CHAPTER-3

FACTORS RESPONSIBLE FOR DELAYS IN JUSTICE DELIVERY SYSTEM IN INDIA

I. Introduction

The dictum ‘Justice Delayed is Justice Denied’ postulates that an unreasonable delay in the administration of justice constitutes an unconscionable denial of justice. The ultimate object of any judicial system is to delivered justice. Justice is of wide connotation and has to be administered by the courts according to law and procedure. In every civilized society there are two sets of laws: Substantive law and Procedural law. Substantive law determine the rights and obligations of citizens. But the efficacy of substantive laws depends upon the procedural laws. In a democratic country like India, for protecting and enhancing the rights of the people, the judiciary besides the legislature and the executive plays an important role. For the enforcement of rights of citizens and remedies thereto, in case of violation thereof, Courts have been established at all levels in the Country. The Courts by interpreting the laws enhance justice to the individual and the society at large. With the rapid growth in the population as well as technological and industrial advancement, the workload of the judiciary has increased tremendously. The negative consequences of these developments have caused serious problem of law and order in the society in various ways. There has been phenomenal increase in rate of crimes in society; the nature of crime, means and methods of committing crimes have also considerably changed. All this has posed a number of problems to law enforcement agencies. One of the offshoots of this notorious development is inordinate delay in disposal of cases, a development which is seriously jeopardizing administration of criminal justice. Delay in disposal of cases is a normal feature in the country and a number of efforts have been made to counter this evil practice but it seems that it will stay in the society.
In India, Committees after Committees have been appointed to tackle this problem. Some States appointed their own Committees to deal with this problem. These Committees have made various recommendations and suggestions in this connection. Further, the Law Commission of India in its various reports has also made a number of recommendations and suggestions for expeditious disposal of cases. Though not all but many of these have been implemented, but the problem still remains same. The problem is deep-rooted and does not admit a simple solution. Our judicial procedure for civil and criminal cases is so cumbersome, technical and lengthy that it takes number of precious years to reach at final unchallengeable adjudicated verdict by the apex Court. Truly admitting that there are number of reasons for the delay and innumerable contributory factors at various stages of proceeding which contribute in delaying the ultimate decision of the case.

In this chapter, an endeavour is made to examine the factors which are responsible for delay in justice delivery system for which people lose faith in the Indian judicial system.

II. Factors Leading to Delay in Disposal of Cases

There is no single factor which is solely responsible for arrears of cases. The problem is much more acute in criminal cases, as compared to civil cases. Speedy trial of a criminal case considered to be an essential feature of right of a fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable. If the accused is acquitted after such a long delay one can imagine the unnecessary suffering he was subjected to. The impediments in the expeditious delivery of justice can be discussed under two broad headings: the procedural factors and the substantive factors.

(i) Procedural Factor

The Malimath Committee formed by the Government of India which made recommendations for reformation of Criminal Justice System, simplifying judicial
procedures, practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive. On the other hand, Supreme Court of India has held that the right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.¹ So far as the procedural factors responsible for the delay in disposal of cases are concerned may broadly be discussed under four sub-heads: (A) Pre-trial delays, (B) Delay during trial, (C) Delay during the appellate proceedings and (D) Delay during the execution proceedings:

**(A) Pre-trial Delays**

Pre-trial delays may be due to the following factors.

(a) Delay in investigation;
(b) Delay in service of summons;
(c) Delay in filing written submissions and documents;
(d) Delay in framing issues/charges.

**(a) Delay in investigation:** One of the principal object of Criminal Law is to protect the society from crime by punishing the offenders. However, justice and fair play requires that no one can be punished without a fair trial. A person might be under a thick cloud of suspicion of guilt, he might even be caught red-handed and yet he is not to be punished unless and until he is tried and adjudged guilty by a competent Court.² Investigation is the first step on the basis of which prosecution files a case against the accused in the Court which tries the accused for alleged offence. It includes all proceedings under Criminal Procedure Code, 1973 for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this

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The Supreme Court has held that the investigation of an offence generally consisting of:

- Proceeding to the spot;
- Ascertainment of facts and circumstances of the case;
- Discovery and arrest of the suspected offender;
- Collection of evidence relating to the commission of offence which may consists of:
  - The examination of various persons (including the accused) and the recording of their statements into writing, if the officer thinks fit.
  - The search of places or seizure of things considered necessary for the investigation or to be produced at the trial; and
- Formation of opinion as to whether on the material collected, the accused can be put to trial before a Magistrate and if so, taking necessary steps for the same by filing of a charge sheet under Section 173 of the Code of Criminal Procedure.

For the effective discharge of its duties, police has the power to arrest any person in certain circumstances. Arrest of an alleged offender even before summons or warrants are issued against him by the Magistrate is provided so as to secure his presence during the trial. Police may take long time for investigation into an offence and thus delaying the initiation of the process of trial, which begins on the filing of charge sheet by the prosecution in Court. In order to check this, Code of Criminal Procedure, 1973 imposes certain restrictions with respect to time to be taken for investigation by police and incarceration of the accused pending such investigation.

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5 Abinandan Jha v. Dinesh Mishra, AIR 1968 SC 117.120; 1968 Cri LJ 97.
According to Section 57 of the Code of Criminal Procedure, 1973, every such person has to be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the Court of Magistrate and an arrestee cannot be detained in custody beyond the said period without the authority of a Magistrate. No police officer has the authority to detain a person arrested without warrant in custody for a longer period than 24 hours. But if it appears to the officer-in-charge of the police station or the police officer making the investigation (not below the rank of Sub-Inspector) that the investigation cannot be completed within the said period and there are grounds for believing that the accusation is well founded he is required to transmit a copy of the entries made in his dairy and at the same time forward the accused to the nearest Judicial Magistrate. Such Magistrate, whether he has or has not the jurisdiction to try the case, from time to time may authorize the detention of the accused in such custody for a term not exceeding 15 days in the whole.

At this stage, the Magistrate can extend the period of detention of the accused by 15 days, which can further be extended to 60 or 90 days depending upon the gravity of offence. The accused becomes entitled to be released on bail on the expiry of the period of 60 or 90 days as the case may be.

The police officers are required to complete investigation without unnecessary delay. On the completion of investigation if there is not sufficient evidence or reasonable ground of suspicion, the accused is to be released on executing a bond to appear if and when so required before a magistrate empowered to take cognizance and if there is sufficient evidence or reasonable ground of suspicion then the Officer-in-charge of the police

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6 Article 22 (2), of Constitution of India.
8 Section 167 (1); Ibid.
9 Ibid.
station forwards the accused under custody to a Magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial. On completion of investigation, the Officer-in-charge of the police station is also required to send a report to a competent Magistrate. Such a report is known as 'police report' popularly called "charge-sheet" or "Challan". When a charge sheet is filed in a case in respect of which there is sufficient evidence to forward the accused person to a Magistrate, then along with the charge sheet all the documents or their extracts on which the prosecution proposes to rely (other than those already sent to the Magistrate during investigation) and statements of witnesses whom the prosecution proposes to examine have to be forwarded to the Magistrate. Despite the mandate of all these provisions requiring speedy investigation but these are hardly followed and investigations go on for months after month without filing any chargesheet. Such delay in the filing of chargesheet results into delay in the commencement of trial which ultimately causes delay in the final disposal of cases.

(b) **Delay in Service of Summons:** Fair trial requires that trial proceedings are conducted in the presence of the accused and that he is given a fair chance to defend himself. Further, in case the accused is found guilty at the conclusion of the trial, he must be available in person to receive the sentence passed on him. The presence of the accused at the trial can well be ensured by simply arresting and detaining him during the trial. However, this course should not be resorted to in every case on the broad principle that the liberty of a person should not be taken away without just cause. Moreover, the detention of the accused prior to the trial is likely to cause direct or indirect obstruction in the preparation of his defence. Consequently, the provisions regarding the issue of summons or of a warrant of arrest are aimed at ensuring the presence of the accused at his trial. But it is a common sight that the summons are not

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13 Section 170(1); Ibid.
14 Section 2(r); Ibid.
served in time. Delay in the delivery of summons also contributes to delay in the process of commencement of trial. A summon is an authoritative call to appear in court for a certain purpose. The summons from the court may be to the accused or to a witness to produce document or to a person to show cause.\footnote{R. V. Kelkar, \textit{op. cit.} at 41.}

Every summon issued by a court under Code of Criminal Procedure, 1973 shall be issued in writing, in duplicate, signed by the Presiding Officer of such Court or by such other officer as the High Court may from time to time by rule direct and shall bear the seal of the Court.\footnote{Section 61, Code of Criminal Procedure, 1973.} Every summon shall be served by a police officer or subject to such rules as the State Government may make in this behalf, by an officer of the Court issuing it or other public servant.\footnote{Section 62(1), Code of Criminal Procedure, 1973.} The summons shall, if practicable, be served personally on the person summoned, by delivering or tendering to him one of the duplicates of the summons.\footnote{Section 62(2), Code of Criminal Procedure, 1973.}

Section 91(1) of the Code of Criminal Procedure, 1973 provides that whenever any Court or any Officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purpose of any investigation, inquiry or other proceedings under this Code by or before such Court or officer, such Court may issue a summons or a written order to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

Law Commission of India in its 14\textsuperscript{th} Report\footnote{Law Commission of India, 14\textsuperscript{th} Report, Vol. II; p. 780.} pointed out that the Magistrate generally sends a packet containing summons by post to the concerned police station within whose jurisdiction the witness resides. Generally, no record is kept by the Station House Officer to show the receipt of
the packet of summons. Often the police officers allege that the summons were not received by them or did not reach them in time to effect service.

(c) **Delay in Filing of Written Submissions and Documents:** Written submissions and documents submitted by parties in a case play a vital role in the decision of the case. But it is very common that the counsels for the parties do not submit these on time on one pretext or the other. In such a situation, judges are handicapped and they have no option but to postpone the hearing of the case. In a warrant case immediately after bail of the accused, the next date is fixed for supply of copy to him. This stage of supply of copy to the accused causes too much delay in the trial of a criminal case. At the stage, delay is caused neither by the prosecution nor by the defence because the matter of supply of copies of documents under Section 173 of the Code of Criminal Procedure, 1973 vests on the learned Court and the Court shall supply this copy to the accused within the meaning of Section 207 of the Code of Criminal Procedure, 1973. The causes of delay in supplying the copy to the accused may be due to shortage of staff, delay in getting case diaries from the police etc.

(d) **Delay in Framing Issues/Charges:** Delay in framing issues (in civil matters) and charges (in criminal matters) also pave the way for delay. Issue means a point in question; an important subject of debate, disagreement. Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Material proposition are those propositions of law or fact which a plaintiff most allege in order to show a right to sue or a defendant must allege in order to constitute his defence.\(^\text{20}\)

The machinery of a civil court is set in motion by the presentation of a plaint, which is the first stage of trial. The second stage is the filing of the written statement by the defendant. The third important stage in the suit is the framing and settlement of issues and the day on which such issues are framed is

the first hearing of the suit. But due to some reason or the other, the Court takes too much time in framing issues which ultimately results in delay in the final disposal of the suit.

Much time is consumed at this stage for framing of charge against the accused. It is not possible to frame charge if all the accused persons are not present on a day fixed for the charge. Many accused persons take this opportunity by remaining absent voluntarily on the date of charge by producing fictitious Medical Certificate or adjournment is prayed for several days, for days together or even for years together. As a result of which much time is consumed and delay is caused even at the stage of framing of charge.

Under the present stage of civilization, it has been universally accepted as a human value that a person accused of any offence should not be punished unless he has been given a fair trial and his guilt has been proved beyond reasonable doubt in such trial. The notion of fair trial, like all other concepts incorporating fairness or reasonableness, cannot be explained in absolute terms. Fairness is a relative concept and therefore, fairness in criminal trial could be measured only in relation to the gravity of the accusation, the time and resources which the society can reasonably afford to spend, the quality of available resources, the prevailing social values etc.

One basic requirement of a fair trial in criminal cases is to give precise information to the accused as to the accusation against him. This is vitally important to the accused in the preparation of his defense. Charges serve the purpose of notice or intimation to the accused, drawn up according to the specific language of law, giving clear and unambiguous or precise notice of the nature of accusation that the accused is called upon to meet in the course of trial. So, unless charges are framed, the trial cannot begin and more often than not, the courts take too much time in framing charges either

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22 R.V. Kelkar, op. cit. at 320.
due to delay in submitting charge sheet by the investigating police officer or
due to some other reason and the same result into delay in the
commencement of the trial. The living example of this can be found in the
Upahaar Fire Tragedy Case\(^2\) wherein CBI filed charge sheet against the
accused in 1997 but the Court framed charges in 2001.

(B) Delay During Trial

Delay is also caused during the trial. Trial means the process undertaken for the
judicial determination as to guilt or innocence of any person accused of any
offence and such trial may be deemed to begin at the stage at which the court takes
cognizance of an offence.

Delay during trial may be discussed under the followings heads –

(a) Provisions for adjournment;
(b) Non attendance of witnesses;
(c) Lengthy oral arguments;
(d) Absence of lawyers;
(e) Application at any stage;
(f) Delayed pronouncement of judgments;
(g) Absconding of the accused cause too much delay;
(h) Non-receipt of death report of an accused or witnesses;
(i) Surety has no control to produce the accused.

(a) Provisions for Adjournment: One of the main problems that have resulted
into pending cases is the adjournments granted by the court on flimsy
grounds.

Section 309 of the Code of Criminal Procedure\textsuperscript{25} and Rule I, Order XVII of the Code of Civil Procedure deals with adjournment and the power of the Court to postpone the hearing. Though the Code of Criminal Procedure, 1973 does not point out to the maximum number of adjournments which can be granted but the Civil Procedure Code limits the same to three. Under the Code of Criminal Procedure, 1973 the postponement or adjournment can be for such time as the court considers reasonable. What is reasonable time in a given case will depend upon the facts and circumstances of the case. The discretion to postpone or adjourn the case is to be exercised judicially and not arbitrarily.

Rule I Order XVII of the Code of Civil Procedure provides that the Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them and may, from time to time adjourn the hearing of the suit for reasons to be recorded in writing, provided that no such adjournments shall be granted more than three times to a party during hearing of the suits. In every such case, the Court shall fix a day for the further hearing of the suit and shall make such orders as to costs occasioned by the adjournment or such higher costs as the Court deems fit.

Provided that –

(a) When the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined,

\textsuperscript{25} Section 309(1) of the Code of Criminal Procedure, 1973 provides that in every inquiry or trial the proceedings shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Section 309 (2) of the Code of Criminal Procedure, 1973 provides that if the Court after taking cognizance of an offence or commencement of trial, finds it necessary or advisable to postpone the commencement of or adjourn, any inquiry or trial, it may from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit for such time as it consider reasonable and may by warrant remand the accused if in custody. Provided that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing. Provided also that no adjournments shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.
unless the Court finds that for exceptional reasons to be recorded by it, adjournment of the hearing beyond the following day is necessary.

(b) No adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) The fact that pleader of a party is engaged in another court, shall not be a ground for adjournment;

(d) Where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a reason for seeking adjournment, the Court shall not grant adjournment unless it is satisfied that the party applying for adjournment couldn’t have engaged another pleader in time.

(e) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit.\(^{26}\)

An adjournment may be granted by a court \textit{inter alia} on the grounds of sickness of either party, his witnesses, or his counsel, non-service of summons, reasonable time for the preparation of the case, withdrawal of the counsels at the last moment, inability of a counsel to conduct the case, inability of a party to engage another counsel, etc. Again adjournment may be refused by the Court \textit{inter alia} on the grounds of engagement of a counsel in another Court, dilatory conduct of the party, non-examination of a witness present in the Court, abuse of process of the Court, undertaking by the party on earlier occasion to proceed with the matter, inconvenience to the opposite party or his witnesses, the case being very old, the arguments of the other side is already concluded, etc. But to grant or refuse adjournment is at the discretion of the Court. The power to grant or not to grant adjournment is not subject to any definite rules, but it should be exercised judicially and reasonably and after considering the facts and

\(^{26}\) Order XVII, Rule 1, proviso, The Civil Procedure Code.
circumstances of each case. So the adjournments are to be granted by the Court only when the Court deem necessary or advisable for reasons to be recorded. These provisions also give discretion to the Court to grant adjournment subject to payment of costs. The Malimath Committee considered the adjournments as a course of the courts suggested that the adjournments should not be used as a tool for delaying justice by the Courts. Today adjournments are granted on the grounds, which clearly defeat the provisions of law and purpose of the law. To cop up with this situation it was suggested by the Committee that to regulate the discretion of the High Courts must lay down the exceptional circumstances when adjournments may be granted. Section 309 of Code of Criminal Procedure, 1973 should be suitably amended to make it obligatory towards imposition of costs against the party who seeks and obtains adjournments. The quantum of costs should include the expenses of the witnesses that have come for giving evidence. The Supreme Court has also held that adjournments are not justified in a number of cases and the court should look into the matter itself and interfere if necessary on merits or else Article 21 of the Constitution would be violated. However, these conditions are not strictly followed and the bad practice continues not only by litigant but by sitting judges also. Such adjournment thwarts the right to speedy trial. By granting regular adjournments, the value of time and importance of the remedy sought for the cause of action get degraded. ‘Justice is called justice’ when it in the real sense delivers justice to the victim within a reasonable time.

(b) **Non attendance of Witnesses:** Non-attendance of witnesses also plays a part in the delay. The parties to the suit have to present in court a list of witnesses whom they propose to call either to give evidence or to produce documents and to obtain summons for their attendance in the court. Such list must be filed on or before such date as the court may fix but not later than fifteen days after the

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issues are framed. The object underlying this provision is going to give notice to the opposite party about the witnesses which his adversary is to examine in the case so that he could be in a position to know the nature of evidence he has to meet. Delay occurs firstly when the party or parties make unreasonable delay in presenting the list of witnesses and secondly, when the witnesses fail to comply with the summons and do not attend the court or refuse to depose.

The Court has power to enforce the attendance of any person to whom a summons has been issued and for that purpose, may (a) issue a warrant for his arrest; (b) attach and sell his property; (c) impose a fine upon him not exceeding five thousand rupees; and order him to furnish security for his appearance and default commit him to the civil prison.

(c) Lengthy Oral Arguments: Oral arguments, though a necessity for submissions before the Court, have been found to be unwieldy and time-consuming. Both Code of Criminal Procedure and Civil Procedure Code discourage lengthy oral arguments. Any party to a proceeding may, as soon as may be, after the closure of his evidence, address concise oral arguments, and may, before he concludes the oral arguments, if any, submit a memorandum of to the court setting forth concisely the arguments in support of his case. The Court may, if it is of the opinion that the oral arguments are not concise or relevant, regulate such arguments. A Court may permit a party or his pleader to argue a case orally. For such oral arguments, it is open to the Court to fix time limit, as it thinks fit.

Although both Code of Criminal Procedure and Civil Procedure Code empower the courts to regulate the length of oral arguments, but it is seen that the judges do not usually fix time limit for such oral arguments and the unnecessary oral arguments go on consuming precious time of the courts. So the judges should specify the time allocated to each side in advance. No case should

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30 Section 314(1), Code of Criminal Procedure.
31 Section 314(2), Code of Criminal Procedure.
be heard for full working hours in a day. It is required that written submissions including the case law to be relied upon, must be submitted to the Court. This will effectively reduce the length of oral arguments and considerably save the time of Court so as to make it available for attending to large number of pending cases.33

Further since the Counsel charges daily fees for appearance in the Court the cost of litigation mounts in direct proportion to the length of the oral arguments. If one combines the fallout of oral arguments however reverential approach one may have to the oral arguments, it is high time to curb and control the length of oral arguments.

(d) Absence of Lawyers/Pleader: Absence of lawyers on the scheduled date of hearing also adds to the cases getting prolonged. The lawyer of a party may remain absent from the hearing of the case on one pretext or the other which are within the provisions of law like the death of his relative, or ill-health, but on the hindsight his absence may be due to non-preparation of the case or his engagement in another Court. In such a situation, the judge is constrained to adjourn the case. The Code of Civil Procedure and Code of Criminal Procedure are based on a general principle that, as far as possible, no proceeding in a court of law should be conducted to the detriment of any party in his absence. Civil Procedure Code requires the parties to attend the Court in person or by their pleaders on the day fixed in the summons for the defendant to appear.34 Where a plaintiff or a defendant, who has been ordered to appear in person, doesn’t appear in person or show sufficient cause for non-appearance, the Court may dismiss the suit, if he is the plaintiff, or proceed ex parte, if he is the defendant. Where the Court has adjourned the hearing of the suit ex parte, and the defendant, at or before such hearing, appears and assigns good reasons for his previous non-appearance, the Court may hear him upon such terms as it directs as to cost or otherwise.

33 Abdul Gaffur: Delay in Criminal Trial; Central India Law Quarterly; Vol XV; 2002; p. No.90.
(e) **Application at any Stage:** There is a practice among the counsels to file applications at any stage of the proceedings of the case. They may do so in the guise of submitting some documents or making some amendments in the pleadings which, what they call, vital for the consideration of the court before disposal of the case. In this regard the existing laws also help them. For example, there is a provision in the Code of Civil Procedure which provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.\(^5\) By way of amendment, a rider has been imposed on the amendment of pleadings which provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that inspite of diligence, the party could not have raised the matter before the commenced of trial.\(^6\) But the effect remains the same because all the counsels who want amendment in the pleadings take the plea that inspite of due diligence they failed to raise the matter before the commencement of the trial. But as a matter of fact, most of the time they do so for buying time foreseeing that they might loose the case. Such a practice causes substantial delay in the final disposal of cases because the filing of applications and new documents have to go through the dilatory process of filing ,notice to the opposite party, arguments, order, appeal etc..\(^7\)

(f) **Delayed Pronouncement of Judgment:** Justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that. The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred upon the convicts under Code Criminal Procedure, 1973. A right of appeal to meet the requirement of Article

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\(^6\) Rule 17, Proviso(addèd by the amendment of the Code of Civil Procedure in 2002).

21 of the Constitution cannot be made a fraud by protracting the pronouncement of the judgment for reasons which are not attributable either to the litigant or to the State or to the legal profession.\(^{38}\)

The intention of the legislature regarding the pronouncement of judgment can be inferred from the provisions of the Code of Criminal Procedure, 1973. Section 353(1) provides that the judgment in every trial in any Criminal Court of Original Jurisdiction, shall be pronounced in open court immediately after the conclusion of the trial or at a subsequent time for which due notice shall be given to the parties or their pleaders. The words “some subsequent time” mentioned in this section is very important because it contemplates the passing of the judgment without delay, as delay in the pronouncement of the judgment is opposed to the principles of law.\(^{39}\)

It is true that for High Courts, no period for the pronouncement of judgment is provided either under the Civil Procedure Code and Code of Criminal Procedure but as pronouncement of judgment is a part of the justice dispensing system, it has to be without delay. In a country like ours where people consider the Judges only second to God, efforts should be made to strengthen that belief of the common people. Delay in disposal of cases cause the people to raise eyebrows. It is seen that some judges don’t deliver judgments even after a lapse of several months after hearing. This may be to buy time for preparing the judgment. This not only causes delay but also shakes the confidence of the people in the judicial system.\(^{40}\)

(g) **Absconding of the Accused causes too much Delay:** Absconding of the sole accused or where there is large number of accused in a criminal case and if some of them are absent or no steps are taken to trace them for causing their attendance in the Court. This is one of the strongest causes in delaying the trial in a criminal case. Sometimes, a proceeding under Section 446 of the Code of

\(^{38}\) *Sukhpal Singh v. Kalyan Singh*, AIR 1983 SC 146.

\(^{39}\) R.V. Kelkar, *op.cit.* at 592.

Criminal Procedure, 1973 is started against the surety of the accused but no fruitful result is obtained. Hence, a large number of cases are pending for years together for execution of warrant and return of the accused.

(h) Non-receipt of the Death Report of an Accused or Witness: Sometimes it is seen that the accused or witness dies at some other place (not at his residence or house) and it becomes difficult for the court to get death report of the accused or the witness, hence, causes delay in fair trial of the case.

(i) Surety has no Control to Produce the Accused: It is also seen in most of the cases that a surety has no control on the accused and his attempts to produce the accused in court cause delay.

(C) Delay during the Appellate Proceedings

Human judgment is not infallible. Despite all the provisions for ensuring a fair trial and a just decision, mistakes are possible and errors cannot be ruled out. The Code therefore provides for “appeals” and “revision” and thereby enables the Superior Courts to review and correct the decisions of the lower Courts. Apart from it being a corrective device, review procedure serves another important purpose. The very fact that the decision of the lower Courts is duly scrutinized by a Superior Court in “appeal” or “revision” gives satisfaction to the party aggrieved by that decision. It assures the aggrieved party that all reasonable efforts have been made to reach a just decision free from plausible errors, prejudices and mistakes.

Although this review procedure through “appeal or revision” is imperative for correctional justice but too much recourse to such procedure is causing another problem, that is, delay in final disposal of cases. The reason is that the Superior Courts are busy in deciding appeals leaving the regular matters at bay. Further, the Superior Courts take too much time in deciding appeals which is partly due to their workload and mostly due to delay in getting the files from the trial court whose decision is challenged. If the multiplicity of appeals are to be reduced and Higher Courts are to function burden less and discharge effective judicial functioning in the
direction of progressive evolution of law, judicial officers at the District level have to discharge their functions diligently so as to avoid shortcomings in their decisions.

(D) Delay during Execution Proceedings

The duty of a Court is not over by the mere pronouncement of a decree or order. The Court has to see that fruits of the decree or order reach to the person in favour of whom the decision has been given. But pronouncements of the Courts are not backed by administrative authority/machinery of the State for effective execution. This keeps the Courts busy in ordering the administrative authorities to carry out the execution of the Court’s order. Delay is also caused when a decree is sent for execution to another court because such a court is required to supply to the executing court a copy of the decree along with some other certificates. But such documents are not provided in time to such executing Courts which thereby cause delay in the execution of the decree. Further there is a provision for stay of execution of the decision so as to enable the person against whom the decision has been given to appeal against the decision. These things results delay in the final disposal of the cases, thereby adding to the huge backlog of cases.

(ii) Substantive Factors

It is not that the procedural factors are alone responsible for delay in disposal of cases; there are a number of substantive factors which contribute to the piling up of pending cases. These substantive factors may be discussed under the following heads:

(A) Judicial vacancies/Delay in appointment of judges,

(B) Lack of accountability of judges,

(C) Too many vacations in the courts,

42 Order XXI, Rule-26(1) The Code of Civil Procedure: The court to which he decree has been sent for execution shall, upon sufficient cause being sown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed or to any other court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution or for any other order relating to the decree or execution which might have been made by such court of first instance or Appellate court.
(D) Misuse of Public Interest Litigation,

(E) Witnesses Turning hostile,

(F) Writ jurisdictions,

(G) Delay by the Judges.

(A) Judicial Vacancies/Delay in Appointment of Judges

There is no doubt, that the proportion of judges to the number of people for when the courts cater is quite low as compared to other countries of the world. At present, there are 13.05 judges per 1 million people in India, as against Australia 58 per million, Canada’s 75, the United Kingdom 100 and the United States of America 130 per million.

For clearing pending cases an adequate number of judges must be appointed and once the posts of judicial officers fall vacant, there shouldn’t be unreasonable delay in the appointment rather they should be filled on a priority basis. But in the Indian judicial system, there are a number of vacancies existing which ultimately affects the efficiency of rendering justice. The former Chief Justice of India S.P. Bharucha on this account had said that “It is only when we have far more trial courts functioning that we shall be able to dispose of more cases than are being filed and thus cut down on arrears.” According to the latest statistics available, the researcher finds that in country’s 21 High Courts, where 42,17,903 cases are awaiting disposal. The main reason for this is that 291 posts of judges against the sanctioned strength of 895 are lying vacant for a long time. This vacancy level constitutes to 32 percent.

In subordinate courts, where we have maximum backlog of cases, there are 3,170 posts vacant. The sanctioned strength of district judges has gone up to 17,151, according to the Supreme Court report on vacancies and pending cases.
It was also suggested by the 127th Law Commission Report, 1988\textsuperscript{43} that the judge population ratio should be increased from 10 judges per million populations (at that time) to 50 judges per million populations within a period of five years. The Supreme Court in \textit{All India Judges 'Association Case}\textsuperscript{44} has directed the State and Central Governments to increase the strength of judges five times over a period of next five years. Due to this low judge-population ratio, the courts lack the requisite strength of judges to decide the pending cases. But the Government has neither taken any interest nor any steps to implement the said recommendation. The view of the Government is that raising the strength of the judges must be set on the basis of pendency of cases and the average rate of disposal of cases and not simply on the basis of population.

But filling the vacancy of judges is not the sole responsibility of the Government. The judiciary also plays a crucial role in the appointment of judges. The Supreme Court while interpreting Articles 124 and 217 of the Constitution of India in its judgment in \textit{Advocates on Record Association v. Union of India and others}\textsuperscript{45} has held that a proposal for the appointment of a judge in the Supreme Court must be initiated by the Chief Justice of India and in the case of a High Court by its Chief Justice of a High Court to another High Court, the proposal has to be initiated by the Chief Justice of India.

Therefore, the judiciary is also responsible for not performing its duty of proposing the name for appointing judges to the government, which in turn would be sent to the President of India for approval. Also, according to norms, the process of filling up of vacancy should start 6 months before the actual date of retirement of a Judge, but this is hardly followed.

An immediate question one might ask from the above statistics is why such large number of vacancies are allowed to remain particularly at the trial court level

\textsuperscript{43} 127th Report of the Law Commission of India (1988), Vol. III.
\textsuperscript{44} (2002) 4 SCC 247.
\textsuperscript{45} (2005) 6 SCC 344.
where the arrear of cases is constantly mounting. That takes us to the selection and appointment process where the Government has a greater role to play than the judiciary. A way has to be found by the Government and the judiciary to address this problem in order to maintain a zero vacancy situation all the time. The Supreme Court through the Chief Justices Annual Conference has taken steps to implement such zero vacancy in the High Courts in this regard. This will certainly help to substantially increase the available judicial hours to attend pending work and reduce delays in the process.

What are the minimum numbers of courts/judges required to deliver timely justice and to avoid pendency of cases for long periods. The judiciary has been conducting scientific studies through expert committees and otherwise to reach an objective and acceptable figure in this regard. One standard recommendation was to fix the maximum capacity a judge can possibly take in a given year and decide the requirement of judge strength based on average filing and accumulated years.

(B) Lack of Accountability of Judges

In India, the judiciary is a separate and independent organ of the State. The Legislature and the Executive are not allowed by the Constitution to interfere in the functioning of the judiciary. The functioning of the judiciary is independent but it does not mean that it is not accountable to anyone. In a democracy, the power lies with the people i.e. we the people of India. The judiciary must concern with this fact while functioning.

The existence of a fearless and independent judiciary is founded in the constitutional structure of India. A notable feature of the Indian Constitution is that it accords a dignified and crucial position to the judiciary in India. In the celebrated decision of the Supreme Court in S.P. Gupta v. Union of India,\(^6\) it was held that; “The concept of independent of the judiciary is a noble concept which inspires the constitutional scheme and constitutes the foundation on which rests

\(^{6}\) AIR 1982 SC 149.
the edifice of our democratic polity. If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law under the Constitution and it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law thereby making the Rule of Law meaningful and effective. This, however, at no stage means that judiciary is not accountable to the nation. In a democracy, the power lies with the people. The Supreme Court in a number of cases held that Courts are accountable to the people of the country and so the judiciary must concern itself with this fact while functioning. Contrary to what has been envisaged in the Constitution, judges play at their own whims as far as their duties in the courts are concerned and thereby adds to the delay in the disposal of cases. Under Article 235 of the Constitution of India, High Courts have the power of control over Subordinate Court but the Supreme Court has no such power over High Courts. The Chief Justice of India/High Courts has no power to control or make accountable other judges of the Courts.

Judicial behaviour has been receiving attention especially since 1998 when a former Judge of the Supreme Court observed that: “everything was rotten about the Indian judiciary.” To a query, why the judge did not say this while he was in office, the reply was: “I was afraid of the safety of my life and children.” These statements conceal more than what they reveal. If the power-holder in the judiciary has had to feel so badly and so strongly, there obviously is some rot somewhere.

The concept of judicial accountability has three stages. First, each member of the judiciary has the accountability to himself. He has to do a soul searching and self-introspection. He has to convince himself that what he has done is morally and more importantly legally correct and his decision is not dictated by any extraneous

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48 Uphaar Fire Tragedy Case.
49 Article 235 inter alia provides that the control over district courts and courts subordinate thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a state and inferior the post of a district judge shall be vested in the High Court.
50 Journal of Indian Law Institute; Vol. 48:1, 2006; p.94.
consideration. As Lord Donaldson, the former English Master of Rolls said; “Judges are without constituency and answerable to no one except to their conscience and the law. The second stage of accountability is the accountability of the individual to the institution. Here again, self-introspection and soul searching plays a vital role. The individual judge has to ensure that what he has done would not bring disrespect or disrepute to the institution. On the contrary, even if it may not increase the respectability and credibility of the institution, it shall not diminish it. The institution cannot be segregated from the individuals. The credibility or lack of credibility would depend to a complete measure on the individuals. The third stage is the most important one. It is the accountability of the institution to the society. Judges have their accountability to the society and their accountability must be judged from the conscience and oath to their office, i.e., they have to defend and uphold the Constitution and the laws without fear and favour. Any criticism about the judicial system or judges, which hampers the administration of justice or erodes the faith on the system and brings it to ridicule must be prevented. Every citizen has a responsibility to ensure that the line between measured criticism of judgments and denigration of judges is not traversed. Constitutionalism is not enhanced by hostility directed against the judiciary, which plays a pivotal role in maintaining the Rule of Law.  

Our Indian system of accountability is based on the basic premise that human beings are not infallible and judges are not exception to that, and if the error is not ill-motivated then the same can be corrected by the exercise of appellate or review powers and warrants no personal accountability of the judges. However, the judges are accountable for their conduct in public or private life if such conduct amounts to ‘misbehaviour’ or brings disrepute or dishonour to the judiciary. Mr. Somnath Chatterjee, the then Speaker of Lok Sabha said, “We hold the judiciary in high esteem …… Judges are assumed to be men of honesty and integrity and discharge their duties and functions with a sense of fairness and independence without fear or favour.” So judges are expected to show highest form of standards in their conduct.

\footnote{Justice Arijit Prasayat, ‘Judicial Independence and Accountability’; NYAYA DEEP, Journal of NALSA; VOL- II, Oct, 2007; p.46.}
India it is an undoubted fact that corruption has infected the judiciary also. Corruption brings disrepute to the institution of judiciary, reduces public confidence in courts, leads also to unpredictability of judicial decision and thereby undermines the effectiveness of the institution.⁵²

The Woolf Report of 1996, emphasized to make the judiciary accountable for their functioning by generating accurate judicial statistics revised on daily basis. It was observed by the Committee that Statistic Report pertaining to the functioning of judges and flow of such information ultimately make judges more accountable to the judiciary. It was also suggested that it is more important and useful to tackle the arrears, rather than increasing financial and human resources. But these suggestions remain on paper and have never been put into practice.⁵³

The Malimath Committee on this issue suggested that judicial credibility is enhanced when it is transparent and accountable. The conduct of judge is also responsible for delay in justice. The Committee suggested that it is necessary to regulate the functioning of the judges with respect to their duties by conferring power to the Chief Justice in this respect and also by making judges accountable for their conduct by establishing a National Judicial Commission. The Chief Justice should be conferred with the following powers to look into the grievance and take effective measures: (i) Advising the Judge Suitable, (ii) Disabling the Judge from hearing a particular class of case or cases in which a particular lawyer appears, (iii) Withdraw the judicial work from judge for a specified period, (iv) Censure the Judge, (v) Advise the Judge to seek a transfer, (vi) Advise the Judge to seek voluntary retirement.⁵⁴

The Committee also recommended that the provision of impeachment by amending Article 124 of Constitution of India to make it less difficult. The Committee while considering the situation of U.S.A. tried to implement it in the Indian Scenario.⁵⁵

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⁵² Justice B. N. Agarwal, “Judicial Accountability” AIR April 2008 (Journal Section); p. 50.
⁵³ Report was submitted in 1996.
⁵⁵ Ibid.
There were similar problems in U.S.A. where the Judge can be removed only through an impeachment process, which is not easy to enforce. Accordingly, the Judicial Council Reform and Judicial Conduct and Disability Act, 1980 was enacted. Under the Act, there is a Judicial Council for each Circuit and a National Judicial Conference at the Apex. They have been given power to censure a judge, request him to seek retirement or direct that no cases be assigned to the Judge for a limited period. The Committee recommended, conferring of similar powers on the Chief Justice of the High Court in India.

The Annual Report of Ministry of Law, Justice and Company Affairs has given data about judicial arrears and nothing about the nature of cases pending. So, it is not fruitful to deal with the pendency of cases. There must be some judicial database that includes the details about the specific laws which deals with subject matter, sections, legal nature of dispute, time taken to decide the case, interim relief in operation and number of adjournments granted etc.\textsuperscript{56}

(C) Too Many Vacations in Courts

The most debated question relating to the causes of delay is the Court vacations. In India, long vacations in Courts are a unique feature. It is argued at national level as to why the courts should have such long vacations when there is such a huge pendency of cases in all the courts waiting for decades for disposal. In most countries like France and United States of America there is no provision for vacations in the courts. The judges in these countries can take leave according to their convenience without affecting the smooth functioning of the courts. In India, only subordinate criminal courts work the whole year but the Supreme Court, High Courts and other subordinate Civil Courts are closed during vacations. If courts in other countries can function like any other business establishment, then why cannot, courts in India do so? The table below makes a comparison between the working days and time of different courts and Government and private establishment: \textsuperscript{57}

\textsuperscript{56} S.S. Siddiqi and Y. Abbasi "Speeding up the Justice Delivery System With Special Reference to Procedural Reforms" Published in Souvenir on 'All India Seminar on Judicial Reforms.'
\textsuperscript{57} A. R. Qureshi; "Court Vacations and Court Delays", AIR (Journal Section) 1999 p. 43.
The system of vacations is a legacy of the colonial rule. In the pre-independence period, the burden was not so great in comparison to the present situation. Also, the Britishers coming from cold climate found the summer in India unbearable. Therefore, vacations were a kind of an arrangement to enable them to go to England during summer and spend the time comfortably. That was the time when traveling was done by sea which required several weeks. This appears to be the real reason for the introduction of long vacations for Courts in India.\textsuperscript{58} Now the situation has been changed drastically and the courts are over burdened with pending cases. So, the situation demands that the courts should do away with such long vacations and work as other Government establishment do.\textsuperscript{59}

(D) Misuse of Public Interest Litigation

The traditional rule is that right to move the courts is only available to those whose fundamental rights are infringed. The power vested in the Supreme Court can only be exercised for the enforcement of fundamental rights. But this traditional rule of locus standi that a petition under Article 32 can only be filed by a person whose fundamental right is infringed has now been considerably relaxed by the Supreme Court. The Court now permits ‘public spirited citizens’ for the enforcement of constitutional or other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief.

\textsuperscript{58} R.V. Kelkar, \textit{op.cit.} at 13.

\textsuperscript{59} \textit{Ibid.}
In *A.B.S.K Sangh (Rly) v. Union of India*, the Supreme Court held that the Akhil Bhartiya Sarkari Karmachari Sangh (Railway) though an unregistered association could maintain a writ petition under Article 32 for the redressal of a common grievance. Thus Article 32 is not confined to protect only individual's fundamental rights but is capable of doing justice wherever the society has an interest in it. Krishna Iyer, J. observed: "Access to justice through 'Class actions', 'public interest litigation' and 'representative proceeding' is the present constitutional jurisprudence."

In the *Judges Transfer case*, a seven judge Bench of the Supreme Court has set at rest the controversy as to whether a person who is not directly involved in a case can move the Court for enforcement of constitutional or other legal rights of any person or group of persons who because of their poverty or socially or economically disadvantaged position are unable to approach the Court for relief. The Court held that any member of the public having 'sufficient interest' can approach the Court for enforcing constitutional or legal right of other persons and for redressal of a common grievance.

P.N. Bhagwati, J. observed: "We would, therefore, held that any member of the public having sufficient interest can maintain an action for judicial redress for public injury arising from breach of public duty or from violation of some provision of the Constitution or law and seek enforcement of such public duty and observance of such constitutional or legal provisions. This is absolutely necessary for maintaining rule of law, furthering the cause of justice and accelerating the pace of realization of the constitutional objectives."

Although Public Interest Litigation has been a revolutionary step in rendering justice to the poor but of late the same is filed for getting publicity, thereby increasing the workload of Courts. This ultimately cause delay in disposal of regular cases. While expanding the scope of the 'locus standi' rules, Bhagwati, J. (as he then was) expressed a note of caution. He observed: "But we must be careful to see that the members of the public, who approach the courts in cases of this kind, is acting bonafide and not for personal gain or private profit or political motivation or other

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60 AIR 1981 SC 298.
61 *S.P. Gupta v. Union of India*, AIR 1982 SC149.
oblique considerations. The Court must not allow its process to be abused by politicians and others…….”

In *Sachidanand Pandey v. State of West Bengal*, Justice Khalid observed: “If the court do not restrict the free flow of such cases in the name of public interest litigation, the traditional litigation will suffer and the courts of law, instead of dispensing justice, will have to take upon themselves administrative and executive functions”.

In *Janta Dal v. H.S. Chaudhary*, Justice Pandian made the following observation: “…….only a person acting bonafide and having interest in the proceeding of PIL will alone have a locus standi and can approach the Court to wipeout the tears of the poor and needy, suffering from violation of their fundamental rights, but not a person for personal gain or private profit. Similarly, a vexatious petition under the colour of PIL brought before the Court for vindicating any personal grievance, deserve rejection at the threshold”.

In spite of its beneficial effect, the Public Interest Litigation is subject to criticism mainly on the ground that the Courts are flooded with litigations resulting in delay in deciding many other important cases and this criticism is not far from truth because the Courts are finding it difficult to handle the arrears of cases.

**(E) Hostile Witnesses**

The problem of witnesses turning hostile in important cases have become a major problem in rendering due justice by our criminal justice system. Bentham has rightly stated that “witnesses are the eyes and ears of justice. Their statements have a magic force to change the entire case”. Of the many things that plague the criminal justice system in India, and thereby increasing the backlog of cases in our country, the most overwhelming and important one is the fact that our conviction rate is very low which is at about 6%. The basic reason for such poor conviction rate is that it is difficult “to prove beyond reasonable doubt” the fact that it was the accused and only the accused who committed the offence. So it requires witnesses to prove the guilt of the accused.

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62 AIR 1987 SC 1109.
63 (1992) 4 SCC 305.
In common parlance, witness is understood as 'a person who has some knowledge about the dispute' and his duty is to appear in the Court and testify truthfully. In *Charan Singh v. State of Punjab*, Wadhwa J. observed: “A criminal case is built on the edifice of evidence, that is admissible in law, for that witnesses are required whether direct or indirect or circumstantial evidence.

The procedural law envisages that administration of oath to the witness precedes the recording of the testimony of the witness. He is not supposed to withdraw from the given statement and the witness ought to sustain the legal sanctity and ethos of the evidence. But with the decline of moral values, the sanctity of Oath is completely bruised and so a witness resiling from the statement has become a common feature of the criminal trial. People are accustomed to utter falsehood in Courts. Intimidation, subornation, vengeance, or some expectation of benefits etc. may be the traditional causes of deviation in witness testimony. Pain of repeated and numerous court visits may also frustrate the witness to resort to casual attitude to the truth. In cases of faction feuds, rivalry between potential and powerful people, where there may be fear of life and safety, witnesses lose their moral conviction before the dreadful scenario of factual conditions. Whatever may be the reason, the Courts cannot remain complacent and passive listeners and recorders of witness version.

The number of witnesses turning hostile is increasing in cases concerning grave offences. Some such incidents are the famous *BMW case, Jessica Lall murder case* and *Best Bakery* case. The first one (*BMW case*) was regarding the BMW car running over six people in the early morning hours. The accused in this case was 22 years old, Sanjeev Nanda, grandson of former Naval Chief S.M. Nanda. The two key prosecution witnesses subsequently changed their version and said that they saw a truck, and not a BMW hitting the victims.

The second case (*Jessica Lall murder case*) involved the murder of a model, *Jessica Lall* who was shot at point blank range amidst a big party thrown at a

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64 AIR 1975 SC 246.
Delhi restaurant. Here the accused was Manu Sharma who hails from an affluent family and had political connections. In this case, all the three witnesses have turned hostile one by one, thereby delaying the final disposal of the case. Although, finally Manu Sharma has been convicted but due to witnesses turning hostile, final disposal of the case took a long time.

In the landmark verdict in **Best Bakery Case**, the Supreme Court gave an enlightened observation and sent the key witness Zahira Sheikh to the jail for playing fraud on the Court by turning hostile. Holding her in contempt, the Supreme Court Bench observed that-

"In a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties, which affect the whole community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and therefore, it is the community that acts through the State and the prosecuting agencies. Interest of the society is not to be treated completely with disdain and as persona non-grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case protecting its ability to function as a Court of law in the future as in the case before it. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a mere spectator and a mere recording machine by becoming a participant in the trial evincing intelligent, active interest and elicit all relevant material necessary for reaching the correct conclusion and administer justice with fairness and impartially to the both parties of a particular case as well as to the society at large. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the judges as impartial and independent adjudicators."

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In most of the cases witnesses are purchased with the use of money. Generally those people who are extremely rich, industrialists, bureaucrats or high profile public servants or politicians who have committed the crime either accidentally or intentionally use this method. They are of the belief that their purchasing power is very high and thus they can afford to relax once the witness has been bought over. These types of cases occur all over India, but are mostly prevalent in the Metropolitan cities of the country.

Very often muscle power is also used. Where money fails, muscles work. Even an honest law-abiding citizen would think hundred times before deposing against the accused if he or any of his family members is threatened with dire consequences or death. They have no option but to do so because most of them are habitual and crime is their profession. e.g. contract killers and men belonging to the underworld.

Apart from money and muscle power there are various other ways in which witnesses are forced to turn hostile viz. political pressure, long winding Court procedures, the psychological factor, self-generating fear etc. Whatever be the tactics applied by powerful ones in turning the witnesses hostile that undoubtedly makes way for delay in the expeditious delivery of justice.

**Writ Petitions**

With the increase in the socio-economic and welfare activities of the State and growing awareness of the citizen as to his rights, Article 32 and 226 of the Constitution assumed singular importance in our system of administration of justice. It empowers the Supreme Court and High Courts throughout the territories, in relation to which it exercises jurisdiction, to issue to any person or authority directions or orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever is appropriate.

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69 G. S. Shekhar; ‘Witness Protection in Criminal Cases’, The Frontline, September, 2005; p. 76.
70 Id. at 77.
71 The difference between Articles 32 and 226 is that through Article 32 Supreme court can be approached for the enforcement of Fundamental rights only, while through Article 226 High Courts can be approached not only for the enforcement of Fundamental rights but also for the enforcement of any other rights.
Writ Petitions are extra-ordinary constitutional remedies under the Constitution by which the Judiciary reviews the executive and legislative acts. They don't constitute the normal judicial work of adjudicating disputes amongst citizens or between citizens and governments etc. The situation has become increasingly serious even for the extra-ordinary remedies of writ petitions. Priorities have to be set even amongst the extra-ordinary remedies. Further, only the temporary, urgent, ad interim, or interim relief is ordered in writ petitions and the real and main issues are relegated to the background and may not be addressed for want of time. More often than not the writ petitions are filed to force the executive to do their duty and the Courts have to waste their precious time in giving direction to the executive to perform their constitutional duty due to which the disposal rate of cases is reduced substantially. Very often, a number of writ petitions are filed involving not only the same point of law but also the same or similar facts. The grouping of these petitions by the Registry will help in the quick and satisfactory disposal of cases. The co-operation of the various government departments would be required for the expeditious disposal of writ cases.

(G) Delay by the Judges

Some practices of our judiciary also cause delay and arrears. Writing of lengthy judgments obscuring the ratio is not uncommon in India. A lot of time is consumed not only by the judges but by others also in writing the judgment which ultimately results in delay in pronouncement of the judgment. Writing separate judgments even when they are concurring makes the exercise time-consuming and confusing. It thereby becomes difficult to find the ratio in quick time. \(^{72}\)

When judges give separate but concurring judgments they say that they want to give reasons other than those mentioned in the judgment with which they concur. However, more often than not it is seen that the most of the separate judgment do add that all have been discussed in the main judgment. The separate judgments may differ only in minor details, still it is written and published. It is not known what benefit one gets from the practice. The dissenting judgments on the contrary display clarity; it helps the lawyers and law students a lot in understanding the ratio as well as the

\(^{72}\) The Academy Law Review; Vol. 17, p. 59.
unarticulated premises of the conclusion. The dissenting judgments of some of our well-known judges are really path-finders.\(^7\)

The languages employed by the judges in writing judgments have also come for criticism. At times the judges who have a flair for flowery languages indulge in displaying good command over the language and in the process make others to miss the legal point discussed in the case. Such writings cause delay not only at the hands of the judges but also for lawyers in finding out the ratio of the decisions.

Malimath Committee considered that some judges do not deliver judgment for years. If there is delay the judge may forget important aspect thereby contributing to a future of justice. There are also complaints that the judgments are not promptly signed after they are typed and causing great hardship to the parties. To correct these aberrations the High Courts should issue a circular to immediately enter below the case, title of the judgment/orders, the following:

(i) The date when the agreements concluded.
(ii) The date when the judgment was reserved.
(iii) The date when the Judgment was pronounced.
(iv) At the bottom of the judgment/order, the Stenographer should enter the date on which he received the dictation, the date when he completed typing the judgment/order and placed it before the judge and the date when the judge signed it.

III. Sum Up

It is apparently clear from the foregoing study that there can be no single factor which is solely responsible for delay in disposal of cases rather it is a combination of several factors which are contributing to delay. Judicial delay applies to burdensome procedures, lack of sufficient courts, the clogging of the system with cases without merit and the use of the courts to settle matters, which could be resolved by negotiation. Post experience and instances have proved beyond doubt that delay at

\(^7\) Id. at 60.
court is always accompanied by ills such as partiality, corruption and a low quality of judgment. Besides this, the causes attributed for delay are (i) An inadequate number of Courts (ii) Judicial officers are not being fully equipped to tackle cases involving specialized knowledge (iii) Dilatory tactics adopted by litigants and lawyers, who seek frequent adjournments and delay filing documents and (iv) The role of the administrative staff of the Court. Further root cause for delay in dispensation of justice in our country is poor judge-population ratio. Other aspects that contribute to judicial delays include lacunae in the Code of Criminal Procedure, methods of police investigation, general administrative disorganization and a lack of modern technology. Frequent adjournments are the direct fall out of increasing inflow of cases. Sufficient judicial officers commensurate with the cases filed everyday are not there. Therefore, the judicial officers are constrained to adjourn the cases again and again so as to take up other matters also. The irony is that in our country for every one million population, there are only 13.5 judges. In contrast, in Western Countries, for every one million people, there are 135 to 150 judges, 10 times more than the proportion in India. There is unanimity of opinion that the strength of Judges in India has to be considerably increased to cope with the growing litigation and demands. Hence, there is a dire need to overhaul the entire system of justice delivery mechanism so that the problem of delay can be nipped in the bud otherwise access to justice and judicial reform will remain non-existent and will only be a mirage to the crores of fellow Indians.