

## Fixing Accountability of Judges Will Enhance the Sagging Credibility of District Courts in India.

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**ABSTRACT:** Judges need to have accountability. It has been stated and observed that judges are not accountable for their judgments, orders and other judicial proceedings and they may pass the judgments, orders rightly or wrongly. In the way, an unfettered immunity has been granted to them for their actions in performing judicial actions in the name of judicial independence or judicial autonomy. Due to this, judges have become more independent, fearless since they are not accountable for their judicial judgments, orders and other judicial functions. Sometimes the judges may interpret the law wrongly and cause injustice rather than providing justice. An effort has been made to understand why there is need that the judges should be accountable and appraise it against number of benchmarks.

**KEYWORDS:** Accountability, judicial independence, autonomy, intellectual dishonesty

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As per Constitution of India, there are three organs Legislature, Executive and Judiciary and another organ considered is media. It is the responsibility of the legislatures to make law and the same is implemented and executed by the Executive and Judiciary is there to interpret the law made by the legislatures. Executive is accountable for their actions to Parliament which is a Supreme and Sovereign body. Law makers are responsible and accountable for their actions in making the law. But what about Judiciary ? Accountable and responsible to whom?. None. In our preamble to the Constitution, it is provided, We the people of India and all the actions of Legislatures, Executive and the judiciary are to abide by the mandate given in the Constitution of India which implies that all the organs of our constitution are accountable to we, the people of India. There is not an iota of doubt that judges need to have independence and enjoy immunity for their judicial functions, but it should not be ignored that in the name of judicial independence, autonomy, immunity etc the common man should not suffer and sometimes in the process of providing justice, great injustice is caused which is not contemplated in the Constitution of India which specifically provides justice for all without any distinction on the basis of caste, colour and creed.

### Intellectual dishonesty committed by the Judges of the Trial Courts

In a recent order passed by the Hon'ble Supreme Court of India, it has been held that not giving bail by the Trial Court Judges where custody is not required amounts to intellectual dishonesty. The observations made by the Apex Court points to the fact that there are some trial court judges who by their orders are causing injustice rather than providing justice as per law. This is not a single situation where the trial courts are causing injustice. There are a numerous circumstances in the judicial functions where the trial court judges may be seen doing intellectual honesty in the name of dispensation of justice. First and foremost of all is that in most of the cases, effective hearing does not take place. Cases taken up in courts are adjourned either suo moto or on the requests of the advocates of the parties involved in the litigation. In most of the cases, FIR is not registered by the Police even if the offence is cognizable though it is under obligation to register FIR under section 154 of Cr.P.C and the same is not done even after complainant approaches the Deputy Commissioner of Police. Being aggrieved by the inaction of the police, the complainant comes to Court and file application under section 156(3) Cr.P.C for directions to SHO for registration of FIR in case of a cognizable offence but finds that the Courts give more weightage to the version of the police rather than the complainant and application is not decided for years despite the fact that the cognizable offence has taken place. It has been seen that the police file ATRs helping the accused persons. In a large number of cases, application under section 156(3) is dismissed and cognizance of the offence is taken under section 190 Cr.P.C and matter is fixed for pre-summoning evidence which again takes substantial period and in this process, some litigants realize that he should not have come to the court.

### Delay in acceptance or rejection of Closure Report and Protest Petition

If by chance, an FIR is registered, police in connivance with the accused persons file Final Form as closure report under section 173 of Cr.P.C stating that no offence is made out against the accused persons. In such a situation, the complainant has right to file protest petition. The court may accept the closure report and reject the protest petition or it may accept the Protest Petition and reject the

## **Fixing Accountability of Judges Will Enhance the Sagging Credibility of District Courts in India.**

closure report or court may take cognizance of the offence or may give directions for further investigation. Sometimes the Court takes substantial time in deciding on the acceptance or rejection of Final Form filed as closure report filed by the Police and protest petition filed by the complainant. If the Court decides to accept the protest petition and reject the Final Form filed by the police as closure report and take cognizance and matter is fixed for pre-summoning evidence and further the case may be fixed for framing of charge which may also take years and the actual trial starts after that and by that time case is decided, parties are exhausted and the complainant looks back and count the years he spent and compare it with the result and repent on what he has done.

### **Delay in passing Judgments / Orders even after hearing of final arguments**

Another harassment being faced by the litigants is that after the case is finally heard, the case is fixed by the courts for orders and it also takes considerable time and intellectual dishonesty is committed by some judges when they write in the note sheet, "Fixed for Orders/Clarification" and most of the time no clarification is sought from any of the parties and this is just to delay in passing the final order. The Judges are supposed to issue final judgment / order within 15 days of the final arguments but to avoid this, the judges write "Fixed for Orders /clarifications. Since the matter is fixed by writing these words, parties are supposed to attend the courts on the apprehension that the Judge may ask for some clarification and in this process, sometimes more than six months are passed in this way and considerable time of the parties, court staff is wasted in this process which can be avoided and the higher judiciary may look into it and pass necessary directions so that harassment to litigants is avoided in such cases.

### **Complaints under section 138 of the Negotiable Instruments Act,**

If we look at the complaints under section 138 of Negotiable Instruments Act, the situation is more precarious. If complainants and the accused are in different cities, getting summons served on accused is a big headache. Bailable warrants are issued which remain unserved for a considerable time and if bailable warrant process is not received back, fresh bailable warrants are issued against the accused for some amount with one suety of the like amount through SHO concerned returnable to the court on a date fixed by the court and in such a situation, non-bailable warrants will not be issued unless bailable warrant process is received back. The whole process comes to a standstill and every time complainant is asked to file PF within a week or fifteen days and in this way every time the complainant is asked to file PF which is not mandatory under the Law, just another example of harassment to the litigants. Even after the summons are served and the accused attend the hearings of the Court, there is long drawn process of recording evidence, cross-examination, statement of accused under section 313 of Cr.P.C and if there is acquittal, the complainant need to appeal in High Court and if the accused is held guilty, he can file revision before the Session Judge and in the entire process it may take more than five years.

### **Recording of statement under section 313 of Cr.P.C**

Another interesting aspect is in relation to recording of statement of the accused under section 313 of Cr.P.C. It has been observed that some judges just ask their readers to type certain questions for the accused and the same is shown to the accused and answers are taken from the accused as if this is a MCQ examination containing yes or no etc. This system is not at all contemplated under our Criminal Procedure Code. The Judge is supposed to ask questions from the accused personally as to the circumstances under which offence has taken place so that truth may come out. This again needs to be looked into by the higher Judiciary.

### **Every Judgment Cited must be discussed**

Hon'ble Supreme Court of India in the case of **Prabha Sharma v. Sunil Goyal & Ors**, has made it clear that the judicial officers are bound to follow the judgments of the High Court and also the binding nature of the judgments of the Supreme Court of India in terms of Article 141 of the Constitution of India. It has been further held the Subordinate Judges who took the precedents just as "pieces of decoration" and violated judicial discipline and the Apex Court has come down heavily upon such delinquent judicial officers and has held in the judgment that disobedience of SC and HC judgments by a District Court Judge sufficient for disciplinary action. Article 141 of the Constitution of India binds all subordinate courts to follow SC judgments and thus precedents are bound to be followed, and any such aberrations should be sternly dealt with.

In support of their case, parties file citations of Supreme Court of India or High Court but the same are not acknowledged / recorded in the note sheet by some judges and sometimes these are recorded in the note sheet but not discussed in the Judgment or order passed by the Courts which is another matter of concern for the advocates and the litigants or sometimes, In the judgment or order, it is simply stated that facts of the case in the judgment cited are different and not applicable to the facts of the case, which is not enough and the judges are supposed to discuss the same and also state how these are different from the facts of the case. It has been observed that in a majority of cases, citations are just ignored and not acknowledged while passing the final judgment or order.

### **Considerable time taken by judges in deciding maintainability of the Suits, petition, complaint, application etc.**

It has been observed that considerable time is spent in Courts in just deciding whether the case is maintainable or not. When a suit is filed in a Court, the opposite party may file an application under Order 7 Rule 11 of CPC for rejection of plaint along with written statement on the ground that the suit as framed is not maintainable as there is no cause of action or suit has not been properly valued and correct court fee has not been affixed on the plaint etc. Normally, the Courts hears arguments on such applications before admission / denial of documents and framing of issues and if the suit is held maintainable, and if there are more than one defendant,

## **Fixing Accountability of Judges Will Enhance the Sagging Credibility of District Courts in India.**

the other defendant again files such an application challenging the suit on some other ground just to delay the case and causing loss of judicial time of the Courts. The Courts need to decide such applications expeditiously and multiple applications need to be discouraged as the principle of res judicata applies not only to final judgments / orders but the same also applies to the proceedings so held during the hearings of the case. It has been observed that sometimes, judges dismiss the suit after five years or so stating the suit / petition has been filed in a wrong forum which gives big shock to the plaintiff / petitioner / applicant as the case may be.

### **Conflicting judgments passed by different High Courts, another cause of concern for the District Courts and litigants**

It has been observed that on certain issues, conflicting judgments are passed by the different High Courts which is another cause of concern for the District Courts and the litigants. For example, marriage of minor has been held to be not illegal and void and the same has been held to be just irregular. The marriage of minor under Hindu Marriage Act is neither void nor voidable but the same is voidable under the Prohibition of Child Marriage Act, 2006 and the same can be dissolved by passing a decree of nullity under section 3 of the aforesaid Act. On the one hand it is provided in law that the minimum age of marriage for girls is 18 and years and 21 years for the boys but on the other hand the marriage of minor is neither void nor voidable nor illegal under Hindu Marriage Act, but the same is considered as irregular and as such cannot be dissolved by passing a decree of nullity. Another important aspect is applicability of Prevention of Children from Sexual Offences (Pocso) Act in case of child marriage. As per Pocso Act, sex with a minor girl below 18 years and minor boy below 21 years is a punishable offence. Under Muslim Personal Law, the marriage of girl can take place when she achieves the age of puberty i.e 15 years. In such a situation, the moot question is, Can the Pocso apply in case of marriage of minor muslim girl ?. Some Courts have stated that such a marriage is perfectly valid and Pocso Act will not apply but others have stated that Pocso will apply as it is a special law made for the protection of children from sexual offences and it has overriding effect over personal laws of the parties in which they have been married. Another aspect where differing judgments have been issued by the High Courts on the applicability of Pocso is when minors are in marriage or otherwise are engaged in romantic relationships. Some High Courts have stated that Pocso Act is not meant for punishing the children for their involvement in romantic relationships but others have stated that such activities come under Pocso.

It has been observed by the Smt Swarana Kanta Sharma, Hon'ble Judge, Delhi High Court "Though it may be desirable that the cases of teenage infatuation and voluntary living with each other, eloping with each other or maintaining a relationship, such as the present case, are dealt with on a different footing, the court's hands are tied." It has been further stated that an amendment would be needed in the wisdom of Parliament if deemed appropriate.

The Karnataka High Court has directed the Law Commission of India to reconsider the age of consent in Pocso Act. It has been observed by division bench of Justices Suraj Govindaraj and G Basavaraja that "having come across several cases relating to minor girls above 16 years having fallen in love and eloped and in the meantime, having had sexual intercourse with the boy, we are of the considered opinion that the Law Commission of India would have to think on the age criteria, so as to take into consideration the ground realities."

It is observed that it is lack of awareness of Pocso Act and Indian Penal Code that is resulting in many offences being committed by young persons. It is also seen that many offences which are deemed offences to have been committed as a result of or on account of lack of knowledge on the part of the minor girl and the boy. Many a time the boy and girl involved are either closely related or very well known to each other being classmates or otherwise. Stating that lack of knowledge of law is not an excuse for committing a crime, the bench stressed on the need that students especially at least of class 9 onwards are educated on the aspect of Pocso Act, the acts which are criminalized under the Pocso Act as also under the Indian Penal Code.

Similarly, Meghalaya High Court has observed that acts of mutual affection between an underage couple do not amount to sexual assault under the Pocso, Act. In an order passed by the single judge bench of justice Wanlura Diengdoh, it has been held that though consent of a minor is immaterial as far as prosecution for an alleged assault is concerned, "considering the peculiar facts and circumstances of a particular case, such as in the case of a boyfriend and girlfriend particularly, if both of them are still very young, the term 'sexual assault' as could be understood under the Pocso Act, cannot be attributed to an act where, there is, as pointed above, mutual love and affection between them".

In a rare judgment, the Uttarakhand High Court while exercising the inherent powers under section 482 Cr.P.C has ordered the fast track court of special sessions at Rudrapur in Udham Singh Nagar to drop a case under the Pocso Act as the victim wanted to 'move on' and continuance of the case would spoil two families.

### **Reluctance of Courts to dissolve marriage of minors by passing a decree of nullity under Prohibition of Child Marriage Act, 2006**

The Courts at times are reluctant to dissolve a marriage by passing a decree of nullity under Prohibition of Child Marriage Act, 2006 where one of the couple is a child, being less than 18 years in case of girl and 21 years in case of boy, due to the fact that such a marriage is neither void nor voidable nor illegal under Hindu Marriage Act despite knowing fully well that the Prohibition of Child Marriage Act, 2006 is a special law and has overriding effect over the personal laws of the parties under which they are married. A very few cases rather negligible cases have been filed and decided by the Courts under Prohibition of Child Marriage Act for dissolution of marriage of minor by passing a decree of nullity.

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The Hon'ble President of India, Smt Droupdi Murmu, at a function has observed that merely giving Judgment is not justice and she asked the dignitaries present there consisting of Hon'ble Chief Justice of India, Chief Justice of High Courts, Law Minister of Government Of India and others to do something as people who belong to lower strata of the society being poor and downtrodden are suffering and they are not getting justice. She also stated that the Judiciary must do something and if rules are to be changed at any level, same must be done

### **CONCLUSIONS AND SUGGESTIONS**

Justice delayed is justice denied. Efforts must be made at all levels be it Parliament, Government of India, Supreme Court of India, High Courts, State Legislatures, State Governments, Bar Councils to make joint efforts to ensure speedy dispensation of justice. Though Judges need to have required independence, autonomy and immunity so that they are able to decide cases fairly and fearlessly but they must share the accountability for the delay and pendency of large number of cases in courts. A feeling has come in the minds of general public that justice is available only for rich persons who can afford high fees of the Senior advocates. It has been observed that while cases of elite and rich class are heard by the courts but the other cases which are pending for years are not taken up. This is not in the interest of democracy of the country. It is the need of the hour that certain radial changes are made so that sagging credibility of justice system of courts is improved upon and people have unblemished faith in the judiciary. Directions may be issued by the Hon'ble Apex Court and High Courts to the District Courts that the practice and procedures adopted by District Courts should be such that every hearing should be an effective hearing and adjournments should be minimized so that pendency of cases in courts gets reduced. To minimize the delay in the criminal cases, timeline should be fixed in the following matters:

1. Applications under section 156(3) Cr.P.C filed by the complainant for directions to SHO for registration of FIR.
2. Pre-Summoning Evidence
3. Arguments on Charge and discharge of the accused
4. Recording of examination-in-chief and cross-examination
5. Recording of Statement under Section 313 Cr.P.C
6. Issuance of Judgment / order after final arguments

To minimize the delay in the civil cases, timelines should be fixed in the following matters:

1. Application for ad-interim injunction under Order 39 (1) & (2) read with Section 151 of CPC
2. Filing of Written Statements
3. Filing of Replications
4. Application under Order 7 Rule 11 CPC for rejection of plaint on the ground of non-maintainability, no cause of action, suit has not been properly valued.
5. Admission / denial of documents
6. Framing of issues
7. Recording of examination-in-chief and cross-examination
8. Issuance of Judgment / order after final arguments

### **REFERENCES**

- 1) The Code of Civil Procedure
- 2) The Criminal Procedure Code
- 3) Indian Penal Code
- 4) The Protection of Children from Sexual Offences (Pocso) Act.
- 5) The Prohibition of Child Marriage Act, 2006.
- 6) The Hindu Marriage Act, 1955
- 7) Muslim personal law on marriage
- 8) Prabha Sharma v. Sunil Goyal & Ors, Supreme Court of India in Civil Appeal No. 632-633 of 2017