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NYAYAV

ABSTRACT

The foundation or backbone of any system is justice which means equality especially in the eye of law. The whole logic of formation of systems are based on achieving the goal of common good where justice is an important and core value. The expression of the notion of justice has changed as per the period in which it is perceived. The Nirbhaya case (2012) has exposed a huge gap and apathy of the legislators and adjudicators and their failure in the fast disposal of a very obvious and sensitive case. Systemic failure is responsible for not getting justice for the victims of crime. Also, there have been various interpretations that are embedded in the cultural foundations. Though the meaning of justice is universal and may not vary from culture to culture still the application of the notion may vary. It was when slavery in different forms was an accepted practice in some societies. In the modern period, the systems through which justice has to be delivered have structures according to it. In all legal systems of the world, the ancient Roman Legal System is inherent as the model which was passed on by the British colonizers when they colonized countries around the world. The legal system and judicial systems (especially courts as [art of justice delivery systems) in most countries are based on a singular command structure inherited directly and indirectly from the Roman civilization. But many a time this model does not prove to be effective when meets the different cultural value systems. In India, a number of mechanisms have been adopted to apply Roman Legal System (civil law and derivative system) as it too has inherited this legacy from the British. Though many a time this system has failed to deliver due to a number of factors one such factor is that the British Legal System is unable to reach the masses as it is based on monetary considerations alone which have no connection with the Indian masses where methods established by gerontocracy or conservatism (Wisdom of the ancestors) still play an important role. The Regulatory mechanisms and alternate dispute resolution mechanisms have become a major part of the justice delivery system but "justice seems to be done" still seems to be a distant dream. Getting justice is an "expensive affair" in India today. Not only that the "alien" jurisprudence also seems to be the reason causing delays in justice delivery in India. More than 4 crore cases are pending before various courts in India which shows the inability of the judicial system in delivering. What is needed today that how the Indian legal jurisprudence can be merged with the western legal framework so that it can be practical and useful for the people of India. The paper will examine both aspects of what is lacking in the Indian legal and justice delivery system. Whether inadequacy of the number of judges or laws or incompatibility of two cultural thought processes. It will further be examined what all reforms are needed to make the system effective.

There are various perceptions about the justice in justice delivery system like 'justice is not only done but it seems to be done' and 'justice delayed is justice denied' William E Gladstone. We know that without the notion of justice as an inseparable part of the system, it is not worthy

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of living. It has various dimensions like social, economic, political, legal, and many more. It has traveled over the period and developed and included many aspects of categories of humans and excluded many components which are detrimental to human life. We have seen how slavery was a justified and accepted way of life at one point of time in history and the very same idea of slavery has lost its legitimacy and relevance in modern times. Now all are equal in moral worth for the state without discrimination based on caste, race, religion, place of birth and language, etc. All are equal in the eye of law (equality before the law –A V Dicey) and equality of opportunities. The fundamental to this is for a system to be just and fair. It is also about giving one its due which is deeply rooted in social norms and social values prevailing. Since an individual is the subject of all the system formation and delivering whatever is good for people is the end of the state establishment of the justice delivery system is an important aspect of it. Over the period various systems to give justice to people were adopted. There have been different fundamental principles governing communities and mechanisms to apply for delivering justice. Modern India has adopted a court system to deliver justice. There are other means also added in support of strengthening the justice delivery system to make it more widespread and effective such as Lok Adalat; National Legal Service Authority (NALSA); State Legal Service Authority (SALSA) and District Legal Service Authority (DALSA); evolution of Mediation centers; Gram Nyayalaya in villages to mention some. The effectiveness of these mechanisms is under question. It has created resulted in the notion of justice delayed is justice denied. There are a number of cases pending before courts that are defeating the very purpose of delivery of justice. The modern system of the court is based on an adversarial representation of dispute and the client-lawyer method. Principles of natural justice (such as no one can be the judge of one's own cause; everyone party to dispute will be given an opportunity of hearing; fair trial means right to be represented) are the guiding force behind this system. What seems to be a big lacuna in this whole effort is less number of judges; legal practitioners; poverty (justice is a costly affair in India); lack of knowledge of the law on part of the petitioner, and complainant (increases dependence on lawyers) and the biggest problem is justice delivery has become a means of employment which has completely transformed fundamental of the meaning of justice from as value in the moral and ethical sense to justice as promoting the idea of establishment of law and order in society. Here there will be two objectives to examine this issue -1. What are the problems? 2. What are the solutions to the problems?

Background:

The modern justice delivery system or legal system of India is rooted in the British legal system. We find this legal system has been blended with the wisdom of Indian legal philosophers to make it applicable to Indians. It has been introduced with the advent of the British in India. The first significant Ministry of Law and Justice was first established in 1833 by the British in India. It is the oldest ministry set up by the Charter of 1833. The said Act vested for the first time legislative power in a single authority namely the Governor General in Council. After the commencement of the Government of India Act, 1919 the legislative power was exercised by the Indian Legislature constituted there under the Government of India Act,

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1935. [1]The Mayoral Courts were established in Madras; Bombay and Calcutta by the East India Company in 1762 replacing the Mughal Legal system[2].

After 1857 the British Crown established Supreme courts in India replacing mayoral courts since power shifted from the Company to the Crown. These courts were converted to the first High Courts by the Indian High Court Act passed by the British parliament in 1862. We are aware that the Privy Council of England was the highest court of appeal in the nineteenth century. Indian Penal Code was enacted in 1860.

These efforts further resulted in the establishment of the judicial courts in India in 1950 after India became a free state. So, we can see India has a long legal history including the modern judicial system but we are aware that is plagued by the pendency and delay in delivering justice which is the end result of the judicial process.

What is 'Delay'?- In the words of former CJI Justice Sabharwal- " Delay in the context of justice denotes the time consumed in the disposal of the case, in access of the time within which a case can be reasonably expected to be decided by the Court. In an adjudicatory system, whether inquisitorial or adversarial, an expected life span in care is an inherent part of the system. No one expects a case to be decided overnight. However, difficulty arises when the actual time taken for the disposal of the case far exceeds its expected life span and that is when we say there is delay in dispensation of justice". [3]

Former Union Minister of Law and Justice, Shri Ravi Shankar Prasad on 10th July 2019 said in front of the Parliament that delay happens "not only due to shortage of judges but due to long vacations; frequent adjournments; the increasing number of state and central legislations; indiscriminate use of writ jurisdictions and lack of monitoring and bunching of cases" also "accumulations of first appeals; continuation of civil jurisdiction in some High Courts; appeals against orders of quasi-judicial forums going to High Courts; a number of revisions; appeals and adjournments" are plaguing the judicial effectiveness.[4]

There are a number of areas that causes delay and need to be taken care of to deliver justice in a fair and just manner given as followed-

Problems before the Administration of Justice in India-

Criminal Justice Administration

The Criminal justice administration system (CJAS) is fundamental to the justice delivery system. But it has a lot of lacunae to hamper and delay the disposal of cases that needed immediate attention. Earlier Justice Malimath Committee was assigned this task to address the problem and to remove the lacunae to make the criminal justice administration system smooth.

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[1] www.myGov.in
[2] http://www.barcouncilofindia.org/about/about-the-legal-profession/legal-education-in-the-united-kingdom/
[3] Justice Y K Sabharwal, Former Chief Justice of India- 'Delayed Justice'- lecture delivered in Justice Shobhag Mal Jain Memorial Lecture in New Delhi, 25th July 2006.

[4]www.timesofindia.com, 11th July 2019.

The Committee aimed at the speedy disposal of cases. The Amendments of 1999 and 2002 were made effective from July 1st, 2002.

The major problems faced by the CJAS are –

- **Issue of Witness Protection-** It is a very important aspect. There is a tendency among the common person not to file complaints or inform the police about the happening of a crime. They generally do not feel comfortable becoming part of the police investigation and testifying before the Court for several reasons one of which is insecurity due to repetitive appearances before the court and sittings in the police station. If the crime involves hardcore criminals or influential persons then the very existence of the person threatened to testify against them. There are a number of such high-profile cases such as the Arushi murder case; the murder of people sleeping on the footpath by high profile film star; the recent murder case of film star Sushant Singh; genocide of Kashmiri pandits in Kashmir by the terrorists in 1990 are very prominent examples. No one will dare to witness the terrorists for the fear of life. The government has no such foolproof system to assure witnesses of their safety.

-**Hostile Witnesses-** Here also in case of involvement of high-profile personalities the witnesses either are bought or threatened. Former chief justice of India, Justice U U Lalit, also expressed his displeasure over the issue and tried to increase the time duration of sittings of the judges of the highest court to make the disposal of the cases faster. To curb the tendency of taking dates after the date by the lawyers causes inordinate delay in trial and creates a sense of fear for one's security in mind or saving time; many a time bail is granted to an accused who is being tried for a case of murder further aggravates the problem;

-**Appeals**- It is a legal right of every party to dispute so the matter goes to higher courts and remains pending there; one such example is the case of Berhampore Bank– India's oldest pending case for 72 years finally got settled on 15th January 2023 by Kolkata High Court. The case was related to the liquidation proceedings of Berhampore Bank limited. The Calcutta High Court declared the Bank bankrupt on 19th November 1948. After that court order was challenged by the consumers and a case came up before the court on 1st January 1951. Though the case was already disposed of in September 2006 it was not brought on record).[5]

-**Collection of Evidence by the Police**- It depends upon the status of the person who has committed the crime. If a person belongs to an influential class -a political or rich collection of evidence depends upon that. There have been examples when police have deliberately not collected proper evidence. The cases mentioned above are examples in addition to the Nitish Katara murder case; the Priyadarshini Mattoo murder case (in this case the murderer was the son of a police officer, therefore, the evidence was not collected. In the case of Bhanwari Bai, this fact was a decisive factor that in absence of proper collection of evidence poor women didn't get justice. Sikh Massacre (1984); the Godhra case (2002) where people were burnt alive inside the rail bogey is other very blatant example of ignoring evidence due to the nature of the

[5] Opindia.com; moneycontrol.com; businesstoday.com; thetimes.co.uk; prabirendra mohan vs Berhampore Bank Ltd and ors july 20, 1953 indiankanoon.org

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case. The procedure and the manner adopted by the police to collect evidence is another problem -the statements taken repeatedly by the police or visits to the police station are not a pleasant experience for a person who is a witness; also, police do not adopt protocols many a time.

-**Non-Registration of First Information Report (FIR)**- Generally police seem reluctant to register First Information Reports for different reasons like Police do not want to show that the crime has been committed in their territory because it reflects adversely on their record of maintaining law and order. It is a major factor responsible for the delay. In a number of cases where the involvement of politicians is there then FIR will not be registered. One such example is post-poll violence in West Bengal where FIRs were not registered initially only under the pressure and instructions issued by the Calcutta High Court some FIRs were registered. The Sikh massacre in 1984 is another gruesome example of such behavior of police when under political pressure they didn't register the FIR. There are innumerable examples. Also, in the case of the Massacre of Sikhs in 1984 and the Genocide of Kashmiri Pandits in 1990, no FIRs were registered.

Issue of Compensation*[6] As the law provides for compensation to be paid to the victim of rape it also gets either ignored or compromised because most of the time victim is not aware of it.

As a result of such inadequacies in criminal justice administration, the biggest sufferers are the parties-the victim, and the accused. The agony especially the victim goes through is beyond description. Especially in rape cases that bring a different kind of suffering-the victim suffers one level of trauma due to torture she has been subjected to deepens manifold when completion of the trial takes time much beyond limitation. Here both –the victim and the accused have their families also add to the miseries further. In some cases, both may have children also. In one such case of Punjab and Haryana High Court on gangrape the victim and the accused have their children grown up and the Supreme Court gave a verdict to go for compromise in such a situation which was completely beyond criminal law of the country as rape is not a compoundable offense.

Under trials-

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[6] *" SCHEME FOR RELIEF AND REHABILITATION OF VICTIMS OF RAPE-

The Hon'ble Supreme Court in Delhi Domestic Working Women's Forum Vs. Union of India and others writ petition (CRL)No.362/93 had directed the National Commission for Women to evolve a "scheme so as to wipe out the tears of unfortunate victims of rape.'' The Supreme Court observed that having regard to the Directive principles contained in the Article 38(1) of the Constitution, It was necessary to set up criminal Injuries Compensation Board, as rape victims besides the mental anguish, frequently incur substantial financial loss and in some cases are too traumatized to continue in employment. The Court further directed that compensation for victims shall be awarded by the Court on conviction of the offender and by the Criminal Injuries compensation board whether or not a conviction has taken place. The Board shall consider the pain, suffering and shock as well as loss of earnings due to pregnancy and the expenses of child birth if this occurs as a result of rape."
SCHEME FOR RELIEF AND REHABILITATION OF VICTIMS OF RAPE.PDF

Another category that suffers the most is under trials. A total of 5,54,034 prisoners were confined as of 31st December 2021 in various jails across the country. The number of Convicts, Undertrial inmates, and Detenues were reported as 1,22,852, 4,27,165, and 3,470 respectively accounting for 22.2%, 77.1%, and 0.6% respectively at the end of 2021.[7] At present, the number of undertrials oscillates between 76% to 77% in India. The new president of India Smt. Draupadi Murmu, while delivering a valedictory address on the occasion of Law Day organized by the Supreme Court of India, drew the attention of the Chief Justice of India Hon'ble Shri Justice D Y Chandrachud towards the plight of the under trials and the apathy of the judiciary towards them -

"I hear these days that we will have to make new prisons because prisons are overcrowded. If we are moving towards progress as a society, why do we need new jails? We should be closing down existing ones,"[8]

Delay in Executing Death Sentence: Such as the Supreme Court of India re-confirmed last year on 9th July 2018 (confirmed for the first time on May 5, 2017) the death sentence of the guilty in the Nirbhaya gang rape case (16 December 2012), a gang rape that shook the country and resulted in evoking lot of debate in the area of criminal justice administration and criminal law per se. The involvement of a juvenile in the case gave a grave matter of concern. A year has lapsed since then and the guilty are still waiting for execution. Finally, the convicts were hanged on 20th March 2020. The law and whole reasoning of the court seem to be tilting in favor of the convicts. It needs to be reexamined from the point of view of the victim and their family. The commutation of the death penalty in the case of delay of execution of it raises another question- what about the delay in trial and the agony faced by the under trial who may sometime be innocent?

Civil Justice Administration

Provisions under Civil Procedure Code relating to Speedy Trial

---An unreasonable delay in providing the judgment is in itself unfair to both the parties especially the accused, timely getting discharged of his offense would be just and fair for the person, if there does not exist any genuine rationale for the charges. Those who go to court for resolving some property dispute seem to have to wait endlessly for that. There could be some exceptional cases also where allegations may be serious in such cases the court should expedite the process. To further this objective of expediting the legal process, the rights of parties to enter a compromise or take back their suit are recognized.

Solutions: -

[7] https://ncrb.gov.in –prison statistics in India-2021 executive summary
[8] Indianexpress.com -

--Order XXII, Rule 3 (CPC) about the compromise between the parties by getting their statement recorded
--Through the insertion of Rule 3A, the objective was further bettered as a person cannot appeal from a compromise decree ensuring a trial that is faster and more justice-oriented.
--Section 89 through the amendment of 1999 provided greater efficiency to the system of Lok Adalat.
--to quicken the trial process Section 47 of the Code explains that the questions which arise between the two parties to the suit that was passed, or through their legal representatives and in relation to the summation of the decree, shall be pronounced by the court, not through any other different suit.

- Section 148 - courts had the authority to expand the required period for an act
- Section 13 of the Amendment Act in 1999. There was a limit was imposed on the time period for the statement to be made by the defendant and the application for summoning the witness being made.
-Rule 9 and Rule 9A of Order V put the responsibility of putting forward the summons to the defendant by making use of newer means of communication like couriers etc.
-Section 27 of the CPC (Amendment) Act, 1999 and Section 12 of the CPC (Amendment) Act, 2002": The amendment provided the commissioners with the power to record evidence.

Delay in serving of summons-

Summons is a process to compel the attendance of defendant. Generally, people try to evade the summons. Consequently, it delays the speedy trial. The Code provides for two kinds of service of summons- personal service and substituted service. In case, the defendant tries to avoid the service of summons court must avail Rule 20 of Order V which deals with substituted service.

Lack of Monitoring of process servers-

Role of Police and others -The role of process servers is also very significant to avoid the delay of summons. Sometimes due to their negligence and lethargy, they fail to serve the summons in time. To avoid such reasons there should be proper supervision of process servers.

Delay in filing Written Statement: -

Order VIII CPC provides that the "defendant should file Written Statement within 30 days from the date of service of summons on him." But this provision is not followed in true letter and spirit. Defendants tend to prolong the matter by not filing written statements in time.

Non-appearance of parties on the day fixed for hearing –

a) Role of lawyers-

It is the major problem for delaying the process of trial where lawyers do play a very significant role many cases are marred by getting the dates after dates in the case. Lawyers do play a pivotal role in the administration of justice and they are fully aware of this fact. People are not well aware and well versed with laws also the language of Acts is very technical and complicated therefore the help of a lawyer becomes essential to face the court of law.
On the other hand, lawyers are well aware of their importance in the process, for a lawyer more than the delivery of justice what matters more is money because it is a means of livelihood so for them delay means more money.

b) Other things that cause delays in the process of civil matters are-

Non-compliance with the provisions of CPC also leads to delays. Courts and judges should abide following provisions of CPC like Order XI – Discovery & Inspection Order XII – Admission Order XIII – Production, Impounding, and Return of Documents Order XV – Disposal of the suit at the first hearing[9]

Payment of Compensation to the under trials when found -not guilty-

The law and the court have been particular about protecting the rights of convicts in the case of the death penalty. The Court has taken decisions to commute the death penalty to imprisonment for life. But here the question arises –what about the misery and anguish the victim has undergone and in the case of his/her death, the family? Also, in the case of under trials, if they are found not guilty at the end of the trial they must be compensated at the end along with the family which has also suffered because of "inordinate delay" in the trial. As the president of India already made a mention in the abovementioned speech in the tribal areas where they are habitual to the use of alcohol many a time even in a small case they are sent to jail where they remain for a long without trial as well. The Government and the Court have to look into it.
Even in the case when for political vendetta a person is arrested and sent to jail compensation must be paid to the person who suffered in this manner.

Causes of Pendency of Cases and vacancies-

More than 4 crore cases are pending at present as per the National Judicial Data Grid (March 2023) Former CJI Justice Ranjan Gogoi once explained that the Indian judiciary is facing 2 major challenges -1. Pendency, 2. Vacancy. As per the data provided by the National Judicial Data Guild (NJDG), the cases pending between 0-1 year are 12640977 which is 29.58% of the

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[9] http://www.legalservicesindia.com/law/article/1049/4/Delay-defeats-Justice-A-study-of-provisions-of-Civil-Procedure-Code-and-Limitation-Act

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total case which are 42812964. The pending cases between 1-3 years are 10332250 and 24.13% of total cases; between 3-5 years cases are 8006028 which is 18.7% of the total cases; the cases between 5-10 years are 7769392 which is 18.15% of the total cases; the cases between 10-20 years are 3415050 which is 7.98% of the total cases and the cases between 20-30 years are 539873 which is 1.26% of the total cases.[10] The old record of the Supreme Court on pendency goes back to 1950 as mentioned in the Annual Report of the Supreme Court 2015-16. A total of 1215 cases were filed before the Supreme Court of India in its inception year-525 matters were disposed of; 690 cases were pending after one year. The sanctioned strength of judges was 8. The number of judges in the Apex Court at different periods of time was-11 in 1956; 14 in 1960; 18 in 1978; 28 in 1986.

5850 positions are vacant at the District level; 351 positions at the High Court Level and 6 at the Supreme Court level. Total sanctioned posts are 25042 in the District Courts; 1108 in the High Courts and 34 in the Supreme Court.[11] 120th Report of the Law Commission of India suggested a number of 50 judges per million.

As per the census of 2011 and the sanctioned strength of judges of the Supreme Court, High Courts, and Subordinate Courts, the ratio stands at 19.66 judges per million. In 2014 ratio was 17.48; in 2018 – 19 and 2019 -20 judges per million.

Insufficient number of courts and vacancies

This is another matter of concern that leads to the pendency of cases. The inadequate number of courts proved a major setback for the justice delivery system. Law Commission of India in its Report No. 245 deals with the establishment of additional courts to the elimination of delay and speedy clearance of matters. Similarly, the Hon'ble Supreme Court in the matter of Imtiyaz Ahmad v. State of U.P.4 also directed Law Commission for the creation of additional courts. The Supreme Court in the matter of Imtiyaz Ahmad v. State of U.P. & others (Criminal Appeal No. s 254-262 of 2012) directed Law Commission for creation of additional courts for ensuring expeditious disposal of cases and elimination of delay (245th report of Law Commission of India.) The report also focused on to examine and suggest additional judicial (wo) manpower needed and its optional utilization.

Judicial officers are not able to tackle those cases involving specialized knowledge- sometimes it is also a drawback

Illegal Strikes by lawyers –

Sometimes illegal strike has also been a major reason for delay. To circumvent the problem created by the strike by the lawyers the Supreme Court has given its verdict in the case -Ex-Capt. Harish Uppal vs Union of India, SC has said that "Lawyers have no right to go on strike or give a call for boycott, not even a token strike". The apex court made an observation that lawyers can protest in a peaceful manner by adopting peaceful methods[12] "strike was a weapon used for getting justice by downtrodden, poor persons or industrial employees who were not having any other method of redressing their grievances. But by any standard, professionals

[10] https://njdg.ecourts.gov.in 2023.
[11] Union Minister Kiran Rijiju replied before Rajya Sabha on 22nd December 2022.-https://www.indiatoday.in 23 December 2022
[12] https://www.livelaw.in ; ex. Capt Harish Uppal vs Union of India and Anr. 2003 (2) SCC 45; AIR 2003 SC 739.

belonging to the noble profession who are considered to be an intelligent class, cannot have any justification for remaining absent from their duty".[13]

Favor to Rich and Influential-

Cases against political leaders and the role of courts-it have been questioned many a time - are they accomplices? There are allegations. Justice is for the rich and influential? There have been many cases where the poor are still waiting for their turn in courts for the want of money, whereas the rich and influential can manipulate the process for their advantage. In the elections of India; celebrities and businessmen make the judiciary dance to their tune in India. Recently we have witnessed people like leaders belonging to political parties, several film stars, businessmen, and even criminals who have political patronage given out of turn attention by the Court ignoring the huge pendency of cases before it. Such examples are rampant. All of them are/were able to escape the noose of law only because they happen to be very rich. They get bail very fast and some of them were also able to leave the country only for one reason which is money because they can easily 'hire' lawyers in the court. How many people from a middle-class or poor family will be able to avail the opportunity to file a case in the highest judiciary and how many of them would be given a chance to appear before the court so fast?

Solutions-

Cases summing up well the issue of Delay in Justice and providing solutions for Speedy Trial -

1. A.R. Antulay v R.S. Nayak

The Constitution Bench in a leading case of Abdul Rehman Antulay v. R.S. Nayak has formulated certain propositions as guiding principles in this regard. They are as follows:

1. "The right to speedy trial is the right of the accused to be tried speedily as implicit in Article 21 of the Constitution of India spreading over through all stages from the investigation, inquiry, trial, appeal, revision, and retrial. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. "Systemic delay" must be kept in view in dealing with an issue of an alleged infringement of the right to speedy trial.

3. The court has to balance and weigh the several relevant factors- the „balancing process"- and determine in each case whether the right to speedy trial has been denied in a given case.

4. Each and every delay does not necessarily prejudice the accused as some delays indeed work

[13] https://indiankanoon.org, ibid.

to his advantage and „delay is a known defense tactic". However, an inordinate delay may be taken as presumptive proof of prejudice.

5. If the right to speedy trial is found by the court to have been infringed, the charges or the conviction, as the case may be quashed. However, in cases where quashing of proceedings would not be in the interest of justice, the court may make any other appropriate order as may be deemed just and equitable in the circumstances of the case, like an order to conclude the trial within a fixed time or reducing the sentence where the trial has concluded.

6. It is neither advisable nor practicable to fix any time limit for the trial of offenses. Any such rule is bound to be a qualified one. It is primarily for the prosecution to justify and explain the delay."[14]

2. Ranjan Dwivedi v. CBI

In Ranjan Dwivedi case, court reiterated the same view that right to a speedy trial is a fundamental right. The court held that "A „reasonably" expeditious trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India."

Certain propositions were made by the Court. These propositions are:

(1) Fair, just, and reasonable procedure implicit in Article 21 of the Constitution creates a right for the accused to be tried speedily. The right to speedy trial is the right of the accused. The fact that a speedy trial is also in the public interest or that it serves the social interest also does not make it any less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of an investigation, inquiry, trial, appeal, revision, and re-trial. That is how this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are:

(a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(b) the worry, anxiety, expense, and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry, or trial should be minimal; and

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[14] Ibid.

(c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance, or non-availability of witnesses or otherwise.

(4) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defense tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses and disappearance of evidence by lapse of time really work against the interest of the prosecution. Therefore, in every case, where the right to speedy trial is alleged to have been infringed, the first question to be put and answered is - who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays are obtained on ex parte representation.

(5) While determining whether the undue delay has occurred (resulting in a violation of the Right to Speedy Trial) one must have regard to all the attendant circumstances, including the nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions and so on — what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and the State includes the judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

(6) Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage.

(7) We cannot recognize or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favor, but the mere non-asking for a speedy trial cannot be put against the accused.

(8) Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court concludes that the right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offense and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case,

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it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

(10) It is neither advisable nor practicable to fix any time limit for the trial of offenses. Any such rule is bound to be a qualified one. Such a rule cannot also be evolved merely to shift the burden of proving justification onto the shoulders of the prosecution. In every case of complaint of denial of the right to a speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint. Nor do we think that not fixing any such outer limit ineffectuates the guarantee of right to speedy trial.

(11) An objection based on denial of the right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of a grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

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Other Solutions-

Augmenting Infrastructure and appointing new staff-

Increase in the number of courts to provide space for the increasing number of Judicial officers which is the need of the hour. Many grave criminal cases can be resolved by the fast courts that need proper building and staff equipped with all necessary skills and facilities.

Equip Courts with modern technology-

So that there is no need to ensure the physical presence of anyone involved in a case. In an age and era of advanced communication technology and artificial intelligence video conferencing in a number of cases will avoid pendency caused due to the non-presence of the concerned person in the court. The delay in serving summons could be avoided by using emails; WhatsApp etc.

Strengthen further Alternate Dispute Resolution Mechanisms (ADRs) and Lok Adalats-

Former Chief justice of India, Justice P N Bhagwati introduced the idea of Lok Adalats (People's Court) in India keeping interest of the poor and other vulnerable sections of society in mind. It has revolutionized the dispute redressal mechanism. The other option explored was alternative modes of dispute resolution including arbitration, negotiation, mediation, and conciliation. The ADR system by nature of its process is totally different from Lok Adalat. In Lok Adalat, parties are encouraged to come to a compromise and settlement on their own, whereas, in the mediation and conciliation system, the parties have before them many

alternatives to solve their difference or disputes. Instead of obtaining a judgment or decision, the parties through ADR might agree to a totally new arrangement, not initially agreed upon or documented. He is also responsible for developing public interest litigations to help the poor who can reach court due to their economic inadequacy. But now it is used by civil society groups not by the people for whom it was meant. Therefore, there is a need to further strengthen this mechanism by educating poor people so that they can use the tool effectively.

Increase the number of Gram Nyayalayas-

Gram Nyayalayas is established under Gram Nyayalaya Act, 2008. They are basically village courts that are meant to ensure expeditious disposal of petty matters at the rural level. There is a need for setting up more village courts for speedy and easy access to justice so that the justice delivery system goes to the grassroots and the courts are not thronged by the new litigations.

Language of Courts-

The Supreme Court of India is out of the approach of a large number of people for two reasons- one the lawyers who are very essential for representation are very expensive, and two- the language of the Court is English that is spoken by a very minuscule number of people in India so using modern technology now translations should be made available to the people in the language that they are familiar with. This way the highest court will be more approachable to a larger number of people directly.

Right to Free Legal Aid and Speedy Trial and Access to Justice-

Article 39 A of the Indian constitution gives right to free legal aid to certain vulnerable and poor sections of society. Awareness about it should be spread properly. The Bar Council of India has also made it part of the curriculum in the area of legal education the implementation should also be ensured. The outcome assessment on the basis of the number of beneficiaries should be made. The highest court of the country should also encourage and promote it. State Bar Councils should ensure the establishment of law clinics in National Law Schools and Law Colleges. The DALSA should provide them (law students plus teachers) with all the necessary support and space to represent cases. Also, rope them more in legal literacy and ADRs. As mentioned earlier the NALSA; SALSA and DALSA should play more active role in promoting the values related to taking justice for the last person and making a just society

If we can achieve some of these measures then we will make the speedy trial a reality and no one will be denied justice.

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