

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 6 | Issue 6

2023

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Judicial Reforms on Subordinate Judiciary: An Analysis

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ABSTRACT

For Indian residents to have equal legal protection, the promise of fair and prompt justice is crucial. The Supreme Court of India has often emphasized that a part of the right to life is the ability to receive justice quickly and without delay. Although it is both a constitutional need and a governance direction, access to justice confronts several challenges that have effectively prevented it from being realized in reality. Although the Indian court may be seen as substantially impartial and independent, its effectiveness has been questioned due to its inability to render decisions in a timely manner. Although it is true that judicial delays and the ensuing backlog of cases affect all levels of the Indian judicial system, this paper's focus is only on the subordinate judiciary, which consists of district and sub-district courts and has been under constant stress as a result of this strain. As a result, there are now vastly increasing arrears and backlogs of cases. In light of this, this article conducts a brief analysis of the structural problems afflicting India's subordinate courts. Judicial reforms in India should concentrate on the lower courts, which are frequently the first to deal with litigants. Although it is commonly acknowledged that the lower court in India suffers from a chronic lack of funding, effective measures to address the issue have not been taken. This essay examines the factors that contribute to the severe backlog and arrears in the lower courts. This essay also assesses potential remedies that may be used to lessen the severity of court delays.

Keywords: *Judicial, reforms, Administration.*

I. INTRODUCTION

For Indian residents to have equal legal protection, the promise of fair and prompt justice is crucial. The Supreme Court of India has often emphasized that a part of the right to life is the ability to receive justice quickly and without delay.² Although it is both a constitutional need and a governance direction, access to justice confronts several challenges that have effectively prevented it from being realized in reality. Although the Indian court may be seen as substantially impartial and independent, its effectiveness has been questioned due to its inability

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² *Hussainara Khatoun and Ors. v. Home Secretary, State of Bihar (1980) 1 SCC 81.*

to render decisions in a timely manner. Although it is true that judicial delays and the ensuing backlog of cases affect all levels of the Indian judicial system, this paper's focus is only on the subordinate judiciary, which consists of district and sub-district courts and has been under constant stress as a result of this strain. As a result, there are now vastly increasing arrears and backlogs of cases. In light of this, this article conducts a brief analysis of the structural problems afflicting India's subordinate courts. Judicial reforms in India should concentrate on the lower courts, which are frequently the first to deal with litigants. Although it is commonly acknowledged that the lower court in India suffers from a chronic lack of funding, effective measures to address the issue have not been taken. This essay examines the factors that contribute to the severe backlog and arrears in the lower courts. This essay also assesses potential remedies that may be used to lessen the severity of court delays.

II. STATE OF ARREARS IN LOWER COURTS

The Law Commission of India (the "LCI") has addressed the subject of delayed justice delivery, ensuing pendency, and related backlog of court cases in many reports since 1958.³ According to statistics from 2013 to 2015, lower courts have had success resolving newly filed cases in the pertinent year. The pendency has fluctuated between 2.64 crores and 2.74 crores throughout the same time period. The lower judiciary, in comparison, has a sanctioned workforce of 20,558 officers and an actual working strength of 16,176 officers, with judicial vacancies for the same period varying between 4,382 and 4,589.⁴ Additionally, every year, about 2 crore cases are filed, which is equal to the number of cases that are resolved by subordinate courts.⁵ According to recent statistics, 2.54 crore cases remain unresolved and roughly 23% of judicial officer positions in the lower judiciary are still unfilled.⁶

III. SYSTEMIC FACTORS IMPACTING HOW THE SUBORDINATE COURT WORK

1. Vacancies and appointments in the judiciary

While the concerns surrounding judge nominations to the Supreme court and High Courts are still hotly contested, the structural flaws in the judicial appointment procedure for the subordinate courts have not received enough attention. The selection of judges has been

³ Arnab K Hazra, Maja B Micevska, *The Problem of Court Congestion: Evidence from Indian Lower Courts*, available at <http://www.diw.de/sixcms/detail.php?id=41409> (Last accessed October 2, 2023).

⁴ *Subordinate Courts of India: A Report on Access to Justice* (2016), Centre for Research and Planning Supreme Court of India 1, at 16-17.

⁵ Memorandum of the Department of Justice, (Ministry of Law and Justice) to the 14th Finance Commission on the Justice Sector, available at <http://doj.gov.in/sites/default/files/Memo-Justice-Sector.pdf> (Last accessed on September 28, 2023)

⁶ *Ranking Lower Court Appointments*, Vidhi Centre for Legal Policy, 12-17 (2017)

impeded by a number of problems, including unclear recruiting methods, inconsistent and protracted recruitment cycles, irregular examination conduct, and a lack of cooperation between the High Courts and the different state governments.⁷ As a result, lower court judges are frequently overworked and understaffed courts though sufficient facilities provided in our Government . A trial court judge, for example, often has a daily list of 25 to 35 cases, the bulk of which are unheard because to tight time constraints.⁸ Because of this, lower court judges are frequently overworked and the courts are understaffed. For instance, a trial court judge often has a daily caseload of 25 to 35 cases, the bulk of which go unheard owing to extreme time constraints. District Judges, Civil Judges (Senior Division), and Civil Judges (Junior Division) are the three cadres of judges that make up the lower judicial branch. In *All India Judges Association v. Union of India*, the Supreme Court established three procedures for selecting district judges.⁹ The techniques include direct hiring from a pool of current Civil Judges (Senior Division) with a minimum of seven years' experience and promotion based on merit and merit-cum-seniority.

States are allowed to choose their own procedures for choosing Civil Judges (Senior and Junior) Division since the Constitution does not provide any standards for such appointments. Judges are appointed directly through a combination of exams and interviews to the position of Civil Judge (Junior Division).¹⁰ As states retain control over judicial appointments to the subordinate courts, a wide divergence in practice is visible across states. This is further affected by the nature of coordination between the High Courts and state public service commissions.¹¹ The Supreme court determined that a two-tier examination process should take 153 days and a three-tier examination method should take around 273 days in the case of *Malik Mazhar Sultan*.¹² Direct recruitment via the two/three tier examination procedure cannot be stated to occur promptly in the majority of states with sufficient assurance. Additionally, despite the conclusion of

⁷ Plan ahead for future judiciary, *The Tribune*, (February 14, 2018) available at <http://www.tribuneindia.com/news/comment/plan-ahead-for-future-judiciary/543457.html> (Last accessed on October 2, 2023).

⁸ *Crying need for judicial reform, more judges and better infrastructure*, *Business Standard* available at http://www.business-standard.com/article/news-ians/crying-need-for-judicial-reform-more-judges-and-betterinfrastructure-113051900168_1.html (Last accessed on September 28, 2023).

⁹ *All India Judges Association v. Union of India & Ors.* (2010) 15 SCC 170.

¹⁰ *Accountability in Judicial Administration*, STATE OF THE INDIAN JUDICIARY (2016).

¹¹ *Ranking Lower Court Appointments*, *Vidhi Centre for Legal Policy* 1, 8 (2017). It is pertinent to mention that *Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission* whereas district judge examinations are conducted by the High Courts, the civil judge selection examination is conducted jointly by the state High Court and the relevant public service commissions.

¹² See, *Malik Mazhar Sultan & Anr. v. U.P. Public Service Commission & Ors.* (2007) 2 SCALE 159. 15 *Supra* note 7, at 13. This is true for direct recruitment through examination to the post of district judges and civil judge (junior division).

recruiting cycles, governments struggle to fill open judicial positions.¹³ The majority of states do not conduct direct recruitment through the two/three tier examination procedure in a timely way, it can be asserted with some degree of assurance. Additionally, despite recruitment rounds being finished, governments are unable to fill open judge positions. The fact that subordinate courts are unable to fill judicial vacancies notwithstanding the completion of recruiting cycles should be taken into account. But, the Aspirants are struggling to clear the exams though the exams are very easy organized by our the Government. This shows that there aren't enough qualified applicants to fill the position, which is a problem for the High Courts. It cannot be disputed that the position of a lesser judicial officer may not appear to be an appealing career prospect, even if this may be attributable to a variety of different circumstances. The main obstacles that deter attorneys from applying include lower pay, unappealing terms and conditions of service, bad working environment, and a narrow range of advancement opportunities, among others. Legal education in India is still poorly administered, with the exception of a small number of excellent law schools, which further restricts the pool of candidates eligible for selection. It is argued that the central selection procedure as it is now envisaged will be useless without improving the current working conditions for judges of inferior courts.¹⁴

2. The condition of the lower courts' facilities:

The state of access to justice is significantly influenced by judicial infrastructure. Physical infrastructure, human resources infrastructure, and digital infrastructure are three main categories of infrastructure.¹⁵ In India, the district and sub-district courts have weak physical facilities. Inadequate physical infrastructure contributes to judicial backlogs and prolonged conflict resolution processes.¹⁶ States and the Union are both responsible for creating court systems. It is remarkable that most states, with the exception of Maharashtra, spend less than 2% of their budget on the judiciary, despite the fact that court infrastructure affects access to justice. Furthermore, money that has already been set aside for the court is being used much too little.¹⁷ It is remarkable that most states, with the exception of Maharashtra, spend less than 2%

¹³ *Ranking Lower Court Appointments*, Vidhi Centre for Legal Policy 12-17 (2017).

¹⁴ *No case for an all India judicial services*, (August 15, 2017) The Hindu available at <http://www.thehindu.com/opinion/op-ed/no-case-for-an-all-india-judicial-service/article19498261.ece>. (Last accessed on September 29, 2018).

¹⁵ *Status of Physical Infrastructure in Lower Judiciary: A report on the status of physical infrastructure in District Courts, Delhi and NCR*, Vidhi Centre for Legal Policy 1, 3 (April 2018).

¹⁶ *Few judges, fewer courtrooms: Indian judiciary tripped by poor infrastructure* (November 16, 2016) available at <https://www.hindustantimes.com/india-news/few-judges-fewer-courtrooms-indian-judiciary-tripped-by-poorinfrastructure/story-uah3AyEY7OsBsT4VwXY5pN.html> (Last accessed on September 27, 2023).

¹⁷ *Court Development Planning System: Infrastructure and Budgeting* (2012).

of their budget on the judiciary, despite the fact that court infrastructure affects access to justice. Furthermore, money that has already been set aside for the court is being used much too little.¹⁸ It is well known that judges in inferior courts, especially in less developed jurisdictions, must endure unfavorable working circumstances.¹⁹

3. Insufficient administrative and support staff:

All levels of court staffing are judged to be insufficient in terms of secretarial and support personnel. Due to preventable issues with scheduling, notice of court dates, and improper listing of cases, the judicial system has become more confusing and inefficient as a result of a lack of qualified and responsive courtroom personnel.²⁰ According to the argument, judicial infrastructure must develop at the same rate as judicial personnel are hired. The remuneration provided by the Government are very high to the staffs of Judiciary. The Department of Justice's study, which prioritizes enhancing the physical infrastructure of courts, supports this.²¹ This is demonstrated by the funding of Rs. 1400 crores for the construction of a court infrastructure that is favourable to litigants.²²

4. Legal Knowledge, Training, and Judicial Education

Given the ever-changing nature of the law, it is critical that lower court judges get proper and ongoing legal training. Lower court judges, on the other hand, have been observed to lack adequate knowledge of new and more specialized areas of law.²³ As a result, judicial training should be updated on a regular basis to keep up with the continual advancements in many sectors of law. An empirical investigation indicated that lower court judges frequently preside over cases involving the application of areas of law with which they are unfamiliar. This issue can be traced in part to the nomination of judges via the direct recruiting procedure of tests. A key flaw with this strategy is that relatively young judges with little litigation and courtroom experience may find themselves presiding over cases involving more experienced attorneys of the bar, making them feel nervous and unable to effective. Regardless of how judges are appointed, it has been discovered that a lack of sufficient training hinders judges from being

¹⁸ See, Krishnan Jayanth K, Kavadi Shirish, Girach Azima & Khupkar Dhanaji *et al*, *Grappling at the Grassroots: Access to Justice in India's Lower Tier* (27), 151, 160 HARVARD HUMAN RIGHTS JOURNAL (2014).

¹⁹ Some lower courts continue to lack sufficient secretarial and support staff, internet facilities, libraries, and seating space.

²⁰ Krishnan Jayanth K, Kavadi Shirish, Girach Azima & Khupkar Dhanaji *et al*, *Grappling at the Grassroots: Access to Justice in India's Lower Tier* (27), 151, 164 HARVARD HUMAN RIGHTS JOURNAL (2014). 27

²¹ Judicial Infrastructure (Note) by the Department of Justice, Ministry of Law and Justice, June 2016, available at <http://doj.gov.in/national-mission/national-mission-for-justice-delivery-legal-reforms/judicial-infrastructure>

²² Memorandum of the Department of Justice, (Ministry of Law and Justice) to the 14th Finance Commission on the Justice Sector, available at <http://doj.gov.in/sites/default/files/Memo-Justice-Sector.pdf>.

²³ Judges as Learners: Reflections on Principles and Practice, JUDICIAL REFORMS.

proactive and more imaginative in the decision-making process, preferring to make judgments in a restricted and technical approach. Furthermore, judges may find themselves lacking in the necessary abilities and legal expertise to adjudicate some cases that come before them. This reflects the divide that exists between legal education at Indian institutions and the day-to-day practice of law.

5. Inadequacies in the judicial system

Lower courts in India suffer from judicial inefficiencies that are the fault of both the court and the litigant/counsel. Lack of a judge, congestion in case listing, insufficient time to hear proceedings, lack of counsel, unwarranted adjournment, condonation of delay, request for grant of restoration and continuances are examples of inefficiency.²⁴ Inefficiencies like the ones stated above lead to judicial delays and impede access to justice. While some courts have limited the amount of continuances and adjournments issued in response to delays, the overall tendency is in favor of granting such motions. Lower courts should impose stringent fines on the parties involved in order to curb the culture of undue postponement and delay.

6. Evaluation of the lower judiciary's performance

High Courts have supervisory authority over lower courts. This involves assessing the judicial performance of lower court judges. Evaluation of judicial performance improves openness and accountability and may help in making more informed choices about transfer, promotion, and job allocation. On several counts, the current system of evaluating the performance of the lower judiciary is inadequate.²⁵ The disposal rate, which is a criterion of the annual confidentiality report (ACR), is currently overemphasized. While the disposal rate is undoubtedly a helpful indicator, it is not adequate in and of itself, and an overemphasis on the statistic may promote increased disposal of cases with little or no legal thought.²⁶ Other qualitative criteria, in addition to disposal rate, should be given equal weight in assessing judicial performance as part of ACR. Preparation, alertness, judicial control in court, timeliness, judgment quality, and number of judgments appealed and strictures received should all be criteria for evaluating judicial performance.²⁷ It is common knowledge that the standards of assessment and evaluation in ACR

²⁴ Bibek Debroy, *Justice Delivery in India- A snapshot of Problems and Reforms*, ISAS Working Paper available at <https://www.files.ethz.ch/isn/91150/46.pdf>. (Last accessed on September 29, 2023).

²⁵ *Colloquium to Develop Parameters for Judicial Performance Assessment*, National Judicial Academy (March 18-19, 2017) available at http://nja.nic.in/Concluded_Programmes/2016-17/P (Last accessed on August 29, 2023).

²⁶ *Colloquium to Develop Parameters for Judicial Performance Assessment*, National Judicial Academy (March 18-19, 2017) available at [http://nja.nic.in/Concluded_Programmes/2016-17/P\(1017%20Programme%20Report.pdf](http://nja.nic.in/Concluded_Programmes/2016-17/P(1017%20Programme%20Report.pdf) (Last accessed on September 2, 2023).

²⁷ Preparation, attentiveness, judicial control on court, punctuality, quality of judgments, and number of judgments appealed and strictures received should be parameters of judicial performance assessment.

are very different across High Courts. Hence, there is a lack of uniformity and standardisation in evaluation of performance of subordinate judiciary in India.²⁸ Furthermore, ACRs are often written in a highly subjective way, with a plethora of subjective considerations at play. When drafting ACRs, a more objective approach should be taken.

IV. CONCLUSION

The commonly accepted belief is that judges of the lower courts are doing their best under the inherent limits and limited resources that they face. While this view is arguable, it is argued that additional resources should be directed toward the lower judiciary by the joint efforts of the federal and state governments. Furthermore, fundamental court facilities and employees require a significant makeover. Existing judicial vacancies should be filled in order to lessen the backlog of cases at the lower court level. In addition to replacing vacancies, the current sanctioned judicial strength of subordinate courts in particular states may need to be raised, depending on criteria such as population size, economic prosperity, and number of litigation, among others. Court employees must be better trained to manage court administration and simplify processes and norms, particularly with regard to litigants and attorneys. Existing judicial vacancies should be filled to lessen the backlog of cases at the lower court level. In addition to replacing vacancies, the current sanctioned judicial strength of subordinate courts may need to be raised in particular states, based on criteria such as population size, economic prosperity, and number of litigation, among others. Court personnel must be better qualified to handle court administration and simplify processes and norms, particularly with regard to litigants and attorneys.²⁹ Lower courts in states such as Kerala, Punjab, Haryana, and Himachal Pradesh, for example, have resolved all cases that had been languishing for 10 years or more. This has been substantially accomplished as a result of the implementation of a case management system. The case management system involves tracking the status of cases from filing through disposition. Annual objectives and action plans were established with the goal of disposing of old cases. A quarterly performance evaluation was undertaken to ensure that cases were not resolved prematurely. Judicial case management, in which the judge takes a more proactive role in defining a timetable for the case and evaluating progress against that timeline, might be critical. The LCI's 230th Report contains a slew of measures to deal with case backlogs, including strict guidelines for grant of adjournment, shorter vacations, less time for

²⁸ *Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary in India*, Vidhi Centre for Legal Policy 1, 33 (2017).

²⁹ Devesh Kapur & Milan Vaishnav, *Strengthening Rule of Law*, GETTING INDIA BACK ON TRACK: AN ACTION AGENDA FOR REFORM, Carnegie Endowment for International Peace 247, 256-257 (2014).

oral arguments unless the case involves a complex question of law, and digitalization of court records. It is important to note that, while there is some commonality in the problems plaguing lower courts across India, subordinate courts are plagued by inefficiencies specific to the local conditions of the state, which must be considered before implementing judicial reform measures. It is argued that a one-size-fits-all judicial reform program should not be used in the case of the lower judiciary, and that it should take into account local characteristics and situations.
