

LEGAL SYSTEM AND ECONOMIC DEVELOPMENT OF INDIA

by

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ABSTRACT

A glimpse of India's updated economic condition was briefly highlighted in June 2021 by Shashi Tharoor (Member of Parliament, writer etc.) through his tweet which reads as follows "In the Modi government's second term, India has slipped from 94 to 111 on the Human Freedom Index, from 79 to 105 in Global Economic Freedom Index, from 129 to 131 in UNDP's Human Development Report....". However no matter what the genuine official records manifest, our heads of governments bureaucrats, officials have the audacity to release and highlight reports regarding the expectancy of India becoming one of the strongest economies soon. On one side we have inspiring statements made by our Hon'ble members of legal fraternity (Justice DY Chandrachud and Hrishikesh Roy maintained in case of July 2021) such as "India can't have two parallel legal systems, one for the rich and the resourceful and those who wield political power and influence and other side, there is brutal treatment and atrocities inflicted upon intoxicated prisoners to bring them under control and the authorities claim to have no idea about the supply of contraband to wretched prisoners. The reason for contrasting the statements regarding economic condition and legal system of India is the fact that effective legal system compliments economic prosperity. It's ludicrous that our talented, efficient administrators and other official's despite of being very well aware about this fact seem not enough interested to make efforts for ensuring effectiveness in both, as our countries economic condition continues to remain in a state of deterioration. The report published by Task Force on Justice (April 2019) states "Providing universal access to basic justice could serve the global economy billions of dollars every year, as lost income and stress related illness due to seeking legal redress can cost countries up to 3% of annual GDP. There are various other such reports that emphasize the significance of a proper, strong legal framework in catalyzing economic progress of a country but our governments, law enforcement agencies etc. are too busy in a flood of trivial things. After all having grand arrangements for Azadi Ka Amrit Mahotsav, and many such events top the list of priorities. And ensuring basic access to justice to people and saving our crumbling economy can be addressed at some other time. Right! What's even more shameful is that few Hon'ble members of our judiciary are too busy in passing vulgar comments over the wives of their counterparts and few of them busy in taking bribes and harassing women! In such a scenario, both legal and economic systems are bound to collapse gradually.

In this article the author has attempted to describe the miserable state of our legal system, the connection between legal system and economic development. Furthermore, the author intends to highlight certain measures required to be taken for improvement in the legal system and thereby ensuring economy boost, which is tremendously important as 'We can't afford to continuously rank poor in various other reports and bring shame to our country'. Above all, we cannot and must not allow anything tarnish the image of our beloved nation---'India'.

Main body

“Injustice anywhere is a threat to justice everywhere “_____Martin Luther King Jr

The fundamental source of ensuring justice by maintenance of law and order, preservation of basic human rights, effective mechanisms of deterrence and punishment for breach of law etc. is a country's legal system but are we certain about our legal system being effective? Alas! Our legal system continues to be in decay for decades because of ineffective policies, poor planning, failure to use optimum resources and other factors.

Such is the plight of justice in India that it took around 5 years for an accused[an under trial, booked under Unlawful Activities Prevention Act¹] to get bail on account of Right to speedy trial which is intrinsic to Article 21, emphasized in number of judgements ².The problem of corruption has ensured to plague almost every section of society but finding judges corrupt is something which shatters the belief of people in justice and the news of judge's being corrupt and their negligent, unethical conduct is so common to hear. Recently Former Kolkata judge C.S. Karnan was arrested on account of his vulgar comments made against Supreme Court judges and their wives. In 2018, judge S Madhu was arrested on the charge of corruption for demanding bribe from his clients for their acquittal. And there are bundle of such other cases of corruption.

Enormous sources signal towards the failure of our legal system

Citing data from a report of National judicial Data Grid **“more than 3.7 million cases are pending across different courts of India “**.According to Ministry of Law and Justice, India had around 4 crore pending cases before different courts in 2020 and other such reports reveal the massive burden of cases under which our judicial system is crumbling .Besides pending cases, there are so many irregularities ,flaws in Indian legal system such as unnecessary delay in the disposal of cases , heavy litigation expenses, lack of adequate judges to decide the cases[India has only 19 judges per 10 lakh people³ and the Indian justice report 2020 again clarified the inadequacy of judges].So expecting justice in such a situation is really absurd! Since 2016, India has not been able to achieve a decent rank in the Rule of Law Index ⁴[analysing countries on following grounds ---On Govt powers, Absence of corruption, Open Govt, Fundamental Rights, Public order and Security, Regulatory Enforcement and Civil and

¹ Union of India v. KA Najeeb.

² Mangal Singh v. Kishan Singh (2009) 17 SCC 507, Bir Singh and Ors. vs NCT of Delhi September 18,2018.

³ Law ministry data.

⁴ Organized by World Justice Report.

Criminal justice] that a need arose for filing a petition⁵ in the court in 2020, asking it to direct govt to formulate expert panels for helping India improve its prospects in Rule of law Index. Although on account of not being an appropriate matter for courts to determine, the plea was refused to be entertained. In fact, setting up expert committees for analysing the practices of top 20 states as per Rule of law Index 2020 has also been recommended, so as to make India mark its entry in the best rankers, which would among other important things imply its effective 'legal mechanism'. As rightly stated by Abraham Lincoln **"Nations do not die from invasion, they die from internal rottenness"** and I feel India's terrible ranking in the Rule of law Index very well elucidates its ineffective internal situation which if not improved would ultimately lead to its decay.

Effective and strong legal framework of India indispensable for its economic prosperity!

Amartya Sen [Indian economist] stated **"Economic growth without investment in human development is unsustainable and unethical"** and I believe the most important thing that will have an incredible impact on human development, progress and ultimately to economic boost is properly served justice. And this could be ensured only by a well-developed legal system. As per Economic Survey of the Finance Ministry, 2017__ **"Slow resolution of economic and commercial cases was one of the stumbling blocks in reviving the investment cycle in the country"**. Reiterating the contribution of legal institutions to the economy, Desmond Tutu (Spokesperson for World justice Project 2020) stated

"Development of Rule of Law is the prerequisite for a country's social and economic development". Few instances of connection between legal institutions and economic development are briefly discussed below:

- Incompetent delivery justice system has caused a loss of about 9% in India's GDP⁶. Former Solicitor General -Harish Salve's blame to Supreme Court for contributing to economic decline was also evident by the reports of experts who analyzed fall in Indian economy since 2g spectrum case of 2008 [where court in response of Public Interest Litigation revoked 122 licenses on account of certain irregularities. However, nothing substantial was proved against the accused [which among 17 others included former Telecom Minister A Raja, MP Kanimozhi, leading to their acquittal but unfortunately caused profuse losses to the telecom sector of around 7 lakh crores, thereby causing terrific impact on India's overall economy]. In the Coal Scam Judgement of 2014, Supreme Court declared more than 200 coal block allocations from 1993 to 2011 illegal & ultimately revoked all except 4 allocations adding to the miserable economic condition. Again in February 2018, India's economic situation deteriorated by the Supreme Court's order of banning 88 iron ore mining leases in Goa [which had a significant contribution of about 40% to India's GDP], on account of a petition filed by an NGO "Goa Foundation" alleging intense harm because of mining activities. Thus, legal institutions play a major role in enhancing the economy of India

⁵ By the Public Interest Litigation Man of India, Ashwini Upadhyay-----Lawyer and BJP leader.

⁶ Institute for Economics and Peace -----2018 report.

or rather any other country. And this clarifies the incredible economic status of countries like USA, Germany, Denmark⁶, UK, Japan, UAE, etc.

Covid-19 pandemic further hampered the enhancement of legal institutions!

Although there is no doubt that there was a positive outcome of online court functioning during Covid-19 pandemic. Supreme Court while defending Virtual Court's System, as it was criticized by few stated **"The advantages of virtual court system, especially in terms of time, energy and money saved by the litigants and counsels in ensuring their presence before a court are innumerable and could be game-changers too"**. But courts functioning was severely hampered during the lockdown phase leaving bundle of important cases unheard as the Supreme Court issued directions under the Supreme Court Rules, 2013 for hearing only urgent cases. Chief Justice of India, S A Bobde in Sep 2020 expressed his concern over huge pendency of cases and mentioned the requirement of mediating cases for burden reduction.

Steps to ensure economy boost by focusing on the enhancement of Indian legal framework

An independent, accountable judiciary [the significance of which has been emphasized again and again] in itself would have been a great reform to judiciary but unfortunately this seems to be a fantasy as even today Court's are not devoid of outside interference and influences which is quite evident by the recent controversy when one of the senior most judges of Supreme Court Arun Mishra, on an event specifically related to law started applauding Prime Minister[As per 1981 judgement of SC, court emphasized the significance of an

independent judge unbending before economic or political power] thereby signaling towards the failure of independence of judiciary even today. Recently in 2020, India's eminent lawyer Prashant Bhushan stated **"The independence of judiciary has collapsed"** and blamed the government for this, calling it ruthless as it ensures to bring every Chief Justice under its control and ultimately influence their decisions. So, in order to ensure India's progress in World Justice Index as well as country's economic flourishing [specifically after the pandemic], some adequate steps after proper analysis and adequate discussion must be taken. I consider the following steps necessary in this regard which I believe have been recommended number of times.

1. As per Judicial Stress Index [census 2011], the states of Bihar, UP and Odisha top the highly stressed district courts because of high pendency cases, inadequate court infrastructure and other factors. So, it is imperative to start addressing the problem right from the bottom I.e., lower courts which in turn would ensure smooth functioning at the higher levels also.
2. Transparency in appointment of judges.

⁶ Denmark is maintaining its record of having the best judicial systems in the world as per World Justice Report for the 4th time.

3. Increasing the number of judges in the lower courts as done in the Supreme Court which is currently working at a full strength of 34.
4. Setting up All India Judicial Services.
5. Disciplined hearing of cases.
6. Proper funding to judiciary.

Could adequate budgeting to judiciary ensure two-fold benefit of reviving it as well as economy?

Providing adequate funding to judiciary would be an incredible move. Quoting the then Chief Justice of India RM Lodha **“Governments think that judiciary is a non-productive organ of the state. They hardly spent on it.... less than 0.5% is spent on it”**⁷. But unfortunately despite repeated attempts on part of judiciary, poor budgeting continues to hamper judicial development even in 2020. In 2020-2021 Union Budget, there was a significant decline in allocation of judicial budget and the hope has again been shattered by 2021 Union budget as despite of increase in judiciary budget, it is not considered sufficient. Let's just hope for the proper implementation of steps contributing to legal development [which would assure economic development as well] and be optimistic about the upcoming budget declaration which might prove a ray of hope for judiciary as well.



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⁷ While hearing petitions on National Judicial Appointments Commission in 2015.