



Justice Delayed Is Justice Denied

How to make the courts work better in India??

As many as 23 CBI courts meant to ensure quick disposal of the central agency's cases in the Capital City (New Delhi) delivered judgments only in 101 of the 908 pending cases through 2016. This has spurred legal experts to suggest that as many of these courts were not being utilized to their full potential, their judges should therefore be reassigned elsewhere, such a move they say, will bring respite to an otherwise overburdened judiciary.

An RTI application filed by a social activist has revealed that the number of CBI cases in the six districts of Delhi is decreasing, as is the disposal rates of the courts. In 2014 its 23 courts had 839 cases pending before them. Only 238 cases had been decided by the end of the year, with courts showing a mere 28% rate of disposal. The CBI courts were created by the Supreme Court order in 2005 to tackle the increasing number of corruption cases. However legal experts cite the low rate of disposal has made these courts useless, S.N Dhingra retired Delhi High Court Judge said that "half of the judges are not working while the other half was overburdened, the top administration is unaware of the ground realities in the district & CBI courts, they need to do a proper study to see how the work can be effectively distributed".

Fast track courts were created to deal with crimes against women, Delhi has just 6 of them every day 6 rape cases are reported here, the six judges were burdened with 782 cases as of January 1, 2016, so every judge required to dispose 130 cases.

Now if we take the example of Additional Sessions courts, which deals with criminal appeals, murders, heinous and terrorism related cases, all cases of child sexual assault etc., there are 7 top additional sessions courts, seven judges had to decide 2500 cases so far in just 2016, each judge has to dispose 358 cases.

As of today, there are more than 20 million cases pending in the Indian districts courts; two-thirds are criminal cases and one in 10 have been pending for more than 10 years, our analysis of National Judicial Data Grid (NJDG) data has revealed the following :

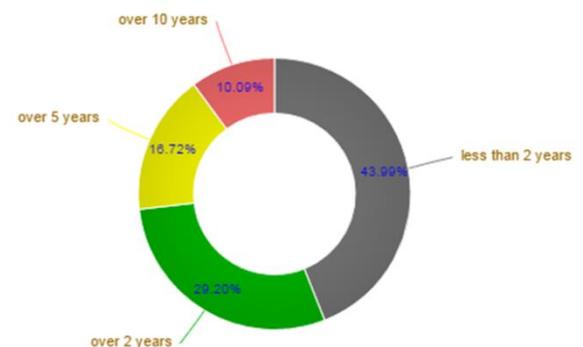
1. There is one judge for every 73,000 people in India, seven times worse than the United States. Delhi is almost seven times worse with about 500,000 people to a judge.
2. On an average, 1,350 cases are pending with each judge, who clears 43 cases per month.

At the rate cases are handled at the district courts, civil cases will never get cleared, and it will take more than 30 years to clear criminal cases. On the other end, smaller states and union territories (UTs) such as Chandigarh, Goa, Andaman and Nicobar Islands, Sikkim, Haryana and Himachal Pradesh have at least twice as many judges per person, compared to the national average. States with fewer judges and higher burdens have most cases pending for more than a decade.

Does the burden on judges translate to judicial delays?

We have mixed results. Smaller states and UTs (Union Territories) such as Haryana, Sikkim, Chandigarh, Punjab, Mizoram and Himachal Pradesh have less than 1 per cent of cases pending more than 10 years. Among states with the worst ratio, Gujarat heads the list with about one in 4 cases delayed more than 10 years. This is a looming crisis, and understanding where the problem lies is key to finding a solution.

Total pending cases



Why the Delay: Power Battle Between the Executive and Judiciary

The process of selection of judges has been a bone of contention between the executive and the judiciary since last year. To decide the new Memorandum of Procedure, appointment of new judges was adjourned for a year. The proposed MoP which gave the Centre the power to reject any name on the ground of national security, was consequently shot down by the Supreme Court. Consequently, the disposal rate of High Courts and Subordinate Courts decreased over the past year. To end the stalemate, it was decided to follow the old procedure of selection for immediate relief wherein the collegium selected the name and sent it to the IB for vetting.

Other Contributing Factors

Increasing literacy: Albeit at a slow pace, the number of cases being filed every year is increasing. An interesting reason for the same, apart from depleting moral conscience, is increased awareness, with increased literacy. Kerala, for example, gets 28 new cases per 1,000 people. It has a literacy rate of over 90%. Jharkhand, which has a literacy rate of around 53%, gets four cases per 1,000.

Lower Courts: According to the National Judicial Data Grid website as on December 31, 2015, 2.6 crore cases are pending only in lower courts of which 41.38% cases have been pending for less than two years and 10.83% have been pending for over 10 years. This is a resultant of rampant postponing dates, so much so that former Chief Justice of India V.N. Khare said in an interview, "Judges are only human, like us. They come from the same society. Our society is all about quick successes. Short cuts are taken. Even by the judges."

Indian government – the largest litigant: Another interesting aspect is that the government is the largest litigant in India, responsible for nearly half the pending cases. Many of them are actually cases of one department of the government suing another, leaving decision-making to the courts.

Indian Legal process: India has a well-established statutory, administrative and judicial framework for criminal & Civil trials.

Criminal : Indian Penal laws are primarily governed by 3 Acts: The Code of Criminal Procedure, 1973 (Cr.P.C.); The Indian Penal Code, 1960 (IPC); and The Indian Evidence Act, 1872 (IEA).

Cr.P.C. is a comprehensive and exhaustive procedural law for conducting a criminal trial in India, including the manner for collection of evidence, examination of witnesses, interrogation of accused, arrests, safeguards and procedure to be adopted by Police and Courts, bail, process of criminal trial, method of conviction, and the rights of the accused for a fair trial. The procedure for a criminal trial in India, is primarily, except as otherwise provided, governed by Cr.P.C.

IPC is the primary penal law of India, which is applicable to all offences, except as may be provided under any other law in India.

IEA is a detailed treaty on the law of "evidence", which can be tendered in trial, manner of production of the evidence in trial, and the evidentiary value, which can be attached to such evidence. IEA also deals with the judicial presumptions, expert and scientific evidence. There are certain other laws, which have been enacted to deal with criminality in special circumstances.

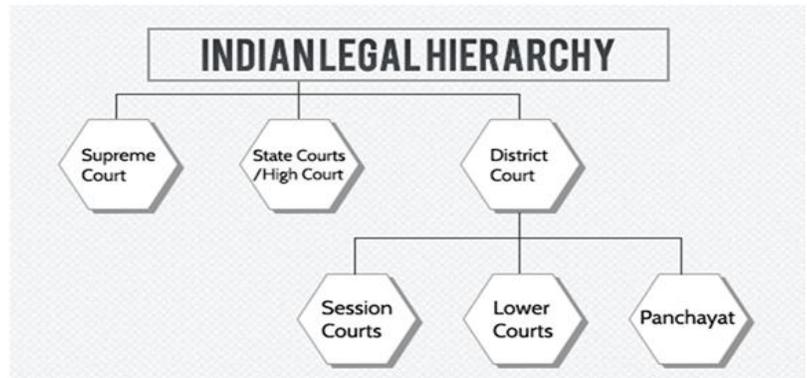
India has a highly developed criminal jurisprudence and prosecution system, supported by judicial precedents, however, there may be certain issues or concerns relating to the execution of the same by Police and implementation by Judiciary. The courts in India, particularly High Courts and Supreme Court have been proactively guarding the rights of the accused. Even Article 21 of the Constitution of India has been interpreted in a highly dynamic manner to protect the rights, life and liberty of the citizens, by also incorporating the principles of natural justice. The Common canons of justice is that "One innocent should not be punished when 100 criminals might escape" with this principle the courts have always held that in criminal law there is no probability theory & it must be proved "beyond all reasonable doubts" hence evidencing & proving a crime takes a lot of time & efforts hence there are delays , moreover there are many

stages before a person can be punished as he is “innocent until proved guilty” if he losses in a lower court he can go to the high court & then again to the supreme court, he can engage the best of lawyers & argue his case & take as much time as he likes (depends on the counsel) by adjournments & cause as much delay as possible and in the meanwhile if the police prosecution is not strong enough the person may even be enlarged on bail & he can roam around freely until he is proved guilty and put in prison.

By the flowchart herein below, an attempt is being made to show the hierarchy system of the India courts to briefly understand the process of criminal investigation and trial in India and the stages.

For Civil Cases, the Procedure is as follows:

1. Filing of Suit/Plaint
2. Vakalatnama
3. Court Fees
4. How Proceedings are Conducted
5. Written Statement
6. Replication by Plaintiff
7. Filing of Other Documents
8. Framing of Issues/List of Witness
9. Final Hearing
10. Appeal, Reference and Review



How Proceedings are Conducted: On the first day of hearing, if the court thinks there are merits in the case, it will issue notice to the opposite party, to submit their arguments, and fix a date. On issuance of notice to the opposite party, the plaintiff is required to do the following: File requisite amount of procedure fee in the court. File 2 copies of plaint for each defendant in the court, i.e. if there are 3 defendants, 6 copies has to be filed. Of, the 2 copies for each defendant, one shall be sent by Register/post/courier, and one by Ordinary post. Such filing should be done within 7 days, from date of order/notice.

Written Statement: When the notice has been issued to the defendant, he is required to appear on the date mentioned in the notice. Before such date, the defendant is required to file his "written statement", i.e. his defense against the allegation raised by plaintiff, within 30 days from date of service of notice, or within such time as given by court. The written statement should specifically deny the allegations, which defendant thinks are false. Any allegation not specifically denied is deemed to be admitted. The written statement should also contain verification from the Defendant, stating that, the contents of written statement are true and correct. The time period of 30 days, for filing a Written Statement, can be extended to 90 days after seeking permission of the court.

Replication By Plaintiff: "Replication" is a reply, filed by the plaintiff, against the "written statement" of Defendant. "Replication" should also specifically deny the allegations raised by the Defendant in written statement. Anything not denied is deemed to be accepted. Replication should also contain, "verification from the plaintiff, stating that contents of "Replication" are true and correct. Once Replication is filed, pleadings are stated to be complete.

Filing of Other Documents: Once, the pleadings are complete, then both the parties are given opportunity to produce and file documents, on which they rely, and to substantiate their claims. Any document not filed or produced cannot be relied upon, during final arguments. Filing of Documents is not sufficient. They should be admitted and taken on record. In brief the procedure is as follows: Documents filed by one party may be admitted by opposite party. If they are denied by opposite party, then they can be admitted by the witness produced by party whose documents are denied. Once the document has been admitted it shall form a part of the record of court, and all the details of suit such as name of parties, title of suit etc, shall be inscribed on the document. (O13 R49 7) Documents, which are rejected i.e. not admitted, are returned to the respective parties. It is necessary that document should be filed in "original", and a spare copy should be given to the opposite party

Final Hearing: On the day fixed for final hearing, the arguments shall take place. The arguments should strictly be confined to the issues framed. Before the final Arguments, the parties with the permission of Court, can amend their

pleadings. Whatever is not contained in the pleadings, the court may refuse to listen. Finally, the court shall pass a "final Order", either on the day of hearing itself, or some other day fixed by the court.

When an order is passed against a party to the suit, it is not that it has no further remedy. Such party can further initiate the proceedings, by way of **Appeal, Reference, or Review**

The above clearly shows the long process of fighting a criminal or a civil case in India & further compounded by delays in adjournments etc.. and various opportunities given for approaching the higher courts referring the matter for appeal, review etc., It is also important to note that India follows the adversarial system, where generally the onus of proof is on the State (Prosecution) to prove the case against the accused, and until and unless the allegation against the accused are proved beyond reasonable doubt, the accused is presumed to be innocent. In certain exceptional cases, which may relate to terrorism, etc., the onus of proof has been put on the accused person, who claims to be not guilty.

Now let us compare this with the judicial system in France. Justice Delivery System in France follow the inquisitorial mode of justice, the justice delivery system in France is the best. Courts in France like any other Court which follows inquisitorial system moves on the presumption of "Guilty until proven innocent" (Reverse to the Indian system). The presiding Judge actively, often vehemently and acidly, participate in the court room questioning of witnesses as well as the accused- who cannot invoke the Anglo Saxon privilege of refusing to take the stands on the grounds of possible self-incrimination i.e. he does not have a right to maintain silence which is given in adversarial system.

The judge of the court combines the power of the prosecutor and a magistrate but he is not a member of a prosecution per se. His function is to determine truth on behalf of the state, with aid of the police. The powers of the judge are very broad which helps him to reveal the truth. He may call witnesses and pester them. The whole process, from the starting of trial, investigation, examination of witnesses, their testimony, judges play a very important role because they themselves assist in all the procedures.

Therefore, it can be said that criminal court in France is investigative rather than the battle between two opposing parties, which happens in adversarial system. According to one legal authority such battles denote a bitter adversary duel rather than a disinvested investigation.

Administrative Justice in France: in administrative Courts such as Conseil d'Etat at litigation, the proceedings are markedly more inquisitorial. Most of the procedure is conducted in writing, the plaintiff writes the court, which asks explanations from the concerned administration or public service, which answers; the court then may ask further details from the plaintiff. When the case is sufficiently complete, the law suits open in courts; however, parties are not required to attend the court in appearance.

French justice delivery system has become envy of the world. As the Sanskrit shloka goes "yukti uktam" which means "useful idea can come from anywhere". Then a question arise, what's wrong in taking idea from France? & Indian Adversarial system to be abolished

To conclude, one must keep in mind that there are multiple factors that have contributed to judicial pendency, and one can't simply blame one party for it. As quality and quantity always go hand in hand, the problem isn't restricted to pendency, it extends to the judiciary not being able to give time to each individual case in order to achieve swift disposal. Hopefully, due to increased discourse on the topic, Corporate litigations, mergers, acquisitions etc.. now being transferred to the NCLT (National Company Law tribunal) high courts can be relatively free with such cases & significant measures will be taken soon and we will never have to taunt the system with '**Justice delayed is justice denied' again.**

Ref:

http://supremecourtindia.nic.in/http://164.100.78.168/njdg_public/

<http://indiancourts.nic.in/sitesmain>.

<http://courtnic.nic.in/courtnicsc.asp>