

## Functioning of Indian Courts and Litigants' Right to Justice: A Critical Reflection on Norms and Practice

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### *Abstract*

*As per the constitutional mandate judiciary is crafted as an independent organ of the government and it is considered as trustee of last hope of the people. However, the efficiency of the working of courts are always questioned. Albeit the institution of judiciary is placed on higher echelon in India yet administrative conduct of the Indian Judiciary is viewed with suspicion and in common man perception it is an institution of elite or richer class. This paper is an attempt to unearth what forces are obstructing, or working as a barrier in achieving the goal set by preamble of the Indian Constitution and preventing implementation of statutory obligations relating to speedy justice and tries to analyze how despite government effort; latent favour to elite became norms? Why in perception of the litigants the norms of courts conduct and prompt action is alleged as tilted in favour of rich? From top to bottom almost every section of the people in India raised concern with regards to functioning of courts. The researcher has tried to analyze the scope and nature of people's aspirations and actual functioning of rule of law in reference to right to speedy justice which is not merely an ideal of the constitution but a tool to render complete justice to all.*

**Keywords:** *Working of Courts, Speedy Trial, Biasness in Indian Judiciary, right of litigants', Rule of law and Speedy Justice, Court Management, Procedural Justice.*

### **I. INTRODUCTION**

The judiciary is the repository of public faith. The disputant approaches the judiciary as a last resort; after every knock of all the doors fail. It is considered as trustee of last hope of the people. Albeit the institution of judiciary is placed on

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higher echelon in India yet the administrative conduct thereof is viewed with suspicion and in common man perception it is an institution of elite or richer class.<sup>2</sup> In India as per the constitution mandate judiciary is crafted as an independent organ of the government but in series of cases we witness that it requires a substantial amount of goodwill in order to make and implement decisions against the political will of the legislature.<sup>3</sup> The dispensation of justice is losing its significance as it is not able to satisfy the will of majority disputant and it is alleged all is not well. A new study on access to justice in India has found that majority of disputant didn't prefer formal judicial system for conflict resolution.<sup>4</sup> Strictly speaking a delayed justice; frustrating the cause thereof and generating apprehensions and suspicion too.<sup>5</sup>

In several cases apex court has observed that every accused is entitled to be heard without unnecessary delay.<sup>6</sup> However, inadequate attention is given to enhancing the quality of administrative functions. Despite the several rights given to the high court and Supreme Court of India and recognition of *suo moto* rights of court; seldom it has been recognized that the rule of law also depends on the quality of administration of justice.<sup>7</sup> So far, no serious effort is made to achieve the goal of effective court management and the studies conducted to examine the back-end administrative functions for efficient performance of the judicial functions are not executed in letter and spirit. Growing voices have been raised that everything is

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<sup>2</sup> Tarique Anwar, "Justice Delayed Again: Former Chief Justice of India Explains Why Cases Like Salman Khan Drag On", FIRSTPOST (May 8, 2015).

Ex CJI V.N. Khare, in an interview about Salman Khan Cases, observed that "The case was delayed just because the government did not want to bring the actor to book.

<sup>3</sup> M. P. Rammohan, et al, *Public Perception of Courts In India: Unmeasured Gap Between The Justice System and Its Beneficiaries*, IIMA W. P. No. 2020, 1-27, (Nov. 2020).

<sup>4</sup> Aarefa Johari, *The Indian Justice System Is Too Slow, Too Complex and Too Costly, Says New Study*, SCROOL.IN (Jan 24, 2018). <https://scroll.in/article/866158/the-indian-justice-system-is-too-slow-too-complex-and-too-costly-says-new-study>.

<sup>5</sup> MS.Anmol Jain, *Right To Speedy Justice In India*, 2(8) LAW MANTRA 1 (2020), (Jan. 19, 2021), <http://journal.lawmantra.co.in/wp-content/uploads/2015/05/26.pdf>, Harish Narasappa, "Justice delayed is justice denied" HINDUSTAN TIMES (Nov. 13, 2019).

<sup>6</sup> See, Mr. Kamal Kumar Arya, "Right to Speedy Trial and Mercy Petitions in India" V(III) (Jan. – Mar., 2016), BHARATI LAW REVIEW 168.

<sup>7</sup> Rameshwer Dayal, "Remedies, Administrative and Judicial, Relating to Administrative Functions of High Courts" 4 (4) (Oct.-Dec., 1962), JOURNAL OF THE INDIAN LAW INSTITUTE 537-551.

not alright and in India all cannot enjoy the rights equally. Charges of biasness were leveled against the functionaries of the courts and judges. Even in few studies it is submitted that perceptions of equal treatment by the courts affect overall confidence of the disputants.<sup>8</sup> Moreover, time to time even the agencies of the government and some stakeholders alleged that there is tacit understanding between bar and bench and in a connivance, both have served only the elite. Furthermore, it is generally alleged that judicial complex, costly and tardy procedure placed others to struggle within the procedural jargons. This is why the poor is developing a detachment for the justice delivery system of India and functionaries thereof.<sup>9</sup>

This paper is an attempt to unearth what forces are obstructing, or working as a barrier in achieving the goal set by preamble of the Indian Constitution and preventing implementation of statutory obligations relating to speedy justice and tries to analyze how despite government effort; latent favour to elite became norms? Do we need any structural and procedural change in reference to policy or legislation to redesign the administration of judiciary and members associated thereto?

Furthermore, the researcher has also tried to analyze the scope and nature of people's aspirations and actual functioning of rule of law in reference to right to speedy justice which is not merely an ideal of the constitution but a tool to render complete justice to all.

## II. WORKING OF COURTS, JUSTICE AND CHARGES OF PRIORITY

The recent political discourse<sup>10</sup> and uproar of people towards the working of Judiciary in India has raised serious question regarding sanctity of courts, their office bearers, its independence and right of litigants with regard to procedure of trial; i.e., it lacks the spirit of rule of law in administration of justice. Whereas procedural justice theory posits that authority should treat citizens in a fair and respectful way, make neutral and unbiased decisions, display trustworthy

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<sup>8</sup> S. C. Benesh & S. E. Howell, *Confidence in the Courts: a Comparison of Users and Non-users*, BEHAVIOURAL SCIENCES AND THE LAW, 204 (2001).

<sup>9</sup> Justice S.B. Sinha, *Judicial Reform in Justice Delivery System*, 4 SCC (JOUR) 35 (2004).

<sup>10</sup> After the Supreme Court's Sabarimala judgment, the Attorney General of India has named Constitutional Morality as a 'Dangerous Weapon'.

motives, and allow the citizen a 'voice' in their interactions.<sup>11</sup> However, in India at every platform the people asked, when the Supreme Court could work till late night to hear the rights of accused involved in terror attack; why common man face; technical and procedural barrier? What is the policy priority in administration of justice to litigants? From top to bottom almost every section of the people in India have raised concern with regards to functioning of courts. In a latest study it was submitted that judicial officers are entrusted with the combined administrative and judicial functions without proper training in management principles and which is the cause for inefficiencies in court administration.<sup>12</sup> Even, the courts were charged for the apathy of judges toward the common man or due to arbitrary exercise of discretion by the administrative wing many a times poor remain either unheard or justice is done after inordinate delay. During first lockdown every day, we heard of migrant labourers walking hundreds of miles, many dying in the process but even the Supreme court of India failed to look out for their interests.<sup>13</sup> It is alleged that the political class and elite always gets edge in hearing and their matters are disposed of with benefits. Even some of the research work identified that the enforcement and administration of justice get compromised when accused have political power.<sup>14</sup> The Indian judiciary so called claim for judicial independence is exposed by post retirement appointment of judges and their judgement at the brink of retirement. Justice Deepak Gupta from the Supreme Court of India opined that the country's laws and legal systems favour the rich and the powerful.<sup>15</sup> In this backdrop the Common litigants are questioning, why, the judiciary in India is very slow in responding to their

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<sup>11</sup> Jonathan Jackson, *Norms, Normativity and the Legitimacy of Justice Institutions: International Perspectives*, LSE LAW, SOCIETY AND ECONOMY WORKING PAPERS (1/2018).

<sup>12</sup> Shruti Naik, "Judges in India's High Courts Waste Precious Time Heading Committees on Furnishings, Cars", THE PRINT (4 Nov., 2019), (23 Feb, 2021) <https://theprint.in/opinion/india-high-court-judges-waste-time-heading-committees-on-furnishings-cars/315258/>.

<sup>13</sup> Ajit Prakash Shah, "Failing to Perform As A Constitutional Court", THE HINDU (May 25, 2020). (23 Feb, 2021), <https://www.thehindu.com/opinion/op-ed/failing-to-perform-as-a-constitutional-court/article31665557.ece>.

<sup>14</sup> Rubén Poblete-Cazenave, "Do Politicians Receive Special Treatment in Courts?" *Ideas for India* (26 August, 2019). <https://www.ideasforindia.in/topics/governance/do-politicians-receive-special-treatment-in-courts1.html>, (Accessed on 25 Feb, 2021).

<sup>15</sup> Scroll Staff, *India's Legal System Favours The Rich and Powerful, Says Retiring Supreme Court Judge*, SCROLL.IN (July 27th 2021).

litigations.<sup>16</sup> Although the Law Commission of India in its 221 Report raises serious concern on mounting of arrears of cases in courts, particularly in High Courts and District Courts.<sup>17</sup> But, hardly any stakeholders of the judicial system have advanced steps or suggestions for rectifying inordinate delay. Perhaps the time has come to review the procedure of working of courts and to determine the role of functionaries in serving the interest of all the stakeholders.

Ex Law Minister of India opined that .....in India the Supreme Court mostly composed of the element from the elite class who lacked sympathy for the have nots. He further suggested that the letters of equality; equal opportunities must be translated in reality and it could satisfy the just aspiration of every disputant in accessing the court if the trial therein have been finished in reasonable duration. He argued that the width and amplitude of these simply worded rights are wide.<sup>18</sup>

There is no dispute that rule of law is integral part of access to justice and it is essential ingredients of the justice delivery system but few researchers observed that it is fashion to talk that in India every organ works within the letters and spirit of rule of law<sup>19</sup>; but people claim justice system is dying. Ideals of the rule of law must go hand in glove; in ensuring that its aura reaches the contours of the entire population of a country.<sup>20</sup> However, the occurrence of long delay in completion of litigation and huge arrears of cases has shaken the confidence of people of

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<sup>16</sup> India was ranked 62<sup>nd</sup> among 113 countries in the World Justice Project's 'Rule of Law' index that was published in January. India was placed 98<sup>th</sup> in the ranking for order and security, 97<sup>th</sup> for civil justice, 75<sup>th</sup> for fundamental rights, and 66<sup>th</sup> for criminal justice. See, Kiruba Munusamy "The Nauseating Nepotism and Caste-Based Discrimination That Exists in Indian Judiciary" THE PRINT (Aug. 1, 2020).

<sup>17</sup> Law Commission 221<sup>st</sup> Report On Need For Speedy Justice, (Aug. 01, 2020), <https://indiankanoon.org/doc/66233467/>.

<sup>18</sup> It can take nearly 20 years if a case goes all the way from the subordinate court to the high court and then the Supreme Court. Twenty years means multiple generations of litigants, enormous cost and frustration - a case taking this long to be resolved is symptomatic of an inefficient and ineffective judicial system; any 'justice' delivered after a span of 20 years would be bereft of its true meaning. See, Harish Narasappa, "Justice delayed is justice denied", HINDUSTAN TIMES (Nov. 13, 2029).

<sup>19</sup> LOKENDRA MALIK (ED.), RULE OF LAW AND HUMAN RIGHTS IN INDIA, 104-114, (Universal law Publishing Co. New Delhi, 2011).

<sup>20</sup> Hon'ble Mr. Justice F.M. Ibrahim Kalifulla, Rule Of Law & Access To Justice, NJA South Zone Regional Judicial Conference on "Role of Courts in upholding Rule of Law" on 31.01.2014 to 02.02.2014. (Aug. 1, 2020) <https://www.latestlaws.com/wp-content/uploads/2015/04/Role-of-Courts-in-upholding-Rule-of-Law.pdf>.

India.<sup>21</sup> There is a serious allegation regarding infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under-trial prisoners in India which is solely responsible for notorious delay in disposal of cases.<sup>22</sup> The mango-men consider that the aspiration of the people of India for justice; embedded in Indian constitution has been forgotten<sup>23</sup> and even the judicial officials and advocates do not consider it as their duty (Table 1). More than 50% delay is directly related to judicial officer and advocates; which is evident from the data of National Judicial data Grid. It is established fact that the rights of citizens – and non-citizens – to access to justice is imperiled on many occasions through various means, may be joint collusion of bar and bench, failure of higher courts to prioritize, disconnect of rich and poor or class supremacy.

#### Reasons for Delay

Types of Delay	Number of Cases
Stayed	718423 (31.06 %)
Unattended	480690 (20.78 %)
Awaiting Record	388460 (16.79 %)
Securing Presence	366594 (15.85 %)
Frequent Applications	274943 (11.89 %)
Execution	83733 (3.62 %)
Bulky Cases	178 (0.01 %)

**Table 1** Source: National Judicial Data Grid

<sup>21</sup> Amir Ullah, “Delays, Costs and Glorious Uncertainty - How Judicial Procedure Hurts the Poor”.

<http://www.delhihighcourt.nic.in/library/articles/mid%20day%20meal/Delays,%20costs%20and%20glorious%20uncertainty%20-%20how%20judicial%20procedure%20hurts%20the%20poor.pdf>, (Accessed on 28 August 2021).

<sup>22</sup> Abir Chattraj, “Justice Delayed-Justice Denied - The Right to Speedy Trial in India” (6 Sep 2011). [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1919493](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1919493), (Accessed on 23 July 2021).

<sup>23</sup> Smaran Shetty and Tanaya Sanyal, *Fraternity and the Constitution: A Promising Beginning in Nandini Sunder v. State of Chattisgarh*, 4 NUJS L.REV. 439 (2011).

### III. RIGHTS OF LITIGANTS IN INDIA

The preamble of the constitution of India in explicit language promises that the people of India enjoy the right of socio, economic and political justice. Which through series of judgments been endorsed by the highest court of India. This has been placed in highest status and considered as the guiding force in working of Indian Constitution<sup>24</sup>. Every individual in principle is entitled for the unbiased trial. However, the big question is who is preventing implantation of justice in just manner. Whether the citizens are getting or enjoying those rights unfettered. In this section we are looking in factual status of working of right to speedy justice, defendants' right to speedy trial, and rule of law existence in justice delivery.

#### A. Right to Speedy Justice

For better understanding of the issues the researcher has taken into consideration the evolutionary process with regard to right to speedy justice. Jurisprudence of speedy trial is based on a simple principle that innocent (suspect) person should not be harassed by legal system to an unreasonable period and victim should get justice as early as legal system can provide it.<sup>25</sup> It has been universally recognized and reiterated by the Supreme Court that timely justice and speedy trial are facets of the right to life under the Constitution. Access to speedy justice and trial is a part of the right to life and personal liberty.<sup>26</sup> Many international conventions have also approved the importance of the right to speedy trial.<sup>27</sup> However, the Courts are clogged with enormous backlogs, and cases take very long time from start to finish. The slow progress of court cases has adverse consequences for Indian democracy and economy<sup>28</sup>

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<sup>24</sup> Liav Orgad, *The Preamble in Constitutional Interpretation*, 8(4) INTERNATIONAL JOURNAL OF CONSTITUTIONAL LAW (I-CON)724 (2010).

<sup>25</sup> *Supra* note 4 at 169.

<sup>26</sup> Dr. Sasikalapushpa & Dr.B. Ramaswamy, "Speedy Justice: Right to be Respected, India Legal Stories That Count" (Oct. 28, 2018), INDIA LEGAL LIVE (5 Aug. 2020), <https://www.indialegalive.com/viewpoint/speedy-justice-a-right-to-be-respected>.

<sup>27</sup> Article 14 of the International Convention on Civil and Political Rights, 1966, and Article 3 of the European Convention on Human Rights, 1950.

<sup>28</sup> Pratik Datta at al., *How to Modernise the Working of Courts and Tribunals in India*, NATIONAL INSTITUTE OF PUBLIC FINANCE AND POLICY WORKING PAPER No. 258, 3 (New Delhi (2019).

Despite several judicial pronouncement and serious observation of the Supreme Court of India; the right to speedy justice is day dreaming. In series of cases the apex court <sup>29</sup> held that the procedure should be 'reasonable, fair and just'. In *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>30</sup>, the court declared that trial should not be arbitrary or oppressive. Even in *M.H. Hoskot v. State of Maharashtra*<sup>31</sup> the court observed that it is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. In *A. R. Antulay v. R.S.Nayaik*<sup>32</sup> and *Sheela Barse v. Union of India*,<sup>33</sup> again the Supreme Court reiterated that violation of rights of speedy trial puts prosecution as violators of fundamental right.

The symptoms are known to everyone who come into contact with judiciary but all efforts about visible reasons such as numbers of judges, infrastructure etc. But the problem is the administration, courts and the judicial procedure is very complex and sluggish, putting the common man at a squad.<sup>34</sup> But it's not enough that the law treats all persons equally, irrespective of the prevalent inequalities but the law must function in such a way that all the people have access to justice in spite of economic disparities.<sup>35</sup> Hon'ble Justice V. N. Khare raised concern over the fairness in the probe process saying, "fair and speedy trial and justice depend on how unbiased the investigation conducted by the police or other agencies has never been taken seriously."<sup>36</sup> The major concern here is why and what is behind the curtain. Do courts in India are so helpless as alleged by him and failing to render their duty as considered by majority mango-man that the Indian courts are actually working as custodian of elite and indirectly protects the interest of richer.

Despite the repeated observation of the apex court again and again that access to justice is part and parcel of right to life guaranteed under Indian Constitution and in all civilized societies around the globe; class discrimination is prevalent almost

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<sup>29</sup> *Maneka Gandhi v. Union of India*, AIR 1978 SC 579.

<sup>30</sup> AIR 1979 SC 1369.

<sup>31</sup> AIR 1978 SC 1548.

<sup>32</sup> AIR 1988 SC 153.

<sup>33</sup> 1986 SCALE (2)230.

<sup>34</sup> Manpreet Kaur, *Constitutional Perspective of speedy Justice in India*, 5(3) INTERNATIONAL JOURNAL OF LAW 115 (May 2019).

<sup>35</sup> *Ibid.*

<sup>36</sup> *Supra note 1.*

in every courts.<sup>37</sup> There is no answer with anyone why political parties' conflict can be heard and disposed of in one day why not for common man. In social perception media trial is more effective means to resort justice.

### **B. Rights of Defendants to Receive a Speedy Trial**

When we got independence, our priority was not towards accused and the framers of the constitution did not include in an explicit language enshrining a defendant's right to a speedy trial. Even we witness that initially the under trial-prisoners were forced to serve for extended periods of confinement. Indeed, in the first two decades after independence, concern for the length of time under trial-detainees spent in prison did not seem to be a focus for the Court.<sup>38</sup> Thousands of defendants had been languishing in jails, awaiting trial; for longer than a formal sentence would have brought. In *P. Ramachandra Rao v. State of Karnataka*<sup>39</sup>, the Supreme Court of India categorically laid down that whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the following factors: (1) length of delay, (2) the justification for the delay, (3) the accused assertion of his Right to Speedy Trial, and (4) prejudice caused to the accused by such delay<sup>40</sup>. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.<sup>41</sup> But in the subsequent judgment the apex Court remarked that it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in earlier cases are not good law. The court further observed that the criminal courts are not

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<sup>37</sup> Anita Kushwaha v. Pushap Sudan, AIR 2016 SC 3506.

<sup>38</sup> Krishnan, Jayanth K. and Kumar, C. Raj, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, 42 GEORGETOWN JOURNAL OF INTERNATIONAL LAW 758 (2011).

<sup>39</sup> AIR 2002 SC 1856.

<sup>40</sup> Kartar Singh v. State of Punjab (1994) 3 S.C.C. 569, para 92.

<sup>41</sup> *Ibid.*

obliged to terminate trial or criminal proceedings merely on account of lapse of time.<sup>42</sup>

In *Machander v. State of Hyderabad*, the Court refused to send the case back to the trial court for a fresh trial because of a delay of five years between the commission of the offence and the final judgment.<sup>43</sup> Albeit we know that the speedy trial of criminal act is one of the basic objectives of the criminal delivery justice system, because long delay can defeat justice.<sup>44</sup>

However, there are certain instances where courts talked about fixing of responsibility. In *State of Maharashtra v. Champalal Punjaji*<sup>45</sup>, the apex court held that In deciding the question whether there has been a denial of the right to a speedy trial, the court is entitled to take into consideration whether the defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defense by reason of the delay.

With the perusal of several judgment, it is evident that defendant right to speedy trial in practice is denied or put in abeyance for he is not in position to approach the highest court either due to want of money or he is not given proper attention while conducting hearing process.

### C. Rule of Law and Right to Speedy Justice

To prevent any short of discrimination against any individual the constitution of India has adopted democracy<sup>46</sup> and rule of law as an ideal of our governance. It is generally conveyed by every testamentary in Indian legal system that the State as a guardian of the fundamental rights of its people is duty bound to ensure speedy trial and avoid any excessive long delay in trial of criminal cases that could result in grave miscarriage of justice.<sup>47</sup> The dispensation of justice has little meaning if

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<sup>42</sup> *Infra* note 33 at 1869.

<sup>43</sup> AIR 1955 SC 792.

<sup>44</sup> *Supra* note 4 at 168.

<sup>45</sup> AIR 1981 SC 1675.

<sup>46</sup> According to L. Diamond out of the four basic elements of democracy third and fourth includes: .... (3) the protection of human rights of all citizens; (4) the rule of law, in which the laws and procedures apply equally to all citizens". See, L. Dimond. "What is Democracy", Lecture at Hilla University for Humanistic Studies. In: Stanford [online]. 21. 1. 2004. (Aug. 1, 2020)

<sup>47</sup> Bharat Singh Saini, *Speedy Justice: A constitutional Norm*, 4(5) INTERNATIONAL JOURNAL OF LAW 57 (Sept. 2018).

it is not delivered in a reasonably short time, strictly speaking a delayed justice, frustrating the cause thereof, is no justice at all.<sup>48</sup> Delay in trials affects the faith in Rule of Law and efficacy of the legal system.<sup>49</sup> The apex Court in CBI case observed that wherever stay is granted, a speaking order must be passed showing that the case was of exceptional nature and delay on account of stay will not prejudice the interest of speedy trial in a corruption case. Once stay is granted, proceedings should not be adjourned and concluded within two-three months.<sup>50</sup> However, in practice many a times we witness that many petty offences criminal are behind the bar because they cannot comply with procedural formality; whereas rich or celebrity are getting bail on priority.

#### IV. STATE RESPONSE WITH REGARD TO PENDENCY OF CASES

In welfare state it is the duty of government to discharge its responsibility in such a manner that citizens get justice in letter and spirit. The mandates have obligated that necessary policy framework is prepared and executed through the judiciary.<sup>51</sup> But all the effort are named as eye wash exercise. Contrary the state claims that the increasing awareness among peoples about their rights is the major cause of increase in litigation. However, apathy of the government organs in improving efficiency of courts and delay in delivery of justice is taking serious turn. In the decade of 2010-2020 people have resorted non judicial method or criminal means to settle their dispute, in some cases on the spot justice mechanism were reported. Although the government of India had referred the matter to Law commission of India but so far satisfactory steps had not been initiated and fruitful progress is not made.

Every year the number of cases is increasing by 10 to 12 per cent<sup>52</sup>. It is a most burning problem before the country especially in the age of globalization. A huge pending case (Table 2) affects the healthy judicial administration in the country and making people helpless. Moreover, it is threat to law abiding people because

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<sup>48</sup> *Supra* note 2.

<sup>49</sup> *Asian Resurfacing of Road Agency v. Central Bureau Of Investigation*, AIR 2018 SC 310, para 28.

<sup>50</sup> *Ibid.* para 30.

<sup>51</sup> The 2017 economic survey of the finance ministry pointed out that the slow resolution of economic and commercial cases was one of the biggest stumbling blocks in reviving the investment cycle in the country.

<sup>52</sup> Chief Justice of India (CJI) K G Balakrishnan, Saturday, April 10, 2010, 22:10 Kottayam.

it is giving impression that the law-abiding people voice shall not be heard and it is heaven for the law avoiding peoples.<sup>53</sup> Even the international investors are not finding that Indian Courts can protect their right. The Judiciary remains a low priority when it comes to state funding.<sup>54</sup> India Justice Report 2019 submits that:

*“On average, no state or UT apart from Delhi spent even 1 per cent of its budget on the judiciary. Nationally, India spends 0.08 per cent. All states combined (excluding the central government) spent 0.54 per cent of their total expenditure on the judiciary in 2015–2016.”*

The Report further states:

*Not a single High Court or state’s subordinate judiciary had reached its complete appointment of sanctioned judicial posts.*

#### **Pendency of Cases: Status**

Particulars	Civil	Criminal	Total
<b>Pending Cases</b>			
0 to 1 Years	2857964(27.53%)	8075859(28.29%)	10933823(28.09%)
1 to 3 Years	3434099(33.08%)	8711119(30.52%)	12145218(31.2%)
3 to 5 Years	1710532(16.48%)	4665725(16.35%)	6376257(16.38%)
5 to 10 Years	1661299(16%)	4480426(15.7%)	6141725(15.78%)
10 to 20 Years	561945(5.41%)	2171673(7.61%)	2733618(7.02%)

<sup>53</sup> Archisman Dinda, “The rich and famous are above the law in India”, GULF NEWS (June 22, 2015). Available at: <https://gulfnews.com/opinion/op-eds/the-rich-and-famous-are-above-the-law-in-india-1.1538904>, (Accessed on 20/08/2021).

<sup>54</sup> Meera Emmanuel, “India Justice Report on the Judiciary: Average case pendency in subordinate courts is 5 years” (08 Nov. 2019). <https://www.barandbench.com/news/india-justice-report-on-the-judiciary-average-case-pendency-in-subordinate-courts-is-5-years>, (11 Nov. 2020).

Particulars	Civil	Criminal	Total
20 to 30 Years	117140(1.26%)	373558(1.26%)	490698(1.26%)
bove 30 Years	37794 (0.36%)	64928(0.23%)	102722(0.26%)
Total	10380773	28543288	38924061

In *State of Maharashtra v. Champalal Punjaji*<sup>55</sup>, the apex Court tried to identify the reason as defense tactics. With the passage of time, witnesses cease to be available and memories cease to be fresh. Vanishing witnesses and fading memories render the onus on the prosecution even more burdensome and make a welter weight task a heavy weight one. The judiciary and state so far had not taken any serious effort to minimize the procedural restraints related with litigation in India. The previous UPA Government through Law Minister Dr. Salman Khurshid<sup>56</sup> opined to adopt some measures to minimize the pending cases. But it will take time and we have to wait for the result. So, we have to evolve other alternative mechanism to minimize the litigation.

## V. THE GROWING CONCERNS IN CIVIL AND CRIMINAL JUSTICE SYSTEM

It is alleged that working of the constitutional courts are biased and anti-poor. Differential approach can be inferred from the recent orders of the Supreme Court. In Cases relating to movement of migrant labourer on the roads during lockdown

<sup>55</sup> AIR 1981 SC 1675.

<sup>56</sup> Replying to a question in Rajya Sabha, law minister Salman Khurshid said government was working towards reducing the pendency. He said government had launched a National Mission aimed at harnessing Information Communication Technology for disposal of cases. Khurshid also said a National Arrears Grid had been set up to manage courts better, adding that pendency could also be reduced by increasing the period for which judges sit, allowing morning and evening shifts in courts, using Gram Nyayalayas and using alternative dispute resolution.

the SC rejects plea seeking relief for migrants and observed that it cannot stop or monitor their movement on road. Even during lockdown, the apex court allows Air India to operate non-scheduled flights with middle seat bookings for 10 days. Rather protecting interest of common man and ensuring implementation of fundamental rights relating to health the Court have shown obvious faith in the stand of the Government.<sup>57</sup> In the recent judgments related to conducting of examination of the final semester students taking time and giving unnecessary time to MHRD and UGC suggest the court has permitted to fabricate facts.<sup>58</sup> Even there are instances of complain against the fellow colleague regarding class and caste discrimination. Justice Karnan complained to the SC/ST Commission that “The judge, sitting cross legged next to me, touched me with his shoes deliberately and then said sorry. Two other judges were watching it smiling”. It is suggesting towards unconscious caste biases does either exist or felt by the judges.<sup>59</sup> A pointer to the relation between caste and the judiciary is a 2006 interview of noted constitutional expert and jurist Fali Nariman during the release of his book *India’s Legal System* where he states, “Former law minister P. Shiv Shankar, a Dalit, told me that as policy, in some states, if two justices have to be sworn in on the same day, the guy from the preferred community is sworn in first, so that the guy from the non-preferred community doesn’t supersede him in becoming chief justice.”<sup>60</sup> Some of the researchers claim that the biasness is unbridled in judiciary of India and There are numerous cases that highlight the extent to which implicit caste biases creep into Indian courts.

In Arushi Talwar Murder Case the Hon’ble Supreme Court Observed, “The learned trial judge has prejudged things in his own fashion, drawn conclusion by embarking on erroneous analogy conjecturing to the brim on apparent facts telling a different story propelled by vitriolic reasoning, .... The trial judge was unmindful

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<sup>57</sup> Alok Prasana Kumar, “India’s Supreme Court Has a Class Bias And It Takes Whatever The Govt Says At Face Value” THE PRINT (27 May, 2020).

<sup>58</sup> Bhadra Sinha, “UGC won’t alter decision on final-year exams, tells SC the move will protect academic future” THE PRINT (30 July, 2020).

<sup>59</sup> Rakesh Shukla, “To Remove Caste Bias from The Judicial System, Judges Need to Self-Correct” THE WIRE (Mar. 23, 2017).

<sup>60</sup> *Ibid.*

of the basic tenets of law....”,<sup>61</sup> The Court has made scathing remark against the CBI Judge. There are series of cases where we witness media trial or the lower judiciary has been guided by biasness whereby many a times accused were put behind the bar and succumbed to other consideration and basic principles of criminal justice system have been ignored. Such miscarriages of justice run the entire gamut of the criminal justice system in India. Be it the police, investigators, advocates, media, even the judiciary — the weak and powerless find the system stacked against them. Filing an FIR is a struggle; the recent Mohammad Harris Nalapad case in Bengaluru being a case in point. Chargesheets are almost never filed within the stipulated 60-day period. Evidence is often tampered with, either deliberately or through callousness.<sup>62</sup>

#### **A. Judges Conduct during Litigation**

The social perception of litigants about the bench are not good and their opinion got endorsement in the statement of Ex Supreme Court Justice Raveendran; when he remarked, “within legal circles, judges are branded as acquitting and convicting kinds, pro labour, pro capitalist, pro employer, anti-landlords, anti-tenant and of late and even pro government and anti-government, depending on the nature of their past verdict”<sup>63</sup> But it appears more worse if we see the allegation of Advocate Manish Kumar Khanna; who in his research paper in legally India alleged that I saw cases like BMW, Manu Sharma, Uphaar, Jayalalitha, Avnish bajaj of DPS MMS case, Abu Salem, etc. and found that the hon'ble courts giving very patient hearing to them at every stage from remand to hearing in SC itself. However, I found that in ordinary cases the attitude was normally adjournment; even when the accused are in jail or it is a bail matter. The judges would not allow to argue properly by saying "come to the point" or "are we sitting in court only for you", even before you had taken a minute. It is alleged by many that it is resulting because of misplaced priorities by the bench and common man aspiration and constitutional morality and complete justice concept

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<sup>61</sup> Choodie Shivaram, “Criminal Justice System In India Skewed Against The Poor; Judiciary Losing Credibility Due To Repeated Legal Oversight” FIRST POST (March 23, 2018).

<sup>62</sup> *Ibid.*

<sup>63</sup> Farheen Hussain, “Judges are Labelled Based on Their Biases: Former Supreme Court Judge” TIMES OF INDIA (Nov. 23, 2019).

has been used on selective cases.<sup>64</sup> However, in *Ritesh Sinha v. State of Uttar Pradesh & Anr*<sup>65</sup>, the court observed, “Until explicit provisions are engrafted in the Code of Criminal Procedure by Parliament, a Judicial Magistrate must be conceded the power to order a person to give a sample of his voice for the purpose of investigation of a crime. Such power has to be conferred on a Magistrate by a process of judicial interpretation and in exercise of jurisdiction vested in this Court under Article 142 of the Constitution of India.”<sup>66</sup> The allegation of the senior advocate or lordship may be motivated by some personal consideration but the charges are of serious nature and directly hitting the respect of Institution and faith of common people, such facts need to be investigated and rectified either by policy change or redesigning the administrative working of the judiciary. We need to adopt steps to convey justice is not merely done but it involves complete justice without any bias.

#### **B. Challenges before the Judiciary**

As far as the delay in trial and disposal of cases is concerned, there are many bottlenecks. When the matter comes to the court, there is no proper scrutiny at any stage and proceedings keep going on. In *Ranjeet Singh v. Ravi Prakash*<sup>67</sup>, the Supreme Court itself observed that it is well known fact that trials of corruption cases are not permitted to proceed further easily and a trial of corruption case takes anything up-to 20 years in completion. We have seen in charges of corruption leveled against the then Governor of Madhya Pradesh Late N. D. Tiwari, and his son in Vyapam case where the approval for cognizance under section 197 of the Cr.P.C. were delayed. Despite hue and cry deliberately in many criminal cases where government officials or politicians are involved; approval is delayed or denied. One major reason for this state of affairs is that the moment charge is framed, every trial lands into High Court and order on charge is invariably assailed by the litigants and the High Court having flooded itself with such revision petitions, would take any number of years in deciding the revision petitions on charge and the trials would remain stayed. Legislature

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<sup>64</sup> Adv. Manish Kumar Khanna, “Judicial Bias and Its True Impact on India” LEGALLY INDIA (Nov. 20, 2013). Prashant Bhushan, “Misplaced Priorities and Class Bias of the Judiciary” 44(14), ECONOMIC AND POLITICAL WEEKLY, 32-37 (Apr. 4 - 10, 2009).

<sup>65</sup> 2019 SCC OnLine SC 956.

<sup>66</sup> *Ibid.* para 25.

<sup>67</sup> AIR 2004 SC 3892.

looking at this state of affairs, enacted provision that interlocutory orders cannot be the subject matter of revision petitions.

Moreover, the ratio of courts per 1000 population is very small in comparison to Developed Country. The ratio of judges is abysmally low at 12–13 per one million persons, compared to 107 in the United States, 75 in Canada and 51 in the United Kingdom.<sup>68</sup> If the number of outstanding cases were assigned to the current number of judges, caseloads would average 1,294 cases per Supreme Court judge, 4,987 per high court judge and 1,916 cases per judge in the lower courts. Consistent failure to fill vacancies compound the problem. In August 2021, there were Eight vacancies in the Supreme Court, 264 out of 829 sanctioned in the high courts.<sup>69</sup> Moreover, in lower courts high level of discretion in various proceedings and paperwork during a trials are creating scope for misuse of discretion resulting entry of corruption at every level from registry to the judicial officers.

### C. Court Craft and Court Conduct

The fact of the matter is that today there is a big question mark on the entire administrative system of the country.<sup>70</sup> Even a layman will laugh if in ad-hoc appointment matter where tenure is six months the next date after admission is beyond maximum duration of appointment. It is not a hidden fact that Indian Courts, their officials are poor in court craft and management. How you manage the scene on the ground while inside a court is what ‘court craft’ is all about. You must always be alert to the surroundings and be able to respond promptly in a manner beneficial to you.<sup>71</sup> Perhaps the most significant aspect of Court Craft and Court Conduct is sound knowledge of law and facts on the file which you are going to deal with instantly.<sup>72</sup> With a fair comprehension and rounded view of the

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<sup>68</sup> Committee on Reforms of the Criminal Justice System (Malimath Committee Report) (Bangalore: Ministry of Home Affairs, March 2003).

<sup>69</sup> <https://doj.gov.in/sites/default/files/Vacancy-Statement-01.08.2021.pdf>.

<sup>70</sup> Justice R. B. Mehrotra, *Court Management*, IJTR JOURNAL Sep. 1995, (Aug. 29, 2021), <http://ijtr.nic.in/articles/art10.pdf>.

<sup>71</sup> Uzair Ahmad Khan, “How relevant is court craft in appearing before the National Company Law Tribunal?” *blog.ipleaders.in* (November 16, 2019), (28 Aug. 2021), <https://blog.ipleaders.in/craft-appearing-national-company-law-tribunal/>.

<sup>72</sup> JUSTICE M.M. Kumar, “Sensitization of Judicial Officers In Dispensation of Justice With A Focus On Court Craft & Court Conduct And Bench & Bar Relationship” *Abstract from the Lecture delivered at Chandigarh Judicial Academy* 1-12 (2010), (Aug. 29, 2021),

relevant law, you would develop the capacity of sifting the ‘substance’ from the ‘frivolous’.<sup>73</sup> However, the factual situation is very grim and it can be inferred from the apex court recent order where the hon’ble bench directed a matter to High Court to pass an order which we can understand. The bench remarked that on perusal of the impugned order, we find it is unintelligible and we could not decipher what has been decided by the court. We accordingly set aside the order and remit the matter to the High Court.<sup>74</sup> Here the delay is not for the pendency or infrastructural scarcity it is linked with inefficiency and non-seriousness. The court room is microcosm of the society and peoples’ lives are affected day-in and day-out immediately and instantly in most fundamental ways by judicial decision-making.<sup>75</sup> The functionaries of justice system are not engaged in management of leisure play their attitudinal luxury may spoil the whole life of a family or individual. Francis Bacon in his Essay on Judicature wrote, “Soloman's throne was supported by lions on both sides: Let them be lions, but lions under the throne, being circumspect, they do not oppose any points of sovereignty”.<sup>76</sup> In P.D. Gupta v. Ram Murti and Others, the Court said that A lawyer owes a duty to be fair not only to his client but also to the court as well as to the opposite party in the conduct of the case. Administration of justice is a stream which has to be kept pure and clean. It has to be kept unpolluted. Administration of justice is not something which concerns the Bench only. It concerns the Bar as well.<sup>77</sup> A just judgment given by the bench, may lead to admission of a deserving student to medical college, whereas an unjust judgment in the same case might change the course of his life and play havoc. Conduct of both bar and bench with effective management of the cases may improve the face of justice system.

## VI. CONCLUSION AND SUGGESTION

On the basis of above discussion it is evident that it is high-time that the judiciary must take utmost care to see that temple of justice do not crack from inside,

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[https://highcourtchd.gov.in/sub\\_pages/left\\_menu/publish/articles/articles\\_pdf/Article%20of%20Justice%20M.M.pdf](https://highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/Article%20of%20Justice%20M.M.pdf).

<sup>73</sup> *Ibid.*

<sup>74</sup> Surekha Nitin Kapse v. The State of Maharashtra, SLP (CrI.) No 8350 of 2019 (Nov. 04, 2019).

<sup>75</sup> *Supra* note 71.

<sup>76</sup> *Supra* note 69.

<sup>77</sup> AIR 1998 SC 283.

because it may lead to catastrophe in the justice delivery system of India; resulting in the failure of public confidence in the system.<sup>78</sup> The justice delivery system is under an obligation to deliver prompt and inexpensive justice to its Consumers, or the persons presented before it.<sup>79</sup> Mandates emanating from the preamble of the Constitution have no significance if the individual residing therein lost faith in institution and the judges working therein. Albeit the statutory obligations created in Criminal Procedure Code, 1973, provide that the court must facilitate the accused with a lawyer to defend him at the cost of the state, in case the accused lacks the required financial means to engage a lawyer for himself but the empirical data in respect of it convey lamenting story. The Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated even when there is enormous delay in deciding cases. It is the need of the time that the direction enumerated in Ramchandra Rao should be implemented in letters and spirit.

Although the intensity of the problem is very serious but efforts made by the parliament in form of enactments of laws, or by the executive in form of enhancement of meager budget for increasing number of courts and judges and other facilities are not sufficient and the issue was not addressed in reference to class difference or attitude of superior or priority for certain segments. Delay is mainly seen as an HR perspective with a recommendation appoint more judges and delay will automatically reduce. But a little attention is paid towards addressing the mindset of judges and culture of courts.

There is an untouched part which may play a very important role to address the issue that how to ensure that bar and bench is imparting decisive responsibility and there are wings of emergency cases courts and date bound trial courts for every litigant. While pronouncing a judgment, no court gives reasons why and how the conclusion of the matter got delayed and who was responsible for it – the police, prosecution or the accused or advocate or judges. If anyone is not honestly and diligently pursuing the case, his or her responsibility should be fixed and court must make observation proposing action against them if any. The apex court hesitation to fix outer limit of trial has worsen the situation of litigants. There should be case movement digital diary mentioning where it got delayed. Fix

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<sup>78</sup> *Supra* note 1.

<sup>79</sup> *Supra* Note 25 at 116.

punitive charges to all who have contributed in delay of trial from their own pocket may be one of the steps but the government should extend legislative sanction, substantive protection to litigants otherwise the concept justice for common man would be dream in India.

It will not be worthwhile to sketch the attempt which has been made by the Parliament and the Supreme Court as well as Law Commission of India<sup>80</sup> in this regard. Though, the Parliament has made some amendments in C.P.C. and Cr.P.C. on the basis of the recommendation of the Law Commission of India. The Concept of evening court is a good concept and it has been implemented in the Delhi but evaluation has to be done. Recently, introduced '*Gramya Nyayalay*' is also a good effort in some of the State in order to find solution to remove these problems<sup>81</sup>. But, Needless to say that these efforts taken by the Parliament and Supreme Court of India are merely lip service and not enough to improve the system up to satisfaction.

There is an urgent need to increase the number of courts, but the action has to be taken by the government to increase to the number of courts along with budget, infrastructure and technical and professional assistance to the judiciary. It needs huge investment in terms of new buildings, Judicial Magistrates and other Court's staffs. No doubt it is hard task for any government but what we are losing makes us to enthuse system with target-based commitment.

Moreover, we also need to acknowledge that there are faults within the judiciary, especially at the lower level. These causes are several and deep-rooted, and require courage of self-criticism and resolve to identify them and eradicate them. The entire process starting from filing to disposal and archiving of cases can be digitalized using available technology.<sup>82</sup> This needs to be done by everyone, the

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<sup>80</sup> Report No. 230, August 2009 for detail see <http://lawcommissionofindia.nic.in/reports/report230.pdf>

<sup>81</sup> As said by Law Minister V. Mooly on November 13th, 2010 that "The setting up of '*Gram Nyayalay*' and introducing mobile courts were significant steps to reduce arrears of legal disputes. The new systems are likely to reduce around 50 percent of the pending cases in subordinate courts,"

<sup>82</sup> Process re-engineering *i.e.*, use of information technology requires to be used for the better management of court's time.

bench, the bar, the government, the lawmakers, the people, and the society as a whole.<sup>83</sup>

Every new incident spur new laws which get jaded in course of time as nobody wants to look back what earlier legislation provided and why did they fail. An attitudinal change is required in the thinking of judges and lawyers with the application of nudging. They must realize that moving the court is not a luxury for anyone. The abhorrent practice of adjournments must be done away with. It must not be granted even in the rarest of circumstances as Indians have ingenious minds that enlarge a needle hole into a tunnel through which even trains can pass. If a lawyer cannot appear due to some unavoidable reason, s/he may submit written arguments and wherever the litigants are able to communicate and present their matter judges should patiently promote them to explain the issues.<sup>84</sup>

At the end the researcher submit that free legal aid has gone some way towards opening access to the courts; but there is still a long way to go to achieve speedy trial for common man and to convert aspirations of the preamble and constitutional morality into reality.

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<sup>83</sup> *Supra* note 2 at 17.

<sup>84</sup> Sudhanshu Ranjan, “Rule of Law v. Lynch Law: Deliver Speedy Justice” *Asian Age* (Dec 16, 2019). <https://www.asianage.com/opinion/oped/151219/rule-of-law-vs-lynch-law-deliver-speedy-justice.html>, (Aug. 19, 2020).