



## FACTORS RESPONSIBLE FOR CAUSING DELAY IN JUSTICE DELIVERY SYSTEM

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### Abstract

In regards to justice, Albert Einstein famously observed that "there is no distinction between huge and minor difficulties in questions of truth and justice, for concerns touching the treatment of people are all the same." "We, the People of India having solemnly resolved to constitute India into a Sovereign, Socialist, Secular, Democratic, Republic and to secure to all its citizens; Justice, social, economic, political; Liberty of thought, expression, belief, faith, and worship; Equal opportunity for all; and to promote among them all; Fraternity, assuring the dignity of the individual and the unity and integrity of the nation." is how the Indian constitution is introduced. However, even after so many years of independence, we still lack sufficient rules, laws, and other tools to administer justice. Our nation's founding fathers prioritised justice, however despite being the greatest democracy in the world, India still does not receive fair justice. It is still a demand and must be answered quickly.

### Introduction

The great English politician and also the former prime minister William Edwart Gladstone (1809-1898) said "Justice delayed is justice denied." This expression means if justice is not served promptly, even if it is carried out later it is not really justice because there was a period of time when there was a lack of justice. people are losing faith in legal system. It is mainly because of protracted delays at every stage, the unwillingness of all the judges to give the judgments and the inevitable adjournments. Because of this, people are approaching the mafia which believe in summary justice. But it is not as easy to understand without clarification as to what actually is meant by the delay in justice. There are several prerequisites, formalities, and rules, regulations, and established procedures that regulate judicial proceedings, which are time-consuming but necessary for the purpose of delivering justice.<sup>1</sup>

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<sup>1</sup>Indian Judicial system, can the poor expect fair Judgement?, India, *availableat*:  
<https://www.civilserviceindia.com/subject/Essay/indian-judicial-system6.html> (last visited on September 2, 2019).

In a democracy like India, the judiciary, in addition to the legislative and the administration, plays a crucial role in defending and advancing the rights of the people. The courts has been established at every level for the purpose of upholding the rights of the citizens. The workload of court has been increased due to the growth in population and industrial development. The rate of crime has been increased dramatically because the nature of crimes as well as the methods of committing have been changed and it created a slew of issues for law enforcement agencies. This results into excessive delay in case disposition. Many efforts has been made to combat the delay in justice delivery system but it appears that this will persist in society.

In India, many committees has been formed to address this issue at central as well as state level. These committees have given a number of recommendation Furthermore, the Law Commission of India has also given recommendations to overcome delay in disposal of cases and most of these recommendations have given effect but the problem still persist. The judicial procedure for civil and criminal cases is so complicated, technical, and time-consuming. It takes a long time to arrive at final decision. There are many factors which are responsible for causing delay at various stages of case disposal and ultimately delays the final verdict. In this chapter these factors has been discussed in detail.

### **The Factors Responsible for Causing delay**

There is no single factor which solely responsible for causing delay in disposal of cases. In criminal cases the problem is more serious than civil cases. The right to speedy trial is an important feature of right to fair trial in criminal cases. A procedure could not be termed as fair and just if it does not allow trial and disposal of cases within a reasonable time frame. When the accused person is acquitted after a long period of time, no one can imagine the pain under which he has gone through.

The causes for delay in investigation and slipshod investigation need to be taken stock of first in order to appreciate the problem in the proper Perspective and to devise ways and means of checking the malady. Though the Judiciary is not responsible for many delays that occur, in the public Perception, it is the judiciary that is mainly responsible. Judiciary is mostly Blamed without appreciating the real reasons. The judiciary, on its part, Remains silent and refrains from conveying to the public that certain delays are Beyond its control. This being the ground reality, what the judiciary is Expected to do, is to introspect on the

delays attributable to it and to vigorously Undertake such measures, as are essential, to put its house in order.<sup>2</sup>

Delay does not only occurred at the time of trial. At very stage of proceedings delay is caused by various factors. From registration of FIR to conclusion of trial, there are many causes which contributes in delaying of proceedings. These factors has been discussed as under:

## 1. Delay before trial

Followings are the reasons, which causes delay in proceedings before trial:

### 1.1 Refusal to register FIR

We can see that , many times First information report is not registered by the police without delay. Police officers does not register FIR immediately , there may be many reasons for not registering it because they have to check whether cognizable case is made out or not .The reason behind it may be to protect the general public from harassment. But most of the time FIR is not registered promptly, police officers refuses to register it without having just cause. There are many reason behind it like corruption, political pressure etc. When the Police officer refused to register FIR without having just cause for such refusal,It is the starting point of delay because the informant has to approach to higher authorities which is a time consuming process. Although, in the case of *Lalita Kamari v. Govt. Of UP*,<sup>3</sup> the Apex court held that section 154 is mandatory provisions. If the condition of section 154 are fulfilled and cognizable case is made out the officer in charge of police station has no other option except to register FIR. But, if he has doubt on the veracity of information then he could conduct preliminary inquiry to determine whether cognizable case is made out or not. But, these guidelines are still ignored by the police officers and they refuse to register FIR seven in prima facie cases. Sometimes they demand the bribes for registering FIR, but the poor people could not pay money. As a result, their complaints are not registered on time. Thus, delay at initial stage delays the whole process of criminal proceedings. It delays the investigation proceeding and ultimately the trial.

<sup>2</sup> The Law Commission of India, “239<sup>th</sup> Report On expeditious investigation and trial of criminal cases against Influential public personalities” ( March, 2012).

<sup>3</sup> (2014 ) 2 SCC 1.

## 1.2 Delay at the time of investigation

Investigation is the first step towards the initiation of proceeding. On the basis of investigation a police report is filed before the court and the court took cognizance of alleged offence and starts issuing processes. Investigation includes all proceedings under Criminal Procedure Code, 1973 for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.<sup>4</sup> The Supreme Court has held that the investigation of an offence Generally consisting of:

- proceeding to the spot;
- Ascertainment of facts and circumstances of the case;
- Discovery and arrest of the suspected offender;
- Collection of evidence relating to the commission of offence which may consists of-
  - The examination of various persons (including the accused) and the Recording of their statements into writing, if the officer thinks fit.
  - The search of places or seizure of things considered necessary for the Investigation or to be produced at the trial; and
- Formation of opinion as to whether on the material collected, the accused can be put to trial before a Magistrate and if so, taking necessary steps for the same by filing of a charge sheet under section 173 of the Code of Criminal Procedure.<sup>5</sup>

There are no fixed time frame for the completion of investigation under the code of criminal procedure. However, some sections are there under the code which provides for completion of investigation as soon as possible.

Section 173 of The code States:

- (1) Every investigation shall be completed without unnecessary delay.
  - (1A) The investigation in relation to rape of a child may be completed within three months from the date on which the information was recorded by the officer in charge of police station.<sup>6</sup>

<sup>4</sup> The Code of Criminal procedure, 1973, sec. 2(h).

<sup>5</sup> *H.N. Rishbud v. State of Delhi*, AIR 1955 SC 196.w

<sup>6</sup> *Supra* note 4, s.173.

Section (1A) was inserted by an amendment in 2009. In spite of this, there are section 57,167 of the code which provides for speedy disposal of the cases. Section 57 provides that whenever an accused person is arrested without warrant, he should be produced before the magistrate within 24 hours. The police officer cannot detain him without the permission of the magistrate for more than 24 hours. The same provisions have been incorporated under Article 22(2) of the Indian constitution.

Section 167 provides that whenever an accused person is produced before the magistrate he can authorise his detention in the police custody or judicial custody as the case may be for the first fifteen days. After the expiry of fifteen days, the Magistrate can authorise his detention only in judicial custody. Maximum time period for detention has been laid down under the proviso of Section 167(2). Proviso states :

(a) the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is prepared to and does furnish bail, and every person released on bail under this sub-section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter<sup>7</sup>

As we have discussed many legal provisions which were added for ensuring speedy investigation, but these provisions are hardly followed by the investigating agencies. The Police officers take long time to file a challan before the magistrate, delay in forwarding charge sheet results into delay in trials and delay in trial results into delay in justice.

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<sup>7</sup>*Supra* note 4, s. 167.

### 1.3 Delay in service of summons

After the submission of Police report by the police to the magistrate, the magistrate takes cognizance and issues processes. Processes are issued for securing the presence of accused person during trial. It is cardinal principle of fair trial that all the proceedings of trial should be conducted in the presence of accused person. Presence of accused person is secured by serving summons or by executing warrants. Arrest warrant is not always necessary to secure the presence of accused. In many cases, For the first instance, summons are issued and served to the accused. The accused is bound to attend the trial in accordance with the summons. But in most of the cases, summons are not served on time due to many reasons. Generally accused person avoids service of summons. Delay in delivery of summons results in delay of commencement of trial.

Law Commission of India in its 14<sup>th</sup> Report pointed out that the Magistrate generally sends a packet containing summons by post to the Concerned police station within whose jurisdiction the witness resides. Generally, no record is kept by the Station House Officer to show the receipt of the packet of summons. Often the police officers allege that the summons were Not received by them or did not reach them in time to effect service.<sup>8</sup>

### 1.4 Delay in framing charges

Another cause of delay in justice delivery system is delay in framing issues in civil cases and framing of charges in criminal cases. The actual trial begins after the framing of charges in criminal cases and settlement of issues in civil cases because, after this stage the parties adduce evidences and try to prove their case.

The machinery of a civil court is set into motion by the presentation of a Plaint before the court, it is the first step of trial. The second stage is the filing of the written statement by the defendant. The third stage is most important stage in a suit and it is framing and settlement of issues and the day on which such issues are framed is the first hearing of the suit.<sup>9</sup> But the court takes a long time in framing of issues, which ultimately delays the trial. Similarly, in

<sup>8</sup>The Law Commission of India, "14<sup>th</sup> Report On Reform of Judicial Administration" (September, 1958).

<sup>9</sup>*Sangram Singh v. Election Tribunal*, AIR 1955 SC 425.

criminal cases, there are many causes which delays the framing of issues, for e.g. absconding of accused person.

Absence of some or all the accused or non-production of under trial Prisoners at the stage of framing of charges and during trial. Earnest efforts are not being made by the Police in apprehending and producing the absconding accused. Execution of warrants has become the least priority for the police who have their own reasons – genuine as well as artificial. Where there are large number of accused, the delays on this account have become a routine feature. If the accused are residing outside the District or the State, it compounds the problem further.<sup>10</sup>

The most important principle of Fair trial is that the accused should be informed about the accusation against him, so that , he could prepare for his defence. Charges gives information to the accused as to the offences alleged to have been committed by him. Trial could not be commenced without framing of charges and it takes long time to frame charges because accused person remain absent on the day of framing of charges. He obtains adjournments on false grounds. Due to the delay in framing charges , The trial is also delayed which ultimately causes the delay in final disposal of proceedings. *Sunil Ansal v. State Through CBI*<sup>11</sup>( Uphar tragedy case) is the example of delay in framing charges. In this case charge sheet was filed in the year 1997 but charges were framed in 2001, after so much delay.

## 2. Delay During Trial

As we all know ,A Trial of a case takes years to reach on final conclusion. There are many factors which contributes towards the delay during trial. A single factor cannot be blamed for delay, a number of factors are responsible for it. These factors has been discussed under the following heads.

### 2.1 Adjournments

Under Criminal as well as civil law provisions for adjournment has been inserted. These provision are made for the benefit of parties as there may be circumstances beyond the control of parties, due to such circumstances they cannot attend trial. In this situation,

<sup>10</sup>*Supra* note 2.

<sup>11</sup>2002 Cri LJ 1369 (SC).

adjournment can be obtained from court. But most of the time adjournments are taken on flimsy grounds for the purpose of causing delay in trial

One or the other advocate appearing for the accused seeking adjournments without adequate justification mainly to delay the trial or to give handle to the accused party to win over the witnesses. The heavy workload in the courts is taken advantage of by the advocates to press for adjournments. The witnesses are often constrained to leave the court without being examined. Sometimes, the Prosecution also seeks adjournments without prior notice to the advocate for the accused.<sup>12</sup> The provision for adjournments has been inserted under Section 309 of The Code of Criminal Procedure. Sub section 2 of section 309 says:

If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that

- (a) No adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.
- (b) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment

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<sup>12</sup>*Supra* note 2.

(c) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in Court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.<sup>13</sup>The civil procedure code also contains the similar provisions regarding adjournments. Order XVII of CPC talks about adjournments. It is as follows:

(1) The Court may, if sufficient cause is shown, at any stage of the suit grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing, Provided that no such adjournment shall be granted more than three times to a party during hearing of the suits.

(2) Costs of adjournment— In every such case the Court shall fix a day for the further hearing of the suit and may make such order, as it thinks fit with respect to the costs occasioned by the adjournment.

Provided that-

(a) When the hearing of the suit has commenced, it shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds that, for the exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) No adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) The fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment.

(d) Where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another Court, is put forward as a ground for adjournment, the Court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.

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<sup>13</sup>*Supra* note 4, s.309.

- (e) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader, though present in Court, is not ready to examine or cross-examine the witness, the Court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.<sup>14</sup>

It is clear from the above mentioned provisions that many safeguards has been attached with these provisions so as to ensure speedy justice. In spite of all these safeguards, adjournments are obtained by the parties on unreasonable and false grounds, such as by producing fake medical certificates etc. It is the discretion of the court to grant adjournment. It was held by Supreme court that the power to grant or not to grant adjournment is not subject to any definite rules, but it should be exercised judicially and reasonably and after considering the facts and circumstances of each case.<sup>15</sup>

In *Salem Advocate Bar Association, Tamil Nadu v. Union of India*,<sup>16</sup> the Supreme Court held that grant of any adjournment let alone the first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary circumstance. It cannot be routine. While considering prayer for adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments.

Although, It is discretion of the court to grant or not to grant adjournments, the parties or their pleaders become successful in seeking adjournments. Sometimes adjournments are granted by the court itself due to absence of the parties. Therefore, adjournment is the main factor responsible for causing delay in the conclusion of trial.

## 2.2 Non attendance of witnesses

Witnesses plays an important role in civil as well as in criminal proceedings. It is rightly said that by the Jeremy Bentham, “witnesses are the eyes and ears of justice.” Witnesses gives testimony in the court which helps the court to find out the truth. But sometimes witnesses do not appear before court on day fixed to record their testimony which causes delay in trial.

<sup>14</sup> The Code of Civil Procedure, 1908 (Act 5 of 1908), Order XVII.

<sup>15</sup> *Sukhpal Singh v. Kalyan Singh*, AIR 1983 SC 146.

<sup>16</sup> AIR 2003 SC 189.

There may be several reasons of not attending the court by the witnesses, such as there may be threat to the witnesses, summons has not delivered on time, witnesses has turned hostile etc.

Under Civil Procedure Code Section 32 provides for the penalties if witnesses fail to attend in pursuance of summons. The Court may compel the attendance of any person to whom a summons has been issued and for that purpose may :

- (a) issue a warrant for his arrest;
- (b) Attach and sell his property;
- (c) Impose a fine upon him not exceeding five thousand rupees;
- (d) Order him to furnish security for his appearance and in default commit him to the civil prison.<sup>17</sup>

No doubt, under Criminal law provisions for securing the attendance of witnesses are also there. But absence of witnesses during trial is one of the causes, responsible for delay in trial.

### **2.3 Unduly lengthy oral arguments and Judgements**

This is one of the main reasons for delay in administration of justice particularly in High Courts and Supreme Court. A tendency has emerged in superior courts that designate senior advocates are given as much time as they want to argue their cases at the suffering of other litigants. These advocates are mostly hired by high profile litigants and companies because poor and indigent can not afford these advocates. The court recognizes and gives due importance to senior advocates at the time of argument and the result is rest of the cases which are on list are delayed. In these circumstances we can say that courts though often may be unknowingly discriminates between litigants on the basis of their position in society.<sup>18</sup>

Section 314 of the Code of Criminal Procedure enables the parties to address oral arguments. Oral arguments should be concise. Section 314 is not in favour of lengthy oral arguments, It gives the authority to the authority to the court to regulate oral arguments which are not relevant and concise. Similarly Order XVIII, Rule 3A of the Code of Civil Procedure gives

<sup>17</sup>Supra note 14, s.32.

<sup>18</sup>RohitGarg, Right to Speedy Justice viz-a-viz Arrear of Cases in Indian Courts ( Published, PhD thesis, Tanta University) ( 2020).



right to the parties to address oral arguments in civil cases. The court shall fix the time limits for the oral arguments by either of the parties, as the case may be.<sup>19</sup>

The code of Civil Procedure and The Code of Criminal Procedure gives the authority to the courts to regulate oral arguments but generally, limits for oral arguments are not fixed by the courts, oral arguments becomes unnecessarily lengthy and consume a lot of time of the court. Due to lengthy oral arguments trial is not concluded on time.

Similarly, another important reason for pendency of cases and delay in disposal is the practice of giving lengthy judgments particularly by the Judges of Supreme Court and High Courts. After the completion of arguments nowadays the Judges reserve the Judgments to be delivered later. Then the judgments are delivered after a long time because of the habit of giving lengthy judgments. The judgement often includes the philosophies not necessary or references which may have no relevance to the case in issue. If we compare the Judgments delivered by Privy Council and U.S. Supreme Court with judgments of Indian superior courts, we find that the former is to the point and very short thereby less confusing whereas in India it is contrary.<sup>20</sup>

The decisions of the Supreme Court is binding on all the courts within India under article 141 and decisions of the High Courts are binding upon all the lower courts. If the judgement is not clear and precise then it will create confusion in the minds of subordinate judiciary. Subordinate courts has to go through the hundred pages of judgements to extract the exact meaning. A constitution bench of Supreme Court gives a judgment on certain point of law which is too long and full of philosophy not relevant to case in issue then it becomes difficult for lower courts to Interpret the judgment and it may be interpreted differently. Ultimately, case go to apex court which in turn would have to again clarify the Judgment of constitution bench or it may distinguish it for better understanding of lower courts.<sup>21</sup> It causes delay in the final disposal of cases.

<sup>19</sup>Supra note 14, order XVIII, Rule 3A and 3D.

<sup>20</sup>Supra note 18.

<sup>21</sup>Ibid.

## 2.4 Filing of application at any stage

In civil proceedings amendment in pleadings is allowed. These provisions are misused by the parties or their pleaders for the purpose of causing delay. Applications are filed in the court for the purpose of amending pleadings, these applications are considered by the court it consumes a lot of time of the court because it involves many processes. Court considers the application and decides whether amendment is to be granted or not. When an application is filed for the amendment of pleading in the court, an opportunity of being heard shall be given to the opposite party and opposite party can file objection against such application. If amendment is granted, a notice of such amendment is given to the opposite party, opportunity of hearing is given to opposite party on the new grounds added in the pleadings. All these factors take long time and cause delay in final disposal of civil cases.

Rule 17 of Order VI Provides: The Court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

Provided that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.<sup>22</sup>

The rule confers a very wide discretion on courts in matter of amendment of pleadings. As a general rule, leave to amend will be granted so as to enable the real question in issue between the parties to be raised in pleading, where the amendment will occasion no injury to opposite party and can be sufficiently compensated for by costs or other terms to be imposed by the order.<sup>23</sup> Although, it is the discretion of the court to grant or refuse amendment, but most of the times the pleaders seek amendment on the grounds that amendment is necessary for the final disposal of the case and they seek amendments in pleadings even after the trial has begun by showing that they could not file application earlier in spite of due diligence. It consumes precious time of the court and delays the proceedings.

<sup>22</sup>Supra note 14, order VI, rule 17.

<sup>23</sup>C.K. Takwani, *Civil Procedure* 214 (Eastern Book Company Publishing (P) Ltd, Lucknow, 7<sup>th</sup> edn., 2016).

## 2.5 Delay in pronouncement of judgement

The judgement of the trial court represents the final stage in the trial of the accused. A judgement in this context is the final decision of the court intimated to the parties and the world at large by formal “pronouncement” or “delivery” in open court<sup>24</sup>. Judgement is pronounced after the completion of trial, but judgement is not pronounced immediately, it takes a great amount of time. There are provisions regarding pronouncement of judgement under The Code of Criminal Procedure and The Code of Civil Procedure. Section 352 of the Criminal Procedure Code talks about the modes of pronouncing a judgement. It states :

(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding officer immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-

(a) by delivering the whole of the judgment; or

(b) by reading out the whole of the judgment; or

(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.

The words “immediately after the termination of trial or at some subsequent time” suggests that judgement must be pronounced without delay but it is often delayed due to some factors , such as parties remain absent and the preparation of judgement also consumes time.

The supreme court has rightly disapproved the undesirable of some judges delivering judgements after several months since completion of hearing. The court has correctly perceived it to be a violation of the speedy trial, a right enshrined in Article 21 of the constitution.<sup>25</sup>

Similarly ,under CPC provision for pronouncement of judgement has been incorporated. Order XX ,rule 1, of the code talks about pronouncement of judgement . It states that after concluding the hearing of the case , the judgement shall be pronounced at once or at some

<sup>24</sup> R.V. Kelkar, *Criminal Procedure* 641 (Eastern Book Company publishing (P) Ltd., Lucknow, 6<sup>th</sup> edn., 2019).

<sup>25</sup> *Id.* at 642.

future day, for this purpose notice shall be given to the parties or their pleaders. Proviso of this rule says that when pronouncement of judgement is postponed on some future day, endeavour shall be made to pronounce judgement within 30 days or within 60 days in exceptional or extraordinary circumstances from the date on which hearing was concluded.<sup>26</sup>

Delay in pronouncing judgement causes the delay in providing justice.

### 3. Delay at Appellate Stage

When trial court pronounced the judgement, if a party is aggrieved with the decision of the trial court, It could approach to higher court by way of filing appeal or revision. Right to appeal is a creation of statute, it is not an inherent right. Reason behind the creation of right to appeal is that possibility of errors or mistakes could not be precluded from the judgements of the court as judges are also human beings.

Human judgement is not always accurate. Despite all the provisions for ensuring a fair trial and a just decision, mistakes are possible and errors cannot be precluded. The Code therefore provides for “appeals” and “revision” and thereby empowers the superior courts to review and correct the decisions of the lower courts. Apart from it being a Corrective device, review procedure serves another important purpose. The very fact that the decision of the lower Courts has been scrutinized by a Superior Court in “appeal” or “revision” gives satisfaction to the party aggrieved by that decision. The review of the case by superior courts, in a way, gives assurance to the aggrieved party that all reasonable efforts have been made to reach a just decision free from plausible errors, prejudices and mistakes.<sup>27</sup>

There are provisions under The Limitation Act, 1963, which provides limitation period for filing an appeal but there is no limitation period for the disposal of appeals. No doubt some statutes provide time frame for the disposal of appeal, but it is extended time to time due to various reasons. When an appeal is preferred it takes long time to dispose of. Sometime new and additional evidences are presented before the court and the court has to analyse it before the disposal of appeal. When appeal is admitted notice is issued to the concerned parties. All these things consumes a lot of time of the court and contributes in causing delay in the final

<sup>26</sup>Supra note 14, order XX, rule 1.

<sup>27</sup>Supra note 24 at 642.

disposal of appeals. When the appeal is disposed of and first appellate court gives its judgement but one of the parties to the appeal is aggrieved with the decision, such party may approach to the second appellate court if the statute gives right to the second appeal. Therefore, it takes a long time to completely dispose of the proceedings whether civil or criminal.

#### 4. Delay During Execution Proceedings

In civil cases, after the conclusion of hearing the decree is passed and the next step is the execution of such decree. It is most important part of civil proceedings as it is that stage when decree holder gets the fruits of decree. Execution is realisation of decree.

In its widest sense, the expression “execution” signifies the enforcement or giving effect to a judgement or order of a court of justice.<sup>28</sup>

Execution process takes a long period of time in civil cases. Sometimes, execution proceedings last for years. Law commission of India in its 14<sup>th</sup> report discussed the delay in execution proceedings and gives some recommendations. Report of Law commission states: nevertheless, it is well known that inordinate delay do frequently occurs at various stages of progress of execution application. Some of these delay are caused by several personal factors which play a part in the trial of proceeding and which can not be remedied by a mere amendment of law. Others are due to the defects in law the law relating to execution which, by providing too many safeguards against the abuse of execution proceedings, have made them cumbersome and ineffective.<sup>29</sup>

When we talk about the execution in criminal proceeding, it means execution of order or sentence passed by the court. In criminal cases order or sentence is not executed immediately, it takes time for execution. The execution of sentence or order is delayed until time for preferring appeal has elapsed or if the appeal has preferred, until it has been finally disposed of. In case, the sentence is of death then execution of it remains pending for years. When mercy petition is filed before president or governor under Article 72 or Article 161, it further delays the execution of sentence.

<sup>28</sup> *Supra* note 23 at 615.

<sup>29</sup> *Supra* note 8.

Supreme court also expressed its concern about delay in mercy petition and held that there must be speedy disposal of the petitions filed under Articles 72 or 161. A self imposed rule should be followed by executive authoritiesrigoursly, that every such petition shall be disposed of within 3 months from the date on which it is received. Long and inordinate delays in disposal of these petitions are serious hurdle in the dispensation of justice and indeed, such delay tend to shake the confidence of the people in the very system of justice.<sup>30</sup>

## 5. Other Factors responsible for delay

Apart from the reasons of delay mentioned above, there are many others causes which contributes in the delay of proceedings. These causes has been discussed in the following heads ;

### 5.1 Inadequate strength of judges

As we already know, in our country the strength of judges is not according to the population. This factor is the major cause of delay in justice. Vacated posts should be filled with immediate effect. The law commission of India made recommendation for the increasing of strength of judges from time to time. It was also suggested by the Law Commission in 127<sup>th</sup>Report that the Judge population ratio should be increased from 10 judges per million populations (at that time) to 50 judges per million populations within a period of five years.<sup>31</sup>But this target could not be achieved The judge population ratio was 21.03 judges per million population in the year 2020 and in the year 2019 it was 19.78 judges per million people. Although it is increasing but as compared to foreign countries such strength is very less.In the year 1987 the judge population ration was in UK 51 judges, In Australia 41, in USA 103, In Canada 75 judges per million people whereas in India it was just 10 judges against one million population in the same year.

<sup>30</sup>*Sher Singhv. State of Punjab* ( 1983 ) 2 SCC 344.

<sup>31</sup> The Law Commission Of India, “127<sup>th</sup> Report on Resource allocation for Infrastructure Services in JudicialAdministration” (June, 1988).

The Supreme Court also in the case of *All India Judges Associations v. Union of India* recommended to increase the strength of judges upto 50 judges per million population with in 5 year.<sup>32</sup> But these recommendation did not implemented strictly.

A huge number of cases are pending before the courts .The Law Commission in its 245<sup>th</sup> report of stated that the most High Courts have a high vacancy in subordinate Courts. Additionally, every year many vacancies are created through retirement. It takes time to select and train new judges to replace the retiring ones. In The meantime, the backlog piles up. To deal with this concern, the Commission recommended that in addition to recruiting new judges, the age of retirement of Subordinate judges be raised to 62 in order to meet the need for a large number of adequately trained judicial officers. The benefit of increase in the retirement age can be made available to judicial officers in terms of the directions of the Supreme Court in *All India Judges' Association v. Union of India* AIR 1992 SC 165. Further, the directions of the Supreme Court in *Malik Mazhar Sultan v. U.P* (2008) 17 SCC 703.Public Service Commission regarding the time Bound filling of vacancies, needs to be strictly adhered to.<sup>33</sup>To deal with the pendency of cases number of judges should be increased, for this purpose vacancies should be filled immediately. More posts should be created and new court should be established because there is lack of court rooms. .

The law commission in its 245<sup>th</sup> report stated hat, data obtained from High Courts indicates that the judicial system is severely backlogged, and is also not being able to keep pace with current filings, thus exacerbating the problem of backlogs. The system requires a massive influx of judicial resources in order to dispose of the backlog and keep pace with current filings. The data indicates the need for taking urgent measures for increasing judge strength in order to ensure timely justice and facilitate access to justice for all sections of society.<sup>34</sup>

## 5.2 Delay in obtaining sanction

Sanctions for prosecution are unduly delayed by the Governments.These reasons are not peculiar to cases of public men – they are all problems surrounding the Criminal Justice

<sup>32</sup>*All India Judges Association v. Union of India* (2002) 4 SCC 247.

<sup>33</sup> The Law Commission of India, “245<sup>th</sup> Report On the Arrears and Backlog: Creating additional judicial (wo)manpower”( July, 2014).

<sup>34</sup>*Ibid.*

system as a whole.<sup>35</sup> Section 197 of Crpc and Section 19 of prevention of corruption Act, 1988 lay down the condition precedent to obtain previous sanction of Central government or State government before prosecuting a public servant. This provisions are inserted to protect the public servant from harassment and frivolous criminal cases. Under Section 197 of Crpc there is no prescribed time limit for granting sanction. Although section 19 of the Prevention of Corruption Act, 1988 prescribes time period of 3 month for granting sanction by the government, but it may be extended. Generally government grants sanction after a long time, which causes delay in justice delivery system

### 5.3 The witnesses turned hostile

Witnesses play an important role in the criminal as well as civil cases. Bentham has rightly stated that “witnesses are the eyes and ears of justice. Their statements have a magic force to change the entire case”. In India the conviction rate is very low. The hostility of witnesses contributes to low conviction rate. Because the prosecution has to prove his case beyond reasonable doubt and it could be proved by the testimony of witnesses. Therefore when witnesses turns hostile, the prosecution become enables to prove the guilt of the accused beyond reasonable doubt. Ultimately, the accused is acquitted by giving benefit of doubt. In *CharanSingh v. State of Punjab*,<sup>36</sup> the apex court observed that a criminal case is built on the edifice of evidence, that is admissible in law, for that witnesses are required whether direct or indirect or circumstantial evidence. The witnesses turns hostile in most of the cases. The hostility of witnesses is contributing to the delay in justice delivery system. The witnesses retract from their statements in the court due to the threat to their lives or they may take bribe for retracting from their statements. When witnesses relies from their statements and prosecution has no other evidence to prove the guilt of the accused, in such cases the court generally acquit the accused in absence of evidences. In *Best Bakery Case*, *Zahira Shaikh* the important witnesses of this case turned hostile, The Supreme court punished her for turning hostile and committing fraud on the court and observed:

“In a criminal case, the fate of the proceedings cannot always be left entirely in the hands of the parties, crime being public wrong in breach and violation of public rights and duties,

<sup>35</sup> The Law Commission of India, “239<sup>th</sup> Report On expeditious investigation and trial of criminal cases against Influential public personalities” ( March, 2012).

<sup>36</sup> AIR 1975 SC 246.

which affect the whole community and are harmful to the society in general. The concept of fair trial entails familiar triangulation of interests of the accused, the victim and the society and therefore, it is the community that acts through the State and the prosecuting agencies. Interest of the society is not to be treated completely with disdain and as persona non-grata. Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice. Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case protecting its ability to function as a Court of law in the future as in the case before it. If a Criminal Court is to be an effective instrument in dispensing justice, the presiding judge must cease to be a mere spectator and a mere recording machine by becoming a participant in the trial evincing intelligent, active interest and elicit all relevant material necessary For reaching the correct conclusion and administer justice with fairness and impartially to the both parties of a particular case as well as to the society at large. Courts administering criminal justice cannot turn a blind eye to vexatious or oppressive conduct that has occurred in relation to proceedings, even if a fair trial is still possible, except at the risk of undermining the fair name and standing of the Judges as impartial and independent adjudicators<sup>37</sup>.

In *SanjeevNanda v. State ofNCT of Delhi*,<sup>38</sup> in this caseBMW car hit six person, twoprosecution witnesses turned hostile who saw the incidence. The witnesses stated that they saw a Truck hitting the victims and not the BMW car. The accused in this case was Sanjeev Nanda, who was 22 years old and was the grandson of Naval chief SM Nanda. Accused belonged to an influential family.

Similarly, in the case of *SidharthVashisth@ManuSharma v. StateofDelhi* (JassicaLal murder case), Manu Sharma who belonged to an affluent family and haspolitical connections committed murder of JassicaLal in a restaurant in Delhi. All the three witnesses turned hostile one by one. Although, the Manu Sharma was convicted, but due to hostility of witnesses final disposal of the case took a long time.

There are many factors for the hostility of witnesses, money plays an important role in turning witnesses hostile. The rich people purchase the witnesses with the power of money.

<sup>37</sup>*ZahiraHabibullah Sheikh and another v. State of Gujrat*, AIR 2006 SC 1367.

<sup>38</sup>2007 Cri.LJ 3786.

The industrialists, politicians, high profile public servants use this method. Whenever, a crime is committed by them, they thought that by using money they could escape from punishment and most of the times they succeeds.

Another factor which is used to influence witnesses is muscle power. When money does not work, muscle power is used to threaten the witnesses. No one would depose against the accused if there is threat of serious injury or death to him or hisfamily. Therefore, witnesses refuses to depose against the accused under the threat and turned hostile.

Apart from this, Political pressure also an important factor to influence the witnesses. Lack of witnesses protection schemes, psychological factors, selfgenerated fear, different tactics used by the powerful and influential people etc. are also responsible for hostility of witnesses.

#### **5.4 Court vacations**

The most debating question relating to the causes for pendency of cases is the vacations for courts. It is said on national level that why the courts should have such long vacations when there is a large number of cases are pending before all the courts waiting for decades for disposal. In other countries like France & USA there is no provision for vacations for the courts. In these countries the judges can take leave according to the convenience without affecting smooth functioning of courts. In India only subordinate Criminal Court work wholeyear but the Supreme Court, High Courts and the other Subordinate Civil Courts remain closed during the vacation period.<sup>39</sup>

The system of vacations was introduced during colonial rule. The Britishers came from cold countries and they could not bear the hotness of summer season in India. Thus, they oftenly went to their ownCountry during summer. As a result of this practice the vacations were evolved. In India, minimum working days for High Courts are 210 days in a year and 185 days for Supreme Court but the requirement of minimum working days is not followed strictly. Apart from vacations, courts remain closed during public holidays and Saturdays and Sundays. Thus, huge number of vacations and holidays are also responsible for delay in proceedings.

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<sup>39</sup>Chhatrapati Singh, “The Concept of Time in Law: Basis of Laws of Limitation and Prescription”323 *JILI* 328(1990).



## 5.5 Government-The Biggest Litigant

In those matters where government is a party, the proceedings are delayed by the government at various stages by evading notices, not replying to the notice on time, lodging appeals unnecessarily etc.

In *Salem Advocate Bar Association, Tamil Nadu v. Union of India*,<sup>40</sup> the Supreme court directed and observed 'wherever the statutory provision requires service of notice as a condition precedent for filing of suit and

prescribed period therefore, it is not only necessary for the governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The governments, government departments or statutory authorities are defendants in a large number of suits pending in various courts in the country. Judicial notice can be taken of the fact that in a large number of cases either the notice is not replied to or in the few cases where a reply is sent, it is generally vague and evasive. The result is that the object underlying section 80 of the code and similar provisions gets defeated. It not only gives rise to avoidable litigation but also results in heavy expenses and costs to the exchequer as well. A proper reply can result in reduction of litigation between the State and the citizens. In case a proper reply is sent, either the claim in the notice may be admitted or the area of controversy curtailed, or the citizen may be satisfied on knowing the stand of the State. There is no accountability in the Government, Central or State or the Statutory Authorities in violating the spirit and object of section 80. These provisions cast an implied duty on all Governments central and States and other Authorities concerned to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all Governments, Central or State or other Authorities concerned, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the court finds that either the notice has not been replied to or the reply is evasive and vague and has been sent without proper application

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<sup>40</sup>AIR 2003 SC 189.

of mind, the court shall ordinarily award heavy costs against the Government and direct It to take appropriate action against the officer concerned including recovery of costs from him.’ In spite of these direction the Government still files reply after a long period and the replies are filed without application of mind.

### **5.6 Inadequate Financial and Infrastructural Support**

Right to speedy trial is fundamental right and for the purpose of securing this right to its citizens the State and Central Government should take adequate steps. One of these steps is to provide financial and infrastructural support to the courts. But the State and Central Governments are not taking adequate steps for the improvement of infrastructure and are not providing financial support. For speeding up disposal of cases additional court room should be created.

As per the information collected by First National Judicial Pay Commission, every State except Delhi has been providing less than 1% of the budget for subordinate Judiciary whereas the figure is 1.03% in case of Delhi. In terms of G.N.P., the Expenditure in our country is hardly 0.2 percent, whereas it is 1.2 percent in Singapore, 1.4 percent in United States of America and 4.3 percent in United Kingdom. Such small allocations are inadequate to meet the requirement of judiciary. Unlike other government department, more than half of the amount which is spent on Indian judiciary is raised from the judiciary itself through collection of court fees, stamp duty and miscellaneous matters. Therefore, Governments should provide more funds for creation of additional courts at all levels.<sup>41</sup>

Though, Indian judiciary is held responsible for arrears of cases, but it has no power to create additional court and create additional posts for subordinate staff. Judiciary has no control over financial resources. High court has superintendence power over state judiciary, but it also has no financial power to create posts of subordinate judges and subordinate staff.

### **5.7 Non-compliance with the provisions of Section 89**

Section 89 of the Code of Civil Procedure provides that when there is a possibility of settling the dispute outside the court, the court will refer the issue for ADR instead of continuing with

<sup>41</sup>Dr. Rattan Singh, “Fast Track Court in India: A Movement towards Speedy Justice” *Journal of Constitutional and Parliamentary Studies* 297 (2007).

the ordinary procedure. This section was added by the amendment Act in the year of 2009 in order to overcome the delay in civil cases. If the matters could be settled outside the court with the consent of the parties by the methods of arbitration, conciliation, LokAdalat and mediation, the court shall make endeavour for such settlement by referring the parties for ADR methods. However, judges sometimes fail to refer the matter for ADR which is another cause that hampers the timely disposal of cases. Nonadherence to Section 89 causes a delay in civil suits.<sup>42</sup>Section 89 is not adhered strictly. Most of the times, when dispute is referred for ADR by the court, the parties hardly cooperate with the ADR mechanism. Ultimately dispute go back to the court. Therefore, it consumes a long time for disposal.

### 5.8 Abuse of Public Interest Litigation

The customary rule is that only people whose fundamental rights have been violated have the right to file court documents. The Supreme Court can only use the authority it has been given to uphold fundamental rights. However, the Supreme Court has significantly altered this long-standing locus standi rule, according to which only a person whose basic right has been violated may bring a petition under Article 32. The Court now allows “public spirited citizens” to enforce the legal rights of any individual or group of individuals who are unable to seek remedy from the Court due of their poverty or social or economic disadvantage.

In *S.P. Guptav.UnionofIndia*,<sup>43</sup> the Supreme Court has settled the question of whether a third party can petition the court for the enforcement of constitutional or other legal rights of an individual or group of individuals who are unable to seek relief from the court because of their poverty or social or economic disadvantage. The Court ruled that any member of the public with a “sufficient interest” might petition the court for the enforcement of another person’s constitutional or legal right or for the redress of a collective grievance.

Though, the introduction of PIL is good step for those who could not approach to court for enforcement of their rights. Anyone could file petition on the behalf of other person. But there are some disadvantages of the concept of PIL. By the introduction of PILs the burden of High Courts and Supreme Court has increased. Most of the times many PILs are filed in

<sup>42</sup>Delay in Civil Litigation: Overview and Analysis, India, available at:<https://blog.ipleaders.in/delay-in-civil-litigation/?amp=1> (last visited on September 5, 2022).

<sup>43</sup>AIR 1982 SC 149.

respect of one matter. It consumes time of the courts as court has to consider them before combining these PILs. Sometimes, the PIL is filed with oblique motive and not in good faith, ultimately it abuses the process of the court. Other important cases are delayed due to the urgent hearing of PILs.

In the case of *JantaDal v. H.S. Chaudhary*,<sup>44</sup> Justice Pandian observed that only a person acting in good faith and having an interest in the PIL proceeding will have locus standi and be able to file petition before the court to end the suffering of the poor and vulnerable whose fundamental rights have violated, anyone acting for personal gain or private profit will not be able to do so. Similar to this, a vexatious petition presented to the court in the guise of a PIL and intended to vindicate any personal grievance should be rejected at threshold.

### Implications of Arrear of Cases

In a welfare state like India, it is the responsibility of the government to protect the rights of its residents, and swift justice is an essential element of welfare state. In a republic State, where the government is chosen by the people, people expect the system to function for their benefit. A state that cannot ensure justice for its citizens where it has been elected by those same citizens then the consequences can be very dangerous in the long run. In the short term, delayed administration of justice may lead to distrust or hopelessness among people, but in the long run, it may lead to lawlessness in society, a decline in the economy, rampant corruption leading to anarchy, or even the dissolution of the state.

Our Constitution guarantees an impartial and effective system for administering justice. Delayed case resolution not only frustrates litigants but also jeopardises the system's ability to administer justice in a prompt and efficient manner. Massive case backlogs have accumulated in courts at all levels as a result of these systemic flaws, and it is urgently necessary to find measures to reduce them in order to maintain the trust of the general public.

Delay in disposing of cases has many adverse effects. It causes mental suffering to the parties, it may lead to the corruption, affects the reputation of the parties when parties dragged in false case, people lose trust in judiciary etc. These have been discussed below:

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<sup>44</sup>(1992) 4 SCC 305.

## Delay Causes Mental Suffering

The Hussainarakhatoon's case, in which right to speedy trial was given the status of fundamental right is an example of mental pain suffered by the under trials. In this case, the accused persons were in jail without being tried. They had been in jail for a longer period than the actual sentence which could be imposed upon them, if their guilt would have been proved. It is completely unjustified and in violation of their Article 21 fundamental freedoms. Due to the prolonged delay the litigant losing faith in the legal system. Every person has a fundamental right to be treated expeditiously, unless it can be demonstrated that the delay was caused by the person in question themselves. Thousands of defendants are still detained in prisons around the nation despite the Supreme Court's explicit directives for swift trials in criminal cases, and in many cases, the trial has not yet started. No one can imagine the mental pain and anguish of an accused person who has been in jail for years without being tried.

## Delay Causes Corruption

Delay in justice delivery system also leads to corruption because the rich people starts paying money for the quick disposal of cases, but the poor people have to wait for years in the hope of getting justice.

Transparency international's Global Corruption Report 2007, which has dealt with the graft in judiciary in 32 countries, has attributed that huge backlog of cases is the main cause for giving bribes to the lower Judicial officers in India. This backlog at the last count was already over 3 crore cases, whereas there were only 1.64 lakh cases pending in 1957. India may be the only country in the world where the backlog of court cases is that extreme. However, as was previously noted, policy makers do not actually have this issue on their radar.<sup>45</sup>

## Delay Effects Economic Growth

Because most companies in India have to reserve a significant portion of project costs for litigation, due to this project costs rise, which has a negative impact on the economy. If the backlog of cases could be efficiently managed, businesses and financial institutions would be more inclined to invest, which would provide the economy a much-needed boost and lower

<sup>45</sup>ChanderKantaNegi, "Judicial Reform and Speedy Justice in India"  
*44Journal of Constitutional And Parliamentary Studies* 287 (2010).

inflation to a significant degree. The Indian Planning Commission also believes that significant case backlogs deter foreign direct investment (FDI), and that if this issue could be managed and resolved, the country's economy might expand at a rate of 10% per year.

According to financial analysts, the delay is typically consuming 2% of the GDP and is particularly adverse to investment. Due to India's weak legal framework, financial investors investing in India has bear "legal risk premium," which is an additional cost. This arises because of the obstacles affecting enforcement of a claim or a contract especially in matters relating to land acquisition. In terms of the ability to enforce contracts, India was ranked 173<sup>rd</sup> globally in the World Bank's Doing Business report from 2009. The report outlined 56 procedural processes that took a total of 1420 days from filing the claim to the enforcement of judgment. Additionally, it takes 462 days to enforce a contract.<sup>46</sup>

We now live in a globalised economy where the globe has become a village, and in order to be compatible with such a system, it is essential that case resolution be quick and not in any way hamper economic growth. A developing economy such as ours could not afford to lose investments through any means, but the slowness of India's justice system has a direct impact on the nation's ability to thrive economically. Different factors are taken into account in commercial disputes. It is stated that a nation may not be viewed as an appealing location for foreign investment unless such issues are quickly resolved by the legal system.

## Conclusion

From the above discussion, we can conclude that there are a number of factors which contributes towards the delay in civil as well in criminal proceeding. A single factor could not be held responsible for delay. Many factors, as lack of judges, dilatory tactics adopted by the parties, adjournments, delay in appointment of judges, hostility of witnesses, delay caused by the investigating agencies, absconding of accused etc. are responsible for causing delay. The judge population ratio is very low in India. In western countries judge population ration is 135-150 judge per million people whereas in our country it is just 21.03 judges or every 10 Lakh, which is very less. The strength of judges should be increased to deal with such a huge number of pending cases. ADR methods should be employed to resolve the family disputes,

<sup>46</sup>B. A. Agarwal, "Speedy and Visible Justice" 2 *Cr. LJ* 172 (2004).



motor accident claims, contractual dispute. Though, the legislature has made provisions for the ADR system but these methods are not adhered strictly.

Number of pending cases are increasing day by day. Almost 4 crore cases are pending in India. Delay in disposing of cases has shaken the trust of the people in judicial system. Therefore, strict steps should be taken to reduce the delay in justice delivery system. The law commission of India has given many recommendation to reduce the pendency of cases and to overcome the delay, these guidelines should be strictly implemented.