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OUR LAGGARD JUDICIARY: EXAMINING THE PERENNIAL DELAY IN THE DISPOSAL OF CASES WITHIN THE INDIAN LEGAL SYSTEM

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ABSTRACT

This paper addresses the colossal delay in the delivery of justice in India. Specifically, it aims to find the different avenues for redress and compensation available for those aggrieved by the infringement of their right to a speedy trial. The current state of the Judiciary is considered i.e. the no of pending cases, the no. of judges per million, the length of pendency etc. Following which, instances where judicial delay has caused grievous injury to citizens are considered; in order to highlight the importance and relevance of the right to a speedy trial. Then, the possible ways for those aggrieved to get compensation under the law of Torts is examined. Finally, a comparative study is done to see how delay of justice is dealt with internationally, like the 'denial of justice' principle of International law and using the various case laws of the European Court of Human Rights when dealing with the right to a fair trial.

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1. INTRODUCTION

Judicial delay can be defined as courts taking longer than the prescribed time to dispose of cases; the prescribed time differs among different cases, for example, criminal cases are generally expected to be dealt with more expediently than civil cases. One of the most common complaints made of Indian Courts is the lumbering pace in which it disposes of cases. However, this feature of the judiciary is hardly ever refuted, it has been widely accepted as the standard of performance to be expected. In the case of White Industries v the Republic of India, the claimants were trying to enforce an award passed by the ICC in India, but they were unable to do so 10 years following the passing of the award. In its arguments, the Indian Republic itself raised the claim that 'The Indian judicial system is and has always been notoriously slow',[1] claiming further that:

"*…this Tribunal must take into account the circumstances of the Host State. And it is clear, as a matter of law, that India, as a developing country, with a population of over 1.2 billion people and an over-stretched judiciary, must be held to different standards than, for example, Switzerland, the United States or Australia*."[2]

The arguments essentially posited that anyone who purports to engage the Indian judiciary in their pursuit for justice must bear in mind that justice will be delivered years, decades, or even generations later; this aspect of the judicial system should be plainly obvious to those who pursue justice, and they shouldn't stand to expect any higher standards. A pertinent observation was made by Justice V.R.Krishna Iyer that,

"would it be just at all for the court to tell a person that we have admitted your appeal because we think you have a prima facie case but unfortunately we have no time to hear your appeal for quite a few years and, therefore, until we hear your appeal you must remain in jail even though you may be innocent."[3]

The lethargic manner in which cases are handled is continually blamed on the gargantuan population size, infrastructural issues, lack of experienced personnel, so on and so forth. However,

[1] (White Industries Australia Ltd v Republic of India, UNCITRAL Award of Nov 30, 2011, Final award, [2011], <https://www.italaw.com/sites/default/files/case-documents/ita0906.pdf>.
[2] White Supra note 1.
[3] Saravanan. A, 'MEDICO & PSYCHOLOGICAL EFFECT OF DELAY IN JUSTICE DELIVERY SYSTEM IN INDIA' Electronic copy available at: https://ssrn.com/abstract=2272661.

such arguments of 'an overstretched judiciary' as a matter of principle are not accepted in international law. In El Oro Mining and Railway Company Ltd (Great Britain v Mexico)[4], it was held that

'the amount of work incumbent upon the Court, and the multitude of lawsuits with which they are confronted, may explain, but not excuse the delay' (at 198) and ***'[i]f this number is so enormous as to occasion an arrear of nine years, the conclusion can be no other than that the judicial machinery is defective, and that the organization of its jurisdiction is not in proper proportion to the task it has to fulfil'*** *(at 198), thereby giving rise to a denial of justice 'in effect equivalent to…undue delay of justice' (at 198). [emphasis added]*

The duty to deliver justice in a timely manner is a heavy one, it cannot be defeated by bare claims of scanty resources or deficient administration. 'Justice delayed is just denied', is a legal maxim that is prudentially used in this context. Delay in the delivery of justice not only denies individuals their right to have their issues redressed or resolved, but it also affects legal certainty, reduces people's faith in the judiciary, it might increase instances of vigilante justice, it will affect the sustainability of evidence and testimonies, it might affect the parties' right of appeal, in addition to the mental anguish and economic damage it causes.

The Law Commission of India has continually raised the issue of delay in its reports. It has advised courts to deliver judgements within a reasonable time, following the guidelines established under Anil Rai v Bihar[5] scrupulously, in both civil and criminal cases. [6] Despite decades of such reporting, the situation in India has not changed much. The commission had suggested that that the number of judges per million population should increase from 10.5 to 50.66; the global average being 64.[7] In 2020, the number of judges increased to 20.91,[8] though progress has been made, reform is happening at a snail's pace. Further to that, there are vacancies within this meagre number which are not being filled. In 2020, the Supreme Court had 4 vacancies, and the various High

[4] El Oro Mining and Railway Company (Ltd.) (Great Britain) v. United Mexican States 5 RIAA 191 [1931].
[5] Anil Rai v. State of Bihar (2001) 7 SCC 318.
[6] Law Commission of India, 230th Report on *Reforms in the Judiciary- Some Suggestions*, 2009.
[7] Law Commission of India, 120th Report on *Manpower Planning in Judiciary: A Blueprint*, 1987.
[8]Yash Agarwal, 'What does data on pendency of cases in Indian courts tell us?' (The Leaflet 2020) < https://www.theleaflet.in/what-does-data-on-pendency-of-cases-in-indian-courts-tell-us/#> [accessed 25th March 2021].

Courts had 404; which account for more than 37% of the total strength[9], similarly, district courts had 26% vacancies[10]. Due to this disparity in judicial strength, nearly 40 million cases are pending across the country's three-tiered judicial system. Among cases in 25 State High Courts, roughly 173,000 have been pending for more than 20 years and roughly half of those for more than 30.[11] It was stated in a Law Commission Report that, a judge of Delhi High Court has calculated that 464 years will be required to clear the arrears with the present strength of the judges in that High Court.[12]

The situation is grim. The perpetual failure of the judiciary in delivering justice on time has reduced the citizenry's belief in the legal system. As stated by the Former Attorney General of India Mr. Soli Sorabjee, "*Justice delayed will not only be justice denied, it will be the Rule of law destroyed*".[13]Instances of people taking the law into their own hands have become commonplace, and are sometimes even lauded in the media and public eye. The rise of such anti-social sentiments can only be explained by looking at the injustices that instigated it. It is often said that delayed justice cannot be termed as justice at all, this idea will be demonstrated in the following case studies.

2. INSTANCES OF JUDICIAL INIQUITY

The genesis of the 'right to a speedy trial' was in the case of Hussainera Khatoon[14]. The right to a speedy trial was declared to be enshrined in Article 21 of the Indian Constitution. Similarly, in the case of Babu Singh v State of Uttar Pradesh[15], it was said that the speedy trial is also part of the fair trial. In Kartar Singh v State of Punjab[16], it was declared that speedy trial is a part of the

[9] Arvind Kumar, 'Over one-third of judges' posts lie vacant in 12 high courts. So much for collegiums' (The Print 2020) <https://theprint.in/opinion/one-third-judges-posts-lie-vacant-in-12-high-courts-so-much-for collegiums/532266/> [accessed 25th March 2021].
[10] Yatin Jain, 'Fill All Judicial Vacancies in Indian Courts' (CSIS)<http://www.cogitasia.com/fill-all-judicial-vacancies-in-indian-courts/> [accessed 25th March 2021].
[11]'Judicial delays make a mockery of India's 'ease of business' rank' (The Hindu Business Line 2020) <https://www.thehindubusinessline.com/economy/judicial-delays-make-a-mockery-of-indias-ease-of-business-rank/article32381250.ece> [accessed 25th March 2021].
[12] Law Commission 230 Supra note 5.
[13] The Statesman, Kolkata edn.; 21st August 2003.
[14] Hussainera Khatoon and others v. Home Secretary, State of Bihar 1979 AIR 1369.
[15] Babu Singh v State of Uttar Pradesh 1978 AIR 527.
[16] Kartar Singh v State of Punjab 1961 AIR 1787.

right to life and personal liberty. [17] The same principles were highlighted in the declaration in Hussainera. The decision in Hussainera followed after a determination that the under-trial prisoners were held longer in prison than would be prescribed if convicted. Such a state of law, that exploits the general population's poverty, illiteracy, and helplessness, is an affront to the democratic nature of our country and its promises of liberty, equality, and freedom to make choices. It is also a flagrant violation of Human Rights, which in itself is capable of evidencing the injustice caused by undue delay in the judiciary. It is clear that even in criminal cases, where the risks associated with delay are severe, cases are left pending for up to 10 years. This is in direct contravention of generally accepted Human Rights law principles, despite the fact that India is a signatory of the UDHR and to covenants that recognize a right to speedy trial as a human right, its significance is constantly overlooked.

Even with the existence of an elaborate framework that guarantees speedy trial as a human right, under various international covenants, and under the Indian Constitution, Article 21, the right of parties' to a speedy trial is not being protected nor respected. The Rajiv Gandhi assassination case took 7 years to be concluded[18]; despite being subject to heavy media scrutiny and attention, many such cases have taken decades to trickle down from the judicial system. Other such cases include the Jessica Lal case (8 years), the Nirbhaya case (7 years),) Harcharan Singh Longowal's murder trial (13 years), 1984 Sikh riots case (32 years). These cases are merely the tip of the iceberg of judicial iniquity in India.

Delay of justice is not limited to criminal cases; the delay is even more grave in civil cases. The Bhopal tragedy case has been running for the past 36 years[19], and the matter is still under consideration by the Supreme Court. Similarly, the Ayodhya case is the longest-running property dispute in India lasting 134 years.[20] The aptest illustration of delay causing injustice is the case of

[17] Mariya Paliwala, 'Principal Features Of A Fair Trial' (iPleaders 2019) <https://blog.ipleaders.in/principal-features-of-a-fair-trial/> [accessed 25th March 2021].

[18] BC Shukla, 'Unnecessary delay in disposal of cases' (Hindustan Times 2006) <https://www.hindustantimes.com/india/unnecessary-delay-in-disposal-of-cases/story-ghADQQoKUc5M6X4a6dMyON.html> [accessed 25th March 2021].

[19]Debeyan Roy, 'SC to begin hearing in Bhopal gas tragedy: All you need to know about 36-yr-old case' (The Print 2020) < https://theprint.in/india/sc-to-begin-hearing-in-bhopal-gas-tragedy-all-you-need-to-know-about-36-yr-old-case/362531/> [accessed 25th March 2021].

[20] Kumar Anshuman, 'Ayodhya case: A brief history of India's longest running property dispute' (Economic Times 2019) < https://economictimes.indiatimes.com/news/politics-and-nation/ayodhya-case-a-brief-history-of-indias-longest-running-property-dispute/articleshow/71988076.cms> [accessed 25th March 2021].

AK Bhatt.[21] The case involved a landlord who wanted to evict his tenant to carry on his business. The matter only reached the Supreme Court after 33 years, whence it was held that the landlord was non-suited on the ground that at the ripe age of 87 years, he is not supposed to start a new business.[22]

Under the same thread, the main case being discussed in this paper is the Maradu Flats case. In it, the Supreme Court ordered the demolition of 4 Flats that were in violation of CRZ Notifications.[23] The case came to a conclusion 13 years after the first petition. During that period, the tenants of the building endured years of mental torture and struggle because of the lack of certainty in something as basic as their right to live on their own property. If the case had been decided in reasonable time, such a grave injustice would not have materialized towards the tenants. According to an account of one of the tenants,

"It was not just a building for us; it was my home. That searing pain I felt when I stepped out of our house for the last time in late 2019... it will linger throughout my life, until my death,"[24]

The reasons, effects, and possible ways to increase the speed of the judiciary have been considered at length in many articles and Law Commission Reports. Therefore, any further attempts at analyzing the same would be redundant. Hence, I will look at what possible remedies and compensation are available for the victims of judicial delay. Specifically, I will use the example of the Maradu Case, in order to examine the various routes toward compensation.

If an injury has been suffered by the citizenry, then a remedy should be availed; keeping in mind the ancient maxim 'ubi jus ibi remedium'- where there is a right there is remedy[25]. There cannot be an injury without redress. As declared by Holt J in Ashby v White[26]

[21] A.K.Bhat & Ors. vs State Through: Mr. Rohit Bajpai, Drug Inspector for Respondent 1997(5) SCC 457.
[22] Shukla Unnecessary delay Supra note 17.
[23] Kerala State Coastal Zone Management Authority v/s State of Kerala, Maradu Municipality & Others 2019 (7) SCC 248.
[24] Neethu Joseph, ''We'll never forget the pain': Evictees recall 2020 Maradu flats demolition' (The News Minute 2021) <https://www.thenewsminute.com/article/we-ll-never-forget-pain-evictees-recall-2020-maradu-flats demolition141279#:~:text=Become%20a%20Member,'We'll%20never%20forget%20the%20pain'%3A%20Evictees %20recall,January%2011%2D12%2C%202020.> [accessed on 31st March 2021].
[25] Abimbola A. Olowofoyeku, 'When courts get it wrong: judicial errors and common law underenforcement' L.Q.R. 2018, 134(Jul), 450-477.
[26]Ashby v White (1703) 2 Ld. Raym. 938 at 953; 92 E.R. 126.

"If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed ***it is a vain thing to imagine a right without a remedy; for … want of right and want of remedy are reciprocal****." (at 136)*

The right to an effective remedy is guaranteed under Article 2 (3) (a) of the ICCPR[27]'; to which India is a signatory, it requires state parties to:

"ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity".

The Indian Constitution also contains a 'right to constitutional remedies' under Article 32.[28] Dr. B R Ambedkar had referred to Article 32 (then Article 25) as the very heart and soul of the Constitution, further that, it is "*one of the greatest safeguards that can be provided for the safety and security of the individual*."[29] Thus, keeping in mind that the victims of judicial delay are entitled to a remedy for their injuries, I will look at possible avenues of redress available to them under Tort law. I will also look at the International perspective, of how judicial delay is dealt with in International law and in Human Rights law by the European Court of Human Rights.

3. TORTIOUS LIABILITY

3.1.Private law remedies

Courts are generally reluctant to place time constraints on legal proceedings as a matter of policy. In P. Ramachandra Rao vs. State of Karnataka,[30] it was stated that:

> *"It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings."*

[27] Article 2(3)(a) of the International Covenant on Civil and Political Rights (ICCPR).
[28] INDIAN CONST, Part III, Article 32.
[29] CONSTITUENT ASSEMBLY OF INDIA - VOLUME VII Wednesday, 8th Dec 1948.
[30] P. Ramachandra Rao vs. State of Karnataka 2002 (44) ACC 974.

However, this is not a rejection of the principle of speedy trial, rather a recognition of the limitations of the powers of the judiciary. The Apex Court went on to hold that:

"It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the Preamble of the Constitution as also from the Directive Principles of State Policy."[31]

It must also be noted at the outset that, holding public authorities liable under Tort law is subject to many conditions, and is as such, a rare phenomenon. Further to that, since tort history and tradition are limited in India it may be harder to establish a case yet. However, it is also arguable that even though instances of holding Public Authorities liable are rare, it is not unprecedented. In State of Rajasthan v. Mst. Vidhyawati,[32]SC made the following observation:

The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorizing or instigating one, and that he could not be sued in his own courts. ***In India, ever since the time of the East India Company, the Sovereign has been held liable to be sued in tort or in contract and the common law immunity never operated in India.*** *Now that we have by our Constitution, established a Republican form of Government, and one of the objectives is to establish a socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle or in public interest, that the State should not be held liable vicariously for the tortious act of its servant. (para 15)*

Similarly, in State of Gujarat v. Memon Mahmmed Haji Hasan[33] and Smt. Basava Kom Dyamogouda Patil v. State of Mysore 1977CriLJ1141,[34] and many other cases, including those dealt with under Article 32 of the Constitution, compensation, and damages were awarded to the petitioner for tortious liability of the servants of the State.[35] Instances where the judiciary has been held liable in this context, are rare if not non-existent.

[31] Id
[32] State of Rajasthan v. Mst. Vidhyawati AIR 1962 SC 933.
[33] State of Gujarat v. Memon Mahmmed Haji Hasan AIR 1967 SC 1885.
[34] Smt. Basava Kom Dyamogouda Patil v. State of Mysore 1977 CriLJ1141.
[35] Common Cause, A Registered Society v Union of India (UOI) and Ors. AIR 1999 SC 2979.

For the sake of the argument is such liability is found then the following principles of tort law have to be considered. In order to establish a negligence tort, the 5 elements of negligence need to be established, i.e. duty, breach, causal connection, proximity, and damage. In the context of holding the judiciary liable for delay, it might prove difficult to establish even the first element, hence, this is not a viable route towards compensation. Economic torts is also discounted because the current case doesn't fall in the set categories that are currently accepted. Another possible avenue is the tort of psychiatric harm, but this requires the existence of a recognized psychiatric illness and reasonable foreseeability. Psychiatric harm is an underdeveloped principle in India, there is not a lot of precedents to go by. Although, in principle, it is possible to establish nervous shock as a result of seeing your home being demolished. For example, in Madiha Attia v British Gas Corporation[36] the British COA saw that the plaintiff suffered nervous shock from witnessing her house being burned down due to the defendant's negligence, and it was held that there is no good reason for precluding her from recovering damages for the same. In the case, Bingham LJ stated that:

"…Suppose, for example, that a scholar's life's work of research or composition were destroyed before his eyes as a result of a defendant's careless conduct, causing the scholar to suffer reasonably foreseeable psychiatric damage. ***Or suppose that a householder returned home to find that his most cherished possessions had been destroyed through the carelessness of an intruder in starting a fire or leaving a tap running, causing reasonably foreseeable psychiatric damage to the owner. I do not think a legal principle which forbade recovery in these circumstances could be supported****." [emphasis added]*

However, such a claim for the Maradu Flats case would be, at best, experimental litigation. It cannot be made as a common claim either because different tenants will have different reactions' some capable of being termed as nervous shock and some not. It is also unlikely to pass the foreseeability test. Thus, a viable remedy can only be found in Constitutional torts.

3.2.Public law remedies: Constitutional torts

[36] Madiha Attia v British Gas Corporation [1988] QB 304.

As mentioned earlier, the Hussainara Khatoon case,[37] established that the right to a speedy trial flows from Article 21 of the Indian Constitution,

"*No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair, or just' and it would fall foul of Article 21.*"

This judgement was inspired by another case, that is, AR Antulay v R.S Nayak,[38] in which it was held that:

"...in the opinion of the Constitution Bench (i) fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial; ...

It also laid down the factors to be considered while looking at a delay that is:

1. Who is responsible for the delay and what factors have contributed towards delay?
2. Attendant circumstances, including nature of the offence, number of accused, and witnesses, the workload of the court concerned, prevailing local conditions and so on what is called the systemic delays must be kept in view
3. The court has to balance and weigh the several relevant factors 'balancing test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied in a given case.
4. Ordinarily speaking, where the court concludes that the right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case.

[37] Hussainera Supra note 15.
[38] Abdul Rehman Antulay and Ors.Vs. R.S. Nayak & Anr. (1992) 1 SCC 225.

5. An objection based on denial of the right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

Notwithstanding the private law remedy stated in the previous section, there is also a public law tort remedy that is 'distinct from and in addition to private law tort remedy'[39], which is a strict liability claim for the enforcement of fundamental rights under Article 226 of the Constitution. In Rudal Shah,[40] the Supreme court held that, in a petition under Article 32 of the Constitution, the Apex Court can grant compensation for deprivation of a fundamental right. That is:

"…Court held that right to compensation is thus some palliative for the unlawful acts of instrumentalities of the State which act in the name of public interest and which present for their protection the powers of the State as shield."

The judiciary may potentially be challenged for breaching fundamental rights (Article 21) under this avenue. There is little history of the judiciary itself being the defendant in such a claim, it may well be rejected by raising the floodgates argument, however, if the main defense of the court is going to be that its defective performance has caused so much injustice that it is not feasible to compensate all the victims, then a deeper look needs to be taken into whether such a judicial system is worthwhile at all.

4. INTERNATIONAL PERSPECTIVE

4.1.Denial of justice: International law

Judicial delay is also dealt with in International law, though not applicable to the instant case, it does provide a variety of case law and interpretations regarding the matter. Under International law, delay in proceedings is considered to be one of the facets of denial of justice. Denial of justice

[39] Smt. Nilabati Behera Alias Lalit vs State Of Orissa And Ors 1993 AIR 1960.
[40] Rudal Shah v. State of Bihar, (1983) 4 SCC 141.

as an international law principle is supported by extensive legal precedents. Denial of justice, as observed in the Salem Case[41], includes 'only exorbitant cases of judicial injustice', namely 'absolute denial of justice; inexcusable delay of proceedings; obvious discrimination of foreigners against natives; palpable and malicious iniquity of a judgment'. It mentioned inexcusable delay of proceedings as a traditional form of denial of justice (at 1202). Similarly, in the Fabiani (No 1) (France v Venezuela)[42] decision, the arbitrator affirmed that,

'upon examining the general principles of international law with regard to denial of justice, that is to say, the rules common to most bodies of law or laid down by doctrine, one finds that denial of justice includes not only the refusal of a judicial authority to exercise his functions … but also wrongful delays on his part in giving judgement' (at 4895).

As mentioned earlier, the court's workload is generally considered irrelevant. However, the test for establishing denial of justice sets a high threshold. As can be seen in Chevron Corporation v Ecuador[43], wherein it was held that:

the test for establishing a denial of justice sets ... a high threshold. While the standard is objective and does not require an overt showing of bad faith, it nevertheless requires the demonstration of "a particularly serious shortcoming and egregious conduct that shocks, or at least surprises, a sense of judicial propriety

There are as yet no strict standards followed in International law to assess whether the court delays are a denial of justice, as pronounced in Toto v Lebanon[44]. There is a bit of ambiguity in that regard in international law as well. But several case laws have laid down the main factors to be considered:

(a) the complexity and sensitivity of the proceedings, as well as the significance of the issues at stake;

(b) the need for swiftness in the resolution of the case, including whether the claimant may be compensated for the loss by any delays;

[41] (United States v. Egypt) (193) 2 R.I.A.A. 1161.
[42] Antoine Fabiani Case (France v. Venezuela), Arbitral Award of 31 July 1905, R.I.A.A, Vol. X, pp. 343-578.
[43] Chevron Corporation and Texaco Petroleum Company v. The Republic of Ecuador (I) (PCA Case No. 2007-02/AA277).
[44] Toto Costruzioni Generali S.p.A. v. Republic of Lebanon (ICSID Case No. ARB/07/12).

(c) the conduct of the litigants involved, including the diligence of the claimant in prosecuting the proceedings;

(d) the behavior of the courts themselves; and

(e) the circumstances of the host State

States are generally held to high standards, and delays are not excusable for reasons of increased workload, or insufficient personnel. Although, the threshold to find denial of justice is set quite high, this being in the nature of International law to be politically sensitive. However, delays that are intra-state should ideally not be limited with a high thresh hold, since the standard of performance will be set by the State itself.

4.2. Human Rights Law

India is a signatory of the UDHR and ICCPR. The Fundamental Rights provided for in the Constitution of the country are set to meet the standards under Human Rights law, further, courts have expanded the bandwidth of certain fundamental rights like Article 21 to be more inclusive and equitable. Yet, the lack of enforcement with regard to the right to a speedy trial is inexcusable, further to which, compensation is rarely provided for the breach of such a right. The ICCPR in Article 14[45] states thus:

(3) In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:

(c) **To be tried without undue delay**;

The case law with regards to this aspect is limited in India. In comparison, this provision of undue delay has been interpreted by the European courts as the 'reasonable time' requirement. Reasonable time is one of the most frequently invoked components of fair trial in the European Court of Human Rights; this right is not limited to only criminal trials in Europe. According to Lord Reed, as noted in HM Advocate v R[46]

[45] International Covenant on Civil and Political Rights 1976, Article 14.
[46] HM ADVOCATE V. R. 2001 S.L.T. 1366, Lord Reed.

By far the most common complaint made by accused persons to the Strasbourg organs is, that the proceedings have breached the guarantee in art 6(1) of the European Convention in respect of trial within a reasonable time.

The factors to be taken into account are similar to the ones under the denial of justice principle in international law. That is, the reasonableness of the length of proceedings is to be assessed in the light of the circumstances of the case and having regard to the criteria laid down in the Court's case-law, in particular the complexity of the case, the behavior of the applicant and the conduct of the relevant authorities. On the latter point, what is at stake for the applicant in the litigation has to be taken into account in certain cases, with reference to Howarth v. the United Kingdom[47] & Bock v. Germany 1989.[48]

Article 6 of the European Convention on Human Rights[49] is a provision of the European Convention that protects the right to a fair trial. In criminal law cases and cases to determine civil rights, it protects the right to a public hearing before an independent and impartial tribunal within reasonable time, the presumption of innocence, etc. In Dyer v Watson[50] it was seen that a violation of the right to a trial within a reasonable time is a free-standing right, not dependent on any prejudice to the fairness of the trial. The period to be considered under Article 6 includes not only the time until the trial begins but also the total length of the proceedings, including a possible appeal to a higher tribunal, up to the Supreme Court or other final judicial authority

The Human Rights Committee stated in General Comment 13 on 13 April 1984[51]:

10. Subparagraph 3 (c) provides that the accused shall be tried without undue delay. This guarantee relates not only to the time by which a trial should commence, but also the time by which it should end and judgement be rendered; all stages must take place "without undue delay". To make this right effective, a procedure must be available in order to ensure that the trial will proceed "without undue delay", both in first instance and on appeal.

[47]Howarth v United Kingdom (38081/97) (2001) 31 E.H.R.R. 37.
[48] Council of Europe. European Court of Human Rights. Bock v. Germany [29 March 1989]. Annu Rev Popul Law. 1989; 16:61. PMID: 12344484.
[49] European Convention on Human Rights 1950, Article 6- Right to fair trial.
[50] Dyer v Watson; K v HM Advocate [2004] 1 A.C. 379; [2002] 3 W.L.R. 1488.
[51] UN Human Rights Committee (HRC), CCPR General Comment No. 13: Article 14 (Administration of Justice), Equality before the Courts and the Right to a Fair and Public Hearing by an Independent Court Established by Law, 13 April 1984, available at: https://www.refworld.org/docid/453883f90.html [accessed 31 March 2021].

The European Court has oft rejected governmental arguments that inadequate staffing or general administrative inconvenience is sufficient justification for failure to meet the reasonable time standard, as can be seen in Union Alimentaria Sanders SA, Re[52], wherein, the European Court of Human Rights took the view that the difficulties encountered in Spain could not be used as reasons to deprive a litigant of his right to have his case heard within a reasonable time under Article 6(1) of the Convention, given that the case itself was not an excessively complex one. Similarly held in, De Cubber v. Belgium[53] & Guincho v. Portugal 1984[54]. The Human Rights Committee has also frequently dealt with complaints regarding undue delays. It also does not accept arguments of overload of the justice system, difficult economic circumstances, etc. In the case of Lubuto v. Zambia[55], the following was noted:

*(§7.3…**The Committee acknowledges the difficult economic situation of the State party but wishes to emphasize that the rights set forth in the Covenant constitute minimum standards which all States parties have agreed to observe…** The Committee considers that the period of eight years between the author's arrest in February 1980 and the final decision of the Supreme Court, dismissing his appeal, in February 1988, is incompatible with the requirements of article 14, paragraph 3(c). [emphasis added]*

There is an excess of case law in the European Courts dealing with the 'reasonable time' facet of the right to fair trial, both civil and criminal cases. Despite the common claim that judicial delay is somehow a peculiarity of developing countries, it can be seen that France[56] and most European countries also deal with an influx of claims with regard to the failure to meet the 'reasonable time' requirement.

However, the difference is that most countries in Europe provide measures for addressing such a guarantee of reasonable time, through damages and enactment of statutes, like the PINTO law in Italy[57]. The right to an effective remedy is guaranteed under the ICCPR, Article 13 of the ECHR.

[52] Union Alimentaria Sanders SA, Re (1989) E.C.H.R. Series A, No.157.
[53] De Cubber v Belgium, Merits, App no 9186/80, Case No 8/1983/64/99, A/86, [1984] ECHR 14.
[54] Guincho v. Portugal, App no 8990/80, Buchholz judgment of 6 May 1981, Series A no. 42, p. 16, para. 50 [1984] ECHR.
[55] Lubuto v Zambia, Merits, Communication No 390/1990, UN Doc CCPR/C/55/D/390/1990, (1995) 10 IHRR 611
56 Roger Errera, 'Liability of the state for defective functioning of justice - excessive length of proceedings before administrative courts' P.L. 2002, Win, 807-811.
[57] 'Civil proceedings: excessive length of proceedings - adequacy of awards for compensation under the Pinto Act - Articles 6(1), 34and Article 1 of Protocol No.1' E.H.R.L.R. 2006, 4, 473-478.

As stated supra, the Indian Constitution gives the right to individuals to move to the Supreme Court to seek justice when they feel that their right has been 'unduly deprived' under Article 32 of the constitution. It is high time that the injustice of judicial delay is addressed in India adequately through damages, as done in most European countries. India's formal judicial system is infamously slow, even for a developing country. The point has been reiterated on a number of occasions, but in the meanwhile, a suitable remedy has to be provided to individuals whose right to speedy trial has been infringed; both for criminal cases and civil ones. There needs to be a better framework for redress for the victims of judicial iniquity, who have suffered damage through no fault of their own. Currently, the picture painted of the Indian Judiciary is similar to Dickens' Bleak house, generations upon generations of claimants approach the court for justice, they are all left with their pockets turned out, only the lawyers leave with lined pockets. A common sentiment shared by litigants nowadays is that 'if you're going to order to execute me, then execute me, but all I ask is that you do it fast'. In most of the inequitable scenarios mentioned supra, the state of affairs brought upon the claimants because of judicial delay is far worse than any adverse judgement that may have been pronounced against them.

5. CONCLUSION

The Indian Judiciary is infamously slow in its disposal of cases. As observed by Justice V D Tulzapurkar of the Supreme Courts:

> *"If an independent judiciary is regarded as the heart of a republic, then the Indian republic is at present suffering from serious heart ailment"*[58]

The right to a speed trial has international recognition as a human right, and in India it was included within the ambit of Article 21 of the Constitution. Even though the importance of a speedy trial has been recognized, it has not been enforced properly and no remedy has been availed for such failure of enforcement. Under Constitutional Torts, citizens have the right to move the court if

[58] Amir Ullah Khan, DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR (Delhi NIC) http://www.delhihighcourt.nic.in/library/articles/mid%20day%20meal/Delays,%20costs%20and%20glorious%20uncertainity%20-%20how%20judicial%20procedure%20hurts%20the%20poor.pdf.

their fundamental rights have been infringed. Under the context of speedy trial, victims have received compensation for the breach of their fundamental rights, like in the case of Hussainera, but such compensation seems limited to grave facts of the case.

The right to a remedy for injury done; be it by a public authority or otherwise, is canonized in both the ICCPR and the Indian Constitution. Thus, following international precedents, by disregarding claims of an 'overstretched judiciary', the Indian citizenry should be compensated for the extensive damages they have suffered because of delayed justice. The instances where delay in justice has caused iniquity in India are numerous, and ever growing. Despite constant reform suggestions to make the judiciary faster, no real changes have happened, hence, citizens shouldn't be left with the dangling hope of a faster judiciary and a better 'tomorrow' indefinitely, their need of a remedy and redress 'today' needs to be considered and acknowledged.

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