JUSTICE DELAYED IS JUSTICE DENIED VIS-À-VIS JUSTICE HURRIED IS JUSTICE BURRIED : ISSUES AND CHALLENGES**

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"Courts and delays are correlatives; they go together. The reasons are a legion. They range from infrastructural inadequacies to insufficient adjudicators to protracted procedures to plain misplaced priorities.... Most of the times, the winner turns out to be the actual loser",[1]

It is a basic principle of justice that it should be delivered without delay. Magna Carta asserted that "to no one will we refuse or delay right or justice". Justice delayed is indeed justice denied, especially to the victims of crime.[2] However, the Apex court upheld in **R.N. Jadi & Brothers vs. V. Subhashchandra[3]**, the principles underlying order viii rule 1 Civil Procedure Code, 1908 were construed and it was observed that the object of the substituted order viii, rule 1 intends to curb the mischief of unscrupulous defendants adopting dilatory tactics, delaying the disposal of cases causing inconvenience to the plaintiffs and petitioners approaching the court for quick relief and also to the serious inconvenience the court faced with frequent prayers for adjournments. The object is to expedite the hearing and not to scuttle the same. While justice delayed may amount to justice denied, justice hurried may in some cases amount to justice buried. The Supreme Court thus observed: "No procedure, which does not ensure a reasonably quick trial, can he regarded as reasonable, fair or just and it would fall foul of Article 21 of the Constitution".[4]

Some times on the directions of the higher courts, subordinate judiciary at district level started disposing cases of rape, dowry death etc in speedy mode even in few days. Very often in the print media, we studied about decision of various courts that cases relating rape and other crime against women are disposed of by courts within week. Such a sensitivity of judicial officers can be understood particularly when there is huge pressure of higher courts. Can such a case, on a very serious matter that too when authenticated investigation is required and live and liberty of accused is at stake should be decided in a haste. No doubt, justice to the prosecuterix / victim should be provided at any cost and without delay, but sometimes trial by media and social pressure may lead to miscarriage of justice also. A sessions trial such as rape, murder which normally

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[1] https://barandbench.com/bombay-hc-costs-of-judicial-delay/, The Bombay High Court recently had occasion to take special note of the judicial delays that plague the system, Omkar Gokhale. Bar & Bench, Indian Legal News, September 10, 2019.

[2] Nick Herbert: 'The victims of crime deserve swift justice', The Telegraph, 6.11.2019

[3] AIR 2007 SC 2571.

[4] Maneka Gandhi vs. Union of India, AIR 1978 SC 597.

takes months to conclude, if decided within few days to reduce the pendency anticipating that if accused is innocent then an appeal to the High Court or the Apex Court may set the person free, is misconceived. If an undertrial is economically poor, he may not be able to appeal to superior court and this can confine him behind the bars for years which is violation of his fundamental right to life and liberty provided to every citizen by the Constitution of India under Article 21.

The constitutional guarantee of speedy trial is an important safeguard The concept of right to speedy trial has grown in age by almost two and a half decades. It deals with speedy disposal of cases to make the judiciary more effective and to impart justice as fast as possible but the goal sought to be achieved is yet a far-off peak. " Justice Krishna Iyer while dealing with the bail petition[5] remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

Swift justice is in the interests of victims, witnesses and the public. Police, prosecutors and courts worked together – and offenders were brought to justice within days, sometimes even hours.

With the rapid growth in technological, industrial field and population, workload has increased on the judiciary system which calls for effective and rapid disposal of ever increasing cases. Also the Constitutional courts of the country were held just and reasonable in holding the right to speedy trial procedure enshrined in Article 21 of the Constitution of India due to the mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself. To achieve the aim of speedy justice, judiciary has also come up with the concept of Fast Track Courts. This is a noble concept which is introduced for the speedy disposal of vast number of pending cases in the various courts throughout India.

A lot have been suggested towards how to deal with this problem, right from increasing the judicial capacity to the usage of artificial intelligence in court management. Court automation systems, digitization and e-courts can help only to some extent . In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenges of the age. It is heartening to note that use of information and communication technology in judiciary is growing despite various constraints. Day-to-day management of courts at all levels can be simplified and improved through use of technology including availability of case-law and meeting administrative requirements. Congestion in court complex can also be substantially reduced through electronic dissemination of information. The objectives that can be achieved through use of technology include transparency of information, streamlining of judicial administration and reduction of cost.

The courts could be slightly cautious and farsighted about the selection of cases and framing of questions and judgments to avoid getting involved in an infinite game. This as one of the major reasons behind the delayed judicial processes and mounting pendency of cases in the Indian courts. A finite game is played for the purpose of winning. These games have well-defined mutually agreed set of rules. They have a precise

[5] Babu Singh v. State of UP, AIR 1978SC527.

beginning and they come to a definitive end.. An infinite game, such as culture or religion, is played for the purpose of continuation of the game, not for winning. Finite games are played within boundaries and limitations. No such limitation can be imposed in an infinite game.

India's judicial delays are legendary, and the shortage of judges is well documented. If justice is not carried out right away timely, then even if it is carried out later it is not really justice because there was a period of time when there was a lack of justice. On the other hand a "swift justice is injustice," is also true. Though fast track courts have whittled away India's backlog, judges and observers have raised concerns about the quality of justice being administered

No single factor which is solely responsible for delay in disposal of cases rather it is a combination of several factors which are contributing to delay. Judicial delay applies to burdensome procedures, lack of sufficient courts, the clogging of the system with cases without merit and the use of the courts to settle matters, which could be resolved by negotiation. Post experience and instances have proved beyond doubt that delay at court is always accompanied by ills such as partiality, corruption and a low quality of judgment. Besides this, the causes attributed for delay are (i) An inadequate number of Courts (ii) Judicial officers are not being fully equipped to tackle cases involving specialized knowledge (iii) Dilatory tactics adopted by litigants and lawyers, who seek frequent adjournments and delay filing documents and (iv) The role of the administrative staff of the Court. Further root cause for delay in dispensation of justice in our country is poor judge-population ratio. Other aspects that contribute to judicial delays include lacunae in the Code of Criminal Procedure, methods of police investigation, general administrative disorganization and a lack of modern technology. Frequent adjournments are the direct fall out of increasing inflow of cases. Sufficient judicial officers commensurate with the cases filed everyday are not there. Therefore, the judicial officers are constrained to adjourn the cases again and again so as to take up other matters also.

Reducing government litigation, compulsory use of mediation and other alternative dispute resolution mechanisms , simplifying procedures, recommending precise capacity reinforcements, use of technology and specification of time limits has emerged as a distinctive feature of process reforms across jurisdictions that have been able to quantifiably minimize judicial delay.

There have been at least two major amendments to the Code of Civil Procedure, in 1999 and 2002, which specified timeframes vis-à-vis completion of various processual steps in civil proceedings. Prior to 1999, there was no limit on the number of trial adjournments courts could grant. The 1999 Amendment fixed an upper limit of three adjournments that courts could grant during the hearing of a suit.

"Procedures are the handmaiden of justice", frequently invoked by the Supreme Court, serve as lexical alibis by which departures from procedure are introduced and justified. In the 2005 case of **Salem Advocate Bar Association-II**[6], the Supreme Court interpreted this restriction as not curtailing the court's power to allow more than three adjournments. This decision has had an active afterlife, having been invoked by tens of high court decisions which proudly proclaim the court's inherent rights to endlessly adjourn.

The 1999 Amendment fixed the timeframe for yet another important provision which directly impacted the court's general power to extend timelines. It specifically disallowed the courts from enlarging the time granted by them for doing *any* "act prescribed or allowed by the Code" beyond a maximum period of 30 days. However, in the same 2005 case, the Supreme Court interpreted this timeframe as one not attenuating the inherent power of Indian courts to "pass orders as may be necessary for the ends of justice or to prevent abuse of process of the Court".

[6] 2005 (6) SCC 344.

In order to curb the practice of non-prosecution of cases filed by litigants, the 1999 Amendment also fixed an outer timeline of 30 days for service of summons on defendants. However, in 2003, in the case of **Salem Advocate Bar Association-I**[7] the Supreme Court interpreted this to mean that 30 days limit designated only the outer timeframe within which steps must be taken by the plaintiff to *enable* the court to issue the summons. In other words, the court held that the provision did not specify a time limit within which summons ought to be served on the defendant by the court.

Insertion of another timeframe that was pivotal to curbing delays was introduced in 2002. Prior to 2002, a written statement could be filed within any time as permitted by the court. The 2002 Amendment incorporated a mandatory outer timeline for filing written statement by not allowing the courts to accept it beyond a period of 90 days from the date of service of summons. However, in the 2005 judgment of **Kailash vs Nanhku**,[8] the Supreme Court relaxed this statutorily prescribed deadline by interpreting it as merely *directory* and not mandatory. It held that courts could use their discretion in unspecified exceptional circumstances to accept delayed written statements. This case has been applied as a virtual carte blanche by lawyers to file written statements beyond 90 days as a matter of course. Thus the exceptional has become the new normal.

Evidently, in each of these illustrations, the Supreme Court relaxes the timeframe inserted by the amendments and restores to the courts discretion to dilute them in accordance with the courts' perceived sense of justice.

These illustrations are not merely fragmentary instances. Similar examples of the undoing of procedure may be found for nearly every provision in the Code that contains a time limit. These illustrations are in fact, a sampling of the adjudicatory maneuvers by which the Supreme Court has unwittingly come to countenance delay, in contradiction to the express wordings and intent of the Code.

The irony is that in our country for every one million population, there are only 13.5 judges. In contrast, in Western Countries, for every one million people, there are 135 to 150 judges, 10 times more than the proportion in India. There is unanimity of opinion that the strength of Judges in India has to be considerably increased to cope with the growing litigation and demands. Hence, there is a dire need to overhaul the entire system of justice delivery mechanism so that the problem of delay can be nipped in the bud otherwise access to justice and judicial reform will remain non-existent and will only be a mirage to the crores of fellow Indians.

The ultimate object of any judicial system is to delivered justice. Justice is of wide connotation and has to be administered by the courts according to law and procedure. In every civilized society there are two sets of laws: Substantive law and Procedural law. Substantive law determine the rights and obligations of citizens. But the efficacy of substantive laws depends upon the procedural laws.

An endeavour is made to examine the factors which are responsible for delay in justice delivery system for which people loose faith in the Indian judicial system.

[7] AIR 2003 SC 189
[8] AIR 2005 SC 2441

Factors Leading to Delay in Disposal of Cases

1. **Procedural Factor**

A. Pre-trial Delays

i) Delay in investigation; • Proceeding to the spot; •Ascertainment of facts and circumstances of the case; • Discovery and arrest of the suspected offender;

• Collection of evidence relating to the commission of offenc

-- The examination of various persons (including the accused) and the recording of their statements into writing, if the officer thinks fit.

-- The search of places or seizure of things considered necessary for the investigation or to be produced at the trial; and

• Formation of opinion as to whether on the material collected, the accused can be

put to trial before a Magistrate

(ii) Delay in service of summons;

(iii) Delay in filing written submissions and documents;

(iv) Delay in framing issues/charges

(B) Delay During Trial

(a) Provisions for adjournment; -- When the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined, -- No adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party, == Pleader of a party is engaged in another court, shall not be a ground for adjournment, -- The illness of a pleader or his inability to conduct the case generally not ground for adjournment; -- Adjournment when witness present and party or his pleader not present in court

(b) Non attendance of witnesses;

(c) Lengthy oral arguments;

(d) Absence of lawyers;

(e) Application at any stage;

(f) Delayed pronouncement of judgments;

(g) Absconding of the accused cause too much delay;

(h) Non-receipt of death report of an accused or witnesses;

(i) Surety has no control to produce the accused.

(C) Delay during the Appellate Proceeding

(D) Delay during Execution Proceedings

2 Substantive Factors

(A) Judicial vacancies/Delay in appointment of judges,

(B) Lack of accountability of judges,

(C) Too many vacations in the courts.

(D) Misuse of Public Interest Litigation,

(E) Witnesses Turning hostile,

(F) Writ jurisdictions,

(G) Delay by the Judges.

The mess in the justice system only ends up harming the interests of the nation. That is why it becomes even more important for the government to solve this crisis. The success of Indian democracy, eventually, depends on this crucial intervention. The number of issues that hold back judiciary to deliver justice . The situation today is so grim that if a poor is able to reach to the stage of a High Court, it should be considered as an achievement". Justice for a vast majority of our population has become a mirage. While judiciary has to share much of the blame.

An honest account of the background in which the judiciary operates, the tendency in every case registered is that it starts from the lowest and moves on to the highest level irrespective of its importance. If every case has potential to travel up to the Supreme Court, then one can imagine the plight of the Highest Court. Besides that " the general tendency to take a chance in litigation is doing serious damage to the judiciary. In addition, too many revisions, bails, applications make one case almost five case." In large number of cases even after the Supreme Court adjudicates, there is always room for 'review petition' and of late another such option "review of review" has been devised as a last appeal to review petition. This is one such example of how cases can be prolonged and justice can be delayed.

Not only the government is the biggest litigant of all, it is again the government that creates situations leading to fresh litigations because in most of the cases, it fails to honor judicial decisions. While a hearing on fresh petition against government inaction takes a minimum of one year, the contempt notice and then the petition to challenge such contempt at a higher court drags the issue further, thereby causing unnecessary delays. This implies that if someone wants to exploit the laws and procedures, one can do it for any longer. Yet, the main obstacle to speedy justice is the "regime of adjournment." The root cause to this growing phenomenon of adjournment is the nexus between lawyers and the litigants. While delay fills lawyers purse, it gives some reprieve to a litigant who has enough money.

The issues and events that are often beyond judicial control. One should visit a subordinate/district court and find on his/her own admission the conditions under which the lower court judges do the business of justice. The almost non-existent infrastructures and the oppressive work environment in the lower courts would appall one. In several cases, the judges do not have a fan, typewriter or proper chairs. Even where there are fans, there is hardly electricity.

There are judges who write judgment in their own hands, as they are not provided with steno/type writers". Besides, the job conditions are not very attractive. Most often they are posted to remote places and there is routine transfer every two years. All this keeps many bright candidates away from subordinate judicial services. Besides, they have little autonomy, as the judicial bosses at the High Court are supreme. Further, contrary to what people believe that judges have plenty of times to relax, all judges have to work extra 7-8 hours everyday to read about the cases and examples. Every judge has to do lots of home works before they deliver a judgment. In fact, Saturday and Sundays are most taxing days for a judge.

The right to speedy trial is not a fact or fiction but a "Constitutional reality" and it has to be given its due respect. The courts and the legislature have already accepted it as one of the medium of reducing the increasing workloads on the courts. Speedy trial is a very important fundamental right[9]. there are many ways by which it can be ensured like:-

1. **Setting up fast-track courts and benches** to speed up pending cases.

2. **Implementing a strong reprimand for bringing up flippant cases** – This will not only ensure that the cases that come to the lower courts are valid but also those which can be worked on quickly. Moves such as the Supreme Court imposing fines for frivolous cases are a welcome step towards warding off unwanted petitions.

3. **A plan to increase the strength of the judiciary fivefold** by expanding recruitments on all levels and ensuring proper training and surveillance of new appointees.

4. **Judges' training and vocations.** Judges should be provided with proper training and vocations on a regular basis to improvise there drafting, hearing and writing skills along with the skill of taking correct and fast judgment. Judicial accountability is one of them is important factor.

5. **Allocation of Cases as per Specialization.** Cases must be assigned according to specialized area of judges. Assigning cases without taking into consideration the specialization leads to delay.

6. **Keeping the courts open 365 days a year.** This, of course, is a long-term goal but one that needs to be seriously pondered upon.

7. **Effective management of the courts**. This is possible only when once in a couple of months or days problems faced by the litigants, lawyers and judges is discussed. Time scheduling should be done so that there is effective management of time leading to effective management of judicial system.

8. **Modernization of courts.** When everything is being modernized, why should courts be left behind? Our courts should be fully digitised and technical experts should be brought in to streamline the whole process right from when a person files a case, to updating it, to the final verdict. Using editors to simplify technically dense final judgments could also be another step.

9. **Ensure stalling tactics are strongly reprimanded.** There is no great mystery to this modus operandi which not only piles up work in the court but also sadly is a reason for the rampant corruption present in the judiciary today. A panel which addresses this problem and gives out remedies is the need of the hour.

9 **Hussainara Khatoon V. State of Bihar, AIR** 1979 SC 1364

10. **Revision of old laws and regulations.** More than a thousand of India's laws date back to the British Raj, some of which are mere loopholes in the workings of the court and thus must be done away with in order to ensure that justice can be served quickly and effectively.

11. **Malimath committee.** Malimath committee: The main aim of this committee is to make recommendation for reformation on Criminal justice system, simplifying judicial procedures, practices and making the delivery of justice to the common man closer.

The right to a speedy trial, and its resulting impact on both the defendant and society as a whole, makes this Sixth Amendment guarantee a crucial portion of the Bill of Rights — and another important part of our legal heritage. Repeated delays and continuances in the criminal justice process prevent victims from ever reaching emotional, physical, and financial closure to the trauma suffered as a result of the crime(s) perpetrated against them. Such delays in prosecution can also limit the ability of victims to receive justice when their memories, or those of other witnesses, fade with the passage of time or when the victim's health deteriorates

The Eleventh Finance Commission recommended a scheme for creation of 1734 Fast Track Courts in the country for disposal of long pending Sessions and other cases. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended time and again with a provision of central assistance. Hon'ble Mr. Justice K. G. Balakrishnan, the then CJI, on 08.04.2007, expressed the view that these courts have been quite successful in reducing the arrears. Most of the criminal cases in subordinate courts are pending at the level of Magistrates. Keeping in view the performance of Fast Track Courts of Session Judges, the Government of India should formulate a similar scheme for setting up Fast Track Courts of Magistrates in each State.

Sometimes, cases are disposed of in fast courts so fast that they can lead to miscarriage of justice. Experts worry that there's pressure on fast track courts to deliver justice at the earliest. Lawyers object to such hurried trials. The court should give enough time to both the prosecution and the defence to present witnesses during a preliminary hearing and also for cross-examining each other's witnesses. Indeed, there was criticism of a fast track court which was hearing the Best Bakery Case of the 2002 Gujarat riots. The National Human Rights Commission (NHRC) submitted a special leave petition in the Supreme Court against the verdict of the fast track court, which acquitted all the 21 accused in the case relating to the murder of 14 Muslims. It said the judge had made no effort to ascertain why witnesses had turned hostile. The NHRC also raised strong objections to why there was no effective cross examination of witnesses who contradicted their earlier written propositions.

In Mumbai, too, questions are often raised about the fast track courts. In 2005, around 15 such courts were set up for speedy justice in rape, murder and dacoity cases. But in more than 50 per cent of cases, the high court overturned the conviction by the fast track courts. Cases tried by fast track courts are usually cases of hurried and buried justice.

Swift judgments in fast track courts do not necessarily mean succour for the victim either. Often, cases get stuck in a high court and then the Supreme Court when the defence teams file an appeal.
Of course, there is also the belief that unless courts speed up justice, the huge backlog of cases will only get bigger. Some top retired judges feel that the entire judiciary system should be put on a faster track to ensure certainty of punishment. "We have to create more courts and appoint more qualified judges to speed up the justice delivery system. Creating a few fast track courts will not serve the purpose," former Chief Justice of the Supreme Court, J.S. Verma, stresses.
The government, however, is confident that the legal infrastructure will soon be improved. "I have written to the Prime Minister asking for a good sum of money for building more court rooms and for appointing more judges," Union law minister Ashwani Kumar states.

The cardinal principle of natural justice is that 'justice should not only be done but it should seen to have been done' which means that those who receive justice must feel it has been done with them. Delay defeats not only equity but justice also and if the delay in relation to criminal justice system it defeats justice more pervasively. It is therefore, crucial that the dispensation of justice must be not only timely but also include quality. If a case is not decided timely or an unreasonable time is exhausted in disposal of a particular cases i.e. nothing but a kind of injustice disguised in the form of justice. In fact the most fundamental aspect in speedy trial is a person accused of some offence must get results in the court of law without any unreasonable delay. Prevention of unreasonable delay is, therefore, the pivot on which the concept of speedy trial and effective criminal justice system revolves.

Remember the words of Cicero: “How invincible is justice if it be well spoken.”