GOVERNMENT OF INDIA

LAW COMMISSION OF INDIA

Need for Speedy Justice – Some Suggestions

Report No. 221

April 2009

LAW COMMISSION OF INDIA
(REPORT NO. 221)

Need for Speedy Justice –
Some Suggestions

Forwarded to the Union Minister for Law and Justice, Ministry of Law and Justice, Government of India by Dr. Justice AR. Lakshmanan, Chairman, Law Commission of India, on the 30th day of April, 2009.

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D.O. No. 6(3)/149/2008-LC (LS) 30th April, 2009

Dear Dr. Bhardwaj Ji,

Subject: Need for Speedy Justice – Some Suggestions

I am forwarding herewith the 221st Report of the Law Commission of India on the above subject.

Mounting of arrears of cases in courts, particularly in High Courts and District Courts, has been a cause of great concern for litigants as well as for the State. It is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration. In this Report, we have made few proposals which when given effect to, will be helpful not only in providing speedy justice but also in controlling frivolous, vexatious and luxurious litigations.

The Law Commission took up the study *suo motu* and recommends the following amendments:

1. Amendment of section 80 and Order V of CPC and also the concerned Court's Rules - In order to shorten delay, it is necessary that provisions parallel to section 80 CPC be introduced for all kinds of civil suits and cases proposed to be filed by a litigant.

2. Amendment of sections 378, 397 and 401 CrPC -

(i) In complaint cases also, appeal against an order of acquittal passed by a Magistrate to the Sessions Court be provided, of course, subject to the grant of special leave by it.

(ii) Where the District Magistrate or the State does not direct the Public Prosecutor to prefer appeal against an order of acquittal, the aggrieved person or the informant should have the right to prefer appeal, though with the leave of the Appellate Court.

(iii) There should be only one forum for filing revisions against orders passed by Magistrates, that is, the Sessions Court, instead of two alternative forums as now provided.

(iv) The Legislature should specifically categorize revisable orders, instead of leaving the matter to confusion caused by various interpretations of the expression “interlocutory order”.

3. Amendment of Transfer of Property Act 1882 – It should be made mandatory that the consideration for every sale shall be paid through Bank Draft.

With warm regards,

Yours sincerely,

(Dr AR. Lakshmanan)

Dr. H. R. Bhardwaj,
Union Minister for Law and Justice,
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Need for Speedy Justice – Some Suggestions

TABLE OF CONTENTS

I. INTRODUCTION

1.1 Mounting of arrears of cases in courts, particularly in High Courts and District Courts, has been a cause of great concern for litigants as well as for the State. It is a fundamental right of every citizen to get speedy justice and speedy trial which also is the fundamental requirement of good judicial administration. In this Report, we have made few proposals which when given effect to, will be helpful not only in providing speedy justice but also in controlling frivolous, vexatious and luxurious litigations.

1.2 In the courts, arrears are mounting by leaps and bounds and there is no respite in sight. This is particularly because institution of cases is much more than their disposal at all the levels of judicial administration. The fundamental requirement of good judicial administration is speedy justice. Quite often, frivolous, vexatious and luxurious litigations also come up and add to the mounting arrears. Such type of litigation has to be controlled, rather stopped. Efforts should be made to decide cases, particularly miscellaneous matters (excluding the matters, which require evidence of witnesses), at the admission stage after affording opportunity to the concerned parties.

1.3 The present Report is in the continuum of the Law Commission's various earlier reports recommending legal changes for speedy justice.

II. PROVISIONS CONSIDERED

(a) Code of Civil Procedure 1908 – Section 80 and Order V

2.1 In order to shorten delay in disposal of cases, it is necessary that provisions parallel to section 80 CPC be introduced for all kinds of civil suits and cases proposed to be filed by a litigant.

2.2 The Supreme Court has held in *Bihari Chowdhary v. State of Bihar*[1] that the object underlying section 80 CPC is to ensure that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The relevant passages are extracted below:

> "3. We are concerned in this case with Section 80 CPC as it stood prior to its amendment, by Act 104 of 1976 (even under the amended provision, the position remains unaltered insofar as a suit of this nature is concerned).
>
> …

[1] (1984) 2 SCC 627

The effect of the section is clearly to impose a bar against the institution of a suit against the Government or a public officer in respect of any act purported to be done by him in his official capacity until the expiration of two months after notice in writing has been delivered to or left at the office of the Secretary to Government or Collector of the concerned district and in the case of a public officer delivered to him or left at his office, stating the particulars enumerated in the last part of sub-section (1) of the section. When we examine the scheme of the section it becomes obvious that the section has been enacted as a measure of public policy with the object of ensuring that before a suit is instituted against the Government or a public officer, the Government or the officer concerned is afforded an opportunity to scrutinise the claim in respect of which the suit is proposed to be filed and if it be found to be a just claim, to take immediate action and thereby avoid unnecessary litigation and save public time and money by settling the claim without driving the person, who has issued the notice, to institute the suit involving considerable expenditure and delay. The Government, unlike private parties, is expected to consider the matter covered by the notice in a most objective manner, after obtaining such legal advice as they may think fit, and take a decision in public interest within the period of two months allowed by the section as to whether the claim is just and reasonable and the contemplated suit should, therefore, be avoided by speedy negotiations and settlement or whether the claim should be resisted by fighting out the suit if and when it is instituted. There is clearly a public purpose underlying the mandatory provision contained in the section insisting on the issuance of a notice setting out the particulars of the proposed suit and giving two months' time to Government or a public officer before a suit can be instituted against them. The object of the section is the advancement of justice and the securing of public good by avoidance of unnecessary litigation."

2.3 The existing provisions of section 80 CPC are culled out below:

"Notice.- (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu and Kashmir) or against a public officer in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of

two months next after notice in writing has been delivered to, or left at the office of-

(a) in the case of a suit against the Central Government, except where it relates to a railway, a Secretary to that Government;

(b) in the case of a suit against the Central Government where it relates to railway, the General Manager of that railway;

(bb) in the case of a suit against the Government of the State of Jammu and Kashmir, the Chief Secretary to that Government or any other officer authorised by that Government in this behalf;

(c) in the case of suit against any other State Government, a Secretary to that Government or the Collector of the district;

and, in the case of a public officer, delivered to him or left at his office, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be

granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice -

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and such notice has been delivered or left at the office of the appropriate authority in sub-section (1), and

(b) the cause of action and the relief claimed by the plaintiff had been substantially indicated."

2.4 The existing provisions of Rules 1 to 8 of Order V, CPC on issue of summons read as under:

"**1**. Summons.- (1) When a suit has been duly instituted, a summons may be issued to the defendant to appear and answer the claim and to file the written statement of his defence, if any, within thirty days from the date of service of summons on that defendant:

Provided that no such summons shall be issued when a defendant has appeared at the presentation of plaint and admitted the plaintiffs' claim:

Provided further that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day as may be

specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

(2) A defendant to whom a summons has been issued under sub-rule (1) may appear -

(a) in person, or

(b) by a pleader duly instructed and able to answer all material questions relating to the suit, or

(c) by a pleader accompanied by some person able to answer all such questions.

(3) Every such summons shall be signed by the Judge or such officer as he appoints, and shall be sealed with the seal of the Court.

2. Copy of plaint annexed to summons.- Every summons shall be accompanied by a copy of the plaint.

3. Court may order defendant or plaintiff to appear in person.- (1) Where the Court sees reason to require the personal appearance of the defendant, the summons shall order him to appear in person in Court on the day therein specified.

(2) Where the Court sees reason to require the personal appearance of the plaintiff on the same day, it shall make an order for such appearance.

4. No party to be ordered to appear in person unless resident within certain limits.- No party shall be ordered to appear in person unless he resides -

(a) within the local limits of the Court's ordinary original jurisdiction, or

(b) without such limits but at place less than fifty or (where there is railway or steamer communication or other established public conveyance for five-sixths of the distance between the place where he resides and the place where the Court is situate) less than two hundred miles distance from the court-house.

5. Summons to be either to settle issues or for final disposal.- The Court shall determine, at the time of issuing the summons, whether it shall be for the settlement of issues only, or for the final disposal of the suit; and the summons shall contain a direction accordingly:

Provided that, in every suit heard by a Court of Small Causes, the summons shall be for the final disposal of the suit.

6. Fixing day for appearance of defendant.- The day under sub-rule (1) of rule 1 shall be fixed with reference to the current business of the Court, the place of residence of defendant and the time necessary for the service of the summons; and the day shall be so fixed as to allow the defendant sufficient time to enable him to appear and answer on such day.

7. Summons to order defendant to produce documents relied on by him.- The summons to appear and answer shall order the defendant to produce all documents or copies thereof specified in rule 1A of Order VIII in his possession or power upon which he intends to rely in support of his case.

8. On issue of summons for final disposal, defendant to be directed to produce his witnesses.- Where the summons is for the final disposal of the suit, it shall also direct the defendant to produce, on the day fixed for his appearance, all witnesses upon whose evidence he intends to rely in support of his case."

2.5 At present, a litigant proposing to sue the State or a public officer has to give two months' notice in writing and in case of emergency can file the case with the permission of the Court. A similar provision can be introduced for all the other matters. When a person has to file a civil case, he can be required to give two months' notice to the affected party. Before he presents his case in the Court, he must serve a copy of the plaint on the affected party through registered post or recognized courier service and should file affidavit along with his plaint stating the fact of service of notice along with a copy of the plaint.

2.6 Similarly, when a litigant files any writ petition in a High Court or the Supreme Court he should be required to give at least four weeks' notice and also to serve a copy of the petition through registered post or recognized courier service on the opposite party. In such cases, when the notice and a copy of the petition is served, he shall not be required to take fresh steps again through Court except for the information of date of hearing that may be fixed by the Court. If this is done, the Court will get the occasion to hear all the parties and will be able to decide the case at the admission stage itself except where the Court directs the parties to lead evidence. Moreover, the presence of both the parties will eliminate frivolous litigation.

2.7 However, if any matter is urgent and notice will frustrate the purpose, the Court can dispense with the notice and hear the plaintiff or petitioner, giving reasons for urgency. If the urgency is not found,

the plaint/petition can be returned for filing, if necessary, after giving notice and serving a copy of the plaint/petition. This will necessitate amendment of section 80 and Order V of the Civil Procedure Code and also the concerned Court's Rules. This may also encourage pre-litigation mediation and settlement of disputes.

(b) Code of Criminal Procedure 1973 – Sections 378, 397 and 401

2.8 Sub-sections (4) and (5) of section 378 CrPC, which provides for appeal in case of acquittal, as it stands today, read thus:

> "(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
>
> (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal."

2.9 All appeals against orders of acquittal passed by Magistrates were being filed in High Court prior to amendment of section 378 by Act 25 of 2005. Now, with effect from 23.06.2006, appeals against orders of acquittal passed by Magistrates in respect of cognizable and non-bailable offences in cases filed on police report are being filed in the Sessions Court, *vide* clause (a) of sub-section (1) of the

said section. But, appeal against order of acquittal passed in any case instituted upon complaint continues to be filed in the High Court, if special leave is granted by it on an application made to it by the complainant, *vide* sub-section (4) of the said section.

2.10 Section 378 needs change with a view to enable filing of appeals in complaint cases also in the Sessions Court, of course, subject to the grant of special leave by it.

2.11 Further, at present, against orders of acquittal passed by Magistrates (where the offence is cognizable and non-bailable) or by Sessions Courts, appeal in cases filed on police reports can be filed only at the instance of the District Magistrate or the State Government, as the case may be, *vide* sub-section (1) of section 378. In such matters, the aggrieved person or the informant cannot himself file an appeal. However, he can prefer a revision. If the revisional Court finds that the accused has been wrongly acquitted, it cannot convict him in view of sub-section (3) of section 401, but it has to remand the case. It is a cumbersome process and involves wastage of money and time. This provision also needs a change and in such matters also, where the District Magistrate or the State does not direct the Public Prosecutor to prefer appeal against an order of acquittal, the aggrieved person or the informant should have the right to prefer appeal, though with the leave of the Appellate Court. This will also give an opportunity to the aggrieved person to challenge the findings of fact recorded by lower court. Also, this will introduce more

transparency and accountability in the lower judiciary, as at present, the percentage of acquittal is quite high.

2.12 Section 397 CrPC provides for calling for records to exercise powers of revision and reads as under:

> "(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.
>
> *Explanation*.- All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.
>
> (2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.
>
> (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

2.13 Section 401 CrPC laying down High Court's powers of revision, as it stands today, reads thus:

> "High Court's powers of revision.- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
>
> (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
>
> (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
>
> (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
>
> (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly."

2.14 At present, a revisable order passed by a Magistrate can be challenged either in the Sessions Court or the High Court. This provision is often misused. If there are several accused persons in a case and an adverse order is passed, some come to Sessions Court

and others to High Court and try their luck. There may be occasions when one party may file revision in Sessions Court and the opposite party in High Court against the same order. Such type of forum-hunting should be immediately stopped. There should be only one forum for revision, that is, the Sessions Court against orders passed by Magistrates. When there is only one forum for revisions against orders passed by the Sessions Court, there is no necessity for having two alternative forums for challenging an order passed by a Magistrate. This will not only be less time-consuming, but will also be less expensive for the litigants, and pendency in High Courts will also be reduced. All such pending revisions in the High Courts can also be transferred to the Sessions Courts.

2.15 As noted above, sub-section (2) of section 397 Cr PC provides that no revision shall be maintainable against an interlocutory order passed in any appeal, inquiry, trial or other proceeding. The Code of Criminal Procedure does not define the expression "interlocutory order". Though the said expression has been judicially interpreted[2], but this has created confusion and litigants have to suffer for it. Now, there is a need for specific categorization of revisable orders by the Legislature and it should indicate the list in the Criminal Procedure Code itself. This will reduce unnecessary litigation. The residuary matters, if any, can be left to the judicial discretion of the concerned courts.

(c) Transfer of Property Act 1882

[2] See, for example, *S. Kuppuswami Rao v. The King*, AIR 1949 FC 1; *Amar Nath v. State of Haryana*, (1977) 4 SCC 137; *Madhu Limaye v. State of Maharashtra*, [1978] 1 SCR 749; V. *C. Shukla v. State through C.B.I.*, AIR 1980 SC 962; *K. K. Patel v. State of Gujarat*, (2000) 6 SCC 195; *State v. N.M.T. Joy Immaculate*, (2004) 5 SCC 729

2.16 When a person purchases immovable property, the sale deed is required to be registered. Normally, the vendor and the vendee show cash transaction for sale consideration and an endorsement is also made by the Registrar/Sub-Registrar to that effect. But when a person has to play a foul game, the major portion of the sale consideration is shown to have been paid outside and not before the Registrar/Sub-Registrar and it gives rise to unnecessary litigation, both criminal and civil.[3] With the vast network of Banks and the growing awareness amongst the common people, a time has come to make it mandatory that the consideration for every sale shall be paid through Bank Draft. This will check frivolous transactions as well as unnecessary litigation.

[3] See, for example, *Kaliaperumal v. Rajagopal*, 2009 (4) SCALE 60; *Akula Madhava Rao v. P. Rukmini Bai*, 1995 (3) ALT 61; *C. Abdul Shukoor Saheb v. Arji Papa Rao*, AIR 1963 SC 1150

III. RECOMMENDATIONS

3.1 We are sure that if amendments on the above-said lines are carried out, not only litigants will get speedy and less expensive justice but the pendency of the cases will be reduced and frivolous litigation will be checked.

3.2 We feel that there is need for following amendments:

1. Amendment of section 80 and Order V of CPC and also the concerned Court's Rules - In order to shorten delay, it is necessary that provisions parallel to section 80 CPC be introduced for all kinds of civil suits and cases proposed to be filed by a litigant.

2. Amendment of sections 378, 397 and 401 CrPC -

(i) In complaint cases also, appeal against an order of acquittal passed by a Magistrate to the Sessions Court be provided, of course, subject to the grant of special leave by it.

(ii) Where the District Magistrate or the State does not direct the Public Prosecutor to prefer appeal against an order of acquittal, the aggrieved person or the informant should have the right to prefer appeal, though with the leave of the Appellate Court.

(iii) There should be only one forum for filing revisions against orders passed by Magistrates, that is, the Sessions Court, instead of two alternative forums as now provided.

(iv)The Legislature should specifically categorize revisable orders, instead of leaving the matter to confusion caused by various interpretations of the expression “interlocutory order”.

3. Amendment of Transfer of Property Act 1882 – It should be made mandatory that the consideration for every sale shall be paid through Bank Draft.

3.3 We recommend accordingly.

(Dr Justice AR. Lakshmanan)
Chairman

(Prof. Dr Tahir Mahmood)
Member

(Dr Brahm A. Agrawal)
Member-Secretary