

A STUDY OF TRANSITIONAL DEVELOPMENT IN DELAY IN DELIVERY OF JUSTICE, WHICH RESULTS INTO DECLINING FAITH IN JUDICIARY: REASONS AND FUTURE

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Bihar is a state attempting to deal with the hurdles of establishing the framework and processes of democratic rule. This is a gargantuan and daunting undertaking in the underdeveloped and struggling state of India. The focal point of this research is “access to justice for the poor people of Bihar”. “Access to justice” in this case means access to both the social system of justice and the state’s justice system. This study examines the realities of poor people who are in need of proper solutions to their problems which need to be dealt with by institutes outside their immediate family. “Access to justice” does not merely mean access to the institutions, but it also means access to fair laws and procedures in addition to affordable, implementable and appropriate remedies in terms of values that are in conformity to constitutional values and directives. Other issues affecting access are social phenomenon, lack of education and legal knowledge among the people of Bihar. Through case studies, it can be concluded that poverty and food insecurity creates an environment ripe for social conflict and crime. Unequal distribution of land, therefore becomes a major topic for competition and social tension, which in turn has a great impact on the social framework within the rural villages and settlements as well as on the managing ability of the formal justice system. It is therefore seen that there is an ardent need for the justice to change the on the ground realities of people otherwise they will create extra-state institutions and remedies for their immediate needs. We hope that the rich information gathered in this research piece and recommendations will also be of satisfactory relevance in deciding how social and state institutions could work in harmony in bringing justice to a society which is struggling to meet its own urgent needs.

Introduction

Justice is the first virtue of social institutions, as truth is of systems and of thought.¹ It is the constant and perpetual disposition to render every man his due. Justice is the edifice of any civilization or any unit of civilization whether it is a family, a clan, a locality, a village, a town, a city, or a nation. Each individual possesses an inviolability founded on justice that even the welfare of society as a whole cannot override except for his own implied or express acquiesce. For this reason, justice denies that the loss of freedom for some is made right by a greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore, in a just society, the liberties of equal citizenship are taken as settled. The rights secured by justice are not subject to political bargaining or to the calculus of social interests. The same is true for any state or province within the boundaries of the Indian state. India is a democratic state, quasi-federal in structure, held together by a written constitution functioning as a supreme set of governing norms to secure the life, liberty, and property of any individual in the state of India.

Life, liberty, and property of the person are a non-compromising issue except in the situation of the safety and security of the state itself. If there exists an unreasonable disturbance to any of the elements of the said trinity of life, liberty, or property of a given individual either by another individual or the state itself, the equity of fraternal existence is disturbed, leading injury to justice. Hence, a result of peaceful restoration is sought by the victim against the violator by way of restoration of his rights or through other resolution of the dispute. This is done through the process of adjudication through the courts. Often times however, the adjudication process is long and extended, defeating the very purpose of justice. This elongation on delivery of justice can be summed up in following proverb, "Justice delayed is justice denied". The acceptance of the same as an obiter² in many of its judgments by the apex court of India provides further empiricism. Further evolution of concepts like arbitration, dispute resolution³, and plea bargaining⁴ are standing evidences that delay in justice is not a theoretical claim;

1 John Rawls, *Theory of Justice*, Harvard University Press, (1971) p.3.

2 Words of an opinion given by the judges or the judicial bench in support of the decision of the case perused.

3 An additional dispute redressal mechanism. Which uses similar processes and techniques as that of a court by an independent non-judicial forum. Forum acts as a non-prejudiced expert means for disagreeing parties to come to an agreement short of litigation.

4 The legal process, which after approbation by the Court system, whereby a criminal defendant and prosecutor reach a mutually satisfactory disposition of a criminal case, subject to court approval.

rather it is an existing truth.

In totality, as far as justice is concerned, many different kinds of things are said to be just and unjust. These are not only laws, institutions, and social systems, but also particular actions of many kinds, including decisions, judgments, and imputations. The attitudes and dispositions of persons, and persons themselves are also considered just and unjust. Oftentimes, it is the inadvertent failure of the state which results in the injustice of trial delays. There is a critical reason to emphasize these ideas. It is because it can be stated that individuals collectively comprise society or social complexes and are claimed to be unit of society. Hence, if a unit is not served correctly, the rest of the complex also remains unserved.

The doctrine of equality is a foundational stone of social justice. This puts forth that at least adequate, if not ample, opportunities are laid open to all. The principle of equality does not consider a person's intellectual nature but rather is a prescription or policy of treating people rightly and correctly. This treatment in the context of adjudication and in the final disposal of trials has been uniformly applied but superficially and not substantively. It is said because end outcome of the courts after such elongated trials does not place the victim individual in original position. Equality must serve restoratively, which unfortunately has been missing in current legal system where conditions have worsened instead of improved. This essay strives to dissect this claim through a periodical study of the approach of state polity and judiciary along with empirical inputs from a study done in the smaller regions of the state of Bihar, which is a large and prominent state inside India.

The prime objective of this work is to study and analyze firstly "how justice delayed is justice denied?" Second, it will trace the historical growth of the problem and find whether overburdening of the judiciary erodes the trust of people in the judicial system. Thirdly, on the basis of above question, two objectives will include the impact of delay in justice on society and on the solutions to a troubled judicial system in India. The essay will also aim to provide a comparative research into other research questions of similar focus.

Manuscripts of Speedy Justice: A Short Outline

In recognition of general perceived notions, many legal scholars have observed that speed has been expected in the carrying out of justice since the early days of law. It has been part of the adversarial system of justice, as inferred from the Magna Carta of 1215, as well as the works of Sir Edward Coke.⁵ Its presence mesmerized the whole English legal community because of its originality. There is nothing of the sort in the Indian criminal justice system.

India received its independence from the English in 1947. Thereafter the Indian Constitution came into existence in 1950 which provided for an impartial, powerful, and effective judiciary. However, the creators did not explicitly mention any concern regarding the right to a speedy trial.⁶ But as per scheme of law it was implied that speedy justice is an inclusive function of the court.⁷ Until recently, the general practice has been that the under-prisoners are forced to serve for an extended periods of confinement despite being noted early. In the case of *Lachmandas Kewalram Ahuja v. Bombay*, The Hon. Supreme Court took notice of the situation in the very first decade of independence and opined that defendants convicted as per the criminal justice system prior to independence should be required to have conformed as per new constitutional rights enshrined in citizens.⁸ However, to ensure the appearance of the accused, the Court then at that time further held that the “accused will be kept in the judicial custody as under-prisoners” thus diluting its own direction.

In reality, during the first two decades of post-independence era, towards the unreasonable lengthy detention of under trial prisoners there was no attention of the courts. In several cases, the Courts gave a very low concern to the matter of long unreasonable and uncalled detentions and in judgment over the matter Apex Court said that long detentions of under trials were justified, as far as regular hearing was a necessity.⁹ In this regard further an unpleasant incident took place whence, then Prime Minister of India Ms. Indira Nehru Gandhi, declared national emergency. Here it was visible that the Court followed the wording of Prime Minister and erringly ignored the constitutional demand of the detained political rivals of Indira Gandhi for

5 Patrick Ellard, “Learning from Katrina: Emphasizing the Right to a speedy trial to protect constitutional guarantees in disaster”, 44 AM, Crim. L. Rev. 1207, 1209-1210 (2007).

6 Transcript of the Constitution Assembly.

7 This is emphasized because Indian Legislature provides codified procedural law for criminal as well as civil litigation, so that litigation proceeds without hassles and ends in time.

8 SCR (1952) 710.

9 Kanta Prashad v. Delhi administration, (1958) S.C.R 1218.

the speedy trial.¹⁰ The national political legal system gained its legitimacy after the uplifting of emergency followed by the electoral defeat of Indira Gandhi.¹¹

Prolonged debate on the issue of speedy justice came to surface once again, but this time at the national level in the matter of *Hussainara Khatoon v. Home Ministry* 1979 SCR (3) 532, in this judgment it was significantly highlighted by Justice P.N Bhagwati, who is also considered as the father of civil liberties in Indian Judiciary¹². He set the precedent that the accused has a fundamental right to a speedy trial under Article 21 of the Constitution of India.¹³ Justice Bhagwati's judgment declared an immense change towards the treatment of the prisoners by the state. In this particular decision, emphasis was upon the better access to bail, betterment of standards of living in prison, and reduction of the duration in arrest to trial.¹⁴ The philosophy and discourse of the said judgment came from a judgment delivered earlier in *Maneka Gandhi v. Union of India*, (1978) 2 SCR 621.¹⁵ Justice P.N Bhagwati in this case, held that substantive due process must be officially considered as basic feature of the liberty, which comes under the right to life of a citizen under the terms of Article 21.¹⁶

After judgment was given in the case of *Hussainara Khatoon*, a similar spirit was reflected in many cases. For instance, the Supreme Court prohibited the handcuffing of persons detained in prison for trial unless there

10 Upendra Baxi, "The Indian Supreme Court and Politics", Eastern Book Co, 113-117, 1980.

11 See: supra note 5.

12 The case relates to the rights of the under trial prisoners. The case disclosed a shocking state of affairs in administration of justice in the State of Bihar. An alarmingly large number of men and women, children including, were behind prison bars for years awaiting trial in courts of law. The offences with which some of them were charged were trivial, which even if proved, would not warrant punishment for more than a few months, perhaps a year or two, and yet they remained in jail, deprived of their freedom, for periods ranging from three to ten years without even as much as their trial having commenced. The Court ordered immediate release of these under trials many of whom were kept in jail without trial or even without a charge. The Supreme Court of India held that the state cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the state has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to improving speedy trial. But yet still reality is grim.

13 Prof. Upendra Baxi explored in detail and analyzed the views of this in his book published by Oxford University Press. Prof. Baxi is renowned Legal Jurist presently Prof. of Law in Warwick University.

14 Bail is a release order of the court in the nature of indemnity bond awarded to the accused during pendency of trial. Kindly see chapter 33 of Code of Criminal Procedure, 1973.

15 Petitioners' passport had been impounded by the Central Government u/s 10(3)(c) of the Passport Act, 1967 without giving any reasonable notice. Here, the Supreme Court of India widened the scope of 'personal liberty' considerably by putting it under right to life. This case, adding a whole new dimension to the concept of due process of law. It declared legislature and executives cannot use colorable use the legal provision against the tenets of fundamental rights as given in the Constitution.

16 S.P Sathe, *Judicial Activism in India : Transgressing Borders And Enforcing Limits*, (New Delhi : Oxford Press) Krishnan, Scholarly discourse, (2002).

was a “clear and present danger of escape”.¹⁷ Once again, Justice Bhagwati decried the impediment to personal liberty and treatment of four juvenile of less than age of 12 years who were arrested and had been waiting for eight years.¹⁸ In the early 1980s, there were many cases seen which concerned the abuse of juveniles under trial the Court was sought to remedy.^{19 20} In *Kadra Pahadiya (I) v. State of Bihar*, the Court complained “that the right to speedy trial had remained a paper promise and was grossly violated, as the case involved the detention of four boys for more than eight years. Detention of any kind of personal liberty would be violative of the fundamental rights conform by Article 21”. Yet still ground reality seems to be stark and grim as government agencies seem to be non-responsive to beneficiary out look of the Supreme Court.

In *Mahendra Lal Das v. State of Bihar*, AIR 2001 SC 2989, the prosecution miserably failed to explain a delay of more than 12 years.²¹ The Court quashed the proceedings keeping in view the peculiar facts and circumstance of the case. Ultimately it come out that unless the matter reaches the benevolence of Supreme Court the under trials are living thin on hope as at grass root level things seem to be different. In most of the above-mentioned judgments, the Supreme Court has followed the principle of “Justice delayed is justice denied” which is squarely applicable to the criminal justice system.²²

In the 2000s, a swift change occurred in the jurisprudence of the highest court of the land that stressed the requirement to protect the rights of under-prisoners.²³ There have been very rare occasions when the court has not favored the under-prisoner’s petition.²⁴ So far, in the light of such landmark judgments, the question which comes to fore is whether such pronouncements translated into progress. In the next section, this question is answered on empirical grounds.

17 Shukla v. Delhi Admin, (1980) 3 S.C.R 855.

18 Kadra Pahadiya v. State of Bihar A.I.R, 1981 S.C. 939.

19 Child below the age of 18 years, in conflict with law as per section @ of Juvenile Justice Care and Protection Act,2000.

20 Munna v. Uttar Pradesh , (1982) 3 S.C.R. 47.

21 In this case petitioner had requested the quashing of the FIR registered against him under Prevention of Corruption Act, 1947 wherein it was alleged that the appellant was in possession of disproportionate assets to the extent of Rs. 50,600. The FIR was sought to be quashed mainly on the ground that despite expiry of over 12 years, the respondent State had not granted the sanction which amounted to the violation of his right of life and liberty as enshrined in Article 21 of the Constitution of India.

22 Dr. G.B. Reddy, “Judicial Activism in India,” Gogia publication, 260-61, 2001.

23 Upadhyay v. Andhra Pradesh, A.I.R. 2006 S.C. 1946.

24 Sarkar v. Ranjan, A.I.R. 2005 S.C. 972.

Historical Factors and Recommendations

Promotion of speedy justice for the people of India is not a new concept, but when questions are raised on the implementation of such speedy justice the outcome does not seem to be impressive. In the treatise of the late Prof. Jag Mohan Singh, he traced the historical progress of criminal justice system in India from the ancient Hindu times to the British period.²⁵ Prof. Singh's work highlighted his research on the conditions of Bihar.²⁶ In the first few lessons of his book he described how early in history, the ancient Hindu period, adjudicators, or those were treated as "law providers were not merely worried about the frequent granting of adjournments, but also with the time period for which an adjournment could be imparted".²⁷ Subsequently he happens to discuss that in ancient India, and also during Islamic Mughal period, the access to justice in reasonable duration was "held in very good opinion".²⁸ It was followed by most of the kings of that time.²⁹ But, by the demolition of the Mughal dynasty, the course of criminal justice system converted into a negligent, sluggish, distorted, rudimentary, archaic, less humane and over-burdened system, which was last inherited by the British in middle of late 1700s.^{30 31} As per recommendations made by Singh, the British with the help of East India Company tried to amend certain portions of the prevailing Muslim law by which India was governed.³² Identifying the above problems, many steps were taken by the British to standardize the system. Professionalism was associated with the duties of police and there were reforms by Lord Hastings and Lord Cornwallis to bring autonomy to courts and outlets for appeal.³³ But enforcement the the objective to bring justice in an appropriate time duration did not come into existence and continued to plague the criminal justice system in India.³⁴ There are other major factors which were considered as some of the contributing factors in the delay of justice. These included the lack of a uniform set of criminal laws throughout the colony, the shortage of competent adjudicators, malprac-

25 Jagamohan Singh, "*Right to speedy justice for under trial prisoners*," Gogia, 85, 1997.

26 Note: a northern state called as Bihar, whose border is touches the parts of Nepal a neighboring country to India.

27 Constituent Assembly Debates, Vol. VII, at 1-20 (Dec, 1948).

28 *Barker v. Wingo*, 407 U.S 514, 529-32 (1972).

29 Robert Lingat, "*The Classical Law of India*", 67, Manshi ram Manohar Lal Publication First ed, 219-222 1993

30 See: Singh, supra note 93, at 30.

31 See :id 23.

32 H. Richard Uviller, "Speedy Trial gets fast shuffle", 72 *Columbia Law Review* 1376 (1972).

33 See: id 23.

34 Note: One of the major reason for the delay in imparting justice during the British judicial mechanism was insertion of end number of interlocutory appeals into the procedural codes.

tices, an inadequate number of defense counsels and prosecutors.³⁵ Mainly to correct the above maladies, India went into a complete transition under British regime, through codification of penal laws like the Indian Penal Code (1862) and the framing of standard principles of evidences like the Indian Evidence Act (1872). Apart from this, procedural laws were also codified as early as 1898.³⁶ Later again, the English established many law commissions to discover how a defendant could receive the best possible time to trial in courts.³⁷ Many recommendations were made to clear the pending criminal cases during the 20th century and in the beginning of the 21st century. For example, “the first inclusive research of prison issues was made by the Indian Jails Committee of 1919–1920.”³⁸ Relating to those under trial, in particular, the Committee urged the Crown to separate these individuals from the convicted, and repeated the requirement to assist them with opening hearings and a trial in a timely manner.³⁹ This further illustrates how the laws with regards to punishment for crimes are out of date, and previous attempts to reform have failed. The Law Commission of India in its Seventy Seventh Report has observed that “long delay in the disposal of cases has resulted in huge arrears and a heavy backlog of pending filings in various courts across the country. A cursory look at the statements of the various types of cases pending in different courts and of the duration for which those cases have been pending is enough to show the enormity of the problem. Also referred to was the the following observation of the Rankin Committee (1925) which read the “improvement in methods is of vital importance, we can suggest improvements, but we are convinced that where the arrears are unmanageable, improvement in methods can only palliate.”⁴⁰

Later during the contemporary period, the Committee on Reforms of the Criminal Justice System, with Justice V.S. Malimath as its chairman, was constituted by the Government of India in November 2000, to consider measures for revamping the criminal justice system and to make specific recommendations on simplifying judicial procedures and practices. The goal was to let the average citizen enjoy a faster, uncomplicated and inexpensive form of justice, and to suggest ways and means of developing such synergy with

35 See: Singh, *Supra* 20.

36 The Code of Criminal Procedure 1898.

37 Surendra Kumar Pachauri, “*Prisoners And Human Rights*” 77–83(1999)

38 R.K. Saxena, Commonwealth Human Rights initiative, *Prison Visiting Systems in India: Community Intervention Into Prisons*, 1–2 (2005).

39 F.A. Barker, “*The Modern Prison System of India: A Report to the department*”: The Progress of prison reform in India during the Twenty years following the publication of the report of the report of the 1919-1920 Indian jails Committee (1944).

40 Seventy Seventh Report, the Law Commission of India, 1978, 1 and 2.

the police to restore the confidence of the citizens in the criminal justice system by unsparingly punishing the guilty. The committee was made to suggest a sound system of managing the pendency of cases at investigation and later stages, and ways of making the police, the prosecution and the judiciary accountable for delays in their respective domains.⁴¹

In every report on under-prisoners, it is interesting to look into the similarity in the recommendations pointed out along with the common threads:

- To increase the number of judges in the criminal courts in order to reduce overburden.
- To improve the technological facilities with specialized training to the judges so that the court proceedings becomes more efficient.
- Encouraging the police to give enthusiastic efforts so that matters do not languish and evidence is not neglected from being collected.⁴²
- Expanding the bail-opportunities for the defendants charged with less serious crimes.
- Separating the under-trial prisoners in jail from the convicted who are serving punishment.
- Reducing the practice of unnecessary government adjournments by the judicial mechanism.

In a rational society, the implementation of the above suggestions would be fruitful to assuage the dilemma of the under-trial in India. But in the current milieu many of these have failed to be implemented into reality even though they have been repeatedly argued for over the past few decades. As such, this clearly depicts a lack of political will and an inadequate commitment to bring such kind of substantive amendment. The most important issue to be noted here is that none of these initiatives have been codified to bring a uniform enforcement. The major problem here seems to that of lack of awareness of legal system amongst people in general and also lack of appreciation of well the researched suggestions by the Law Commission of India.

Empirics

The judicial system of India has the honor of having the second most popular bar in what is also the world's largest democracy. However, there are only 800,000 practicing lawyers on record today, compared with 900,000 in the United States, which is the oldest democracy of modern world.⁴³ Even after

41 Fali. S. Nariman, "*India's Legal System: Can it be Saved,*" Penguin Publication, (2006), 86.

42 See: Law Commission of India reports.

43 Justice William O. Douglas, the longest serving member of the US Supreme Court, and a frequent

reaching comparable standards, the performance of the Indian legal system is not faring well as millions of cases are still lying in sub-ordinate courts, high courts, as well as in the Supreme Court.

Statistical Analysis of the Case Load in 2012 on the Courts in Bihar, India

The main purpose of the statistical analysis of the case-load for the year 2012 in the research was:

- To ascertain the type of cases that were processed during a one-year period and to assess the volume of cases to these courts; and
- To ascertain the speed with which these cases were being finalized in these courts. The report provides detailed results of this empirical research, but a broad overview is best illustrated by way of the following figures (numbered in accordance with the numbering in the Report) that graphically represents the type and number of finalized cases in each of the four districts as well as the speed of throughout of cases.

As far as matter prison capacity and inmate population is considered it was noted that many of state prisons seem to be overcrowded. The latest statistics from 2011 reveal that prisons of Lakshadweep and many other states are serving a number of inmates twice the actual capacity of the prisons. This is what Justice Bhagwati, emphasized in most of his judgments related to the matter of speedy trial. His emphasis can be quoted as “that the state has no right to keep under-trial prisoners in prisons when it is in no position to provide basic services to all.” He further said “If the state is not in a position to endow with infrastructure the under trials prisoners along with convicted prisoners who are serving the punishment then it will be the failure on the part of State to protect the right to life as enshrined by the Article 21 of the Constitution.” Given this information, if the Article 21 is not protected then the fears of Justice Bhagwati in which “a state will be a failed nation which is not in position to protect the right to life of its people” will come alive.

Results Drawn From the Survey

visitor to India, gave this piece of advice to young lawyers, “Nightfall does not come at once, nor does oppression, in both instances there is a twilight when everything remains seemingly unchanged. It is in such twilight that we must all be aware of the change in the air, however slight, lest we become unwitting victims of the darkness.” Excerpt from the *Dounglas letters: Selection From The Private Paper of Justice William O. Douglas* by William Orville Douglas and Melvin I. Urofsky (Bethesda : Adler and Adler, 1987).

In order to have empirical data to evaluate the three villages situated on borders of State of Bihar and State of Uttar Pradesh were randomly identified. The research aimed to analyze the comfort level of people to approach courts for redressal of issues. The basic premise was to find whether belonging to sound economic and educational strata of society bears any positive impact on the pendency issues. In other words, whether poverty of person leads to the pendency of case due to the non-affordability of the system, or if it is on the part of legal systems mal-administration which leads to the pendency of cases. An open-ended questionnaire was employed to trace the behavior and opinion towards the redressal system and redressal approach taken by the people of Bihta and two other villages.

These villages of Bihta, Gorakhpur and Tighrateyai all had nearly the same level of population. However, there were variations in educational and economic standards. Out of the three places literacy was highest in Gorakhpur and least in Tighrateyai. Economically Tighrateyai was last, as per local government records of the State of Bihar. The same is also true in the sequence, for distribution of land resources and other socio-economic benefits. As per survey findings, in Bihta 39 percent of people preferred compromise, 26 percent preferred the court system, and 35 percent preferred substitute arrangements for dispute resolution. In the village of Gorakhpur 28 percent of people preferred compromise, 45 percent preferred the court system, and 27 percent preferred substitute arrangements for dispute resolution. In the village of Tighrateyai 26 percent of people preferred compromise, 20 percent preferred the court system, and 59 percent preferred substitute arrangements for dispute resolution.

Based on this survey it was found that more than 55 percent of people on average did not prefer courts. Simply, as a final outcome the general populace of these three sample villages had engrained in their understanding that once involved in the court proceedings then their daily routine and life progress will be hampered. More than this, according to them it was a waste of time as they felt that a delay in justice was a common feature.

During one of the interviews with the people of these villages a very significant concern was highlighted. According to the villagers, approaching the judicial system for the relief will not end up in justice and rather it could result in punishment in some other way. Courts and police were considered as a form of potential terror. This opinion was very common in almost all the three villages and might be due to lack of knowledge or awareness of the law. However, it is also likely that the long and exasperating judicial process was the main reason for it. Hereby the survey reveals that a common fear

was aroused in the mindsets of the citizens. Thus when people are terrified by the justice system itself, it will clearly lead to a failure in rendering the basic rights which are enshrined for the people of India, guaranteed by the Constitution of India.⁴⁴ In a remedial opinion, courts must build confidence among the people so that people do look towards court for justice.

Lack of Reasonable Speed of Trial in Bihar, India

Bihar has the highest number of fast track courts but also the second highest number of pending cases.⁴⁵ Against the total sanctioned strength of 43 judges in Patna High Court, only 31 judges are working. If lower courts are also taken in account, there exists a 35 percent shortfall of judges against the total sanctioned strength of 1,385. In the lower courts of Bihar, there are 20 million pending cases while 3.5 million are pending in the Patna High Court. The pace with which the justice is delivered is surely crying for attention. The real sufferers are those who are entangled in litigations and for whom this court of law is the only hope forward. This prolonged justice delivery system has started to be reflected in the recent rise of crime in the state.⁴⁶

Rapes

There are no fast track courts (FTCs) in Bihar to deal with cases of rapes, gang-rapes and other sexual harassment. The Bihar government has sent a proposal to the Center for setting up FTCs for rape and economic offences but the final sanction is still awaited.

Over 1,000 cases of rape and sexual assault are pending in different courts of Bihar. About 300 such cases, including 35 in Patna and 15 in Nalanda, are pending at the police station level as the police have repeatedly failed to file charge sheets. According to the data released by the Center, currently there were approximately 40,000 cases of sexual assault and rape pending before courts across the country, which have been looking forward justice for over eight.⁴⁷ According to the records of the Patna police, there are altogether 45 rape cases which were registered in the state capital in the present year whereas charge sheets filed are found to be present in only 10

44 Part III (Fundamental Rights) of the Constitution of India read with Part IV (Directive Principle of State Policy).

45 Salim MD, 1,200 Fast Track Courts in India but 600,000 Cases Still Pending, *Hindustan newspaper*, 3, January 23, 2013.

46 Prabhakar Magaon, "Farmer waiting for justice since 33 years," CNN-IBN, January 17 2011.

47 Avinash Bajaj , "Over 1,000 rape cases pending in Bihar courts," December 26 2012.

cases. Over 250 cases related to abduction of women and girls are pending with different police stations of Patna, as charge sheets have not been filed and in several cases even proper evidence has not been collected.⁴⁸

After the Delhi gang rape case on December 16th 2012, the Central government came up with ordinances for the speedy trial of rape related matters. The government established a three member committee chaired by the Former Chief Justice of India Jagdish Saran Verma. It was a historical step taken by the government as well as by this committee. Within 30 days of establishment, committee reports were delivered to the Prime Minister of India. In the report of the Verma Committee many changes in respect to the criminal justice system are recommended. Similar to the results drawn by the survey conducted in the village Bihta, Gorakhpur, and Tighrateyai, it is observed that people wish to find substitutes and are more inclined towards compromising rather opting for remedies and justice the current courts. Additional enthusiastic attempts should be taken in the future so that people will have faith in the judicial mechanism.

Lack of Administrative Official's Safety

There are many instances where a state official's safety itself was at stake. It clearly shows a lack of good governance in the state. A state in which officials are not safe is not a state in which a poor villager will be able to approach the court for access to justice. In 1994, District Magistrate Mr. G Krishanaiah of Gopalganj was killed by a mob instigated by the notorious and powerful criminal politician Anand Mohan.⁴⁹ This incident is an indicator of the failure of governance in a democratic setup and the lack of safety for administrative officials, for which as an opinion judicial delay can be a considerable and ponderable issue of concern.

No Victim and Witness Protection

Research has revealed that most victims of domestic violence and similar crimes seldom tend to report such cases to the police.⁵⁰ However, a very surprising point was discovered by the authors when going through records. It was seen that the cases of non-reporting were seen to be more frequent in the villages of Bihar, where the victims of such crimes take a longer time report to the police. Moreover, it has been observed by the police and magistrates that it was not uncommon for the people from villages to return

48 Police Investigation reports are referred to as charge sheets.

49 Roy AK, SC upholds life term of former MP Anand Mohan, "*Hindustan Times*", IANS, 10, July, 2012.

50 Mostly against woman in India under the Domestic Violence Act, 2005.

and ask them to withdraw the case against the defendants, making an excuse that they mistakenly filed the case against them out of emotion without carefully assessing the consequences. In some extreme cases, it was seen that the victims would plead to the magistrate to withdraw the cases against the accused even after conviction on the grounds that there was no one to support them.

The research revealed that the problems mentioned above were an expression or manifestation of the deep-rooted problems that exist in the Indian justice system, i.e. that the law does not seek to minimize the discomfort of the victims and does not provide adequate protection to them against intimidation and retaliation by the accused. We generally tend to appreciate that criminal conviction deters criminals and the general public from committing domestic violence, but such a notion is not always appreciable as in situations where the parties are likely to continue with their relationship after the dispute. Such problems tend to arise more in rural settings, an example in which the victim lives in the perpetrator's village and is dependent on the perpetrator for his or her livelihood.

Courts in such cases should aim to provide a "redressal measure" in place of penal sanctions. Accordingly it is imperative that our justice system think about starting the use of restorative justice, which has its roots in customary law. Furthermore, there are occasions where the partnership between traditional leaders and the courts could be strengthened, and the traditional leaders be given watching briefs over implementation of court sentences. Moreover, access to protection from abusers requires giving protection to the intimidated party, in order to ensure that true and fair justice is served. The research study pointed out that, women in particular suffered from specific problems, when it came to present their case before the court. It was observed in one case, that people in the courtroom were requested to leave the room before a particular woman gave her testimony. This study also revealed that cases of witness intimidation by vigilante groups or other powerful groups were quite frequent. This is among the foremost impediments in access to justice in India.

Recommendations for the Future

The first proposal is to provide better infrastructure to the overcrowded jails throughout the nation. This recommendation is drawn from the report of the Commonwealth Human Rights Initiative which is a leading document in analyzing the perils faced by under trial prisoners. Recent data says that nearly

4,030,000 prisoners are housed in 1,340 jails presently available in the country. By relying on the government data from 2011, the issue of overcrowding in jails is visible.

- Measures to improve the situation would include: increased and efficient use of court resources, court management's initiatives which have a flow on effect on delays, case management, and simplification of legal procedures. Some measures such as the court management initiatives are broad in scope and ongoing, while others are designed to fix specific problems and can be considered complete once implemented.⁵¹
- Attempts should be taken by judges to visit the jails and adjudicate the trial in the accused's cell premises. "Prison Courts" have been instituted in different parts of country, and research into their performance is ongoing.⁵²
- Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be streamlined together with the help of technology and used to dispose of other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become intractable, can be separated and listed for hearing and prompt disposal. The same is true for many interlocutory applications filed even after the main cases have been disposed of. Such cases can be traced with the help of technology and disposed of very quickly.
- Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of Anil Rai v. State of Bihar must be scrupulously observed, both in civil and criminal cases.⁵³
- Efforts to increase pro bono legal services.
- Separating the under trial prisoners in jail from the convicted prisoners serving punishment.
- Imparting the basics of legal education and legal rights through books at the secondary level education so that every individual will be aware in detail of their basic rights afforded to them by birth.
- Lawyers must curtail prolix and repetitive arguments and should supplement it with written notes. The length of the oral argument in any case

51 Arun Mohan, "Justice, Courts and Delays," Universal Publication Private Limited, New Delhi, Volume 1 40.

52 Priti Bharadwaj, "Common Wealth Human Rights Initiative (CHRI), Liberty At The Cost of Innocence: A Report On Jail Adalats in India" 31-34, (2010)..

53 (2001) 7 SCC 318.

should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of the constitution.

- Most importantly, the suggestions long pending as prescribed in various Law Commission reports must be put to practice as soon as possible.

Conclusion

Mounting of cases in courts, particularly in High Courts and District Courts, has been a cause of great concern for litigants as well as for the State. It is a fundamental right of every citizen to receive justice through a speedy trial. This is a fundamental requirement of a quality judicial administration. In the courts, arrears are mounting and there is no respite in sight.⁵⁴ This is particularly because the number of cases are much higher their ability to dispose of at all the levels of judicial administration. The fundamental requirement of a good judicial administration is speedy justice. Quite often, frivolous litigations also come up and add to the mounting arrears. Such types of litigation have to be controlled and efforts made to prevent from occurring. Efforts should be made to decide cases, particularly miscellaneous matters such as those that do not require the evidence of witnesses, at the admission stage after affording an opportunity to the concerned parties. Many scholars and policy makers are working in this regard to improve the conditions of those under trial, but there is a pressing need for time to check and improve the processes at the individual level in the criminal justice system of India.

At present, India has about 900 law schools approved by the Bar Council of India.⁵⁵ As of now, it is presumable that there is a failure to produce an adequate number of lawyers. If so, then under-qualified lawyers are imparting advocacy at lower level criminal courts, which is an area in need of correction. All budding lawyers must step ahead to save the country's aspirations for an equal and non-prejudiced justice mechanism.

The judiciary, being an independent body and custodian of the constitution, should take necessary measures in this regard very solemnly so that people who have lost their faith in the judiciary can have it restored. This will be difficult, and what is required is discipline, introspection, and a realization that without these reforms, the present system is under threat. Both judges and lawyers have to change their mindsets. Unless the resistance to reforms are lessened, all doses of external remedies are bound to fail. We

54 Government of India, Law Commission of India need for speedy justice – some suggestions Report no. 221, April 2009.

55 Available on the Bar Council of India website <http://www.barcouncilofindia.org/about/legal-education/list-of-law-colleges-in-india/> (Accessed February 21, 2014).

must remember what Gandhiji said, “If you want to change anything, you be the change”.⁵⁶ Y