

## **Endemic delays bring down Delhi justice system**

*Asian Legal Resource Centre*

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(Hong Kong, July 21, 2008) Endemic delays in criminal trials are hastening the collapse of Delhi's criminal justice system, a new report has found.

The 80-page report, "Judicial delays to criminal trials in Delhi", has been published by the Asian Legal Resource Centre (ALRC) to emphasize how India's legal system is failing to cope with the immense number of cases brought before it daily, with over half of the cases brought to the courts in Delhi taking at least one year and up to five years to complete, and courts daily hearing cases concerning crimes committed over 20 years earlier.

"Simply put, when it takes years and even decades for the courts to resolve simple criminal cases, the description of this system as a system of justice is an utter joke," Basil Fernando, executive director of the Hong Kong-based regional group, said on the release of the report.

Fernando emphasized that although the report was on Delhi, it could be read as indicative of the conditions across the whole of India.

"In fact, in many parts of the country, conditions are far worse than this," Fernando added.

Salar M Khan, the report's author, studied pending cases before the courts of Delhi and found that on the ordinary working day of 16 November 2007, a single magistrate had the incredible number of some 74 cases to examine.

His findings reveal that in the sessions courts the overwhelming majority of cases had been pending for more than a year. Specifically:

- Around 67 per cent of the pending criminal trials were one to five years old, 12 per cent six to ten years, 4 per cent 11-15 years, and around 2 per cent more than 15 years old.
- On November 16 a mere 14 per cent of the matters had come up for trial in the same year as the crime had allegedly occurred.

Similarly, in magistrates courts approximately 51 per cent of cases were between one to five years old, 21 per cent six to ten years old, 7 per cent 11-15 years old, and around 1 per cent pending for more than 15 years. In these only 20 per cent of the matters taken upon the day studied pertained to 2007.

The study also showed that approximately 40 per cent of the matters listed before the courts of additional sessions judges, roughly five matters per court per that day, were not even for the purpose of trial, whereas for magistrates an incredible 70 per cent of matters were listed for miscellaneous purposes rather than actual trial.

Despite all this, the courts remain a low priority for the government. Whereas its budget had over the last two years increased by 61 per cent, the increase for the judiciary had been only 37 per cent, the report notes.

Apart from the sheer number of cases and lack of funding and judges, other causes for delays uncovered in the report include that:

- Court working days in 2007 were only around 280. After leave days and other reasons for judicial officers being absent, such as training and official functions, were deducted, this number comes to around 220 days per year.
- Around 59 per cent of cases in magistrate courts are pending at the stage of prosecution evidence, with about 13 cases posted to record evidence per day, resulting in a culture of adjournment that only exacerbates problems.
- Some 55 per cent of cases handled in the courts of magistrates are sent up to be studied under section 138 of the Negotiable Instruments Act, 1881, which relates to dishonoured cheques. The needless load of these cases on the criminal courts is a consequence of the corresponding failure of the civil justice system.

The report also contains ten detailed case descriptions, summaries of some of which are below.

In a second part to the study, Khan looks at proposed amendments to criminal procedure in India aimed in part at addressing these delays and other flaws in the system. He finds that although motivated to address genuine and serious problems, most of the proposed solutions are likely only to undermine further the entire judicial system.

"Many provisions of the (amending) Bill are either deficient or entirely incompatible with settled principles of criminal jurisprudence," Khan, a practicing lawyer, states.

He points in particular to those aimed at preventing witnesses from reversing their stories during trial, the deleting of summons procedure, and a number of other proposed changes that would "sacrifice justice for administrative expediency".

In his introduction to the report, Bijo Francis, a programme officer of the ALRC, points out that the extent of decay in the Indian legal system uncovered in the report is often concealed by attempts to promote the relative independence and creativity of the courts.

"Discussions about the Indian legal system often revolve around the innovative methods that its courts have used to intervene on socially and politically important issues," Francis says.

"However, the independence of the courts and judges is but one factor in a meaningful and functioning legal system. Domestic laws, ease of access, court facilities, speed of trial and the quality of legal professionals are among the other important elements," he notes.

"Among these, the time that it takes for Indian courts to dispose of cases is something that the government does not advertise abroad, yet it is perhaps what distinguishes India's courts most markedly from those in other jurisdictions in the region and perhaps all around the world," Francis says.

"Whereas a two or three year delay in an ordinary case even in relatively underdeveloped jurisdictions is considered unreasonable, in India a delay of ten years fails to excite interest or sympathy for the affected parties, most of whom, whether the accused or victims, are poor," he adds.

The special report is published in the June edition of the ALRC's quarterly periodical, *article 2*, and is available on its website: [www.article2.org](http://www.article2.org).

A PDF version can be downloaded directly: <http://www.article2.org/pdf/v07n02.pdf>.

It is the first extensive report on Delhi published by the ALRC and the fifth edition especially on India.

Earlier special editions that have studied militarization and impunity in Manipur and reported on two people's tribunals on severe hunger in Uttar Pradesh and West Bengal are also available online.

Other recent special editions have examined the courts and policing in Burma and the Philippines, and looked at the prosecution systems of a number of Asian countries.

## **JUDICIAL DELAYS TO CRIMINAL TRIALS IN DELHI**

### *A snapshot of the courts in Delhi*

Criminal courts per million inhabitants: 7.94

Caseload listed with additional sessions judges on 16 November 2007: 531

Cases per judge: 12

Caseload listed with metropolitan magistrates on 16 November 2007: 6801

Cases per metropolitan magistrate: 74

Percentage of criminal cases pending in additional sessions courts for 1 to 5 years: 67%

Percentage pending for 6 or more years: 18%

Percentage of criminal cases pending in magistrates courts for 1 to 5 years: 51%

Percentage pending for 6 or more years: 29%

### *Extracts from some of the cases studied*

*State v. Durga Burman*: "The accused was poor and could not engage a private lawyer [on a drugs charge]... He remained in jail for around 20 months during trial... The police took around six months to file the forensic science laboratory report... The case came up for hearing on 33 dates... The court acquitted the accused... The judgment was dictated to the stenographer and taken in short hand, which shows that the judge did not have sufficient time to write the judgment even on that day."

*State v. Ravinder Kumar*: "The trial in this case started on 12 December 2000; however, no efforts were made to summon the injured/complainant expeditiously. He was summoned first time for tendering his evidence on 25 May 2005. The prosecution did not make any efforts to trace this witness till 27 January 2006... The court issued a summons to trace him; however, there is nothing on record to show that efforts were made to do this except from filing the same old report that he had left the given address. Non production of this witness caused unnecessary harassment to the accused for more than seven years and resulted in a denial of justice due to the miscarriage caused by the delay."

*State v. Afsar*: "The trial took more than 11 years to conclude. There were only two witnesses; both of them were policemen. Neither was examined and the accused person had to suffer 29 days in prison and 11 years on trial..."

*State v. Shah Nawaj & Another*: "These proceedings [on wrongful restraint and simple injury] continued for around nine years from the date of incident. The offences were allegedly committed on 5 November 1998. The first date for recording of prosecution evidence fixed by the court was 15 September 2005. During the course of trial only two out of six witnesses cited in the charge sheet were examined. Meantime, the injured/complainant died, not due to the injuries inflicted by the accused persons but of a natural death, before he could be brought in the witness box... prior to the start of prosecution evidence being given, yet the prosecution neither informed the court of the exact date of death nor was any document confirming his death ever filed in court."

*State v. Shiv Pujan Rai and Another*: "The case came up for hearing [on drugs charges] before the trial court on 62 occasions. The judge was not available on 13 occasions. One or the other of the lawyers

appointed by the court was either absent or quick in seeking adjournments. Recording of almost all of the witnesses continued over more than one sitting per person for various reasons, either because the judge did not have time or defence counsel were either absent or sought adjournment. On two occasions recording of evidence was stopped for the reason that one suitcase which was to be shown to the court as evidence was accidentally locked and the police could find any person to open it. The prosecution did not produce the three police witnesses of recovery at the beginning of trial. They were produced last. Discrepancies in their testimony could have had significant bearing on the release of the accused persons on bail... Both remained in jail for about four years. Ultimately the court held that the prosecution had failed to prove its case and they were acquitted."

*State v. Sri Chand and Others*: "The [murder] trial continued for around five years. Finally, the trial court, disbelieving both the eyewitnesses, acquitted the accused persons. The eyewitnesses made representation to the Delhi state government to appeal against the acquittal. The state government informed them that it would appeal against the judgment and that the file had been sent to the concerned sub-divisional magistrate for filing in the Delhi High Court. However, no appeal was ever filed. Ultimately both the eyewitnesses were forced to file a criminal revision petition against the judgment, in February 1998, which remained pending for more than nine years before the Delhi High Court. The court in its judgment dated 13 July 2007 refused to interfere with the acquittal and dismissed the petition."