

Chapter 6

Administration of Civil Justice and Its Glorious Uncertainty in the Indian Legal System: A Long, Expensive Journey to Justice

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ABSTRACT

“Justice delayed is justice denied” and “justice hurried is justice buried” are oft quoted proverbs in legal studies. While the latter is rarely prevalent in India, the former has maligned the image of the Indian legal system considerably. Delay in disposal of cases, pendency of cases, especially those of civil and commercial nature, and inducing unnecessary procedural complexities in litigation process are hindrances that come in the way of access to justice. Several reports of the Law Commission of India have pointed out that the present situation is very grim with escalating number of pending cases in the courts in India. To add to this compelling situation, the COVID-19 pandemic has further disrupted the court proceedings by increasing burden, moving the hearings from physical to virtual courtrooms. The endeavour of the authors in this chapter has been to search for convincing reasons that have led to inordinate delays in disposal of civil cases and to find out possible solutions to this problem plaguing the Indian legal system.

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1. INTRODUCTION

The Preamble to the Constitution of India guarantees to secure the quaternity of Justice, Liberty, Equality and Fraternity. In its truest sense, the virtue of ‘Justice’ - ‘social, political and economic’, is the essence of the Holy Trinity of “LIBERTY, EQUALITY AND FRATERNITY”. Thus, access to justice is fundamental to the protection and preserving of Liberty, Equality and Fraternity of all human beings. The right to access to justice, which is of ancient vintage in India and later on emerged as the Magna Carta on 5 May, 1215, in the words of Justice A.K. Ganguly, emanates from:

1. a basic instinct for survival with dignity; and
2. to evolve a mechanism to redress deprivation of basic rights without which human dignity would be a teasing illusion.

Being inherent in Article 14 of the Constitution of India which guarantees equality of law and equal protection of the law, ‘access to justice’ is placed on high pedestal of fundamental rights, which gets reflected in other Articles like Article 22, 32, 38, 39A, 142, etc. in the years to come, the Supreme Court of India would read ‘access to justice’ within the folds of Article 21.

Envisioning this ‘access to justice’ as fundamental, the Constitution of India lays for the establishment of an illustrious and elaborate hierarchy of court system with the Supreme Court placed at the top of the pyramid, followed by High Courts at the states (presently 25 in number) and the lower courts also called the subordinate courts at the lowest tier. The judiciary, therefore, plays an important role in securing justice by providing fora for the enforcement of the rights of individuals, or remedies against their violation.

In spite of having a structured judicial system, the Indian judicial system has failed to offer speedy remedies to its citizens. As Marc Galanter described, delay is endemic (Kirpal, et. al, 2008, p.59). To quote Professor Galanter (2008), “...Indian courts are desperately congested, even though the number of cases filed is small on a per capita basis. They appear to be heavily used because there are relatively few courts (in comparison to other common law countries). These courts are poorly equipped and inefficient” (ibid). The present chapter emphasises on delay in disposal of cases and huge backlogs in courts as a hurdle in accessing justice. The problem of litigation delays becomes acute especially in civil and commercial laws. The objective of this chapter is to find out reasons for such piling of cases and search for practical and long-term solutions to this chronic problem.

2. THE CIVIL JUDICIAL SYSTEM IN INDIA AND ITS PERENNIAL PROBLEMS

a. The Civil Judicial System in India: A Brief History

The modern Indian Judicial System owes its origin to colonial rule which continued for more than 200 years. Though the seeds of a separate judicial system for civil and criminal judicature were sown by the Mughal rulers, a systematic and segregated arrangement of the civil and criminal judicature was done by the British rulers under various Judicial Plans between 1772 and 1859. One could come across courts like the Mofussil Diwani Adalats (courts of civil jurisdiction established in each district), Sadar Diwani Adalats (civil courts of Appeal) and Diwani Adalats. Subsequently, the Supreme Courts of Calcutta

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