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Judicial Delays in India: Causes & Remedies

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Abstract
No body can dispute the fact that the Justice delivery system in India is in a bad shape. A survey of working of more than half a century of Indian Judicial System reveals that this system which had worked smoothly and satisfactorily for centuries has now failed to deliver Justice expeditiously there is a well-known saying that "Justice delayed is Justice denied." With 30 million cases pending in various courts and an average time span of 15 years to get the dispute resolved through court system, the judicial system it can hardly be described as satisfactory. An attempt is made in this article to highlight the causes of judicial delays and to suggest remedial measures for improving the System.

INTRODUCTION
One of the grey areas, where our justice delivery system has failed to come up to the people's expectations is that the judiciary has failed to deliver justice expeditiously [1]. This delay in delivery of justice is in fact one of the greatest challenges before the judiciary.

The problem of delays is not a new one – it is as old as the law itself. The problem has assumed such a gigantic proportion that unless it is solved speedily and effectively, it will in the near future crush completely the whole edifice of our judicial system[2].

Delay in 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. 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. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice in an efficient and effective manner. Long delay also has the effect of defeating justice in quite a number of cases[3]

The huge back log in the courts has been the subject of number of Reports, debates in parliament and state legislatures, in Judicial conferences and the Media. Chief Justice Anand Observed:
"The consumers of justice want unpolluted, expeditious and inexpensive justice. In its absence, instead of taking recourse to law, he may be tempted to take law in his own hands. This is what the judicial system must guard against so that people do not take recourse to extra judicial methods to settle their own scores and seek redress of their grievances."[4]

Therefore, the important question is: why does this delay occur? The causes for delay when reproduced reads as:

Causes
The institution of cases in the courts far exceeds their disposal:
The real problem is that the institution of cases in the courts far exceeds their disposal. Though there is a considerable increase in the disposal of cases in various courts, the institution of case has increased more rapidly[5]. The average disposal per judge comes to 2370 cases in the High Courts and 1346 cases in subordinate courts, if calculated on the basis of disposal in the year 2010 and working strength of judges as on 31-12-2010. Applying this average, we require 1539 High Court judges and 18,479 subordinate judges to clear the backlog in one year. The requirement would come down to 770 more High Court judges and 9239 more subordinate judges if the arrears alone have to be cleared in the next two years. The existing strength being inadequate, even to dispose off the actual institution, the backlog cannot be wiped out without additional strength, particularly, when the institution of cases is likely to increase and not come down in the coming years[6].

Judge – Population Ratio

Another reason behind the sad state of affairs is that the number of Judges is highly disproportionate to the population. A human being, howsoever intelligent, has a limited capacity to work. So do the judges. The population of our country is over 100 crores, yet the number of judges for the aforesaid population is only 17,615[7]. Thus the number of judges per million of population is 10.5 judges per million[8]. Recently it has gone up to 13 Judges per million as against an estimated requirement of 50 judges per million of the population. In All India Judges Association's Case[9], the Supreme Court has expressed its desire that the number of Judges be increased in a phased manner in 5 years so as to raise the Judge-Population ratio to 50 per million. A comparative study of the number of judges working in other countries can tell us a lot about how far we are lagging behind.

Table (ii) below shows the number of judges per million of population in some of the advanced countries in the world.

Table (ii)
Judge-population ratio in some advanced countries [10]

Country	No. of judges per million.
Australia	41
Canada	75
England	51
USA	107

The Judge- Population ratio in India is the lowest in the world. Far worse is the fact that out of existing sanctioned strength of judges, 25-30% of the posts are normally lying vacant on any point of time.

Table iii below shows the number of vacant posts of Judges as on January 2008 [11]

Table III

Name of the Court	Total Strength of Judges	Actual no. of Judges	Number of Vacant Seats
1. Supreme Court	26	26	0[12]
2. High Court*	877	593	284
3. District Courts	15, 917	12524	3393

* Punjab & Haryana High Court alone has 20 vacant post as reported in the Tribune in November, 2011.

Further, a Judge has 30 Plus cases[13] on the list every day against the maximum of 10-15 cases which a Judge can handle, resulting in liberal grant of adjournments on the mere asking, which again leads to delay. Hence the Judges' strength must be increased with immediate effect.

State Government Related Delays.
"The state is also responsible for causing delay in the dispensation of justice. The government "contributes" to the problem of delay by its own lack of priority for matters relating to the administration of justice. This may happen in different ways, namely - delay in judicial appointments[14] lack of manpower needed for maintaining an efficient and a reasonable legal system and lack of adequate infrastructure facilities in the Court both for the bench and the bar[15].

Poor infrastructure in the courts and absence of computerized records etc.
This is the age of technology, today even the smallest office in the private sector is well equipped with computers and other electronic gadgets, which help them to raise their efficiency and update their records. But our Judiciary has not been provided with the technical assistance of faxes, dicto-phones and other such devices. Almost all the courts have heaps of rotten files in the basement. In District Courts one can see courts working without electricity. Thus, though we are living in the age of computers, yet our methodologies are outdated and urgently need a re-look.

No fixed period for disposal: There is no time limit fixed either by any Act or Code within which the cases must be decided. Therefore, the judges, lawyers and even the litigants take it for granted that there is no urgency to finish the case. The cases drag on for years together.

Role of Judges:
(i) lack of punctuality, laxity and lack of control over case-files and court-proceedings, attending social and other functions during working hours contribute in no small measure in causing delays in the disposal of cases[16].
(ii) Some judges are very liberal in granting adjournments.
(iii) Some judges come to courts without reading case-files, therefore, the lawyers have to spend a lot of time just to explain the facts of the case and legal point (s) involved therein. Therefore, they argue at length and all this leads to wastage of precious 'Courts Time'. There is a great need for self improvement by Judges.

Role of Lawyers
The role of lawyers is very important in justice delivery system. The commitment of these professionals can change the whole scenario. Unfortunately, they are also responsible for delay due to varied reasons.

(i) Lawyers are not precise; they indulge in lengthy oral arguments just to impress their clients.
(ii) Lawyers are known to take adjournments on frivolous grounds. The reasons ranges from death of the distant relative to family celebrations. With every adjournment the process becomes costly for the court and for the litigants; but the Lawyers get paid for their time and appearance. More often than not, lawyers are busy in another court. They have taken up more cases than they can handle, hence, adjournments are frequently sought.
(iii) It is also true that lawyers do not prepare their cases. A better preparation of the brief is bound to increase the efficiency of the system.
(iv) It is seen that lawyers often resort to strikes. The reasons could be any - it ranges from misbehavior with their colleague both inside court or outside the court to implementation of some enactment.
The strike by lawyers against the decision of the government to enforce an amendment in the Civil Procedure Code is an example. This was very unfortunate because the main objective behind these amendments was to curtail delays in disposal of cases.
However, the Supreme Court's Judgement in Harish uppals v Union of India[17] that lawyers had no right to go on strike or give a call for boycott not even a token strike, will certainly discourage the lawyer to go on strike unless they really had a strong cause.
In this case the Supreme Court had issued specific directions that Lawyers should not resort to strike except "In rarest of the rare cases" and instead, peaceful demonstrations should be held, such as wearing of the arm band, so that courts' working is not affected. The Supreme Court held:
The law is already well settled….. a lawyer who has accepted a brief can not refuse to attend court because a boycott call is given by the Bar Association…… the courts are under an obligation to hear and decide case brought before it and can not adjourn matters merely because lawyers are on strike…… that it is the duty and obligation of courts to go on with matters or otherwise it would be tantamount to becoming a privy to the strike….. Lawyers have known, at least since Mahabir's case[18] that if they participate in a boycott or a strike, their action is Prima-facie bad in view of declaration of law by this court…… that advocates would be answerable for consequences suffered by their clients if the non- appearance was solely on the grounds of a strike call.

The court further observed:
The court may, however, ignore protest, absentation from work by lawyers for one day in 'rarest of rare cases', where the dignity, integrity and independence of the bar and/or bench are at stake.

Stating it in clear terms that any interference from any body or authority in daily administration of justice cannot be tolerated and that the court can and will take disciplinary action against an advocate for non-appearance by reason of a call for strike or boycott it has been suggested (as per justice B.M.Shaw) that the advocates can get redressal of their grievances by passing resolutions, making representations, taking out silent processions, holding dharnas, can resort to relay fast and can have discussions by giving T.V interviews or press statements.

So the need of the hour is that the lawyers must behave in responsible manner and restrain themselves from resorting to strikes etc.

Complexity and Rigidity of Procedural laws
There are two types of laws - substantive laws and the procedural laws. Substantive laws define the rights and liabilities[19]. However the procedural laws provide a mechanism to enforce these rights and liabilities[20].

Most of these laws are around hundred years old and are not well drafted. Since it is not possible to dispense with them, the only possibility is to reshape them because they have become the biggest stumbling blocks in the way of speedy disposal of cases. The Law Commission of India through its various reports[21] has highlighted these issues. So much time is wasted on the arguments of jurisdiction, cause of action, sufficiency of notice, amendments of plaint and other procedural matters. Moreover, the words or terms used in the Bare Acts are highly technical and difficult (like the words - notwithstanding, nevertheless, proviso, provided subject to the Provision herein after Provided) and hence beyond the comprehensions of a Common man The procedural laws need to be simplified because howsoever good the substantive law may be, it can be effective only if procedural rules are simple, effective and expeditious. There are many provisions in these Acts, providing ample opportunities for delaying the disposal of cases. Even after initial judgment, the opportunity of filling appeals further causes delay, where the final judgment is secured, execution is more than likely to be returned unsatisfied. All this contributes to delays.

Rotation of benches:
There is another peculiar practice. Whose rationale is baffling: that of rotating the bench periodically? In this, judges handling a particular case get shifted to hear other cases. This affects continuity and leads to further delays and costs.

REMEDIES:

The alarming situation calls for speedy remedial measures. These should be practical and effective. These reforms should be capable of providing speedy and efficient justice which is accessible to the common man. Equally important steps should be taken to enforce judicial accountability and independence of the judiciary. Several law commission reports have made a case for many specific and practical judicial reforms. However, little has been done to address this growing crisis.

To start with the government, the Judges, the lawyers and litigants - all must have a positive will and strong determination to remove these ills from our system.

Shift System:[22]
No doubt, because of financial constraints the creation of new courts is not feasible. To establish a new court at any level involves enormous expenditure. The appointment of whole time staff - judicial and administrative to new courts and building infrastructure involves considerable recurring expenditure which the government cannot afford. There is a way out. If the existing court could be made to function in two shifts with the same infrastructure, utilizing the services of retired judges and judicial officers reputed for their integrity and ability, which are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears could be reduced quickly and smoothly.[23]

Urgent need for filling of old vacancies and creation of new posts:
Vacancies of judges in courts must be filled on top priority. The law commissions in its 120th report and apex court through its judgement has examined the problem of under staffing of judiciary and recommended 50 judges per million of population instead of existing 10.5/million. The sanctioned strength of High Court was 877 and working judges were 593 as in January, 2008 leaving 284 vacancies. Similarly sanctioned strength of sub-ordinate judges was 15917 and working strength 12524 leaving 3393 vacancies on 14 January, 2008 We have to develop zero vacancy or nearly zero vacancy culture[24]. So there is an urgent need for filling the existing vacancies and creation of new posts.

Litigation should not be Encouraged
Another method to reduce the backlog is that the quantum of cases coming to the courts must be reduced. The Judges should be very strict at the first stage itself. They should distinguish between frivolous and genuine litigation and should discourage frivolous litigation.

Expert Advice
The court can take the help of management experts to schedule the cases for hearing in a day.

Fixing Time Limit
Time limit should be set for hearing a case as also for giving decision.

Restriction on Adjournments

Adjournments to be limited to emergencies and exceptional cases. It is common sight for a popular lawyer to handle several cases every day which needs his presence in different courts. This forces him to focus on one or two and seek adjournments on others.

Alternative Dispute Resolution forums:
The importance of referring the mater to Alternate Dispute Resolution Mechanism i.e. Arbitration, Mediation, Conciliation, should not be under estimated.

Conclusion
The financial sector, telecom, automobile and other segments have been beneficiaries of reforms that have improved efficiency and productivity, Judiciary is in crying need for similar reforms. But this is predicated upon the practicing lawyers involving whole-hearted in improving the entire process. Chief Justice Eqbal could focus on this vital element.

In spite of so many ills which plague our judicial system, the overflowing docket of court cases is a positive sign of people's faith in the judiciary. Honest efforts must be made by the Bar, Bench and the Government to strengthen this pillar of justice. Yet no system, not even the justice delivery system can be better than the men who man it. We may make the best laws and introduce new procedures, yet it may not have done enough to achieve the constitutional promise of providing justice. It may be totally useless to make even good laws for bad people.

References and Footnotes

1. Supreme Court, has expressed its deep concern at excessive delay in disposal of cases in the country. The Supreme Court of India on 23rd August, 2007 & 24th Sept 2007 has disposed of cases which were 50 years & 60 years old respectively. In 1993 Mumbai Bomb Blast cases verdict came after 13 Years. Sh. Shivani Bhatnagar's murder case verdict comes after 13 years.
2. C.L. Aggawwal, "Laws' Delay and Acccumlation of arrears in the High Courts." The Journal of Bar Council of India – Vol. 7(1): 1978 p 41.
3. CJI Justice K.G. Bala Krishnan Efficient Functioning of India's Justice Delivery System (2007) 4 SCC J-15
4. Chief Justice A.S. Anand: Indian Judiciary & Challenges of 21st century. The Indian Journal of Public Administration July-Sept 1999 Vol XLV No. 3, p 299
5. The High Courts increased their annual disposal from 9,80,474 cases in the year 1999 to 14,50,602 cases in the year 2006, the cumulative increase being 48% in seven years, without there being commensurate increase in the strength of judges. However, the institution increased from 11,22,430 cases in the year 1999 to 15,89,979 cases in the year 2006 leading to increase in pendency from 27,57,806 cases as on 31-12-1999 to 36,54,853 cases as on 31-12-2006.
   Subordinate courts disposed of 1,58,42,438 cases in the year 2006 as against 1,23,94,760 cases in the year 1999, thereby, increasing the disposal by 28% in seven years without any substantial increase in the strength of judges. However, the institution increased from 1,27,31,275 cases in the year 1999 to 1,56,42,129 cases in the year 2006, resulting in the pendency getting increased from 2,04,98,400 cases as on 31-12-1999 to 2,48,72,198 cases as on 31-12-2006.
6. CJI Justice K.G. Bala Krishnan : Efficient Functioning of India's Justice Delivery System (2007) 4 SCC J-16, 17
7. Only .0013% of our population consists of Judges
8. R.C. Lahoti : Envisioning Justice in the "21st Century" 2004(7) SCC Journal p 13
9. (2002) 4 SCC 247
10. C.J. Bharucha: Speech Delivered in Kerala organized by the Bar Council of India and Bar Council of Kerala Published in India Bar Review Vol XX VIII (4) 2001 p 2
11. Need to Hasten Justice Delivery: The Tribune dated 19th April 2008 p11
12. as modified on 10th Oct, 2011 http://www.Supremecourt of India.nic.in/news/judges.htm.
13. Of some 30 Plus cases listed per day around 28 get adjourned – as reported in Industrial Economist: November, 2011

14. CJI K.G. Bala Krishnan, as quoted in Hindustan times, 25 Sept, 2007 has said that India required 1539 more judges in H.C. and 1, 8479 in sub-ordinate courts to clear the back log of cases in one year.
15. CJI K.G.: Balakrishnan in April, 2007, blamed the government for poor judge population ratio, making laws without judical impact assessment and not setting up courts to adjudicate cases arising out of central laws quoted in H.T, 25 Sept, 2007
16. CJI A.S. Anand: Indian Judiciary and Challenges of 21st century: The Indian Journal of Public Administration: July-Sept 1999 vol XLV No. 3, p 300
17. AIR 2003 SC739
18. Mahabir Prasad Singh Vs Jack Aviation (P) Ltd. AIR 1999 SC 287
19. The Indian Contract Act, 1872, the Transfer of Property Act, 1882, and Indian Penal Code, 1860 etc. are all substantive laws.
20. The Code of Civil Procedure 1908, the Code of Criminal Procedure 1973, and the Indian Evidence Act 1872 are the principal procedural laws.
21. The law commission through its 14th, 27th, 41st, 48th, 54th, 71st, 74th, 77th, 79th & 144th report has dealt with reforms in legislation.
22. The law commission's 125th report dated May 11,1988 has recommended introducing shift system in the supreme court to clear backlog of cases by deploying retired judges
23. P.P Rao: Access to justice and delay in disposal of cases published Sournier on in All India Seminar on judicial reforms with special reference to arrears of court cases p. 92 held on 29th & 30th April 2005 at Vigyan Bhawan.
24. CJI Justice K.G Bala Krishnan: Efficient functioning of Indias Justice delivery System (2007) 4 SCC 19.