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Backlog of Justice in India

ANSHUMALI YADAV¹, ASMITA MISHRA² AND PARANTAK YADAV³

ABSTRACT

When justice is delayed, justice is denied. This concept underpins the right to a fast trial, as well as other rights aimed at expediting the legal process, because it is unjust for a victim to suffer harm with little chance of recovery. Pendency in different courts around the country is 4.04 crores in this country's three-tier judicial system. Furthermore, rising population, poverty, and economic expansion result in more enterprises and government activities, as well as more crimes and, presumably, more lawsuit activity by those institutions. The current article is an attempt to critically analyses the many causes of pending cases and to provide solutions to the justice system's backlog.

Keywords: Justice Delayed, Backlog, Justice, Pendency, Subordinate Court.

I. BACKGROUND

The Indian Constitution guarantees social, economic, and political justice. Equal justice and equal protection under the law are guaranteed through the legal system. Equal access to justice is a constitutional mandate that our forefathers enshrined in the Constitution as a directive principle of state policy, not just as a fundamental right. Making access to justice a reality is one of the most important features that our forefathers enshrined in the Constitution as a directive principle of state policy. Because the courts are responsible for more than just adjudicating disputes between individuals, they frequently state normative rules to which institutions must adhere.

Denial of 'timely justice' amounts to denial of 'justice' itself. Two are integral to each other. Timely disposal of cases is essential for maintaining the rule of law and providing access to justice, which is a guaranteed fundamental right.

Moreover, increased civil/commercial litigation is frequently associated with rising economic prosperity. The link between the two is explained by the fact that increased prosperity is the outcome of increased diverse economic activity and urbanisation, which leads to civil/commercial disputes.⁴ Despite the current strength of the judiciary, courts resolve nearly

¹ Author is a LLM student at Lucknow University, India.

² Author is a student at Lucknow University, India

³ Author is a student at Lucknow University, India

⁴ 9 Law & Society Review 347 (1975)

as many cases as are filed each year. For example, the subordinate courts disposed of 18,730,046 cases between July 2014 and July 2015, with a working strength of between 15,500 and 15,600 judges, compared to 18,625,038 cases filed during the same period - slightly more than the number of cases reported.⁵

II. OBSERVATION

The total backlog touching 3.3 crore cases, as of Jan 01, 2019, 2.94 crore cases are pending in the subordinate courts, the pendency in the High Courts and Supreme Court (SC) is 43 lakh and 57,346 cases, respectively. When a case should be counted as delayed, there is no universally agreed-upon definition. The backlog occurs when the number of new cases instituted in a given time period exceeds the number of cases dismissed in that same time period. This depicts the build-up of cases in the system as a result of the system's inability to process as many cases as they are filed. Pendency refers to all cases that have been filed but have not been resolved, regardless of when they were filed.

As per the data available on National Judicial Data Grid⁶, 8515584 civil cases and 20974787 criminal cases are pending. In the civil cases pendency, Hearing/Argument wise pendency is 33.73%, Appearance/Service wise pendency is 24.2%, Compliance/Steps/Stay wise pendency is 17.90% and Pleading/Issues/Charges wise pendency is 12.13% while other factors wise pendency counts only 12.04%. In the Criminal cases pendency, Appearance/Service wise pendency is 47.6%, Evidence wise pendency is 25.94%, Cognizance-Issue process wise pendency is 10.22%, Compliance/Steps/Stay wise pendency is 8.36% and Pleading/Issues/Charges wise pendency is 7.67%.

In 2018, 12898071 cases were disposed in subordinate judiciary; however, the case institution rate is much higher, 14325509 new cases were instituted in year 2018. Thus, resulting in backlog of 142748 cases. As per the data available, 45.92% cases are pending due to 'presence' i.e. parties not brought on record or One or more accused not attending/absconding or Record of the case is sent to Other Court or missing or destroyed - full or in part. While, delay due to 'Complex litigation or Parties are taking more time to complete evidence' is only 23.14%. Delay due to 'awaiting records' is only 5.41%. Some of these cases date back as far as 25 to 30 years. The longer a matter drags on, the more costly it is to pursue.

The Supreme Court is resolving pending cases at a faster rate, according to data released by

⁵ Alok Prasanna Kumar, how many Judges does India really need? Jul. 12, 2016, <https://www.livemint.com/Politics/3B97SMGhseobYhZ6qpAYoN/How-many-judges-does-India-really-need.html> (last visited Aug 14, 2021)

⁶ Data as on Jan 01, 2019, <https://njdg.ecourts.gov.in/>

the Ministry of Law and Justice in March 2016. Despite the fact that cases before the Supreme Court are still pending, the court's efforts to resolve them are yielding results. The figures show that the number of cases pending in the Supreme Court has decreased from 66,603 to 59,468 between 2013 and 2016.⁷

The Higher Judicial Service is disposing of fewer cases than are being instituted. On the other hand, in the Subordinate Judicial Service, the disposal rate is higher than the institution, implying that the backlog is being reduced. A low backlog creation rate, therefore, indicates that the system as a whole is incapable of dealing with the recurring annual demand for Judicial Services, and is, therefore, in need of additional resources.⁸

Despite the fact that fast track courts have been chastised for their performance, close to 30.7 lakh of the 36 lakh cases moved to them since their establishment have been resolved. In practise, fast track courts have been successful in resolving more than 80% of cases referred to them.⁹

The data available shows that the reason for delays are Litigation explosion; Accumulation of first appeal; Inadequacy of staff attached to the Higher and subordinate judiciary; Inordinate concentration of work in the hands of some members of the Bar; Lack of punctuality among judges and advocates; Granting of unnecessary adjournments; Indiscriminate closure of Courts and call of strikes by bar; Inadequacy of classification and granting of cases; Inordinate delay in the supply of certified copies of documents due to lack of staff. Nevertheless, State of Infrastructure is also responsible for backlog of cases. The subordinate judiciary works under severe deficiency of 5,018 court rooms, resulting in the judicial officers having to work under undesirable conditions.¹⁰ The staff position for Subordinate Courts is also not encouraging, 41,775 such positions are lying vacant, thus further hindering in the functioning of the courts. Another factor is the Judge-population ratio, Based on the 2011 census and sanctioned strength of judges of the Supreme Court, the high courts and numerous subordinate courts, the ratio stands at 19.66 judges per million (10 lakh) people. India needs a five-fold increase in judge

⁷ Gaurav Shukla, Pending cases in Indian courts By Gaurav Shukla - July 1, 2016, *The Companion*, Jul. 1, 2016, <https://thecompanion.in/tli-pendency-in-indian-courts/>

⁸ Report No. 245, Law Commission of India

⁹ Rakesh Dubbudu, Fast Track Courts might help reduce Pendency in Courts – But are the Governments Interested?, *Factly*, Oct. 12, 2015, <https://factly.in/fast-track-courts-in-india-might-help-reduce-pendency-in-courts-but-are-the-governments-interested/> (last visited Aug 14, 2021)

¹⁰ Subordinate Courts of India: A Report on Access to Justice 2016, Centre for Research & Planning, Supreme Court of India, available at <https://main.sci.gov.in/pdf/AccessstoJustice/Subordinate%20Court%20of%20India.pdf>

¹¹ Dhananjay Mahapatra, Govt must devise infrastructure plan to ease traffic jams on, *Times of India*, Sep. 30, 2019, <https://timesofindia.indiatimes.com/india/govt-must-devise-infrastructure-plan-to-ease-traffic-jams-on-judicial-highways/articleshow/71366774.cms> (last visited Aug 14, 2021)

strength in the country immediately and India should achieve a Judge-Population Ratio which the U.S. Commanded in 1981 i.e., 107 Judges per million.

III. ALL INDIA JUDICIAL SERVICE: NOT A SOLUTION

The AIJS was first proposed in the Law Commission's 14th report in 1958. The establishment of the AIJS was recommended in this report, but there was little detail on how it should be structured. They hoped that by establishing the AIJS, they would be able to attract the best talent in the country. The AIJS is intended for the selection of district-level judges, as opposed to the provincial judicial examination, which inducts for the posts below the rank of District Judge.

According to the Ministry of Law and Justice's 101st Report on Demands for Grants (2020-2021), India has 24018 sanctioned judicial officer jobs, 5146 of which are unfilled. Jurisdictions under the Allahabad High Court, Patna High Court, and Madhya Pradesh High Court account for 42.7 percent of India's total vacancy. Other High Courts, on the other hand, account for a very small percentage of the total. The number of vacancies in Subordinate courts is significantly larger than in District courts.¹² As a result, AIJS will only be able to fill a small percentage of the total vacancies.

As a result, AIJS will only be able to fill a small percentage of the total vacancies. The goal of filling vacancies is hollow because these courts account for the bulk of vacancies, and modifying the present judicial structure to compensate for their ineffective performance would be a risky step with potentially severe consequences.

IV. RECOMMENDATION AND CONCLUSION

The judicial system is badly backlogged, and it is unable to keep up with current files, compounding the backlog situation. According to the data, urgent actions for a five-fold increase in judge strength are required to achieve swift justice. Special morning and evening courts should be established to handle specific types of cases. For the proper administration of justice, the judiciary need sufficient personnel and facilities..

It is evident form the data available, that in criminal and civil cases, pendency due to 'non-appearance' is 47% and 46% respectively i.e. parties not brought on record or One or more accused not attending/absconding or Record of the case is sent to Other Court or missing or destroyed - full or in part. While, delay due to 'Complex litigation or Parties are taking more

¹² Primer on All India Judicial Services Vidhi Centre for Legal Policy, <https://vidhilegalpolicy.in/research/a-primer-on-the-all-india-judicial-service-a-solution-in-search-of-a-problem/> (last visited Aug 14, 2021)

time to complete evidence' is only 23% in civil cases and in criminal cases Evidence wise pendency is 26%. These statistics show that it is apart from the Judiciary, the executive is also at fault because, securing presence of accused, investigation and prosecution are domain of the executive i.e., the police and Prosecuting officers. The executive must be held accountable for it. A separate Investigation department of Police shall be created under the general control of the Chief Judicial Magistrate for an efficient working and it will also secure accountability, while the administration of Police shall vest with the Superintendent of Police. This investigation department of police shall not be involved in any other work except judicial work such as investigation and securing presence of accused.

There is a need for a separate Court administration department for each district court, whose primary task will be to administer the courts; judges will be responsible only for judicial functions, while the administrative department will be responsible for all other tasks, reducing the burden on judges. For real judicial reform, a systemic perspective that encompasses all levels of the judicial hierarchy is required.

In order to fill vacancies in higher subordinate courts, the AIJS might be divided into two parts: one for the lower judiciary, which would fill positions in Subordinate courts, and another for the upper judiciary, which would fill positions in District courts only. Article 312 must be amended to allow AIJS recruitment solely for the District Judge cadre, not for the Subordinate judiciary. By amending this article, it will be possible to implement this policy for both District and Subordinate Courts.¹³

Money is the most powerful lever in the world; India should adopt the Chinese framework, which includes a timetable for each court. A target settlement percentage has been established, and courts must adhere to the programme in order to meet the target. We shall establish a court of appeals, similar to the United States, to hear appeals from high courts. Moreover, Divisional Courts, similar to courts of Divisional Commissioner (Revenue), shall be established to hear appeals from trial court for not substantial matters and no further appeal shall lie. Increase the retirement age of subordinate judges to 62 in order to meet the demand for a large number of highly trained judicial officers, in addition to recruiting new judges and efficiently deploying the increased judicial resources.

¹³ Dhananjay Dutta Shrimali, Lokendra Singh Chouhan, All India Judicial Service: A Policy Critique, Law School Policy Review & Kautilya Society, 4 July 2020, <https://lawschoolpolicyreview.com/2020/07/04/all-india-judicial-service-a-policy-critique/> (last visited Aug 14, 2021)