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INCREASING THE EFFICIENCY OF TRIAL COURTS IN INDIA

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Abstract: Trial court is a court in which the facts of a case are decided. The evidence related to a case are put on record in a trial court, the witness testimony is recorded and a preliminary sentence is given for the crime. The criminal justice system in India is extremely slow in deciding cases. Often cases go on for years and a significant portion of the life of an individual is spent in prison awaiting trial. This delay in disposal of cases has been much discussed upon in the recent past. Several lawmakers, jurists and other policymakers have debated on it and have tried to find a solution. The lack of efficient judicial management, the frequent adjournment of trials, the lack of adequate number of judges and judicial officers have been identified as the causes of delay in the disposal of cases. Solutions like reforming the Criminal Procedure Code (CrPC) to make the process much simpler, increasing the number of courts and judges, constituting fast track courts and taking the help of artificial intelligence have been proposed to ease the process. In this essay the author intends to analyse the cause for the delay in disposal of cases and also comment on the viability of the solutions proposed and suggest a way forward to increase the efficiency of trial courts in India.

INTRODUCTION

Criminal Justice has been an important aspect of the Indian Judicial System. India follows an adversarial criminal trial system in which both the prosecution and the defense have to plead their case before the judge, present evidence and witnesses to establish the facts and the judge will give his verdict convicting or acquitting the accused. The courts in India face a very serious pendency problem. The rate of disposal of cases is very slow. Often it takes decades to decide a case. India has a fixed hierarchy of trial courts. Trial courts for criminal cases in India consists of sessions and magisterial courts. Cases decided in trial courts are appealed to the high courts and finally the supreme court. According to the law commission of India, all cases awaiting in the court are said to be pending. The cases which have been pending for more than normal period of time are said to be delayed¹. The delayed cases where there is no valid reason for the extra time taken are called arrears². The slow pace of the trial courts is often a factor leading to the huge time taken in the disposal of cases. Subordinate courts contribute to 86% of total undecided cases in India. The high courts contribute 13.8% and the remaining 0.2% of the undecided cases are pending in the Supreme Court³. By analyzing the data from all states, it can be seen that the number of cases pending has increased in the year 2020, with respect to the previous year, in all of them with Uttar Pradesh showing the highest increase⁴. Delay in deciding the cases means delay in delivery of justice. This results in gross injustice to both the victims of crimes and innocent undertrials wrongly accused of being criminals. The huge backlog in cases thus prevents justice from being delivered. The Supreme Court of India has taken note of this delay in disposal of cases in many cases and the problems faced by the undertrials in cases like *Hussainara Khatoon v State of Bihar*⁵. It acknowledged the need of speedy dispersal of cases in *Imtiyaz Ahmad v. State of Uttar Pradesh*⁶. In this case the court instructed the Law Commission of India to analyse the cause of delay and come up with recommendations. It has been said that it would take decades to clear the current backlog of cases⁷. This pendency of cases has also affected the position of India in ease of doing business index. Several alternatives like using court management system, better court administration, using of artificial intelligence, setting up of specialised tribunals and alternative dispute resolution have been proposed to increase the efficiency of Indian trial courts.

CAUSES OF PENDENCY OF CASES

Low Judges to citizens ratio: India has one of the highest number of citizens per judge. There are only thirteen judges in India per million citizens as of 2020⁸. As a result, there is a serious want of adequate number of judges required for speedy disposal of cases. The number of cases is increasing but new judges are not being appointed in

¹ Law Commission of India, *Arrears and Backlog: Creating Additional Judicial*, Report no. 245 at 3 (July 2014)

² Law Commission of India, *Arrears and Backlog: Creating Additional Judicial*, Report no. 245, at 3 (July 2014).

³ Vital Stats: Pendency of cases in the Judiciary, PRS India, (July 25, 2018)

⁴ *India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid*, 62 (Tata Trusts, 2021).

⁵ *Hussainara Khatoon v State of Bihar*, MANU/SC/0121/1979.

⁶ *Imtiyaz Ahmad v. State of U.P.*, (2012) 2 SCC 688.

⁷ Srutee Priyadarshini, *Efficiency of Courts and Criminal Justice System*, Probono India (May 6, 2020), <https://www.probono-india.in/blog-detail.php?id=119> (Last Visited 23rd September 2021).

⁸ *Id.*

the same rate. The selection and appointment process of judges is also slow⁹. As a judge is burdened with a large number of cases which is greater than his/ her capacity. This affects speedy functioning of courts and leads to delay in disposal of cases

Inefficiency of various parties associated with the trial: Another cause leading to delay in disposal of cases is frequent adjournments of trial in court and unpreparedness of the counsels. Section 309 of the CrPC gives the court the power to adjourn cases after the commencement of trials. But adjournment is supposed to be done on reasonable ground and the judge has to record the reason for the adjournment. But in real life often trials are repeatedly adjourned due to minor reasons.¹⁰ Hearing of some other case takes up more than expected time and the cases are not heard and gets delayed. Sometimes the counsels ask for time from the judge because they are not adequately prepared to plead their cases or due to strategic reasons. Sometimes the judges are also absent on the date of the hearing. Also, after the completion of trials judges may not pronounce a verdict immediately but delay the judgment for months. In some cases, due to change in roster or retirement of a judge in middle of a hearing, the judge gets changed and a fresh trial has to start before a new judge. The inefficiency of court management also plays a role in delay in trials. Mistakes like listing several complicated matters before the same judge in the same day, listing several cases with the same lawyer in a single day, listing cases in the bench of a judge who is on leave, etc. are also responsible for pendency of cases. Nonappearance of witnesses is another factor responsible for delay during trials¹¹. Thus, due to the inefficient behavior of the various parties associated with the trial there is delay in disposal of cases.

Frivolous Litigation: The courts in India are flooded with trivial, sometimes false lawsuits which lack a genuine cause of action¹². Hearing these cases results in wastage of valuable working hours of the courts and thus contribute to the huge backlog of cases in the lower judiciary of India.

PROBLEMS FACED AS A RESULT OF SLOW TRIAL

In Hussainara Khatoon Justice Bhagwati had opined that the right to speedy trial is a fundamental right which falls under the ambit of Article 21 of the Indian constitution¹³. An undertrial prisoner loses a significant portion of his or her life in prison without justice. In India undertrials constitute the majority of the prison population. Many people are indiscriminately arrested in non bailable offences. Then have to remain in prison without bail or conviction due to slow trials. Sometimes the detention exceeds the period of imprisonment due for the offence they have been accused. In many cases the undertrials are from poor economic background and marginalised

⁹Supra note 2, 48.

¹⁰Harshul Bangia, *Delay in Criminal Trial: Unheeded S. 309 of CrPC*, Criminal Law Review (July 15, 2020) <https://crlreview.in/delay-in-criminal-trial-unheeded-s-309-of-crpc/> (Last Visited 23rd September 2021).

¹¹ Id.

¹²Nitika Khaitan, Shalini Seetharam, Sumathi Chandrashekar, *Inefficiency and Judicial Delay: New Insights from Delhi High Court*, 20 (Vidhi Centre For Legal Policy, March 2017).

¹³J.K. Krishnan, C.R. Kumar, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, 42 Georgetown Journal of International law 747, 760 (2011).

communities. They are not aware of their rights under the CrPC and remain in prison. This results in overcrowding of prisons. The root cause of all these is the slow pace of the trials and the inefficiency of the courts¹⁴.

Some solutions tried to improve the efficiency of courts

Provisions in CrPC ensuring speedy trials: Section 309 of the CrPC states that a trial should proceed expeditiously after examination of witnesses has begun and should continue on a day-to-day basis till all witnesses have been interrogated. It has been implied in the act that adjournments should be the exception. It also mandates the judge to put into record the reason for each adjournment. Thus, this provision was intended to ensure speedy trials while giving certain discretionary power to the judges. But as discussed earlier in this essay and pointed out by the honorable Supreme Court of India multiple times this provision has not been very successful in ensuring speedy trials and often due to frequent adjournments cases are delayed.

Plea Bargaining: Plea Bargaining is the process of negotiation between the accused and the prosecution. As a part of the negotiations the accused voluntarily agrees to plead guilty for a particular offence, or to give witness against other offenders and provide information related to some other crime. In return some charges are dropped or the accused is awarded a lesser sentence or the prosecutor has to agree with any other demand the accused may put forward. The concept of plea bargaining originated in the United States of America and became dominant by the end of the nineteenth century¹⁵. In India every accused has a right to free and fair trial and can only be convicted by procedure established by law. The Supreme Court in *Kasambhai Abduirehmanbhai Sheikh v. State of Gujarat*¹⁶. held that plea bargaining was unconstitutional and contrary to public policy. Later due to huge backlog of cases the 154th law commission report, 1996 recommended the process of plea bargaining. Finally, plea bargaining was inserted in the CrPC through a 2005 amendment. Sections 265A to 265L talks about plea bargaining. For the purpose of plea bargaining the accused first has to file an application before the court. The court then examines the accused to ensure that he was not forced. Then notices are issued to the accused, prosecutor, victim and investigating officer to negotiate on a fixed date. If a successful solution is reached, a report is prepared by the presiding officer of the court and signed by all the parties. After that the case is disposed by the court and a judgement is pronounced in lines of the mutually agreed solution. The cases decided by plea bargaining cannot be appealed before higher courts. But a special leave petition before the supreme court or a under Article 226 of the Indian constitution before the high courts can be filed. No plea bargaining is allowed in offences with maximum punishment of imprisonment more than seven years or life imprisonment or death penalty. It is not available in socio economic offences and crimes related to women and children¹⁷. In the process of plea bargaining the case gets settled before the commencement of trials. As a result, the time taken for trial reduces to a great extent as there is nothing much to plead. This helps persecutors to handle a greater number of cases in a short span of times. In this way it helps in speedy disposal of cases. It helps to reduce the excessive number of undertrials present jails.

¹⁴ Madhurima Dhanuka, *Under Trial Prisoners and the Criminal Justice System*, 4-6(C.H.R.I., 2010).

¹⁵ A.W. Alschuler, *Plea Bargaining And Its History*, 79(1) Columbia Law Review 1, 4-6(1979).

¹⁶ *Kasambhai Abduirehmanbhai Sheikh v. State of Gujarat*, (1980) 3 SCC 120.

¹⁷ P.K. Singh, *Plea Bargaining and Criminal Justice in India*, 7(1) Athens Journal of Law 33, 42-44(2021).

Plea Bargaining has not been entirely successful in reducing the case load of Indian courts. Since the introduction of plea bargaining very few cases were disposed of by the process of plea bargaining. Firstly the process is not available to all kinds of offences. In India the accused are often unaware of their rights and cannot afford proper legal representation due to lack of adequate resources. Also, the social stigma associated with a convicted offender plays a role in this. The accused is often desperate to obtain the tag of an acquittal and is reluctant to plead guilty¹⁸. The various functionaries associated with the criminal justice system did not take any effort to promote plea bargaining¹⁹. All these contribute to the low popularity of plea bargaining in India.

Fast Track Courts: The eleventh finance commission, 2000 recommended the creation of fast-track courts to reduce the huge backlog of cases in lower courts of India. These courts were meant to ensure speedy delivery of justice. They were to be set up by the states with central support. Initially the scheme was proposed for a period of five years. The scheme had been extended subsequently and was put to an end in 2011. After the brutal Delhi Gang Rape in 2012 the central government created the Nirbhaya fund to step up fast track courts to deal with crimes related to women. In 2019 1023 fast track courts were approved by the government to hear sexual offences under the IPC and POCSO act. In 2021 the government approved the continuation of the courts up to 2023²⁰.

The fast-track courts in India have not functioned efficiently as they were expected to. According to NCRB data from the year 2019 81% of the cases completed in fast-track courts took between one and ten years of time. Among rape cases there was a pendency rate of 89.5% and among POCSO cases there was a pendency rate of 88.8%. The fast-track courts lack adequate infrastructure and do not have the required number of judicial staff. The procedural laws are similar to that of main courts. As a result, the fast-track courts too face similar issues and get clogged with a huge number of cases which is beyond their capacity²¹. Also there has been reluctance on the part of the state administrations in setting up of fast-track courts. As of 2020 15 Indian states and union territories do not have them.²² Thus fast track courts have not been successful in increasing the efficiency of the criminal justice system and the policy has not been uniformly implemented throughout the nation. Hence there is need for reforms to make them fulfill the purpose for which they were set up.

E Courts: The E Courts mission project was conceptualized for district courts throughout India in 2005 with the vision of increasing the efficiency of the judiciary by introducing information and communication technology. It aims to improve transparency and accessibility of the Indian judiciary. In the phase one of this project computer hardware and case information systems were introduced in the district courts. The courts launched their websites. The judicial officers were trained how to handle them. In phase two of the project the technology was further

¹⁸ S.G. Katkar, *Plea Bargaining- Challenges for Implementation*, Bharti Law Review 237, 242 (April - June 2016).

¹⁹ Shama Sinha, *Criminal Justice Reforms will Make Plea Bargaining Effective in Reducing Pendency of Cases*, The Leaflet (November 13, 2020), <https://www.theleaflet.in/criminal-justice-reforms-will-make-plea-bargaining-effective-in-reducing-pendency-of-cases/> (Last Visited 23rd September 2021).

²⁰ Fast Track Special Courts (FTSCs), Insightias (5th August 2021), <https://www.insightsonindia.com/2021/08/05/fast-track-special-courts-ftscs/> (Last Visited 30th October 2021).

²¹ Prachi Salve, *What's Slowing Down India's Fast-Track Courts*, India Spend (Dec 11, 2020), <https://www.indiaspend.com/police-judicial-reforms/whats-slowing-down-indias-fast-track-courts-700397> (Last Visited 23rd September 2021).

²² Yash Agarwal, *Why have Fast Track Courts Failed in India?*, The Leaflet (October 31, 2020), <https://www.theleaflet.in/why-have-fast-track-courts-failed-in-india/> (Last Visited 23rd September 2021).

updated and developed. The national judicial data grid and the e courts website were launched to show the case status, to litigants and increase transparency²³. Further e filing of petitions was allowed from 2020. This digitalization of the courts helps to monitor the pendency of cases in various trial courts more effectively. It reduces the daily operational activities of the courts and helps in better management. ²⁴ It helps the courts to do functions like recording of witness statements with the help of computers, which formerly had to be written by hand, and thus took up a lot of time.²⁵

But the e courts have also faced some problems. The overall computer literacy in India is very low. The government has not been able to increase the awareness about the e courts project among the lawyers and the litigants, especially in remote areas. Also, there is a general reluctance to avail these features due to poor computer literacy and people are more comfortable with the traditional methods. Further often the software is not handled properly and the data is not properly updated²⁶. All these have further hindered speedy and efficient delivery of justice, which was the main intent of the e courts project. So, there is need of further actions on the part of the government to ensure the success of the project.

THE FUTURE OF DIGITALIZATION OF INDIAN JUDICIARY

Covid Pandemic and Virtual Courts: The ongoing covid pandemic put forward a new challenge before the Indian judiciary. The courts were closed amidst the pandemic due to lockdowns and the spread of the virus. There was no possibility of physical hearings. So, the courts were forced to push for virtual hearings. This presented an opportunity before the court to move for virtual hearings. The Indian judiciary had been reluctant to adopt virtual hearings prior to this. Also, the pandemic saw large scale use of the e payment and e filing facilities for the first time in the Indian judiciary. Thus, the pandemic pushed us towards modernization of the judiciary. Virtual hearings help in speeding up of trials because it allows lawyers to attend multiple hearings in a short span of time. In physical mode the lawyers had to spend a large amount of time in the court rooms waiting for the hearings to take place. This results in wastage of time. So even after the pandemic subsides India needs to move towards a hybrid model. Where unimportant cases can be heard virtually. Physical hearings can be restricted only for sensitive, critical cases. This opportunity needs to be utilized to develop infrastructure, of lower courts to make them more compatible with virtual hearings. Also, the computer literacy among the various functionaries associated with the criminal justice system needs to be increased.

Use of Artificial Intelligence in Judicial Work: Artificial intelligence can help to increase the pace and efficacy of legal research done by judges and lawyers. It also helps in sorting of cases and better management. AI algorithms

²³E committee Supreme Court of India, *E Courts Mission Mode Project*, <https://ecommitteesci.gov.in/project/brief-overview-of-e-courts-project/> (Last Visited 23rd September 2021).

²⁴ Shalini Seetharam, Sumathi Chandrashekar, *E Courts in India: From policy formulation to Implementation*, 18 (Vidhi Centre for Legal Policy, July 2016).

²⁵S.B.N. Prakash, *E Judiciary: a Step towards Modernization in Indian Legal System*, 1(1)Journal of Education & Social Policy 111, 117 (2014).

²⁶ Supra note 23 , 21,22.

also helps in solving simple cases like motor vehicle compensation claims which does not involve much debate upon legal issues. AI is already used for adjudicating small disputes Estonia and for management purposes in countries like Austria.²⁷ This can also reduce wastage of judicial time. The Supreme Court of India has started pilot projects like SUVAAS, a software to make the judiciary paperless²⁸. It will take a lot of time, money and infrastructure development to make AI technology available through out the nation.

RECOMMENDATIONS

1) The need for awareness building about the legal system: It can be seen from this essay there is lack of awareness about several government actions among the general population. As discussed in this essay there is lack of awareness among the accused about the option of plea bargaining. The legal aid societies associated with the courts need to be proactive in building up awareness about the plea-bargaining process. All accused persons should be made aware of plea bargaining and its implications. Also, there is lack of awareness about the e courts system. The state government with the help of NGOs can organize workshops in the courts across the nation to familiarize lawyers and Judicial officers with the e courts portal. The government can increase its awareness among the litigants by targeted advertisements.

2) Legal Reforms: The CrPC often relies on the discretion of judge and does not impose strict time limits. This often results in delay. There is serious need for reforming the CrPC. The offences need to be classified based on their severity, sensitivity and other factors as the government may deem fit and time limits need to be introduced for the trial of each category. Also, the government may specify the maximum time that may be taken to give the verdict after completion of hearings. The government needs to frame guidelines for the exercise of the power of adjournment in trial courts. There also a need to bring a law making the establishment of fast-track courts compulsory in all states and Union Territories. Fast track courts should have their own simplified trial procedures similar to that for summary trials under CrPC to make the process faster.

3) Infrastructure development: The government needs to increase the number of courtrooms and recruit more judges. This would help in speedy functioning of the courts. Also, this would help in solving some of the problems faced by the fast-track courts. Most fast-track courts don't have adequate number of judges and have to share the courtroom with regular courts. Thus, this move will enable them to function speedily. Also, the government needs to ensure stable internet access in all courts. The computers and other digital gadgets should be functional properly. Thus, in this way if all parties work in tandem and take adequate measures the efficiency of Indian trial courts can be increased.

²⁷Ameen Jauhar, et al., *Responsible Artificial Intelligence for the Indian Justice System*,6-9 (Vidhi Centre for Legal Policy & T.C.G. Crest).

²⁸ Anubhav Mishra, *SUVAS- An Artificial Intelligence system to translate legal judgments into Indic languages.*, Legalmind, November 1, 2020, <https://blog.legalmind.tech/legalmind-blog-suvas-an-artificial-intelligence-system-to-translate-legal-judgments-into-indiclanguages/>, (Last Visited 30th October 2021).

CONCLUSION

Thus, it can be seen from the above discussion that several procedural flaws, administrative issues and the laid back attitude of the various functionaries associated with the criminal justice system in India lead to the delay in disposal of cases. The central and the state government have taken note of this problem. They have taken several measures to increase the efficiency of the system. But in most cases the government's policies did not have the desired effect. India is still burdened with a huge pendency of cases. The various reasons for the failure of the government's policies were discussed. It can be seen that improper planning, poor understanding of the ground realities the reforms have not got the desired effect. For example, the fast-track courts did not have the desired effect as the root problems like lack of court rooms and low number of judicial officers persisted. Some reforms like the digitalization of the judiciary were ahead of time and could not be backed up with required infrastructure development. The scope for the legal and administrative reforms have been discussed in this article. If all parties work in tandem and take adequate measures the efficiency of Indian trial courts can be increased.