

Rethinking Criminal Justice Administration: Efficacy Of Indian Courts

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Synopsis

Introduction.....	189
Basic Problems of Indian Judiciary:-	189
Specific causes of delay in criminal cases:.....	193
Delay in investigation:-	193
Problems while filing of an FIR:-	193
Delay in filling of charge sheet:-	194
Unnecessary adjournment:-.....	194
Excessive cross examination:-	194
Evidence to be taken in one court sitting:-	195
Lengthy Arguments:-	195
Summary trial:-	196
Huge amount of Backlog in Indian Courts	196
Speedy Trial: A Requirement since long time	200
Conclusion & Suggestions.....	201

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Introduction

The oldest and most reiterated saying in law is “justice delayed is justice denied.” But the present criminal justice administration conditions reflect that this saying has not been taken seriously. Whenever we talk of betterment of judiciary or effectiveness of judiciary we always debate that there is something lacking in the legislations. As a result, the Parliament passes new laws which further result into increment of new cases, misuse of laws and leads to the exploitation of these new legislations by people thus, resulting in hampering of justice. The recent examples of such activities are Dowry Prohibition Act, Juvenile Justice (Amendment) Act of 2015 or Women Empowerment related laws.

If we closely watch then we will find out that all the laws brought about for societal betterment are getting highly misused. This is merely because out of all these Acts many are brought out by the Legislature in a very haste manner. The new laws which are brought about by the Legislature are given as a shield of protection to the citizens of the country but they are being used as a sword because we follow basic presumptions that the one who is the victim and is filing a Complaint or an FIR is innocent. This presumption has led to a high level of misuse by the people as those who want to take revenge use these new laws as a shield for themselves while filing a wrong complaint against their rivals who might be innocent. The best example of this type of law is Protection of Women from Domestic Violence under Section 498-A of Indian Penal Code whereby women are misusing this law at a speedy rate.

Basic Problems of Indian Judiciary:-

According to the Principles of Natural justice, the presumption is that complainant is always innocent as a result of which all the laws are inclined towards the complainant. This leads to the situation where even if somewhere judges want to give certain reliefs to one wrongly trapped they are unable to do so.

The problem here does not lie with the judiciary and the courts but with the fact that even for small causes the legislature is bringing about new laws. The whole system

itself is not clear on as to what it wants. The hue and cry after the Nirbhaya Gang rape case³ led to new amendments in Juvenile laws and bringing about new Juvenile Justice (Amendment) Act of 2015. But what is to be seen here is that the judiciary is again confused as to which criminal is to be treated as an adult under the new provisions and which to be not. The new law clearly states that any juvenile who commits a heinous crime will be tried as an adult but what we don't realize is that the one who has committed the crime for the first time should be tried as a juvenile only. Rather, the ones who are habitual offenders should be treated as an adult under this law. Any judicial decree in a particular case is effective only when the case has a speedy discharge and the punishment for the offence is meted out as soon as it is clear whether the offence has been committed by that person or not. This whole process must be completed without any delay.

The present case scenario is where any and every trial takes a huge amount of time whereby the people involved in the case either become too old or die during the pendency of the trial. Due to these situations sometimes witnesses fail to recall the exact events of any case leading to self-made stories which manipulate the facts and as a result the offender gets acquitted. In such doubtful situations, evidences and misleading facts lead to miscarriage of justice. If we look at a coin we can clearly see that there are two sides: heads and tails. There are cases when some innocents are being put behind bars facing trial just because they are unable to prove themselves as innocent. It is apparent in Indian Courts scenario that the trial and investigation process takes a long time to be completed. As a result of all this, such a person who is innocent and is facing trial has to lead a significant part of his life in torture of police remand /station and has to go through the tedious process of issuance of multiple dates for hearing, detour of tribunals and the related process which not only affects his job but also his status in society. So where we can see that even for

³ *Ram Singh and Ors. v. Union of India* (2015) 11 SCC 220 (India).

the murder trial of Prime Minister Rajiv Gandhi it took around seven years to solve.⁴ Then how can we even expect that the trials of normal citizens of the country can be disposed off speedily.

Delay in justice has been very obvious, lucid and explicit cause:

1. Many laws in the present time are the ones which are being carried on since the British era in India and if we even think of improving such laws then the process is not easy as apart from legislative procedure, we also have to think about societal barriers such as caste, religion, politics, etc. There is not proper ratio in number of courts available in country as per the population of nation.
2. Whenever there is any fixation of time period for certain type of cases then also the trials and procedures take such a long time that many witnesses die, the parties become old and face problems in coming to the court for the final disposal of their case.
3. In democracy, importance is given to the decision of majority, the attorneys take judicial administration very lightly and keep on asking for further dates. As a result, the minority group of attorneys who work punctually for the speedy disposal of cases cannot take their own stand which leads to the wasting of their dedication for their cause. If we really want effectiveness and betterment of our criminal justice administration, then we should take actions within specified time after uniting all the bodies involved in dispensing of justice with a healthy mind and a strong will power in totality.
4. Like the other organs and institutions of the Government, even the judicial system is corrupted. The various recent scams like the CWG scam, 2G scam, Adarsh Society scam, including rapes and other atrocities in the society etc. have emphasized on the drawbacks in the functioning of Indian judiciary.

⁴ Nalini and 3 others v. The Governor, State of Tamil Nadu, Raj Bhavan, Guindy, Chennai and 4 others, (1999) SCC Online Mad. 882; (2000) 1 CTC 28.

There is no system of accountability. The media also do not give a clear picture on account of the fear of contempt.⁵

5. Another problem which is being faced is that of lack of transparency in the judicial procedures. A person cannot file an RTI for the legal system as it is out of its ambit. Thus, in the functioning of the judiciary, the substantial issues like the quality of justice and accountability are not known properly.⁶

Along with procedural issues, another most important issue is the usage of modern resources such as technology and cyber influence in judicial administration which should be effectively used to the best of their capacity. The decrees which are being passed by the courts in cases which affect the society at large must be analyzed and accepted as a positive revolution by the people. The best examples of these are the cases of *Arnesh Kumar v. State of Bihar*,⁷ whereby guidelines were laid down for arrest under Section 498-A of Indian Penal Code and *D K Basu v. State of West Bengal*,⁸ whereby arrest guidelines were given for the arrest of a person and also the rights of the arrestee. These cases clearly elaborate that it is not only the duty of the judges but also police authorities, attorneys, witnesses and parties of the case to cooperate for speedy trial and those who become a barrier in this should be strictly sanctioned by the courts.

⁵ Rumani Saikia Phukan, Five Major Problems the Indian Judicial System is Facing, October 31, 2014 available at <https://www.mapsofindia.com/my-india/society/five-major-problems-the-indian-judicial-system-is-facing/>.

⁶ Ibid.

⁷ (2014) 8 SCC 469; (201) 6 SCC (Cri) 25; 2013 SCC Online SC 1127 (India).

⁸ (1998) 6 SCC 380; 1998 SCC (Cri) 1454 (India).

Specific causes of delay in criminal cases:

Delay in investigation:-

Any offence that has been committed first needs the filling of FIR after which the procedure for justice delivery starts.⁹ After this the police officer gets power to investigate the case,¹⁰ and where the case is non-cognizable in nature, police officer proceeds with the investigation as soon as magistrate order him to do so.¹¹ The provisions of Code of Criminal Procedure clearly state that after investigation if police officers and investigating officers do not find any relevant evidences then they have to release the arrestee,¹² otherwise they have to present him before the Magistrate if evidences are sufficient against him.¹³ Thus, we can clearly see that the omittance of an arrestee depends upon the investigation done by the police authorities and judiciary cannot interfere in their area of work. This has been clearly laid down in a seven-judge bench decision of *A R Antulay v. R S Nayak*,¹⁴ “on the ground of malafide investigation only High Court has power to interfere in process of investigation otherwise not.” Thus it is clearly shown that to start an investigation of a case formalities need to be covered first and then only it can be started.

Problems while filing of an FIR:-

- a) FIR based on cryptic information:- Many a times the witnesses or the complainants are unable to produce all the required information of an offence. As a result the FIR cannot be lodged on time the complaint is made. This results in the delay in investigation due to non-filing of an FIR.

⁹ Code of Criminal Procedure, 1973 § 154.

¹⁰ Code of Criminal Procedure, 1973 §156.

¹¹ Code of Criminal Procedure, 1973 § 155.

¹² Code of Criminal Procedure, 1973 § 169.

¹³ Code of Criminal Procedure, 1973 §170.

¹⁴ (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531 (India).

However, in the case of *Patai alias Krishna Kumar v. State of U.P.* it was held that “it is not possible for an informant to give all the details of a cognizable offence. It is enough that the complainant has disclosed that a cognizable offence has been committed. Thus, the police authorities need to file an FIR if such an event has been disclosed.”¹⁵

- b) The concept of ‘Zero FIR’ was also given by courts whereby it was stated that if the jurisdiction of police station is not confirmed then the police of the police station who first witness the crime scene are the ones who can file a Zero FIR in such cases. But many a times police keep on discussing on the crime scene as to where the FIR should be registered.

Delay in filing of charge sheet:-

Due to the delay in filing of an FIR and Delay in investigation there is always a delay in filing of the charge sheet by the police. It is given to the Magistrate only once the whole investigation is completed.¹⁶

Unnecessary adjournment:-

The advocates and the judges are in the habit of adjourning the case for next dates, no matter how long it takes for the disposal of the case. This issue has been dealt by Law Commission of India also.¹⁷ However, this habit of judicial people to take sick leaves or to start protest and become a hindrance in the working of courts also leads to the hindrance in the speedy delivery of justice.

Excessive cross examination:-

Cross- Examination is a practice which was introduced for the purpose of extracting relevant facts out of the witnesses during the trial if they are

¹⁵ (2010) 4 SCC 429; (2010) 22 SCC (Cri) 854 (India).

¹⁶ Code of Criminal Procedure, 1973 § 157.

¹⁷ 77th Report, Law Commission of India available at <http://lawcommissionofindia.nic.in/51-100/Report77.pdf> .

contradicting their own previous testimony. But unnecessary and scandalous questions which are asked during cross-examination leads to harassment of witnesses' and ultimately leads to the delay of cases. Even the legislature has specifically mentioned in Evidence Law that putting up any indecent and scandalous questions is prohibited.¹⁸ Furthermore, it is the responsibility of respective courts to forbid the use of any such useless questions which would ultimately lead to delay in their working.¹⁹ Law Commission in its report has clearly stated that: "sometimes questions are put to the witnesses in cross-examination which are unnecessary, slanderous and harassing. It is on such occasions it becomes necessary for the trial judge to control the proceedings"²⁰

Evidence to be taken in one court sitting:-

In every case whereby the police authorities come and file the evidence, it should be done in one sitting of the court for that case rather than many dates. It's a practice for the police authorities now to file different evidences of a particular case on different dates. This leads to confusion and manipulation of facts, evidences and inducement of threats to the witnesses finally resulting in delay of the case.

Lengthy Arguments:-

For every case, the attorney's submit lengthy arguments before the court which ultimately result in the delay of cases. The courts should restrict this practice and make it clear that the arguments should be to the point, clear, specific and simplified. The advocates should not give baseless arguments

¹⁸ Indian Evidence Act, 1872 § 151.

¹⁹ Indian Evidence Act, 1872 § 152.

²⁰ 77th Report, Law Commission of India available at <http://lawcommissionofindia.nic.in/51-100/Report77.pdf> .

and take away court's precious time. Rather, they should come well-prepared to the court with their arguments so as to justify their case.

Summary trial:-

Power to try summarily lies with the court where the offence is punishable with imprisonment for less than two years. It is a good way to ensure speedy trial.²¹

Huge amount of Backlog in Indian Courts

Indian judiciary is an independent body and cannot be ruled upon by anybody else in person or institution. The legislature and executive have some judicial powers but they don't have the right to encroach upon the working of judiciary. Yet our Indian judiciary cannot be said to be the best in the world or that it doesn't have any flaws or problems. The biggest flaw or problem of Indian judiciary is the backlog of cases in the Indian courts. The number of pending cases are increasing day by day. Even the highest authority or the Chief Justice of India pleaded for some remedy to the Prime Minister of India, Mr. Narendra Modi, to help in clearance of this huge backlog. This shows how weak and helpless our judiciary is.

Backlog in Indian courts is not only a result of huge vacancies of judges but the fact that the available number of judges are not able to dispose of the cases early. Normally a criminal suit would take maximum six months to be completed but the time duration taken usually exceeds this limit. Similarly for a civil suit also. Petty civil suits can be solved in a maximum duration of three months but they take more than a year and sometimes even twenty years to be solved.

Recently, Ex-Chief Justice of India, Mr. Tirath Singh Thakur "attributed over three crore pending cases to a huge gap in the judge-population ratio and sought 70,000 more judges to clear the backlog."²² The rate of disposal of cases by a judge in a year

²¹ Code of Criminal Procedure, 1973 § 260.

²² Pradeep Thakur, *Judges' Vacancies Not Sole Reason For Pending Cases*, TNN, June 20, 2016.

varies from state to state. For example in states such as “Kerala, the rate of disposal of cases per judge per year is as high as over 3000 and in Tripura it is 2,800 cases. While in states such as Jharkhand and Bihar, it is merely 255 and 274 cases.”²³

The judge-population ratio is a major factor in the pendency of cases²⁴ but the facts state that states with less number of judges have less pending cases and states with more number of judges have more pending cases. “The best example of this is Delhi and Gujarat where the former has 47 judges per million population and the latter has 32 judges per million population. On the other hand, there are states such as Tamil Nadu and Punjab which though huge in size and population but less in number of judges have less number of pending cases. Tamil Nadu has 14 judges per million population and Punjab has 24, yet their pending cases are far too lower than Delhi and Gujarat.”²⁵

This report clearly indicates that major backlog of Indian cases is in the courts of the big states where even the judge population is in accordance to the population ratio. Delhi, Gujarat, Chandigarh, Maharashtra, Karnataka, Jharkhand, Bihar all combined together form the largest portion of the country’s geographical as well as demographic area. These states have the judge population above the national average of 17 yet they are the ones who have the highest number of pending cases. “The states which reported the largest number of more than 10-year-old cases are: UP - 6.6 lakh; Gujarat - 5.2 lakh; Maharashtra - 2.51 lakh; Bihar - 2.3 lakh; Odisha - 1.83 lakh and West Bengal 1.51 lakh. Among the larger states, Punjab recorded the least number of over 10 year-old cases at 1,328 only.”²⁶

²³ *Id.*

²⁴ <https://www.lawteacher.net/free-law-essays/administrative-law/administration-of-criminal-justice-law-essays.php>

²⁵ See generally *Id.*

²⁶ Dhananjay Mahapatra, *Over 22 lakh cases stuck for more than 10 years: Supreme Court*, TOI, August 11, 2016.

Justice V V S Rao of Andhra Pradesh High Court and Ex-Chief Justice of India, Mr. T S Thakur said in a press conference that over 3 crore cases are pending in the courts of India from the basic to the highest level. Every year number of cases registered is more than the number of cases dismissed. Thus, as a result the logjam goes on increasing. CJI requested the appointment of more judges in the High Court's so as to get rid of this problem; three decades ago Law Commission of India recommended a total of 40,000 judges to solve this problem. But still the total number of judges is around 20,000. Thus, this problem remains unsolved.

Study by Law Commission in 2014 suggested that more than a 1000 number of judges are required to clear the pendency in the High Court's alone. But still the country's judge population remains poor and utterly desolate. Some criminal cases are pending since a very long time and as a result of which the innocent are still caged behind the bars even without fault. The judiciary needs to stop moving at a snail's pace and speedy justice delivery is required so that the innocent do not suffer. CJI made some recommendations for this problem one of which was to clear the cases which are more than 5 years old. It is a good point and should be taken into action as soon as possible because seeing the current rate at which the judiciary is working; it will take more than 6 decades to clear out this logjam.

In a statistic released by the Supreme Court by May 31, 2016, the courts across the country had 2.18 crore cases pending of which 59.3 lakh are more than 5 years old. Out of this 59.3 lakh cases, 22.3 lakh are more than 10 year old cases.

"The National Judicial Data Grid reports on 10th November, 2017 revealed the statistics of the month of October as:-

- Total cases disposed- 8,22,538 out of which civil were 2,21,485 and criminal were 6,01,053.
- Total cases filed- 9,14,892 out of which civil were 2,00,411 and criminal were 7,14,482.
- Cases disposed in last month which were more than 10 years old were 33,668.

The statistics also revealed about the number of pending cases. They showed that over 22,77,267 were pending over 10 years (8.82%); 41,57,419 of between 5 to 10 years (16.11%); 73,90,407 of between 2 to 5 years (28.64%); and cases pending since less

than 2 years are 1,19,81,243 (46.43%). On total accounting it is revealed that 2,58,06,336 number of cases are pending since more than 10 years.”²⁷

Apart from the above-mentioned data, there is also the case of Senior Citizens and Women cases pending in huge numbers. According to National Judicial Digital Grid, pending cases filed by *senior citizens* were 8,89,595 civil cases and 2,53,039 criminal cases in the month of November. As a result, the total number of cases filed by senior citizens which were pending were 11,42,630. Cases filed by *women* stood at a pendency of 13,25,954 for civil and 13,14,949 for criminal which resulted in a total of 26,40,900. All these figures show the slacking of our judiciary and how casual their working is. This adds as a major factor to the lagging behind of India in the race of development.

People go to the court to get justice and remedy for their problems, but it takes a very long time for the Indian courts to deliver it. If we take a case of a senior citizen only, we get to know that how much they have to suffer for attaining legal solution to their problem. Now, if such an old person files a case in the courts and the judge takes more than ten years to give the judgment, then how will the cases finish? There's no guarantee of life at such an age. Nobody knows when they will die; it might be the next day or more than ten years. But there's always this dilemma. If the judiciary will take more than ten years to solve a case, it might happen that the person who has filed the case might die even before the case would finish. Thus, the pendency of case takes place for a long time and the case would not be solved.

Similar is the case for a woman. If a woman has filed a criminal case, probability is that it might get solved in a year or two. But still some cases are pending for more than five years. If a woman has filed a civil suit, chances are that that suit will last for more than ten years if the court in which it is filed already has thousands of pending cases.

²⁷ http://njdg.ecourts.gov.in/njdg_public/main.php (The Indian government's e-courts website) accessed on 10th November, 2017.

Justice Markandey Katju even said that a judge should not have more than 300 cases as pending in his court in a month. But the digits stood at 15,000 to 30,000 in all the Indian courts. The reason for this problem is the number of cases filed by the State and the Central government. More than 70% cases in Indian courts are filed by the government. But they should be demarcated as being minor and serious ones. Minor cases should be cleared as soon as possible, within a month or two or better transferred for alternate dispute resolution²⁸ rather than litigation. But the major cases should not take more than two years to be cleared out. Another major problem is the filing of huge number of PIL's. The courts accept them and as a result the judges have to juggle their time between the hearing of cases as well as the PIL's, which is a lot more time consuming. Justice Bhagwati, in the landmark judgment of *Janata Dal v. H. S. Chowdhari*,²⁹ had cautioned against the misuse of PIL for personal and political motives.

Speedy Trial: A Requirement since long time

Pondering over the current situation of the criminal justice administration and the amount of backlog of cases in Indian Judiciary we can clearly see that a system for speedy trial and justice delivery is an urgent requirement. This has been discussed by the courts since a long time in various judgments. The first of all the cases to discuss this was *Hussainara Khatoon v. State of Bihar*,³⁰ where a PIL was filed for the prisoners who were under-trial. Justice Bhagwati held that: right to speedy trial is a fundamental right which is implicit under Art.21 of the Constitution. Later on, it was further again mentioned by Justice Krishna Iyer in the case of *Mantoo Majumdar v. State of Bihar*,³¹ where two under-trial prisoners were kept in jail for seven years without the filing of charge sheet before the court. Same thing has been reiterated

²⁸ Hereby referred as "ADR".

²⁹ (1992) 4 SCC 653 (India).

³⁰ (1980) 1 SCC 108: 1980 SCC (Cri) 50: 1979 Cri LJ 1052: 1980 MLJ (Cri) 93: AIR 1979 SC 1377 (India).

³¹ (1980) 2 SCC 06: 1980 SCC (Cri) 504: 1980 Cri LJ 546: 1980 BLJR 577: AIR 1980 SC 847 (India).

again and again by the court in cases such as *Kadra Pahadiya v. State of Bihar*,³² *T V Vatheeswaran v. State of Tamil Nadu*,³³ *A R Antulay v. R S Nayak*,³⁴ *Supreme Court Advocates on Record Association v. Union of India*,³⁵ *Ranjan Dwivedi v. CBI*,³⁶ *Imtiyaz Ahmed v. State of U.P.*³⁷

Thus, if we look at all these cases we are able to see that the judges are focusing on speedy trial of under-trial prisoners and also for speedy delivery of justice to all these people who are behind bars.

Conclusion & Suggestions

Before concluding the paper, what needs to be understood is that when the paper here says that there is a lack in the efficiency of the working of the Criminal Judicial Administration, it is not only raising a question on the working of courts but also on the working of related bodies such as advocates, police authorities, prosecution, etc. All that this paper intends to say is that the courts cannot work solely and make the system for criminal justice more efficient. The problem with judicial working is not only because of the corruption involved in this organization or lack of transparency, it is also because of many other factors such as advocates taking leaves, protests, police authorities not working properly, etc. The other related governmental and administrative bodies also need to work efficiently. They all need to go hand-in-hand so as to be efficient enough that nobody would raise a finger on their working.

What needs to be done now is to bring new development, modifications and adjustments in the working of the whole judicial system as well as for the police authorities. The number of vacancies for the appointment of judges which are being exhausted every year needs to be filled up by the government. More and more

³² (1983) 2 SCC 1044: 198 SCC (Cri) 361: AIR 1982 SC 1167 (India).

³³ (1983) 2 SCC 68: 1983 SCC (Cri) 342: 1983 Cri LJ 481: AIR 1983 SC 361 (2). (India).

³⁴ (1988) 2 SCC 602: 1988 SCC (Cri) 372: AIR 1988 SC 1531 (India).

³⁵ AIR 1994 SC 268(India).

³⁶ (2012) 8 SCC 495 (India).

³⁷ AIR SC 2012 642 (India).

judges need to be appointed so that the burden of judiciary can be reduced and the disposal of cases can be done as soon as possible. More and more Lok Adalats and Fast-track courts need to be set-up in every district, so that the petty cases can be dealt with them at a speedy rate and justice can be delivered on time. Seeing the number of cases that are pending as mentioned according to the National Judicial Data Grid, it is clear that our judiciary is not only being over-burdened but also lacking in speedy justice delivery.

The advocates need to be more active in fighting their cases. They should not take unnecessary leave from the court or go on asking for more and more adjournments because it may fill their pockets but it is also leading to delay in delivery of justice as well as adding to the increase in the burden of the court.

The police authorities need to be more vigilant. The police are the first step to whom a person comes for the filing of a complaint. They need to be faster in searching and collecting of evidences and also in submitting their reports to the Magistrate so that the case can be disposed of speedily.

In the end the researcher would like to conclude by saying that if the authorities work hand-in-hand, they will definitely be able to deliver justice to the victims in time and thus will ultimately lead to increasing the efficiency of Criminal Justice Administration in India.