

**"JUSTICE DELAYED IS JUSTICE DENIED"**

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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.

**KEYWORDS :** Judicial, Criminal, delay etc

**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. 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. 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.

**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.

**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. Thus the number of judges per million of population is 10.5 judges per million. 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, 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.

**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 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.

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:**

1. 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.
2. Some judges are very liberal in granting adjournments.
3. 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**

1. 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.
2. Lawyers are not precise; they indulge in lengthy oral arguments just to impress their clients.
3. Lawyers are known to take adjournments on frivolous grounds. The reasons range 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.
4. 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.

5. 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.

6. 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* 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.

#### **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.

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 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 filing appeals further causes delay, where the final judgment is secured, execution is more than likely to be returned unsatisfied. All this contributes to delays.

#### **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.

#### **Shift System**

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.

#### **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 120<sup>th</sup> 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.

#### **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 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.

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