Supreme Court and the Jurisprudence of Delay

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There are around 21.3 million cases currently pending in various courts in India including the Supreme Court[1]. The magnitude of this problem was brought sharply into perspective in a 2015 article in Bloomberg Businessweek which stated that *"if the nation's judges attacked their backlog nonstop with no breaks for eating or sleeping and closed 100 cases every hour, it would take more than 35 years to catch up"*[2]. How did we get here?

The problem of delay in Indian judicial system has been studied extensively by the Indian Law Commission over the years. In these studies, infrastructural deficiencies have frequently been blamed for the delay. And accordingly, more courts and more judges are seen as a solution. However, a cause that has escaped the lens of the Commission and remains under-examined in the literature and public discourse on delay is the contribution of the courts to the problem by non-adherence to procedural timeframes.

Specification of time limits has emerged as a distinctive feature of processual reforms across jurisdictions that have been able to quantifiably minimizing judicial delay viz. the UK and Singapore[3]. In India, there have been at least two major amendments to the Code of Civil Procedure in the year 1999[4] and 200[5] which introduced specific timeframes vis-à-vis completion of various processual steps in civil proceedings. But that doesn't seem to have remedied the problem in any significant way.

Why, one may wonder, have the prescribed timeframes not worked in India?

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[1] National Informatics Centre, "Summary Report of India as on 24/08/2016," *National Judicial Data Grid*, August 24, 2016, http://164.100.78.168/njdg_public/main.php.

[2] Tom Lasseter, "India's Stagnant Courts Resist Reform," *Bloomberg.com*, January 8, 2015, http://www.bloomberg.com/news/articles/2015-01-08/indias-courts-resist-reform-backlog-at-314-million-cases.

[3] For instance, the Civil Procedure Rules, 1999 introduced *case management conference* which made fixing of timetable of the litigation mandatory. Singapore has also adopted an active case management system to reduce judicial delay. See, Mr. Foo Chee Hock, "Civil Case Management in Singapore: Of Models, Measures and Justice" (presented at the 11th ASEAN Law Association General Assesmbly Conference, Bali, Indonesia, n.d.), http://www.supremecourt.gov.sg/docs/default-source/default-document-library/sjc/fch_ja_1.pdf.

[4] The Code of Civil Procedure (Amendment) Act, 1999

[5] The Code of Civil Procedure (Amendment) Act, 2002

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A close examination of the Supreme Court's reception of these time frames is revealing. In what follows we will study an indicative assortment of four amending provisions that introduced specific outer timeframes in the Code and their interpretation by the Supreme Court.

Prior to 1999, there was no limit on the number of trial-adjournments courts could grant. The 1999 Amendment fixed an upper limit of three adjournments that courts could grant during the hearing of a suit.[6] However, in 2005 case of *Salem Advocate Bar Association-II*[7], the Supreme Court interpreted this restriction as not curtailing the court's power to allow more than three adjournments. This decision of *Salem Advocate Bar Association-II* has had an active after-life, having been invoked by tens of high court decisions which proudly proclaim the court's inherent rights to endlessly adjourn.

The 1999 Amendment fixed the timeframe for yet another important provision which directly impacted the court's general power to extend timelines. It specifically disallowed the courts from enlarging the time granted by them for doing *any* "act prescribed or allowed by the Code" beyond a maximum period of 30 days[8]. However, in the same 2005 case, the Supreme Court interpreted this timeframe as one not attenuating the inherent power of Indian courts to "pass orders as may be necessary for the ends of justice or to prevent abuse of process of the Court".

In order to curb the practice of non-prosecution of cases filed by litigants, the 1999 Amendment also fixed an outer timeline of 30 days for service of summons on defendants.[9] The statement of the object and reasons of the Amendment Act of 1999 specifically stated that insertion of 30 days limit was with the view to lay down a fixed time frame to serve the summons on the defendant. However, in 2003, in the case of *Salem Advocate Bar Association-I*[10] the Supreme Court interpreted this to mean that 30 days limit designated only the outer timeframe within which *steps must be taken* by the plaintiff to *enable* the court to issue the summons. The limit was not a timeframe within which service had to be affected. In other words, the court held that the provision did not specify a time limit within which summons ought to be served on the defendant by the court!

Insertion of another timeframe that was pivotal to curbing delays was introduced in 2002. Prior to 2002, a written statement could be filed within any such time as permitted by the court. The 2002 Amendment incorporated a mandatory outer timeline for filing written statement by not allowing the courts to accept it beyond a period of 90 days from the date of service of summons.[11] However, in the 2005 judgment of *Kailash v. Nanhku*[12] , the Supreme Court relaxed this statutorily prescribed deadline by interpreting it as merely *directory* and not mandatory. It

[6] The 1999 Amendment inserted a proviso to Order 17 Rule 1 of the Code of Civil Procedure, 1908 limiting maximum trial adjournments to three.
[7] 2005 (6) SCC 344
[8] This was done by inserting the clause - "not exceeding thirty days in total" in Section 148 of the Code
[9] The amending Act achieved this by inserting the phrase - "on such day not beyond thirty days from date of the institution of the suit" in Section 27 of the Code
[10] AIR 2003 SC 189
[11] The 2002 Amendment Act inserted a proviso to Order 8 Rule 1 of the Code to this effect which stated that the timeline for filing written statement 'shall not be later than ninety days from the date of service of summons'
[12] AIR 2005 SC 2441

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held that courts could use their discretion in unspecified *exceptional* circumstances to accept delayed written statements. This case has been applied as a virtual carte blanche by lawyers to file written statements beyond 90 days as a matter of course. Thus the *exceptional* has become the new *normal*.

Evidently, in each of these illustrations, the Supreme Court relaxes the time frame inserted by the amendments and restores to the courts, the discretion to dilute them in accordance with the courts' perceived sense of justice.

These illustrations are not merely fragmentary instances. Similar examples of the undoing of procedure may be found for nearly every provision in the Code that contains a time limit. These illustrations are in fact, a sampling of the adjudicatory manoeuvres by which the Supreme Court has unwittingly come to countenance delay, in contradiction to the express wordings and intent of the Code. In addition, phrases like 'procedures are the handmaiden of justice', frequently invoked by the Supreme Court, serve as lexical alibis by which departures from procedure are introduced and justified.

Solving the infrastructural deficit by itself would not reduce delays unless a simultaneous effort is made at reforming this *jurisprudence of delay* that has been allowed to take root. With over 21 million cases pending, treating procedural laws as the *equal partner* rather than a handmaiden of justice would be a better way forward through the crisis.