CIVIL JUSTICE DEFIANCE VIS-A-VIS INEFFCTIVE EXECUTION SYSTEM IN INDIA: AN ANALYSIS

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I. INTRODUCTION

In any legal system, there are two types of justice systems namely civil justice system and criminal justice system to administer justice. The central purpose of civil justice system is to determine and uphold the various rights of the people while the central purpose of the criminal justice is to maintain peace and tranquility in the society by booking the offenders for their wrong doings and sending them to jail in the name of imprisonment. What is the objective of courts and judges in civil matters in contemporary world? What is the goal of civil justice? The two main goals of civil justice may be in the broadest sense defined as: Resolution of individual disputes by the system of states courts; and Implementation of social goals, functions and policies.¹

Civil procedural law is pervasive in the sense that it is ubiquitous and inevitably enters into every other branch of law, except criminal law. It provides the appropriate machinery for access to common man to the courts in order to obtain the appropriate relief and to sustain and uphold the rules of substantive law. All legal relations, transactions, happenings and events may ultimately have to be determined or adjudicated upon by the appropriate courts or tribunals according to the applicable rules of law, and methods and machinery for securing this determination or adjudication are regulated by civil procedural law.² In various doctrinal works, these goals have different names. For the first, the conflict-resolution (dispute-resolution, conflict-solving) goal is often spoken of. The second, the policy-implementation goal, is more difficult to denote uniformly, as the social policies and functions that civil justice should have may be rather diverse and serve different political or social ideologies or paradigms.³

Civil procedure code provides a means for the citizens to enforce and determine their rights and obligations. Consequently, enforcement of individual rights forms one of the main goals of civil justice. At the same time, the existence of an effective enforcement mechanism affects the level of compliance with legal norms in society at large. Rather, protection and enforcement of individual rights and implementation of the legal order form two side of the same coin.⁴

II. EXPEDITIOUS EXECUTION OF DECREE AS A PART OF CIVIL JUSTICE

Often people in our country complain about the large number of pendency of cases in the Indian courts. Everyone seeks an early justice in the form of a judgment by the court. However, the

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³ Supra pg 4.
⁴ C. Koller, Goal of civil justice from an Austrian-German Perspective, IUS Gentium Comparative Perspective on law and Justice, Springer publication, 2014, pg 37
journey till the court’s judgment is just the half way. Getting such decree executed is equally cumbersome. The process of execution of a decree under the Indian law is similar to the process of suit. The Judgment Debtor (the person against whom the decree of payment of payment is to be sought) takes undue advantage of such procedural technicalities and intentionally prolongs the execution. As a result, the Decree Holder (the person in whose favour the decree has been passed) loses confidence in the judicial system.

Due to long delay and procedural deficiencies in the execution of civil judgment in the court, the right to fair trial within a reasonable time has been undermined and has resulted in compromising with the rule of law. Delay is the biggest obstruction in way of fair and effective implementation of the decree. Unsatisfied decrees and delay in enforcement of decrees is a major cause which has lowered the confidence of common man in public. Undermining credibility of legal system and loss of confidence of individuals will result in prevalence of anarchy. There will be reduction in reliance over courts for dispute resolution and public may turn to unofficial and private means in order to have justice.

That the difficulties of a litigant in India begin when he has obtained a decree because the same is hardly executed.\(^5\) The Execution of decree is a very peculiar feature of civil litigation as by virtue of this only, decree holder is able to execute decree effectively. In absence of these provisions, the decree obtained by him would be nothing more than a piece of paper. It has been complained several times that decree –holders are unable to reap the fruits of the decree to the fullest and sometimes even partial satisfaction is not possible.

It has been observed that generally in Trial Courts the focus is on disposing of cases rather than ensuring that the litigant gets the relief. But the focus should not only be on early disposal of cases, but also on early and easy securement of relief for which the party approaches the court. So has been further observed by the Hon’ble Court. Justice delayed is justice denied should not be confined to disposal of the cases but should be until he gets the fruits.

### III. INTERNATIONAL PROVISIONS AS TO RIGHT TO FAIR AND EFFECTIVE ENFORCEMENT

The European Court recognized the applicability of article 6(1) of the ECHR to enforcement proceedings and affirmed that enforcement proceedings must be considered as an integral part of the trial.

Universal Declaration of Human Rights article 10: “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

International Covenant on Civil and Political Rights article 14(1): “... in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law...”

6(1): “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

American Convention on Human Rights article 8(1) “Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labour, fiscal or any other nature.” Additionally, article 27(2) prohibits any derogation from judicial guarantees;

African Charter on Human and People’s Rights article 7(1) “Every individual shall have the right to have his cause heard. This comprises ... (d) the right to be tried within a reasonable time by an impartial court or tribunal.”

IV. INDIAN JUDICIAL PERSPECTIVE: EXPEDITIOUS DISPOSAL OF EXECUTIONS IS A FUNDAMENTAL RIGHT

Hon’ble Allahabad High Court while deciding a writ petition has held that delay in executing the decree amounts to denial of benefit of the decree to the decree-holder and is antithesis to justice6. Right to speedy justice is an established fundamental right of individuals7. The aim behind Right to speedy justice is to inculcate justice in the society. Justice Krishna Iyer has remarked that “Our judicial system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision Effective justice dispensation system includes three things i.e. Accessibility to Courts, Concluding the dispute and reaching a Decision by Judges and third is enforceability of these decisions8. Pendency of large number of execution petitions throughout the country is a great challenge being faced in the way of Right to Justice. Justice does not end merely with the determination of rights of the parties but extends till the time when rights determined are duly enforced. So delay in the execution proceedings means delay in justice delivery.9 Right to speedy justice is guaranteed by virtue of Article 21 (Right to Life and Personal liberty) of Constitution of India to every person, citizen or non-citizen. The Indian Judicial system has given its best for the purpose of interpretation of section 21 and has given wide amplitude to the aforesaid article, varying from situation to situation. Article 21 has been a torch bearer for the development of rights whenever need has arisen and ensuring fairness in justice delivery system10.

In a landmark case of Abdul Rehman Antulay11, the Constitution Bench has formulated certain guiding Principles to curb the delay in way of Right to Justice and same are as follows:

1. The right to speedy trial is the right implicit in Article 21 of the Constitution of India.

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7Animesh Chander Sengupta v. State of West Bengal,
2. A Systematic Delay should be kept in mind while dealing with the issue of alleged violation of the right to speedy trial.

3. It is for court to weigh and balance the relevant factors and to see in every case if right to speedy trial has been denied.

4. Presumptive proof of prejudice may be attached with the delay.

5. Court must make an appropriate order in case of delay varying from situation to situation like making the proceedings time bound.

In Ranjan Dwivedi case\textsuperscript{12}, Hon’ble Supreme Court repeated similar view that right to speedy trial is a fundamental right. It was held that a judicious and expeditious trial is an integral and indispensable part of the fundamental right to life and liberty as enshrined in Article 21 Indian Constitution. Even Hon’ble Apex Court has directed the Law Commission for creation of more courts to ensure speedy and efficient justice\textsuperscript{13}.

Thus it can be concluded that delay in disposal of execution petitions amount to delay in justice delivery in complete sense and defeats the Right of Speedy Justice granted to individuals by virtue of Article 21 of Constitution of India. It defeats justice in number of cases. It makes the decree infructuous as taking advantage of delay, judgment-debtor gets new ways to escape the enforcement of rights of Decree-Holder.

V. IMPEDIMENTS IN WAY OF EFFECTIVE IMPLEMENTATION OF DECREE

Excessive delay along with immunities granted to judgement-debtor, excessive cost, failure of sanction, work load of courts, callous and ignorant attitude of judges, lack of executing staff, ambiguous judgements and excessive formalism are some of the factors which are preventing decree-holder to have satisfaction of decree in the terms of decree itself. These all factors make the existing system for execution as inefficient.

1. Excessive Delay: - On the delivery of judgment, it is assumed by the layman that the case has been finished. But in fact, delivery of judgment is mere declaration of respective rights and do not provide that how these rights are to be executed. After getting a decree, next thing which successful party has to consider is the enforcement of decree. However delay in execution stands in way of successful litigant to enjoy the fruits of his decree\textsuperscript{14}. Justice is foundation goal of civilized society. For peace, harmony and progress of the society it is necessary that timely and quality delivery of justice must be there. However, unfortunately Indian Judicial system, despite many successes suffers from severe structural problems which prevent it from functioning properly. Delay in judicial decision is not hidden from anyone\textsuperscript{15}. But story does not end here. Litigant who has earned the decree with great difficulty has to fight one more battle for enforcement of his rights which he has obtained in form of decree. For the purpose of social justice it is obligatory for courts to deliver quick and inexpensive justice\textsuperscript{16}. It is delay in enforcement of decree which is preventing the implementation of decree in exact terms to its

\textsuperscript{12}Ranjan Dwivedi v. CBI, SCC (2012) 8 495

\textsuperscript{13}Imtiyaz Ahmed v. State of UP, AIR SC 2012 642.

\textsuperscript{14}David Barnard, “The Civil Courts in Action”, Enforcement of Judgments, Chapter 18 p.259.

\textsuperscript{15}“Hindustan Times” 13 November 2019.

fullest. Frustrated by the delay, decree-holder even agree for less on the terms of judgment-debtor and hence defeating the decree.

2. Work load in Courts: - Next impediment after excessive delay which prevents the effective implementation of decrees is excessive work load in courts. Due to excessive work loads, courts are ignoring executions. As per the data available of National judicial Data Grid almost 2 crore 50 lakh total cases are pending in the subordinate courts and out of this almost one crore are civil cases\(^{17}\). However, unfortunately, number of judges to deal with this number are not adequate and rather are far less than required. As per data collected from the districts selected for purpose of empirical study approximately 900-1200 files are pending in each court on an average and cause list constitutes even more daily 80-100 cases per day. In such situation, it become quite difficult for courts to pay attention to each and every case adequately. In the cause list executions are the worst sufferers. Furthermore, during interview respondents revealed that incentives or units for disposal of execution petition are far less than the main suits. Executions are treated as miscellaneous work. Due to work load, courts are more inclined to decide main suits as it will fetch more units and are not as brain storming as execution. Thus, excessive work load is second problem creator in effective implementation of decree.

3. Inadequate number of Executing staff: - Besides, delay and work load, lack of executing staff is one of the major reason for delay in executions. There is no separate staff for executing decree and orders of the court. Summons and notice are served through process servers and warrants are executed through Bailiff. These process servers and Bailiffs are also serving summons and warrants in original suits. Bailiff who is senior process server is generally in countable number ranging from 1 to 2 and sometimes 3 to 4 for bigger districts. There is very limited staff for purpose of service of processes of court. There is also tendency amongst the executing staff to ignore the process of executions, they also give importance to processes of regular suits. In such situation, when execution in itself is a full fledged proceeding to meet the ends of justice, it is required to have separate and sufficient staff for the same.

4. Excessive Formalism in execution procedure: - Our system is marred by complexities and lot of formalities. These formalities are significant obstacle to a fair and effective enforcement process. There are opportunities for raising technical procedural objections at every stage of process. These objections are often false and frivolous.\(^{18}\) Procedure initiating with the notification procedure and ending with disposal of execution consists of lot of formalities. These formalities are adhered to even when, these are not mandatory. Issuance of notice is not mandatory if execution is preferred within two years of decree but courts are issuing notices despite this. Issues are being framed on objections. Even evidence is taken on same. Courts tend to involve in such complex procedure, so that integrity is not doubted by higher courts. Besides, procedure for sale is also lengthy and complex. After attachment of property, notice under Order 21 Rule 66 CPC is again issued to the judgment-debtor. Judgment-debtor, take the benefit of these formalities and intentionally avoid the service of notice, so that they can benefit later on.

\(^{17}\) Data available at National Judicial Data Grid, retrieved from http://njdg.ecourts.gov.in.
All these formalities and complexities is also one reason due to which judgment-debtor are not able to reap the fruits of decree efficiently.

5. Absence of sanction to deal with non-compliance of court order: - Everyone from parties to court staff wants to wriggle out of their duties and want to shirk out of their responsibilities. But there are no sanctions against those who are not complying with the orders. Beginning with the reports, it has been observed that processes of the courts are being received unserved and often fake reports are being made and courts are again and again issuing notices, without verifying the genuises of the reports and penalizing those who are intentionally making such reports in order to defeat the decree. Even At the stage of filing of list of property. Courts keep on waiting for list to be filed. Perusal of files reveals the forgetting attitude on part of decree-holder after filing the list of the property. This rather leads to situation of fix and comes in way of successful disposal of execution. Besides, Judgment-Debtor also do not leave any stone unturned in making the execution proceedings unsuccessful by filing objections which are generally false and frivolous. But despite finding the objections false and frivolous, nothing penalizing him is done. Rather, there is no sanction against this. All this stand as barrier in successful enforcement of decrees.

6. Immunities to enforcement proceedings: Code of Civil Procedure provide for lot of immunities to judgment-debtor. Section 47 provides for general objections which Judgment debtor can take before the executing court. Rule 58 to Order 21 CPC provides for objections which can be taken at the stage of attachment and Rule 97 to Rule 106 to order 21 CPC provides for objections taken by third party. These immunities in form of objections provides lot of opportunities to judgment-debtor to defeat the decree execution of which is sought and make it infructuous. Objections are being raised by judgment-debtors or third parties on one or other ground in order to make execution a failure. Respondents are of view that almost every stage of execution meets the objections and sometimes, it defeats whole proceedings and stand in way of effective implementation of decree.

7. Ambiguous judgments: Ambiguity in judgment itself is one of the cause because of which judgment-debtor is not able to enjoy the fruits of what he has actually got. It often causes situation of fix for executing court as executing court is not able to understand the actual relief for which decree-holder is entitled. Lot of time and energy is wasted in finding what trial court intended while passing the judgment and decree. Sometimes wrong interpretations are drawn making decree and judgment ineffective.

8. Unwillingness of court to deal with the execution: - Lethargic, biased and callous attitude on the part of the court towards the execution is also identified as problem creator in the way of effective implementation of decree. During the pilot study, researcher was told by the respondents that units for contested execution are half the units for the contested civil suits. There are 6 units for contested civil case and 3 units for execution in case it is disposed of as contested after deciding the objections by framing issues and then taking evidence on same. Due to this courts prefer to decide civil suits in comparison to execution.

19= Execution of Decrees”, retrieved from shodhganga.inflibnet.ac.in. on 23 October 2018
9. Excessive Cost: - To involve in litigation is not a cost effective deal. It involves huge cost. Litigation leads to bankruptcy of many. At the stage of execution parties have already done with their resources and exhausted with their both physical and mental energy. Exhausted decree-holder agrees for whatever he gets. He even gets ready to accept the conditions of the judgment – debtor. Fed up with the payment of fees of lawyer, clerks, corrupt officials, fees for legal formalities etc., he deems to relinquish his right. So, excessive cost is also responsible to some extent for non-enforcement of decrees.

10. Procedural defects: Objections by JD

Filing of objections by JD and their disposal is the stage which not only takes time but waste the precious time of the court. It has been observed that objections filed by JD are generally those objections which are available with them at the time of decree and sometimes even taken and disposed of by the court passing the decree. These are filed just to delay the implementation of decree. Certain kinds of objections filed by JD are: Objection as to validity of decree, Objection regarding maintainability of execution petition itself, Objection on the attachment of decree, Objection as to auctioning and sale, Objection as to the jurisdiction of court passing the decree, Objections on misjoinder and non-joinder of parties, Objection that property in question has already been sold, Objection that appeal to decree is pending, In case of ex-parte decrees, objection as to pendency of application for setting aside decree or appeal is pending etc.

After observing that objections to attachment of property under order 21 rule 58 CPC cause great delay in disposal of execution, it has been laid that investigation of such objections has to be summary in nature. Hon’ble High Court has observed that these objections are often collusive and requires great scrutiny and should be disposed promptly. It has been observed that these objections are maximum time consuming and there are very cases in which these are not filed.

Conclusion and Suggestions

To conclude, it can be said that all the aforesaid hindrances do not let the execution of decree to finally get implemented. Amongst these impediments, excessive delay is the most common and rampant cause of delay in execution proceedings. To overcome this factor and for the speedy execution of decree a few suggestions have been laid down which would prove to be useful in preventing defiance of Civil Justice due to delay in execution of decrees-

1. There should be a statutory provision in law which should set out the powers, rights and responsibilities of the parties and of the various players in the process. This framework should provide a definition of executive titles as well as legal certainty and transparency regarding the enforcement process and the status, role and responsibilities of enforcement agents. The courts also should do effective monitoring and exercise control over the enforcement process.

2. A clear definition of existing enforcement procedures and mechanisms, as well as their scope of applicability, should be provided by law. Enforcement measures should be proportional to the amount of the claim. Enforcement agents should have effective means of identifying, locating and seizing assets as well as mechanisms for the prompt sale of attached assets. The law must provide effective sanctions which are adequate, proportionate and dissuasive. These sanctions must be applicable, and effectively applied, to the parties as well as their legal representatives and enforcement agents with a view to sanction and deter procedural and other abuses. The law should also provide for the possibility of holding enforcement agents
individually liable to disciplinary, civil and/or criminal proceedings for abuses of power and human rights violations;

3. Enforcement agents must be adequately skilled and receive appropriate initial and continuing training. Their powers, especially in relation to the powers of the courts, should be clearly and adequately defined and limited. Enforcement agents must be neutral, bound by high professional and ethical standards and ultimately subject to judicial control.

4. Judges must be adequately qualified and receive appropriate initial and continuing training. Their powers and role in the enforcement process should be clearly and adequately defined and limited. Judges must be competent, impartial and independent, as well as bound by high professional and ethical standards. They should be subject to proper disciplinary oversight.

5. The law must provide for effective and appropriate means of service of documents as well as effective mechanisms for locating the debtor and alternative means of service when the debtor cannot be located. Information about the debtor and his assets and revenues must be accessible to the creditor and his legal representatives to the greatest extent possible as permitted under privacy and personal data protection laws. Enforcement agents should be provided with the broadest access possible for enforcement purposes, with the possibility of exceptional derogations to privacy rules.