

JUSTICE DELAYED IS JUSTICE DENIED: STATUS OF INDIAN JUDICIAL SYSTEM

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ABSTRACT

The structure, mechanism and efficiency of a democratic nation are assessed by the efficiency of system of dispensation of justice. Indian judiciary has become slow and empathetic towards its citizens. Inadequate process of appointments of judges, time consuming proceedings of courts, corruption among staffs of courts resulted into the dissatisfaction among public. The instances like Nirbhaya rape case, Priyanka reddy's case, encounter of Vikas Dubey have been applauded by the large section of society silently and these circumstances is an evidence that Indian public have lost their faith in their judicial system. It is a matter of grave concern that public is supporting illegal way of seeking justice if these encounters will be continued and supported by the public then the existence of Indian legal system would be at stake. This paper focuses on causes of delay of dispensation of justice and remedies for it.

I. Introduction

The whole world was aggrieved by the malfunction of the monarchy and colonialism, after a long revolution public unanimously agreed to form a type of governance where public wish would be supreme and in this way democratic form of government came into existence. A democratic form of government has three organs Legislature, Executive and Judiciary legislature enacts laws according to requirements of society; executives executes laws; judiciary has the responsibility to apply the laws to relevant cases and settle all disputes. After independence in 1947, India framed its Constitution and adapted democratic form of government. Indian judiciary is characterised as a guardian of the Constitution of India. Independent judiciary is indispensable in a democratic form of government. A well functioned judiciary keeps eye on the actions of sovereign bodies. Judges and magistrates are persons who have the full authority to supervise and direct the government if there is violation of rights of individual. Judges are entrusted with the duties of protecting the rights of individuals. The first Court was established in independent India in the year 1950.¹

Former Chief Justice P N Bhagwati in his Law Day speech in 1985 said: “I am pained to observe that the judicial system in the country on the verge of collapse. Our judicial system is crashing under the weight of arrears. It is trite saying that justice delayed is justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual and superficial level. Those who are seeking justice in our own Courts have to wait patiently for year and years to get justice. They have to pass through the labyrinth of one Court to another until their patience gets exhausted and they give up hope in utter despair.... The only persons who benefit by the delay in our Courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against Government and public authorities and then continue to enjoy the benefits of such stay or injunction for years, often at the cost of public interest.”²

¹ Judiciary: Functions, Importance and an Essential Quality of Judiciary <https://ncert.nic.in/ncerts/l/keps206.pdf>

² DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR (<http://www.delhihighcourt.nic.in/library/articles/>)

From the statement of the Justice P.N.Bhagwati it is evident that Indian judiciary suffers from time consuming proceedings, high expenses, uncertain period of concluding a case but, irony is that even after the statement of the Chief Justice P. N. Bhagwati, and nothing has been done to increase the pace of judiciary. The Court takes a long time to complete trial hence, parties have to wait patiently to get justice and even if a party is unsatisfied by the judgment of the trial Court then process for appeal is more time consuming. The failure of judiciary is equal to the failure of democratic legal system.³

Limitation Act, 1963 provides time limitation for filing suit but there is no legislation which specifies time limitation for dissolution of civil suits. Causes of the delay in civil suits are the cost of filing suit is heavy and the calendars of civil suits are always overcrowded. Civil suits trial continues up to 2nd and 3rd generation hence question arises whether justice is being served in civil matters.

II. Law Commission of India

Inordinate delays obstruct civil and criminal cases these delays have forced public to believe that Indian justice mechanism is ineffective. 14th report of Law Commission 1958, 58th report of Law Commission 1974, 121st report of Law Commission, 1987 specified the lacuna on the existing legal system and proposed recommendations to combat with it. The proposals are –

- (a) The number of posts of magistrates should be increased and more powers shall be conferred upon them.
- (b) Setting up of a National Judicial Service Commission for appointment of magistrates in lower courts.
- (c) Increase in retirement age of judges from 62-65. 27th report of Law Commission 1964 and 213th report have drawn that there is dire need of adequate judges and appointment of administrative staffs in the Courts. Besides the recommendations made by the Law Commission vigorous steps should be taken by government for filling the loopholes of judicial system.

³ DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR (<http://www.delhihighcourt.nic.in/library/articles/>)

III. Rule of Law: Concrete concept of the Rule of Law has been given by the A.V. Dicey.

Dicey's rule of law contain three cardinal principles (a) supremacy of law (b) equality before law and (c) predominance of legal spirit. It is British principle which was incorporated by the Constitution makers and interpreted by the Supreme Court of India. Rule of law has been elevated to the status of the basic structure of the Constitution in the historic judgment of Kesavananda Bharati v. State of Kerala.⁴ India judicial system has played active role in interpreting the Constitution and gave a list of basic structure which includes rule of law. In A.K. Kraipak v. Union of India⁵ the Supreme Court held that India being a welfare State, it is regulated and controlled by the Rule of Law. In Maneka Gandhi v. Union of India,⁶ the Court ensured that the exercise of power in an arbitrary manner by the government would infringe the rights of the people. The Constitution and Supreme Court of India have done their part of duty to establish rule of law in our legal system. But the problem is with the implementation issues, the pile up of long pending cases, the convoluted procedure is fading away the existence of rule of law.

IV. Reasons for shortcomings of procedure followed by judiciary

The fons et origo of inadequacy of Indian judiciary are as follows:

A. Lack of transparency

The significance of transparency is paramount in judiciary. Transparency in justice delivery system guarantees fair and equal treatment to everyone. In India public often consider its judicial system with lowest public trust and magistrates and judges are commonly as non-transparent, inefficient and far off. Absence of transparency in the functioning of administration benefits the corrupt staffs and administrators and that is the reason it is practiced by them. There is less chance that these people will ever abstain from practising such conduct.⁷

⁴ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461.

⁵ A.K. Kraipak v. Union of India, AIR 1970 SC 150.

⁶ Maneka Gandhi v. Union of India , 1978 SCR (2) 621.

⁷ What does data on pendency of cases in Indian courts tell us? (<https://www.theleaflet.in/what-does-data-on-pendency-of-cases-in-indian-courts-tell-us>)

B. Pendency of cases

The Supreme Court in *Ganesh Narayan v. S.Bangarappa*⁸ observed that: “the slow motion becomes much slower motion when politically powerful or high and influential persons figure as accused”. Judiciary must work independently but it could not be ignored that abovementioned reason are one of the causes of delay disposal of cases. In the year 2021, the Union Ministry of law and Justice has stated that more than 4000 judges’ posts are vacant in subordinate courts. While 38% of the sanctioned posts for permanent and additional judges in India’s 25 High Courts also lie empty. 419 seats are vacant across High Courts in India. In regard to the subordinate Courts, out of 24,247 posts in trial courts in various states 4,928 are lying vacant. Allahabad High Court has the most pending cases in the country. Indian Courts have huge backlog of pending cases. The data of the pendency of cases shows inefficiency of judicial system.⁹

C. Cumbersome Procedures

The procedure followed by the Indian Courts are too slow that either witness forget that they are witness or they die before the trial conclude. Appeal procedure is also time taking and there is huge number of cases pending in High Court as well. The large number of pending appeal case shows that people are unsatisfied by the judgments of lower courts. In respect of civil matters cases are continued till 2nd and 3rd generation of the litigants.

D. Corruption

Corruption is so rampant in our society that public has adapted it as a part of their daily life. Anna Hazare initiated revolution for eradicating corruption among administrators of India. In the context of Indian judiciary, the court staffs are often alleged for asking bribe for their work. The taking of bribe by court staffs have become a common scenario, it makes public to believe that money can buy everything including justice.¹⁰

⁸ *Ganesh Narayan v. S.Bangarappa*, (1995) 4 SCC 41.

⁹ What does data on pendency of cases in Indian courts tell us?, (<https://www.theleaflet.in/what-does-data-on-pendency-of-cases-in-indian-courts-tell-us>)

¹⁰ DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR (<http://www.delhihighcourt.nic.in/library/articles/>)

E. Lack of awareness amongst public

Awareness of the rights of individuals and the means of securing it are powerful tools of bringing social and economic progress. Indian public are not aware of their legal rights, they are often misguided by the lawyers. Lack of awareness has empowered lawyers and staffs to take bribe in the name of doing their work. Court procedure is not known to its citizens. National Legal Services Authority (NALSA) and State Legal Services Authorities need to work efficiently to secure justice.¹¹

F. Deficiency in working of police authorities

Police force is often seen lacking in discharging their duties. They lack the basic of criminal and civil laws. Creating dispute while lodging FIR either on jurisdictional or factual point is a tool to harass and creating confusion and dissatisfaction in the minds of complainant. More often the influential or the people with high profile contacts succeed in lodging FIR at the first instance. In many cases it is seen that police proceeds with the case without the matter is properly enquired into. Corruption is rampant in the police department. In criminal cases it is often seen that once the FIR is lodged the police takes too long time in concluding investigation and filing charge sheet within the statutory period allowed in any particular offence. As a result of which the accused are released on bail. In regard to the failure of present police system, Justice H.R.Khanna of the Supreme Court observed that another issue which is shaking the confidence of public is that the large number of acquittal of accused in criminal cases. The high rates of acquittals are mainly for three reasons first is politicians support the goons and make arrangements to set them free from the conviction by their influence in legal system. Second reason is that influenced investigations are being conducted by police officers. They delay the investigation or give opportunities to the culprits to cause the evidences of the offences to disappear or temper with such evidence in any manner or making an inducement, threat, promise to any person acquainted with the facts and circumstances of the case so as to dissuade him from disclosing facts to the court. As a result of which the charge sheet submitted before the court is often ambiguous or false or fabricated. Third

¹¹ DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR
(<http://www.delhihighcourt.nic.in/library/articles/>)

reason is that police are deployed in the service of VIPs. They also have to maintain law and order during any violence, strikes, bandh and dharna, these activities takes a lot of time of police. These reasons are deteriorating the quality of investigation and efficiency of the police force.

G. Inefficient budgeting for Indian judiciary

Adequate allocations, poor planning and underutilisation of funds-- all these have impacted the ability of the justice system to address its capacity constraints and improve its functioning. The lower courts are in miserable condition. Indian allocates only 0.08% of GDP to judicial system.¹² There is co-existence of low allocation of budget with under implementation of budget. Lack of political will is root cause with the implementation of funds. Although central government should take required steps in this matter.

H. Lack of Infrastructure

Poor infrastructure of Indian courts is a grave concern for legal system. Indian government has passed schemes to invest in developing the court premises. The central government has extended the centrally sponsored scheme for development of court infrastructure with the estimated outlay of 3320 crore rupees but the development has not been as done adequately.

V. CASE LAWS

L.N. Mishra Murde¹³ case L.N. Mishra was the then law minister; he was killed¹⁴ in bomb blast near railway station of samastipur. It took 40 years for trial court to reach to a judgment. The prime accused who was 27 years at the commission of crime turned 66 years old at the time of judgment. One of the four accused died before the conviction. Other two accused punished for rigorous punishment for ten years. The question is if trial court will take 40 years then High Court or Supreme Court will take how much time for disposing a case. It is one of the lengthiest legal battles of Indian legal system. Nirbhaya Gang Rape and Murder case¹⁵, on 16th December 2012 was a

¹² India Spends Only 0.08% Of GDP on Judiciary, Crippling Reforms (<https://www.indiaspend.com/india-spends-only-0-08-of-gdp-on-judiciary-crippling-reforms/>)

¹³ Sudevanand v. State (2012) 3 SCC 387.

¹⁴ Legal Correspondent, ₹3320cr set aside for judicial infrastructure till 2020: government, The Hindu, 1/01/2018, At A1.

¹⁵ Mukesh v. State (NCT of Delhi) (2017) 6 SCC 1.

female physiotherapist was brutally raped by 6 men in bus at Delhi. The rape was so horrific that it gave goosebumps to the entire national and protest was raised against the then government. After agitation, protest and dharnas government were forced to enact stricter laws to punish the culprits.

The case was transparent but the Court took 8 years to punish the offenders. On 7th January 2020 death warrant was issued by the Court and execution day was fixed on 22nd January 2020 but execution could not be completed because convicts application was pending in the Supreme and the convict's lawyers contended that court are taking this case hurriedly and justice hurried is justice denied. The Supreme Court rejected all the application and finally on 20th March 2020 culprits were hanged till death. There was dissatisfaction among public that why there was delay in execution of death penalty when the case was transparent. In Hyderabad Priyanka Reddy's¹⁶ Rape case four convict of the case was killed in a police encounter. The whole nation celebrated the act of police slogans were made to appreciate the encounter, rose petals were showered over police officers at the encounter spot. Public were delighted with the instant justice. Despite these encounters are illegal but it was applauded by the citizens' openly. ISRO SPY¹⁷ case ex- scientists Nambi Narayan, K.Chandrashekhara along with three other scientists were arrested by the police on the grounds of sharing ISRO's confidential documents to two Maldives ladies. Later the case transferred to the CBI and CBI concluded that no espionage has taken place in 1996 and the verdict came after twenty four hours. K. Chandrasekhara died one hour before the verdict. The case defamed all scientists; this case ruined their whole life. According to the legal system justice has been served but this kind of justice has no true meaning. Mumbai Serial Blast,¹⁸ 1994, at 13 places bombs were placed in Mumbai, the prime suspects were Daud Ibrahim, Tiger Menon and Yakub Menon. Yakub Menon were arrested and jailed; he was given death sentence the year 2015. After 22 years death punishment was given to him but the case is still not disposed of, the other two accused are not arrested till now. These are the cases where cases should be disposed on reasonable time.

¹⁶ Abhinay Pandey, All four accused in Hyderabad vet rape and murder case shot dead, The Hindu, Dec 6,2019,at A1.

¹⁷ S.Nambi. Narayanan v. Siby Mathews & Others Etc,(2018) 10 SCC 804.

¹⁸ Yakub Abdul Razaj Memon v. State of Maharashtra and Ors. (2015) SCC 135

VI. SUGGESTIONS TO REFORM INDIAN JUDICIARY

Indian judiciary is on the brink of collapse, it is necessary to make changes in the system to meet the demands of public. Some reforms are as follows –

A. Improve lower courts and district courts

Lower Courts are the courts which have direct contact with the public hence efficiency of these courts are essential. A high level team or committee must be set up to investigate the condition of the lower courts, district court, and consumer forum. This committee or team should ensure whether the court rooms, registration room or furniture room are in good condition or not. There must be increase in the number of appointments of magistrates or judges in district court and lower courts so that the trial properly be conducted This will decrease the pendency of cases in lower courts. The Gramnyaylayas Bill has been enacted to set up more trial courts in intermediate level. The feature of this Bill is that cases would be disposed of within six months. Aim of these courts is to bring justice to the doorstep of public. At the time of digitalisation there is need of improving the cyber laws, bio genetics and IPR. Bar Council of India stated in this matter that “Trained and experienced judicial officers can comprehend and dispose of matters at a much faster pace thereby leading to efficient administration of justice.”¹⁹

B. Increase in judicial capacity

Increase in judicial capacity need investment from central as well as state governments. There is need that the judges and magistrates should be appointed in district courts and in lower courts. The filling up of vacancies is not uniformly maintained by the every state; it is upon the discretion of the state government. Indian judiciary need a streamlined process of appointment.

C. Court management

In the present covid situation Court premises need a better organised registrar, administration and management. Indian judiciary is left behind because of inefficiency and corruption among the

¹⁹ <http://www.barcouncilofindia.org/>

court staff. Digitalisation of Court administration is required to minimise the human discretion and increasing the speed of judiciary. Courts need a separate list of courts and administrative personnel to organise efficient structure of court.

Courts which are overburdened need an automated infrastructure so that judges don't need spend extra time to manage trials and appearances. There should be supportive administration which ensures smooth functioning of court system.

D. Case management

Case management is a significant area which has been neglected by the administration of courts. Case management is systematic organisation from inception of the case to its settlement. Indian courts grant adjournments during trials and allowing parties to manipulate delays. Case management is a requirement to accelerate the delivery in justice dispensation.

E. Infrastructure

Infrastructure of Courts require drastic changes since after independence there has not been any change in efficiency of infrastructure. There is need of more courtroom, registrar office, back office, parking rooms, bathrooms. These have not been expansion as per the population. Condition of lower court is miserable; there is necessity in enhancing infrastructure of lower courts.

F. Speedy Trial

Indian judicial service has a huge backlog of pending cases it will take years to clear this backlog. To resolve the issue of pending cases the trial process must be made faster by establishing new courts, appointing new magistrates and recommendations of the Law Commission must be implemented without further delay. The time taking trial will not serve justice to needy people. Hon'ble Justice S.B. Sinha and Justice Dalveer Bhandari of Supreme Court of India observed that : "Speedy trial is one of the facets of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India and the law must endure reasonable, just and fair procedure which has a creative connotation."³¹ An Indian Judiciary Services should be created which would aim at selecting suitable candidates for magistrates and judges both at lower and higher judiciary. Steps must be taken to make judiciary independent efficient working body. All parts of the Court i.e.

judges, magistrates, prosecutors, registrar should work in cohesion to ensure timely justice to citizens. Innovative approach should be adopted such as developing new appeal courts and setting up new courts in field of IT sector. Improved facilities must be constructed which enables easy access to courtrooms to make an effort to deal with backlog of cases. The object of these efforts should be to fill loopholes of our justice system.

G. Merit appointment

Merit appointment means only qualified and eligible people should be given position of magistrates and judges. In contrast to this Indian judiciary tend to make appointments on the basis of caste, religion and race. In judicial appointments there is reservation system in it. The criteria for appointing judges are not clear under Indian administration. In lower judiciary exams are conducted while in Supreme Court collegium process is followed by the judges. The perfect procedure would be there will be a separate board for appointing judges; this would enhance the freedom of the judges. Another concern is lack of women judges in the Indian judiciary. The number of women magistrates and judges in High Court is less as compared to male judges. Just 10.89 per cent of High Court judges as of 23 March 2018 were women in High Court. There is no calendar year for appointment.

H. Better investigation

Lack of investigation is the reason behind lagging of judiciary. Innocents get punishments because of lack of investigation. Recording evidences are completed in the old way. Scientific investigation approach must be adapted by the Court. The traditional method should be replaced by the scientific methods. Nambi Narayan case is example of lack of investigation. Nambi Narayan and four other scientists have been accused of sharing the confidential report with the two maldives women; all the scientists were tortured in police custody. They were released after 52 days of custody later CBI gave them clean chit. This case ruined the reputation of Nambi Narayan and other scientist. Another example is that on 6th January 2018 the trial Court dismissed the case against Narayan Waman Nerurkar, an electronic scientist who was accused of sharing General radar test to foreigners in 1987. The court dismissed this case there was nothing to be proved against the scientist, he was declared innocent after 31 years.

I. Court approach should be public oriented

The court procedure should be accessible to the public. The negative approach which public have adopted must be changed and it can be achieved only if the process is public oriented.

VII. Conclusion

Judiciary is blamed for its delay in dispensing judgments, but the laws i.e. the codes containing procedure, upon which judges rely, have loopholes. Influential class of society for instance politicians do not make required changes in the laws which are in public interest. They also pressurize judges, magistrates or police officers to work in their favour. These factors causes delay in justice dispensation process. The question arises that can prompt justice be an alternate to delayed justice. Failure in providing justice signifies that state is unable to protect its citizens. It is absolutely right that justice hurried is justice buried. An instant justice cannot guarantee fair and appropriate justice. The need of hour is timely justice and it means proportionality and appropriateness. Legal mechanism should maintain a balance between quality of justice and timeliness. It is important to give justice timely otherwise the rate of crime would be increasing day by day. It requires unanimous and cumulative steps by all the government, court administration and public to reform the existing judicial system. There is necessity to bring immediate change in the system; changing the system is not possible without the collective efforts of government, judiciary and public. E-Courts are alternative remedy for speedy and timely justice. Incorporation of e-courts would eliminate corruption among staff members and would also ensure speedy justice. Digitalisation of courts would also decrease the burden of documentation. Although it will take some years to make all courts e-courts, but is a great initiative to deal with the issue of delay in disposing of cases. Conversion of traditional courts into e-courts is possible if central government spend required amount of money on infrastructure.

Indian administration should have taken appropriate steps to resolve the issue of delay in legal proceedings but at present the way nationals are supporting and celebrating the encounters of goons and rapists indicate that days are not far when aggrieved parties will take law on their own hands. To prevent these future circumstances administration should need to take active steps.