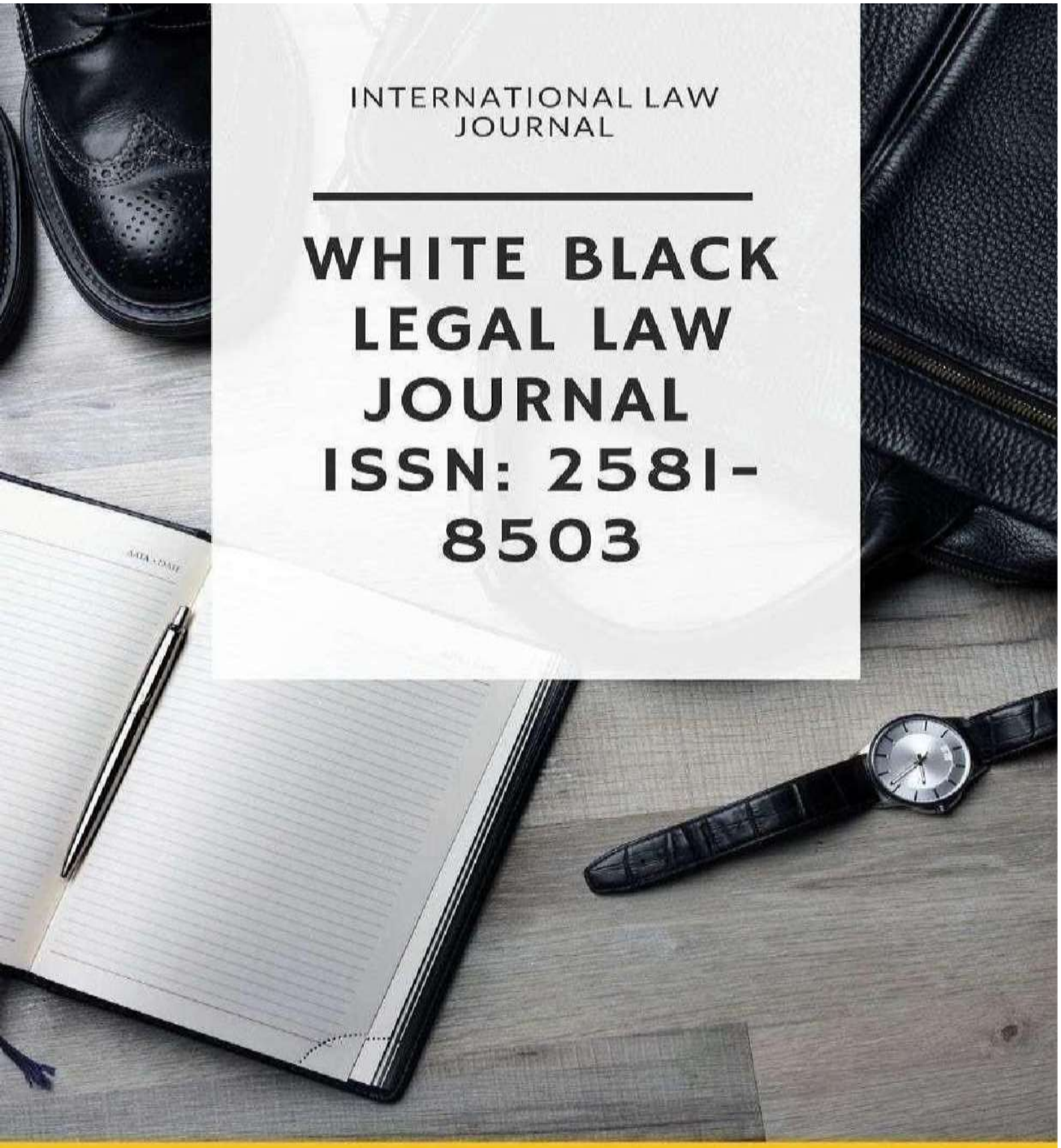

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Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

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PECUNIARY, TERRITORIAL, AND SUBJECT-MATTER JURISDICTION UNDER THE CPC: A STUDY ON JURISDICTIONAL CONFLICTS

AUTHORED BY - VISHESH GUPTA

ABBREVIATIONS

&	:	And
ABA	:	American Bar Association
ADR	:	Alternative Dispute Resolution
AIR	:	All India Reporter
Anr	:	Another
CJ.	:	Chief Justice
CJI	:	Chief Justice of India
CPC	:	Code of Civil Procedure
Cr.PC	:	Code of Criminal Procedure
DAC	:	Delhi International Arbitration Centre
etc.	:	Et cetera
Hon'ble	:	Honourable
HRC	:	Human Right Commission
ICA	:	Indian Council of Arbitration
ICCPR	:	International Convention Civil and Political Rights
i.e.	:	that is
J	:	Justice
Ld.	:	Learned
MCIA	:	Mumbai Centre for International Arbitration
MSME Act Development Act, 2006	:	Micro Small and Medium Enterprises
NGO	:	Non-Government Organization
NHRC	:	National Human Right Commission
NSCS	:	National Centre for State Courts
PC Act	:	The Prevention of Corruption Act
PIL	:	Public Interest Litigation

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CHAPTER 1

INTRODUCTION

1. *WHAT IS 'JURISDICTION'?*

The expression '*jurisdiction'* does not mean the power to do or order the act impugned, but generally it would import the authority of the judicial officer to act in the matter.[1] The Court shall be competent to entertain the proceeding. The competency is legally termed as 'jurisdiction'. The jurisdiction is of three kinds, namely statutory, pecuniary, and territorial. Every suit shall be instituted in the Court of the lowest grade competent to try it, is the decisive rule. (See section 15 CPC)[2]

The jurisdiction of a court implies its competence to entertain the dispute and adjudicate upon the same according to law governing the subject matter of the dispute. In other words, it can also be said that the right of action available to a party shall be decided by a court of competent jurisdiction. For this purpose there shall be two conditions to be satisfied by the party, namely, that the claim made by him is within the territorial and pecuniary limits of the court; and secondly, that his claim is of civil nature and is not barred expressly or impliedly by any law.

1.1. Kinds of jurisdiction

(i) Territorial

(ii) Inherent

(iii) Jurisdiction in terms of competence – powers of the court

1.2. Executing Court: 'Court which passed the decree' – analysis

The relevant provisions of the CPC are given below for ready reference:

Section 37 - Definition of Court which passed a decree: The expression "Court which passed a decree", or words to that effect, shall, in relation to the execution of decrees,

[1] Tayen vs. Ramlal, ILR 12 All 115; Anwar Hussain vs. Ajoy Kumar, AIR 1965 SC 1651

[2] Excerpt from "Civil Adjudication-Law, Practice & Procedure" by V.S.R. Avadhani, Revised Edition, ALD Publications, 2017

unless there is anything repugnant in the subject or context, be deemed to include,--

(a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and

(b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which, if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

[1][Explanation.--The Court of first instance does not cease to have jurisdiction to execute a decree merely on the ground that after the institution of the suit wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but, in every such case, such other Court shall also have jurisdiction to execute the decree, if at the time of making the application for execution of the decree it would have jurisdiction to try the said suit.]

Section 38 - Court by which decree may be executed: A decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution.

A comprehensive analysis of the various provisions of the Code of Civil Procedure would show that every decree of a civil Court is liable to be executed primarily by the Court which passed the decree. Therefore, an application for execution is expected to be filed in the first instance, only in the court which passed the decree. It is only in cases where the Court which passed the decree is unable to execute it, that the provisions for the transfer or transmission of such decree and the procedure prescribed therefor, come into play.

Section 37 of the Code states that the expression “Court which passed the decree” shall in relation to the execution of decrees, unless there is anything repugnant in the subject or context and deemed to include- (a) where the decree to be executed has been passed in the exercise of appellate jurisdiction, the Court of first instance, and (b) where the Court of first instance has ceased to exist or to have jurisdiction to execute it, the Court which if the suit wherein the decree was passed was instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.

The expression 'court of first instance' has not been defined in the Code. The term means the parent Court in which the suit was instituted and includes any other Court to which it is transferred for trial and by which it is finally disposed of.[3] Suppose the Decree was passed in the year 1993 by Additional District Judge of erstwhile State of Ajmer – Merwara, then the District Judge Ajmer is competent to execute the decree himself or he may assign same to any Additional DJ in his jurisdiction at Ajmer.[4]A 'camp court' cannot be said to be a different court for this purpose. Its main seat is the jurisdictional court always.[5]

High Court can withdraw execution petition and entertain the enquiry by itself.[6] However, the execution petition even if withdrawn to this Court can proceed only subject to the constraints of Sections 38 and39(4) of the CPC. In other words the execution of the decree cannot pervade beyond the local limits of the jurisdiction of the District Court taking note of the Court which passed the original decree. This is the purport and intent of Section 39(4) of the CPC as reiterated in *Salem Advocates Bar Association v. Union of India*,[7]

Prior to the introduction of explanation to section 37 of the Code of Civil Procedure, there was a conflict of opinion whether a decree can be executed by a Transferee Court in the absence of any transmission made by the court which passed the decree. There was also a doubt whether the court which passed the decree loses its jurisdiction to execute it by reason of certain matters being transferred to any other court. This doubt was clarified by the introduction of explanation to section 37 and in the amendment Act 104 of 1976.

According to the explanation, the Court of first instance does not cease to have jurisdiction to execute the decree merely on the ground that after the institution of the suit, wherein the decree was passed or after the passing of the decree, any area has been transferred from the jurisdiction of that Court to the jurisdiction of any other Court; but,

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[3] State Of U.P. vs. IV A D J Kanpur Nagar, (1999) 35 AllLR 79 (All)=(1999) 1 AllLR 79=(1999) 1 ARC 311=1999 (2) JCLR 201

[4] Dewan Syed Ali Rasul Ali Khan, Sajada Nashin Khwaja Moinuddin Chisti Saheb Through Uttradhikari vs. Altaf Hussain and Others (1999) 1 RLW (Raj) 41

[5] Irukula Lalitha Devi & another vs. Ramini Ramappa & another AIR 2016 AP 206

[6] Srimad Sudhindra Thirtha Swamiji vs. Raghavendra Thirtha Swami and Ors (2015) 3 KLT 614 (Ker)

[7] Salem Advocates Bar Association v. Union of India AIR 2005 SC 3353= 2005 (6) SCC 344

in every such case, such other Court also shall have jurisdiction to execute the decree, provided at the time making the application for execution of the decree it would have jurisdiction to try the said suit. The explanation to Section 37 thus takes care of a situation where the Courts are reorganized and the territorial jurisdiction is changed on account of such reorganization. Reference also may be had from the following decisions to support this view.[8]

Further, section 38 of the Code provides, inter alia, that the Court which passed the decree or the Court where it is sent for execution, may execute the decree and Sec. 37 of the Code provides, inter alia, that the expression "Court which passed a decree" shall mean, in relation to the execution of decrees, the Court of first instance where the decree to be executed is passed in exercise of appellate jurisdiction whereas in the cases where the Court of first instance has ceased to exist, then the said expression would mean and include the Court which would have jurisdiction to try the suit, if the suit in which the decree is passed was instituted at the time when the execution petition is filed.

The explanation to Sec. 37 provides for succession of the jurisdiction by a newly constituted Court, in relation to matter which was dealt with by its predecessor Court. The explanation does not deal with the cases of transfer under Section 39 CPC. For example, the village Gannavaram was within the territorial jurisdiction of the Court of Senior Civil Judge, Ongole, when the suit was instituted or when the preliminary decree was passed and later on the village came to be brought within the territorial limits of one Court or the other. That village was never within the territorial jurisdiction of Ongole and it was the Court of Senior Civil Judge at Chirala that held the territorial jurisdiction over it, when the suit was filed and when the preliminary decree was passed. It is a fact that the Court of Junior Civil Judge, Addanki was constituted by carving out some areas from the territorial jurisdiction of the Courts of JCJ, Ongole and Chirala. However, the village Gannavaram was transferred to its jurisdiction for the Court of JCJ, Chirala, and not that of Ongole. Same is the case, with the Court of SCJ, Parchur. Once it has emerged that petition schedule property was never within the territorial jurisdiction of the Court of JCJ at Ongole, transfer of some other areas of it, to a newly constituted Court at Addanki or Parchur, cannot confer the territorial jurisdiction upon them to entertain the execution

[8] Merla Ramanna Vs. Nallaparaju and Others AIR 1956 SC 87; Pearey Lal and Sons (Pvt) Ltd, Vs. M/s. Jamuna Properties (P) Ltd., and Others AIR 2004 Delhi 126; V. Nirmal Kumar alias V. Robert Nirmal Kumar vs. Tamil Evangelical Lutheran Church Represented by Church Counsel Trichy2013 (5) CTC 628 (Mad)=(2013) 4 LW 396=2013(7) MLJ 211

proceedings, in relation to the decree in question. Therefore, when the E.P was presented to a Court, who did not have the territorial jurisdiction and the objection rose in terms of sub-section (3) of Section 21, deserved to be sustained.[9]

There is a classic precedent from AP High Court. A suit is filed for specific performance in the Court of Subordinate Judge, Eluru by which time the town Tadepalligudem was within the jurisdiction of Sub-court, Eluru at the time suit was instituted. Later, suit was transferred on administrative grounds to Sub-Court, Kovvur where the decree of specific performance was granted. In the meanwhile, a Sub-Court was constituted at Tadepalligudem Town also. In pursuance of decree granted by Sub-court, Kovvur, the Execution petition filed at Kovvur was returned by that Court and it is presented at Sub-Court at T.P. Gudem which has territorial jurisdiction over subject matter of suit. Sub-Judge held that the EP is not maintainable, ignoring the import of Section 37 but having only considered the scope of Sections 38 and 39 which was held by the High Court as not relevant for the purpose of deciding the issue. It is held that the Sub-Court, Tadepalligudem has jurisdiction to entertain EP.[10]

In *Akola Janata Commercial Co-Op. Bank Ltd*. case,[11] the Division Bench of Bombay High Court considered the definition of a Court under Section 2(1) (e) of the Act and the definition of an 'executing court' and the 'Court to which the decree is transferred' under Sections 37, 38 and 39 of the CPC'. Under section 36 of the Arbitration & Conciliation Act the award can be enforced under the CPC in the same manner as if it were a decree. This would be by the 'Court' defined under Section 2 (1) (e) as the Court having jurisdiction to decide questions forming the subject matter of the arbitration.

Thus where the award has been passed in Mumbai the Bombay High Court would be the Court which must be taken to be the "the Court which passed the decree" under Section 37 of the CPC. Consequently under Section 38 of the CPC the decree would be executed by Bombay High Court which passed it or the Court to which it sent for execution. Under Section 39 the Court would send the decree for execution to another court where it would have to be executed upon the application of the decree holder. It is held in that judgment that the award must be treated as the decree passed by the District Judge and therefore, it

[9] Prathipati Subbarao vs. Union Bank of India, 2005 (1) ALD 92
[10] Pasala Suryachandra Rao vs. Vatti Venkata Ranga Pardhasaradhi, 1999 (2) ALD 179
[11] Akola Janata Commercial Co-Op. Bank Ltd. Vs. Raju Natthuji Badhe, 2011(2) MhLJ 427

may be executed either by the District Judge himself or by the Court to which it may be transferred for execution under Section 39 of the CPC. There is not much dispute with this provision also.[12]

When the execution petition was stayed by the appellate court and during pendency of appeal the said court before which the execution petition was pending ceased to have jurisdiction, the Decree Holder is entitled to file a second execution petition, after dismissal of appeal, the second execution before the newly constituted court after withdrawing the first execution petition.[13]

1.3. Court which had passed the decree will not lose jurisdiction to execute it, if jurisdiction is transferred to another court after the decree

There was conflict of opinion among different High Courts whether the jurisdiction of the original Court *i.e*. the Court which had actually passed the decree will be lost when once the jurisdiction is transferred to another Court. This conflict was set at rest once by the judgment of the Supreme Court. It is not a settled law that the Court which had passed the decree does not lose its jurisdiction to execute it, by reason that the subject matter thereof being transferred subsequently to the jurisdiction of another Court. The Court to whose jurisdiction the subject matter of the decree is transferred acquires inherent jurisdiction over the same by reason of such transfer, and that if it entertains an execution application with reference thereto, it would, at the worst, be an irregular assumption of jurisdiction and not a total absence of it, and if objection to it is not taken at the earliest opportunity, it must be deemed to have been waived and cannot be raised at any later stage of the proceedings.

Therefore it is clear, that in a case where the territorial jurisdiction of a Court is transferred after passing of the decree, execution lies both in the Court which passed the decree and in the Court to which the territorial jurisdiction is transferred.[14] Thus, a combined reading of Sections 37 and 38 indicates that the Court of first instance is the

[12] L&T Finance Ltd vs. Kajal Kumar Das & Another, 2015 (1) BomCR 286

[13] Tek Chand vs. Jagdish Parshad 2015 (3) UC 1738= MANU/UC/0430/2015

[14] Merla Rammanna vs. Nallaparaju, AIR 1956 SC 87; V. Nirmal Kumar alias V. Robert Nirmal Kumar vs. Tamil Evangelical Lutheran Church Represented by Church Counsel Trichy 2013 (5) CTC 628(Mad)=2013 (4) LW 396=2013 (7) MLJ 211

Court which passed the decree within the meaning of Section 38.

By going through the Objects and Reasons for introducing Explanation to Section 37, it is undoubtedly made clear that the Court which passed the decree does not lose its jurisdiction to execute it by reason of transfer of the jurisdiction over the subject matter to any other court. On the other hand, the Court which passed the decree as well as the Court to which the jurisdiction is transferred are having jurisdiction to entertain the application for execution of the decree. In other words, the Court which passed the decree can either execute the same by entertaining an application or it can transmit the decree to the other Court which is conferred with the jurisdiction by virtue of the amendment.[15] At any event, when the Court which passed the decree does not lose its jurisdiction to execute the decree, it is not for the judgment debtor much less the petitioner like third parties to question the jurisdiction of such Court which passed the decree and seek for transfer of the execution petition to the other Court.

1.4. RESEARCH OBJECTIVE

- To analyze the legal framework governing pecuniary, territorial, and subject-matter jurisdiction under the Civil Procedure Code (CPC) in India.
- To examine the practical challenges and jurisdictional conflicts arising from overlapping judicial authorities in civil disputes.
- To assess the impact of jurisdictional conflicts on litigants, case pendency, and judicial efficiency in Indian courts.
- To evaluate judicial interpretations and landmark cases that have shaped the application of jurisdictional principles under the CPC.
- To propose legal and procedural reforms to minimize jurisdictional conflicts and enhance clarity in civil litigation.

1.5. RESEARCH QUESTION

- How do jurisdictional conflicts arise in civil cases under the Code of Civil Procedure (CPC) due to overlapping pecuniary, territorial, and subject-matter jurisdiction?
- What are the key legal challenges in determining the appropriate jurisdiction of a civil court under the CPC when multiple courts have concurrent authority?

[15] V. Nirmal Kumar alias V. Robert Nirmal Kumar vs. Tamil Evangelical Lutheran Church Represented by

Church Counsel Trichy 2013(5) CTC 628=2013 (4) LW 396=2013 (7) MLJ 211

- How have Indian courts interpreted and resolved disputes related to pecuniary, territorial, and subject-matter jurisdiction in landmark cases?
- What impact do jurisdictional conflicts have on the efficiency and accessibility of the civil justice system in India?
- How can legislative or judicial reforms address ambiguities and conflicts in jurisdictional provisions under the CPC to enhance legal certainty?

1.6. HYPOTHESIS

- H_1: Jurisdictional conflicts in civil litigation under the Code of Civil Procedure (CPC) primarily arise due to ambiguities in the determination of territorial jurisdiction, leading to delays and inefficiencies in judicial proceedings.

- H_2: The lack of uniform interpretation of pecuniary and subject-matter jurisdiction by different courts contributes to inconsistent rulings and forum shopping, impacting the fairness and predictability of civil dispute resolution

1.7. RESEARCH PROBLEM

Jurisdictional conflicts in civil litigation often arise due to ambiguities and overlaps in pecuniary, territorial, and subject-matter jurisdiction under the Civil Procedure Code (CPC) of India. The allocation of jurisdiction is crucial for ensuring fair and efficient adjudication of disputes; however, the rigid demarcation of courts based on monetary value, geographical boundaries, and subject-matter competence frequently leads to legal complexities. Pecuniary jurisdiction, which determines the court's authority based on the value of the suit, may result in forum shopping or unnecessary burden on higher courts due to misclassification. Territorial jurisdiction, which dictates the court's power based on the location of the cause of action or the defendant's residence, often raises disputes in cases involving multiple jurisdictions, contractual agreements with jurisdiction clauses, and online transactions that transcend geographical boundaries. Similarly, subject-matter jurisdiction, which assigns cases to specific courts based on the nature of the dispute, faces challenges when cases involve overlapping legal issues, requiring interpretation of multiple laws. These jurisdictional conflicts not only delay justice but also create procedural hurdles that increase litigation costs and complicate case management. Moreover, conflicting interpretations by courts and a lack of uniformity in applying jurisdictional principles further exacerbate the problem. This study seeks to examine the causes, legal implications, and potential resolutions of jurisdictional

conflicts under the CPC, highlighting the need for reforms to streamline jurisdictional rules and enhance judicial efficiency.

1.8. SCOPE OF THE STUDY

This study explores the complexities of pecuniary, territorial, and subject-matter jurisdiction under the Civil Procedure Code (CPC) of India, with a specific focus on jurisdictional conflicts. It examines the principles governing these three types of jurisdiction and their practical implications in civil litigation. The study aims to analyze how courts determine their authority to adjudicate cases based on the monetary value of claims (pecuniary jurisdiction), geographical location of disputes (territorial jurisdiction), and the nature of legal issues involved (subject-matter jurisdiction). It also investigates common jurisdictional conflicts that arise due to overlapping authorities, improper forum selection, and challenges in enforcing jurisdictional limits. Through a review of case laws, statutory provisions, and judicial interpretations, the study seeks to highlight inconsistencies and ambiguities in jurisdictional application, offering insights into how such conflicts impact judicial efficiency and access to justice. Furthermore, the study assesses the role of higher courts in resolving jurisdictional disputes and examines potential reforms to enhance clarity and uniformity in jurisdictional principles. By addressing both theoretical and practical aspects, this research aims to contribute to a deeper understanding of jurisdictional conflicts under the CPC and their implications for litigants, legal practitioners, and the judiciary.

CHAPTER 2

CREATION OF JURISDICTION ON TRANSFER OF DECREE – INTRODUCTION

Sec. 39 of the Code reads:

Section 39 - Transfer of decree :(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction--

(a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or

(b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or

(c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or

(d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorize the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.

The Court which passed the decree may send the same for execution to another Court of competent jurisdiction, on the application of the decree-holder. Those Courts to which the decree may be sent are:

(a) within the local limits of the jurisdiction of a Court where the JDr actually and voluntarily resides or carries on business or personally works for gain;

(b) to a Court within whose territorial jurisdiction the property sufficient to satisfy the decree against the JDr is situate;

(c) to the Court where the decree directed the sale or delivery of immovable property is situate or

(d) to such other Court, if the Court which passed the decree considers for any other reason in writing that the decree should be executed by such Court.

Sub-section (2) of Section 39 enables the Court which passed a decree to transfer it to any subordinate Court, even of its own motion, without an application by the decree holder. Sub- section (3), has created a deeming fiction, that a Court to which an application for the transfer of the decree is made, has jurisdiction to try the suit in which the decree was passed, then it could also be deemed to be a Court of competent jurisdiction. Sub-section (4) inserted under the Amendment Act 22 of 2002, places an embargo upon a Court which passed the decree to execute such a decree against any person or party outside the local limits of its jurisdiction. Section 41 of the Code imposes an obligation upon the executing Court to inform the Court which passed the decree, about the completion of execution or about the failure to execute the decree along with the attending circumstances.

A perusal of Section 39 would show that a decree may be sent to other Court for execution either for the reasons contemplated under sub-clauses (a) to (d) of sub-section (1) of Section 39 or by the Court, which passed the decree, on its own motion. Thus, an execution of the decree has to be done only as per Sections 38 and 39 of CPC.

2.1. Lands in more than one jurisdiction

From sub-clause (4) of Sec. 39, it emerges that if the property against which or the person against whom the decree is to be executed is outside the local limits and jurisdiction of the Court which passed the decree, then, the provision under sub-sees. (1) to (3) of said Sec. 39 will not authorise such Court to execute the decree.

But, Order 21 Rule 3 prescribes that where immovable property forms one estate or tenure situates within the local limits of the jurisdiction of two or more Courts, any one

of such Courts may attach and sell the entire estate or tenure.

2.2. Transfer of the decree by a Court of Small Causes

The A.P. Small Causes Courts Act (as amended by Act 15/2005) did not contain any specific provision empowering the Small Causes Court to transfer its decree for execution by a regular Civil Court or to any other Court of Small Causes. Order 21 Rule 4 CPC provides power in the Civil Court to transfer its decree to the Small Causes Court for execution. It may be noted that the Small Causes Court cannot execute the decree by attachment and sale of immovable property as provided in Order 21 Rule 82 CPC. In case the fruits of decree have to be realised by sale of immovable property belonging to the defendant, necessarily the DHr should get the decree transmitted to a Civil Court as he has no other option to realise the amount due under the decree granted by a Small Causes Court.

Section 9(1) of the A.P. Small Causes Courts Act, 1330F (amended in 2005) reads: *"a Court of Small Causes shall, in the trial of suits by it and in proceedings ancillary thereto, as far as possible, follow the provisions of the Code of Civil Procedure, 1908, except those specified in the schedule annexed hereto."* The schedule did not exempt the provisions of Code relating to execution of decree and Orders more specifically Order 21 Rule 4 CPC. The expression 'ancillary proceedings" used in Section 9 of the Act may be taken to include the execution proceedings with reference to a decree granted by the Court of Small Causes. A comprehensive reading of the above provisions would make it clear that the Small Causes Court can transfer the decree passed by it to a civil Court for execution by virtue of Order 21 Rule 4 CPC.

This view is supported by Karnataka High Court, where the Karnataka State Small Causes Court Act containing provisions similar to the A.P. Act was considered.[16] It is observed by the Court that the Karnataka Act provides only for establishment and administration of Small Causes Courts and the jurisdiction of those Courts, the procedure to be followed by a Small Causes Court in respect of the cases filed before it, and all other matters connected thereto including execution of decree, are governed by the Civil

[16] K. Aswathanarayana Setty vs. Hindustan Finance Corporation, (1991) ILR Kant 2415

Procedure Code. Therefore, transferring of a decree from the Court which has passed it to another Court is a matter for which there is a provision in the CPC. A person who has obtained the decree from a Small Causes Court can make a request to that Court either to execute it or to transfer the same to another Court for execution. It is the right given to the DHr. Therefore, it is held that, the absence of a specific provision in the Karnataka Act, similar to the one contained in the Presidency Small Causes Courts Act, will not, in any way affect the jurisdiction of Small Causes Court to transfer the decree to another Court. If once the decree of Small Causes Court is transferred to a regular civil Court, the bar against sale of immovable property imposed by Order 21 Rule 82 may not be operative.

When Section 19 of the A.P. Act mentions Order 21 Rule 6, regarding the documents to be sent along with the decree of Small Causes Court to another Court for execution, it is made very clear that it is imbedded in the A.P. Small Causes Courts Act, that the procedure for execution shall be as in Order 21 of CPC only and that must be the reason why in Order 21 Rule 82 only the powers of Small Causes Court in the execution are limited by the Code.

2.3. Return of decree to the Transmitting Court - the jurisdiction of transferor Court ceases

Rule 208 Civil Rules of Practice prescribes that the Court to which a decree is sent for execution shall certify to the Court which sent the decree, the fact of execution of such decree specifying the nature and extent of satisfaction, or where the former Court fails to execute the decree, the circumstances attending such failure. If the DHr does not apply for execution of the decree thus transferred to another Court for execution within six months from the date of the receipt of the decree on such transfer, the Court to which the decree has been sent shall certify the fact that no application for execution has been made to the Court which passed the decree and shall return the decree to that Court. The jurisdiction of the transferee Court ceases when the copy of the decree is returned by that Court to the Court that transferred the decree with a certificate of non- satisfaction. This opinion is based on Section 41 which provides that while returning the copy of the decree sent to it. Court to whom a decree is sent for execution shall certify to the Court which passed it the fact of such execution or where the former Court fails to execute the same in

the circumstances attending such failure. It may however be noted, Section 41 CPC does not refer to the transferee Court.

2.4. What are the powers that remain with the Court transferred the decree after transfer

Mulla in his celebrated Text Book on the Code of Civil Procedure at page 173 comments that "after transferring a decree to another Court for execution, the Court which passed the decree cannot itself execute the decree; and an application for execution made to it after the transfer and before a certificate of non-satisfaction under Section 41 has been returned, is not even a step-in- aid of execution so as to save limitation." There may be another view also. It is that there is no justification for holding that the transferor Court cannot execute a decree after it is transferred to another Court; and that when the transferor Court transfers a decree, it does not divest itself of its power but only vests the transferee Court with powers it would not otherwise have. The difference of opinion mainly turns on the construction placed on the judgment of Privy Council.[17]

The Court which passed the decree does not altogether surrender control of the execution proceedings. It has power under Order 21 Rule 26 to pass an order for stay of execution. It may withdraw execution by calling back the decree; or it may make an order for simultaneous execution by another Court; or it may make an order for rateable distribution. It has moreover, jurisdiction to decide an objection as to limitation if referred to it by the transferee Court. If the decree is assigned after transfer, the assignee must apply for execution to the original Court. If after a decree has been transferred for execution the JDr dies, the Court which passed the decree, by Section 50 CPC, is the proper Court to order that execution should proceed against the legal representative.[18]

2.5. Attachment of salary – Section 39 has no application

A reading of Order 21 Rule 48 made very clear that so far as the attachment of the salary is concerned, the Court which passed the decree may also order attachment of the salary of the JDr who is working outside the jurisdiction of that Court also. The Court can order attachment where the JDr or Disbursing Officer is or is not within the local limits of the jurisdiction. Order 21 Rule 48 is the appropriate Rule that has to be applied to such a case. The explanation of this rule clarifies what is the 'appropriate Government'. Unless

[17] Maharaja of Bobbili vs. Narasaraju, AIR 1916 PC 16

[18] S. Sundera Rao vs. B. Appaiah Naidu, AIR 1954 Kar 01 (FB)

and otherwise ordered by the Government, the Disbursing Officer is the competent person to attach the salary. Therefore, Section 39 has no application in respect of EP filed for attachment of the salary. [19]

2.6. Jurisdiction & Powers of Court in executing the transferred decree

Section 42(2) empowers the Court to which a decree is transferred, to send it to some other Court for execution. For this purpose, the transferee Court would have the same power as that of the Court which passed the decree. Sub-section (2) lists out the powers which are generally be enjoyed by the transferee Court. They are (a) power to send the decree for execution to another Court under Section 39; (b) power to execute the decree against the legal representative of the deceased JDr under Section 50 and (c) power to order attachment of a decree. The Court exercising such powers under sub-section (2) above shall communicate its order to the Court which passed the decree. Sub-section (4) of Section 42 contains two limitations to the power of the Court to which a decree is sent for execution. It has no power to order execution at the instance of the transferee of the decree; and (b) in the case of a decree passed against a firm, power to grant leave to execute such decree against any person, other than such a person as is referred to in clause (b), or (c) of sub-rule (1) of Rule 50 of Order 21.

A comprehensive analysis of various provision of the Code would show that every decree of a civil Court is liable to be executed primarily by the Court which passed the decree. Therefore, an application for execution is expected to be filed in the first instance, only in the Court which passed the decree. It is only in cases where the Court which passed the decree is unable to execute it, and then the provisions for the transfer or transmission of such decree and the procedure prescribed there under come into play.

2.7. Whether the Court having territorial jurisdiction over the mortgaged properties could entertain a petition for execution of a decree passed by another Court which ceased to have territorial jurisdiction but which still exists, in the absence of a notification transferring the business or an order under Section 24 or Section 39 CPC?

A decree was passed by the Subordinate Judge Court, Guntur and execution of that

[19] S. Sudera Rao vs. B. Appaiah Naidu, AIR 1954 Karn 01 (FB); Salem Advocate Bar Association vs. Union of India, 2005 (5) ALD 1 (SC)=AIR 2005 SC 3353; Mohit Bhargava vs. Bharat Bhushan Bhargava, (2007) 4 SCC

795;

decree was levied. Sometime later, a Subordinate Judge's Court was established at Narasaraopet and its jurisdiction included the village in which the property sought to be proceeded against are situate. Notwithstanding the continued existence of the Subordinate Judge's Court at Guntur, the DHr filed EP in the Court at Narasaraopet. The JDr raised the objection that the Court at Narasaraopet had no jurisdiction to entertain the execution petition, as the Subordinate Judge's Court, Guntur continued to exist and no notification was issued transferring the business concerning the suit or an order passed under Section 24 or Section 39 CPC. Though the Subordinate Judge, Narasaraopet upheld this objection, the High Court reversed it and held that the Court which has territorial jurisdiction could always take cognizance of the execution petition notwithstanding the continued existence of the Court which passed the decree. In the Letters Patent Appeal, the question was whether it was competent for the Subordinate Judges Court, Narasaraopet, to entertain the EP in the circumstances above. The Bench examined this question from the perspective whether that question is capable of only one answer and that is that the DHr could not file an EP in the Court at Narasaraopet so long as the Court which passed the decree exists and so long as there is no transfer of business by the District Court to that Court or an order passed under Section 24 or 39. Considering the views of Full Bench expressed in *Ramier's* case[20] it was held that the view of the learned Single Judge that the Court having territorial jurisdiction could always take cognizance of an execution petition though it is not 'the Court which passed the decree' and though the Court which passed the decree continues to exist is erroneous. Consequently the order of the Trial Court was restored.[21]

2.8. Executing Court is not Transferee Court under Section 150 CPC

If the business of any Court is transferred to any other Court the Court to which the business is so transferred shall have the same powers and shall perform the same duties as those respectively conferred and imposed by or under the Code upon the Court from which the business was so transferred. Whether the expression 'transfer of business' is similar to the process of transfer of a decree for execution covered by Section 39 is the question. An *ex parte* decree was granted at Madras and the decree was transferred to District Munsif, Bhongir for execution. The JDr (Defendant) applied in the Court at Bhongir for setting aside the decree granted against him *ex parte*. It was argued that because the decree is transferred to the District Munsif, Bhongir, which can be said to be

[20] Ramier vs. Muthukrishna Ayar, ILR 55 Mad 801=AIR 1932 Mad 418 (FB)
[21] Guntupalli Hanumayya vs. Ravella Venkata Subbaiah, AIR 1964 AP 68 (DB)

transferee Court, an application to set aside an *ex parte* decree lies before the transferee Court. It is also argued that it is not necessary that the application under Order 9 Rule 13 CPC be made to the Court that passed the decree and the transferee Court is competent to set aside an *ex parte* decree.

The High Court of Andhra Pradesh is of the opinion that Section 150 by analogy cannot be applied to transfer of a decree under Section 39 for execution. It is pointed out that, at the outset it has to be noted that the transmission of a decree for execution to another Court does not amount to transfer of business from one Court to another. The transfer of business contemplated by Section 150 would arise where cases are transferred under Section 24 CPC or where on account of reorganization of the Courts or by creation of new Courts, certain areas are taken on to new Court, on account of which the business pertaining to that area pending on the file of one Court is transferred to the file of any newly constituted Court.

But Section 150 CPC does not take into its ambit decrees which are transmitted or transferred from one Court to another. There is a specific provision in the Code with regard to transfer and execution of decree passed by one Court by the other. The powers of the Executing Court are mentioned in Section 42 wherein the powers of the original Courts vest in the executing Court only to the limited extent and purpose of executing the decree. The Executing Court cannot certainly be said to be a transferee Court in the sense that the business is not transferred to it.[22]

2.9. Stay of execution – Power of Transferee Court

Order 21 Rule 28 provides that any order of the Court by which the decree was passed, in relation to the execution of such decree, shall be binding upon the Court to which the decree was sent for execution. Rule 29 provides that where a suit is pending in any Court against the holder of a decree of such Court, on the part of the person against whom the decree was passed the Court may, on such terms as to security or otherwise, as it thinks fit stay execution of the decree until the pending suit has been decided. It is obvious from a mere perusal of the rule that there should be simultaneously two proceedings in one Court; one is the proceeding in execution at the instance of the decree-holder against the judgment-debtor and the other a suit at the instance of the judgment-debtor and the other suit at the instance of the judgment-debtor against the decree- holder. That is a condition under which the Court in which the suit is pending may stay the execution before it. In

[22] E. Krishna AReddy vs. R. Prithvinathan, AIR 1979 AP 6

the given case, the decree sought to be executed by the Court of Munsif, Gaya was not the decree of that Court but decree of the Subordinate Judge, Gaya exercising Small Causes Court jurisdiction and so, the Court of the Munsif had no competence under Order 21 Rule 29 to stay the execution of the decree. [23]

2.9.1. **Decision on executability of decree by transferee court:** Where the objection is regarding executability of the decree on the ground that the transferor executing court had no jurisdiction to pass the decree, whether such objection could be entertained and decided by the transferee executing court, one may usefully recall that Sec. 42(1) which says that the Court executing a decree sent to it shall have "the same power in executing such decree as if it had been passed by itself". Further, Order XXI, Rule 6 of the Code deals with the procedure where the Court decides that its own decree shall be executed by another Court.

It may be possible for the executing Court in two contingencies to report to the transferor Court that execution is not possible -when a decree has been passed against a dead person or the decree is passed by a Court which is not constituted in accordance with the law. But it is not as if under Sec.42 of the Code the transferee executing court has all the powers, co-terminus with the Court which passed the decree for its execution -the power of the transferee executing court conferred by Sec.42 is only that power of the Court which passed the decree "in executing such decree". The function of the transferee executing court is to execute the decree in the way the Court which passed the decree could have done it. Along with said provision, Sec.41 of the Code has also to be read. Under that provision, the transferee executing court is to certify to the Court which passed the decree the fact of such execution, or where the former court fails to execute the same, the circumstance attending such failure.

The view taken by the Andhra Pradesh, Punjab and Madhya Pradesh High Courts is that Sec.42 of the Code gave power to the transferee executing court co-terminus with the power of the transferor Court in respect of any and every matter while dealing with the decree.[24] But Kerala High Court took contrary view.[25]

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[23] Shaukat Hussain alias Ali Akram vs. Bhuvneswari Devi, (1972) 2 SCC 731

[24] Kammela Somasekhara Rao Vs. Kammela Seshagiri Rao (AIR 1960 AP 321); The Allahabad Bank Ltd Vs. Chaitram Ram Choudari and Ors. (AIR 1964 Madhya Pradesh 226); Sanwal Das Gupta Vs. Babubhai Bhawanji Jhaveri (AIR 1963 Punjab 395;

[25] Shrimad Raghavendran Thirtha Swami Sanyasi vs. Shrimad Sudheendra Theertha Swami 2012 (1) ILR(Ker)

2.10. Court cannot execute decree outside its jurisdiction

According to Section 39, it does not authorise the Court to execute the decree outside its jurisdiction but it does not dilute the other provisions giving such power on compliance of conditions stipulated in those provisions. Thus, the provisions, such as, Order 21 Rule 3 or Rule 48 which provide differently would not be affected by Section 39(4) of the Code.

2.11. Appellate Court is not empowered to be Executing Court

It is plain from the language of Section 37, even in a case where the decree to be executed has been passed by the appellate Court; jurisdiction is conferred upon the trial Court in that behalf. This would disclose the intention of the Legislature that even where the decree is passed by the appellate Court reversing that of the trial Court, the function of executing that decree should be entrusted to the Court of first instance. The appellate Court cannot exercise the jurisdiction of an executing Court and there does not seem to be any provision of law which empowers the appellate Court to entertain an execution petition.[26]

2.12. In the case of award of Arbitral Tribunal

Earlier view was that the arbitral award can be filed in execution before the Court of Junior Civil Judge, Senior Civil Judge and District Judge or Additional District Judge depending upon amount awarded in the award subject to territorial jurisdiction. The Additional District Judge is not subordinate to the Principal District Judge and for all intended purposes the Court of Additional District Judge is have same powers and shall exercise the powers as District Judge. If the Court which passed the decree ceased to exist or the Court ceased to have jurisdiction to execute the decree, in either case the Court which would have jurisdiction to try such suit, is the Court to execute the decree.[27]
Sec. 42 of the A & C Act reads:

Section 42: Jurisdiction: Notwithstanding anything contained elsewhere in this Part or in any other law for the time being in force, where with respect to any arbitration agreement

560=(2012) 1 KLJ 694

[26] V.V. Narayana Chetty vs. Narapareddigari Venkata Reddi, AIR 1963 AP 452

[27] Bhoomatha Para Boiled Rice and Oil Mill vs. Maheswari Trading Company rep by its Proprietor, 2010 (1) ALD 522

any application under this Part has been made in a Court, that Court alone shall have jurisdiction over the arbitral proceedings and all subsequent applications arising out of that agreement and the arbitral proceedings shall be made in that Court and in no other Court.

Supreme Court has taken a view that Section 2(1)(e) of the Act contains a scheme different from that contained in Section 15 of CPC.[28] A meticulous survey of decisions of the Supreme Court and the High Courts of various States including AP High Court, , makes it clear that the "Court" referred to in Sections 34 and 36 of the A &C Act is the "Court" as defined under Section 2(1)(e) of the Act and, thus, in unmistakable terms refers to a "District Court", but not the character of a grade inferior to the Principal Civil Court of original jurisdiction. Therefore, the Division Bench of AP High Court that Section 42 of the Act applies only to the applications made under Part - I, if they are made to a Court as defined under the Act and the applications made under Sections 8 and 11 of the Act would be outside Section 42 of the Act, and, thus, it is clear that reference to the "Court" mentioned in Section 42 of the Act also relates to the "Court" defined under Section 2(1)(e) of the Act i.e. principal court of original jurisdiction viz., District Court. Therefore the Enforcement of award has to be applied before the Dt Court only.[29]

Hence the Court where any application under part I of the A & C Act is made would alone have jurisdiction over the arbitration proceedings and all subsequent applications arising out of that agreement and arbitration proceedings would be in that Court. The Court considered with special emphasis upon "all subsequent applications arising out of arbitration proceedings" The Court held that that expression must be read in a comprehensive manner to include recourse to execution proceedings and that it must be given its full with in interpretation.

2.13. Court cannot insist the Arbitration Award Holder to get transmission of Arbitral Award

An award passed by an Arbitral Tribunal is liable to be enforced under Section 36 of the Act, in the same manner as if it is a decree of the Court, in terms of the provisions of the

[28] Executive Engineer, Road Development Division No.III and another v. Atlanta Limited AIR 2014 SC 1093, 92014) 11 SCC 619, 2014 (1) Supreme 195, 2014 (2) JT 1, (2014) 2 JLJR (SC) 118,2014(2) JCR (SC) 258

[29] Potlabathuni Srikanth & Others vs. Shriram City Union Finance Limited & Others AIR 2016 AP 73 (DB), 2015 (6) ALT 629 (Also see: L&T Finance Ltd vs. Kajal Kumar Das & Another 2015 (1) BomCR 286)

Civil Procedure Code. In other words, an award passed by the Arbitral Tribunal is equated to the decree of a Court, for the purpose of execution and only for that purpose. But according to Section 19(1) of the Arbitration and Conciliation Act, 1996 the Arbitral Tribunal is not a Court. It therefore follows that the Arbitration and Conciliation Act elevates an award to the level of a decree, for the purpose of execution though it does not elevate the tribunal to the status of a Civil Court. Under that Act, an award can be executed directly without a seal of approval by a civil Court as under the earlier Act of 1940. When the award of the Arbitral Tribunal is deemed to be a decree, it follows as a corollary that the Arbitral Tribunal is in the position of a Court which passed the decree for the purpose of execution. But, no application for execution can be presented to an Arbitrator by the holder of an award under Order 21 Rules 6 and 10 of Code on the ground that the tribunal is the Court which passed the decree and so, the provisions of Section 38 and Order 21 Rules 5, 6 and 10 of the Code cannot be applied to an Arbitral Tribunal.

To put it differently, it is only when an award holder is entitled to file an execution petition before the Arbitral Tribunal itself under Order 21 Rule 10, treating it as a Court which passed the decree that the provisions of Order 21 Rules 5 and 6 come to play. Because the tribunal is not a Court, it cannot order the transfer of the decree (award) to any other Court for its execution. Similarly there is no provision either in the Code or anywhere else, to treat a Court, within whose jurisdiction the Arbitral proceedings took place, as the Court which passed the decree. It is only when a Court within whose jurisdiction the award was passed, is taken to be the Court which passed the decree within the meaning of Section 37 and Order 21 Rule 10 that the award holder would be entitled to seek transmission from that Court. There is no deeming fiction anywhere to hold that the Court within whose jurisdiction the award was passed should be taken to be the Court which passed the decree.

Therefore, the whole procedure of filing an execution petition before the Court within whose jurisdiction the award was passed as though it is the Court which passed the decree is pathetically misconceived. No Court to which an application for execution of an award is presented, can insist on the filing of the execution petition first before some other Court and to have it transmitted to it later.

In the background of this discussion, the Madras High Court held that the Arbitration & Conciliation Act, 1996 transcends all territorial barriers. Consequently it is open to the

parties to a dispute, to choose, for instance, Bangalore or Bombay as the venue of arbitration, despite both parties being at Chennai. In case it happens and an award is passed at Bangalore or Bombay, would it be necessary for the award holder to file an execution petition before the Bangalore or Bombay Court and get it transmitted to Chennai in terms Order 21 Rules 5 and 6? The Court observed that in the absence of any provision in the 1996 Act, requiring a Court to pass a decree in terms of the award (except in terms of Section 34) and in the absence of any provision in the 1996 Act making the Arbitral Tribunal a Court which passed the decree and in the absence of any provision anywhere making the Court within whose jurisdiction an award was passed as the Court which passed the decree, it is open for any executing Court (1) either to demand transmission from any other Court; (ii) or to order transmission to any other Court. The Court directed the lower Court to number the EP without insisting upon a transmission order and proceed with the execution petition.[30]

The A.P. High Court has also taken the same view. An Arbitrator from Chennai was chosen and he passed an award in favour of the petitioner. The parties are residents of Visakhapatnam and so the Court at Visakhapatnam was competent for the petitioner to file the execution petition in the Court of the Principal District Judge, Visakhapatnam for enforcement of the award. The petitioner filed an execution petition before the Court of the Principal District Judge, Visakhapatnam with a prayer to transfer the decree to the Court of Principal District Judge, Ranga Reddy District on the allegation that the respondents own several items of property within the jurisdiction of the District Court, RR District. That application was rejected by the District Judge, Visakhapatnam on the ground he has no jurisdiction and that order was challenged in the Revision. It is argued that once a decree is enforceable in the Court of District Judge, Visakhapatnam, by that very logic and reasoning, it is capable for being transmitted to the Court of District Judge, RR District. The Court is of opinion that the award passed by an arbitrator is entrusted to civil Court for enforcement and it can be straightaway executed as though it is a decree. As per Section 38 CPC, a decree may be executed either by the Court which passed it, or by the Court to which it is sent for execution. The Court at Visakhapatnam

[30] Kotak Mahindra Bank Ltd. Rep by B. Muthu Kumar, Sr. Manager-South vs. Sivakama Sundari S. Narayana S.B. Murthy, 2011 (4) LAW WEEKLY 745=(2011) 6 CTC 11(also see: Dilipsinh Kanubha Gohil vs. Kotak Mahindra Bank Ltd. 2014 (2) GLR 1675 (Guj)]

did not pass any decree and the powers conferred upon such Court are very limited, in the sense that the award passed in arbitration has to be implemented as it is. Even the powers available under Section 47 CPC cannot be exercised in relation to such an award.

Therefore, a decree passed by a civil Court on the one hand and an award passed by an Arbitrator on the other, cannot be equated in the context of exercise of powers under Order 21 Rule 5. It is further held that it is only a Court, which passed the decree that can transfer or send it for execution to another. And such a power is not available *vis-a-vis* an award. As the Court did not explain what should be done in case the award has to be executed elsewhere than the place of residence of parties or the place where the award is passed, on the ground that the properties are situated at a different place for realisation of fruits of award, it goes without saying that the award can be enforced straightaway without the necessity of transmission as in the case of decree granted by a civil Court.[31] It is argued before the Delhi High Court, by the judgment (award) debtor that unless the award is transferred from the Courts at Guhawati/Golghat, the same cannot be executable by attachment of the properties. The Court felt that as there is no decree of those Courts, no such transfer of decree can be expected and held that without the fetter of Section 38, the Courts of the place where the property against which the decree is sought to be enforced is situated would have inherent jurisdiction to entertain the execution.[32]

2.14. Whether a decree can be executed in more than one Court simultaneously, against different properties?

Yes. Simultaneous execution proceeding in more places than one is possible but the power is used sparingly in exceptional cases by imposing proper terms so that hardship does not occur to Judgment debtors by allowing several attachments to be proceeded with at the same time. [33]

3. Competence of executing Court: Relevant provisions from the Code

Sec. 47: Questions to be determined by the Court executing decree: (1) All questions arising between the parties to the suit in which the decree was passed, or their, representatives, and

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[31] Ashok Leyland Finance Ltd., Hyderabad vs. P. Vengal Rao, 2009 (5) ALD 235

[32] Daelom Industrial Company Ltd., vs. Numaligarh Refinerey Ltd., (2009) 159 DLT 579 (Del)

[33] Prem Lata Agarwal vs. Lakshman Prasad Gupta, (1970) 3 SCC 440

relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

[***]

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

2[Explanation I .--For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit. Explanation II .--(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or hi s representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.]

Order XXI Rule 58: Adjudication of claims to, or objections to attachment of property:
(1) Where any claim is preferred to, or any objection is made to the attachment of, any property attached in execution of a decree on the ground that such property is not liable to such attachment, the Court shall proceed to adjudicate upon the claim or objection in accordance with the provisions herein contained :

Provided that no such claim or objection shall be entertained--

(a) where, before the claim is preferred or objection is made, the property attached has already been sold ; or

(b) where the Court considers that the claim or objection was designedly or unnecessarily delayed.

(2) All questions (including questions relating to right, title or interest in the property attached) arising between the parties to a proceeding or their representatives under this rule and relevant to the adjudication of the claim or objection, shall be determined by the Court dealing with the claim or objection and not by a separate suit.

(3) Upon the determination of the questions referred to in sub-rule (2), the Court shall, in accordance with such determination,-

(a) allow the claim or objection and release the property from attachment either wholly or to such extent as it thinks fit ; or

(b) disallow the claim or objection ; or

(c) continue the attachment subject to any mortgage, charge of other interest in favour of any person; or

(d) pass such order as in the circumstances of the case it deems fit.

(4) Where any claim or objection has been adjudicated upon under this rule, the order made thereon shall have the same force and be subject to the same conditions as to appeal or otherwise as if it were a decree.

(5) Where a claim or an objection is preferred and the Court, under the proviso to sub-rule (1), refuses to entertain it, the party against whom such order is made may institute a suit to establish the right which he claims to the property in dispute ; but, subject to the result of such suit, if any, an order so refusing to entertain the claim or objection shall be conclusive.]

***Order XXI Rule 101: Question to be determined*:** All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application, and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.]

3.15."Executing Court cannot go behind" a jurisdictional dogma -an analysis

It is axiomatic that an executing court cannot go behind the decree. The correctness and validity of the decree cannot be challenged in execution. Once a decree is passed, the executing Court cannot go behind the decree or merits of the case.

For example, an ex-parte decree is as well executable as a contested decree. If the contention of the JDr is that the decree has been obtained by the plaintiff who is not entitled to a decree, or that it was obtained by fraud etc., that question has to be agitated

in the suit or by challenging the decree by way of appeal, review or revision whatever provision may apply. In other words, the executing court must take the decree according to its tenor; has no jurisdiction to widen its scope and is required to execute the decree as made by the trial court.[34] While considering an order of modification of the compromise decree by the executing court it was held that it will amount to modification of decree and, therefore, the same is without jurisdiction.[35]

The conditions which stand beyond the scope of the suit or falling outside the subject matter of the suit and included in the decree as conditions regulating the execution of the compromise decree, is legally valid and permissible. It follows therefore, unless and until that condition regulating the execution of the decree is satisfied, this decree cannot be executed. When a compromise decree is passed on term of the agreement containing conditions beyond the subject matter or scope of the suit, in execution, parties cannot turn round and contend that such conditions are invalid and unenforceable as the same goes beyond the scope of the suit or falling outside the subject matter.

7. ***1. Exceptions to the rule*:** There are exceptions to the above rule. While it is true that an executing court cannot go behind the decree under execution, but that does not mean that it has no duty to find out the true effect of that decree. At any rate, the executing court cannot suo moto decide the legality of the decree without there being a challenge by the party to the decree.[36] The following circumstances may be examined which are available to challenge validity of decree before executing court.

1) ***Where the decree is ambiguous***: When an ambiguous decree is passed, it is the duty of the executing court to interpret the decree and for this purpose the court is entitled to look into the pleadings and the judgment. For construing a decree it can and in appropriate cases, it ought to take into consideration the pleadings as well as the proceedings leading up to the decree. In order to find out the meaning of the words employed in a decree the Court, often has to ascertain the circumstances under which those words came to be used. That is the plain duty of the execution Court and if that

[34] M/s Century Textiles Industries Ltd. vs. Deepak Jain & Anr, 2009 (5) SCC 634=2009 (3) Supreme 93=2009
[35] Shivshankar Gurgar vs. Dilip, (2014) 2 SCC 465

[36] Oil and Natural Gas Corporation Limited vs. Modern Construction and Company, (2014) 1 SCC 648= AIR 2014 SC 83=2013 (7) Supreme 247=2013 (4) BBCJ(SC) 66=2014 (1) JCR (SC) 47=2013 (4) JLJR (SC) 340=2014 (1)
LW (SC) 177

Court fails to discharge that duty it has plainly failed to exercise the jurisdiction vested in it.[37]

2) ***Where the decree suffers from lack of jurisdiction in the court that passed the decree:*** An executing court can only refuse to execute an order or decree if the same suffers from the vice of lack of inherent jurisdiction of the court passing such order or decree. According to the law laid down by the Supreme Court,[38] if the decree is not challenged in the appeal or if the appellate decree is not challenged before the superior court with success, in absence of interference in the execution proceeding any part of the decree cannot be called in question, save and except on the ground of nullity of the decree for lack of jurisdiction of the court which has passed the decree under execution.

When the decree is made by a Court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record where the objection as to the jurisdiction of the Court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing Court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction.[39]

The defect of jurisdiction strikes at the very root and authority of the Court to pass decree which cannot be cured by consent or waiver of the parties.[40] Where the decree sought to be executed is a nullity for lack of inherent jurisdiction in the court passing it, its invalidity can be set up in an execution proceeding. Where there is lack of inherent jurisdiction, it goes to the root of the competence of the Court to try the case and a decree which is a nullity is void and can be declared to be void by any Court in which it is presented.

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[37] Bhavan Vaja v. Solanki Hanuji Khodaji Mansang, AIR 1972 SC 1371=(1973) 2 SCC 40=1972 (1) UJ 697;
[38] State of Punjab & Others vs. Mohinder Singh Randhawa and another, AIR 1992 SC 473=AIR 1992 AIR(SCW) 38=1992 (5) JT 381=1992 (2) Scale 473=(1993) Supp1 SCC 49

[39] Vasudev Dhanjbhai Modi vs. Rajabhai Abdul Rehman, AIR 1970 SC 1475= 1970 (1) SCC 670=1971 (1) SCR 66(followed in Indian Bank vs. Nallam Veera Swamy 2015 (1) ALD 278=2014 (5) ALT 631)

[40] Union of India vs. Sube Ram & Others, (1997) 9 SCC 69= (1996) Supp5 SCR 219=1996 (7) Supreme 640=1997 (1) R.C.R. (Civil) 564=1996 (7) Scale 119= 1996 (10) JT 529= 1996 (4) CCC(SC) 87=1996 (4) CLT (SC)

3) ***Where the decree is obtained by fraud etc:*** Fraud and justice do not dwell together. Question as to whether a plea of fraud could be entertained even in collateral proceedings, at the stage of execution, after passing of the decree, is no longer res integra. Its nullity can be set up whenever it is sought to be enforced or relied upon and even at the stage of execution or even in collateral proceedings. A decree can only be challenged on the ground that it had been obtained by fraud or misrepresentation of fact. Fraud has to be pleaded and proved by the person alleging that he has been duped.

The executing Court can, therefore, entertain an objection that the decree is a nullity and can refuse to execute the decree.[41] By doing so, the executing court would not incur the reproach that it is going behind the decree, because the decree being null and void, there would really be no decree at all. even in execution if it is shown that the order was made upon mistake or fraud which affects the very validity of the order under execution rendering it ineffective, it can properly be questioned by any one. Section 44 of the Evidence Act in terms applies to such matters and permits a person to lead evidence to show that the order is not binding in any such proceeding. Under Section 44 of Evidence Act, a party can, in a collateral proceeding in which fraud may be set up as a defence, show that a decree or order obtained by the opposite party against him was passed by a Court without jurisdiction or was obtained by fraud or collusion and is not necessary to bring an independent suit for setting it aside.

4) ***Where the decree is void & nullity*****:** What is 'void' has to be clearly understood. A decree can be said to be without jurisdiction, and hence a nullity, if the Court passing the decree has usurped a jurisdiction which it did not have; a mere wrong exercise of jurisdiction does not result in nullity. The lack of jurisdiction in the Court passing the decree must be patent on its face in order to enable the executing Court to take cognizance of such nullity based on want of jurisdiction; else the normal rule that an executing Court cannot go behind the decree must prevail.[42] When a decree which is a nullity, for instance, where it is passed without bringing the legal representatives on the record of a person who Was dead at the date of the decree, or against a ruling prince without a certificate, is sought to be executed an objection in that behalf may be raised in

[41] Sunder Dass v. Ram Prakash, AIR 1977 SC 1201=1977 (2) SCC 662=1977 (3) SCR 60

[42] Rafique Bibi (D) by Lrs vs. Sayed Waliuddin (D) by Lrs and Ors. AIR 2003 SC 3789=2003 (Supp1) JT

160=2003 (6) Scale 785=(2004) 1 SCC 287= 2003 (6) Supreme 300

a proceeding for execution.[43]

If the JDr challenged the legality of a foreign court's decree on the ground that it was obtained by playing fraud, since the fraud alleged is prior to the judgement, it is held that on that ground the decree cannot be impugned. If such a defence was allowed it would mean a new trial on merits. The Court observed that if such a defence was not taken in the claim/suit itself it would not have been an issue between the parties and could never been decided by the foreign Court. It was, therefore, held that such an issue cannot be considered by the executing Court as such a Court would not retry any issue.[44] The fraud, if any, alleged by the defendant to stall an execution of a decree even of a foreign Court must be a fraud which was discovered by the defendant since the date of the foreign judgment and, therefore, not before the judgment was passed. Hence the Supreme Court held in the case of Sankaran[45] that to successfully prevent the foreign judgment from being executed the judgment debtor must show a case of fraud not on the defendant but a fraud practiced upon the Court and to see that the Court was deceived thereby.

5) ***Where the interest is wrongly awarded:*** Where the loan was for agricultural purpose when future interest would not more than 6% and under Sec. 34 CPC, the Court while passing a decree, had no jurisdiction to grant more than 6% future interest as the transaction of debt was a crop loan and agricultural loan could not be considered as a commercial loan, the Executing Court could examine if the decree was passed by the Court was in conformity with the first proviso to Section 34 of the Code.[46] But at the same time, the executing court has no power to grant interest which was not granted by the trial court. If the land acquisition reference Judge has rightly or wrongly specifically rejected the prayer for grant of interest on solatium then the Executing Court cannot grant such interest. However, the Court observed that there were a large number of cases where there is no specific reference to interest payable on solatium and there may also be cases where claim for interest on solatium had not been made and, therefore, there was no question of accepting or rejecting such a claim. In these cases the Apex Court held that the executing Court was free to follow the judgment of *Sunder* (supra) and grant interest

[43] Vasudev Dhanjbhai Modi v. Rajabhai Abdul Rehman AIR 1970 SC 1475= 1970 (1) SCC 670=1971 (1) SCR 66
[44] Masterbaker Marketing Ltd. Thru Mr. Mukund Venkataraman vs. Noshir Mohsin Chinwalla, 2015 (3) ABR 228 (Bom)= 2015(4) ALLMR 686=2015 (3) BomCR 604=2015 (5) MhLJ 727
[45] Sankaran Govindan Vs. Lakshmi Bharathi, AIR 1974 SC 1764=(1975) 3 SCC 351=[1975] 1 SCR 57
[46] Amandeep Singh vs. Punjab State Civil Supplies Corporation Limited & Ors, 2016 (2) Law Herald 1690

(P&H)

on solatium but with the caveat that in such cases the interest would be awarded only from 19.09.2001 i.e. the date when *Sunder's* case was decided. Further, the Apex Court also made it clear that the executing Court could award interest on solatium only in pending executions and where the execution proceedings had been disposed of, the matter could not be re-opened.

6) ***Where there is conditional decree:*** In case of a conditional decree, if the decree-holder fails to deposit the remain sale consideration within the specified time as per the judgment and decree, rejection of execution petition by the Executing court on the ground of delay in depositing of sale consideration is a valid order.

7) ***Where the direction in the decree is against public policy:*** Where alienation of certain property is prohibited on grounds of public policy, either under the general law or by statute, the executing Court can refuse to execute a decree which directs such a sale.

8) ***In the enquiry under Order 21 Rules 97 to101:*** The rule that the executing court cannot go behind the decree is not available to the decree holder or auction purchaser in the case of adjudication under O.21 R.97 to 101 C.P.C. It is relevant to note that the authority given to the court under R.98 and 100 of O.21 C.P.C. Includes a power to put the decree holder or auction purchaser (who are the applicants under O.21 R.97 C.P.C.) or the stranger obstructer (who is the applicant under O.21 R.99 C.P.C.) to be put in possession of the property. It is such an order passed under Rules 98 or R.100, as the case may be or O.21 C.P.C., which will be deemed to be decree and which will be executable and appealable. Such an order supercedes the earlier decree to which the stranger obstructer was not a party. In that way, the executing court is going behind the decree.

9) ***Delivery of property in a decree for specific performance:*** Possession can be granted in a suit for specific performance even though that relief was not sought for in the suit without amending the relief. A direction to deliver possession of the property is incidental to a decree for specific performance of an agreement to sell immovable property, and, therefore, the executing Court has jurisdiction to delivery of possession, although the decree in the suit for specific performance does not provide for delivery of possession. It cannot be said that in such a case the executing Court cannot go behind the decree and order delivery of possession. Therefore, the executing Court has jurisdiction to grant the relief of possession as incidental to the execution of the decree for specific

performance of a contract of sale.

10. Order in the writ is not executable in civil court: The Civil Court has no jurisdiction to entertain an Execution Petition for execution of the order for payment of costs passed by the High Court in a Writ Petition, unless the High Court specifically issues a direction thereof.

CHAPTER 3

SCHEME AND STRUCTURE OF CODE OF CIVIL PROCEDURE, 1908

3.1. Introduction:

The Civil Procedure Code, 1908 is a procedural law governing the administration of civil proceedings in India.

The Act has two parts:

1. The first part has a total of 158 Sections. The sections comprise of general provisions of jurisdiction.
2. The second part contains the first schedule comprising of 51 Orders and Rules. The Orders and the Rules prescribe the procedure and method that govern civil proceedings in the country.

3.2. Scheme of Code of Civil Procedure:

As mentioned above, the Civil Procedure Code, 1908 has total 158 sections divided into 11 parts. Here are the 11 parts of the Act.

3.2.1. Part 1 – Suits in General: Section 9 to Section 35B:

Sections 9 to 35B and Orders I – XX of the First Schedule contains provisions regarding suits.

CHAPTER – 4

DELAY IN CIVIL LITIGATION IN ADMINISTRATION OF JUSTICE

4.1. Introduction:

Justice is a backbone of Indian Judicial System. Delay in getting justice creates further problem. Delay in the process of getting justice weakens the strong possibility of justice. There are different definitions of justice but the most important aspect is to provide the litigant with right thing. If one is committing crime then there must be realisation and other party must be provided relief. In civil litigation at the time of need, the particular person is not able to get his or her rights. The case is resolved after long time, till that time real need of the money or property or rights are vanished.

A person who is living in a country submits his responsibility to the state for security and justice. Justice becomes an inevitable part of our system. In India cases related to civil litigation are of delayed. There is a famous quote that Justice delayed is justice denied. So when a person does not get justice in time then in such situation that particular person goes in hopeless condition. However, if timely justice is refused it is equal to the denial of justice.

In Indian situation, the system of Justice Delivery and it takes unnecessary delay in providing justice to litigants. The reason is backlog of cases in large number. If we see the report of National Judicial Data Grid, In India there are total 10932327 Civil Cases are pending and there are 6375556 (58.32%) Civil Cases pending for more than 1 Year and in Uttar Pradesh the number of civil cases pending is 1856143 total. In Punjab there are 399692 total Civil Pending Cases and in Maharashtra there are total 1564314 civil cases pending. At figure no.1 it represents the data related to the pendency related to matter for example writ petition are pending at 43.1 % similarly second appeal is pending at 7.61%. Another, figure no.2 the pie chart represents the data of age wise pendency of civil cases for above 30 years. There are 41.73% civil cases that pending for 1 year. Similarly, another figure no. 3 represents the data regarding the reasons of delay. According to the data in figure no. 3 it prima facie shows that 31.0% cases are delay due to stayed. The figure no. 4

represents the data regarding the pendency of civil cases. After

analysing the data it seems that speedy Justice is now a fundamental right which has been decided by the apex court of India in number of cases. A delay which is inordinate and unnecessary cannot be justified at any cost. It is a simple violation of Article 21 of the Constitution of India which has been guaranteed and very important right.[47]

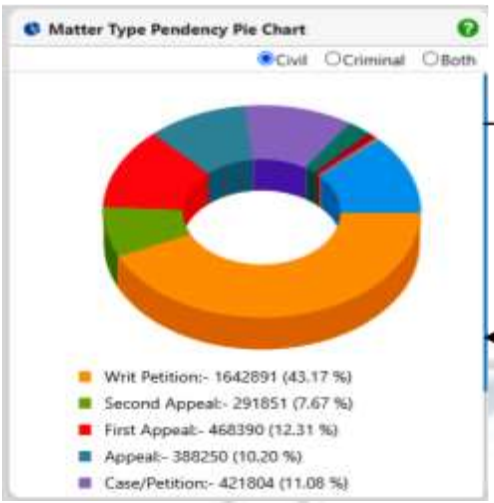

Fig 1

Fig 2

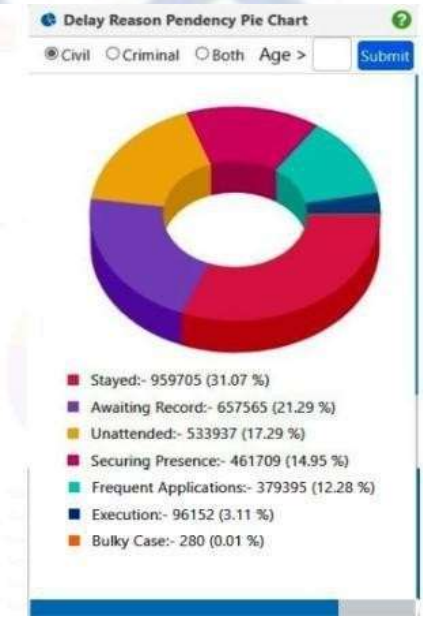

Fig 3

[47] https://njdg.ecourts.gov.in/njdgnew/index.php

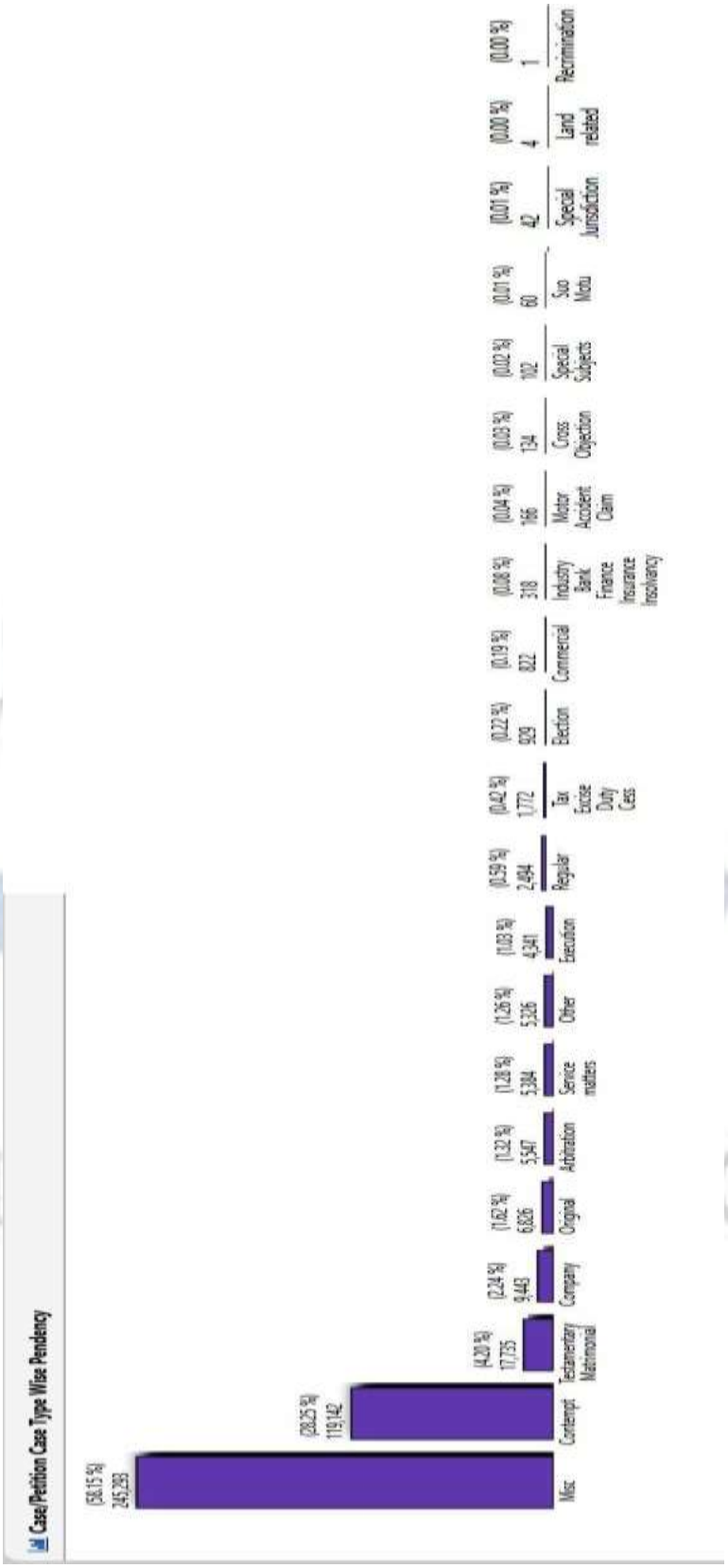
Case/Petition Case Type Wise Pendency
(58.15 %) 245,283
(28.25 %) 119,142
(4.20 %) 17,735
(2.24 %) 9,443
(1.62 %) 6,826
(1.32 %) 5,547
(1.28 %) 5,394
(1.26 %) 5,326
(1.03 %) 4,341
(0.59 %) 2,494
(0.42 %) 1,772
(0.22 %) 929
(0.19 %) 822
(0.08 %) 318
(0.04 %) 196
(0.03 %) 134
(0.02 %) 102
(0.01 %) 60
(0.01 %) 42
(0.00 %) 4
(0.00 %) 1
Misc
Contempt
Testamentary Matrimonial
Company
Original
Arbitration
Service matters
Other
Execution
Regular
Tax Excise Duty Cases
Election
Commercial
Industry Bank Finance Insurance Insolvency
Motor Accident Claim
Cross Objection
Special Subjects
Suo Motu
Special Jurisdiction
Land related
Reimination

Fig 3

In one of the important cases of the ***Hussainara Khatoon v State of Bihar***[48] and another case of ***Abdul Rahman Antulayv R S Naya***[49] it was held that if a procedure cannot provide timely justice then in such as cases, we cannot say that it is just, fair and reasonable. Now the question arise that what are the causes of such delay in speedy justice. Generally, in the first place the procedure which deals with the civil litigation is the main cause of such delay in justice and second important cause of delay in justice is the overburden of courts. Then the strength of the Judges is totally deficient. Cases are more and judges in courts are less. The situation is really unmanageable. The very basic framework of structure in itself is faulty. The situation is extremely critical and alarming. People are losing value but expecting justice from courts and courts also have their own limitations. The problems of delay in litigation have been highlighted by many scholars. The problem of delay in litigation and lacunas of Code of Civil Procedure has been high lightened and examined by the various Law commissions also over the years. The Apex Court of India in one of its important case ***Imtiyaz Ahmad v State of Uttar Pradesh***[50] coordinated the various Commissions and attempted to inquire the main problem and suggest the solutions.

One of the suggestions was to establish additional courts for the expeditious solution of the cases. The real question arises when the time taken by the civil litigants surpasses the normal time and it goes endless without getting justified solutions. In such conditions we are not able to reach the real justice and it undermines the efficiency of the judicial system in India.

The main thing is that our infrastructure is overburdened in every aspect. Still people believe in courts and have faith in it that they would get justice from the courts only. If it is said actually, the justice is not an easy thing. Judges are doing great job and working continuously. Justice is something where the judges have to satisfy both the parties. Even blaming someone is not easy. Number of times only statements are blames or the only basis of conviction.

Thus, Justice Delivery is very delicate work. Here the court has to take care of both the parties. On the one side, first party is giving its statements and on the other hand other party is defending himself. We cannot say that a particular party is saying trut

There may be number of lies also from both the parties. Another concern is that no

[48] 1979 AIR 1369 1979 SCR (3) 532 1980 SCC (1) 98.
[49] 1988 AIR 1531, 1988 SCR Supl. (1) 1.
[50] AIR SC 2012 642.

innocent person must be punished. So judges are doing great work. In spite of such complex procedure of Code of Civil Procedure, judges are managing very well.

Now the condition is being improved but with very slow rate. In few branches some special courts are being opened but the real situation in different districts with slow efficiency rate is worsening the problem. It requires the transformation in the structural framework of the whole system. More than that the people must be aware of the situation and must try to resolve the problems through mediation or conciliation.

4.2. Dangers of delay in Civil Litigation:

The institution of judiciary was created to provide justice to the common citizens but at present the delay in delivering Justice by the courts is creating the negative image of the judiciary in the minds of the citizens. India is infamous for not providing justice on time. In India fast justice in any case is special news as generally litigation is time taking process in India. The most susceptible danger is that it causes denial of justice and creates further problem to the litigants.

The main reasons for delay are pendency of large number of cases and lack of judges in the courts. This delay is increasing the pendency more and more which is causing a burden of cases on the court‘s day by day. At present about 47 million cases are pending in the Indian courts.[51] According to an estimate of a magazine if the judges of India resolve hundred cases per hour without any break, then it will take about 35 years for them to finalize every case. The studies of Law Commission of India blame the deficiency in the infrastructure for this delay.[103] According to it the number of judges must be increased and number of courts must be increased to control this delay.

Other cause for this delay which is not generally discussed is the procedure of the courts and unlimited time easily given by the courts to the parties of the cases.[52] Here the time given easily means that the next date of hearing issued on very low cost of fine on the parties and on just a simple application by the attorney or advocate of the parties to the courts. It can be witnessed a lot of time in the lower courts that the advocate is roaming in the court premises but he is giving the application of his non availability in court room because of his illness and on that application the judge is giving him the next

[51] Bal, M. (2017). Securing property rights in India through distributed ledger technology. *Observer Research Foundation.*

[52] Moog, R. (1992). Delays in the Indian Courts: Why the Judge Don't Take Control. *Just. Sys J.*, *16*, 19.

date of hearing very easily at very low cost of fine. This type of procedure and easement is also the big reason for the delay in the judgments.

We need to specify the time limit for some processes of the courts and on exceeding the time limit without any valid and strong reason the courts must impose a huge amount of fine on the parties. In other countries like UK and Singapore there is time limit for some processes and this limit is effectively imposed. In India also we have some time limit or can say time frames in the civil proceedings under the Code of Civil Procedure but it is not effectively imposed and because of that it doesn‘t seems to resolve this problem of delay in the judiciary.

There are many examples of civil as well as criminal cases those took more than 20-30 years in the final judgement from the Supreme Court and many times even from the lower courts. This type of delay decreases the importance of judiciary and faith of the peoples in the judiciary. We have to find a way to resolve this problem as soon as possible otherwise it may become very dangerous.

Some of the dangers which could be caused by the delay in the judgements and litigation are to be discussed as:

a. Faith of the common citizens loses in judiciary: The delay in the judgement of the courts cause the decrease of faith of the common citizen in them and in the judicial system.[53] It creates a negative image of the courts and pressurizes the common citizens to resolve their issues outside the court on the basis of compromise which causes them loss. Once the faith is lost then it is very hard to regain it and if the faith in judiciary will lose at large level then it will create chaos in the country and corruption and dictatorship in the country. Still the people ultimately believe in courts. Our system must try to retain that trust otherwise days are not far that people will snatch their rights by own force without taking the help of judicial system.

b. Harassment of the witnesses: Many times, due to delay in the proceedings the witnesses lose the faith in the judiciary and because of that they refuse to come in the court on particular date given by the court. Because it has been seen in the courts (mostly in the lower courts) that on the given date the witness came for his or her testimony but due to some reasons the opposite party ask for another date

[53] Quirk, W., & Bridwell, R. R. (1995). *Judicial Dictatorship*. Transaction Publishers.

and the court on some cost or fine issue a new date which causes trouble to the witness and loss of faith in the judiciary. As in the cases witnesses came in the court on their own expenses so whenever they got a new date, they have to spend more expenses and due to which after some time the witnesses gets frustrated and do not to come in the court for the testimony which cause further delay in the case.

c. Wrongdoer gets the chance to avoid litigation: Due to the delay in proceedings or judgement the powerful people or the wrongdoer gets a chance to mold the evidences and to corrupt the evidences by giving bribes and other things to the officials related to the case.[54] Even they pressurize the aggrieved party for the compromise or to drop the case. Sometimes by this pressure the opposite party gets ready to compromise and even drop the case on some terms of the wrongdoer. So the system is very complex and number of times wrongdoer gets the benefit of that.

d. Delayed Justice frustrated the cause: It is said in the language of law that _justice delayed is justice denied'. Many times, during the pendency of the case witnesses dies and even the necessary parties die. After the death of necessary party, the remedy becomes of no use for the aggrieved party. When a case took almost 20 years then the decision most probably of no use for the victim or aggrieved party and the party will feel deceived by the delayed decision. Such situation seems very drastic when a person is not able to get the justice in his lifetime.[55]

e. Memory of the witness and the Judge fades: Due to delay most probable chances are that the memories of the witnesses and the judges may fade about the cases and even many witnesses die, judges retires or transfer during the proceedings of the suit which weaken the strong stand of one party in the suit.[56] When judges transfers or witnesses dies the case becomes like a fresh start and then much delay causes. Because of fade memory judges recalls the same arguments again and again which causes further delay. Thus the limitation of human memory and senses are also another factor which causes problems in the issue and increase further delay.

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[54] Khaitan, N., Seetharam, S., & Chandra shekharan, S. (2017). Inefficiency and judicial delay. *New Insights from the Delhi High Court. Vidhi Centre for Legal Policy*.
[55] Ali, A. (1991). The Incidence of Cost in Civil Litigation. *JL & Soc'y*, *10*, 47.
[56] Dr. Satyanarayana, B. H. *"Pendency of litigation in India"* published by Indian Journals at https://www.indianjournals.com/ijor.aspx?target=ijor:ajdm&volume=12&issue=1sl&article=

f. Mental and physical agony to the party to the suit: The pendency of the suit causes mental harassment to the parties and a lot of expenses occurred during a single simple case. This type of delay mostly harasses the poor parties who spend almost every single penny in a suit which they earned whole life. And of course this delay affects the parties physically as well because the courts are not always in the neighborhood of the party.

4.3. What are the causes of delay in civil litigation?

In India the courts are famous for the pendency of the large number of cases and delay in the judgment of the cases. There are many reasons for this delay like the procedure, a smaller number of courts and others related substantially to these reasons. Everyone who is related to law knows the root cause of this problem but still there are very less effective measures are taken till now to solve this problem. The reason behind this is lack of political will to resolve this issue. In India the focus of politicians instead of making country strong is on making the government by any means and by providing unnecessary advantages to the citizens during the elections.[57]

There are numerous reasons responsible for the resolution of cases in a timely manner. These reasons are getting collected day by day without any kind of way out. Instead of coming out of the problem we are going in the problem. There is always a root cause of every problem and there is always a solution for every problem. The question is how positively we take initiatives to resolve this issue. Resolving the problem is nothing but needs a true intention. Since every person and institution is engaged in their own selfish agendas, so the true objectives are being spoiled somewhere. Though, there are number of causes of delay but some of the important causes are discussed here:

4.4. State Government Related Delays:

4.4.1. Judge-citizen ratio and vacancies of the Judges:

We have a large population which is increasing day by day and the disputes between them are also increasing rapidly. The reason behind this rapid increase in the disputes may be selfishness of the humans or the valueless society or in simple words we can say that our new society is not giving that much value to the relations as like our old society.[58] The number of judges is very less in comparison to the ratio of citizens as per a

[57] Grosman, B. A. (1962). Testing Witness Reliability. *Crim. LQ*, *5*, 318.

[58] Pal, S. (2016). Where can we improve? A cross-country comparison of factors affecting eGovernment success.

A Cross-Country Comparison of Factors Affecting eGovernment Success (November 18, 2016).

judge. The shortage of judges could be termed as the main reason for the delay in justice. There is lot of vacancies of the judges but the fulfillment of these vacancies does not seem to be the priority of the governments. This may be as said earlier, because of inefficiencies or lack of will of the governments and politicians towards the betterment of the country. But at the time of elections or nearby the date of elections we can witness notifications of the fulfillment of the vacancies by the governments to make citizens or candidates happy.

Once former chief justice of India Justice T.S. Thakur in an event said that the problem of pendency of the cases in the courts is since 1987 and from that time nothing has changed or moved. In the year of 1987 the Law Commission in its report stated that we need at least forty thousand judges to come over the problem of the pendency of the cases. Now it is 2022 and from 1987 about 34 years have been passed but still the problem is present and even at much higher level. In its report the Law commission also stated that there are only ten judges to one million peoples whereas there must be fifty judges for ten lakh peoples. Justice T.S. Thakur further stated that mainly four main reasons for delays, these are:

- The vacancies are not being filled by the governments.
- And if vacancies are notified then in the end the appointment get stuck because of some ambiguous causes of the governments.
- Lack of judges would be an obstacle in the smooth road of the judiciary and for common citizens the judiciary is the last hope whenever something happens with them so if judiciary will suffer then the common man would also agonize a lot.
- The judges are being restless and anxious by over load of the cases.

In 2016 there were 32 million cases pending in the courts as per Court record. Ram Jethmalani a senior lawyer of the Supreme Court and great jurist once said that ―the governments are deliberately neglecting the judiciary and because of that the condition of the judiciary has become scary‖. The budget of India is very less towards the judiciary that is about 0.5 percent of total budget.

4.4.2. Inadequate Number of Courts:

Infrastructure deficiency is another cause of judicial delays. We also need new courts for speedy trial and to increase the number of the judges. If we appoint new judges

then the situation is like that, we have not adequate number of courts for the sitting of the

new judges so we need to construct new courts or court rooms as well. We need to create more fast track courts, special courts and other additional courts to come over the problem of the pendency of the cases in the courts. In the case of ***"Imtiyaz Ahmad v. State of U.P"***[59], the Supreme Court stated that we need to establish new additional courts to come over the problem of pendency of the millions of cases in the Indian courts.

a. Frequent adjournments: In India especially in the lower courts we can witness the frequent adjournments given by the courts in the procedure of the cases. Many times, an advocate or attorney gave just a simple application regarding his illness and ask the court to issue a new date and on just that simple application he gets the new date of hearing even when he is present in the court premises. The judges also don't much inquire about the advocate's illness and issue a new date for hearing. According to the Order XVII Rule 1 of the Civil Procedure Code the maximum limit of granting adjournments is three but still the pleaders get more than ten adjournments very easily and at a very low cost or fine. The courts specially the lower courts don't follow the rule of limit on adjournments strictly or can say they don't follow it in anyway. This is also a big reason behind the delay in justice and in consequence of this there is pendency of the cases is increasing.

b. Transfer of the Judges: During the proceedings of a case a judge get transferred which causes further delay in the case as the new judge hear and understand the case from the beginning. The new judge issue more dates to understand the case properly so it causes further delay.

c. Massive number of appeals: Because of the massive number of appeals the courts have less time to hear the fresh cases and they have to spend their time in the appeals. Many times, appeals are so irrelevant and it is clearly visible from the judgement that appeal won't change the judgement but still the pleaders apply for the appeal and wastes the precious time of the court. Whether the court dismisses the appeal or not it wastes the time of the court as to dismiss the appeal the court also have to give a valid reason and to find a valid reason the court have to hear the appeal of the pleader.

d. Non-compliance with the provisions of the Section 89: Section 89 of the Civil Procedure Code provides that if there is any chance of resolving the dispute outside the court then the court may order to settle the dispute with the help of

[59] (2012) 2 SCC 688.

Alternative Dispute Resolution (ADR). ADR includes methods like arbitration, conciliation, mediation, Lok Adalat. The process of ADR was included by an amendment[60] in the Civil Procedure Code to reduce the burdens of the court by settling the disputes outside the court. But judges failed to use the ADR properly and confer the matters in the ADR on right time which causes the pendency of the cases. Even the ADR failed to resolve the matters in its institutions on time because of that the cases again reached to the courts. ADR also became like the courts where pleaders are getting only new dates instead of getting the matter resolved and even when it is resolved then also the decision does not satisfy the parties so they approach the court again which causes further delay and burden on the courts. In short, we can say that the courts are not strictly following the provisions of section 89 and even ADR failed to comply with the rules of section 89 which is causing further delay in the cases.

e. Non-appearance of the parties: The parties to the suit many times does not come on the issued date by the courts of their cases because of that the court have to issue a new date which causes delay in the cases. The courts issue new dates on some cost or fine but this cost is so less and because of that the party does not take this fine very seriously and be continuously negligent towards the case. Many times, the parties do this intentionally when they know that their case is not that much strong and they will lose they try to extend the case and make it hard for the victim to get the justice on time. Witnesses also do not come on the issued date because of that also the court has to issue a new date. But this is always not the fault of the witness or the parties, as they also get fragile because of the long procedure of the courts and lose hope to get justice on time and because of that they started to neglect the proceeding by not coming to the court on the issued date.[61]

f. Non-adherence to Order X: As per the Order X of the Civil Procedure Code this is the duty of the courts to examine the parties before framing of the issues so that it can decide whether the case should move for other proceedings or should be dismissed or ordered ex-parte or not and also the examination helps to frame proper issues. But the courts are not following these rules strictly which is creating irrelevant issues and wasting the time of courts and distressing the proceedings of the case. The Law Commission stated in its report that the courts

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[60] Amendment Act 46 of 1999, s. 7 (w.e.f. 1-7-2002).

[61] Moog, R. (1993). Indian litigiousness and the litigation explosion: challenging the legend. *Asian Survey*,

33(12), 1136-1150.

should go with the reading of the pleadings in advance so they can clear their minds in advance and decide the case and issues properly without wasting the time in hearing the pleadings again and again.

g. Delay in the filing of the written statement: According to the Order VIII of the Civil Procedure Code it is the duty of the defendant to file the written statement within the time limit of thirty days but the pleaders are not following these rules properly and strictly. The pleaders at the time of filing written statement remain absent and wait for the court to order the ex-parte order and when the court issue this order the pleader came and ask for the setting aside the ex-parte order and issue a date for filing the written statement. The courts are bound to give another chance to the parties because of the rules of natural justice and other rules of Civil Procedure Code of setting aside the ex-parte order. So, this procedure is also a reason for the delay in the judgment.

4.5. Increase in litigation:

Another reason for delays in Justice is increased in litigation over the period of time. The process of justice in courts is set up by British. In ancient time most of justice was based on values and by collective efforts. Panchayat system was followed for justice in villages. Value of most of the people was very strong. If anyone tried to breach those values, immediately come under the cameras of society. With the passage of time value went down and society developed on the basis of money and greed. People became individualistic and rights became individualistic. Collective efforts, collective thinking and welfare of all went in vain. On the name of rights, other kind of egoistic society was setup. Though it seems good from outside but what it is doing from inside is making the people valueless.

Next chain is courts after losing the moral values. People fight cases in courts for long time. They don‘t trust themselves. They don‘t trust people. They just trust the outer agency for justice which is very difficult. Outer agency cannot provide you justice in every aspect except in some exceptional cases. In real sense except criminal cases all other cases must be resolved through mediation and conciliation. If it is not possible to resolve the dispute through mediation and conciliation then only, we must approach the outer agency.

CHAPTER 5
CONCLUSION AND SUGGESTIONS

5.1. Conclusion:

Access to Justice is an important right as embarked in the Indian Constitution. Article 21 of the Constitution of India enriches in itself right to life which includes right to speedy trial[62] as an integral and essential component. Article 39A of the Constitution further directs the States to provide for equal justice and free legal aid. Article 8 of The Universal Declaration of Human Rights, 1948 provides for effective remedy which includes speedy trial. The International Covenant on Civil and Political Rights, 1966 also provides for effective remedy under Article 2(3). Article 14 of the International Covenant on Civil and Political Rights (hereinafter as ICCPR) reaffirmed the objects of UDHR and provides that ―Every one shall be entitled to affair and public hearing by a competent, independent and impartial tribunal established by law.‖

Both on national and international front, it is well accepted and claimed that right to justice is meaningless without the facet of speedy and fair trial. The aim and idea behind a Civil Justice System is to guard and justify the civil claims of the party by providing a code of substantive law which consist of effective and efficient machinery and procedure so as to achieve a time bound end result of claims.

The principle of access to justice depends on the following factors:

i. **Speedy Adjudication:** The adjudication of the cases should be necessarily done in the time bound manner. In criminal trials, it is difficult to provide the timelines for investigation and trials but the procedural laws should be strictly adhered to especially where time is specifically mentioned in the codes. In civil hearings recourse to ADR mechanism should be made as much as possible as it helps in settling the disputes by the consent of the parties amicably. In cases where parties do not reach a mutual discourse, disputes should be handled by the courts in an efficient and effective manner keeping the time frame for disposal of cases in mind.

ii. **Affordability:** The notion of justice should be made affordable if we have to provide justice to all irrespective of their paying capacity. The court fees and

[62] Hussainanra Khatoon v State of Bihar AIR 1979 SC 1364.

cost of litigation should be nominal.

iii. **Accessibility:** the access to justice is integral part of judicial system meaning there by that all should have equal access to justice irrespective of age, gender, financial capacity. Means to provide Access to justice should be available from the end of courts by the way of adequate number of judges in proportion to the population, efficiency in the working of the courts.[63]

Even after the acceptance and recognition of concept of access to justice the bitter truth lies in the fact that due to inefficiency on the part of both judicial and legislative system and dilatory tactics on the part of lawyers and litigants the access to justice which is quick, time bound and fair is far-fetched. For the first time in 1924 under the guidance of Justice Rankin Committee was founded to deal with the problem of unnecessary delays in disposing of civil suits and appeals. Again in 1929, another committee under the chairmanship of S.R. Das was constituted to solve the problem of delay in justice but all the efforts of the two committees went in vain as the measures suggested by them did not find place in the system as it was neither discussed not implemented. After these committees, many committees have made recommendations but due to poor implementation no progress was made.

5.2. Lacunae in Legal Provisions:

- Unnecessary Adjournments: Order XVII Rule (1) of Code of Civil Procedure, 1908: It states that the party needs to assign the reason in writing for seeking adjournments. The adjournments will be given only three times but the courts do not seem to follow this rule in the strict sense. It is a weapon in the hands of lawyers and parties to delay the justice delivery system. Though the amendments were made in Civil Procedure Code in the year 1999 and 2002 but in vain as lawyers take adjournments on the ground of engagement in other courts, ill health.
- Non-compliance with the provisions of Section 89**:** This section provides for settling of the dispute by the process of Alternate dispute resolution system instead of following the procedure of the Court. With the intention to reduce the problem of delay the section was added by the way of amendment in CPC.
- Non-appearance of the parties**:** Another reason which leads to delay in civil cases is when the date and time are fixed for a matter and the parties do not turn

[63] Dr Vandana Singh and Dr Jasper Vikas George, Structural Reforms for Overcoming Delays in Justice

Delivery, Cochin Law Review 2017.

up on the given date and time. Further, the delay is also caused because the parties do not appear for cross-examination.

- Non-adherence to Order X**:** The Law Commission in its 77th Report mentioned that it is crucial that the Judge should read the pleadings of the parties in advance and must know the content of the pleadings and case of both the parties and quickly frame issue in the dispute under Order X which provides for the examination of parties by the Court and hence, non-adherence to this rule affects the proceedings.
- Delay in the filing of written statement**:** The defendant has to file his written statement within 30 days from the date of service of summons as provided under Order VIII Rule 1 of CPC[223] but discretion has been provided to condone the delay and allow submission of written statement after the time period of 30 days has been elapsed. This procedural loophole leads to delay in disposing of civil suits. The provision which was designed to fasten the process is being misused.
- Delay in Service of Summons: Summons is a procedure to compel the attendance of defendant. Order V of CPC provides that after the initiation of the suit, summons would be issued to the defendant to appear before the court and submit his pleading. In practice people avoid service of summons which leads to delay in the suits.

5.3. Other Causes of Delay in delivery of Justice:

a. Inadequate Number of Judges: the major factor contributing to the delay is the strength of judges. The number of judges is less than the required strength due to unfilled vacancies. This inadequacy leads to poor quality of judgments.

b. Inefficiency of Judges: The absence of preparation for the day to day cases on the part of Judges is another problem as the lawyers take time in explaining the technicalities of the case which is a time consuming process. Absence of judges from the courts is another reason contributing to the delay.

c. Controlled Case Management: As the civil disputes range from matrimonial disputes to property disputes to commercial laws, the parties are free to decide their own terms and process which causes a potential danger to finality of judgments.

d. Delayed cases: the delay in justice is not because of pendency of case, it is due to cases which are delayed i.e. cases which are in courts for more number of

years than they should have been depending upon the subject matter of the cases. The Law Commission clarified in its 245th Report, pendency refers to all cases that have not been disposed of, regardless of whether they were filed in the last week or last decade. In 2003, the Malimath Committee suggested that cases pending for more than two years should be considered delayed.

e. Cost on Adjournments: Amount of cost due to adjournments is negligible. Cases in which court orders the party seeking adjournments to pay cost, the amount of costs is minimal which helps such parties to defy the process of system.

f. Procedure, Jurisdictional errors and Appeals: the procedure is detailed, time consuming which often leads to delay. A number of applications are admissible at the discretion of the judges as they are free to condone the delay which leads to delay in cases. Parties makes jurisdictional errors at the time of filing applications, suits and petitions time consumed in correcting it is another cause of delay. The time frame to decide the appeals should be made to finalize the judgments.

g. Negligence on the part of lawyers: Sometimes lawyers do not prepare well to appear before the court as they appear without preparing the details of the case in order to either seek adjournments or to delay the matter. Absence of lawyers and parties from the courts, condonation of delay and restoration of applications are reasons for time consuming process of the Courts.

h. The complex procedural as well substantive law is also the reason for delay in litigation. Number of different judgments are there on one point of law which takes time to understand and apply the same on the facts of the case.

i. Voluminous Paper Work: The paper work to be undertaken in each case is voluminous. It consumes both time and resources of the court as well as the litigants.

j. Lack of Trained Mediators: The mediators at mediation centres are not much trained to handle all types of litigations. One of the reasons for non-availability of trained mediators is less incentives.

k. Lack of facilities at mediation centre is also the one of the reasons.

5.4. Suggestions to Resolve the Issue of Delay in Justice:

a. The National mission for Justice Delivery and Legal Reforms 2011 was launched to end the problem of unreasonable delay with two objectives.

b. Reduction in delays by increasing access of people to the Courts.

c. By the way of structural changes and standards for performances for augmenting answerability.

d. Insolvency and Bankruptcy Code2016: The Act was framed to consolidate the amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for expansion of value of assets.

e. Fast track Courts: In its judgment in ***Brij Mohan Lal vs Union of India Others***[64]on 19.04.2012, the Supreme Court has directed the States to take final decision either to bring the Fast Track Courts scheme to an end or to continue the same as a permanent feature in the State. Fast track courts cannot be continued on temporary basis.

f. Use of Technology: By the use of technology, we can save time and resources of the litigants and of the government as well. E Court system makes it convenient to access the life span of cases as well.

g. Case Information System in Indian Judiciary is a big tool to manage the litigations to avoid delays. Major upgradations and tools need to be done in the said system so that general public without any specialization may access to it and get the required information. It otherwise also will help the system to improve the litigation process in India.

h. Virtual hearings should be accepted and promoted in all courts. During Covid-19, the courts changed the mode of hearing from physical to virtual and during that period almost all Advocates adopted the process of virtual hearings. This process saves the time of the court and advocates. The parties also can access to the hearing process. The courts should adopt and enhance the process of virtual hearing to avoid delays in litigation.

i. Alternate Dispute Resolution: the way to time bound justice and without the technicalities of law can be reached through ADR mechanism as they are efficient and effective especially in commercial disputes. Besides Arbitration and mediation, Conciliation and Lok Adalat are also helpful in resolving commercial disputes and other disputes outside the court.

j. Amendments in procedural law: the procedural law needs to be amended by providing specific time frame for filing of applications, notices and petitions. It also needs to be adhered mandatorily.

k. In order to end the backlog of cases it is suggested that the recruitments should

[64] (2012) 6 SCC 502.

be regular and further in order to make qualitative justice it is necessary that the process of recruitment should be same in all the states which is possible by All India Judicial Services Exam.

l. Mandatory submission of written arguments can help to curb the problem of delay as it saves the time of oral arguments done by lawyers at length.

m. Frivolous Applications in Civil Procedure Code: An application under Order 7 Rule 11 i.e. Rejection of Plaint is often used by the lawyers to delay the process of court, the role of judges here is very important in applying their mind before issuing of notice in this regard. Also imposing higher costs on parties undertaking such practices should be made a rule. Other example for the same is Interlocutory Injunctions under order 39 Rule 1 and 2 which is preferred by the parties to delay justice.

5.5. Judicial Timeline:

The Indian Judiciary has made noteworthy achievements in the span of 70 years since its beginning but still the gaps between ideal and reality is persisting. A holistic perspective in this regard is required as it is important and necessary to find the reasons and causes of delay and to provide a mechanism to end this practice of perpetual pendency of cases in the court rooms. The irony lies in the fact that in all other spheres, speed and efficiency has become the hallmark of modern culture. In order to give true meaning to the concept of fair trial it is an indispensable condition that government and Indian judiciary should make collaborative efforts to end this vexing problem of delay in dispensing justice.

In the case of ***Babu v. Raghunathji*** the Apex Court held that legal justice is a part of social justice wherein it should be mandate on the part of justice administration system that it should be inexpensive, efficient and speedy for all the sections of the society people irrespective of their social or economic position or their financial resources.

For the first time Apex Court recognized the Right of Speedy Trial as a fundamental right in ***Hussainara Khatoon Case***[65] The Supreme Court held that speedy trial is an essential ingredient of reasonable, fair and just procedure guaranteed by Article 21 and that it is the constitutional obligation of the state to ensure that the procedure is framed in such a manner that it helps litigants to justice which they are

[65] AIR 1976 SC 1734.

seeking in an effective manner. It is the responsibility of the State as per the constitutional mandate to provide speedy trial to the litigants which cannot be avoided by the plea of financial or administrative inability.

In ***Maneka Gandhi v Union of India***[66] Article 21 of the Constitution of India requires a fair, just and equitable procedure to be followed in criminal cases. The court further observed that the right of an indigent person to be provided with a lawyer at state's expense is an essential ingredient of Article 21, for no procedure can be just and fair which does not make available legal services to an accused person who is too poor to pay for a lawyer.

In ***Salem Advocate Bar Association, Tamil Nadu v. Union of India*** [67] the Supreme Court directed that various procedural norm in the CPC (or example, the provisions on adjournments, the provisions on the government replying to notices in a judicious and proper manner, etc must be followed.

In ***Motilal Saraf v. State of J &K***[68] the Supreme Court elucidated the significance and application of speedy trial and said that the concept of speedy trial is an integral part of Article 21of the Constitution.

In the year 2011 Supreme Court in the case of ***Rameshwari Devi v Niramala Devi***[69] issued directions regarding vexatious litigation and delaying tactics for improving the system for speedy disposal.

In ***Imtiaz Ahmad v State of U.P &Ors***[270] it was observed by the Court that accused take advantage and create hurdles in conducting the trial by resorting to tactics through procedural lacunae.

In another case of ***Gurnaib Singh vs State of Punjab***[71] Supreme Court directed the trial courts that it is the duty of the trial court to monitor the direction of the cases and trial court should not allow party or lawyers to control the process of the court.

In ***Hussain v UOI***[72], The Division Bench observed the timeline should be followed by the Courts and managed by the Courts in disposing of various cases and

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[66] 1978 (1) SCC 248.
[67] (2005) 6 SCC 344.
[68] (2007) 1 SCC (Cri) 180.
[69] (2011) 8 SCC 249.
[70] (2012) 2 SCC 688.
[71] (2013) 3 SCR 563.

[72] 2017 SC 235.

applications. Court reiterated the idea that long delay has the effect of deliberate violation of rule of law and adverse impact on access to justice which is a fundamental right.

5.6. Conclusion:

Structural reforms are necessary on urgent basis for restoring the civil legal system. There is an urgent need of All India Judicial Services for both qualitative and quantitative filling of vacancies of judges as it will ensure that judges in all the states of same level of knowledge and acumen. The need of the hour is revisiting of the laws by the legislature to ensure speedy trial in both procedure and practice so that the general public can repose its trust in the organs of the government. The Supreme Court being the custodian of the Constitution is under the duty to protect the words, intent of the framers of the Constitution. Also it is the ardent responsibility of the Courts to not only to do justice but to do it within a reasonable time frame to ensure that Justice is not delayed and it is not denied.

The following are the some of the suggestions & recommendations to curtail the backlog of cases:

a. Constitution of Fast-Track Courts:

Establishment of Fast Track Courts serves a prominent achievement in expedient trial. The Eleventh Finance Commission prescribed "a plan for constituting 1734 Fast Track Courts (FTCs) in the nation for disposing long pending Sessions and other cases. The FTCs were constituted to speedily dispose the long pending cases in the Sessions Courts and in cases of under-trial prisoners." Justice J S Verma Committee also suggested constitution of fast-track courts for speedily managing rape cases.

b. Encouragement to Lok Adalats:

Lok Adalat is an ADR mechanism for amicable settlement of dispute between the parties. Lok Adalat got its statutory status under the Legal Services Authorities Act, 1987. Consolation to Lok Adalat will positively reduce the burden of cases on the court and quicken the justice delivery system. The methods may also be adopted to publicize the ADR methods in general public so that the public should aware about the methods and procedures for ADR mechanism to resolve the dispute outside the court.

c. Setting up of Gram Nyayalaya:

Nyayalaya are set up under Gram Nyayalaya Act, 2008. They are village courts

which are intended to guarantee speedy disposal of petty issues at rural level. However, at present only few nyayalaya is working. Hence, there is a requirement for setting up of more village courts for expedient and simple access to justice from grass root level.

d. Establishment of Commercial Courts:

The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015 was passed for the constitution of Commercial Courts which shall reduce the burden of other civil courts. Commercial Courts are effective and guarantees expedient disposal of cases involving commercial relations.

e. Role of Legislature:

Role of legislature is very important to ensure speedy and fair justice. The law making body should make effective legislations which curtails the delay in proceedings and fix a proper limitation period for every proceeding. It shall also establish provisions for strict implementation of already prevailing provisions.

f. Filling Vacancies of judges:

There is an earnest need to fill the vacancies of judicial posts since there are more vacancies in the Indian Judiciary. Both judiciary and government should cooperate to overcome this issue.

g. Judicial Education, Training and Personality of Judges:

Law Commission of India in its Seventy Seventh Report deals with the same issue. Consequently, there ought to be appropriate training and judicial education for the judges. A Judge‘s personality is considered to be an essential part in justice delivery system.

h. Need of Time Management:

There must be full utilization of the court working hours. Whatever the time of court has been assigned, it must not be wasted. The judges must be punctual and lawyers must not be asking for adjournments, unless it is absolutely necessary. There must not be misuse of adjournment. Grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.

i. Use of Technology:

There must be the use of technology in clubbing same type of cases. In other word many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and it must be used to dispose other such

cases on a priority basis. It will definitely help in reducing the arrears of cases. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.

j. Time Bound Judgment:

Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of ***Anil Rai v. State of Bihar***[73] must be scrupulously observed, both in civil and criminal cases. Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour.

Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

Criteria of judgment and analysis of cases must be of such a nature that there must not be need of further litigation. Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation. Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of ***Harish Uppal (Ex-Capt.) v. Union of India***[74].

Thus, in resultant there are number of causes, suggestions and recommendations. However, we are still waiting for the concrete solution for the reforms. It requires complete structural change and transformation. For the purpose of reforms, we can take the suggestions and recommendation provided here with the advice of Law commission and analysis in the research.

[73] (2001) 7 SCC 318.

[74] (2003) 2 SCC 45.

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