Disposal, Delay and Denial: Case Study in Criminal Justice System

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Abstract

Securing justice has always been riddled with difficulties. This problem is akin to all jurisdictions, though at different levels of severity. The problem of delay, especially delay in criminal justice system, is at alarming scale in India. Numerous reasons are being cited by officials, professionals and academicians working in the field of judicial system. Whatever may be the reasons, delay inevitably results into denial of justice. It is undeniable fact that the criminal justice system of India is going through rough phases. On one hand, there is a strong demand for radical reforms in terms of creating new offences and stringent punishment due to new set of criminality, crime pattern and methodologies coming at fore, on the other, since justice hurried is justice buried, there is a deeply felt need for protection of human rights. One way for looking remedies avoiding delay and ensuring justice would be to re-examine the very conceptual outlining of Criminal Justice System. Arguments were made as to re-designing of categories like Cognizable vs. Non-cognizable, Bailable vs. Non-bailable, Categorisation of Trial Procedure, Sentencing patterns etc. It is further added that these concepts/categories need to be re-examined with different conceptual outlook. In the present work, author empirically tests the very functioning of two different procedural rule contained in the Code of Criminal Procedure, 1973 dealing with bail and grant of compensation respectively, and demonstrates that how these procedure results, equally, into the delay and the denial of justice.

Key Words: Bail, Bail Bond, Bail Jurisprudence, Victim Compensation, Criminal Justice System, Justice Delayed, Justice Denied etc.

I. INTRODUCTION

Securing justice has always been riddled with difficulties. This problem is akin to all jurisdictions, though at different levels of severity. The problem of delay, especially delay in criminal justice system, is at alarming scale in India. As per the available data, by the April 2018, there were over 03 Cr. cases pending across the various Indian Courts.[1] Of these, the subordinate courts account for over 86% pendency of cases, followed by 13.8% pendency before the High Courts. Between 2006 and 2018 (up to April), there has been an 8.6% rise in the pendency of cases across all courts. Pendency of cases in Subordinate Criminal Courts are at very high level. As per data of 2016, 81% of all cases pending in subordinate courts were criminal cases. Though, delays are not a peculiarly Indian phenomenon. Problem of delay in disposal of cases are at rampant in many other jurisdictions. However, the scale of delay in Indian judicial system is unprecedented.

II. EXPLORING THE PATTERN OF DENIAL

Numerous reasons are being cited by officials, professionals and academicians working in the field of judicial system. Whatever may be the reasons, delay inevitably results into denial of justice. It is undeniable fact that the criminal justice system of India is going through rough phases. On one hand, there is a strong demand for radical reforms in terms of creating new offences and stringent punishment due to new set of criminality, crime pattern and

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[1] Gajraj Singh, Pendency of Cases in Judiciary (5/05/2020) https://prsindia.org/policy/vital-stats/pendency-cases-judiciary

methodologies coming at fore, on the other, since justice hurried is justice buried, there is a deeply felt need for protection of human rights. It is further argued that the rule of law cannot exist without an effective judicial remedy available to all in a timely manner. Non-availability of efficient judicial system impedes the public confidence in rule of law, and thus provokes perturbed minds to search quick alternatives. It further obstructs the process of economic development.

The Economic Survey 2017 marked that commercial cases pending in various courts were the biggest stumbling block in reviving the investment. The Survey states:

> "The next frontier on the ease of doing business is addressing pendency, delays and backlogs in the appellate and judicial arenas. These are hampering dispute resolution and contract enforcement, discouraging investment, stalling projects, hampering tax collections but also stressing taxpayers, and escalating legal costs. Coordinated action between government and the judiciary-- a kind of horizontal Cooperative Separation of Powers to complement vertical Cooperative Federalism between the central and state governments-- would address the "Law's delay" and boost economic activity."

III. Reasons for Delay

The delays in disposal of cases are due to various reasons. It ranges from issues like long due vacancies in various courts, Court's infrastructure, procedural issues like adjournment to that of psychology of litigants. Vrinda Bhandari, in her work "*India's Criminal Justice System: An Example of Justice Delayed, Justice Denied*"[2] counted three fundamental reasons of delay in criminal justice system. *Firstly*, the '*external factors*' such as monetary, cultural or geographical barriers, which exclude or "fence-out" certain sections of society by preventing their access to courts. Geographical barriers or distances from courts can cause great difficulty to litigants, accused, witnesses, if they have to undertake day long trips to reach the courts, only for the matter to be adjourned.[3] *Secondly*, the '*internal factors*', such as delays or convoluted procedures and technicalities, which affect everyone in the system, but disproportionately impact those with fewer resources. And *thirdly*, the '*quality factors*', which are caused by the uncertain and inconsistent application of law and arbitrary sentencing and affect the substantive judgment of the case on merits. She argues that, this '*quality factor*' tends to have a disproportionate impact on the poor, whether in cases related to arrest, bail, or the sentencing including the death penalty.

A close examination of the reasons cited above would re-affirm the common belief that criminal justice system is still a distant dream for poor and ignorant. A large number of arrests in India are reportedly either "unnecessary or unjustified". This does not only add up to the problem of undertrials, but also causes inexorable delays in the judicial process. The extended incarceration of accused, in addition of causing mental trauma and economic loss to the accused and his family, further impedes the effective legal assistance.[4] The delay in the investigation and prosecution of criminal cases erodes faith in the rule of law and the criminal

[2] Vrinda Bhandari, India's Criminal Justice System: An Example of Justice Delayed, Justice Denied (Firstpost) (15/02/2020) https://www.firstpost.com/long-reads/indias-criminal-justice-system-an-example-of-justice-delayed-justice-denied-3475630.html
[3] Id., Vrinda Bhandari (Supra)
[4] Ibid.

justice system, which has serious implications for the legitimacy of the Judiciary.[5] Justice delayed is, thus justice denied.[6] Delays in the administration of justice dents the delivery of justice, not only to the accused but also the victim as well as the system. Delay lead, inevitably, to loss of physical evidence, questionable reliability on witness testimony etc. The delay which ads-up socio-economic loss to victim and accused equally, often delude both to pursue their case diligently to any logical conclusion. *Daksh Report* noted, an accused who has been in prison for many years as an under trial, may think it is more advantageous for him to plead guilty and leave prison, rather than face the uncertainty of trial.

IV. RE-EXAMINING THE CONCEPTUAL FRAMEWORK

The one way for looking remedies avoiding delay and ensuring justice would be to re-examine the very conceptual outlining of Criminal Justice System. Arguments were made as to re-designing of categories like Cognizable vs. Non-cognizable, Bailable vs. Non-bailable, Compoundable vs. Non-compoundable, Categorisation of Trial Procedure, Sentencing patterns etc.[7] Committee on Reforms of Criminal Justice System, Ministry of Home, Government of India, (popularly known as Malimath Committee Report) suggested complete overhauling of these distinctions. The Committee through Para 15 at page 181 (Vol.-I) discuss in length about reclassification of offences. The Committee lamented the approach and stated that "*India inherited the present system of classification of offences from its colonial rulers more than 140 years back, in which the police are the primary enforcers of the law. Considering the nature of the impact of colonial law making, suffice it to say that it is time to re-examine and reframe the laws as appropriate to the twenty first century Indian society and its emerging complexities.*" It further added that "*[if] the Criminal Justice System were to increase its efficiency in rendering justice and become as quick as it is fair, it would restore the confidence of the people in the system. Towards this, it is necessary to not only re-classify crimes but re-classify them in such a manner that many of the crimes- which today take up enormous time and expense- are dealt with speedily at different levels by providing viable and easily carried out alternatives to the present procedures and systems.*" Thus, these concepts/categories need to be re-examined with different conceptual outlook.

In the present work, author empirically tests the very functioning of two different procedural rule contained in the Code of Criminal Procedure, 1973 dealing with bail and grant of compensation respectively, and demonstrates that how these procedure results, equally, into the delay and the denial of justice.

V. CASE STUDY-I: BAIL BOND-A FLAWED PROCEDURE

According to the data released by National Crime Record Bureau (NCRB) in 2017, there were at least 3, 08,718 inmates in various jail as undertrials and they constitute 68.5% of total inmates. Among undertrial prisoners, around 75% of prisoners were confined for a period of less than one year, whereas 34,311undertrial prisoners were confined for more than 2 years. There were 4,876 undertrial prisoners were confined for more than 5 years. Thus, the data collected by National Crime Record Bureau speaks in volume about problem of undertrials, and thereby narrates the complexities of bail system.

[5] Law Commission of India, 245th Report, 2013
[6] Law Commission of India, 239th Report, 2004
[7] Diwaker Singh v. State of Bihar, Crl. Appeal No. 433 of 20041

VI. Bail Bond and Surety: The Procedure

Chapter 33 of the Code of Criminal Procedure, 1973 (hereinafter referred as Criminal Procedure) provides the law relating bail. Apart from other substantive requirements, there are two procedural requirement for granting bail i.e. furnishing of bail bond and surety.[8] Bail-bond is a monetary deposit/guarantee whereby accused undertake to observe the terms and conditions laid down in the bail order, and in case of breach of terms and conditions, his bail will be cancelled, and the amount deposited as 'bond', will be forfeited.[9] As a general rule, the Courts insist for the production of property documents and the verification thereof, before a formal release of accused may be ordered. In case of land documents enclosed bond, the same is to be verified by appropriate authority, mostly often the Sub-Divisional Magistrate.[10] It further permits to deposit of a sum of money or Government Promissory Notes, except in the case of a bond for good behaviour, *in lieu* of executing a bond.[11] Sometimes, *in lieu* of property documents, accused or surety use to enclose the Registration Certificate (RC) of two-wheelers, four-wheelers, etc., and even in such cases verification is done through the Regional Transport Office (RTO). Criminal Procedure cautions the courts about the amount of bail bond or surety, and provides that every bond should be fixed *with due regard to the circumstances of the case and should not be excessive*.[12] There is no provision in law to insist that surety must hail from within the district where the Court is situated.[13] Courts have guided that when the accused is not likely to abscond and has his roots in the community, he can be safely released on personal bond. Enquiry into solvency of the accused can become a source of harassment and often results in deprivation of his liberty.[14] Where sureties are insisted on, ordinarily due weight should be given to the affidavits produced by the surety and an inquiry or insistence on a solvency certificate must be the exception rather than the rule.[15]

VII. The Monetary Tag of Bail Order

The concept of bail bond and/or surety seems to be very reasonable procedure to compel the presence of the accused before the court. It is believed that the accused having furnished certain amount of bail-bond can't dare to jump the bail. However, the procedure for furnishing bail bond and surety, and the verification process is flawed and violates its own normative requirements. *Firstly*, there are occasions where accused is arrested in some other jurisdictions, far away from his local area, and in such cases accused being a stranger to the area, may not secure a person to stand as surety. *Secondly*, notwithstanding the fact that 'monetary tag' is an accepted norm for granting bail, and the law directs amount so fixed *shall not be excessive*, it is often seen that the amounts are being fixed arbitrarily high, and thereby deny the accused quick release. *Thirdly*, as against Section 440 of the Criminal Procedure which demands the court '*to give due regard to the circumstances of the case'* and accordingly fixed the bond, various bail orders examined hereinafter suggest that the bail bonds are being fixed arbitrarily without giving due regard to nature of crime, flight risk in the of offender or any other normative criteria. Thus, in practice, it is fixed arbitrarily devoid

[8] The Code of Criminal Procedure, 1973, s. 441
[9] Id., s. 446
[10] Shiv Shyam Pandey v State of UP, 2009 (5) ALJ 70.
[11] The Code of Criminal Procedure, 1973, s 445.
[12] Id., ss 440 & 441,
[13] Moti Ram v. State of Madhya Pradesh, AIR 1978 SC 1594
[14] Hussainara Khatoon v. Home Secretary, state of Bihar, AIR 1979 SC 1360
[15] Valson v. State of Kerala (1984) 2 Crimes 503

of any normative criteria.[16] Imposing arbitrary bond amount was ridiculed by the Apex Court of India since seventies, as being violative of Article 14 and 21 of the Constitution of India.[17] The court observed that the 'money' may be one consideration for creating deterrence, but *per se* cannot be a guarantee for observance of terms and conditions laid down in the bail order.

VIII. Approach of Bail Courts: Monetary Tag & Arbitrariness

Generally, bail bond is fixed while considering relevant financial status of the accused. In *Motiram* case[18] the Apex Court suggested that harsh condition in bail orders are against the law. In *Sandeep Jain v National Capital Territory of Delhi*,[19] Supreme Court ruled that bail conditions being onerous in the nature are against law. Further, *Ramathal & Others v. Inspector of Police*,[20] the Supreme Court did not approve a bail condition Rs. 32,00,000/- and also on their executing a personal bond of Rs. 1,00,000/- with two sureties each for the like sum. Again, the Supreme Court in *Amarjit Singh* v. *State of NCT of Delhi*,[21] deplored the bail order requiring the applicant to submit the sum of Rs. 15 lacks in the form of FDR, and held the same as 'unreasonable' condition. Thus, the Apex Court guided that the objective of a bail bond should be to create a financial deterrence, and thereby securing compliance of terms and conditions of bail order, and no the means to deny a proper release of the undertrial prisoner.

Hereinafter, it is argued that without having a reasonable and substantial difference between the amounts for bail bond between rich and poor; between different classes of accused based on severity of offence committed, creates a serious doubt as to arbitrariness of these bail orders, and thus, violative of Article 14 of the Constitution of India.

IX. Empirical Data

The data collected would expose the applicability judicial dictum given in *Moti Ram* v. *State of M.P*,.[22] Through stratified random sampling method, bail orders from Districts Ghaziabad and Saharanpur of Uttar Pradesh were collected and examined from various perspective. These two districts represent two different socio-economic and demographic patterns. A total of one hundred bail order, fifty each from district Ghaziabad and Saharanpur respectively were selected from the official website of these courts. Only those cases were selected in which bail was allowed with or without sureties.

Table-03: Average Monetary Tag in the Bail Bond

Category of Offences	Ghaziabad		Saharanpur	
	Male	Female	Male	Female
Attempt to Murder/CH	1,00,000	NA	50000	50,000
Hurt Simple/Grievous	NA	50000	50000	50,000
Theft/Robbery	50,000	50,000	41,111	47,500

[16] State of Rajasthan v. Balchand AIR 1977 SC 2447
[17] Moti Ram v. State of Madhya Pradesh, AIR 1978 SC 1594
[18] Ibid.,
[19] (2000) 2 SCC 66; See, Sakthivel v Inspector of Police, [2015 (2) MWN (Cr.) 438]
[20] [2009 (3) SCALE 550]
[21] JT 2002 (1) SC 291
[22] Moti Ram v. State of Madhya Pradesh, AIR 1978 SC 1594

Forgery	50,000	NA	50,000	50,000
Arms Act	NA	NA	NA	50,000
Cow Slaughter	NA	NA	60,000	NA
Possession of Drug/Liquor	50,000	50,000	54,000	50,000
Gangster Act	50,000	NA	50,000	NA

The data reflects very indiscriminate fixation of amount in the bail bond. There seems to be no criteria and little application of mind as to facts and circumstances while fixing the amount of bail bond. For example, in case of heinous offences like attempt to murder, culpable homicide the average amount mentioned in the bail bond is Rs. 50,000/. Ironically, cases of theft also met with the similar bail bond. During study, it was found that bail amount for stealing of buffalo or a mobile is not anywhere different to that of attempt to murder.[23]

Though, the sample size of the work is comparatively smaller, and thus any possible generalization may be subject to further inquiry. However, there are three irresistible findings of this study, *firstly*, that bail courts have failed to appreciate the rationale behind having differential amount of bail bond; *secondly*, the bail courts are reluctant in providing reasons behind fixing any given amount against the bail bond; and *thirdly*, fixing monetary tag for higher sum would unnecessary insist for verification, and thus denial of quick release of undertrials.

X. CASE STUDY-II: VICTIM COMPENSATION

Code of Criminal Procedure, 1973 provides mechanism for compensation to victim crime through Section 357 & 357A. As per this provision, victim may be granted compensation out of the amount of Fine, if any, imposed on the convict[24]; and if fine does not form the part of substantive punishment, then such amount, as may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person has been so sentenced.[25] Further, Section 357-A provides that "when the compensation awarded Under Section 357 is not adequate for such rehabilitation, or where the case ends in acquittal or discharge and the victim has to be rehabilitated, then such amount, as recommended by Court, from the Fund Created by State." There are additional provisions for providing compensation under various Central as well as State Schemes under National Legal Services Authority Act, 1987; POSCO Act, 2012; and another *ex-gratia* scheme.

Under a UGC sanctioned Minor Research project, the author has collected empirical data i.e. 2776 case, decided by 71 Sessions Courts of Uttar Pradesh between year 2017-18. The sample design for this research was *stratified random sampling* wherein at least 20 and not more than 100 cases were taken from each Session Court. Only those cases were part of this sampling process which have qualified the criteria i.e.

(a) Case must have been tried by Sessions Court in Uttar Pradesh;

[23] Akbar v. State, Crime No. 140/2018, District Court & Session Court-09, Saharanpur, 11/05/2018
[24] The Code of Criminal Procedure, 1973, s. 357(1)
[25] The Code of Criminal Procedure, 1973, s. 357(3)

(b) Offence must be of such a nature wherein some individual must be the direct victim of the crime (cases relating to Electricity Theft, Food Adulteration, Possession of Liquors, NDPS etc. are not taken into consideration)
(c) Case must have resulted into conviction
(d) Court must have imposed fine with or without grant of compensation.

Sample Size		Fine		Compensation		
				Not Granted	Granted	
Courts	Number of cases	Fine Imposed	No Fine Imposed		Granted u/s 357(1)	Granted u/s 357(3)
71	2776	2748	28	1898	877	01

The research depicted a very sorry state of affairs about granting of compensation pattern throughout state of Uttar Pradesh. The data reflects that out of 2776 cases, compensation is awarded in only 878 cases i.e. 31.62%. Out of 2276 cases, there is only one case wherein victim was granted compensation without the fine being imposed on the accused. It is very alarming that 1898 (68.37%) cases, which form the part of sample in this research, though resulted into conviction but courts have not awarded any compensation to the victims. One of the reasons for non-awarding of compensation is higher dictate as to total disposal of cases on daily basis. Judicial officers, subject to anonymity, suggested that if they turn towards providing compensation in each case that will lead to further delay because in many cases court were yet to finalise the true victim. There were cases wherein victim's family disputed the right of compensation recipient as to his entitlement. Thus, awarding compensation would further delayed the disposal of the file.

XI. REFORMING THE PROCEDURE

The inferences drawn from above two studies would inevitably suggest for an urgent reform in procedural laws for expediting criminal justice system. As argued earlier, in number of bail applications, bond amount is fixed at higher side, requiring verification, which in turn delay the process of release, and thus result into total delay in the disposal of the case. Similarly, a distinct system is required to be placed whereby victim can be granted 'compensation' without the file being classified as 'pending'.

XII. SUMMING UP

It is high time to envision a multipronged strategy to reduce the pendency of cases at the different levels of courts. Some of these may include reducing government litigation by adopting alternative dispute resolution, compulsory use of mediation etc. Criminal Justice System, which is currently plagued with procedural complexities, need to be simplified, and at the same time capacity building should be enhanced through use of technology. While making any such effort, one need to keep in mind that justice delivery system is not an infinite game where one party is doing her best to win the case and the other is interested in just playing with it. It is rather, a finite game, where both the parties are trying their best to win and reach to the justice.