Quicker Justice on the Cards — Five Plus Zero

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Abstract:

The author is disturbed by the plight of the cases running pending in the Indian judicial system. Having served for almost 32.5 years in the judicial services, the author has extreme feelings for the litigants that one day they will get justice. But when that day will arrive is a question to ponder upon. Through his practical experience of himself being a part of the Indian judiciary for 32.5 years, the author has tried to portray the plight of the cases pending in the judicial system of not only India but also that of Pakistan, where Pakistan's Supreme Court has decided a case of inheritance filed in 1918 in 2018 i.e., after 100 years. Is it access to justice or excesses of justice? The State Governments are also responsible for this plight to some extent. Failure on their part to provide basic facilities to the courts also amounts to violation of litigants' right to life, which includes right to speedy trial. Barring the metro cities and state capitals, subordinate courts in the country do not have basic facilities for the litigants. Adequate infrastructure is a sine qua non for the reduction of pendency and clearing backlog of cases in courts. Litigant's collective right to speedy justice gives birth to corresponding duty on the part of the state to construct and develop sufficient infrastructure so as to enable the judiciary to perform its constitutional obligations. The other most important factor responsible for mounting arrears and backlog of cases is non-appointment of Judicial Officers as against the court rooms lying vacant.

Our effort should be 'five plus zero' that is clearing all cases which are more than five years old and gradually move towards 'four plus zero'. The overall disposal of cases should be more than filing every year. A "Disposal Review Committee" is also required to be set up in each High Court to focus on disposal of cases on a priority basis so as to ensure the goal of five plus zero as early as possible so that quest for justice may not entangle in the web of dates and dates.

Keywords: Justice Delayed, Justice Denied, Backlog of Cases, Access to Justice, Speedy Justice.

Introduction:

Part-I

When I joined court compound as a law student in July 1975 at Dehra Dun and as Munsif again in early 1985, at Muzaffarnagar, I was surprised to note the faith of litigants in our legal system. The litigants were reaching the court compound before the court staff and judicial officers. Some of them reached the court compound along with their family members. I saw ladies brought their nascent kids and food stuff with them in a wrap up piece of cloth commonly called as potli and they were seen eating the same during lunch hours of the court. The call of the court for hearing their case was the happiest moment of the day, but they were not disheartened if next date was given to them without any hearing. They went back to their village after purchasing few items of household goods, seeds or manure etc. It appeared as if coming to court compound was a routine of their life. They never mind it. Rather they were satisfied that they are looking after their litigation as well shopping in the same trip. The peon of the court use to give them a slip mentioning the next date of hearing which they religiously keep and preserve by keeping the same in a polythene bag, to save the same from rain water, like we keep our Aadhar card nowadays. Illiterate litigant will ask more than one person in the village to read out the date fixed by the court, so that he may not miss it even by chance. Litigant had a strong conviction in mind that day is not far away when he will get justice from the courts.

I also witnessed the judicial officers, litigants, lawyers, police officers, court staff, typists, stamp vendors, Munshis coming to the court compound on foot or on bicycles, scooters and rarely by their cars. In those days' cars were very few. I have also seen handwritten pleadings too. I saw chelpark ink and holder or pen with a nib in the hands of clerks. Blotting paper and erasers were the boon. Sharpener of the pencil was like coaching centre sharpening the brains of the students. Card board writing pad was the confidence of students and advocates. I saw the District Judges using these boards while writing the statements of witnesses themselves without the help of their readers. I also saw them inserting two carbons between the three sheets of legal size papers so that two carbon copies of the statement of witness are ready, one to be given to the counsel of each party, subject to payment of nominal charges of rupees one only. I saw senior lawyers writing adjournment and bail applications using these card boards. Only land line phones were the chief means of communications at that time. Postman was an important personality at the court compound. One happily signed the A.D. form for receiving the registered letter issued from a court or an appointment letter issued by U.P.S.C. Role of postman was and is still very vital because service of summons is still presumed on the basis of his endorsement. He is at liberty to write "not found at the given address" or "refused to take." Godrej and Remington were the two brands of type writers on which pleadings, bail applications etc., were typed. Carbon paper was the only way to prepare copies of the pleadings. Later on cyclostyle Machines were invented, in which stencil was used after cutting the same on type machine without using ribbon. Printing in those days was done manually through hand driven printing press. Later on Photostat Machines replaced the cyclostyle process. The computer era changed the entire scenario of

drafting of pleadings, and now use of mobiles has revolutionised the scene of court compound too.

I saw that call bell of the officers was a manual bugger or at best a ting tong bell based upon spring lever. I saw Hon'ble District Judge coming to the court on bicycle confidently and proudly. Behind him, there use to be his peon on another bicycle with a bag having lunch box for the judge. People use to leave the way clear for the passage of District Judge with folded hands. Big Barh, Baniyan or Peepal trees were a regular feature of each and every court compound. It use to give shelter to dozens of Advocates, typists, Clerks, stamp paper vendors, tea sellers etc. There was hardly any lady constable in those good old days. I witnessed the investigation officers briefing the witnesses through case diary of the police standing beneath the tree.

A book seller at each and every court campus use to be a significant feature. Once I was sitting at my Basta beneath the Barh tree in Dehra Dun in 1981. It was raining. A book seller came to me. He was wet, but was trying to sell me old U.P. (Temporary) Control of Rent and Eviction Act of 1947. I was insisting that this Act has been repealed and I have new Act No. 13 of 1972 with me. With a grim face he remarked *"Babuji! purana mukadama to purane act se laroge, naya act kya karega?"* (Sir, the old cases are to be contested in accordance with erstwhile old Act, what the new Act will do for the old cases?) This was an eye opener sentence for me. I immediately learnt that old cases are to be decided by the erstwhile legislations. I purchased that Bare Act immediately. The book seller started going back with a heavy bag, full of books. I stopped him and requested to stay for a while since it was raining and have a cup of tea with me. He readily agreed with me and enjoyed a hot cup of tea with me. I was feeling obliged since he taught me an important point of law, without opening any book.

Munshiji was also a preacher. In the month of October 1981, when I started going towards court of Munsif, Munshiji stopped me and instructed me that I should take care since it was my first civil case. Munshiji told me that every Presiding Officer has his own Jabta Diwani (C.P.C.) and the presiding officer who is sitting on the dias, knows nothing. You will have to tell him everything. Munshiji started walking with me towards the court room. I was annoyed at his comments on the presiding officer of the court. The file was presented at 2:00 p.m. for hearing. I argued the facts of the case before the court. It was an injunction suit, but the court was pleased not to grant interim injunction in my case. However, notices were issued for service on the defendants. When we came out of the court room, Munshiji gave me a grim look because client was looking forward for a favourable stay order which I could not get for him. I realised the meaning of Munshiji that "presiding officer of the court knows nothing; you will have to tell him everything". I realised my mistake of not explaining the facts in detail before the court.

Part-II

If we look at the balance sheet of access to justice, judicial era in our country can be divided into two major parts:

1) Starting from commencement of Constitution, upto 1985 and

2) Post 1985, which is prominent because of passage of three important legislations, i.e., '*The Legal Services Authorities Act, 1987'*, which provided legal literacy to masses throughout the country through district legal aid services authorities; '*The Protection of Human Rights Act, 1993*', which gave more and more awareness and implementation of human rights and the third '*The Right to Information Act, 2005'*, which provided information to people which was otherwise not accessible to them.

In the first era between 1950 and 1985, the number of laws and courts were limited. The consciousness among the masses too, was at the lowest ebb. Number of judges was scanty, but even then there was good implementation of laws and justice was available to almost all citizens. The cost of litigation was also affordable. Generally, a criminal trial was decided in 2 to 2.5 years and its appeal was also decided in 4 to 6 years. It was an era of *timely justice*.

In the post 1985 era, we find that more and more laws are being enacted, public awareness is increasing day by day and number of cases having soared high but number of courts and judges have not increased in that proportion. The population has doubled. Resultantly, floodgates of litigation opened, causing *docket explosion* and justice to few only mainly due to delays in access to justice. Simultaneously, the cost of litigation has gone astronomically high and it takes 8 to 10 years in deciding a case or sometimes even more than that. The High Courts are now able to hear criminal appeals filed as back as in 1988 to 1990. Only urgent matters, injunction applications and bail applications are being heard on priority basis. Hardly any time is left for regular hearing of the original cases and appeals at higher levels. Thus, balance sheet of 'access to justice' in pre-1985 era was better in as much as voice of almost all the litigants was heard. Laws were implemented. Thus, utility of courts was considered better. But in post 1985 era, the position has changed altogether. Same is the case in neighbouring countries too. Recently, Pakistan's Supreme Court has decided a case of inheritance of 1918 in 2018 i.e., after 100 years.[20] Is it access to justice or excesses of justice?

The Supreme Court of India has recognised that *access to justice is a fundamental right under Article 14 and 21 of our Constitution.* Role of Supreme Court in expediting access to justice has been significant ever since the commencement of the Constitution. The revolutionary concept of Public Interest Litigation started with the decision of *Bandhua Mukti Morcha's case*[21], wherein a letter was treated as writ petition. What a wonderful beginning of our Supreme Court it was. There are instances when guidelines of Supreme Court were adopted by the legislature and laws were amended and enacted afresh. *Vishaka's guidelines*[22] and directions in *D. K. Basu's case*[23] are glaring examples. A number of directions on prison reforms and rights of undertrials and convicted persons are worth noting.

If we talk of women's rights, directions of the Supreme Court for interim maintenance during the pendency of the main application under S.125 Cr.P.C. in *Savitri v. Govind Singh Rawat*[24] was a breakthrough judgment of Supreme Court.

[20] Available at http://www.peshawarhighcourt.gov.pk/PHCCMS/reportedJudgments.php?action=search
[21] *Bandhua Mukti Morcha v. Union of India*, (1997) 10 SCC 549
[22] *Vishaka v. State of Rajasthan*, AIR 1997 SC 3011
[23] *D. K. Basu v. State of West Bengal*, (1997) 1 SCC 416
[24] AIR 1986 SC 984

For Muslim women, the judgment of Supreme Court in *Shah Bano's case*[25] was an eye opener, in as much as, it provided maintenance to Muslim women from their husbands. To undo this judgment, government enacted Muslim Women (Protection of Rights on Divorce) Act, 1986, which had restricted the right of maintenance only up to the period of Iddat, i.e., 3 months. The constitutional validity of this Act was challenged in *Daniel Latifi v. UOI*[26], wherein the Supreme Court reiterated the position of Shah Bano's judgment. This judgment was a great sigh of relief for divorced Muslim women and the verdict on triple talaq[27], though came a little late, is laudable and a step towards the ultimate justice, bringing cheers for humanity of Muslim female folk.

Another landmark ruling of the Supreme Court on speedy justice has been recently pronounced on 28th March, 2018 in *Asian Resurfacing of Road Agencies Pvt. Ltd. v. C.B.I.*[28], wherein it was ruled that in all civil and criminal cases, stay order will not be operative after six months of its grant by appellate or revisional court. This means that none of the case will remain stayed throughout the territory of India on 27-9-18, unless the same was stayed between 28-3-18 and 27-9-18. What a judgment indeed! The Supreme Court has decided that trial cannot be stayed for more than 6 months, in civil and criminal cases, particularly corruption cases because *justice delayed is justice denied*. It was also emphasised that speaking order must show that case was of such an exceptional nature that continuing stay was more important than having a trial finalised. It is to be noted that prolonged trials can result in witnesses turning hostile or even dying and evidence being diluted, which frustrates the victims and law enforcement agencies. Delay in trial affects the faith in rule of law and efficacy of legal system.

According to the said ruling, 'stay order' will automatically stand vacated after six months unless they are extended by a speaking order. It was also observed that stay should be granted by the High Courts in rarest of rare cases. Court will fix a date of 6 months on receiving a stay order and lower court will proceed with the case after six months. This ruling has retrospective effect for all pending cases.

It is commonly noticed that once a stay order is granted by the court till next date of listing, litigants in whose favour stay orders were passed, try their best to manipulate that the matter is not listed or even if listed, it does not reach the hearing stage. The clerks of the court generally contribute in the malpractices of litigants. Unfortunately, if the dates of listing match with 3 strikes of lawyers, the whole year is lost but stay continues. The practice of repeated adjournments, mentioning of illness on the date fixed, though the pleaders are present in the court campus, are also contributory factors in delaying the hearing of cases. This will be checked to a considerable extent by this ruling and automatic vacation of stay after six months will definitely accelerate the pace of justice in the coming days. At the same time, it is important that law declared by the Supreme Court is binding on all the subordinate courts within the territory of India in accordance with Article 141 of our Constitution and everyone is obliged to comply with it.

Another malady, commonly noticed is that litigants try and press before the appellate/revisional courts that file of the lower court be summoned for hearing. If

[25] *Mohd. Ahmed Khan v. Shah Bano Begum*, AIR 1985 SC 945
[26] (2001) 7 SCC 740
[27] *Sharyara Bano v. Union of India*, decided by the Hon'ble Supreme Court on 22nd August, 2017
[28] Decided by the Hon'ble Supreme Court on 28th March, 2018

the file of the lower court is summoned by the higher courts, lower courts become helpless to proceed with the case even though there is no stay. This practically amounts to a stay without a stay order.

In continuation of order dated 28-3-18, Bench of Hon'ble Justices A. K. Goel and R. F. Nariman of Supreme Court has ruled on 25-4-18 that High Courts and Supreme Court should get photo/scanned copies of the record of the lower court to decide the case and original documents should remain with the trial court to ensure uninterrupted proceedings. But in cases where specifically original record is required by holding that photocopy will not serve the purpose, the appellate or revisional court may call for record only for perusal and the same be returned while keeping photo/scanned copy of the same.[29] This is definitely a feather in the cap of 'quicker justice'.

Whenever a time bound stay was granted by the High Courts, and no extension of the same was received by the lower courts, it was invariably a practice amongst the trial courts to write a letter to the High Court through registrar of the court whether the stay order was extended by the Hon'ble court or not. A series of reminders were required to be sent in this respect every third month. However, the registry of the High Court rarely replied to the queries of the lower courts. This practice was depicting a consciousness of the lower courts towards the quick dispensation of justice. But of late, this practice too has vanished and has become a part of the history. Present ruling given by the Supreme Court will obliterate any such practice since stay order will stand vacated after six months automatically.

Fast track courts were created all over India for speedy disposal of criminal and civil cases under 11th Finance Commission. These courts were a great success in our country. Thereafter, Evening Courts were also created all over the country to deal with criminal matters, but they too are running at a low pace. However, our Supreme Court has heard the matters by burning the midnight oil. Accused *Surender Koli's* execution was stayed by the Supreme Court to show a sense of justice at 1:40 a.m. on 7-9-2014 in *Nithari killings case*.[30] The application for stay of execution of *Yakub Menon*, involved in Mumbai bomb blast cases was heard and rejected at 3:20 a.m. on 29-7-15.[31] Recently, on 17-5-2018, Supreme Court heard the petition of Congress party challenging the decision dated 16th May, 2018 of the Governor of Karnataka inviting leader of BJP's legislative party Sh. B. S. Yeddurappa, to form a government in the State. Hearing continued overnight when the countrymen were asleep.[32]

Recently, 12 Special Courts have been created for trial of more than 1500 pending cases against politicians for quicker justice. Due to delay in trials, politicians keep on contesting elections even if criminal cases are pending against them. Better it is to get these cases decided at the earliest, which will serve as a quicker step to check corruption.

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[29] Ibid.

[30] Available at https://www.hindustantimes.com/noida/nithari-serial-murders-given-death-in-7-cases-eighth-sentence-for-koli-today/story-but2kjjQOAPlXdNUd54RKO.html

[31] Available at https://www.deccanchronicle.com/150731/nation-current-affairs/article/unprecedented-history-created-supreme-court-opens-320-am

[32] *Dr. G. Parmeshwara and another v. Union of India, Ministry of Home Affairs*, available at http://www.reddyandreddy.org/supreme-court-refuses-to-stay-swearing-in-ceremony-of-mr-yedyurappa-subject-to-the-outcome-of-the-petition/

History of the Supreme Court is full of such leap frog instances. In *Common Cause v. UOI*[33], cases relating to traffic offences under M.V. Act were to be closed, if summons were not served upon the accused for more than two years or the case remained pending for more than two years for any other reason. It was also held that where cases pending in criminal courts for more than two years under IPC or other laws, which are *compoundable* with the permission of the court, and if in such cases the trial have still not commenced, the criminal courts were directed to discharge or acquit the accused after hearing both the parties.[34]

Similarly, cases under IPC or other laws, which are *non-cognizable and bailable* and if such cases are pending for more than two years, and the trial have not yet commenced, the criminal courts shall discharge or acquit the accused, and close such cases.[35]

The offences punishable with fine only, if remained pending for more than one year and if in such cases trial have still not commenced, the courts shall discharge or acquit the accused as the case may be, and close such cases.[36]

The cases which are punishable with imprisonment up to one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, criminal courts were directed to discharge or acquit the accused person.[37]

It was also held that if trial of an offence which is punishable with imprisonment up to 3 years, with or without fine, has been pending for more than 2 years, and the trial have still not commenced, court was required to discharge the accused and drop the proceedings.[38] Thus, thousands of cases were decided all over India under the directions of the Supreme Court relieving the courts from congestion of backlogs. No hanging of sword for long.

Another bright example is of *Raj Deo Sharma v. State of Bihar*[39], wherein, it was held that in trial of offences punishable with *not more than 7 years of imprisonment*, whether the accused is in jail or not, prosecution evidence was to be closed on completion of *2 years* from the date of recording the plea of accused on framing of charges, whether the prosecution has examined all witnesses or not. In such cases, punishable up to 7 years, if accused has been in jail for a period of not less than one half of maximum punishment provided for the offence, accused was to be released on bail.

But, if the offence was punishable with *more than 7 years* of punishment, whether the accused is in jail or not, prosecution evidence was to be closed on completion of *3 years* from the date of recording plea of accused on framing of charges, whether the prosecution has examined all witnesses or not within said period. Period of stay order by court or by operation of law was to be excluded from abovementioned period of 2 or 3 years.[40]

[33] (1996) 4 SCC 33
[34] Ibid.
[35] Ibid.
[36] Ibid.
[37] Ibid.
[38] Ibid.
[39] (1998) 7 SCC 507
[40] Ibid.

The ratio decidendi of Common Cause and Raj Deo Sharma was held not a good law and was overruled by the Supreme Court itself in *P. Ramchandra Rao v. State of Karnataka*[41], holding that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe outer limit for conclusion of all criminal proceedings. During this period of almost five years, thousands of cases were closed and dockets were cleared to a considerable extent. However, if the accused delayed the trial, no court was obliged to close evidence.

There is one more aspect of the matter, that courts in India are already overburdened. If stayed cases, which are in large number, are revived for hearing, will they not cause docket explosion once again? This is a million-dollar question to be answered in near future.

Conclusion:

A litigant starts his journey towards court compound early in the morning in the quest for justice, which is a long and difficult search for something, which may be life saviour for him and his family. Failure of state governments to provide basic facilities to the courts amounts to violation of litigants' right to life, which includes right to speedy trial. Barring the metro cities, and the state capitals, subordinate courts in the country do not have basic facilities for the litigants. Adequate infrastructure is a sine qua non for the reduction of pendency and clearing backlog of cases in courts. Litigant's collective right to speedy justice gives birth to corresponding duty on the part of the state to construct and develop sufficient infrastructure so as to enable the judiciary to perform its constitutional obligations. If courts are denied basic infrastructure, it tantamount to violations of fundamental rights guaranteed under Article 21 of the Constitution, not only for the litigants but also the lawyers. The most important factor responsible for ever mounting arrears and backlog of cases is the lack of adequate number of court rooms and other necessary infrastructure. This could be achieved when more number of Judicial Officers is appointed as against the court rooms lying vacant.

Our effort should be 'five plus zero' that is clearing all cases which are more than five years old and gradually move towards 'four plus zero'. The overall disposal of cases should be more than filing every year. A "Disposal Review Committee" is also required to be set up in each High Court to focus on disposal of cases on a priority basis so as to ensure the goal of five plus zero as early as possible so that quest for justice may not entangle in the web of dates and dates.

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[41] AIR 2002 SC 1856

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