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Effect of delay in justice delivery on the litigant

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Abstract

People quest for justice starts when they approach the judiciary with the hope. The most important work of judiciary is to conduct the proceedings in a fair and dignified manner. Finding the truth timely in smart manner. Indian Judiciary is known for its impartiality, independence and justice oriented approach. The biggest challenge being faced by the Indian Justice Delivery System is that of delay in the dispensation of justice. It is shaking public trust and confidence in the legal system and it is tending to erode the quality of social justice and hampering the socio-economic development of the country. 73 long years ago we declared ourselves as independent but still the process delivering justice to people is delayed and causes frustration as well as disgust towards the existing judicial system. The large number of pending cases disturb the efficient working of the court. The delay in justice had adversely affected the right of the society

The Indian judiciary its judgment stand fearlessness are appreciates by one and all. But the only criticism against it is that it is very slow for that reason most of the time litigant loss their faith over Judiciary. "Justice delayed is justice denied" is a legal maxim meaning that if legal redress is available for a party that has suffered some injury but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. The trust and confidence of "we the People" in judiciary Stand of its ability to impartial justice. In a country like India Judicial system plays an important role to set rule of law for that reason Court have to be very serious about delay in Justice. This paper an attempt to highlight the problem of delay in justice and the effect of it.

Keywords: interest of justice, delay, litigant, faith

Introduction

Justice Delivery System in India

The preamble of the constitution guarantees the people of India "Justice, social, Economics, and Political. Justice has basically two modes, criminal Justice which includes investigating agencies such as Police, Prosecution, Defendant and Court. Second Civil justice which includes plaintiff respondent Government¹ machinery and Courts.

Administration of Justice

It is most important function of the state. Power exercised by the state through judiciary to enforce rights and Punish Wrongs. Judicial process involves rights claimed or wrong complained by one party against other. Hearing of Parties by the court. Judgment of the court delivered at the end of the trail. Execution of the operative part of the Judgement.

Constituents of Justice delivery System

Aggrieved person (Plaintiff in Civil cases and Complainant in criminal Cases). Alleged wrongdoer (Defendant in civil cases and accused in criminal cases). Police, Prosecutors, Lawyer, Courts (from lower courts to Supreme Court). It is the court which ultimately delivers justice.

Hierarchy of the Court

Supreme Court, High Court, District court & Subordinate Court.

General function of the court

Administration of justice in accordance with law. Adjudication of civil and criminal cases. Decides on Constitutional questions. Administrative function, Advisory Function, Protection of fundamental rights in form of writ Jurisdiction, Guardian of Constitution.

Importance of Justice

For Justice Lawyer, Prosecutors, Police and Court play an important role. First I have to explain what is Justice. In short "Just" behavior with the society known as justice. Justice is not a term to define in one word. To define justice it is very essential to refer to the root idea of the word "Jus" Meaning Joining or fitting. Thus, justice carries the meaning of cementing and joining up human beings together. The concept of justice is not static. With the changes in the society, the concept of justice has also changed from time to time. Keeping in view the various concept of justice, justice may be classified into certain kinds ^[2], namely- Natural justice, Economic justice Social justice, Political justice, Legal justice, Distributive justice and Corrective justice.

In litigation when any crime is committed People want justice for both Offender ^[3] as well as Victim. For that reason delay in justice is the reason of increasing crime. In civilized society the tag of accused or any type of pending case both the parties suffer and it may give a negative effect on the growth of the person family and

¹ Mcrhdi.gov.in.

² /bitstream/10603/67805/6/06_

³ Howstuffworks.com.

country. It is shaking the Trust of the society on Judiciary. Sometime family matter or, Offence which are compoundable in nature takes year and year. Why People not take a Path of Alternative dispute resolution or, plea Bargaining, Compounding of offences. Time to think over it.

Reason of Delay

The Maxim 'Justice Delayed is Justice Denied' postulates that an unreasonable delay in the administration of justice constitutes an unconscionable denial of justice. The ultimate aim of any Legal Judicial system is to delivered justice. In every legal system there are two sets of laws: Substantive law and Procedural law. Substantive law determine the rights and obligations of citizens. But the efficacy of substantive laws depends upon the procedural laws. The Judiciary by interpreting the laws enhance justice to the Society. Population as well as technological growth and industrial advancement has increased workload of the judiciary. The negative impact of these developments have caused serious problem of law and order in the society in various ways. There has been phenomenal increase in rate of crimes in society; the nature of crime, means and methods of committing crimes have also considerably changed. All this has posed a number of problems to law enforcement agencies. Delay in disposal of cases is a normal feature in the country and a number of efforts have been made to counter this evil practice but it seems that it will stay in the society. In India, Committees after Committees have been appointed to tackle this problem. These Committees have made various recommendations and suggestions regarding delay. The Law Commission of India in its various reports has also made a number or recommendations and suggestions for expeditious disposal of cases. Though not all but many of these have been implemented, but the problem still remains same. The problem is deep-rooted and does not admit a simple solution. Our legal system for civil and criminal cases is so complicated, lengthy and technical that it takes year and year. Truly speaking there are number of reason for delay in various stages of proceeding which contribute in delaying the ultimate decision of the case. Just think Speedy trial of a criminal case considered to be an essential feature of right of a fair trial in India but the problem as it is. That is my opinion procedure which does not provide trial and disposal within a fix or reasonable time cannot be said to be just, fair and reasonable. It is not a Justice imagine a accused acquitted after a long delay or family matter like Marriage, divorce, Child related Conclude after many years. Impact of delay on their life, image, Growth, no one can ever measure. What I feel the role of Police and Legal officer is most important first make the Category of Cases which are serious in nature go for the litigation otherwise Go for Alternative Dispute resolution. There is no single factor for delay. Indian justice delivery system can be discussed under two broad Title: First the procedural factors and Second the substantive factors.

Procedural Factor

For Criminal Justice System the Malimath Committee Formed by Indian Government made various recommendations. For Speedy Justice Supreme Court of India has held that the right to speedy trial flowing from Article 21 encompasses all the stages, namely

the stage of investigation, inquiry, trial, appeal, revision and retrial ^[4]. I can discuss four stage for delay

- A. Pre-trial delays.
- B. Delay during trial.
- C. Delay during the appellate proceedings.
- D. Delay during the execution proceedings.

Pre-Trial Delays

Pre-trial delays may be due to the following factors.

- a. Delay in investigation.
- b. Delay in service of summons.
- c. Delay in filing written submissions and documents.
- d. Delay in framing issues/charges.

Delay during Trial

During-Trial delays may be due to the following factors.

- a. Provisions for adjournment.
- b. Non-attendance of witnesses.
- c. Lengthy oral arguments.
- d. Absence of lawyers.
- e. Application at any stage.
- f. Delayed pronouncement of judgments.
- g. Absconding of the accused cause too much delay.
- h. Non-receipt of death report of an accused or witnesses.
- i. Surety has no control to produce the accused.

Delay during the Appellate Proceedings

For ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. Law therefore provides for "appeals" and "revision" and thereby enables the Superior Courts to review and correct the decisions of the lower Courts. But the Problem is workload of the Court and other factor take too much time. What is see every day In Court Accused take advantage of Appeal and Got Bail during Pendency of Criminal Appeal these are some Disadvantage. That's why Confidence Level of Criminal are so High Crime Increasing Day By Day.

Delay during Execution Proceedings

Substantive Factors

- A. Judicial vacancies/Delay in appointment of judges.
- B. Lack of accountability of judges.
- C. Too many vacations in the courts.
- D. Misuse of Public Interest Litigation.
- E. Witnesses turning hostile.
- F. Writ jurisdictions.
- G. Delay by the Judges.

Effect of Delay on Litigant.

The delay in Justice is a Curse for any Judicial System. In India Undoubtedly the all effort by Judiciary or other Institute like Police is tremendous. But what I find a Gap between Police station to Judiciary so that the evidence and all not done in manner which is crucial for trail or Justice. That's why the Society slowly slowly loss his faith in Judiciary and the respect love as a legal fraternity we need. Not too much but a Change is the necessity of the time take a example of fine specified in Penal Code for offence. Why we are not Promoting Alternative Dispute resolution, not rigid but Strict rules for the all

⁴ A.R. Antulayv. R.S. Nayak (1992) 1 SCC225.

criminals During Pendency of Trial, Criminal Appeal the Rich Criminal Got the Bail just for Delay. Some practices of our judiciary also cause delay and arrears. Writing of lengthy judgments obscuring the ratio is not uncommon in India. A lot of time is consumed not only by the judges but by others also in writing the judgment which ultimately results in delay in pronouncement of the judgment. Writing separate judgments even

When they are concurring makes the exercise time-consuming and confusing. It thereby becomes difficult to find the ratio in quick time when judges give separate but concurring judgments they say that they want to give reasons other than those mentioned in the judgment with which they concur⁵. The languages employed by the judges in writing judgments have also come for criticism. At times the judges who have a flair for flowery languages indulge in displaying good command over the language and in the process make others to miss the legal point discussed in the case. Such writings cause delay not only at the hands of the judges but also for lawyers in finding out the ratio of the decision. Malimath Committee considered that some judges do not deliver judgment for years. If there is delay the judge may forget important aspect thereby contributing to a future of justice. There are also complaints that the judgments are not promptly signed after they are typed and causing great hardship to the parties. To correct these aberrations the High Courts should issue a circular to immediately enter below the case, title of the judgment/orders, the following:

1. The date when the agreements concluded.
2. The date when the judgment was reserved.
3. The date when the Judgment was pronounced.
4. At the bottom of the judgment/order, the Stenographer should enter the date on

Which he received the dictation, the date when he completed typing the judgment/order and placed it before the judge and the date when the judge signed it the number of witnesses turning hostile is increasing in cases concerning grave offences. Some such incidents are the famous *BMW case*, *Jessica Lull* murder case and *Best Bakery* case. The long time. In the landmark verdict in *Best Bakery Case*,^[6] the Supreme Court gave an enlightened first one (BMW case)^[7] was regarding the BMW car running over six people in the early morning hours. The accused in this case was 22 years old, Sanjeev Nanda, grandson of former Naval Chief S.M. Nanda. The two key prosecution witnesses subsequently changed their version and said that they saw a truck, and not a BMW hitting the victims. The second case (Jessica Lull murder case)^[8] involved the murder of a model, Jessica Lall who was shot at point blank range amidst a big party thrown at Delhi restaurant. Here the accused was Manu Sharma who hails from an affluent family and had political connections. In this case, all the three witnesses have turned hostile one by one, thereby delaying the final disposal of the case. Although, finally Manu Sharma has been convicted but due to witnesses turning hostile, final disposal of the case took a observation and sent the key witness Zahira Sheikh to the jail for playing fraud on the Court by turning hostile. Holding her in contempt, the Supreme Court

Bench observed that- "In a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and therefore, it is the community that acts through the State and the prosecuting agencies. Interest of the society is not to be treated completely with disdain and as persona non-grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case protecting its ability to function as a Court of law in the future as in the case before it. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a mere spectator and a mere recording machine by becoming a participant in the trial evincing intelligent, active interest and elicit all relevant material necessary for reaching the correct conclusion and administer justice with fairness and impartially to the both parties of a particular case as well as to the society at large. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators." In most of the cases witnesses are purchased with the use of money. Generally those people who are extremely rich, industrialists, bureaucrats or high profile public servants or politicians who have committed the crime either accidentally or intentionally use this method. They are of the belief that their purchasing power is very high and thus they can afford to relax once the witness has been bought over. These types of cases occur all over India, but are mostly prevalent in the Metropolitan cities of the country^[9] Very often muscle power is also used. Where money fails, muscles work. Even an honest law-abiding citizen would think hundred times before deposing against the accused if he or any of his family members is threatened with dire consequences or death^[10]. They have no option but to do so because most of them are habitual and crime is their profession, e.g. contract killers and men belonging to the underworld. Apart from money and muscle power there are various other ways in which witnesses are forced to turn hostile viz, political pressure, long winding Court procedures, the psychological factor, self-generating fear etc. Whatever be the tactics applied by powerful ones in turning the witnesses hostile that undoubtedly makes way for delay in the expeditious delivery of justice.

Sum UP

It is apparently clear from the foregoing study that there can be no single factor which is solely responsible for delay in disposal of cases rather it is a combination of several factors which are contributing to delay. Judicial delay applies to burdensome procedures, lack of sufficient courts, the clogging of the system with cases without merit and the use of the courts to settle matters,

⁵ The Academy Law Review, Vol. 17, p. 59.

⁶ Zahira Habibullah Sheikh and another v. State of Gujarat (AIR 2006 SC 1367).

⁷ Sanjeev Nanda v. State of NCT of Delhi. 2007 Cri. LJ 3786.

⁸ Sidharth Vashisth fql Manu Sharma v. State of Delhi. 108(2003) DLT 134.

⁹ G. S. Shekhar; 'Witness Protection in Criminal Cases', the Frontline, September, 2005; p. 76.

¹⁰ /d at 77.

which could be resolved by negotiation. Post experience and instances have proved beyond doubt that delay at court is always accompanied by ills such as partiality, corruption and a low quality of judgment. Besides this, the causes attributed for delay are

1. An inadequate number of Courts.
2. Judicial officers are not being fully equipped to tackle cases involving specialized knowledge
3. Dilatory tactics adopted by litigants and lawyers, who seek frequent adjournments and delay filing documents and
4. The role of the administrative staff of the Court. Further root cause for delay in dispensation of justice in our country is poor judge-population ratio. Other aspects that contribute to judicial delays include lacunae in the Code of Criminal Procedure, methods of police investigation, general administrative disorganization and a lack of modern technology. Frequent adjournments are the direct fall out of increasing inflow of cases. Sufficient judicial officers commensurate with the cases filed everyday are not there. Therefore, the judicial officers are constrained to adjourn the cases again and again so as to take up other matters also. The irony is that in our country for every one million population, there are only 13.5 judges. In contrast, in Western Countries, for every one million people, there are 135 to 150 judges, 10 times more than the proportion in India. There is unanimity of opinion that the strength of Judges in India has to be considerably increased to cope with the growing litigation and demands. Hence, there is a dire need to overhaul the entire system of justice delivery mechanism so that the problem of delay can be nipped in the bud otherwise access to justice and judicial reform will remain non-existent and will only be a mirage to the crores of fellow Indians.

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