P: ISSN NO.: 2321-290X RNI : UPBIL/2013/55327 VOL-6* ISSUE-1* September- 2018
E: ISSN NO.: 2349-980X **Shrinkhla Ek Shodhparak Vaicharik Patrika**

A Critical Study of The Need of Improvement in The Indian Judicial System For The Sake of Economical, Speedy & Easy and Equally Accessible Justice

Manroop Singh Meena
Principal,
Government Girls' College,
Dholpur, Rajasthan

Abstract

Executive, legislation and judiciary are the three separate organs of a nation which make the nation move by working independently. Judiciary is the backbone of a nation as it guarantees the citizens justice. As a principle, judiciary guarantees justice to everyone. Judiciary may not be democratic as initiator, but it becomes so by democratic approval through acceptance of judicial pronouncements by the people at large. Black finds merit in a judiciary provided with the power of judicial review. To quote him: "Now surely it ought to be clear that no democratic principle whatever is infringed, if the people choose, as a matter of prudence, to give the power of constitutional decision to a Court composed of men trained in the requisite professional discipline, and isolated from immediate responsiveness to changing popular views."

The people of India have eversince revealed faith in the judiciary and judicial system. Even the most of powerful of powerful keep themselves bound to accept the judgments made by the judges at the lower courts, the higher courts and the Supreme Court. It is the common expectation of the people from the judiciary to dispense speedy, economical and easily accessible justice so that the people get justice to the wrongs done to them. The judicial procedure is, to everyone's surprise, too long. In civil cases in particular, it takes too many years for the victims to get justice.

The paper is a theoretical study made with a view to producing procedural weaknesses of the Indian judicial system, status of the pending cases and interpreting the cause and effect relationship of the delay in justice to the victims. The paper chiefly is designed and prepared on the basis of the secondary data available in various sources. However, the primary data collected through the self-prepared interview guide, casual and informal talks and healthy discussions on the theme too find room in the paper.

Keywords: Judiciary, Natural Justice, Equity, Delay in Justice, Spirit of Law and Order, in The Eye of Law, Session Courts, High Courts, Supreme Court, Judicial Activism

Introduction

Despite much transparency, the Indian judiciary seems to be unable to satisfy the people through its long procedural working. No doubt, there are lower courts, high courts and the Supreme Court in order to dispense justice to the people, but the practice says that the people fail to get justice in time. Major reasons cited for judicial delays are: Paucity of judges and court staff, Inefficiency of the case management system, Apathy towards use of technology in justice deliverance, Absence of work culture in court rooms and Predominance of "Adjournment culture" in litigation. Whatever the reasons are, the victims suffer eventually when they find that in spite of undergoing the tiresome procedure, high court fee and the fee of the lawyers, they get nothing but frequent visits to courts getting dates for hearing.

Judiciary works at three levels through the lower courts, the high courts and the Supreme Court. Each of the three types of courts dispense justice to the people to the extent they are allowed by the Constitution of India. It is true that some of the cases are finalized at the level of the lower

courts but in many of the cases make appeals to the high court and even to the Supreme Court seeking justice. The completion of the legal procedure costs too much and even disturbs the life of the people. The most shocking thing occurs when at the higher levels, the parties lose the cases and fail to get justice despite much efforts.

In some of the cases, though exceptional ones, all the three types of courts dispense incredibly speedy justice, but in general it does not happen and the suffering parties have to wait for a very long time. In some of the cases, justice is dispensed even after the death of the appellants. The reports of the speedy trial and speedy justice by the courts exercising special powers make the common men believe that even judiciary which was founded on the principle of natural justice works under the influence of the rich and powerful.

Moreover, there are certain cases of the celebrities and the elites which are decided in favour of the accused setting aside the evidence produced in the court, while in case of the cases of same nature of the common men, decisions are prolonged. In order to keep on winning faith of the common men, the judiciary needs to dispense economical, speedy and easily accessible justice to all. It is the demand of time and common men. By maintaining transparency and objectivity based on the constitutional law, judiciary can make the existing judicial system flexible for everyone to get justice at the earliest possible.

Examples of Late or Midnight Hearing and Speedy Trial & Justice In The Supreme Court

Ajay Bijesh Issac enlists the examples of late or midnight hearing of certain exceptional cases by the Supreme Court under **'Midnight knocks at the Supreme Court'**-

B. S. Yeddyuarappa

At 1:45 in the morning on Thursday, the Supreme Court of India turned down a petition challenging Karnataka Governor Vajubhai Vala's decision to invite the BJP to form the government. The petition was aimed at stopping BJP leader B.S. Yeddyuarappa's swearing-in ceremony on Thursday morning but was declined by the apex court in a historic hearing post mid-night. However, this was not the first time that a court has been convened for a hearing at such odd hours. Previously, the apex court has come into session in the middle of the night in four different cases.

Yakub Memon

In the midnight of July 2015, only three hours before 1993 Mumbai Blasts accused Yakub Memon was to be executed, his lawyers Anand Grover and Yug Mohit Chaudhary met Chief Justice of India, H.L. Dutta. In a dramatic turn of events, for the first time in history, the Supreme Court was convened inside the court premises post midnight to hear a final plea. The session lasted for 90 minutes—from 3:20am to 4:50am—in court number 4 where the judges reviewed the final petition after President Pranab Mukerjee had rejected a 14-page mercy petition filed by Memon on July 29th.

The plea was rejected and Yakub Memon was executed on 30th of July, 2015. Even though the verdict was opposed by numerous human rights activists, the fact that the Supreme Court was available at such an odd hour was greatly appreciated by the public and media. Yakub Memon's case was the first time that the SC was convened within the court premises during midnight. But hearings have been held at three other occasions at the residence of senior justices even after court hours.

Lalit Mohan Thapar and Shyam Sunder Lal

On the September 5, 1986, a bench of the Supreme Court sat late into the night to provide bail for Lalit Mohan Thapar and Shyam Sunder Lal. The two industrialists were convicted in their company's violation of the Foreign Exchange Regulation Act (FERA) but where granted bail in an emergency session at Justice E.S. Venkataramiah's residence. This, however, attracted a lot of criticism from the public on grounds of double standards for court proceedings and petition regarding bails for socially privileged and what was described as "small men". The bail had freed L.M. Thapar from criminal charges, but two years later, the Directorate of Enforcement slammed a fine of Rs 26.5 lakhs on his company.

Maganlal Barela

On 7th August 2013, the Supreme Court suspended the execution of Maganlal Barela, who was convicted for beheading his five daughters. Colin Gonsalves, a senior counsel had approached the chief justice, late in the night, at his residence. The then chief justice, P. Sathasivam, issued an interim order of stay of execution at 11:30pm. The fax from the Supreme Court reached the jail authorities five hours before the execution and Barela escaped the gallows thanks to the late night apex court hearing.

Surinder Koli

In 2014, a similar hearing was held two hours before the execution of Surinder Koli, the prime accused in the Nithari case. Right before midnight on September 7, 2014, Koli's lawyers, led by Senior Advocate Indira Jaising appealed for a re-hearing of his review petition before the bench of Justices H.L. Dattu and Anil R. A previous five-judge constitution bench judgement on September 2, 2014 had stated that review petitions had to be held in open court by a three-judge bench as it was a matter of life and death. At 1:40am on September 8, the court issued a stay order and the execution was postponed to the September 12. This was further postponed to 29th and later commuted to life sentence. The legal proceedings for Koli is currently underway.

Objectives of The Study

1. To study the functioning of judiciary in India
2. To learn about the principles on which the judiciary works.
3. To be familiar with the influence of the power and approach on judiciary.
4. To know about the faith of common people in judiciary.
5. To explore the causes that have shaken the common man's faith in judiciary.
6. To go through some of the cases that have met speedy justice.
7. To go through some of the cases of the common people in which justice is unnecessarily delayed.

8. To find out whether the role of a judge is merely to declare law as it exists or to make law.
9. To examine the role of the judges in speedy justice.
10. To discuss the role of judges in making the justice easily accessible to all.
11. To compare the Judicial Behavior of the Indian Judiciary.
12. To discuss and examine the discretionary powers of the judges in the context of providing speedy justice.
13. To evaluate the factors responsible for the origin of Judicial activism in India, its evolution and reasons for its growth, in the light of the decisions given by the Supreme Court.
14. To discuss and analyze the concepts of Judicial Power, Judicial Review, Judicial Activism and Separation of powers in general with particular reference to India.
15. To ascertain the problems and perils of judicial activism.
16. To examine the factors that have given rise to Public Interest litigations in India.
17. To discuss the role played by judicial activism in the administration of justice in India.
18. To suggest ways and means to ensure and uphold the spirit of constitutionalism.
19. To find out how economical, speedy and easily accessible justice can be dispensed to all without any manipulation.
20. To arrive at an understanding the role of judiciary in modern scenario and finding solutions to some important issues.
21. To go through and review the exceptional late or midnight working of Supreme Court in certain cases for the sake of speedy trial and hearing.
22. To critically evaluate the public opinion about late night hearing by the Supreme Court in certain cases.

Review of Literature

Former Chief Justice P N Bhagwati in his Law Day speech in 1985 stated: "I am pained to observe that the judicial system in the country on the verge of collapse. Our judicial system is crashing under the weight of arrears. It is trite saying that justice delayed is justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual and superficial level. Those who are seeking justice in our own Courts have to wait patiently for year and years to gets justice. They have to pass through the labyrinth of one Court to another until their patience gets exhausted and they give up hope in utter despair.... The only persons who benefit by the delay in our Courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against Government and public authorities and then continues to enjoy the benefits of such stay or injunction for years, often at the cost of public interest."

An Interpretation of The Concept of Common Law and Civil Law ;Vis-À- Vis Their Differences and Points of Intersect(JLRA, September 2014 ISSN -2348-456X)- The civil law is defined as a codified body having its source in a old roman law. It was known as juriscivilis of the Justinian. The civil practice was largely confine to the European countries. The civil law and its codes were firstly formed upon the mercantile and trading laws in the France, Italy and German countries. In England the court of chancellery was established and the chancellor was the head of the English civil law. As time passed away it was entirely codified and different subjects were divided into the sets of laws and systematically framed structured for the civil court.

An Interpretation of Judicial Activism and Public Interest Litigation – The Indian Scenario(JLRA, September 2014 ISSN -2348-456X)- The concept of judicial activism is the area where the judges are acting or taking active part in order to secure the welfare state as described under the constitution. It is the doorway for the people who cannot be covered by any statue or any state law for the protection. The famous doctrine of independence of judiciary is an expression as well as the duty upon the judges not only to decide the cases pending in their court, but to be part of the society. They are esteem members of judicial wing. It is their duty to dispense justice not only in court but at society at large. The national legal service authority is the Apex body for judicial activism and public interest litigation in the Indian scenario.

An Interpretation of the Role of Nyaya Panchayats in Providing Speedy Justice for the Rural People (JLRA, September 2014 ISSN -2348-456X) - The Nyaya Panchayat is one of the old system in Indian society. It is once again recognized to diminish the burden on regular courts. They are permitted for advocates to take cases and appear before the Nyaya Panchayats. It would be similar to the quassi judicial bodies. This was achieved as a method of alternative dispute resolution. The 73rd amendment of constitution has resulted in creation of these Nyaya panchayat for speedy justice.

An Interpretation of Legislative Framework for Ensuring Speedy Justice under The Code of Criminal Procedure in India (JLRA, March 2015 ISSN -2348-456X)- A judge has to be looked upon as an incarnation of justice. The pledge of fair trial is the primary requirement for dispensing justice. It can be achieved from the rights of our citizens under the constitution of India. The right flows from article 21 of the constitution. This article says that every person has right of life and liberty, however the exception is according to the procedure established by law. In the case of Husena Khatun, the Supreme Court held that speedy trial is the primary duty in criminal justice system. This right is broadly connected with article 21 of the constitution. The criminal procedure also prescribes section 167, 258, 311 & 468 for speedy delivery and disposal of cases for the ends of justice.

PTI (2017) in 'Pending cases go down in SC, HCs; but see upward swing in lower courts' reports that the number of pending cases in the Supreme Court and the 24 high courts has gone down in the past three years but the pendency has seen an upward swing in the lower judiciary, says law ministry data. According to figures compiled by the ministry,

the apex court had 62,791 pending cases at the end of 2014. The figures went down to 59,272 in December, 2015. But at the end of 2016, the pendency in the Supreme Court went up to 62,537. The ministry said according to latest data provided by the SC, as on July 17, 2017, the pending cases have been pegged at 58,438. These include 48,772 civil and 9,666 criminal cases. Similar is the case with the 24 high courts of the country where pending cases were pegged at 41.52 lakh at the end of 2014. In December, 2015, the pendency went down to 38.70 lakh. But at the end of 2016, the cases went up to 40.15 lakh, but were less than the pendency in 2014. But in the subordinate courts -- considered the backbone of the country's justice delivery system -- the pendency of cases has gone up in the last three years. While the pending cases in 2014 were recorded at 2.64 crore, they went up to 2.70 crore in 2015. In December, 2016, the pending cases went up to 2.74 crore. The high courts have a shortage of 413 judges as on September 1. While the approved strength is 1,079, these are working with 666 judges. The lower courts with an approved strength of nearly 20,000 judicial officers is short of 4,937 judicial officers.

Pradeep Thakur (March 26, 2018) in 'Over 10 lakh cases pending in HCs for over 10 years' reports that Over 10 lakh cases are pending in 24 high courts across the country for more than 10 years, many of them pending disposal for 20 years or more.If we add to the list of decade-old cases those which are pending for a period between 5 and 10 years, then such pendencies constitute almost 50% of the total 42.69 lakh cases yet to be disposed in the 24 high courts.

Shubham Singh (August 30, 2018) in 'Supreme Court comes to the aid of Urban Naxals in another midnight hearing' reports that the Supreme Court, in another late night hearing conducted due to the pressure group, provided relief to five arrested Urban Naxals, namely, Sudha Bharadwaj (An activist & lawyer), Arun Ferreira (A human rights activist-lawyer), Vernon Gonsalves (A renowned lawyer in Mumbai), Gautam Navlakha (A human rights activist) and P. Varavara Rao (A revolutionary writer from Hyderabad) in Bhima-Koregaon violence case.

The Indian Express (September 3, 2018) – reports in 'District courts: 2.81 crore cases pending, 5,000 judges short across India' that The situation has led to suggestions in two Supreme Court reports to increase the judicial manpower, at least seven times, to overcome the crisis by appointing about 15,000 more judges in the coming few years.

The cited reviews produce the multi-faceted picture of the status of the cases in the various courts, status of the pending cases, existing trial and justice trend and procedure that make one feel and realize that the functioning of judiciary at present is full of suspicion as it seems to be working under pressure group providing relief to certain individuals. T here is a need of much improvement in the judicial procedure and system for the sake of speedy and easily accessible justice.

Hypothesis

1. Judiciary is one of the three major organs of democracy.
2. In India the people have an unshaken faith in the powers and working of judiciary.
3. In the last few decades, judiciary has shaken the faith of the common man not by making justice equally accessible to all.
4. Judicial activism is more a positive than a negative concept which suggests that judiciary should be active in dispensing justice.
5. The working of judiciary needs improvement in the public interest and in the interest of the nation
6. Judicial activism has facilitated the balanced administration of justice in India.
7. Judicial activism has acquired social legitimacy and public support.
8. The people have become more aware of their rights and the protection and enforcement of civil liberties due to the concept of judicial activism.
9. An unfettered and unrestrained judicial system is detrimental to the constitutionalism in a democracy like India.
10. There are constitutional provisions to check and control judicial powers, but practice reflects encroachment and personal interests.
11. Judicial activism has developed as the result of escapism of political elite and failure of the executive machinery and an active participation of judiciary in protecting the fundamental and human rights.
12. Judicial activism is just an upgraded form of judicial review, which has been adopted as a weapon to curtail the arbitrary powers of the legislature.
13. Due to increasing cases of judicial activism, the legislature has become more preventive in taking decisions and making law.
14. Through activist approach, the Supreme Court has succeeded in filling up the lacunae created by the legislature and executive and has contributed more for the development for the specific areas in the constitutional law.
15. An economical, speedy and equally accessible justice is possible.

Research Questions

1. Is the judiciary in India working successfully?
2. What are the problems before the judiciary at present?
3. Have the common people in India lost faith in the judiciary?
4. Is it the function of a judge merely to declare law or, taking in consideration the hopes of masses, can they make law?
5. Whether judicial activism is a positive or a negative concept?
6. Has judicial activism acquired social legitimacy?
7. Why is the judicial activism in India facing suspicion and doubts of the common people?
8. Why is it considered that the judiciary works more under influence than under the set principles?
9. Has the judiciary really succeeded in curtailing the arbitrary powers of the other two state organs?

10. Why do the cases of same nature meet different decisions?
11. Why do some of the cases meet speedy justice and in many such other cases justice is delayed?
12. Who is liable for the delayed justice and long-pending cases?
13. How can the judicial system be made flexible?
14. How can the judiciary maintain transparency?
15. How can the speedy and economical justice be dispensed?
16. How can justice be made equally accessible to all?
17. What are the expectations of the public from the judges employed at the various types of courts?
18. Whether it is constitutionally justified for the judiciary to encroach in the domain of legislature and executive to check any anomaly that arises as a result of the mal-functioning?
19. Why does the Supreme Court make hearing at late or midnights in certain specific cases?
20. What is the reaction of the public against the midnight hearing of certain cases in the Supreme Court?
21. Why can the speedy trial and justice not be allowed to all?

Methodology

The methodology adopted for this theoretical study is doctrinal in nature. It involves review of relevant literature, critical and analytical study of theoretical, practical and legislative and judicial aspects, study of source materials, text review, comparative study etc.

The approach is historical as the past of the judiciary was reviewed in the context of dispensation of justice in various types of cases.

Law Commission report and parliamentary debates were taken into consideration as well. Use of relevant internet sites was made to gather important information relating to the subject of study.

As regards the evaluation of the position of the Judiciary in India, the method adopted was purely Historical whereas with regard to the Analysis of the Judicial behavior of the Supreme Court of India in specific areas of the Constitutional Law of India, the methodology adopted was analytical, critical and descriptive in nature.

The primary materials and secondary materials collected through the various sources helped the researcher prepare the paper.

Material and information has been collected from both legal sources and socio-economic sources like original judgments of various National and International Courts, National and International Journals, Research Papers presented at National and International Seminars and other published works, websites, etc.

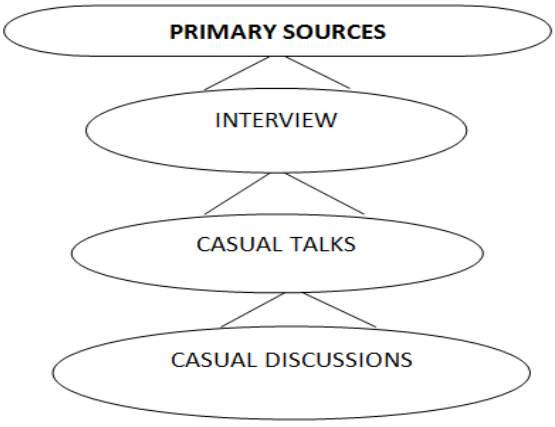
Steps Undertaken for The Study

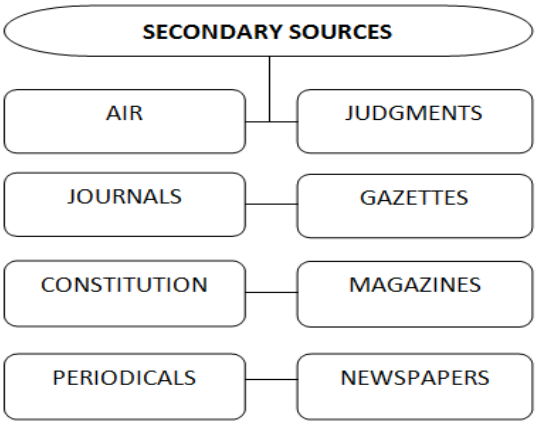
1. Selection of the topic.
2. Setting the aims and objectives for the study.
3. Going for the various sources of the secondary data.
4. Selection of the relevant-related literature on the theme for the sake of understanding the theme.
5. Classification of the secondary data collected through the available literature on the theme.
6. Developing an understanding of the key-words used in the paper through the given definitions.
7. Formulation of the hypothesis on the basis of the collected secondary data and personal experience.
8. Framing of research questions on the theme and making a special focus on them for the purpose of the study.
9. Selection of method and approaches adopted for the study.
10. Selection of tools and techniques adopted for the purpose.
11. Collection of primary data through casual interview and talks, discussions.
12. Classification, analysis and interpretation of the collected primary data.
13. Setting the primary and the secondary data together in order to develop the theme.
14. Arriving at fruitful findings.

Sources of Study

For the scientific study on the theme, both the primary and the secondary sources were used. The primary sources that were found helpful for the researcher in getting the primary data on the theme were casual and planned individual and group interviews, casual and participatory observation based talks and discussions.

The various secondary sources, such as, research journals, official gazettes, AIR, judgments, the Constitution, newspapers, periodicals, magazines and internet sites meant for furnishing information on the theme were found helpful in the conduction and completion of the study.





Key Findings

1. The Indian judiciary has eversince been very powerful in catering the faith of the common man in its power, but recently it has shaken this faith because of the slow trial procedure, unnecessary delay in justice and working.
2. At present the working of judiciary in India is not successful and it is facing much problem.
3. Constitutional provisions, imposed restrictions, theoretical implications, encroachment of the other two organs and undesirable pressure are some of the problems before the judiciary at present.
4. The common man's faith in judiciary and judicial system is staggered.
5. The judge's function is merely to declare law, and not to make law or to consider the hopes of the masses.
6. The judges work on constitutional laws and on evidence produced before them.
7. Law is blind, and it does not allow the judges to go beyond the evidences or to listen to the voice of their own conscience.
8. Judicial activism is more a positive than a negative concept.
9. Judicial activism is in the interest of the nation and public, hence it has acquired social sanction and social legitimacy.
10. Some of the people doubt the success of judicial activism because of the reflection of so-called corruption in the judicial system.
11. It is considered and strongly believed that at present, with the exception of a very few, most of the judges are working under influence without caring for the hopes of the masses and going against the principle of natural justice to all.
12. Judiciary has succeeded partially in curtailing the powers of the other two organs of the state, namely, the executive and the legislation.
13. The cases of the same nature are decided differently because of the approach of the concerning judges, and because the elites draw the attention of the judges more than the poor common people.
14. As per the latest pendency data made available by the Supreme Court, the total number of pending cases in the Supreme Court as on 1 November 2017 is 55,259 which includes 32,160 admission matters (miscellaneous) and 23,099 regular hearing matters.
15. With the exception of few, in most of the cases the speedy justice results as a result of the promptness of the concerning parties.
16. Justice is delayed in most of the cases because of the long procedure which takes a lot of time.
17. There is a shortfall in delivery of justice.
18. There is also the weight of the backlog of older cases dragging down efficiency and creeping upward every year.
19. The shortfall in deciding as many cases as are filed in a year is dwarfed by the weight added by pending cases.
20. Since fresh cases exceed the number of cases getting resolved, this leads to an increase in pendency.
21. The legal system and not the judiciary is responsible for the delayed justice and long-pending cases.
22. Justice costs too much to the common people.
23. Justice is not easily and equally accessible to all.
24. Economical, speedy and easily and equally accessible justice can be possible only through the constitutional amendment and through reform in the existing legal system.
25. Midnight hearings in certain cases by the Supreme Court reveal speedy justice, but such a speedy justice is not equally accessible to all. Hence, such type of working staggers the faith of the common man in judiciary.

Conclusion

The study involves research of changing role of judiciary for the socio-economic welfare of the society. Obviously, for the researcher it was very difficult to collect primary data for such a study, and therefore, both the primary and the secondary data were collected for the purpose. But for the various consulted journals, periodicals, articles and books and various internet sites, the study and the paper writing might never have been possible. The judiciary needs to be reformed and the judges need to be objective and transparent while dispensing justice to the people. The demand for speedy, economical and easily and equally is genuine as in most of the cases, and particularly in the cases of the common men who have neither any approach nor any power or money, the justice is delayed or decisions are manipulated for one or the other reason. The judiciary can revive the faith of the public only when it makes the legal procedure flexible and justice easily and equally accessible to all. It is appreciable that the Supreme Court should go for speedy trial, hearing and justice in order to provide relief to the victims, but it should not be limited only to the few selected ones, but to all whosoever is there irrespective of caste, creed, power or political interest. The speedy trial should be in the interest of the common man and the nation as a whole. The judiciary can maintain the public faith only when such a speedy procedure and justice is available to all.

References

1. *Ajay Bijesh Issac - 'Midnight knocks at the Supreme Court'- THE WEEK, May 18, 2018 14:41 IST'*
2. *Bhadra Sinha - "From trial court to Supreme Court, woman judge may go all the way". The Hindustan Times. Retrieved 30 November 2014.*
3. *Chhibber, Maneesh (25 April 2014). "CJIs must have fixed tenures: Sathasivam". Indian Express. Retrieved 26 April 2014.*
4. *Chowdhury, Rishad Ahmed. "Missing the Wood for the Trees: The Unseen Crisis in the Supreme Court" (PDF). NUJS Law Review (July–September). 2012 (3/4): 358. Archived from the original (PDF) on 8 December 2015. Retrieved 3 November2015*

5. *"Number of pending matters in Supreme Court as on 1st April 2014". Retrieved 18 January 2018.*
6. *Pradeep Thakur- 'Over 10 lakh cases pending in HCs for over 10 years', TNN, March 26, 2018*
7. *PTI- Pending cases go down in SC, HCs; but see upward swing in lower courts, Oct 01, 2017, 12.46 PM IST*
8. *Shubham Singh- 'Supreme Court comes to the aid of Urban Naxals in another midnight hearing' rightlog.in, August 30, 2018.*
9. *The Indian Express, 'District courts: 2.81 crore cases pending, 5,000 judges short across India' September 3, 2018*