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Arbitration: First Step towards Solving the Indian Judicial System's Greatest Problem

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ABSTRACT

"Justice delayed is justice denied" a famous legal maxim that has become the infamous condition of the Indian courts. Indian courts are now one of the most overburdened courts in the world. In the 'Question Hour' of the 2020 Winter Session of Lok Sabha[2] (House of People), the Minister of Law was asked for the total number of cases pending before the Supreme Court, High courts, District and all subordinate courts. It is shocking to note that all the aforementioned courts are currently overburdened by a total of 40 million cases. Some of these cases are pending before the courts since the Independence. Numerous attempts have been made by the government to better this situation to no avail. This unfortunate condition of the Indian courts has instilled feelings of helplessness and loss of faith in the judicial system of the country. Among the many ways that may help encounter the problem, Arbitration stands out to be the best way for taking the first step in the right direction. This paper aims to analyse the situation and provide an effective plan of employing Arbitration methods to commence 'Mission Unburden'.

Keywords: *Arbitration, Pendency of cases, Indian courts.*

I. THE PROBLEM

The Supreme Court of India wears the crown for being the strongest court in the world based on its strong Judicial activism, effective execution of Separation of Powers and its flair for never disappointing the citizens on paramount social issues. But it is far from perfect if one tries to take a closer look. The Supreme court along with all its subordinate courts are institutions greatly affected by corruption, complicated and redundant processes, lack of transparency and worst of them all, a huge burden of pending cases. The pendency of cases poses the greatest threat to the functioning of a judicial system as it impairs any court from passing timely verdicts. If justice isn't given to people at the right time, their confidence in the country and its principles gets lost. Ultimately, a good democracy runs on the faith and confidence of the people, impairing that will give rise to grave problems to the country's future.

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[2] *Lok Sabha- The lower house of the Indian Bicameral Parliament*

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Finding effective solutions to a problem requires accessing the depth of the issue carefully before coming up with a workable solution model. Given below are the major problems affecting the slowdown of disposing of legal matters:

(A) Judges

On average, a Supreme Court judge in India goes through a total of 2600 cases per year whereas their American or Canadian counterparts go through an average of 65-80 cases per year[3]. This average number of disposal remains the same for judges on every level. Hence, the performance and functionality of the judges towards the disposal of cases cannot be called into question. A judge per 72,441[4] people comes with obvious repercussions. To curb this, the government has assured the establishment of more courts for over a decade but no implementation has been made so far. Due to the incapacity to fund the ideal number of judges required, the judicial system has no option but to make do with the current sanctioned strength. The system, however, has failed to fulfil the sanctioned strength too. Hence, the vacancy of judicial posts also contributes to the pendency of cases. The following table demarcates the sanctioned strength and vacancies in the courts:

No.	Courts.	Strength.	Vacancies.
1.	Supreme Court	34	3
2.	High Courts	1079	403
3.	District and Subordinate courts	22036	5133
Total		23118	5539

*Vacancies of Judicial post in courts of India[5]

(B) Complicated procedures and rules

One of the most significant features of the Constitution of India is that it is the longest handwritten constitution of any sovereign state in the world. It has 395 articles in 22 parts and 8 schedules. The Constitution of India is the undertone of any legislation drafted after it. Although beautifully drafted, it is a very long and complicated document like every other act, rule or order formulated in India. The procedural codes of the country, i.e. Civil Procedure code

*[3] Panda **A**nkit (April 26, 2016), "30 million pending cases: **F**ixing **I**ndia's overburdened **J**udiciary", The Diplomat.*
[4] Dushyant Mahadik (January 2018) "ASCI Final Report" 118547/2018/NM, Retrieved from www.doj.gov.in
[5] Suo Motu Writ Petition (Civil) No. 2/2018. On 22nd October 2018, a two-judge Bench took Suo Moto cognizance of the huge number of judicial vacancies in courts.

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1908 and Criminal Procedure Code 1973, are decades-old legislations that have very little flexibility and efficiency. It is a common practice among practising lawyers to collude and get a further date at the time of the court hearing to increase their billable hours and monetise over the long lengths of the cases. Corruption is seen in every nook and corner of the courts, starting from the law clerks handling sensitive information to high profile judges.

(C) Delay

Another major reason for the pilling up of cases is the continued delay of the cases in hand. In the Constitution of India right to speedy justice is recognised as the fundamental right of the citizens. In the Criminal jurisprudence of the country, the Supreme Court has laid down various precedents to ensure speedy trials for the under-trial prisoners[6]. It is interesting to note that in *Hussainara Khatoon v Home Secretary, State of Bihar*[7], the apex court interpreted Article 21[8], in a new light which gave birth to the writ of Habeas Corpus[9]. However, this ensures merely that the trial of the accused commences, not that a judgement is passed in time. When it comes to civil cases there have been no solid judgements or laws made on speedy trials. In the Civil Procedure Code, 1908, there are time limits given for issuing summons and filing of written statements[10], but no time limits are issued to ensure the case is adjudicated within a reasonable time.

(D) Statistics

All the subpoints mentioned above talk about the major reasons for the backlog of cases. The following line graph shows the increase in the number of pending cases in the High courts and the Subordinate courts respectively, between the years 2002 to 2016[11].

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[6] *Machander v State of Hyderabad 1955 AIR 792 1955 SCR (2) 524, Maneka Gandhi v Union of India 1978 AIR 597, 1978 SCR (2) 621, Anita Kushwaha v Pushap Sudan (2016) 8 SCC 509.*

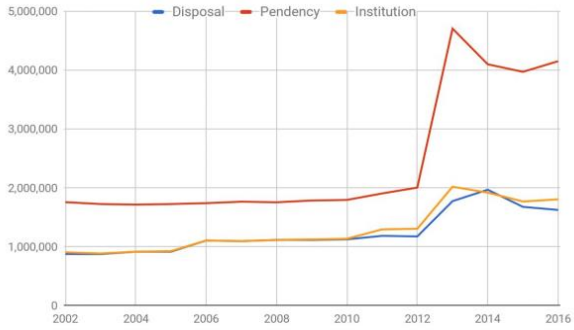
[7] *1979 AIR 1369, 1979 SCR (3) 532; In this case the emphasis was laid on the fact that the under-trial prisoners who had been in jail for more than half the maximum term of imprisonment for which they could be sentenced if convicted. These under-trial prisoners were kept to languish in jail merely because the State did not try them within a reasonable time. It is well established under Article 21 that no person shall be deprived of his life or liberty except by the procedure established by law which ought to be 'reasonable, fair and just' Hence, It was held essential to ensure that the accused persons do not have to remain in jail longer than is necessary and a speedy trial of persons accused of offences was directed.*

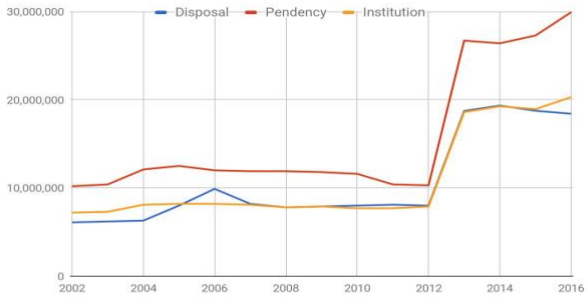
[8] *Article 21, Constitution of India, Retrieved from https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf*

[9] *A writ recognized under the Indian Constitution that means to "Provide the body before court"*

[10] *Order 8 Rule 1 and Order V Rule 1, Civil Procedure Code 1908, Retrieved from https://legislative.gov.in/sites/default/files/A1908-05.pdf*

[11] *Dushyant Mahadik (January 2018), "ASCI Final Report" 118547/2018/NM, Retrieved from www.doj.gov.in*





The following data demarcates the pending cases in total and their nature before the various courts of India.

No.	Courts.	Civil.	Criminal.	Total as of 31.09.2015	Civil.	Criminal.	Total as of 31.09.2020
1.	Supreme Court	-	-	61,300	-	-	62,054
2.	High Courts	28,39,000	10,36,000	3,875,000	3,677,089	1,475,832	5,152,921
3.	District and Subordinate courts	84,50,346	18,651,560	25,654,906	9,449,268	25,023,800	34,473,068
Total				29,591,206			39,688,043

*Statistics available on Court websites[12]

[12] *Rajya Sabha (22nd SEPTEMBER, 2020), QUESTION NO.1381, retrieved from https://pqars.nic.in/annex/252/*

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As we can observe from the above-given line graphs, the number of pending cases in 2002 in the High courts were 2,000,000 and those in the Sub-ordinate courts were 10,000,000. In 2015, there was an increase of approximately 94% in pendency of cases in the High Courts, whereas there was an increase of approximately 157% of the same in the Subordinate Courts. Similarly over the past 5 years, i.e. 2015 to 2020, there has been an approximate increase of 33% in the pendency of cases of High Courts and an approximate increase of 35% in the Subordinate Courts. From the above data, we can conclude that the rate of pendency of cases has immensely increased from 2002 till 2020 i.e. 158% and 245% in High Courts and Subordinate Courts respectively.

(E) Psychological effect

Courts are taboo for Indians when it comes to a dispute. It is a general belief that avoiding the courts is a better way to get justice. Everyone is well aware of corruption, politics, delay in justice and hence, other ways are always preferred. In 2017, a study was published by a non-profit organisation that raised some concerning issues. Indians were said to be only 10% likely to turn to courts for help[13]. The major reasons mentioned were: costly litigation, complex procedures and unreasonable delays[14]. The lack of faith in justice is detrimental to the social well-being of people. The very reason why humans started to colonise was for the security the resultant society provided. In the modern sense, when an individual or public right is harmed, such protection is sought from the courts. If the courts themselves fail to be the upholders of justice then its citizens will lose faith in the state itself. As established above, if there are 40 million cases pending before the courts, then the judicial system is on the edge of collapsing under its pressure. One step away from being in a state of civil war is the time for immediate solutions to cause relief or at least buy some time for the justice system to regain its place and pace.

II. THE SOLUTION

There have been multiple attempts to improve the situation of the Courts of India by appointing various committees and embodying several measures to help resolve the problem of pendency. In the year 2000, the government formed a panel headed by the former Chief Justice of Kerala and Karnataka, Justice V.S. Malimath, that suggested various reforms like increasing the

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[13] *JOHARI AAREFA (JAN 24, 2018), "THE INDIAN JUSTICE SYSTEM IS TOO SLOW, TOO COMPLEX AND TOO COSTLY, SAYS NEW STUDY", RETRIEVED FROM HTTPS://SCROLL.IN/ARTICLE/866158/THE-INDIAN-JUSTICE-SYSTEM-IS-TOO-SLOW-TOO-COMPLEX-AND-TOO-COSTLY-SAYS-NEW-STUDY*

[14] *Daksh Foundation, "Access to Justice, 2017", retrieved from https://dakshindia.org/access-to-justice-2017/index.html*

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strength of judges in all courts, timestamping the date of conclusion of arguments and the date of pronouncement of judgment, and employing the 'Arrears Eradication' scheme. There have been substantive advancements in technology with the Centre introducing a mobile application -- Justice App -- meant exclusively for judges across the country to help them track pending cases. The strength of the judges has increased from time to time and the procedural codes have been amended to aid faster disposal. Despite all these reforms made since 2000, the actual issue has not been targeted. To resolve it we have to ensure the working of a stable judicial system in parallel. The doctrine of severability can be employed to resolve such a complex legal problem. When looking for a speedy way, uncomplicated yet effective method of disposing of cases, arbitration is what best fits the description. In countries like Canada and the USA, all civil disputes that are valued under a specific amount are resolved through an arbitration program. This has been put in place to ensure cost-effective and speedy disposal which lowers the burden of the courts. By employing this method, a part of the problem and be severed and resolved without causing any problems to the ongoing system. This will prove to be a good first step which will in turn bring about a paradigm change in the disposal of cases.

(A) History of ADR

The legal system in India in the Vedic times was entrusted with the Panchayat. The Panchayat consisted of the eldest members of the town and it sat weekly to resolve public issues. After independence, one of the noted Gandhian Social Workers, Shri. Harivallabh Parikh started Lok Adalat in the tribal area of Rangpur. Lok Adalats were formulated on the foregrounds of Panchayats and principles of ADR. Since its inception the Lok Adalat system has been successful in settling more than 50,000 cases[15]. This led to it gaining a statutory status in 1987 known as the Legal Services Authorities Act, 1987[16]. In 1974, millions of acres of land situated in 117 villages in Kurnool and Mahboobnagar districts of Andra Pradesh were acquired under the Land Acquisition Act. About 40,000 families were uprooted in the process of constructing a Hydro-Electric plant near these villages. Their cases were pending for 10 years until they were finally settled through Lok Adalats. Hence, ADR methods have always been a go-to for Indian Citizens because they have evolved around the society which depended on ADR to solve its legal issues. The country promotes settlement through various ADR provisions like

[15] *The Economic Times (May 15, 2016), "National Lok Adalat settles over 50,000 pending cases", retrieved from https://economictimes.indiatimes.com/news/politics-and-nation/national-lok-adalat-settles-over-50000-pending-cases/articleshow/52272930.cms?from=mdr*

[16] *Pursuant to the constitutional mandate in Article 39-A[xviii] of the Constitution of India the Legal service Authorities Act was enacted to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society and to organize Lok Adalats to secure that the operation of the legal system promotes justice on the basis of equal opportunity.*

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Arbitration, Negotiation, Concilliation and mediation. Arbitration entered India with British rule and has evolved ever since. The Arbitration Act 1966 is based on the Model Law and the UNCITRAL Arbitration Rules and has been amended from time to time.

(B) Arbitration in India

India always promotes foreign as well as domestic trade and investment. Continuous efforts are taken to strengthen arbitration in the country to aid its commercial application. The recent developments to the act have attempted to impose time limits, lower court intervention and introduce a more realistic cost regime. Neither does the Arbitration Act apply to criminal, family and insolvency matters, nor to disputes which have tribunals constituted for them. The mandate is to have an arbitration clause or an agreement in connection to the commercial dispute that is to be referred to arbitration. There is a list of issues on basis of which the court can intervene in the proceedings. Earlier, the court was made to intervene to appoint arbitrators if the parties failed to do so. According. to the recent amendment, an independent body called the Arbitration Council of India has been formulated which comprises largely of central government appointees. This Council grades arbitral institutions, accredits arbitrators, and evolves policy and guidelines for the establishment, operation and maintenance of uniform professional standards in arbitration. The Legislation should amend the arbitration act to increase the scope of the Arbitration Council and divest the involvement of the courts in the arbitral proceedings. This will not only cause the courts to be unburdened with solving arbitration matters but will also ensure the efficiency of arbitration in India.

III. PLAN FOR 'MISSION UNBURDEN'

To take the first step towards solving the problem, legislation should be enacted where civil matters up to a particular pecuniary limit should be referred to compulsory arbitration and the arbitration council should be put in charge of all these cases to be resolved.

New cases should be directed to the Arbitration Council as a compulsory mandate. The current pending civil cases of the country in the High courts and the Civil courts have come up to about 14 million. Out of these whichever pass the conditions for the new Arbitration policy should be directed towards the Arbitration Council. The Civil cases that go to the Supreme court have been accepted by the Supreme Court because they must be either of high monetary value or must be questioning the substantive interpretation of a particular law. Hence, these cases cannot be included in arbitration.

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To bring about such a paradigm shift, an effective plan should be formulated to ensure easy handover and speedy disposal. The proposed plan of action is as follows under the assumption that the suggested legislation is already passed.

(A) Step-I

Prepare

1. The Arbitration Council should recruit a set of professionals needed to ensure they are not understaffed and inefficient. This could include professionals of law, IT, Management, law clerks etc.
2. A form for registering cases with the Arbitration council should be made available online. A ready contract of arbitration should be followed with such a form.
3. The Arbitration Council should issue guidelines to all the courts to prepare themselves with the necessary infrastructure.
4. All the courts should be directed to appoint a committee in each court to enlist the pending civil cases in the court and make a list of cases that fall under the pecuniary guidelines.
5. Upon finding out the number of cases to be sent to arbitration, the desired number of arbitrators and a list of ready arbitrators should be sent to the Arbitration Council.
6. The Arbitration Council should approve all such lists after careful consideration and declare the courts to be 'Mission Unburden- READY'

(B) Step-II

Announce and Educate

1. The Mission Unburden plan should be advertised to people all across the country through radios, T.V, emails, messages and papers. The plan should be advertised in all regional languages and a simple format.
2. The citizens should be made aware of the disposal system for any new civil cases.
3. As a part of the legal aid cells in all law colleges[17], all colleges should be directed to ask their law students to conduct education camps, send interns to courts to help out with preparation.

[17] *No 11, SCHEDULE III of Rules of Legal Education, 2008 issued under The Advocates Act, 1961*

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4. There should also be a grievance cell appointed at every court to assist in case of discrepancies.

(C) Step III

Management of Arbitrable Pending Civil Cases

1. The approved case lists should be arranged according to the date of the institution. It should be arranged based on 'FIRST IN, FIRST OUT' (Adjudicate the oldest cases first)

2. The courts should issue notices to all the cases falling under 'Mission Unburden' to register with the arbitration programme on the websites made for it. All the local courts should also have a link to this website.

3. The cases that fail to register should be directed to be discarded.

4. All the cases should be encouraged to be conducted online and within the prescribed time limit.

IV. THE WAY FORWARD

If 'Mission Unburden' becomes successful the burden of cases will be reduced by at least 25%. This does not solve the problem entirely but will get the legal system the required momentum. After the desired results are obtained by the Indian Judiciary here are the next steps that can be followed to solve the issue even further.

1. There was a survey conducted of the criminal cases in the country[18] where the data indicates that in the High Courts under consideration, in the last three years 38.7% of institutions and 37.4% of all pending cases before the Subordinate Judicial Services were traffic and police challans. Tribunals formed in the country under article Article 323 B[19] have always shown efficient and speedy disposal of cases. Under the same article, a traffic tribunal can be instituted by the Legislature which will unburden the criminal cases up to a great extent.

2. All the Indian Courts function from 10 am to 5 pm. Anybody who practices in the courts knows that the judges do not commence work until one hour later and finish work one

[18] *LAW COMMISSION OF INDIA (July, 2014), "Arrears and Backlog: Creating Additional Judicial (wo)manpower" Report No. 245, retrieved from https://lawcommissionofindia.nic.in/reports/report245.pdf*
[19] *Article 323 B, Constitution of India, retrieved from https://www.india.gov.in/sites/upload_files/npi/files/coi_part_full.pdf*

hour earlier. The courts can be instead held in two shifts; the Morning shift and the Afternoon shift. The oldest cases should be scheduled in the morning shifts.

3. Law students across the country are always looking for internships. Practical knowledge is the best teacher when it comes to law. The courts are always overburdened with responsibility and law students are looking for work. The courts could evolve an internship programme and recruit interns to help with decluttering and organising the courts.

V. CONCLUSION

The largest democracy in the world is facing the greatest dilemma. It being by the people and for the people, needs help from its people. Due to the political pressures, the country is in a state of an undeclared emergency. It can only be resolved if all its citizens come together, take cognizance of the problem and decide to resolve it. Time is of the essence in the 'Mission Unburden'. The mission needs to be commenced without any further ado. Also, the time limits for each milestone should be prescribed in advance. It is a common practice in the country to employ lesser people to save costs and overburden them with work, micromanage them and derogate them. A code of conduct should be published to keep this in check. All tasks should be prescribed properly, for e.g.- A predetermined number of pending cases per day should by allotted to a person to process. This will ensure nobody is overburdened and things are done promptly. The state has made many attempts to help solve the problem but it's conclusion is now a mandate and not an option. After all Interest Reipublicae Ut Sit Finis LitiumCITE.[20]

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[20] *A legal Maxim that means "All litigation should come to an end".*

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