

Litigation Management with Applying latest tools and Technique for Speedy Justice

Introduction- Indian judicial system is based on equity justice and good conscience. All the residents are having good faith on Indian judicial system. That is said to be last hope for justice. Our judicial system still works on the British Indian based colonial legislations. All the procedure laws like the Civil Procedure Code, the Criminal Procedure Code and the Evidence Act are legislated by British Parliament. Substantive laws like Contract, Tort and the Indian Penal code are well established post Independence in India.

Our statutes and courts are well established but not upto date and well equipped with time needs. Due to poor recourses and non maintenance of system are major causes for delayed justice delivery system.

Therefore it is becoming necessary for major reforms in our judicial system.

Delay Defeat Justice- Judicial delays are so endemic and pandemic that more than 3 corore cases are still pending in our lower courts. This big list of lispendency is main causes for delay defeat justice. This slow delivering system somehow creates doubts on our judicial system. Rest of the world wide courts are very prompt and quick. We are very slow and still working on old traditional methods which require immediate reformative steps for speedy justice.

Causes for Delay- there are so many causes for defeating of justice-

1. Lack of Infrastructure- our district level courts (lower courts) are not well equipped . lack of well equipped courts rooms ,frustrate us very much.
2. Vacant Courts- Benches are not having adequate number of judges. There is huge vacancy in our courts. We are World's second largest populated country even though our judges are not as per standard norms.
3. Ill Functionary- Bar (Advocates) are not interested in final setelment of cases. Their approach are in linger on the pending cases.
4. Non Technosavy – Bar and Bench both are not interested in advance means and modes for communication as well as gagets for their daily routine work.
5. Casual Approach- Advocacy profession is now not by will or choice it is by default.

Remedies in Management Principles- There are certain managerial measures that can reduce such problems. We highlighted the major problems those can be shorted out by good management. These principles are applicable on all sphears of our life, in justice delivary system also. it should be inserted in our LL.B degree program as a compulsory paper. How to manage litigation management ,how to prepare file noting, how to draft, how to use our resourses for betterment of our clint.

In our Supreme court just like American Courts litigaion managers shall be appoined. These managers prime function will be allotment of cases for the conserved bench. Recently in our Supreme court faced such kind of problem. Our Chief Justice alloted the case with certain kind of favourism. He used his discretionary power with biased grounds. Such kind of activites has shaken our belief in our judiciary.

Legislative Amendments- in the year 2002 we have revived section 89 of the Civil Procedure Code, 1908. That gave additional redressal mechanism through (a) Arbitration (b) Conciliation (c) Judicial settlement including through lok adalat and (d) Mediation.

Section 89 provides for the settlement of disputes outside the courts. The provisions of this section are based on the recommendations made by law commission of India and malimath committee. It was suggested by law commission of India that the court may require attendance of any party to the suit or proceedings to appear in person with a view to arriving at an amicable settlement of dispute between the parties and make an attempt to settle the dispute between the parties amicably.

In the Criminal Procedure code, 1973 section 320 defined the compoundable offences. Means all such less serious criminal offences can be settled by the permission of the court. Some of the frequently reported offences under sections 294(b), 147, 148, 279, 324, 384 and 498A of the Indian Penal Code, 1860. Which are not very serious in nature can be brought under compoundable offence. This can also be a good way for timely settlement of criminal cases.

In the same direction our Grama nayala Adihynaim, 2000 is another step towards it. Here Grama Sabha has given power for settlement of petty offences.

Speedy Trial as Fundamental Rights- As Article 21 of the constitution of India mandates :

“no person shall be deprived of his life or personal liberty except according to the procedure established by law.”

The supreme Court in a catena of decisions has held that the expression “procedure established by law” envisages an expeditious procedure. In the instant case, it is per se clear that there has been an infringement of the fundamental rights of the petitioner conferred by Article 21 of the constitution of India. A procedure in which the trial of the petitioner could not be disposed of, for no fault of his, for a period of nearly nine years is the very anti-thesis of an expeditious procedure. It is a blatantly dilatory procedure, shocks judicial conscience and casts a very sad reflection on the judicial system¹

As in *Smita Ambalal Patel*² case Right to speedy and expeditious criminal trial is one of the most valuable and cherished fundamental rights guaranteed to our citizens under the constitution. The said right is an integral part of right to life and liberty and a necessary concomitant of fundamental right guaranteed under Article 21 of our constitution. Fundamental rights are not a mere illusion to be enforced and made a reality in practice. The constitutional courts like the Supreme Court and the High courts are enjoying to enforce the fundamental rights promptly and expeditiously whenever the aggrieved citizen establishes the infringement or invasion thereof to the satisfaction of the court.

In *Kartar Singh vs. State of Punjab*³ a constitution bench observed that

“the concept of speedy trial is read into Article 21 as an essential part of fundamental right to life and liberty guaranteed and preserved under our constitution. The right to speedy trial begins with actual restraint imposed by arrest

¹ *Sada Shiv Manohar Parkar vs. State of Maharashtra*, 1998 Cri Lj 3755 at p.3756 (Bom)

² *Smita Ambalal Patel vs. Asst Director of Enforcement, Enforcement Directorate*, 1992 Cri Lj 961 at p.962

³ (1994) 3 SCC 569

and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averred. In this context, it may be noted that the constitutional guarantee of speedy trial is properly reflected in section 309 of the code of Criminal Procedure...

Of course, no length of time is per se too long to pass scrutiny under this principles nor the accused is called upon to show the actual prejudice by delay disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether he accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors-

1. Length of delay
2. The justification for delay
3. The accused assertion of his right to speedy trial and
4. Prejudice caused to the accused by such delay.

However, the fact of delay is dependent on the circumstances of each case because reason for delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the court, etc.”

In *Munn vs. Illinois*⁴ Life was elaborated – Right to life includes all that which gives meaning to life and makes it wholesome and worth living. It means something more than survival or animal existence. Right to life enshrined in article 21 also embraces any aspect of life which makes it dignified. This view was accepted in India in *Maneka Gandhi vs. Union of India*.⁵

Human Rights are derived from the dignity and worth inherent in the human being. Human rights and fundamental freedoms have been reiterated by the universal declaration of human rights. Democracy, development and respect for human rights and fundamental freedoms are inter-dependents and have mutual reinforcement⁶. It means that right to live includes all those aspects of life which go to make a man's life meaningful, complete and worth living.⁷

The Supreme Court in *Chameli Singh vs. State of U.P.*⁸ “ In any organised society, right to live as a human being is not ensured by meeting only the animal needs of men. It is secured only when he is assured of all facilities to develop himself and is freed from restrictions which inhibit his growth. All human rights are designed to achieve this subject. Right to live guaranteed in the civilised society implies the right to food, water, decent environment, education, medical care and shelter. These are basic human rights known to any civilised society. All civil, political, social, and cultural rights

⁴ (1876-78) 94 US 113.

⁵ AIR 1978 SC 597.

⁶ *Gaurav Jain vs. Union of India*, AIR 1997 SC3021 p3033.

⁷ *Makhan Singh vs. State of Punjab*, AIR 1964 SC 381.

⁸ AIR 1996 SC 1051

enshrined in the Universal Declaration of Human Rights and Convention or under the constitution of India cannot be exercised without these basic human rights.”

Judicial System- the judiciary is the most prominent and outstanding wing of the constitutional system for fulfilling the mandate of the constitution. For its sound functioning it is, therefore, necessary that there must be an efficient judicial system and one of the factors for providing requisite efficiency is ensuring adequate strength.⁹

In *Baba Abdul Khan vs. A. D. Savant, J.M.F.C., Nagpur*¹⁰, it was observed as follows:

“Courts of justice are called as ‘temple of justice’. Temple denotes sanctity, purity and reality. So in the temple of justice these things are observed while administering justice. As the temple it is a holy place, so is the court where justice is made impartial and aggrieved parties are put to happiness with dignity and sanctity. Judges are the guardians of law and justice. Judges have remained the moral guardian of Indian polity preserving high ideals of law and liberty enshrined in the constitution. In every case, a judge’s conduct should be above reproach. He should be conscientious, studious, through, courteous, patient, punctual, just, impartial, fearless of public glamour, regardless of public praise and indifferent to private, political or partisan influences. A judge is expected to administer justice according to law and deal with his/her appointment as a public trust; he should not allow other affairs of his private interest to interfere with the prompt and proper performance of judicial duties; nor should he administer the office for the purpose of advancing his personal aims or increasing popularity.”

Inherent Powers of High Courts- the jurisdiction under article 226 of the constitution of India is extraordinary and discretionary. It cannot be encapsulated and confined in terminological and technical formalities so as to limit the plenitude of the jurisdiction nor it can be cribbed and confined. It must rush in, to cure injustice. Writ is not, nor has ever been a narrow formalistic or a static remedy. Its scope has grown to achieve its purpose, to protect the public against the wrong act or the action or order passed arbitrarily, in absence of fair play resulting in discrimination, or against inaction, in utter neglect of public duty, by the usurpers of public offices.

Objects of Criminal Justice System- the primary aims of criminal justice system are summarized as: to detect crime and convict those who have committed it; to have rules relating to arrest, search, questioning and admissibility of evidence which do not expose the suspects to unfair treatment likely to lead to unjust convictions; to have as above which do not unnecessarily impede the proper investigation of crime; to ensure that innocent persons are not convicted; to maintain public order; to maintain public confidence in the criminal justice system; and to properly balance considerations of justice and fair procedure with those of efficiency and funding.¹¹

The growing complexity of social relations coupled the rapid in technological development and proliferation of different legislative enactments have ultimately tendered to escalations of pending cases with protracted litigations. The concept or philosophy of speedy and fair trial and principle of natural justice have gradually stepped into the arena of judicial process for securing justice to the

⁹ Subhash Sharma vs. Union of India AIR 1991 SC 631.

¹⁰ 1994 Cri Lj 2836 (Bom), Referred in AIR 2001 Journal at p156.

¹¹ State of Maharashtra vs. Yadav Kohachade 2000 Cri Lj 959 p961.

people, protecting the valuable interest of the parties and the liberty of the individual as a whole which is the dear value of the constitution. The procedural formalities as well as technicalities deeply embedded in the statute, not only reluctant to recognize the well-accepted philosophy and principles but also purely adhere to constricting the power and functions of the court for rendering proper dispensation of justice. The poor litigants, as a result, used to approach court to court spending a lot of time and sustaining a lot of pecuniary loss in anticipation of securing justice in their favors. India being a welfare state, the constitution in its preamble aims at securing, to all citizens, social justice. The court through the instrumentality of law is only meant for administration of justice and not to impel the parties to resort to a process of protracted litigations. To alleviate the situation and to rejuvenate faith on criminal justice, necessitates the need of inherent powers of the criminal justice, necessitates the need of inherent powers of criminal justice, necessitates the need of inherent powers of the criminal courts who directly deal with the litigant people and disposal of cases.

Judicial Crusadism-every proceedings before the court must reflect judicial initiative, involvement, resourcefulness, concern which can be packed up in one word namely, the 'judicial activism', the moving spirit of justice! In fact, the judge without judicial activism can perhaps be described as a flower without odour and fragrance and vehicle without fuel and wheels which is unavoidably must for any court to be known as the court of justice, substantial justice and speedy justice! To frame charge or issues, issue summons, warrants or even non-bailable warrants, record evidence, hear arguments and decide the cases by writing down judgments, record evidence, hear arguments and decide the cases by writing down judgments are not the only avenues where constant and unflickered lamp of the judicial awareness must stand enlightened and manifest itself. The source of this judicial activism is the crusading spirit of the concerned judge/magistrate in delivering the substantial and speedy justice which may be termed as 'judicial crusadism'. In fact, over and above all the aforesaid things all the cases before the court are also required to be attended at the earliest best and should also be the matter of 'personal concern, worry and anxiety of every judge'.

Article 39-A of the Constitution of India, says that- "the State shall secure that the operation of the legal system promotes justice, on the basis of equal opportunity and shall in particular provide free legal aid, by suitable legislation or scheme or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

The free legal aid was recognised by our Supreme Court as fundamental right under Article 21 of the constitution. In *Sunil Batra vs. Delhi Administration*¹² it was held that the legal aid shall be available to the prisoner in two situations: first, to seek justice from prison authorities and second, to challenge the decision of such authorities in the court. Thus, the requirement of legal aid was brought about in not only the judicial proceeding but also the proceedings before the prison authorities which were in administrative proceedings.

Justice P N Bhagwati opined that a procedure which did not make available the legal services to an accused, who was too poor to afford a lawyer, could not be regarded as 'reasonable, fair, just.'¹³ Again in *M. H. Haskot vs. State of Maharashtra*¹⁴ he emphasized on the right to legal aid to the said

¹² AIR 1978 SC 1675.

¹³ *Hussainara Khatoon vs. State of Bihar*, AIR 1979 SC 1369 p.1373.

¹⁴ AIR 1978 SC 746.

detention as well as the preventive detention law should also satisfy the test of Article 21 of the constitution.

Right to Speedy Trial- in *Abdul Rehman Antulay vs. R. S. Nayak*,¹⁵ the Supreme Court observed,

“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.

Ordinarily speaking, where the court comes to the conclusion that the right to speedy trial of an accused has been infringed, the charges or the conviction, as the case may be, may be quashed. But this is not the only course open. The nature of the offence 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, 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.

It is neither advisable nor practicable to fix any time-limit for trial of offences. 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 on to the shoulders of the prosecution. In every case of complaint of denial of right to 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.”

¹⁵ AIR 1992 SC 1701.