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MEASURE TO CURB PENDENCY: JOINT LEGISLATIVE AND JUDICIAL EFFORTS

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INTRODUCTION

Competence and timeliness of delivery of justice are two basic elements of Indian Judicial system." However, with enormous backlogs in the judicial system judges are having a difficult time in delivery of cases especially on account of inadequate judge strength and lack of facility for the judicial infrastructure. Government has undertaken various steps to curb exacerbated pendency of cases. Both the legislative and executive wings have addressed the problem and are working hand in hand to overcome the situation. Many High Courts have established arrear committees in order to solve the existing problem. Ministry of Law and Justice has drafted policies that have been shared by States to review all pending litigations. Alternate Dispute Resolution is largely promoted and it is reported that Union Law Minister has communicated to Chief Justice of all High Courts asking them to invoke Section 258 of Code of Criminal Procedure, i.e., "Power to stop proceeding in certain cases," so as to enable criminal courts to expeditiously dispose of cases[1] and remove deadwood from our judicial system, such as majorly lying with cases relating to tariff and police challan. Proper implementation of National and State policies together can only reduce the number of pendency in our courts by meets and bounds.

MEASURE TO CURB PENDENCY

(i) To increase the strength of the judiciary:

The first step taken by the government was to increase the number of Judges. Sufficient Judge-Strength is necessary to process cases in timely manner in order to reduce unwarranted delay. In All India Judges Association vs. Union of India, (2002) 4 SCC 247, prominence was given to increase Judge to population ratio[2], i.e., number of Judges per million persons in the population, in order to protect our judicial system from huge figure of pendency. In 2014, the Apex Court in the case of Imtiyaz Ahmad[3] acknowledged that timeliness is of great essence to facilitate access to justice, further focusing on the issue of additional judicial manpower and required infrastructure. The statistics of cases pending along with duration of pendency in criminal matters with several High Courts was brought forth before the Apex Court. And the 14th and 19th Law Commission's Reports were referred, thus, recommending immediate measures to be taken for timely administration of quality of criminal justice which may be owning to not just the social reasons but also due to economic and political causes.

Law Commission of India in its Report no. 245 of 2014 on 'the Additional Judicial (WO) manpower', categorically listed methodologies of computing adequate Judge Strength. It focused on two comprehensive methods, namely, Judge to Population ratio and Judge to Filing ratio.[3] Judge to population ratio was for determining the number of judges required per million persons, however, the method seemed very objective as no number can be standardized since the requisites may vary from State to State. Another method of filings per capita that was advocated in the report was based on socio-economic condition across the States of the country. As per the study of Theodore Eisenberg, Sital Kalantry and Nick Robinson in 'Litigation as a Measure of Well-being', civil filing rate is higher in States with higher GDP per capita and higher Human Development Index.

However, the Law Commissions report, negated above methodologies in favour of 'Time disposal method' as this method has more of a pragmatic approach in order to keep pace with fresh filings and to breakeven large number of backlog. Considering

[1] Webpage: http://www.wbja.nic.in/wbja_adm/files/Brief%20Note%20on%20Legislative,%20Policy%20and%20judicial%20initiatives%20for%20the%20expeditious%20selivery%20of%20justice%20prepared%20by%20the%20National%20Mission%20for%20Justice%20Delivery%20and%20Legal%20Reforms.pdf

the statistics, the need for appointment of more judges is crucial, since India only has 1/5th of the number of Judges that it needs. Increased recruitment of positions will help ease the burden of pendency.

In recent years, though the Judges vacancies of High Courts have been increased yet the position for instance of Allahabad High Court is beyond comparable. The Allahabad High Court has been functioning with less than half of the strength of Judges where the backlog goes up to 3,09,634 on cases which are more than ten year old.[5] Second in the[2] ranking with highest pending cases is Madras High Court. Figures on the sanctioned strength of Judges have been also been issued in the, 'Indian Judiciary Annual Report 2015-2016', by the Hon'ble Supreme Court of India.

(ii) To keep courts open throughout the year:

Times have changed and today people stay active round the clock. India's former Chief Justice R.M. Lodha understanding the concern on escalation of pendency in 2014, proposed that the vacation time of Courts from hearing cases should be scraped; instead it should be used in clearing huge pile of cases by keeping the benches open throughout the year. The idea is more in consonance with the system of keeping courts open for the maximum days like that of several States and Federal Courts of United States and England. Former CJI was of the belief that if leaves are regulated, judicial process will not stop thereby helping in reduction of backlogs and pendency before judicial system gets into the status of an emergency delivery status.

(iii) Introduction of Fast track courts:

Document of English Law, Magna Carta had for the very first time stated about speedy trial principle, which is now embodied and implicit in our constitution as well. The concept now is about more than two decades old and deals with speedy disposal of case in order to make judiciary more efficient. Considering the view of Justice Krishna Iyer in the case of, 'Babu Singh vs. State of U.P.' that "our justice system suffers from slow motion syndrome", we are aware that it is of utmost importance that trials finish in reasonable time and the innocent is absolved from delayed ordeals. Therefore, judiciary came up with the concept of Fast Track Courts.

The Eleventh Finance Commission approved a scheme for creation of 1734 Fast Track Courts (for short "**FTCs**") for disposal of long pending sessions and other cases. This scheme was spread over a span of five year plan[6] and was extended further from 2005 to 2010, as directed by the Union of India. The object was to dispose of cases pending for more than two years and with peculiar attention on those cases in which accused has been on bail. It also provided for appointment of ad hoc judges amongst retired sessions judges and the selection was to be made by the High Court. Out of 36 Lakh cases that were once transferred to Fast Track Courts, near about 30.7 Lakh cases have been disposed of. Setting up of E-courts and fast track courts has escalated the process of clearing out of pending cases.

The latest data provides that about 524 FTCs are active and functional in the country presently, as quoted by the Union Minister Ravi Prasad in March 2017[7]. Huge funds have been sanctioned previously for establishing and running FTCs. By the 14th Law Commission proposal of setting up 1800 FTCs in a span of 5 years with investment of Rs. 4144 crore is endorsed. This is especially bearing in mind the large number of heinous criminal cases pending for more than 5 years.

Therefore, it can be fairly said that introduction of the FTCs has helped in increasing the disposal rate to a considerable extent and State in consultation with respective High Courts are constantly working on their resources for establishing more FTCs.

(iv) Alternate Dispute Resolutions (for short "ADR")

Arrear committees have been established by many High Courts to deal with the issue of pendency. ADR processes were found necessary to give speedy relief to the litigants and to reduce pendency, through a user-friendly system of disputes resolution. ADR consists of methods like arbitration, conciliation, mediation and negotiation which basically forms part of outside court settlement. It is only after the parties fail to get their disputes settled through any one of the alternative dispute resolution methods that the suit shall proceed further in the court in which it was filed. This will not only provide speedy, inexpensive justice and reduce litigation, but will also bring peace and harmony in the society.

(A) Parliament inserted Section 89 in Part V of the Code of Civil Procedure, to ensure that ADR was resorted to before trial of suits. Section 89 of the Code of Civil Procedure as amended in 2002 has introduced ADR methodologies for effective resolution of disputes and reads as below:-

Settlement of dispute outside the Court. " (1) Wherever it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of a settlement and give them to the parties for their observations and after receiving the observations of the parties, the Court may reformulate the terms of a possible settlement and refer the same for –

(a) Arbitration

(b) Conciliation

(c) Judicial settlement including settlement through Lok Adalat; or

(d) Mediation……"

On the basis of the above ADR modes are broadly explained below :

(a) Arbitration

The Indian Arbitration Act of 1940 was repealed by Arbitration and Conciliation Act, 1996 which is based on UNICITRAL Model Law. Arbitration basically involves help of a third impartial intermediary, chosen by the parties to dispute. An 'arbitrator' listens to the grievances' of the parties and pronounces decision i.e., award after the arbitral proceedings are completed. There must be an agreement with an arbitration clause between the contracting parties. It may be a part of the contract or a separate agreement . Arbitration process bears a lot of difference from that of a trial as the rules of evidence do not apply to Arbitration. It is not the same as that of judicial proceedings and Mediation. Arbitration may be voluntary or mandatory.

(b) Conciliation

Conciliation is another method of ADR where a 'conciliator' assists the parties at dispute by conducting negotiations and directing parties to a satisfactory agreement. Part III of the Arbitration and Conciliation Act, 1996 deals with process of conciliation. This process bears adversarial nature of proceedings and aims at identifying a right that has been violated or breached and seeks for optimal solutions. In conciliation there need not be a prior agreement that can be forced upon the parties. Conciliation and mediation are strikingly different in the sense that in conciliation the

[2] Webpage: http://lawcommissionofindia.nic.in/reports/report245.pdf

[3] See Imtiyaaz Ahmad v. State of U.P. and Ors., AIR SC 2012 642

that in conciliation the 'conciliator' is more directly involved in developing on the terms of settlement and proposing best suited solutions, wherein a mediator does not assume responsibility for generating solutions. Conciliation is more of a preventive resort in order to prevent the development of substantial conflict as soon as it surfaces.

(c) Lok Adalats

Settlement through Lok Adalats or more commonly known as 'People's Court' is the mechanism to arrive at a compromise on basic principles of justice, equity and fair play. Lok Adalats are presided over by a sitting or retired judge. It is not governed by provisions of the Civil Procedure Code, 1908 or the Indian Evidence Act, 1872. It obtained sanctity from Article 39A of the Constitution of India. Legal Services Authority Act, 1987 in chapter VI, sections 19- 22 has also provided for provisions in relation to Lok Adalats. A dispute may directly be filed before a Lok Adalat and is not mandatory to have prior permission of courts.

(d) Mediation

Mediation is one of the fastest growing mode of settlement, as it a 'peaceful' dispute resolution tool. It is a voluntary process and non-binding on the parties. It facilitates multi stage dialogue structure in order to reach to a mutual conclusive agreement. Mediation and conciliation are mostly used interchangeably, however, they both are different on the aspect that conciliation bears focus on opening channels of communications and negotiations whereas mediation works on later stages of negotiations, analyzing areas of disagreement of parties where parties may be interested for compromise.

(B) Setting up of Gram Nyayalaya

Gram Nyayalayas Act, 2008 has been enacted for establishment of Gram Nyayalayas or village courts for speedy and easy access to justice system focusing on the rural areas of India. The Act came into force from 2 October 2009. Judges who preside over the Gram Nyayalayas are judicial officers. The Ministry of Law and Justice made Gram Nyayalayas Bill with an objective to secure justice, at the grass-root level to the citizens, which would be the lowest court of subordinate judiciary and shall provide easy access to justice to litigant through friendly procedures, use of local language and mobile courts wherever necessary.

(v) Plea bargaining

The concept of Plea Bargaining came into force by Code of Criminal Procedure, 2006 Act. The plea bargain is any agreement in a criminal case between the prosecutor and defendant whereby the defendant agrees to plead guilty to a particular charge in return for some concession from the prosecutor. Plea bargaining benefits both the State and the offender; while the State saves time, money and effort in prosecuting the suspects, the latter gets a lenient punishment by pleading guilty. One of the merits of this system is that it helps the court to manage its load of work and hence it would result in reduction of backlog of cases. The Law Commission of India in its 142nd, 154th and 177th reports recommended that concessional administration is an absolute necessity to over burdened judicial and prison system on India.[8] If more and more accused came forward and bargain the plea, the reform could reduce the enormous backlog of cases in courts.

Thus, ADR has acted as successful tool in clearing enormous backlog and helped in curbing pendency at different levels of the judicial system. As it is the duty of the State to ensure infrastructural need and duty of judiciary to facilitate speedy disposal it also the duty of the subjects of the state to protect judiciary from unnecessary litigation by resolving small disputes amicably keeping mutual interest of the parties on priority, outside court and seeking court as a last resort for resolution of minor disputes.

(vi) Computerization of Courts

Last but not the least; technological advancement in today's era cannot be ignored. A scheme for computerization of 13,000 district and subordinate courts, prepared in accordance with the National Policy and Action Plan, was approved by the government on 08.02.2007 with National Informatics Centre (NIC) as the implementing agency. Digitization of the court records and computerization has improved the productivity and efficiency of the courts. Computerization of the Registry of Apex Court has the beneficial effect of slashing down arrears. E-filing and video conferencing by dispensing with physical appearances saves time and resources and makes justice more easily accessible and less expensive. The e-Courts National portal (ecourts.gov.in) was launched on 07.08.2013 to provides cause-list, case status information in respect of more than cases (pending and decided) in the courts is playing a key role in bringing judicial reform and transparency in the judicial system.

CONCLUSION

In view of the aforesaid, several steps have been undertaken jointly by the Judiciary and Ministry of Law and Justice in light of the judge strength, managerial staff, infrastructural measures, needed to fill in the gaps created over generations, in order to facilitate fair and speedy disposal of cases. Today, we are in a transitional phase where the measures undertaken will need a basic reasonable span of time before meeting results. We need to ensure that these measures are effectively implemented for the simple reason that development and progress of any country stands on its two pillars of judicial and economic stability, which can only be established with mutual effort. In order to promote and ensure same, it is necessary to maintain an equilibrium of proper checks and balances between both the limbs of the Constitution, i.e., Legislature and Judiciary. It is only then that we can get rid of present issue of pendency in Indian courts.

[4] Webpage: http://lawcommissionofindia.nic.in/reports/report245.pdf

[5] Webpage: https://www.outlookindia.com/newswire/story/24-high-courts-short-on-judges-by-436-percent-with-505-lakh-pending-cases/964442

[6] Webpage: http://doj.gov.in/other-programmes/fast-track-courts

[7] Webpage: http://indianexpress.com/article/india/over-524-fast-track-courts-are-functional-says-union-minister-ravi-shankar-prasad-4590873/

[8] Webpage: http://www.huffingtonpost.in/vrinda-vinayak/clearing-the-backlog-the-_b_10520676.html