Justice Delayed is Justice Denied

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Synopsis

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Introduction

The Constitutional Bench of the Hon'ble Supreme Court of India held in the very recent judgment of 2016 that "access to justice" is a fundamental right guaranteed to a citizen by article 14 and article 21 of the Constitution[2]. The bench comprising of, the then Chief Justice of India T.S. Thakur and justices Fakkir Mohamed Ibrahim Kalifulla, A.K.Sikri, S.A. Bobde, and R. Banumathi observed that right to life under article 21 is not mere physical existence but "access to justice" is one of the facets of it. The bench further enumerated the four main aspects of "access to justice". They are:

- The need for adjudicating mechanism
- The mechanism must be conveniently accessible in terms of distance
- The process of adjudication must be speedy
- The process of adjudication must be affordable for the disputants

One of the most fundamental needs to ensure "access to justice" is to have an adjudicating mechanism, which is conveniently accessible and affordable. Another important aspect to ensure "access to justice" as a constitutional value is that such adjudication must be speedy. According to the very famous saying "Justice delayed is Justice denied" the mere existence of a justice mechanism will not be able to ensure justice; the so mechanism is also required to provide speedy justice. If the process of justice is slow, time-consuming and laborious it becomes frustrating for the people seeking justice and this makes them deter from even the thought of resorting to such a mechanism as an option to resolve any dispute. There is no doubt that there have been tremendous changes in the judiciary from the day British left the country to the present scenario. But along with the increase in a number of courts, there has been a tremendous change in the law and legal processes which had consequently made the justice procedure more complex and slow. With the increase of literacy, awareness, and media, people are well aware of their rights and their liabilities resulting in an increase in the number of cases. This situation has led to a collection of piles of cases in the courts at all the levels. Due to the overworked and the under-staffed judicial system the Indian judiciary is constantly being burdened by the ever increasing demand of the society. It is extremely in the

[2]Anita Kushwaha and Ors. Vs Pushap Sudan and Ors. AIR 2016 SC 3506 (India).

need for improved infrastructure and human resource to deal with the backlog of over 30 million cases in the subordinate courts alone.

Justice Krishna Iyer while dealing with the bail petition in Babu Singh v. State of UP[3], remarked, "Our justice system even in grave cases, suffers from slow-motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

Status quo of the criminal justice administration system

Judiciary is an organ of the government and is co-equal to the executive and legislature. The legislature makes the laws, the judiciary interprets it and the executive implements it; but the role of judiciary and courts can't be confined to adjudicating the disputes between two parties but it also plays a very important role as the protector of rights and liberty of individuals; especially for criminal cases, where the wrong is against the society which needs to be protected from the wrongdoer.

The Rule of Law propagated by the constitution of India can't exist without an effective judiciary. The Justice system needs to enforce rights in a timely manner in a way that inspires public confidence. Unfortunately, the efficiency of the justice system of India, due to a huge backlog of cases, is encumbered.

The first problem that halts the efficient working of the judiciary is the number of judges. Currently, the Indian criminal Justice system is over-burdened due to the under- staffed Judiciary. The law commission in its 1987 report recommended, a least of 50 judges per million population; in spite of this, in India, the judge-population ratio is only 18 judges per million population. According to 2011 census, the population hiked up to 1210.6 million and according to the recommendation of the law commission, 60,530 judges are required for clearing all the cases. This number is far more than the number of judges in the judiciary today, which are approximately only 18,000 in total. In order to clear all the pending cases, the justice administrative system needs to appoint a huge number of judges as soon as possible.

[3] Babu Singh v. State of UP 1978 SCC (1) 579 (India).

The second problem arises due to less number of judges, the statistics of cases has increased manifold. The number of cases is increasing continuously, whereas the rate of disposal is not been able to increase itself accordingly; this situation leads to the pendency of a huge pile of cases. To look closely at the criminal justice administrative system specifically, let us look into the statistics of criminal cases in India.

As per the "Crime in India 2015 statistics" report of 2015 of National Crime Records Bureau, the total number of cases for cognizable offences under IPC, which were sent for the trial was 1,05,02,256, out of which 84,53,784 cases were the pending trial cases from the previous year i.e. 2014 and 20,56,716 cases were sent to trial in the year 2015. Out of 1,05,02,256 cases, only 13,25,989 cases were disposed of the Criminal Administrative system; 6,21,320 cases were convicted and 7,04,669 cases were acquitted or discharged. At the end of the year 90,13,983 cases were pending; the case pendency rate was 85.8%.

To understand the problem more specifically, let us take an example of a particular offense; Murder is a cognizable offense under IPC. In 2015[4], murder cases which got reported were 32,127. The total number of cases that got reported from all over India and subdued the judiciary with the trial of murder cases was 2,05,467, out of which 1,76,863 cases were only the cases which were pending from 2014 and 28,632 were the cases that were sent to trial which got reported in 2015. Out of 2,05,467 cases, only 19642 cases were disposed and their trials were completed. At the end of 2015, 1,85,739 cases were left pending for the year 2016. The case pendency for the offense of Murder was 90.4% in the year 2015.

Along with the two problems discussed above, the third problem that poses a threat to the efficiency of the justice system is the lack of proper infrastructure. The status of the number of the courts is proving to be a hindrance in clearing the huge backlog, which is continuously and increasingly pressurizing the judiciary. The subordinate judiciary is working under a deficiency of 5,018 courtrooms[5]. The present strength of court rooms is 15,540 whereas the sanctioned strength of 20,558 judges requires 20,558 court rooms to sit in. The staff position of the subordinate courts of Indian judiciary is also not very satisfactory. There is 1,72,641 working staff under the subordinate courts and 41,775 positions are lying vacant. The above data is hindering the criminal justice system to clear its huge pile of cases.

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[4] 2015 report of National Crime Records Bureau, Crime in India 2015 Statistics

[5] Subordinate Courts of India: A Report on Access to Justice 2016, Centre for Research & Planning, Supreme Court of India New Delhi

Philosophical Impact of existing arrangement

It is already a proven fact that "speedy justice" is very important for justice to be done in its true sense. Keeping this in view the provisions of law and the administrative system of imparting justice must be framed in order to achieve its two most important aims; first to bestow justice and second to achieve this as promptly as possible. Justice is the backbone of any society. Justice imparts contentment and happiness among people. If the justice is not prompt it may lead to vigilantism by people frustrated by such a system. This may lead to situations where people are not satisfied with the system and rebellions are expected to arise in such a society.

Crime and criminals are problems faced by every society. There is no such society without crime and thus it makes the society more determined towards making such an administration system which makes it able to cope with the problems arising out of crimes. Criminal justice administration system of India is one such system given to us by the British, during the colonial period. The evolution of India judiciary lies from the "Jury System" to the present framework.

The existing arrangement of courts, as discussed above is over-burdened with a backlog of three crores cases and due to the under- staffed judiciary this number is continuously increasing. Education and literacy in the society lead to knowledge of rights and obligations resulting in more reported cases. The courts in India are constantly pressurized under the ever increasing demand of people for Justice.

Justice is a concept where a person who has done wrong to another person is punished, and the other person is given relief for the losses he suffered due to the wrong that were done to him. Crime in India is considered not as a wrong against a person but against the whole society, wherein every such person who commits a crime, is punished, not only to provide justice but also to set an example in front of every other person; as a result the Indian population is losing its faith in the judiciary because many times innocents have to face the menace of slow justice system. This lost faith can only be restored if the justice system is made more efficient and quick so that it could clear a criminal case within two years at maximum. This will have far-reaching effects among the minds of the Indian people; people will regain trust as the wrongdoer will be punished and the victim will be given justice without any delay.

As a matter of fact, fundamental rights guaranteed by the Indian constitution presume the accused to be innocent until proven guilty. But in reality, such a person is subjected to psychological and sometimes physical torture as well during the detention period; also he is exposed to subhuman living conditions of prison and all kinds of violence among other criminals.

Being in prison comes coupled with social stigma for the under-trials. Latent effects of losing the love and affection of family members, losing respect in the society can also sabotage a person's life. The social stigma brings disgrace for the person and makes it difficult for him to live in such surroundings; in severe cases, where the offence for which such a person was being tried is of heinous nature like Rape or Murder, so much social loathe can bring about commitment of suicide or put together of a sociopath. In some cases, the employability of an under trial is severely jeopardized, even after their acquittal.

Even the families of such a person are not secured from the disgrace and the humiliation. The family of a rape victim, for an example, will have to face a severe form of social stigma, where every person will blame the victim for such an act. In such criminal cases, this hatred from the society leads the victims to commit suicide and their families to rehabilitate to some other place. In either way, whether from the side of the victim or the under-trials, the protracted judiciary is proving to be a risk for the society at a large and individuals as well.

Judiciary is very important for the economy, though it is usually considered as a non-profitable organ of the government. In practicality, it has serious implications for the Indian economy. With the increasing trend of "Make in India", propagated by PM Narendra Modi, there has been a tremendous growth in the Indian Economy, which has drawn a huge amount of Foreign Direct Investments. Many foreign companies are investing and trying establishing themselves commercially in India. This leads to many commercial disputes, for which these companies seek fast disposal. The current condition of judicial system doesn't inspire much confidence.

As per directive of the law commission and indications of the Constitution of India, a criminal case must be suspended within one year of framing the charges. In spite of such directives, a majority of cases in the country are waiting for their disposal. There is a need to make advancements in other methods like alternative dispute resolution to dispose of cases speedily; while strengthening the justice mechanism and the infrastructure. After all, Justice Delayed is Justice Denied.

Plea bargain: a possible avenue of improvement

The concept of 'Plea Bargain' is a newly developed notion to provide justice and to help the judiciary to clear its huge arrears of cases. This concept was introduced in Indian criminal justice system through the Criminal Law Amendment Act 2005. By this amendment, a new chapter XXI A was inserted in the Code of Criminal Procedure 1973, which inserted section 265A to 265L. Sections 265A to265L presents a set format of procedures which are to be compiled to make a valid Plea Bargain. It is derived from the principle of '*Nalo Contendere'* which literally means 'I do not wish to contend'. The apex court has interpreted this as a quasi-confession of guilt where the accused accepts the conviction on a promise that he will get a lesser sentence.

The salient features of Plea Bargain are:

- It is applicable to offenses for which the punishment is up to a period of seven years.
- It is not applicable to socio-economic offenses.
- It does not apply to offenses against women and child below the age of 14 years.
- No appeal lies in cases where the judgment is given after the plea negotiations.

Black's Law Dictionary[6] defines Plea Bargain as "The process whereby the **accused** and the **prosecutor** in a criminal case work out a mutually satisfactory **disposition** of the case subject to court approval. It usually involves the defendant's pleading guilty to a lesser offense or to only one or some of the counts of a multi-count **indictment** in return for a lighter sentence than that possible for the graver charge."

In simple words plea bargain is the pre-trial negotiations between the defendant and the prosecutor, to come up to a contract where the defendant pleads guilty and the prosecutor leaves grave charges and agrees to a lighter sentence. The sole object of Plea Bargain is to reduce the risk of unwanted and severe judgments on both the parties. One of the secondary benefits of using this concept in practice is it helps to deal with cases speedily. It can prove to be the best possible way to clear the piles of cases and to reduce the burden of Judiciary.

[6] Black's Law Dictionary 1173 (9th ed. 2009)

There are two types of Plea bargain, the first one is Charge bargaining and the second one being sentence bargaining. Under Charge bargaining the prosecution promises to deduct some charges brought against the defendant in exchange for guilt acceptance; it is solely on the choice of the prosecution. Under sentence bargaining, the prosecution promises the defendant that he will recommend some specific sentence to the court, on the acceptance of guilt. Such plea bargain saves the time of the court.

This concept is not originally known to Indian law. However, references may be made to section 206(1) and 206(3) of the Code of Criminal Procedure and section 208(1) of the Motor Vehicles Act, 1988. These provisions allowed the accused to plead guilty to petty offenses and pay small fines and thereby the case is disposed of. Later, as this practice was widespread in practice in the US, taking reference from there the law commission of India recommended introducing the notion of Plea Bargain. It got recommended by the 142nd, 154,th and 177th Law commissions of India. Later it was supported by the Mallimath committee report in 2003[7].

The apex court of India in many cases has been reluctant to the application of this concept. In cases like MURLIDHAR MEGHRAJ LOYA v STATE OF MAHARASHTRA[8], KASAMBHAI v STATE OF GUJRAT[9], KACCHIA PATEL SHANTILAL KODERLAL v STATE OF GUJRAT[10], STATE OF UTTAR PRADESH v CHANDRIKA[11] the apex court clearly said that allowing plea bargain will be the miscarriage of the concept of justice and that they are not going to ratify this in the court of law especially in severe criminal cases.

There are many risks in the implementation of the Plea bargain. The judiciary itself is under doubt about the concept being constitutional or unconstitutional. On one hand, it is constitutional because it provides speedy justice to the victims and saves them from the long process of the trial. Also, it will help in quick disposal of cases and increase the efficiency of the criminal administrative system which is very important at this point in time. On the other hand, it has severe unconstitutional implications because of the following reason:

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[7] Committee on Reforms of Criminal of Justice system, Government of India, ministry home affairs (March 2005)
[8] Murlidhar Meghraj Loya V State Of Maharashtra AIR 1976 SC 1929 (India).
[9] Kasambhai V State Of Gujrat AIR 1986 SC 854 (India).
[10] Kachhia Patel V Shantilal Koderlal V State Of Gujrat 1980 CRI LJ 553
[11] State Of Uttar Pradesh V Chandrika 2000 CR.L.J.V 384 (386)

- Involvement of police in the process of plea bargain would allow coercion on innocent people. Letting coercion enter the system might fail the whole concept of justice. The rules of natural justice give the concept of '*Audi Altrem Partem*' which means that everyone should have a fair right to be heard.

- It may lead to corruption, as the victim and the accused gets directly involved in the process of plea bargaining.

- The judiciary will be handicapped as this instilling this concept in the criminal justice administration system will take the power off the hands of the Judiciary and put it in the hands of the victim and accused directly. Plea bargain works upon the will of parties to settle and this will surely scathe the status of the judiciary and will lead to vigilantism.

- It will lead to increase in a number of cases where innocents are dragged into the prison. Sometimes, poor people are paid off by the police or rich criminals in order to close a case; poor people do so to get money. This way of speedy justice will only lead to the miscarriage of justice.

Article 20(3) of the Constitution of India, grants the right against self- incrimination. This right mandates that for plea bargain to be constitutional it need to be done voluntarily. Voluntariness, in this case, means that the accused should agree on the bargain of the prosecutor freely without any form of coercion. In practice, plea bargain includes coercion whether soft or hard. Hard coercion as stated above is done by police or rich criminals; it can be misused and can destroy the trust among people. Soft coercion includes many economic and social factors or say, fear of severe sentences or long trials compel the accused to choose for the bargain, affecting the free choice of the accused. It violates the assumption of free consent in the article 20(3) of the Constitution.

Although many would argue that plea bargains are necessary to efficiency and speed in the justice system, it violates the principles of equality and fairness. In the cases where the guilty is served less severe punishments or the innocent agrees to a conviction of a crime which was never committed, the use of plea bargains need to be reconsidered.

An analysis of the criminal justice administrative system

To start with the critical analysis of the criminal justice administrative system, the author would like to mention a statement from the 77th report of the Law Commission of India.

"Any stress on speedy disposal of cases at the cost of substantial justice would impair the faith and confidence of the people in the judicial system – perhaps in a much greater degree than would be the case if there is delay in the disposal of cases."[12]

It is a very well established fact that delays in justice is equal to no justice, but very quick decisions can cause the malfunctioning of law. Indian criminal justice system is in the need of quick disposal of cases but this hurried disposal of criminal cases can cause ignorance of law and infringement of several human rights. This will cause an even more devastating condition of the justice system.

The designing and administration of criminal justice system today hardly discharge any of the functions that were intended to get fulfilled. Delays and uncertainties in the justice mechanism hardly prevent the criminals; rather it encourages malpractices and corruption in the system. Due to a large number of cases, the victims become vulnerable to corrupt police and other administration levels, in order to get their cases heard first. Poor people suffer the most, as they are the socially and economically weakest link in the society.

The chief reasons for such delays, questioning the efficiency of the courts are:

- The manpower in the judiciary is not up to the mark. As discussed in the above paragraphs the present strength is less than the sanctioned strength and the sanctioned strength is also less than the required number as per the recommendations of the law commission of India.
- Judiciary is considered as an independent organ of the government. This has lessened its accountability and answerability. This is a possible reason for delays as the judges not being answerable to anyone, misuse and enjoys their independent posts.
- The next possible reason for delays is the adjournment power of the court. The courts are into a practice of adjourning the cases on very trivial grounds.

[12] The 77th Report of the Law Commission of India on "Delay and arrears in trial courts", November, 1978 (Ministry of Law and Justice, Government of India)

- The courts have long vacations along with week-long vacations on Dussehra, Muharram, Holi, and Diwali apart from fortnight-long winter-vacations for Christmas Day and New Year.

With nearly 30 million cases, burdening the judiciary every day, the role of police and the prosecution has increased eventually resulting in exploitation of people. The US, when faced similar condition it adopted the concept of Plea Bargain; but India still being a developing country having a large population who is poor could not work with the concept even after 12 years of its adding to the code.

There is a strong need for restoring the role and importance of the victim in the process. It will heal the wounds through a reuniting and remodelling manner. The Victim-centred system will help in finding a mid-way to solve all the problems in a way where no is left unheard and the scope of ill practices is abolished. Plea Bargain is one such concept, where the role of victim is increased but its implementation needs to be regulated only after the basic hearing of the case and it should not be solely left on the accused and the prosecution.

The adversarial model of justice which is followed by India has proved to be counterproductive. Under this model, two advocates represent the sides of their parties and then unbiased person determines the truth and punishes the wrongdoer. Comprehending the Indian society which is a plural society and need integration, a counterproductive criminal justice system can create halts in its growth in all aspects whether economic or social.

While sustaining the adversarial system of justice for grave offenses, Indian criminal justice administration system needs to experiment more democratic system where the victim's involvement is more and that the focus is on the restoration of the harm. The restorative justice system is the need of the hour because only this will change the mindset and bring back the lost trust of people.

Conclusion

On the basis of the research done for the paper, the author would like to submit that the Indian judiciary is in the need of reforms in its administration, infrastructure, and manpower related prevalent situation. All the reforms should be directed

towards seeking and eradicating the discrimination, lack of resources, torture, delays, backlogs, and corruption out of the system. For this dream to be fulfilled, everyone will have to come forward and start working rather than complaining.

Plea bargain, a possible avenue to increase the efficiency of the criminal justice system and clear the 30 million arrear of cases need to be implemented in a way that it does not exploit the poor and human rights. This concept if wrongly applied can cause malfunctioning of law and justice mechanism and fail the paramount reason for the existence of judiciary. The author would like to recommend that in order to implement Plea bargain effectively, it requires a change in the procedure of such an application. As per the author, such an application must be accepted only after a primary hearing of the case and the judge or some other regulatory body must be involved in the process of the bargain. If the entire bargain is handled by the prosecution and the accused without any authority above them, it might provide for a possible way of exploiting the victim.

Judiciary being a pious institution should work in the direction of eradication of crime and not the criminals but rehabilitate such a criminal. Also, it should focus towards forming a welfare state where everyone believes in the concept of justice and the mechanism imparting it. To achieve the required standard of the judiciary, especially in the criminal justice system, the system needs to reshape it, become more victim-centric and fill the lacunas.

Another suggestion which the author would like to submit is that to make criminal justice mechanism more efficient, there is a need to reform the criminal code. The codes prepared by British only to subdue Indians 150 years ago are still in practice and are still not letting the Indians be free and is still undermining the spirit of justice. Anything that does not change with the time slowly degrades, as its relevance and rectitude decrease. The same is happening with the present justice mechanism. It is not able to cope with the current state of events with those rules which were written 150 years ago.

The author would like to conclude that it's the court's responsibility to work in a way that would help the victim rather than giving him adjournments of next dates.

People are losing reliability from the system and the present mechanism will never be able to reach the desired efficiency and only reforms will help it to regain the trust of its subjects.