Social Diversity and Judiciary in India: A Comparative Study with Bhutan

Vibhudi Venkateshwarlu

Abstract:

Keywords: Appointments, Judges, Influential factors, Law and Society, Religious values, and Social diversity

There are many sources for wellbeing in a given society including culture, beliefs values, practices off course religion, in modern times executive, legislation and judiciary also having great role to protect happiness in the society, but these institutions ultimately depending on the religion, culture, belief, tradition and practices of particular society. Judiciary is considered as sacred institution having honorable place, it is directing, guiding remaining institutions for wellbeing of society, therefore, there is a need to select good, quality, and efficient judges having all kind of social, cultural, including subject knowledge about a particular society.

There is no uniform history for India, infact India is a new word. It was called with various names; there were small kingdoms, there were diverse cultures, traditions, values, beliefs and practices according to their requirements. History is predominantly influenced by the political & religious sources. The dominant religious source and dominant political practice become popular in a particular area and get protection by the kings or states or governments which can be noticed from Harappan, Sindh times to present day. The society is regulating by various sources of laws, according to Austin law is command of sovereign backed by sanction, according to him there are two kinds of source of laws which are regulate the society, one is divine law second is human law, which means divine command and human command.

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Law is a command; it may be express or implied, written or unwritten, which controls behavior of human beings. There are various sources for law through which behavior of human beings is controlled, regulated and prevented like religion, culture, traditions, values, beliefs and practices. In Indian sub-continent, there were diverse religions, cultures, traditions, values, beliefs and practices, and also diverse languages, food cultures, dress cultures. Within the religion, there were different sects, castes and class. Each sub-continent has its own belief system, cultures, traditions and practices which are different from one another, for example Bhutan is a country having its own religious values, cultures, beliefs, practices, according to their belief cutting of tree, hunting and theft is a sin and their beliefs make a nation as peaceful and happiness.

The philosophy of religion is to ensure equality, liberty, justice, fraternity to its followers but yet at the same time the same religion is responsible for the corruption, inequality, suppression, injustice, inhumanity in the particular society. In India, the dominant religion philosophically led to corruption, inequality, suppression, injustice, inhumanity and it has become impossible for it to achieve equality, liberty, justice and fraternity. Here, every organ or institution promotes corruption, inequality, suppression, injustice, inhumanity in the society. The judiciary is part of the society. All the religious, cultural, traditional beliefs, practices and values reflect on the judiciary also. The judiciary is not independent of society. It is the part of society and all the best and bad principles followed in society reflect in the judiciary. Judges, Advocates and other staffs of the courts are coming from the same society. They function in the court with their religious values and beliefs which reflect in their functions whether good or bad.

Methodology:

Doctrinal methodology has been adopted for this work. Books, articles and judgments could refer for completion this work; this work would be given conclusions for the real understanding of society and its implications in India and Bhutan. This paper focus
on critique on present judiciary in its function, representation, and appointment system, this work criticizing present judiciary because, present judiciary is not accepting majority of people, they are not ready to approach for their grievances, simply they are adopting traditional methods of dispute solving systems. Therefore, this paper simply rejecting present judiciary and criticizing it, by which transform of judiciary may be happened in future. This paper has been favoured with transform, if judiciary transforms, majority of people will get benefited and included into the judiciary, but other side some of people who are benefiting with present judiciary they don’t want to reform or transform the judiciary because they are sectarians and they want retain present system and function of judiciary.

According to Austin, law is command of sovereign backed by sanction, but this definition undergone critique. Here sociological definition about law as per the Pound Law is body of principles recognized or enforced by public and regular tribunals in the administration of justice\(^2\). According to idealistic definition as per the Salmond the law may be defined as the body of the principles recognized and applied by the state in the administration of justice\(^3\). The term law means and includes different things in different societies. The corresponding word of the term law in Hindu system is Dharma in Islamic system it is Hukum in Roman it is Jus in French it is Droit, and German it is Richt\(^4\). These words convey different meanings and ideas. Law in general sense law means an order of the universe, of events, of things or actions. In its judicial sense, law means a body of rules of conduct, action or behavior or person, made and enforced by the state. It expresses a rule of human action. All the definitions were undergoing critique, but from the point of view of society law means justice, morality, reason, order, righteousness etc\(^5\). in this work finding about law in the point to religious point of view that law means Religious beliefs, customs, traditions, and practices of particular religion in particular time in particular place.

\(^3\) Ibid.
\(^4\) Ibid. 51
\(^5\) Ibid. 51.
According to Austin there are two kinds for source of laws which regulate the society, one is divine law second is human law, which means divine command and human command. Another positivistic jurist Salmond, divides source of law into formal and material\textsuperscript{6}. Formal Sources of Law is the will of the state as manifested in statutes or decisions of courts. It is that force which a rule of loan derives its force and validity. These are the sources from which law derives its force and validity, a law enacted by the State or Sovereign falls into this category. Second is Material Sources of Law is that source from which law derives not its validity but the matter of which it is composed. Material sources are divisible into two classes – legal and historical\textsuperscript{7}. It refers to the material of law. In simple words, it is all about the matter from where the laws are derived. Customs fall in this category of law. But it was criticizes by Allen Solmond for his attaching little importance to the Historical source, Keetan to criticized too Salmond’s classification of formal sources. According to him, in modern times, the only formal source of law is the State. Because, the State is only source for enforcing the law and technically there is no law\textsuperscript{8}.

According to Hart the combination of primary rules and secondary rules prepare a legal system; this explains the nature of law. Accordingly, he explained that primary rules are duty imposing rules while secondary rules are power conferring rules. According to the naturalists think of law in the time frame of continuum is that they think it of divine origin and applicable in all ages to the universe. They believed that all generations should follow the natural law. While positivists build up their theory of law as the command of sovereign. The sovereign changes from time to time and his command may also change. As it is binding duty to follow the command, it should be just in present. It may change in future. So, it is not possible for positivists to think law in the time frame of continuum but only present. Therefore, law is developed simultaneously man made law and historical continuum these are the regulating source for the human beings, historical law/secondary law/informal law/divine law is influencing every movement of individual, it deal with all aspects human beings, from times immemorial, therefore, historical law, custom, belief,

\textsuperscript{7} Ibid.
\textsuperscript{8} Ibid. p.138.
practice are more stronger than manmade law or primary law, or formal law, positive law, or analytical law, so history is the main and bigger source of law.

There is no uniform history for India; in fact India is a new word. It was called with various names; there were small kingdoms, there were diverse cultures, traditions, values, beliefs and practices according to their necessities. History is predominantly influenced by the political & religious sources. The dominant religious source and dominant political practice become popular in a particular area and get protection by the kings or states or governments which can be noticed from Harappan, Sindh times to present day.

Law is a command; it may be express or implied, written or unwritten, which controls behavior of human beings. There are various sources for law through which behavior of human beings is controlled, regulated and prevented like religion, culture, traditions, values, beliefs and practices. In Indian sub-continent, there were diverse religions, cultures, traditions, values, beliefs and practices, and also diverse languages, food cultures, dress cultures. Within the religion, there were different sects, castes and class. Each sub-continent has its own belief system, cultures, traditions and practices which are different from one another.

The philosophy of religion is to ensure equality, liberty, justice, fraternity to its followers but yet at the same time the same religion is responsible for the corruption, inequality, suppression, injustice, inhumanity in the particular society. In India, the dominant religion philosophically led to corruption, inequality, suppression, injustice, inhumanity and it has become impossible for it to achieve equality, liberty, justice and fraternity. Here, every organ or institution promotes corruption, inequality, suppression, injustice, inhumanity in the society.

Hindu religion is the popular and dominant religion for India which was created for retain dominance in the society, where the society is having caste system in its philosophy. Which encouraging religion high and low status in social, economic and political institutions based on the caste identity and the caste identity is based on the birth, where the birth is not a accident but important; there are 6747 castes, people are divided into as
many as 6747 castes and there are 22 constitutionally recognized languages, but apart from it there are 1,625 dialects, some having origin from Dravidian (Pracrutam) and Sanskrit languages, and most of them are neither Dravidian nor Sanskrit, which are tribal languages.

The Hindu religion emerged with principles of inequality, suppression, injustice, inhumanity in the name of purity and impurity concept, low and high social status, some castes having more respected based on their social status (caste), majority castes are highly humiliated, suppressed based on their low social status (caste). The dominant religion created and constructed inequality, suppression, injustice, inhumanity in society, the society is regulating or commanding more unwritten (effective) laws than the written laws by which the behavior of human beings are controlled, regulated and prevented.

The judiciary is part of the society. All the religious, cultural, traditional beliefs, practices and values reflect on the judiciary also. The judiciary is not independent of society. It is the part of society and all the best and bad principles followed in society reflect in the judiciary. Judges, Advocates, and other staffs of the courts are coming from the same society. They function in the court with their religious values and beliefs which reflect in their functions whether good or bad. In the society like India, which is having corruption, suppression, injustice, inhumanity consciousness in the culture, tradition, beliefs, values and practices, how is it possible for a judge to be independent, unbiased, and separate from the society. If he or she is alien to this land or foreigner, how can a foreigner give justice, if he or she is not a local and is not well versed with local culture, beliefs and practices? Influence of the religion, culture, tradition, beliefs, practices are responsible for corruption, delays, pendency of cases, commercialization of courts and these reflect in courts by way of judgments, orders and its functions, processes etc.

After the British rule in India came one law, they were introduced uniform laws for India, India was adopted colonial knowledge of law and following the same e.g. I.P.C., C.P.C., Cr. P. C., Evidence Act, Contract Act so on. It is imperial knowledge of law, which was derived from West basically their Culture, beliefs; practices are different from the Indian
realities. The same argument made by Swapan Das Gupta\(^9\) that self image of the Indian intellectual was the confusion over where he stood in relation to India. At one level, he observed, nearly all of what certain Indian intellectuals refer to as modern thought comes to them through England and the medium of English. At the same time, there was the reality of life in a traditional and largely Hindu milieu. It would not be an outlandish exaggeration to say that it is impossible for a Indian of Hindu descent to cease to be a Hindu\(^10\). The British colonial rule was imposed their imperial knowledge forcefully into Indian Territory, it was adopted by the Indians after independence. Therefore, there is a contrary to Indian culture and British culture, religious, belief, tradition, and practice for India, the same is responsible for the huge pendency of cases, lack of judges and diversity in India.

After Independence, the Constitution of India was adopted by the people of India themselves under the constituent assembly, they framed about the appointment of judges of High Courts and Supreme Court of India. Article 124 of the Constitution enabling provision for appointment of judges in India according to Article 124 (1) There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges. (2) Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal after consultation with such of the Judges of the Supreme Court and of the High Courts in the States as the President may deem necessary for the purpose and shall hold office until he attains the age of sixty-five years:

Provided that in the case of appointment of a Judge other than the Chief Justice, the Chief Justice of India shall always be consulted: Provided further that—

\((a)\) a Judge may, by writing under his hand addressed to the President, resign his office;

\((b)\) a Judge may be removed from his office in the manner provided in clause (4).

\([(2A)\] The age of a Judge of the Supreme Court shall be determined by such authority and in such manner as Parliament may by law provide.\]


(3) A person shall not be qualified for appointment as a Judge of the Supreme Court unless he is a citizen of India and—
(a) has been for at least five years a Judge of a High Court or of two or more such Courts in succession; or
(b) has been for at least ten years an advocate of a High Court or of two or more such Courts in succession; or
(c) is, in the opinion of the President, a distinguished jurist.

Explanation I.—In this clause "High Court" means a High Court which exercises, or which at any time before the commencement of this Constitution exercised, jurisdiction in any part of the territory of India.

Explanation II.—In computing for the purpose of this clause the period during which a person has been an advocate, any period during which a person has held judicial office not inferior to that of a district judge after he became an advocate shall be included.

(4) A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity.

(5) Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge under clause (4).

(6) Every person appointed to be a Judge of the Supreme Court shall, before he enters upon his office, make and subscribe before the President, or some person appointed in that behalf by him, an oath or affirmation according to the form set out for the purpose in the Third Schedule.

(7) No person who has held office as a Judge of the Supreme Court shall plead or act in any court or before any authority within the territory of India.
The Supreme Court held and created a new principle in Supreme Court Advocates-on-Record Association v. Union of India\textsuperscript{11} popularly known as second judge’s case. Main argument in first judges and second judges cases that politicians or legislatives and executive head state are appointing politically motivated advocates as judges into higher judiciary therefore, the independence of judiciary influenced with political motivated activities. The legislators are not having commitment, they are not high-quality people to select a judge, therefore, the independence of judiciary is affected.

Main argument in this context is that according to Preamble of the Constitution of India, India is Republic means the king shall be elected by the people of the country whether directly or indirectly, people are real authority to appoint executive head, including judges whether directly or indirectly. In second judges case\textsuperscript{12} Judges of Apex Court were suspected people representatives and their decision, but in textual spirit of Constitution people of country having real sovereign power in their hands, it means judges are suspecting sovereign authority and people direction in India therefore, it can be call it as judges misinterpreted, misused and they were suspected their power moreover they have misinterpreted and created collegium system with irresponsible manner and that is continuing without rectification.

In the year 2013 UPA Government introduced and passed a legislation of National Judicial Appointment Commission (NJAC) according to the 2013 Act the President who is executive head shall consult NJAC consisting of Law Minister and two eminent persons equal to the CJI in recommending appointments as CJI, Judges of Supreme Court, Chief Justices and other Judges of the High Courts, which is giving fair chances all the sections of society who is having skill, quality in subject knowledge and social understanding in Indian context who may enter into Higher Judiciary and also having chance to SC, STs, OBC, Minority, Disabled, Transgender sections of Indian society. There may ample chances to check quality and merit of judges, and it will also give fair competition among all the

\textsuperscript{11} Supreme Court Advocates-on-Record Association Vs UOI reported in 1993 (4) SCC 441 and Special Reference 1 of 1998 reported in 1998 (7) SCC 739
\textsuperscript{12} Ibid.
candidates from all the sections of society. But the NJAC was scraped out with the verdict of Supreme Court of India\textsuperscript{13}.

Supreme Court Advocates-on-Record Association and another v. Union of India the Supreme Court of India held that the NJAC\textsuperscript{14}. There is also no merit in the contention that in the present case mere alteration in a constitutional provision does not amount to damage of a basic feature. It is not a case of simple amendment to iron out creases. Its impact clearly affects the independence of judiciary. As already mentioned, appointment of judges has always been considered in the scheme of the working of the Indian Constitution to be integral to the independence of judiciary. It is for this reason that primacy in appointment of judges has always been intended to be of the judiciary. Pre-dominant role of the Executive is not permissible. Such primacy comprises of initiating the proposal by the judiciary and final word being normally with the CJI (in representative capacity). This scheme is beyond the power of amendment available to the Parliament\textsuperscript{15}.

[In the new scheme, the Chief Justices of the High Courts have not been provided any constitutional say. The Chief Justice of the High Court is in a better position to initially assess the merit of a candidate for appointment as judge of the High Court. The constitutional amendment does not provide for any role to the Chief Minister of the State. This may affect the quality of the candidate selected and thereby the independence of judiciary. The statutory provision in the NJAC Act will be gone into separately]\textsuperscript{16}. [I would conclude that the new scheme damages the basic feature of the Constitution under which primacy in appointment of judges has to be with the judiciary. Under the new scheme such primacy has been given a go-bye. Thus the impugned amendment cannot be sustained].

\textsuperscript{13} Writ Petition (Civil) No. 13 of 2015
\textsuperscript{14} Ibid.
\textsuperscript{15} Ibid.
\textsuperscript{16} Ibid.
Validity of the NJAC Act:

[In view of my conclusion about the amendment being beyond the competence of the Parliament, I do not consider it necessary to discuss the validity of the NJAC Act in great detail as the said Act cannot survive once the amendment is struck down. However, consistent with my earlier view that primacy of judiciary in appointment of judges cannot be compromised and on that ground not only Section 2 of the Amendment dispensing with the mandatory consultation with the judiciary as contemplated under the unamended provisions, Section 3 conferring power on the NJAC (under Article 124B) and providing for composition of the Commission under Article 124A giving a role to the Law Minister and two eminent persons equal to the CJI in recommending appointments as CJI, Judges of Supreme Court, Chief Justices and other Judges of the High Courts and recommending transfer of Chief Justices and Judges of the High Courts are unconstitutional but also Article 124C giving power to the Parliament to regulate the procedure and to lay down the manner of selection was also unconstitutional, the impugned Act has to be struck down. It goes far beyond the procedural aspects. In Section 5 (2) ‘suitability criteria’ is left to be worked out by regulations. Second proviso to Section 5 (2) and Section 6 (6) give veto to two members of the Commission which is not contemplated by the Amendment. Section 5 (3) and Section 6 (8) provide for conditions for selection to be laid down by regulations which are not mere procedural matters. Section 6 authorizes the recommendations for appointment as judges of the High Courts without the proposal being first initiated by the Chief Justice of the High Court. Section 6 (1) provides for recommendation for appointment of Chief Justice of a High Court on the basis of inter se seniority of High Court Judges. This may affect giving representation to as many High Courts as viable as, in inter se seniority, many judges of only one High Court may be senior most. Section 6 (2) provides for seeking nomination from Chief Justices of High Courts, but Section 6 (3) empowers the Commission itself to make recommendation for appointment as Judge of the High Court and seek comments from Chief Justice after short listing the candidates by itself. Section 8 enables the Central Government to appoint officers and employees of the Commission and to lay down their conditions of service. The Secretary of the Government is the Convenor of the Commission.]
Section 13 requires all regulations to be approved by the Parliament. These provisions in the Act impinge upon the independence of judiciary. Even if the doctrine of basic structure is not applied in judging the validity of a parliamentary statute, independence of judiciary and rule of law are parts of Articles 14, 19 and 21 of the Constitution and absence of independence of judiciary affects the said Fundamental Rights. The NJAC Act is thus liable to be struck down. There are many positive provisions to protect diversity but in the name of independent judiciary it was struck down and this order is critique by Women, disabled, Transgender, BCs, SCs and Tribes in India.

Somanath Charterjee Criticised by stating that legislators deciding their salaries themselves and judges are appointment their successors themselves. There is no system is like this therefore these systems are unaccountable to people of the country these two systems shall be make accountable otherwise, these are continued undemocratically. And he argued about Indian Judiciary following words: "today deprecated attempts by the Supreme Court to “arrogate all powers” in appointments to higher courts and said the Executive should “not give up” attempts to set things right, while avoiding a “running feud” with the Judiciary. The former Parliamentarian, who often fought against attempts by the judiciary to encroach upon the legislature’s turf, says it was time the judiciary engaged in some introspection in the wake of the Supreme Court judgment which brought back the collegium system. Chatterjee, who is a barrister and was a senior advocate in the Supreme Court for several years, said the Executive should “not give up” its attempts to set things right in judicial appointments, “but should not have a running feud with the judiciary]."

[Noting that one of the judges on the apex court bench has voiced dissent to the majority judgment, he wanted the Executive to move slowly “in a proper manner and at a proper time”. “It is time for introspection for judiciary. Executive should not give up, but should not have a running feud with the judiciary. It should proceed ahead in a proper

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17 Ibid.
18 India is unique. It is the only democracy where judges can appoint judges and MPs can decide their own salaries” was the lament of Somnath Chatterjee, then speaker of the Lok Sabha. On the appointment of judges, Parliament did try to “correct” the interpretation that had brought in the collegium system. But the apex court’s verdict on the constitutional validity of the new system is awaited.
manner at a proper time. Already one judge has dissented,” he said. He said India is perhaps the only country where judges appoint judges and that they are “too touchy about this arrogation of power to themselves.” “This authority is neither there in the Constitution nor in law, but by judgments they have decided that judges will be appointed by judges. How many countries in the world follow this practice. It could have been followed by one or two banana republics. I don’t know. Someone can teach me,” he said. Chatterjee said he was never in favour of collegium system and wondered if it was fool-proof. “Question is to get the best people appointed by those who have been authorized to do so,” he said. It needs to be seen whether collegium system brought extraordinary benefits to the judiciary or to judicial appointments. “On the other hand, there are a lot of allegations. I am more concerned...Every Indian would have been beholden if they had tried to help people of India, if expeditious justice at not much cost was really meted out to them,” he said. Chatterjee said not many people today can afford to approach the Supreme court and hire an advocate to agitate their matter. “What the Supreme Court is doing for ordinary citizens of India? Courts have arrogated all wisdom and power. Even after the entire Parliament unanimously approved the new law, it was struck down,” he said. He also wondered as to why the Supreme Court was hearing the matter on the issue of improving the collegium system when “judges know everything”].

The Supreme Court of India struck down law of Parliament for National Judicial Appointment Commission again and again, the contention of Supreme Court is clear that the MPs coming from criminal back ground and they are sending their kith and kin advocates as Judges to High Courts and Supreme Court. But in my point is that people of this country having sovereign authority and they are sending their representatives to Parliament and the executive, judiciary including legislators shall follow peoples will but, judiciary is not respecting people will and suspecting their selection (voting). The reasons can understand with studying Indian social and cultural history.
The present judiciary is not for the people, of the people, and by the people as it is not democratic, it is anti-people\textsuperscript{19} and it is not respecting aspirations of the people of the country. Indian jurisprudence is not indigenous but adopted from West; those are not relevant to Indian reality and aspirations. The Indian diversity as it is a set of diverse religions, cultures, traditions, beliefs, values and practices. The dominant religious culture, tradition, belief, value and practice became popular and its values, beliefs and practices became general for all. The modern judiciary is successor of English judiciary; it was introduced for the control, regulation, administration of native Indians. Basically, the laws and judiciary of English was against Indian natives, those were introduced for exploitation of resources from India. The ways were followed, practiced but those laws were not relevant to Indian reality and those laws and judiciary continued even after independence, naturally those laws and institutions are anti people continuing with suppression of common man.

**Indian Judiciary and other challenges:**

Three tire structure having for the functioning of judiciary in India, Supreme Court, High Court and Lower Judiciary. It is nothing but the Hindu philosophical social structure (\textit{varna}), it is replica of \textit{varna} structure constructed and followed by the dominant religious ruling castes in Indian society, process is very complex, language is English, which majority of people do not understand, there are varies stages and procedures for filing cases, appeals etc. A common man cannot effort to get the justice; in fact, they are unable to approach the modern judiciary. The operation is, at the top is supreme court having more discretionary powers, middle is high court having normal discretionarty powers, lower judiciary is having low discretionary powers so it is same replica or traditional social structure, process and operation of Hindu culture.

\textsuperscript{19} Vibhudi Venkateshwarlu (2014). Social Diversity and Judiciary in India, Theses submitted in the Department of Social Exclusion Studies, EFL University, Hyderabad
The modern judiciary is not addressing aspirations of people because of delay of cases, huge amount of pendency of cases in various courts, sky rocketing expenses to approach the courts, and corruption of courts are the problems for modern judiciary. The modern judiciary of India is not democratic and it is anti-people. Even appointments of Judges are not transparent and without diversity. There is no diversity in Indian Judiciary recently, the Government of India tried to introduce National Judicial Appointment Commission which will give fair chance to all the sections people in India to become judges in the Higher Judiciary, but it was struck down merely being a monopoly of upper strata of society leading to corruption, delay, pendency, costly etc. The common man is scared of the modern judiciary; in fact, they are following and settling their disputes with their traditional methods and practices. The modern judiciary is not respecting the aspirations of all people of society and it is working for the few sections, which are elite, politically & religiously dominant in Indian society.

Vacancies in various courts leading to injustice to the parties in India, 24 High Courts have 397 vacancies for judges\textsuperscript{20}; what’s more eight of them have acting chief justices, in all the High Courts in India 397 Judges are vacant out of 1,017 posts of justices the High Courts are lying vacant that’s a vacancy level of 39%, a serious shortfall when lakhs of cases are pending in the High Courts\textsuperscript{21}. It is a common saying that Indian courts move so slowly that the grandson ends up fighting the court case that his grandfather files. What does this mean for the inheritance we will leave our children? Over 3.15 crore cases are pending across India. This suggests over 3 crore plaintiffs or petitioners. After accounting for the large number of cases instituted by government, defendants could number around 9 crore assuming each legal case involves 3-5 defendants. That’s 12 crore litigants. Assume each litigant has 3 family members. This implies that a staggering 36 crore Indian citizens are directly or indirectly involved in litigation at any point of time\textsuperscript{22}.

\textsuperscript{21} \textit{Ibid}.
In other words, today every fourth person in our society is a litigant (directly or indirectly) and in another 20 years or so this number could swell to every second person. That’s the kind of society Indians are creating a nation of litigants. This is because of the way law has been practiced for the last 67 years\(^{23}\). Indian have about 16,000 judges to deal with 66,000 pending cases across the apex court, 45 lakh in the 24 high courts, and 2.7 crore across the district and subordinate courts. How fast is this mountain of pending cases likely to be dealt with?

The Supreme Court was constituted in 1950 and it has delivered 40,000 judgments in 65 years that comes to 600 judgments per year. If it now delivers 1,000 judgments a year, that will still take over 60 years to deal with currently pending cases not accounting for new cases. Assuming a high court judge would deliver 2 judgments per day or 500 judgments per year, all 24 high courts with 640 judges may take 15 years to tackle their pending cases. As for the district and subordinate courts, with 15,000 judges they may take about 10 years to deal with their 2.7 crore pending cases assuming every judge delivers 200 judgments a year\(^{24}\). These are staggering time frames to deal with ever mounting litigation in India.

There are many recommendations were given by various committee’s that, to employ more judges and create more courts. The current judge to population ratio is just 10.5 to 10 lakh. The Law Commission has recommended\(^{25}\) it should be 50 to 10 lakh. This can be accomplished over 3 years as India has 12 lakh registered advocates, 950 law schools, 4-5 lakh law students, and 60,000-70,000 law graduates joining the legal profession every year. Surely this pool can be tapped to recruit judges for all the courts. This will provide gainful employment to legal professionals while making the mountain of pending cases manageable. Increase the number of working hours and working days for all courts. Former Chief Justice of India R M Lodha had once observed that when hospitals,
airlines and trains can work 24×7, why can’t the courts? This single measure can dramatically reduce backlog\textsuperscript{26}.

The staff of the court always expect bribe from the litigants, even advocates every time they are asking money for assistance in cases, in fact, they salaried employees in the courts why can’t their work is monitored by CC Cameras, why can't take legal action against them. Courts must also punish those providing false evidence and false testimony, including lawyers. This again will discourage lawyers dragging cases to eternity. Finally, all courts should follow the Supreme Court’s advice to limit lengthy arguments by advocates within agreed time limits. The goal must be “lean, to the point judgments delivered in quick time”\textsuperscript{27}.

**Bhutan:**

In mountainous Bhutan, geographical isolation (landlocked country) has helped in conserving local cultures and traditions in isolated pockets. The small population of about 700,000 (Seven Lakhs) is said to speak 19 living languages. Many of these communities are small in numbers, economically and socially marginalized, and live in remote regions. With road access and penetration of global forces like the media and international markets, many of these communities are in transition and their distinctive cultural practices are in serious danger of being lost without having been documented\textsuperscript{28}.

Archeological evidence suggests that Bhutan was inhabited as early as 2000 B.C.E. Oral tradition indicates that at the beginning of the first millennium, the country was inhabited by semi-nomadic herdsmen who moved with their livestock from foot hills to grazing grounds in higher valleys in the summer. Like other inhabitans of the Himalayan region, they were animists, many of whom followed the Bon religion, which held sacred trees, lakes, and mountains.

\textsuperscript{26} Ibid.\textsuperscript{9}
\textsuperscript{27} Ibid.
By the eighth century C.E., with the advent of Buddhism in the eastern Himalayas, Bhutan’s history became closely entwined with religious figures and the myths and legends associated with them. Buddhism practiced in Bhutan. But there are still some isolated pockets in the country where the Bon religion, with its shamanistic practices, lives on. Bhutanese culture remains both deeply spiritual and robustly earthly, owing much to the religious traditions that have influenced the country for more than a thousand years.

Today, more than 2,000 temples and monasteries throughout Bhutan and the ubiquitous presence of red-robed monks indicate the important role that Buddhism continues to play in almost every aspect of Bhutanese life. Every district in the country has a dzong, which houses the official local monastic community, and several temples. And every village has a temple, around which the life of the community revolves. Public culture in Bhutan has since the earliest historical times revolved around community life and religion. The two were interlinked in Buddhist teachings brought to Bhutan from Tibet by monks in search of converts in what were once wilderness areas of the Himalayas.

The third Druk Gyalpo, HM Jigme Dorji Wangchuck, (1952-1972) was the architect of modern Bhutan. His rule has been dedicated to reform and restructuring of the existing political and economic system to allow the kingdom, in a world that was changing rapidly outside, to adapt to new challenges. As far as institutions were concerned, he separated the judiciary from the executive by establishing a High Court and re-organized the judicial system on modern lines.

After creating the Tshogdu (National Assembly) in 1953, he progressively increased its role and powers. In 1965, the King also established the Ladoi Tshogde (Royal Advisory Council) and in 1968, he created what became the first council of ministers in Bhutan. Recently, the judiciary of Bhutan has also institutionalized the process of drafting laws and

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regulations with support from foreign experts provided by UNDP\textsuperscript{30}. Those laws may be influenced with the historical and religious, beliefs, practices which are basically Bhuddist dominant principles values, beliefs and practices.

According to Lyonpo Sonam Tobgye, who served as the Chair of the Constitution Drafting Committee,\textsuperscript{31} ‘[t]here is no mention of religion and culture in any constitution of any other country except in the Constitution of Bhutan. Religion and culture play a vital role. Religion provides values and moral thread at the same time as culture exhibits a separate identity and unity.’\textsuperscript{32} These would predictably be interpreted as obstructions to individual liberty. According to the wisdom of liberal democracy, these types of constitutional clauses risk leaving the definition of a ‘good society’ in the hands of the few who may articulate particularistic interests\textsuperscript{33}. Decisions that they make should be based on reason and supported by empirical (collecting from the people directly) data if available\textsuperscript{34}. In case of public issues, laws and policies should be framed through collective discussion and reasoning that needs to be justified to the public who are source of political authority.\textsuperscript{35}

Bhutanese appear to be treacherous robbers, a cruel and treacherous race and absolutely without shame who distinguished themselves by treachery, fraud, and murder and were an idle race, indifferent to everything except fighting and killing one another, in which they seem to take real pleasure\textsuperscript{36}. For a Bhutanese crime was the only claim to distinction and honour\textsuperscript{37} and their nation had no ruling class, no literature, no national

\textsuperscript{30}Ibid. p.143.
\textsuperscript{31}The drafting committee was formed in November 2001 at the authorization of the King. It consisted of thirty-nine representatives from different sections of the society (the central monk body, the twenty districts, the judiciary, and government administration), with Chief Justice, Lyonpo Sonam Tobgye as the chairperson.
\textsuperscript{34}Sangay Chophel (2010). Culture, Public Policy and Happiness (Researcher, The Centre for Bhutan Studies. Correspondence: schophel@gmail.com).
\textsuperscript{35}Ibid. p.91.
\textsuperscript{36}Dr. Sonam B. Wangyal(). A Cheerless Change: Bhutan Dooars to British Dooars, Dr. Sonam B. Wangyal is an Indian doctor running a clinic in Jaigaon, a border town abutting Phuentsholing. He was a columnist for Himal, The Himalayan Magazine (Kathmandu) and The Statesman, NB Plus (Siliguri & Calcutta). He currently runs a weekly column in a Sikkim daily, Now and a Kalimpong fortnightly Himalayan Times.
\textsuperscript{37}Eden, Ashley: Report on the State of Boothan, and the Progress of the Mission of 1863-64, in a combined volume titled Political Mission to Boothan (Henceforth PMTB), Majusri Publishing House, New Delhi, 1972 (1865), pp.15,
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pride in the past or aspirations for the future and that there were no reliable history, and very little tradition.\textsuperscript{38} Eden’s unlimited scorn of Bhutan is difficult to absorb even if one is charitably blessed with a soft and spongy mindset. Of the revenue system he concluded, Strictly speaking there is no system. The only limit on the Revenue demand is the natural limit of the power of the official to extort more.\textsuperscript{39} Commenting on the Judiciary he scoffs that, the Bhutanese have no laws, either written or of usage and where religion was concerned he berates that the Bhutanese only nominally profess the Buddhist religion…their religious exercises are merely confined to the propitiation of evil spirits and genii, and the mechanical recitals of a few sacred sentences.\textsuperscript{40}

One measure of happiness, then, becomes the degree to which public policy making demonstrates diversity (in terms of age, sex, occupation, ethnicity, views, etc) in deliberation. Deliberation should not be based only on quantitative data but also on values. If right policies are framed and implemented then it is likely that society would navigate towards happiness. This entails formulation and implementation of programmes and projects based on these policies. Even programmes and projects should be subjected to democratic consensus. Bhutan’s fourth king, Jigme Singye Wangchuck, coined the term Gross National Happiness in the late 1980s arguing that Gross National Happiness is more important than Gross Domestic Product.\textsuperscript{41} His vision was to create a GNH society: an enlightened society in which happiness and wellbeing of all people and sentient beings is the ultimate purpose of governance\textsuperscript{42}.

\textbf{Bhutan constitution:}

Article 21: (4) of the Constitution of Bhutan the Chief Justice of Bhutan shall be appointed from among the Drangpons of the Supreme Court or from among eminent jurists by the Druk Gyalpo, by warrant under His hand and seal in consultation with the National

\textsuperscript{57, 87, 115, 130, 123.}
\textsuperscript{38}\textit{Ibid.}
\textsuperscript{39}\textit{Ibid.}
\textsuperscript{40}\textit{Ibid.}
\textsuperscript{41}As cited by Ura 2008, para.1.
\textsuperscript{42}\textit{Ibid.} Para.2.
Judicial Commission. According to the constitutional provisions of Bhutan the King who is executive head appointing High Court and Supreme Court judges with consultation of National Judicial Commission of Bhutan, the King has discretionary power while appointing the judges. The NJC have a great role to assisting king in appointment of judges.

**National Judicial Commission:**

According to Article 21: (17) Constitution of Bhutan the Druk Gyalpo shall appoint members of the National Judicial Commission by warrant under His hand and seal. The National Judicial Commission shall comprise:

(a) The Chief Justice of Bhutan as Chairperson;
(b) The senior most Drangpon of the Supreme Court;
(c) The Chairperson of the Legislative Committee of the National Assembly; and
(d) The Attorney General.

(18) Every person has the right to approach the courts in matters arising out of the Constitution or other laws subject to section 23 of Article 7.

There are minority religions Islam, Christian, and Hindu people are having fair chances along with Bhuddist people of Bhutan to enter into Higher Judiciary, but some people from Muslim, Christian and Hindu minority people basically non citizens are not having right to enter into the Judiciary. Recently, Bhutan courts are equipped with computers and computers have been in use especially in the case of Judiciary of Bhutan from early 1990’s. The Judiciary with a three level of appeal system, the High Court in the apex, the District and Sub-District Courts as subordinate is well equipped with computers made available both through RGOB funding and support from UNDP and DANIDA projects. The Judiciary retains the objectives that the Information technology is a powerful resource, for the court system to function as being accessible, fair, accountable, transparent, and effective and timely (the concept of due process) in the administration of justice. For detail reports see ‘Royal Court of Justice, Strategic IT Plan’

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43 Drew Jackson, Umesh Pradhan and Bob Mortgenthaler, 5 May, 2000, High Court of Bhutan, Thimphu.
Religious morality is not allowed to hunt, cutting of trees, steal, lie and hurt others no need to regulate them, the religion is the biggest regulation of society, the religious morality is governing the people, and people inner morality is always consciously guiding the people that hunting is sin, cutting of tree is sin, and stealing is sin, then no need to police, and administration of justice. Mainly, the court role is very less. Ultimately, the religious morality leads to happiness in the society, not only in Bhutan if follow these moral principles the society will remains happy and the people will remains happy. Compare to India majority people nearly 75% are following Hindu religion, and other religions Islam, and Christianity influenced with Hindu practices and beliefs. Where the people inner morality is allowing hunting, stealing, lying, and hurt others, the religious philosophy is giving justification for those acts, required more police, courts and administration of justice, people are leading mechanical life.

Conclusions:

The Western concept of Independence of Judiciary is myth for India. The religious values, beliefs, practices are responsible every acts of the human society like India and Bhutan, whatever good and bad notions of religious values, beliefs and practices seen in the judiciary also, judiciary is not independent to society and state rather part of the society Judges, advocates, other staff of courts coming from the society and functioning for it with their pre notions.

Diversity is comes from the religious values, practices and beliefs where the diversity is not allowed in their religion it is not possible into the judiciary also. Simple statements and writing in the Constitution or any other legal documents is not possible to bring diversity in to the judiciary.

\[44\] Hindu Sacred Texts Bhagavat Geeta and Manu Code, the first one is having religious philosophy and second one is governing text for Hindu religious society, these texts were written by Veda Vyas and Manu respectively and strictly implemented during Gupta dynasty period and continuously followed the same still 1950, when Indian Constitution was introduced.
Social reforms are very much necessary for the Indian society for achievement of political reforms, modern judiciary will not success, it is almost failure system for the Indian society and people are not interested to approach to judiciary in India. Indian common man is not happy with modern judiciary of India. Because, of corruption, delay, pendency of cases, language barrier, lack of representation from all the sections in the society.

Appointments will not affect independence of the judiciary, appointments are purely considered administrative action it is not judicial function, there should be a creator that creator should be third person. Finally the diversity will give trust; real representation ultimately leads happiness or wellbeing in the society.

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