Ubi Jus, Ibi Remedium – A Critical Analysis

*By **Arjun Sundar***

Final Year LLM Student, Government Law College, Kozhikode, Kerala, India

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It is a cause of concern that delay caused in the courts is a perpetual problem faced by litigants who knock the sacred door of the temple of justice with great expectations. The non delivery of the judgments and orders within the stipulated time period is a cause of concern and these delays are created by judges and judges alone. Non delivery of judgments and orders is not a new problem. It has existed since the evolution of modern judicial system.

Every litigant has a constitutional right to secure justice and the non-delivery of judgment after conclusion of arguments causes indignation and perturbation to the poor litigant. I am not speaking of those cases involving lengthy arguments and sophisticated questions of law. My concern is about simple cases which can be easily disposed off where there is violation of the rights of a citizen by the state. I refer to the plight of a citizen rushing to the court for an injunction or whose rights are violated by different arms or authorities of the government. The litigant approaches the court under the strong belief that irrespective of the costs and expenses involved in conducting the case, the sacred temple of justice would uphold justice and provide relief once approached.

The common man believes that judiciary is the strongest pillar of democracy and remains apolitical and untouched by corruption of any species. He believes that judgments and orders would come out after the conclusion of arguments without intentional delay. If the litigant does not get the decision in his favor, he could move to the next higher court in the hierarchy. Thus, timely delivery of judgments and orders plays a crucial role in ensuring justice to the litigant, failing which the alleged violator happily goes on procreating his evil designs making mockery of the temple of justice.

When the arguments are over, the petitioner goes to bed every night believing that the long-awaited judgment would arrive the next day. The remedies available to the litigant are limited at such circumstances when the delivery of judgments is delayed. It is true that the litigant can

apprise the judge concerned through his counsel or file a petition for re posting of the case and the like. The litigant will be extremely frustrated and losses faith upon judiciary if nothing happens even despite such endeavors. The lethargic attitude of the Judge aggravates the disappointment of the litigant and adds to the exasperation of the litigant. It is true that some cases end up in sheer misfortune but it is the duty of the judge to protect the litigant from a worse calamity.

It is true that Chief Justice is the first among equals. He is just the Master of the Roster. But it does not mean that he is powerless. He should intervene in cases of judicial apathy in the matter of delivery of judgments. He should use his administrative powers to make an intervention with the aim to render justice for which the court is established. It is a fact that the Code of Civil Procedure does not prescribe any time limit for pronouncement of judgments. But this does not mean that the judge can take any amount of time. In Kunwar Singh and Others v. Sri Thakurji Maharaj,[1] there was excessive time lag of six years and four months between reservation of judgment and delivery thereof. It was set aside on that ground alone. Similarly in Bhagwan Das Fatehchand 13 Daswani v. HPA International and Others,[2] the delay was nearly five years. In that case also, the judgment had to be set aside on the ground of inordinate delay. In R.C. Sharma v. Union of India,[3] it was held that justice must not only be done, but must also manifestly appears to be done. The litigant approaches the court with confidence in the results of litigation but this confidence gets shaken if there is excessive delay between the hearing of arguments and delivery of judgment.

In Anil Rai v. State of Bihar,[4] while considering Appeal (Crl.) 389/1998, the Supreme Court had an occasion to give guidelines on this aspect on 06/08/2001. The Hon'ble Mr. Justice K.T. Thomas delivered the judgment for the Bench consisting of Justice R.P. Sethi as well. In para 20 it was held that if it is noticed that the judgment is not pronounced within a period of two months, after conclusion of arguments, the concerned Chief Justice shall draw the attention of the Bench concerned to the matter pending. The Chief Justice shall also take the necessary steps to circulate the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of arguments amongst the Judges of the High Court for their information. Such communication has to be kept confidential and be conveyed in a sealed cover. Similarly, the Supreme Court held that any of the parties in the case may file an application to the High Court with prayer for early judgment if the judgment

is not pronounced within three months, from the date of reserving it. Such an application for early judgment shall be listed before the Bench concerned within two days excluding the intervening holidays. The Supreme Court further held that any of the parties to the case may file an application before the Chief Justice of the High Court with a prayer to withdraw the said case and make it over to any other Bench for fresh arguments, if the judgment, for any reason, is not pronounced within a period of six months. The Chief Justice has the discretion to grant the said prayer or to pass any other order as he deems fit in the circumstances.

The above judgment was delivered by the Supreme Court in a case involving criminal law. But the principles enunciated appear applicable to civil as well as constitutional litigations. The problem can easily be solved in the case of Subordinate Courts as the litigant can approach the District Judge or the Chief Judicial Magistrate, as the case may be, on the administrative side to ensure effective intervention. But the problem becomes sophisticated and the complexity aggravates when the judge occupies a seat in the Constitutional Court since the Chief Justices become reluctant to act on the administrative side. Following the principles laid down in Anil Rai v. State of Bihar [5] is not always an easy remedy. The Supreme Court had directed that if after the conclusion of the arguments, it is noticed that judgment is not pronounced within a period of two months, the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. But this is of no use when the suit turns infructuous in the time gap of two months therein. It depends upon the facts and circumstances of each case. Thus, duty of the Judiciary is to provide justice and it should be of supreme importance. The time limited should be adjusted thereby rather than prescribing a flat limit of two months depending upon the facts and circumstances of each case. The remedy in the Anil Rai case cannot be easily sought because after the expiry of the period of two months, there would be nothing to take up and the respondent would have walked off with the gains which were sought to be prevented through the litigation. Thus, the need of the hour is to have an alert on the administrative side and to make it more effective and time saving.

Thus, inordinate delays in the judiciary is a threat to the Judicial standards and accountability since the common man approaches judiciary with great expectations. The Economic Times dated 04/04/2010 had published a report on the perennial problem of delays under the caption, JUDICIARY AGAINST TIME LIMIT ON RESERVING VERDICTS. The report threw light to the misconduct of judges and the excessive delays caused in the judiciary. The Supreme

Court had come up with a new in house procedure, on 07/05/1997 titled RESTATEMENT OF VALUES FOR JUDICIAL LIFE and the press described the same as the sixteen commandments. They were of the nature of regulating the personal and social life of judges.

Every judge must be conscious that he is under the public gaze and there should be no act or omission on his part which is unbecoming of the high office he occupies and the public esteem in which that office is held. In Sardar Amarjit Singh Kalra v. Pramod Gupta and Others,[6] the court recognized the maxim Ubi Jus, Ibi Remedium as fundamental principle of law. The Supreme Court held that it is the duty of the courts to protect the rights of people and to grand relief to the aggrieved party rather than denying it. In Shivkumar Chadha v. Municipal Corporation of Delhi,[7] where the statutory laws do not provide any remedy, the legal principle, 'where there is a right, there is a remedy' shall be applied. Law always punishes the wrongdoer. This doctrine of the Common law in England also establishes the fact that there is remedy for each and every wrong. This object of the maxim will be vitiated if there is inordinate delay in the delivery of judgments and orders. The Court of Appeals of the United States of America in the case of Leo Feist v. Young [8] observed that it is an elementary maxim of the equity of jurisprudence and there is no wrong without a remedy. Various courts have stressed the importance of this maxim through case laws such as Ashby v. White ,[9] D.K. Basu v. State of West Bengal, [10] Bhim Singh v. State of Jammu and Kashmir. [11]

The person whose rights are violated has a right to stand before the court of law. Every aggrieved person knocks at the doors of the temple of justice with an expectation that no wrong will be unaddressed if it can be remedied by the court. Thus, every effort should be there on the part of judicial officers to ensure that inordinate delays are avoided and judgments and orders are delivered as soon as possible after the completion of arguments so that common man will not loss his faith upon the strongest pillar of democracy – THE JUDICIARY.

Endnotes

1. (1995) Supp 4 SCC 124
2. (2000) 2 SCC 13
3. 1976 KHC 865 : (1976) 3 SCC 574
4. 2001 KHC 858 : (2001) 7 SCC 318
5. 2001 KHC 858
6. 17 December, 2002
7. 1993 SCR (3) 522, 1993 SCC (3) 161, 1993 SC 417
8. 138 F.2d 972 (7th Cir. 1943)
9. (1703) 92 ER 126, (1703) 2 Ld Raym 938, (1703) 1 sm Lc (19th Edn) 253
10. 1997 (1) SCC 416
11. AIR 1986 SC 494, 1986 CRILJ 192