# JUSTICE DELAYED IS JUSTICE DENIED : ISSUES & SOLUTION'S PERTAINING TO PENDENCY IN INDIAN JUDICIARY

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*"The greatest drawback of the administration of justice in India today is delay... I am not aware of any country in the world where litigation goes on for as long a period as India".*

*-Nani Palkhiwala*

## INTRODUCTION-:

The issues of deferrals and pendency have been the bone of conflict for the Indian Judiciary for quite a while. Since the most recent 5 decades, the Judiciary, the Ministry of Justice, prominent masterminds and legal advisers have mooted a few systems to handle the issues of postponements and pendency in India. Hon'ble Justice Madan Lokur, Judge, Supreme Court of India had once commented that evaluating pendency of cases would be an impolite stun. He went ahead to express that with crores of cases effectively pending transfer, it would take over 300 years to clear the excess and that as well if no new cases are enrolled amid that time. This is only a sign of the massive load that our Hon'ble judges handle and the weight they involvement keeping in mind the end goal to clear whatever number cases as would be prudent. It is perceived that India requires legitimate case administration and furthermore court organization frameworks to accomplish the objective.

## OVERVIEW OF HUGE PENDENCY IN COURTS-:

The latest statistics on pendency of cases, at all levels of courts across the country, makes it evident that a lot requires to be done to fulfill the mandate of speedy justice. The data, collected from the web-portal of National Judicial Data Grid (NJDG) and the court websites, indicates not much has changed in the last few years although the huge pendency of cases have taken the centre stage in several deliberations between the judiciary and the government. As per the information made available by the Supreme Court of India to the Union Ministry of Law and Justice, the total number of pending cases in the apex court as on December 18 was 54,719. The number of cases pending in the court for more than 5 years was 15,929, which is more than 29 per cent of the cases. Those waiting for disposal for more than 10 years constituted 1,550 cases. According to the statistics

available on NJDG, as on December 26, more than 34.27 lakh cases were pending in high courts, excluding High Courts of Allahabad and Jammu & Kashmir. Data available on the Uttar Pradesh government's law department's website disclosed pendency of more than 3.2 lakh. Thus, a total of 37.47 lakh cases are pending in 23 high courts, with an average of around 1.65 lakh each.

## CAUSES OF HUGE PENDENCY IN COURTS-:

### a) LESS NO OF JUDGES-:

The most noticeable purpose behind the pendency of cases is the deficient portrayal of judges in the Indian Judiciary. The quantity of judges is route not as much as required. The fundamental motivation behind equity can't be met in the event that we don't have the expected judges to choose the case. The issue lies not just at the subordinate level of the legal yet in addition in the higher legal. The opening existing at the Courts, both lower and the higher are not appropriately filled. With an officially low extent of judges is to various cases, the Indian legal is deficient with regards to the base fundamental necessity of judge's quality. Opportunities of judges impact definitely the pendency of cases. Both are in reality contrarily corresponding to each other.

### b) POOR ADMINISTRATIVE SYSTEM-:

As figured by me for the pendency of cases in Indian courts is the ascent in abuse of law. For an occurrence, the report of one of the famous National daily papers of our country, there are around 1 lac. Instances of endowment recorded each year out of which 10 for each penny are discovered false. At that point now and again there are circumstances when advises endeavor to play their card, they either ask for giving further date by giving different reasons or they are absent with the goal that they get next date for hearing because of which there is superfluous deferral in the event that procedure. Counsels try to extract more time for preparation of cases.

### c) FILLING OF FALSE CASES-:

The second huge purpose behind the pendency of cases in Indian courts is recording false cases with malafide plan for making pointless inconveniences others. Truly, I am endeavoring to draw your consideration towards documenting of phony cases keeping in mind the end goal to settle grudge. There is documenting of case, at that point there is examination of the same, and if proofs

are accessible or not the coherence or intermittence of the same depends yet because of this, the valuable time of court is as of now superfluously squandered. What's more, because of this there is a deferral in equity. Delhi Commission of Women (DCW) uncovered stunning measurements that 53.2 for each penny assault cases documented between April 2013-July 2014 in Delhi were discovered 'false'. The report says that between aforementioned dates the quantity of assault cases recorded in Delhi were 2,753 out of which, just 1,287 cases were observed to be valid, and staying 1,464 cases were observed to be phony.

**d) POOR INFRASTRUCTURE OF SUBORDINATE COURTS-:**

This is the age of technology, today even the smallest office in the private sector is well equipped with computers and other electronic gadgets, which help them to raise their efficiency and update their records. But our Judiciary has not been provided with the technical assistance of faxes, dicto-phones and other such devices. Almost all the courts have heaps of rotten files in the basement. In District Courts one can see courts working without electricity. Thus, though we are living in the age of computers, yet our methodologies are outdated and urgently need a re-look.

**e) EXCESSIVE CROSS-EXAMINATION-:**

The issue of over the top and pointless interrogation is likewise extremely pertinent to talk about in shortening the deferral. Law Commission of India in its Seventy Seventh Report brings up that "occasionally addresses are put to the observers in round of questioning which are pointless, offensive and hassling. It is on such events it ends up vital for the trial judge to control the procedures." There is a need to keep away from the bugging of witnesses. Indeed, even Indian Evidence Act additionally restricts asking disgusting and shameful questions.24 The court ought to likewise preclude question which means to irritate or insult.25 Further, the Code gives that inquiry ought not to be asked without sensible grounds.26 Therefore, one might say that such sort of pointless inquiries squander the valuable time of the court and accordingly equity is deferred. Hence, the part of judge is extremely relevant to control such pointless interrogation.

**f) ABUSE OF PUBLIC INTEREST LITIGATION-:**

Presently a-days, courts are over-overflowed with trivial PILs. Paltry PIL isn't associated with the general population intrigue. Be that as it may, under the pretense of PIL, solicitor needs to serve his own intentions and thus it causes delay in choosing numerous vital cases. Maybe, therefore Bhagwati J. forewarned against abuse of PIL in a historic point judgment of Janata Dal v. H. S. Chowdhari. Along these lines, PIL ought not to be petitioned for individual and political thought processes.

**g) NON-COMPLIANCE OF PROVISIONS UNDER CRIMINAL PROCEDURE CODE,1973-:**

The Code provides certain provisions for settlement of disputes and for speedy trial for instance, compounding of offences, plea bargaining, summary trial etc. But the problem is that this provision is not implemented properly.

**h) GREAT NO OF APPEALS-:**

Vast number of requests additionally blocks the expedient transfer of cases. Courts need to invest their valuable energy in transfer of the huge number of claims. Thus, courts can't give their chance in the transfer of other imperative issues.

**i) NON-ADHERENCE OF ORDER X OF CODE OF CIVIL PROCEDURE 1908-:**

Order X CPC manages examination of gatherings by the court. Law Commission of India in its Seventy Seventh Report says that "with a specific end goal to make powerful utilization of arrangements of Order X, it is basic that trial judge should read ahead of time the pleadings of the gatherings and should know the instance of each gathering at exactly that point he can put inquiries and edge issues appropriately." So, resistance of arrangements of Order X drags out the issue.

## SOLUTIONS TO REDUCE HUGE PENDENCY IN COURTS-:

The following steps should be take into consideration for reducing pendency in Courts and also for fast justice delivery too-

### a) REMOVING OF REDUNDANT LAWS-:

It was discovered that outdated and excess laws make disarray among subjects as well as increment pendency of cases, as there are different perspectives from different individuals. Consequently government has accentuated on the e-courts venture and has just modernized 13,273 courts. Government is concentrating on working of more court lobbies. At show 2,600 new court corridors are under development. As of now close around 15,500 court corridors are accessible. The Commercial Courts Act has additionally been passed with a specific end goal to tackle business question in time bound way.

### b) PRACTICING ALTERNATIVE DISPUTE MECHANISM-:

Suit through the courts and councils set up by the State is one method for settling the question which is an antagonistic strategy for question determination which prompts win-lose circumstance while in Alternative Disputes Resolution what is attempted to be accomplished is win-win circumstance for both the gatherings. There is no one who is failure and the two gatherings feel fulfilled toward the day's end. The ADR systems incorporate assertion, arrangement, intervention and assuagement. Section- 89 of the Code of Civil Procedure has been corrected w.e.f. 1-7-2002 with a view to carry elective frameworks into the standard.

### c) FOUNDATION OF FAST –TRACK COURTS-:

On the proposal of the eleventh Finance Commission, 1734 Fast Track Courts of Sessions Judges were authorized for transfer of old pending cases and the said conspire was to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have been discarded by these courts. Keeping in see the execution of Fast Track Courts and commitment made by them towards clearing the excess, the plan has been stretched out till 31-3-2010.

**d) ESTABLISHMENT OF LOK ADALATS-:**

Keeping in mind the end goal to accomplish the target revered in Article 39 An of the Constitution of India, the Legal Services Authorities Act, 1987 was established to give free and equipped legitimate support of the weaker areas of the general public to guarantee that open doors for securing equity are not denied to any resident by reason of monetary or different inabilities. To accomplish that objective, Lok Adalats are being held at different places in the nation and countless are being discarded with lesser expenses.

**e) SETTING UP E-COMMITTEE-:**

Extraordinary compared to other methods for viably accomplishing the improvement of the legal parts in the nation was reception of data innovation based frameworks in the legal system to make the legal more successful in giving expedient and opportune equity to the prosecutors. Data innovation was out of the blue presented in the Indian legal by Mr Justice G.C. Bharuka in the year 1991 in the Patna High Court when he was an infant Judge of a couple of months and there was some progress so long he stayed in Patna, where after it remained stop. After Mr Justice Bharuka was exchanged to the Karnataka High Court it was a aid in mask for the general population of Karnataka where he had done broad work for presentation of IT in Indian legal also, was given a doctorate degree.

**f) EMERGENCE OF GRAM NYALAYA-:**

It is comprehended that the Ministry of Law and Justice is drawing a Gram Nyayalayas Bill with a goal to secure equity, both common and criminal, at the grass-root level to the residents, which would be the most reduced court of subordinate legal and might give simple access to equity to prosecutor through agreeable strategies, utilization of neighborhood dialect and portable courts wherever vital. In the event that established,such Gram Nyayalayas would truly make equity available and will be reasonable to the normal man at their doorway.

**g) ADHERENCE TO PROPER JUDICIAL EDUCATION-:**

Law Commission of India in its Seventy Seventh Report likewise manages a similar issue. Thusly, there ought to be appropriate preparing and training for the judges. Identity of judges assumes a fundamental part in equity conveyance framework. It very important for the judges to have a proper judicial education and should abstain from biasness in the court of law. They should keep in mind the principles of Natural Justice & Audi Alteram Partem also.

**h) ENCOURAGEMENT TO PLEA BARGAINING-:**

With the inclusion of new Chapter XXI-An in the Code of Criminal Procedure by Act 2 of 2006, the idea of Plea Bargaining turned into a reality and part of our criminal statute. The act of supplication bartering is pervasive in western nations, especially the United States, the United Kingdom and Australia. While issuing summons to a charged, he might be educated of the arrangements of request bartering contained in Chapter XXI-An of the Code of Criminal Procedure, 1973. Assuming increasingly charged approach and deal the supplication, the change could diminish the huge accumulation of cases in our courts. Request bartering separated, if the rundown of compoundable offenses is extended and more offenses are incorporated in that and made compoundable, it too will help in making a mark in the mounting overdue debts and sparing time of the courts.

i) **STRENGTHENING LEGAL AID SYSTEMS-:**

Article 39A of the Constitution mandates the State to secure that the activity of the lawful framework advances equity based on measure up to circumstance. The State is required to give lawful guide to guarantee that open doors for securing justice are not denied to any native by reason of monetary or other disabilities. The effect of Article 39A read with Article 21 of the Constitution has been to fortify the privilege of a man engaged with a criminal continuing to lawful guide. This Article has been in this manner used to decipher the privilege gave by Section- 304 of Cr.P.C. The privilege of correspondence before law and equivalent assurance of laws, conceded to our natives, regardless of their social and monetary status will stay fanciful unless and until each resident including the individuals who are from monetarily and socially in reverse classes can have access to the Justice Delivery System by drawing in an effective and equipped Advocate, who can effectively put their case before the Courts and look for equity for them.

## LANDMARK CASES FOR SPEEDY TRIAL FOR JUSTICE-:

There are some driving case laws on the purpose of rapid trial. The investigation of these case laws is fundamental to understand the development of law of quick trial-:

a) **Hussainara Khatoon v. Home Secretary, State of Bihar-:** In this praised case, an appeal to for writ of habeas corpus was recorded by number of under-trial detainees who were in prisons in the territory of Bihar for a considerable length of time anticipating their trial. Equity Bhagwati held that "right to quick trial is a major right which is certain under Art.21 of the Constitution." Consequently, the Apex Court requested the Bihar Government to discharge under-trial detainees on their own bonds.

b) **State of Maharashtra v. Champa Lal-**Court held that "if the blamed himself was in charge of postponement, he couldn't exploit it. A deferred trial was not really an uncalled for trial. In the event that the blamed had been partial in directing for his guard, one might say that the denounced had been denied the privilege and the conviction would unquestionably need to go.

c) **Ranjan Dwivedi vs CBI** –In this case, court repeated a similar view that privilege to fast trial is a crucial right. Court held that "A reasonably speedy trial is a vital and basic piece of the basic appropriate to life and freedom revered in Article 21 of the Constitution of India."

d) **S.C. Advocates on Record Association v. UOI**-The Court called attention to the need of arrangement of judges and held that "it might issue bearing to survey the felt need and fix the quality of judges as indicated by the need."

## CONCLUSION-:

The regularly expanding pendency of prosecution in courts and councils the nation over has involved worry over the most recent couple of decade s. On account of the expanding populace and furthermore a synchronous increment in the mindfulness among residents with respect to legitimate rights, the pendency in the courts has been increasing. It is regular that pendency of cases in the courts, councils and in addition High Courts would bring about the expanding pendency of cases in the Supreme Court. In such circumstances, it is being recommended that exceptional leave petitions under article 136 ought to be limited by appropriate rules. There is additionally a view that the Supreme Court under Article 136 should just focus on matters of protected significance.