

DELAY IN DISPOSSAL OF CASES:- PROBLEMS AND SOLUTIONS*

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Introduction:

This paper is an endeavor to understand the present scenario of the Indian Judicial system, the way it is uplifting the faith of Indians in Judiciary with all the hiccups faced by it.

The entire world is looking towards our country because of the reason that India is the only country with live democracy, that too more so because of the Judiciary more so in making the democracy work. But the faith of the *We the People* is slowly ebbing away due to the delay in courts caused due to conventional procedures adopted by the lawyers, judges due to procedural hiccups, lack of infrastructures, shortage of well equipped staff etc. The remedy is motivation to Judges, staff, lawyers and strict adherence to ADR mechanisms, case flow management rules etc.

In a democratic country like India, judiciary plays a vital role in establishing a state of justice. Therefore being the supervisory body, we are not allowed to shift our burden on others for the failure to establish an actual State of Justice. It is judiciary on which millions of people have faith in seeking justice. It has the capability of imparting justice to the aggrieved. It is that structure of our society, which is placed next to the God and if not properly dispensed, it will shatter down the entire trinity of democratic instrumentalists with checks balances, parliamentary structure and the judicial facets of our constitution.

In India, Justice is beyond the reach of most and the right of access to it is not communicated to the citizens properly. In many a

circumstances it was found that the litigant who has had access to the court failed to obtain quick relief and for some never have the opportunity even to knock the doors of the court due to ignorance and poverty. But increase in litigation due to court birds are now-a-days are in a habit of dragging their point of grievances to the court of law, which rather can be solved outside the purview of the court. With this background it is here an attempt to understand the concept of delay:-

Delay means according to the Cambridge Advanced Dictionary is “to make something happen at a later time than originally planned or expected” or “to not act quickly or immediately”

“Delay” in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. In an adjudicatory system, whether inquisitorial or adversarial, an expected life span of a case is an inherent part of the system. No one expects a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when we say there is delay in dispensation of justice. A scanning of the figures would show that despite efforts being made at various levels and substantial increase in the output being given by the system, the gap between the expected and actual life span of the cases is only widening.

CAUSES FOR DELAY:

1. HEAVY PENDECY OF CASES:

In assessing delay the statics with regard to pendency of cases is necessary to be known as per the collected information as on **June 03, 2011**

Over 42 lakh cases are pending in India's 21 high courts and shocking 2.7 crore cases are pending in lower courts across the country. The figures appear to be quite alarming and surprisingly are growing by the day. These figures have been revealed by the Supreme Court this week in its latest update of pending cases and vacancies in Indian courts. The report discloses pendency in cases up to December 31, 2010 for Supreme Court and up to September 30, 2010 for High Courts and Lower Courts. The report also provides statistics on vacancies up to February 1, 2011.

Pending Cases:

Courts		2009	2010
Supreme Court*	Admission	34,976	32,565
	Regular	20,815	21,997
	Total	55,791	54,562
High Court**		4,060,709	4,217,903
Lower Court**		27,275,953	27,953,070
Total		31,392,453	32,225,535

* Statistics as of December 31, 2010 ** Statistics as on September 30, 2010
 Source: Supreme Court News, *Bar & Bench* (www.barandbench.com)

The good news here is that the number of pending cases in Supreme Court has reduced by 2.2 percent. But for both High Courts and Lower courts the number has gone up by 3.8 percent and 2.5 percent respectively. There has been a 2.65 percent annual increase in the total number of pending cases despite the efforts of the government such as the [National Litigation Policy](#).

2. LESS NUMBER OF JUDGES:

The Law Commission in its 20th Report found that India had 10.5 judges per million of population, the corresponding figure in England was 50.9, Australia 57.7, Canada 75.2 and the U.S.A. 107. The position in India remains

without any significant improvement even today. The Law Commission in 1987 had recommended 50 judges per million of population instead of 10.5. The recommendation has remained buried in the Report follow-up action inadequate judge strength is a major cause for the delay in disposal of cases.

Vacancies in various Courts:

Court		2009	2010	2011
Supreme Court*	Sanctioned	31	31	31
	Vacancy	4	2	2
High Courts*	Sanctioned	895	895	895
	Vacancy	265	287	291
Lower Courts**	Sanctioned	16,880	17,151	-
	Vacancy	2,785	3,170	-

Statistics as of February 1, 2011 ** Statistics as of September 30, 2010
 Source: Supreme Court News, *Bar & Bench* (www.barandbench.com)

Statistics released by the Supreme Court shows that the number of vacancies in Supreme Court remains the same as last year. But the statistics of both High Courts and Lower Courts are of concern. There have been nearly 30 percent vacancies in the High Courts for the past three years and Lower Courts are not fairing any better. Lower Courts across India have 19 percent vacancy as compared to 16 percent in 2009.

One of the reasons of the creation of huge backlog of cases is that India is facing alarming shortage of judges. There are about 291 vacant posts in the high courts alone and 3,170 in lower courts.

State wise Pending Cases:

Sl.No	State/Union Territory	High Court*	Lower Courts*
1.	Uttar Pradesh	973,599	5631993
2.	Andhra Pradesh	194,691	956448
3.	Maharashtra	347,618	4057973
4.	Goa	BHC	29721
5.	Daman & Diu	BHC	2034
6.	Dadra, Nagar, Haveli	BHC	3950
7.	West Bengal	333,763	2747170
8.	A & N Islands	CHC	15031
9.	Chhattisgarh	56,102	270186
10.	Delhi	60,375	939850
11.	Gujarat	98,128	2201244
12.	Assam	53,400	251020
13.	Nagaland	GHC	5080
14.	Meghalaya	GHC	12889
15.	Manipur	GHC	8757
16.	Tripura	GHC	57467
17.	Mizoram	GHC	4415
18.	Arunachal Pradesh	GHC	6348
19.	Himachal Pradesh	46,698	170724
20.	Jammu & Kashmir	65,905	184656
21.	Jharkhand	57,218	284,391
22.	Karnataka	209,843	1154526
23.	Kerala	120,764	972995
24.	Lakshadweep	KHC	215
25.	Madhya Pradesh	213,028	1159421
26.	Tamil Nadu	444,979	1255011
27.	Puducherry	MHC	27016
28.	Orissa	275,052	1113844
29.	Bihar	128,293	1523142
30.	Punjab	237,658	572550
31.	Haryana		565591
32.	Chandigarh	P&H HC	84668
33.	Rajasthan	282,826	1509066
34.	Sikkim	52	1304
35.	Uttarakhand	17,911	172374
	Total	4,217,903	27,953,070

* Statistics as of September 30, 2010

BHC-Bombay High Court; CHC- Calcutta High Court; GHC- Guwahati High Court, KHC- Kerala High Court

P&H HC- Punjab & Haryana High Court

3. WELL EQUIPPED JUDGES/ADVOCATES/STAFF:-

Non-adherence with the code properly by the judges and the

lawyers both add to same cause in a greater extent. Fourthly, while it can be understood that delay may occur in the civil cases but the same is not expected in the criminal proceedings. If we compare these two on the basis of its disposal then it is very much advent that criminal justice system is at its worst and this position leads to a situation where the common man had lost its complete trust on the efficacy of the criminal system. While Hon'ble Justice B.P.Singh gave an approx statistics showing an average disposal and pendency of cases which would rather reveal the actual state of justice in India today:

On average 50 lakh crimes are registered every year, which are sought to be investigated by the police. The pendency of criminal cases in subordinate courts is 1.32 crore and the effective strength of judges is 12,177. Pending cases of the under trials in criminal cases are 1.44 crores. In an average 19 percent of the pending cases, disposed every year

Delayed decisions, piled up files and indefinitely extending projects, never serve their purpose. They are the real roadblocks to development of any state or nation. Generally, delayed decisions take its maximum toll from the under privileged section as Poor section of our society, they are often denied of their bare amenities of life.

Consider the condition of the poor victims of Bhopal gas Leak disaster, which took a toll of 15000 people. Twenty five years had passed to that ghastly incident; still now victims are fighting for its compensation, which fails to measure up the damage caused to them. Today the victims of such and other cases know full well that the price of truth is extremely high.

4. STEP MOTHERLY TREATMENT BY THE GOVERNMENT:-

Government can be termed for contributing maximum to the backlog. Judiciary is the most neglected and it is an unwanted child of the Government, which takes least effort in combating the appointments of Judicial Staff, provide with good infrastructure.

5. IMPROPER /LACK OF USE OF E-PROJECTS:-

Courts under the E-Project are computerized, but in most of the places there are no computers all the details of 3rd Saturday inspections, entering the "A" Dairy, writing of summons/warrants etc., is done manually, which time would have been saved if the E-Project is properly implemented. Train the staff and lack of motivation amongst the staff who are adhering to the old system of manual typing then adopting the latest modes.

The list is never ending wherefore I stop the reasons and now advert to some of the positive measures that have been taken in the past which have already started showing results and are significantly contributing in decreasing the delays and increasing disposal in subordinate as well as the High Courts and those which are still required to be taken for dispensation of speedy and affordable justice. The measures that have already been taken are:-Setting up of Fast Track Courts of Sessions Judges, introduction of shift system in subordinate courts, setting up of mobile courts, Lok Adalats, ADR system, insertion of Chapter XXI-A in the Code of Criminal Procedure about plea bargaining and setting up of e-committee, etc.

1. ESTABLISHMENT OF FAST TRACK COURTS:

On the recommendation of the 11th Finance Commission, 1734 Fast Track Courts of Sessions Judges were sanctioned for disposal of old pending cases and the said scheme were to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have

been disposed of by these courts. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31-3-2010. In view of the contribution made by the Fast Track Courts of Sessions Judges towards clearing of backlog, and number of huge pendency of cases triable by Magisterial Courts being 1,66,77,657 as on 31-12-2006, there is an urgent need to formulate a similar scheme for setting up of **Fast Track Courts of Magistrates in each State and Union Territory.**

2. MOBILE COURTS:

Mobile courts are also being set up which would not only educate the rural folk about their rights and responsibilities and provide swift justice and create a feeling of law and judiciary being very close to them, but will also help declog the expanding docket of our overburdened courts.

3. SHIFT SYSTEM IN SUBORDINATE COURTS: The State of Gujarat has taken a lead in introducing shift system in subordinate courts w.e.f. 14-11-2006. 60 evening courts are already in place in different parts of the State. As per the figures made available, the number of cases that have been disposed of from 14-11-2006 to 31-3-2007 is 57,384, which is highly commendable. Introduction of shift system in courts would be far less burdensome to the exchequer as existing courts could be made to function in two shifts with the same infrastructure by utilizing the services of retired judicial officers, reputed for their integrity and ability, who would be paid only the difference between the salaries and emoluments payable to serving officers of the same rank and their pension. It is, therefore, high time that shift system is introduced in subordinate courts all over the country as it would help reduce the backlog considerably. In my view, apart from

regular court hours, shift system should be introduced; two hours in the morning from 8.00 a.m. to 10.00 a.m. and in the evening from 6.00 p.m. to 8.00 p.m. and these courts should be manned by retired judicial officers as far as they are available but, in case of their non-availability, on part-time basis the services of local lawyers, particularly, young promising ones should be availed of on payment of fixed remuneration—in the morning shift one batch and evening another. So far as ministerial staff and officers are concerned, we should avail the services of retired personnel for working in the morning and evening shifts. I find that 52 lakh cases relating to petty offences were pending where only fine could be awarded as punishment out of total pendency of cases viz. 2.49 crores as on 31-3-2007 throughout the country in District and subordinate courts. Such cases should be placed before these courts and the same can be decided with utmost expedition by a short order. By adopting such methodology the pendency would be reduced by 20%. If the shift system works well and if those courts require more cases we may entrust certain other types of cases to them out of 70 lakh police cases pending in Magisterial Courts. In this way young Bar would not only grow but may have sustaining power for continuing in the profession.

4. LOK ADALATS: In order to achieve the objective enshrined in Article 39 A of the Constitution of India, the Legal Services Authorities Act, 1987 was enacted to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. To achieve that objective, Lok Adalats are being held at various places in the country and a large number of cases are being

disposed of with lesser costs. Mobile Lok Adalats are presently in place in different parts of the State of Karnataka, legal aid, awareness, and Adalats are held once in 3 months in each Taluk, District, which imparts the Mobile Lok Adalats held in the corner/remote villages, which prevent the people come to the Taluk places and resolve their disputes in front of the house i.e at their doorstep so speedy and affordable justice could be made available to the litigants at their doorsteps.

5. ADOPT ALTERNATIVE DISPUTE RESOLUTION MECHANISMS:-Litigation through the courts and tribunals established by the State is one way of resolving the dispute which is an adversarial method of dispute resolution which leads to win-lose situation whereas in Alternative Disputes Resolution what is tried to be achieved is win-win situation for both the parties. There is nobody who is loser and both parties feel satisfied at the end of the day. The ADR mechanisms include arbitration, negotiation, mediation and conciliation. Section 89 of the Code of Civil Procedure has been amended w.e.f. 1-7-2002 with a view to bring alternative systems into the mainstream. The challenge that we are facing today is bringing about awareness among the people about the utility of ADR and simultaneously developing personnel who will be able to use ADR methods effectively with integrity. The person who occupies the position of a mediator or conciliator in the Mediation and Conciliation Centre has to be known for unique qualities such as skill, poise, tact, art of persuasion, human behavior and psychology. The mediator should have impeccable integrity and ability to persuade and create conviction among the parties. Such centers have already started functioning in many High Courts and subordinate courts and training is also being imparted to the mediators and conciliators so that the desired objective is

achieved. National Judicial Academy has also prepared a National Plan for Mediation which envisages systemizing and institutionalizing mediation, training of mediators, preparation of training materials, organizing awareness programmers and setting up of Mediation Centers, in three phases, spread over a period of five years, for resolution of disputes through settlement. This will not only provide speedy and inexpensive justice and reduce litigation, but will also bring peace and harmony in the society. In this regard in the State of Karnataka the Bangalore Mediation Center has achieved more than that was expected and is still doing a great work. Alternate dispute resolution system is well stated by Abraham Lincoln—

“Discourage litigation, persuade your neighbors to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time.”

6.PRE-TRIAL SETTLEMENTS:- All nature of cases compoundable criminal cases and civil cases should have a pre trial settlement as one of the mode of settlement before the matter is taken up before the court and it should be a necessary stage and compulsorily advise them of time and money being saved to the litigants if this method of ADRL system is adopted. Which will curtail most of the simple cases coming before the court which again to prevent the bottle neck in other cases which really requires more care by the court and most of the productive judicial work will be saved. In the pretrial process of settlement retired Judges/ senior Advocates should to trained and placed to settle the matter and work out the mode of settlement or settle the matter.

7. COMPUTERIZATION OF COURTS: one of the best ways of effectively achieving the betterment of the judicial components in the country was adoption of information technology-based systems in the judicial framework to make the judiciary more effective in providing speedy and timely justice to the litigants. Information technology was for the first time introduced in the Indian judiciary by Hon'ble Mr Justice G.C. Bharuka in the year 1991 in the Patna High Court when he was a baby Judge of a few months and there was some headway so long he remained in Patna, whereafter it remained standstill. After Mr Justice Bharuka was transferred to the Karnataka High Court it was a boon in disguise for the people of Karnataka where he had done extensive work for introduction of IT in Indian judiciary and was conferred a doctorate degree. His famous treatise "Rejuvenating Judicial System through E-Governance & Attitudinal Change" was published in the year 2003. Drawing motivation from their Lordships Dr. Justice Bharuka in the field of IT, the Union Government constituted an e-committee under his chairmanship. This process should be adopted throughout the country.

8. SETTING UP OF GRAM NYAYALAYAS:- It is understood that the Ministry of Law and Justice is drawing a Gram Nyayalayas Bill with an objective to secure justice, both civil and criminal, at the grass-root level to the citizens, which would be the lowest court of subordinate judiciary and shall provide easy access to justice to litigant through friendly procedures, use of local language and mobile courts wherever necessary. If established, I hope such Gram Nyayalayas would genuinely make justice accessible and affordable to the common man at their door.

9. PLEA BARGAINING:- With the insertion of new Chapter XXI-A in the Code of Criminal Procedure by Act 2 of 2006, the concept of "Plea Bargaining" became a reality and part of our criminal

jurisprudence. Plea bargaining benefits both the State and the offender; while the State saves time, money and effort in prosecuting the suspects, the latter gets a lenient punishment by pleading guilty. One of the merits of this system is that it helps the court to manage its load of work and hence it would result in reduction of backlog of cases. Therefore, I suggest that, while issuing summons to an accused, he may be informed of the provisions of plea bargaining contained in Chapter XXI-A of the Code of Criminal Procedure, 1973. If more and more accused come forward and bargain the plea, the reform could reduce the enormous backlog of cases in our courts.

Apart from Plea bargaining, if the list of compoundable offences is widened and more offences are included therein and made compoundable, it too will help in making a dent in the mounting arrears and saving time of the courts. Example offence like 324, 498A, 355, 354 should be made compoundable with the permission of the court. There are some more measures which, if taken, would be helpful in dispensation of speedy and qualitative justice which I propose to touch now.

10. MOTIVATE LAW STUDENTS/LAWYERS:- Motivate Law Students to take part in Legal Aid camps, Lok Adalats, and ADLR modes in educating the people/public of less litigation and more peaceful life amongst the rural population and thereby make a new commencement in the Bar with free mind amongst the young lawyers to think of speedy remedy given to the litigants. Further if the newcomers give preference to profession than corporate sector, it would, undoubtedly, improve the Bar. A strong Bar is a sine qua non for an independent and strong judiciary which plays an important role in the democratic set-up.

The vocation of lawyers is a profession and not business where earning is the motto. The motto must be to earn by serving and not to serve by earning. Having chosen law as a professional career, if in the beginning the entrant does not run after money, the day is not far off when money would follow him. Hence they require motivation in this direction.

11. EQUAL DISTRIBUTION OF WORK: it is seen in some of the District places that some courts are flooded with cases and some courts are facing drought of cases hence certain arrangements should be made to strike the balance of equilibrium in those courts that the number of cases are more or so same. Transfer some cases to those courts with fewer cases from the more cases courts based on territorial jurisdiction or nature of cases.

12. TIMELY APPOINTMENT OF JUDGES: - The process for appointment in district and subordinate judiciary should commence sufficiently in advance so that immediately on retirement the next incumbent takes over. Judges should develop knack of deciding cases in shortest possible time and the members of the Bar should be able to place their points without loss of public time. After all the Bar and the Bench both owe a duty to the litigant who has come to seek justice.

13. STRICT ADHERENCE TO CASE FLOW MANAGEMENT RULES: In Karnataka we have adopted the Karnataka Case flow management Rules which has really worked the courts to make two list per day, where the first crucial hour is devoted by the court in recording of Evidence and hearing arguments and the list II consists of matters dealing with issuance of Suit Summons and notices which will be called before the Registry/Chief Ministerial staff. Disposal of cases based upon the category of cases which is categorized on the bases of nature of the Suit and to dispose of the same as per the time

allotted to the cases as per the Rules. Advocates and Judges should be sensitized of these Rules.

Conclusion:

Generally, aggrieved with lots of pain anguish and hope in their heart litigants approaches the court of law for their grievances to be clarified but at the end of the day the procedural lacuna left them with bare hands. They are denied of their most important right of Justice. What is that we are giving them? *Doing right thing in a right manner at a right place in the right time is intelligence, so is the Justice. Justice hurried is Justice buried and Justice delayed is Justice denied.*