



## REVIEW ARTICLE

# INNOVATION PROPOSAL TO REDUCE MONUMENTAL BACKLOG OF CASES ACROSS THE INDIAN COURTS

**\*Pallavi Mahajan**

High Pendency of Cases Plagues Judiciary- H.L.Dattu, Former Chief Justice of India

### ARTICLE INFO

#### Article History:

Received 24<sup>th</sup> July, 2016  
Received in revised form  
07<sup>th</sup> August, 2016  
Accepted 18<sup>th</sup> September, 2016  
Published online 30<sup>th</sup> October, 2016

#### Key words:

Backlog in Indian Courts,  
Indian Judiciary System.

### ABSTRACT

The conventional system of justice delivery is deeply flawed; as a result of which there is a backlog of pending cases in the Indian Courts. The judicial infrastructure is inadequate and is on the verge of a collapse. The question of delays in the Indian legal system has been the subject of a number of research initiatives. However, these reforms have not been able to keep pace with the growing pendency. The reason is that reformers have focused on the factors traditionally blamed for the delay without paying any heed to political-economic analysis. Marrying the conventional wisdom with the pragmatic approach, the author has concluded an imperative innovative mechanism to cater to the needs of the society.

Copyright © 2016, Pallavi Mahajan. This is an open access article distributed under the Creative Commons Attribution License, which permits unrestricted use, distribution, and reproduction in any medium, provided the original work is properly cited.

Citation: Pallavi Mahajan, 2016. "Innovation proposal to reduce monumental backlog of cases across the indian courts", *International Journal of Current Research*, 8, (10), 40225-40227.

## INTRODUCTION

The most challenging problem facing the administration of justice in India is the backlog of cases and the resulting delay in their redressal, which not only tarnishes the stature of the Judiciary but also impoverishes the Country socially and economically. Frustrated by long waits, parties lose confidence in the Judiciary and resort to corruption and violence, thus giving rise to the vicious circle of more litigations and more case load. High pendency dilutes the fear of deterrent punishments under the law of the land, giving rise to the instigators who ruin the peace and tranquil functioning of the Country. Obscure life span of litigation in India dissuades foreign investment and deters the proposition of 'doing business in India'. Businesses and credit markets hesitate to partner with new enterprises fearing 'delayed justice' in the event of a contractual dispute. Thus, court delays are expensive for both the party and the society as a whole. In the bigger picture, due to grave number of pending litigation, the Democracy (which relies on the adequate functioning of the Legislative, Executive and Judiciary) stumbles creating an opportunity for corruption, turmoil and unrest in the Country. The question of delays in the Indian legal system has been the subject of a number of research initiatives. However, these reforms have not been able to keep pace with the growing pendency. The reason is that reformers have focused on the

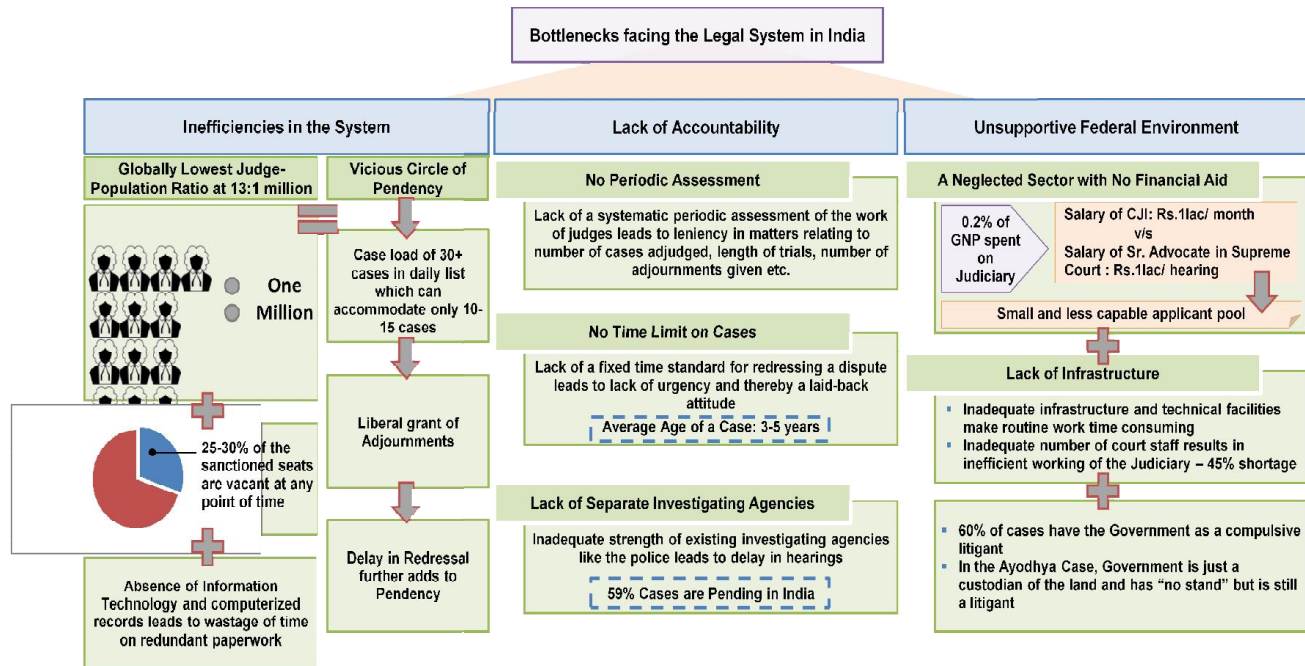
factors traditionally blamed for the delay without paying any heed to political-economic analysis. Marrying the conventional wisdom with the pragmatic approach, following have emerged as the bottlenecks for the grave pendency in litigation. Despite of substantive efforts to address the chronic and monumental problem of backlog of cases judicial reforms have failed far more often than they have succeeded. The traditional prescription for reducing delays called for technical fixes: hiring and training more judges and support staff, setting up specialized courts, introducing computer and information technology, and reforming procedures. Whereas, the traditional fixes are crucial, there was no heed given to the possibility of looking behind the formal structure of the courts and to examine how judges, lawyers, and clerks work together to conduct the courts' business and how their interests and incentives interact – in other words, a political-economy analysis. After objective and critical analysis of the position of Judiciary in Indian demography, deep study of judicial reforms in other geographies and recommendation of various Indian committees and a pragmatic approach towards its execution, the following recommendations have emerged as Noah's arc:

### Overhauling the Judicial Machinery

### Making Judiciary an attractive career option

- Incorporation of 'All India Judicial Services' to make a transparent entryway to the Judicial system

\*Corresponding author: Pallavi Mahajan,  
High Pendency of Cases Plagues Judiciary- H.L.Dattu,  
Former Chief Justice of India.



- Making salary and emoluments industry-wide competitive
- Increasing the retirement age of High Court judges from 62 to 65 years, at par with the Supreme Court
- Regular training and orientation of the judicial officers

- Targeted distribution of judges to areas with the highest arrears

#### Improvement in Judicial Infrastructure to reduce Delays

- Allocation of adequate budget and financial aid by the Government and granting financial autonomy to the Judiciary
- Creation of Special Courts which club disputes of similar nature – eg. Traffic / Police *challan* cases (making 28% of pending cases), land revenue cases (contributing to 22% of pending cases) etc.
- Complete digitization and computerization of courts to ensure smooth, efficient and accurate maintenance of records
- Ensuring restatement of laws and on-the-spot precedents to be made readily available during court proceedings
- Establishment of additional buildings, physical facilities, updated library and an efficient security system
- Appointment of Desk Judges to study and eliminate non-compelling petitions

#### Innovative Mechanisms to enable better Administration

- Fast tracking cases related to women, children and senior citizens
- Institution of e-filing in order to save time and fasten execution
- Existing court be made to function in two shifts – morning & evening
- Magistrate to hold courts in jails for undertrials (75% of total prisoners) involved in petty offences
- Pre-trial proceedings to encourage narrowing down of specific issues of trials in order to save time
- Institution of Legal Literacy Camps and Legal Aid Clinics for redressing petty legal issues at bud stage

#### Strengthening Alternate Dispute Resolution System

- Enactment of the Arbitration & Conciliation (Amendment) Ordinance, 2015 without delay
- Statutory Arbitration for certain cases, like contractual disputes, motor accident claims etc.
- Setting up of Mediation Centre (which have a settlement rate of 26%) in every High Court
- Setting up of a permanent Lok Adalat in every state as 42% of pending litigation involve disputes over public utility services
- Institution and encouragement of Gram Nyayalaya to dispose cumbersome village litigation matters
- Training to be provided to prospective mediators and conciliators by the Bar Council

#### Strict Vigilance on the various Stakeholders of the Judiciary

- Periodic assessment of judges and basing promotion parameters on the number of quality and mutually agreed judgments delivered
- Rewarding judges, judicial officers and lawyers for dispatching cases expeditiously
- Penalties and costs to be imposed on advocates and parties seeking unreasonable adjournments or making frivolous motions or appeals
- Institution of an independent wing of Police (under the direct control of Judiciary) with special officers acting as watchdogs
- Execution of 'Case Management System' and regular assessment of performance of the courts to improve efficiency

#### Suggested Amendments to Legislation and Codes

- Formulation of 'Code of Compulsory Costs' on vexatious litigations and inclusion of the Government under its purview

- Implementation of 'National Litigation Policy' to reduce Government litigation (largest litigant)
- Execution of 'National Arrears Grid' to keep a check on arrears and intervene whenever the need arises
- Stay orders to be decided within 6–12 months by the court where the case has initiated

Policy proposals are the golden pages which adorn deliberations and research but are as good as paper scraps if not executed and implemented. The biggest hurdle in carrying out the above mentioned recommendations is the absence of strong leadership and lack of personal accountability, which is not only the onus of the Government but also of the three major groups of actors in the system – judges, lawyers, and court staff/process servers. A strong leadership from the Government under which Judiciary is not neglected and the reform-minded senior judges, unscrupulous judicial officers and responsible advocates and parties can not only help arrest the impending delays but also help Judiciary deliver better. Pressure from civil society, the media, and others outside the judicial branch will prove to be the sandalwood log for 'in the doldrums' Judiciary. We live in interesting times, where platforms, like International Innovations Corps (IIC), for change makers are available. I, as a significant member of these platforms, considering IIC, and a qualified advocate will not only research further on the root causes of the pending litigation and study the other geographies for recommendations, solutions and best practices but also play a key role in bringing about legal awareness amongst the masses, through legal literacy camps and by writing easy to comprehend handbooks about various laws. Legal awareness not only helps to reduce frivolous litigations from reaching the courts but also makes the social structure of the democracy executionable. Law is an important instrument of society and political change. For the Rule of Law to be a reality and to maintain the faith of the society in the legal system there is an urgent need to reduce the pendency of cases in the courts and also to reduce the average life span of litigation.

## REFERENCES

- Aurbach, Jerold S. 1983. *Justice without Law?* New York: Oxford University Press.
- Baar, Carl and Robert G. Hann 2007. "The Reduction of Case Backlog in the Courts: A Framework and Strategy", in Arnab Kumar Hazra and Bibek Debroy (ed.), *Judicial Reforms In India: Issues And Aspects*, 2007. Academic Foundation with Rajiv Gandhi Institute for Contemporary Studies, New Delhi.
- Baxi, Upendra, 2004. "Rule of Law in India: Theory and Practice", in Randall Peerenboom (ed.), *Asian Discourses of Rule of Law: Theories and Implementation of Rule of Law in Twelve Asian Countries, France, and The U.S.* 324. New York: Routledge.
- Debroy, Bibek and Aditya Singh, 2009a. "Justice Delivery in India – A Snap Shot of Problems and Reforms", 125 *Economic Developments in India* 1.
- Debroy, Bibek and Aditya Singh, 2009b. "Rules of the Law-IV", *Financial Express*, September 11, 2009 available at <http://www.financialexpress.com/news/rules-of-the-lawiv/515511/0>.
- Debroy, Bibek, 2000. "Some Issues in Law Reform in India", in Jean-Jacques Dethier ed., *Governance, Decentralization and Reform in China, India and Russia*. Dordrecht, The Netherlands: Kluwer Academic Publishers.
- Dhawan, Rajeev 1978. *The Supreme Court Under Strain: The Challenge of Arrears*. Bombay: M. N. Tripathi Pvt. Ltd.
- Dhawan, Rajeev, 1986. *Litigation Explosion in India*. Bombay: M. N. Tripathi Pvt. Ltd.
- Edgell, Stephen, Sandra Walklate, and Gareth Williams, eds. 1995. *Debating the Future of the Public Sphere: Transforming the Public and Private Domains in Free Market Societies*. Aldershot: Avebury.
- Galanter, Marc S. and Catherine S. Meschievitz, 1982. "In Search of Nyaya Panchayats: The Politics of a Moribund Institution," in 2 Richard L. Abel (ed.) *The Politics Of Informal Justice* 47
- George, Sheba and Kalpana Kannabiran, 2007. "What is justice for survivors of Gujarat 2002?", March 17, *Economic and Political Weekly* 923.
- Goerdt, John, Chris Lomvardias, Geoff Gallas, and Barry Mahoney, 1989. *Examining Court Delay: The Pace of Litigation in 26 Urban Trial Courts, 1987*. Williamsburg: National Center for State Courts.
- Moily, M. Veerappa, 2009. "National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays." Vision Statement presented by Dr. M. Veerappa Moily, the Union Minister for Law and Justice, to Justice K.G. Balakrishnan, the Chief Justice of India.
- So, Winky W. 2010. "The Enforcement of Time Limits: An Introductory Comparison of the Hong Kong CJR and the English CPR Regimes" (unpublished draft on file with Jindal Global Law School).
- Stuart, Barry 1997. *Building Community Justice Partnerships: Community Peacemaking Circles*. Ottawa: Aboriginal Justice Learning Network, Justice Canada.
- Stuart, Don, R.J. Delisle and Allan Manson, eds. 1999. *Towards a Clear and Just Criminal Law: A Criminal Reports Forum*. Toronto: Carswell.
- Subordinate Courts of Singapore 2008. *Enhancing the Public Value of Justice - Subordinate Courts Annual Report 2008*.
- Torre A. 2003. "The Impact of Court Delays on the Prosecutor and the Defendant: An Economic Analysis". 16 *European Journal of Law and Economics* 91.
- Trubek, David 1990. "Critical Moments in Access to Justice Theory: The Quest for the Empowered Self" in Allan C. Hutchinson (ed.), *Access to Justice* 107.
- Umbreit, Mark S. 1994. *Victim Meets Offender: The Impact of Restorative Justice and Mediation*. New York: Willow Tree Press.
- Van Ness, Daniel and Karen Heetderks Strong 1997. *Restoring Justice*. Cincinnati: Anderson Publishing.
- Vereeck L. and Mühl M. 2000. "An Economic Theory of Court Delay." *European Journal of Law and Economics*, 10:3, 243-268.
- Walsh, Barry 2007. "Pursuing Best Practice Levels of Judicial Productivity: An International Perspective on Case Backlog and Delay Reduction in India", in Hazra Arnab Kumar and Bibek Debroy (ed.), *Judicial Reforms In India: Issues And Aspects*, Academic Foundation with Rajiv Gandhi Institute for Contemporary Studies, New Delhi.
- Woolf, Rt Hon'able Lord 2005. "Review of the Working Methods of the European Court of Human Rights". Available at: <http://www.echr.coe.int>.
- World Bank 1999. "Reducing Court Delays: Five Lessons from the United States", *PREMnote* 34, Washington, DC: World Bank.