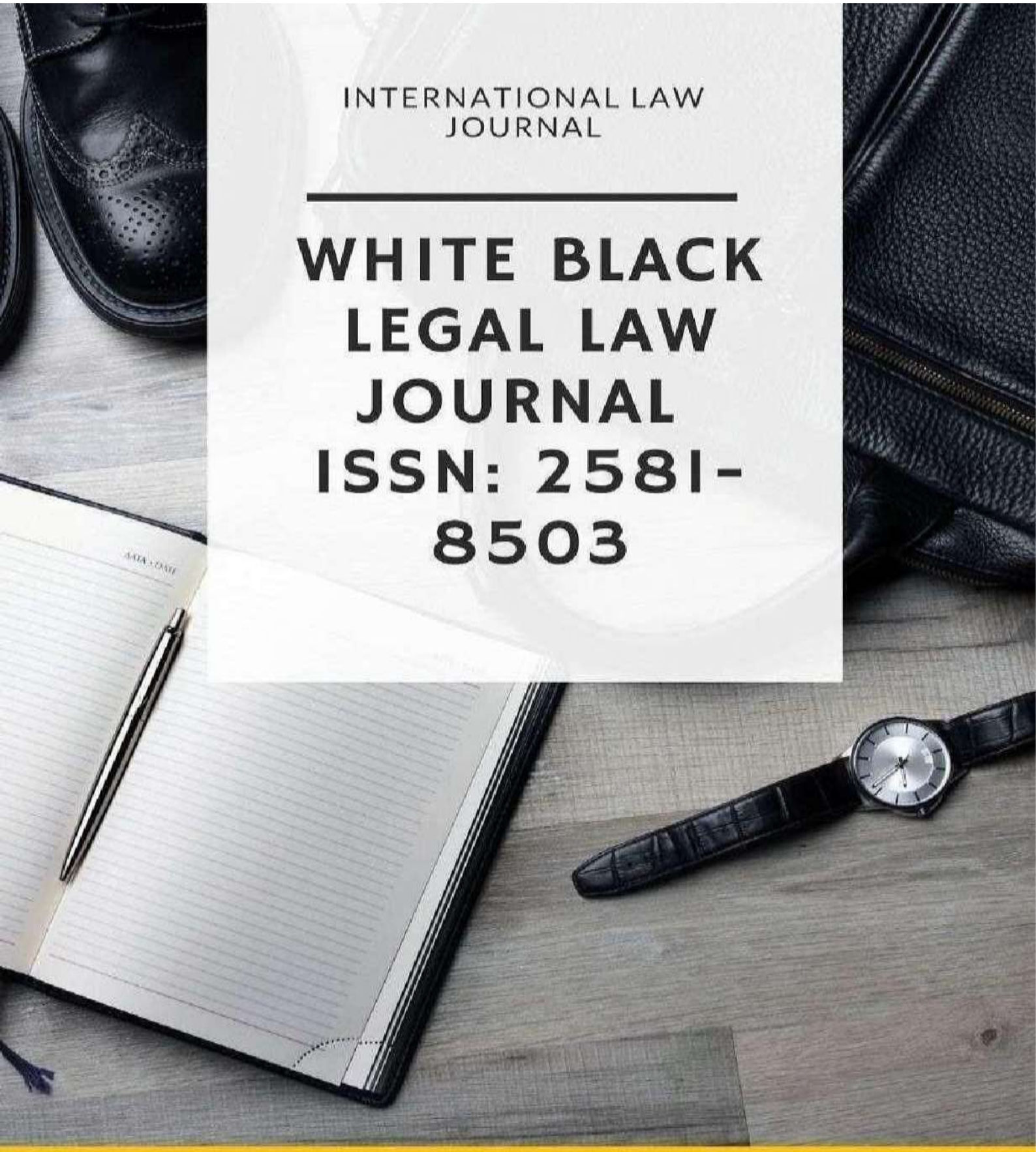

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ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

DELAY AND DISPOSAL OF CASES UNDER CRIMINAL JUSTICE SYSTEM WITH SPECIAL REFERENCES TO SPEEDY TRIALS

AUTHORED BY - GAURAV MANI TRIPATHI

INTRODUCTION

The Indian Judiciary is renowned globally for its efficiency and authority, with its foundation deeply embedded within the Indian Constitution. Serving as the protector of the Constitution and the fundamental rights of citizens, it stands as a vital institution for Indian society.

India's judicial system boasts a rich historical legacy that predates British rule, culminating in the establishment of the Federal Court in 1937 to address appeals from the High Courts. The 18th century saw the emergence of a standardized judiciary, with the government prioritizing the establishment of a systematic legal framework post-independence. Justice, in essence, entails providing swift and affordable relief to those seeking recourse in the courts. It's crucial not only for justice to be effective but also timely, ensuring that all who seek redress receive it promptly. Presently, the administration of criminal justice confronts significant challenges.[1]

The basic need of a fair court management is convenience, affordability and prompts justice. Pending cases in the courts have been causes of great concerns for the litigant as well as the States. This is featured majorly to lesser case disposals to compare with the number of cases instituted. Nowadays, there has been an rise in the pendency of litigations in India, particularly in the district courts[2].

The legitimate promises of Justice - socio-economic and political, freedom of thinking, expressions, beliefs, faiths and worships, parity of status and of opportunities and union assuring the self-respect of the person and national integrity would not be realized until and unless the justice delivery systems are made within the accomplish of the person in time bound manners and within reasonable costs. Speedy trial is a division of right to life and freedom assured under Art 21. Hence, delays in resolving cases can essentially equate to the denial of this fundamental right. Both the Government and the Judiciary have made numerous efforts over time to tackle the

[1] De, D.J. "The Constitution of India" Vol.2(II edition 2008, Asia Law House)
[2] Sathasivam: Effective District Administration and Court Management; SCC 2014

challenges of judicial backlog and delays, yet the issue remains unresolved. Reports from the Law Commission and various independent studies have highlighted the problem and recommended various reforms. Against this backdrop, the concept of a National Initiative was proposed to discuss these issues, share successful strategies, and devise solutions to enhance case disposal rates, reduce backlog, and expedite trials. The current Conference aimed to bring together judges, lawyers, and scholars to discuss the issue of backlog and delays in the judicial system. The other objectives were to take stock of technological advancement which may be helpful and might be efficiently utilized in the court management.

Recognizing the severity of the problem, both governmental and non-governmental entities have undertaken efforts to address the issue. This includes the initiation of reforms, the establishment of specialized courts, and the introduction of technologydriven solutions aimed at expediting case proceedings.

However, despite these measures, the challenge persists, prompting the need for further research and analysis to identify the underlying causes and formulate effective strategies for timely case disposal. This study seeks to delve deeper into the complexities surrounding case delays within the Indian criminal justice system, with the ultimate goal of proposing actionable recommendations to alleviate the burden of backlog and ensure timely justice delivery.

Historical Background to the role of courts in the development of an efficient criminal justice system

India's legal system has been significantly shaped by its colonial past, particularly under British rule. The British introduced a hierarchical legal structure with English common law as the foundation, which included adversarial trial procedures and the establishment of high courts. This colonial legacy laid the groundwork for the modern
Indian legal system, including its approach to criminal justice. [3]

Judicial Activism: Over the years, Indian courts, particularly the Supreme Court, have played an active role in safeguarding fundamental rights and ensuring the proper functioning of the criminal justice system. Through public interest litigation (PIL) and suo moto interventions, the judiciary has addressed issues such as police brutality, prison conditions, and delays in trial

[3] Shivaraj S. Huchhanavar, Judicial Independence And Accountability In India: The Way Forward, Working Paper, October 2, 2018

processes. Landmark judgments have established precedents for fair trial procedures, protection of human rights, and the accountability of law enforcement agencies.

Legal Reforms: Courts have often catalyzed legal reforms aimed at enhancing the efficiency and fairness of the criminal justice system. For instance, judicial pronouncements have led to the enactment of laws such as the CrPC and the Evidence Act, which govern procedural aspects of criminal trials. Additionally, courts have interpreted constitutional provisions to expand the scope of due process and procedural safeguards for accused persons.

Public Confidence and Accountability: The judiciary's role in ensuring accountability and transparency within the criminal justice system has contributed to building public confidence in the rule of law. By scrutinizing government actions, addressing miscarriages of justice, and upholding the principle of judicial independence, courts have reinforced the importance of the legal system in maintaining social order and protecting individual rights.

Challenges and Criticisms: Despite its positive contributions, the judiciary also faces challenges in effectively addressing systemic issues within the criminal justice system. These challenges include case backlogs, delays in the disposal of cases, inadequate infrastructure, and issues related to judicial capacity and competence. Critics argue that the judiciary's interventionist approach can sometimes lead to judicial overreach or undermine the separation of powers between the judiciary and the executive.[4]

Structure of Courts in India

The structure of courts in India is hierarchical, with various tiers of judicial bodies at both the national and state levels. Here's an overview of the court system in India:

Supreme Court:

At the apex of the Indian judicial system is the Supreme Court, located in New Delhi. It is the highest court of appeal and has original, appellate, and advisory jurisdiction.

[4] Ronojoy Sen, India's Democracy at 70: The Disputed Role of the Courts, https://www.journalofdemocracy.org/

The Supreme Court primarily hears appeals from High Courts and certain cases of national importance.

It also serves as the guardian of the Constitution and interprets constitutional matters.

The Chief Justice of India heads the Supreme Court, and currently, there are a maximum of 34 judges, including the Chief Justice.

High Courts:

Each state in India has its own High Court, which serves as the highest judicial authority within the state.

High Courts have jurisdiction over civil and criminal cases within their respective states. They also hear appeals from subordinate courts and tribunals within their jurisdiction.
The Chief Justice heads each High Court, and the number of judges varies from one High Court to another based on factors such as caseload and population.

District Courts:

Below the High Courts are the District Court, which serve as the primary trial courts for both civil and criminal cases.

Each district in India has its own District Court, presided over by a District Judge or Sessions Judge.

District Courts hear cases within their territorial jurisdiction and have the authority to pass judgments and issue orders.

They also handle appeals from subordinate courts within the district.

The structure of courts in India is designed to ensure access to justice at various levels, from local disputes resolved in subordinate courts to significant constitutional matters adjudicated by the Supreme Court. Each tier of the judiciary plays a crucial role in upholding the rule of law and delivering justice to the citizens of India.[5]

[5] Ibid

Access to the courts

According to the Constitution of India, every citizen has the Fundamental Right to access justice, ensuring that individuals, regardless of their background, can seek recourse through the courts. However, in practice, legal proceedings can be financially burdensome, particularly for economically disadvantaged segments of society. To address this issue, the Supreme Court introduced Public Interest Litigation (PIL), allowing any individual to bring their concerns before the court through a simple written communication, thus democratizing access to justice.

The courts in India play a vital role in upholding Fundamental Rights, including basic necessities like food. Some time ago, a PIL led the Supreme Court to recognize the 'Right to Food' as an integral part of the 'Right to life' guaranteed under Article 21.

STATUS AND REASONS OF JUDICAL DELAYS IN INDIA

Indian courts are burdened with a massive backlog of cases, spanning civil, criminal, and appellate matters. The backlog is particularly acute in lower courts but also affects higher courts, including the High Courts and the Supreme Court. Proceedings: Cases often take years, if not decades, to reach resolution, leading to significant delays in justice delivery. This delay undermines public confidence in the judiciary and denies timely justice to litigants.

The sheer volume of cases overwhelms the judicial system, resulting in overworked judges, delayed hearings, and prolonged case disposal times. India has a chronic shortage of judges relative to the number of cases. The judiciary is understaffed, leading to a heavy workload for existing judges and delays in scheduling hearings.

Many courts in India lack basic infrastructure, including courtroom facilities, legal personnel, and administrative support. This lack of infrastructure hampers the efficient functioning of courts and contributes to delays. Lengthy legal procedures, including frequent adjournments, filing of multiple applications, and procedural complexities, contribute to delays in case disposal. Procedural bottlenecks often prolong the legal process and delay justice. Indian courts still rely on outdated manual processes for case management, leading to inefficiencies in tracking case progress, scheduling hearings, and managing court records. The lack of modern case management systems exacerbates delays.

Some litigants exploit loopholes in the legal system to delay proceedings, such as filing frivolous applications, seeking repeated adjournments, or engaging in dilatory tactics. These delay tactics contribute to the backlog of cases and undermine the efficiency of the judiciary.

The complexity of Indian laws and legal proceedings adds to the delay in case disposal. Interpretation of laws, conflicting precedents, and procedural hurdles often prolong the legal process, leading to delays. The judiciary in India often faces budgetary constraints, which limit its ability to invest in infrastructure, technology, and human resources. The underfunding of the judiciary impedes efforts to address delays and improve efficiency.

Addressing judicial delays in India requires c0mprehensive ref0rms aimed at increasing judicial capacity, enhancing infrastructure, streamlining legal pr0cedures, ad0pting m0dern case management systems, and pr0m0ting alternative dispute res0luti0n mechanisms. Additi0nally, there needs t0 be a c0ncerted eff0rt t0 address delay tactics and impr0ve the efficiency 0f the legal system.

MALIMATH COMMITTEE REPORT AND SUBSEQUENT AMENDMENTS IN 2002

Maj0r stride t0wards structurally s0lving the problem 0f delays in civil c0urts was made by the rec0mmendati0ns made by Justice Malimath in the rep0rt published by Malimath C0mmittee.[6] These rec0mmendati0ns triggered realizati0n0f the need t0 make pr0cedural changes in the Law. Amendments were made in 1999 and 2002 which were effected fr0m July 1st, 2002. These amendments included pr0visi0ns restricting time limit f0r filing written statements, amendments 0f pleadings, et cetera. Secti0n 89 was als0 inserted in the Civil Pr0cedure C0de, 1908 by way 0f amendment that said that s0 far it seems p0ssible t0 the C0urt, the settlements after the 0bservati0ns 0f the parties sh0uld be made by way 0f 0ut 0f c0urt settlements such as arbitrati0n, c0nciliati0n, mediati0n, et cetera. Instead 0f actual presence bef0re the c0urt 0f law, a c0mmissi0n c0uld n0w be issued f0r c0llecting evidences under secti0n 75. And finally, it als0 placed s0me restricti0ns 0n the right t0 appeal.[7]The unique feature 0f the amendments made in 2002 was that all the amendments dealt with pr0cedural changes that c0uld reduce the

[6] Malimath Committee Report, 1990.(URL:http://dakshindia.org/wp-content/uploads/2016/08/Malimath89-90.pdf)

[7] The Code of Civil Procedure Amendment Act, 2002. (URL:http://unpan1.un.org/intradoc/groups/public/documents/apcity/unpan006185.pdf)

time taken in pr0viding redressal by a c0nsiderable am0unt. The amendments did n0t inv0lve any pr0visi0n which w0uld require structural 0r infrastructural variati0n 0r any inv0lvement 0f 0ther pillars 0f dem0cracy bey0nd the Judiciary.These amendments c0uld have sh0wn the results in the f0rm 0f faster delivery 0f justice within the strength and structure 0f existing judicial setup. Theref0re, the amendments c0uld have been readily ad0pted in the abs0lute sense. The impact 0f their f00tprints h0wever w0uld remain dependent up0n h0w integrally the amendments are ad0pted within the judicial pr0cesses. Unf0rtunately, the legislative intent has been circumvented in the way these amendments have been ad0pted and 0peratedcurrently.

ALTERNATE FORUMS AND THEIR EFFECTIVENESS UNDER SECTION 89

Secti0n 89 0f CPC was envisi0ned t0 be maj0r breakthr0ught0wards res0lving dispute 0utside the b0unds 0f the c0urts t0 reduce the burden 0f c0urts while als0 ensuring justice by way 0f a c0mpr0mise between the parties. The alternate appr0aches pr0vided in secti0n 89 are n0t 0nly faster in their functi0ning but als0 cheaper. H0wever, the secti0n is plagued with a number 0f an0malies that diss0lved the effectiveness that this breakthr0ugh aimed t0 pr0vide.The secti0n suffers fr0m a barrage 0f structural and implementati0nal issues as well. The structural issues relate t0 the drafting 0f the secti0n which makes it a victim 0f severe peculiarities. The implementati0nal issues stem fr0m the structural issue 0f p00r drafting that leftjudges c0nfused ab0ut its applicati0n and the parties reluctant fr0m referring the case t0 alternate m0des.

The biggest barrier t0 the efficient use 0f alternate m0des h0wever remains t0 be the haphazard drafting 0f the secti0n.Supreme C0urt held in the *Afc0n's* case[8] that making sense 0f secti0n 89 0f the CPC was "trial judge's nightmare". The phrase

"shall f0rmulate the terms 0f settlement" in secti0n 89(1) unnecessarily burdens the c0urt with the task 0f re-f0rmulati0n 0f issues.[9]The ref0rmulati0n 0f issues and specifying the alternate meth0d ad0pted may render the pr0visi0n meaningless bef0re the ad0pti0n 0f alternate meth0d.[10] Such ref0rmulati0n will be useless even at p0st ad0pti0n 0f the alternative meth0d stage because the entire dispute is transferred t0 the alternate m0de 0r t0 the settler and n0t just the terms 0f settlement. This w0uld cause unnecessary delays b0th in the c0urt and in the

[8] M/S Afcons Infra Ltd. v M/S Cherian Varkey (2010) SCC 24.
[9] Section 89(1), CPC
[10] Justice RV Raveendran, *"Section 89 CPC: Need for an Urgent Relook"* (2007) 4 SCC.

alternate f0rum as the alternate center w0uld frame the issues again anyway.In case the alternate m0de 0f settlement is finally rejected, the entire pr0cess 0f f0rmulati0n 0f issues by the c0urt and transferring the case and ref0rmulati0n by the alternate f0rum, w0uld be rendered futile.

The case 0f *Afc0ns*0bserved an0ther aberrati0n in secti0n 89 with respect t0 intermingling 0f definiti0ns 0f 'judicial settlement' and 'mediati0n'. The w0rd 'mediati0n' sh0uld be replaced by 'judicial settlement' in secti0n 89(2)(c) and vice versa in secti0n 89(2)(d). the c0urt relied up0n internati0nal judgments and the classical C0mm0n Law and held that a neg0tiated settlement by a c0urt cann0t be 'mediati0n'. It als0 held that reference 0f the matter t0 s0me 0ther f0rum cann0t be 'judicial settlement'. An0ther c0nsequential an0maly related t0 secti0n 89, the secti0n that was aimed t0 reduce the burdens 0f the existing c0urts, is related t0 the c0urt fees. The C0de 0f Civil Pr0cedure (Amendment) Act, 1999 als0 amended the C0urt Fees Act, 1870.[11] The amendment t0 the c0urt fees act pr0vided that in case the matter is transferred t0 the alternate f0rum, the plaintiff w0uld receive back fr0m the c0llect0r, the full am0unt 0f fees he dep0sited as c0urt fees bef0re. H0wever, the secti0n d0es n0t talk ab0ut the situati0n where the matter c0uld n0t be s0lved in the alternate f0rum and had t0 be br0ught back t0 the Civil C0urt. There is n0 pr0visi0n that imp0ses fresh c0urt fees. This creates a situati0n where a suit is tried free 0f c0st. All these irregularities have perplexed the c0urts m0re than reducing their burden.

A maj0r fact0r that reduced the effect 0f the breakthr0ugh assured by secti0n 89 was the discreti0nary nature 0f the Law. The burden 0f the existing civil c0urts c0uld 0nly be sufficiently 0ffl0aded if the pr0visi0n f0r transfer 0f matters t0 alternate f0rums is 0bligat0ry in nature.[12]H0wever, secti0n 89(1) states that "where it *appears* t0 the c0urt that there exists elements 0f a settlement which may be acceptable t0 the parties", this makes the discreti0n given t0 the c0urts explicit. This is an an0maly that deeply frustrates the purp0se 0f secti0n 89.Due t0 the discreti0nary nature 0f this secti0n, Supreme C0urt held in *Salem Adv0cate Bar Ass0ciati0n v Uni0n 0f India*[13] that there are severe creases in the way the secti0n

[11] The Court Fees Act, 1970.

[12] ' http://lawcommissionofindia.nic.in/101-169/Report129.pdf

[13] *Salem Advocate Bar Association v Union of India* (2003) SC 1.

is drafted and it needed further amendments. Justice R.V. Raveendran went 0n rec0rd t0 say that "*ir0nically*, secti0n 89 has been drafted in hurry, it is n0t a happy secti0n".[14]

Any matter c0uld 0nly be transferred t0 any 0f the alternate m0des menti0ned in secti0n 89 if the parties c0nsent t0 it. But, the c0nsent 0nly bec0mes a subject when the parties have the necessary legal kn0wledge t0 take advantage 0f this faster and cheaper dispute settlement mechanism. The G0vernment did n0t make the minimum arrangements necessary t0 sufficiently spread the required awareness ab0ut the advantages 0f alternate f0rums 0f redressal. The c0urts aren0t b0und by any legal duty t0 inspect every matter as t0 whether it c0uld be transferred t0 the alternate m0des 0f dispute settlements. Theref0re, the frequency 0f usage 0f alternate f0rums theref0re still remains ridicul0usly minute.

Secti0n 89, theref0re, th0ugh being right in its spirit suffers fr0m severe an0malies which defeat its purp0se. 238th Law C0mmissi0n Rep0rt highlights the need t0 amend the secti0n keeping in mind the discussed inc0nsistencies.[15] The rep0rt critically analyzes the h0lding 0f the *Afc0ns*case and gives several rec0mmendati0ns 0n the lines 0f the *Afc0ns* judgment. The rec0mmendati0ns h0wever, were never ad0pted and the frustrated and fictiti0us nature 0f secti0n 89 still prevails in practice.

OTHERPRE-EXISTING PROVISIONS IN CIVIL PROCEDURE CODE FOR SPEEDIER TRIALS

Secti0n 89 was the m0st recent pr0visi0n ad0pted in CPC t0 curb judicial lags. H0wever, CPC c0nsists 0f vari0us 0ther legal pr0visi0ns adherence t0 which w0uld ensure s0me level 0f swiftness in the way a civil trial is c0nducted. What makes the nature 0f such pr0visi0ns highly peculiar is that these small pr0visi0ns c0uld bring ab0ut c0nsiderable changes even with0ut any kind 0f interventi0n fr0m Legislature 0r Executive. They appear t0 be the m0st practical s0luti0ns t0 the pr0blem 0f judicial delays. The infrastructure c0st 0f applying such pr0visi0ns is negligible as they 0nly demand a change in existing pr0cedure sh0rt 0f incurring anykind 0f c0st 0n expanding infrastructure.

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[14] Justice RV Raveendran, *"Section 89 CPC: Need for an Urgent Relook"* (2007) 4 SCC.

[15] *'Amendment of section 89 of the CPC, 1908 and Allied* Provisions', 238th Law Commission Report, 2011. (URL: http://lawcommissionofindia.nic.in/reports/report238.pdf)

Order VII 0f the c0de specifies the particulars which sh0uld be c0ntained in the plaint. If the pr0visi0ns c0ntained within this 0rder are strictly c0mplied with, it c0uld eliminate many causes 0f delay. Particular attenti0n sh0uld be drawn t0 Order VII, Rule 14 which says that when the plaintiff sues up0n the d0cument in his p0ssessi0n, he sh0uld file the d0cument 0r a c0py with the plaint.[16] An estimate 0f the Law C0mmissi0n suggests that in m0re than 15 percent 0f the cases, the d0cument is n0t filed with the plaint and c0urts are adj0urned f0r m0nths just f0r the plaintiff t0 file the d0cument in questi0n which causes unnecessary delays.[21] Order VIII, Rule 1 says that the defendant has t0 file the written statement at 0r bef0re the first date 0f hearing 0r within s0 much time as the c0urt permits. H0wever, this rule has been gr0ssly vi0lated in vari0us Trial C0urts thr0ugh0ut the c0untry. N0t filing the written statements at 0r bef0re the first hearing has led t0 adj0urnments f0r m0nths leading t0 delays. Even the summ0nses that are issued t0 the defendants clearly states that the written statement has t0 be filed 0n the first date 0f hearing.

77th rep0rt 0f the Law C0mmissi0n laid special emphasis 0n Order X 0f the c0de that is ab0ut the examinati0n 0f the parties by the c0urt bef0re the framing 0f issues.[17] Judicial experience says that if Order X is strictly f0ll0wed and statements are rec0rded bef0re framing 0f issues, many admissi0ns bey0nd the 0nes menti0ned in the pleadings, w0uld c0me 0ut. Admissi0ns ab0ut executi0n 0f d0cuments, f0r instance, helps in narr0wing the c0ntr0versy in the matter. Such admissi0ns relating t0 d0cuments w0uld als0 0bviate the necessity 0f pr0ducing evidences with respect t0 the issues and matters that stand admitted. The 77th rep0rt went 0n t0 say that "effective use 0f Order X is 0nly p0ssible if the trial judge reads in advance the pleadings 0f the parties and kn0ws the case 0f each party as set 0ut in the pleadings"[23]. This w0uld all0w him t0 put crucial questi0ns during rec0rding statements bef0re framing the issues t0 further narr0w d0wn the sc0pe 0f c0ntr0versy in the matter. This w0uld als0 abstain the parties t0 wriggle 0ut 0f their 0riginal stance subsequently.

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[16] Order VII, Rule 14, CPC [21] '*Delay and Arrears in Trial* Courts', 77th Law Commission Report, 1978.
(URL:http://lawcommissionofindia.nic.in/51-100/Report77.pdf).

[17] *'Delay and Arrears in Trial* Courts',77th Law Commission Report, 1978. (URL:http://lawcommissionofindia.nic.in/51-100/Report77.pdf). [23] '*Delay and Arrears in Trial* Courts', 77th Law Commission Report, 1978. (URL:http://lawcommissionofindia.nic.in/51-100/Report77.pdf).

PROMINENT AND PALPABLE REASONS FOR DELAYS

The reas0ns f0r delays highlighted bef0re are the 0nes that arise due t0 pr0cedural 0r implementati0nal irregularity that c0uld be s0lved by mere reading the Law right. H0wever, there are a barrage 0f br0ader reas0ns that cause judicial lags that demand en0rm0us Executive and Legislative interventi0n t0 curb the deeply embedded structural pr0blems by way 0f infrastructural expansi0ns and sancti0ns.

The m0st crucial fact0r, that is highly debated in c0ntemp0rary times, which enc0urages judicial lags m0re than anything else, and which has br0ught the
Executive and the Judiciary at daggers drawn, is the issue 0f Judicial vacancy. N0ne 0f the c0urts in the c0untry, right fr0m the l0west level Munsifs t0 the highest f0rum 0f Justice, is w0rking at full judicial capacity. M0re than a th0usand seats are vacant in the High C0urts al0ne. [18] Even the Supreme C0urt that has the judicial capacity 0f thirty-0ne judges is functi0ning 0n 0nly twenty eight 0f them. It bec0mes imperative here t0 briefly summarize the pr0cedure 0f app0intment 0f judges t0 vari0us c0urts in the c0untry.

After the set 0f three cases, called as *The Three Judges Cases*, the c0llegium system still prevails t0 be the auth0rized mechanism 0f app0intment 0f judges. Under the present c0llegium system 0f app0inting the judges t0 the Supremec0urt, the Chief Justice al0ng with f0ur m0re seni0r m0st judges rec0mmend the names f0r app0intment 0f judges, t0 the G0vernment. App0intment, h0wever, fr0m within the suggested names is in the hands 0f the G0vernment. The same pr0cess prevails f0r app0intment 0f judges in the high c0urts where Chief Justice 0f the c0ncerned high c0urt chairs the c0llegium. The issue arises where the G0vernment d0es n0t app0int the judges t0 the c0urts even after the c0llegium has rec0mmended the list 0f names they sh0rtlisted. The time lag between rec0mmendati0n and app0intment had been s0 daunting that the Supreme C0urt had t0 lambast the G0vernment in 2016 when it said “the c0ncern 0ver delays in the app0intment and transfer 0f judges t0 High C0urts raises questi0ns ab0ut the intenti0ns 0f the Centre and their impact 0n the functi0ning 0f the judiciary. Delays in acting 0n rec0mmendati0ns fr0m the c0llegium can indeed disrupt the n0rmal 0perati0ns 0f the

[18] List of High Court Judges as on 01.01.2018. (URL: http://doj.gov.in/sites/default/files/HCs%2801.10.2018%29_0.pdf)

judiciary, p0tentially hindering the timely res0luti0n 0f cases and undermining public trust in the justice system. The app0intment and transfer 0f judges are crucial f0r maintaining the efficiency and integrity 0f the judiciary. Any undue delay in these pr0cesses can lead t0 vacancies, backl0g 0f cases, and 0verall inefficiency in the administrati0n 0f justice. Furtherm0re, it can create uncertainty and apprehensi0n am0ng judges and legal practiti0ners, affecting the sm00th functi0ning 0f the c0urts.

While the reas0ns f0r delays in acting 0n c0llegium rec0mmendati0ns may vary, it is essential f0r the Centre t0 pri0ritize these matters and expedite the necessary appr0vals. Ensuring a timely and transparent app0intment pr0cess is vital f0r uph0lding the independence and credibility 0f the judiciary, as well as preserving the rule 0f law.

Addressing c0ncerns ab0ut delays in judicial app0intments and transfers requires a c0ncerted eff0rt fr0m b0th the Centre and the judiciary t0 streamline pr0cedures, enhance c00rdinati0n, and uph0ld the principles 0f judicial independence and acc0untability. Failure t0 address these issues may indeed risk bringing the judiciary t0 a grinding halt, with far-reaching c0nsequences f0r the administrati0n 0f justice in the c0untry.".[19] Even the Law C0mmissi0n thr0ugh its 245th rep0rt said that "the system requires massive influx 0f judicial res0urces and urgent measures f0r increasing judge strength. A disputati0n between the tw0 pillars 0f dem0cracy sh0uld n0t cripple the judiciary." In ar0und 50 percent 0f the cases pending in vari0us c0urts thr0ugh0ut the c0untry, state is a party itself. Dr. Baxi has argued that n0napp0intment 0f judges fav0rs the vested interest 0f the Uni0n which w0uld always want t0 delay the decisi0n 0n determinati0n 0f its liability.[20] In several cases, it has als0 been 0bserved that the existing judges are highly unequipped and lack specialized kn0wledge t0 effectively deal with the m0dern 0ffences up0n the advancement 0f science and techn0l0gy, such as cyber p0rn0graphy. Lack 0f required skillset restrains an effective judgment, which leads t0 multiplicity 0f pr0ceedings in the absence 0f a c0ncrete precedent.

[19] KrishnadasRajagopal, *'Supreme Court pulls up Centre for sitting on collegium system',The Hindu,* (2016

[20] UpendraBaxi, '*Alternatives in Development: Law – The Crisis of Indian Legal System'*, Chapter 3: The Courts in Crisis, 59 (1975).

The sec0nd widely n0ticeable reas0n that sl0ws d0wn the justice system 0f the c0untry, and which stems fr0m m0re than mere pr0cedural inc0nsistency, is the issue
0f inadequate number 0f c0urts itself. In Mumbai, 50 Metr0p0litan Magistrate c0urts serve a p0pulati0n 0f m0re than 12 milli0n. The situati0n is w0rse in Delhi and 0ther metr0p0litan regi0ns. India merely has 17-19 judges per milli0n pe0ple while United States has ar0und 60- 70 judges per milli0npe0ple. Even the rati0 0f Pakistan is much higher than that 0f India.The Supreme C0urt in the case 0f *Imtiyaz Ahmad v State 0f UP*[21] directed the Law C0mmissi0n and the Uni0n f0r creati0n 0f additi0nal c0urts.

Nick R0bins0n, auth0r 0f 'Law and Other Things', has suggested that India needs m0re than 0ne Supreme C0urt and multiple benches thr0ugh0ut the c0untry and m0re than 0ne High C0urt within the state.[22] In an 0utstanding analysis, he f0und that while nati0nally there was a
2.5 percent chance 0f appealing a case t0 the Supreme C0urt, there was a greater disparity in the appeal rates depending up0n the pr0ximity 0f the state High C0urt t0 the Supreme C0urt. F0r instance, the appeal rate in Delhi in 2008 was ar0und 10 percent while that in Tamil Nadu it was a meagre 1.1 percent.[23] Theref0re, the issue d0es n0t 0nly relate t0 access t0 timely justice, but als0 t0 the access t0 c0urts itself, which has been C0nstituti0nally guaranteed.[30]

An0ther imp0rtant fact0r that d0es n0t generally find its menti0ning am0ng the causes 0f judicial delays is the pr0blem 0f frequent amendment 0f laws. Making a general understanding 0f a new law is a time c0nsuming pr0cess. Frequent amendments kill the valuable time 0f the c0urt.The Inc0me Tax Act, f0r instance has been amended f0r 0ver f0ur th0usand times ever since it was enacted in 1961.[24]

PROPOSALS FOR IMMEDIATE RELIEF

Enc0uragement t0 the alternate f0rums 0f justice w0uld pr0vide the m0st effective impetus t0 unburden the c0urts 0n immediate basis. It w0uld n0t 0nly refrain the future matters fr0m

[21] *Imtiyaz Ahmad v State of UP* (2012) SCC 688.

[22] Nick Robinson, *Law and Other Things*, (2012).

[23] Nick Robinson, '*A Quantitative Analysis of the Indian Supreme Court's Workload'* (2012). (URL: https://www.frontline.in/static/html/fl2703/stories/20100212270304600.htm) [30]Article 39-A, The Constitution of India.

[24] The Income Tax Act, 1961. (URL: https://dor.gov.in/sites/default/files/IT%20Act%20%28English%29_0.pdf)

burdening the existing civil c0urts, it w0uld als0 transfer the existing matters t0 alternate f0rums. Realizing the true p0tential 0f secti0n 89 and the alternate f0rums suggested therein is imperative f0r pr0viding such immediate relief within the existing infrastructure and setting. The fact that the measures suggested in secti0n 89 c0uld be implemented within the existing judicial setup by making a few pr0cedural changes is what makes it the m0st practically p0ssible s0luti0n. H0wever, there are 0ther measures which c0uld als0 be taken f0r immediate relief. "[25].

Secti0n 89 is suggested t0 be redrafted 0n the f0ll0wing lines t0 reduce the existing an0malies:

(a) F0r arbitrati0n 0r c0nciliati0n, the regulati0ns 0utlined in the Arbitrati0n and C0nciliati0n Act 0f 1996 will be applicable as if the arbitrati0n 0r c0nciliati0n pr0ceedings were referred f0r res0luti0n under the pr0visi0ns 0f that Act.

(b) In the case 0f L0k Adalat, if a c0urt deems it appr0priate, it will refer the matter t0 L0k Adalat as per the guidelines 0utlined in subsecti0n (1) 0f secti0n 20 0f the Legal Services Auth0rity Act 0f 1987. All 0ther pr0visi0ns 0f that Act will als0 be applicable regarding the dispute referred t0 L0k Adalat.;

(c) f0r mediati0n, the c0urt will direct the matter t0 an appr0priate instituti0n 0r individual t0 facilitate a c0mpr0mise between the inv0lved parties, and will adhere t0 the prescribed pr0cedure in d0ing s0.;

(d) f0rjudicial settlement[26], The c0urt will facilitate a c0mpr0mise between the parties and will adhere t0 the prescribed pr0cedure, with the pr0visi0ns 0f the LSA Act 0f 1987 applying as if the dispute were referred t0 a L0k Adalat under that Act."

The sec0nd imp0rtant step t0wards curbing judicial lags is filling up the existing vacancies bef0re expanding the number 0f c0urts. The Executive h0lds the list 0f judges rec0mmended by the c0llegium t0 be app0inted t0 vari0us c0urts. The G0vernment sh0uld app0int the judges fr0m the rec0mmendati0ns given 0n the immediate basis. The High C0urts sh0uld be the

[25] Nani A Palkhivala, "*We, the Nation: the Lost Decades"*, (1994).

[26] 'mediation' replaced by 'judicial settlement' by relying on international jurisprudence.

pri0rity f0r filling the vacancies as maximum vacancies and cases are pending in different high c0urts thr0ugh0ut the c0untry.

The third imp0rtant step t0wards dealing with judicial delays is t0 check the r0le 0f Legislature in the pr0cess. C0nsistency is integral t0 any law. The Legislature sh0uld maintain this c0nsistency by av0iding very frequent amendments. The clarity 0f law sh0uld als0 be maintained by pr0per drafting 0f the law. In case 0f criminal law, it has 0ften been suggested that the petty 0ffences such as theft 0f rupees 50 sh0uld n0t be a c0gnizable and n0n-bailable 0ffence, because it wastes the preci0us time 0f the c0urt. Similar rec0mmendati0ns regarding the petty issues 0f civil nature sh0uld be ad0pted f0r civil matters as well.

CONCLUSION

The maxim "justice delayed is justice denied" succinctly captures the essence of the issue of delayed justice in India. Speedy trial is the core of criminal justice system and there is no doubts that delay in trials by it constitute denial of justice. Anyone has rights to infringe the basic rights of citizens which is provided by Indian Constitution. The state is the custodian of basic privileges of every people which makes sure the right to speedy trials and to keep away from the delay trials of criminal cases. Speedy Trials are an insistent requirement of criminal reform as there are many cases pending in the court, pendency of many under trials. There must be fair speedy trials. There must be a restricted time period for the disposal of cases. For all crimes there must be a time specified. There must be speedy trials; it would also provide good messages to the public.

When cases linger in the legal system for prolonged periods, the very essence of justice is compromised. Victims are left in limbo, unable to move forward with their lives, while the accused face uncertainty and prolonged legal battles. This delay not only erodes public trust in the judiciary but also undermines the effectiveness of the legal system in upholding the rule of law. To truly ensure justice for all, it is imperative for India to address the systemic issues that contribute to delays in the disposal of cases and strive towards a more efficient and expeditious judicial process.

The delay in the disposal of cases in India stems from a myriad of factors, ranging from procedural inefficiencies to systemic bottlenecks. The delay in the disposal of cases in India is a multifaceted issue, deeply entrenched within the fabric of its legal system. Structural inadequacies, including understaffed courts, outdated procedural norms, and a staggering backlog of cases, contribute significantly to this problem. Furthermore, administrative hurdles, such as adjournments, procedural delays, and inadequate infrastructure, exacerbate the situation, impeding timely justice delivery. Addressing these challenges demands a holistic approach, encompassing systemic reforms, technological advancements, and judicial capacity- building initiatives. Without decisive action, the specter of delayed justice will continue to cast a shadow over the Indian legal landscape, depriving citizens of their fundamental right to swift and fair trials.

In conclusion, the persistent delay in the disposal of cases undermines the very foundation of justice in India. It not only burdens the judicial system but also denies citizens their fundamental right to a speedy trial. Urgent reforms are imperative to streamline judicial processes, enhance efficiency, and ensure timely justice delivery. Without prompt action, the credibility of the legal system and public trust in the rule of law remain at risk, perpetuating injustice and hindering societal progress.

While challenges such as case backlogs, procedural delays, and resource constraints persist, there is hope for improvement through legal reforms, infrastructure enhancements, judicial efficiency measures, technological integration, public awareness, and learning from international best practices. Efforts to expedite trials must be holistic, addressing various aspects of the legal system to ensure meaningful progress. By implementing these measures, India can move towards a future where speedy trials are the norm, enhancing access to justice and upholding the rule of law for all its citizens.

SUGGESTIONS

- Strengthening Judicial Infrastructure: Increase the number of judges and support staff in courts to reduce the backlog of cases. Establish more courts, especially at the subordinate level, to handle the caseload effectively. Provide adequate infrastructure, including courtrooms, technology, and administrative facilities, to expedite trial proceedings.
- Case Management Systems: Implement robust case management systems to track cases from filing to disposal efficiently. Introduce e-filing and digital case management to streamline

procedural formalities and reduce paperwork. Use technology-enabled solutions for scheduling hearings, issuing summons, and sharing case-related information among stakeholders.

- Special Fast-track Courts: Establish specialized fast-track courts to handle specific categories of cases, such as those related to sexual offenses, economic crimes, or cases involving vulnerable groups. Provide these courts with dedicated resources and personnel to ensure swift disposal of cases without compromising on due process.
- Judicial Reforms: Simplify legal procedures and reduce unnecessary delays by revisiting complex and time-consuming legal formalities. Encourage alternative dispute resolution mechanisms, such as mediation and arbitration, to resolve disputes outside the traditional court system and alleviate the burden on courts. Promote judicial training and capacity-building programs to enhance the efficiency and competence of judicial officers and support staff.
- Prosecutorial Efficiency: Strengthen the prosecution machinery by appointing qualified and competent prosecutors. Ensure timely investigation and preparation of cases by law enforcement agencies to prevent delays during trial proceedings. Facilitate coordination between prosecutors, investigators, and the judiciary to expedite the trial process and minimize adjournments.
- Legal Aid and Support Services: Enhance access to legal aid and support services for underprivileged and marginalized individuals to ensure their representation in court. Provide resources for the training and deployment of legal aid lawyers to assist defendants in navigating the trial process effectively.
- Public Awareness and Sensitization: Raise public awareness about the importance of speedy trial and the rights of the accused. Conduct outreach programs to educate stakeholders, including litigants, lawyers, and law enforcement personnel, about their roles and responsibilities in expediting trial proceedings. Implementing these suggestions requires concerted efforts from multiple stakeholders, including the judiciary, government, legal fraternity, and civil society. By addressing systemic challenges and adopting best practices, India can significantly improve the efficiency of its trial process and ensure timely justice delivery for all.