CHAPTER 5

JUSTICE DELIVERY SYSTEM: PROBLEMS AND THE CAUSES OF DELAY

"Jarndyce and Jarndyce drones on. The scarecrow of a suit has, in course of time, become so complicated, that no man alive knows what it means. The parties to it understand it least; but it has been observed that no two Chancery lawyers can talk about it for five minutes, without coming to a total disagreement as to all the premises. Innumerable children have been born into the cause; innumerable young people have been married into it; innumerable old people have died out of it. Scores of persons have deliriously found themselves made parties in Jarndyce and Jarndyce, without knowing how or why... Fair wards of Court have faded into mothers and grandmothers; a long procession of Chancellors has come in and gone out... but Jarndyce and Jarndyce still drags its dreary length before the Court, perennially hopeless".

Charles Dickens (Bleak House)

5.1 Introduction

The problem of delays in law is not a new one - it is as old as the law itself. It had "plagued" every judicial system be it Roman,
Greek, English or American. The problem has assumed such a gigantic proportion that unless solved speedily and effectively, it will in the near future, crush completely the whole edifice of our judicial system. Laws' delays have always been proverbial. The ailment has become extremely malignant and it has brought the entire administration of justice into dispute. A malignant ailment requires a radial cure, it poses a great challenge before every one. The heavy arrears of cases pending in Courts have made a mockery of our Justice Delivery System and have created a grave situation. Time and again people have expressed their repugnance to the extremely slow moving machinery of justice. It is indeed true that judicial delays are the blackest spots on the “rule of law”. Over the years the rule of law has suffered at the hands of such delays. Delays of the “rule of law” has shaken the people’s faith and trust in the state order. The principle function of state is to secure to the people, the enjoyment of their rights and in the event of their infringement, to adjudicate them justice speedily – Gladstone. “Sin of arrears” is the evil which blacks out our constitutional objectives of justice.

The alarmingly rising crime rate coupled with the higher rates of acquittal clearly indicate that the system is not as effective as it is required to be. The recent huge increase in the white collar crimes particularly the discovery of hundreds of scams involving billions of rupees in the last 15 years or so, have shaken the economy of the country. The above graphs clearly show and prove the dismal increase in the crime rate. There is no denial of the fact that the criminal law

---

has ceased to have a deterrent effect for criminals on account of long delays in disposal of cases coupled, with the declining rate of conviction of all the cases in which the accused are arrested on criminal charges.

The huge and ever-mounting pendency of cases in the Courts is shocking and challenging. The pendency of Civil and Criminal cases over the years is the sad reflection of the failure of the Justice Delivery System. The problem of dealing with delay in the administration of justice deserves a thorough study and in-depth analysis. The delays have been held not only to be a cause of shaking the confidence of the common man in the working of the system but are also responsible for large-scale acquittals. The cases involving the most heinous offences of murder continue up to two decades as shown by some instances below:

<table>
<thead>
<tr>
<th>Title of Case</th>
<th>Pendency (in years)</th>
</tr>
</thead>
<tbody>
<tr>
<td><em>Bachchu v. State of UP</em></td>
<td>20</td>
</tr>
<tr>
<td><em>Bharat Singh v. State of UP</em></td>
<td>20</td>
</tr>
<tr>
<td><em>Kamlesh Mandal v. State of Bihar</em></td>
<td>20</td>
</tr>
<tr>
<td><em>Kamlesh v. State of UP</em></td>
<td>20</td>
</tr>
<tr>
<td><em>Mohan Singh v. State of MP</em></td>
<td>19</td>
</tr>
<tr>
<td><em>Pahar Singh v. State of Rajasthan</em></td>
<td>18</td>
</tr>
<tr>
<td><em>State of UP v. Hori Lal</em></td>
<td>21</td>
</tr>
</tbody>
</table>

The list of instances given below is not exhaustive. It is endless indeed it is not possible to give the detailed list of all case in which delay was caused.

8 1999 Cri LJ 829.
9 1999 Cri LJ 891.
10 1999 Cri LJ 1354.
11 1999 Cri LJ 1334.
12 1999 Cri LJ 1150.
13 1999 Cri LJ 1039.
5.2 Who is Responsible?

Shri K. R. Narayanan, our former Hon’ble President, while inaugurating the All India Seminar on Judicial Reforms December 1998, observed:

“A combination of factors has conspired to make law a time-consuming process—the intricacies of procedures, the ingenuity of lawyers in prolonging cases, even the indifference of Judges and the unending process of appeals...”

Laws’ delays, no doubt have become the chronic disease and it could not be cured, even till today and has become an unceasing, unaffected and insolvable problem. The fault lies with all the stakeholders of the Justice Delivery System i.e. Legislators, Executive, Judiciary, Lawyers and the Public (accused, victims and witnesses). The general public and even the administrators throw the blame on the judiciary alone, which is not correct on the face of it. All the organs of the Justice Delivery System are to be blamed as they are all responsible to some extent or the other and each of them knowingly or unknowingly are contributing their respective share in the delays, which ultimately, is resulting in the general saying, “Justice delayed is justice denied”.  

No single instrument can be blamed for such problem of delay because a problem of such magnitude arises due to malfunctioning, mal-administration and mismanagement of different elements of the Justice Delivery System. Corruption and lack of commitment on the

14 1999 Cri LJ 1638.
part of various instruments are the main factors responsible for the delay in the Justice Delivery System.

Man in general has uncanny fascination for dreams and Indians, in particular, seem to be bestowed with them. Those who fought for our country's freedom dreamt that independence would bring the system of governance which would be just, fair, efficient and responsive. Fortunately, they are not alive to see the fruition of their dreams. India which was recognized as a land-where religion, culture and philosophy reach at their acme, is now known for political shortsightedness, sloth, opportunism, avarice, indolence, poverty and non-performance. It is surprising as well as disgusting that the legacy of honesty, dedication, austerity public service and patriotism - the values which our leaders of the past Gandhi, Nehru, Subhash, Patel and others cherished so dearly - are being squandered away by the corrupt and power hungry political characters.

'Corruption' means perversion of morality, integrity, character or duty out of mercenary motives with regard to honour, right or justice. We can confine ourselves to financial disintegrity rather than including intellectual and moral disintegration. The World Bank defines corruption as the abuse of public office for private gain. Corruption today is a dangerous degenerating disease which is eating into the vitals of the nation and economy. It is an uncontrolled financial behaviour which involves financial rape and financial adultery. Financial rape is when a citizen goes to any public office and the public servant misuses his power to extract bribe from him. It can be illustrated as that in "Sanskrit those who are knowledgeable are called Saksharas and if they don't use the knowledge properly they become reverse of Saksharas, which is Rakshasas. 'Saksharo vipareetatve raksharo bhavati dhruvam'. In fact today we are having, in India, a Rakshasas Raj where the public servants exploit the citizens. The second type of uncontrolled, financial behaviour which
leads to the AIDS of Corruption is financial adultery which takes place when the colluding businessmen or political leaders or bureaucrats accept bribes and exploit the system. To this menace of corruption, no sphere of public life can claim to be an exception.

For a number of years the Judiciary has enjoyed a well-deserved reputation for honesty and integrity. So in the past, even the severest critics of the judicial system who found fault with the tardiness of the legal process, cost involved and the uncertainty which weighed heavily on the litigant would not accuse the judge of corruption except in very rare cases. But in recent times this monster is rearing its ugly head in the judicial branch also. The causes are not far to see. The emoluments of the judge and the amenities enjoyed by the judge compare unfavorably with the executive officer of the same status. The disease of corruption is extremely infectious and a judicial officer succumbs to it when he sees it prevalent all round him. Further the category of cases, which are more frequent nowadays like land acquisition matters, bail etc. having large field of judicial discretion of judges. Even an honest judge is corrupted especially when there are unscrupulous lawyers who are willing to dangle tempting baits before him. Corruption may assume many forms other than monetary corruption sometimes subtle, sometimes sophisticated-nepotism, favoritism, communal, caste, or religious bias.16

The Parliament has been given the role of the making of laws because it is the will of the people which is to prevail. But our legislature has been lagging far behind in feeling the pulse of the needs of the people. They keep on discussing unnecessary or less important matters. Many a times the opposition stages the walkout on one issue or the other. Inapt and vague drafting, old and antiquated laws etc. ultimately results into laws’ delays.

The *Executive* is also equally responsible for the laws' delays by taking most reckless, dishonest, hasty and injudicious actions and by passing arbitrary, capricious and illegal orders, creating discriminations, by changing its policies unnecessarily and more frequently. This attitude of the Executive results in much litigation and ultimately results into unwanted congestion in Courts. Moreover Government is the biggest litigants. Further the non co-operative attitude of the executive also adds to the problem of delays.

The *Prosecution* agencies in major cases like BMW case, Priya Darshni Matto case, Hawala Case etc. are the examples where public prosecutors are acting as the handmaid of elite by protecting their interest, the public prosecutors are denying justice to the masses thus causing delay. Justice Reddy, the Chairman of Law Commission has rightly remarked:\(^{17}\)

> “The Criminal Justice System in the county is in a bad state of affairs and this is because of incompetence and corruption in prosecution agencies”.

He further adds:

> “Blaming the Courts and judges for low conviction rate would be misleading, if a case is devoid of evidences they could not do much”. The justice in Indian Courts has become a myth."^{18}\)

The *Lawyers* also are responsible for laws' delays. A very few lawyers have the courage and broad-mindedness to nip the litigation in the bud by advising his client that there is no case for him. Though


\(^{18}\) *Ibid* at 3.
there is no case for a client, no Advocate generally, will advise a client to stop going to the Court and at one stage or the other the Advocate will try to postpone the evil day of his client by prolonging the litigation by dilatory means and methods.

The litigant public (accused, victims and the witnesses) is also responsible in contributing their share to a major part, for the laws' delays. The litigant public is adopting all types of dilatory tactics.

The lackadasical approach of investigation agencies, unscrupulous lawyers, sleeping judiciary and redundant legislation's which have rotten our criminal justice system. The whole system including the police, the prosecution, the defence, the trial and the appellate Courts, the prison and the correctional administration has become a web of inefficiency, corruption and bureaucratic hurdles, therefore whole system is responsible for delays.\textsuperscript{19} So we can say that each element of Justice Delivery System is responsible in one way or the other for denying the people of this country the quest of Preamble i.e. justice.

According to a study as shown in table 5.1 conducted by Ravi Karan Singh,\textsuperscript{20} the big groups of advocate, judge and law teacher respondents i.e. 24.97, 27 and 23 per cent respectively support that there is a heavy work load in all Courts and posts of judges are lying vacant since long and this is one of the vital reason for not dispensing of justice as reflected in the table below. The other professional and litigant respondents in a big way i.e. 30.46 and 32.18 per cent, blamed that corruption is spreading in our judicial system. Although all the groups of respondent also support that dilatory practice, lawyers' strike and commercialization of legal profession have adverse effects

\textsuperscript{19} Supra note at 17.

of dispensation of justice or multiplying the cost of justice. It is not an exaggeration to say that now justice has become more costly and is beyond the reach of a common man.

Table: 5.1 What could be attributed in the following (per cent)

<table>
<thead>
<tr>
<th>Reasons</th>
<th>Advocates</th>
<th>Judges</th>
<th>Law Teachers</th>
<th>Other Professionals including Law Officers</th>
<th>Litigant (Only natural persons)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Corruption in judicial system</td>
<td>22.11</td>
<td>14</td>
<td>20</td>
<td>30.46</td>
<td>32.18</td>
</tr>
<tr>
<td>Expensive Justice</td>
<td>17.04</td>
<td>6</td>
<td>10</td>
<td>10.92</td>
<td>16.23</td>
</tr>
<tr>
<td>Heavy Workload and Vacancies</td>
<td>24.97</td>
<td>27</td>
<td>23</td>
<td>23.56</td>
<td>15.10</td>
</tr>
<tr>
<td>Dilatory Practice</td>
<td>19.64</td>
<td>20</td>
<td>15</td>
<td>16.09</td>
<td>3.27</td>
</tr>
<tr>
<td>Lawyer’s Strike</td>
<td>6.76</td>
<td>21</td>
<td>10</td>
<td>6.32</td>
<td>10.96</td>
</tr>
<tr>
<td>Commercialisation</td>
<td>7.80</td>
<td>10</td>
<td>17</td>
<td>10.35</td>
<td>20.55</td>
</tr>
<tr>
<td>Others</td>
<td>1.68</td>
<td>2</td>
<td>5</td>
<td>2.30</td>
<td>1.71</td>
</tr>
</tbody>
</table>

5.3 The Main Causes of Delay

5.3.1 At Legislative level

The first most important function in a democratic setup is making of the laws. In India, this function lies with the legislators. But most of our legislators are either illiterate or are unable to understand the real nature of law. The gradual criminalisation of politics has further deteriorated the situation because a large number of criminal elements have entered into politics. Our ‘democracy’ has
become 'mobocracy' because here the majority rule prevails without any distinction between the citizens on the basis of their qualification and understanding. Consequently, the candidates contesting the elections use all means for winning elections like booth-capturing, purchase of votes and other violent activities etc.

This leads us to one conclusion that our legislators may not have pure conscience, sacred wisdom and true commitment towards the constitutional and humanistic goals of justice.

5.3.1.1 Vague, ambiguous and poor drafting of statutes

Many a times, our law making body does not make laws. The rights of the people continue to be violated. The laws are ineptly, inadequately, carelessly drafted. All this breeds litigation. In Minerva Mills Limited v. Union of India, Mr. Justice P.N. Bhagwati has rightly and aptly observed: “This slovenliness” in drafting is becoming rather common these days”. Legislation not only in this way but also in many other ways is contributing their share in laws’ delay.

The drafting of legislation has now become a particular type of art which has to be learnt and mastered and only properly qualified and experienced men should be placed in charge of such drafting works. Because of poor drafting of various statutes, Court had to struck down many of these statutes on the ground that these are repugnant to the provision of the Constitution or in some cases because of vagueness or ambiguity of the language it becomes very difficult for the Court to interpret the law and to make out the real intention of the legislature. Consequently such litigation continues and ultimately causes delays.

---

21 AIR 1980 SC 1789.
5.3.1.2 **Outdated Laws**

The old laws are not amended so as to keep them meaningful in the realm of the present time. They lose their spirit and the ultimate objective. Even today our penal code contains the provisions of imposition of fines of Rs. 10 or the like meagre amount for the violation of some of the offences. This is a mockery of the present justice delivery system that nobody can be expected or thought to have been deterred by such old laws.

The principles of law that we have today, were laid down by the judges, in the 19th century or even earlier than that. They, of course, suited the social conditions of that time. But they are not relevant at present. Therefore those laws are out-dated and need to be recodified and restructured to suit the distinct social needs of our times. Lord Denning has said:

“Times after times I have suggested that present law is mistaken and in the need of reform. It should be altered so as to secure as near as may be the doing of justice”.

5.3.2 **At Judicial level**

The judicial system we have in today's India is a legacy of British rule and is adversarial in nature. “An adversary system is used to establish the guilt or innocence of the accused”. But in the current period it is not uncommon for any criminal case to drag on for many years. Long delays in Court cause great hardship not only to the accused but even to the victim and also to the state and the society in general. The accused who is not out at bail may languish in jail for months or even for years awaiting trial. The three main evils that are

---


commonly associated with the administration of justice in India are cost, delay and uncertainty and the most gruesome of them is the delay. The common man is reluctant to approach the Courts of law due to fear of long delays. The result is that, the frustration is caused in the honest man and there is a corresponding inclination to disobey law in the dishonest man such a situation leads to a complete lack of faith in administration of justice.\textsuperscript{24} This problem of delay is most acute in the subordinate Court. “A perusal of statistics showing the total number of cases instituted every year in subordinate Courts and the cases decided will reveal the problem i.e. delays”.\textsuperscript{25} There has been a manifold increase in the number of cases instituted and this increase has subjected the trial Courts to extreme strains. The problems faced by the trial Court therefore call for great qualities of head and heart in a judge.

The role of the Judiciary in general can be aptly brought out in these words: “In a country which declares, its dependence on the proposition that all men are created equal and the Judiciary is to support, to define and to constitute, this equal protection of laws and it is no more than reasonable to expect a Court system to be both of law and justice”. A system which will establish procedures to protect the innocent, discover and initiate appropriate action against the guilt and offers “due process” to all litigants . . .\textsuperscript{26}

The criminal Court is the core of the criminal justice system. It has the duty of the Court to supervise the work of the police prosecutor and defence counsel, to ensure the presence of the due

\textsuperscript{25} Ibid at 434.
process of law throughout from the arrest to release procedures in criminal justice.  

Thus the legitimate expectation of people rightly is that whenever they come up with a grievance before in adjudicatory forum they should have reasonable opportunity of having their say and adjudicator should decide the matter within reasonable time.  

Naini Palkhiwala observed:

"An independent judiciary is the very heart of a republic, the foundation of a democracy, the source of its perennial vitality, the condition for its growth and the hope for its welfare- all this lie in the great institution of independent judiciary".

When the question as to the fixing up of the responsibility of the institution/person for such dismal performance of this delayed justice comes, apart from various other elements at different levels, the most unfortunate fact that comes out that none else is more responsible than the judiciary itself for the reasons:

(i) They pass the orders without considering and visualizing the ultimate result that if their orders are not implemented, will they be able to get them implemented by passing strictures or ordering them to suffer the monetary loss, which is rarely done by our justice delivery system;

27 *Ibid* at 97.
Each time the executive does not implement orders, they are not dealt with strict action. They take dates after dates for one reason or the other because they know very well that at the most they would be ordered to do a particular act, which they will have to do if ordered. Therefore their tendency is to delay the matter as long as they can;

However some of the reasons are as follows:

5.3.2.1 Huge backlog of pending cases

The inadequacy in the strength of the subordinate judiciary to deal with the arrears and the increase in the number of freshly instituted cases contribute to the piling up of cases. It brings a sense of frustration and helplessness among the litigant public, which for no fault of its own, is prevented from getting appropriate redress from the Court in time. With the growth rate of population, the institution of cases is increasing but disposal rate has not moving from its point of growth. A study\(^\text{30}\) has revealed that while the population of the country increased by 127.6% between 1951-1990, the total reported crimes under the Indian Penal Code have gone up by 146.9%. There is no denial of the fact that the criminal law has ceased to be having a deterrent for criminals on account of long delays in disposal of cases coupled with declining rate of conviction of all the cases in which the accused are arrested on criminal charges. The huge mounting pendency in the Courts of the country is the biggest challenge.

The problem of the arrears in higher judiciary is due to very wide appellate jurisdiction in civil and criminal cases, the writ

jurisdiction conferred under Articles 32 and 226 further aggravates the problems. The experience during the past fifty years has shown that the Court has not been able to cope up with such large volume of work.

5.3.2.2 Poor Judge - Population Ratio

India has the lowest judge population ratio in the world. During the last 50 years, the population and litigation has increased many times but proportionately there is no increase in the judge’s strength and judicial infrastructure. In 120th report, the Law Commission found that India had 10.5 judges per million of population, the corresponding figure in England was 50.9, Australia 57.7 and USA 107. The Law Commission had recommended 50 Judges per million of population instead of only 10.5. Dr. Justice Anand, caution that it is not merely the raising of strength of judges in subordinate Courts which is the need of the day but greater need is for making right appointments, because an unfilled vacancy may not cause that much harm as wrongly filled vacancy. The anxiety of all concerned about quick dispensation of justice has also been succinctly discussed by the Supreme Cour in *All India Judges Association v. Union of India*, and in *P. Ramachandra Rao v. State of Karnataka*.

5.3.2.3 Large scale Unfilled Vacancies in Courts

In the subordinate Courts the sanctioned strength of the judges/magistrates is around 13,000 out of which around 2000 posts are lying vacant and are yet to be filled. According to Chief Justice of India “the major cause of delay in high Courts is large unfilled vacancies, the total strength of judges in Supreme Court is 26 of which

---

33 *AIR 2002 SC 1752*.
34 *JT 2002 (4) SC 92*.
25 are in place. The sanctioned strength of judges in the 21 High Courts of the country is 719 out of which 228 remains to be filled up". Even though around 200 post of judges of the High Courts have been created, still they are yet to be filled up. The main reason for these unfilled vacancies is the lack of recommendations received and matters pending with the government. There are long standing vacancies of Court staff and judges which are not being filled because of financial crunch or ban on appointments. The Courts have bare minimum staff and that too is over burdened. On account of these unfilled vacancies the subordinate Courts function like lame ducks. Adding to the problem the special judges are appointed at the request of the central or state government from out of the existing strength, without increasing the number of judges and without providing additional infrastructure for delivering speedier justice, this has an adverse impact on the Justice Delivery System. The delay in appointment of judges has become rule and timely appointment is a exception. ‘The non-appointment the judges on time and ever increasing arrears of cases complete the vicious circle of delays’.

5.3.2.4 Defective System of Appointment and Training of Judges

The procedure for recruitment of judges is also very much defective. The persons having merit and aptitude for judicial work are not always appointed according to 14th report of the Law Commission. The delay in disposal and accumulation of arrears in trial Courts are principally due to the judicial officers themselves, the country requires adequately trained and capable judicial officers to apply and

---

55 Supra note at 31.
56 Ibid.
57 Law Commission 121st Report.
administer the laws and it also requires to give comprehensive training for not less than a year.  

Most of the states do not have separate and special academy for imparting training to newly appointed judicial officers. Training of seven days to one month is given, which is not appropriate and fruitful. Considering the fact that from the first day of his assuming office, the judge has to decide, among others, questions of life, liberty, property and reputation of the litigants, to induct graduates with little experience to occupy seats of such vital powers is neither prudent nor desirable.

5.3.2.5 Same Court for Civil and Criminal Cases

Generally, the same judicial officer exercises powers over both civil cases and criminal cases and they give preference to criminal cases because in these cases, life and liberty of the persons is directly at stake. So much of their time is consumed in hearing bail applications and recording of evidence of witnesses in criminal cases and very few hours are available for civil cases which keep on lingering for decades.

5.3.2.6 Judgements

One of the most important reasons for delay in justice by the Courts is relating to judgements. The causes are as follows:

1. Most of the times there are a large number of lengthy judgements on various points raised in a case. Even there are conflicting judgements supporting the case of both the parties.

---

39 Supra note 2.
40 All India Judges Association v. Union of India, AIR 1993 SC 2493 at 2496.
2. Many a times the judgements are time and again overruled. This also leads to confusion.

3. The quality of the judgements also suffers immensely for the judges are in a hurry because of heavy workload.

4. It has also been observed that many a times the judgments are not delivered even after the conclusion of arguments.

5.3.2.7 **Procedural Constraints in Courts**

A large number of cases are fixed on a day on which there is no reasonable chance of their being taken up for hearing and the Courts spend 30 to 40% of their time in calling certain cases with a view to adjourn them to a future date. The time spent for this purpose can hardly be considered to have been put to any constructive use.  

The litigants have to spend a considerable amount of time in obtaining copies of documents. The Procedure for obtaining authenticated copies of the documents must be simplified and litigants must be able to obtain documents without the aid of touts who fleece the litigants. Yet another reason, which account for delay, is preparation of copy of documents and statements to be furnished to the accused. The causes of delay in supplying the copy to the accused may be as follows:

(c) Shortage of staff who prepare these copies.

(d) Large number of accumulation of cases may cause delay because large time is consumed to prepare it.

(e) Delay in getting case diaries from the police.

---

42 *Supra* note 24.
5.3.2.8 **Deplorable working conditions**

It is pity that the people who are expected to administer justice are housed in shabby and dilapidated Courtrooms. A visit to any lower Court will demonstrate how unhealthy and appalling conditions are there in the Courts. Ants, flies, broken chairs and tables, torn and soiled table cloth, ceaseless noise and complete lack of order characterise the courtrooms. We can see the judges in the subordinate judiciary working in candle light in the day time when the electricity is out of order and there room does not receive adequate sun light. During the rainy season some of the courtrooms look like island in the water. Sometimes, even the courtrooms are filled with water and the judges have to close their work. Huge rush like fish market can be seen in as well as outside the courtrooms. A top-heavy obsession with the Supreme Courts and High Courts has led to near-total neglect of the Subordinate Courts, which represent the real face of justice for the common man. The working conditions in the subordinate Courts are simply appalling and it is miracle that they continue to dispense justice. No legal or judicial reform will have more than cosmetic effect unless it reaches down to the subordinate Courts and change their lifestyle in a big way.45

---

45 *Ibid* at 7.
5.3.3 At Executive level

5.3.3.1 Government/State Related

5.3.3.1.1 Legal Hurdles of Statutory Notice and Prior Sanction

Section 80 Code of Civil Procedure, 1908 requires the service of a prior statutory notice for the institution of a suit against the government or a public officer in respect of act done or purporting to be done by such public officer in their official capacity. Its purpose is to afford an opportunity to the government or the public officer to consider the legal position and to settle the claim put forward by the prospective plaintiff if the same appears to be just and proper. Though the government, unlike private parties, is expected to consider the matter objectively and dispassionately and after obtaining proper legal advice, it can take an appropriate decision in the public interest within a period of two months allowed by the code by saving public time and money and without driving a person to avoidable litigation. The legislative intent behind the provision is that public money should not be wasted for unnecessary litigation. The Section has been intended to alert the Government or a public officer to negotiate just claims and to settle them if well-founded without adopting an unreasonable attitude by inflicting wasteful expenditure on the public exchequer.46

In Bihari Chowdhary v. State of Bihar,47 the purpose behind the provision has been highlighted by the Apex Court thus:

---


"When we examine the scheme of the Section it becomes obvious that the Section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the government or a public officer, the government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The government, unlike private parties, is expected to consider a matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the Section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the Section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving
two months' time to government or a public officer before a suit can be instituted against them. The object of the Section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation”.

Such notice has, however, become an empty formality. The administration is often unresponsive and shows no courtesy even to intimate the aggrieved party why his claim is not accepted. Consequently in 1976, the Law Commission, therefore, recommended for the deletion of Section 80. It stated:

“The evidence disclosed that, in a large majority of cases, the government or the public officer made no use of the opportunity afforded by the Section. In most cases the notice given under Section 80 remained unanswered till the expiry of the period of two months provided by the Section. It was also clear that, in a large number of cases, government and public officer utilized the Section merely to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of the Section. These technical defences appeared to have succeeded in a

---


number of cases defeating the just claims of citizens”.

Similarly in *State of Punjab v. Geeta Iron & Brass Works*, Krishna Iyer, J. also stated:

“We like to emphasize that Governments must be made accountable by Parliamentary social audit for wasteful litigative expenditure inflicted on the community by inaction. A statutory notice of the proposed action under Section 80, CPC is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. Now Section 80 has become a ritual because the administration is often unresponsive and hardly lives up to Parliament’s expectation in continuing Section 80 in the Code despite the Central Law Commission’s recommendations for its deletion. An opportunity for settling the dispute through arbitration was thrown away by sheer inaction. A litigative policy for the State involves settlement of governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compose disputes rather than continue them in Court. We are constrained

---

50 (1978) 1 SCC 68 (69): AIR 1978 SC 1608 (1609); (1979) 1 SCR 746.
to make these observations because much of the litigation in which Governments are involved adds to the caseload accumulation in Courts for which there is public criticism. We hope that a more responsive spirit will be brought to bear upon governmental litigation so as to avoid waste of public money and promote expeditious work in Courts of cases which deserve to be attended to”.

Similar is the fate of any other statutory requirement of prior notice/sanction under any other enactment.

5.3.3.1.2 Indifferent attitude of the executive and the meagre plan allocations

The framers of the constitution have not provided a financially independent judiciary. Its dependence on the executive for funding is part of a system of a check and balance and was not intended to create obstacles. The concepts of independence and accountability of the judiciary are two arms of triangle resting on the baseline of funding. But attitude of executive towards judiciary is of indifference causing financial crunch, thus laws’ delays are unavoidable. This is evident from the meagre plan allocations which work out to 0.071% and 0.078% of the total outlay in 9th and 10th plans.

In the 9th plan (1997–2002) the centre released Rs 385 crores for fulfilling priority demands of the judiciary. This was 0.071% of the 9th plan expenditure of Rs 5,41,207 crores of the center. During the 10th plan (2002 – 2007), the allocation is Rs 700 crores which is 0.078% of the total plan outlay of Rs 8,93,183 crores. This shows that the meager allocations of 0.071% and 0.078% by the planning commission are totally inadequate and coupled with formulation of a
centrally sponsored scheme with a condition that the utilisation of the central grant is permissible only if a matching grant is provided by the states, makes it shockingly unfortunate. The planning commission is not expected to make such a meager allocation and that too by way of formulation of a centrally sponsored scheme, which makes the utilization of the central grant conditional and dependent upon the matching granted being provided by the states. The planning commission has been ignoring the grave need to establish more Courts ignoring immense pressure on Courts and general criticism as to the heavy backlog.

5.3.3.2 Police Related

The primary responsibility of police is to protect life, liberty and property of citizens. It is for the protection of these rights that Justice Delivery System has been constituted assigning important responsibility to the police. They have various duties to perform, the most important among them being maintenance of law and order and investigation of offences.51

Whenever a wrong is committed, the investigating machinery of the state comes into motion in order to conduct the investigation as per the mandate of the Code of Criminal Procedure, 1973. It is this investigating agency which collects evidence, examines the persons who are acquainted with the facts and circumstances of the case, makes arrests (if required) of the accused and ultimately forms the opinion as to whether the case should be sent for trial before the neutral agency i.e. Court. This function of the investigating agency streamlines the significance of their role in the dispensation of justice by the Courts ultimately.

---

The manner in which police investigations are conducted is of critical importance to the functioning of the Justice Delivery System. Not only serious miscarriage of justice will result if the collection of evidence is vitiated by error or malpractice, but successful prosecution of the guilty depends on a thorough and careful search for truth and collection of evidence which is both admissible and probative.\(^\text{52}\) In undertaking this search, it is the duty of the police to investigate fairly and thoroughly and collect all evidence, whether for or against the suspect.

The in-time justice is essential, in order to gain the confidence of public in the Justice Delivery System and also in prevention and control of crimes.\(^\text{53}\) The guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved at the earliest, are the basic conditions which are consistent, with a fair and impartial trial.\(^\text{54}\) Justice V.R. Krishna Iyer emphasizing the need for expeditious police investigations and trials, in *Numeon Sangama v. State of Meghalay*,\(^\text{55}\) observed,

> "Criminal Justice System breaks down at a point when expeditious investigations and trial are not attempted, while the affected parties are languishing in jails, it is unfortunate, indeed pathetic that there are such considerable delay in investigation by the police..."\(^\text{56}\)

---

\(^{52}\) *Ibid* at 12.


\(^{55}\) AIR 1979 SC 115.

\(^{56}\) *Ibid* at 116.
The police perceive themselves psychologically and morally bound to do every thing possible to curb crime and investigate the cases successfully to meet the expectation of the people. The investigation is the foundation of the criminal justice system. The police is the first agency for the administration of criminal justice and is considered to be the first line of defence against the crime. But it is unfortunate that the police force in our country by and large, is not aware and conscious of their duties. Under the prevalent system of policing, the police, is the demand of the people. The police force is the most visible symbol of the state authority in the eyes of the common man. Though there are problems of the police also like excessive workload due to inadequacy of manpower and long working hours and absence of shift systems.

The police officers have mentioned the following difficulties which are the main causes of delays in police investigation before the Malimath Committee on reforms of criminal justice system in ensuring speedy effective and fair investigation.

(i) Non-co-operative attitude of public at large.
(ii) Inadequacy of logistical and forensic back up support.
(iii) Inadequacy of trained investigating personnel.
(iv) Inadequacy of the state of the art training facilities.
(v) Lack of co-ordination with other sub-systems of the criminal justice system in crime prevention and control and search for truth.
(vi) Distrust of the laws and Courts (Sections 161 and 162 of Cr PC).

---

Supra note 30.
Supra note 51 at 13.
Lack of laws to deal effectively with the emerging areas of crimes such as organized crimes, money laundering etc.

Misuse of bail and anticipatory bail provisions by the accused.

Directing the police for other tasks that are not the parts of police functions.

Interruption of the investigation work by withdrawl for law and order duties in the midst of investigation.

Political and executive interference.

Existing preventive laws being totally ineffective in curbing criminal tendencies of the hardened criminals and recidivists.

5.3.3.3 Prosecution Related

The proper administration of justice is not in the hands of the judiciary alone. It also depends upon the character of the personnel of the Prosecuting Agencies. The reforms in criminal justice system cannot be attained without improvement in the role of the prosecuting agencies. Earlier the Public prosecutors (Prosecuting agencies) were conscious of maintaining justice in the society, laws were successful and their interest in maintaining justice paved the way for early disposal of cases, conviction of criminals, prevention of crimes and reformation of offenders. But today, these agencies are sheltering criminals on the basis of caste, religion, political affinity etc. There is growing apprehension that justice may not only be delayed but even denied a number of factor are responsible for this phenomenon.60

The quality of the public prosecution suffers on two counts:

---

1. Inadequate number of public prosecutors directly affects the trial of the cases e.g. only about 15 Public Prosecutors and 45 Assistant Public Prosecutors are handling nearly 78,000 criminal cases pending in the lower Courts situated in Jaipur City. At present, there are around 100 posts of government counsels are lying vacant at the district level.

2. The problem is not only of non-appointment of government advocates and public prosecutors promptly, properly and in requisite number but that the appointments are often made on considerations other than merit. Political proximity and patronage etc. play the most important role. Consequently the judicial system and the people at large suffer.

Table: 5.2 Working of the Government advocate/standing counsel (Per cent)

<table>
<thead>
<tr>
<th>Opinion</th>
<th>Advocates</th>
<th>Judges</th>
<th>Law Teachers</th>
<th>Other Professionals including Law Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>For</td>
<td>26.86</td>
<td>18</td>
<td>15</td>
<td>17.30</td>
</tr>
<tr>
<td>Against</td>
<td>73.14</td>
<td>82</td>
<td>85</td>
<td>82.70</td>
</tr>
</tbody>
</table>

Keeping in view the public opinion about the panel of government lawyers, a survey of different Section of legal profession was made. As shown in table 5.2, all groups of respondent are not satisfied with the working of government advocates and standing counsel.
counsels because of poor performance, due to absence of accountability and non-sincerity to assist the Courts. A number of respondents stressed that there is no effective co-ordination between litigant department and other government agencies particularly in the case of criminal matters. The police, government hospital, and other related institutions cause a lot of delay and malpractices to prepare reports, documents etc.

It is clear from the data that the government does not make appointments strictly on merit or expertise basis. These defects and deficiencies in the prosecution cause many problems including delay and denial of the right to justice in the Justice Delivery System.

5.3.3.4 Public Related

In a trial, apart from the instrumentalities of the state and the Court, there are other players who are also involved in most of the cases i.e. accused or the plaintiff, witnesses, litigants in any capacity. It is often said that one of the party is always interested in delay so as to deny or defy and dilute the claim of the other party. This is not far away from the truth.

5.3.3.4.1 By Accused

5.3.3.4.1.1 Absconding of the accused

In most of the criminal cases, either the sole accused or one of the several accused absconds/remains absent. It hinders in the administration of justice because the attendance of the accused is generally required. This is one of the strongest causes of delaying the fair trial of the criminal case. A large number of cases remain pending for years together for the Execution of Warrant and Return of the accused. In most of the cases, even after pendency of warrant against the accused for years together; when the whereabouts of the accused persons are not found in spite of repeated attempts; the proclamation
and attachment of property is resorted to against the accused under Sections 82 and 83 of the Code of Criminal Procedure, 1973. Nothing comes out of it. The practical outcome is that the de facto complainant in such cases gets no remedy. In this way, the trial of the case is delayed.

An ordeal, as has been prescribed for the prosecution, should also be prescribed for the accused. The accused should not be allowed to be oblivious of the responsibilities to help the Court in imparting quick justice. If an accused can be acquitted for default, even by death of the complainant, why not evidence should be recorded if the accused avoids being present on the date already fixed within his knowledge? Unless the accused has the same desire or compulsion for conclusion of the trial, there cannot be a speedy trial. In the present set-up, it is the accused that control the speed of trial. If a set of accused in a case conspires to delay the trial by absenting one by one, there is no procedure or power to conclude the trial.

5.3.3.4.1.2 Several and repeated adjournments of the date of evidence

Several and repeated adjournments of the date of the prosecution evidence by any of the element of the Justice Delivery System discourages the witness(es) in the worst way. The witnesses have to return home which causes unnecessary harassment; wastage of time of various instruments of the system.

5.3.3.4.1.3 Intentional delay caused by the accused artificially in the fair trial of the case

Most of the times, the accused persons cause material delay by taking dilatory tactics either by way of criminal revision or by invoking the jurisdiction under Section 482 of the Code of Criminal Procedure, 1973, as the case may be before the High Court on trifling
grounds only for the purpose of causing unnecessary delay in the trial of the case. This situation has assumed alarming proportions in civil cases.

5.3.3.4.2 By witnesses

Witnesses assume a pivotal role in the Criminal Justice system of our country. In the labyrinth of criminal justice of today, where burden of proof lies heavily on the prosecution, the entire merit of a criminal case depends on the witness. By giving evidence relating to the commission of an offence, he performs a sacred duty of assisting the Court to discover truth. He sacrifices his time and takes the trouble and pain to advance the cause of justice. If the witness fails, the whole system will fail. But our system is indifferent to the plight and pains of witnesses as they are victimised in such a way as if they have committed a crime by opting to come before the Court for the cause of justice. In the ultimate either no body is ready to be a witness or he turns hostile if he has done the ‘wrong’ of opting/accepting to be the witness. P.R. Thakur describes protracted trials as the major cause behind the witnesses turning hostile, in the following words:

“In olden days, it was rare to see an important prosecution eye-witness turning hostile or not supporting case of prosecution during trial in a Court. It is not that lure of money or shadow of muscle power or political or social influence over witnesses did not exist during those days. Earlier, trial used to be conducted on a day-to-day basis and there was hardly any adjournment of a case on any ground unlike today when

---

adjournments are granted for the asking and at the drop of a hat. Earlier, the rule of practice was that an eyewitness used to be summoned only once, and he/she would be examined on the date for which summoned. These days, inspite of several attendance by the witnesses, their examination-in-chief is not started at all largely due to delaying tactics of the lawyer of the accused. Very often the cross-examination of a witness is not completed in a day and several dates are fixed for cross-examination of the witness. The witness also feels disgusted over having been summoned time and again and having appeared uselessly on a number of dates, only to be told to appear again without fail at the risk and cost of being issued arrest warrant in case of his failure to appear or late coming. The witness then realises the folly of his having volunteered or consented to become a prosecution witness to help the cause of justice and falls in line with the defence to get rid of the harassment”.

The following are the different problems related with witnesses, which result into laws’ delays:

1. Generally, no witness comes forward to testify.

2. The service of summons to the witnesses takes a lot of time due to change in their addresses or that their whereabouts are not known.
3. Sometimes, the witnesses are reluctant to attend Court for fear of severe cross-examination and they try to avoid Court by remaining absent even after service of Summons on them.

4. The important witnesses are very often either purchased by the accused or threatened by the accused from attending the Court. Consequently they turn hostile.

5. Sometimes due to large number of attendance of witnesses many witnesses remain unexamined but they have to wait in the Court for long time for their examination. But due to want of time on the part of the learned Court or adjournment by the accused, they are compelled to go home. These witness being vexed, go home and try to avoid the Court.

6. A sizeable number of cases are lying pending for the evidence of Court witnesses. These witnesses are reluctant to turn up especially in old cases because due to lapse of time, their memory fades away and the parties having not got any immediate relief take recourse to their own sources and mostly forgive and forget. Even if they are compelled to attend Court, they come unwillingly only to observe the formality of giving evidence.

5.3.3.4.3 By Litigants

It is also a fact that the litigants who blame the Courts and also the legal profession for the delay caused in completion of their cases, do not always co-operate with the Courts and also with their lawyers in securing speedy justice. In some cases they themselves are interested in the delay. In most cases they do not provide their respective lawyers with real and proper documents, do not come up
with proper witnesses, do not take effective steps for service of summons, etc. These things on the part of the litigants are also one of the causes for delay in completing the trials and appeals.

5.3.3.5 Lawyer related

Jonathan Swift in his famous work “Gulliver’s Travels” sarcastically describes the delay in Courts particularly the role of the lawyers in the following words:

“In pleading, they (lawyers) studiously avoid entering into the merits of the cause; but are loud, violent and tedious in dwelling upon all circumstances which are not to the purpose . . . they never desire to know what claim or title my adversary hath to my cow, but whether the said cow were red or black; her horns long or short; whether the field I graze her in be round or square; whether she were milked at home or abroad; what diseases she is subject to; and the like; after which they consult the precedents, adjourn the cause from time to time, and in ten, twenty or thirty years come to an issue.

It is likewise to be observed that this society hath a peculiar cant and jargon of their own, that no other mortal can understand, and wherein all their laws are written; which they take special care to multiply; whereby they have wholly confounded the very essence of truth and falsehood; of right and wrong; so that it will take thirty years to decide whether the field, left by my ancestors for six generations, belong to me or to a stranger three hundred miles off”.

The role of lawyers is very important in the administration of justice. It is one of the professions in our country which has found a
place of pride in the Constitution of India, and it is indispensable to society. It is true that the members of the legal profession are also responsible to some extent for delay in completing the cases, though professional ethics require that the lawyers should try to secure quick justice for their clients. In actual practice most of them act in a different manner. Lawyers are called officers of the Court because all actions start from lawyers’ Chambers.

According to a study conducted by Ravi Karan Singh, the following result as shown in table 5.3 has come out:

Table: 5.3 Public perception and profile of lawyer (Per cent)

<table>
<thead>
<tr>
<th>Profile</th>
<th>Advocate</th>
<th>Judge</th>
<th>Law Teacher</th>
<th>Other Professional including Law Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>21.06</td>
<td>40</td>
<td>55</td>
<td>48.08</td>
</tr>
<tr>
<td>High</td>
<td>64.34</td>
<td>53</td>
<td>41</td>
<td>42.30</td>
</tr>
<tr>
<td>Very high</td>
<td>14.60</td>
<td>7</td>
<td>4</td>
<td>9.62</td>
</tr>
</tbody>
</table>

No doubt the members of this noble profession are expected to maintain high traditions, ideals, and standards of their profession. However, respondent groups are divided on this issue as indicated in the above table. The advocate and judge respondents i.e. 64.34 and 53 per cent respectively support the existence of a high perception and profile of lawyers in society whereas law teacher and other professional respondents disagree with the marginal majority and state a low profile.

Another study shows various reasons for low public perception of lawyers. The reasons for this 21, 23 and 18.92 per cent of respondents other than advocates are like commercialisation and

---

65 Supra note 20.
66 Supra note 20.
predatory nature of the legal profession as shown in the table 5.4 below. However, large group of advocates and second large group of law teachers and other professionals support the view that it is due to the delay and denial of justice. Besides, the wide spread competition among the advocates, the flood gate opened for passing out of law graduates without any pre or post practical training to enter in the profession are also reasons for lawyers not having very high public perception and profile in the public mind. It is clear that the profession has suffered devaluation in the estimation of the public. Of course, members of the legal profession hesitate to accept this fact.

Table: 5.4 Reasons for not very high public perception & profile of lawyers (per cent)

<table>
<thead>
<tr>
<th>Reason</th>
<th>Advocates</th>
<th>Judges</th>
<th>Law Teachers</th>
<th>Other Professionals including Law Officers</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercialisation &amp; predatory</td>
<td>17.98</td>
<td>21</td>
<td>23</td>
<td>18.92</td>
</tr>
<tr>
<td>Justice delay and denial</td>
<td>22.55</td>
<td>16</td>
<td>20</td>
<td>18.61</td>
</tr>
<tr>
<td>Technicality and rigidity of Procedure</td>
<td>15.54</td>
<td>15</td>
<td>15</td>
<td>15.04</td>
</tr>
<tr>
<td>Wide spread competition</td>
<td>16.52</td>
<td>15</td>
<td>14</td>
<td>16.25</td>
</tr>
<tr>
<td>Incompetence majority of lawyers</td>
<td>17.69</td>
<td>18</td>
<td>18</td>
<td>16.33</td>
</tr>
<tr>
<td>Other</td>
<td>9.72</td>
<td>15</td>
<td>10</td>
<td>14.85</td>
</tr>
</tbody>
</table>

- 207 -
Mahatma Gandhi\textsuperscript{67} has advised, “Put your talents in the service of the country. If you are a lawyer, there are differences and quarrels enough in India. Instead of fomenting more trouble, path up those quarrels and stop litigation”. The following are the reasons relating to lawyers vis-a-vis delay in Justice Delivery System:

5.3.3.5.1 \textbf{Low standards of Legal Education}

The level of legal education in our country has not grown in accordance with the requirements of the present time. Though in the recent years some of the institutes of legal education at the national level have been opened, still the quality and quantity of lawyers qua the requirements are yet to be fulfilled.

5.3.3.5.2 \textbf{Citing Irrelevant Decisions}

Considerable time is wasted in citing decisions which have no relevance. The lawyer merely picks up the decision with the aid of a digest and looks only at the head note. They do not have the patience and sometimes adequate knowledge to go through the judgments and mark the relevant passages. In a large number of cases the lawyers waste time for want of adequate preparation of the case. Apart from this several lawyers adopt various other dubious and questionable methods for prolonging litigation.

5.3.3.5.3 \textbf{ Strikes by Advocates}

In recent time, lawyers have adopted a very strange and unjustified attitude of boycotting the Court work, popularly known as ‘strike’ for indefinite period irrespective of the seriousness of their grievances. Even for a small grievance they boycott the Court work for months together with the result that the purpose, if any, of the boycott

\textsuperscript{67} Quoted by Rachana Joshi Issar, at \textit{All India Seminar on Judicial Reforms with Special Reference to Arrears of Court Cases}, held on 29\textsuperscript{th} and 30\textsuperscript{th} April, 2005 at New Delhi.
loses its importance and value. But it adds to the arrears of cases and further delay in disposal of cases despite the fact that the Apex Court and various High Courts have declared such strikes as illegal. The spirit of service among advocates is a vanishing element, a sad epithet in the poetry of the profession. Unless a sense of responsibility and duty consciousness is created in the minds of the lawyers, this unfortunate practice cannot be avoided.

5.3.3.5.4 Lawyers' Resistance to Changes

Change is the law of nature. Every institution and each individual keeps on changing so as to meet the needs of the time and the age. But the lawyers have always been resisting the changes required to be made in the system. This is more because of their professional compulsions and not in accordance with their professional ethics of justice and fair play. The changes made by the Parliament through Code of Civil Procedure (Amendment) Act, 1999 and Criminal Law (Amendment) Act, 2005 are the latest example in this category.

Lawyers as a class used to camouflage their concerns as the worries of the poor litigants forgetting that the present system is favourably leans towards the rich, who can go on appeal after appeal and hinder the smooth hearing of the cases. The whole situation seems to be that perhaps the legal profession never desires to enter into a collusion with the men of riches, because it is they who constitute their bread and butter providing fountain-sources or may be, they feel by helping poor litigants, they may be setting out on a bumpy course which will be unrewarding to them.

5.3.3.5.5 Adjournments

The Bar and the Bench being two wheels of a Chariot of Justice Delivery System. It is needless to say that one of the causes for the delay in disposal of cases is requests for adjournment. The
adjournments are very often granted at the drop of hat. The only remedy is to avoid uncalled for adjournments and this malady can only be resolved if the Bar and the Bench make sincere efforts together. The experience proves that it is always the helpless litigant who has to pay the price and to suffer for the uncalled for adjournments at the behest of the Bar members.

There is specific provision under Section 309, Code of Criminal Procedure, 1973 that adjournment should be granted sparingly that too on valid grounds when it is necessary but it is followed more in the breach than in observance. The under trials remain in detention without trial resulting in violation of their right to get justice. Once the examination of witnesses has begun, the same should be continued on day to day basis until all the witnesses have been examined and the trial reaches its logical conclusion and the adjournment should be only subject to justifiable reason to be recorded.

Similarly Order XVII of the Code of Civil Procedure, 1908 deals with adjournments in civil cases. It provides:

1. *Court may grant time and adjourn hearing*— [(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any them, and may from time to time adjourn the hearing of the suit for reasons to recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suit.]*68

2. *Costs of adjournment*—In every such case the Court shall fix a day for further hearing of the suit and [shall make

---

68 Substituted by Act No. 46 of 1999, Section 26 (w.e.f 01.07.2002).
such orders as to costs occasioned the adjournment or such higher costs as the Court deems fit]. 69

[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, unless the Court finds that, for the exceptional reasons to be recorded by it, the 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 the 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 a reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

(c) 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.

69 Substituted Act No. 46 of 1999, Section 26 for certain words (w.e.f 01.07.2002).
dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.]^{70}

Even after the inclusion of such provision for the grant of adjournment, these provisions are not followed.

5.3.4 Other causes

5.3.4.1 Less number of compoundable offences

Besides the causes mentioned above, there also other reasons inherent in a criminal case which delay the trial. Section 320 of the Code of Criminal Procedure, 1973 gives a list of offences which may be compounded by the parties to a case. The parties compound such offences and the cases are disposed of quickly. But the offence of unlawful assembly for committing the same offences is not compoundable. Let us take an example: In a case of rioting the common object of which was to cause hurt and theft of articles below Rs. 250, the offences of hurt and theft being compoundable, are compounded by the parties but the offence of unlawful assembly being non-compoundable, cannot be compounded by the parties. Despite the fact that parties come to an amicable settlement and ward off their differences, they have to face the long procedural wrangle of the Court, consuming much time and energy of the Court, only to find an acquittal in the case. All the witnesses have to come to Court and depose falsely in order to take out the accused persons from the labyrinth of the non-compoundable Sections. Similarly, the offences against properties exceeding the values of Rs. 250 have been made non-compoundable. Even if the parties compromise themselves, they have to come across the formalities of the Court.

^{70} Substituted by Act No- 104 of 1976, for the previous proviso (w.e.f. 01.02.1977).
5.3.4.2 Defective Bail System

Defective property-oriented bail system is also taking its toll. Under trial prisoners, can be classified mainly into two categories, firstly those who cannot furnish bail and secondly, those who can furnish bail but are denied the same. The Criminal Procedure Code divides offences into bailable and non-bailable. An accused tried for a bailable offence is entitled to get bail as a matter of right. But in case of non-bailable offence he has to persuade the Court to grant bail. The problem is, if the offence is bailable or the Court exercises its discretion to grant bail in non-bailable offence, an accused still may have to linger in jail if he is not able to furnish security of the requisite amount because of the following reasons.

(a) Most of the times a very high amount set for the grant of bail.

(b) Sometimes it is difficult to find appropriate sureties in a strange jurisdiction or due to poverty or sheer absence of legal aid. But in practice the approach of the Court has become property-oriented and is founded on the assumption that the risk is a monetary loss is the real assurance of securing the presence of the accused at his trial.

In Maneka Gandhi v. Union of India, it was made clear that procedure which keeps such large number of people behind bars without trial so long cannot possibly be regarded as a reasonable, just or fair so as to be in conformity with the requirement of that article. It is necessary, therefore, that the law as enacted by the legislature and as administered by the Courts must radically change its approach to pretrial detention and ensure ‘reasonable, just and fair’ procedure. Justice P. N. Bhagwati has also remarked that the main reason as to

71 AIR 1978 SC 597.
why our legal and judicial system continually denies justice to the poor by keeping them for long years in a pretrial detention, is our highly unsatisfactory bail system.

5.3.4.3 Existence of hierarchy of appeals and revisions

Appeals and revisions also consume considerable amount of time. It may be principally due to cumbersome procedure and absence of adequate number of judges. It is perhaps rightly said that even in the highest Court of appeal, at least one-third of the appeals filed, ultimately succeed. Merely by increasing the number of Appellate Courts, right decisions can’t be ensured. To avoid delay and contradictory judicial decisions, it is to be decided whether we need in all matters first appeals, second appeals and again further appeal to the Supreme Court and also whether there should be rights of revision from all type of orders and decisions and whether such rights should be controlled. Therefore we can say that this hierarchy of appeals and revision causes considerable amount of delays.

5.3.4.4 Inadequate Court Staff

Another important reason for delay and inefficiency in subordinate Courts is the extremely inadequate staff working in such Courts. The strength of the staff in each Court was fixed several decades ago and in spite of the fact that there has been a tremendous increase in litigation. There has been only a marginal increase in the strength of the staff. It is unfortunate that late in the 20th century when other nations are thinking in terms of computers and calculators and even robots, most of our Magistrates are forced to write evidence with their own hand. We should imagine the wastage of thousands of magisterial hours by resorting to ancient practice. The least help that can be rendered to judicial officers is to see immediately that there is sufficient number of stenographer, typists.
5.3.4.5 Lack of Sufficient Data on Scientific Basis

The problem of delays can not be solved satisfactorily without proper hypothesis. Unfortunately in the field of administration of justice we don’t have sufficient data on scientific basis. We have no doubt figures relating to number of cases instituted, the cases disposed of and number of judges and Courts. But we require more scientific data so that in case of delay we should be able to pinpoint where and why exactly the delay occurs. We must have enough data to show the effect of a particular piece of legislation and whether it is being administered properly.

5.3.4.6 Complex and Cumbersome Procedural Laws

Another reason for the delay in disposal of cases is the complex and cumbersome procedure prescribed under the Codes. To have a case ready for hearing in a Criminal Court it takes about three to four years. The procedure for service of summons, framing of charges, etc. take so much time that it becomes next to impossible to have a case ready for hearing before lapse of several years. Moreover much delay is caused in obtaining reports from the police, completing investigations, securing attendance of witnesses and such other matters. In appeals and revisions also service of notices and other connected procedural matters in criminal cases take considerably long time. Unless effective steps can be taken to simplify those procedural constraints, most of the delays cannot be avoided.

5.3.4.7 Problems With Tribunals

Various Commissions and tribunals have been constituted to share the burden of Courts. Most of such alternative forums are limping. The absence of accommodation for office and for residence, inadequate staffing are the common complaints. For example, the chairman of a commission could not write judgments because his
secretary made available on deputation was withdrawn by the
government without notice. The certified copies could not be delivered
to the successful party for reaping fruits of the decision or to the
losing party for exercising his right to appeal because there was no
paper to give and no money to purchase the same.

5.4 Conclusion

In essence, we can say that the causes of delay are multi-
dimensional. The rigour of the problem cannot be solved easily. Co-
operation from all sides is need of hour and the entire criminal justice
system should run with the paramount purpose of expeditious disposal
of criminal cases. Speedy disposal of cases should not be construed to
mean that cases should be disposed of quickly to the detriment of
justice. Disposal is no remedy, there should be remedies for disposal.
The administration of justice is already moving in a semi-conscious
stage and if urgent steps are not taken it will collapse totally and
forever on its own weight of delay. Only the proper, meaningful and
rightful thinking and approach can cure the struggling suffocation
syndrome of our Justice Delivery System.