

ROLE OF LAWYER'S IN SPEEDY JUSTICE

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ABSTRACT

The principle "justice delayed is justice denied," articulated by William E Gladstone, remains as relevant today as it was in the late 1800s. This article critically examines the pressing issue of delayed justice within the context of India's legal system. Notably, the Indian law Minister's recent revelation in the Rajya Sabha underscored that a staggering 5.02 Crore cases are pending across the nation's courts. This study delves into the causes of this backlog and explores the pivotal role lawyers play in expediting the delivery of justice. The causes of delayed justice encompass a myriad of factors, including the overwhelming influx of cases, budgetary constraints, an imbalance in the ratio of judges to the population, judicial vacancies, continuous amendments to laws, and the lack of defined timeframes for resolution. Amidst this challenging landscape, lawyers emerge as key stakeholders in accelerating the legal process. Addressing unnecessary adjournments, advocating against prolonged court vacations, and discouraging strikes by legal practitioners are vital areas where lawyers can contribute to expedited justice. By embracing alternative methods such as Alternative Dispute Resolution (ADR), Lok Adalats, and Fast Track Courts, lawyers can play a crucial role in diminishing the backlog of cases. Furthermore, the government's establishment of Fast Track Courts (FTCs) and Fast Track Special Courts (FTSCs) demonstrates a proactive approach to addressing specific challenges, such as the backlog of cases involving serious crimes and sexual offenses. These specialized courts have exhibited tangible success in swiftly resolving cases that demand urgent attention. In conclusion, this article underscores the significance of lawyers' active involvement in promoting timely justice. By advocating for streamlined processes, embracing alternative methods, and participating in the development of specialized courts, lawyers can make substantial contributions to ensuring justice is delivered promptly and effectively to the people. The principles of fairness and expediency laid down in Magna Carta & Article 21 remain as pertinent as ever, urging legal practitioners to collaborate with the judicial system in providing justice without undue delay.

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Keywords: Delayed Justice, Legal Backlog, Lawyers, Alternative Dispute Resolution, Fast Track Courts, Lok Adalats, Article-21, Legal Reforms.

INTRODUCTION

“Justice delayed is justice denied,” said the former British statesman and Prime Minister William E Gladstone in the late 1800’s.¹ On 20 July, 2023 Indian law Minister Arjun Ram Meghwal said in Rajya Sabha that over 5.02 Crore cases are pending in the various courts of India. According to the data retrieved from the Integrated Case Management System, there are 69,766 cases pending in the Supreme Court, as of July 1. The National Judicial Data Grid mentions that the total number of pending cases in the High Court and the District Court and Subordinate courts are 60,62,953 and 4,41,35,357 respectively, as of July 14.²

Magna Carta of 1215, clause 40 speaks for speedy justice, “We will not sell, or deny, or delay right or justice to anyone”.³ *Hussainara Khatoon & Ors v Home Secretary, State Of Bihar*, on 9 March 1979 this case laid the foundation of speedy justice in which a large number of men and women including children were in jail for years awaiting trial in the court of law and the offense even if proved, would not warrant punishment for more than a few months.⁴ The right to a speedy trial is a fundamental right inherent under Article 21 of the Indian constitution which states “Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law”⁵

REASONS FOR DELAY IN JUSTICE

Huge pendency: The judicial system of India experiences a substantial influx of cases, with individuals resorting to the courts even for minor disputes.⁶ The judiciary is grappling with two interconnected challenges: a significant backlog of cases and a low success rate in convictions.

¹ Professor Tania Sourdin & Naomi Burstyn, ‘Justice Delayed is Justice Denied’ (2014) 4(1) Victoria University Law and Justice Journal < DOI: [10.15209/vulj.v4i1.61](https://doi.org/10.15209/vulj.v4i1.61) > accessed 25 August 2023

² ‘Cases pending in courts cross 5-crore mark: Govt in Rajya Sabha’ (The Economic Times, 20 July 2023) < <https://economictimes.indiatimes.com/news/india/cases-pending-in-courts-cross-5-crore-mark-govt-in-rajya-sabha/articleshow/101993830.cms?from=mdr> > accessed 25 August 2023

³ Magna Carta of 1215, cl-40

⁴ *HUSSAINARA KHATOON & ors. v. HOME SECRETARY, STATE OF BIHAR, PATNA* 1979 AIR 1369

⁵ The Constitution Of India 1949, art-21

⁶ ‘Judicial delay in india’ (READERS’ BLOG, 20 February 2023) < <https://timesofindia.indiatimes.com/readersblog/lawpedia/judicial-delay-in-india-50731/> > accessed 25 August 2023

To enhance this situation, the primary focus should be on addressing the deficiency of skilled judges specialized in handling criminal cases.⁷

Less Budgetary allocation: In the Union Budget of 2022-23, a sum of Rs. 858 crore was designated for the enhancement of judicial infrastructure, encompassing support for initiatives like Centrally Sponsored Schemes targeting lower courts. Nevertheless, the Ministry of Law and Justice's allocation accounted for merely 0.1 percent of the entire Union budget.⁸

Imbalance in the ratio of judges and population: Another contributing factor to the concerning situation is the significant imbalance between the number of judges and the population size. No matter how intelligent an individual may be, there exists a finite limit to their capacity for work – a reality that applies to judges as well.⁹ A report submitted by Dr. Justice V.S. Malimath to the Government of India in 2003 stated that the Supreme Court has examined this issue and given direction to increase the Judge strength to 50 judges per million people within a phase of 5 years.¹⁰ But it didn't happen till now since in February 2023 Law Minister Kiren Rijju said Using the population data from the 2011 Census, which stood at 1,210.19 million, and considering the provided details about the authorized number of judges in the Supreme Court, high courts, district, and subordinate courts in 2023, it has been calculated that the judge-population ratio in the nation is approximately 21 judges for every one million people.¹¹

Vacancy: In December 2022 Minister of Law and Justice Kiren Rijju told in Rajya Sabha that in Supreme Court there are six open positions out of the sanctioned strength of 34. The minister also noted that among the 25 High Courts, the authorized number of High Court judges stands at 1108, with an operational strength of 775 judges, leaving a total of 333 High Court judge

⁷ MALIMATH COMMITTEE '*Committee on Reforms of Criminal Justice System*' (V-1,2003) pg-133, para 1

⁸ S.N.THYAGARAJAN, '*Budget 2023: The need for reinforcing judicial infrastructure*' (Money control, 31 January 2023) < <https://www.moneycontrol.com/news/business/budget/budget-2023-the-need-for-reinforcing-judicial-infrastructure-9973851.html> > accessed 25 August 2023

⁹ Vandana Ajay Kumar, '*Judicial Delays in India: Causes & Remedies*' (2012) V-4 Journal of Law, Policy and Globalization < chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://core.ac.uk/download/pdf/234649558.pdf > accessed 25 August 2023

¹⁰ MALIMATH COMMITTEE '*Committee on Reforms of Criminal Justice System*' (V-1,2003) pg-279, point-9

¹¹ '*India Has 21 Judges Per Million Population: Centre*' (NDTV, 2 February 2023) < <https://www.ndtv.com/india-news/india-has-21-judges-per-million-population-centre-3748073> > accessed 26 August 2023

positions unfilled and the District Courts in India have a total vacancy of 5,850 judges out of the sanctioned strength of 25,042, as of December 19, 2022.¹²

Endless Amendments: In the pursuit of modernizing laws, the legislative body continues to introduce an unending series of amendments, often without recognizing the resulting slowdown in the legal process. Persistent gaps persist within laws, which can be exploited in cases, thereby exacerbating the workload on the judiciary.¹³

Lack of defined timeframes for resolution: Neither any statute nor any legal code establishes a specific duration within which cases should be concluded. Consequently, judges, lawyers, and even the parties involved tend to assume that there is no imperative to expedite the case. As a result, cases often extend over several years.¹⁴

ROLE OF LAWYER'S IN SPEEDY JUSTICE

Unnecessary Adjournment: Merely concentrating on enhancing capacity will not effectively mitigate delays. A significant factor contributing to these delays is the frequent use of adjournments. A research study carried out by the Vidhi Centre for Legal Policy (VCLP) within the context of the Delhi High Court revealed that in 91 percent of cases that experienced delays exceeding two years, the cause could be attributed to the seeking and granting of adjournments.¹⁵

Legal practitioners are often observed seeking adjournments for reasons that might lack substantial merit. These rationales encompass a wide spectrum, spanning from the passing of a distant relative to personal family festivities. Each adjournment not only escalates expenses for both the court and the litigants but also financially benefits the lawyers, who receive compensation for their attendance. In many instances, lawyers find themselves engaged in other court proceedings concurrently. Due to an excessive caseload, they frequently request adjournments, as they have committed to handling more cases than they can effectively

¹² Kanu Sarada, 'District courts in India have a vacancy of 5,850 judges, Law Minister tell Rajya Sabha' (INDIA TODAY, 23 December 2022) < <https://www.indiatoday.in/law/story/district-courts-in-india-have-a-vacancy-of-5850-judges-law-minister-tell-rajya-sabha-2312841-2022-12-23> > accessed 26 August 2023

¹³ 'Judicial delay in india' (n.6)

¹⁴ Vandana Ajay Kumar (n.9)

¹⁵ Arghya Sengupta, 'Hidden factors that slow our courts and delay justice' (The Economic Times, 29 March 2017) < <https://economictimes.indiatimes.com/news/politics-and-nation/hidden-factors-that-slow-our-courts-and-delay-justice/articleshow/57887726.cms?from=mdr> > accessed date 27 August 2023

manage.¹⁶ It's the duty of both the defence and prosecution to avoid unnecessary adjournments to save the time of the court and the client can get speedy justice.

Long Vacation of courts: No governmental entities within the nation observe breaks, apart from the courts and educational establishments. However, educational institutions, which are crucial for children's learning, are considered separately. A common query from the public has emerged, why do courts enjoy such extensive vacations, given the substantial backlog of cases persisting in all courts, some awaiting resolution for decades? Instances exist where the accused have remained in anticipation for years for their cases to progress to the hearing phase.¹⁷

The Supreme Court engages in its judicial activities for 193 operational days annually, while High Courts operate for roughly 210 days, and trial courts remain active for 245 days.¹⁸ It's the time for both the bar and bench to understand the problem and follow the suggestions of Malimath's committee, it suggested that the period of vacation should be reduced by 21 days, keeping in mind the long pendency of cases and the Supreme Court should work for 206 days, and High Courts for 231 days every year.¹⁹

Strike: On April 20, 2023, the Supreme Court ruled that legal practitioners are prohibited from initiating strikes or refraining from their duties. Additionally, the court instructed all High Courts to establish state-level grievance redressal committees, headed by the Chief Justice, where lawyers can present their concerns for the resolution of "genuine problems."²⁰ It was determined that if a lawyer, who possesses a client's vakalatnama, chooses not to attend court due to a strike, they shall bear personal responsibility for covering costs. These costs will be in addition to any damages they might be required to compensate their client for any incurred losses.²¹

¹⁶ Vandana Ajay Kumar (n.9)

¹⁷ MALIMATH COMMITTEE 'Committee on Reforms of Criminal Justice System' (V-1,2003) pg-157, point-12.1

¹⁸ Apurva Vishwanath, 'Court vacations: What are arguments for and against judges taking breaks?' (The Indian Express, 17 December 2022) < <https://indianexpress.com/article/explained/explained-law/supreme-court-vacation-bench-kiren-riju-cji-chandrachud-8329189/> > accessed 27 August 2023

¹⁹ MALIMATH COMMITTEE 'Committee on Reforms of Criminal Justice System' (V-1,2003) pg-286, point-90

²⁰ 'Lawyers can't go on strike or abstain from judicial works: Supreme Court' (The Hindu, 20 April 2023) < <https://www.thehindu.com/news/national/lawyers-cant-go-on-strike-or-abstain-from-judicial-works-supreme-court/article66758745.ece> > accessed 28 August 2023

²¹ 'Supreme Court Judgements on Strike - Reprehensible act' (Advocate Khoj) < [https://www.advocatekhoj.com/library/lawreports/advocatesact/8.php?Title=Advocates%20Act,%201961%20-%20Regulation%20of%20Legal%20Profession&STitle=Supreme%20Court%20Judgements%20on%20Strike%20-%20Reprehensible%20act%20\(1\)](https://www.advocatekhoj.com/library/lawreports/advocatesact/8.php?Title=Advocates%20Act,%201961%20-%20Regulation%20of%20Legal%20Profession&STitle=Supreme%20Court%20Judgements%20on%20Strike%20-%20Reprehensible%20act%20(1)) > accessed 28 August 2023

The continuity of justice delivery should remain uninterrupted under all circumstances. Legal practitioners' strikes have negatively impacted the public's perception of the courts. The Supreme Court has emphasized that the right to speedy justice is encompassed within Article 21 of the Constitution.²² So Lawyers should keep all this in mind and cooperate with the bench to provide speedy justice to the people.

Alternative methods for Speedy Justice: Rather than making money from litigation lawyers should go for other alternative methods so that the clients can get speedy justice. The alternative methods are:-

Alternative Dispute Resolution (ADR): It is a method utilized to settle conflicts beyond the confines of the courtroom, specifically outside the legal framework. As the global landscape evolves and trade and business expand at an unparalleled pace, disputes have inevitably become integral to the situation. The traditional approach of resolving disputes through litigation is notably protracted and costly. Thus, the ADR approach presents a feasible substitute.²³ The Commercial Courts Act of 2015 (as amended on August 20, 2018) mandates the prior engagement in mediation and settlement of commercial disputes before initiating formal legal proceedings. The Arbitration and Conciliation Act of 1996 has also been revised through the Arbitration and Conciliation (Amendment) Act of 2015 to enhance the prompt resolution of conflicts by setting specific timeframes.²⁴

Lok Adalat: In India, the Lok Adalat, commonly referred to as the People's Court, has gained significant authority. With the aim of tackling the backlog of cases, Lok Adalats were instituted across the country. These forums actively promote the amicable settlement of disputes outside the formal judicial process. Over the past two decades, these courts have successfully resolved numerous disputes, numbering in the millions.²⁵

In this process of alternative dispute resolution, unresolved court cases or conflicts are effectively addressed within a span of one day. Many countries have embraced this form of

²² *Ibid*

²³ Agam Gupta, 'ADR: A VIABLE ALTERNATIVE FOR EXPEDITIOUS DISPENSATION OF JUSTICE?' (Readers Blog, 3 January 2023) < <https://timesofindia.indiatimes.com/readersblog/justjournald/adr-a-viable-alternative-for-expeditious-dispensation-of-justice-48783/> > accessed 28 August 2023

²⁴ 'Speedy Disposal of the Cases' (Ministry of Law and Justice, 25 March 2023) < <https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1809624> > accessed 28 August 2023

²⁵ 'Judicial delay in india' (n.6)

alternative dispute resolution as a means to circumvent the complexities of legal proceedings, court systems, and legal consultations.²⁶

Rather than establishing fresh institutions to tackle identical problems, it is imperative to consider avenues for enhancing the efficacy of existing systems. The inception of Lok Adalats ushered in a new era within India's legal framework. Protracted cases in the Indian legal landscape find resolution beyond the courtroom through Lok Adalats. These forums employ negotiation and conciliation to address conflicts.²⁷ As of 2015, the country boasted over 1.5 million public courts, within which more than 80 million lawsuits were successfully settled. The majority of state governments have actively endorsed Lok Adalats due to their role in alleviating the burden on the judicial system.²⁸

Fast Track Courts and Fast Track Special Courts:

Fast Track Courts: The establishment and operation of Fast Track Courts (FTCs) fall under the jurisdiction of State Governments, carried out in collaboration with their respective High Courts. The 14th Finance Commission recommended the establishment of 1800 FTCs between 2015 and 2020. These courts are dedicated to handling cases involving serious crimes, civil matters concerning women, children, senior citizens, HIV/AIDS, and property disputes lingering for over 5 years. The Commission also encouraged State Governments to utilize the increased financial allocation resulting from tax devolution (rising from 32% to 42%) for this purpose. As of June 2023, there are 843 operational FTCs throughout the nation. Since 2014, FTCs have successfully resolved a total of more than 33 lakh pending cases.²⁹

Fast Track Special Courts: Advocating for the safety and well-being of women and young girls, the Government took significant steps to address this concern. This involved enacting the Criminal Law (Amendment) Act of 2018, which introduced stringent penalties, including the death penalty, for individuals convicted of rape. The prevalence of sexual offenses and prolonged legal proceedings prompted the need for specialized court infrastructure to promptly address the needs of victims.³⁰

²⁶ *Ibid*

²⁷ *Ibid*

²⁸ 'Lok Adalat' (National Legal Services Authority) < <https://nalsa.gov.in/lok-adalat> > accessed 28 August 2023

²⁹ 'Fast Track Courts' (Department of Justice) < <https://doj.gov.in/fast-track-courts/> > accessed 28 August 2023

³⁰ 'Fast Track Special Courts' (Department of Justice) < <https://doj.gov.in/fast-track-special-court-ftscs/> > accessed 28 August 2023

Starting from October 2019, the Department of Justice has been actively implementing a Centrally Sponsored Scheme. This initiative aims to establish 1023 Fast Track Special Courts (FTSCs) across the country, including 389 courts exclusively dedicated to handling cases under the Protection of Children from Sexual Offences (POCSO) Act. These courts are designed to ensure the swift adjudication of cases related to sexual offenses, offering a solution to the challenges posed by such incidents.³¹

As of June 2023, there are 763 operational FTSCs, out of which 412 are exclusive POCSO Courts, spread across 29 States and Union Territories. These courts have successfully resolved over 1,74,000 pending cases.³²

CONCLUSION

In a nation where millions of cases are entangled within the labyrinth of the legal system, the role of lawyers emerges as a beacon of hope for expediting justice delivery. The challenges of pendency, budgetary constraints, imbalanced judge-population ratios, vacancies, relentless amendments, and the absence of defined timeframes for resolution underscore the pressing need for collective efforts to overcome these obstacles. Within this context, legal practitioners wield considerable influence in accelerating the pace of justice.

The imperative to curtail unnecessary adjournments, reevaluate extended court vacations, and discourage disruptive strikes by lawyers underscores the pivotal role that the legal community plays. By heeding the Supreme Court's emphasis on the right to speedy justice enshrined in Article 21 of the Constitution, lawyers can foster a culture of uninterrupted justice delivery. Furthermore, the exploration of alternative methods such as Alternative Dispute Resolution (ADR), Lok Adalats, and specialized Fast Track Courts (FTCs) presents a promising path toward alleviating the backlog. The efficacy of FTCs and Fast Track Special Courts (FTSCs) in resolving cases, particularly those involving grave offenses, showcases the potential of specialized forums in achieving timely justice.

The collaborative efforts of the bench and bar are paramount. Legal professionals must actively engage in the pursuit of expeditious justice, recognizing that the pursuit of justice is a shared responsibility. As both wheels of the chariot of justice, the bench and bar must operate in tandem to ensure that the chariot moves steadily towards its destination.

³¹ *Ibid*

³² *Ibid*

In conclusion, the vision of "justice delayed is justice denied" can be transformed into a reality through the concerted efforts of legal practitioners, the judiciary, and all stakeholders involved. By embracing best practices, advocating for efficient processes, and championing alternative methods, lawyers hold the power to alleviate the burdens of the judicial system and provide every individual their constitutional right to speedy justice.

