The Efficiency of Courts in Administering Criminal Justice: An Overview of Problems and Solutions

Sundar P L[1]

Abstract

The Indian legal system prides itself due to its capacity to administer justice with fair and speedy trials by acknowledging the right to a speedy trial as a fundamental right under Article 21 of the constitution. However, the reality is quite contrary to the established ideals due to the high level of pendency of cases. There is an array of reasons contributing to this pendency which shall be discussed in this paper. This paper aims to target particular stages at which cases tend to get stagnated in with respect to warrant and summons cases; the stages generally having such a tendency largely being witness chief examination, cross examination and the discharging of the accused. The paper attempts to address some of the flaws existing in acts such as the Code of Criminal Procedure, 1973, the Indian Evidence Act, 1872 and more in administering justice and further aims to strengthen those provisions which are already in place according to documentation but limited in practice such as the practice of plea bargaining. This paper also deals with the inadequacies in the organisational design shaping the legal system which can be furnished to administer justice in a speedier, distributive and efficient manner such as the deficit of judges to provide justice, competency of judges and advocates, the need for stricter guidelines for advocates and concerned parties and so on. It further correlates the reliance of courts on investigation services in administering justice efficiently. The paper aims to consolidate the problems faced by courts in administering justice and solutions to the same in order to fulfil the goals of the 230th Law Commission Report. The content of the paper has been arrived at through reliance on the National Judicial Grid Data, axiomatic opinions of advocates, writings of scholars, articles and reports.

Keywords: *Code of Criminal Procedure, Criminal* Justice, Efficiency of courts, Solutions, Stages

[1] School of Law, Christ (Deemed to be University), 2nd year, BBA.LLB.

Introduction

In a country where the right to speedy trial is considered to be a fundamental right under the right to life and liberty[2]under article 21 of the Constitution of India which has been laid down in Kartar Singh v State of Punjab[3] and Hussain Khatoon v Home Ministry[4], the fact that a backlog of 3.3 crore cases exists in the system[5] exhibits the inefficiency in the functioning of courts. While 2,81,08,642[6](2.81 crore) cases are pending in the subordinate courts, the backlog clogging the High Courts and Supreme Court (SC) is 40,33,963[7] and 57,987[8] cases, respectively. Out of these pending cases, 10,71,798 cases pending in High courts and 1,97,04,295 cases pending in District courts are criminal cases, which makes up 26.57% and 70.1% respectively of the total pending cases.70.94% of the pending cases in the High Court and 52.81% of the pending cases in District Courts have been pending for more than 2 years according to the National Judicial Data Grid[9].

There is a multiplicity of reasons for which this delay can be attributed to; there lies a tendency for these delayed cases to get accumulated in certain stages of cases beyond which the complexities constrain its progress. There are 2 kinds of criminal cases; warrant cases and summons cases. The procedure followed in warrant cases are initiated by(a)lodging a complaint; which is followed by the (b)filing of a First Information Report (FIR); which is then followed by (c)addressing a legal notice to the opposing part; after which (d)a final report[10] is presented by the investigating officer to the magistrate; following which a(e)discharge may be made by way of an application by accused in the preliminary stage of proceedings, followed by a (f)witness chief examination,(g)cross examination and (h)finally the passing of orders.

[2]INDIA CONST. art. 21.
[3] Kartar Singh *v.* State of Punjab,1994 S.C.C. (3) 569 (India).
[4] Hussain Khatoon *v.* Home Ministry,(1979) 3 S.C.R. 169 (India).
[5]Mail Today Bureau, *3.3 crore cases pending in Indian courts, pendency figure at its highest: CJI Dipak Misra*,Business today, (June.28, 2018, 8:44 A.M).
[6]National Judicial Data Grid (District and Taluka Courts of India), (November.13, 2018, 8:36 P.M).
[7]National Judicial Data Grid (November.13, 2018, 8:37 P.M).
[8]*Ibid.*
[9] ECOURTS SERVICES (November.13, 2018, 8:40 P.M).
[10] Sec 173, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

In summons cases, (a)complaints are first filed under sec 200[11] CrPC; followed by (b)addressing a notice; followed by the stage of (c)petitioner evidence and (d)cross examination of the petitioner; followed by the stage of (e)defendant evidence and (f)cross examination of the defence; followed by (g)arguments and the (h)passing of the final order.

In order to serve an accurate judgment and provide justice to all involved parties, it is necessary to allot sufficient time to both sides with due consideration to all relevant statements. Most proceedings involve a large number of applications and objections to the same until there is a window to move into the next stage. Therefore, it inherently tends to be a time-consuming process. However, there are certain changes which can be made in order to boost the efficiency of courts and maintain the accuracy of judgments while increasing the speed at which such justice is served.

Objective

This paper attempts to consolidate an array of problems causing the provision of justice to get delayed by the increasing level of pendency leading to a point of delay and subsequently offers solutions to each one of such issues. It establishes certain stages of cases wherein proceedings tend to get stagnated and prioritise those stages by stimulating the service of justice in a targeted manner. Civilians tend to stay away from courts in order to prevent the burden of expense incurred in the course of proceedings such as time, money, travel and monotony which this paper wishes to address and tackle. It must be understood that the efficiency of courts is not measured solely with respect to time, but with respect to the accuracy of orders too which brings up the issue of competency. Readers of the paper are therefore expected to develop an image of a furnished legal system which can be achieved with much difficulty as long as resources are organised efficiently.

Methodology

The paper mainly employs external secondary data through sources such as articles, studies by organisations such as Vidhi Centre for Legal Policy, National Judicial Grid Data and so on from which the quantitative research has been arrived at through empirical reliance in order to affirm the existence of the said issue. The qualitative research has been arrived at through visits to courts such as the Additional Chief Metropolitan Magistrate Court (ACMM), City Civil Court Complex, Mayo Hall, Family Court and High Court in Bangalore including the

[11] Sec 200, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).

observation of Lok Adalat and mediation proceedings in the Nyaya Degula for the purpose of understanding the functioning of courts and inefficiencies in proceedings whose data has not been widely available on a public forum and requires personal attendance. The opinions of Advocates have also been considered as the clear display of experience translates to a deeper understanding of a system and thus leading to majority opinions being declared as axioms. It must be noted that although the research conducted is factually correct, portions of it are not backed by tangible documentation as they are impliedly tendencies, trends and axioms in the legal sphere.

Provision of sufficient documentation

In the framing of the charge, the passing of a formal order with reasons is not obligatory[12] and such an order framing charge cannot be quashed[13]. This lack of clarity abusing the judge's power to exercise discretion without providing sufficient reason for exercising it as such. Any action made by the judiciary which determines any person's fate must have a reason to back it up as such rather than to merely be an unquestionable statement laid down by an authoritative figure. However, he is required to record the reasons for discharge or reasons for not granting a discharge[14]

Where a magistrate takes the cognizance of an offence without taking note of sec 468 CrPC which establishes the limitation period, the most appropriate stage at which an accused can plead his discharge is the stage of framing of charges, he should not wait till completion of the trial.[15] Essentially, this provision attempts to deter the abuse of the power to appeal and guarantees the service of justice even after the court overlooks the limitation period instead of dismissing the complaint after such discovery by discharging the accused on those grounds.

Inadequate powers of the Magistrate in summons cases

Sec 239[16] gives the magistrate the power to discharge the accused if he considers the charges to be groundless after considering the police reports and documents and the prosecution and accused an opportunity to be heard and applies only to warrant cases and not to summons cases[17] as classified under sec 138[18] of the CrPC.Summons cases may not be discharged by

[12] Jayaprakash *v.* State, 1981 Cr.L.J. 460. (India)
[13] Kanti Bhadra Shah *v.* West Bengal, A.I.R.2000S.C.522. (India)
[14] Nenai Chandra Chatterjee *v.* State of Bihar, 2006 Cr.L.J. (NOC)303(Pat). (India)
[15] Arun Vyas *v.* Anita Vyas, A.I.R.1999S.C.2071. (India)
[16] S. 239, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974. (India)
[17] Bhiwane Denim and Apparels Ltd *v.* Bhaskar Industries Ltd, 2003 Cr.L.J. (NOC)31(MP).
[18] S. 138, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974. (India)

the Magistrate due to the absence of a specific provision in the CrPC to empower them to do so which has been affirmed in Amit Sibal v Arvind Kejiriwal[19] which may lead to unnecessarily prolonged trails due to the disparity in provisions enabling the Magistrate in warrant and summons cases. It has been a topic of controversy in the past and although the magistrate has been empowered to discharge such cases in the past[20], that power has been repeatedly curbed[21] due to the absence of such provision under sec 251 which has now been interpreted to be intentionally left out. Although the magistrate is empowered to stop proceedings in summons cases under sec 258 CrPC[22], this applies only to cases which have been instituted "otherwise than upon" a complaint which provides a humongous limitation against the powers of such an authority which would have been larger if not for the phrase of exception.

Hostility of witnesses

Under sec 161[23] CrPC, the witnesses to a case are not bound to answer the questions of the investigating police officer if they have the capacity to expose them to penalty, forfeiture and criminal charges and they are not required to be signed[24]. Under sec 25[25] Indian Evidence Act, 1872, no confession made to a police officer can be proved against the accused unless it is in the immediate presence of a magistrate during such custody as stated under sec 26[26] Indian Evidence Act. This requirement for a witness to repeat the same statements in front of a magistrate for it to be admissible gives rise to a lot of deviations between the 2 statements which brings about inaccuracies in the framing of the charge sheet, leading to wastage of time, prolonged proceedings and inefficiencies when these deviations combat the advocate's and prosecutions established expectations[27] in the witness chief examination and cross examination all though the hostility doesn't lead to a disregard of the witness' testimony altogether[28]. This is caused due to an array of reasons such as strong arming through threats[29],

[19] Amit Sibal *v.* Arvind Kejiriwal,2016 S.C.C. OnLine S.C. 1516. (India)
[20] K.M.Matthew *v.* State of Kerala, (1992) 1 S.C.C. 217 (India); Bhushan Kumar *v.* State (NCT of Delhi), (2012) 5 S.C.C. 424 (India); Urrshila Kerkar *v.* Make My Trip (India) Private Ltd, 2013 S.C.C. OnLine Del. 4563.
[21] Adalat Prasad *v.* Rooplal Jindal & Ors, (2004) 7 S.C.C. 338 (India);Subramanium Sethuraman *v.* State of Maharashtra & Anr, (2004) 13 S.C.C. 324 (India); R.K. Aggarwal *v.* Brig Madan Lal Nassa & Anr**,** 2016 S.C.C. OnLine Del 3720.
[22] Sec 258, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[23] Sec 161, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[24] Sec 162, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[25] Sec 25, Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).
[26] Sec 26, Indian Evidence Act, 1872, No. 1, Acts of Parliament, 1872 (India).
[27] State of Kerala *v.* Shinas, SC 223/14 (District and Sessions Court Ernakulam).
[28] Krishan Chander *v.* State of Delhi,(2016) 3 S.C.C. 108. (India)

provision of incentives to influence behaviour and even the mere avoidance of the complexities of court proceeding.

The reliance by courts on investigation officers needs to be increased by categorising statements received by them as evidence which is admissible in court by making a record of such statements with audio-visual mechanism to affirm the absence of coercion of sorts. However, if there does lie any deviation between statements recorded by the investigating officers and statements made in court, a thorough investigation must be initiated by the court's appointed officials against the investigating officers in charge of the case. There must be a shift from the presumption of dominance and coercion to one of mutual benefit without neglect to rights of witnesses and with reliance on documentedstatements in initial stagesas stated to back it up by building up a competent workforce and to avoid mishaps by way of investigation through development programmes.[30]Witnesses must be guaranteed protection during and after the course of trial depending on the nature of such case from the risks of the said threat by ways of physical protection through witness protection schemes carried out by specialised officers and by guaranteeing their anonymity under sec 17[31] National Investigation Agencies act, 2008 and by taking the witnesses concerns into consideration and providing them with the benefit of doubt.

Organisational Setup

The supply of judges in courts to meet the demand of litigation avalanche is another issue. The number of vacancies of judgesin the Supreme Court and High courts together lie at 434[32]insubordinate courts lies at 5,984[33]. This deficit[34] is a prominent contributing factor which needs to be filled in with competent judges to administer justice.

Excessive adjournments being granted cause delay too. According to a study by Vidhi, Centre for Legal Policy[35] in 70% of delayed cases, the counsel sought time more than 3 times

[29]Zahira Habibulla H Sheikh and Anr *v.* State of Gujarat and Ors, (2004) 4 S.C.C. 158. (India)
[30] Santosh Kumar Singh *v.* State through CBI, (2010)9S.C.C. 74. (India)
[31] Sec 17, The National Investigation Agency Act, 2008, No. 43, Acts of Parliament, 2008 (India).
[32]Statement showing Approved strength, Working Strength and Vacancies of Judges in the Supreme Court of India and the High Courts, Department of Justice (October.1, 2018).
[33]India's judge-population ratio goes up marginally, Economic Times (Jan.7, 2018, 11:38 A.M).
[34]T. T Bureau, *PM assures Chief Justice of Govt support in increasing judges' headcount*, Telegraph India (Apr.24, 2016).
[35]Nitika Khaitan, Shalini Seetharam & Sumathi Chandrashekaran, INEFFICIENCY AND JUDICIAL DELAY NEW INSIGHTS FROM THE DELHI HIGH COURT, Vidhi Centre for Legal Policy (March, 2017), pg. 21.

while in 30% of them, it was sought more than 6[36] times.[37] They must be penalised for requesting adjournments which are granted beyond a prescribed number of times as many lawyers are incentivised to adjourn as they get paid by clients per appearance rather than by way of speedy disposition.[38] The penalty for absence must also be stringently furnished such as making recalls for non-bailable warrants and exemption applications[39]more difficult to be granted by way of the party making such an application[40] and by increasing the stringency of such considerations to deter the prolongation of cases.

Subordinate courts tend to consist of relatively incompetent personnel such as court officers who call out for case numbers in an inaudible manner, leading to the said case getting passed over and demotivating the concerned parties to be present for the proceedings further on. This can be fixed by either being more audible or by digitising courts with the use of electronic token boards which consist of case numbers, leading to a more efficient process and lower rates of passed over cases, therefore not deterring civilians from seeking justice. Process memos[41] are required to be repeatedly[42] filed due to mistakes in entering it often due to subjectivity in handwriting. Instead of this, notices can be forwarded to parties digitally to avoid such confusion. The organisational design of court systems must be made more user-friendly[43] in order to prevent the deterrence of civilians from indulging in their rightful entitlements due to burdensome processes and to facilitate speedier administration of justice by providing for an atmosphere[44] wherein the civilians can perform their obligations in court with ease.

Transfer

Under sec 228(1)(a)[45] of the CrPC, the moment the judge forms the opinion that a case is not exclusively triable by the court of sessions, he is obliged to transfer the case before or after framing the charges to the Chief Judicial Magistrate for trial[46]. When the judge may be of the opinion that the accused is not liable to be discharged as there is prima facie case for an

[36] Akshata P. B *v.* Sandeep T, C. Misc No. 127/2015, (6th MMTC court, Bengaluru).
[37] Order 7, Rule 1 of the Civil Procedure Code makes this suggestion for the hearing of a suit.
[38] Prasanth Regy, Shubho Roy, and Renuka Sane, *'Understanding Judicial Delays in India'* (May.18, 2016).
[39] Srividya *v.* Divya Sunil, c.c 25514/2016 (16th ACMM court Bengaluru).
[40] Mr Haridas Salian *v.* Smt Rama R Shetty, 2018(3)K.C.C.R.2449.
[41] Mahesh Chawla *v.* Studio Sources Pvt Ltd, c.c No. 19815/2017 (19th ACMM court Bengaluru).
[42] Sanskrutha Hitharakshana Sangha *v.* Government of India and Ors., W.P No. 40905/2018 (S-Res).
[43] NCMS Baseline Report on Court Development Planning System: Version 2.0, Supreme Court of India (2012).
[44]Renee L. Danser, CREATING A USER-FRIENDLY COURT STRUCTURE AND ENVIRONMENT, National Association for Court Management (2016-2017).
[45] Sec 228, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[46] Nagarao, 1978 Mah.L.J. 152.

offence even though it is not exclusively triable by a court of session, the judge has the power to frame charges and transfer the case to the Chief Judicial Magistrate for trial[47]. At this stage, the Chief Judicial Magistrate cannot discharge the accused[48], he has to try the case himself rather than merely sitting in[49] and he cannot transfer this case to another magistrate[50] according to his discretion if he considers it to be appropriate either. The transfer of cases in the absence of appeals although the said case may lie under the jurisdiction of the transferring court contributes to the wastage of time in the proceedings of courts. To combat this, the courts wherein such cases are lodged must be empowered to deal with them as long as there is supervision by the appellate courts on the initial orders rather than a complete transfer. Advocates who file complaints on behalf of the said parties must face a penalty for doing so in the inappropriate court howsoever minimally for interfering with the efficiency of courts in case it is determinable that such cases in with respect to this particular situation are not triable by court where the said complaint has been lodged.

Consolidation of cases

It has been held that separate incidents arising between the same parties which may be tried by separate authorities; the Magistrate and the Court of sessions, an order of consolidation of cases by the lower court to try both cases is bad in law[51]. However, when cases of similar instances arise out of the same transaction or failure to perform the same transactions, or simply when there are multiple cases between the same parties that are not excessively deviant in nature although they are for separate purposes[52], if a singular forum could be empowered to try a substantial number of such cases as an umbrella, the time taken for service of holistic justice would be minimised rather than tending to multiple courts if it could all be reduced to a single application rather than one for the transfer of a case followed by the clubbing of cases. In Senior Labour Inspector, 41st Circle v Ramalingam Mageswari,

[47] Abani Chowdhury *v.* The State, 1980 Cr.L.J.614.
[48] Sudipto Sarkar & V.R Manohar, Sarkar-Code of Criminal Procedure (Vol. 2), pg. 1069 (9th ed., 2007).
[49] Vijaya, 1977 KLT 458.
[50] Narendra Amratlal Dalal v State of Gujarat, 1978 CrLJ 1193; China Kolay v State, 1983 CrLJ (NOC) 196 (Cal).
[51] Sanwal Ram *v.* State of Rajasthan, 1995 Cr.L.J.3549(Raj).
[52] Dhananjaya *v.* Vinutha, Ex No. 122/2018 (6th Additional Family Judge, Bengaluru), G&WC No. 76/2018 (6th Additional Family Judge), Misc No. 105/2018 (Principal Family court, Bengaluru); Vinutha v Dhananjaya, Ex No. 226/2018 (6th Additional Family Judge, Bengaluru).

Lakshmi Jayaraman & Joseph Solomon[53], the directors of a company failed to dispense the minimum wages to its labourers in 2016 and on failure to comply with the orders issued against them in 2016, subsequently failed to dispense the said minimum wages in 2017. Since 2 separate cases had been filed, the number of proceedings were more than required as the same parties were concerned with the similar matter.

The procedure to try cases in a singular forum must be made simpler by conducting background checks of cases of such nature and making administrative adjustments to ease parties of the burden of wastage of such time, money and travel and to reduce the cumulative time spent by each court in tending to the same parties.

Plea Bargaining

Another solution to dilute such an avalanche could be plea bargaining wherein the defendant agrees to plead guilty to a criminal charge with the reasonable expectation of receiving some consideration from the state[54]so as to ease the burden of the courts from conducting trials for those offences whose outcomes are known and enable them to tend to those which aren't once an order is passed. There is a restriction on offences which are- punishable for more than 7 years or with death penalties; against women and childrenbelow 14 years and; affecting socio-economic conditions of the country[55]. Further, it is subject to an additional penalty according to the judge's discretion[56] upon striking a deal which ensures that it shan't be inequitable as long as the system ensures a check on coercive measures. Coercion in this context refers to that which is against the person making such a plea by a third party who is possibly connected to the actions of such interest as well as the coercion against the complainant into being forced to accept such a plea in the revised model. However, courts must ensure that the accused and victim is aware of the provision before the commencement of trial rather than considering it on the accused's application[57] to encourage the use of this form of settlement.The complainant's consent[58] with respect to the reduced sentence on such a plea must be taken into consideration.This helps in providing speedy justice, relief and even

[53]Senior Labour Inspector, 41st Circle *v.* Ramalingam Mageswari, Lakshmi Jayaraman & Joseph Solomon, C.C No. 4532/2018; C.C No. 4533/2018 (4th MMTC court, Bengaluru).
[54]DrSuman Rai, Law Relating to Plea Bargaining, pg. 34 (2nd ed. 2013).
[55] Sec 265A, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[56] Sec 265E, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[57] Sec 265B, Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1974 (India).
[58] Vijay Moses Das v CBI, Cri. Misc. Application No. 1037/2006 (Uttarakhand High Court).

contributes to settling the interim problem of overcrowded prisons[59] by reducing the number of under trial prisoners through reduced sentences. Courts must therefore embrace this provision rather than shun it[60].

Conclusion

The Indian legal system although has established goals and has taken measures to efficiently administer justice on paper, there have been an array of deficiencies in practice. The deficiency of thecase management formula[61] to establish proper timeframes due to excessive discretionary measures[62],fast track courts[63]which have been facing a decline in practice[64], the scantily crowded court rooms and elaborately taxing procedures of courts has led to a stagnant pool of cases which need to be disposed of in a just manner. The effectiveness off the judiciary in penalising in India can be viewed as higher than the likes of other countries[6566] with lower[67] rates of recidivism[68] therefore the current issue largely revolves around the neglected platter of cases rather than the accuracy of judgments. Plea bargaining and other alternate dispute settlement mechanisms cannot be solely reliable to unload courts of the burden and it is of utmost importance to rectify the deficiencies in courts through the stated solutions in order to secure every person's fundamental right to speedy trial.

[59]Dhananjay Mahapatra, Jails overcrowded up to 600 times: SC slams states, Times of India (Mar.31, 2018, 2:46 A.M).
[60]Murlidhar Meghraj Loya *v.* State of Maharashtra, 1976 A.I.R. 1929, Kasim Bhai Abdul Rehman *v.* State of Gujarat, 1980 A.I.R. 854.
[61] Salem Advocate Bar *v.* UOI, 2005 (6) S.C.C. 344.
[62] Jagannadha Rao Committee, 'Consultation Paper on Case Management'.
[63]Department of Justice, Brief Note On the Scheme of Fast Track Courts (Non-Plan).
[64]Rakesh Dubbudu, *Fast Track Courts might help reduce Pendency in Courts – But are the Governments interested?* Factly (Oct.12, 2015).
[65] In a study conducted across 30 states, more than 76.6% of prisoners were rearrested within 5 years of release Durose, Mathew R. et al, "Recidivism of Prisoners Released in 30 States in 2005: Patterns from 2005 to 2010", Bureau of Justice Statistics Special Report, April 2014, NCJ 244205.
[66] The rate of recidivism in the United Kingdom has been recorded to be as high as 28%
"Proven Reoffending Statistics Quarterly Bulletin July 2013 to June 2014", England and Wales, Ministry of Justice Statistics Bulletin, April 28, 2016.
[67] Recidivism rates in India as on 2015 lies at 8.1% and 7.8% as on 2014 according to NCRB data- National Crime Records Bureau Ministry of Home Affairs, Crime in India- 2015 statistics (Jul.29, 2016).