

# THE PROPERTY OWNERS' ASSOCIATION

( Established in 1924, Governed by the Bombay Non-Trading Corporation Act, 1959 )

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## **PRESS NOTE**

**Shri B.R. Bhattad's, Vice President cum Executive President of The Property Owner's Association**

**Speech on "Justice Delayed is Justice Denied" at the Public Meeting by**

**The Property Owners' Association (Estd. 1924)**

**& All India Business Council at Y. B. Chavan Hall, on July 26<sup>th</sup>, 2014 Mumbai**

Respected Chief Guest Justice, Shri. Gautam Patelji,  
Shri. M.N. Pittieji, Shri. Ashok Maniar,  
Shri. Y.P. Trevediji, Shri. Dipan Merchant,  
Shri. H. Devarajan & Friends,

1.

- a) The origin of the quoted line "Justice delayed is justice denied." This line was written by William Ewart Gladstone (1809 - 1898). He was one of the greatest of English Politicians and also former British Prime Minister.

The 15th August 1947 is a red-letter day to the Indians. India got freedom on this day at midnight. The last ship carrying British soldiers left India for England. Struggle for independence was thus over on this day. **But, to speak the truth, it was only the beginning of a struggle -- the struggle to live as an independent nation and to establish a democracy based on the ideas of justice, liberty, equality and fraternity.**

- b) Keeping these ideals in mind the Preamble to the Indian constitution, interalia, declares that -

"We the people of India having solemnly resolved to constitute India into a sovereign, socialist, secular, Democratic Republic and to secure to all its citizens -- Justice, -- social, economic and political .... . But

sixty years after Independence, we have endless laws but not enough justice. The founding fathers of our constitution placed "Justice" at the highest pedestal and our preamble to the constitution placed justice higher than the other features like liberty, equality and fraternity. People use to go to the judiciary in quest of justice.

- c) Hon'ble President of India, His Excellency Shri Pranab Mukherjee said "I am very disturbed to find a staggering 31 million cases pending in various courts all over the country and hope the judiciary would do its best to clear them," Stressing the well-known maxim 'justice delayed is justice denied', the President said he was, however, happy to note that the Chief Justice of India P Sathasivam had recently initiated steps to clear the backlog. Shri Pranab Mukherjee also said it was important for the judiciary to remain transparent. "Not only the delivery system should be made simple and acceptable but it is also necessary to render quality and speedy justice," he said.
- d) Former President of India, Shri Narayanan stated that "Law is not a cathedral but a casino where so much depends on the throw of the dice. He said mysterious are the ways of justice. He quoted that judges are not here to do justice but to decide cases according to the evidence on record."
- e) Former Attorney General of India Mr. Soli Sorabjee in a lecture at the Nehru Center in London lamented the laws delays and said the criminal justice system in India was on the verge of collapse on this reason. He also observed that, "Justice delayed will not only be justice denied, it will be the Rule of law destroyed"<sup>7</sup>. More than 60 percent of pending court cases in India are the result of -- "State" action or inaction because some official of the central or State Government or agency has failed to act justly -- towards a citizen or a group of citizen.

2.

- a) There are about 10,000 courts in India .Out of these, one Supreme Court, 21 High Courts, 3150 District Courts, 4861 Munsif and 1st class Magistrate courts and 1964 2nd class Magistrate courts are there. Besides, there are many tribunals. There are 3.10 crores cases pending in different district courts across the country while there is a backlog of 34 lacks cases in State High Courts. 1,66,77,657 criminal cases are pending before Magisterial courts and 72,37,495 civil cases are pending in various subordinate courts. As many as 70 percent of these cases are -litigations

from villagers. Again some of these cases are as long as 25 to 30 years old. Out of the pending cases in these High Courts, 88 percent are civil cases and only 12 percent are criminal cases.

- b) The Population of India in 1951 was 36.11 Crores and in 2011 it was 121.1 Crores. The strength of Hon'ble Courts & Judges ought to have 60 to 70 Judges per 10 Lakhs of peoples instead of 10 to 12 Judges per 10 Lakhs peoples.
- c) A recent report by National Court Management System shows that about 19,000 Judges, including 18,000 in trial courts, are coping with a pending of 3 crore cases, resulting in a civil case continuing for around 15 years on an average. The total number of pending cases in Indian courts is expected to touch 15 crore by 2040.
- d) Major portions of the Indian people are very poor and illiterate as well. They come to the court by paying their hard-earned money. They pay to advocates, law clerks day after day, and wait for justice. They pay for court fees, months pass, year after year passes away they wait for justice gradually becoming destitute by selling their everything to meet the court expenses waiting for justice. Sometimes they even expire without getting justice.
- e) Speedy trial is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice. It is prejudice to a man to be detained due to delay in trial. Speedy trial is an integral and essential part of the fundamental right of life and liberty enshrined in Article 21 of the Constitution of India.
- f) Justice delayed is justice denied means that if timely justice is not provided to the sufferer, it loses its importance and violates human rights. If the Judgement is delayed people would loose faith in judiciary and make settlement out of court. Further, a very good judgement would loose its value if its delayed. The denial of justice through delay, in fact, kills the entire fabric of justice delivery system of the country.
- g) Sufficient, reasonable and due hearing of every cases with consideration of its circumstances is the necessary requirement of natural justice and balance of convenience.
- h) The present day society is a victim to the dilatoriness slow/delay of the process of justice. People unfortunately fall victim to injustice.

- i) Over two thirds of India's prisoners are under-trials, i.e. being held in custody pending trial. About 75% of such under-trials are illiterate or barely literate. Needless to say, the coefficient of correlation between lack of education and poverty is almost equal to one. Faced with overwhelming evidence of bias against the poor and marginal sections in the matter of arrest and imprisonment, the 177th report of the Law Commission, on the law of arrest in India, quotes Bernard Shaw to argue that "poverty is crime".
- j) According to statistics posted by the National Crime Records Bureau (NCRB) on its website, in 2011 about 40% of all under-trial prisoners spent about three months in jail, over 59% spent between three months and five years in jail and about 0.6% of them spent over 5 years in jail as under-trials. Thus, over 99% of the several lakh arrested each year spend up to five years in jail as under-trial prisoners. If one were to add up the time spent by these persons in jail as under-trials, then several crore years of the life of Indian citizens is spent in jail without being convicted.
- k) According to the book written by former Police Commissioner of Mumbai - Dr. SatyaPal Singh -
  - i. As per 9<sup>th</sup> Law Commission out of 3500 Central Acts/Laws, almost 1500 central Acts/Laws according to the present circumstances are of no use and such 1500 Acts should be repealed similarly almost 30000 Acts/Laws of all the states out of which 15000 Acts/Laws are of no use and they must be repealed and several other Acts/Laws are required to be amended.
  - ii. Indian Penal Code, 1860 & Criminal Procedure Code, 1973 (former British time Criminal Procedure Code, 1898 with slight modification, Indian Evidence Act, 1872. Government of India - Jain commission in its report has stated that atleast 1300 Acts in India are against the time & situations and it should be repealed forthwith. However only 29 such Acts are repealed.

3. **Former Chief Justice of India & Chief Justice of the United States comments:-**

- (a) **Former Chief Justice of India Hon'ble Mr. Justice B.N. Kirpal remarked, "In lower courts a judicial official presides over eighty cases per day on an average, out of which seventy are**

adjourned”. Victims have to go through a harrowing time while seeking justice. We often hear about such justice being delivered either after the death of justice seeker or at that time when it has become redundant and useless for him. This approach of justice delivery system brings forth a pathetic situation prevailing all around.

- (b) Chief Justice of the United States "Warren E Burger" in his speech addressed to the American Bar Association in 1870 said;

“A sense of confidence in the Courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to the society: that people come to believe that inefficiency and delay will drain even a just judgement of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law - in the larger sense - cannot fulfill its primary function to protect them and their families in their homes, at their work and on the public streets”.

#### 4. Hon’ble Supreme Courts Observations:

- a) In 1978, Hon’ble Supreme Court has held as:- Article 21 of the Constitution means "fair and reasonable procedure" ... Delay in disposal of an appeal on account of inadequate number of Judges, insufficiency of infrastructure, strike of lawyers and the circumstances attributable to the State is understandable but once the entire process of participation in justice delivery system is over and only thing to be done is the pronouncement of judgment, no excuse can be found to further delay for adjudication of the rights of the parties, particularly when it affects any of their rights conferred by the Constitution under Part-III. [1978 3( SCC 544]
- b) In 1998, Hon’ble Supreme Court has observed as:- Even when statutes require an action to be completed within a time frame, they have been held to be directory - (1998) 1 SCC 371 para 11.

- c) In 2001, Hon'ble Supreme Court in another matter has observed as:- The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negated the right of appeal conferred upon the convicts under the provisions of Code of Criminal Procedure. It is submitted that such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. ... [(2002) 4 Supreme Court Cases 578; - para 2]
- d) Even in US where speedy trial is per se, a fundamental right in view of the Sixth Amendment, the US Supreme Court has refused to lay down any time-limit for completion of the trial and has held that in order that the delay may be treated as an impairment of liberty, it should be inexcusable and unjustifiable causing prejudice to the accused. (2002) 4 Supreme Court Cases 578; para 13 - "P. Ramchandra Rao v. State of Karnataka"]
- e) In 2002, Hon'ble Supreme Court has observed that Mr. F.S. Nariman has drawn our attention to yet another important aspect with regard to dispensation of justice, namely, the huge backlog of undecided cases. One of the reasons which has been indicated even in the 120th Law Commission Report was the inadequate strength of Judges compared to the population of the country. ... The said committee has noted the Judge-population ratio in different countries and has adversely commented on the judge- population ratio of 10.5 judges per 10 lakh people in India. The Report recommends the acceptance, in the first instance, of increasing the judge strength to 50 judges per 10 lakh people as was recommended by the 120th Law Commission Report. [(2002) 4 Supreme Court Cases 247; para 24 - "All India Judges' Association & Others v. Union of India & Others"]
- f) In 2002 Hon'ble Supreme Court has held "An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient numbers of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of judges has adversely been commented upon. Not only have the Law Commission and the Standing Committee of Parliament made observations in this regard, but even the Head

of the Judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the Judicial Officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only will be the posts have to be created but infrastructure required in the form of additional Court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first directs that the existing vacancies in the Subordinate Courts at all levels should be filled, if possible latest by 31st March, 2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary.” [AIR 2002 SC 1752; para 25 - “All India Judges Association v. Union of India”]

- g) In 2003 Hon’ble Supreme Court has held “The Judge has burdensome responsibilities to discharge. He has power over the lives and livelihood of all those litigants who enter his court. His decisions may well affect the interests of individuals and groups who are not present or represented in court. If he is not careful, the judge may precipitate a civil war or he may accelerate a revolution. He may accidentally cause a peaceful but fundamental change in the political complexion of the Country.”

5. Committee's Observations:-

- (a) For speedy trial and quick -- disposal of cases several committees were formed by the Government from time to time. In 1924 a committee was formed under the chairmanship of Justice Rankin. In 1949 Justice S.R. Das Committee, in 1972 Justice J.C. Shaha committee, in 1986 Satish Chandra Committee and in 1990 Justice V.S. Mallimath committee. But the situation has not so changed from 1926 to 2007. The law commission in its 120th report submitted in 1987 -- examined the problem of understaffing of judiciary and recommended 50 judges per million of population instead of the present number 10.5. The inadequate number of judges is a major reason behind delay in disposal of cases. Thus, the main cause of judicial procrastination is not in the hand of judiciary but in the hand of executive and administrative wings.
- (b) The arrears committee headed by Justice V. S. Mallimath (1990) -- identified various causes of accumulation of arrears of cases in the High Courts. Some of the principal causes are :
- (i) Litigation explosion;
  - (ii) Accumulation of first appeal;
  - (iii) Inadequacy of staff attached to the High Court;
  - (iv) Inordinate concentration of work in the hands of some members of the Bar;
  - (v) Lack of punctuality among judges;
  - (vi) Granting of unnecessary adjournments;
  - (vii) Indiscriminate closure of Courts;
  - (viii) Indiscriminate resort to writ jurisdiction;
  - (ix) Inadequacy of classification and granting of cases;
  - (x) Inordinate delay in the supply of certified copies of judgments and orders etc.
- (c) The inadequate number of judges and also courts in the country is undoubtedly one of the major reasons for such delay. Successive Governments have not only failed to increase the numerical strength of judges and courts. At present the country's 21 High Courts have a



combined strength of 725 judges; but there are 128 vacancies left to fill up. The High courts are handling an overwhelming 34,00,000 cases and the shortage of judges is only delaying the legal process. It is not out of place here to mention that there is only 10 - 12 judges per 10 lacks of people in India while in U.S.A., it is 60 - 70 judges per 10 lacks of people, 40 - 50 judges in U.K.

(d) Strength of Judges are inadequate: The ratio of Judges to population is 10.5 to 1 million, the lowest in the world. 140 against the approved strength of 668 judges in the High Court and 2000 against 15,000 in subordinating courts.

6.

a) **As justice delayed is justice denied, similarly, the saying, justice hurried is justice buried is equally true. Therefore, sufficient, reasonable and due hearing of every cases with consideration of its circumstances is the necessary requirement of natural justice and balance of convenience.**

b) The reason why one goes to court is to seek justice and justice delayed is justice denied. Judgement should be pronounced within a reasonable time otherwise people would lose confidence in the Court and this denial and speedy disposal of cases will lead to increasing "out of court settlement" which are cheaper and much quicker thereby 'leading to the loss of trust in our judiciary. The justice delivery system is on the verge of collapse with more than 30 million cases clogging the system. That it will take more than 300 years to clear the backlog of cases in Indian Court.

7. **Undoubtedly, it has been proved that fast track justice is the need of the hour.**

(a) Hon'ble Supreme Court Benches in all 29 States for State Benches of Apex Court will render speedy justice to the litigants thereby reducing unnecessary expenses.

(b) Civil cases should be heard day to day and should not be adjourned over and over again;

- (c) The number of courts should be increased in proportion to increasing in population. We hope that these measures will certainly prove helpful in quick justice in our society;
- (d) The strength of Judges be increased to 60 to 70 per 10 Lakhs peoples instead of 10 to 12 Judges per 10 Lakhs peoples;
- (e) Registered Mobile Courts in Villages;
- (f) Justice system be made easily accessible to the common man & speedy and cheap;
- (g) Irrelevant old and antique statutes be either scrapped, repealed or amended to suit present day requirements.
- (h) Effective measures be undertaken to reduce litigation
- (i) Infrastructures of the lower Courts: The good and necessary infrastructures enable the judicial to function normally which contains good library, requisite furniture, sufficient staff and business space for good system of qualitative Justice.
- (j) Independent Police Force as an investigative agency: Delay in Police investigation is one of the reasons due to which cases linger on for years. It is therefore, necessary to create an independent wing of Police Force, fully in charge of crime investigation and functioning under the direct control of independent prosecutors. The wing should be directly accountable to judiciary that should be a proper co-ordination between the Police and prosecuting agencies.
- (k) Endless amendment of laws is an important reason behind delay. Most of Indian laws were amended time and again. These endless amendments make the legal system slow and confusing. Our propensity for enacting laws is really a problem. The Income Tax Act, for example, has been amended over 4000 times since it came into force in 1961. According to Late Mr. Nani A. Palkhivala, the tragedy of India is the tragedy of wastage of national time, energy and manpower for grappling with torrential countless amendments.
- (l) The habit of taking adjournment by the lawyers is another reason behind delay. In Government cases, adjournment are freely sought to file affidavit because the offices of the Advocate General, the Attorney General and Solicitors General to the Central and State Governments are inadequately staffed and equipped.

Government should not tinker with Laws. Laws before they are settled, new laws are passed, this affects and litigation increases.

**Infact the Justice Delayed is Justice Denied.**

The memorandum to 1) The Hon'ble President of India, 2) The Hon'ble Prime Minister, 3) The Hon'ble Law Minister, 4) The Hon'ble Chief Justice of India, 5) The Hon'ble Chief Justice of High Court of Bombay, is circulated for signature of all the members present of the Property Owners' Association & All India Business Council. The said memorandum was approved in the meeting and duly signed by the members present. It shall be submitted to the above Hon'ble His Excellency The Hon'ble President of India, The Hon'ble Prime Minister, The Hon'ble Chief Justice of India & Other Authorities.

Thank You

***Jai Hind***

***Jai Maharashtra***

**B.R. Bhattad,**  
*Vice President & Executive President,*  
**The Property Owners' Association.**