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## 13. Progressive Law - Work in Progress

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### **Abstract**

To achieve the social political and economical objectives there is a need to have progressive legislation and legal system and the work in this direction is in progress. Though lots of reforms have been done yet much remains to be done in this direction. Law reform is the process of examining existing laws and advocating and implementing change in a legal system with the aim of enhancing justice, smooth governance, empowering all sections of society and efficiency. Keeping in tune with the guidelines of the United Nations on human right and environmental laws modifications have been made in the Indian legal system. Delay in justice, lack of Administrative and Management Service, lack of infrastructure, prevalence of obsolete laws delay in appointment of judges are the areas in which reforms are needed immediately.

### **Introduction**

To achieve the social, political and economical objective, there is a need to have progressive legislation and legal system. And the work in this direction is in progress. Law in India has been evolving since the vedic period till the current legal system. We can trace the sources of law in the Vedas, the Upnishads and other religious text. There had been many practisiers from various Hindu philosophy schools and later by Jain and Buddhist.

India witnessed variance in secular law from region to region and from ruler to ruler. There was Court system for civil and criminal Matters by many ruling dynasties of Ancient India. Excellent secular Court systems existed under the Mauryas (321 to 185 BCE) and the Mughals (16 century to 19<sup>th</sup> century). Then came the period of British ruled India laws, a system of law based on recorded judicial precedents which entered in India with the British East India company. "Mayor's Court" were established in 1726 under the Charter granted by King George 1. The company quotes expanded its working and slowly replace the existing Mughal legal system and various parts.

During the British raj, the control of company territories in India passed to the British Crown. Supreme Court was established, Indian High Courts Act was passed by the British

parliament in 1862, the Privy Council acted as the highest court of appeal, coding of law also began in earnest with the forming of the first law commission. The Indian Penal Code 1862, the Code of Criminal Procedure, Evidence Act 1872 and the Contract Act 1872 were drafted, enacted and brought into force.

Independent Nation's first leader, Jawaharlal Nehru and 'Bapu' i.e. M K Gandhi, both were exemplary lawyers. The understanding of law and its relation to society prompted the founding fathers to devote the energy to form a constitution of unprecedented magnitude in both scope and length. The responsibility to formulate the constitution was given to Dr. B R Ambedkar.

The constitution of India is the guiding light for all subjects related to executive, legislative and judicial. It is very sensitive and extensive document. The constitution explicitly and through judicial interpretation seeks to empower the weakest members of the society.

But it is seen that India maintains a hybrid legal system with a mixture of civil, common law and customary, personal laws of Hindus, Muslim, Christian or other religions legislations introduced by the British with modification, its own constitution and other laws adhering to the United Nations guidelines on human right law and environmental law.

As per a report of January 2017, there are about 1248 laws in India (both Central laws as well as state laws). Apart from constitutional and administrative law, there are criminal laws contract law labour laws law of tort property law that laws family laws nationality laws and laws enacted by the state governments.

As the topic selected is "Progressive Law- Work in Progress", we look at the scenario of laws related to various aspects of human life. Lots of legal reforms have been done yet much remains to be done in this direction. Law reform is the process of examining existing laws, and advocating and implementing change in a legal system with the aim of enhancing justice, smooth governance, empowering all sections of society and efficiency. The four main methods of reforming law repeal creating of new law, consolidation and codification.

A majority of the reforms have been undertaken by the centre such as Goods and Service Tax, Insolvency and Bankruptcy Code, new Companies Act 2013, Cyber Laws, Intellectual Property Rights related laws namely the Patents Act 1970 (amended in 2005) Copyrights Act 1951, Trademarks Act 1999, the Designs Act 2000, the Information Technology Act 2000, Geographical Indication of goods (registration and protection) Act, 1999, Limited Liability



Partnership Act, Right to Education Act 2009, PC& PNDT Act 1994 and many more but the work is still in progress. There is a long way to go.

We Indians very well know about the delay in resolving cases. Due to this many citizens don't even explore a legal solution to a problem. The Indian judicial system does badly when compared to the judicial system in other countries. According to World Bank's Ease of Doing Business report, India rank 168 out of 190 countries on enforcement of contracts. It is found that it takes 1445 days to resolve this youth from the date of filing. This problem of poor enforcement of contracts adversely affects investment, entrepreneurship, economic growth and employment.

The scene is even worse than this in the case of criminal cases. It is possible that victims may die waiting to see the perpetrators get punished in court. Due to this delay and difficulty on the part of state to keep witnesses safe over a long period it is found that witnesses often change their testimony. We all know "*Justice delayed is justice denied*". The most important reform is to eliminate judicial delay.

Ideal Indian needs to triple the number of judges, will all the current vacancies and have appropriate judicial recruitment system. The immediate goal should be to reach the law commissions 50 judges per million recommendation.

The Indian judiciary needs to have a dedicated Registrar, administrative and Management Service. The management system will be helpful in streamlining the process of filing a case, filing additional paperwork rejoinders, responses at 17, getting a date for hearing. There has been no updation in the judicial system, it still operates the way it was operating centuries ago. Ideally there should be computerized system minimising human discretion. Even in Higher Courts, Judges spend their precious and valuable time in court scheduling cases and dates and hearings.

A dedicated Court registry of Administrative staff is the need of hour. India needs to create a judicial service to provide the support required for the smooth functioning of court. Right from the recruitment process, physical infrastructure, administration, case load distribution system, the service should have a trained Bureaucracy and IT process to assist the judicial system.

Indian courts need to increase in size number of court rooms and also expand to accommodate the increased staff, as well as to physically accommodate the increasing number of lawyers and parties and increase the number of restrooms, parking spaces, waiting areas.

Every judicial systems strives to balance between justice and efficiency. Justice requires detailed hearings and efficiency required completing the cases in a time frame. India is well known for granting adjournments and allowing parties to exploit delays in judicial system. To overcome this, there is a need to change procedural rules to limit the number and situations where adjournments are granted. To accomplish this it is necessary to amend the evidence and court procedures, impose penalties on party that delays, penalties on parties that fails to file requisite papers or evidence, promotion of judges to higher bench on the record of disposal of cases and also introduction of a procedural change which lays down the timeline for completing the case.

Judiciary needs to be a Priority of the state. Judicial system consists of three elements laws, Institutions and the personnel involved. Personnel is the important element because law and Institutions are not self executing. The inadequacy of laws and Institutions can be overcome to a large extent if the personnel are competent and motivated professionals.

In 2011, the Government of India has set up the National Mission for Justice Delivery for a 5 year period with a view to overcome delay and arrears and to modernize judicial processes with Technology and Management reforms. The working of mission is extended upto 2020. It is realised that now it is the time for All India Judicial Service and it will bring a remarkable breakthrough and further integration of the legal and judicial system of the country. Appointment of meritorious candidates, transparency in the selection process and proper training by the judicial Academy will definitely increase the efficiency considerably.

Another area which needs to be focused is amendments of laws and statutes and removal and repealing of obsolete laws. Government usually appoints Law Commission panel to study and make non binding recommendations for the law reform in first 65 years 1301 obsolete laws were identified including 1029 old laws in 1950 by Jawaharlal Nehru and 272 old laws in 2004 by Atal Bihari Vajpayee full stop after that, 1824 such laws repealed by Narendra Modi government between May 2014 to December 2019, taking the total to 3125. The historic achievement is the repealing of Article 370 of the Constitution of India. Overwhelming mentality given by the people in 2019 provides a historic opportunity to fix broken systems, even if required by constitutional amendments.

Reforms are needed in the working of the tribunals also. Tribunals was set up to reduce the workload of courts, to expedite decisions and to provide a forum which would be manned by



lawyers and experts in areas within the jurisdiction of tribunals. The tribunals perform an important and specialised role in delivery of justice. But it is found that the object of setting up tribunals is not met fully. Reforms in this area are necessary to ease the burden of cases before high courts and provide for certainty in dispute resolution and reaffirming the faith of citizens and foreign investors in the justice delivery system in India.

There is a need for more vigorous statutory regulation for the regulation of news media. The current system is ineffective because the decisions made by the existing bodies are not enforceable so much mechanism that incorporates elements of self Regulation and statutory regulation is necessary full stop the next area of reforms needed is streamlining ownership and improving corporate governance and public sector undertakings to unshackle the economic Powerhouse.

Reforms needed in National litigation policy. For reducing the backlog and overburden on the ports it is necessary to make NLP binding and enforceable against officers of the government, because it is found that the central government is the single largest litigant in the country in terms of initiating cases and responsible directly for a large number of cases as a respondent.

Amendment in arbitration and conciliation act will reduce the number of times parties approach courts in matters related to arbitrations does speeding up over all process this will ultimately improve the investment climate in India.

As Uniform Civil Code is required same is the case with labour laws. Labour laws also require standardized or uniform definitions for all Acts. Reforms in the most neglected area that is labour laws can also contribute in the economic development of the country. Reforms in labour law are in pipeline and we may hear some changes one fine day.

Innovations needs to be protected, do they may be the outcome of cost efficiency for use of local resources and Technical know-how. There is a need of utility model law to establish a second tier system of patent protection. Sati system needs to be an inexpensive source of IP protection which will help commercializing search products cheaper and easier. It will serve as a catalyst for an innovation boom.

There is an urgent need for amendment in anti corruption legislation, PC&PNDT and MTP Act, anti-trafficking laws, right to education Act, if we wish to see a new India. Law and Justice is a means of social welfare. The social and economic welfare which we Indians desire to



witness can be achieved by legal and judicial reforms. It is urgent to bring in certain judicial reforms in our country full stop a sound in efficient dispute resolution and Justice delivery system will attract more foreign investors as well.

Another lacuna is lack of professional ethics. Even the bar is facing this problem. Teaching law is not sufficient, it is necessary to teach how law has to be practiced honestly and ethically. This is an urgently needed judicial reforms.

### **Conclusions**

Though laws like Goods and Services Tax have seen the light of the day and Article 370 of the Constitution of India have been repealed but still many reforms need to be done in the legal and judicial system. Fast Track courts, special tribunals with special objects are the need of hour. Updation of the Judiciary and working of the court, expansion of court rooms and other area attached with the court is required. Transparency in the selection of judges and speedy trial not only ensure justice but also contribute to the social and economic growth of the nation. Progressive laws which meet all the requirements of the common man and help to achieve the social, political and economical objectives of the country is the need of time. Keeping in mind globalisation, foreign Investments, innovations, make in India and the current situations, the laws need to be reformed and amended and if need be some laws be repealed.

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