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# **INCREASING THE EFFICIENCY OF TRIAL COURTS IN INDIA**

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BA LLB (5 YEARS) BATCH OF 2020

## **DECLARATION**

I hereby declare that the work reported in this project report entitled “**Increasing the efficiency of trial courts in India**” submitted at . I have duly acknowledged all the sources from which the ideas and extracts have been taken. To the best of my understanding, the project is free from any plagiarism issue.

(Signature of the Candidate)

Name: Jyotika Arora

Program/ Batch: BA LLB 2020

Date: 11<sup>th</sup> June

## **LIST OF ACRONYMS & ABBREVIATIONS**

(Alphabetically)

AIR	All India Reporter
ADR	Alternative Dispute Resolution
ASCI	American Standard Code for Information Interchange
Cr. L. J.	Criminal Law Journal
ICA	International Centre for Arbitration
ICADR	International Centre for Alternative Dispute Resolution
NALSA	National Legal Services Authority
SCC	Supreme Court Cases
UNCITRAL	The United Nation Commission on International Trade
v.	Versus
WLR	Weekly Law Reports

# **1. INCREASING THE EFFICIENCY OF TRIAL COURTS IN INDIA**

## **1.1 What is the situation of trial courts in India**

Delay in conducting trials and increasing pendency of cases can be seen in the courts of India. There is no proper conduct of trials seen in Indian courts. Rate of corruption has increased amongst the lawyers judges and the public. “The judicial system in India is under tremendous pressure. As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, while nearly 1,82,000 cases have been pending for over 30 years. Amid the rising trend of litigation, more people and organizations are approaching courts. This spike, however, is not reflected in the number of judges available to hear these cases. Inadequate infrastructure has resulted in overburdened courts, which in turn has led to a massive backlog of cases.”<sup>1</sup>

“Cases filed in the high courts and Supreme Court are new cases or appeals against lower court judgements from dissatisfied litigants. On September 29, 2020, the total number of pending cases in all the courts was approximately 4 crore (Staff, 2019); almost a year earlier (on November 28, 2019), there were 59,867 cases pending in the Supreme Court, while the corresponding figures in the high courts and subordinate courts were 44.75 lakh and 3.14 crore, respectively.<sup>8</sup> This continuous growth in case filing can be attributed to the rising population, literacy, per capita income and growing public awareness about constitutional rights. Also, disagreement with the policies of the government, unfavourable Acts(Laws), and skewed and discriminatory actions by the authorities to favour a particular class with the idea of achieving certain political ambition could also be major reasons for increasing case institution. Additionally, cases related to property, services, and family disputes are witnessing a steep rise, as those resulting from rising trends in crime, growing caste conflicts, and instances of social tensions. Pendency has a huge economic cost affecting expenditure, investment, resource mobility, and wastage of human resources, all of which leads to a loss in GDP. According to Narasappa, a conservative estimate puts GDP loss from delays and pendency in the justice system at 1.5 per cent (Dey, 2016).”<sup>2</sup>

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<sup>1</sup> <https://www.thehindu.com/news/national/indian-judiciary-pendency-data-courts-statistics-explain-judges-ramana-chief-justice-under-trials/article65378182.ece>

<sup>2</sup> [https://csep.org/wp-content/uploads/2022/06/Analysing-Judicial-Efficiency-of-Indian-Courts-\\_F-1-1.pdf](https://csep.org/wp-content/uploads/2022/06/Analysing-Judicial-Efficiency-of-Indian-Courts-_F-1-1.pdf)

## 1.1 Pendency of Cases

Source:ASCI, Final Report (2018)

COURT	INSTITUTION OF CASES	PENDENCY	PENDENCY RATE(%)
High Court	1,079	2,839	263
High Court	684	1036	152
High Court	1,762	3,875	225
Sub. Court	3,718	8,450	227
Sub. Court	15,222	18,651	122
Sub. Court	18,940	27,285	144

### **1.1.1 Why are the trial courts inefficient**

There is a lack of awareness of rights in a layman and they are not well informed about the regulations that a court should follow or what is the right procedure to follow while conducting trials and hence the public is not able to fight against the wrong happening since so long, this gives the people in authority a chance to misuse their power which leads to a slow and inefficient judiciary system. Corruption is a major reason in making the process of serving justice inefficient these days. A major reason of pendency of cases is due to the huge amount of population in India with a very few agents of judicial system in proportionate to the population which causes delay in cases. “With a backlog of 3.5 crore cases pending across the courts of the country, it would take decades to clear the backlog of cases. Moreover, India has the worst ratio of judge to citizens; with only 13 judges per million people, it is not a surprise that we have such a huge backlog of cases.”<sup>3</sup> Increasing no of crimes due to technological advancements and access of internet is also a reason why there is a huge numbers of crimes being committed and pressurizing and burdening the courts with even more cases

### **1.2 How can we increase the efficiency**

Online Courts is a very effective way to make the process of serving justice very quick and efficient. It will not only help in increasing the speed of conducting the trials but also help complete more number of cases, reducing the backlog of the past years. It will also result in benefiting the people in saving time while waiting for their case to start, the time taken to travel

<sup>3</sup> <https://www.probono-india.in/blog-detail.php?id=119>

to the court and will be a more economical alternative to physical courts. This would also help in recording the trials and so the judges and the advocated would not be able to conduct the trials fraudulently because they will be monitored. The problem of less court rooms will also be solved as there won't be the requirement of rooms in the courtroom to conduct the trials as it could be easily done by just a click of a button. Increasing the working timings of the court would make the process more smooth and faster. Employment of more judges to hear out cases would result in creating a more reliable and trustable system. Making laws to mandate to complete or hear a certain number of cases within a certain period of time will help in making the judges work their level best rather than being inefficient. Giving incentives to the judges for completing more no of trials within a certain period of time can boost the judge to work harder and more efficiently. It is also proved during covid that online court can be a better alternative for better working of our judicial system. Reducing the vacation time for the courts and opening the courts to function 24 hours will give the judges ample time to conduct trials not in haste but without the crunch of time. Imposing stricter guidelines for the judges and courts for granting adjournment for cases. Taking actions on those who are not following the already made laws for following the proper procedure of courts. ADR system should be promoted, if people will settle and negotiate in a lawful manner there will be less cases in the court of law reducing the pendency of cases.

“Fast Track Courts were set in the principal example by the Central Government to arrange off cases which were long forthcoming cases which for the most part included session court legal disputes. The 11th Finance Commission endorsed a financial plan for the formation of Fast Track Courts in India. It made a plan for the production of 1734 Fast Track courts in the country. The Ministry of Finance authorized a measure of Rs. 502.90 crores as a “special issue and upgradation grant” for judicial administration.

The term of this grant concluded in 2005 and was restored by the Finance Commission for the upkeep of 1,562 existing quick track courts for an additional 5 years up to 2010. In 2000, the idea of fast track court enjoyed a lot of varied mechanisms. The 188th Law Commission Report in such a manner suggested the setting up of a fast track commercial division at each High Court as a lasting Fast track court to manage high worth business questions. In 2008, the Law Commission again perceived the significance of Fast track courts in managing the issue of accumulation of check bouncing cases, however, it was suggested uniquely as an ad-hoc measure.

The decade's end saw a change in perspective in the idea of Fast Track Courts (FTC) which at that point started to be distinguished uniquely as a specially appointed system for managing the issue of pendency of cases. In April 2011, the Central Government began financing the FTCs after which the greater part of them was twisted up. It is additionally fascinating to note here that these FTCs were set up specially and lacked legislative backing.

At the point when the Central Government chose to stop its financing for the most optimized plan of fast track courts, it was challenged in the case of Brij Mohan Lal v. Association of India where the Supreme Court chose to strike down the arrangement choice of Union of India not to fund the FTC conspiracy past March 31, 2011.

The Supreme Court has anyway passed numerous decisions which pointed toward improving the justice delivery framework and assisting the trial process in standard courts and bracing the autonomy of the judiciary. The Court noticed that the "constitutional mandate to accommodate reasonable and expeditious trials to all litigants and citizens of this country." and consequently directed that the State and Central Government to make extra-judicial posts inside a quarter of a year from the date of the judgment.

The Court additionally expressed that the States have the freedom to either end the most optimized plan of fast track courts conspire or to proceed with that. However, the States may not decide to proceed with the plan on an ad-hoc or impermanent basis. Following the Nirbhaya case in 2012, the proposals of the J. Verma Committee and public opinion preferring quick justice likewise went about as an impetus for setting up all the more fast track courts in India.

Subsequently, according to the current Center's activity plan, the most optimized plan of fast track courts will be needed to dispose of 14 session trial cases and/20 to 25 civil/criminal cases each month. The State Governments and the High Courts have been requested to arrange for the prosecution to guarantee fast cycle administration. The plan likewise envisages the appointment of specially appointed judges from among the retired session and additional session judges pass judgment on advanced and posted in these courts or from among members from the Bar. The choice of appointing judges would be finished by High Courts. The plan likewise visualized the setting up of a normal of five fast track courts in each district of the country.

## **Contemporary challenges to fast-track courts in India**

The adequacy of both the special fast track courts and other fast track courts for getting justice for the citizens of this Nation has been under the scanner for an extended period now. Out of the 623 cases that have been allotted to the special fast track courts since its origin, just 107 cases have been disposed of, of which just 18 cases brought in convictions. There are around 1192 fast track courts in India where the quantity of pending cases is 6, 05,813.

Such terrible showing can't be ascribed to a particular explanation. Individuals who have worked in these most optimized plans of fast track courts call it 'fast track injustice' as these courts are at times given an unreasonable target of cases to wrap up. They are approached not to get involved too actually in the matter and that extensively, assuming they feel that the individual is guilty, proclaim him to be liable and on the off chance that he is honest, announce him to be honest.

This isn't how the criminal justice framework or any justice framework on the planet works. Justice can't be given based on hunches and mystery and that it requires purposeful consideration and attention. Judges are additionally discovered to be eliminating proof, not permitting full cross-examinations, permitting proceedings without legal counsellors as a rule and consequently it tends to be expressed that is not extremely a good delivering justice system. Rushed and husky trials raise the dread of potential unsuccessful labours of justice which the Law Commission of India summed up as "justice deferred is equity denied and simultaneously justice rushed is justice buried."<sup>4</sup>

### **1.2.1 What impact will it show on trial courts if efficiency is increased**

Cases will be solved quicker due to efficiency of courts causing to reduce the pendency of cases. As it is said Justice delayed is justice denied, if it will be believed that the public is being served justice the public will have a lot more trust in our judicial system than before as they will be served justice which will lead to more and more people knocking the doors of courts to solve their disputes rather than taking the law in their hand.

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<sup>4</sup> <https://blog.ipleaders.in/contemporary-route-justice-analysis-efficiency-fast-track-courts/>

### **1.3 What is the impact of inefficient trial courts**

Due to inefficient working of the courts the cases are given dates instead of conducting the hearing for the same. This is a major reason why people don't take their cases to the law and try to handle themselves because they are scared that they will get trapped in the game of dates, this results in increase of crime as well as people have assumed that as courts are inefficient so they won't get caught even after committing of any crime or they believe that going to the courts is a waste of time so they take their revenge themselves by committing another crime. People also have stopped helping people and going to the courts as evidences, eye witnesses or their allibies just to avoid the trap as they all believe that the court will take a long time to finish this matter and they will have to waste their time in the inefficient process of the judicial system. It is very unfair for the under trial prisoners to waste their lives in prisons because of the delayed court system of our country as they were not heard in the courts in time. There are so many under trial prisoner who were later acquitted as they were proven not guilty who have wasted more than half of their lifetime in prisons for no fault of theirs but because of the slow court system.

“Such person is accused and his or her guilt has not been proved, hence he cannot be called a convict. According to 78th Report of the Law Commission of India (1979), Undertrial is a person who is in a judicial custody or remand during investigation. An undertrial prisoner is the one who has been detained in prison during the period of investigation, inquiry or trial for the offence they are accused to have committed.

<sup>5</sup>Undertrial prisoners population in India is estimated to be the 18th highest in the world and the third highest in Asia.

Undertrials such as Muslims, Dalits and Adivasis are in disproportionate number. About 53% of undertrial prisoners are from these communities, which make up 39% share of the population of India. Around 29% of undertrial prisoners are not formally literate, while 42% had not completed their secondary education.”

#### **Scholarly observations and concerns:**

“Justice V.R Krishna Iyer, former judge, Supreme Court of India observed that: 24 “In India, the arrears of litigation are so terrible that Justice in the Indian Courts with its slow processes and

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<sup>5</sup> <https://www.legalserviceindia.com/legal/article-4537-the-human-right-of-under-trial-prisoners.html>

appeals, revisions and reviews making Justice, justices and justicing an interminable phenomenon. Actually a patriotic legislature if it has concern for social and economic justice should take away too many appeals and revisions, one appeal being sufficient this measure will make number of cases considerably reduced. The expenditure on lawyers and litigative process will be made inexpensive. Today, a lawyer is an expensive creature. This need not be. Here the legislature has to be active. Today, litigation lives long. The litigant himself with the heavy expenditure finds himself short lived".<sup>6</sup>

Senior Advocate and Member of Parliament<sup>7</sup>, K.T.S.Tulsi, observed that:

"The real solution to the humongous pendency of court cases is in complete overhauling the criminal justice system. Our criminal justice system relies on bullock cart technologies in this supersonic age".

"India has about 21 judges per million people, Rajya Sabha was informed on Thursday. In a written reply, Law Minister Kiren Rijiju said to calculate the judge-population ratio for per million population in a particular year, the Department of Justice in the ministry uses the population as per Census 2011 and as per available information regarding sanctioned strength of judges in Supreme Court, the high court and district and subordinate courts in the particular year. Seeking to provide speedy justice, the 14th Finance Commission had recommended the setting up of 1800 FTCs during 2015-2020 and had urged state governments to utilise enhanced fiscal space available through tax devolution for dealing with specific natured cases of heinous crimes, civil cases pertaining to women, children, senior citizens, other vulnerable sections of society etc and property related cases pending above 5 years. As per data provided by the high Courts up to December 2021, total 898 FTCs are functional in 22 states and UTs."<sup>8</sup>

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<sup>6</sup> <https://archives.palarch.nl/index.php/jae/article/download/9013/8371/17681>

<sup>7</sup> <https://archives.palarch.nl/index.php/jae/article/download/9013/8371/17681>

<sup>8</sup> <https://economictimes.indiatimes.com/news/india/india-has-about-21-judges-per-million-people/articleshow/89481479.cms>

## **Conclusion**

The most difficult times for the whole world that was during covid, taught us that online courts were a very good alternative to increase the efficiency of courts in our country. Taking in notice, all the technological advancements of our country the online courts can be implemented very easily with just a little spreading of awareness about internet and how to access it amongst the rural people. As we are aware of the fact that everything has a pro and a con; a coin has two sides to it and hence necessary and specific monitoring would be required as there could be a negative impact of judges completing cases in haste to earn incentives. It is rightly said that Justice delayed is justice denied but justice provided in haste is also of know advantage as it won't be proper and right. Justice delayed is not right but justice given in hurry is also of no use

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