

JUDICIARY - ITS FUNCTIONING

Preface

Judiciary is the pre-eminent one among the three instrumentalities of the Indian Constitution. This has to abide by the rule of law laid down in the Constitution. However, the Collegiums System brought in by a decision of the Supreme Court for the selection of judges has left judiciary without a backing of the Constitution. There is no structure to hear the public in the process of selection. No principle laid down, no investigation made. The critical need to think over the appointment, functioning, accountability, on the whole, the quality of the judiciary has arrived. The "Judiciary - Its Functioning" provided a platform to explore the ways to debate on the Collegiums System as well come up with recommendations as a beginning.

Presidential Address

In this context DSS organized a Round Table Conference (RTC) on 12th June 2014 at Ravindra Bharathi, Hyderabad. The discussion was among four major groups - the retired judges, bureaucrats, advocates and representatives of civil society organizations. Jhansi Geddam presided over the discussion.

Jhansi Geddam in the presidential address, said that the ever burning question of 'dalits and judiciary' has come to attention once again in the light of the Tsundur judgment. Judiciary is an independent wing according to the Constitution of India. The basic principles laid down in the Constitution also hold up its independence. It is vital that a discussion be held on how far India has achieved a casteless, classless and genderless society in these 68 years of independence. Whatever the international laws, human rights and Constitution state, they are placed into water tight compartments of casteism when it comes to the Indian society. The equality sans caste has remained an article of Indian Constitution. Indian Constitution says un-equals should be treated equally. Executive and legislature have procedures like reservations that provide space for equality with respect to caste. Judiciary does not have any such provision. The reason why so-called lower castes are not given an opportunity is that judges are appointed on the basis of merit. Hence, the oppressed communities are not given an equal opportunity from lower courts to Supreme Court. The word merit held some value during the phase of judges like Justice Gajendra Ghatkar, Justice Mahajan, Justice Koka Subbarao and others. But now it is apparent that most of the appointments in judiciary have political, caste or class influence. Prashanth Bhushan, Senior Counsel has filed a petition on all judges serving the Supreme Court, except 6 justices, claiming they are corrupt. Justice Markandeya Khatju, a Supreme Court justice commented that the Indian judiciary has rotten. Keeping aside corruption, caste and class discrimination, judicial system is also polluted with sex-scandals. Recently, former Tamilnadu Chief Minister Karunanidhi and West Bengal Chief Minister Mamata Banarjee have given bold statements against judiciary system even at the risk of contempt of court.

As a final point, she said that, if dalits are accused, the topic goes around the crime. But if dalits are victims, it is evidence and witness that becomes vital. Benefit of doubt is not

universal in Indian judiciary. It changes with the class and caste stature. Tsundur massacre, Satyambabu, Chilakalurupet bus burnt cases stand as examples.

Daniel Prakash, the Program Manager, gave an account of their experiences while presenting the statistics from their study – Law in Action. The study is based on the atrocities that took place in the years 2010, 2011 and 2012 in 5 districts of erstwhile Andhra Pradesh. Gathering the information and statistics itself was a major challenge as most of the courts and police stations do not have it. The present Public Prosecutors shift the blame on their predecessors and police stations do not have complete details for reasons unexplained.

From the 2551 cases in these 3 years, the rate of acquittal is 88% and the rate of conviction is 2% which is astonishing. In 70 cases there was trial for just one day and the cases were acquitted. Bails are given to the accused in a day or two. As there is no prescribed time for the trial, they go on for years. There are quite a few rape cases where the victims got married and settled in life and hence cannot attend the trial. In Ranga Reddy district, for instance, there were 3 rape cases that have come to the trial after 3 years and by then, the victims got married. Justice delayed is justice denied. This delay, majorly due to caste discrimination by police and courts is leading to "out of courts settlement." Prakash explained the concept and then handed over the discussion to Jhansi Geddam.

The Discussion

Prof. Kanche Ilaiah:

The major point of discussion he raised was that judges, advocates, PPs or any person in judiciary comes from the Indian society. Born and brought up in the caste and religion, their views cannot be alienated from the system. Hence, there is caste discrimination in judiciary too. He said that the vulnerability to violence increases as the stature of caste decreases. He put in the picture points from his newspaper article that he has written in light of Lakshimpet incident. He segregated the law into three types - divine, social and legal. The divine law of Hinduism itself preaches for caste system. The social law comes from the society ruled by caste discrimination. He opined that until the people giving justice belong to same caste, discrimination prevails. Just as Sanskrit mantras cannot be understood by common people, the language at courts is English and cannot be understood by the poor and dalits. To end with, he concluded saying that English education should be imparted to dalit students and judges should belong to same caste to render justice.



Jhansi Geddam mentioned here that, the dalit legal issues have to be considered as social issues. For instance when atrocities like Tsundur happen, it's not just the dalit organizations that should react, but all the civil society organizations. Denying justice to one group impacts the justice of the whole society.

Justice A. Lakshmana Rao said that he would carry on the discussion in the framework of constitution. Constitution is written by the Indian citizens according to their aspirations. The Indians wanted justice - social, political and economic, liberty, equality and fraternity. The executive, legislature and judiciary have to abide to these essential ideologies. This ensures the humane treatment of all the citizens. It is a common practice to amend the



Constitution whenever a change is required, which is not advisable. For instance, he said, the American Constitution ensures Right to Property to its citizens. But during II World War, the government undertook all the factories which was supported by their Supreme Court, that during war, state has the power to over ride the rights of individuals, as the defense of the country stands as priority. Later after the war when the government was still in possession of the factories, the same Supreme

Court held that after the war, government has to abide by the rights given to its citizens. Here interpretation is what is required. India, that has highest number of laws among the world countries, does not have proper implementation of most of them.

When corruption fails the executive and legislature, citizens approach judiciary. However, judiciary is also by the people, who are the products of the same corrupt society. Now corruption, political influence has crept into the appointment of judges too. Appointment of judges needs to be based on merit, character, ethics, social outlook and awareness of law. He appreciated the work of Dalit Stree Sakthi to bring in changes in the working of judiciary. He said that bringing changes in legal process is extensive. For instance, to bring in changes in SC/ST (PoA) Act took 20 years. Hence it is important to involve women and youth and take it forward as people's movement. Outreach to more and more people intensifies the movement.

Jhansi Geddiam thanked Lakshmana Rao for placing the discussion in a frame work. She said that it is the thought process that needs to be changed in the society to move the judiciary. As initial meeting, DSS has invited retired judges, advocates, civil society organizations and press, just because, people from other groups have stepped back for the fear of 'contempt of court.'

Shri Mazzar Hussain from COVA, first of all said that he was highly impressed by the study conducted by DSS. He appreciated the amount of effort put behind it. In the light of many organizations leaving cases after fact finding and press release, it is a remarkable work to get the study report out as a book. He said that even at the risk of contempt of court, the civil society organizations should voice it out. Taking the instance of US trials, he said that there are more trails on blacks than on the whites in that country. Similarly, in India, there are more trails on dalits and muslims than on any other religion or caste. He said that DSS has brought out that the conviction in atrocities against dalits is 2%, and there is one more point in statistics, that the conviction rate of dalits and muslims where they are accused has to be derived.



Jhansi Geddam, responding to Mazhar Hussain's recommendation, said that the survey DSS has conducted, has at a point of time, seemed impossible. The information cannot be taken from the judges, PPs do not have. With the help of Addl. DGP, CID information from police stations was taken. She proposed that it would be more fruitful if other organizations also take part in the study further. She said DSS would be happy if COVA joins them in stepping ahead with this movement.

Justice K. Ramaswamy spoke majorly about the appointment of judges in Supreme Court and lower courts. He said that SC/ST, BC and women advocates should be given first



priority according to seniority while appointing judges in sessions and High Courts. Later on, these judges depending on their seniority should be alleviated to Supreme Court. To maintain transparency, members of NGOs should also be a party to enquire on the candidates to be recommended as judges. The collagium will then select from this filtered list. He also recommended that 'Indian Judicial Service' exams be introduced like the IAS and IPS to select the judges to cut down the corruption in process of appointment.

Shri Padmanabha Reddy, IFS from Forum for Good Governance, talking on the points put forward by the others in the discussion, said that India has not made an independent constitution for itself. It has made changes to the laws laid down by the British. Hence it is not more people friendly. Law is not affordable, not cost-effective for general public, not transparent enough and not easy to understand. There is a need for setting standards to dispense with the corruption in judiciary. Judicial Accountability Bill is pending to come out as an Act. This would ask for the account of movable and immovable property of judges. This talk does not aim at the truthful judges but for those who need to follow the ethical code of conduct.



Jhansi Geddam said that there is a need for sincere, honest individuals and organizations to form a platform and work for the judicial reforms.

Shri T. Gopal Rao, IAS Retd. said that it is important to talk about reforms in judiciary at this point of time where the Supreme Court has made a rule for itself to select its judges. Everyone knows that there is corruption in the process. Everyone knows that there is a need for reforms. At the moment, what is essential is that the procedure and steps for action plan be discussed. The study report, as others opined should be taken to the High Court and Supreme Court.



Shri Kaki Madhava Rao, IAS, former Chief Secretary said that, at the risk of amounting to contempt of court, he would want to say that there is corruption in the appointment of judges from the lowest to the highest levels of courts. He narrated instances of political pressure during his service time where the merit list of candidates was subsided and

people with high political influence were appointed. He said about the 'origin of sin'. He questioned how one can expect ethical behaviour from one who originates from sin. To be appointed as a judge, the candidate has to pass through the path of corruption, therefore candidate is corrupt. Hence he also recommended that exams like Indian Judicial Services be conducted to ensure honesty at least for a period of time.



Shri R. Subba Rao stressed on the rights given to dalits by Dr. BR Ambedkar which are not taken and implemented in the spirit of law. He said that only education for dalits can solve the issues with equal justice. Constitution is a powerful weapon and serves according to the one who is in power. Judiciary, in the same way is serving bad master in the present scenario. He suggested that everyone follows the path laid down by Ambedkar.

Shri Nanda Gopal said that, social activists feel so responsible towards dealing with cases and take trainings and orientation on social and legal issues. He accounted his experience during a meeting with judges where there was a group of 200. They were not ready to believe the atrocities committed on dalits and women. They felt it was exaggeration. Except for 3-4 judges who were dalits, others did not believe that caste discrimination still prevails. He questioned that if the judges do not have the responsibility to know the society, if they are not given proper orientation, how will they understand the cases and render justice. He further said that in the discussion, one point was that more and more voices should be raised. There are thousands of victims, their relatives, and people fighting for rights who are raising their voices in every instance of injustice. Then how many more voices does judiciary need to understand the gravity of violence? He also said that the cases do not stand in court for petty reasons such as the investigation was not carried out by DSP/ACP, the accused did not have intension of caste discrimination or does not know the caste. Finally, he questioned what the method to really move the judiciary is.



Jhansi Geddani, having worked with Nanda Gopal for some time, recounted some cases they dealt together. She also mentioned Satyambabu's case, where they knew he was not guilty. Hence, they locked the gates of the court and demanded justice. When others tried to warn that it amounts to contempt of court, they further demanded that the honourable judge should also tell what contempt of court at that instance is. She also said about the legal clinic conducted for further justice in 30 cases. She put forward the questions, what is supreme, what is merit and what is justice. These answers are not easy to find. All organizations need to work together in finding the answers.

Shri Jajula Gouri, Adv, AP High Court, majorly spoke about the corruption and injustice done in cases like Tsundur. She told how corruption at administrative level in courts jeopardizes cases. Representatives of various organizations, Mahesh, Yadaiah, Prakash, Gadda Srinivas, Ravi Chandar, Padma Rao further continued the discussion on the points raised above. The discussion was concluded



with the following outputs to be taken forward together. Vote of thanks was given by the program manager.

Outputs:

- There is a need to find an alternate, to bring in reformatations in the judicial system infested with caste and class.
- The present society is the effect of corrupt judiciary system, which ironically is meant to render justice to those who are victimized by other systems.
- Collegium does not serve the spirit of equality. The appointment process of judges has to be made like the IAS or IPS selections. This would bring in change in the work culture of judiciary.
- In the present judicial system, “Benefit of Doubt” is serving in the favor of the haves.
- Change in judiciary and hence society is possible only if oppressed communities and women are also appointed in crucial positions in judiciary.
- The members expressed hope that the Judiciary Standards and Accountability Bill soon becomes an Act.
- There is a need for orientation to the judges on the caste, class and gender issues.

