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The Long Road to Justice: Decoding Factors Responsible for Delay in Courts

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"Law should not sit limply, while those who defy it go free and those who seek its protection lose hope."

The Constitution promises to secure justice for every citizen of the country. The state in furtherance of the objective ensures equal administration of justice by creating substantive rights and constitutional rights. Access to Justice is a dispute mechanism provided by the state to secure justice under the mandate of the Constitution. However, the concept of access to justice leads to illusion when justice becomes delayed. Delay in justice delivery system is a barrier to access to justice. Access to Justice is not only confined to getting access to the courts but also getting just, speedy and expeditious outcome from the courts. The paper begins by analyzing the concept of access to justice and attempts to identify the magnitude of the delay problem plaguing the Indian Judicial system. Then the paper moves to the substantial portion by considering various factors resulting in the ballooning of the cases in the courts, clogging the Justice delivery system leading to delay. At last, the paper moves to propose sustainable solutions to set the delays right which has no doubts made justice illusive and elusive.

Introduction

The Constitution of India has guaranteed us with the words Justice: Social, Economic and Political in the preamble itself which outlines the importance attached to justice. Justice is the first virtue that the Constitution seeks to secure for the people of India. The State is duty bound to ensure equal administration of justice as it is a *sine qua non* of the civilized state. The constitution has provided it in the form of Article 14 which is rightly called the "the mother of justice" as it is one of the provisions which is not only meant for the elite but also the butcher, the baker, and the candlestick maker[1] It is an established principle of law that every citizen has a right of unimpeded access to a court.[2] The right guaranteed to us is not only limited to the access of the courts but should also be understood as including access to just treatment in courts, and access to just outcomes from courts.[3]

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1 *Bide Supply Co. v. Union of India*, AIR, 1956, SC, p. 479.

2 *Raymond v. Honey*, 1983, AC, p. 1.

3 United Nations, 'Access to Justice: Practice Note', United Nations Development Programme 2004.

The term "access to justice" is used synonymously with access to dispute resolution mechanisms provided by the State by creating substantive rights and constitutional rights. However, the very concept of Access to Justice leads to obfuscation when people have to face impediment in accessing justice due to a long delay. Long delays are the barrier to the Access of Justice.[4] The problem of endemic delay clogging the Indian Judicial system according to the Law Commission is a subset of 'pendency' where a case has taken longer than the 'normal time' that it should take for disposal of such a case.[5] The 'normal time' which a case should take for disposing of by the court, beyond which a 'pending' case becomes 'delayed'.[6] Several Law Commission reports,[7] Dr. Justice V.S. Malimath Committee[8] and Jagannadha Rao Committee[9] suggested that cases pending for more than two years should be considered delayed.

This paper will argue the ways to be adopted to set the delays right reducing the widespread malaise, pendency.

The magnitude of the Problem

The lifetime mission of Justice PN Bhagwati was Justice must reach all.[10] But the question which needs to be answered as to Justice must reach to all but in what time frame- the statistics which will reveal the sad state of affairs of the dispensation of justice which is plagued by the pendency of cases leading to inordinate delays.

The number of cases pending has been increased manifold. It has been estimated that over 60,750 cases are pending in the Supreme Court, over 40, 00,000 cases in High courts and over 2.7 crore cases are pending in the subordinate courts of India in 2016.[11] The mere case pendency is not to be seen as a bane; it is the inevitable concomitant of growth: economic, educational and social, *indicia* of

4 Ibid.

5 Law Commission of India, Report No. 245 on Arrears and Backlog Creating Additional Judicial Manpower, 2014.

6 Nitika Khaitan et al, 'Inefficiency and Judicial Delay New Insights from the Delhi High Court', Vidhi Centre of Legal Policy, 29 March 2017.

7 Law Commission of India, Report No. 14 on Reform of Judicial Administration, 1958; See also Law Commission of India Report No. 79 on Delay and Arrears in High Court and other Appellate Court, 1979.

8 Malimath Committee, Report on Reforms of the Criminal Justice System, Ministry of Home Affairs, 2003.

9 Jagannadha Rao Committee, 'Consultation Paper on Case Management, Constituted by the Hon'ble Supreme Court in Salem bar Assn. v. Union of India', Department of Justice, 2008.

10 Dr. Lokendra Malik, 'Justice P.N Bhagwati: A Tribute', *Live Law*, 16 June 2017.

11 Department of Justice, 'Action Plan to reduce Government Litigation', Draft by the Government of India, 13 June 2017, available at http://doj.gov.in/page/action-plan-reduce-government-litigation, accessed on 29 July 2018.

prosperity and awareness in the society.[12] However, while mere filing is not a cause for alarm, the existence of a large number of cases, beyond the suggested timelines is, because it results in inordinate delay as every case requires a defined and "acceptable" case life so that justice is not hurried and buried.[13] It is only when this defined timeline is exceeded that a "pending" case becomes part of "delay".[14]

The average time which a court takes to dispose of a case will allow us to understand what delay means in our country. A litigant in the subordinate courts of the country is likely to get a verdict in 2,184 days and suppose if a case does not go the Supreme Court, an average litigant who appeals to at least one higher court is likely to spend more than 3,650 days which add to the woes of the litigant and 4,745 days if a litigant decides to go in appeal in Supreme Court.[15] These figures subtly illustrate the sorry state of the complex judicial system.

It is apt to recall John Marshall who said: "Power of Judiciary lies, not in deciding cases, not in imposing sentences, not in punishing for contempt, but in the trust, faith, and confidence of the common man."[16] Indian Justice Delivery system has become synonymous with the long delay in disposal of cases due to Docket Explosion. It makes the litigants think that justice has become elusive.

Cause of Delay

The reason attributed to delay is multifarious from societal causes, inefficiency, lack of resources, and bottleneck in procedures to Burden on Judicial Officers. The pendency of fresh cases indicate prosperity; economically, socially and educational in the society as cases filing go up[17] but the problem arises when the disposal rate is low as compared to the filing of the cases. It results in inordinate delay. Few causes have been identified behind the delay.

First and foremost reasons pointed out is that the legislation passed in pursuance of the welfare activity has caused tremendous pressure on the courts, as such

12 A Report on Access to Justice on Centre for Research & Planning, Subordinate Court of India: 2016, Supreme Court of India, 2016.

13 Law Commission of India, Report no. 77, Delay and arrears in trial courts, 1978.

14 Law Commission of India, Report no. 14, Reform of Judicial Administration, 1958.

15 Harish Narasappa, 'The long, expensive road to justice', *India Today* (2016) available at https://www.indiatoday.in/magazine/cover-story/story/20160509-judicial-system-judiciary-cji-law-cases-the-long-expensive-road-to-justice-828810-2016-04-27, accessed on 26 July 2018.

16 *Rajesh Kumar Singh v. High Court of Judicature of M.P*, SCC, 2007, SC, p.126.

17 'The average filing of cases in Kerala which has a literacy rate of 93.91% is 24 per 1000 population whereas in Jharkhand which has a literacy rate of 66.41 is 4 per 1000 population'.

legislation are passed without establishing new courts to deal with the cases. The increase in legislative activity has resulted in a ballooning backlog in courts.

Second, in the adversarial system of justice, the court acts as a mediator between two parties who institute the suits on their own contrary to the Criminal Justice system wherein a proceeding is instituted on the behalf of the state. The investigation and prosecution are in the hands of the state which investigates and brings the matter before the court for adjudication as per the Criminal Procedure Code. The police which is entrusted from providing protection to dignitaries, maintenance of law & order, the task of securing public places et cetera hardly find any time for investigation due to which charge-sheet is not filed on time further delaying the trial as an accused is entitled to get bail if charge-sheet is not filed within 60 days.[18] It is for this reason, the Code prescribes that every investigation shall be completed without unnecessary delay[19] as it was felt that the investigation into offenses ought to be carried out in a time bound manner so as to provide speedy justice.[20]

Third, the quantum of budgetary allocation to judiciary has been negligible in recent years. It has not seen an increment despite being a change in the dispensation. Instead of tiding over the crisis, the budgetary allocation made to the judiciary by the government in the year 2017-18 was 0.4 of the GDP[21] whereas other sectors such as health and education have been allocated sufficient budget.[22] It is a sad fact that decision makers are on perpetual somnolence and not granting adequate funds. Whenever a request for funds is forwarded by the Judiciary to the government to provide adequate funds, the government simply puts the request in cold storage by saying they do not have funds[23] due to which the recruitment of Judges in the lower Judiciary is prolonged, deal a 'severe blow' on the delay problem.

Fourth the loopholes in the procedure very often are used to frustrate the purpose of the law. The Legislature by 1999 amendment act provided an upper limit of maximum 3 adjournments in the Civil Procedure Code.[24] The Supreme

18 *Rakesh Kumar Paul v. State of Assam*, AIR, 2017, SC, p. 3948.

19 The Code of Criminal Procedure 1973, s. 173(1).

20 *Rakesh Kumar* (n 18).

21 Siddhartha Dave, 'The Price of Justice', *The Indian Express, 25* December 2017.

22 The health sector has been allocated 1.2 % of the GDP, whereas the Education sector has been allocated 3 % of the GDP.

23 P. Sathasivam, former Chief Justice of India had in his farewell speech said "Budget allocation for the judiciary is a serious concern. In so far as the Supreme Court is concerned, the government is not providing sufficient budget and, time and again, the Chief Justice has to intervene to seek sufficient allocation of Budget".

24 The Code of Civil Procedure 1908, Order 17 Rules 1.

Court rendered its decision in *Salem Advocate Bar Assn. v. Union of India.*[25] Wherein it held that on extreme and exceptional circumstances, the strict rule does not apply. Lawyers take advantage of this loophole by showing frivolous circumstances *inter alia* on the grounds of the death of the relative, a reasonable time for preparations and so on. On the other hand Legislature in its wisdom has granted discretion to the courts in criminal matters to adjourn a proceeding in exceptional circumstances.[26] The problem of adjournment in a criminal proceeding is acute. It has become more or less a fashion to adjourn a criminal case again and again till the witness tires and gives up. In adjourning the matter without any valid cause a court unwittingly becomes a party to the miscarriage of justice.[27] These 'dillydally' tactics used by the lawyers drag the cases for years leading to delay.

Final debates are spilled over whether Judges are victim or culprit. Statistics will reveal the victimization of Judges who work assiduously despite being overburdened with cases. According to a survey, Judges of a lower court hear around 80-90 cases every day which affects the efficiency of a judge as it impacts fundamental promise that the judiciary makes to the litigants, the concept of the fair hearing, due to the paucity of time.[28] The Judges-Population ratio which currently stands at 18 Judges per million populations is abysmally low whereas the global norm is 100.[29] Further, the manpower to assist the judges is under-qualified. Large numbers of matters are shouldered by a few staff members.[30] The number of Judges is not proportionate to the number of cases pending in the Courts in India which lead to the nagging delay problem.

Setting the Delay Right

The unduly long delay has an adverse impact on the common man's access to justice.[31] In the Indian context, this is a clear violation of 'Right to Speedy Trial" as a facet of right to life as conferred by Article 21 of the Constitution of India.[32]

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25 *Salem Advocate Bar Assn. v. Union of India*, SCC, 2003, SC, p.49.

26 The Code of Criminal Procedure (n 18) s. 309.

27 *Swaran Singh v. State of Punjab*, AIR, 2000, SC, 2017.

28 Harish Narasappa & Shruti Vidyasagar (trs), *The State of Indian judiciary*, Eastern Book Company, 2016, p.89.

29 A Report on Access to Justice on Centre for Research & Planning (n 12).

30 Ibid, p. 50.

31 *Imtiyaz Ahmad v. State of Uttar Pradesh*, SCC, 2012, SC, p. 688.

32 *Hussainara Khatoon v. Home Secretary, State of Bihar*, AIR, 1979, SC, p. 1360; *Mantoo Majumdar v. State of Bihar*, SCC, 1980, SC, p. 406; *State of Maharashtra v. Champa Lal,* AIR, 1981, SC, p.1675; *Kadra Pahadiya (I) v. State of Bihar*, AIR, 1982, SC, p.639; *Sheela Barse(II) v. Union of India*, AIR, 1986, SC, p.1773; *A.R. Antulay v R.S. Nayak*, SCC, 1992, SC, p.225; *Ranjan Dwivedi v. CBI,* SCC, 2012, SC, p. 495; Ibid; *Anita Khuswaha and Ors v. Pushap Sudan and Ors*,, AIR, 2016, SC, p. 3506.

It has been estimated that "if the nation's judges attacked their backlog non-stop with no breaks for sleeping or eating and closed 100 cases every hour, it would take more than 35 years to catch up".[33] Delay has virtually become part of our judicial system. Nonetheless, delays are not ineluctable and can be tackled by adopting management techniques.

First, the Subordinate Judiciary is currently working with 16393 judges against the sanctioned strength of 22,677 whereas there are 410 Judges post are vacant in different High Courts against the sanctioned strength of 1,079.[34] The appointment of Judges should be paced up to reduce the cascading of the cases. The Judgment in *Brij Mohan Lal v. Union of India and Ors.*[35] Should be complied with of at least 10 % per year increment in the strength of judicial officers. Further time-bound vacancies every year needs to strictly adhere to *Mazhar Sultan v. U.P. Public Service Commission*[36] to reduce the delay problem as more number of judges would mean quick disposal of cases. Resultantly the number of cases will be distributed among a large number of judges.

Second Independence of Judiciary does not only mean the right to adjudicate without interference but also entails resource-wise independence as well. Without it, judicial independence will become inconsequential and redundant. There should be National Budget on the line of Brazil and U.S where autonomy has been granted to the judiciary to prepare their own budget.[37] This provision will go a long way in improving the financial necessities of the Judiciary which is short of funds. Apart from having its own power to sanction the budget, the fines imposed, court fees in criminal courts and costs imposed by courts which now goes to the government's exchequer must go to the Judiciary for developing Judicial infrastructure and providing Residential Accommodation to Judicial officers[38] as it would attract young talents to work in Judiciary.

Third Secretarial assistance should be provided to judges for better efficiency in

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33 Tom Lasseter, 'India's Stagnant Courts Resist Reform', *Bloomberg Businessweek* (8 January 2015) available at https://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases, accessed on 29 July 2018.

34 Department of Justice, 'Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts', Government of India 2018 available at http://doj.gov.in/sites/default/files/vacancies-01.04.2018.pdf, accessed on 29 July 2018.

35 *Brij Mohan Lal v. Union of India and Ors*, SCC, 2012, SC, p.502.

36 *Mazhar Sultan v. U.P. Public Service Commission*, SCC, 2008, SC, p. 703.

37 As per doctrine of separation of powers, it is generally accepted that it is not open to any one of the three branches of the government to underestimate the needs of the other branches so as to make it difficult or those branches to discharge their constitutional obligations satisfactorily. American Courts have propounded the "Doctrine of Inherent Powers" under which the Judiciary could pass orders seeking funds from the Executive and the Legislature so as to meet its constitutional obligations in a reasonable way.

38 *All India Judges Association v. Union of India, SCC,* 2002, SC, p.247.

the light of *All India Judges*[39] and *Brij Mohan*[40] dicta. Creation of post of court manager having an MBA degree will enhance the efficiency in courts. In absence of adequate managerial staff, most of the time of the judge is wasted on the administrative side. Creation of the post of court manager will enable the judges to devote more time to their judicial functions, thus reducing the delay problem.

Fourth "All the rules of procedure are the handmaid of justice "frequently invoked by Hon'ble Apex Court to advance the cause of Justice has been decisive in delay problem in the country.[41] Adjournments are the primary reason a case is dragged on for years using delay tactics by parties. The adjournment should be limited to maximum 3 as per 1999 amendment in Civil Procedure Code 1908. In criminal cases, the dicta of Hon'ble Apex Court in the case of *Vinod Kumar v. State of Punjab*[42] wherein it held that criminal trial should be conducted on day to day basis once the witness starts deposition till his cross-examination is over, should be complied with so that no adjournment is taken on frivolous grounds by lawyers at the crucial stage of the criminal proceeding.

Fifth Police do not file charge-sheet on time and execute summons to witnesses which further delays a case. A separate wing of investigation should be created for every Police station for efficiently investigating the crime. That wing should also be entrusted to receive the summons from courts on an everyday basis and execute it accordingly. It is for that reason the Hon'ble Supreme Court of India in the matter of *Prakash Singh v. Union of India,*[43] came heavily upon the executive for deploying police force from providing security to dignitaries to the investigation of a crime which is not only demoralizing but which is also very disincentivizing.

Sixth Government is the largest litigator in cases across the courts and constitutes 46% of total litigation in the country. The tendency on the part of the government to challenge every claim of the party even if it is just claim needs to be discouraged. If the claim is justified, the government should take immediate action, thereby avoiding unnecessary litigation and delay as per Apex Court's dicta in *Bihari Choudhury v. State of Bihar.*[44] Special Litigation policy should be adopted by every state to educate Government lawyers as per *Bihari Choudhury* dictum.

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39 Ibid.

40 *Brij Mohan* (n 35).

41 *Salem Bar Assn. v. Union of India* (n 25); See also *Kailash v. Nankhu*, AIR, 2005, SC, p. 2441.

42 *Vinod Kumar v. State of Punjab*, AIR, 2015, SC, p. 1206.

43 *Prakash Singh v. Union of India*, SCC, 2006, SC, p. 1.

44 *Bihari Choudhury v. State of Bihar*, AIR, 1984, SC, p. 1043.

Seventh popularizing ADR mechanism should reduce the pendency of cases. The attitude must be changed from 'See you in Court' to 'see you out of Court.'

Final the recommendation of National Commission to review the working of the Constitution (NCRWC) which suggested that another Article be added Article 30A in the Constitution:

Article 30A- Access to Courts and Tribunals and Speedy Justice:

2)"The right to access to courts shall be deemed to include the right to reasonable and effective justice in all matters before the courts, tribunals or other fora and the State shall take all reasonable steps to achieve the said object."[45] Should be inserted in the constitution so that the courts can enforce it under Article 32 and 226.

Conclusion

Access to justice which is the very foundation of our Constitutional value will prove to be elusive if administration of justice is not affordable and expeditious. Justice delayed is justice denied, it is famously said. The dispensation of justice delivery if not speedy, affordable for those who repose their trust in the judiciary and come in its asylum, will amount to an abandonment of not only access to justice but also justice which is the first virtue that the constitution seeks to achieve for its people. There is a real danger of confidence in the existing Justice delivery system and the rule of law, getting eroded due to denial of expeditious and affordable justice. It is high time for both the Judiciary and Executive to come together and take steps to strengthen judiciary for upholding the rule of law. Faith, trust, and confidence need to be restored in this great institution. Both the organs of the government should extend help to each other strengthening the rule of law and judiciary so that it can function effectively without having to compromise to the concept of fair and speedy justice

[45] P.K Das, *Protection of Woman from Domestic Violence*, 4th edition., Universal Law Publishing Co. Pvt. Ltd., 2011, p.246.