

Dispensation of Justice: Drawbacks, Consequences and Cures

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Introduction

“The life of the law has not been logic; it has been experience,” commented Oliver Wendell Holmes. The quest for speedy and pragmatic justice is the need of the hour in a democratic country like India. Justice is the foundation and object of any civilized society. The quest for justice has been an ideal, which mankind has been aspiring for generations down the line. Justice is a constitutional mandate.ⁱ The preamble of the constitution of India enshrines and secures to the people of India Justice--social, economic and political. Article 14 guarantees equality before the law and the equal protection of the laws. Article 39A of the Constitution mandates the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity and ensure that the same is not denied to any citizen by reason of economic or other disabilities. All have equal rights, but unfortunately, all cannot enjoy the rights equally. Enforcement of the rights has to be through courts, but the judicial procedure is very complex, costly and tardy, putting the poor at a detachment. It is one of the most important duties of a welfare state to provide judicial and non-judicial dispute-resolution mechanisms to which all citizens have equal access for resolution of their legal disputes and enforcement of their fundamental and legal rights.ⁱⁱ

*Ansuyaben Kantilal Bhatt v. Rashiklal Manilal Shah*ⁱⁱⁱ is an exemplary case to convey as ‘how delay is defeating the cause of justice’. In this case, the landlord, aged 54 years, sought to evict his tenant on the ground of his personal need to carry on his own business. When the matter finally reached the Supreme Court after a lapse of 33 years, in view of the prolonged litigation genuine requirement may not exist at that time. The landlord, at the age of 87 years, was not supposed to start a new business. Such is the basis of the ubiquity of the comment ‘Justice delayed is justice denied’.

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The Apex Court, in a number of rulings, has stressed the need for right to speedy justice and free legal aid, as successive governments have failed to translate the court's orders into legislative action. Law Minister M Veerappa Moily told, "The government intends to ensure that receiving justice is the right of each and every individual, irrespective of his or her caste, colour, creed, social and financial status. We intend to place the draft before the Cabinet soon. While the Constitution does have certain provisions regarding need for speedy justice, there is no specific provision confirming justice as either a fundamental right or constitutional right."^{iv}

The foundation of this right lies in the Supreme Court judgment in *Hussainara Khatoon v. State of Bihar* where Justice Bhagwati observed, "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21 of the Constitution. There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The question which would, however, arise is as to what would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21."

Well-timed and smooth delivery of justice is fundamental to the civilized and peaceful society. Therefore, effective and efficient system for speedy and just trial for dispensation of justice is an obvious appendage.

R.K.Agrawal, Chief Justice, Madras High Court in his speech in a Judicial Conference said that a "slight change in approach while dealing with the administration of justice would go a long way in ensuring greater 'access to justice' and upholding the 'rule of law' as a result."^{vi} One of the ways to achieve these mandates of law is the resort to Alternate Dispute Resolution Mechanism.

There was much delay in the settlement of disputes between parties in law courts, which prevented investment of money in India by other countries. India has undertaken major reforms in its arbitration of law in the recent years as part of economic reforms, initially in 1991. The

Arbitration and Conciliation Act of 1996 was thus enacted by the Parliament bringing in substantial reforms in arbitration, regarding domestic and international disputes.^{vii}

In **Rajasthan State Road Transport Corporation v. Krishna Kant**^{viii}, the Supreme Court observed: “The policy of law emerging from Industrial Disputes Act and its sister enactments is to provide an alternative dispute-resolution mechanism to the workmen, a mechanism which is speedy, inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of the courts and tribunals under the Industrial Disputes Act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.”

The Family Courts Act 1984 was enacted to provide for the establishment of Family Courts with a view to promote conciliation in, and secure speedy settlement of, disputes relating to marriage and family affairs.

Another right and welcome step taken was the enactment of the Consumer Protection Act 1986 for the settlement of consumers’ disputes. The Act provides effective, inexpensive, simple and speedy redressal of consumers’ grievances, which the civil courts are not able to provide. This Act is another example of ADR for the effective adjudication of consumers’ disputes.

The Dire Need

Now there is also a great requirement to improve the quality of each and every agency involved in the process of providing justice. Thus, effort is required to be made to improve the methods of investigation and prosecution. More professionalism needs to be infused in them. The State Government should create a special wing in the Police Department solely for the purpose of investigation and attending to court-work, and the prosecuting agency should be independent.^{ix}

In *Hitendra Vishnu Thakur v. State of Maharashtra*^x, the Supreme Court observed that ‘the success of a trial depends mainly on effective prosecution, which is possible only through well-qualified, trained, fair and dedicated prosecutors.’ It goes without saying that integrity and

impartiality of the public prosecutor is essential in the administration of justice. It is essential that efforts are made to improve the quality of the management of prosecution in order to secure fair, just and expeditious conclusion of trials.

Lawyers, as the general public expects, should be thorough professionals, persons of integrity and competence, who can uphold the 14 AIR 1994 SC 2623 36 cause of justice. Lawyers must be men or women of substance having full sense of their social responsibilities as social technicians and architects of the judicial process. They must have a grasp of the endless tradition and must be aware of the greatness of their task. They must have necessary humility, being servants of justice and the conscience of the community.^{xi}

Legal literacy campaign, paralegal training programmes, mobilization of public opinion against injustice and exploitation, out-of-court settlement of disputes, legal advice, etc. are some of the ways through which the poor and the underprivileged can be made to realize their rights.

In our country, the ratio between the population and the judges is unrealistic. Therefore, the Judiciary is unable to cope up with the flood of litigation. Hence, the number of judges needs to be increased in proportion to the population.^{xii}

Our antediluvian laws either need to be deleted or rejuvenated. The procedure laws should be pruned and streamlined. The right to appeal on both the civil and the criminal sides need to be restricted.^{xiii}

The Commission found that 253 laws despite having been recommended for repeal in previous reports still exist on the statute-books. The Law Commission further opined that “In today’s times when national economies are increasingly becoming globally ‘interdependent’ and ‘interconnected’, ignoring to recognize the above symbiotic linkages between law and economy can prove very costly to the nation. As the economy gets liberalized and modernized encompassing phenomenal changes brought in almost every walk of life the need for laws to keep pace with changes thus occurring become fundamental requirement lest there should appear legal gaps, inconsistencies and contradictions causing serious impediments to the processes of ‘growth’ and of ‘development’”.^{xiv}

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In conclusion the commission suggested that “It may not be out of place to remember what one of the eminent scholars of jurisprudence, Puchta, long back said: “Law grows with the growth and strengthens with the 49 strength of people.....”. We wonder whether ‘law’ in our system is growing and gaining strength or in many respects, say for example in case of obsolete, irrelevant and are archaic laws remaining on the statute books still remain muddled and outmoded. There is urgent need to ensure that laws and legal structures keep pace and are reflective and responsive to growing needs and challenges of the time. Commission hopes that the suggestions and recommendations made in the report constitute a step in that march of law.^{xv}

Recently Centre for Civil Society’s Justice, NIPFP Macro/Finance Group, and Vidhi Legal Centre, with the help of lawyers, legislative experts and economists recommends for complete repeal 100 laws that are redundant, or materially impede the lives of citizens, entrepreneurs and the government.^{xvi}

These all cumulatively are responsible for delay in dispensation of justice. There is much that has been done in the past to find out some ways to dilute the problem but there is a dire need to reemphasize and reaffirm the methods for efficient, just, fair and reasonable justice-delivery system.

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