

JUSTICE DELAYED IS JUSTICE DENIED

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“Justice denied anywhere diminishes justice everywhere”- Martine Luther King Jr.

Delay in dispensation of Justice generally devalues judgments. It generally creates anxiety among the litigants and results in deterioration of evidence upon which rights are determined. A nation's legal system is integral to how its citizens look upon issues that concern the country in general and their individual lives in particular. Delay gives a wrong signal of justice delivery system and puts the judiciary to public criticism and loses the confidence of the common people who regards judiciary as their last resort which is regarded as temple of justice .

It is pertinent to note that the judiciary is a co-equal branch of the government within India's democratic and constitutional framework, along with the legislature and the executive. The important role of courts in society is not only to adjudicate disputes between parties, but also to protect the rights and liberty of individuals. Law is an instrument of social change and one of the main function of law in society is maintenance of public order and the administration of justice.

The rule of law cannot exist without an effective judicial system, which is capable of enforcing rights in a timely and proportionate manner in a way that inspires public confidence in the administration of justice. For the law to govern, the system through which it is administered must measure up adequately when mapped against the three dimensions of justice– substantive justice on merits, timeliness in the disposal of cases, and proportionate use of the State's resources. Access to justice thus, assesses the fulfillment of an individual's entitlement to justice on these parameters to ensure that legal redress does not become the preserve of a few. It represents the ability of every person to enforce the fundamental rights and freedoms guaranteed by law.

Constitutional Perspective of Justice:-

Preamble of the Indian Constitution itself reflects the aim and aspiration of justice for mankind Under our Constitution dispensation, sovereignty vested in the people. So we can legitimately boost a people –oriented jurisprudence without any impediment to access to justice. The Preamble aims at securing to all citizens Justice: social, economic and political. Though it is not easy to give a precise meaning of the term justice, by and large, it can be stated that the idea of justice is equated with equity and fairness. Social justice, therefore, would mean that all sections of society, irrespective of caste, creed, sex, place of birth, religion or language, would be treated equally and no one would be discriminated on any of these grounds. Similarly, economic justice would mean that all the natural resources of the country would be equally available to all the citizens and no one would suffer from any undeserved want. Similarly, Political justice entitles all the citizens equal political rights such as right to vote, right to contest elections and right to hold public office etc.

Directive principle of state policy were formulated to lay down directives for the state. In word of Dr. B. R. Ambedkar

“ Because we did not wanted merely a parliamentary form of Government to the instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution The word 'strive' which occurs in the Draft Constitution, in judgment, is very important. We have used it because our intention is even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfillment of these Directives. That .is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go.”

Constitution provided for safeguards when the provisions of fundamental right are violated by the state in the form of right to constitution remedy to move directly to the Supreme court or High courts under article 32.This is most unique feature of the Indian Constitution. The provision of the article states that:

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part [Part-III] is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

In the case of **Olga Tellis Vs Bombay Municipal Corporation**² it was observed that:

“ Those who have made pavement their homes exist in the midst of filth and Squalor, which has to be seen to be believed. Rabid dogs in search of stinking meat and cats in search of hungry rats keep them company. They cook and sleep here as no conveniences are available to them. Their daughters come of age, bathe under the nosy gaze of passersby, unmindful of the feminine sense of bashfulness. The cooking and washing over, women pick lice from each other’s hair. The boys beg, men folk, without occupation snatches chains with the connivance of the defenders of law and order; when caught, if at all , they say ‘ Who doesn’t commit crimes in this city?’

In this case the Constitutional Bench of the Supreme Court has redressed the grievances of homeless people in the right time for providing them shelter. IT is glowing example showing that Indian judiciary playing vital role in protecting interest of the litigant.

The individual and collective growth can only be ensured with improving the surroundings and providing clean drinking water, toilets and educational opportunities. The Constitution of India guarantees protection from social injustice and all forms of exploitation (Art. 46). It guarantees equality before law (Art. 14), and enjoins upon the State not to discriminate against any citizen on grounds of caste (Art. 15 (1)). Untouchability is abolished and its practice in any form is forbidden (Art. 17). The Constitution mandates that no citizen shall, on grounds only of caste or race, be subjected to any disability and restriction (Art. 15 (2)). It empowers the State to make provisions for reservation in educational institutions (Art. 15 (4) and 15(5)), and in appointments for posts in favour of SCs (Art. 16 (4), 16(4A), 16(4B) and Art. 335). Reservation of seats for SCs in the Lok Sabha is provided under Article 330, in the State Assemblies under Article 332 and in the Local Self-Governments bodies under Articles 243D and 340.

Article 38 urges that the State should strive to promote the welfare of the people by securing and protecting as effectively as it may be a social order in which justice: social, economic and political shall inform all the institutions of national life.

Article 39A of the Constitution, provides for equal justice and free legal aid. It commands the state to secure that the operation of legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that the opportunities for securing justice are not denied to any citizen by reason economic or other disabilities. Article 39 A of the Constitution of India provides for equal justice and free legal aid. It is, therefore clear that the State has been ordained to secure a legal system, which promotes justice on the basis of equal opportunity. In M.H.Hoskot’s case the Supreme Court did not hesitate to imply this right in Article 22(1) and Article 21 jointly while pressing into service application of a Directive Principle of State Policy under Article 39-A of Equal Justice and free legal aid.

Real Analysis of Justice in India:-

Unlike the experience of many other newly independent countries, the prospects for democracy in India have not shrunk but grown since Independence, number of legislation and judicial pronouncement have come into picture which tries to secure sprite of justice enshrined in the constitution. Unfortunately, apathy and ineffective governance have created barriers in accessing justice, which has resulted in granting certain sections of society only limited access to the full range of socio-economic and civil-political rights available. There are three immediately obvious barriers to access. First, there are ‘external factors’ such as monetary, cultural or geographical barriers, which exclude or “fence out” certain sections of society by preventing their access to courts. Geographical barriers or distances from courts can cause great difficulty to litigants, accused, witnesses, if they have to undertake day long trips to reach the courts, only for the matter to be adjourned. Distance also determines the probability of appealing the decision of a lower Court to a State High Court or to the Supreme Court.

Nick Robinson, in an excellent analysis³ of the Supreme Court’s docket found that while nationally, there was a 2.5 percent chance of a High Court decision being appealed to the Supreme Court, there was great disparity in the appeal rates based on the proximity of the State High Court to the Supreme Court in Delhi. Thus, while the appeal rate in Delhi in 2008 was 10 percent (around 4 times the national average), in Tamil Nadu it was 1.1 percent.

Second, are ‘internal factors’, such as delays or convoluted procedures and technicalities, which affect everyone in the system, but disproportionately impact those with fewer resources. This raises the question of whether every individual, who approaches the legal system or is made to participate in it – as a Defendant in a civil suit or an accused in a criminal trial – can expect an expeditious hearing, as well as a fair outcome?

Third, there are ‘quality factors’, which are caused by the uncertain and inconsistent application of law and arbitrary sentencing and affect the substantive judgment of the case on merits. This tends to have a disproportionate impact on the poor, whether in cases related to bail, or the death penalty. Reforms in each of these areas will significantly improve the lives of our citizens by creating equal opportunities to enforce the law and more generally, improve social cohesion.

This piece focuses on delays in the legal system, looking at both, the scope of the problem, and its implication on the criminal justice system.

The Constitution treats all citizens as being equal and provides them equal protection under the law. Yet, Illiteracy, lack of financial resources and social backwardness hinder common person from accessing justice. There are other invisible barriers: lack of courage to exercise legal rights, the proclivity to suffer silently the denial of rights, and geographical and spatial barriers are examples. Such barriers keep people disempowered and subjected to exploitation by powerful people. One of the reason why most of the people in our country are unable to access justice is due to slow and sluggish speed of disposal of litigation.

For the law to govern, the system through which it is administered must measure up adequately when mapped against the speed of disposing cases. Unfortunately, delays illustrate the impediments to accessing justice in India.

Currently, there are more 2.8 crore cases pending⁴ in various courts across India, with more than 60,000 matters before the Supreme Court.⁵ The problem however, is not of too many cases coming into the system; it is of too few coming out.

This is best demonstrated by the Supreme Court's own data on the national picture of the pendency of the cases in the subordinate courts:

These undue delays, often occasioned by judicial vacancies and improper case management, are burdening the system and frustrating the average citizen's hopes for effective redressal. As is evident from the aforesaid table, although subordinate courts are usually adept at handling the flow of fresh cases, they fail when it comes to reducing the pendency or backlog of cases.

It is a matter of great worry that even in 2015, more than 22.8 percent of all cases before subordinate courts are more than five years old; and of this, 15.8 percent are criminal cases, where the life and liberty of individuals is at stake. Such delay in criminal matters adversely affects the rights of the victim (and creates future disincentives from filing or pursuing cases) and the accused (who might be in prison, or have his liberty and free movement constrained, or at the very least, be living under the fear of an eventual conviction).

Delay and the criminal justice system: Some figures

While delays in the civil sphere are problematic, delays become particularly challenging on the criminal side, when we consider that marginalized and vulnerable groups are sometimes forced to engage with the system as accused and might have to spend extended periods as under-trial prisoners if they are denied, or cannot afford, bail. This makes the need for reform extremely urgent.

Currently, India's subordinate judiciary is only able to complete a trial in a criminal case (based on offences prescribed in the Indian Penal Code and other Special and Local Laws such as the NDPS Act, Prevention of Corruption Act, Prevention of Money Laundering Act, the terror laws etc.) in approximately 25 percent of the cases brought under these laws in a year, with the performance at 13 percent being even worse in cases brought for trial under the Indian Penal Code. This is brought out by "he Supreme Court's report titled 'Subordinate Courts of India: A Report on Access to Justice, 2016'⁶, which compiled the following data and chart based on the data it analysed from the National Crimes Records Bureau:

There are two aspects of delay that need to be considered in the context of a criminal trial. The first, as expressed above, deals with the time taken to complete a trial and give a judgment. The second aspect, related to pendency, pertains to the consequences of delay, and its effect on under trials. Criminal law proceeds on the presumption of innocence, namely an accused presumed innocent until proven guilty. However, the pendency of a criminal trial has a substantive impact on the liberty of an accused person and their presumption of innocence, especially if they are put in prison pending trial.

Globally, there are nearly 3 million pre-trial/remand prisoners or "under trial prisoners", constituting 27 percent of the total prison population.⁷ In India, the situation "is much worse. As per t- late"t 'Prison Statistics India — 2015' ⁸ Report released by the National Crime Record Bureau ("NCRB"), 67.2 percent of our total prison population comprises of under trial prisoners. That means, that 2 out of every 3 prisoners in India is an under trial, ie a person who has been accused or charged with committing an offence, but has not been convicted and is still, presumed innocent. The proportion of under trial prisoners as a percentage of the total population has only been increasing since 2000.

Apart from examining the total numbers of under trial prisoners in India, it is also instructive to break down the time being spent by such prisoners in judicial custody while awaiting trial. An analysis of the NCRB Prisons' Report⁹ reveals the following trends:

It is thus clear that the proportion of under trials that have been in jail for more than one year, while awaiting trial, is steadfastly increasing.

One might ask, what is the connection between the number of under trial prisoners and delays in the criminal justice system? 60 percent of police arrests in India are reportedly either "unnecessary or unjustified". In that context, inexorable delays in the judicial process result in the continued detention of accused persons, pending trial. This is problematic because extended incarceration of a person accused of an offence impedes the effective assistance from their counsel, and can affect the defence put on at trial. From a

practical perspective, it is often difficult and time consuming for lawyers to take out time to go to far-off prisons to meet their clients, especially in a legal aid context. There is some anecdotal evidence that lawyers end up meeting their clients only when they are produced in court, thus giving them a very little time to effectively confer with their clients for their case.

Additionally, extended pre-trial detention also causes a mental trauma of incarceration and has a socio-economic impact on the accused person's family. In many cases, an under trial prisoner may be the only earning member of the family, and the period for which he/she has been in prison, may have a lasting impact on their families, even if the accused is eventually acquitted.

Apart from this, the pendency of a criminal case is like a sword hanging over a person's head, and directly affects their liberty, free movement, and interaction in society, even if the accused is not in prison. It is for all these reasons that speedy trial, or a "reasonably expeditious trial", has been held to be an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 by the Supreme Court.

The justice P.N. Bhagwati in *Kadra Pehadiya vs. State of Bihar*¹⁰ said "It is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial." The court in a compassionate expression observed "... no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a session trial ... we fail to understand why our justice system has become so dehumanised that lawyers and judges do not feel a sense of revolt at caging people in jail for years without trial."

Justice Krishna Iyer while dealing with the bail petition in *Babu Singh v. State of UP*¹¹, 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."

It is important to remember that delays in the administration of justice, affect not only the rights of the accused, but also the rights of the victims. Long trials can lead to evidence, especially eyewitness testimony, being forgotten or lost, which reduces the chance of conviction. Given that victims have a very limited role to play in the prosecution of a criminal case, and thus no control over its progress, delays in the conclusion of trial can deter victims from filing or pursuing the case diligently.

Finally, there is a law and order angle to consider. As the 239th Report of the Law Commission of India noted, delays in the investigation and prosecution of criminal cases erodes faith in the rule of law and the criminal justice system, which has serious implications for the legitimacy of the Judiciary. Justice delayed, is thus justice denied¹².

Solution for Delay in delivering Justice:

Various solutions have been proposed to reduce the problem of delays. Justice is one critical component of citizenship which cannot be neglected. Overworked judges, overburdened court staff, chronic shortage of court-space and unending wait to justice does not complement the policies of the State.

"The role of a robust judiciary in a nation's development is pivotal. With development and a corresponding growth in litigation, more judges will certainly be required to handle the same so that justice is done in its truest possible sense,"

This extends from increasing the strength of judges, reducing judicial vacancies, diverting cases from the courts to alternate dispute resolution forums (such as mediation and Lok Adalats) and specialised tribunals. In the criminal justice sphere, the introduction of "fast-track" courts, jail-adalats ("prison courts"), and plea-bargaining were introduced with much fanfare, although their success is yet to be demonstrated. However, even assuming that such methods succeed in reducing the pendency of cases, we have to be careful not to lose focus on the quality of substantive justice rendered. Both jail adalats and plea bargaining, reduce the backlog in courts, by encouraging accused in certain cases to plead guilty in exchange for a reduced sentence, although the taint of a conviction remains. However, serious questions have been raised about the class-bias that operates in these systems. For instance, as the recent Daksh Report¹³ noted, an accused who has been in prison for many years as an under trial, may think it is more advantageous for him to plead guilty and leave prison, rather than face the uncertainty of trial.

Till now we have not stood on the aspiration of the millions of the peoples who while drafting the constitution wanted society to be free from all modern day evils like corruption, communalism etc. Our position in terms of providing access to justice to all the section of society is detrimental, there is rampant need to take steps which can rescue our country from the worsening situation and helping in regaining faith of millions of our population.

In conclusion it is fact that India has not the shortage of laws for securing justice, it has only the shortage of commitment for implementation of the laws. If we call ourselves as developed country then we have to provide the justice to the people of India. It should also be remembered that it is not only the responsibility of political elite to work for achieving justice to all the section of the society, in fact it is duty of every Indian to assist his country man so that justice can be secured to every section of the society.

End Note:

1. Associate Professor, S.P.College of Law, Chandrapur (MS), India
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