

A STUDY ON DELAY IN CIVIL PROCEEDING

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ABSTRACT:

Effective access to justice is the fundamental condition for establishing rule of law in the country. It is an undisputed fact that the justice delivery system in India is not in a good shape. Access to justice and justice are two different concepts. Unnecessary long time in litigation process and too much of procedural complexities create another forum of injustice for litigants. "Justice delayed is justice denied" and "justice hurried is justice buried", are the two frequently used maxims. In the ordinary course of law, justice is not hurried in India, but with a few exceptions, justice is usually delayed and often seems to be denied. The reason for the delay is that the congestion of cases in different courts of the country from time to time and it is known that civil cases remain pending for years. To tackle with the congestion of cases, it is necessary to devise new methods and the existing justice delivery system must be updated with effective and stringent measures. This paper aims to study the causes for the delay in civil suits and bring out effective measures to overcome the problem.

KEYWORDS: *Justice, delay, justice denied, civil suit, pendency of cases.*

INTRODUCTION

The term litigation refers to controversy before a court of law or simply known as suit before the court. But with a huge pendency of more than 30 million cases, in a country with grave economic conditions like India, it has become a luxury which only few people can afford. The right to litigate is guaranteed in our constitution as well as other national and international instruments. However in India the justice delivery system is improper. With delay being the major defect in the efficiency of the justice system, it is regarded that justice delayed is justice denied. Due to the delay in civil proceedings, despite of a well established system of law, rights and obligations of citizens, justice still remains far from the layman. It is a known that judiciary is the honest and trusted organ when compared to other governmental organs due to its independence and fairness. But the confidence it used to inspire people is corroding due to the delays in justice delivery system.

The main reason for delay in civil proceeding is, the lengthy and complex procedures in the Civil Procedure Code and the huge pendency of cases before the courts right from lower court to the Supreme Court. The exact influx of large number of cases is due to socio-economic advances and the awareness about the legal rights. This led people, increasingly approach the courts for realization of their rights. The problem of delay in Indian judicial system has been studied by the Indian law Commission. The law commission has reported infrastructural deficiencies as the reason for delay. Accordingly, more courts and more judges were seen as the solution to this problem. However, another cause for delay is the contribution of courts to the problem by non-adherence to procedural timeframes. Delay in justice denotes the time consumed in disposal of case. The actual problem arises when the time taken for disposal exceeds the expected reasonable time to dispose of the case. This not only results in disillusionment among the litigants but also undermines the effectiveness of justice delivery system in India.

In countries like U.K. and Singapore, specified time limit is considered to be a proper remedy to minimize judicial delay. In India, prior to 1999, there was no time limit for procedural steps in civil proceedings. The two major amendments to the Civil Procedure Code in 1999 and 2002 have fixed time frames for various procedures in civil proceedings. But that hasn't solved the problem in any way. What is the main cause for delay in trial of civil suits. The aim is to study on delay in civil proceedings.

Sec. 27 of CPC, Order V, Order IX, Order XV, Order XX & Order XXI of CPC.

By prescribing a limitation period for every proceeding in trial, the delay can be overcome. Whether delay in trial of civil suits leads to injustice? The aim is to study the trial proceeding in civil suits and to study the factors delaying the trial proceeding. To analyze the recommendations made for speedy trial and to study the concept of delay in trial with reference to Art. 21 of the constitution. Finally to bring out the remedies to reduce the backlog of cases.

HYPOTHESIS

Even though the procedures are lengthy they do not cause any delay in trial of civil suits. A delay in civil litigation causes injustice to the people.

RESEARCH METHODOLOGY

This is a doctrinal research. Only secondary sources have been referred for this study. The primary sources which include interviews with people were not possible. Secondary sources include books related to civil procedure code and limitation act and research articles on the causes for delay in civil suits were referred. Ample websites and blogs have also been referred for the study.

CAUSES FOR DELAY

There are various reasons for delay in civil suits. Some of the most important reasons are as follows:

VACANCIES IN JUDICIARY

This is the most imperative reason for delay. Presently, this is an issue of controversy. More number of vacancies represents a difficulty for the speedy disposal of cases. Indeed, even in Supreme Court, authorized number of the judges is 31 while working number is only 28 that implies, three posts of judges are still empty. On this issue both judiciary and executives are at daggers drawn. The general number of judges in all the High Courts is 1017 and the working number is 604. Allahabad High Court leads in the aggregate opportunity of judges where endorsed quality is 160 however working strength is only 75. A few months back, Supreme Court assailed the Center and asked "whether the Center expects to convey the whole legal to a pounding end by sitting on proposals of the collegium for arrangement and exchange of judges to

High Courts over the country." Further, our nation has seen a considerable commotion over the issue of NJAC. NJAC i.e. National Judicial Appointment Commission was a proposed body set up through Ninety-Ninth Amendment Act, 2015 for the appointment of judges in higher judiciary. Later, NJAC was struck down by the Constitutional Bench of Supreme Court as invalid. In this manner, Apex Court again maintained the collegium framework for appointment of judges. The present NJAC system has also crippled the appointment of judges.

Additionally, Supreme Court on different events reprimanded Central Government on its dull disposition on the appointment of judges. While responding pointedly on the issue of appointment of judges, Chief Justice of India T S Thakur said "vacancies in the judiciary, particularly state High Courts have turned into a national importance, and endeavors were being made to convince the legislature to speed up the issue.

Law Commission of India in its Report No. 245 also recommended the need for filling vacancy of judiciary. It says that "*data obtained from High Courts indicates that the judicial system is severely backlogged, and is also not being able to keep pace with current filings, thus exacerbating the problem of backlogs. The system requires a massive influx of judicial resources in order to dispose of the backlog and keep pace with current filings. The data indicates the need for taking urgent measures for increasing judge strength in order to ensure timely justice and facilitate access to justice for all sections of society.*"³

INADEQUATE NUMBER OF COURTS

This is another matter of concern which prompts pendency of cases. Insufficient number of courts is considered to be major mishap for the justice delivery system. Law Commission of India in its Report No. 245 manages the foundation of extra courts to meet the ends of justice and expedient disposal of matters. Similarly, Hon'ble Supreme Court in the matter of *Imtiyaz Ahmad v. Province of U.P.*⁴ likewise coordinated Law Commission for making of extra courts.

³ Law Commission of India, Report No. 245, Arrears and Backlog: Creating Additional Judicial (wo)manpower, July 2014

⁴ AIR SC 2012 642

LACK OF SPECIALIZED KNOWLEDGE

Absence of specific knowledge of judges on peculiar matters lays an effect on the justice delivery system. Due to modernization and advancement of science and technology, numerous new offenses have been developed e.g. cyber pornography, cyber stalking, hacking and so on. For handling such sort of offenses, numerous Judicial Officers are required to have specific knowledge on such matters.

MISUSE OF PILs

Now-a-days, courts are over-overwhelmed with fatuous PILs. Fatuous PIL isn't associated with the general public interest. Be that as it may, under the pretense of PIL, petitioner wants to serve his own good it causes delay in choosing numerous imperative cases. Therefore Bhagwati J. warned against abuse of PIL in a landmark judgment of *Janata Dal v. H. S. Chowdhari*⁵. It was held that, PIL should not be petitioned for individual and political purposes.

INADEQUATE ARRANGEMENTS IN HEARING CASES

There is an absence of legitimate mechanism to monitor, track and cluster cases for hearing which results in waste of time of the court and leads to the pendency of cases.

TRANSFER OF JUDGES

This is another essential reason which impedes the justice delivery system. Some of the time, the new judge orders for de novo trial which delays the proceedings.

APPEALS

Huge number of appeals additionally hinders the expeditious disposal of cases. Courts need to invest their valuable time in disposal of this huge number of appeals. Therefore, courts can't spend their time in the disposal of other imperative issues.

FREQUENT ADJOURNMENTS

Frequent adjournments back off the justice delivery system in common issues. Law Commission of India in its Seventy Seventh Report likewise said frequent adjournments as an

⁵ (1992) 4 SCC 653

imperative reason for delay.⁶ Though the Code of Civil Procedure provides that "no such adjournment should be allowed more than thrice to a party to the suit," the courts are not following this properly.

DELAY IN SERVING OF SUMMONS

Summons is a procedure to compel the attendance of defendant. Order V of the Code of Civil Procedure says that "when a suit has been properly initiated, a summons might be issued to the defendant to show up and answer the claim." Generally, individuals attempt to avoid the summons. Subsequently, it delays the trial. The Code accommodates two sorts of service of summons- personal service and substituted service. If the defendant tries to dodge the service of summons, the court shall apply Rule 20 of Order V which provides substituted service. Substituted Service is the best mode to deal with delay in service of summons.

NON-EXAMINATION OF PROCESS SERVERS

The part of process servers is important to evade delay of summons. Due their carelessness and indolence, they neglect to serve the summons in time. Therefore, there must be bona fide supervision of process-servers.

DELAY IN FILING WRITTEN STATEMENT

Order VIII of CPC says that "defendant shall file the written statement within a period of 30 days from the date of service of summon on him." But this rule isn't followed genuinely. The defendants extend the issue by not filing the written statement in time which contributes in pendency of cases.

NON-APPEARANCE OF PARTIES ON THE DAY OF HEARING

According to the provisions of CPC, if the plaintiff does not appear on the day of hearing the suit will be dismissed. Thus, the plaintiff bring new suit or court may restore the suit. Similarly, if the defendant does not appear and plaintiff appears the court shall decide the suit ex-parte. Therefore, non-appearance of parties on the day fixed for hearing is also a prominent cause for delay in civil proceedings.

⁶ Law Commission of India, Seventy Seventh Report, Delay and Arrears in Trial Courts, November 1978.

NON-COMPLIANCE OF ORDER X

Order X of CPC provides examination of parties by the court. Law Commission of India in its Seventy Seventh Report says that "it is fundamental that trial judge should read the pleadings of the parties in advance and should know the case of each party, only then the issues can be framed properly in order to make effective use of Order X." Therefore, non-compliance of Order X prolongs the proceedings.

NON-ADHERENCE TO THE PROVISIONS OF SEC. 89

Section 89 of CPC was embedded through amendment in 2002 which deals with out of court settlement. It provides that if the court considers a possibility of settling the dispute outside the court, it shall direct the matter for ADR rather than proceeding with normal trial process. Non-adherence to this provision causes delay in civil suits.

NON – COMPLIANCE OF SOME DIFFERENT ARRANGEMENTS OF CPC, 1908

Non-compliance of the following provisions of CPC prompts delay:

1. Order XI – Discovery and Inspection
2. Order XII – Admission Order
3. XIII – Production, Impounding and Return of Documents Order
4. XV – Disposal of the suit at the principal hearing

RIGHT TO SPEEDY TRIAL

With a huge number of pending cases and the delay in giving a reasonable and just judgment, it is necessary for right to speedy trials to meet the ends of justice. Civil cases can be settled outside the Court by methods of alternative dispute resolution, lok adalats, and so on. Article 21 of the Constitution of India also implies the right of expedient trial. No person shall be harassed by delay the legal proceedings in a suit. Section 89 of the Civil Procedure Code provides the settlement of the matter outside the Court by methods of ADR. The Legal Services Authorities Act of 1987, which constituted Lok Adalats for the purpose of curtailing the backlog of cases. Right to speedy trial is thus a fundamental right.

SUGGESTIONS:

The following are the some of the suggestions & recommendations to curtail the backlog of cases:

Constitution of Fast-Track Courts:

Establishment of Fast Track Courts serves a prominent achievement in expedient trial. The Eleventh Finance Commission prescribed "a plan for constituting 1734 Fast Track Courts (FTCs) in the nation for disposing long pending Sessions and other cases. The FTCs were constituted to speedily dispose the long pending cases in the Sessions Courts and in cases of under-trial prisoners." Justice J S Verma Committee also suggested constitution of fast-track courts for speedily managing rape cases.

Encouragement to Lok Adalats

Lok Adalat is an ADR mechanism for amicable settlement of dispute between the parties. Lok Adalats got its statutory status under the Legal Services Authorities Act, 1987. Consolation to Lok Adalats will positively reduce the burden of cases on the court and quicken the justice delivery system.

Setting up of Gram Nyayalaya

Nyayalaya are set up under Gram Nyayalaya Act, 2008. They are village courts which are intended to guarantee speedy disposal of petty issues at rural level. However, at present only few nyayalaya is working. Hence, there is a requirement for setting up of more village courts for expedient and simple access to justice from grass root level.

Establishment of Commercial Courts

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was passed for the constitution of Commercial Courts which shall reduce the burden of other civil courts. Commercial Courts are effective and guarantees expedient disposal of cases involving commercial relations.

Role of Legislature

Role of legislature is very important to ensure speedy and fair justice. The law making body should make effective legislations which curtails the delay in proceedings and fix a proper limitation period for every proceedings. It shall also establish provisions for strict implementation of already prevailing provisions.

Filling Vacancies of judges

There is an earnest need to fill the vacancies of judicial posts since there are more vacancies in the Indian Judiciary. Both judiciary and government should cooperate to overcome this issue.

Judicial Education, Training and Personality of Judges

Law Commission of India in its Seventy Seventh Report deals with the same issue. Consequently, there ought to be appropriate training and judicial education for the judges. A Judge's personality is considered to be an essential part in justice delivery system.

Other proposals to guarantee speedy disposal of cases

1. Adherence of Alternate Dispute Resolution mechanism under Sec. 89 CPC;
2. Check on unnecessary and frequent adjournments;
3. Proper adherence to the provisions of C.P.C.1908 and Cr. P.C. 1973
4. Minimizing the delay in service of summons and filing written statements and other related matters.

CONCLUSION

William Gladstone has clearly observed that 'Justice delayed is Justice denied'. Speedy trial is of great importance which is also perceived as a fundamental right in many of the judgments. At the same time 'Justice hurried is Justice buried.' Therefore, speedy justice doesn't mean non-compliance of procedures of C.P.C., & Cr.P.C. and also the Evidence Act. However, within the statutory parameters, court ought to guarantee the speedy disposal of cases. Many different committees have also been framed to analyse the reasons for delay. Law Commission of India is especially concerned about pending and excess of cases. Judiciary has also made efforts on the issue of vacancies of judges to limit the delay. Hence, a joint effort is required with respect to

every one of the partners to guarantee expedient and fair justice. Both, Government and judiciary should approach and discover the solution for delay in civil suits.

Also, speedy trial ought to contain the component of fairness. The component of fairness prompts fair trial. Both expedient trial and fair trial are sine qua non for guaranteeing the genuine justice. It has been rightly said that, "Not only must Justice be done; it must also be seem to be done." Thus delay in civil litigation causes injustice to the people.

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