AN OVERVIEW

OF

DELAY IN JUDICIAL SYSTEM

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Introduction
The Indian legal system measures up rather well if assessed by the yardsticks of fairness and independence. Where it fails and by a long shot is in terms of speed and efficiency, attributes that are vital for the health and credibility of any justice delivery system, and ipso facto, to any liberal democratic order. The observations made by the Supreme Court, while disposing of a land dispute case pending for a staggering 50 years, have focused critical attention on the problem of judicial delay. The strong language used by the Division Bench which said the “inordinate delay in the disposal of cases” has eroded faith in the judiciary and left the people “simply disgusted” — is a reflection of the anguish about a problem that is getting worse by the day. It is no secret that a major cause for this delay is understaffing. India has fewer than 15 judges per million people, a figure that compares very poorly with countries such as Canada (about 75 per million) and the United States (104 per million). In 2002, the Supreme Court had directed the Centre that the judge-population ratio be raised to 50 per million in a phased manner. Indefensibly, successive governments have not done enough to address this issue; in the Tenth plan, the judiciary was allocated a mere 0.078 per cent of the total expenditure, a small crumb more than the 0.071 per cent assigned in the Ninth Plan.

Causes Of Judicial Delay
There is of course a cluster of other reasons for the backlog of cases. These include inadequate physical infrastructure, the failure or inability to streamline procedures in the Civil and Criminal Procedure Codes, the tardiness in computerizing courtrooms, and the inadequate effort that has gone into developing alternative dispute resolution mechanisms such as the Lok Adalats, arbitration and mediation. The backlog problem is most acute at the level of the subordinate judiciary. In 2005, there were 2.78 crore cases pending in the lower courts and 33.79 lakh in the high courts and 30,000 in the Supreme Court — an accumulation that is not possible to clear without a huge spike in the rates of disposal. As former Chief Justice of India M.N. Venkatachaliah pointed out recently, the disillusionment with the judicial system has led to a dangerous increase in jan adalats or kangaroo courts in many parts of the country. It is time the county took a serious and comprehensive look at the entire legal system with special attention to tackling the
problem of backlog. Too much time has gone by and too little has been done to sort out a problem that undermines the rights of litigants and accused, damages the credibility of the judiciary, and weakens the very basis of the democratic order.

India is said to possess one of the fairest legal systems in the world. This is not an unreasonable assertion when one assesses the performance of the Courts only in light of judgments handed down. Yet, promptness and efficiency in access to justice are a sine system. A thorough assessment that accounts for access to justice and judicial delay in India would place the judicial system in a much less positive light.

In light of its obligations under international law to “respect, protect and fulfill” the rights of its citizens, the government of India is obliged to undertake all positive measures, both in conduct and result, to remedy existent institutional anomalies that serve, intentionally or otherwise, to violate these rights. If the position taken by the Indian government is that it does not have the resources to create new posts for judges and new courtrooms, the burden lies with the government to prove this; as such acts of omission constitute a complicit violation of the rights of detainees and others attempting to access the justice system.

Any attempt to address the problem of judicial delay must seek solutions within the judiciary’s existing formal structure. Several recent initiatives have sought to invest time and resources into evolving systems of alternate dispute resolution (ADR). However, this runs the risk of deflecting attention from the root causes of the formal system’s inadequacies. The founding principles of the legal system, assuring due process of the law, must remain the focus of efforts to redress in justices.

The predominant cause of judicial delay is understaffing. India has only 10 to 15 judges per million people, who are often burdened with a daily workload that exceeds their capacity by up to 500 percent. This imbalance can be attributed directly to government complacency. Beyond the unwillingness to fund the necessary expansion of judges, the delay in the appointment of judges when vacancies arise is also commonplace, and can
only be attributed to governmental disorganization, as the exact date of judges’ retirement is known well in advance.

Even so, judges are difficult to recruit as remuneration is significantly lower than those of prominent attorneys, and judges at the lower tiers of the judiciary are often under-trained. Thus, judges that may not be adequately well informed fill vacancies and can do little to reduce the backlog of cases. Judicial training for new officers and refresher courses for existing judges would aid in the reduction of arrears and the more efficient handling of cases. The placement of judges may also be tied to several independent variables, such as population or the litigation rate. Certain processes, such as the hearing of civil cases by panels of judges, could also be streamlined.

But without enough courtrooms, the current backlog of cases simply cannot be accommodated. Whenever there are indications that the number of cases goes beyond the capabilities of existing courts, additional courts should be created. The multiplication of fast track courts is a positive beginning, but needs to be stepped up considerably.

Prosecutors are likewise enormously understaffed, often resulting in adjournments as a single prosecutor is representing two separate cases at the same time. Yet, perhaps of most concern is the erosion of the independence of public prosecutors in many states of India. Despite the fact that prosecutors are duty bound not to represent any particular party and “the impartiality of [whose] conduct is as vital as the impartiality of the court itself”, a process is now underway whereby the post of Director of Prosecutions is being filled by police officers of the rank of Director General of Police, granting administrative and disciplinary control over Prosecutors. Aside from expressly violating the independence of prosecutors, this increases the risk of bias, corruption, and legal lack of expertise, and decreases public confidence in the entire legal process. Legal safeguards must be implemented to repeal this erosion of prosecutorial independence.

There are many other aspects that contribute to judicial delays, including lacunae in the criminal procedure code, methods of police investigation, general administrative disorganisation and lack of modern technology. Regarding the latter, for instance, the
judicial system in India requires an immediate computerization of its internal management system. While, at present, the High Courts’ computerised transfer of materials is slow, in the lower courts it is simply non-existent.

In each case, the solutions are the same. Change requires a commitment from the government to investing in employing and better training more judges and prosecutors, to supplying more courtrooms wherever necessary, and to enacting legislation that better regulates the efficiency of the courts. Training and supplies, however, are not enough. The current access to materials that legal practitioners require needs also to be vastly improved. The quality of law libraries at the disposal of courts in India at present is a broadly overlooked hindrance to the efficiency of lawyers and the judiciary alike.

**Inefficiencies in law**

The consistent paucity of resources allocated to the Law and Justice Department takes its toll on the potential and efficiency of the justice system. India suffers from chronic judicial delay, with an extraordinarily long time span for a typical civil litigation, and a backlog of cases of up to an estimated 25 million. For example, in 1997 there were 3.18 million cases pending in India’s High Courts alone, with some civil cases taking more than 20 years to come to court. It is clear that the present system renders the courts incapable of resolving cases within a reasonable time, which means that contractual obligations are functionally almost impossible to enforce, and those remedies that are eventually provided are of little value. Overall, judicial delay and inefficiency render public and private rights and obligations virtually unenforceable and therefore worthless.

Judges are poorly paid, overworked and frequently transferred; it is not uncommon for judges to have a workload that is 500 times that which they are physically capable of achieving. The result is cases being constantly adjourned and postponed. While judges have the authority to change procedures in order to speed them up, they rarely use this authority to effectuate any significant change. More fundamentally, India has a seriously low ratio of judges per head of population, with only 13 judges per
million people, despite decades of government promises to increase this ratio to 50
per million people. Even this figure, if achieved, would be far less than that of the US
which, by comparison, has a ratio eight times this figure, standing at 107 judges per
million.

Court systems continue to spurn the transition to modernity and remain antiquated,
with hand-kept records and inconsistent classification systems making it difficult to
locate documents, and easy to misplace and lose them. Judges give oral summaries of
cases to court reporters as testimony, as there is no mechanized reporting system;
evidence can only be given and collected in court, and no time restrictions are
imposed, further exacerbating delays. In fact, it is common for parties not to appear in
court at all, and much time is misspent calling for appearances. When parties do
appear, extensions and adjournments are frequently asked for and liberally granted.
An analysis of 150 cases in a Delhi court showed that a staggering 68 percent of the
hearings conducted there were ineffective.

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the judiciary, and weakens the very basis of the democratic order.
Judges-Population Ratio & Vacancies of Judges

Presently, for dealing with the pending cases there must be required number of judges present to entertain the matter laid before them. But in Indian judicial system there is number of vacancies existing, which ultimately affects the efficiency of rendering justice.

Former Chief Justice of India, S.P. Bharucha on this account said that "It is only when we have far more trial courts functioning that we shall be able to dispose of more cases than are being filed and thus cut down on arrears." In 2002, the total strength of judges in High Courts was 669 out of which 163 vacancies were not filled, which comes out to be 25% of the total strength. Like wise in Supreme Court out of total strength of 26 there were 2 vacancies. The condition at present is not better than the mentioned record data. It had also suggested by 127th Law Commission Report, 1988 that the judge-population ratio should be increased from 10.5 judges per million population (at that time) to 50 judges per million populations within period of 5 year. It recommended that by the year 2000 the ratio should be increased at least 107 judges per million populations. At present in India, the ratio is 12 or 13 judges per million populations where as 12 years before it was about 41 judges in Australia, 75 in Canada, 51 in U.K. and 107 in United States. Due to this low judge-population ratio, the courts are lacking requisite strength of judges to decide the cases. This judge-population ratio has been used for providing quantity of judges required to deal the cases. The government had neither taken any interest nor any steps to implement the said recommendation. In view of the government, the raising strength of judges must be set on the basis of the pendency of cases and average rate of disposal, not simply on basis of population, which is absurd and without any principle of foresightedness.

Filling the vacant seats of judges is not the sole responsibility of the government but judiciary plays crucial role in the appointment of judges. Supreme Court interpreted Article 124 and 217 of the Constitution of India, by its judgment in Advocates-on-Record Association vs. Union of India and others held that a proposal for the appointment of a Judge in the Supreme Court must be initiated by the Chief Justice of India, and in the
case of a High Court by its Chief Justice and for the transfer of a Judge or the Chief Justice of a High Court to another High Court, the proposal has to be initiated by the CJI. Therefore, the judiciary is also responsible for not performing the duty of proposing the name for appointing judges to the government, which in turn would be sent to the President of India for appointments. Also according to the norms the process of filling up a vacancy should start six months before the actual date of retirement of a Judge. In 2002, there were 170 vacancies in High Courts, out of which only on 64 vacancies the process of filling began. Further, there was also delay in filling up the 1500 vacancies in the sub-ordinate courts. Even today the position is same regarding the process of filling up of judges in place of retired judges.

**Accountability of Judges**

In India, judiciary is a separate and independent system. Legislature and Executive are not allowed by the Constitution to interfere in the functioning of judiciary. The courts on the other hand check the acts of these two bodies. The functioning of judiciary is independent but it doesn't mean that it is not accountable to anyone. In democracy the power lies with the people. The judiciary must concern with this fact during their functioning. Considering the judicial system independent and unaccountable by the courts, generally it gives leisure and comfort to the judges that ultimately lead to delay in deciding the matters. High Courts has the power of control over Subordinate Courts under Article 235 of Constitution of India. Supreme Court has no such power over High Courts. The Chief Justice of High Courts / India has no power to control or make accountable other judges of the court.

**Woolf Report of 1996**, emphasized to make judiciary accountable for their functioning by generating accurate judicial statistics, revised on daily basis. It was observed by the report committee that statistic report pertaining to the Judges functioning and flow of such information ultimately make judges more accountable to the judiciary and also it was suggested that it is more important and useful mean to tackle these arrears than increasing financial and human resources. But these suggestions remain on the paper and have never been put in practice.
The Annual Reports of Ministry of Law, Justice & Company affair only laid data about the judicial arrears in their reports and not about the nature of cases pending. So it is not fruitful to deal with the pendency of cases. There must be some judicial database that includes the details about the specific laws which deals with subject matter, sections, legal nature of disputes, time taken to decide the case, interim relief in operation and number of adjournments etc.

**Provision of Adjournments**

The main problem that resulted into pending cases is the adjournments granted by the court on flimsy grounds. Section 309 of Code of Criminal Procedure and Rule 1,Order XVII of Code of Civil Procedure deals with the adjournments and power of the court to postpone the hearing. These adjournments are granted only when the courts deems it necessary or advisable for reason to be recorded. It also gives discretion to the court to grant adjournment subject to payment of costs. However these conditions are not strictly followed and the bad practice continues not by litigants but by sitting judges also. It thwarted the right to speedy trial of the concerned litigants. By granting regular adjournments the value of the time and importance of the remedy sought for the cause of action also degraded with the time. The justice is called as justice when it in real sense delivers justice to the grieved person at proper time.

**Vacations for the Courts**

The most debating question relating to the causes for pendency of cases is the vacations for courts. It is argued on national level that why the courts should have such long vacations when there is such huge pendency of cases in all the courts waiting for decades for disposal. In most of the countries like France & USA there is no provision for vacations for the courts. The judges in these countries can take leave according to the convenience without affecting smooth functioning of courts. In India only Sub-ordinate Criminal Court runs whole a year but the Supreme Court, High Courts and the other Sub-ordinate Civil Courts are closed during the vacation period.
The system of vacation is a legacy of colonial ruler. In the pre-independence period, the burden was not so great in comparison to the present situation. Also, the English comings from the cold country were finding summer in India unbearable. Therefore the vacation was evolved as an arrangement to enable them to go to England during summer and spend their time comfortably there. That was the time when travel was required to be made by sea, which occupied several weeks. This appears to be the real reason for the introduction of vacations for courts in India.

Vacations for the High Courts are fixed by each High Court according to their own convenience, bearing in mind the order of the President issued under **Section 23(a) of the High Court Judges Conditions of Service Act, which requires each High Court to work for 210 days a year.** The total period of vacation of each High Court varies from 48 to 63 days. However, during vacations some Judges sit on the vacation benches only to transact urgent work. There is a convention, which enables the High Court Judges to take 14 days Casual Leave every year. In addition, there are more than two weeks of public holidays every year. High Court Judges do not sit on Saturdays and Sundays. Though the High Court is expected to work for 210 days, the Judges would be working for a much lesser number of days when they avail of different kinds of leave. Supreme court should work for 185 days a year. In summer, Supreme Court goes for 8 weeks summer vacations. Besides these there are public holidays like Holi, Daseera, Deepavali and New Year. These vacations ultimately affect the functioning of courts. The Arrear Committee suggested that these vacations has been given in order to provide time to the judges for updating their knowledge by reading, attending seminars, conducting research work etc. So the vacations should be reduced and not abolished completely. These recommendations are not yet implemented and the minimum working days of the courts have not been followed.

**Other Relevant Causes**

Lack of utilizing the applications of information technology for the case management.
Same procedural law and proceeding even for the trifling and low cause of action cases.
Sometimes the precious time of the court is wasted to decide the cases which can be decided through other bodies. No consideration given to the expertise and specialization
of judges while assigning them the cases. Normally same judge has been assigned civil as well as criminal cases that resulted into taking more time to understand the facts and circumstance of the cases. This is one of the malpractices practices in most of the high courts. By effective system of case management this problem can be curbed.

**Alternative systems**

Lok adalats may be useful for settling motor accident claims and revenue matters. However, complex litigation must necessarily take place within the formal legal system. The focus of judicial reform must therefore remain on strengthening the formal system, not least because of the distress caused to those seeking recourse in criminal cases and to victims of grave human rights violations.

Traditional informal systems, on the other hand, cannot be relied upon to dispense justice – recently, a women was commanded by her village “panchayat”, to abandon her husband and “return” to her first husband without having had any say in the matter. Part of the problem stems from the lack of clarity regarding traditional systems and their functions – as admitted by the Minister for Panchayati Raj, caste groups often masquerade as panchayats and intervene in social issues. A comprehensive audit of such systems is long overdue, and must precede any major investment of time or resources in ADR.

Instead, a greater focus is required on institutions such as the National Human Rights Commission, the National Commission on Women and the National Commission on Minorities. We already have examples of courts delegating responsibilities to the NHRC with regard to specific cases. Advocacy efforts could focus on expanding such inter-institutional interaction.

“India’s counter-terrorism efforts were hampered by its outdated and overburdened law enforcement and legal systems. The Indian court system was slow, laborious, and prone to corruption; terrorism trials can take years to complete.”
Though the US state department, which has been releasing such country specific reports for the last three years, has not cited any particular case as an example or reason which caused delay, it relied on the figures given by an independent Indian think tank which pointed out that “thousands of civilians killed by terrorism in Jammu and Kashmir from 1988 to 2002 received justice in only 13 conviction through December 2002”

Without identifying the think tank, the report noted that most of the convictions were for illegal border crossing or possession of weapons and explosives. Even as the US observation of India’s court system may appear to be harsh in certain quarters, the trials in 1993 Mumbai serial bomb blasts – the first major terrorist incident outside Jammu and Kashmir – reflected what the state department meant while coming out with comments on “slow” trials in Indian courts.

It is a known fact that the court took nearly 13 years to deliver judgment in the March 1993, blasts case. Though the primary charge sheet was filed in this case nearly eight months after the incident in November 1993, the court could start delivering the judgment only on September 12, 2006.

It is not just Indian judiciary, which has caught US attention. The report has also highlighted shortcomings in policing. It said, “Many of India’s local police forces were poorly staffed, trained and equipped to combat terrorism effectively.”

**Tackle the problem of judicial arrears**

Various proposals to tackle the problem of judicial arrears and delay have been tried such as to ease the work-load of the courts by establishing specialized tribunals; increasing the manpower of judiciary, increasing the number of courts, simplifying the procedural laws and cutting down appeals. However, the problem continues and the society suffers. The public has right to know who is responsible whether it is the judiciary, the executive or the legislature? The judiciary faults the executive for not providing judicial manpower and court in proportion to population. This justification is valid only to a certain extent.
Adjudication is not like essential services like water, health-care which have direct nexus with population. And this argument tends to make the executive and legislature primarily responsible for the arrears which is not correct. Legal community, which includes judges and lawyers, also has a responsibility to tackle this problem after all reason de atre for their existence is justice to the litigant public in civil cases and to society in criminal cases. The Supreme Court has interpreted Articles 124 and 217 of the Constitution in Advocates on Records case decided in 1993 that it will have primacy in appointing judges. The correctness of this judgement is outside the scope of this article. But having taken over this power, it invariably follows a duty on the Supreme Court that there are no vacancies. It knows well in advance when a particular judge will retire and vacancy will arise. Therefore, the recommendations of persons to be appointed as judge should reach the government well in advance. As of today the total strength of judges in High Court is 669 out of which there are 163 vacancies which come to more than 25%. The total strength of judges in Supreme Court is 26, there are two vacancies. I understand that the government has been asking the judiciary to send the names again and again. Why aren’t the names sent. If recommendation to fill the vacancies are not sent in time, and therefore vacancies are not filled and delay occurs in disposing of cases who is responsible? Since the date of occurrence of vacancy is known years before, the practice of submitting the names and appointment should be over well before the vacancy occurs so that each court works full sanctioned strength at all times. However, this is only a part of the problem of delayed justice.

The other method, which is no less important to solve this problem of delay and arrears in we should have performance assessment or audit, of work-load of court as well as individual judges and advocates on the basis of statistical data. This is now possible with computerization. This data should include details such as about the number of cases disposed by each judge, names of judges who heard and lawyers who appeared in the case; adjournments granted with names of advocates and judges, time taken to decide the case, time lag between judgement and the conclusion of hearing, legislation under which cause of action is evoked or is appealed; what was the result and defect pointed out and suggestions made to amend laws by the judiciary. Such a database will provide basis for
assessing the efficiency of judges and the advocates and the impact of laws in generating litigation. It will also facilitate mapping the judicial activity subject-wise, Act-wise as well as judge and lawyer-wise. It will also help legislature to amend laws to plug loopholes and take remedial actions to control litigation.

Such database will also facilitate monitoring progress of pending cases and help Chief Justices to find bottlenecks and take action in management of cases and enables him to assess the quality and performance of the judges and the bar on the basis of facts and figures. Publication of such statistics will increase the judicial efficiency as found in the U.S.A and Britain. The American and the British courts annually publish such reports. This has not only helped in reducing delays but has also made legal system more transparent and thereby more efficient and accountable to the people. It will also enhance the image of the judiciary in the public eye.

Unfortunately, our judiciary is reluctant to part with even simple statistics available with them. For example, pursuant to a Parliamentary question about the time lag between conclusion of hearings and delivery of judgements and number of cases decided by judges in the High Courts, the government asked for information and about the number of judgements delayed over a period of one year. One High Court replied that it would infringe its autonomy to furnish such information. How? When it has direct relation with the delay. There has been instance when some judges took more than two years to deliver judgement. Also there are cases when judges having heard the case retired without delivering judgement. As a result there had to be fresh round of hearing causing unavoidable delay but also expense to litigants. There was a case when one Chief Justice did not deliver a single judgement during his entire tenure. Independence of judiciary does not mean unaccountability. In a democratic system every institution is accountable to people – the ultimate sovereign. Judiciary and lawyers exist for litigants and general public. In the circumstances, there is an urgent need to have a law providing for collection and publication of judicial statistics. This will not only help in better management of courts and pinpoint cause of delays and take effective measures to tackle the problem of arrears. It will also in turn increase the efficiency of courts and lawyers and thereby improve the image of our legal system.
These suggestions will help in speedy justice, which as mentioned earlier, is the command of Constitution under Article 21 – which is the soul of Fundamental Rights and therefore binding on all the arms of the state.

**Alternative dispute resolution (ADR)**

It includes dispute resolution processes and techniques that fall outside of the government judicial process. Despite historic resistance to ADR by both parties and their advocates, ADR has gained widespread acceptance among both the general public and the legal profession in recent years. In fact, some courts now require some parties to resort to ADR of some type, usually mediation, before permitting the parties' cases to be tried. The rising popularity of ADR can be explained by the increasing caseload of traditional courts, the perception that ADR imposes fewer costs than litigation, a preference for confidentiality, and the desire of some parties to have greater control over the selection of the individual or individuals who will decide their dispute.

ADR is generally classified into at least four subtypes: negotiation, mediation, collaborative law, and arbitration. (Sometimes a fifth type, conciliation, is included as well, but for present purposes it can be regarded as a form of mediation. See conciliation for further details.) The salient features of each type are as follows:

- **In negotiation**, participation is voluntary and there is no third party who facilitates the resolution process or imposes a resolution.

- **In mediation**, there is a third party, a mediator, who facilitates the resolution process (and may even suggest a resolution, typically known as a "mediator's proposal"), but does not impose a resolution on the parties. In some countries (for example, the United Kingdom), ADR is synonymous with what is generally referred to as mediation in other countries.

- **In collaborative law** or collaborative divorce, each party has an attorney who facilitates the resolution process within specifically contracted terms. The parties
reach agreement with support of the attorneys (who are trained in the process) and mutually-agreed experts. No one imposes a resolution on the parties.

- In **arbitration**, participation is typically voluntary, and there is a third party who, as a private judge, imposes a resolution. Arbitrations often occur because parties to contracts agree that any future dispute concerning the agreement will be resolved by arbitration. This is known as a 'Scott Avery Clause'. In recent years, the enforceability of arbitration clauses, particularly in the context of consumer agreements (e.g., credit card agreements), has drawn scrutiny from courts. Although parties may appeal arbitration outcomes to courts, such appeals face an exacting standard of review.

"Alternative" dispute resolution is usually considered to be alternative to litigation. It also can be used as a colloquialism for allowing a dispute to drop or as an alternative to violence.

ADR can increasingly be conducted online or by using technology. This branch of dispute resolution is known as online dispute resolution (ODR). It should be noted, however, that ODR services can be provided by government entities, and as such may form part of the litigation process. Moreover, they can be provided on a global scale, where no effective domestic remedies are available to disputing parties, as in the case of the UDRP and domain name disputes. In this respect, ODR might not satisfy the "alternative" element of ADR.

**Lok Adalat for speedy justice**

Though the Lok Adalat lends itself to easy settlement of money claims there is scope for settlement of other disputes as well. Partition suits, damages and matrimonial cases can be easily settled before Lok Adalat as the scope for compromise through an approach of give and take is high in these cases.

In Recent times the concept of Lok Adalat has gained popularity. Prison Lok Adalat, Provident Fund Lok Adalat, Labour Law Adalat, etc., are organised to settle disputes, and
naturally many may be curious to know what is Lok Adalat. Lok Adalat means people's court, in contrast to the regular law courts established by the government. Despite the fact that the judicial system in India is well organised with high level of integrity, the law courts are confronted with four main problems: (1) the number of courts and judges in all grades are alarmingly inadequate; (2) increase in flow of cases in recent years due to multifarious Acts enacted by the Central and State Governments; (3) the high Cost involved in prosecuting or defending a case in a court of law, due to heavy court fee, lawyer's fee and incidental charges and (4) delay in disposal of cases resulting in huge pendency in all the courts.

The poor find it difficult to prosecute or defend a case due to high costs involved. Eminent judges of the Supreme Court and High Courts have many a time emphasised the need for free legal aid to the poor. The Central Government, taking note of the need for legal aid for the poor and the needy, had introduced Article 39 (A) in the Constitution in February 1977. Thus in the Directive Principles of the State Policy, it is now enshrined that the Central and State Governments should ensure that the operation of the legal system promote justice on the basis of equal opportunity and shall in particular provide free legal aid for the poor and ensure that justice is not denied to them for economic reasons or other disabilities.

Arbitration

The essence of arbitration is the settlement of disputes by a tribunal chosen by the parties themselves, rather than by the Courts constituted by the State. The popularity of arbitration as a mode of settling disputes is due to the fact that "the arbitration is regarded as speedier, more informal and cheaper than conventional judicial procedure and provides a forum more convenient to the parties who can choose the time and place for conducting arbitration and the procedure. Further, where the dispute concerns a technical matter, the parties can select an arbitrator who possesses appropriate special qualifications or skills in the trade"
Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person, but without having recourse to a court of law. When two persons agree to have a dispute settled through arbitration, what they really mean is that the actual resolution of the dispute will rest with a third person called the arbitrator. The essence of arbitration, therefore, is that it is the arbitrator who decides the case and not the ordinary civil courts established by the state. The law of arbitration, is based upon the principle of referring the disputes to a domestic tribunal substituted in the place of a regular Court. Thus arbitration can be defined as a reference to the decision of one or more persons called arbitrators of a particular matter in difference or dispute between the parties. It can be defined as the determination of a matter in dispute by the award of one or more persons called arbitrators.

**Major kinds of Arbitration**

(1) **Ad-hoc Arbitration**: When a dispute or difference arises between the parties in course of commercial transaction and the same could not be settled friendly by negotiation in form conciliation or mediation, in such case ad-hoc arbitration may be sought by the conflicting parties. This arbitration is agreed to get justice for the balance of the un-settled part of the dispute only.

(2) **Institutional Arbitration**: This kind of arbitration there is prior agreement between the parties that in case of future differences or disputes arising between the parties during their commercial transactions, such differences or disputes will be settled by arbitration as per clause provide in the agreement.

(3) **Statutory Arbitration**: It is mandatory arbitration, which is imposed on the parties by operation of law. In such a case the parties have no option as such but to abide by the law of land. It is apparent that statutory arbitration differs from the above 2 types of arbitration because (i) The consent of parties is not necessary; (ii) It is compulsory Arbitration; (iii) It is binding on the Parties as the law of land; For Example: Section 31 of the North Eastern Hill University Act, 1973, Section 24,31 and 32 of the Defence of
India Act, 1971 and Section 43(c) of The Indian Trusts Act, 1882 are the statutory provision, which deal with statutory arbitration.

(4) **Domestic or International Arbitration**: Arbitration, which occurs in India and has all the parties within India, is termed as Domestic Arbitration. An Arbitration in which any party belongs to other than India and the dispute is to be settled in India is termed as International Arbitration.

(5) **Foreign Arbitration**: When arbitration proceedings are conducted in a place outside India and the Award is required to be enforced in India, it is termed as Foreign Arbitration.

**Recommendation made by Malimath Committee**

This committee was formed by the order of Government of India, Ministry of Home Affairs by its order dated 24 November 2000. The main aim of this committee is to make recommendation for reformation on Criminal justice system, simplifying judicial procedures, practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive.

**On Vacancy of judges**

It recommended that to increase the present 10.5 or 13 judges per million populations to 50 judges per million population within 5 year period as decided by the Supreme Court in All India Judges Association and others Vs. Union of India. Also, it suggested that it is necessary for each State to make an estimate of the number of Judges required to be appointed having regard to pendency and inflow of fresh cases and nature of litigation. It also suggested for constituting a National Judicial Commission, being considered at the national level to deal with appointment of the Judges to the High Courts and the Supreme Court and to deal with the complaints of misconduct against them. It stresses on the quality with the quantity of judges.

**Improving the Quality of Justice: Specialization, Training and Qualification**

The Committee suggested that the cases must be assigned according to the specialized area of the judges. Assigning cases without considering specialization results into delay
in deciding the matters. Also some specialized tribunal must be established to deal some matter pertaining to tax, services, and labour etc. separately. It suggested that the specialization provide consistency, certainty, speedy and quality judgments.

It also suggested that the newly appointed judges and the judges promoted from subordinate courts to the higher courts should be given intensive training for reasonable period to improve their skills in hearing cases, taking decisions, writing judgments and in court management. The inadequate competence of the judges resulted into delay in justice should be removed through proper training.

It also recommended that special attention should be paid in the matter of prescribing qualifications for recruitment of Judges at all levels and to improve the methodology for selecting the most competent persons with proven integrity, character, having regard to the nature of functions which a Judge is required to discharge. No other consideration other than merit and character should be taken into consideration in choosing the Judge for the Courts.

Accountability
The Committee suggested that judicial credibility is enhanced when it is transparent and accountable. The conduct of judges is also responsible for delay in justice. Due to no power conferred on the Chief justice to control the judges activities, judges recklessly perform their duties. The committee suggested that it is necessary to regulate the functioning of the judges with respect to their duties by conferring power to the Chief Justice with this respect and also by making judges accountable for their conduct by establishing National Judicial Commission. The Chief Justice should be conferred with the following powers to look into the grievance and take effective measures:

(i) Advising the Judge suitably
(ii) Disabling the Judge from hearing particular class of cases or cases in which a particular lawyer appears.
(iii) Withdraw the judicial work from the Judge for a specified period.
(iv) Censure the Judge.
(v) Advise the Judge to seek transfer
(vi) Advise the Judge to seek voluntary retirement

Committee also recommended that the provision of impeachment by amending Article 124 of Constitution of India to make it less difficult. The Committee while considering the situation of USA tried to implement it in Indian scenario. There were similar problems in USA where the Judge can be removed only through impeachment process, which is not easy to enforce. Accordingly, Judicial Councils Reform and Judicial Conduct and Disability Act 1980 was enacted. Under the Act, there is a judicial council for each circuit and a National Judicial Conference at the Apex. They have been given power to censure a Judge, request him to seek retirement or direct that no cases be assigned to the Judge for a limited period. The Committee is in favour of conferring similar power on the Chief Justices of the High Courts.

The Committee considered that some Judges do not deliver Judgments for years. If there is delay the Judge may forget important aspects thereby contributing to failure of justice. There are also complaints that the Judgments are not promptly signed after they are typed and read causing great hardship to the parties. To correct these aberrations the High Courts should issue a circular to enter immediately below the cause title of the judgment/order, the following:
(i) The date when the arguments concluded;
(ii) The date when the judgment was reserved;
(iii) The date when the judgment was pronounced;
At the bottom of the judgment/order, the stenographer should enter the date on which he received the dictation, the date when he completed the typing and placed before the Judge and the date when the Judge signed it.

**Adjournments**
The Committee considered adjournments as a curse of the courts and suggested that the adjournments should not be used as a tool for delaying the justice by the courts. Today the adjournments are granted on the ground, which clearly defeats the provisions of law and purpose of the law. To cope up with this situation it was suggested by the Committee
that to regulate the discretion the High Courts must lay down the exceptional circumstances when adjournments may be granted. Section 309 of the Code of Criminal Procedure should be amended to make it obligatory towards imposition of costs against the party who seeks and obtains adjournment. The quantum of costs should include the expenses incurred by the opposite party as well as the Court, the expenses of the witnesses that have come for giving evidence and not merely the cost of Rs. 200, 500 or 1000/-.

Vacations for Courts
The Committee on the question, whether the Courts should enjoys the vacations inspite of huge pending cases yet to decide? agreed on the recommendations made by the Arrear Committee that there should be reduction by 21 days in the vacations for the courts. These recommendations are yet to be implemented. The Malimath Committee agreed on this suggestion. The recommendations made are:
(i) The working days of the Supreme Court be raised to 206 days.
(ii) The working days of the High Courts be raised to 231 days.
(iii) The Supreme Court and the High Courts shall reduce their vacations by 21 days which would increase in their working days.

Other Recommendations:
Arrears Eradication Scheme: Govt. of India, Ministry of Law and Justice has created a fast track courts which is limited only to the Session Court Cases and also having practical problems which restrict it to work in all states. To overcome this problem the Committee is in favour of working out an Arrears Eradication Scheme for the purpose of tackling all the cases that are pending for more than 2 years on the appointed day. The retired judge of high court, known for his efficiency, should preside over this scheme.

Burden of Proof: In India, Adversarial System is followed so the standard of proof laid down by our courts following the English precedents is beyond reasonable doubt in criminal cases. The Committee suggested that it is difficult to prove for the prosecution that the accused person is guilty beyond reasonable doubt. In several other countries Inquisitorial System is followed where the standard of proof preponderance of
probabilities is on the accused. The committee suggested that now the time has come to change the Adversarial System into Inquisitorial System. It also recommended that the burden of proof should be of degree which lies in-between the beyond reasonable doubt and preponderance of probabilities.

**Conclusion**

The government for making reforms in the judicial system should follow the above-mentioned recommendations and suggestions given by various committees and boards. Besides these, there are certain other facets that should also be considered:

Compulsory Pre-trial Conciliation: For Civil matters; Section 89 of CPC deals with the alternative disputes resolution for settlement. But it is not fruitful until some circumstances are laid down which guides that the particular matter must be first go for settlement outside the court. It is necessary to draft the rules or guidelines by Central government, which clearly lays down the circumstances.

Judgments should not be allowed to be kept reserved by the judges at various levels for more then two weeks after completion of argument. Rule 1 Order XX of Code Of Civil Procedure deals with the same but not strictly adhered by the court. The provisions should be made which makes judges statutorily liable for delay in pronouncement of Judgments. A provision must also be introduced in the Code of Conduct for judges that if a judge hears the case, he should deliver the judgment. The judge who hears the arguments, examined the evidence in a particular case requires to deliver his decision unless otherwise the case falls in specific exceptions such as death of the judge or retirement. If it is not done then the other judge take time to understand the facts and situations of the case that cause undue delay.

Records of Performance Assessment or Audits of workload of judges and advocates on individual basis should be maintained on the basis of statistical data. It should mention the number of cases disposed by each judge, number of adjournments granted by the judges, etc.. Also publication of such statistics should be made as done in USA & Britain.
Second Appeal for the matters should not be granted leniently and the courts should grant it only on certain conditions, which should be laid down by the High Courts.

Social justice will be possible only if the entire concept of egalitarian politico-social order is followed, where no one is exploited, where every one is liberated and where every one is equal and free from Hunger and poverty. The proverb ‘Justice Delayed is Justice Denied’ is proved as it is denied to the poorest of the poor. Providing basic necessities to them will amount to Justice because the definition of justice varies from individuals to individuals on the basis of its economic conditions. According to B.P.Singh J the situation today is so grim that if a poor is able to reach to the stage of a high court, it should be considered as an achievement. At this juncture the author is of the opinion that judiciary obviously owes an obligation to deliver quick and inexpensive justice irrespective of the complicated procedures but it cannot be hurried to be buried. Cases should be decided for imparting justice not for the sake of its disposal. Secondly, Arbitration procedure must be utilized as a better option for quick disposal of cases. Finally, to conclude with the words of Lord Hewet as it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

Thank You