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### **Litigation Docket Management in India: Re-visiting towards the delivery of Justice**

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#### **Abstract**

In the present Indian scenario, it is found that there is no universal rule for case management, hence the litigation is piling up. The cases are managed as per the respective procedural codes by the stakeholders such as lawyers, litigants, and judges. The 14th law commission report has made a detailed study regarding the disposal of cases. The gravity of the problem is very high looking at the data of year-wise pending cases. The concept of the case management system developed in the Salem Advocates Bar Association Case does not have the power of mandatory implementation and hence not very successful. The second attempt by the government of India on a national machine for the delivery of justice and legal reform, a blueprint for judicial reforms is more suggestive in nature. The statistical data collected for the State of Telangana and Hyderabad also go to prove that more than 50% of the litigants have been denied justice for the simple reason of pendency of cases which is actually eroding the values laid down in the principles of rule of law and adversely affecting the common man's faith in justice delivery system. The study observed that civil cases do not have a speedy disposal in comparison to criminal cases and there is a speedy disposal of cases in urban areas than rural areas.

#### **Keywords**

Case management, Litigation docket, Judicial reforms, Speedy trial

**JEL Classifications:** J11, F43

## **1. Introduction**

If we see the Indian situation regarding docket management, we find that there is no universal rule for case management<sup>1</sup> but the cases are managed according to respective procedural codes i.e. civil procedure code, Criminal procedure code. If we study both the procedural codes, we find that there is no time management with respect to the cases, as how much time should be given to the cases and time duration within cases should be disposed of. Thus, usually in practice cases are managed by stakeholders, such as Lawyers, Litigants, and Judges. If we see the 14<sup>th</sup> Law Commission Report, report suggested that in civil cases the disposal time in a junior civil judge's court should be one year while in subordinate Judges Court it should be eight months<sup>2</sup>. It is also found from the same that it was a detailed report on the working of the judiciary and covers all most all problems relating to the judiciary and justice administration in India. In this regard, this paper focuses on the case management system with special reference to Telangana State.

## **2. Method**

A doctrinal research design used in the study has been used in the study. Only secondary data sources have been used for the study. The data has been collected from various sources like Journals, magazines, websites and other government sources. The statistical data used in the study has been collected from National Judicial Grid of India. The data has been analysed both qualitatively to collate the results.

## **3. Analysis and Discussion**

The preamble of the Constitution of India guaranteed the economic, political, and social justice to its citizens. But even after seventy five years of independence, vast majority of Indian citizens yet to get substantive justice. Backlogs and pendency of cases are the major problems in the specific area of justice system in India<sup>3</sup>.

At present, more than 40231814<sup>4</sup> cases are pending at different levels of courts across the country. It has been observed that the pendency of cases not only leading to the justice delay, but also creating pressure on the judges<sup>5</sup>. It is

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<sup>1</sup> Justice M. Jagannadha Rao (2009), Case Management and Its Advantages, [http://lawcommissionofindia.nic.in/adr\\_conf/Mayo%20Rao%20case%20mngt%203.pdf](http://lawcommissionofindia.nic.in/adr_conf/Mayo%20Rao%20case%20mngt%203.pdf) Last accessed on 12.09.2020

<sup>2</sup> 14<sup>th</sup> Law Commission Report, Chapter on Delay in Civil Proceeding, page 255. Available on <http://lawcommissionofindia.nic.in/1-50/Report14vol1.pdf> last accessed on 12-12-2020

<sup>3</sup> Chalakkal, K., & Prabhakaran, A. (2021). The Importance of Structural Reforms for an Efficient Indian Judiciary. *IUP Law Review*, 11(3).36-50 - 38

<sup>4</sup> National Judicial Data Grid, <https://njdg.ecourts.gov.in/njdqnew/index.php>, Last accessed on 25/10/2021

<sup>5</sup> Faizen, N. (2017), Need of the Court Management in the Present Scenario, *South -Asian Journal of Multidisciplinary Studies (SAJMS)*, 4 (6), 291-307 - 295

often said that litigation in India is passed down from generation to generation as part of a legacy.

Year and Percentage wise pendency of the cases in India

<b>Particulars</b>	<b>Civil</b>	<b>Criminal</b>	<b>Total</b>
0 to 1 Year	3613651(33.75%)	9993779(33.85%)	13607430(33.82%)
1 to 3 Years	3198619(29.88%)	8183342(27.72%)	11381961(28.29%)
3 to 5 Years	1614704(15.08%)	4449220(15.07%)	6063924(15.07%)
5 to 10 Years	1585185(14.81%)	4336963(14.69%)	5922148(14.72%)
10 to 20 Years	543495(5.08%)	2137757(7.24%)	2681252(6.66%)
20 to 30 Years	113966(1.18%)	361474(1.18%)	475440(1.18%)
Above 30 Years	36189(0.34%)	63470(0.21%)	99659(0.25%)

Source: National Judicial Data Grid, India

On analysing the above data, the authors find that in one in every five cases justice is delivered after a period of 5 years. Although 80 percent of cases are disposed of in five years the remaining 20 percent of the cases are taking a maximum period of 25 Years for disposal, which is equivalent to justice being denied to these litigants.

### **3.1 Development of cases management in India**

The case management system started developing after the *SALEM ADVOCATES BAR ASSOCIATION vs. UNION OF INDIA*<sup>6</sup>. It should be noticed that case management started developing with Supreme Court activism for speedy justice. The first attempt at drafting case management was done by the committee and that draft rule was known as "Case Flow Management Rules" for High Court and subordinate courts.

The Case flow management mandates to "Division of civil suits and appeals into tracks". Track 1 may comprise family matters, divorce, child custody, adoption maintenance, etc. Track 2 may consist of money suits, based on negotiable instruments, and suits based on which are based primarily on documents. Tracks 3 shall include suits concerning partition and property disputes, trademarks, copyright, and other Intellectual property matters. Track 4 shall include rent, lease, eviction matters, etc. The schedule for the completion of cases recommended was less than six months for Track1, within nine months for Track2, within one year for Track3 and within one and half year from the date of filing<sup>7</sup>.

Cases Flow Management, in its draft, requires that one or more judges of a court, or court appointed for the purpose, monitor the stages of each case assigned to different tracks at monthly intervals to ensure that cases are recommended to complete and make the right decision. Disposal within the time limit set for each

<sup>6</sup>AIR 2003 SC 189. - 295

<sup>7</sup>CONSULTATION PAPER ON CASE MANAGEMENT, available on [http://lawcommissionofindia.nic.in/adr\\_conf/casemgmt%20draft%20rules.pdf](http://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf), last accessed on 21-11- 2021

lane<sup>8</sup>. However, the cases flow management draft rules provide liberty to the judges and courts to transfer cases from one track to another depending upon the complexity and circumstances of the cases and keep control of the flow of every case<sup>9</sup>. The case flow management rules are not mandatory and it was left to the High Court and State government to adopt and implement case flow management rules in their respective territory. Many states are pioneering to adopt the case flow management and with compliance of the Case flow management 21 States<sup>10</sup> have adopted their cases flow management rules. The first state which adopted case flow management was Himachal Pradesh adopted in 2005 while Gujarat was the last to adopt it in May 2016.

The second attempt was made by the Government of India through the policy document on "*National Mission for Delivery of Justice and Legal Reform, A Blueprint for Judicial Reforms: Strategic Initiatives 2009-2012*"<sup>11</sup>. This policy document describes "Case management is a comprehensive system of management of time and events in a lawsuit as it proceeds through the justice system, from initiation to resolution of disputes"<sup>12</sup>. The objective of case management should be cost-effective litigation, speedy and prompt disposal of cases, guaranteeing the fairness, facilitating the settlement, and helping the courts through legal representativeness, instead of simply responding to the processes initiated by the practitioners.

Further, this document aims to encourage the parties to cooperate, identify problems early, encourage and facilitate the use of alternative dispute resolution mechanisms, set timetables, or manages the progress of cases on a regular basis. It is also expected and encouraged courts to actively manage cases. Review cases to identify discrepancies and deficiencies. The policy document also suggests that courts should establish a prearranged timetable of events and monitor the progress of litigation through the timetable. A "Scheduling Questionnaire" must be completed to enable the court to establish a tailored schedule that considers the parties' legitimate claims and the needs of the individual case.<sup>13</sup>

In 2011 Supreme Court further set directions that should be followed in civil proceedings. Further sets of directions were given Supreme Court in the matter of *Rameshwari Devi vs. Nirmala Devi*<sup>14</sup> case, the main directions include,

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<sup>8</sup> Draft Rule 2

[https://districts.ecourts.gov.in/sites/default/files/casflow%20management%20rules\\_0.pdf](https://districts.ecourts.gov.in/sites/default/files/casflow%20management%20rules_0.pdf), last accessed on 20-11-2021

<sup>9</sup> For details see the CONSULTATION PAPER ON CASE MANAGEMENT

<sup>10</sup> Surya Parkash (2016, July 25), Brining Case Flow Management on Radar, *Business Standard*, available on <https://www.pressreader.com/india/business-standard/20160725/281981786947262>, last accessed on 13-11-2021

<sup>11</sup> Available on [http://lawmin.nic.in/doj/justice/National\\_Legal\\_Mission-7NOV2009.pdf](http://lawmin.nic.in/doj/justice/National_Legal_Mission-7NOV2009.pdf), last accessed on 12-11-2021

<sup>12</sup> Ibid Page 18

<sup>13</sup> For detail report please see NATIONAL MISSION FOR DELIVERY OF JUSTICE AND LEGAL REFORM, A BLUEPRINT FOR JUDICIAL REFORMS: Strategic Initiatives 2009-2012, available on [http://lawmin.nic.in/doj/justice/National\\_Legal\\_Mission-7NOV2009.pdf](http://lawmin.nic.in/doj/justice/National_Legal_Mission-7NOV2009.pdf), last accessed on 12-11-2021

<sup>14</sup>(2011) 8 SCC 249, Para 52, available on <https://indiankanoon.org/doc/183635/> last accessed on 14-11-2021

1. The trial judge's responsibility and obligation to thoroughly review, check and verify the pleadings and other papers submitted by the parties. This is required immediately following the filing of civil lawsuits.
2. The Court according to the object of the Code must ensure the discovery and production of documents and interrogatories at the earliest according to the object of the Code.
3. Imposing actual, reasonable, or proper fees and/or mandating prosecution would significantly reduce the tendency for plaintiffs to introduce false pleadings and forged and manufactured documents. The Court must adopt a realistic and pragmatic approach in granting mesne profits.
4. Courts should grant ex-parte ad interim injunctions or stay orders with the utmost care and caution. Normally, defendants or responders should receive brief notice, and only after hearing from all parties involved should appropriate orders be made. Litigants who have received ex-parte ad interim injunction on the basis of false defence and false documentation must be punished adequately.
5. To achieve true and substantial justice, the principle of restitution must be applied fully and pragmatically.
6. Each case involves a human or business problem, and the court must undertake a sincere effort to find a just solution within the bounds of the law and in conformity with established legal and just principles.
7. If an ex parte injunction is granted in a particular case, the application for the injunction should then be decided on the merits following a priority-based expedited hearing for both parties.
8. The trial court shall set dates for all of the phases of the lawsuit, from the submission of written statements to the rendering of judgment, at the time the plaint is filed. The courts should then strictly adhere to the dates set forth in the timetable. In order to avoid disrupting the date set for the main suit, any interlocutory applications must be resolved between the hearing dates specified in the relevant lawsuit itself. If we see the last point of the direction, it is also the same as the case flow management which also suggests fixing a date for all events of the proceeding and conducting proceedings strictly.

The recent effort made by the Supreme Court was building National Court Management Systems (NCMS) in 2012<sup>15</sup>. Under the National Court Management System, four sub-committee were constituted for giving reports on the (a) Court Development Planning System (b) Case Management System (c) National Framework for Court Excellence (d) Human Resource Development Strategy. The sub-committee Case management system was headed by Justice A.M. Khanwilkar. The main recordation of the sub-committee includes.

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<sup>15</sup> National Court Management System: Policy and Action Plan, <https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf>, last accessed on 18-11-2021

1. Establishment of a "case management information system (CMIS)" to analyse the progress of case,
2. Appointment of Professional administrators who are having knowledge and real-time experience in the function of court management
3. digitalization of entire court records and integration them with the CMIS,
4. Establishment and assigning the cases to specialised courts and appointing the judges who are having expertise in that area.

### **3.2 Has Case management achieved its goal?**

Traditionally in the Indian legal system, the cases proceed as per the steps which are prescribed by the respective procedural code. When cases are filed by the plaintiff, or prosecution the cases are directed to the respective judge as per the court's jurisdiction and power to try cases. In the practical sense, lawyers and litigants manage cases as per their suitability<sup>16</sup>. In India, there are no uniform rules to expedite cases to every jurisdiction. Even though some of the High Court's come up with rules to expedite cases those rules can provide a temporary solution to clear huge pendency but there will be a question for newly accepted cases because there is no set time frame for these cases usually.

It has been practically seen that Indian Courts are very liberal to the defaulting lawyers, litigants, and other stack holders. If in a proceeding, the reply of the suit is not filed by the party of the cases, the lawyer is not present, the witness is not appearing, or the charge sheet is not filed, usually, the court grants the next hearing date without imposing any cost on the defeating party<sup>17</sup>. There may be reasons for not imposing the cost on the defaulting person but in practice, it encourages the litigant and their representative to make default when they need.

As we can see the example of the Telangana State

<b>Particulars</b>	<b>Civil</b>	<b>Criminal</b>	<b>Total</b>
0 to 1 Year	122001(37.48%)	202923(43.37%)	324924(40.95%)
1 to 3 Years	110538(33.96%)	157451(33.65%)	267989(33.78%)
3 to 5 Years	50522(15.52%)	73069(15.62%)	123591(15.58%)
5 to 10 Years	35264(10.83%)	31662(6.77%)	66926(8.43%)
10 to 20 Years	6537(2.01%)	2567(0.55%)	9104(1.15%)
20 to 30 Years	623(0.1%)	191(0.1%)	814(0.1%)
Above 30 Years	35(0.01%)	55(0.01%)	90(0.01%)

**Source:** National Judicial Data Grid, India

This data shows that civil cases do not have a speedy disposal in comparison to criminal cases. For civil cases to get disposed of it may take a period of 30 years and above which is too long litigation in the life span of the litigant.

Looking at cash flow management, the absence of a "case manager" raises the question of who monitors the progress of cases and reviews the scheduling process. Existing cash flow management does not create a special mechanism

<sup>16</sup>Supra Note 1, Page 9 available

<sup>17</sup> Dalat, S., & Dewan, B. (2022). Cause of pendency of cases in India: An analysis. International Journal of Health Sciences, 6(S1), 13248-13252. <https://doi.org/10.53730/ijhs.v6nS1.8313>

monitoring system other than creating a tracking system and time period to track cases. All responsibility for oversight and review rests with the existing court administration system, and it is clear whether the lower court or Supreme Court administration is working or what is the purpose of creating case flow management. This problem has been also recognized in the *Joint Conference of Chief Ministers of the States/UTs and Chief Justices of the High Courts*, wherein the agenda note it was stated that "The Judges of the High Court and subordinate courts may not have the required expertise in court management"<sup>18</sup>. Currently, responsibility for court administration, including data collection and management, rests with the judge, who may not be equipped to carry out this task.

### 3.3 Hyderabad Central Data

Particulars	Report		
	Civil	Criminal	Total
0 to 1 Years	21339(36.24%)	31796(36.42%)	53135(36.35%)
1 to 3 Years	22078(37.5%)	34705(39.75%)	56783(38.84%)
3 to 5 Years	9079(15.42%)	15071(17.26%)	24150(16.52%)
5 to 10 Years	5458(9.27%)	5106(5.85%)	10564(7.23%)
10 to 20 Years	879(1.49%)	535(0.61%)	1414(0.97%)
20 to 30 Years	31(0.06%)	50(0.06%)	81(0.06%)
Above 30 Years	14(0.02%)	45(0.05%)	59(0.04%)

**Source:** National Judicial Data Grid, India

In comparison to the above two data, the authors find that there is slightly better disposal of cases in Hyderabad city. This fact may be true to the reason for having more courts to dispose of cases. But still, in rural areas, this situation would not be the same in civil litigation and criminal litigation to get disposed of it takes not less than five years to 30 years. Thus, Justice delayed is Justice denied. This is proved true in the above data.

### 4. Conclusion

According to the doctrine of the separation of powers, the judiciary is an essential component of our state and the resolution of disputes is one of its fundamental duties. The cornerstones of the Indian legal system are the judiciary's impartiality, competency, and independence. However, a significant number of open cases have hampered the administration of justice and negatively impacted the prompt delivery of justice; for this reason, it is sometimes asserted that justice delayed is justice denied.

In addition to being an essential component of a fair trial, the right to a speedy trial is also a cornerstone of the international human rights philosophy. The requirement for a speedy trial has been reiterated by the Indian Supreme Court in several of its landmark judgments. Article 21 includes the principle of a speedy trial

<sup>18</sup>Agenda Notes Joint Conference of Chief Ministers of the States/UTs and Chief Justices of the High Courts, April 24, 2016, page 25, available on <http://doj.gov.in/sites/default/files/AGENDA-NOTE-CMCJ.pdf>, last accessed on 12-11-2021

as a crucial component of the fundamental right to life and liberty protected and upheld by our Constitution.<sup>19</sup>

“Speedy trial is considered one of the essential facets of reasonable, just, and fair procedure post”-Maneka Gandhi<sup>20</sup>.

One of the important duties of a democratic and welfare State is ensuring all of its citizens have equitable and effective access to the judicial and non-judicial conflict resolution system mechanisms for the purpose of resolving their legal disputes and upholding their basic and legal rights. However, the backlog of cases has weakened the right to prompt access to justice and undermined the ideals of the rule of law, which has negatively impacted the confidence of the general public in the justice delivery system. Increasing the number of courts, and other methods of alternative dispute resolutions may be one of the solutions for reducing the pendency of docket litigation.

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<sup>19</sup>Kartar Singh v. State of Punjab, (1994) 3 SCC 569  
Refer also HussainaraKhatoon (I) v. Home Secretary, State of Bihar [(1980) 1 SCC 81; Sunil Batra v. Delhi Administration (I) [(1978) 4 SCC 494

<sup>20</sup>Maneka Gandhi v. Union of India (1978) 1 SCC 248



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