
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**EFFECTIVENESS OF SPECIAL COURTS UNDER THE POCSO ACT IN
EFFICACIOUS DISPOSAL OF CASES.**- Ankita Jakhmola¹**I. Abstract**

Crime has suffused every corner of social fabric in the Indian society and it will be a bold statement to make if it's said that the Criminal Justice System is broken and cannot be fixed. In continuation of the statement made above, it is important to note that the rising pendency in POCSO cases have made fingers point at the Indian Justice Delivery System, at large. Thus, this has become a massive cause of concern for working on the untimely justice as the issues revolving around children and their security are not only of prime concern but also because of the extra-sensitive nature of POCSO cases, unwarranted delay makes the path-breaking law ineffective *in toto*. Unfortunately, if one chooses to turn back on the aforementioned subject then the factors contributing the rising pendency before the special courts will be left unidentified.

The present research work includes detailed analysis of police with its delayed investigation on one hand and the challenges revolving around the inadequate number of judges on the other hand. The paper includes in-depth case studies which depict “whys” and “wherefores” for increasing pendency before the special courts addressing the POCSO cases. The ongoing gaps have duly been pointed out in order to bring procedural irregularities at the forefront along with the factors accountable for untimely justice in sensitive cases related to child sexual abuse.

Highlighted words- POCSO, Untimely Justice, Procedural gaps, Irregularities.

II. Introduction

The role of Indian Judiciary is to act as a custodian of human rights and prevent injustice from happening, specifically where a child is involved. People in general expect that justice

¹Asst. Professor, School of Law, Graphic Era Hill University Dehradun.

will be timely served but due to unwarranted delay in the justice system, a person might lose interest in the same. Moreso, highlighting the Governmental obligations, it is apparent that the State is bound to protect Human Rights which is inclusive of child rights through Part III & IV of the Constitution of India. While scrutinizing the reasons for the untimely justice, the researcher observed through “*Centrally Sponsored Scheme for Development of Infrastructure Facilities for the Judiciary*”² that a budget of Rupees seven sixty-seven crore has been approved under the centrally sponsored scheme mentioned for the years 2020-21 & 2021-22, consecutively. Critically, section 28 of “POCSO Act” states that to avoid long and pending trials in these cases, the State Government with the consent of Chief Justice of the High Court shall designate to each district to constitute a special court in order to try child related offences under the said Act. Similarly, as per in Section 32 of the Act a special Public Prosecutor is appointed to try the cases under the POCSO Act. Coming on to Section 35 of the Act, the prescribed period mentioned in clause (1) to record the evidences of the child is thirty days and clause (2) states that the trial should be completed within a time-slot of one year. Section 35 of the POCSO Act provides procedures and powers of the special court guaranteeing and ensuring speedy trial and circumventing inadequate delay which was the fundamental objective on which the POCSO Act, 2012 was built upon. As per a report by Outlook (The News Scroll), Hon’ble Supreme Court has also directed the states should setup two designated courts where the cases of POCSO are more than 300 in number.³ Despite implementation and execution of these provisions, the Apex Court noted that the trial was completed only in 911 cases out of 24,212 cases registered in India from January 1st to June 30th in the year 2019.⁴ Amicus Curiae, V Giri was appointed to submit a detailed report as to speedy trial in cases of child abuse. After his report the SC directed the Union Government to initiate funds for “special courts” established in each district including the Union Territories and to setup special courts within a period of 60 days on the basis of the report submitted. As per the data received by the India States and Union Territories; the total number of special courts that had to be setup by April, 2019 were 664 in number.⁵

²Economic Services Group, National Productivity Group, New Delhi, 2017. *Evaluation Study Of Centrally Sponsored Sponsored Scheme For The Subordinate Judiciary During XII Plan*. [online] New Delhi: Department of Justice, Ministry of Law and Justice, Government of India. Available at: <<https://doj.gov.in/sites/default/files/CSS-%20Final%20Report-%20%281%29.pdf>> [Accessed 30 July 2020].

³<https://www.outlookindia.com/>. 2020. *Set Up Two Special Courts In Districts With Over 300 Firs Under POCSO Act: SC*. [online] Available at: <<https://www.outlookindia.com/newsscroll/set-up-two-special-courts-in-districts-with-over-300-firs-under-pocso-act-sc/1687101>> [Accessed 30 July 2020].

⁴In Re: Alarming rise in the number of reported child rape incidents, 2019 SCC OnLine SC 1774 (India).

⁵Press Information Bureau, Government of India, Ministry of Women and Child Development (19 July, 2019).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

III. Factors responsible for untimely disposal of the POCSO Cases

Trial in criminal matters can be compared to a relay race which is like a track and field sport that includes many steps to get completed. The paper highlights factors, case studies which depicts the “whys” and “wherefores” for increasing pendency before the special courts addressing the POCSO matters. The reasons are listed below.

A. Inadequate number of judges

The primary source for delay in dispensation of justice in an Indian justice delivery set up is because of the *poor judge population ratio*.⁶ The law commission in its 245th report⁷ notifies that it is not only important to strengthen the ratio of judges but at the same time it is equally important to deploy supplementary judicial resources. It is difficult to trace which district needs more judges and which court needs more allocation of judicial material. For this the commission has recommended that a micro level analysis is important for efficiency in the judicial work. Following factors should be kept in mind before appointing the required number of judges.

- i. Pendency of cases, like a case pending more than for a year should be treated fairly on time.
- ii. Gravity of a case which means that a murder or rape case cannot be compared to a petty or trivial matter. Thus, if a petty case is lying pending doesn't matter compared to a pending case of rape and murder. There should be a benchmark to determine the time period of case that it should take in total.
- iii. Case load of a court should be determined before allocating judicial resources. Overall rate of disposal should be calculated between the quick and slow disposal of cases.
- iv. Subordinate courts should be provided with guidelines that older and more complex cases like (sexual violence) should be prioritized and should not stagnate or deteriorate the system.
- v. Quality of the justice delivered should not be deteriorated on the pretext of speedy justice.

⁶Press Trust of India, 2013. *More Judges Needed, States Should Take Initiative, Justice Manmohan Says*. [online] Available at: <<https://timesofindia.indiatimes.com/india/More-judges-needed-states-should-take-initiative-Manmohan-Singh-says/articleshow/19426423.cms>> [Accessed 30 July 2020].

⁷Shah, A., 2014. *245Th Report Of Arrears And Backlog: Creating Additional Judicial (Wo)Manpower*. [online] New Delhi: Law Commission of India, Government of India. Available at: <<http://lawcommissionofindia.nic.in/reports/Report245.pdf>> [Accessed 30 July 2020].

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

In "*P. Ramchandra Rao v. State of Karnataka*"⁸ it was held that with the present judge's strength in criminal courts it is very difficult to deliver judgment on time. In the landmark judgment of "*All India Judges' Assn. v. Union of India*"⁹, the Hon'ble Apex court felt the need for increased efficiency of judicial officers over any other thing in the Judicial System. Henceforth, the Apex Court asked the Government to increase the ratio of judges from the existing 10/13 judges per ten lakh people to 50 judges per 10 lakh people. According to Malimath Committee¹⁰ the two problems that exist in criminal justice system are that firstly there is a high pendency in serious criminal matters and secondly the conviction rate in these matters is very low. The pendency of cases can be resolved if the judiciary appoints judges who are proficient in dealing criminal matters. The Apex Court in a judgment *All India Judge's Association and others v. Union of India*¹¹ has established that there is a gross inadequacy in the statistics of strength of judges which causes ordeal delay in the justice delivery system of India and subsequently the Malimath committee had suggested that each State should individually focus upon three essential points till the time being this problem exists and they are; the estimate of judges required; amount of pendency; inflow of fresh cases and nature of litigation in each State.

B. Procedural Inadequacy and intricacies

Guidelines and procedures define an organization's working and goals. Under section 35 of the POCSO Act it has been stated that recording of the evidences should be done within a 30 days' time duration procedurally, the time taken by the courts is more than predictable. As per a report prepared by NLSIU, Bangalore¹² the objective behind setting up time duration is per the child's memory and ability to retain incidents. It is true that memory of a child is short lived which tends to make him/her forget incidences earlier than adults. The court states that sometimes the child is not present which causes delay in recording of the evidences. Another prominent problem that POCO courts face is the absence of bail provisions mentioned under the Act. Since crimes of sexual assault are considered heinous it is well established that the offences under the POSO Act shall be non-bailable offences. In "*State of*

⁸ P. Ramchandra Rao v. State of Karnataka, (2002) 4 SCC 578 (India).

⁹ All India Judges Association v. Union of India, (2002) 4 SCC 247 (India).

¹⁰Malimath, V., 2003. *Committee On Reforms Of Criminal Justice System*. [online] New Delhi: Ministry of Home Affairs, Government of India. Available at: <https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> [Accessed 30 July 2020].

¹¹*Ibid*.

¹²2016. *Report Of Study On The Working Of Special Courts Under The POCSO Act, 2012 In Delhi*. Bangalore: National Law School of India University, Bangalore.

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

*Bihar v. Rajballav*¹³ the SC held that the High Court has erred in granting bail to the accused who later on went on intimidating and harassing the victim's family. The accused can easily tamper with evidence once he is on bail and that's why it is important for any judge to form a balance individual's liberty and possibility. In *Panchanan Mishra v. Digambar Mishra*¹⁴ the SC held that if releasing of an accused on bail causes any kind of delay in justice the entire purpose and essence of justice including the speedy justice goes in vain and the interest of the prosecution is shackled. Thus, the POCSO Act should be amended with respect to bail provisions in order to ensure that there is no additional discretion on judges while hearing matters of bail. Further, proceeding, under section 190 of Cr.P.C, proceedings take 90 day's time which then postpones the case and frustrates the ends of justice. Talking about child friendly atmosphere it is pertinent to not to forget section 33(2), (4), (6) of the Act which curtails the power of a defence lawyer to put forth questions which are aggressive or goes against the character of any child.¹⁵ Therefore, the Legislature has duly ensured that the question of the defense counsel while cross-examining the child-victim are or must be routed through the courts designated under the Act. Furthermore, the Legislature has also ensured that child friendly atmosphere should be created within the four walls of the courtroom by allowing a guardian along with the child victim.

C. Delay in police investigation

Police is the central chunk of Justice Administration and is expected to undergird the system with utmost sincerity and honesty. The duty of a policeman is to record FIR, arrest and investigate the matter post which a "charge-sheet" is submitted to the Court on the basis of which the magistrate takes cognizance. This is a step by step procedure and is also reliant on each other to harvest the best results. The 245th report of Law Commission of India is a report on "Arrears", "Backlogs" & "pendency". Pendency means all cases which are yet to be disposed of notwithstanding the time of their institution. The term "delay" is explained as to a case which has been lying before the court for more than the specified time it should have essentially taken. "Arrears" can be understood in relation to delayed cases which take more time than required and the term "backlogs" refers to a situation where courts are so overburdened that it becomes extremely difficult to hear the cases on time. This piling up before the Courts is due to the inability of the justice delivery system which is directly

¹³ State of Bihar v. Rajballav Prasad, (2017) 2 SCC 178 (India).

¹⁴ Panchanan Mishra v. Digambar Mishra, (2005) 3 SCC 143 (India).

¹⁵ Nipun Saxena v. Union of India, (2019) SCC 703 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

affected by inadequate number of judges in the system to timely dispose of as many cases as are being filed on a daily basis.¹⁶

According to a report by Law Commission of India the delay in justice arises due to galore reasons of procrastination by the police officials itself which is directly responsible for unreasonable delay in the justice system.¹⁷

These reasons are recorded as:

- i. Even after the directions given in the police manual stressing on swift and timely disposal of investigation, the police delays in registering the FIR which eventually leads to delay.
- ii. Police is cautious to proceed with investigation if the accused involved is a connection of a powerful party or the accused himself is an influential person. Thus, a stay in investigation or an incompetent investigation makes the case delicate and it finally ends either in acquittal or leads to untimely justice.
- iii. Police officials are deprecated because of their working standards and their attitude towards the layman. Moreover, due to the rising corruption practices in police stations and lack of police staff the quality and speed of justice has absolutely been affected.
- iv. There is no internal order of keeping a check on the methodologies of investigation and the efficiency of investigating officers. Despite deputation of additional superintendents of police in each district the situation of police stations and their mechanism seems to be the unchanged.
- v. Lack of facilities related to intelligence, Research & Development makes it difficult to get expected results from the investigation and make it impossible to take preventive measures against corruption and the ill-wills of the officials involved.
- vi. Police officials take up tasks with lack of motivation and the investigation is not given prime importance due to less remuneration to the officers.

Not limited to the abovementioned factors, it is very common that the officials often forget to attach the photographs of the accused or the victim on the charge sheet or the arrest memo which brings a lot of complications in identifying the accused during trial.¹⁸ Efforts which are expected from the police which is at a position of bringing criminal justice machinery to motion sometimes tend to commit mistakes at a very ground level. In *Govinda P.E v. State*¹⁹

¹⁶(2017) 7 GJLDP (October) 53

¹⁷Law Commission of India, Government of India, 2012. *239th Report on Expeditious Investigation And Trial Of Criminal Cases Against Influential Public Personalities*. New Delhi: Law Commission of India.

¹⁸*Ibid.* at 7.

¹⁹ Govindan P.E. v. State, 2014 SCC OnLine Ker 7133 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

a teacher was arrested on the grounds of sexually molesting and harassing his students. The police stated that an investigation is going on but due to delay in filing of the “charge-sheet” the accused was let out on bail. In *Mithun K.V v. State of Kerala*²⁰ the petitioner who was the accused in child sexual abuse was let out on bail because the police was taking more than required time to file a charge-sheet. The entire trial begins when the F.I.R. is lodged to a police officer which is followed by investigation.

D. Indiscriminate closure of court

There is a massive delay caused when it comes to justice delivery and the main reasons recorded for the delay falls to the non-attendance of witnesses, absence of lawyers, faulty investigation, interlocutory proceedings, system’s lacunas and many more.²¹ Amidst all these reasons little heed was paid to indiscriminate closure of courts due to various reasons like condolences in lower courts that is a death of a person belonging to the legal fraternity and who has been working in that court premises suspends the court for a day, public holidays, winter’s and summer’s break and sometimes absence of judges.

It was well founded through “*State (Govt of NCT of Delhi) v. Mohd. Ashif Billa @ Ashit & Anr*”²² the maximum time taken by a trial court to dispose POCSO cases was 27 months which is almost equal to 2 years and this time period is excluding the time period covered by public holidays. In *Alam Khan v. State of Delhi*²³ the Trial Court took 20 months to pronounce a judgment which equals to 1 year and 8 months excluding the public holiday. In “*State v Azam Alias Rihan*”²⁴, 1 year and 7 months were taken by the lower court to dispose of a case again excluding the public holidays. In “*State of NCT v. Om Prakash*”²⁵ the trial court again took 20 months or 1 year and 8 months to decide a judgment excluding the time taken by public holidays. In “*State (Govt of NCT of Delhi) v. Prem*”²⁶ the time taken by the trial court was 32 months which equals to 2 years and 8 months excluding public holidays. In “*State v. Soniya*”²⁷ the time taken by the trial court excluding public holidays is 46 months which is extremely disappointing as it equals to almost 3.5 years. When the trial courts itself cause inordinate delay, it leads to grave injustice and breakdown in litigants and the victims. Almost every case discussed above ended in acquittal after delay in justice.

²⁰Mithun K.V. v. State of Kerala, 2019 SCC OnLine Ker 1541 (India).

²¹ P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 (India).

²² State (Govt of NCT of Delhi) v. Mohd. Ashif Billa, 2018 SCC OnLine Del 13213 (India).

²³ Alam Khan v. State of Delhi, 2016 SCC OnLine Del 3603 (India).

²⁴ State v Azam Alias Rihan, 2017 SCC OnLine Del 6975 (India).

²⁵ State of NCT v. Om Prakash, 2019 SCC OnLine Del 7328 (India).

²⁶ State (Govt. of NCT of Delhi) v. Prem, 2019 SCC OnLine Del 8400 (India).

²⁷ State v. Soniya, 2019 SCC OnLine Del 11474 (India).

Coming to the analysis of Mumbai based POCSO cases the researcher found out that in “*State of Maharashtra v. Atul Kumar Late*”²⁸, the trial court took almost 2 years excluding the public holidays to deliver the judgment. In “*Babu v. State of Maharashtra*”²⁹ the court took 2 years and 6 months to deliver a judgement. In *MahadevGurling v. State of Maharashtra*³⁰ the court took 1 year and 8 months and in “*Kundan v. State of Maharashtra*”³¹ the court took 20 months which is almost around 2 years to deliver the judgement in “*State of Maharashtra V. Raju*”³² the court took 1 year and 6 months to decide a case. These judgements took a time period which excluded all the holidays and closures of the courts due to variety of instances and reasons. Despite the provisions mentioned under the said law which states that the evidence recording of a child should end within a period of 30 day’s time and the decision should be delivered within a year, the trial courts have taken abundant time period to dispose of one case at a time. In relation to the same, even the Malimath committee has observed that it is high time to introspect and answer the outlooks of people who seek and look for speedy justice.³³ The committee recommended that despite facing heavy case-load and disposal-pressure the judges should not overlook the long pending matters for at least few more years.

E. Inadequate number of fast track courts

The very essence of imparting justice fails not only when an innocent is convicted or a guilty is acquitted but it miserably fails when there is a massive adjournment and laidback attitude in deciding the impactful criminal matters which shook the society from core.³⁴ Because POCSO cases involve child who is a victim of sexual abuse the Act pays attention to details like sensitivity and sensitization while disposing of the cases. The Act directs the special courts under Section 35 to guarantee and ensure that speedy trial should take place because delivering speedy and fair trial is the fundamental objective of the Act. Therefore, the trial should end in a year as per clause 2 of Section 35. Despite the directions given through these provisions the time taken by the trial court is more than expected which goes beyond exceeding the statutory time limit. The Court thereafter

²⁸ State of Maharashtra v. Atul Kumar Late, 2019 SCC OnLineBom 703 (India).

²⁹ Babu v. State of Maharashtra, 2018 SCC OnLineBom 1075 (India).

³⁰ MahadevGurling v. State of Maharashtra, 2019 SCC OnLineBom 48 (India).

³¹ Kundan v. State of Maharashtra, 2018 SCC OnLineBom 157 (India).

³² State of Maharashtra v. Raju, 2018 SCC OnLineBom 4037 (India).

³³ Malimath, V., 2003. *Committee On Reforms Of Criminal Justice System*. [online] New Delhi: Ministry of Home Affairs, Government of India. Available at: <https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> [Accessed 30 July 2020].

³⁴ Malimath, V., 2003. *Committee On Reforms Of Criminal Justice System*. [online] New Delhi: Ministry of Home Affairs, Government of India. Available at: <https://www.mha.gov.in/sites/default/files/criminal_justice_system.pdf> [Accessed 30 July 2020].

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>

directed the states to setup two designated courts where the cases of POCSO are more than 300 in number.³⁵ Litigants, after trying every possible step from their end, finally resort to judicial remedies for their last hope and when the delay creeps in this situation, litigant's hope and trust is shackled and ripped off. This demands extreme concern and immediate remedies to eliminate judicial delay and welcome fair trial.³⁶

F. Delay because of the forensic labs

It is significant to take note of the role of experts who are dealing with forensic laboratories and other scientific evidences. They play a very vital role both at the investigation and as well as the trial stage. They are the medical jurists and the information fetched by them holds a seminal value in a case of heinous offence where murder or sexual assault is tangled. But if these reports are not submitted on time it hampers the court proceedings and it indirectly contributes in delaying of a case. Even after the Central-Government's guidelines of a minimum time frame in which these reports have to be submitted the delay doesn't rests because the labs are fewer in number and the pressure on these labs is relatively very high resulting in late submission.³⁷ The Malimath committee made a recommend for establishment of these FSL units in each district or state for a stronger network in criminal cases. It is also observed that the present level of application of FSL is quite low in our country as per the same reports. There is an acute shortage of manpower in these laboratories and thus the vacancies for the position of these scientists should be increased and by a way of proper training these men should be appointed to these labs. A report by India Today states that over 5000 cases remain pendent before the UP Courts due to lack of Forensic Laboratories. In this report it is held that more than 100 cases are of sexual assaults with the minor children.³⁸ A Times of India report states that justice is defeated due to a delay caused by the Forensic Labs. Judges are dependent upon these reports because a

³⁵<https://www.outlookindia.com/>. 2020. *Set Up Two Special Courts In Districts With Over 300 Firs Under POCSO Act: SC*. [online] Available at: <<https://www.outlookindia.com/newsscroll/set-up-two-special-courts-in-districts-with-over-300-firs-under-pocso-act-sc/1687101>> [Accessed 30 July 2020].

³⁶Lakshmanan, A., 2009. *229Th Report On Need For Division Of The Supreme Court Into A Constitution Bench At Delhi And Cassation Benches In Four Regions At Delhi, Chennai/Hyderabad, Kolkata And Mumbai*. [online] New Delhi: Law Commission of India, Government of India. Available at: <<http://lawcommissionofindia.nic.in/reports/report229.pdf>> [Accessed 30 July 2020].

³⁷*Supra* at 223.

³⁸Qureshi, S., 2019. *Over 5000 criminal cases pending in UP due to lack of forensic labs*. *India Today*, [online] Available at: <<https://www.indiatoday.in/india/story/over-5000-criminal-cases-pending-in-up-due-to-lack-of-forensic-labs-1576590-2019-08-2#:~:text=Lack%20of%20forensic%20laboratories%20in,the%20investigation%20of%20criminal%20cases.&text=According%20to%20sources%20at%20the,more%20than%20two%20years%20old.>> [Accessed 30 July 2020].

case gets a breakthrough by the expert opinion and reports provided by FSL.³⁹ A report by Hindustan Times held that the Apex Court imposed Rs. *Fifty thousand INR* on a few “State Governments” for not releasing and filling the vacancies of FSL. “*You don’t complete your work but you always belittle judiciary for delayed Justice,*” Justice Madan B Lokur.⁴⁰ In one of the judgments the Delhi High Court after receiving multiple FSL reports was of opinion that this kind of situations bring barriers in the proceedings and delays the judgment day and due to the same reason the court in this case directed the CBI to conduct preliminary inquiry with respect to the multiple FSLs submitted by the doctor called Ms. L. Babito Devi and to examine these samples and also her activities involved. Thus the researcher is of opinion that FSL and other reports which are of great value to the case can be tampered and can cause grave injustice to the case because the judges rely upon the essential evidences these reports contain for further formation of the decision and thus it is pertinent that more such units of FSL should be formulated engaging more posts for speedy trial and fair justice to the litigants.⁴¹

G. Improper Court Management

In the words of W. Edwards Deming who once said that “*a corrupt arrangement can exhaust a good person every time*” Anyone who witnesses the court proceedings in lower and subordinate level will not fail to observe that the judges lack competence, court management and adequate training. This happens because these judges do not receive proper professional training skills and less emphasis is paid to court and case management.⁴² Justice V.S. Malimath committee had suggested a few points mentioned which can be a result of implementing better case management and court efficiency.

- i. Reduction in the time taken by trial and quick disposal of cases.
- ii. Ideal utilization of court time.
- iii. Formation of trial standards.
- iv. Examining and monitoring the case load for yielding the best result in future.

³⁹Sakil, S., 2015. *Forensic delay is defeat of justice: Experts.* *Times of India*, [online] Available at: <<https://timesofindia.indiatimes.com/india/Forensic-delay-is-defeat-of-justice-Experts/articleshow/49696258.cms#:~:text=According%20to%20experts%2C%20there%20is,leads%20to%20failure%20of%20justice.>> [Accessed 30 July 2020].

⁴⁰Hindustan Times. 2018. *Supreme Court Fines 7 States Rs 50,000 For Delays In Prison Reforms Case.* [online] Available at: <<https://www.hindustantimes.com/india-news/supreme-court-fines-7-states-rs-50-000-for-delays-in-prison-reforms-case/story-oWdzTmzwUuNZjXx2t3xwNP.html>> [Accessed 30 July 2020].

⁴¹ State (Govt of NCT of Delhi) v. Khursheed, 2018 SCC OnLine Del 10347 (India).

⁴²*Supra* at 223.

- v. Improved user-friendliness to courts.
- vi. Certifying public accountability.

If the court management is not competent and the judges are not professional it will be difficult to make them understand intricacies and because of which the court seeks delay and this delay is endless. One big reason for this is that judges do not do pre-reading of each case and law.

H. Delay because of the advocates

Lawyers play a key role in functioning of the court system and their conduct is expected to be as diligent as their profession. They are considered to be the officers of the court in the administration of justice.⁴³ But sometimes a respectable profession like advocacy can suffer severe disorders when insensitive and indelicate men put on their black capes. Before seeking any adjournments, the lawyer must make sure that the same is not done with deliberate intentions to cause delay in justice. In “*Bal Krishna Pandey v. State of UP*”⁴⁴ the SC held that after multiple adjournments taken by the Additional District Government Counsel when the case was finally listed for hearing, at the same date, the advocates sat on strike which made the case delayed for another date. On the following date the case was again adjourned due to absence of the presiding officer. Access to speedy justice is massively abused by non-appearance of the counsel and taking needless adjournments reflects apathy and indifference toward justice and the sufferers.⁴⁵ In “*Alakh Ashok Srivastava v. Union of India and others*”⁴⁶ the Court held that granting unnecessary adjournments delays the time prescribed by the POCSO Act to dispose of a case and therefore there should be no such adjournments be given from now onwards as to complete the trial as per the directions given in the Act. In *Swaran Singh*⁴⁷ the Apex Court observed that it is the plan of dishonest and corrupt lawyers to keep adjourning the matter in order to harass a victim, to win a witness or make the prosecution tired of tedious process. It is important to note that during this break between two dates not only the witness is threatened but at times also abducted and murdered as there is no witness protection scheme. If these kinds of unscrupulous adjournments take place every now and then, it is going to cause a grave miscarriage to the justice system in the name of fair and speedy trial.

⁴³ Bench Bar Relationship; Chief Justice of Madras High Court. (2010) 3 LW (JS) 9.

⁴⁴ *Bal Krishna Pandey v. State of U.P.*, (2003) 12 SCC 186 (India).

⁴⁵ *Noor Mohammed v. Jethanand*, (2013) 5 SCC 202 (India).

⁴⁶ *AlakhAlok Srivastava v. Union of India*, (2018) 17 SCC 478.

⁴⁷ *Swaran Singh v. State of Punjab*, (2000) 5 SCC 668 (India).

Non-receipt of trial court records in the high courts and Supreme Court

One of the most unnoticed, unseen and underestimated reasons for delay in the courts is the non-receipt of district courts, session courts and other subordinate courts in the higher courts.⁴⁸ Only because of the absence of such important records the appeals are dismissed and cases lie in pendency. It is noted that delay can also be spotted even through the order sheet only if it is timely maintained and insisted upon. These delays can be avoided at the upper courts if the filing from the lower court is on time while filing of the appeals. It is due to the inefficiency of the lower courts; the higher courts get concentrated with file-load.

I. Absence of pivotal witnesses

Witness in criminal justice system play one of the most imperative roles. A witness can act as a deciding factor for a criminal case at the stage of judgment pronouncement. *Per contra* to the prevalent impression that rapid adjournments are the reason for delay in cases it was felt that usually absence of witness or due to the silence of witness a gap comes in the trial at the district level.⁴⁹ It must be ensured that the witness attends the court only to render sacred duty to the route of justice and hence they should be treated with utmost respect and dignity so that their confidence is not fettered.⁵⁰

IV. Conclusion

NaniPalkhiwala in one of his articles stated that Courts alone cannot be blamed for the inordinate delay in justice because the greater contribution comes from the lawyers causing delay. The quality of justice suffers when the management and the justice system is flawed. Trial in criminal matters can be compared to a relay race that includes several steps to get completed, however, delay can be avoided by adopting effective and well-organized management techniques but unfortunately least attention is paid to this.

The factors enumerated above are the major reasons that cause delay in the imparting of justice in India. In case, the afore- discussed measures are adopted, the same may result in a timely disposal of the cases pertaining to the sexual offences against children.

⁴⁸Pillai, K., 2007. DELAY IN CRIMINAL JUSTICE ADMINISTRATION — A STUDY THROUGH CASE FILES. *Journal of the Indian Law Institute*, 49(4).

⁴⁹*Ibid.*

⁵⁰ Ram Chander v. The State of Haryana, AIR 1981 SC 1036 (India).

For general queries or to submit your research for publication, kindly email us at editorial@ijalr.in

<https://www.ijalr.in/>