

PACE OF TRIALS VIS – A – VIS FATE OF THE PARTIES

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Abstract

This study has been undertaken to analyze the judicial process and its ultimate effect not only on the parties but also in the economy as a whole. The whooping number of cases pending in various High Courts and in the Supreme Court reminds of one legal maxim “Justice delayed is justice denied” meaning that if a legal remedy is available to a suffering party but that remedy is not provided on time, then it is as good as denying a justice. The importance of justice is lost, if it is not provided on time thereby leading to violation of human rights. Justice delayed is a mockery of the judicial system in the country. In India, around 4.2 million cases¹ are pending in the High Courts. It is necessary to dispose the matters at the earliest otherwise it not only costs the parties involved in it, but also it affects the nation as a whole, particularly if the matter is pertaining to the nation or any project belonging to the government. It is high time that a system be evolved to resolve such issues at the earliest. Introduction of more fast track courts and appointment of more judges can help the derailed judicial system thereby providing speedy disposal of cases at the earliest. If the remedy is provided very late, then the very purpose of such redress fails as the legal redress provided to the party for suffering some injury is not provided on time then it is as good as providing no redress to the party. The very purpose of legal system in any country is to provide speedy trial.

INTRODUCTION

The present legal system is too slow in resolving various legal issues either due to the complexity of the system or because the system is overburdened or the parties in question uses political favours. Many a times moratorium laws hamper speedy disposal of cases. If timely justice is not provided, then it amounts to denial of justice. It is necessary to dispose cases timely so that the rule of law can be maintained. Access to justice is a fundamental right. Looking at the present scenario, there is a huge gap between the backlog cases and the total strength of the judges. This has derailed the present system of delivering redressal and is also hampering to keep pace with the current cases.

The 245th Report of the Law Commission of India² focuses on examining and suggesting additional judicial (wo) manpower required to clear backlog cases and its optimal utilization. The Supreme Court in the case of *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors.*³ asked the Law Commission of India to conduct an inquiry and submit its report on recommending creation of additional courts to cope the issues of delay in the cases so that such delays can be eliminated and costs in such cases can be minimized. The Law Commission of India thereafter requested all the High Courts to provide data in a prescribed format pertaining to litigation in each district falling within their jurisdiction. Still sufficient information was not provided by many High Courts therefore, due to insufficient information an in-house expert’s team was formed and a questionnaire was sent to various High Courts. As such, the data was later combined and the Law Commission came out with the noting’s that there is an urgency on appointing judges on priority basis and introduction of fast track courts.

A study was conducted in some of the High Courts and it was found that they take on an average four years to dispose of a case. It was also found that the worst performers were the High Courts of Allahabad,

¹ Mathur, S. and Mandal, P. (2018, February 12). 4.2 Million Cases Pending in High Courts, Allahabad Tops List. *the quint*, Retrieved from <https://www.thequint.com>

² Law Commission of India, Report No. 245. (2014) *Arrears and Backlog: Creating Additional Judicial (wo)manpower, India*. Available at http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf last seen on 02/07/2018.

³ AIR SC 2012 642. Criminal Appeal Nos.254-262 of 2012 [arising out of SLP (Crl.) Nos. 1581-1598/2009]

Calcutta, Rajasthan and Karnataka. The condition was worse in the subordinate courts, where the subordinate courts on an average takes 9.5 years for disposal of cases. Apart from this it was also found that on an average from the time of evidence stage to the final judgment stage, approx. 50% cases took more than 384 days⁴.

As on 22/06/2018⁵ around 438431 civil cases are pending (10 years and above) and around 277862 criminal cases are pending (10 years and above).

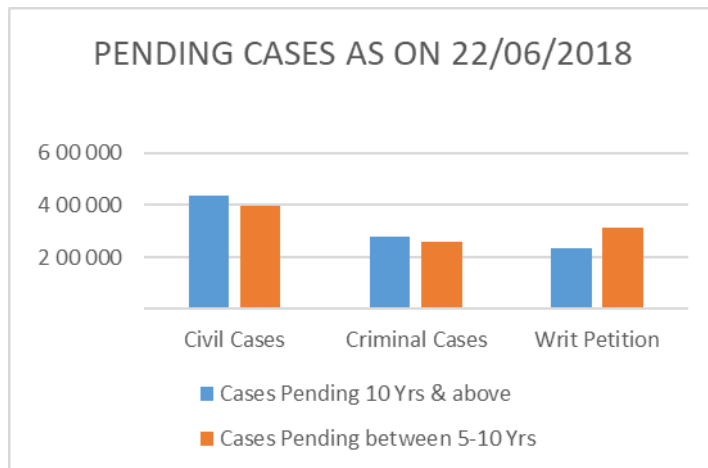


Figure 1: Pending cases as on 22/06/2018

The delay in the cases is at every stage of the case i.e. from lodging of a compliant to the dispersal of judgment by the Court. It also leads to breaking down of criminal justice system. The Supreme Court in the case of *Mantoo Majumdar v. State of Bihar*⁶ had stated that one cannot deprive a person of his personal liberty for an arbitrary period.

The Constitution of India explicitly provides under Article 39-A not only equal justice but also free legal aid to all the citizens of the country. But when one looks at the number of cases pending in the courts one realizes that here Article 39-A fails, the State has failed in addressing even basic issues thereby denying inexpensive justice. The one who suffers a lot are the poor and the vulnerable groups. The State has failed to protect the rights of these people. Sometime the time taken to settle the cases is so much that the issue is pertaining to one generation and the redressal is provided to the next generation.

PAST JUDGMENTS

In the case of *Hussainara Khatoon and Ors. v. State of Bihar*⁷ in the year 1979, the constitutional provisions that dealt with were Article 14 (Equality before law and equal protection of laws), Article 21 (right to life and personal liberty) and Article 39 A (right to free legal aid). This case was famous for right to speedy trial and introduction of the legal aid services to under-trials. There were under trial prisoners in Bihar, some of whom had been imprisoned for the term longer than the maximum punishment under the law. It was stated in the judgment that under all circumstances, the State should not avoid its constitutional obligations to provide speedy trial. Since, the courts is the guardian of the fundamental rights of the people, therefore, it is the constitutional obligation of the court to ensure that fundamental rights of the accused are not abridged. It is the responsibility of the court to issue necessary directions to the State to strengthen the investigative machinery. If necessary, the State should set up new courts and appoint additional judges to ensure speedy trial⁸.

⁴ Pradeep, T. (2017) 'Some HCs take average of 4 years per case'. The Times of India. Available at <https://timesofindia.indiatimes.com/india/some-hcs-take-average-of-4-years-per-case/articleshow/62111687.cms> last seen on 02/07/2018.

⁵ 2018, June 22. *NJDG for High Courts*, Retrieved from <http://njdg.ecourts.gov.in>

⁶ A.I.R. 1980 SC 847.

⁷ AIR 1979 SC 1369.

⁸ (2014) *The Hussainara Khatoon Case 1979*. Lawgic. Available at <https://lawgic.info/the-hussainara-khatoon-case/> last seen on 02/07/2018.

In the case of *Babu Singh and Ors. v. The State of U. P.*⁹ while dealing with the bail application, Justice Krishna Iyer stated that the justice system of India in grave cases indeed suffers from slow motion syndrome which adversely affects the fair trial. It is the right of the citizens to seek speedy justice, which is very much a component of social justice, so that the criminal is finally punished within a reasonable time to end the suffering of the innocent¹⁰.

Once again the court had affirmed in the case of *Sheela Barse v. Union of India*¹¹ that speedy trial is the fundamental right of every citizen of this country. This concept of speedy trial is getting recognized and is gaining importance. The Apex Court stated that there three pillars to represent social restraint viz; Legislature, Executive & Judiciary. The authority responsible for making laws is the Legislature and the Executive takes care of effective implementation of such laws made by the Legislature. On the other hand, Judiciary implements such laws in practical life. Thus, all the three strong pillars go hand in hand for delivery of justice.

In the case of *Kartar Singh v. State of Punjab*¹² it was said that fundamental rights are not mere rights and they are meant to be effectively enforced. The court stated that right to speedy trial is a fundamental right and no one can be denied this right. Being a democratic country, it is the responsibility of the State to protect the rights of the people. It was stated that if democracy needs to survive, then it is necessary that the rights of the citizens should not be compromised with¹³.

It took almost 10 years for the judiciary to pronounce death sentence to stalker of *Priyadarshini Mattoo*¹⁴, who raped and murdered her. Similarly, it took around 11 years to bring justice to *Jessica Lal's* family¹⁵.

CAUSES OF PENDENCY OF CASES

There are various causes resulting in pendency of cases. The malafide intention of the defendant to abstain from appearing in the Court is one of the cause. The intentions of the defendant is to drag the case in the Court as they know the likelihood of the judgment against him. So, just to frustrate the petitioner, the defendant drags the case. Many a times it is found that the parties file false cases just to harass the other. Parties also don't appear for cross-examination so that adjournment can be taken and the case can be dragged for longer period of time. It is also found that advocates tactfully divert their arguments by quoting irrelevant or unnecessary preceding.

On the other hand, the judiciary is overburden due to pendency of cases and many a times pendency of cases also takes place due to overburdened work of the public prosecutor. There are also not sufficient number of judges in the judiciary, resulting in delay of cases. Apart from this, the existence of rigid rules and large amount of paperwork also delays the cases.

EFFECTS OF PENDENCY OF CASES

Pendency of cases adversely affects the justice delivering system. The long pending cases first of all shake the confidence of the parties on the judiciary. The long pending cases leads to high litigation costs thereby adversely affecting the petitioner or the respondent. The delay also causes mental and physical agony to the parties. It is found that many a times, the under-trials spend more time in jails as compared to the maximum punishment awarded under the Act.

⁹ AIR 1978 SC 527.

¹⁰ Chhavi, A. *Right to Speedy Trial-Problems and Solutions*. Legal Service India. Available at <http://www.legalserviceindia.com/article/I297-Right-To-Speedy-Trial.html> last seen on 02/07/2018.

¹¹ 1986 AIR 1773.

¹² 1994 SCC (3) 569.

¹³ Aditya, S. (2007) *Terrorism and the Rule of Law: A Case Comment on Kartar Singh v. State of Punjab*. Bepress. Available at file:///C:/Users/Amity/Downloads/fulltext_stamped.pdf last seen on 03/07/2018.

¹⁴ Santosh Kumar Singh v. State, (2010) 9 SCC 747.

¹⁵ Manu Sharma v. State (NCT of Delhi), (2010) 6 SCC 1.

It is also found that due to long pending cases economy gets affected. The cases pertaining to infrastructure projects are hard hit. According to Economic Survey 2017-18¹⁶, the data from the Central Ministries show that the infrastructure projects close to approx. Rs.52,000 crore are affected by court orders.

REMEDIES TO OVERCOME PENDENCY OF CASES

To ensure speedy trials, it is necessary to regulate judicial appointments at the earliest and the same should be based on the ratio of pending cases/workload per judge. The judicial transfers should take place only and only after considering the workload per judge. Strict time frame should be framed for disposing of the cases particularly the trial cases. The party who files a false case should be heavy penalized. First preference to be given to Alternative Dispute Resolution (ADR) and Lok Adalats. Introduction of *Nyaya Panchayats* at smaller levels should be authorized to settle the small or petty cases and then people should approach *Lok Adalats* which are established at lower levels for speedy disposal of cases. The burden of long pending cases can be eased if all the session trials are dealt with by the Fast Track Courts. All the cases with compoundable offences should be disposed of on priority basis. More public prosecutors should be appointed so that the workload per public prosecutor is reduced. It is also to be seen that the cases assigned to judges should be according to their specialization. All redundant laws should be repealed. Apart from this accountable administrative staff should be appointed. If the court working hours are increased and the holidays are curtailed, then it will help the judiciary to a great extent in reducing the pile of pending cases. It is also necessary to recall retired judges as this will help in clearing the backlog cases. It is also necessary to generalize economic and commercial cases separately as they are usually complex in nature and have to be handled by an economic expert. Another remedy is if the original and commercial jurisdiction of High Courts is either removed or downsized and the lower judiciary be allowed to deal with such cases, then to an extent the pendency of cases can reduce. It is to be remembered that the pendency of cases in the Tribunals, various High Courts and Supreme Courts have stalled many projects of the government¹⁷.

ADVERSE EFFECT ON THE ECONOMY

It is found that due to judicial orders around 60% of the cost of various projects overruns. It is also found that in the case of Intellectual Property Rights (IPR), injunctions have led to around 60% of cases being stayed. Such delays which last on an average to 4 – 3 years dissolve the relevancy of the work. The judicial orders have also adversely hit the projects carried on by the ministries of railways, road and power. It is stated by the Economic Survey of India 2018 that it is though difficult to find out the exact cost of judicial delays and pendency, but it is found that in case of government projects around six infrastructure projects are stayed thereby hitting the economic growth. It is found that the delays, injunctions and pendency of cases are overburdening the courts thereby not only adversely affecting the progress of cases, but also affecting the economy at large¹⁸.

CONCLUSION

It is found that majority of the cases progress at a very slow pace, be it the judges or the public prosecutors. Neither the judges, nor the public prosecutors with too many cases, can give sufficient time to every case. Many a times the public prosecutors and the advocates have their cases listed at the same time in different courts, this as such results in taking adjournments and exemptions. The long pending cases cause anguish in the minds of both the parties. Therefore, to achieve social justice it is necessary to dispose of the cases at the earliest. In the case of *Abdul Rehman v. R. S. Nayak*¹⁹ the Apex Court of the country observed that ultimately it's the court that can decide whether right to speedy trial to anyone has been denied or not. The courts have also stated that every time the proceedings cannot be quashed because it is not in the interest of the society. It is therefore, necessary to reform the judicial system as the judiciary is accountable.

¹⁶ Ministry of Finance, Government of India. *Economic Survey 2017-18*, Retrieved from <http://mofapp.nic.in>

¹⁷ Economic Survey 2017-18. *Ease of Doing Business' Next Frontier: Timely Justice*. Available at http://mofapp.nic.in:8080/economicsurvey/pdf/131-144_Chapter_09_ENGLISH_Vol%2001_2017-18.pdf last seen on 03/07/2018.

¹⁸ Ashok, B. (2018). *Economy hit as court stay orders delay govt. projects*. Hindustan Times. Available at <https://www.pressreader.com/india/hindustan-times-delhi/20180130/282398399852402> last seen on 03/07/2018.

¹⁹ 1992 (1) SCC 225.