

## JUSTICE DELIBERATION: AN ENDLESS LOOP

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After 33 years of freedom, the accused was finally put under lock and key for raping a 10-year-old girl. What was the girl's accountability here? In *State of UP vs. Dharma*, a case that took place in 1989, the trial court declared the victim's testimony untrustworthy.<sup>1</sup> It is popularly known and used that justice delayed is justice denied". But is it only denied? For the 33 years that the 10 year old has been through, justice was not only denied to her, but injustice and inaccuracy prevailed for the concerned time. Who is to be held responsible here?

Article 21 entitles the accused to the right to a speedy trial, which had been violated in many cases like *Hussainara Khatoon vs. the State of Bihar*, which was the respective landmark judgment for it. In *Durga Datta Sharma vs. the State of Kerala*<sup>2</sup>, the court dropped all the charges as after 25 years, the chances of commencing and culminating were very low, as for the given time the accused suffered the hardship of imprisonment without being proven guilty.

- Let's acknowledge the causes of such longer deliberation:

### 1. ADJOURNMENTS:

Justice G.R Gawai stated that "Everybody is asking for adjournment at the drop of a hat". The repercussions of this could be obstruction of court proceedings. Many advocates do this to gain higher professional fees. Records reveal that the maximum number of adjournments, being three, are not followed in 50% of cases leading to delays. Adjournments could also lead to witness tampering.

In the case *Isharwal Marli Rathor vs. Gopal and Others*, the defendant received ten adjournments between 2014 and 2019 which were granted with a cost. This greatly contributes to delay. .

### 2. INSUFFICIENCY AND INEFFICIENCY OF JUDGES:

The data published by the Ministry of Law and Justice provides the information that the Supreme Court of India allows the strength of 31 judges, but only 21 of them to be filled, creating a vacancy of 6 posts. In the High court the Court, a vacancy of 403 posts. As per observations the average number of cases that judges hear in high court averages to 70 per day. That makes 28,210 overburden of pendency on the rest of the presiding justices. My point here wasn't to indulge in numbers but just to showcase the severity of the matter.

The inefficiency of the justice system can be remarkably noted in the *case of Aryan Khan vs. Union of India*<sup>3</sup>, son of mega movie star Shah Rukh Khan, who was caught in the nexus of international and national drug dealers. The case was closed as soon as it erupted within the span

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<sup>1</sup> Judgment for State of UP vs Dharma <<https://indiankanoon.org/doc/1808782/>>

<sup>2</sup> Judgment for Durga Datta Sharma <<https://indiankanoon.org/doc/529384/>>

<sup>3</sup> Judgment of Aryan Khan <<https://www.casemine.com/judgement/in/61a47cb99fca193d1e428076>>

of 28 days (October 3 to October 30, 2021). I have been mentioning how long cases take, but this one gives me no scope to do so. Ironic, isn't it?

### 3. NONESSENTIAL CONTENTION BURDENING THE COURTS:

Important issues are being deserted while political squabbles take over all the attention of courts. The Punjab government filed a petition against the state governor's passivity on the state cabinet's decision to summon Punjab Vidhan Sabha's budget. Was it really necessary to seek legal counsel when it is clear that the governor was obligated to follow the cabinet's advice. The superfluous use of judiciary assets by government authorities to manipulate their power and standing is a major cause too.

To mention a few other causes: Endless amendment of laws, Absence of work culture in courts, Poor administrative system, Delay commences at the exact point when the petitioner is filling out the suit, it is aggravated due to non cooperation and is extended due to non attending in cross examination.

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It would be prejudiced of me if I do not address the steps taken by the government to resolve the issue. While I highly empathize with the judicial process, it being a vast and complex one, and I recognize the improvement as well, but how far has it taken us?

India ranks 178th out of 189 countries on enforcing contracts indicator, making it one of the worst performers in World Bank's Ease Doing Business study. About three crore cases are currently pending in courts of India. It would take more than 35 years if 100 cases are closed per hour by judges. The severity of this matter is quite alarming.

#### Suggestive solutions:

##### - TECHNOLOGY:

Nine Research Institute in China developed a software that helped 300 hundred judges handle 1,50,000 cases. The CJI's office and high courts should have a live dashboard which gives them performance feedback and compiled data of lower courts. Technology should be strengthened and its efficient use should be implemented.

##### - CASE MANAGEMENT HEARING:

Civil Revision petition takes 2303 days on average in India. Case management procedures should be overhauled by promoting hearings after pleading have been completed by both parties. A timeline should be set and the court must impose sanctions against parties that fail to adhere to the timelines.

- COORDINATION BETWEEN JUDICIARY AND THE REST OF THE GOVERNMENT:

Government is required to commit to assisting with financial expenditure for overall development (man power and infrastructure), supporting administrative agencies, providing technical systems and so on.

- URGENT NEED FOR FILLING OLD VACANCIES AND CREATING NEW POST:

The judge-population ratio is a significant factor of case pendency. It ratio increases, pendency decreases. Working hours of judicial workers can be increased and the number of courts should be added. Mediation and Arbitration should be promoted to prevent backlog.

- PREVENTING IRRELEVANT ADJOURNMENT: Lawyers charge their client per appearance. There could be self-serving motives for monetary benefits which might lead them to ask for further dates. Court must strictly stick to Rule 1 of Order XVII stating the essentials for adjournment. Any deviation from this should be charged with a higher fine to create an atmosphere of authoritarianism and regard for the justice system.

- Other: Encouraging police to accelerate the investigation process, expanding bail opportunities for defendants charged with less serious crimes, segregating undertrial prisoners from those who have already been convicted.

People's life highly depends on the justice system and to protect their faith and trust in the same should be a primary target. The constitution mandates safeguarding to all its citizens. The judiciary in cooperation with all its components has a role to play in achieving socio-economic goals enshrined in the Constitution. Nani Palkhivala once stated " Law may or may not be an unruly horse, but in India it is a snail". With the speed as such, it would cost a calamitous period for India to reach its destination as provoked by internal unsettlement of the public. Putting the plan into action is as necessary as designing it.