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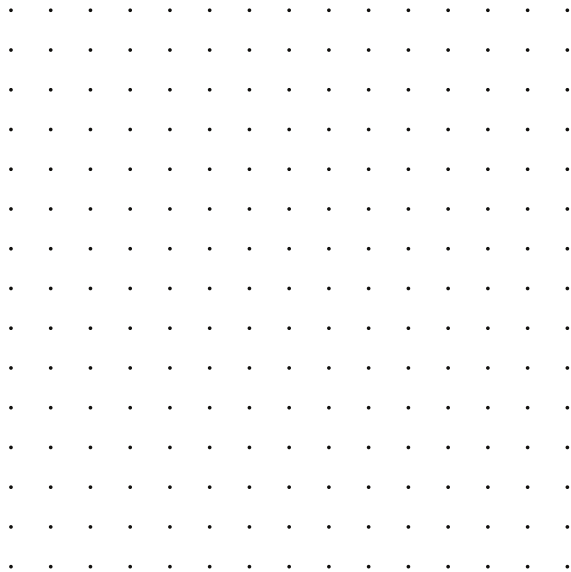
GURINDER PAL SINGH

PRACTICE AREA

ARBITRATION & DISPUTE RESOLUTION

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JUDICIAL DELAYS: A TIME FOR REFLECTION

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In the year 1789, George Washington in his letter to Randolph wrote: *"The administration of Justice is the firmest pillar of Government"*. It is so because it keeps the Government and the public authorities not only within legal limitations by providing shield against absolute and unfettered administrative power but also keeps the government and its authorities within legal bounds thereby providing a shield to the citizen against the tyranny of the State. But, then, the judicial system is by no means confined to judicial review of the acts of the State. It protects an individual or body of individuals too, and so also the powers created by law keeping in view the essence of justice. Having said that, many a time, the very essence of justice gets frustrated or defeated nay, even abused by delays in the justice delivery system, failing Galsworthy's words: *"Justice is a machine that, when someone has given it a starting push, rolls on of itself"* **[John Galsworthy, Justice (1910) act II]**.

Remember Gladstone? He wrote: *"Justice delayed is justice denied"*. True! But, have we been able to overcome the malaise of delay? The answer is shockingly No. It is stated that as many as about 5 crore cases are pending awaiting decision out of which around 59 lac cases are pending disposal in High Courts, many of which are more than ten years old. It is not that the courts are not aware of this malaise. At a function, a Former Chief Justice of India was so overwhelmed emotionally on account of the delays in justice system and need for appointment of additional judges that while referring to this malaise, his eyes welled up with tears before the Prime Minister of India. It is another matter that till date there has been no move to increase the number of judges. Even the will required to meet the challenge appears to be wanting.

It must be said to the credit of the Law Commission that being aware of this judicial malaise eating the very sinews of judicial system, it has been making some significant suggestions. It is perhaps, because of this and general awareness and public opinion, the Legislature has brought in some Legislations to not only meet the challenge of inordinate delays in courts of law but also to unburden their work load.



Two examples in that direction will suffice. The first such attempt to avoid frivolous defence and to expedite judicial decision process was Section 21 of the Delhi Rent Control Act. It was a brave step towards expeditious disposal of cases and by being an exception to Section 14, it mandated restoration of possession “notwithstanding any other law”. It enjoined the Controller to place the landlord in vacant possession after expiry of time without any right to tenant to contest it except to the limited extent that permission was vitiated by fraud or for such other purposes. But, then, we know, by now, how even that salutary provision is invariably made to eat dust resulting in inordinate delay in the disposal of the Eviction Petition. While referring to that salutary provision, a judgment of the Delhi High Court in the matter of **“Hardit Singh Chadha v Jagtar Singh Grover” 52(1993)DLT 120** comes to the fore. It was a case where an old landlord despite having legitimately invoked Section 21, suffered inordinate delay in disposal of his petition. The matter came up before Justice Jaspal Singh of the Delhi High Court. By that time the tenant had avoided eviction for as many as 16 years. The landlord got the eviction order but what signifies that order is the poem penned by **Professor Shiv K. Kumar** entitled “Tis Hazari Courts, Delhi” depicting long drawn plight of the justice seeker in the corridors of Trial Courts. The following verses of that poem will suffice:

***From the murky corridors of this labyrinth, there is no escape.
Since time began I have watched the victims enter from the eastern gate-
and then only the smoke exits from the other end.***

***On the rickety wooden benches, the waiting pilgrims have left their bones for their progeny to collect.
The air echoes with the wailings of those who first knocked at these doors, centuries ago.***

....

***It's the long way that kills the lover, the cancer-patient and the petitioner.
I am now old and snuffed out, my son-I am lost somewhere in these catacombs***



**So enter ye from the eastern gate-and I already see your son and his-
and his-all queued up brandishing the same petition for a speedy
readdress**

**I may someday bring my grandson here to let him see your catacombs
So that he may never walk past your front gate on which glower the
words;
Enter ye only to be buried alive”**

Let us have a look at yet another Act- the Arbitration and Conciliation Act 1996, enacted to lighten the burden and strain of the courts and expedite disposal of civil disputes. It encourages Arbitration as an effective forum. It fixes fee of the Arbitrator, limits time for disposal and thereby encourages an alternate decision making forum. And yet, to what extent has it lightened the burden of the civil courts? To what extent has it helped expeditious disposal of the disputes? And how effectively have the successful parties been able to enforce the Awards? Unfortunately, the experience has been far from satisfactory. The Act has made litigation more expensive as the parties have to pay Arbitrators fee, an expense which a litigant has not to bear in the civil courts. Add to it, the fact that despite the Fourth Schedule provided under the Act, there is a general complaint that by and large, the fee charged by the Arbitrators, though ostensibly with the consent of the parties, is exorbitant. That said, has the Arbitration Act succeeded in curtailing delay? Unfortunately, not. Here is a classic example. A dispute arose amongst the family members in the year 2008. The Family Settlement which had been reduced into writing embodied an Arbitration Agreement. In the year 2008, Arbitration was invoked and the Delhi High Court appointed a retired Judge as the sole Arbitrator. This was in September 2009. The Arbitrator entered into the Reference in October 2009. After as many as 9 long years, the Award came to be announced in February 2018. No, it did not end the matter. Execution Petition was filed in 2018 followed by Objections under Section 34. By this time, Act of 1996 stood amended by the Amendment of 2015 and in terms of amended Section 36, a mere filing of Objections under Section 34 would not and could not lead to automatic stay of the Award.



Unfortunately, these provisions remained just on paper. The Objections under Section 34 kept hanging from 2018 to 2024 and saw as many as 92 hearings. And what about the Execution? Well! despite there being no stay, the courts failed to execute the Award and for the reason that Section 34 Petition was pending. In short, the Arbitration which commenced in the year 2008 culminated into an Award in the year 2018, the dismissal of Petition under Section 34 in the year 2022 and execution of the Award only in December 2024 and all this, irrespective of the 1996 Act and the Amendments made therein in the year 2015 and 2018. Were there too many holes to fill? Or is it, that law was being allowed to be wounded by its own protectors?

Michelle Obama, the wife of former American President, in her autobiography ***"Becoming"*** writes: *"You have to be basic and functional as an umbrella on a rainy day"*. Here is another example where the Court, though having that umbrella, failed to provide it. In a case where the Arbitrator had made the Award but had refused to deliver the same on account of failure of the parties to clear the arrears of Arbitral Fee, a Petition under Section 39(2) was filed before the High Court seeking direction to the Arbitrator to deliver the Award. A submission was made by the Respondent's Counsel that since he had been recently engaged he did not have complete record of the Arbitral proceedings. The court directed parties to move an Application under Section 29(A) of the Act of 1996 to extend the mandate of the Arbitrator so that proceedings could be revived and the entire Arbitral record could be provided to the Respondent and directed the matter to be posted after 4 months. Why could the court not ask parties to exchange the entire arbitral record if the same was not available to either party? It required no creativity or imagination. Is a party first required to revive arbitration and extend the mandate before applying for certified arbitral record? Many a time, the courts, requiring creativity, imagination and realization that delays invariably breed injustice, refuse to see light. Its effect? The harassed litigants, with dead eyes and drooping shoulders are found howling **Dickens's [Bleak House]** warning: *"Suffer any wrong that can be done you rather than come here"*. It is time to reflect and some of us need to reflect more than the rest.



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