

RIGHT TO SPEEDY JUSTICE

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ABSTRACT

Justice is a universal and fundamental principle of law. The essence of justice remains vague if it is not delivered in due time. The Right to speedy Justice is a fundamental human right and it is included within the Article 21 of the Constitution of India. Delays in dispensing justice is the major cause of concern for the judiciary. The huge backlog of the cases reaches in such a position that it become unmanageable for the court to deliver justice in time .People start questioning in the Credibility of the Administration of Justice and they are gradually losing their faith in judiciary. There are many factors that contribute in the delays in dispensing justice among them, major factors are shortage of manpower , poor infrastructure tussle between judiciary and executive ,multiplicities of law etc. To tackle the menace of delay in dispensing justice immediate and effective measures required should be taken. A time frame action plan should be devised to reduce the pendency of the cases. Increase of judge –population ratio, use of modern information technology, Infrastructure development are the key issues for tackling the problem.

Key words: *Justice, Backlog, ADR, Adjournment, Judiciary.Delays.*

INTRODUCTION

The Constitution of India reflects the quest and aspiration for justice. Its preamble speaks for justice in all its form social, economic and political. Justice social economic and political also includes legal justice. It is the duty of the state to secure a social order in which the legal system of the nation promotes justice on the basis of equal opportunity and in particular ensure that the opportunities for securing justice are not denied to any citizen by reason of economic and other disabilities . Access to prompt and quality justice is the key for realizing this aspiration. The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking delayed justice, frustrating the cause thereof, is no justice at all¹ .A good legal system should not only yield proper and just solutions but also these solutions must be had quickly as human agency can guarantee. While emphasizing the need for speedy justice, Justice Anand has rightly observed that:

“People want justice, pure, unpolluted, quick and inexpensive and they have every right to receive the same”. But in reality there are deplorably long delay in the dispensation of justice, the need for the speedy justice cannot be gained because as said, “If Justice is not executed speedily men persuade themselves that there is no such thing as justice.”

Right to speedy justice is more a vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in

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¹ Dr V.P. Ramiah, Customary Clogs In Justice Delivery System” AIR 2003 Journal, p - 336

the criminal process when the State can put the defendant to the choice of either exercising or waiving the right to speedy trial.²

The efficacy of the criminal justice system is being questioned regularly in India. Law as an instrument of social change has not been able to precipitate desirable social changes in society effectively. On the other hand, modern society is also growing rapidly due to heavy influence of ultra-modern scientific, technological and biological developments. The negative consequences of these developments have caused serious problem of law and order in society in various ways. There has been phenomenal increase in rate of crimes in society; the natures of crime, means and methods of committing crimes have also considerably changed. Inordinate delays in disposing the criminal cases jeopardizing the efficacy of the criminal justice system. Those who have suffered physically, mentally or economically for criminal acts approach the court with great hope for redressal of their grievances. They refrain from taking law into their hand as they believe that one day or other they would get justice from the court.

Right to speedy Justice and Constitution of India.

Constitutional Law, being the “Basic and Fundamental law” of the land is a subject of paramount importance. The ultimate goal of every organ of the state is to serve the people of India upholding the “Letter of Spirit” of the Constitution. The Constitution of India has defined and declared the ‘common goal’ for all its instrumentalities, as to secure to all the citizens of India, Justice: Social, Economic and Political; Liberty; Equality and fraternity. The ‘eternal value’ of constitutionalism is the ‘rule of law’ which has three facets i.e. ‘rule of law’, ‘rule under law’, and ‘rule according to law’³. The Constitution of India does not explicitly or separately enshrine the right to speedy justice, yet it recognizes as an objective of the system. There are many articles in the Constitution of India which are implicitly incorporated the right to speedy justice.

Article 14 of the Constitution of India provides for Equality before Law and Equal protection of Laws. It prohibits any kind of discrimination on any ground. It ensures that the process of delivering justice goes on at equal pace for any two people facing equal situation, for example, facing the same charge. It, being a fundamental right of every citizen, cannot be curtailed.

Article 21 of the Constitution of India enshrines the Right to Life and Personal Liberty. It states that “no person shall be deprived of his life or personal liberty except according to procedure established by law.” So, if a person is detained, there must be fair application of the law providing for arrest and detention. The

²SarlaMudgal v. union of India AIR 1995 SC 1531

³S.K. Sharma, “Right to Speedy Trial ; An imperative procedural piece of criminal justice”
The Commercial
law gazette, (1980), p – 15

fair application is one which is just and reasonable. The right to speedy trial has been interpreted to be a part of the fundamental right to life and personal liberty. Article 21 requires that a person can be deprived of his liberty only in accordance with the procedure established by law which should be a just, fair and a reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures speedy trial for determination of the guilt of the person deprived of his liberty.⁴

There are many cases where the Hon'ble Supreme Court of India explicitly recognized the right to speedy trial as a fundamental right and it is covered under Article 21 of the Constitution.

Hussainara Khatoon v. State of Bihar⁵

The Court held that detention of under-trial prisoners in jail for a period longer than what they would have been sentenced if convicted was illegal as being in violation of Article 21. The court thus, ordered the release from jail of all those under-trial prisoners who have been in jail for longer period than what for which they could have been sentenced had they been convicted.

Sunil Batra v. Delhi Administration⁶

The court held that the practice of keeping undertrials with convicts in jails offended the test of reasonableness in article 19 and fairness in article 21. Justice Krishna Iyer giving a majority decision held that integrity of physical person and his mental personality is an important right of the prisoner and must be protected from all kinds of atrocities.

Motilal Saraf v. State of Jammu and Kashmir⁷

In order to make the administration of criminal justice effective, vibrant and meaningful, the Union of India, the state government, and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

Santosh Dev v. Archana Guha⁸

Prosecution was pending against the accused for the last 14 years. Since the accused was not responsible for the delay, the proceedings were quashed. Also in the second appeal, there was an unexplained delay for 8 years and the court held that it infringed the right to speedy trial.

Bombay Port v. Premier Automobiles⁹

⁴Hussainara Khatoon v state of Bihar, AIR 1979SC 1360

⁵ Ibid.

⁶ AIR 1980 SC 1579

⁷ AIR 1951 SC 257

⁸ Criminal Appeal 774 of 2002

⁹ AIR 1974 SC 2122

Justice Krishna Iyer suggested that systematic slow motion in dispensation of justice must claim the nation's immediate attention towards basic reformation of the traditional structure and procedure; there are some delays which are avoidable in the existing court procedure which must be avoided.

Kartar Singh v.State of Punjab¹⁰

A constitution bench of the apex court held that the right to a speedy trial was a derivation from the provision of Magna Carta and this principle had also been incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment of the U.S. Constitution.

Common Causes, a Registered Society v. Union of India¹¹

The Hon'ble Supreme Court of India held that the very pendency of criminal proceeding for long period by itself operated as an engine of oppression, the court issued appropriate direction for the release on bail or the discharge of the accused persons and closure of the cases.

Article 39A enshrining the concept of free legal aid.

This Article particularly highlights the responsibility of the State to provide 'free legal aid' to its citizens. It further indicates that the ways in which this can be done are not exclusive of statute. When Article 39A is supported by Article 21, it ensures free legal aid to the accused, and no discrimination on the basis of him being the accused. This Article directs the State to ensure that no person is deprived of justice because of his/her economic and social condition or status. Those who need legal aid for free belong to the most downtrodden strata of the society; the weaker sections; without resources to bear expenses, and ignorant of their rights due to illiteracy and social backwardness.

The delay in dispensing justice is one of the greatest challenges for the judiciary. Our justice delivery system has failed to come up to the people expectation is that the judiciary has failed to deliver justice expeditiously. Delay in context of justice deliver denotes time consumed in disposal of a case, in excess of the time within which a case can be reasonably expected to be decided by the court. Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated, but also when there is enormous delay in deciding the criminal cases. The denial of justice through delay is the biggest mockery of law. It does not amount to mere mockery; the delay in fact kills the entire fabric of justice delivery system of the country.

¹⁰(1994)3 SCC 3057

¹¹AIR1996 SC 1619

According to data available the total number of pendency across all courts in the country trial courts, high courts and the Supreme Court stands at 3.25 crore cases. No. of cases pending in Supreme court of India as on March, 2016 is 59468, over 44 lacks cases pending in 24 High Courts and rest are pending in the District courts of all over the country.

Period wise pendency of cases in lower courts all over the country ¹²

Period of pending	Civil cases	Criminal cases	Total pending	%
Cases Pending over 10 years	653689	1577046	2230735	9.98%
Cases Pending (Between 5 to 10 years)	1171079	2552715	3723794	16.66%
Cases Pending (Between 2 to 5 years)	2223183	4287874	6511057	29.14%
Cases Pending less than 2 years	3421667	6459851	9881518	44.22%
Total Pending Cases	7469614	14877486	22347100	(100%

Apparent reasons for pendency of cases:-

There are many factors contribute to the pendency of cases but one of the major cause is the vacancy of the Judges and Judicial officers. As per data available the working strength and vacancy are as shown in the table below.¹³

Court	Approved Strength	Working Strength	Number of Vacancies	Percentage (%)
Supreme Court	31	28	03	9.7
High Court	1056	591	465	44.03
Lower Courts	20495	15421	5074	24.75

Besides the vacancy, the low Ratio of Judge and Judicial Officers have also contributed in the increasing number of pendency. Currently the Judge and Judicial officers’ ratio in India is 17.72 per million Population which is very low as

¹² National Judicial Data Grid data

¹³ The Hindu August 13,2016

compared to other developed countries. As recommended by the Law Commission of India the ratio should be raised to 50 per million populations.

Other Contributing Factors:

The Increasing number of state and central legislations, continuation of ordinary civil jurisdiction in some of the high courts, appeals against orders of quasi-judicial forums going to high courts, large number of appeals, frequent adjournments, indiscriminate use of writ jurisdiction and lack of adequate arrangement to monitor, track and bunch cases for hearing. The increased number of literacy and awareness of people have also contributed to the flooding the pendency of cases. Kerala, for example, gets 28 new cases per 1,000 people. It has a literacy rate of over 90%. Jharkhand, which has a literacy rate of around 53%, gets four cases per 1,000.¹⁴ Another interesting aspect is that the government is the largest litigant in India, responsible for nearly half the pending cases. Many of them are actually cases of one department of the government suing another, leaving decision-making to the courts. Unethical practice by some advocates like delaying tactics by taking undue adjournment in frivolous reasons contribute the delays in quick disposal of cases. Multiplicities of laws makes the courts difficult to dispose the case within a reasonable time.

Remedial Measures:

It is not that the Supreme Court has not paid enough attention to the issue of pendency of cases. The Chief Justice of India T.S. Thakur's emotional address to the public brought the paucity of judges into focus. We have about 17.72 judges per one million people in our country where the ideal requirement is 50 per million. But this isn't the first time this issue has surfaced. In 1987 too, the Law Commission had recommended increasing the number of judges from 10 judges per one million people then to 50. Therefore, immediate filling up of the vacancies and increasing the ratio of judge's population is the sine qua non for reducing the long list of backlog.

The Chief Justice of India Justice T.S. Thakur came out with an innovative idea of expeditious disposal of cases by setting up a special "social justice bench" to deal with the pendency of cases having social issues which are on the rise and needs specialised approach. The Hon'ble CJI has also been emphasising on the disposal of petty, compoundable (cases which can be compromised) criminal matters and other civil disputes through Lok Adalats as an alternate dispute resolution mechanism where decisions are arrived at amicably and can't be appealed against.

Establishment of Fast Track Court and transfer of cases to such court can reduce the pendency of cases to great extent. Fast Track Courts was the first implemented in 2005 as a successful solution to the problem. Out of 36 lakh cases that were

¹⁴www.doj.in

transferred to the FTCs, close to 30.7 lakh have been disposed off.¹⁵In 2011, the Centre cut off funding and made it the State's responsibility to fund the FTCs out of their own budgets. Since then 60% of these courts have shut down even though the programme only requires approximately 0.1% of the state budget. So, revival of such FTC and establishment of new FTC will help in reducing the pendency.

Increasing budget allocation setting up E-courts can escalate the process of clearing out pending cases. Judicial infrastructure needs to be given equal importance as well. We will require almost 5000 extra courtrooms in near future to accommodate judges and judicial officers. Retired judges can be appointed in High Courts on an ad hoc basis under Article 224-A of the Constitution.

Another measure that can be taken to tackle the pendency of cases is reducing the long vacations for judges of higher courts as the present convention allows the judges to go to vacations for long period. Working throughout the year may some extent help to minimise the menace of pendency. Establishing of Evening Court is another option for quick disposal of cases.

Some of the High courts have taken initiatives to hold the Judicial officers of the sub-ordinate courts accountable if they fail to achieve the minimum target of disposal of cases fixed for a particular period .But due to lack of monitoring the desired results have not been achieved so far . Effective monitoring and disciplinary action like stoppage of promotion, increment etc. against the errant officer may help to make them accountable. Further, performance based promotion and other rewards promote work culture among the Judicial officers, consequently it will help in reducing the backlog of the cases.

Conclusion

The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking delayed justice, frustrating the cause thereof, is no justice at all. A good legal system should not only yield proper and just solutions but also these solutions must be had quickly as human agency can guarantee. Delay is a great reproach, and the cry for speedy justice is heard from all quarters as slow justice would be futile whereas over speedy justice is undesirable, because hurried justice implies buried justice. Speedy Justice has always been considered the "*sine qua non*" of an effective and efficient Administration of Justice System. Speedy Justice is also essential in order to gain the confidence of the public in Administration of Justice System.The Right to Speedy Justice is not only the very essence of an effective Administration of Justice System but is also consistent with the concept of fair and impartial justice. People all over the world have been raising their voices to achieve speedier justice for themselves, their people, and the masses.Reforms are being undertaken by the legal systems around the globe to achieve speedier justice. What is evident is that this goal can only be achieved

¹⁵ Faculty.in

collectively, and requires creative and result-oriented thinking on part of the legislature, judiciary, executive, media, bar, society and the nation as a whole. Delay in the dispensation of justice is not good for any society. It leads to distress, damage, and resentment. It leads to people taking law in their own hands. It can ultimately lead to anarchy and chaos. So justice in general and speedy justice in particular, is essential for the system to survive and run.

REFERENCES

Basu, D.D., Introduction to the Constitution of India, 2008, Lexis NexisButterworths, Wadhwa, Nagpur.

Desai, A.R., 2006, Social Background of Indian Nationalism, Popular Prakshan, Mumbai, 227-230.

Dr. Paranjape .N.V, The Code of Criminal Procedure ,fourth edition ,CLA Mathews K.K , “Laws Delays” ULP(1978).

Myneni, S.R., Legal Research and Methodology, 2010, Allahabad Law Agency, Haryana.

Purohit, M., Legal Education and Research Methodology, 2010, Central Law Publications, Allahabad.

Saxena, D.R., Law, Justice & Social Change, Deep & Deep Publications, New Delhi.

Journals

All India Reporters

Civil & Military Law Journal , Vol 44, January- March, April-June, 2008

Gwahati Law Times

Indian Bar Review, Vol. 13(2), 1986

Journal of the Indian Law Institute, Vol.51 No.2, April-June 2009.

News Papers

The Assam Tribune,

The Hindu

The Times of India

Web site

www.IndianKanoon.org.

www.india-seminar.com

www.ghc.inc.govt.in

www.supremecourtindia.in

www.Doj.in