

Judicial backlog and need of special courts

Mr. Aman Kohli (LLB)

Campus law Centre, Faculty of law, University of Delhi (India)

ARTICLE DETAILS

Article History

Published Online: 19 June 2018

Keywords

Courts, Delay, Backlog, Judicial System, Special Courts, Procedural Laws

ABSTRACT

Martin Luther once said, "Injustice anywhere is a threat to justice everywhere" which is rightly the present scenario of India. We live in a largest democratic country like India where people are governed by the laws of the land, it is obligatory to deliver justice on time to the victim to prevent the miscarriage of justice. It is serves as a shield of innocence and the guardian of civil right well. There are approximately 2.7 crore cases pending in various courts in India which means there is no meaning for justice. People unfortunately fall victim to injustice. Majority of the Indians are poor and illiterate but still they somehow manage to go to courts to get justice by paying their hard-earned money. This has been a curse and a major drawback to Indian judicial system. In short terms it means that if the justice is delayed by any cause it is not good for the society by any means. In this report I have tried to find out some causes of delay and also some suggestions to eradicate it.

1. Introduction

According to National Judicial Data Grid statistics there are 2,61,73,356 cases pending in various courts of India, and are rising with each passing day. The minimum average period taken by the courts to complete any trial in India is six years, which generally increase if the case is taken to the Supreme Court. The accused gets punished after years of trial and by that time either the victim or the accused dies, so it serves no purpose. As the saying goes, "justice delayed is justice denied".

Reasons of this delay:-

- Lack of Infrastructure support.
- Human resource
- Transfer of Judges.
- Political Influence.
- Absence of time standards or goals in case management practices .
- Lawyers have a low sense of obligation to the court and do not adequately prepare.
- Lawyers have too much influence over scheduling .
- lack of quality information upon which to monitor and manage the caseload .
- Excessive adjournments

Steps Taken By The Legislature:-

1. Arbitration, Conciliation & Mediation centres.
2. The concept of plea bargaining system was introduced in 2005 and enacted in 2006 on the recommendation of 142nd and 154th law commission report.
3. Tribunals .
4. Special courts.
5. Lok Adalats.
6. Fast track Courts.

2. Special Courts

Special courts are the bodies within the judicial branch of government that generally address only one area of law or have specifically defined powers. The special courts in India have a limited jurisdiction as they are established for a purpose which is established under particular statute. Its purpose is to deal with cases in a speedy manner as the frequency of the cases under a particular statute may be more than a court can deal with due to the elongated procedure.

Nearly 5 decades ago the Supreme Court in the case titled in **Re: The Special Courts Bill, 1978** which was related to the establishment of special Court, the court had thoroughly examined the competency and tractability of the Legislature by which it is empowered to establish such courts. In this case the court had given a definition of a special court as **'a court which was established under an enactment which will only deal with special class of cases under a time limit and a very simple procedure.'**

The parliament have from time to time felt the necessity of establishing special courts in order to make the whole judicial system more efficient. The Legislature has through various laws orders ordinance tried to introduce special courts on few occasions with the intention to enable quick and efficient judicial system. If we compare the requirement of setting up of special court as compared to the actual number that have been set up one would find out that it is nowhere near to the mark.

As per the data collected by VIDHI Centre of Legal Policy, a total number of 764 Central laws were enacted and amended between the year 1950 to 1980 and out of these laws only 4 statutes mention the words "special or designated courts", whereas from the year 1982 to 2015 there were actually 25 statutes that were passed or amended and had expressly mandated the establishment of special courts as intended by the Legislature.

Various laws have used many terms in respect to the special courts such as setup, designate or established etc. Despite providing for the establishment of special courts the

concerned state or central government has followed the procedure only to designate under most of the enactments. This is quite obvious that in setting up of a special Court it require a new infrastructure and facilities as well as human resource. It must be noted that in most cases where the existing courts are designated to be a special courts the real objective that is the speedy disposal of cases seems to have been defeated altogether. The law which has been inducted in the last three decades I have considered the establishment of special courts as a immediate and quick remedy for all the disputes or delay in trial.

3. The cobra effect

Although the legislature wants to establish the special courts so that a burden on judiciary could be lowered down but the fact is that the state government by only designating our regular court as a Special Court it only take a toll on the regular Court which are being given an additional responsibility. As it is assumed that special courts are the Panacea for judicial efficiency there is hardly any evidence to believe that. The central government has initiated the process to setup at least 50 such courts to decide and speedily dispose of the cases involving the member of parliaments and legislative assemblies high dignitaries bureaucrats etc. The 11th Finance Commission has advised the establishment of 1734 Fastrackcourts in order to deal with the judicial backlog. Over 25 special courts were set up between 1950 to 2015 through various Central and state legislations.

The Supreme Court had only examine the competency of the Parliament to establish such courts but policy question

relating to the necessity of establishing such special courts have never been analyzed. There are over 2.8 crore cases backlog in the whole judicial system of the three tier of judiciary high court supreme court and district courts. Everyday a number of cases which are filed is far more than the number of cases disposed of.

Our India is now in that phase where it can't afford to lose any more time so that the overall progress of the nation could be stalled. There is absolutely no doubt that the judicial system is much overburdened as far as the number of cases pending in our judicial system. The Parliament as well as the respective state governments have to co-operate each other in every aspect so that the whole judicial mechanism could run more effectively and efficiently. The central government has already started working on this by making express provisions of establishing of special courts in the acts like Prevention of Corruption Act, Money Laundering Act, SEBI Act, National Investigation Agency Act, Schedule Caste and Scheduled Tribes (Prevention of Atrocities) Act and many more. I hope this problem which is like an impediment for the growth of the nation be eradicated at the earliest.

4. Suggestions

1. Increase the strength of the judiciary five-fold.
2. Set up more special courts instead of designate.
3. Keep courts open 365 days a year.
4. Modernization of courts.
5. Fix a time frame for the cases.
6. Periodic training of the judges.
7. Improved infrastructure.

References

1. Firstpost.com
2. <https://vidhilegalpolicy.in>
3. www.thehindu.com
4. Manupatra.co.in
5. Law Herald, Issue 2 , May 2015.