

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



Open Access, Refereed Journal Multi Disciplinary
Peer Reviewed Edition :

www.ijlra.com

DISCLAIMER

No part of this publication may be reproduced or copied in any form by any means without prior written permission of Managing Editor of IJLRA. The views expressed in this publication are purely personal opinions of the authors and do not reflect the views of the Editorial Team of IJLRA.

Though every effort has been made to ensure that the information in Volume 2 Issue 7 is accurate and appropriately cited/referenced, neither the Editorial Board nor IJLRA shall be held liable or responsible in any manner whatsoever for any consequences for any action taken by anyone on the basis of information in the Journal.

Copyright © International Journal for Legal Research & Analysis

IJLRA

EDITORIAL TEAM

EDITORS

Megha Middha



Megha Middha, Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar

Megha Middha, is working as an Assistant Professor of Law in Mody University of Science and Technology, Lakshmangarh, Sikar (Rajasthan). She has an experience in the teaching of almost 3 years. She has completed her graduation in BBA LL.B (H) from Amity University, Rajasthan (Gold Medalist) and did her post-graduation (LL.M in Business Laws) from NLSIU, Bengaluru. Currently, she is enrolled in a Ph.D. course in the Department of Law at Mohanlal Sukhadia University, Udaipur (Rajasthan). She wishes to excel in academics and research and contribute as much as she can to society. Through her interactions with the students, she tries to inculcate a sense of deep thinking power in her students and enlighten and guide them to the fact how they can bring a change to the society

Dr. Samrat Datta

Dr. Samrat Datta Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Samrat Datta is currently associated with Seedling School of Law and Governance, Jaipur National University, Jaipur. Dr. Datta has completed his graduation i.e., B.A.LL.B. from Law College Dehradun, Hemvati Nandan Bahuguna Garhwal University, Srinagar, Uttarakhand. He is an alumnus of KIIT University, Bhubaneswar where he pursued his post-graduation (LL.M.) in Criminal Law and subsequently completed his Ph.D. in Police Law and Information Technology from the Pacific Academy of Higher Education and Research University, Udaipur in 2020. His area of interest and research is Criminal and Police Law. Dr. Datta has a teaching experience of 7 years in various law schools across North India and has held administrative positions like Academic Coordinator, Centre Superintendent for Examinations, Deputy Controller of Examinations, Member of the Proctorial Board



Dr. Namita Jain



Head & Associate Professor

School of Law, JECRC University, Jaipur Ph.D. (Commercial Law) LL.M., UGC -NET Post Graduation Diploma in Taxation law and Practice, Bachelor of Commerce.

Teaching Experience: 12 years, AWARDS AND RECOGNITION of Dr. Namita Jain are - ICF Global Excellence Award 2020 in the category of educationalist by I Can Foundation, India. India Women Empowerment Award in the category of "Emerging Excellence in Academics by Prime Time & Utkrisht Bharat Foundation, New Delhi.(2020). Conferred in FL Book of Top 21 Record Holders in the category of education by Fashion Lifestyle Magazine, New Delhi. (2020). Certificate of Appreciation for organizing and managing the Professional Development Training Program on IPR in Collaboration with Trade Innovations Services, Jaipur on March 14th, 2019

Mrs.S.Kalpna

Assistant professor of Law

Mrs.S.Kalpna, presently Assistant professor of Law, VelTech Rangarajan Dr. Sagunthala R & D Institute of Science and Technology, Avadi. Formerly Assistant professor of Law, Vels University in the year 2019 to 2020, Worked as Guest Faculty, Chennai Dr. Ambedkar Law College, Pudupakkam. Published one book. Published 8 Articles in various reputed Law Journals. Conducted 1 Moot court competition and participated in nearly 80 National and International seminars and webinars conducted on various subjects of Law. Did ML in Criminal Law and Criminal Justice Administration. 10 paper presentations in various National and International seminars. Attended more than 10 FDP programs. Ph.D. in Law pursuing.



Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

learning.

ABOUT US

INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS
ISSN

2582-6433 is an Online Journal is Monthly, Peer Review, Academic Journal, Published online, that seeks to provide an interactive platform for the publication of Short Articles, Long Articles, Book Review, Case Comments, Research Papers, Essay in the field of Law & Multidisciplinary issue. Our aim is to upgrade the level of interaction and discourse about contemporary issues of law. We are eager to become a highly cited academic publication, through quality contributions from students, academics, professionals from the industry, the bar and the bench. INTERNATIONAL JOURNAL FOR LEGAL RESEARCH & ANALYSIS ISSN 2582-6433 welcomes contributions from all legal branches, as long as the work is original, unpublished and is in consonance with the submission guidelines.

TIMELY DISPOSAL OF CASES – CHALLENGES **FOR JUDICIARY IN UPHOLDING JUSTICE**

AUTHORED BY - S. ARRIVAZHAGUY¹

“How invincible is justice if it be well spoken” – Cicero

Justice is a concept of legal theory in which righteousness and fairness should be administered without prejudice to anybody. It is what a person deserves and not what he wants. It is expeditious to a person to approach a court to obtain justice if his right is infringed by any other person, this sort of expectation from the public should be protected by the judiciary by pronouncement of judgment following principles of natural justice and also it should be made without any unreasonable delay. As said by the British Prime Minister William E. Gladstone, “justice delayed is justice denied”. This phrase is very apt to our Indian judicial system. It is one and the same to be injustice and waiting for justice. Since seventy years of our independence still the process of delivering justice to the people is delayed and there is more backlog or arrears of cases in almost all the courts, which cause frustration and makes the public to lose confidence towards the existing judicial system. Though our system of judiciary is considered as one of the best and independent for its path breaking judgment but still it has got a drawback of delay in justice. In most of the cases their grandsons appear for cases filed by their grandparents. Even though many committees have been formed to analyse the reason for the existing situation and given their recommendations to rectify the clog in disposing the cases. But still there is a big lacuna in disposal of cases by the judiciary. This delay is considered as more notorious in criminal cases than in civil cases. It is not a work of single man to rectify the arrears it should be a team work of bar and bench to achieve the goal.

Timely disposal of cases is an integral part of the fundamental rights of our constitution. It affects the financial position of the country and the industrial growth and development due to the stagnant of property related issues for years together. Thus it is really a challenge to our judiciary for speedy disposal of cases in the present scenario.

¹ Guest faculty, Government Law College, Viluppuram, Tamil Nadu.

Causes for the delay:

The problem of courts is huge backlog of cases in almost all the courts. It is serious threat to our judiciary to dismiss the alarm arising about the arrears of cases. This problem is not new to our judicial wing as it is prevalent from several decades. Though many committees were formed to find measures still it is not being solved. As a result of this committees report and suggestions the causes for the delay of cases is traced out,

1. Vacancies in judiciary:

This is the foremost causes for the pending of cases. The vacancy of judges start from the lower court and ends in the higher courts. This creates a great hazard in disposing of cases and paves way for backlogging of cases. Vacancy in one court creates a burden to a judge who is in additional in charge of that court and it creates a deep setback for speedy justice. This way of giving additional in charge will still makes the lacunae very big. In this issue both the judiciary and the executive are at daggers drawn. Out of overall vacancy in all the high courts only little more than the half parts filled and the remaining are left vacant which make more clog in appeal cases.

At one point of time the Supreme Court lambasted the centre and asked “whether the centre intends to bring the entire judiciary to a grinding halt by sitting on the recommendations of the collegium for appointment and transfer of judges to High Court across the country”.² While reacting sharply on the issue of appointment of judges, Chief justice of India T.S. Thakur said “vacancies in the judiciary, especially state high courts have become a national challenge and efforts were being made to persuade the government to expedite the matter. We have been talking very often about pendency of cases in the courts. 80% of the backlog is in eight to nine states. Uttar Pradesh, largest state in terms of population has alone 25 % of total pendency followed by other states like Tamil Nadu, Andhra Pradesh, Maharashtra and West Bengal. Burden of backlog on account of these states brings the entire judiciary under criticisms has the backlog is huge.”³

The next issue is NJAC (National Judicial Appointment Commission) was established by the

² <http://www.thehindu.com/news/national/cji-slams-centre-over-recommendations-of-collegium-on-judges/article8979565.ece> accessed on Jan 13, 2018.

³ Vacancies in judiciary a national challenge, says CJI T.S.Thakur available at <http://indianexpress.com/article/india/india-news-india/vacancies-in-judiciary-a-national-challenge-says-CJI.T.S.Thakur2985733/> accessed on Jan 20, 2018

Union government of India by amending the constitution through the 99th Constitutional Amendment Act, 2014 which was passed by both the houses of the Parliament by 2/3 of majority by replacing the collegium system for appointment of judges and later on it was struckdown by the constitutional bench of the Supreme Court as unconstitutional and again the collegium system was replaced for appointment of judges. In this way a little step was taken but still it is of vain. Law Commission of India in its report no.245 also recommended the need for filling vacancy of judiciary. It says that “data obtained from High Courts indicates that the judicial system is severely backlogged and it is also not being able to keep pace with current filings, thus exacerbating the problem of backlogs. The system requires a massive influx of judicial resources in order to dispose of the backlog and keep pace with current filings. The data indicates the need for taking urgent measures for increasing the judge strength in order to ensure timely justice and facilitate access to justice for all sections of society”.⁴ This loophole is one of the main cause for pending delay, it should be administered effectively and mostly all the vacancies of judges should be filled at least for one decade to reduce the backlog of cases and to decide the cases which were in series of numbers in our courts made by our grant parents.

2. Inordinate delay by way of adjournments:

“Adjournment have grown like cancer corroding the entire body of justice delivery system.”⁵ This view was reiterated by Hon’ble Chief Justice. R.M. Lodha on the first day when he assumed the office of CJI. The Honourable apex court through series of judgement emphasised and at time virtually warned all the participants in the judicial system namely the judges, the lawyers and the litigants that too liberal and lenient approach for the adjournment has been a major contribution to the problem of backlog of cases and hence the power to grant the adjournment itself has to be exercised judiciously and by reasoned orders.⁶

“It is sad but true, that the litigants seek – and the courts grant – adjournments at the drop of the hat. In cases where the judges are little proactive and refused to accede to the request of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigations. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional court compound the malady further. The case in hand is a case of such

⁴ Law Commission of India Report No245.

⁵ Shiv Cotex Vs. Tirgun autoplast Private Ltd. AIR 2011 SC 2557

⁶ 2015 AIR Journal/ Vol VIII – P.144

misplaced sympathy. It is high time that the courts become sensitive to delays in justice delivery system and realised that adjournments do dent the efficacy of the judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts ensure that on every date of hearing, effective progress takes place in the suit.”⁷

Though there is discretionary power to the judges for adjournment of cases such a discretion should not be at the whims and fancies of the judges, lawyers, or litigants. There should be a reasonable cause for adjournments or on considering the merits of the case. As discussed earlier there is inadequate number of judges, still then if there is more adjournments in cases it will surely create a situation to lose hope upon the judiciary and very nature of implementation of the Act itself becomes meaningless. This exact situation in our judiciary is very well pictured in one of the plywood advertisements which is unfortunate and ashamed on the judiciary. The statutes themselves provide for prescribed time limit to complete the case but adjournments goes on defeating the real objects of the Act. Thus this kind of adjournments should be prevented to make the Act fruitful and functioning of the judiciary more effective.

3. Inadequate number of courts:

In All India Judges Association case⁸ the Supreme Court directed that there should be fifty judges for a million population. The court noticed that the strength of the judges then existing was 10.5 to 13 per one million. While so many state government plead financial inequalities for creation of many courts. The proportion of present sanctioned strength of the judges bears to the total population is about 15 per million,⁹ at any point of time for about 20 percent of the vacancies of judges remained vacant. This is due to lack of proper planning on the part of High Courts coupled with inordinate delay in recruitment process and promotions. The issue relating to setting up of a new courts and filling up of vacancies engaging the attention of the courts before a bench presided over by D.K. Jain in two matters (W.P. (c) No.122 of 2008, Janhit Manch Vs. Union of India and C.A. No. 1867 of 2006 (Malik mazhar Sultan Vs. U.P.S.C. The subject related to infrastructure for the courts is monitored by another bench headed by Hon’ble Chief Justice of India in W.P. No.

⁷ Supra note. 5 para 15.

⁸ AIR 2002 SC 1752

⁹ Lawcommissionofindia.nic.in/reports/report239

1022 of 1989. Further in a recent judgment *Imtizaz Vs. State of U.P.*¹⁰ this Hon'ble court held that the Law Commission of India has been entrusted with the task of ascertaining the number of additional courts needed in the country after consulting the concerned stake-holders.

4. Inadequate staff strength:

There is large number of vacancies for stenographer and computer operator, at times the person appointed is with lack of knowledge and there is lack of proper service facilities which contributes for pendency of cases. Proper training is must for working staff as to the technical growth

5. Need for specialised knowledge:

There is lack of knowledge for some judicial officers in certain specialised areas like cybercrimes, food adulteration, etc., due to advancement in science and technology, it shows the impact directly on delivery of justice.

6. Increase in public Interest Litigation:

There must be a legal basis for any Public Interest Litigation regarding public interest but there are many ridiculous PIL filed before the Supreme Court, such ridiculous PIL's should be nipped out by the Supreme Court in the very beginning by refusing to admit such petitions. For example PIL seeking a ban on 'sardar jokes'. There is no legal basis to seek a ban on any such jokes unless and until they cross such red lines already existing in laws such as Indian Penal Code.

7. Redundant process and complexity in Indian Laws:

Lot of paper work and procedures also creates the clog, it should be taken care by the judges to make it in the place wherever needed and relax if possible.

1. Increase in filing of frivolous cases
2. Increase in number of appeals
3. Increase in number of days of vacation to judges mostly in civil courts.

¹⁰ AIR 2012 SC 642

Certain reasons for traffic in civil matters:

There are approximately around 21.3 million cases pending in various courts in India including Supreme Court. The magnitude of this problem was brought sharply into perspective in a magazine article last year which stated “if the nations judges attacked their backlog non- stop with no breaks for eating or sleeping and closed hundred cases every hour it would take more than 35 years to catch up.¹¹ The statute itself has given ample time to decide the cases but still there is more adjournment or unnecessary delay which undermines or defeats the real intention of the Act. There are major amendments to the CPC in 1999 and 2002 which also focuses on provisions relating to adjournment and time to decide the case. But still it does not remedied as expected. In Salem Advocate Bar Association II case the Supreme Court interpreted the restriction on adjournment has not curtailing the courts power to allow more than three adjournments. Some of the procedural causes for the delay are:

1. Filing of written statement: Order VIII of CPC provides for filing of written statement by the defendant within 30 days from the date of service of summons on him .provided that where the defendant fails to file the written statement within the said period of 30 days, heshall be allowed to file the same on such other day as may be specified by the court for reasons to be recorded in writing but which shall not be later than 90 days from the date of service of summons.
2. The process of service of summons: Order V of CPC deals with issue and service of summons to the defendant. When a suit was duly instituted summons were sent to the defendant to place his side arguments. This summon can be wantonly avoided by the defendant in some cases thus it contributes a delay.
3. Apart from the above points some of the instances to drag the cases are filing of interim applications and after obtaining the order delaying the procedure to continue, for example after getting the interim injunction delaying the procedure as far as possible. Similarly if the defendant has no defence then he tends to prolong the trial to prevent the day of judgement. The judges hearing the cases should also know about the facts of the case before the date of trial to frame issues and avoid unnecessary delay. It is required that the judges should be most talented to comply with the provision relating to discovery and inspection, admission and disposal of the case at the first hearing to overcome the delay. In addition

¹¹ <http://blogs.timesofindia.indiatimes.com/toi-edit-page/>

toit frequent transfer of judges and non-adherence to the possible chance of settlement outside the court as under section 89 of Civil Procedure Code also contribute for the delay.

REASON FOR THE DELAY IN CRIMINAL CASES:

The judiciary is co-equal branch of the government. The role of the courts in the society is not merely to adjudicate the disputes between the parties but also to protect the rights and liberties of an individual. This is mainly important in criminal matters than civil matters. In *Hussainara Khatoon v. Home Secretary, State of Bihar*¹² Justice Bhagwathi held that “right to speedy trial is a fundamental right which is implicit under Art. 21 of the constitution”. In *AbdulRahman Antulay Vs. R.S.Nayak*,¹³ Supreme court provides the guidelines for speedy trial. Right to speedy trial flowing from Art.21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this court has understood this right and there is no reason to take a restricted review.¹⁴

The rule of law will vanish if there is no effective judicial system. Our criminal laws is based on the principle of presumption of innocent until proven guilty but in actual case when the case is in pending trial, it has an impact on the liberty of the accused person especially if they are put in prison pending trial, thus as discussed earlier speedy trial is most needed in for today's set up. Pronouncement of the judgment is not an end point to provide complete justice. Even it extends to its implementation too. For example in *T.V. Vaitheeswaran Vs state of TamilNadu*,¹⁵ the Supreme Court held that prolonged detention to await the execution of sentence of death is unjust, unfair and unreasonable procedure and the only way to undo the wrong is to quash the sentence of death. If the delay exceeding two years in the execution of death sentence the person under sentence of death can invoke Article 21 and demand the quashing of the order. The delay in criminal case is not only because of the judiciary, the police officials also got a role to play in it. Few causes for the delay in criminal cases are summed up here:

¹² AIR 1979 SC 1360

¹³ AIR 1992 SC 1701

¹⁴ AIR 1992 SC 1702

¹⁵ AIR 1983 SC 361

Filing of FIR:

The criminal law is set in motion when the FIR is filed against a person. This is so but in some cases filing FIR itself is delayed due to various reasons. Some due to influential persons due to pressure and some due to hindrance on the part of the aggrieved persons to give a complaint and also the arrogant attitude of police and so on.

Delay in investigation:

In case of cognizable offence the police officer gets the power on his own to investigate the case as per section 156 of Criminal Procedure Code and in non-cognizable case the police officials get the power to investigate the case by an order from the magistrate. In *H. N. Rishbud state*¹⁶, a three judge bench states that investigation consists of

- a) Proceeding to the spot
- b) Ascertainment of the facts and circumstance of the case
- c) Discovery and arrests of the suspected offender
- d) Collection of evidence.....

After investigation if he finds there is sufficient collection of evidence against the accused then such accused shall be forwarded to the magistrate as per section 170 of Criminal Procedure Code or else the accused shall be released under section 169 of Criminal Procedure Code it is concluded that the police officials as vital role in speedy disposal of cases. If the investigation is completed without the delay, justice is made without delay.

Delay in filing of charge sheet:

When the investigation is complete the police officer is required to submit a report under section 173 of CRPC to the magistrate known as charge sheet. If the filing of the report is delayed it automatically ends in delay of justice. In *H.S. Bains Vs State*¹⁷ it was held that the Magistrate should apply his judicial mind to report and he is not bound by the conclusion drawn by the police, the judgement is made only after finishing the trial and the evidence recorded from the trial. He may differ with charge sheet or the final report.

¹⁶ AIR 1955 SC 196

¹⁷ 1981 SCR(1)935

Absence of accused:

Absence of some or all the accused or nonproduction of under trial prisoners at the time of framing of charges and during trial earnest efforts are not being made by the police in apprehending and producing the absconding accused. If the accused are residing outside the District or the state it compounds the problem further¹⁸

Tactics by advocates:

Advocate appearing for the accused seeking adjournments without adequate justification mainly to delay the trial or to win the witnesses by the accused. Even heavy workload in courts are also taken advantages by the advocates to press adjournment.

Controlling the case diary of courts for fixing cases:

“In the matter of controlling the case diary and in fixing of cases for each day working the presiding judges discharge important duty but there is a practice by the judges to leave the matter of fixing dates to their reader or sheristadars”¹⁹ hence the judges should not delegate power of fixing dates for hearing.

Delay in pronouncement of judgment:

After the conclusion of argument the judgment is reserved for months together. This is like adding fuel to the fire to the sufferings of the litigants. This kind of practice is very bad on the part of the judiciary. A judge in Patna high court expressed his wrath in following words when a magistrate took nine months to pronounce a judgment. “The magistrate who cannot find time to write judgment within reasonable time after hearing arguments ought not to do any judicial work at all. This court strongly disapproves of the magistrate making such a tremendous delay in the delivery of judgment.”²⁰

Sec 353(1) of Cr.PC clearly provides that the judgment in every trial shall be pronounced in open court immediately after the completion of the trial or at some subsequent time of which notice shall

¹⁸ Law commission of India.nic.in/reports/report 239. Accessed on 5th feb 2018.

¹⁹ Law Commission of India report,77 report.

²⁰ Sojagiya Vs. Ram baksh Mahto 1961 BJLR 282

be given to the parties. The Supreme Court of India explained this subsequent timeu/s 353(1) should be made without undue delay. The delay in pronouncement of judgment willaffect the principle of rule of law.

Apart from these causes, the delay even includes taking of evidence in instalments, asking unnecessary questions to the accused or to the witness and making excessive cross examination and wasting the precious time of the courts, absence of summary trial wherever needed and fixing of too many cases for hearing on any single day when it is not possible.

Conclusion and Suggestions:

Delayed justice is very much dreadful to the people and it affects more the poor as well as the financial position of our country is clogged together with the clog of land dispute cases with decade or more which hinders the development in business or industrial growth. Therefore our judicial system has become the organ to preserve the wealth of our country. The victims thinking of going to court for seeking justice goes a step backward because he knows that it will take years to prove the case and get the proper justice for a case. On the other side the criminals are taking more advantageous position and roaming freely without any guilt in case of due judgment. This creates a negative impact to the people at large and lose faith upon judiciary. As our Constitution provides an independent judiciary it can take essential steps independently to cut short the drawbacks. By which the judiciary can maintain the equilibrium in the scale of justice between delayed is justice denied and hurried justice is buried justice. To attain the balance in scales of justice, the following suggestions may be considered:

- The use of modern technology for introducing e-Courts to speed up the process of deciding cases as well as to provide more transparent and easy access to justice at all level.
- More fast track courts for disposal of long term pending cases.
- Creating more courts and filling the existing vacancies of judges with right person having a burning passion to give the very best to the litigant.
- Encouraging the concept of plea bargaining
- Control over unnecessary adjournments
- Preferring alternate dispute resolution for settlement of disputes at ease by using sec.89 of CPC.

- Increasing the days of work by minimising the vacations and also not to encourage the unnecessary strikes by advocates which stop the court proceedings.
- Encouragement of Lok Adalat.
- To make people aware of the legal proceedings.

Though the structure of court as power house radiating wisdom, happiness and peace, dedicated service is the foundation on which the reputation of the court rests. This requires not much brilliance. Conscience to give best to litigant is sufficient. It can be achieved only through the cooperation of Advocate – judges and staffs.

