



Factors causing delay in justice delivery system in Delhi district courts

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Abstract

Justice: The word “Justice” has a very comprehensive meaning. In its common usage, it means rendering every man his due. Three great objects are covered by the concept of justice. It is “the security of life”, “individual liberty” and the “pursuit of happiness”. Justice is the basis of the state. It is surety bond of all commerce.

Patient and impartial hearings are important ingredients of Justice.

An American Jurist Hans Kelsen explained the contents and concept of justice in the following words:-

“Justice is social happiness. It is happiness guaranteed by a social order. The happiness that a social order is able to assure cannot be happiness in a subjective individual sense; it must be happiness in an objective collective sense, that is to say, by happiness we must understand the satisfaction of certain needs recognized by social authority, the law gives as needs worthy of being satisfied, such as the need to be fed, clothed, housed and the like.”

Legal Justice: Justice is of wide connotation to take in social justice, political justice, economic justice, legal justice, etc., but what we are now concerned with broad principles applied uniformly and impartially to one and all. Justice has to be administered by the courts according to law and procedure. Applied to the court of law, justice is nothing more or less than equitable application of law.

Litigation Delays: Litigation delays refers to the delays in proceedings before a court of law from the point of time of their institution until disposal by the court through a judgment or an order.

Keywords: justice, legal justice, litigation delays

1. Introduction

Factors behind delay in the disposal of cases

There is no one factor which is solely responsible for these arrears of cases. As is known that accumulation of tiny drops of water results into a pond, similarly a combination of plethora of factors contribute to the huge back-log of cases. There are a number of factors responsible for the delay: so for carrying out reforms in the existing scenario, a number of elements must be considered.

The impediments in the expeditious delivery of justice can be discussed under two broad headings: the procedural factors and the substantive factors.

1.1 Procedural factors

The Supreme Court has held that the right to speedy trial flowing from Article 21 encompasses all the stages, namely the stages of investigation, inquiry, trial, appeal, revision and retrial^[2]. As far as the procedural factors behind the delay in disposal of cases are concerned, such delays may broadly be discussed under four headings:

1. Pre-trial delays,
2. Delay during trial,
3. Delay during the appellate proceedings, and
4. Delay during the execution proceedings.

1.1.1 Pre-trial delays

- a) Delay in Investigation
- b) Delay in Service of Summons
- c) Delay in Filing of Written Submissions and Documents.
- d) Delay in Framing Issues/Charges.

A) Delay in Investigation

One principal object of criminal law is to protect the society from crime by punishing the offenders. However, justice and fair play requires that no one can be punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might even be caught red-handed and yet he is not to be punished unless and until he is tried and adjudged guilty by a competent Court^[3]. Investigation is the first step on the basis of which prosecution files a case against the accused in the court which tries the accused for alleged offence. It includes all proceedings under Criminal Procedure Code for the collection of evidence by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf^[4].

B) Delay in Service of Summons

Fair trial requires that trial proceedings are conducted in the presence of the accused and that he is given a fair chance to

defend himself. Further, in case the accused is found guilty at the conclusion of the trial, he must be available in person to receive the sentence passed on him. The presence of the accused at the trial can well be ensured by simply arresting and detaining him during the trial. However, this courts should not be resorted to in every case on the broad principle that the liberty of a person should not be taken away without just cause. Moreover, the detention of the accused prior to the trial is likely to cause direct or indirect obstruction in the preparation of his defence. Consequently, the provisions regarding the issue of summons or of a warrant of arrest are aimed at ensuring the presence of the accused at his trial. But it is a common sight that the summons are not served in time. Delay in the delivery of summons also contributes to delay in the process of commencement of trial. A summon is an authoritative call to appear in court for a certain purpose. The summons from the court may be to the accused or to a witness to produce document or to a person to show cause ^[5].

C. Delay in Filing of Written Submissions and Documents

Written submissions and documents submitted by parties in a case play a vital role in the decision of the case. But it is very common that the counsels for the parties do not submit these on time on one pretext or the other. In such a situation, judges are handicapped and they have no option but to postpone the hearing of the case.

D. Delay in Framing Issues/Charges

Delay in framing issues (in civil matters) and charges (in criminal matters) also pave the way for delay. Issue means a point in question; an important subject of debate, disagreement. Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Material propositions are those propositions of law or fact which a plaintiff most allege in order to show a right to sue or a defendant must allege in order to constitute his defence ^[6].

1.1.2 Delay during Trial

Delay is also caused during the trial. Trial means the process undertaken for the judicial determination as to guilt or innocence of any person accused or any offence and such trial may be deemed to begin at the state at which the court takes cognizance of an offence.

Delay during trial may be discussed under the following heads:

- a) Adjournment for petty reasons;
- b) Non-attendance of Witnesses
- c) Lengthy Oral Arguments
- d) Absence of lawyers.
- e) Application at Any Stage; and
- f) Delayed Pronouncement of Judgment

a) Adjournment for petty reasons

One of the main reason that have resulted into pending cases is the adjournments granted by the court on flimsy grounds. Section 309 of the Code of Criminal Procedure and Rule 1, Order XVII of the Code of Civil Procedure deal with adjournment and the power of the Court to postpone the hearing. Though, the Code of Criminal Procedure does not

talk of the maximum number of adjournments which can be granted but the Civil Procedure Code limits the same to three. Under the Code of Criminal Procedure the postponement or adjournment can be for such time as the court considers reasonable. What is reasonable time in a given case will depend upon the facts and circumstances of the case. The discretion to postpone or adjourn the case is to be exercised judicially and not arbitrarily.

b) Non-attendance of Witnesses

Non-attendance of witnesses also plays a part in the delay. The parties to the suit have to present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and to obtain summonses for their attendance in the court. Such list must be filed on or before such date as the court may fix but not later than fifteen days after the issues are framed. The object underlying this provision is going to give notice to the opposite party about the witnesses which his adversary is to examine in the case so that he could be in a position to know the nature of evidence he has to meet. Delay occurs firstly when the party or parties make unreasonable delay in presenting the list of witnesses and secondly, when the witnesses fail to comply with the summons and do not attend the court or refuse to depose.

The court has power to enforce the attendance of any person to whom a summons has been issued and for that purpose, may (a) issue a warrant for his arrest; (b) attach and sell his property; (c) impose a fine upon him not exceeding five thousand rupees; and order him to furnish security for his appearance and default commit him to the civil prison ^[7].

c) Lengthy Oral Argument

Oral arguments, though a necessity for submissions before the Court, have been found to be unwieldy and time-consuming. Both Criminal Procedure Code and Civil Procedure Code discourage lengthy oral arguments. Any party to a proceeding may, as soon as may be after the closure of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum of to the court setting forth concisely the arguments in support of his case ^[8]. The court may, if it is of the opinion that the oral arguments are not concise or relevant, regulate such arguments ^[9] A court may permit a party or his pleader to argue a case orally. For such oral arguments, it is open to the court to fix time limit, as it things fit ^[10].

d) Absence of lawyers

Absence of lawyers on the scheduled date of hearing also adds to the cases getting prolonged. The lawyer of a party may remain absent from the hearing of the case on one pretext or the other which are within the provisions of law like the death of his relative, or ill-health, but on the hindsight his absence may be due to non-preparation of the case or his engagement in another Court. In such a situation, the judge is constrained to adjourn the case. The code of Civil Procedure and Code of Criminal Procedure are based on a general principle that, as far as possible, no proceeding in a court of law should be conducted to the detriment of any party in his absence. Civil Procedure Code requires the parties to attend the court in

person or by their pleaders on the day fixed in the summons for the defendant to appear. Where a plaintiff or a defendant, who has been ordered to appear in person, doesn't appear in person or show sufficient cause for non-appearance, the court may dismiss the suit, if he is the plaintiff, or proceed ex-parte, if he is the defendant. Where the court has adjourned the hearing of the suit ex-parte, and the defendant, at or before such hearing, appears and assigns good reasons for his previous non-appearance, the court may hear him upon such terms as it directs as to cost or otherwise.

e) Application at Any Stage

There is a practice among the counsels to file application at any stage of the proceedings of the case. They may do so in the guise of submitting some documents or making some amendments in the pleadings which, what they call, vital for the consideration of the court before disposal of the case. In this regard the existing laws also help them. For example, there is a provision in the Code of Civil Procedure which provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties ^[11]. By way of amendment, a rider has been imposed on the amendment of pleadings which provides that no application for amendment shall be allowed after the trial as commenced, unless the court comes to the conclusion that inspite of diligence, the party could not have raised the matter before the commencement of trial ^[12]. But the effect remains the same because all the counsels who want amendment in the pleadings take the plea that inspite of due diligence they failed to raise the matter before the commencement of the trial. But as a matter of fact, most of the time they do so for buying time foreseeing that they might lose the case. Such a practice causes substantial delay in the final disposal of the cases because the filing of applications and new documents have to go through the dilatory process of filing, notice to the opposite party, arguments, order, appeal, etc. ^[13]

f) Delayed Pronouncement of Judgment

Justice should not only be done but should also appear to have been done. Similarly whereas justice delayed is justice denied, justice withheld is even worse than that. The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negative the right of appeal conferred upon the convicts under Criminal Procedure Code. A right of appeal to meet the requirement of Art. 21 of the Constitution cannot be made a fraud by protracting the pronouncement of the judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession.

1.1.3 Delay during the Appellate Proceedings

Human judgment is not infallible. Despite all the provisions for ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. The Code therefore, provides for "appeals" and "revision" and thereby enables the

superior Court to review and correct the decisions of the Lower Courts. Apart from it being a corrective device, review procedure serves another important purpose. The very fact that the decision of the Lower Courts is duly scrutinized by a superior court in "appeal" or "revision" gives satisfaction to the party aggrieved by the decision. It assures the aggrieved party that all reasonable efforts have been made to reach a just decision free from plausible errors, prejudices and mistakes.

Although this review procedure through "appeal or revision" is imperative for correctional justice but too much recourse to such procedure is causing another problem, that is, delay in final disposal of cases. The reason is that the superior Courts are busy in deciding appeals leaving the regular matters at bay. Further, the Superior Courts take too much time in deciding appeals which is partly due their workload and mostly due to delay in getting the files from the trial court whose decision is challenged. If the multiplicity of appeals are to be reduced and higher courts are to function burden less and discharge effective judicial functioning in the direction of progressive evolution of law, judicial officers at the district level have to discharge their functions diligently so as to avoid shortcomings in their decision.

1.1.4 Delay during Execution Proceedings

The duty of a Court is not over by the mere pronouncement of a decree or order. The Court has to see that fruits of the decree or order reach to the person in favour of whom the decision has been given. But pronouncements of the Courts are not backed by administrative authority/machinery of the State for effective execution. This keeps the Courts busy in ordering the administrative authorities to carry out the execution of the Court's order. Delay is also caused when a decree is sent for execution to another court because such a court is required to supply to the executing court a copy of the decree alongwith with some other certificates ^[14]. But such documents are not provided in time to such executing Courts which thereby cause delay in the execution of the decree. Further there is a provision for stay of execution of the decision so as to enable the person against whom the decision has been given to appeal against the decision. These things results delay in the final disposal of the cases, thereby adding to the huge backlog of cases.

1.2 Substantive Factors

- 1.2.1. Judicial Vacancies
- 1.2.2. Lack of Accountability of Judges
- 1.2.3. Too many Vacations in Court
- 1.2.4. Witnesses Turning Hostile
- 1.2.5. Delay by the Judges

1.2.1 Judicial Vacancies

For clearing pending cases an adequate number of judges must be appointed and once the posts of judicial officers fall vacant, there shouldn't be unreasonable delay in the appointment rather they should be filled on a priority basis. But in the Indian judicial system, there are a number of vacancies existing which ultimately affects the efficiency of rendering justice. The former Chief Justice of India, S.P. Bharocha on this account had said that " It is only when we have far more

trial courts functioning that we shall be able to dispose of more cases than are being filed and thus cut down on arrears.” In 2002, the total strength of judges in the High Courts was 669 out of which there were 163 vacancies which come out to be 25% of the total strength. It was also suggested by the 127th Law Commission Report, 1988 ^[15] that the judge population ratio should be increased from 10 judges per million populations (at that time) to 50 judges per million populations within a period of five years. The Supreme Court in *All India Judges’ Association Case* ^[16] has directed the State and Central Government to increase the strength of judges five times over a period of next five years. Due to this low judge-population ratio, the courts lack the requisite strength of judges to decide the pending cases. But the Government has neither taken any interest nor any steps to implement the said recommendation. The view of the Government is that raising the strength of the judges must be set on the basis of pendency of cases and the average rate of disposal of cases and not simply on the basis of population.

As on 01.06.2017 there are many posts of judges lying vacant in the Hon’ble High Court and District Court. In total 24 Hon’ble High Courts there are sanctioned of 1079 vacancy out of which 419 vacancies are lying vacant. In the Hon’ble High Court of Kolkatta out of sanctioned 73 posts 37 posts are lying vacant. In the Hon’ble High Court of Madras out of sanctioned 75 posts 26 posts are lying vacant. In the Hon’ble High Court of Punjab and Haryana out of sanctioned 85 posts 39 posts are lying vacant. As far as Hon’ble Supreme Court is concerned out of sanctioned 31 posts 4 posts are lying vacant. In the various Lower Courts about 4166 posts are lying vacant.

1.2.2 Lack of Accountability of Judges

The Constitution of India talks about free and independent judiciary which not only implies that the judicial organ of the state has been kept away from the intervention of the executive and legislature. The existence of a fearless and

independent judiciary is founded in the constitutional structure of India. A notable feature of the Indian Constitution is that it accords a dignified and crucial position to the judiciary in India. In the celebrated decision of the Supreme Court in *S.P. Gupta Vs. Union of India* ^[17], it was held that; “The concept of independent of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the constitution, it is the principle of the rule of law under the constitution and it is the judiciary which is entrusted with the task of keeping every organ of the state within the limits of the law thereby making the rule of law meaningful and effective ^[18]. This, however, at no stage means that judiciary is not accountable to the nation. In a democracy, the power lies with the people. The Supreme Court in a number of cases held that Courts are accountable to the people of the country and so the judiciary must concern itself within this fact while functioning. Contrary to what has been envisaged in the constitution, judges play at their own whims as far as their duties in the courts are concerned and thereby adds to the delay in the disposal of cases. Under Art. 235 ^[19] of the constitution of India, High Courts have the power of control over Subordinate Courts but the Supreme Court has no such power over High Courts. The Chief Justice of India/High Courts has no power to control or make accountable other judges of the court.

1.2.3 Too many Vacations in Court

The most debated question relating to the causes of delay is the Court vacations. In India, long vacations in Courts are a unique feature. If courts in other countries can function like any other business establishment, then why cannot courts in India do so.

The table below makes a comparison between the working day and time of different courts and Government and private establishment ^[20].

Table 1

| Sl. No. | Supreme Court | High Court | District Subordinate Courts | Other Government Establishment | Private Org./Non Government |
|---------|--|---|--|---|---|
| 1. | 185 days a year. | 210 days a year | 240 days a year | 245 days a year | 255 days a year |
| 2. | 10.30 am to 4.00 pm with one hour lunch i.e. Four hours 30 minutes each working day. | 10.30 am to 4.30 pm with one hour lunch i.e. Five hours each working day. | 10.30 am to 5.00 pm with 45 minutes lunch i.e. Five hours 45 minutes each working day. | 10.00 am to 5.45 pm with 45 minutes lunch i.e. Seven hours a day. | 9.30 am to 6.00 pm with 30 minutes lunch i.e. 8 hours or more each working day. |

1.2.4 Witnesses Turning Hostile

The problem of witnesses turning hostile in important cases have become a major problem in rendering due justice by our criminal justice system. Bentham said “witnesses are the eyes and ears of justice. Their statements have a magic force to change the entire case.” Of the many things that plague the criminal justice system in India, and thereby increasing the backlog of cases in our country, the most overwhelming and important one is the fact that our conviction rate is very low which is at about 6%. The basic reason for such poor conviction rate is that it is difficult “to prove beyond reasonable doubt” the fact that it was the accused and only the

accused who committed the offence. So it requires witnesses to prove the guilt of the accused. In common parlance, witness is understood as ‘a person who has some knowledge about the dispute’ and his duty is to appear in the court and testify truthfully. In *Charan Singh Vs. State of Punjab*, Wadhwa J. observed:

“a criminal case is built on the edifice of evidence, that is admissible in law, for that witnesses are required whether direct or indirect or circumstantial evidence. By giving evidence, he performs sacred duty of assisting the court to discover the truth”.

The number of witnessed turning hostile is increasing in cases

concerning grave offences. Some such incidents are the famous BMW case, Jessica Lal Murder case and Best Bakery Case. The first one was regarding the BMW car running over six people in the early morning hours. The accused in this case was 22 years old, Sanjeev Nanda, grandson of former Naval Chief S.M. Nanda. The two key prosecution witnesses subsequently changed their version and said that they saw a truck, and not a BMW hitting the victims.

The second case involved the murder of a model, Jessica Lal who was shot at point blank range amidst a big party thrown at a Delhi restaurant. Here the accused was Manu Sharma who hails from an affluent family and had political connections. In this case, all the three witnesses have turned hostile one by one, thereby delaying the final disposal of the case. Although finally Manu Sharma has been convicted but due to witnesses turning hostile, final disposal of the case took a long time.

In the landmark verdict in Best Bakery Case the Supreme Court gave an enlightened observation and sent the key witness Zahira Sheikh to the jail for playing fraud on the court by turning hostile.

1.2.5 Delay by the Judges

Some practices of our judiciary also cause delay and arrears. Writing of lengthy judgments obscuring the ratio is not uncommon in India. A lot of time is consumed not only by the judges but by others also in writing the judgment which ultimately results in delay in pronouncement of the judgment. Writing separate judgments even when they are concurring makes the exercise time-consuming and confusing. It thereby becomes difficult to find the ratio in quick time.

The language employed by the judges in writing judgments have also come for criticism. At times the judges who have a flair for flowery languages indulge in displaying good command over the language and in the process make others to miss the legal point discussed in the case. Such writings cause delay not only at the hands of the judges but also for lawyers in finding out the ratio of the decisions.

2. Doctrinal Study of Delay in Disposal of the Cases

The main objective of the empirical study is to ascertain the impediments behind the speedy trial. In other words, through this empirical study the researchers endeavours to find out the main reasons for delay in the disposal of the cases.

The study is confined to Courts of Delhi only, so that view point of some of the litigants, lawyers and judicial officers of Tis Hazari Courts, Patiala House Court, Hon'ble Delhi High Court and Hon'ble Supreme Court of India, have been taken on the basis of doctrinal investigation which have been carried out through interview and questionnaire method.

3. Findings of the Doctrinal Study

For a better understanding of the doctrinal study, the opinion of litigants, lawyers and judicial officers can be discussed under several heads like nature of the pending case, year of filing the case, main reasons for the delay, personal experience of delay, designation of Judicial officers interviewed and other correlated issues.

The findings given below is based on the data collected by the researcher from the litigants, lawyer and judicial officers:

06.06.2017 Navbharat Times, Hindi Dainik, Delhi.

01.03.2017 pending cases in the Hon'ble Supreme Court 62161.

01.05.2017 statics 60751 rest pending before 10 years in the Hon'ble Supreme Court pending civil cases 1132. Criminal cases are pending 34 last 10 years.

In 24 Hon'ble High Courts upto 2014 according to Government statics 4153957 cases are pending which of them 31 lacs civil matter last 10 years 589000 civil cases pending when 187000 are the criminal case more than 10 years.

4. Conclusion

After discussion and cogitation over various reasons for delay in the disposal of cases as well as after analyzing the pros and cons of the data, it can be said that there is no single factor which is solely responsible for delay in disposal of cases rather it is the combination of several factors which are contributing to delay. But what is visible is that the lack of judicial officers and judges is the main reason for delay in the disposal of cases. There is considerable increase in litigation, almost an explosion in numbers of litigations without any proportionate increase either in the number of Judge or Judicial Infrastructure. Another reason for delay (as pointed by the respondents) is the frequent adjournment of case. But such adjournments are direct fall out of the increasing inflow of cases. Sufficient judicial officers commensurate with the cases filed everyday are not there. Therefore, the judicial officers are constrained to adjourn the cases again and again so as to take up other matters also. In whatever way one approached the problem, there is unanimity of opinion that the strength of judges in India has to be considerably increased to cope with the growing litigation and demands. So the need of the hour is to overhaul the entire system of justice delivery mechanism so that the problem of delay can be nipped in the bud."

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7. S.32, The Civil Procedure Code.
8. S. 314(1), Code of Criminal Procedure, 1973.
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15. 127th Report of Law Commission of India, 1988, III.
16. All India Judges. Association Case. 4 SCC 247, 2002.
17. Gupta SPV. Union of India, AIR SC 149, 1982.
18. Nyaya Deep. Journal of NALSA; Extract from Speech delivered by Justice K.G. Balakrishnan at Society of Lincoln's Inn, London, 5.
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