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PROCEDURE PARALYSIS: IDENTIFYING BARRIERS TO TIMELY ADJUDICATION IN CRIMINAL JUSTICE

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Abstract: Since evolution of the human kind, we are trying for a crime free society and still trying and struggling. But the situation getting worsen when the victim unable to get the justice or justice delayed to him which is equal to denied or we can say the court procedure and lot of fee squeeze him, harass him more than he suffered from a crime. That's why timely disposal of cases whether it is civil or criminal is essential for maintaining the rule of law otherwise, people may try to take the law in their hands to get justice by their own methods whether it is legal or illegal. The present paper discuss the need to ensure that the speedy justice should be given to the victims, also need to ensure that the administration should be fully prepared with tools and techniques to assist the victims and accused throughout the procedure of a case. Federally speaking, while 'right to decide' belongs to the judiciary what they need and require legislature have authority to provide and act upon judicial decision.

Keywords: Judiciary, Supreme Court, E-Court, Speedy Trial, Decriminalization, Stringent laws

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Introduction

Over the years, legislature and judiciary has tried to proposed a mechanism for the speedy disposal of court cases. But for speedy disposal in criminal cases there must be a proper criminal law because the essential aim and object of criminal law is to guard and protect the society against the criminals. Therefore criminal law in its broad sense consist of both the one side substantive law defines & determine various type of offenses and punishment for the same

and on the other side procedural criminal law is to administer the substantive law, it means without procedural law substantive law is nothing. And if there are glitches and ambiguities in any procedural law it will negatively impact the victims as well as the accused also. It is very important to early disposal in criminal cases we must have a good procedural law but for the proper dispatch of court work depends not merely on the law but also depends on the administration which is involved in the cases from bottom to high like Police, Prosecutors, Magistrate, Judges, staff which assist all of them whether it is reader of a judge or typist. If there is any mistake done by any staff member it may create an ambiguity to the judge, victims, accused or to the other staff also and ultimately it delayed the justice and also deprived a victim from his right that is right to speedy justice. In these days the strength of the judges and their staff in the courts are not sufficient and not properly equipped with modern technologies which can help in the speedy procedure. The court staff which is involved in the case must be trained in proper use of technology to assist the court and victims as well as accused also.

The principle of presumption that every one is presumed to be innocent unless proved otherwise should be maintained. The electronic and paper media should be barred from the medial trial because they make the person guilty before the court decided what is true and it also in some or other way influence the trial, recent example of it is Sushant Singh Rajput case, It may ruined the image of accused or in many times victim also become a scapegoat of media trial. In recent law commission's reports, committee and various other studies explained so many ways to ease the procedure of a case, ease. The government must show the courage to rectify them and modify the criminal justice to speedy disposal of criminal cases.

Tool and Techniques for Early Disposal in Criminal Cases

- **Modernization of lower Courts:** To improve the quality and speed of trial in criminal cases now a days modernization of the lower court should be the first priority because mainly each and every dispute gone through the lower courts and if the lower courts slow to decide the matter it will negatively impact on the further proceedings. In the pandemic of Covid-19 situation we must consider the new changes and also make some of them permanent which can help in the boosting of early disposal of cases whether it is civil or criminal. The **E-Court Mission** is the milestone in the journey

of modernization of the courts. The old traditional register and bundle of papers were replaced by new electronic gadgets and its also increase the speed of work and also improve the quality of it. Video conferences for the testimony of the accused from the jail or an old person from his house are very easy and its also very helpful in the covid-19 situation to resolve the cases without physical appearance.

- **Electronic Evidence and Expert Views**: The electronic evidence and expert views are very crucial in a criminal case. "Evidence" means and includes – All documents including electronic records produced for the inspection of the court, such documents are called documentary evidence[1]. But the courts are looks very suspiciously at electronic evidence, it's good to take all measures before consider them as an evidence but court must improve its speed whenever in the case requirement of evidence and there are some electronic evidence court must give its node to produce the evidence, after that check the credibility of the particular evidence. But many times courts ignore to do that. In the case of ***R.M. Malkani v. State of Maharashtra***[2]**,** the court said a contemporaneous tape-recorded is admissible under section 8 if the conversation is relevant to the matters in issue, there should be the identification of the voice, the accuracy of the tape recorded conversation is proved by eliminating the possibility of erasing the tape record. According to Indian Evidence Act, 1872 section 45, Opinion of the experts when the court has to form an opinion upon a point of foreign law or science or art or as to identify of handwriting or finger impressions the opinions upon that point of persons specially skilled in such foreign law, science or art or in question as to identify of handwriting of finger impressions are relevant facts, such person are called experts. But the courts are very lazy to call experts and take their opinions the court also does not facilitate them properly this is the one of the many causes the courts have to consider and be expeditious in the matter of criminal cases but cautiously because in the case of ***Ram Narain v. State of Utter Pradesh***[3]**,** the honorable court said that the such type of evidence and opinion has to be received with great caution.
- **Facility and Security of the Victims and Witness**: It is very important in a criminal case that the security and convenience of the victim and the witness properly managed for the smooth and expeditious trial. The lower as well as higher courts have to focus on the security and facility of a victim

and the witness so they can present themselves in the front of the court without fear and any bias.

- **Application of Science and Technology**: The application of science and technology in the administration of justice mainly in criminal justice is increasing rapidly. The science and Technology are very helpful in our efforts to prevent crime and in crime control strategies. The technology like camera, location tracker, voice recorder, metal detector are very helpful to find the criminal and also prevent them to do any crime. Whereas science assist in the critical situation when there is need of deep investigations. The science tells investigation team whose fingerprints, blood sample, DNA or hair sample etc. are found on the crime scene and it will also help the courts to timely dispose of the criminal cases as well[4]. There are so many cases which were solved with the help of science and Technology like, ***Mukesh & Anr. Vs. State of Nct of Delhi & Ors*** also known as ***Nirbhaya case*[5].**

Feedback for the Performance/Work (User Satisfaction)

> *"How courts handle people and their cases is of even greater importance than the resolution of the case, both for their inclination to voluntarily comply with the decision of the courts, and for confidence in the courts. People who feel that they have been treated fairly in court have an easier time accepting if they loose."*
>
> Fredrik Bohlin, Judge at the District Court of Yastad, Sweden.

Now a days there are many courts which are recognize that user satisfaction and their feedback is a key dimension of the quality of justice and also help in early disposal in criminal cases. When the courts are attuned to the needs of their users, trust and confidence in the entire justice system grows. But the main thing is that how to improve the satisfaction of court users. Very first it requires a detailed understanding of the experience of the court users through their feedback, interview, survey etc. Court must have developed a simple, effective, and less expensive way to do this. The judges and staff of the courts may conduct regular exit interviews with court users to measure and improve the court. They can ask about their experience in the court that day including whether the information they received was sufficient, how they found the facilities and how they were treated by the staff and any other officials. After that findings should be discussed among the judges and staff seriously. Common problems are identified, and low-cost solutions are then proposed and implemented after the detailed discussion.

Just look at this quote from a Court user – a criminal defendant in a Sweden district Court – who was interviewed after their hearing:

> *"The judge we had, she was so good. And the jurors were also good. The judge, she started with presenting herself and kind a…. talked a bit about what would happen….this makes you a bit less nervous and you can relax a bit. Yes and then she listened, looked at me when I spoke, and I was able to say what I wanted….it doesn't matter if I go to jail*[6]*."*

These type of gestures and empathy can make the process of coming to court smoother and also help to improve the punctuality of hearing.

Regular Seminars and Trainings

Any organization which is service oriented in nature can be appreciated in terms of effectiveness in the achievement of its objectives goals results and promotion of internal efficiency in order to achieve the result. Indian judicial system mainly in criminal cases are very slow. In 1906 what Lord Devlin said for British Justice system has equal validity for our system. He said, *"If our business methods were as antiquated as our legal system, we would have become a bankruptcy nation a long back*[7]*."*

It means judges of lower courts, high courts and as well as their staff must be up to date and well trained. There seminars and trainings with new techniques and technologies regularly conducted by the Session and the High courts. The seminar and training for the judges and also regular seminar and training for the public prosecutor as well as for the advocates should be conducted to learning new things and give boost in the hearing of cases in the court.

Mainly the judges of lower courts must be very efficient in procedure of framing charges, issuing notices, summons and warrants as described under the Indian Criminal Procedure Code, 1972. Training for judgment writing and maintenance of diary and finding cases for evidence are also necessary because these thing gives tremendous capacity to early disposal of cases.

Need of Additional Courts, Judges and Better Infrastructure of Lower Courts

If we visit to any lower court of our country it reveals the ground realities about the judicial institution. It reveals the poor conditions in which the court function for the administration of justice. Even the basic facility of drinking water and toilets are not there. There are not enough judges to handle or hear the pending cases.

According to the National Judicial Data Grid we have millions of cases which are pending[8]. The of pending cases:

Particular	*Civil Cases*	*Criminal Cases*	*Total*
0 to 1 years	4088940	10640337	14729277
1 to 3 years	2561780	6606848	9168628
3 to 5 years	1358299	3439167	4797466
5 to 10 years	1276123	3667180	4883303
10 to 20 years	473684	1826267	2299951
20 to 30 years	104781	317658	422439
Above 30 years	33896	52252	86148
Total	9897503	26489709	36387212

Source: National judicial Data Grid.

We just beating around the bush, and not focus on what the judiciary real need for early disposal of cases. This data of NJDG shows that the judiciary need additional courts and more judges with better infrastructure. Former Chief Justice of India T.S. Thakur in 2016 in a conference said with tears, there are need of 70 thousand more judges to tackle the heavy burden of pending cases. On other side deficiency in infrastructure is a factor that affects judicial delays and becomes relevant in improving efficiency of speedy and smooth trials.

In 2012 the Supreme Court set up the National Court Management and System (NCMS) committee, with an immediate aim of upgrading the court management system on the instructions of the then Chief Justice of India. With the object of understanding how all the district courts in India are faring against the benchmark laid down by the NCMS committee and to fill the lacuna[9].

According to findings of VIDHI Center For Legal policy report Navigation like map, a help desk, Waiting Areas, Hygiene and Case Display Board ls both at the entrance and in the waiting areas are necessary in a district court. The overview of findings of the VIDHI Center For Legal Policy, shows that the Delhi, Kerala, Meghalaya, Haryana and Himachal Pradesh are among the best performing states in India. The district court complex of Chandigarh and Lakshdweep are the best performing among Union Territories. States with the poorest overall judicial infrastructure are Bihar, Manipur, Nagaland, West Bengal and Jharkhand. The district court complex of Andaman & Nicobar Islands and Puducherry are the worst performing among Union Territories[10].

Client Must Not Be The Source of Money for An Advocate

According to the Advocate Act 1961, Advocate to be the only recognized class of persons entitled practice of law in the courts[11]. A layman find it so hard to understand how lawyers function and he totally depends on an advocate for his matter in court. Now the duty of an advocate is that, he should fair with his client and not become a cause of slow proceeding in courts and looted money from the client. He should charge a reasonable fee and defend or present his clients in the court properly.

The professional responsibility of a lawyer derives from his membership in a profession which has the duty of assisting members of the public to secure and protect available legal rights and benefits. In our government of laws and not of men, each member of our society is entitled to have conduct judged and regulated in accordance with the law, to seek any lawful objective through legally permissible means and to present for adjudication any lawful claim, issue or defense[12].

An advocate is the chain of trust between the legal system and the public and he is also the member who can maintain the dignity of a court. So ethically, morally and in real life it is the duty of an advocate to fair, punctual, supportive and truthful towards the client and do not reveal the secret of his client to any one specially to the opposite party.

Decriminalize Unnecessarily Criminalised Act

In recent years, there has been a strong pressure on states legislatures across the world to decriminalize or legalize those acts which should not be criminalized or civil in nature, in a recent debate many countries demand to decriminalize the non-medical use of Cannabis, the USA already decriminalized the no-medical use of Cannabis. But the decriminalization is not the same as legalization. If the legislature decriminalize the use of some drugs that it does not mean that use of drug is legal. But it will certainly effect the judicial burden mainly to disposal in criminal cases in the courts. There are so many acts which is civil in nature but they listed in various statutes as a crime. Now a days government try to identify those acts which can be decriminalized or change them in civil nature.

In order to cope up with the changing scenario, the Supreme Court and government of India has devised various policies and thereby, has introduced several notable changes and updates. Recently one such significant measure

was also adopted by Finance Ministry of India to cope up with the economic crisis along with fulfilling the objective of achieving *'Sabka Sath, Sabka Vikas* and *Sabka Viswas* by proposing the decriminalization of the offence of dishonor of cheques under Section 138 of Negotiable Instruments Act, 1881 (the Act) along with other thirty-eight minor economic offences[13].

The Supreme Court of India in ***Makwana Mangaldas Tulsidas V. State of Gujrat[14],*** noted that over 35 lakh cases of cheques bouncing were pending and utilizing judicial time and money and registered a *Suo Moto case* to devise a mechanism to dispose of these cases rapidly. The Supreme Court of India also in the case of ***Kaushalya Devi Massand v. Roopkishore Khare[15]*** have stated that the offence under section 138 of the Act is intrinsically civil in nature. The Supreme Court of India in the case of ***Joseph Shine V. Union of India[16]*** (writ petition) struck down section 497 (adultery) of the Indian Penal Code, 1860 as unconstitutional being violative of Article 14, 15, and 21 of the Indian Constitution. Taking a step further in this series of positive changes the honorable court in the case of ***Navtej Singh Johar v. Union of India[17]*** held that consensual sexual relationships between two adult homosexual, heterosexual or lesbians is no more an offence under section 377 of Indian Penal Code, 1860.

The center government of India following the recommendation of 'Report of the Committee to Review Offences' under the Companies Act, 2013, the 2019 Amendment decriminalized 16 sections of the Act to civil violations. The 2019 Amendment eliminates the criminality of these violations by levying monetary penalties instead of criminal fines. Levying these penalties has also been shifted from courts to in-house adjudication mechanism (IAM) under Section 454 of the Act, whereby adjudicating officers appointed by the central government determine the offences and enable companies to prompts communicate, represent, and resolve defaults[18].

Criminal Law should be beneficially used to rehabilitate the corrigible offenders. But the Kerala government give a serious blow in this series of changes, these changes are also a helping hand to resolve the pending matters in criminal courts. The Kerala government take decision to amend law to make allegedly "threatening or abusive or humiliating" social media posts punishable by a jail term crosses many red lines – and walks a path which the Supreme Court has clearly flagged as unconstitutional in the case of ***Shreya Singhal v. Union of India[19].***

Repeal or Amend Unnecessary and Unwanted Stringent Laws

The crime or any offence and of its punishment both are different, because the punishment hardly make any change in the behaviour of an offender. So the punishment for an offence or any crime should be reformative and deterrent in nature. But in our laws the situation is opposite for example if talk about the sedition law under section 124A in India Penal Code 1960, Sedition is an offence which existed in our Indian Penal Code before we got Independence because the colonial master wished to penalize anybody who was trying to overthrow the state. There are so many cases in which it seems like government use the sedition law as a weapon to suppress the dissent. Another stringent Act is Unlawful Activities Prevent Act, 1967 or UAPA is an anti – terrorism law which has been used against various activists, it is okay we have a law to tackle with those who want to break the Nation but the way these laws tried to apply on them is impose a huge burden on the judiciary. The way these laws and Act are formed make judiciary weak and motionless. The judiciary can not take any decision swiftly when the matters under trial with these laws. So it would be better for the government as well as for the judiciary make the procedure easy with these type of laws.

The Way Forward

The legal maxim "Justice delayed is Justice denied" is not just a legal maxim but a bitter truth. In many cases Supreme Court held that the speedy trial is a legal and fundamental right. But awareness of these rights to the public is very poor that's why we have to work on our typical language and other procedural systems and need to simplify them for the public. In this chain, role of advocates and public prosecutors are very important. The role of Magistrate and Police before and through out the trial and the role of judges and their staff should be amicable with the court users. The legislature must have provide all necessary facilities and infrastructure with modern equipment and a reasonable strength of staff to the lower courts for give a boost in hearing of cases. In this Covid-19 pandemic situation video conference are there, It is an interesting experience to see that the physical appearance of the parties is no more important except in some serious cases. It means now the judiciary should focus on these new aspects and improve the mechanism of mobile court, family courts and other local justice systems.

Notes

1. Section-3, Interpretation clause, Indian Evidence Act, 1872
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3. Ram Narain v. State of Uttar Pradesh, AIR 1973 SC 2200.
4. Law Commission of India Report No.-271 'A draft bill for the use of and regulation of DNA based technology ' Available on https://lawcommissionofindia.nic.in/
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