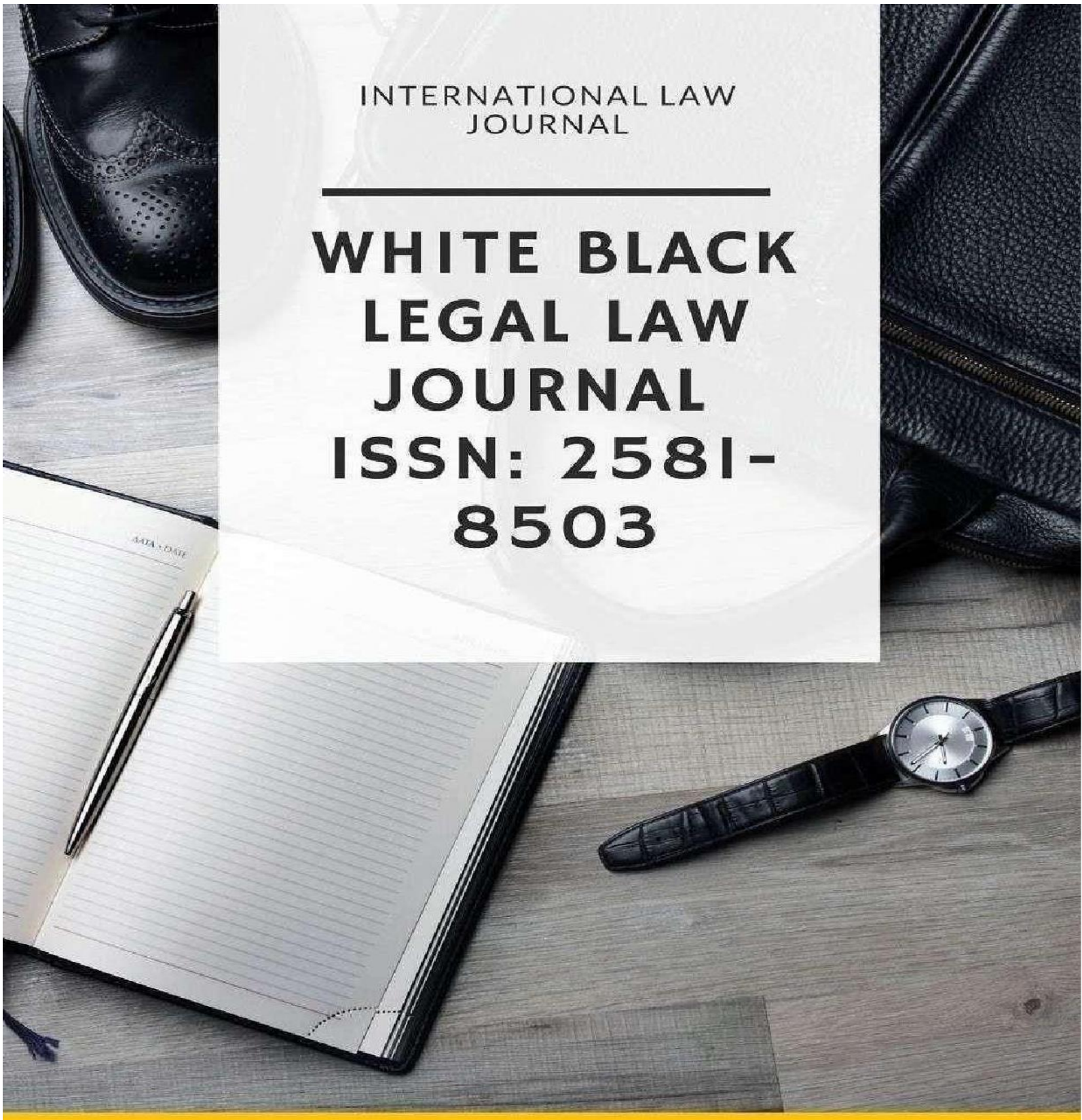

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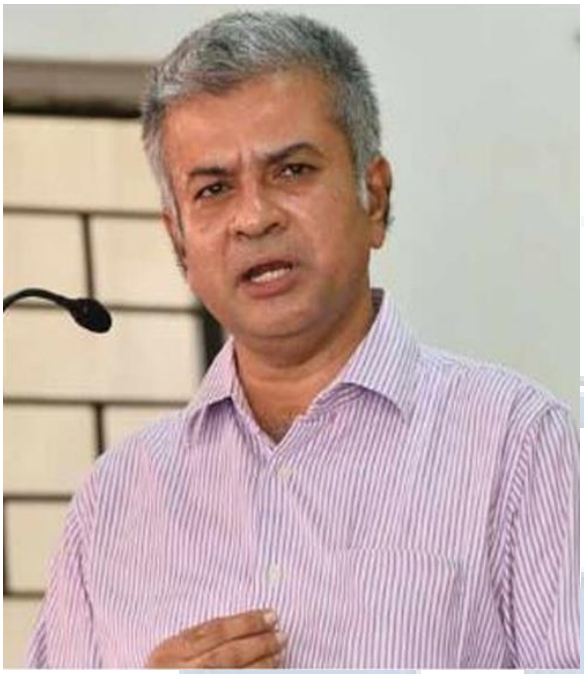

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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

JUSTICE WITHOUT DELAY: A NEED FOR SPEEDY TRIAL IN INDIA

Authored By - Deepak

INTRODUCTION

"*Law should not sit limply, while those who defy it to go free and those who seek its protection lose hope*''

-Jennison v. Baker[1]

Most Indian government agencies had difficulties in the year 2020. As a result of the coronavirus epidemic, the Indian lower house of parliament met for a record low of just 34 days during the 2020-2021 fiscal year. More than 400,000 Indians have died officially as of August 2021, but the true number may be far higher due to the severe public health crisis that has absorbed the attention of central, state, and local government officials.

The Indian judicial system has struggled to operate in the face of the hazards and limits brought on by the epidemic, just as have many other institutions in the country. The National Judicial Data Grid reveals that in 2020, the country's high courts (the supreme courts in each Indian state and union territory) would have resolved just half as many cases as they did in 2019. Nonetheless, the overall number of outstanding cases grew since the number of new cases only decreased by a third. The Indian judicial system and the country's overall political system are both severely affected by this issue.

As is obvious, the Indian judicial system has been struggling with a pendency crisis for quite some time. The Supreme Courts now have 5.8 million ongoing cases, despite resolving an average of 1.8 million cases year from 2015-2019. Most years see fewer cases resolved than initiated, compounding an already serious issue.

The result of this backlog is that many pressing legal matters go unanswered for far longer than they should. Several significant constitutional law issues, including some that might have far-reaching implications for the rights of ordinary individuals, have been outstanding for years, if not decades. Delays in criminal proceedings cause significant hardship for the accused, many of whom are

[1] Jennison v. Baker (1972) 1 All ER 997.

already incarcerated as they await their day in court. Also, the high cost of enforcing contracts due to a prolonged pendency hinders economic activity. As of the year 2020, India ranks 163 out of 190 nations on the World Bank's Ease of Doing Business rankings for its contract enforcement.

Pendency is a pervasive problem in India's specialised tribunals as well as its courts. Although statutory tribunals have proliferated across economic sectors in India since the deregulation of the economy in the early 1990s, their performance leaves much to be desired. Consider the National Company Law Tribunal (NCLT), a prominent body tasked with settling India's debt issue. The NCLT's infrastructure has been repeatedly criticised by academics and legal professionals for being insufficient.[2] These structural flaws have made it impossible for the tribunal to meet the deadlines set by the new Insolvency and Bankruptcy Code, thwarting a major reform initiative that was supposed to give failing businesses a way out. The NCLT admitted over 480 cases every quarter in the 2020 fiscal year, according to a recent analysis by management firm Alvarez and Marsal. It would take the NCLT six years to finish the backlog if it keeps going at the current rate.

The mission of the judiciary is to streamline the judicial process so that it is more accessible, efficient, straightforward, and affordable for everyday citizens. Justice that takes too long to be handed out might be counterproductive. As a result, the Constitution of India seeks to safeguard numerous fundamental rights of the people, including the right to fair and expeditious trials. No individual shall be deprived of life or liberty except in conformity with the method provided by law, as stated in Article 21 of the Indian Constitution. In light of this, it is well-established that merely establishing a system under which a person's liberty is taken is not sufficient; rather, the procedure itself must be "reasonable," "fair," and "just." Maneka Gandhi v. Union of India, 1978.

In a case with similar facts, Hussainara Khatoon v. Home Secretary, State of Bihar, Patna, (1979) ruled that the state must establish a mechanism to guarantee the speedy resolution of criminal proceedings. A'reasonable, fair, and just' procedure must include the right to a quick trial so that an accused person's life and freedom can be protected.

Article 21 guarantees the right to a fair trial, which is a service provided by the Indian judicial system. Both the victim and the accused need the case to go quickly and fairly. Irreplaceable for safeguarding human life and independence. Yet, the Indian judicial system has a number of structural issues that make it difficult for it to do its job. Regarding case backlogs and delays is one

[2] The NCLT also suffers from a lack of adequate member strength. The presidency has been vacant since January 5, 2020.

such issue. In 2018, around 30 million cases were pending in Indian courts. In order to preserve the efficiency and usefulness of the legal system, it is imperative that attorneys and academics investigate and develop new methods to minimise pendency. The article suggests a number of potential solutions and reforms.

CAUSES OF THE LEGAL LOGJAM

Pendency has several causes on both the demand side (the growing number of fresh cases) and the supply side (the slow disposal rate). Demand-side causes include the expansive jurisdiction granted to the judiciary in the Indian Constitution, excessive government litigation, rapid social and economic changes leading to more disputes, and so on. Supply-side causes include civil and criminal procedure codes that do not encourage quick case disposal, the readiness of judges to hear complaints under their writ jurisdiction and to take suo moto (judicial action taken without any request by the parties involved) cognizance of matters, and the country's large number of judicial vacancies.

JUDICIAL VACANCIES AND PRODUCTIVITY

Many experts have suggested that the Indian government should tackle the challenge of increasing pendency in Indian courts by appointing more judges to the bench. While this reasoning seems intuitive (and, undoubtedly, India has very few judges per capita compared to other leading economies), it is also important to consider the productivity of the country's judges. To this end, judicial productivity is calculated as the ratio of judges to case disposals per year. While empirical evidence on this metric is sparse, one 2008 study suggests that judicial productivity in Delhi district courts is about half of that in Australian courts. Increasing the number of judges without finding ways to improve their productivity is, at best, a half measure.

The judicial officers at the subordinate courts in our country are working at the strength of 16000 against the sanctioned strength of 22,200 as of 1st April 2018. These leave 5300 posts vacant, which constitute around 24 per cent of the total sanctioned strength. The appointment of the High Court judges are articulated in Article 217 of the constitution, and the procedure for the appointment is outlined in the Memorandum of Procedure (MoP) which is considered lengthy. The Chief justice of the concerned high court recommends the nominee to the state government. Then it goes to the Union Law Ministry, which then sends it to the Supreme Court Collegium. It is a cumbersome procedure. The MoP has articulated a timeline for the completion of procedure stages. Still, they are

not always adhered to, and the absence of an overall time limit for the completion of the process makes it more cumbersome.

Steps have continuously been taken to correct the problem of vacancies, like the Supreme Court in case of district judiciary has been monitoring the vacancies. The timeline is being prescribed in Malik Mazhar Sultan v UP Public Service Commission in 2006 for filling up of the vacancies and is expected to be completed by different dates. The SC also directed the Union Department of Justice to take necessary steps so that the requisite funds allocated are made available to the state for the construction of judiciary infrastructure.

The SC in *Imtiyaz Ahmed Versus State of Uttar Pradesh*, 2012, asked the Law Commission of India to create additional courts and other allied matters to help eliminate delays and speedy clearance of arrears and reduction in costs. Justice Kurien Joseph also recommended that the retirement age of the High Court judge and Supreme Court judges should be increased to 70 years to get the full benefit of their expertise and experience.

In the case *Lok Prahari vs Union of India*,2021, the Supreme Court issued specific guidelines for the invocation of Article 224A. The Article enables the Chief Justice of the High Court to request the former High Court judge to sit and act as a judge of the HC for hearing cases. This provision has been rarely invoked in history. The Supreme Court has issued five trigger points for activation of the process under Article 224A.

1) If the vacancies are more than 20% of the sanctioned strength.
2) The cases in a particular category are pending for over five years.
3) More than 10% of the backlog of pending cases are over five years old.
4) The percentage of the disposal rate is lower than the institution of the cases either in a particular subject matter or generally in the Court.
5) Even if there are not many old cases pending, but depending on the jurisdiction, a situation of mounting arrears is likely to arise if the rate of disposal is consistently lower than the rate of filing over a year or more.

DELAY IN THE POLICE INVESTIGATION

The police investigation is critical to the functioning of the Criminal Justice System. The police system uses old obsolete techniques to collect evidence, and thus it results in a delayed investigation. On the other hand, criminals are committing well-planned crimes by using scientifically developed

techniques. Many police manuals expect the police officer to reach the investigation site immediately for preserving the evidence and preparing the site plan etc. However, this has not always been adhered to. The police officer delays the filing of charge sheets. Forensic reports are also delayed as few forensic labs exist; delays in the expert report, both forensic and cyber, thus, causes enormous delays and occasionally leads to miscarriage of justice.

While hearing the petition '*In Re: Speedy trial of undertrial prisoner*',2018, and 'In Re: Alarming rise in the number of reported child rape incident',2019, the Supreme Court observed the importance of increasing the number of forensic science laboratories as a large number of trials are pending due to expert reports and thus to ensure the speedy trial, it is necessary to develop the infrastructure for speedy investigation.

In the *State Of Karnataka v. Shivanna @ Tarkari Shivanna*,2014, the SC, after witnessing a recurrence of heinous crimes of rape all over India, issued specific guidelines for fast track procedure for investigation by the authority without causing any unnecessary delay.

The SC, while addressing the deficiencies in a criminal trial, in a suo moto case (In re: to issue certain guidelines regarding inadequacies and deficiencies in a criminal trial) discussed the feasibility of creating a separate cadre of the judicial magistrate for monitoring the evidence collection process during the investigation. They discussed that it would be a fool-proof collection of evidence, and there would be a greater sense of responsibility for the police at the initial stage of the investigation.

BUDGETARY ALLOCATIONS FOR THE JUDICIARY

While most institutions demand more inputs, it is equally important to focus on the utilization of inputs. Take, for example, the financial management of India's judicial system. Legal scholars have long held that India does not spend enough on the judiciary. Recently, the India Justice Report 2019 found that, out of the twenty-seven states and two union territories covered by the study, the growth rate of judicial expenditures was lower than the growth rate of total expenditures in twenty-one of them.

Analysis by this article's authors on government spending on the administration of justice by the Indian central government and five state governments (Bihar, Delhi, Gujarat, Karnataka, and Odisha) over the last decade shows that actual expenditures regularly fall below (and often well

below) the requisite budgetary allocations.[3] For instance, in Bihar, each year between fiscal year (FY) 2014 and FY 2018, the state judiciary's actual expenditures fell short of the revised estimate by more than 20 percent. This gap suggests that the Indian judiciary is not able to budget properly or spend the (inadequate) funds allocated to it. This deficiency is likely due to lacunae in the judiciary's internal administrative mechanisms. Because the budget for each fiscal year is based on the prior year's expenditures, this failure to spend down the funds already allocated leads to a consistent decline in the budgetary share allocated to the judiciary. Each year, the vicious cycle repeats.

CASE MANAGEMENT

Similar problems can be seen regarding case management. The objective of case management is to ensure that judges' time and cognitive resources are utilized efficiently. However, due to inadequate preparation before judges hear a case, a judge's time is easily wasted once legal proceedings begin. Scheduling problems also lead to innumerable delays and adjournments.

In the *State of Maharashtra v. Champalal Punjaji*,1981 the Supreme Court observed that delay is the known defence technique. In case of weak evidence, the prosecution tends to delay the process so that the accused is kept incarcerated for a more extended period. With the passage of time, the memories of the witness fade along with witnesses for the trial. Thus many times, due to hostile witnesses, the onus on the prosecution is even more burdensome. The respondent several times knows the probability of the judgement would be against him, and therefore the respondent tries to take as many adjournments as possible to give his counter.

According to Order XVII, after the 1999 amendment in CPC, Rule 1 mentions that the adjournment should not be provided more than three times. However, in Salem Advocate Bar Association-II,2005, it has been noticed that the courts do not have to strictly adhere to the provisions as it was held that in case of circumstances beyond the control of a party, there is no restriction for granting adjournment by the court. Thus, the court has the power to grant adjournment more than three times when the circumstances are beyond the parties' control.

Adjournments are also caused by the absence of the presiding officer of the court due to unexpected causes. Thus, the cases fixed for the day are automatically adjourned to the next working day.

[3] Authors' analysis based on a dataset of budgetary figures curated from government budget documents. See the hyperlinks above for select examples of these documents.

Unanticipated holidays and long vacations of the judges are another reason for delays in the disposal of the cases.

Since the early 1990s, the Indian government has launched a litany of schemes and projects to computerize the judiciary's proceedings. Most of these initiatives have simply involved injecting computers into existing court processes without fundamentally rethinking the design of these internal processes. For instance, e-filing in the Supreme Court of India has been available for many years. Yet advocates-on-record, who are entitled to act for and to plead for a party before India's Supreme Court, prefer the physical filing process since it has traditionally cost less than e-filing. Moreover, if there are any defects in an e-filed petition, the advocate-on-record is required to rectify them and ultimately submit a hard copy. Such procedural rules defeat the basic purpose of e-filing. Unfortunately, computerization has also failed to improve the case scheduling process. In India, there is no preliminary conference whereby parties can give the registry, the court's administrative secretariat, a sense in advance of how long they estimate oral submissions will take. As a result, lawyers and litigants are forced to guess when a listed matter is likely to come up for a hearing on a given day. Furthermore, various routine applications—such as those involving direct, unscheduled requests from lawyers to judges through the mentioning process—often must be placed before a judge instead of being resolved by the registry. Myriad procedural issues like these end up wasting precious judicial time and, as a result, negatively affecting judicial productivity.

OTHER CAUSES OF DELAY

- Transfer of judges;
- Delay in services of summons and warrants on the accused /witnesses;
- Delay in the examination of the witnesses;
- Non-adherence to various provisions mentioning time frame for completion of the procedural stages by the court;
- Increase in litigation and massive piling of appeals;
- Increase in legislative activities and loopholes in the laws;
- The failure of taking advantage of alternative disputes resolution, etc.

IDEAS FOR JUDICIAL REFORM

Running an efficient, modern judiciary necessitates successfully carrying out a range of administrative functions, including activities related to managing and maintaining the courts (such as case, facility, financial, and human resource management). To be clear, better administration is no more a panacea for judicial productivity than increasing the number of judges. Improvements to the adjudication process are also necessary. However, solving some administrative problems could reduce the constraints under which judges work.

DIVERSIONS TO ALTERNATIVE METHODS

Undertaking pre-litigation mediation would reduce the inflow of cases to the courts. For this adequate research, training and preparation are required in the Alternative Dispute Resolution (ADR) mechanism, which would help in reducing the pendency of the cases. Plea bargaining should be encouraged in criminal cases. Lok Adalat is the principal instrument of the ADR mechanism and should be encouraged more. Ensuring full capacity is utilised by commercial courts for settling commercial disputes and Gram Nyayalayas for resolving small disputes.

CASE AND COURT MANAGEMENT

Case planning and grouping different cases in different categories based on the time allocated to them. For example, fast track, medium track and long track- treatment, bunching similar cases for collective treatment and grouping them based on urgency and priority. There should be strict regulation for providing adjournment, and high costs should be imposed if the reasons proposed for adjournment are flimsy. Dilution of the time frame specified in the legislation should not be permitted easily. Written arguments should be encouraged where it is possible and thus limiting the time for oral arguments. Annual targets should be made to dispose of old cases for the subordinate courts and high courts. Bi-monthly and quarterly reviews should be taken to ensure transparency and accountability.

USE OF TECHNOLOGY

The application of technology at various stages of judicial proceedings would undoubtedly help in the fast disposal of cases. Technology can be effectively used in e-registration of cases, e-payment of court fees, auto-generation cause lists and daily case status, uploading final order/judgment, etc. Technology can be used to fully upgrade the advocates, litigants and public, legal services, judicial academy, etc. The alternative disputes resolution can also be taken up online to settle disputes and

other online dispute redressal mechanisms like e- negotiation.

DELEGATING ADMINISTRATIVE FUNCTIONS

Presently, the respective registries of the courts are mostly tasked with carrying out the judiciary's administrative functions. This structure has limited the potential for professionalizing these ranks and building up expertise. Many other countries have accepted that the administrative functions of courts and tribunals should be supported by a separate professional agency with administrative expertise, specialization, and modern management practices and technologies.

For instance, Her Majesty's Courts and Tribunals Service (HMCTS) in the UK provides an integrated system of support—including infrastructure and financial resources—for the administration of courts in England and Wales as well as most tribunals throughout the UK. The HMCTS is an agency under the Ministry of Justice, but it is structured as a corporation that operates based on a partnership between the lord chancellor and the lord chief justice.[4] The two partners do not interfere, either directly or indirectly, in the day-to-day operations of the agency. The agency is board-driven, and its chief executive is responsible for its day-to-day operations and administration. Another example comes from the United States, where the Administrative Office of the U.S. Courts (a specialized agency established in 1939 within the judicial branch) provides a broad range of legislative, legal, financial, technology, management, administrative, and program support services to federal courts.

Canada, too, has an entity called the Courts Administration Service, which was established under the 2002 Court Administration Service Act. This body provides registry, judicial, and corporate services to the Federal Court of Appeal, the Federal Court, the Court Martial Appeal Court of Canada, and the Tax Court of Canada. Its chief administrator acts as the chief executive officer and supervises the organization's staff.

Leaders within the Indian judiciary have also acknowledged the importance of creating a professional agency to support the administrative functions of tribunals. In various cases going back to the 1990s, the Supreme Court has recommended such reforms. In 1997, in *L. Chandra Kumar v.*

[4] A framework document reflects an agreement reached by the lord chancellor, the lord chief justice, and the senior president of tribunals on the partnership between them in relation to the effective governance, financing, and operation of the UK judiciary's administrative service.

Union of India, the Supreme Court suggested establishing an authority charged with supervising and fulfilling [the] administrative requirements [of tribunals].

It is worth noting, however, that such recommendations from the judiciary have two distinct motivations: to enhance the quality of tribunal administration and to make tribunals independent of their sponsoring ministries. Often, the second reason has seemed to dominate judges' thinking. Judges have appeared more concerned about placing the agency under the purview of the Ministry of Law and Justice rather than the sponsoring ministry of the tribunal in question so that tribunals can act more independently. Therefore, although the idea of a separate agency for tribunal administration has long been discussed in India, the objective of administrative efficiency has probably always been secondary to concerns of judicial independence.

The Supreme Court's insistence on placing the agency under the Ministry of Law and Justice may be why the idea has not gained much traction within the executive branch. If the agency were to be placed under this ministry, the common perception would be that all other ministries would lose sponsorship of what had been seen as their tribunals. However, this loss need not be the case. The agency could merely provide standard administrative support services to all the tribunals, irrespective of which ministry sponsors the tribunals and holds the power to appoint their members. Decoupling discourse on administrative efficiency from discourse on the ministerial allocation of tribunals would probably help the idea gain more traction within the executive branch.

The idea of establishing a specialized agency to manage the judiciary's administrative functions has also been proposed a few times by Indian government committees and advisers. In 2015, the Ministry of Finance's Task Force on Financial Sector Appellate Tribunal recommended the creation of an agency specializing in court administration to support the administrative functions of the proposed tribunal. In 2019, the ministry's annual economic survey included a recommendation to create '. . . a specialized service called [the] Indian Courts and Tribunal Services . . . that focuses on the administrative aspects of the legal system.' The envisioned major roles for this specialized service included providing administrative support functions needed by the judiciary, identifying process-related inefficiencies and advising the judiciary on legal reforms, and reengineering certain inefficient processes.

Until recently, there was no clear proposal from the judiciary to implement these ideas. Since the matter pertains to the administration of the judiciary, the reforms require buy-in from the country's senior judges. In this context, two recent proposals are worth considering. In March 2021, the chief

justice of India proposed that a specialized infrastructure corporation be established to modernize the infrastructure of the judiciary. One month later, the Supreme Court's e-Committee released a draft Digital Courts Vision and Roadmap, which proposed establishing a professional agency for managing judicial technology.

OTHER REFORM IDEAS TO CONSIDER

Although these proposals are worthy of deeper exploration, reform advocates should be careful not to repeat the mistakes of the past. Reforms require clarity of thought. For a while, there was much confusion about the idea itself. For instance, the phrase 'court and tribunal services', as commonly used in the UK, has been widely misinterpreted by many people in India—including lawyers, judges, and journalists—as involving the appointment of judiciary staff instead of the creation of a separate organization to which the administrative services could be outsourced. Policymakers working on tribunal reforms tend to focus only on judicial functioning (including judicial independence)—probably because it is important for the epistemic community in the field of law. For example, the 2017 Finance Act reorganized and rationalized the tribunal system, focusing primarily on the merging of tribunals and on tribunal members' conditions of service, but it neglected the administrative structure of tribunals. Fortunately, Chief Justice N. V. Ramana has clearly articulated the idea of a National Judicial Infrastructure Corporation, thereby focusing on the judiciary's administrative functions.

Reformers would do well to bear in mind five lessons based on the experiences of India and other countries.

1. **Pursue comprehensive reform carefully**: Reforms should seek to remake the administrative functions of the judiciary in a comprehensive manner, albeit over time, so reforms can accommodate various stakeholders' ideas and interests. The road map for reform should seek to create a professional, competent agency to provide administrative support to courts and tribunals. Instead of focusing narrowly on individual pillars of the system—such as real estate and information technology systems—the focus should be on improving judicial administration in a holistic manner. For instance, instead of superimposing computers on top of existing paper-based processes within the court registry, the goal of reforms should be to completely reengineer these processes, leveraging the best available technology to achieve the desired outcomes. The existing registries of the courts and tribunals might view these changes as a threat, so it is important to protect their interests so that the transition is not undermined.

2. **Focus on professionalization and expertise**: A new administrative agency for the courts should be led by people with expertise in the management of large systems, especially in the design and implementation of process-related reforms. At present, there is a lack of professional expertise in the administrative divisions supporting the judiciary. A new agency should be designed on the basis of expertise and specialization, relying on modern management practices and technologies. It should build domain expertise in procurement, financial, human resource, and facilities management. Its focus should be on providing the best possible administrative support to the judiciary.

3. **Separate judicial and administrative functions**: Most administrative functions should be placed with the agency so that day-to-day administration does not consume judges' time—which should largely be spent on their comparative advantage: judicial functions. At the same time, the judiciary should be able to hold the agency accountable for its performance, likely through the oversight of a board.

4. **Facilitate cooperation and coordination between the judiciary and the rest of the government**: Any reforms to revamp judicial administration will require the judiciary and governments at the union and state levels to work together to build the administrative agency. During the initial stages, governments will be required to commit to allocating significant financial outlays, and they may also need to support the administrative agency with procurement of facilities and technology systems, recruitment of personnel, and so on.

5. **Insist on judicial oversight**: While cooperation between the judiciary and the rest of the Indian government will be essential to build and sustain the administrative agency, it is also important to respect the independence of the judiciary. Therefore, the government should see its role as that of an enabler in improving judicial performance and should not intrude into the judiciary's domain. This balance can be achieved if board oversight of the agency primarily rests with the judiciary.

CONCLUSION AND SUGGESTIONS

The delays in a court proceeding are endemic. Few reforms cannot solve it. An attitudinal change coupled with motivation, accountability, and a sense of ownership is necessary to bring the paradigm shift in the system. Emphasizing a positive outlook and mindset is essential to bring change. The manpower should introspect and look for answers and solutions for reducing delay and pendency. Justice delayed is justice denied; therefore, the judiciary should focus on delays and

pendency in the cases as it is crucial for ensuring the public's confidence in the judicial system.

To start reducing its judicial case backlog and achieve a robust economic recovery from the pandemic, India needs a strategy that focuses on both the immediate problems facing its judiciary and their root causes. The Indian government should address the institutional weaknesses that hold the country's economy back. The problems of the Indian judiciary are among the most important institutional challenges the country is facing, and the public health crisis has made them worse. The idea proposed by India's chief justice is perhaps the most consequential in many years. It is now up to the judiciary and the rest of the Indian government to make the most of this proposal.