

ADDRESSING DELAYS IN INDIAN DISTRICT COURTS –
IMPROVING EFFICIENCY AND REDUCING DEMAND

BY

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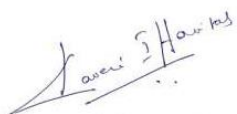
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EXECUTIVE SUMMARY

As a cornerstone of the world's largest democracy, the Indian judicial system, is currently grappling with approximately 50 million cases that are growing each day. This judicial pendency impacts about 35% of India's households. The problem is pervasive, and the Indian district courts are unable to cope up with the demand for justice. There is an urgent need for a comprehensive study on the increasing case load - why the reforms proposed for a century have not worked, and how the situation can be remedied. This the approach undertaken in this research study. This thesis is consciously titled as “**Addressing Delays in Indian District Courts – Improving Efficiency and Reducing Demand**”. The research study specifically takes an approach that proposes ways to improve efficiency and reduce demand on the judicial system – both are very novel and pragmatic approaches to tackle the dogged and mounting case pendency challenge that Indian district courts face. Combined, they have a potent solution to India's dogged problem of mounting case pendency.

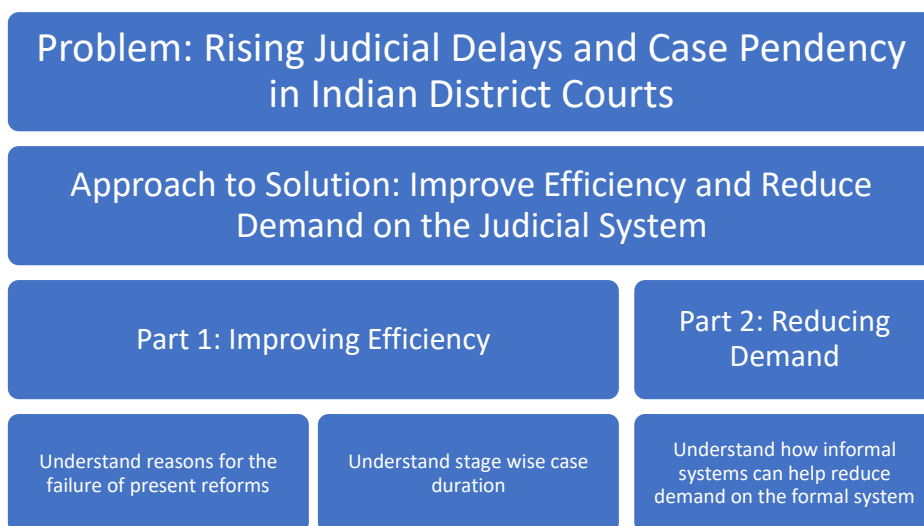
The approach undertaken in this research study leverages both quantitative and qualitative research methods to get a comprehensive understanding of the increasing case load - why the reforms proposed for a century have not worked, and how the situation can be remedied. The research examines the experiences and perspectives of district court judges through semi-structured interviews, observations, and document analysis reveals three primary themes - feelings of being overburdened, a lack of confidence in the system, and a sense of disempowerment among judges. Additionally, the research analyses the real case data from district courts and investigates the stage wise case duration to draw inferences on case delays. This reveals structural flaws in the justice system that are beyond the control of judges and the need for a more comprehensive view on reforms. Overall, this pioneering research gives a comprehensive understanding on the complex issue of judicial delays in India. It is equipped with the rigour to inform policy recommendations to remedy the situation in a sustainable and systematic manner.

Research Questions

Overall, the focus of the study is to propose policy reforms to improve efficiency of the Indian district courts and reduce demand on the Indian judicial system. Consequently, this means understanding (1) the reasons for the failure of existing efficiency reforms (2) the micro details of the case flow through various stages, and (3) the potential of informal institutions to reduce the inflow of cases into the formal system. These questions were answered by researching deeper into the following sub-questions:

- RQ1: What is the nature of resistance to efficiency reforms from within the judicial system?
- RQ2: What are the fine-grained procedural reasons for delays of court cases?
- RQ3: How can community justice systems integrate with the formal justice systems?

We can present our approach through the following infographic:



Key Conclusions

Before we delve deeper, at the outset we present the key conclusions derived from different sections of the research undertaken. These conclusions will be followed with relevant recommendations for policy reform.

Conclusions About Resistance to Efficiency Reforms in Indian district courts

We adopted a phenomenological approach to understand the challenges of district court judges in implementing efficiency reforms. The research findings illuminate a complex landscape of obstacles from the judges' perspective hindering the integration of efficiency reforms within the judicial system. These findings coalesce into three overarching themes: "Overburdened," "Lack of Confidence in the System," and "Disempowerment."

The "Overburdened" theme underscores the paramount challenge of workload management confronting judges. Factors such as inadequate training and resources, political pressures from lawyer lobbies, the mounting stress of courtroom proceedings, an extensive non-judicial workload, and an increasing caseload collectively contribute to the substantial burden carried by judges.

The theme of "Lack of Confidence in the System" draws attention to systemic issues within the judicial framework that erode trust and confidence among judges. They perceive Case Flow Management (CFM) rules as arbitrary and out of touch with practical realities. Moreover, they contend that reform initiatives lack an appreciation for the unique dynamics of individual courts and fail to allocate the necessary resources for effective implementation. This lack of alignment in incentives further hampers their willingness to embrace these reform guidelines.

The "Disempowerment" theme reveals a pervasive sentiment of frustration and helplessness among judges, stemming from factors such as client unawareness, frivolous litigation, insufficient support from the government, and limited opportunities for career advancement. Judicial personnel often find themselves ensnared in a system that fails to adequately acknowledge or address these pressing concerns. In essence, these conclusions offer a comprehensive understanding of the multifaceted challenges faced by judges in their pursuit of judicial reform within the system.

Conclusions from Analysing Stage Wise Case Flow Duration in Indian District Courts

We analyzed the case data from district courts and investigated the stage wise case duration to draw inferences on case delays. The research findings shed light on a critical aspect of the performance of district courts in India, that has a far-reaching implication for the judicial system's efficiency.

Our research brings to light the substantial time that cases spend in stages outside the courtroom, encompassing various phases like appearance and evidence collection. Crucially, these prolonged durations often lie beyond the control of judges and are exacerbated by the understaffed nature of the justice system. This revelation underscores the multifaceted challenges confronting the Indian judiciary. While judges play a central role in the adjudication process, our findings emphasize that delays and inefficiencies are not solely attributable to their actions or decisions. Instead, they are influenced by systemic factors, including dependence on law enforcement agencies and the availability of resources and staff. These factors significantly impact the pace of case progression. Consequently, our research underscores the urgency of conducting a comprehensive examination of the broader structural issues within the judicial system that impede its capacity to manage cases efficiently and expeditiously. Addressing these systemic constraints is imperative for instigating meaningful reform and enhancing the overall efficiency of the Indian judicial system.

Conclusions on Integrating Community Justice Systems with the Formal Judicial System

We conducted a phenomenological study to understand the experience of a tribal community that has recently seen their traditional justice system receive formal recognition and support. The research findings have unveiled three distinct themes that vividly portray the profound impact of PESA (Panchayats Extension to Scheduled Areas) Act on both tribal justice systems and cultural identity within the Palghar region. The first theme, "Cultural Integration of Customary Laws," underscores the pivotal role of tribal customs in shaping the community's identity. These customary laws transcend mere guidelines; they represent the evolving essence of tribal heritage. The concept of 'Significance and Evolution' highlights the dynamic nature of these laws, enabling them

to adapt to changing times while preserving tradition. Moreover, the concept 'Acceptance and Cultural Validation' emphasizes the pride with which these laws are embraced, and their 'Impact on Community Justice' is evident in their commitment to restoration and harmony rooted in community traditions.

The second theme, "Accessibility and Affordability of Community Justice," underscores the inclusive nature of the tribal justice system. It guarantees access to justice for all, regardless of geographical proximity or financial capacity, rendering it 'Geographically and Financially Accessible.' Furthermore, the absence of intermediaries fosters transparency, as illustrated by the 'Elimination of Intermediaries,' leading to swift, enforceable decisions that ensure timely justice. This approach aligns seamlessly with community values, as highlighted by 'Swift and Enforceable Decisions.'

The third theme, "PESA Support to Customary Laws and Institutions," shines a spotlight on PESA's transformative role in connecting customary laws with formal legal frameworks. 'Community Participation' emerges as a linchpin in preserving customary laws and fostering productive dialogue among stakeholders. Additionally, the concept 'Empowering Community Judicial Bodies' underscores the reinforcement of these bodies' authority and their crucial role in maintaining social order in accordance with tribal customs. Lastly, the concept 'Creating Culturally Accessible Justice' ensures that justice not only becomes accessible but also aligns harmoniously with cultural values.

Collectively, these themes, voiced by the Palghar tribal community, provide a comprehensive and illuminating depiction of the far-reaching influence of PESA in reconfiguring tribal justice systems while simultaneously preserving the rich tapestry of cultural identity.

Key Policy Recommendations

Here are the key policy recommendations proposed to improve efficiency and reduce demand on the Indian judicial system.

Recommendations To Reduce Resistance to Efficiency Reforms

1. **Review the implementation of the CFM rules:** It has been 15 years since the CFM rules were promulgated and a comprehensive study of their implementation has not been undertaken. A rigorous quantitative study of the implementation of CFM rules needs to be undertaken.
2. **Publicly acknowledge the outcomes:** Once we have the results of the above study, we should release them in the public domain. This builds confidence in people that the policy makers are willing to reassess and reform. Assuming that the results are a mixed bag, we will have some successes and some failures. The positives as well as the lacunae need to be presented with full transparency. Along with this a roadmap must be presented for how the implementation will be improved for the next phase. These steps are listed below.
3. **Consultative process to redraft the CFM rules:** One of the key emergent themes from our study says that a consultative process was not followed by the High Courts. It is important that this exercise is done by one of the high courts first. All stakeholders including district court judges, bar association representatives, political executives, academicians should be consulted in redrafting the rules. The lacunae in implementation must be discussed and deliberated upon.
4. **Pilot implementation in one district:** Once there is a consensus on the revised CFM rules, the implementation should be piloted in one of the districts under the above high court. This will allow a very controlled study on the execution. However, before the implementation, larger reforms might be needed both within and outside the judicial system. These reforms should be implemented to the extent possible to ensure the success of the revised CFM rules. Capacity building of various stakeholders should be done before the implementation. This is also one of the emergent themes from our study. In short, macro changes and capacity enhancement should be undertaken before the revised rules are piloted.
5. **Continuous monitoring of pilot implementation:** The pilot implementation should be continuously monitored through live dashboards. This allows for

quick amendments where challenges are seen and documentation of the successes. A comprehensive documentation of the implementation needs to be done to enable replication in other districts and states.

6. **Phase-wise roll out to the entire country:** With a tightly controlled pilot implementation of the revised CFM rules, it is very likely we will have more success than the present. The results of the pilot implementation should be shared with the people and the relevant stakeholders in the judicial system. It helps build confidence and a sense of ownership. The pilot implementation should be replicated in the state(s) under the High court first and then across the entire country. Successes should be celebrated, and appropriate incentives need to be given.
7. **Periodic revaluation and modifications:** While theoretically this process seems right, the implementation will have roadblocks, especially when the implementation is scaled nationally. There needs to be constant monitoring and appropriate modifications to factor the diversity. The data collected through the monitoring of the implementation will be immensely useful for larger judicial reforms and for formulating other policies. An academic study of the same needs to be undertaken.

Recommendations To Improve Efficiency of Indian District Courts

1. **Integrated View of Judicial System:** The recommendation underscores the imperative of considering the judicial system as interdependent with other law enforcement agencies, especially the police. By initiating comprehensive police reforms that focus on improving 'Evidence Collection' and 'Appearance,' one can effectively reduce bottlenecks and streamline the judicial process.
2. **Academia-Judiciary Collaboration:** This policy advice highlights the need for a strong collaborative relationship between academia and the judiciary. The idea is to employ the research capabilities and unbiased perspectives of the academic sector to inform and drive policy reforms within the judiciary. A particular focus should be on enhancing transparency concerning Case Flow

Management (CFM) rules, especially in terms of the rationale behind case tracks and their associated time limits.

3. **Promotion of Open Data:** Open data is crucial for fostering transparency and accountability within the judiciary. The availability of eCourts data should be leveraged for quantitative research on case flow and court performance. Furthermore, civil society, academia, and media should be engaged in using this data for informed advocacy, thereby enriching the culture of accountability within the system.
4. **Public Awareness on CFM Rules:** Public awareness regarding the CFM rules introduced in 2007 needs to be amplified. Despite a backlog of nearly 50 million pending cases in India, these rules have not received due attention. By increasing public awareness and understanding of these rules, their effective implementation can be propelled forward, thus fostering a sense of shared responsibility in judicial administration.
5. **Policy Agility:** The recommendation calls for a more agile policy framework within the judicial system. As technological advancements, new legislation, and societal changes have evolved over the years, the existing CFM rules have become outdated. Therefore, revisiting and adapting these rules to meet current and future challenges is crucial for a resilient judicial system.
6. **Capacity Building:** Lastly, there is a dire need for capacity building within the judicial system. Judges and court staff should be provided with comprehensive and ongoing training to adapt to new legal processes and technologies. This recommendation stresses the importance of adequate resource allocation and institutional support to ensure the effective administration of justice.

Recommendations To Formalize the Community Justice Systems

1. **Expand PESA Awareness:** Increase public awareness about the PESA Act, particularly among tribal communities that stand to benefit from it. Engage civil

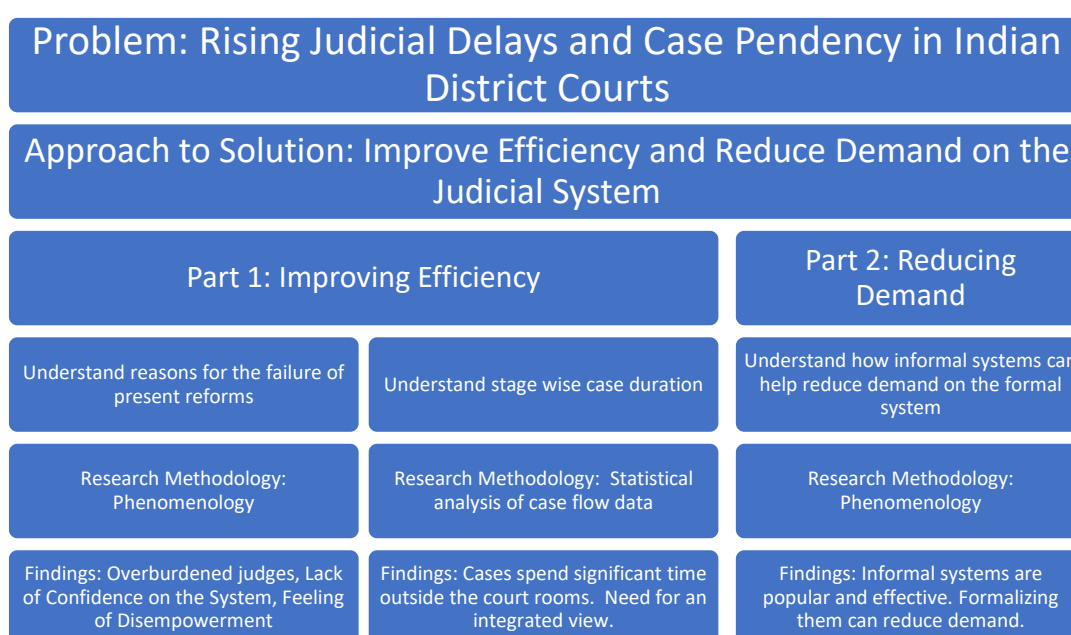
society organizations to spearhead this awareness campaign, given the political sensitivities that make it challenging for state governments to promote PESA.

2. **Formalize Traditional Institutions:** Address the friction between traditional and modern institutions by formalizing the traditional systems. This could involve codifying customary laws and officially documenting the proceedings of traditional justice bodies like the Panch. Advocate for the formal legal system to accept arguments and evidence from these traditional institutions, all while retaining their restorative character.

3. **Adapt and Scale PESA-Like Laws:** Examine the potential for applying the principles and successes of the PESA Act to other administrative units such as Gram Panchayats in India. Consider the international applicability of such laws by encouraging other countries to establish decentralized, village-level restorative justice systems based on the Indian experience. The goal is to alleviate the burden on central judicial systems and to provide quicker, more culturally attuned justice at the local level.

Summary

A summary of our approach and findings can be captured in the infographic below:



Judicial delays and increasing case backlogs have been long-standing concerns in the Indian judicial system, especially in district courts. Addressing this challenge requires a systematic approach that both improves the efficiency of the existing system and seeks innovative solutions to reduce the incoming demand.

Problem Statement: Rising Judicial Delays and Case Pendency in Indian District Courts

The magnitude of the challenge can be gauged by the increasing number of unresolved cases and the extended time taken to dispense justice, leading to a loss of confidence in the system and feelings of disempowerment among the public.

Approach to Solution:

To address this complex issue, our solution is two-pronged:

1. Improving Efficiency

- 1.1. Understanding Reasons for the Failure of Present Reforms. Phenomenological research was employed to delve deeper into the lived experiences of stakeholders within the judicial system. This qualitative method allowed for an in-depth understanding of the reasons behind the failure of current reforms. The primary factors contributing to inefficiencies include Overburdened judges leading to a slowed judicial process, a pervasive lack of confidence in the system, a prevailing feeling of disempowerment among those seeking justice.
- 1.2. Understanding Stage-wise Case Duration. Statistical analysis of case flow data was carried out to identify bottlenecks and inefficiencies at different stages of the judicial process. The data revealed that cases spend a significant amount of time outside courtrooms. An integrated view of the entire judicial process, rather than a siloed approach, is essential for meaningful reform.

2. Reducing Demand

- 2.1. Understanding How Informal Systems Can Help Reduce Demand on the Formal System. A phenomenological approach was again utilized to understand the role and effectiveness of informal judicial systems in India.

Informal systems, such as community mediation and traditional dispute resolution mechanisms, are popular and effective in resolving disputes. Formalizing these systems or integrating them with the formal judicial process can play a significant role in reducing the demand on district courts.

Addressing the issue of judicial delays and case pendency in Indian district courts necessitates a dual strategy: enhancing the efficiency of the existing formal system and leveraging informal systems to reduce overall demand. With a comprehensive understanding of both the inefficiencies within the current system and the potential of informal systems, policymakers and stakeholders are better equipped to devise and implement effective reforms.

Limitations in the Study

Limitations in phenomenological research with judges

In conducting this study, we strategically employed a phenomenological research method, to delve into the concept of "resistance to efficiency reforms." While phenomenological research has its unique set of challenges, we systematically navigated these through well-established procedures and methodologies.

One often-cited limitation of phenomenological research is its emphasis on in-depth, contextual insights at the expense of broad generalizability. However, our study used purposive criterion sampling to create a homogenous sample of participants, all of whom have experienced the phenomenon under study. This approach led to thematic saturation, suggesting that the sample size was indeed sufficient for the research aims.

It is also noted that phenomenological research can be susceptible to researcher bias during the data interpretation stage. To offset this, we applied the transcendental phenomenology approach and rigorously bracketed our assumptions and preconceptions. This technique minimized the intrusion of our own viewpoints, thereby enhancing the validity of the data analysis.

Recruiting a pool of participants suitable for phenomenological scrutiny, especially within sensitive sectors like the judiciary, can be a formidable task. Nevertheless, we

were able to gain the invaluable perspectives of judges who volunteered to share their experiences anonymously.

Further, while the research method is time and resource-intensive, requiring extensive interviews and data analysis, these investments were necessary for the depth of understanding we sought to achieve.

In conclusion, although phenomenological research comes with its set of challenges, the methodologies and frameworks employed allowed us to navigate these effectively. The limitations, therefore, should be understood not as drawbacks but as contextual factors that shape the interpretation and application of our research findings.

Limitations of the stage wise case duration research

Our quantitative research involved analysing eCourts data to establish statistical significance between variables, but we acknowledge several potential limitations. Firstly, the data quality from eCourts was poor due to manual conversion from paper to digital, resulting in typos, incorrect entries, inconsistencies, incompleteness, and outliers. Cleaning the data addressed some issues but may have introduced false positives and negatives. Secondly, the scope of our research was limited to a specific district, Sonipat, which may not always be representative due to dynamic conditions. Since we used data from several decades since independence, we have a strong reason to believe that the sample district is a reasonable choice and would continue to be representative for the near future. Lastly, researcher bias can affect variable selection, analysis methods, and result interpretation. We mitigated this by choosing diverse case types but acknowledge potential for additional variables. Complex phenomena like emotions and attitudes may not be fully captured by quantitative research, requiring complementary qualitative methods. We conducted qualitative research on resistance to efficiency reforms, but variations in time periods and interview subjects introduce limitations. In conclusion, we recognize the limitations of our quantitative research and complemented it with qualitative methods for a more comprehensive understanding of the studied phenomenon.

Limitations in the phenomenological research on community justice systems

The phenomenological research has notable strengths but also some acknowledged limitations. Firstly, its limited generalizability is evident as our phenomenological

research focused on tribal communities in Palghar district, making it challenging to extend findings to other populations. Secondly, potential translator bias in some interviews introduces the possibility of interpretation bias. Despite efforts to minimize bias, the translator's perspective may have influenced data analysis. Thirdly, the study's difficulty in replicability stems from its single-district focus, limiting the ability of other researchers to validate findings. Lastly, the research was time-consuming and resource-intensive due to extensive data collection and analysis, making it more challenging compared to methods utilizing secondary data sources. In conclusion, while phenomenological research in Palghar provided detailed insights, its limitations should be considered in the context of the specific study.

Future Research

- **Extend the scope of research:** The research done primarily focused on district courts, because 87% of the case pendency lies there. However, the research can be extended to the higher courts i.e., High Courts and the Supreme Court. Though the case pendency here is lower in terms of numbers, the impact of cases pending at a higher court is much greater.
- **Simulation to show impact of targeted reforms:** While the scope of the present research was to show that there are specific stages in the case flow that take significant time, we didn't get into the potential impact if the bottlenecks are released through procedural reform. A modelling of the case flow as an operations process and potential changes in specific stages can be a powerful way to demonstrate the impact of reforms. It will also give a quantitative measure of the cost-benefit impact of the reforms.

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CHAPTER 1: INTRODUCTION

The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

– Article 39A of the Indian Constitution

Chapter Overview

Human history has been defined by struggles for justice. The defining wars, revolutions and upheavals in our history have had justice as their common quest. In its simplest sense, to a person who has been wronged, justice is delivered when his wrong is put right. The concept of justice is fundamental in any society, as it ensures that individuals receive fair treatment and that the rule of law is upheld. The forum which the individual can approach, and which decides the disputes is the judicial system or the courts. Independence, fairness, and certainty are important to the working of a judicial system. However, these attributes will be relevant only if the system is timely. Without timely delivery of justice an independent and fair judiciary serves no purpose. Timely justice is crucial because it prevents the escalation of conflicts, fosters respect for the legal system, and upholds human rights.

The Importance of Timely Justice Delivery

“There is no better test of the excellence of a government than the efficiency and independence of its judicial system.” - Lord Bryce, British academic, jurist, historian (Bryce, 1929).

Timely justice is of utmost importance in any society. This needs to be emphasized because this quest has been the motivating factor behind the research undertaken.

Firstly, timely justice helps to prevent the escalation of conflicts. When people feel that their grievances are not being addressed, they may resort to taking matters into their

own hands. This can result in a cycle of violence, revenge, and retaliation that can spiral out of control. By providing timely justice, the legal system can act as a mediator and prevent these conflicts from escalating. For example, if a criminal case is resolved quickly, the victim and their family can move on from the trauma and avoid feeling the need to seek revenge.

Justice delivered in time fosters respect for the legal system. If people feel that justice is delayed or denied, they may lose faith in the legal system and resort to taking matters into their own hands. This can lead to a breakdown of law and order, as people may start to see violence as the only means of obtaining justice. In contrast, when the legal system is seen as fair and efficient, people are more likely to respect its authority and obey its laws.

Timely justice is important to uphold human rights. When justice is delayed, individuals may be held in detention or prison for extended periods of time, even if they are innocent. This can have serious consequences on their mental health and well-being. Timely justice ensures that individuals are not held in custody for longer than necessary and that they receive a fair trial in a reasonable timeframe. Furthermore, timely justice ensures that victims receive the justice they deserve and that perpetrators are held accountable for their actions.

When justice is delayed, individuals may resort to taking matters into their own hands, which can lead to a breakdown of law and order. Therefore, it is essential for the legal system to prioritize timely justice and ensure that individuals receive a fair trial in a reasonable timeframe. By doing so, we can ensure that justice is not only served, but that it is served in a way that promotes peace, order, and respect for the law.

Constitutional Guarantees of Justice

For any democratic state, administration of justice is a State obligation and perhaps the most important function. The Constitution of India lays enormous emphasis on justice and commits 'Justice - social, economic and political' in the preamble. Even though, this goal is placed at the highest pedestal, administration of justice continues to be the biggest challenge for the Indian democracy. In particular, intractable caseload, ever increasing case pendency and the consequent delay in civil and criminal cases has become a major cause of concern for the leadership at all levels - judicial, executive

and legislative. As mentioned above, article 39A of the Constitution of India directs the state ‘*to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities*’. If the Indian judicial system continues to deteriorate, these ideals will never see light of the day.

Unfortunately, in India today the judicial system has failed to deliver justice in a timely and efficient manner. ‘Delayed justice’ is a matter of common opinion in India. A survey (Narasappa & Murthy, Access to Justice Survey, 2016) conducted across 305 locations in 24 states showed that 90% of the people in the country feel that the judicial system is slow, and the reason is that judges do not pass judgments in time.

Overview of the Judicial System in India

India being a living and continuing ancient civilization, the Indian judicial system is one of the oldest in the world. Village *panchayats* have formed an integral part of national life since times immemorial. While empires rose and fell, the village *panchayats* in India ensured that democratic traditions continued to flourish at a decentralized level. *Nyaya panchayats* played the important role of dispute resolution in villages. These institutions were replaced by formal courts by the British during their colonial rule. The current formal system is a continuation of the colonial era. The legal framework has been laid out in the Indian Constitution and the legal system derives its powers from it. The Constitution has set up a single integrated system of courts to administer both the Union and State laws. At the apex is the Supreme Court, followed by 24 High Courts which cater to one or more states. At the lowest level are the subordinate courts which comprise of the district courts and other lower courts. Apart from these judicial bodies, there are numerous quasi-judicial bodies called tribunals which are involved in dispute resolution. They hear cases limited to their specified area.

The Colonial Legacy on Indian Legal System

“We wanted the music of veena or sitar, but here we have the music of an English band.” - Kengal Hanumanthaiah, on November 17, 1949, Member of the Indian Constituent Assembly (Hegde & Kishore, 2019).

India in 1947, described as desperately poor, largely uneducated, and inexperienced in parliamentary democracy, lacked the traditions and conventions foundational to Westminster democracy. This gap allowed Indian Republic’s founding fathers,

including Nehru, Ambedkar, and Patel, to craft a system that, while borrowing the Westminster model's form, diverged significantly in substance, creating a distinct 'Eastminster' typology (Singh, 2022).

Constituent Assembly member Kengal Hanumanthaiah's initial disappointment with the Constitution's anglicized elements underscores a broader sentiment that it lacked indigenous influence, echoing calls for decolonizing India's political and constitutional systems. The Indian Constitution's creation was not merely an imposition of foreign principles but a significant adaptation to suit India's context.

Key distinctions of the Indian Constitution include its extensive detail and length, aiming to provide clear guidance in the absence of entrenched traditions. It was designed to serve as a pedagogical tool to educate Indian institutions and their personnel on democratic governance. The Constitution embedded revolutionary social aims, allowing for individual rights to be overridden by state-led social initiatives, reflecting Nehru's socialist policies. It granted the executive branch unprecedented legislative powers, such as promulgating ordinances, highlighting a deliberate move towards executive supremacy to facilitate Nehru's social revolution and address India's unique exigencies. These adaptations were not mere concessions but deliberate attempts to root the Constitution in Indian realities. This approach has resulted in a democracy and constitutional structure that is recognizably Indian and distinct from the Westminster model in both form and substance.

The Indian judicial system is predominantly based on the common law system, which originated in England and is fundamentally built upon the concept of judicial precedent. This system, also referred to as the case law system, necessitates judges to refer to past decisions of higher courts (precedents) to guide their rulings in cases that bear similarity. The essence of the common law system lies in its flexible and evolving legal framework, which is continually shaped by judicial decisions. It emphasizes the interpretation and application of legal principles over reliance on codified laws or statutes, placing significant emphasis on the role of judges in the legal process. Decisions from higher courts are binding on lower courts, underscoring the hierarchical nature of legal precedent.

However, to characterize India's legal system as purely common law would oversimplify its complexity and diversity. Notably, the state of Goa operates under a civil law system, largely influenced by its Portuguese heritage, and India as a whole maintains a uniform civil code in certain areas. This blend of legal traditions highlights the unique hybrid nature of the Indian legal system, which incorporates elements of both common and civil law systems.

The historical evolution of India's legal framework is deeply influenced by its colonial past (Stokes, 1959), where figures such as Jeremy Bentham and his disciple Thomas Babington Macaulay played pivotal roles. Bentham, critical of the common law for its perceived inefficiencies and reliance on judicial discretion, envisioned a codified legal system for British India. His vision was largely realized through the efforts of Macaulay, who, as the chair of the first Law Commission, introduced a series of codified laws. These laws, including the Penal Code, Civil and Criminal Procedure Codes, Law of Contract, and the Personal Laws governing Hindus and Muslims, were instrumental in structuring the legal framework of India. These codifications, inspired by the Napoleonic Codes admired by Bentham, aimed at providing clarity and predictability to the administration of justice, offering illustrative examples and clear directives for judges in handling disputes.

The enactment of these codes marked a significant departure from the purely precedent-based common law system, embedding elements of codified law within India's judicial system. This integration of codified law with judicial precedent has created a unique legal landscape in India, where the administration of justice is not solely reliant on the interpretation of judges but is also guided by written statutes. The coexistence of these systems allows for a more structured and predictable legal environment, mitigating the potential chaos that could arise from an exclusive dependence on judicial discretion.

India's legal system, therefore, cannot be neatly categorized into the traditional dichotomy of common law and civil law systems. It is a complex amalgam that reflects the country's colonial history, diverse cultural heritage, and contemporary legal challenges. This hybrid system underscores the adaptability and resilience of India's legal framework, capable of incorporating varied legal principles and practices to meet the evolving needs of its society.

Adversarial System

Another, key aspect of Indian judicial system is that it follows the adversarial system for administration of justice (Basu, 2022). The adversarial system for the administration of justice is a legal system in which two opposing sides, usually the prosecution and the defence, present their cases to an impartial judge or jury. The adversarial system is based on the principle of "equality of arms," which means that both parties have an equal opportunity to present their case and challenge the other party's evidence.

In the adversarial system, the prosecution must prove the defendant's guilt beyond a reasonable doubt, and the defence has the opportunity to challenge the prosecution's evidence and present their own evidence and arguments. The judge or jury then makes a decision based on the evidence and arguments presented by both parties.

The inquisitorial system, on the other hand, is a legal system in which the judge takes an active role in investigating the case, gathering evidence, and questioning witnesses. In the inquisitorial system, the judge is responsible for determining the truth of the matter and making a decision based on the evidence presented.

One of the key differences between the adversarial and inquisitorial systems is the level of involvement of the judge in the trial. In the adversarial system, the judge is more of a neutral referee, while in the inquisitorial system, the judge is more of an active participant in the trial.

Another key difference is the burden of proof. In the adversarial system, the burden of proof is on the prosecution to prove the defendant's guilt, while in the inquisitorial system, the burden of proof is on the defendant to prove their innocence.

Overall, the adversarial system is used in common law countries such as the United States (e.g. state of New York), England, India and Canada, while the inquisitorial system is used in civil law countries such as France, Germany, and Italy.

Current State of Indian Judiciary

Benchmarking at a global level as well, the Indian judiciary performs poorly. The World Bank releases its Ease of Doing Business Report (EODB) every year before 2021. 190 economies are ranked on their ease of doing business based on 10 indicators.

In the 2019 report (World Bank, 2019), India ranked 163 on the ‘Enforcing Contracts’ indicator, behind Pakistan, Iraq and Sudan. This indicator measures the time and cost for resolving a dispute and the quality of judicial processes in that economy. The dismal ranking shows the poor state of the Indian judiciary at the global stage. The World Bank EODB report shows that Indian courts take, on average, almost four years to enforce a standard sales agreement in a local court, and the legal costs are up to 31% of the claim’s value. Comparing with similar economies, the time taken is much higher than the average for South Asia (3 years) and China (1.3 years). These statistics also reflect the experience of the citizens of India who deal with the Indian judiciary. The judicial system is seen as inefficient and ineffective in delivering justice. Long delays, high costs, complicated language, and complex procedures have distanced the judicial system from its intended goal – delivery of timely, affordable and quality justice. An inefficient judiciary results in a failed republic. Without an effective and efficient judicial system, the state will not be able to protect the rights of the citizens and the people will resort to extra judicial measures to get justice. It is high time that the judicial system is revamped.

The Court Hierarchy in India

In India, there are mainly four types of courts that operate at different levels. The Constitution of India lays down the framework for the judicial system, including the hierarchy of courts. Relevant articles include Article 124-147 (Supreme Court), Article 214-231 (High Courts), and provisions related to subordinate courts. They are presented here in simple terms:

1. **Supreme Court of India:** It is the highest court in India and the final court of appeal. It has both original and appellate jurisdiction, meaning it can hear cases that have not been heard by any other court, as well as appeals from lower courts. Its functions include interpreting the Constitution, protecting the fundamental rights of citizens, and hearing cases of national importance.
2. **High Courts:** Each major state in India have a High Court. High Courts have jurisdiction over cases within their respective states and have the power to hear appeals from lower courts. Their functions include interpreting state laws,

protecting the rights of citizens, and supervising the work of lower courts within their jurisdiction.

3. District Courts: Each district in India has a District Court. These courts have original jurisdiction over criminal and civil cases within their district. District Courts are presided over by a District Judge and have the power to hear cases up to a certain monetary limit.
4. Subordinate Courts: These are the lower courts in the hierarchy of the Indian judicial system. They include Magistrates' Courts, Sessions Courts, and Civil Courts. These courts have jurisdiction over specific types of cases and hear cases that fall within their jurisdiction.

Overall, the functions of these courts include dispensing justice, interpreting and applying the law, and protecting the rights of citizens. They play a crucial role in upholding the rule of law and ensuring that justice is delivered fairly and efficiently.

Pendency in Indian Courts

The pendency and delays in Indian courts are well known. 47.6 million cases were pending in all the courts of India according to the estimates in May 2023. Of these 87.6% cases or 43.4 million cases are pending in the Indian lower courts (district and subordinate courts) and this number is increasing each year. The situation is dire and needs an immediate remedy. Detailed data of the pending cases and their duration is mentioned in the tables below.

Cases Pending in Indian Courts as of May 2023		
Court	TOTAL CASES	PERCENTAGE
District and Subordinate Courts	43,367,348	87.59%
High Courts	6,077,971	12.28%
Supreme Court	68,310	0.14%
Total Pending Cases	49,513,629	

Figure 1: Cases Pending in Indian Courts

Data Source: National Judicial Data Grid¹ and Supreme Court Website², May 2023

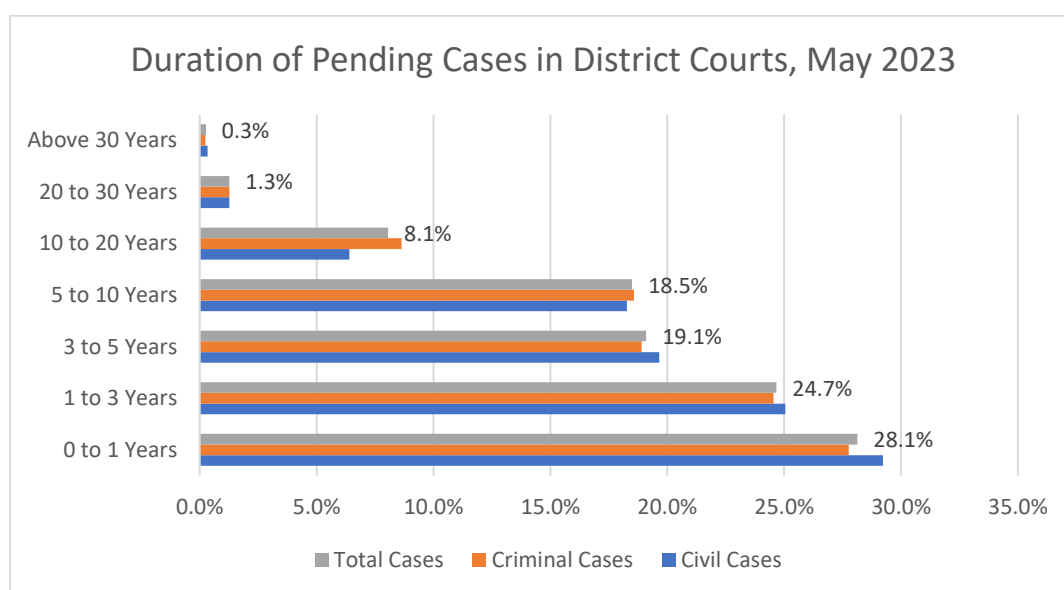


Figure 2: Duration of Pending Cases in District and Subordinate Courts

Data Source: National Judicial Data Grid, May 2023

Observations from the case pendency chart:

1. About 28% cases are pending for less than one year and 25% are pending between 1 to 3 years. Together they constitute more than 50% of the cases. If these cases get resolved soon i.e., do not get further delayed, then justice would be 'timely'. Though we are yet to investigate the types of cases and what is the expectation of timeliness.
2. There are 10% cases that are pending for more than 10 years. This is not a good situation, and the number is significant to be worried.
3. The civil and criminal cases are pending in the same way i.e., we do not find one case type significantly different from the other.

Overall, we have a broad picture of the pendency in Indian courts – across the court hierarchy and within the district courts.

¹ <https://njdg.ecourts.gov.in/>

² <https://main.sci.gov.in/statistics>

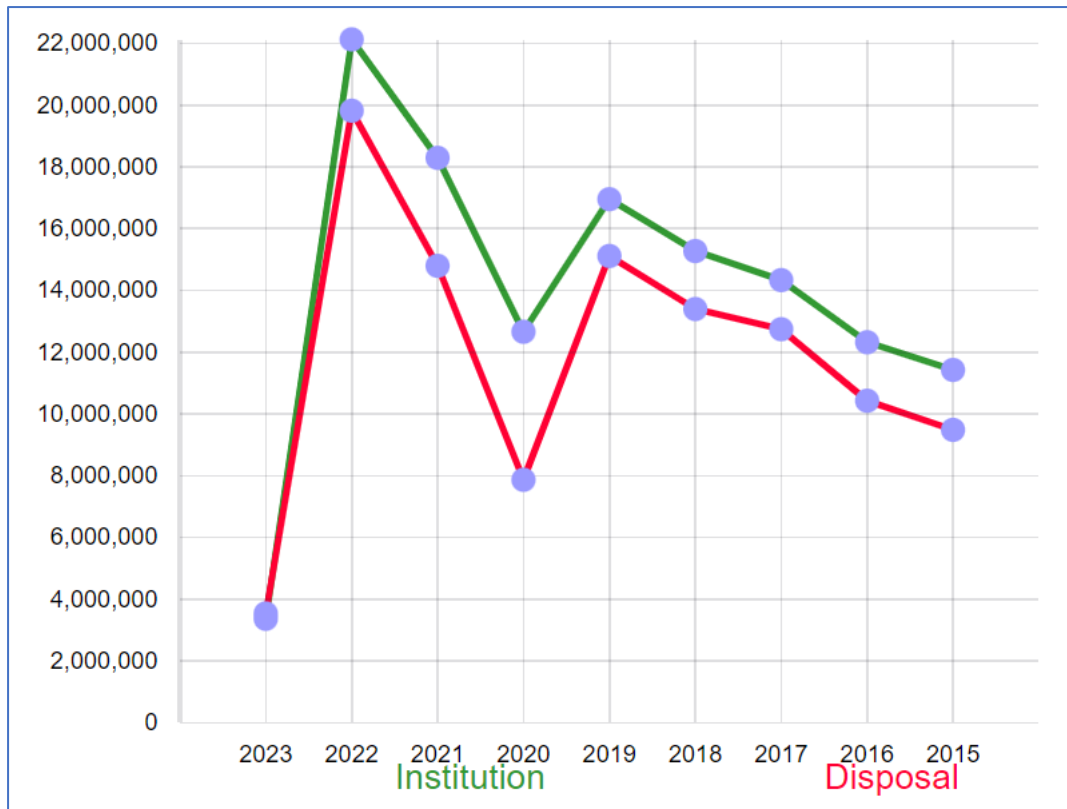


Figure 3: Institution Vs Disposal Rates of District and Subordinate Courts

Image Source: National Judicial Data Grid

As can be seen from the chart above, in India's district courts, the case disposal rates have been lagging the case institution rates every year. This implies that the case pendency is rising each year, since the system is unable to dispose cases at the same or higher pace than they are being instituted. The problem is getting aggravated. The disposal rates must outpace the institution rates for the case pendency to drop. It is not an easy problem to solve, but it needs to be addressed urgently. The data for 2023 is not updated yet (hence the drop in the graph).

Research Motivation

It has been 76 years since India has got its independence from British rule. It is about time that we address the basic needs of our population – one of them being fair and timely justice. While India is doing well on many counts, the judicial system has been lagging. The experience of the people of India when they interface with the legal system has consistently poor. While this is a big and growing problem for the world's largest

democracy, this issue has not received its public recognition. The researcher is pained by this fact, and this was the simple motivation to study the problem in its entire breadth and depth.

The issue of delayed justice in India does not get the due public discussion it deserves. It is important to bring this matter into public discourse, because about 40% of India's population is directly impacted by it. The people have made simplistic conclusions, including outdated legal systems, overburdened courts, and a lack of resources. By conducting a formal research, one can explore the root causes of this problem and suggest potential solutions to address them. Beyond the fundamental need for fair and timely justice, there are various other dimensions of the problem.

Delayed justice delivery is a significant problem in India, particularly in the context of a developing country where access to justice is essential for promoting the rule of law, protecting individual rights, and fostering economic growth. It is essential to understand the underlying causes, consequences, and possible solutions to this problem. Given that India is the world's largest democracy, this issue gathers more importance. It is important that Indian democracy continues to be vibrant and shows a model to the rest of the world. An efficient and just legal system is a pre-requisite for the same.

Finally, research on delayed justice delivery can help identify best practices and potential solutions. Scholars can explore successful examples of judicial reforms, innovative approaches to legal aid, and other strategies to expedite the delivery of justice in developing countries. By sharing best practices and successful examples, researchers can help other countries adopt similar strategies and promote positive change.

Personal Research Motivation

As the Co-Founder and Vice Chancellor of Rishihood University, an institution dedicated to fostering social and public impact in India, I find myself uniquely situated to discuss the exigencies of the Indian judicial system. My academic and administrative journey has endowed me with a responsibility to not merely point out systemic deficiencies but to delve into solutions that can bring about transformative changes in our society.

The impetus for this research emanates from a deeply personal space, characterized by my own trepidations towards the Indian judiciary. While I have fortunately not been compelled to extensively engage with the judicial system, the prospect itself evokes a sense of dread, uncertainty, and frustration. This apprehension is not exclusive to me but resonates with a large swath of the Indian middle class—an educated demographic that accounts for approximately 50% of the nation's population.

In its current state, the Indian judicial system is perceived as a labyrinthine maze, fraught with delays, exorbitant expenses, and mental harassment. The courts, which should ideally be temples of justice, have unfortunately metamorphosed into arenas where individuals feel they have to beg for their rightful due. This experience is not only daunting but also discouraging, creating a barrier between the citizens and their fundamental right to timely justice. The inadequacies of the system extend beyond mere numbers or statistics; they venture into the realm of social and psychological deterrents that preclude the common citizen from approaching the judicial corridors with confidence.

This research is not just an academic endeavour for me; it is a clarion call for action. It is an exploration into the bottlenecks that stifle our judicial system, an examination of the socio-economic costs it imposes, and a probe into actionable solutions that could make the dream of accessible justice a tangible reality for millions of Indians. By doing so, I aspire to transform the Indian judiciary into a more robust, transparent, and expedient system that not only delivers justice but also instils confidence among its citizenry.

My motivation, therefore, transcends personal concerns and encapsulates a larger vision—that of creating a judicial system that each citizen can approach not with despair, but with a resounding confidence in the timely and effective administration of justice.

Research Problem

The Indian judicial system is on the verge of collapsing under its own load. Citizens and businesses have nearly lost their confidence that the system will deliver timely

justice. This has grave repercussions. Many reforms have been proposed, few have been executed, yet the formal legal system has been unable to match the demand it faces. The focus of our study is to propose how fair and timely justice can be delivered efficiently in the Indian judicial system while ensuring cultural, economic, and geographic accessibility.

Judicial delays in Indian district courts can be addressed in 2 ways – supply side and demand side. On the supply side, our focus is on improving the efficiency of the current system through case management. On the demand side, we look at strengthening the community justice systems to absorb case load and improve access to justice. In a severely resource constrained Indian judicial system, case management is a novel approach that improves efficiency and predictability. Decentralization through community justice systems reduces demand on the formal system and improves the cultural, economic, and geographic access to justice. Hence, we propose our research title as:

“Addressing Delays in Indian District Courts – Improving Efficiency and Reducing Demand”

Research Gaps

Based on the literature survey we conducted (detailed in Chapter 2) on the above research problem, the following gaps were identified in the areas of understanding judicial delays, understanding Case Flow Management (CFM) and community justice systems:

- **RG1: Understanding the nature of systemic resistance to efficiency reforms from within the judicial system.**

One of the most significant efficiency reforms pushed in the recent years has been the case flow management rules. High courts have passed case flow management rules for their subordinate courts in 2007. However, empirical evidence shows that the implementation has been poor. We need to understand the reasons for the systemic resistance to the implementation of these rules. Is the resistance due to lack of resources? Is there a technology barrier? Is it due

to lack of clear accountability? Is it due to the lack of incentives for the change among the stakeholders?

- **RG2: Understanding stage wise case flow for cases in the lower courts.**

In India, we do not have substantial quantitative research that gives us an understanding of the case flow through various stages of a case. How do cases flow through various stages in Indian courts, particularly the lower courts where bulk of the cases lie? How much time do they spend in each stage? Case flows would differ based on the case types and potentially other factors such as demography and type of court they are in. Case flows in Indian district courts has not been studied sufficiently in a scholarly manner. Understanding the case flow in its entirety would give us a comprehensive systemic view, that is necessary to understand before we propose any reforms to improve the efficiency of the existing system.

- **RG3: Understanding the experience of integrating community justice systems into the formal system.**

The formal legal system has become inaccessible to the people due to delays, costs, and distance. India has age-old community justice systems spread across its land. They are still functional, and many people approach them for justice. There is a need to first recognize their existence, understand them and then strengthen the community justice systems. It is perhaps possible to integrate them into the formal system and ensure the rights guaranteed in the constitution. This will help reduce the burden on the existing formal system, reduce costs and improve access to justice.

Research Questions

Overall, the focus of the study is to propose how timely justice can be delivered efficiently and in an accessible manner in the Indian judicial system. This larger question will be answered by researching deeper into the following sub-questions:

- RQ1: What is the nature of resistance to efficiency reforms from within the judicial system?
- RQ2: What are the fine-grained procedural reasons for delays of court cases?
- RQ3: How can community justice systems integrate with the formal justice systems?

Research Objectives

To address the research questions, the following objectives are proposed:

1. Study and factor the reasons for systemic resistance to implementing the case flow management rules in the district courts:
 - a. Select different judges in the lower tier of the judicial system.
 - b. Interview the judges to understand the reasons for systemic resistance to case flow management rules.
 - c. Recommend reforms for better design and effective implementation of case flow management rules.
2. Investigate the case flows and analyse the stage wise case duration for different case types in India's district courts:
 - a. Identify a representative district court system to study.
 - b. Study the case duration of different case types from the representative district court.
 - c. Analyse the case duration for different types of cases through time spent in each stage and draw conclusions on the reasons for delays.
3. Study the impact of formalization of community justice systems in India.
 - a. Study examples of successful community justice systems in India and globally and how they have been formalized.
 - b. Study the impact of formalization and integration of a community justice system in India.
 - c. Propose how to integrate community justice systems into the formal system.

Research Methodology

To achieve our research objectives, we will use a combination of quantitative and qualitative methods. In the sections below, for each research objective we will explain the research method used, and the corresponding the data collection and analysis plan.

Research objective 1: Study and factor the reasons for systemic resistance to implementing the case flow management rules in India's district courts.

Research Method

While judicial reforms, particularly case flow management (CFM) rules, have been proposed previously by the Government of India, they face execution challenges. It is commonly understood that there is a systemic resistance to implementation of the CFM rules. Understanding the nature of this resistance is important. This resistance is neither an abstract concept nor a quantifiable metric; it is a lived phenomenon, deeply entrenched in the administrative, social, and psychological fabric of the Indian judiciary. Hence, the lived phenomenon of 'systemic resistance' was studied through qualitative research methods.

Phenomenology as a qualitative research approach (Creswell, 2012) aims to depict the meaning of a lived experience related to a particular phenomenon for multiple individuals. It offers a pathway to delve deeply into human experiences and perceptions, thereby offering an unmediated insight into the essence of a phenomenon—in this case, 'systemic resistance'. Traditional quantitative methodologies are restrictive in their scope when it comes to capturing the nuances of human experience and institutional behaviour. In contrast, phenomenology allows for a comprehensive understanding of how systemic resistance manifests in attitudes, narratives, and daily practices within the judiciary. The phenomenological approach enables the researcher to gather rich, qualitative data through in-depth interviews, observations, and document analyses. By focusing on the lived experiences of district court judges, one can peel back the layers of collective resistance, revealing not just what the resistances are but why they exist and how they are sustained.

Phenomenological studies primarily exist in two forms—hermeneutical and transcendental—the latter being employed in this study. The transcendental

phenomenology approach (Mohanty, 1985) derived from Husserl's philosophy (Husserl, 2012) and advanced by Moustakas (Moustakas, 1994), emphasizes understanding the essence of the lived experience through the participants' descriptions rather than the researcher's interpretations, which is more common in hermeneutical phenomenology. It allowed the researcher to describe and interpret the shared experiences of a group of people about a particular phenomenon, in this case, the resistance to court efficiency reforms by district court judges in India.

In order to grasp the complexity and nuances of this 'resistance', it is important to get a deep and rich understanding of the judges' experiences, their interpretations, and the meanings they attach to these reforms. A quantitative research approach would be less suited to this, as it is typically more focused on measuring and generalizing phenomena, rather than gaining an in-depth understanding of people's lived experiences.

Transcendental phenomenology allows the researcher, to bracket their own experiences, perceptions, and assumptions to focus solely on the experiences of the participants. This is crucial in a context like this one, where personal biases about the court system or the efficiency reforms might interfere with a true understanding of the judges' experiences.

Furthermore, phenomenological research emphasizes the importance of understanding the phenomenon from the participants' perspectives. By doing this, you can delve into the complexities of the participants' perceptions and feelings, the cultural, social and institutional structures that shape their experiences, and the ways in which these factors contribute to their challenges in implementing the reforms.

Adopting a phenomenological approach can also reveal underlying assumptions and attitudes that might not be apparent in a more surface-level investigation. It can unearth aspects such as power dynamics, social norms, perceptions of self and others, and deeply ingrained beliefs and attitudes that might be shaping the judges' challenges in implementing the reforms.

Finally, phenomenological research aims to generate new knowledge, understanding, and insights about a phenomenon. Given the relative scarcity of research on the experiences of district court judges in India and their attitudes towards court efficiency

reforms, this approach is highly suited to addressing this research gap and contributing new insights to the field.

Therefore, by adopting a transcendental phenomenological approach, the researcher was able to gain a profound understanding of the lived experiences of the judges, understand the essence of their ‘resistance’, and provide a rich, nuanced, and detailed account of this complex phenomenon, which could be instrumental in informing future policy decisions and interventions.

In this study, multiple data collection methods, an exhaustive and stringent analytic procedure, and various validity and reliability approaches were applied. This approach allows for a comprehensive understanding of the judicial resistance to court efficiency reforms.

Sampling

Purposive criterion sampling was used to select the judges to be interviewed for this study. This method of sampling allows the researcher to create a homogenous sample of participants who have all experienced the phenomenon to be studied. 12 district court judges, each from different district courts in India were selected for the study. They were all responsible for the implementation of the Case Flow Management (CFM) reforms promulgated by their respective High Courts since 2007. The sample size turned out to be sufficient as the researcher reached a thematic saturation from the interviews conducted.

Data Collection

The researcher, who oversaw data collection for this study, underwent training in qualitative methodology and took precautions to acknowledge and mitigate biases before commencing data collection, ensuring the accuracy of the data. A semi-structured interview protocol was developed, thoroughly examined by qualitative research experts, and refined based on their valuable insights and recommendations.

- 1. Choice of stakeholders:** As mentioned above, we chose to interview 12 different district judges who can help us understand the functioning of the courts and the reasons for resistance to efficiency reforms. A sample “Human Subjects Consent-to-Participate Form for Phenomenological Study” is shared in Appendix 2.

2. Approach to data collection: Semi-structured interviews were conducted privately with judges on zoom on the weekends outside their work hours. All interviews were recorded for accuracy with the permission of the judges. The interview protocol encompassed several questions addressing topics such as: their role in court efficiency (CFM) reforms, feelings about implementing these reforms, their perception of efficiency reforms, experiences with the reform procedures, and potential barriers. The interview protocol followed is shared Appendix 3. The questions to be asked were memorized in advance to minimize losing eye-contact with the interviewees. During the interview process, the researcher utilized probing and follow-up questions as necessary to encourage in-depth explanations and to ensure clarity in responses. Additional specific questions were introduced as the interview progressed, addressing emerging themes. The researcher conducted all interviews, and verbatim transcripts were promptly generated after each session. Data collection spanned a duration of 6 weeks and concluded when data saturation was achieved. At this point, no further themes or novel information emerged, enhancing our comprehension of the phenomenon.

3. Pilot testing: A pilot study involving two judges was done to refine the questions and the interview process.

Following the pilot study, a meticulous analysis was conducted to refine the interview questionnaire. Specific modifications were made in various dimensions as elaborated below:

1. **Sequencing:** Initially, questions about personal experiences were placed towards the end of the interview. Feedback suggested that starting with these questions would establish rapport and make participants more comfortable discussing systemic issues. Therefore, questions about personal experiences were moved to the beginning of the questionnaire.
2. **Relevance:** One question about general legal reforms was consistently leading respondents away from the topic of systemic resistance to CFM

rules. This question was removed, and a more targeted question towards CFM were inserted.

3. Prompt Inclusion: In the pilot, it was observed that certain critical themes, such as the role of judicial culture in systemic resistance, were not organically emerging. Therefore, prompts like "Can you comment on how the prevailing culture within the judiciary affects the implementation of CFM rules?" were added.
4. Time Allocation: Originally, equal time was allocated to each question. However, the pilot study revealed that questions concerning the specifics of resistance required more time for a nuanced discussion. The timing for these questions was accordingly adjusted.
5. Sensitivity Measures: The pilot study also highlighted the need for sensitivity in asking questions that might be perceived as critical of the judiciary. As a result, phrasing was adjusted to be more neutral. For example, "Why do you think the judiciary is resistant to change?" was modified to "Can you discuss the challenges and opportunities for change within the judiciary?"

By incorporating these specific adjustments, the revised questionnaire aimed for higher degrees of clarity, relevance, and depth, making it a more effective tool for exploring the lived experiences related to systemic resistance in the Indian judiciary.

Data Analysis and Presentation

In this study, Moustakas's structured method of inductive data analysis (Moustakas, 1994) was employed.

1. Description of Personal Experiences with the Phenomenon

The study commenced with an exploratory phase wherein personal experiences concerning the phenomenon of 'systemic resistance' were described. These experiences were sourced through in-depth interviews conducted with 12 district

court judges selected through purposive sampling. By discussing their daily interactions with the judicial system, the participants were encouraged to share anecdotes and reflections that exemplify systemic resistance.

Example: One judge described how he struggled to introduce time bound case resolution in his jurisdiction, facing opposition from lawyers who were accustomed to exploiting loopholes in the case flow procedures.

2. List of Significant Statements

The researcher immersed themselves in the data by reading each transcript twice and documenting memos to highlight key concepts. Each statement was isolated for its potential value in shedding light on the nature and impact of systemic resistance. This involved assessing if a statement captured a crucial moment and could be abstracted and labelled. Statements that did not represent the core experience were removed to identify the invariant elements. A list of significant statements that directly pertained to the phenomenon was compiled.

Example: Statements like "The established routines make it difficult to introduce reforms" or "There is a general hesitancy towards change" were listed as significant.

3. Grouping Statements into Core Themes

The significant statements were then categorized into broader units of information or core themes. This step involved meticulous coding, clustering similar statements together to create thematic groups. The initial coding resulted in 34 categories, which were further reduced through iterative clustering until three core themes of the experience emerged. A detailed description of the key concepts, sample quotes and core themes are given in Appendix 9. One core theme is reproduced below for ease of reading:

Theme	Key Concepts and Supporting Quotes
Overburdened	Lack of sensitization and training <i>"While the High Courts have introduced the Case Flow Management (CFM) rules, there has been insufficient guidance, particularly in enhancing the skills of judicial staff. Their inefficiency only leads to more delays. And the court managers? They've hardly been a help as they lack proper training and court experience."</i>

	No additional resources provided <i>"The implementation of the CFM rule calls for quicker case processing, but we're expected to achieve this without any additional resources. There's no extra manpower, no new infrastructure – how are we supposed to improve under these conditions?"</i> Political power of the lawyers' lobby <i>"The challenge isn't only implementing new rules; it's contending with the entrenched lawyer's lobby that resists these changes. We come in as outsiders, and they're the ones with the lasting relationships and the backing of the High Courts. The scales are tipped against us from the start."</i> Unwillingness to take on additional courtroom stress <i>"The caseload is already immense, with copious amounts of written work and judgements to dictate at the end of the day. Trying to enforce CFM guidelines on top of all that, especially against resistant lawyers, just adds to the stress in an already high-pressure environment."</i> Non-judicial workload <i>"Apart from handling cases, we're loaded with a plethora of administrative tasks, from issuing summons to attending committee meetings. The idea of court managers looked promising on paper, but in practice, it hasn't taken the load off because the lawyers and litigants trust only us judges with these duties."</i> Increasing litigation and appeal rates <i>"The sheer volume of litigation is overwhelming. With clients having more financial resources and High courts becoming more accessible, appeals have skyrocketed. Even if more judges are added, the cases are mounting at an even higher pace. We feel helpless, as our efforts seem like mere drops in this vast ocean of increasing caseload."</i>
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4. Textual Description of Experiences (What Occurred)

In this phase, a comprehensive textual description was formulated, elaborating on what the participants experienced about the phenomenon of ‘systemic resistance’. This description was built around the core themes identified in the previous step. The complete transcripts were revisited to verify that the themes and associated invariant elements were explicitly expressed and aligned with the participants' words.

5. Structural Description of Experiences (How It Occurred)

A structural description was then developed to explain how these experiences unfolded. This included identifying conditions that enabled or hindered the phenomenon, such as organizational hierarchy, cultural attitudes, or administrative bottlenecks.

6. Synthesis into Essence of Experience

Finally, a synthesis of both the textual and structural descriptions was constructed to capture the essence of the experience of systemic resistance among participants. This integrated view aimed to provide a deep and holistic understanding of how systemic resistance manifests itself and is experienced within the Indian judiciary.

Reliability and validity techniques employed in this study included detailed field notes, audio recording for accuracy, and intercoder agreement between the author and an external coder. The external coder's involvement was crucial for ensuring reliability. Any discrepancies were resolved to establish a single set of themes.

Validation techniques included data source triangulation to corroborate evidence, bracketing to acknowledge bias, and member checking. Member checking, considered the most critical validation technique, involved consulting participants to assess the credibility of findings and interpretations. The final themes and a sample of invariant elements were shared with all participants for review. Judges confirmed that the provided account accurately reflected their perspectives and experiences.

Data Anonymization and Storage

To protect the identity and maintain anonymity of the interviewees, the author anonymized the identifiers. There is a fine balance to maintain between anonymity and

integrity of the data collected. All the data was stored on the cloud with access control to only the researcher.

Purpose Statement

The purpose of this phenomenological study is to describe the systemic resistance to CFM rules by the judges working in district courts of India. The systemic resistance can generally be defined as “an inability to improve efficiency of the judicial processes due to lack of resources”.

Research objective 2: Investigate the case flows and analyse the stage wise case duration for different case types in India’s district courts.

Research Method

We used the publicly available case data provided by the eCourts services of Government of India³ and applied statistical analysis on the quantitative data. The eCourts portal provides detailed stage-wise case level data for most cases throughout the country. We first identify a representative district for our study. For a meaningful statistical analysis, we aggregated the case data from different district courts in the representative district and categorized them by case types. We did a fine-grained analysis of the case flow for different case types to investigate how the cases spend their time in different stages and recommend reforms to address the delays.

Data Collection

We particularly looked at the disposed cases from the district courts in Sonipat, Haryana. An example case data downloaded from the portal is given in the Appendix 1. The rationale behind the choice of data is given below:

1. 87% of India’s pending court cases are pending in the subordinate or district courts. Hence, understanding the cases in these courts is key to improving the efficiency of the court system in India. We chose the district courts in Sonipat, Haryana for our analysis. We first established that Sonipat District Court is a reasonable choice for a representative district court. Our choice is also driven by the fact that we could complement our quantitative study with on-ground qualitative study. The geographical proximity of the Sonipat district court and

³ <https://districts.ecourts.gov.in/>

the awareness of the local context helped us in conducting a more thorough qualitative study.

2. We look at both case types – civil and criminal, and within them 15 different case types each.
3. We look at the disposed cases whose case data has been digitized. Disposed cases go through the entire case flow i.e., filing to judgement, while the case flow is incomplete for pending cases. Choosing to analyse only disposed cases gives us the complete stage-wise case data.
4. Since the database is dynamic (more cases getting disposed and digitized), we took a snapshot of the database on a particular date and downloaded all the cases according to our criteria i.e., case data of disposed cases in Sonipat district courts.

Data Processing and Analysis

As mentioned earlier, the case data is available on the eCourts portal. Daksh⁴, a Bengaluru based think-tank, has downloaded, parsed, cleaned, and loaded the data into a database⁵. We looked at the stage wise case duration for different types of cases. This allowed us to identify the stages that take the most amount of case time for a few case types.

Research objective 3: Study the impact of formalization of community justice systems in India.

Research Method

Prior studies have addressed the implications of PESA and related acts on tribal development (Dandekar, 2016), (Date & Lele, 2022) particularly in Maharashtra. However, the impact of PESA on access to justice, examined through the experiences of community members, *Panch* representatives, and civil society members, has not been studied in a scholarly manner. To fully encapsulate the intricate dynamics of such an experience, it is paramount to immerse oneself in the participants' narratives, their derived interpretations, and the significance they associate with these reforms. We have

⁴ <https://www.dakshindia.org/>

⁵ <https://www.dakshindia.org/login-to-database/>

chosen to adopt a phenomenological lens in this research as it has the ability to capture in-depth the intricate tribal experiences, elevating it from mere empirical observations to a profound understanding of lived experiences of the tribal communities in Palghar. This research objective requires us to study the lived experience of the phenomenon of ‘formalization of a community justice system’.

Phenomenology stands out as a unique approach that seeks to uncover the depth and nuance of lived experiences pertaining to a specific phenomenon (Creswell, 2012). This methodology bifurcates predominantly into two distinct categories: hermeneutical and transcendental, with this study subscribing to the latter. Transcendental phenomenology, rooted in Husserl's philosophy (Husserl, 2012) and subsequently augmented by (Moustakas, 1994) and (Mohanty, 1985), prioritizes the essence of participants' recounted experiences over the researcher's interpretations—a feature distinguishing it from the hermeneutical variant. Within the context of this study, this approach provided an avenue to keenly discern and narrate the collective experience of the tribal communities in Palghar as they navigated the nuances of PESA implementation.

Transcendental phenomenology equips researchers with the ability to momentarily suspend—or "bracket"—their personal insights, beliefs, and preconceptions, thereby allowing the narratives of participants to emerge unadulterated. Such a practice is invaluable in studies like the present one, where any inherent biases pertaining to the tribal community, or the governing apparatus could potentially skew the genuine apprehension of participants' narratives.

A deeper, phenomenological lens often brings to the fore latent assumptions and paradigms that might remain obscured in more superficial inquiries. This dimension can illuminate prevailing power hierarchies, societal conventions, self-perceptions, and deeply rooted ideologies that potentially shape the tribal community's experiences amidst the PESA implementation in Palghar.

The pursuit of phenomenological research is not merely descriptive; it seeks to enrich the existing knowledge base and offer fresh perspectives about a phenomenon. Given the limited scholarly exploration into tribal communities' perceptions as they

experience the legal validation of their customary practices through PESA, this methodological choice aptly addresses this academic void, adding invaluable insights.

By employing a transcendental phenomenological framework, this study aspired—and achieved—a deep-seated comprehension of the lived realities of the participants, capturing the quintessence of their experiences. Such a profound exploration holds immense potential for guiding future policy articulations and strategic interventions.

Rationale for Choosing Phenomenology as the Research Methodology over Other Method

Emphasis on Lived Experiences

The core of this research is to unearth the lived experiences of individuals within tribal communities whose justice systems are undergoing formalization through policy. Phenomenology's central tenet revolves around understanding these lived experiences, making it especially pertinent for capturing the individual and collective realities faced during this transitional period.

Depth Versus Breadth

While other methods such as ethnography offer a broad canvas that captures cultural practices and social dynamics, phenomenology allows us to drill down into the subjective realities and the meaning ascribed by individuals to their experiences. Given that the research objective is to understand the nuanced implications of formalization of community justice systems through policy, phenomenology offers the required depth of understanding.

Capturing the Essence

Phenomenology aims to isolate the 'essence' of experiences, which in this case can be vital for policymakers to identify central issues or challenges inherent in the formalization process. This focus provides a lens through which we can critically assess the practical and emotional implications of formalization on the community members.

Limiting Researcher Bias

One of the advantages of phenomenology is its emphasis on "bracketing" where I, as a researcher, consciously set aside my own preconceptions and biases to fully engage

with the perspectives of the participants. This is crucial to ensure the authenticity and reliability of the research findings.

Sensitivity to Cultural Context

Phenomenology inherently accommodates the context in which experiences are lived. This is especially valuable in our study, where the justice systems are deeply embedded in specific cultural frameworks. The method allows for nuanced capturing of how formalization through policy impacts or is integrated within the unique cultural idiosyncrasies of the tribal communities.

In light of the above considerations, phenomenology emerges as a rigorous, interpretative, and context-sensitive methodology, uniquely equipped to fulfil the objectives of this research. It promises not only academic rigor but also the potential for findings that are rich in context, making them invaluable for future policy interventions.

Sampling

We chose to study the community justice system of the tribes of Palghar district in Maharashtra, India. The district has 1008 villages and covers a total of about 470,000 hectares. Scheduled tribes make up 37.4% of the population. In 2017, tribals of Palghar district demanded that the Panchayats (Extension to Scheduled Areas) Act (PESA) be implemented in their hamlets. The PESA allows tribals to have their self-rule in scheduled areas of the country. PESA confers absolute powers and independence to the *Gram Sabhas* – the village governing bodies. This includes powers to resolve local disputes. The State government relented, and many villages started being governed under PESA since 2017. With this change, the traditional governance and particularly the dispute resolution systems of the tribal communities got a formal legal recognition. A dying system got a fresh lease of life. This allows us to study the traditional justice system of the tribal communities in Palghar and how it interfaces with the formal legal system outside.

We employed purposive criterion sampling to identify interviewees. This sampling strategy facilitates the creation of a cohesive participant group, all of whom have directly encountered the phenomenon under investigation. The study encompassed interviews with 8 *Panch* members, 22 individuals from the community, and 12

representatives of civil society organizations. Each participant either played a pivotal role in PESA's implementation or directly witnessed transformative shifts in their lives as a consequence of PESA's enactment. The chosen sample size proved to be apt, as the accumulation of data led to a point of thematic saturation in the interview findings.

Data collection

- 1. Permission:** A permission to conduct the research needs to be first taken from the leaders of the community in Palghar and other non-profits working there. A sample “Human Subjects Consent-to-Participate Form for Case Study” form is shared in Appendix 4.
- 2. Approach to data collection:** The researcher travelled to Palghar district, particularly the Jawhar taluka, three times in the last four years. The researcher's most recent visit was in July 2021. Jawhar is divided into about 300 tribal hamlets called ‘padas’. The padas are far away from each other and the connectivity is poor in monsoons due to the heavy rains. Jawhar is famous for the warli paintings. Katkari, Kokna, Mahadeo-koli, Malhar-koli, Kathodi, Warli are some of the tribes of the region. The focus of the researcher's visits was to study the community justice systems of the tribals of Jawhar. The tribal judicial body is called the Panch. This has now got formal recognition under PESA as the Peace Committee that is responsible for dispute resolution.

For this study, the primary investigator, who was responsible for data collection, underwent specialized training in qualitative methodologies. Rigorous measures were adopted to recognize and minimize biases, thus reinforcing the integrity and authenticity of the gathered data. An initial draft of a semi-structured interview protocol was formulated, which underwent meticulous scrutiny by seasoned qualitative research experts. Drawing upon their constructive feedback, the protocol was further honed. 1-1 face-to-face semi-structured interviews and group discussions were conducted with the selected interviewees over the period of several days. Sample interview protocol is given in Appendix 5, Appendix 6, and Appendix 7. We used the help of a respected local community member to build the trust with the interviewee. The questions were memorized in advance to minimize losing eye-contact with the

interviewee. Each interview was audio recorded and transcribed later. Pictures were taken to understand the setting of the panchayat within the community. Appropriate location for unhindered interviews and recording was chosen at the site. The pictures recorded audio files and transcripts are digitally stored on a secured cloud storage.

The overarching interview guideline encompassed inquiries into participants' perceptions of justice, their contributions to community justice systems, firsthand experiences concerning PESA implementation, and the challenges they discerned.

Throughout the interview sessions, the primary investigator deftly employed probing and supplementary queries to elicit comprehensive answers and to affirm the precision of participants' responses. As the dialogues unfolded, particular questions, resonating with evolving themes, were integrated. Ensuring consistency, the principal investigator personally executed all the interviews, and detailed transcripts were expeditiously prepared post each interaction. The data collection process spanned eight weeks, encompassing three site visits, and culminated upon reaching a saturation point. At this juncture, the emergence of new themes or distinct insights ceased, thereby deepening our holistic grasp of the subject matter.

3. Pilot testing:

Initial Visits to the Community: Prior to embarking on the formal interview process, two exploratory visits to the tribal community were conducted. These visits served to familiarize myself with the community's social fabric, key stakeholders, and prevailing attitudes towards their justice system. Meetings were arranged with community leaders, and preliminary observations were documented.

Pilot Study Duration: A pilot study was then conducted over a span of 2 days, involving trial interviews with two members of the community who held roles in the traditional justice system. These interviews were aimed at gauging the

initial set of questions' effectiveness in eliciting meaningful and relevant information.

Findings from Pilot Interviews: During the pilot interviews, it was observed that certain questions were either too broad or too complex for the interviewees. For instance, the question, "Can you describe your experience with the formalization of the community justice system?" resulted in vague and general responses. Similarly, questions using formal legal terminology were not well-received and created a barrier to communication. For example, the term "formalization" itself required a simpler, more accessible synonym or explanation to be better understood by the participants.

Modifications to the Interview Protocol:

Based on these findings, several adjustments were made to the interview protocol. The final interview protocol is shared in Appendices 5, 6, and 7.

1. Question Refinement: Ambiguous or overly complex questions were reworded for clarity. The aforementioned question was broken down into more specific inquiries such as, "How has the acceptance of the *Panch* by government changed the way you conduct community trials?"
2. Terminology: Legal jargon was replaced with more colloquial language or was accompanied by a brief explanation. For instance, "formalization" was rephrased to "the process where your traditional ways of resolving disputes are officially recognized by the government through PESA act."
3. Incorporation of Probes: The revised protocol included planned follow-up questions to encourage elaboration. For example, a probe like, "Could you share a specific instance where you felt this change?" was added.
4. Time Management: The initial protocol didn't account for the time-sensitive nature of community members' schedules. The revised protocol limited the interview time to 45-60 minutes, with cues for the interviewer to move the conversation along to cover all pertinent areas.

5. Cultural Sensitivity: Additional notes were added to remind the interviewer to be respectful of cultural norms and practices, especially when discussing sensitive topics related to justice and community affairs.

By rigorously applying these modifications to the interview protocol, the study aims to enhance the reliability and depth of the qualitative data collected. This refined approach, conceived through the pilot study, ensures that the interviews are both contextually appropriate and methodologically sound.

Data Analysis and Presentation

The phenomenological method aimed to capture the core of the experience by focusing on 'what was experiences' and 'how it was experience'. In this study, Moustakas's structured method of inductive data analysis (Moustakas, 1994) was employed. To do this, we first transcribed the interviews, followed by an analysis of the transcribed content. Initially, 'Horizontalization' was applied where each statement received equal weight and was marked with a descriptive tag, ensuring comprehensive coverage of the data. This was followed by 'Reduction and Elimination', a phase where non-essential statements were discarded, focusing on capturing the invariant elements that were pivotal in representing the core experience. Subsequently, 'Clustering' was conducted, wherein these elements were categorized, and thematic labels were assigned, starting with twenty categories and eventually narrowing down to three core themes through iterative clustering. The final phase, 'Final Identification', involved a thorough re-examination of the complete transcripts to ascertain the accuracy and alignment of the identified themes and elements with the participants' original expressions. These meticulously derived themes facilitated the construction of textural, structural, and textural-structural descriptions, encapsulating the overall essence of the experience, which are articulated in this text.

Here, each stage of the analysis mentioned above is elucidated with examples pertinent to one to our three core themes 'Cultural Integration of Customary Laws'.

1. Detailing Individual Encounters with the Studied Phenomenon

Example: Interviews with community leaders and elders brought forth personal stories of how the formalization process through PESA act influenced their roles in

dispute resolution. One elder recounted how he had to adapt his decades-old practices to align with the new formal guidelines, exemplifying the key concept of 'Significance and Evolution.'

2. Compiling Key Remarks

Example: Statements such as “We feel appreciated by the government now” or “Our customs have lost their soul through the legal formalization process” were noted. These remarks underscore the concept of 'Acceptance and Cultural Validation' of the customary laws within the theme ‘Cultural Integration of Customary Laws’.

3. Categorizing these Remarks into Overarching Information Clusters or Central Themes

Example: After careful examination, the collected remarks were organized into key concepts which were further categorized under three principal themes. These are ‘Cultural Integration of Customary Laws’, ‘Accessibility and Affordability of Justice’, ‘PESA support to customary laws and institutions.’ These are elaborated in Appendix 12.

4. Drafting a Textual Account of Participants' Experiences, Highlighting What Transpired

Example: A narrative was developed to elaborate on what participants felt about the formalization process. For instance, under the third theme ‘PESA support to customary laws and institutions' textual accounts described how formalization led to increased respect but also raised concerns about the dilution of traditional practices. These are elaborated in Chapter 5.

5. Drafting a Structural Account of Participants' Experiences, Emphasizing How it Transpired

Example: This segment focused on the logistical and procedural elements affecting the lived experiences. One such account described the friction between the formal and the inform justice systems due to an overlapping jurisdiction.

6. Merging the Textual and Structural Accounts to Encapsulate the Essence of the Experience

Finally, the textual and structural narratives were synthesized to capture the essence of the lived experience of the integration of customary laws. This is elaborated in Chapter 5.

Reliability and validity techniques employed in this study included detailed field notes, audio recording for accuracy, and intercoder agreement between the author and an external coder. The external coder's involvement was crucial for ensuring reliability. Any discrepancies were resolved to establish a single set of themes.

Validation techniques included data source triangulation to corroborate evidence, bracketing to acknowledge bias, and member checking. Member checking, considered the most critical validation technique, involved consulting participants to assess the credibility of findings and interpretations. The final themes and a sample of invariant elements were shared with all participants for review. Participants confirmed that the provided account accurately reflected their perspectives and experiences.

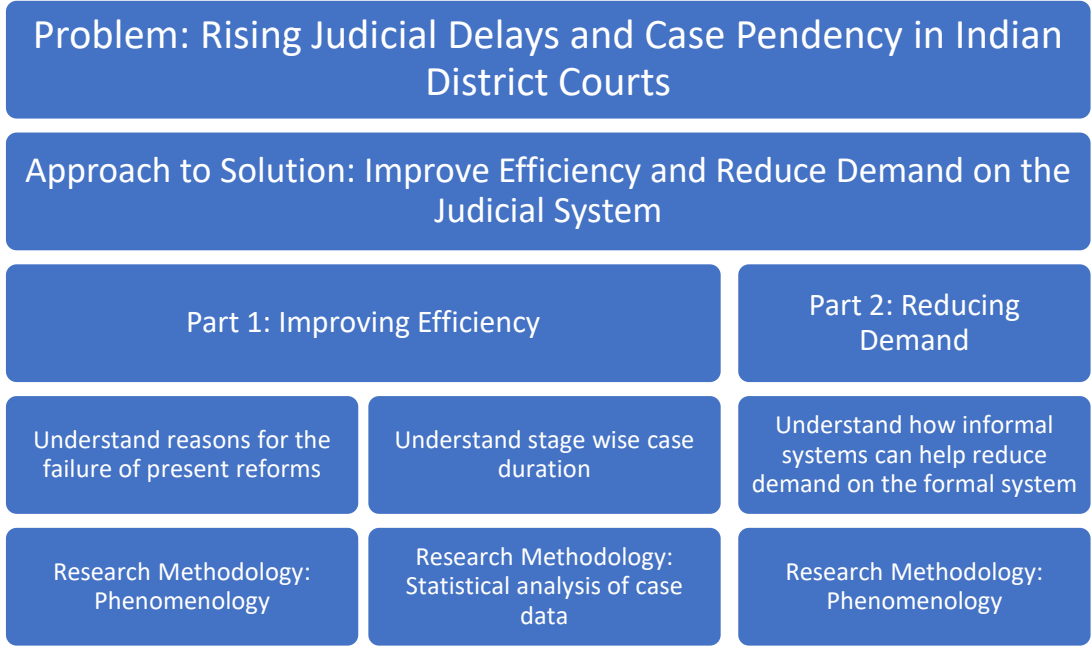
Data Anonymization and Storage

To protect the identity and maintain anonymity of the interviewees, we anonymized the identifiers. All the data (raw and anonymized) was stored on a cloud with access control to only the primary researcher.

Purpose statement

The purpose of this phenomenological study is to describe the lived experience of ‘formalization of a community justice system’ within the tribal communities of Palghar district that have recently experienced their community justice systems being formally recognized.

We summarize our research approach for better visualization through the following infographic:



Outline of Thesis Chapters

The thesis chapters that follow are outlined according to the research questions we have followed for the study.

Chapter 2 is the literature survey. It is categorized according to the research questions we pursue in the study. About 300 reports, journal articles, conference proceedings have been surveyed. The literature survey helped us identify the gaps in existing literature, frame our research questions and approach.

Chapter 3 studies and factors the reasons for systemic resistance to implementing the case flow management rules. India has seen a century of judicial reforms but little change in the ground reality. It is time to zoom in within the judicial system and understand why the reforms get stuck from an insider perspective. The chapter delivers on that. More importantly, this chapter concludes with lessons on how policy formulation and implementation should be undertaken, especially in a complex and diverse country like India that is constrained on resources.

Chapter 4 investigates the case flows for different case types. While it is clear that pending cases in Indian district courts are increasing, it is not clear ‘where’ they spend their time. We need a deep dive into the case flow to understand the reasons for the

long case durations of court cases and also get an integrated view of the case flow. This chapter accomplishes that.

Chapter 5 studies and compares community justice systems in India and the world that have received formal recognition and have been integrated with the formal justice system. Demand reduction on the Indian judicial system is as important as improving its efficiency. The community justice systems of India provide a possible solution to this need. However, in popular discourse they have been dismissed as ‘kangaroo courts’. This has prevented a serious study about them. This chapter undertakes that and concludes with ways in which the informal community courts can be formalized. Further, it elaborates, what the formal courts can learn from the informal courts to improve access to justice.

Chapter 6 is a summary of our research findings, acknowledges the limitations of the studies undertaken and suggests future research areas. It elaborates the contributions of this research study to the wider body of literature on this subject. The research study taken up is motivated by a very urgent and important public issue. Consequently, it is important to share the implications the study has on public policy and law. No study can be comprehensive and cover all dimensions of the research undertaken. This chapter also mentions the limitations of the study and how they can be addressed in future.

CHAPTER 2: LITERATURE REVIEW

“The only true wisdom is in knowing you know nothing”.

- Socrates (Plato)

Chapter Overview

A literature survey or literature review is an essential component at the beginning of any research. The researcher conducted an in-depth and critical examination of existing literature on the defined research topic.

We categorize the literature review into the three research areas we are pursuing in this study:

1. Understanding judicial delays and their reasons, the past reforms suggested, and the global approach to the problem.
2. Understanding case management as an approach to improve judicial efficiency, the international experience, and the Indian context.
3. Understanding community justice systems, the models worldwide, and the Indian context.

This literature survey is generic to the overall topics of our research. The respective chapters additionally build on the previous research specific to their focus.

Judicial Delays

Constitutional Mandate and Case Laws

The idea of timely and fair justice has been the focus of interest of the Indian judiciary for long. The emphasis had been laid in the Indian Constitution, and since then there have been several judgments and commissions which have reiterated this idea. This section includes an elaborate discussion on the constitutional mandate and leading case-laws which establish the idea of timely justice.

The constitutional promise of social, economic, and political justice is mentioned right in the preamble of Indian constitution. The Directive Principles of State Policy obligate the Indian state to ensure justice delivery in an effective manner as per Article 38(1), Article 39 and 39A of the Constitution of India. This establishes the constitutional mandate for timely justice. Part-III of the Constitution of India further gives life to this idea under Articles 14, 19, 21, 32 and 226.

Case law, also known as precedent or judicial precedent, is a central feature of the common law system. Case law refers to the body of judicial decisions, opinions, and interpretations that have been handed down by courts in previous cases, and which serve as authoritative guidance for how similar cases should be decided in the future. Here are some case laws that have emphasized the importance of timely justice.

Highlighting the import of the constitutional obligation of the state to ensure timely justice as per Article 38(1), the Hon'ble Supreme Court of India (L. Babu Ram vs Raghunathji Maharaj And Ors, 1976) said that:

“social justice would include ‘legal justice’ which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources.”

Supreme Court in 1979 in its landmark judgment in *Hussainara Khatoon v. Home Secretary State of Bihar*⁶ held that speedy trial is a part of Article 21 of the Constitution guaranteeing right to life and liberty. Again in 2017 the Supreme Court in *Hussain v Union of India*⁷ while reiterating that the right to a speedy trial is part of Article 21 held that,

“This constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, setting-up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures as are necessary for speedy trial.”

⁶ AIR 1979 SC 1369

⁷ (2017) 5 SCC 702

The jurisprudence flowing from judicial interpretation of Article 14, 19 and 21 of Constitution of India constitutes the central plinth of the idea of timely justice. This obligation was aptly articulated by the Constitution Bench of the Supreme Court of India in (P Ramachandra Rao Vs State of Karnataka, 2002):

“It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defense to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system.”

The right to timely justice has also been enshrined in several international charters and conventions which India is a part of. For example, India ratified the International Convention on Civil and Political Rights (ICCPR) on 10th April 1979 which obligates India to provide the right to a speedy trial to its citizens.

Reports of Committees and the Law Commission

From pre-independence era, numerous committees have been constituted to understand judicial delays and suggest reforms. The first such committee was set up in 1924 under Justice Rankin. Here is a list of committees instituted by Government of India post-independence to address judicial delays and the purpose of the constitution of the committee:

Committees set up by Government of India on judicial delays		
Year	Committee	Purpose
1949	Justice S.R. Das High Court Arrears Committee	Address the issue of arrears in the high courts of India
1949	Trevor Harris Committee, West Bengal	Legal aid for people with limited means
1950	Wanchoo Committee, Uttar Pradesh	Judicial reforms in Uttar Pradesh

1969	Justice J.C. Shah Committee	Delays and arrears in courts
1986	Justice Satish Chandra Committee	Reducing litigation rate
1990	Mallimath Committee	Ways to reduce and control arrears in high courts and subordinate courts

Figure 4: Reports of various committees on judicial delays⁸

Each of these committees contributed significantly to shaping judicial policies and reforms in their respective areas. Their reports are crucial documents in the history of the Indian judicial system, reflecting the history of efforts to enhance judicial efficiency, reform procedures, and improve access to justice. We categorize the themes of the committees and their reports in the following manner:

Judicial Efficiency and Arrears Reduction:

Justice S.R. Das High Court Arrears Committee was a committee established in 1949 by the Indian government to address the issue of arrears in the high courts of India. The committee was named after Justice Sarat Chandra Das, a former Chief Justice of the Calcutta High Court. The primary objective of the committee was to devise a plan to dispose of pending cases in the high courts and reduce the backlog of cases. The committee submitted its report in 1951, which included several recommendations to tackle the issue of arrears in the high courts. Some of the key recommendations made by the committee included the appointment of additional judges to the high courts, setting up of special courts to deal with specific types of cases, and the establishment of alternative dispute resolution mechanisms.

The Justice J.C. Shah Committee of 1969 was also known as The High Courts' Arrears Committee. It was set up by the Union Government to investigate the problem of delay and backlog in civil cases in various courts of the country. It suggested measures to reduce the arrears and curtail the right of appeal and revision. It also recommended the

⁸ <https://www.legalservicesindia.com/law/article/1049/4/Delay-defeats-Justice-A-study-of-provisions-of-Civil-Procedure-Code-and-Limitation-Act?id=1049&u=4>

setting up of an independent tribunal to handle service matters of government employees.

The key recommendation of the Justice Satish Chandra committee of 1986 was to eliminate the ordinary civil jurisdiction of the High Courts, and to transfer original civil suits that were pending before some of the High Courts to either the City Civil Courts or the District Judge's Court that had unlimited pecuniary jurisdiction.

In January 1989, a committee led by Justice V.S. Malimath, the then Chief Justice of the Kerala High Court, was formed to study the problem of arrears in courts and recommend steps for their prompt disposal. This committee is commonly referred to as the Malimath Committee and it made 177 recommendations in its report in 1990. These recommendations were forwarded by the Department of Justice to the relevant central ministries, state governments/UT administrations, and High Courts in December 1990 for necessary follow-up action. Some of the recommendations made by the Malimath Committee were accepted and implemented in many states. These recommendations include abolishing the original civil jurisdiction of the High Court, abolishing Letters Patent Appeals, dispensing with the filing of a certified copy of the decree, specifying categories of cases that could be heard by a Single Judge or a Division Bench, allowing Magisterial Courts to try specified offenses in a summary way, entrusting the work of serving summons and notices to court process servers in addition to the police, discouraging adjournments, avoiding lengthy judgments, delivering reserved judgments within a reasonable time, and preparing lists of old cases to arrange for their early disposal.

Judicial Reforms:

Justice Kailash Nath Wanchoo was a former Chief Justice of the Allahabad High Court and was appointed as the chairman of the committee. The committee submitted its report in 1953, which contained several recommendations for improving the functioning of the judiciary in Uttar Pradesh. The key recommendations of the committee included the establishment of a separate cadre of judicial officers, the creation of a judicial service commission for the appointment and promotion of judicial officers, the simplification of court procedures, the provision of better facilities and equipment for the judiciary, and the introduction of alternative dispute resolution

mechanisms. The recommendations of the committee were largely accepted by the Government of Uttar Pradesh, and several measures were taken to implement them. The committee's report is considered an important document in the history of judicial reforms in India and has influenced judicial reforms in other parts of the country as well.

Legal Aid and Access to Justice:

The Sir Arthur Trevor Committee was established by the Government of West Bengal to make recommendations on providing free legal aid to indigent persons in the state. The main objective of the committee was to study the legal aid system in West Bengal and suggest measures for improving access to justice for the poor and marginalized. The committee submitted which contained a number of recommendations for providing free legal aid to indigent persons. The recommendations of the committee included the establishment of legal aid cells in courts, the appointment of legal aid officers, and the provision of legal aid through voluntary organizations. The recommendations of the Sir Arthur Trevor Committee played a significant role in shaping legal aid policies in West Bengal and influenced legal aid policies in other parts of India as well. The committee's report is considered an important document in the history of legal aid in India.

The Law Commission of India is an executive body established by an order by the Government of India. The commission consists of legal experts and its responsibility is to work on legal reforms. Typically, the tenure of a commission is about 3 years. Presently the 22nd law commission of India is working. Each commission so far, has come up with several reports related to various aspects of judicial reform. The Law Commissions of India have collectively submitted a total of 277 reports. These reports cover a wide range of subjects and have been influential in shaping legal reforms and the development of law in India. We look at the reports through the years related to judicial delays specifically and summarize them.

The 14th Law Commission Report on Reforms in Judicial Administration, 1958 (14th Report on Reforms in Judicial Administration, 1958) was a landmark document that reviewed the existing judicial system in India and suggested ways to improve its efficiency and accessibility. The report aimed to make justice more affordable, speedy, transparent, and responsive to the needs of a democratic society. The report addressed

both civil and criminal aspects of judicial administration, offering several key recommendations. These included reducing court fees and enhancing legal aid for poor litigants, increasing the number and quality of judges and magistrates, and streamlining the appellate courts to reduce delays. It also proposed simplifying the civil procedure code and introducing alternative dispute resolution methods. Revisions to the criminal procedure code were recommended to ensure fair trial rights, alongside reforms in evidence law to make it more scientific. Additionally, the report suggested defining and regulating the concept of contempt of court.

The 79th Law Commission Report on Delay and Arrears in High Courts and other Appellate Courts, 1979 (79th Report on Delay and Arrears in High Courts and other Appellate Courts, 1979) was a report that examined the causes and consequences of pendency and backlog of cases in the higher judiciary and suggested measures to reduce them. The report emphasized the need for speedy justice as a constitutional right and a social necessity. The report comprehensively analysed various elements of judicial administration. It discussed the scope and types of jurisdictions exercised by High Courts and identified key factors contributing to delays, including procedural laws, judicial vacancies, and inadequate infrastructure. Additionally, the report highlighted the adverse impact of such delays on litigants' rights, public confidence in the legal system, and the broader pursuit of social justice. To address these challenges, the report proposed solutions such as increasing judicial manpower, simplifying legal procedures, and implementing case management systems.

The 120th Law Commission Report on Manpower Planning in Judiciary: A Blueprint, 1987 (120th Report on Manpower Planning in Judiciary: A Blueprint, 1987) was a report that addressed the issue of judicial manpower planning, which was neglected in India's planned development. The report aimed to provide a blueprint for achieving speedy justice and reducing pendency and arrears in courts. The report emphasized the importance of enhancing the judiciary by increasing the number and quality of judges at all levels. It discussed criteria and methods for determining necessary judicial strength and outlined measures to improve judicial productivity and efficiency. The report also addressed the need for timely recruitment and training of judges and highlighted the significant role of technology and infrastructure in boosting judicial performance.

The 124th Law Commission Report on The High Court Arrears - A Fresh Look, 1988 (124th Report on The High Court Arrears - A Fresh Look, 1988) was a report that examined the problem of pendency and arrears in the High Courts and suggested ways to improve their functioning and efficiency. The report stressed the importance of speedy justice as a constitutional right and a social necessity. The report delved into various topics including the structure and jurisdiction of the High Courts and the causes and effects of delays, which encompass procedural laws, judicial vacancies, appeals, and writs. It recommended reforms such as rationalizing jurisdiction, simplifying procedures, and increasing judicial strength. Additionally, it emphasized the significance of technology and infrastructure in improving judicial performance and proposed the establishment of a Judicial Reforms Commission to comprehensively study the justice delivery system.

The 221st Law Commission Report on Need for Speedy Justice - Some Suggestions, 2009 (221st Report on Need for Speedy Justice - Some Suggestions, 2009) was a report that addressed the issue of delay and backlog in courts and proposed some measures to expedite justice delivery. The report emphasized the need for a holistic approach to tackle the problem of delay and ensure access to justice for all. The report explored numerous facets of judicial efficiency. It scrutinized constitutional and statutory provisions for speedy justice and analysed causes of delays, such as inadequate judicial strength, frequent adjournments, and complex procedures. It also assessed the impact of such delays on human rights, social justice, and public confidence. Suggestions for reform included increasing judicial manpower, improving infrastructure, reducing appeals, and utilizing alternative dispute resolution methods. Additionally, the report emphasized the importance of legal education and awareness in promoting the expeditious administration of justice.

The 222nd Law Commission Report (222nd Report on Need for Justice Dispensation through ADR, 2009) highlights the need for alternative dispute resolution (ADR) mechanisms in India, as the courts are inaccessible due to various factors such as poverty, illiteracy, delay, etc. It traces the history of ADR in India from ancient times to modern legislation. It discusses four methods of ADR: negotiation, mediation, conciliation, and arbitration. The report offers a detailed review of the historical development and current state of Alternative Dispute Resolution (ADR) in India. It

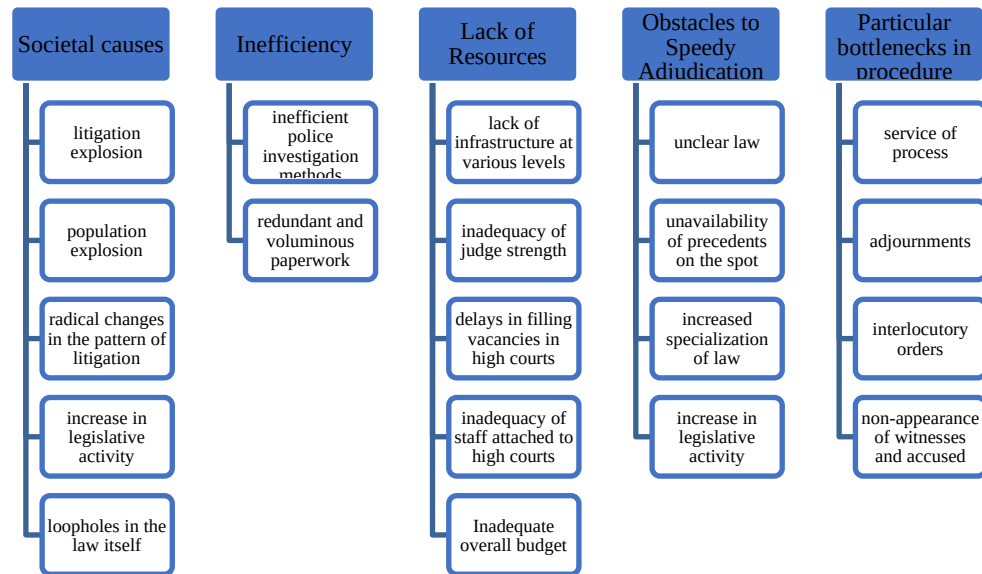
traces ADR's evolution from ancient informal methods in villages to modern legislation post-independence. The report delves into four ADR methods—negotiation, mediation, conciliation, and arbitration—outlining their pros and cons and contrasting them with litigation. It also includes examples of ADR cases in India. To promote and popularize ADR, the report suggests measures like raising public awareness, providing legal aid and training for ADR practitioners, establishing ADR centres, encouraging pre-litigation settlements, and amending laws to facilitate ADR.

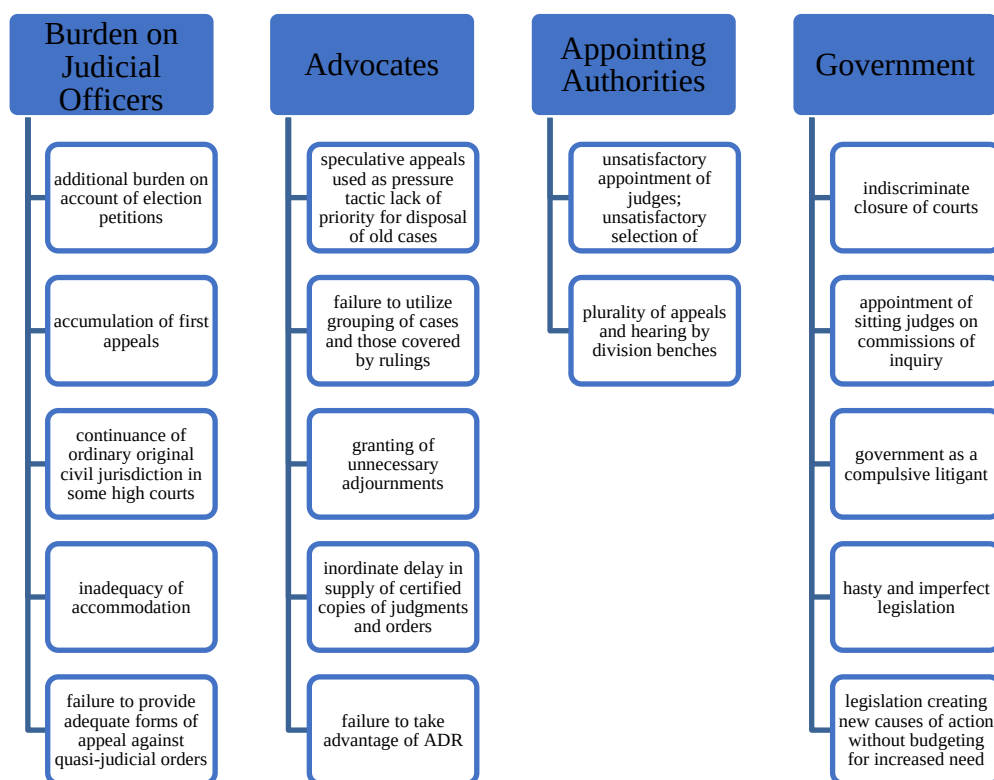
The 230th Law Commission Report (230th Report on Reforms in Judiciary - Some Suggestions, 2009) deals with some suggestions for reforms in the judiciary to improve its efficiency, accessibility, and accountability. The report addresses key areas in the judicial system including judicial appointments, infrastructure, case management, legal aid, and alternative dispute resolution. It recommends increasing the number of judges and filling vacancies swiftly, establishing a National Judicial Commission for judge appointments and transfers to enhance independence and transparency, and improving court infrastructure with adequate funding. It also advocates for streamlining case management to reduce delays, employing technology, and strict rule adherence. Additionally, the report emphasizes promoting access to justice and legal aid for underprivileged groups by raising awareness, simplifying procedures, and offering free legal services.

The 245th Law Commission Report (245th Report on Arrears and Backlog: Creating Additional (wo)manpower, 2014) deals with the issue of arrears and backlog of cases in Indian courts and suggests ways to create additional judicial manpower to tackle it. It covers various aspects such as defining delay, arrears, and backlog, estimating judicial vacancies and requirements, proposing a new method for calculating judge strength, recommending measures to fill up vacancies and enhance judicial productivity, etc. The report recommends adopting a scientific approach for determining judicial strength using the case-weighted disposal method. It suggests increasing judge strength at all levels by filling existing vacancies and creating new posts based on this method. The report advocates for improved judicial recruitment and training through the establishment of a National Judicial Service Commission. Additionally, it calls for enhancing judicial accountability and performance by setting up Court Management

Systems and promoting alternative dispute resolution methods like mediation, conciliation, and arbitration, supported by incentives, training, and adequate resources.

Before we close this section, it is important to specifically highlight an important report. Of the reports of committees and commissions mentioned above, the Satish Chandra Committee (Chandra J. , 1986) has done the most comprehensive in its analysis of causes of judicial delays. Here is a summary of the reasons mentioned in the report:





Scholarly Articles and Reports on Judicial Delays

Other than the constitution, case law and the reports by various committees and the law commission, there has been scholarly research also produced by researchers across the world about judicial delays. We review some of the seminal papers in this regard and summarize their key findings.

To begin with, a very good summary report on judicial delays in India can be found in “Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts” (Justice Without Delay: Recommendations for Legal and Institutional Reforms in the Indian Courts, 2011) published in the Jindal Global Law Review. The report was prepared in 2011 by the Centre on Public Law and Jurisprudence at Jindal Global Law School on legal and institutional reforms to address delays in the Indian courts. The report is based on a seminar that brought together various stakeholders and experts to discuss the causes and consequences of judicial delays and possible solutions. The report covers topics such as judicial appointments, case management, alternative dispute resolution, legal education, legal aid, and public interest litigation. The report offers specific recommendations for each topic and suggests a roadmap for implementation.

Court delays in India cannot be studied in isolation. It is important to get a global context as well. “Court Performance around the World A Comparative Perspective” (Dakolias, 1999) by Marina Dakolias addresses this. The article examines court performance trends around the world based on a survey of 109 countries conducted by the World Bank. The article analyses data on indicators such as court structure, budget, personnel, workload, clearance rates, disposition time, and public access. The article identifies common problems and challenges faced by courts in different regions and levels of development. The article also discusses some best practices and recommendations for improving court performance and efficiency.

In 2004 Arnab K. Hazra and Maja B. Micevska from the University of Bonn, Center for Development Research published an article titled “The Problem of Court Congestion: Evidence From Indian Lower Courts” (Hazra & Micevska, 2004). The article explores the problem of court congestion in Indian lower courts. It uses several measures to capture court congestion. These include caseloads per capita and per judge, the number of cases older than a year per capita and per judge, and congestion rates calculated as the ratio of cases older than a year to cases disposed. The authors suggest several strategies to address the issue of court congestion in Indian lower courts, including increasing the number of judges and court staff, improving court infrastructure, and implementing better case management practices. They also recommend addressing the root causes of delay, such as adjournments, and implementing alternative dispute resolution methods to reduce the number of cases going to court.

On a similar theme, as a comparative study of judicial systems across countries, in 2011 Jayanth K. Krishnan and C. Raj Kumar published an article titled “Delay In Process, Denial Of Justice: The Jurisprudence And Empirics Of Speedy Trials In Comparative Perspective” (Krishnan & Kumar, Delay In Process, Denial Of Justice: The Jurisprudence And Empirics Of Speedy Trials In Comparative Perspective, 2011). The research article explores the concept of speedy trials in comparative perspective. The paper compares the jurisprudence and empirics of speedy trials in the United States and India. It argues that both countries face similar problems of prison overcrowding, long pretrial detention, and ineffective enforcement of the right to a speedy trial. It examines how the courts in both countries have developed different standards and tests to

determine whether a defendant's right to a speedy trial has been violated. It also analyses the empirical data on case pendency, conviction rates, and acquittal rates in both countries. Overall, the article argues that timely and efficient trials are essential to ensuring justice for defendants, and that legal systems should prioritize the goal of speedy trials.

Continuing the focus on the lower courts in India, "Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts" (NALSAR Hyderabad, 2015) is an important government sponsored study. The article presents a study conducted by NALSAR University of Law on court management techniques for improving the efficiency of subordinate courts in India. The study was commissioned by the Department of Justice, Ministry of Law and Justice, Government of India. The study examines various aspects of court management such as infrastructure, human resources, case flow management, use of technology, performance evaluation, and stakeholder participation. The study identifies the problems and challenges faced by subordinate courts and suggests some recommendations for reform. The central purpose of this the study was to identify various court management techniques that have been adopted by the court managers across various subordinate courts for improving the efficiency of subordinate courts.

There are assertions that the Indian litigiousness is the reason for judicial overload in India. Robert Moog in 1993 addressed this assumption through an article "Indian Litigiousness and the Litigation Explosion: Challenging the Legend" (Moog R. , 1993). The paper challenges the stereotype of Indian litigiousness and the myth of a litigation explosion in India. It argues that these notions are based on faulty assumptions and inadequate data. It presents empirical evidence from Uttar Pradesh, one of India's most populous states, to show that litigation rates are low and declining over time. It also examines the factors that influence people's decisions to litigate or not, such as costs, benefits, alternatives, social norms and expectations. It concludes that Indians are not inherently litigious, but rather rational actors who weigh their options carefully before resorting to courts.

Judicial delays are often correlated to lower access to justice. But access to justice is difficult to measure objectively. "Access to Justice Indicators in Asia and the Pacific" (La Salle Institute of Governance, 2003) addresses this. The paper is an initial attempt

to develop indicators that can be used to compare access to justice in the Asia-Pacific region. It reviews the existing indicators used by various sources, such as governments, civil society, and international organizations. It adopts a rights-based approach to justice and considers both the perspectives of claimholders and duty-bearers. It proposes a set of indicators that cover four dimensions of access to justice: availability, affordability, acceptability, and accountability.

Study on judicial delays by the Government often brings the focus on the lack of judges. There are very few studies that place the attention on the procedural laws as the reason for delays. “Major Bottlenecks in Procedural Laws Affecting Expeditious Conclusion of Criminal Trials and Measures Needed To Remove Such Bottlenecks” (Murthy, Syamala, & Prakash, 2015) from the Judicial Academy at Jharkhand, India elaborates this issue. The paper is a research study conducted by Judicial Academy Jharkhand and sponsored by Ministry of Law and Justice. It aims to identify the major bottlenecks in procedural laws that affect the speedy conclusion of criminal trials in India and suggest measures to remove them. It analyses various factors that cause delay in criminal justice delivery, such as inadequate infrastructure, shortage of judges and staff, frequent adjournments, non-appearance of witnesses, lack of coordination among agencies, etc. It also examines the existing legal provisions and judicial pronouncements on the right to speedy trial and its enforcement. It proposes some recommendations to improve the efficiency and effectiveness of criminal trials, such as strengthening judicial administration, enhancing use of technology, simplifying procedures, ensuring accountability, promoting alternative dispute resolution mechanisms, etc. The recent availability of public data from the Supreme Court of India has allowed researchers to do a data driven analysis of the Supreme Court’s functioning. A recent book in this regard is titled “Court on Trial: A Data-Driven Account of the Supreme Court of India” (Chandra, Kalantry, & Hubbard, 2023). One of the major findings in the book that is of particular relevance to our research on district courts is the fact that Supreme Court’s time is consumed by cases that fail to contribute to a broader legal framework for the judiciary, thus impeding the delivery of justice on a more significant scale. The arguments in the book posit that the Supreme Court of India would enhance its effectiveness by focusing on adjudicating cases with the potential to establish significant precedents. This shift in focus could also benefit the high courts by reducing

redundancy in the cases they handle. The current practice of revisiting issues previously addressed suggests a misallocation of the Supreme Court's valuable time toward cases that, given their similarity to those already decided, might better be left to the determinations of lower courts. Further analysis by the authors reveals that a considerable portion of the cases accepted by the Supreme Court involve matters where there is unanimous agreement among lower court rulings, with the Supreme Court frequently upholding these decisions. This trend raises concerns about the efficacy of the Court's case selection and admission procedures. The current preoccupation with a high volume of cases, many of which offer little in terms of legal precedent, diverts the Court's resources away from their pivotal function.

There have also been a few studies that have taken a specific court and studied it in detail to analyse the court delays and extrapolate the reasons. One such study is the “Inefficiency and Judicial Delay New Insights from The Delhi High Court” (Khaitan, Seetharam, & Chandrashekar, 2017). The paper is a research study by Vidhi Centre for Legal Policy that analyses the causes and consequences of inefficiencies and delays at Delhi High Court. It uses data from 8,086 orders in 1,129 cases filed between 2011 and 2015 across eight case types. It identifies various kinds of inefficient behaviour by counsel or court that result in case delays, such as adjournments, non-appearance of parties or witnesses, non-filing of documents or affidavits, etc. It finds that 97% of delayed cases exhibit at least one instance of inefficient behaviour. It also finds that inefficiencies vary across case types and judges. It suggests some recommendations to improve court efficiency and reduce delays, such as imposing costs for adjournments, streamlining procedures for filing documents or affidavits, enhancing use of technology for case management and monitoring, etc.

More recently, between January 2, 2017, and December 31, 2018, the Delhi High Court, in conjunction with Daksh India⁹, conducted a pilot study of 11 reference courts and 11 pilot courts within its jurisdiction as part of the Zero Pendency Courts Project. The study (High Court of Delhi, 2019) scrutinized the progression of cases from inception to disposal, and the duration taken to resolve various types of cases. It offers a micro-level analysis of diverse facets of court functioning, providing insights into the number

⁹ <https://www.dakshindia.org/>

of cases filed and the quantity of judges required to expeditiously clear the backlog each year. The report highlights the dearth of judges and staff, the non-availability of witnesses, adjournments, and delays in the delivery of summons as the principal causes of the backlog. A notable conclusion drawn from the study is that, considering the time taken by each court to settle cases, an additional 43 judges are necessary to eliminate the backlog across Delhi's courts.

The impact of judicial delays is not just on access to justice, but beyond that to the economic activity in the country as well. There have been a few studies that have studied the secondary impact of judicial delays. “Does Court Speed Shape Economic Activity? Evidence from a Court Reform in India” (Chemin, 2010) is an article that highlights this aspect. The article investigates how faster courts affect firms’ contracting behaviour and economic performance in India. It uses a natural experiment that occurred in 2002 when a court reform was enacted to speed up civil suits. The article finds that faster courts lead to more formal contracts, more credit access, higher profits and sales, and lower corruption for firms. The article also explores the mechanisms behind these effects and suggests that faster courts reduce uncertainty and transaction costs for firms.

Adding administrative capacity to the judges to free their time for judicial tasks is another possible reform. However, one such attempt failed in India. “The Curious Case of Court Manager in India: From its Creation to its Desertion” (Oberoi, 2017) highlights this. The article traces the history and development of court managers in India, who are professionals hired to assist judges in their administrative tasks and improve court efficiency. The article discusses how the idea of court managers was introduced by a judicial reform committee in 2009, and how it was implemented by various states with different degrees of success. The article also examines some of the reasons why court managers failed to gain acceptance and recognition by judges and lawyers, such as lack of clarity about their roles and responsibilities, lack of training and skills, lack of autonomy and authority, and lack of support from the judiciary.

Malaysia stands out as an example that India can learn from to reduce its judicial delays. Malaysia - Court Backlog and Delay Reduction Program (Malaysia - Court Backlog and Delay Reduction Program, 2011) elaborates this. The article evaluates the progress of a court reform program initiated by the Federal Court of Malaysia in 2009 to improve

judicial performance and reduce backlog and delay. The article analyses data and statistics provided by the Court and conducts fieldwork in several court locations. The article finds that the program has achieved significant results in reducing pending cases, increasing clearance rates, and enhancing public confidence in the judiciary. The article also identifies some challenges and areas for improvement, such as data quality, case management, human resources, and infrastructure.

Relevance for our Research

The body of work cited in this section collectively provides comprehensive insights into the causes, implications, and potential solutions for judicial delays. However, there are a few gaps in the existing literature that we intend to address through our research presented in Chapter 3 and Chapter 4.

- **Lack of primary data:** The literature on the subject of judicial delays in India, and particularly the district courts, is not based on interviews with the primary stakeholders i.e. the serving district court judges across India. It is either based on secondary data or is limited to specific courts or geographies. We address that through interviewing 12 district court judges sampled to represent the Indian district courts and interviewed them till we reached a saturation in our findings.
- **Uniqueness of research method:** A century of judicial reforms has not changed the judicial system to people's expectations. It was important to understand the underlying 'systemic resistance', from a rigorous qualitative research perspective. A phenomenological approach to understanding the resistance to judicial reforms is very unique and offers us a new perspective.
- **Recency of research:** The research on judicial delays in the district courts of India is primarily before India underwent a digital transformation. As in other domains of social and public life, there has been a transformation in India through digital penetration during the last decade. Technology has permeated many aspects of governance and expectations of the people towards delivery of public services have also dramatically changed. The interviews with judges have brought out this aspect of people's expectations on judicial services which didn't exist a few years ago. This is captured through our interviews in a structured way.

Case Management

While there have been several reports and academic papers highlighting the problems in Indian judiciary and potential reforms, the concept of ‘case management’ has received recent attention. This is a radical idea which gives the management of the case flow in the hands of the judges. It can also be called ‘court led litigation’ or ‘judge led case management’. In a case-management system, the judges or court managers set the timetable of the case. This system has yielded very good results in several countries, and it is about time we tried it in India. The 245th Law Commission Report (245th Report on Arrears and Backlog: Creating Additonal (wo)manpower, 2014) released in July 2014 refers (in footnote 14 on page 8) to a consultation paper on case management.

There are five areas of case management that have been implemented in courts over time (Gramckow & Ebeid, 2016):

Case Management Practice	Good Practice Examples
Regulations setting time standards for key court events.	The UK Admiralty and Commercial Courts. The Singapore Supreme Court
Regulations on adjournments and continuances	The Courts of Norway. The Ontario Superior Court of Justice. The Courts of South Korea
Availability of performance measurement mechanisms	The Supreme Court of Victoria, Australia. The Florida State Courts.
Use of pretrial conference	The U.S. Federal Courts. Norway District Courts. District Courts, Western Australia
Availability of an electronic case management system	The Courts of South Korea. Austrian Courts and Justice System

Figure 5: Case Management and Best Practices

There has been considerable research done on case management since the last three decades. Here is a summary of the of the important and influential scholarly research in this regard.

One of the earliest review articles on case flow management is “What Have We Learned about Court Delay, Local Legal Culture, and Caseflow Management” (Steelman, What Have We Learned about Court Delay, Local Legal Culture, and Caseflow Management, 1997). The article reviews the research and practice of caseflow management since the late 1970s. The article argues that court delay is influenced by local legal culture, which is a set of norms, values, expectations, and behaviours of legal actors in a jurisdiction. The article examines how caseflow management has tried to change local legal culture through various strategies, such as setting time standards, monitoring performance, enforcing compliance, providing incentives and sanctions, and involving stakeholders. The article also discusses some limitations and challenges of caseflow management, such as resistance to change, lack of resources, diversity of cases, and external factors.

Another good overview article is “Judicial Case Management: Caught In the Crossfire” (Gensler, 2010). The article explores the evolution and challenges of judicial case management in federal civil litigation. The article traces how judicial case management became a dominant feature of pretrial procedure since the 1980s, and how it has been influenced by policy debates about the role of judges and the goals of civil justice. The article argues that judicial case management is caught in the crossfire between competing norms and expectations, such as efficiency versus fairness, individualization versus uniformity, discretion versus predictability, and cooperation versus adversarialism. The article also examines some recent proposals for reforming judicial case management and suggests some guiding principles for future rulemaking.

The Woolf reforms were a set of changes to civil procedure rules that aimed to improve access to justice, reduce complexity and encourage settlement. “The impact of the Woolf reforms on costs and delay” (Fenn, Rickman, & Vencappa, 2009) evaluates the impact of the Woolf reforms on costs and delay in civil litigation in England and Wales. The article uses data from a survey of solicitors and a sample of court files to compare cases before and after the reforms. The article finds that the reforms had mixed effects: they reduced delay but increased costs for some types of cases, they increased

settlement rates but also increased uncertainty about costs, they simplified some aspects of procedure but also introduced new problems such as case management.

“Lord Woolf’s Access To Justice: Plus Ça Change” (Zuckerman, 1996) is an article by A. A. S. Zuckerman that critically evaluates Lord Woolf’s Access to Justice report, which was published in 1996 and proposed a major reform of civil procedure in England and Wales. The article argues that Lord Woolf’s report failed to address the root causes of inefficiency, complexity, and costliness of civil litigation, such as adversarial culture, lack of judicial control, excessive discovery and expert evidence, and inadequate legal aid. The article also suggests that Lord Woolf’s report did not offer any radical or innovative solutions, but rather recycled some old ideas that had been tried before with little success.

Moving on to country specific case studies, “The Impact of Caseflow Management on the Judicial System” (Sallmann, 1995) stands out. This paper is about the significant role and impact of caseflow management in bringing about substantial procedural, operational and cultural changes in the judicial systems of Australia over the last decade. The article examines how caseflow management has influenced various aspects of the justice system, such as access to justice, judicial independence, court administration, legal profession, dispute resolution and public confidence.

Timeframe Alarm System: Designing a Practical Tool for Caseflow Management (Pekkanen, Eronen, Pirttilä, & Jalonen, 2015) is an article about an experiment in Finland. This article introduces a practical tool for improving caseflow management, called the “timeframe alarm system.” The tool has been designed to improve managerial and work planning actions in courts and to help bring timeframes as a more integral part of everyday court operations. The tool is designed to help courts monitor and manage their cases according to predefined timeframes. The tool alerts court staff when a case is approaching or exceeding its timeframe and provides information on how to prioritize and plan their work. The tool was developed and tested in a Finnish court.

Philippines has also had a transformative experience using case flow management. “Case Management Reform - The Philippine Experience” (Elepano, 2009) is an article written by Zenaida N. Elepano, a retired court administrator, a consultant for judicial reforms, and a faculty member of the Philippine Judicial Academy. It describes the case

management reform project that was implemented in the Philippines during 2003 for the trial courts. The project aimed to improve case and caseload management in the Philippine judiciary by using information technology tools and best practices from other countries. It involved developing and installing tracking systems that monitor the progress of cases from filing to disposition, using differentiated case management that assigns cases to different tracks based on their complexity and urgency, and providing training and technical assistance to judges and court staff on how to use the new systems. The article reports that case management reform has resulted in several benefits for the Philippine judiciary, such as reducing delays and backlog, improving efficiency and quality, enhancing access to justice, promoting alternative dispute resolution, and increasing public confidence and trust. The article also discusses some of the challenges and lessons learned from implementing case management reform in the Philippines, such as securing funding and support, addressing technical issues, adapting to local conditions, engaging stakeholders, and evaluating outcomes. The article concludes by recommending some possible steps to sustain and expand case management reform in the Philippines, such as updating laws and rules, creating incentives, providing feedback, sharing best practices, and collaborating with partners.

A good article that looks at case flow management in the United States of America is “Reexamining the Pace of Litigation in 39 Urban Trial Courts” (Goerdts, Lomvardias, & Gallas, 1991). The article analyses the pace of litigation in 39 urban trial courts in the United States. The article uses percentiles as the primary statistic to describe overall case processing times within individual courts. The article reports that pace of litigation varies widely across different courts and types of cases. It also identifies some patterns and trends that affect pace of litigation, such as civil cases taking longer than felony cases, jury trials taking longer than bench trials, complex cases taking longer than simple cases, cases with more pretrial events taking longer than cases with fewer pretrial events, and cases with more parties taking longer than cases with fewer parties. The article also discusses some of the implications and recommendations for improving pace of litigation in urban trial courts, such as developing standards and goals for case processing times, monitoring, and reporting case processing performance, implementing differentiated case management systems, enhancing judicial supervision and control over caseload management.

As a specific case study in the USA , “Toward Excellence in Caseflow Management: The Experience of the Circuit Court in Wayne County, Michigan: a Guide by and for Practitioners” (Batty, Colombo Jr, & Kaufman, 1991) is an excellent book. The book is a guide on how to reduce delay in civil cases, written by judges and staff of the Wayne County Circuit Court in Michigan. It describes their five-year effort to implement a caseflow management program that improved efficiency, fairness, and public trust. The book is divided into four parts. The first part introduces the concept of caseflow management and explains why it is important for courts to reduce delay and backlog in civil cases. The second part describes how the Wayne County Circuit Court implemented a caseflow management program that involved setting time standards, monitoring case progress, enforcing deadlines, using alternative dispute resolution methods, and improving communication among judges, staff, lawyers, and litigants. The third part evaluates the results of the program and shows how it improved efficiency, fairness, public trust, and judicial satisfaction. The fourth part offers some lessons learned and recommendations for other courts that want to adopt a similar approach.

Another important book in this regard from the USA is “Caseflow Management. The Heart of Court Management in the New Millennium” (Steelman, Goerdt, & McMillan, 2000). The book is a comprehensive guide on how to monitor and control the progress of cases in courts, written by experts from the National Centre for State Courts. It explains why caseflow management is essential for court efficiency, fairness, accountability, and public trust. It also provides practical advice on how to implement caseflow management principles and techniques in different types of courts and cases. It covers topics such as setting goals and standards, designing case processing systems, managing resources and personnel, using technology and data, resolving disputes early, involving stakeholders, evaluating performance, and sustaining improvement.

Continuing on the USA based studies “User Requirements for a New Generation of Case Management Systems” (Matthais, 2010) is a brief overview of the user requirements for a new generation of case management systems, written by a senior consultant from the National Centre for State Courts. It identifies some of the key features and functions that users expect from modern case management systems, such

as flexibility, integration, security, usability, accessibility, reliability, scalability, performance, reporting, and analytics. It also discusses some of the challenges and opportunities that courts face in adopting new technologies and standards for case management.

Moving closer to India, “Caseflow Management in Courts in Punjab” (Siddique, 2016) is a case study from Pakistan. The article by Osama Siddique analyses the caseflow management system in courts in Punjab, Pakistan. The article examines the legal frameworks, institutional structures, practices, and challenges of caseflow management in Punjab. The article also proposes some reform measures to enhance caseflow management, such as improving data collection and analysis, strengthening judicial leadership and accountability, streamlining procedures and processes, enhancing coordination and communication among stakeholders, providing training and capacity building, and promoting public awareness and trust.

Finally, the most important and influential study that resulted in case flow management rules in India is “Case Management and Its Advantages” (Rao, 2003). The article was written by Justice M. Jagannadha Rao, a former judge of the Supreme Court of India and a former chairman of the Law Commission of India. The article explains what case management is and how it can benefit the Indian judicial system. The article argues that case management can have several advantages for the Indian judiciary, such as: reducing delays and backlog, improving efficiency and quality, enhancing access to justice, promoting alternative dispute resolution, increasing public confidence and trust.

The article also discusses some of the challenges and obstacles that may hinder the implementation of case management in India, such as: lack of infrastructure and resources, resistance from lawyers and judges, diversity of laws and procedures, complexity of cases, cultural factors.

The article concludes by suggesting some possible steps to introduce case management in India, such as: amending laws and rules, creating pilot projects, training judges and lawyers, educating litigants and public, evaluating outcomes.

International Case Studies on Case Management

India is not unique regarding its problems in the judicial system. Several countries across the world have faced similar issues and have reformed their judicial

administration and adjudication to tackle the problem. They have introduced new institutions, processed, and developed technology solutions. Below are listed 3 countries which are of the same profile as India, from which we can learn.

- **Malaysia:** Since the 1980s Malaysia's judiciary faced mounting caseloads and consequent delays in justice delivery. The situation continued to become worse, when in 2008 a new Chief Justice was appointed who began a reform program. A key reform was the Case Management System (CMS) - integrated system for managing the cases that allows for computerizing file tracking, scheduling of trials, retrieving of statistics, managing reports and monitoring the cases (World Bank, 2011). This system offered:
 - Complete automation of the court case management and related operations
 - Live dashboard of the case progress at all stages
 - Electronic management of documents
 - Fully automated planning and scheduling of court sessions
 - Defined templates for creation of any necessary documents.
 - Automatic allocation of case according to case features
 - Robust access control and security features

The benefits accrued from the transition to an automated case management system were several. These included:

- Reduction in delays and pendency
 - Improved efficiency of judges and court staff
 - Increased transparency and predictability
 - Reduction of human errors
 - Time and cost savings for the litigants and lawyers
-
- **South Africa:** South Africa transitioned to a judiciary led case management through the reforms introduced by the Office of the Chief Justice. One of the key reforms introduced was the Norms and Standards for the Performance of Judicial Functions (NSPJF) on 28 February 2014 (Norms and Standards for the

Performance of Judicial Functions, 2014). This introduced norms and standards such as the following:

- Judges must ensure strict adherence to applicable timelines.
- Civil cases must be resolved within 1 year and specific timelines were fixed for various stages of the criminal cases.
- Judgments should be given within 3 months of the last hearing.

Though the reforms are very recent the case backlog and delays have reduced each year since the reform has been introduced

- **Philippines:** In 2003, the Supreme Court of Philippines introduced a pilot program on case management in its regional trial courts and metropolitan trial courts (Elepano, 2009). Cases were classified into:

- Fast track cases, which require minimal judicial interference.
- Complex track cases, which require maximum judicial interference.
- Standard track cases, which require normal judicial interference.

For each track, the timelines were well defined, and their progress was tracked on a dashboard. Cases lagging were highlighted and brought back to schedule. Since 2003, 95% of the civil cases and 90% of the criminal cases have completed according to the set timelines.

Case Management in the Indian context

Justice M Jagannadha Rao in his paper on the advantages of case management (Rao, 2003) talks about the origins and success of case management worldwide and how it could be introduced in India. In essence ‘judge led case management’ in the Indian context would refer to the idea of:

- **Categorization of cases based on complexity:** When the case is filed, the judges decide the nature and level of complexity of the case. This can be changed later by the judge.
- **Mutually agreed schedule:** The schedule for filing of evidence will be decided before the commencement of proceedings collectively by the judge, registry, and the parties.
- **Close monitoring of progress:** Using IT tools the judge shall have complete visibility on the stage-wise progress of each case.

- **Non-submission of evidence:** If the case doesn't follow the set deadline for submission of relevant evidence, the judge may refer the case to Alternate Dispute Resolution (ADR) mechanisms.
- **Limited adjournments:** Once the evidence is recorded, the case will be called for hearing. The number of adjournments to be granted would be restricted as per law.

There could be many objections raised against the case management policy, by both the judges and the lawyers. In the Indian context the objections would primarily relate to:

- **Shortage of manpower in courts:** Courts in India face a shortage of judges and staff. Case management adds an additional burden on the existing manpower which it may not be able to handle. Additional court managers and judges will be needed. Improved IT support will also help in managing the additional burden.
- **Shortage of manpower in Government:** The Government is itself the biggest litigant in the country (Financial Express, 2018). Government cases get adjourned due to shortage of manpower from the government as well. There is a need for a National Litigation Policy to reduce government litigations jamming the courts (The Mint, 2014).
- **Timelines need to be lenient given the profile of litigant as well:** The litigant might come from a lower socio-economic stratum which might limit his resources. This should be considered while deciding the timeline for the case, so that he gets the deserved justice.

Case management has been discussed in various forums in the last couple of decades. Indian parliament and judiciary have taken steps in this direction.

Code of Civil Procedure (Amendment) Act, 2002:

The Parliament of India amended the Code of Civil Procedure (CPC) in 1999 and the changes were effected from 1st July 2002. This amendment brought about significant changes to simplify the procedure of filing a civil case and reduce the delays (Financial Express, 2002). This amendment is particularly important from the perspective of case management. Specific time limits are laid for various stages of a civil case. Though

these rules are enforced, the parties can request for relaxation and judges are also allowed to use their discretion. This has resulted in partial implementation of these rules.

Fast Track Commercial Courts

The Commercial Courts Bill (Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015) was introduced in the Lok Sabha in April 2015 and became an Act on 23rd October 2015. It implements the idea of case management for commercial cases. The 188th report of the law commission had submitted a report in 2003 (188th Report on Proposals for Constitution of Hi-Tech Fast-Track Commercial Divisions in High Courts, 2003) recommending the establishment of such courts. The commission then submitted another report (Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015) in 2015 on the same topic. The act enables the creation of commercial divisions in high courts, and commercial courts at the district level. To expedite the judicial process, the act defines specific timelines for respective stages of the case. If the suggested time limits are followed, commercial disputes would get resolved theoretically within 1 year and 15 days from the institution of the suit. The act has been introduced with the right intent to address the delays in Indian courts. Its mandate needs to be expanded to other forms of litigation as well. However, the effectiveness in its implementation is yet to be measured.

Relevance for our Research

The body of work cited in this section collectively provides comprehensive insights into case management across the world and in India, the successes and failures and its potential to address judicial delays. However, there are a few gaps in the existing literature that we intend to address through our research presented in Chapter 3 and Chapter 4.

- **Evaluation of Case Flow Management Rules:** More than 15 years have passed since the Case Flow Management rules for district courts were promulgated. Yet there has been no rigorous evaluation of their implementation. It is commonly understood that they have not been effectively implemented, but it is not based on an academic study. Our research aims to address that.

- **Lack of use of official Court Data:** In the study of judicial delays in district courts of India, the official court data available on e-courts has not been used. This is because this data is only recently available at a pan India level. This is a very rich data set and reveals the granular case flow information which can be analysed to reveal insights that were not accessible earlier.
- **Mixed Methods Approach:** Our research corroborates the findings of qualitative research of interviews with a phenomenological approach with that of the quantitative research using case flow data. Most methods so far have used only a qualitative or quantitative approach. Using a mixed method approach results in a more confident and deeper inference that is not available using just either of the approaches.

Community Justice Systems

Most judicial reforms target the supply side of the system i.e., increasing the capacity and efficiency of the judicial system. However, given the practical constraints of judicial manpower and financial resources, the formal system cannot deliver beyond a point. This is true especially for a country like India which has about 18% of the world's population and has multiple areas which need immediate attention. Addressing the demand side of the problem, i.e., reducing the number of court cases entering the formal system, will ease the pressure. A parallel can be drawn from the local self-governance model of Panchayati Raj. The idea of self-governance is that each village should take care of its own affairs; this is incomplete without a local judiciary. Just like the administration, the judiciary needs to be further decentralized and allow the villages to take care of the litigations locally. This is in consonance with the directive principle contained in Article 39A of the Indian Constitution which states that the State should take steps to provide opportunities for securing justice to all its citizens.

The village courts from the pre-colonial times have characteristics which offer a solution. These were informal courts which had several benefits (Mathur S. , 1997):

- They provided a fair and speedy resolution of village disputes at the local level.
- Hearings were conducted in the open for everyone to participate.

- The costs of justice delivery were low as people could represent themselves and did not need an intermediary lawyer.
- They were based on mediation and conciliation. This allowed relationships to be retained and not strained.
- Since the hearings were within the village in front of the community, it was easy to bring forth evidence and witnesses and difficult to perform perjury.
- The court hearings and operations were conducted in the local language which made the process of justice delivery comprehensible to the last person.

Many aspects of this institution can be revived today to address the demand side of the crisis we have. If simple court cases can get resolved at the village level, lesser cases would reach the formal courts at the district level. As described above, these institutions not just provide timely and low-cost justice; they also make justice more accessible.

In 2009, the Panchayati Raj Ministry drafted the Nyaya Panchayats bill (The Nyaya Panchayats Bill, 2009) to revive this institution. The bill has faced opposition based on the composition of the Nyaya Panchayat and potential for elite capture. However, the bill provides safeguards against elite capture which can be further enhanced (Upadhyay, 2011). The 114th law commission report (114th Report on Gram Nyayalaya, 1986) recommends establishment of Gram Nyayalays - a formal institution for a cluster of gram panchayats. Gram Nyayalayas Act 2008 (The Gram Nyayalays Act, 2008) came into force on October 2, 2009. A Gram Nyayalay is a mobile court which travels to the villages under its jurisdiction. However, the implementation of this act has been poor. By March 2015, only 194 Gram Panchayats had been notified with half of them in Madhya Pradesh. The poor implementation can be attributed to (Narasappa & Vidyasagar, State of the Indian Judiciary, 2016):

- Complexities involved in implementation of a new legislation.
- Difficulty in appointment of *Nyayadhikaris* who head the Gram Nyayalaya.
- Funding challenges.
- Reluctance of police officials to approach the institution.
- Weak response of the Bar.
- Problem of concurrent jurisdiction with regular courts.

- Absence of auxiliary services such as notaries, stamp vendors at the village level.

These are systemic defects and need to be addressed if we intend to make justice truly democratic as enshrined in the constitution.

Let us next look at the scholarly research in the domain of Community Justice Systems. We will explore their key features, case studies from around the world and India, and importantly how they have impacted access to justice.

Improving access to justice is the overarching idea behind community justice systems. “International Access to Justice: Barriers and Solutions” (Begiraj & McNamara, 2014) describes the phenomenon of access to justice across geographies. The article analyses access to justice at an international level, and conceptualises the way that barriers operate. It provides a basis on which links may be drawn across jurisdictions because there is a degree of universality about the nature of barriers. The article identifies four types of barriers to access to justice: (a) societal barriers, such as poverty, illiteracy, discrimination and violence; (b) institutional barriers, such as lack of legal aid, lawyers, courts and infrastructure; (c) legal barriers, such as complex laws, procedures and language; and (d) intersectional barriers, where societal and institutional barriers overlap, such as lack of trust in lawyers and judges, and corruption. The article discusses some of the solutions that have been implemented or proposed to address these barriers. It categorizes them into four groups: (a) legal empowerment initiatives, such as legal education, awareness raising and paralegal services; (b) alternative dispute resolution mechanisms, such as mediation, arbitration and customary justice; (c) judicial reform measures, such as simplifying laws and procedures, increasing transparency and accountability, and enhancing judicial independence; and (d) international cooperation efforts, such as sharing best practices, providing technical assistance and monitoring compliance.

A book titled “Community Justice - Second edition” (Clear, Hamilton, & Cadora, 2011) is a good overview of case studies and lessons on community justice systems. In this book we find examples of community justice in practice and case studies that provide more information about specific community justice efforts. The book argues that crime management is more effective through the use of informal social control mechanisms

such as family, friends, neighbours and local organizations than through formal social control mechanisms such as police and courts. The book also advocates for a more holistic and restorative approach to justice that focuses on repairing harm, restoring relationships and reintegrating offenders into society.

Let us next look at some important survey articles. “Alternative Dispute Resolution: An International Approach” (Vargès, 1985) examines how different countries use alternative dispute resolution (ADR) methods such as arbitration, mediation, conciliation and negotiation to resolve conflicts outside the formal court system. It compares and contrasts the advantages and disadvantages of ADR in various legal and cultural contexts, such as the United States, Europe, Latin America, Asia and Africa. It also explores some emerging trends and challenges in ADR, such as its role in international trade and human rights disputes, its impact on legal education and ethics, and its potential for promoting peace and cooperation among nations.

One of the early articles on community justice systems was “Ideological Production: The Making of Community Mediation” (Harrington & Merry, 1988). The article explores how community mediation is constructed and shaped by different ideological projects and organizational models. The article uses ethnographic data from local mediation programs in the United States to show how mediators are selected, trained, and deployed to handle various types of disputes. The article also examines how community mediation is influenced by three visions: legal reform, social reform and community justice.

Community Justice Systems have an important role to play in human development. An important report that brings this out is “Inclusive governance for human development” (Sudarshan & Dias, 2007). This report emphasizes the importance of inclusive governance. It highlights the key recommendations for improving inclusive governance from 10 different case studies across the world. It particularly looks at the role of community justice systems and showcases an important case study. The study from Cambodia advocates for the reformation of both the formal and traditional systems, as indigenous communities continue to be excluded from the formal legal system despite their reliance on customary conflict resolution mechanisms. Likewise, the study on *Nari Adalats* in Gujarat, India, highlights the dynamic interplay between traditional and modern court systems in determining what constitutes justice and legality. The study

emphasizes the significance of localized, decentralized alternative dispute resolution systems in the domain of social justice and recommends augmenting entitlements and constitutional rights.

Another paper in this regard is “Doing Justice: How informal justice systems can contribute” (Wojkowska, 2006). The article explores how informal justice systems can contribute to human development, democratic governance, poverty reduction and conflict prevention. The article defines informal justice systems as those that are not part of the state’s legal system, but are based on customary, religious or traditional norms and practices. The article examines the advantages and challenges of informal justice systems, as well as some examples of how they have been engaged with by UNDP and other development actors.

The success of village courts in the past open up a question whether they should be revived in the present. “Feasibility of Revival of Nyaya Panchayats” (Sathe, 1998) reviews a book by S.N. Mathur titled *Nyaya Panchayats as Instruments of Justice*, which advocates for the revival of Nyaya panchayats (village courts) in India as a means of providing accessible and affordable justice to rural people. The article critically examines the historical, legal and socio-cultural aspects of Nyaya panchayats, and evaluates their strengths and weaknesses in comparison to formal courts and other alternative dispute resolution mechanisms. The article also discusses some of the challenges and opportunities for reviving Nyaya panchayats in the context of constitutional reforms, human rights norms, gender equality, legal literacy and judicial accountability.

Continuing on the subject of Naya Panchayats, “Nyaya Panchayats: The Unfinished Task” (Bandyopadhyay, 2005) by D. Bandyopadhyay discusses the need and challenges of establishing Nyaya panchayats, or village courts, in India as a way of ensuring access to justice for rural people. The article traces the history and evolution of Nyaya panchayats, from pre-independence times to the present day, and analyses their constitutional, legal and administrative aspects. The article also examines the obstacles and opportunities for implementing Nyaya panchayats effectively, such as political will, social awareness, financial resources, and human resources.

Many community justice systems continue to thrive in tribal and rural India today. They have played a significant role in promoting legal pluralism. “State Law, Dispute Processing And Legal Pluralism: Unspoken Dialogues From Rural India” (Kodal, 2019) is an excerpt from the book that presents an ethnography of how non-state forums and actors handle disputes in rural India. The article focuses on the rituals of gossip that surround memories of disputes and how they shape social relations and identities. The author argues that gossip is a form of dialogue that reveals the complexity and diversity of legal pluralism in rural India.

Any discussion on informal justice systems brings up the question of protection of rights and unbiased application of justice. “Informal Institutions and the Rule of Law: The Judicial Response to State Killings in Buenos Aires and São Paulo in the 1990s” (Brinks, 2003) examines how informal institutions affect the rule of law in Argentina and Brazil, focusing on the judicial response to police killings of suspected criminals. The article argues that judges apply different standards of proof and punishment depending on the perceived social status and behaviour of the victims, resulting in impunity for police violence against marginalized groups. The article also explores the origins and consequences of these informal institutions, as well as their implications for democratic consolidation and human rights protection. It presents the inability of the justice systems in Brazil and Argentina to protect certain basic rights, as evidenced by the failure of their courts to punish the large number of police homicides that continue to be committed.

On the successes of community justice systems in various countries “The "Community" in Community Justice: Issues, Themes, and Questions for the New Neighbourhood Sanctioning Models” (Bazemore, 1997) compares four neighbourhood decision-making models now being used with some frequency in the U.S. and Canada. The article examines the concept and practice of community justice, which involves the participation of local communities in crime prevention and sanctioning. The article reviews different models of community justice, such as restorative justice, community policing and neighbourhood courts. The article also identifies some key issues, themes, and questions for developing and evaluating community justice initiatives, such as defining community, measuring outcomes, ensuring accountability and promoting democracy.

Among the Asian countries, Japan has also had a history of successful informal justice systems. “Judicial Review of Administrative Guidance: Governmentally Encouraged Consensual Dispute Resolution in Japan” (Young, 1984) explores the phenomenon of administrative guidance in Japan, which is a form of informal and non-binding regulation by government agencies that encourages consensual dispute resolution among private parties. The article examines the legal and historical origins of administrative guidance, its advantages and disadvantages, and its judicial review by courts. The article argues that administrative guidance is a distinctive feature of Japanese legal culture that reflects a preference for harmony and cooperation over confrontation and litigation. This paper highlights that Japan possessed sophisticated indigenous legal institutions and traditions, as well as a historical, cultural, and philosophical tradition that differed considerably from that of the countries in which the modelled legal institutions originated.

Social structures play an important role in community justice. “Community Justice, Capitalist Society, and Human Agency: The Dialectics of Collective Law in the Cooperative” (Henry, 1985) analyses the relationship between social structures and community justice, using the case of small-scale cooperatives as an example. The article argues that community justice is neither a radical alternative to dominant legal systems nor a mere tool of social control, but rather a dialectical process that reflects and shapes human agency. The article also discusses how community justice can challenge and transform capitalist society by creating new forms of collective law and democratic participation.

Another paper in this regard is “Influences of Social Organization on Dispute Processing” (Felstiner, 1974). This paper first outlines several types of social organization and analyses certain forms of dispute processing. It then suggests that these forms of dispute processing either depend on an availability of resources which varies with social organization or have different negative consequences in different social contexts. Finally, the paper explores the implications of this linkage between social organization and dispute processing for certain reforms currently advocated in the U.S.

Jayanth K. Krishnan and Marc Galanter have written extensively on informal justice systems in India. One of their seminal articles is "Bread for the Poor": Access to Justice

and the Rights of the Needy in India (Krishnan & Galanter, "Bread for the Poor": Access to Justice and the Rights of the Needy in India, 2004). The article is a scholarly paper that examines the challenges and opportunities for improving access to justice for poor and marginalized people in India. The authors analyse various reforms that have been proposed or implemented by Indian politicians and judges, such as alternative dispute resolution, legal aid, public interest litigation, Lok Adalats, etc. They also explore how social movements, NGOs, lawyers, media, and other actors influence the legal system and its responsiveness to the needs of the poor. The authors argue that access to justice is not only a matter of providing legal services or remedies, but also a matter of empowering people to claim their rights and participate in democratic governance.

Another article by them in this regard is "Debased Informalism: Lok Adalats and Legal Rights in Modern India" (Galanter & Krishnan, Debased Informalism: Lok Adalats and Legal Rights in Modern India, 2003). The article argues that the Lok Adalats are not effective in protecting the legal rights of the needy, because they lack procedural safeguards, judicial independence, legal representation and substantive justice. The article also challenges the claim that the Lok Adalats reduce the backlog of cases in the formal courts and shows that they mainly deal with minor civil matters or government-initiated cases. The article suggests that instead of relying on debased informalism, India should improve its formal judicial system by increasing its resources, accessibility, and accountability.

Galanter has also written another important article "Justice in many Rooms: Courts, Private Ordering, and Indigenous Law" (Galanter, Justice in many Rooms: Courts, Private Ordering, and Indigenous Law, 1981). This paper argues that although by definition indigenous law may have the virtues of being familiar, understandable and independent of professionals, it is not always the expression of harmonious egalitarianism. The article is a seminal work that explores how different forms of law interact and coexist in complex societies. The author challenges the conventional view that state law is superior or dominant over non-state law, such as customary law, religious law, or informal norms. He argues that state law and non-state law are both shaped by social context and power relations, and that they often complement or supplement each other rather than compete or conflict. He also warns against

romanticizing non-state law as more egalitarian or less coercive than state law, as it may also entail violence, inequality, or injustice. He proposes a pluralistic and pragmatic approach to understanding and improving access to justice for diverse groups of people.

Galanter and Krishnan have also written on personal law and religious conflict. “Personal Law Systems and Religious Conflict” (Galanter & Krishnan, *Personal Law Systems and Religious Conflict*, 2001) is an article that compares how India and Israel have developed different personal law systems for their diverse religious populations, and how these systems interact with secular laws, democratic principles, constitutional values, and international norms. The authors compare and contrast the similarities and differences between India and Israel in terms of their personal law systems. They identify some common themes and challenges such as managing religious diversity, conflict, coexistence; balancing individual, group rights; adapting traditional/customary law and practice; promoting and protecting human dignity, etc. They also suggest some possible ways forward for both countries such as learning from each other’s experiences.

Harish Chander writes a review of Galanter’s book on the legal system in India in “Review of Marc Galanter’s *Law and Society in Modern India*” (Chander, 1989). The article is a book review of Marc Galanter’s *Law and Society in Modern India*, which is a collection of thirteen essays that examine various aspects of Indian legal system and culture. It praises Galanter for his insightful and nuanced analysis of how modern Indian law, which is derived from Western sources, has adapted to local conditions and realities in post-colonial India. The article also highlights some of Galanter’s main themes and arguments, such as the role of legal professionals, the dynamics of litigation, the impact of social movements, the challenges of legal pluralism and the prospects of legal reform. It concludes by recommending Galanter’s book as a valuable contribution to the field of law and society studies in India. Looking at the failure of the Nyaya Panchayats, the author concludes that there is an almost total obliteration of indigenous elements.

Lok Adalats have received criticism from many scholars. “Neither Fish, Nor Flesh, Nor Good Red Herring Lok Adalats: An Experiment in Informal Dispute Resolution in India” (Whitson, 1992) is an article in this regard. The article examines the Lok Adalats

(LA), a system of informal dispute resolution in India that aims to provide speedy and inexpensive justice to litigants. The article analyses the historical, legal and social context of LA, as well as its strengths and weaknesses. The article argues that LA has some advantages over formal courts, such as flexibility, accessibility, efficiency, and cost-effectiveness. However, it also points out some drawbacks of LA, such as lack of procedural safeguards, quality control, accountability and appeal mechanisms. The article concludes that LA is neither fish nor flesh nor good red herring, meaning that it is not a complete substitute for formal courts nor a satisfactory alternative for informal justice. The article suggests some reforms to improve LA's functioning and legitimacy, such as enhancing legal aid services, ensuring voluntary participation, providing legal representation, and training for mediators, and establishing clear guidelines and standards for LA proceedings.

Robert Moog is also critical of alternative dispute resolution in India. In "Conflict and Compromise: The Politics of Lok Adalats in Varanasi District" (Moog R. S., 1991) he explores the politics of Lok Adalats. This article is an empirical study of how Lok Adalats (people's courts) operate as an alternative dispute resolution mechanism in India. The author examines how different actors, such as organizers, staff, judges, lawyers, and disputants, influence the selection and settlement of cases in Lok Adalats. He argues that Lok Adalats are not simply a form of informal justice that empowers disputants to resolve their conflicts peacefully and consensually, but also a site of organizational politics that shapes disputant choices and outcomes. He suggests that Lok Adalats may have both positive and negative effects on access to justice, depending on the context and interests involved.

Guruswamy in "Village courts in India: unconstitutional forums with unjust outcomes" (Guruswamy & Singh, 2010) also highlights how village courts can flout the law. This article has two primary aims. The first is to examine the premise of the overburdened system and to highlight figures that show that the Indian legal system is accessed very unevenly and that there seems to be some link between literacy levels, poverty rates and where a person lives, and their use of the courts. Second, it argues that the statute will lead to the unjust exclusion of the impoverished, from just legal processes under the garb of 'speedy' and 'efficient' administration of justice. The article criticizes the Gram Nyayalayas or Village Courts Act (2008) which aims to provide speedy and

inexpensive justice to rural citizens through informal courts at the village level. It argues that the act is unconstitutional because it violates the right to equality, fair trial and legal representation for rural litigants who are often poor, illiterate and marginalized. The article also challenges the assumption that the formal judicial system is overburdened and inefficient, and shows that the government is responsible for most of the litigation in India. It suggests that instead of creating parallel courts with lower standards of justice, the government should invest in improving the infrastructure, accessibility and accountability of the existing courts.

Another article that is critical of village courts is “Dispensing Justice Through Kangaroo Courts - Gaavkis in Maharashtra” (Ingole, 2015). The article argues that gaavkis are kangaroo courts that violate human rights, especially of women and lower castes, by imposing arbitrary and harsh punishments for social transgressions such as inter-caste marriages, elopements, adultery or witchcraft accusations. The article also criticizes the Tanta Mukti Gaav Yojna (TMGY), a government scheme that aims to empower village communities to resolve their disputes through mediation and conciliation but ends up legitimizing gaavkis as dispute resolution mechanisms. The article suggests that instead of supporting gaavkis, the government should ensure access to formal justice for rural citizens by strengthening legal awareness, legal aid and legal enforcement.

Informal courts in the form of Caste specific courts are also problematic. “The Devil's Court!'. The Trial of 'Katta Panchayat' in Tamil Nadu” (Headley, 2015) that highlights the problems in them. This is a book chapter that traces the making of a spurious concept, that of the *katta panchayat*, which showcases the shift of the relation between the state and the village society in matters of legal reasoning and procedure. The article analyses the conflict between the Indian judiciary and caste panchayats, which are informal courts that operate on the basis of caste hierarchy and tradition in rural Tamil Nadu. The article argues that caste panchayats are devil's courts that violate constitutional rights, especially of women and lower castes, by imposing illegal and oppressive verdicts for social issues such as inter-caste marriages, elopements, adultery or witchcraft accusations. It also examines how the Madras High Court has tried to curb caste panchayats by issuing various orders and directions to protect human rights and uphold legal justice. It suggests that instead of dismissing caste panchayats as backward

and barbaric, the judiciary should engage with them critically and constructively to reform their practices and norms.

In the race to improve efficiency of our court system, we should not ignore the access to justice. In “Access to Justice and Rule-of (Good) Law: The Cunning of Judicial Reform in India” (Baxi P. , 2007) Pratiksha Baxi argues the same. The article is a critical analysis of how judicial reform in India has been influenced by neoliberal agendas and global governance norms. The author argues that judicial reform has focused more on improving efficiency, transparency, and accountability of the courts, rather than addressing the substantive issues of justice, rights, and equality for marginalized groups. She also contends that judicial reform has expanded state power and control over legal processes and outcomes, while undermining democratic participation and social movements. She calls for a more radical and transformative approach to access to justice that challenges the dominant discourses of rule-of-law and good governance¹. The paper highlights that the links drawn between efficiency, speed and cost effectiveness with the reduction of court arrears do not assure access to justice to the poor. Nor does the creation of alternate dispute resolution bodies necessarily report empowerment of the poor.

Post-Colonial India did not try to revive the traditional justice systems. “A Note on Caste Panchayats and Government Courts in India: Different Kinds of Stages for Different Kinds of Performances” (Hayden, 1984) highlights this. The article argues that the attempt to revive indigenous institutions after Indian independence did not fail; it was never really made. It compares caste panchayats and government courts in India as different kinds of stages for different kinds of performances. The author argues that caste panchayats, which are informal and traditional dispute resolution bodies based on caste affiliation, are more concerned with maintaining social harmony and restoring relationships than with enforcing legal rules or rights. On the other hand, government courts, which are formal and modern institutions derived from British colonial law, are more focused on applying legal principles and procedures than on resolving conflicts or satisfying parties. The article concludes by suggesting that caste panchayats and government courts represent different modes of social control that reflect different values and goals. The author also notes that both forums have their advantages and disadvantages, depending on the nature and context of disputes.

Galanter also writes about this in “The Aborted Restoration of 'Indigenous' Law in India” (Galanter, *The Aborted Restoration of 'Indigenous' Law in India*, 1972). This article analyses the attempts and failures to restore the traditional law of India, such as Hindu, Muslim and customary law, after independence. The article traces the historical development of the modern Indian legal system under British colonial rule and its impact on the indigenous legal traditions. The article also examines the various proposals and movements that advocated for the revival or reform of traditional law in post-colonial India, such as Gandhi’s vision of village republics, Ambedkar’s campaign for a uniform civil code, and Nehru’s policy of secularism and social justice. The article argues that these efforts were aborted due to various political, social, and ideological factors, such as the lack of consensus among different groups, the resistance from vested interests, the complexity and diversity of traditional law, and the influence of modernization and westernization. The article concludes that traditional law has been largely marginalized and replaced by a centralized and uniform legal system that is alien to most Indians.

Amartya Sen offers a very good critique of this straightjacketed thinking about justice. In his book “*The Idea of Justice*” (Sen, 2011) presents a significant departure from traditional political philosophy by challenging the notion of identifying a single set of just principles to design perfectly just institutions. The main argument revolves around the need for a theory that focuses on comparative justice rather than an ideal state of justice. Sen emphasizes the importance of making judgments about comparative justice, indicating when and why societies are moving closer to or farther away from realizing justice in a globalized world.

Certainly, Prof Shobhit Mathur. Amartya Sen's critique of John Rawls' approach to justice, emphasizing the distinction between “Nyaya” and “Niti,” offers a profound insight into understanding justice in a broader, more inclusive context. In his book “*The Idea of Justice*,” Sen argues that a comprehensive understanding of justice cannot be achieved through the lens of institutions and rules alone (Niti), but must also consider the actual realizations and outcomes (Nyaya) that these institutions and rules produce in the lives of people.

Rawls' theory, primarily articulated in "A Theory of Justice," focuses on the principles that would be chosen by individuals in an original position of equality, behind a veil of ignorance. Rawls emphasizes designing institutions and distributive principles that would ensure fairness and equality. However, Sen critiques this approach for its primary focus on the fairness of institutions (*Niti*) without adequately considering the actual lives and outcomes (*Nyaya*) that result from these institutions.

Sen argues that justice should be concerned with the lives that people can actually live, which includes examining not just the fairness of the processes, but also the capabilities of individuals to pursue their goals. This approach demands a more comprehensive examination of social arrangements, including the examination of public reasoning, dialogue, and the scrutiny of actual outcomes.

In critiquing John Rawls' seminal work on 'justice as fairness,' Amartya Sen introduces an important distinction between '*Nyaya*' and '*Niti*' to underscore the limitations of focusing solely on the structure of institutions and rules for assessing justice. Sen posits that an adequate understanding of justice must transcend the confines of institutional fairness (*Niti*) to consider the actual outcomes and realizations (*Nyaya*) these institutions foster. Sen argues against Rawls' approach, suggesting that a comprehensive evaluation of justice requires a broader scrutiny that encompasses the effectiveness of social organizations, institutions, and public policies in enhancing individual capabilities and freedoms. Sen's critique illuminates the necessity of integrating a more expansive view of justice that assesses not just the fairness of procedures and distributions, but the actual improvements in people's lives, thereby advocating for a justice that is both procedurally fair and outcome oriented.

Post independence an attempt was made to revive the traditional justice institutions in a new form. "From Nyaya Panchayats to Gram Nyayalayas: The Indian State and Rural Justice" (Bail, 2015) describes this journey.. This article traces the history of Nyaya Panchayats to their modern attempt of reviving them through Gram Nyayalayas. It argues that these institutions reflect different visions of justice and state-society relations, and that they have faced various challenges in implementation and effectiveness. It evaluates the performance of Gram Nyayalayas so far, based on available data and studies. It identifies some of the factors that have hindered their

functioning, such as lack of awareness, infrastructure, cooperation and incentives. It also suggests some possible ways to improve their viability and impact.

The Law Commission of India had first proposed the institution of Gram Nyayalayas. This is described in “Law Commission Report on Gram Nyayalaya” (114th Report on Gram Nyayalaya, 1986). The 114th Law Commission Report on Gram Nyayalaya was published in August 1986. The conception of Gram Nyayalaya was first recommended in this report with a two-fold objective: First, addressing the pendency of cases in courts, and second, introducing a participatory form of justice. The Law Commission of India put forward the consideration of transitioning from the democratic Nyaya Panchayat setup, whose composition was based on elections, towards a form of ‘participatory justice’ under the authority of people with requisite legal skills and customary, traditional knowledge in the form of Gram Nyayalayas.

Bitto Rani has a more positive view on informal courts. In “Sharia Courts as Informal Justice Institution in India” (Rani, Sharia Courts as Informal Justice Institution in India, 2014) she explores the role and functioning of Sharia courts as informal justice institutions that cater to the Muslim community in India. The article argues that Sharia courts are not anti-constitutional or anti-democratic, but rather provide an alternative forum for dispute resolution that is based on Islamic law and values. The article also examines the challenges and limitations of Sharia courts, such as their lack of legal recognition, their patriarchal bias, their interference with personal laws and their potential conflict with human rights norms. This paper argues that sharia courts improve access to justice delivery by lessening costs associated with bureaucratic delay and with the need for professional assistance, and lessening the discouragement of potential parties who are confronted in regular courts by judges and lawyers of higher social status than themselves. The article concludes by suggesting some ways to reform and regulate Sharia courts, such as ensuring their accountability, transparency, accessibility and compatibility with constitutional principles.

Bitto Rani extrapolates her research to other informal justice institutions in “The Role of Informal Justice Institutions: An Overview of its Existence and Functioning in Justice Disbursement” (Rani, The Role of Informal Justice Institutions: An Overview of its Existence and Functioning in Justice Disbursement, 2014). The article is a study of the informal justice institutions that exist and function in different parts of the world,

especially in developing countries. The article argues that informal justice institutions play a vital role in providing access to justice for people who are marginalized, disadvantaged, or excluded by the formal state-sponsored judicial system. The article also examines the advantages and disadvantages of informal justice institutions, such as their flexibility, responsiveness, legitimacy, affordability, cultural sensitivity, as well as their potential for human rights violations, corruption, discrimination, and lack of accountability.

Jeffrey A Redding also looks at the informal Muslim courts in India. “Institutional V. Liberal Contexts for Contemporary Non-State, Muslim Civil Dispute Resolution Systems” (Redding, 2010) makes the case for a new ‘institutional pluralism’ - with both different antecedents and different prospects than liberal pluralism. It compares two different contexts for non-state, Muslim civil dispute resolution systems: one that is institutionalized and supported by the state (such as in India) and one that is liberal and marginalized by the state (such as in Canada). The article argues that both contexts have advantages and disadvantages for Muslim women’s rights and access to justice. The article also suggests some ways to improve these systems in both contexts.

Informal justice systems have been leveraged to create dispute-free villages in India. “The Impact of Mahatma Gandhi Tantamukti Gaon Abhiyan of Maharashtra State on Gram Panchayat Elections in Satara Taluka” (Shinde, 2016) describes this effort in India. The article analyses the impact of Mahatma Gandhi Tantamukti Gaon Abhiyan (MGTA), a state-sponsored initiative to promote dispute-free villages, on gram panchayat elections in Satara taluka of Maharashtra. The article uses primary data collected from 30 villages to examine how MGTA influenced voter turnout, candidate selection, campaign expenditure and electoral violence. The article finds that MGTA had a positive impact on voter awareness, participation and empowerment, but also faced some challenges such as elite capture, political interference and lack of sustainability.

The state can play a key role in implementation of this initiative to create dispute free villages, particularly the police have an important role. In “Role Of The Police In Society For Implementing Mahatma Gandhi Tanta Mukti Gaon Mohim” (Dighavkar, 2013) the author evaluates how police can play a positive role in implementing Mahatma Gandhi Tanta Mukti Gaon Mohim (MGTMGM), a village-level dispute

resolution scheme launched by the Maharashtra government in 2007. The author examines how police can help villagers resolve their conflicts peacefully and amicably, without resorting to litigation or violence. The author also assesses how MGTMGM can improve the socio-economic condition of villagers by reducing crime, enhancing trust and promoting development. It describes MGTMGM as an innovative initiative that aims to empower villagers to settle their disputes through dialogue, mediation and arbitration. The author also highlights the benefits of MGTMGM for reducing litigation costs, saving time and resources, preserving social relationships and fostering communal harmony. The author claims that MGTMGM can reduce crime rates, enhance trust among villagers, improve public services delivery, increase participation in governance and promote social welfare. The article concludes by recommending that police should adopt a proactive approach to implement MGTMGM across Maharashtra and other states.

There have been other interesting studies of the initiative that are worthy of discussion. “A Study of Tanta Mukti Gaon Mohim (Dispute-Free Rural Plan) Of The Maharashtra Administration” (A.U., 2015) stands out. The article aims to assess the impact and effectiveness of MGTMGM on rural development, social harmony and justice delivery. The article uses both primary and secondary data sources, such as interviews, surveys, reports and literature review. The article finds that MGTMGM has some positive outcomes, such as reducing litigation costs, enhancing participation of women and marginalized groups, promoting peace and cooperation among villagers, and improving police-public relations. However, the article also identifies some challenges and limitations of MGTMGM, such as lack of awareness, training and resources among committee members, influence of caste and political factors on dispute resolution, exclusion of serious crimes from MGTMGM purview, and possible violation of human rights and legal principles. The article concludes that MGTMGM is a commendable initiative that needs further improvement and evaluation to ensure its sustainability and accountability.

Khap Panchayats have also received criticism due to cases of ‘honour killings’. However, they are institutions that have lasted for centuries and continue to play an important role in the community life in India, particularly the state of Haryana. “Relevancy of Khap Panchayat” (Kaur, 2017) explores how Khap panchayats, which

are traditional caste-based councils that regulate social norms and practices among certain communities in India, have become a source of controversy and conflict in recent times. The author examines how Khap panchayats function, what types of issues they deal with, what challenges they face from legal and human rights perspectives, and what role they play in contemporary society. It concludes by suggesting some ways to reform or regulate khap panchayats. The author proposes some measures such as creating awareness among people about their constitutional rights; promoting dialogue between different stakeholders; empowering women through education and employment; providing legal aid and protection to victims; ensuring accountability and transparency of Khap panchayat proceedings; etc.

While Lok Adalats have received their fair share of criticism, there have been proposals on how to reform them as well “Justice for All: Improving the Lok Adalat System in India” (Zainulbhai, 2016). In this article, the author highlights the advantages and disadvantages of Lok Adalats over formal courts, such as their flexibility, accessibility, affordability, efficiency, finality and public participation versus their lack of legal representation, procedural safeguards, quality control, transparency and accountability. The article compares Lok Adalats with mediation practices in common law countries and suggests ways to improve their effectiveness and legitimacy. He compares Lok Adalats with mediation practices in common law countries such as Australia, Canada, England and Wales, New Zealand and United States (e.g. state of New York). The author identifies some common features and differences between them. The author proposes some recommendations for improving Lok Adalats based on international best practices and empirical studies.

Broadening the perspective “Is Alternative Dispute Resolution Consistent with the Rule of Law?: Lessons from Abroad” (Sternlight, 2007) describes how ADR can be made more consistent with the Rule of Law. The article argues that by labelling ADR projects as rule of law projects and using them to achieve or work toward peace, perhaps we are beginning to recognize that our definition of justice ought to be broadened to include harmony and social equality as well as individual rights.

There have been successful examples of community justice systems from around the world. One such paper that showcases a few cases studies globally is “Resolution Of Domestic Disputes Through Extra-Judicial Mechanisms In The United States And

Asia: Neighbourhood Justice Centres, The Panchayat, And The Mahalla” (Klock, 2001). The article highlights that the community should be responsible for the resolution of social conflicts that arise within its boundaries and the enforcement of those resolutions, not the state sanctioned judicial system. It explores how domestic disputes can be resolved through extra-judicial mechanisms in different cultural contexts. The author compares three models of community-based dispute resolution: neighbourhood justice centres (NJC) in the United States, panchayats in India, and mahallas in Uzbekistan. The author examines how these models operate, what types of disputes they handle, what advantages and disadvantages they have, and how they relate to formal legal systems. The article concludes by highlighting some common features and challenges of extra-judicial dispute resolution mechanisms across cultures.

There are successful examples from Africa as well of informal justice systems. “Analysing The Effectiveness Of Informal Access To Justice In Kenya” (Mwihurih, 2015) evaluates the effectiveness of informal access to justice in Kajiado North and Kajiado West constituencies of Kenya. The article uses a mixed-methods approach to collect data from various stakeholders, such as elders, women, youth, local leaders, and government officials. The article assesses the informal justice mechanisms based on four criteria: accessibility, affordability, timeliness, and fairness. The article finds that informal justice is more accessible, affordable, and timely than formal justice, but also faces some challenges such as gender bias, human rights violations and lack of enforcement.

Informal justice systems have played an important role in rebuilding communities in conflict. “Rebuilding Communities after Violent Conflict: Informal Justice Systems and Resource Access” (Joireman, 2014) highlights that customary dispute resolution processes are sufficient to address small conflicts within a community, but when land claims are made by powerful actors who are community leaders or outsiders, informal dispute settlement processes will be insufficient to protect property rights.

However, there are questions on how far we allow traditional systems of justice in criminal jurisdiction. “Criminal Jurisdiction of Nyaya Panchayats” (Pillai, 1977) discusses this in detail. The article discusses the scope and limitations of the criminal jurisdiction of Nyaya panchayats in India. Nyaya panchayats are local bodies of elected representatives that adjudicate minor civil and criminal disputes at the village level. The

article traces the historical evolution of Nyaya panchayats and their legal status under various laws and bills. The article also examines the nature and extent of their criminal jurisdiction, which covers offences punishable with imprisonment up to six months or fine up to Rs. 1000, such as theft, assault, trespass, nuisance, defamation and breach of peace. The article evaluates the merits and demerits of conferring criminal jurisdiction on nyaya panchayats, such as their accessibility, affordability, informality, flexibility and participation on one hand, and their lack of legal training, procedural safeguards, impartiality, accountability and appeal on the other hand. The article concludes that nyaya panchayats have a significant role to play in providing speedy and inexpensive justice to rural people, but they need to be reformed and regulated to ensure fairness and quality.

While we discuss criminal jurisdiction of community justice systems, the book “Community Justice - Issues for probation and criminal justice” (Community Justice - Issues for probation and criminal justice, 2005) cannot be ignored. This book is a collection of papers highlighting various aspects of community justice models. It provides an accessible text and critical analysis of the concepts and delivery of community justice, a focal point in contemporary criminal justice. Chapter 14 of the book proposes some recommendations for improving community justice delivery in terms of policy and practice. It emphasizes the importance of developing a coherent framework for community justice that clarifies its aims, principles, values and standards. It also advocates for enhancing collaboration among agencies and stakeholders involved in community justice delivery, promoting public education and involvement in community justice activities, ensuring quality standards and ethical principles in community justice practice, fostering innovation and diversity in community justice provision. It concludes by highlighting some of the future challenges and opportunities for community justice in a changing social context. It acknowledges some of the potential threats to community justice from political pressures, economic constraints, social divisions, and technological developments. However, it also recognizes some of the potential benefits of community justice from increased public awareness, participation, and support.

Continuing on Nyaya Panchayats, the Government of India had proposed a draft bill to resurrect the institution. However, the bill was never formally introduced in the

parliament. Scholars have suggested ways to improve the bill. “A Study to Review And Strengthen Nyaya Panchayats In India” (Upadhyay, 2011) is worth studying. This is a legal report by Videh Upadhyay for the Ministry of Panchayati Raj, Government of India. The report was published in May 2011 and aimed to review and strengthen Nyaya Panchayats in India, including aspects of constitutionality of Nyaya Panchayats with reference to the Nyaya Panchayat Bill, 2009. It also suggests ways to improve their functioning and effectiveness in resolving disputes and ensuring access to justice for rural people.

While Gram Sabhas are not justice institutions, they have a lot of significance that is worth studying. “Significance Of Gram Sabhas in The Exercise of Free, Prior And Informed Consent By Indigenous Peoples In India” (Tiwari, 2015) elaborates on this. The article addresses how the Gram Sabha has come to embody the protection of the rights of indigenous peoples by their exercise of consent in India by drawing from international law and the principles enshrined under the Constitution of India. It explores the significance of Gram Sabhas, which are village assemblies that consist of all adult members of a village, in the exercise of free, prior, and informed consent (FPIC) by indigenous peoples in India. FPIC is a right of indigenous peoples to participate in decision-making processes that affect their lands, territories and resources. The article analyses the constitutional and legal framework of FPIC and Gram Sabhas in India and examines some case studies where Gram Sabhas have played a crucial role in protecting the rights and interests of indigenous peoples against development projects.

There is important literature that talk on the need for an integration between the informal and the formal justice systems. “Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region” (Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region, 2018) is a Report of the 2018 Geneva Forum of Judges and Lawyers. This report concludes that indigenous peoples and States should jointly consider means for improved coordination and collaboration between indigenous and non-indigenous justice systems, with a view to seeing the different systems work in harmony to provide effective access to justice and protection of human rights for all people.

India has attempted very innovative ways of integrating the State with community justice systems. One such example is highlighted in “Hope beyond the squalor—the police panchayat of Mumbai” (Mendelsohn, Hope beyond the squalor—the police panchayat of Mumbai, 2018). The article discusses an informal dispute settlement body, the “police panchayat”, that has been flourishing in Mumbai since the early years of this century. The police panchayat is entirely staffed and run by unpaid community workers in and from the slums, most of them women of little education. At the same time, the organization has the imprimatur of the Mumbai police force—so in a sense it is a hybrid body, not entirely a creation of civil society. The article explores the origins, functions, and challenges of the police panchayat, as well as its implications for access to justice and social change. The article argues that the police panchayat offers hope beyond the squalor of Mumbai’s slums by providing a low-cost, accessible, and effective way of resolving disputes among poor and marginalized people. The article also acknowledges some limitations and criticisms of the police panchayat, such as its lack of legal authority, its dependence on police support, its potential for bias or corruption, and its limited scope for addressing structural inequalities. The article concludes that despite these drawbacks, the police panchayat is a remarkable innovation that deserves more attention and recognition.

Customary courts of Nagaland have also been immensely popular and successful institutions. “Naga customary law vis-a-vis the advent of administration: Historical legal framework and impact on adjudication” (Ao M. , 2014) elaborates on this institution. This article is a study of the Naga customary law system and how it was affected by the colonial administration in India. The article argues that the Nagas practice a rudimentary system of delivering justice based on simplicity and truthfulness, which reflects their socio-cultural values and traditions. The article also examines how the colonial administration introduced structural changes in the customary administration and adjudication of disputes, such as enactments by the colonial government, recognition of tribal councils, codification of customary laws, and introduction of formal courts. The article analyses how these changes have impacted the Naga customary law system and its relevance in contemporary times.

Continuing on the theme of customary institutions of indigenous people “Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region”

(International Commission of Jurists, 2018) is an important report. The report examines the role and challenges of indigenous and other traditional or customary justice systems in Asia, in terms of access to justice for rural communities, indigenous peoples, minorities, and other marginalized populations. The report also explores the relationship between these systems and formal State justice systems and provides recommendations for ensuring respect for human rights and rule of law principles. The report is intended for judges, lawyers, and other legal experts from both formal State justice systems and indigenous and other traditional or customary systems. In this report of the Geneva Forum, the participants reaffirmed the potential for indigenous and other traditional or customary justice mechanisms to contribute to the realization of equal and effective access to justice, particularly for indigenous, rural, poor and other marginalized populations.

If the social context is not factored by the State, efforts at formalizing the informal justice systems fail. “The Global Indigenous Peoples Movement: It's Stirring in India” (Xaxa, 2016) highlights this issue. This paper describes how the arrangements by the Indian state that were aimed at protecting and safeguarding the indigenous/tribal interest, had no reference to their social arrangement, tradition, customs, values, and ethos. Rather, they were mainly responsible for their erosion and disintegration.

This is also elaborated in the context of other countries. “Constitution, Custom, and Creed: Balancing Human Rights Concerns with Cultural and Religious Freedom in Today's South Africa” (Goodsell, 2007) describes the importance of respecting the indigenous culture while designing justice institutions in the South African context. This paper argues that to avoid a repeat of "cultural imperialism," such as occurred during colonialism, and ensure that principles of human rights and respect for the rule of law remain firmly rooted in South Africa, local cultures need to adopt, incorporate, and "hybridize" constitutional norms with their own understandings and values, such as that of "ubuntu." It analyses how South Africa's 1996 Constitution balances human rights concerns with cultural and religious freedom, especially in relation to customary law and practices. It evaluates the effectiveness of the Constitution's approach to balancing human rights concerns with cultural and religious freedom. It identifies some of the factors that have facilitated or hindered its implementation, such as judicial interpretation, political will, public awareness, and civil society participation. It also

suggests some possible ways to improve its impact, such as strengthening institutional mechanisms, enhancing legal literacy, and fostering intercultural dialogue.

Indonesia has also had success integrating community justice systems with their formal system. “The Double Track System in Sentencing Juvenile Offenders in Indonesia: Strengths and Weaknesses of the Juvenile Criminal Justice System Act 2012.” (Windari & Widjajanti, 2015) showcases an important case study in this regard. The article reviews the formulation of a new sentencing system for juvenile offenders in Indonesia, regulated by the Juvenile Criminal Justice System Act 2012 (JCJSA 2012). It explains the concept of double track system, which is a system that allows for both punitive and non-punitive measures to be applied to juvenile offenders depending on their circumstances. It analyses how the JCJSA 2012 integrates the equilibrium idea of double track system. It shows that the Act gives priority to divertive, restorative, and rehabilitative measures than punitive ones. It also discusses some of the strengths and weaknesses of the Act, such as its flexibility, clarity, consistency, and compatibility with international standards. It also suggests some recommendations for improving its implementation, such as enhancing coordination among stakeholders, providing adequate resources and facilities, promoting public awareness and participation, and conducting further research and evaluation.

There have been successes on the other side of the world as well. “Supporting Parallel Legal Systems as a Means of Improving Access to Justice in Guatemala” (Endy, 2007) is a noteworthy article. The question this paper addresses is whether the de facto existence of parallel systems in Guatemala benefits the indigenous population, or whether the ultimate goal of attaining access to justice requires a complete overhaul of the official legal system. It examines the parallel legal systems that exist in Guatemala, where indigenous communities have their own customary laws and practices that differ from the official state law. The article argues that supporting parallel legal systems can be a means of improving access to justice for indigenous peoples, who face discrimination and marginalization by the state legal system. The article also explores some of the challenges and opportunities of recognizing and harmonizing parallel legal systems, such as ensuring human rights protection, promoting intercultural dialogue, and strengthening local governance.

Frameworks for creating institutions for consensual dispute processing have been proposed in the past. “Guideposts for an Institutional Framework of Consensual Dispute Processing” (Murray, 1984) proposes some characteristics to guide the development of a framework for a comprehensive institution that can help parties resolve their disputes through consensual methods. The article defines dispute processing and distinguishes between different types of conflict resolution. The article also analyses how consensual dispute processing can be applied to various domains, such as labour relations, family conflicts, and international relations. The article argues that consensual dispute processing needs to be recognized as a separate and legitimate institution that can complement other forms of dispute resolution.

Can community legal systems be seen as cultural rights? “Legal Systems as Cultural Rights: A Rights' Base Approach To Traditional Legal Systems Under The Indian Constitution” (Dam, 2005) is an article explores how traditional legal systems of tribal communities in India can be recognized as cultural rights under the Indian Constitution. The author argues that these legal systems are not merely customary practices, but expressions of identity, autonomy and self-determination. The author also examines how legislations on plant variety protection, biodiversity rights and intellectual property rights have affected these legal systems and their constitutional status. This article argues that unless the modern Indian State protects the customary legal systems of the tribal communities, it will have to live with the indictment of having traded a constitutional guarantee for "national development." It discusses how tribals can also invoke Article 21 of the Indian Constitution, which guarantees right to life and personal liberty, to defend their legal systems as essential for their dignity and survival. The author suggests that tribals have a right to choose their own laws and institutions, as long as they do not violate fundamental rights or public order.

Relevance for our Research

The body of work cited in this section collectively provides comprehensive details into community justice systems across the world and in India, their successes in the past and the present, the challenges they face in modern times and also the problems they have. However, there are a few gaps in the existing literature that we intend to address through our research presented in Chapter 5.

- **Primary Study of the Impact of Formalization of Informal Justice Systems:** Most studies have limited themselves to understanding a particular informal justice system, their merits and demerits and their challenges. However, there has not been a systematic primary study of an undergoing transformation from an informal system to a formal system. Modernization and formalization of the traditional institutions is inevitable. Our study acknowledges this reality and studies the undergoing transformation in a representative district in India.
- **Choice of the Community:** The district of Palghar is an important area to study the impact of formalization of community justice systems. It has all the right ingredients - It is a district where PESA implementation is taking place rapidly, it has a strong presence of civil society organizations that are active in the region, and it is closer to a metropolis like Mumbai which has a big influence on the economy and social life. Palghar in many ways will be the forerunner among other tribal dominated districts in India that will undergo a similar transformation in years to come.
- **Implications for Addressing Judicial Delays:** The most important gap in the literature is analysing the impact of community justice systems in addressing judicial delays in the context of contemporary India. Judicial delays faced in formal institutions is one of key reasons why formal justice is inaccessible in the tribal regions of India. Our research does not end at studying the informal systems of justice, it begins there, and presents policy recommendations to make justice more accessible by integrating the formal system with the informal system of justice.

Chapter Summary

The overarching research problem we aimed to address was identified as:

“Addressing Delays in Indian District Courts – Improving Efficiency and Reducing Demand”

This research problem helps us stay focused on the research to be undertaken – we are particularly interested in improving efficiency of the present judicial system and reducing the demand on it.

Identifying Research Gaps

As mentioned in the beginning of the literature survey, we categorized the literature review into the three research areas we are pursuing in this study:

1. Understanding judicial delays and their reasons, the past reforms suggested, and the global approach to the problem.
2. Understanding case management as an approach to improve judicial efficiency, the international experience, and the Indian context.
3. Understanding community justice systems, the models worldwide, and the Indian context.

One of the primary objectives of our literature survey was to identify gaps in the current research. This involved evaluating the strengths and limitations of existing research in the fields identified and determining areas where further investigation is necessary. We identified gaps in several ways, such as by examining inconsistencies or contradictions in existing research, identifying unanswered questions, and by exploring emerging trends or new perspectives in the field. By identifying research gaps, we can develop new research questions that address these gaps and advance the knowledge in the field.

Based on the literature survey we conducted, we identified the following gaps in the areas of understanding judicial delays, understanding case management and community justice systems:

- **RG1: Understanding the nature of systemic resistance to efficiency reforms from within the judicial system.**

In recent times, the push for case flow management rules has been one of the most notable efficiency reforms. While high courts introduced these rules for their lower courts in 2007, the actual implementation appears to be lacking. It's essential to delve into the root causes of this systemic reluctance to adopt these rules. Could it be a resource constraint? Perhaps a technological hurdle? Maybe it's an absence of defined responsibility? Or is it a lack of motivation for change among the involved parties?

- **RG2: Understanding stage wise case flow for cases in the lower courts.**

In India, there's a noticeable gap in quantitative research that provides insights into the progression of cases through their various phases. How do cases navigate the different stages in Indian courts, especially in the lower courts where the majority of cases reside? What duration is spent at each phase? The flow of cases might vary depending on the nature of the case, as well as other potential factors like demographics and the specific court type. The study of case flows in Indian district courts hasn't been extensively explored in academic circles. A deeper understanding is crucial before suggesting any changes to enhance the current system's efficiency.

- **RG3: Understanding the experience of integrating community justice systems into the formal system.**

The official legal framework has become out of reach for many due to prolonged delays, expenses, and geographical barriers. India boasts ancient community justice systems scattered throughout its territory. These systems remain operational, with numerous individuals seeking justice through them. It's essential to firstly acknowledge their presence, comprehend their workings, and then fortify these community justice mechanisms. Potentially, they could be merged with the formal system while upholding the rights enshrined in the constitution. Such an integration could alleviate the strain on the current formal system, cut down expenses, and enhance justice accessibility.

Developing Research Questions

Once the aforementioned research problem and research gaps were identified, we developed research questions that address these gaps. Research questions should be clear, specific, and focused on addressing the knowledge gap identified in the literature survey. They should also be achievable and feasible to answer with the available resources. Research questions should also align with the research objectives and should be designed to test the hypothesis or answer the research problem.

The focus of our study is to propose how timely justice can be delivered efficiently and in an accessible manner in the Indian judicial system. This larger research question will be answered by researching deeper into the following sub-questions:

- RQ1: What is the nature of resistance to efficiency reforms from within the judicial system?
- RQ2: What are the fine-grained procedural reasons for delays of court cases?
- RQ3: How can community justice systems integrate with the formal justice systems?

Establishing Research Objectives

Research objectives are the specific goals that researchers aim to achieve through their study. These objectives should be specific, measurable, achievable, relevant, and time bound. They should reflect the research questions developed based on the gaps identified in the literature survey. Research objectives should also align with the overall research goal and hypothesis.

To address the research questions, the following objectives are proposed:

1. Study and factor the reasons for systemic resistance to implementing the case flow management rules in the district courts:
 - a. Select different stakeholders in the lower tier of the judicial system – lawyers, judges, researchers, etc.
 - b. Interview the stakeholders to understand the reasons for systemic resistance to case flow management rules.
 - c. Recommend reforms for better design and effective implementation of case flow management rules.
2. Investigate the case flows and analyse the stage wise case duration for different case types in India's district courts:
 - a. Identify a representative district court system to study
 - b. Study the case duration of different case types from the representative district court.
 - c. Analyse the case duration for different types of cases through time spent in each stage and draw conclusions on the reasons for delays.
3. Study the impact of formalization of community justice systems in India.
 - a. Study examples of successful community justice systems in India and globally and how they have been formalized.

- b. Study the impact of formalization and integration of a community justice system in India.
- c. Propose how to integrate community justice systems into the formal system.

In the chapters that follow, we dedicate one chapter to each of the above research objectives.

CHAPTER 3: THE CHALLENGES OF INDIAN JUDICIARY IN IMPROVING COURT EFFICIENCY

“I know much has been written about pendency, and pertinent suggestions have been made to address the issue. Yet, the debate continues and the pendency keeps increasing too. Ultimately, the citizens and organizations that have grievances bear the brunt. What can be done to quicken the pace of justice? The obvious answer is reform. But ‘reform’ is an umbrella term under which different stakeholders wish to see different things”.

- Former President of India Ram Nath Kovind on the Constitution Day, Nov 2021

Chapter Overview

100 years ago, the first committee was set up to improve the Indian judicial system. After a century of reforms and multiple attempts to improve the system, the problem of pendency and delays gets worse each year. The judicial system has come under increased scrutiny and the common man has started voicing their critique publicly. If the system is not made more efficient soon, an important pillar of Indian democracy will fail. We have hit a dead end in reforming the system. Most suggestions advocate supply side solutions. They are hinged on adding more judges. This seems to be the obvious way out but given several constraints the Indian state has been unable to bring in more judges while the cases continue to pile up. We need to shift the thinking to improving the efficiency of the system.

There have been several reforms suggested to expedite the judicial processes, but they have hit a roadblock and have not achieved their intended outcomes. There has been no scholarly study to understand the perspectives of those within the system i.e., the judges, on their challenges in implementing the efficiency reforms proposed so far, and particularly the case flow management reforms.

This chapter is dedicated to achieving our first research objective:

Study and factor the reasons for systemic resistance to implementing the case flow management rules in the district courts:

1. Sample judges in the lower tier of the judicial system.
2. Interview the judges to understand the reasons for systemic resistance to case flow management rules.
3. Recommend reforms for better design and effective implementation of case flow management rules.

The mainstream discourse on judicial delays has primarily focused on shortage of judges and infrastructure. The metric often cited is the judge to population ratio. Though it has been steadily increasing each year, it lags behind international benchmarks. The ratio was 21 judges per million population in 2020 in India¹⁰, while it is about 100 judges per million in the USA¹¹. Due to many constraints the judiciary and Indian Government have been unable to increase the judges in India. These include – lack of good candidates to be elevated as judges, long procedure of judge selection, lack of funds, limited time of the judges to involve in selection of new judges, etc. But this is the supply side of the story. As we look deeper, we realize that a lot more can be done with the existing resources i.e., efficiency can be improved. It needs a better policy design and implementation.

It is obvious for an astute observer of the Indian judicial system that the cases and courts can be managed better. It is often cited that the unnecessary adjournments can be reduced. The reasons for adjournments include absence of witnesses and absence of defence counsels. The scheduling of cases can also be improved. In an attempt to clear the backlog, courts typically schedule many more cases than they can hear. Cases that cannot be sufficiently heard that day get deferred to a later date. Realizing the potential for improving efficiency in the judicial processes, the Supreme Court in *Salem Advocates Bar Association v. Union of India (2005)* suggested the adoption of Case flow management (CFM) in India. The Supreme Court set up a committee headed by former Supreme Court Judge and Chairman of the Law Commission of India, Justice M. Jagannadha Rao, to examine benefits of CFM and develop draft CFM Rules for India. Justice Jagannadha Rao's Committee proposed a Consultation Paper on Case Management.

¹⁰ <https://sansad.in/getFile/loksabhaquestions/annex/1715/AU1335.pdf?source=pqals>

¹¹ <https://www.nationmaster.com/country-info/stats/Crime/Judges-and-Magistrates-per-million>

Case Flow Management

Case Flow Management (CFM) is a radical idea which gives the management of the case flow in the hands of the judges. It can also be called ‘court led litigation’ or ‘judge led case management’. In a case-management system, the judges or court managers set the timetable of the case. Most often, dates of filing and hearing are fixed at the request of the counsel. This leaves case management at the hands of the advocate. CFM reverses this practice and vests complete control of the trial in the hands of the judges.

Case flow management entails that a judicial officer or a court official establishes and monitors a schedule for each case from its initiation to its resolution. Accordingly, case flow management rules stipulate time limits for case disposal. The model draft rules for case flow management drafted by the law commission of India and endorsed by the Salem Advocates ruling, apply to both the High Courts and the lower courts.

The Case Flow Management rules drafted by the Law Commission of India have the following key features:

1. The Case Flow Management Rules represent a fundamental aspect that recognizes the diverse progression of individual case types and underscores the importance of handling them differently. To achieve this objective, the Rules classify cases into 'tracks' based on their subject matter or the nature of the offense. The timelines for the disposition of each track vary, ranging from nine months to two years in most states.
2. Additionally, the Rules provide specific guidelines and timelines for various stages in a case's life cycle, including the issuance and service of summons or notice, granting of interim orders, referral to Alternate Dispute Resolution methods, recording of evidence, imposition of costs, calling of cases, and passing of adjournments.
3. In jurisdictions where the Case Flow Management Rules are implemented, two types of cause lists are prepared on a daily basis. The first list outlines cases that are in the procedural stage, such as the service of notice and submission of pleadings, while the second list indicates cases that have progressed to substantive stages, such as the recording of evidence, cross-examination,

hearing, and arguments. The rules require judges or presiding officers to hear cases in the second cause list (substantive), while registrars are responsible for procedural matters that fall under the first list.

4. The primary objective of the rules is to alleviate the pressure of efficient case management on courts by empowering them to impose costs and initiate perjury proceedings, as appropriate.

The Indian Context

The Supreme Court of India, in a famous case, *Salem Advocates Bar Association versus Union of India*¹², suggested the formation of a committee to draft model case management rules. The committee was headed by a Supreme Court Judge and chairman of the Law Commission of India, Justice Jagannadha Rao. The 245th Law Commission Report (245th Report on Arrears and Backlog: Creating Additional (wo)manpower, 2014) released in July 2014 refers (in foot note 14 on page 8) to a consultation paper on case management.

Justice M Jagannadha Rao in his paper on the advantages of case management (Rao, 2003) talks about the origins and success of case management worldwide and how it could be introduced in India. The paper highlights the advantages of adopting case management techniques in the civil justice system to expedite the disposal of cases and reduce the backlog of pending cases.

The paper argues that the traditional adversarial system, which relies on the parties to manage their own cases, is inefficient and time-consuming, often resulting in excessive delay and cost. Case management, on the other hand, involves active judicial intervention to manage and control the progress of a case, with the aim of achieving a just and speedy resolution of disputes.

The paper identifies several advantages of case management, including:

1. Early identification and resolution of disputes: Case management techniques such as early neutral evaluation and mediation can help identify disputes early on and facilitate their resolution before they escalate into full-blown litigation.

¹² *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

2. **Better case planning and management:** Case management allows judges to actively manage cases, set timetables for the completion of various stages of the case, and monitor progress to ensure that the case proceeds smoothly and efficiently.
3. **Reduction in delay and backlog:** By adopting case management techniques such as pre-trial conferences and case management conferences, courts can reduce delays and expedite the disposal of cases, thereby reducing the backlog of pending cases.
4. **Improved quality of justice:** Case management can lead to a better quality of justice by ensuring that cases are heard in a timely and efficient manner, with the evidence and arguments presented in a clear and concise manner.

Overall, Justice M Jagannadha Rao's paper emphasizes the need for Indian courts to adopt case management techniques to improve the efficiency and effectiveness of the civil justice system. In essence 'judge led case management' in the Indian context would refer to the idea of:

- **Categorization of cases based on complexity:** When the case is filed, the judges decide nature and level of complexity of the case. This can be changed later by the judge.
- **Mutually agreed schedule:** The schedule for filing of evidence will be decided before the commencement of proceedings collectively by the judge, registry and the parties.
- **Close monitoring of progress:** Using IT tools the judge shall have complete visibility on the stage-wise progress of each case.
- **Non-submission of evidence:** If the case doesn't follow the set deadline for submission of relevant evidence, the judge may refer the case to Alternate Dispute Resolution (ADR) mechanisms.
- **Limited adjournments:** Once the evidence is recorded, the case will be called for hearing. The number of adjournments to be granted would be restricted as per law.

Based on the recommendations of the law commission, various high courts issued CFM rules in 2007 for their subordinate courts to implement.

Caseflow management rules in India

The High Courts in India have proposed their case management rules. A compilation of these rules has been made by Daksh (Daksh India, 2015), a civil society organization. While each High court has drafted their own rules, these rules are based on the Law Commission model rules. Since our research focus is on the subordinate courts in Haryana, we list below some of the Punjab and Haryana High Court's Case Flow Management Rules 2007 for subordinate civil courts (Punjab and Haryana High Court, 2007). Appendix 11 lists the CFM rules promulgated by the Punjab and Haryana High Court in more detail. For the sake of brevity, we only look at original civil suits here. Similarly, other case management rules are proposed for subordinate criminal courts.

1. Division of civil suits and appeals into tracks.
 - a. Track 1 (time limit 6 months): Rent petitions, cases of maintenance, custody of children, cases relating to senior citizens, cases relating to grant of succession certificates, money suits based on Negotiable Instruments
 - b. Track 2 (time limit 12 months): All other cases.
2. Fixation of time limit while issuing notice: Maximum of 30 days for filing a written statement after issuing the notice.
3. Service of Summons / notice and completion of pleadings: Strict action against the plaintiff not issuing summons in time or against defendant for refusing notice.
4. Procedure on the grant of interim orders: Ensure that plaintiff or defendant do not take advantage of interim orders through adjournments.
5. Settlement of disputes outside the Court: After completion of pleadings, a time limit of 4 weeks for discovery and inspection, and admission and denial of the documents.
6. Procedure on the failure of Alternative Disputes Resolution: The suit shall be listed before the registry within a period of 14 days after ADR has failed.

7. Reference to Commissioner for recording evidence: The Court should appoint a commissioner for recording of evidence. The matter should be listed for arguments 15 days after the Commissioner records the evidence.
8. Adjournments: Maximum number of adjournments in the course of hearing of the suit is 3.

The perceived failure of the proposed case management rules

Given the increasing rate of judicial pendency there is empirical evidence that the case management rules, though proposed have not been effectively implemented. In 2017, Bibek Debroy, Chairman of the Prime Minister's economic council wrote an op-ed (Debroy, 2017) in Financial Times quoting a private unreleased report by Vidhi Center for Legal Policy¹³. He quotes the Vidhi report *"A key takeaway from our study is that courts are unable or unwilling to adhere to time limits recommended by the CFM Rules, despite the fact that the Rules passed by the High Courts are binding on the subordinate courts. This situation could be because of two reasons: one, courts have little knowledge or will in implementing CFM to better administer their courts and two, the time limits recommended by the Law Commission were adopted without much contextualization by the states"*. He concludes his op-ed by saying he suspects the reason to be the first.

There have been a few attempts in the past to bring in reforms to expedite the judicial system. A couple of the prominent ones are shared below.

Code of Civil Procedure (Amendment) Act, 2002

The Code of Civil Procedure (Amendment) Act, 2002 (Parliament of India, 2002) is an amendment to the Code of Civil Procedure, 1908, which is a central law that governs the procedure for the civil courts in India. The Parliament of India amended the Code of Civil Procedure (CPC) in 1999 and the changes were effected from 1st July 2002. This amendment brought about significant changes to simplify the procedure of filing a civil case and reduce the delays (Financial Express, 2002). The 2002 amendment was introduced to simplify and expedite civil litigation in the country.

Some key features of the Code of Civil Procedure (Amendment) Act, 2002 include:

¹³ <https://vidhilegalpolicy.in/>

1. Introduction of Alternative Dispute Resolution (ADR) mechanisms: One of the most significant changes brought about by the amendment was the introduction of Alternative Dispute Resolution (ADR) mechanisms. The ADR mechanisms, such as mediation, conciliation, and arbitration, were introduced to encourage parties to resolve their disputes amicably and avoid lengthy court battles. The amendment made it mandatory for courts to promote and encourage the use of ADR mechanisms before taking up a case for trial. This provision has helped to reduce the burden on the courts and expedite the resolution of disputes.
2. Changes to the procedure for filing and disposal of cases: The amendment also introduced changes to the procedure for filing and disposal of cases. One of the most important changes was the introduction of electronic filing of cases. This has made it easier and faster for litigants to file their cases and for the courts to manage and process them. The amendment also introduced the provision for fast-track disposal of certain types of cases, such as cases related to cheque bouncing and summary eviction suits. This has helped to expedite the resolution of cases and reduce the backlog of cases in the courts.
3. Changes to the provisions related to costs: The Code of Civil Procedure (Amendment) Act, 2002 also made changes to the provisions related to costs. The amendment introduced the provision for awarding costs to the successful party in a case, which has helped to deter frivolous or vexatious litigation. The amendment also provided for imposing costs on a party for filing a frivolous or vexatious suit. This has helped to discourage the filing of frivolous suits and has made the litigation process more cost-effective.
4. Changes to the provisions related to jurisdiction: The amendment made changes to the provisions related to jurisdiction. The amendment introduced the provision for filing a suit where the cause of action arose in part or wholly within the jurisdiction of the court. This has made it easier for litigants to choose the appropriate court for filing their case and has reduced the burden on the courts.

Overall, the Code of Civil Procedure (Amendment) Act, 2002 aimed to make civil litigation in India more efficient, speedy, and cost-effective by introducing changes to the existing procedures and provisions of the Code of Civil Procedure.

Implications on case management:

This amendment is particularly important from the perspective of case management. Specific time limits are laid for various stages of a civil case. Though these rules are enforceable, the parties can request for relaxation and judges are also allowed to use their discretion. In practice, this has resulted in partial implementation of these rules. Some of these rules are described below:

The Civil Procedure Code (Amendment) Act of 2002 established a time-limit of one year for the settlement of civil cases. The amended CPC enables courts to dispose of civil suits swiftly, which was intended to benefit hundreds of thousands of litigants in obtaining prompt justice. The amendments made to the CPC were simple in nature but have far-reaching consequences on the functioning of civil courts in the country.

It is well-known that most judicial delays occur during pre-trial and at the hearing stage for various reasons. To reduce delays at the pre-trial stage, the service of summons can be expedited by utilizing private couriers and information technology. The Act permitted the use of fax, email, and courier for serving summons, which was previously considered illegal. The situation of pre-emptive avoidance or refusal to accept summons by a party is nearly eliminated by presuming that the person to whom it was issued received it, even if the summons was returned with an endorsement that the party refused to accept it.

The general power of courts to extend the time prescribed in the CPC was limited to 30 days. Previously, courts could extend the time without any limit, resulting in unconscionable delays and an increasing list of pending cases. In addition, on filing a revision application against the orders of a subordinate court, its record may not be called unless the high court specifically orders it in cases of conciliation and arbitration.

The amendment has limited the number of adjournments in a civil case to three. If a party attempts to use delaying tactics, the court can direct it to pay higher costs to the other party. Furthermore, the courts are empowered to fix a time limit for oral arguments and, if necessary, seek written submissions from parties to save time and avoid delays. The judges are also made accountable, and they should deliver their ruling within 60 days of the completion of the hearing of a civil case.

The existing provision of a second appeal in financial suits where the value did not exceed Rs 25,000 was abolished. This can considerably reduce the litigation time, which previously extended beyond ten years in many cases, and the next generation had to continue with the legal battle.

Fast Track Commercial Courts

The Commercial Courts Bill (The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Bill, 2015) was introduced in the Lok Sabha in April 2015 and became an Act on 23rd October 2015. It implements the idea of case management for commercial cases. The 188th report of the law commission had submitted a report in 2003 (188th Report on Proposals for Constitution of Hi-Tech Fast-Track Commercial Divisions in High Courts, 2003) recommending the establishment of such courts. The commission then submitted another report (Commercial Division and Commercial Appellate Division of High Courts and Commercial Courts Bill, 2015) in 2015 on the same topic.

The Commercial Courts Bill 2015 aimed at creating a specialized commercial court system in India to improve the speed and efficiency of commercial dispute resolution. The bill sought to streamline and expedite the resolution of commercial disputes by establishing commercial divisions within high courts and commercial courts at the district level. The bill was passed by both houses of the Indian Parliament in December 2015 and received presidential assent in January 2016. As a result, the Commercial Courts Act 2015 was enacted, which came into effect on April 1, 2016. The Act consolidated and amended the provisions of the existing laws related to commercial disputes in India, and introduced significant reforms aimed at improving the speed and efficiency of commercial dispute resolution in the country.

The key features of the Commercial Courts Act 2015 include:

1. Establishment of specialized commercial courts: The Act mandates the establishment of specialized commercial courts at the district level and commercial divisions within high courts to exclusively deal with commercial disputes. This ensures that cases are heard by judges with commercial expertise, leading to faster and more efficient resolution of commercial disputes.

2. Pre-institution mediation: The Act provides for mandatory pre-institution mediation for commercial disputes exceeding a specified amount. This means that parties must attempt to resolve their disputes through mediation before initiating court proceedings, thereby reducing the burden on the courts, and promoting alternate dispute resolution mechanisms.
3. Imposition of strict timelines: The Act imposes strict timelines for case disposal, with a maximum of six months for disposal of cases at the district level and one year for cases at the high court level. This ensures speedy and efficient resolution of commercial disputes, which is crucial for business operations.
4. Fast-track procedures for small- and medium-sized enterprises (SMEs): The Act provides for fast-track procedures for commercial disputes involving SMEs, which are heard and disposed of within six months. This is aimed at providing SMEs with faster and more cost-effective dispute resolution mechanisms.
5. Provision for summary judgments: The Act allows for the grant of summary judgments in certain cases, where there is no genuine dispute, and the claim or defence is bound to fail. This helps in weeding out frivolous claims and ensures that only genuine disputes go to trial, thus reducing the burden on the courts.
6. Appointment of judicial officers with commercial expertise: The Act provides for the appointment of judicial officers with commercial expertise to preside over commercial courts and divisions. This ensures that judges have the requisite knowledge and expertise to effectively handle commercial disputes.
7. Training of judicial officers: The Act mandates training programs for judicial officers to enhance their knowledge and expertise in commercial law and dispute resolution.
8. Establishment of a dedicated fund: The Act provides for the establishment of a dedicated fund for the development of judicial infrastructure, which is crucial for the effective functioning of commercial courts and divisions.

The act has been introduced with the right intent to address the delays in Indian courts. Its mandate needs to be expanded to other forms of litigation as well. However, the effectiveness in its implementation is yet to be measured.

In summary, various attempts to improve the efficiency of the Indian judicial system have been attempted so far. However there are no scholarly studies yet to understand their effectiveness and importantly the problem of increasing case pendency continues to persist.

The International Experience

Case Management has yielded very good results in several countries. Here is a summary of the international experience in its implementation.

There are five areas of case management that have been implemented in courts over time (Gramckow & Ebeid, 2016):

Case Management and International Best Practices

Case Management Practice	Good Practice Examples
Regulations setting time standards for key court events.	The UK Admiralty and Commercial Courts. The Singapore Supreme Court
Regulations on adjournments and continuances	The Courts of Norway. The Ontario Superior Court of Justice. The Courts of South Korea
Availability of performance measurement mechanisms	The Supreme Court of Victoria, Australia. The Florida State Courts.
Use of pretrial conference	The U.S. Federal Courts. Norway District Courts. District Courts, Western Australia
Availability of an electronic case management system	The Courts of South Korea. Austrian Courts and Justice System

Figure 5: Case Management and International Best Practices

International Case Studies on Case Management

India is not unique with regard to its problems in the judicial system. Several countries across the world have faced similar issues and have reformed their judicial administration and adjudication to tackle the problem. They have introduced new institutions, processed and developed technology solutions. While several countries have attempted Case Management, we look at countries that are comparable with India

(colonized in the past by western powers and similar economic levels) and have been successful in their implementation. Below are listed 3 countries which are of the same profile as India, from which we can learn.

- **Malaysia:** Since the 1980s Malaysia's judiciary faced mounting caseloads and consequent delays in justice delivery. The situation continued to become worse, when in 2008 a new Chief Justice was appointed who began a reform program. A key reform was the Case Management System (CMS) - integrated system for managing the cases that allows for computerizing file tracking, scheduling of trials, retrieving of statistics, managing reports and monitoring the cases (World Bank, 2011). This system offered:
 - Complete automation of the court case management and related operations
 - Live dashboard of the case progress at all stages
 - Electronic management of documents
 - Fully automated planning and scheduling of court sessions
 - Defined templates for creation of any necessary documents.
 - Automatic allocation of case according to case features
 - Robust access control and security features

The benefits accrued from the transition to an automated case management system were several. These included:

- Reduction in delays and pendency
 - Improved efficiency of judges and court staff
 - Increased transparency and predictability
 - Reduction of human errors
 - Time and cost savings for the litigants and lawyers
-
- **South Africa:** South Africa transitioned to a judiciary led case management through the reforms introduced by the Office of the Chief Justice. One of the key reforms introduced was the Norms and Standards for the Performance of Judicial Functions (NSPJF) on 28 February 2014 (Norms and Standards for the

Performance of Judicial Functions, 2014). This introduced norms and standards such as the following:

- Judges must ensure strict adherence to applicable timelines.
- Civil cases must be resolved within 1 year and specific timelines were fixed for various stages of the criminal cases.
- Judgments should be given within 3 months of the last hearing.

The reforms started in the last decade and the case backlog and delays have reduced each year since the reform has been introduced

- **Philippines:** In 2003, the Supreme Court of Philippines introduced a pilot program on case management in its regional trial courts and metropolitan trial courts (Elepano, 2009). Cases were classified into:
 - Fast track cases, which require minimal judicial interference.
 - Complex track cases, which require maximum judicial interference.
 - Standard track cases, which require normal judicial interference.

For each track, the timelines were well defined, and their progress was tracked on a dashboard. Cases lagging were highlighted and brought back to schedule. Since 2003, 95% of the civil cases and 90% of the criminal cases have completed according to the set timelines.

Literature on Managing Judicial Performance and Court Performance

In the preceding section, we touched upon the Caseflow Management reforms. In this section we delve into the broader literature on performance management of the public sector in general and courts in particular. Verbeeten's 2008 research (Verbeeten, 2008), involving 93 Dutch public sector entities, found a positive link between setting clear, measurable goals and both the quantity and quality of performance. Interestingly, while incentives positively correlated with performance volume, they didn't relate to its quality. The study also underscored the role of institutional factors in shaping the results of performance management systems in the public sector. This suggests that the behavioural implications of performance management in the public sector are as pivotal as its economic impacts.

Shifting our focus to more contemporary judicial performance literature, a standout study is Visser et al.'s 2019 examination (Visser, Schouteten, & Dijkers, 2019) of the Dutch judiciary. In recent times, the Dutch judiciary, mirroring many public sector entities, has integrated New Public Management (NPM) methodologies into its operations. This study delves into this merger from a managerial and organizational perspective. Drawing from a comprehensive survey of Dutch judges, it reveals a mismatch between NPM-driven management controls and judges' professional experiences. The findings suggest that while many judges were proactive in adopting NPM practices, there was widespread disillusionment, especially concerning increased perceived workloads and a decline in judgment quality.

In the context of Italy, Giacalone et al.'s 2020 research (Giacalone, Nissi, & Cusatelli, 2020) offers an empirical assessment of the Italian judicial system's efficiency using Data Envelopment Analysis (DEA) and Malmquist indexes. This study underscores the longstanding efficiency crisis in Italian justice, its repercussions on financial sectors, and the disparities in efficiency across Italian judicial bodies.

Westover's 1959 research (Westover, 1959), one of the pioneering studies on court performance, spotlighted the repercussions of prolonged case resolution delays on the judicial system. Meanwhile, Rosales-López's 2008 study (Rosales-López, 2008) on Spanish courts from an economic standpoint investigated the potential for courts to optimize their output with existing resources.

In academic circles, the importance of judicial efficiency in mitigating court delays is well-acknowledged. Voigt's 2016 research (Voigt, 2016) reviewed evidence on factors affecting judges' productivity, identifying literature gaps and suggesting remedies.

In Latin America, a surprising finding by Buscaglia and Ulen (Buscaglia & Ulen, 1997) was that higher judicial expenditure didn't necessarily translate to better efficiency. On a global scale, Dakolias's 1999 comparative study (Dakolias, 1999) offered invaluable insights for judicial reform by examining court systems across various nations.

Indian district courts, due to data constraints, have seen limited research. Notable studies include Hazra and Micevska's 2004 exploration (Hazra & Micevska, 2004) of court congestion and Ghosh's 2017 review (Ghosh, 2017) of Indian judicial reforms. Khaitan et al.'s 2017 research (Khaitan, Seetharam, & Chandrashekar, 2017) and a

joint study by the Delhi High Court and Daksh India in 2019 (High Court of Delhi, 2019) delved into the inefficiencies and delays in the Indian judicial system.

Yet, a glaring gap remains: none of these Indian studies have adopted a qualitative approach to fathom the root causes of perceived inefficiencies or judge underperformance. They rely on secondary data and quantitative analysis, bypassing stakeholder interviews that could offer qualitative insights. Such a qualitative lens can unearth underlying assumptions, societal norms, and deep-seated beliefs that might be pivotal in understanding the challenges faced by judges. Notably, there's a lack of research on the non-implementation of Caseflow Management Reforms, India's major initiative to enhance court efficiency. This chapter aims to bridge this gap, offering a deeper understanding of perceived judicial inefficiencies in India.

A Qualitative Study of the Challenges to Implement CFM Reforms in India

The Indian Constitution, in contrast to the British and American Constitutions, established an appointment system that neither allows complete control by the executive (as seen in the British model) nor lets the Parliament participate in the appointment process (as per the American model) which could potentially make judicial appointments susceptible to political influence. India stands unique as one of the few nations where judges, through interpretation of the constitutional text, gained democratic political authority to appoint other judges. Consequently, there is very little public and academic scrutiny on the performance of judges. It is commonly understood that there is judicial 'resistance' to implementation of efficiency reforms in Indian district courts. Given the lack of scholarly studies in the Indian context, understanding the nature of this 'resistance' by judges is important. It gives us a view of the Indian judges' perspective in implementing the Caseflow Management court efficiency reforms.

Research Method

The research method followed has been described in detail earlier in Chapter 1. We next look at the results of the method followed.

Results

Three themes emerged from our study of the challenges faced by judges in implementing efficiency reforms in their courts. These include (1) overburdened (2) lack of confidence on the system (3) disempowered. The three themes, the associated key concepts and supporting quotes are given in Appendix 9 and explained below. We first understand in detail the three themes that have emerged from the study and then investigate the possible implications on policy and society.

Overburdened

Our qualitative study reveals a complex interplay of factors contributing to the challenges in implementing efficiency reforms in Indian district courts. The thematic analysis of the judges' responses led us to the first overarching theme of an 'overburdened' system.

Within this theme, the first major concept revolves around a 'Lack of sensitization and training.' The judges expressed frustration over insufficient guidance. As one judge stated, *"While the High Courts have introduced the Case Flow Management (CFM) rules, there has been insufficient guidance, particularly in enhancing the skills of judicial staff. Their inefficiency only leads to more delays."*

Furthermore, the judges also decried the lack of additional resources provided for the increased workload. They observed that the CFM rules demand a faster throughput of cases without any provision for additional resources. One of the judges pointed out, *"The implementation of the CFM rule calls for quicker case processing, but we're expected to achieve this without any additional resources. There's no extra manpower, no new infrastructure – how are we supposed to improve under these conditions?"*

The power dynamics within the system also play a crucial role. The judges often find themselves grappling with the political power of the lawyers' lobby, which often resists changes. One judge aptly articulated, *"The challenge isn't only implementing new rules; it's contending with the entrenched lawyer's lobby that resists these changes. We come in as outsiders, and they're the ones with the lasting relationships and the backing of the High Courts."*

Additional courtroom stress from increased caseloads further exacerbates the issue. The judges' willingness to take on these added pressures is significantly affected. As stated by a judge, *"The caseload is already immense... Trying to enforce CFM guidelines on top of all that, especially against resistant lawyers, just adds to the stress in an already high-pressure environment."*

An increased non-judicial workload and burgeoning litigation and appeal rates add to the 'overburdened' environment. One judge lamented, *"Apart from handling cases, we're loaded with a plethora of administrative tasks. The idea of court managers looked promising on paper, but in practice, it hasn't taken the load off because the lawyers and litigants trust only us judges with these duties."*

Lastly, the judges expressed their helplessness with the increasing litigation rate, stating, *"The sheer volume of litigation is overwhelming. We feel helpless, as our efforts seem like mere drops in this vast ocean of increasing caseload."* These revelations call for an urgent need to address these issues for effective implementation of efficiency reforms in the courts.

Lack of Confidence on the System

The theme of 'Lack of Confidence on the System' encompasses a number of key concepts that emerged from the judges' perspectives. First, a significant concern is the unscientific basis of the Case Flow Management (CFM) rules. Judges noted that the CFM rules were not designed with a consideration of the unique challenges of different regions or courts. One judge voiced, *"CFM guidelines have been passed on from the High Courts with minor adjustments without considering the unique challenges of our diverse country. It's impractical to expect the same tracks and timelines for all courts."* The CFM rules also fail to take into account resource disparities, as highlighted by another judge, *"The CFM rules do not take into account the severe shortage of judges and staff in our courts. The rules are static and fail to adapt to resource disparities across different courts."*

Second, the reforms are seen as being disconnected from ground realities. Judges expressed a belief that the committees proposing reforms do not consider the full implications of their recommendations, as their tenure usually ends before implementation. Furthermore, these committees are often perceived as lacking recent,

relevant district court experience, and thereby, their proposals may be detached from the actualities of the court. As succinctly articulated by a judge, *"Most committee heads lack recent experience in district courts. Their perspectives might be outdated and detached from the current realities we face."* There is also a widespread perception of a lack of stakeholder involvement in the reform process.

Third, the alignment of incentives was seen as inadequate, with judges suggesting that there is no motivation to put extra effort into implementing CFM guidelines. One judge expressed this concern by stating, *"There is no incentive to put extra effort into implementing CFM guidelines. Judges can meet their performance targets by disposing of old cases, so there is no real incentive to embrace CFM."*

Disempowered

The theme of "Disempowerment" underscored by several key concepts reveals a pervasive sense of frustration and helplessness among judges within the district court system. This sense of disempowerment is fuelled by an array of factors including oblivious clients, lack of support from the union government, frivolous litigations, and limited opportunities for career progression.

A judge lamented, *"It's disheartening to witness the tactics employed by lawyers to prolong cases. Their earnings stem from repeated hearings, leading to a lack of motivation to expedite case resolution. The clients, unfamiliar with courtroom protocols and the law, often remain oblivious to these delaying tactics."* This statement highlights the unfortunate power dynamic between unaware clients and manipulative lawyers, which subsequently fuels a lack of case resolution and prolongs proceedings, further straining the already overburdened judicial system.

The absence of support from the union government was another critical issue judges expressed. One judge noted, *"The central government's lack of concern for the state of affairs in district courts is palpable. There's a dearth of reform initiatives or support measures aimed at district courts, probably because they don't have a direct stake in the cases heard here. Such apathy does little to motivate the judicial personnel."* This lack of vested interest from the central government hinders necessary reform and dampens motivation among court staff and judges, contributing to the sense of disempowerment.

Frivolous litigations add another layer to the complexity of the situation. A judge shared, *"We often face frivolous litigation aimed at stalling proceedings or commercial transactions. It's incredibly challenging to deal with these cases, particularly because there's no penalty for wasting the court's time."* The absence of a deterrent for misuse of the legal system adds a significant obstacle to swift case resolution.

Finally, the lack of career progression was identified as a significant demotivator among judges. One judge voiced, *"Career progression for district judges is, unfortunately, lacklustre. We get transferred from one district to another, with only a few getting the chance to serve in the High Courts and that too, quite late in their careers. This absence of growth and learning opportunities, coupled with a monotonous work life, is quite disheartening and does not inspire one to strive for better performance."* Such stagnation may discourage judges from going the extra mile in their roles, reinforcing a sense of disempowerment.

Overall Essence

The study reveals a complex interplay of challenges obstructing the implementation of efficiency reforms within the judicial system, particularly from the judges' perspective. The essence of the judges' experience has been encapsulated into three primary themes - Overburdened, Lack of Confidence on the System, and Disempowered.

The theme "Overburdened" underlines the pressing issue of workload management within the courts. Judges feel strained due to a lack of appropriate training and resources, political pressures from lawyers' lobbies, mounting stress from courtroom proceedings, extensive non-judicial workload, and increasing litigation rates. These elements collectively contribute to the high pressure and workload experienced by judges.

"Lack of Confidence on the System" underscores systemic issues within the judicial system that diminish trust and confidence. Judges perceive the CFM rules as arbitrary and disconnected from ground realities. Moreover, they feel the reform initiatives lack understanding of the unique dynamics of each court and do not account for the resources required for effective implementation. The lack of alignment in incentives further undermines the willingness to implement these guidelines.

The theme "Disempowered" highlights a pervasive sense of frustration and helplessness among the judges. This is primarily fuelled by client unawareness, frivolous litigation, lack of support from the union government, and poor career progression opportunities. The judicial personnel often feel trapped in a system that fails to acknowledge or address these issues effectively.

Policy Recommendations for the Way Forward

The themes that emerged from this study have profound practical implications for policy makers and administrators. The "Overburdened" theme suggests the need for additional resources and training for judicial personnel and calls for addressing the political pressures from lawyers' lobbies. Policymakers should consider implementing strategies that alleviate the workload, such as redistributing non-judicial tasks and addressing the increasing litigation rates.

The "Lack of Confidence on the System" theme advocates for a more nuanced approach to developing rules and guidelines. Policymakers must strive to develop a flexible framework that accommodates the diversity and unique dynamics of different courts, considers the resource constraints, and provides meaningful incentives for implementation.

The "Disempowered" theme calls for measures that empower judges and enhance their motivation and autonomy. This could involve addressing frivolous litigation and client unawareness, fortifying support from the union government, and designing an improved career progression pathway that appreciates performance and dedication.

Strategies to enhance client awareness could include conducting legal literacy programs and making case proceedings more transparent. This could also involve re-evaluating the current fee structures of lawyers to discourage unnecessary adjournments and prolonging of cases.

For managing frivolous litigations, punitive measures can be considered for those wasting the court's time. This approach might dissuade parties from using courts merely as a delay tactic in transactions.

Furthermore, to make the union government more interested in the condition of the district courts, considerations could be given to incorporating the court's performance indicators into the broader governmental performance metrics.

Finally, to address poor career progression, a more dynamic and transparent system could be instituted, wherein judges have clear visibility on their career advancement paths and performance-based recognitions. Such measures could go a long way in motivating judges and creating a more effective and efficient judicial system.

In conclusion, this study highlights key challenges obstructing the implementation of judicial efficiency reforms from the judges' perspective. By addressing these challenges, policymakers and administrators can pave the way for a more streamlined, effective, and just legal system.

Chapter Summary

In the context of India's populous democracy, its judicial system, a key component, is currently facing a substantial challenge with a backlog of around 50 million cases. This situation severely hampers the implementation of efficiency reforms within the courts. The purpose of this qualitative research study is to explore this complex issue through phenomenological methods, focusing particularly on the experiences of district court judges. The aim is to understand the underlying issues affecting judicial efficiency.

The research methodology is comprehensive, involving semi-structured interviews, detailed observations, and thorough analysis of relevant documents. This approach aims to provide an all-encompassing view of the matter. The study reveals three main themes:

Firstly, district court judges are experiencing a significant burden due to the overwhelming number of cases. This leads to exhaustion, frustration, and sometimes disillusionment, as they struggle to manage their workload.

Secondly, there is a noticeable lack of confidence in the judicial system among these judges. This manifests as doubts about the effectiveness of reforms, scepticism about the system's capacity for meaningful change, and concerns about the responsiveness of policymakers.

Thirdly, many judges feel disempowered, perceiving themselves as unable to bring about change within the system. They often feel restricted by bureaucratic hurdles, systemic inertia, and a lack of influence in reform processes.

These findings highlight the need for involving district court judges in every stage of the reform process, including its design, implementation, and evaluation. Recognizing judges as key stakeholders with valuable insights can significantly improve the judicial system's efficiency. This collaborative approach could streamline the adoption and execution of reforms and enhance public trust in the judiciary.

In conclusion, addressing these issues is crucial for transforming the judicial system into one that delivers justice more equitably and swiftly. By improving public confidence in the judiciary, this research not only seeks to better the quality of justice but also to strengthen the democratic foundations of the Indian legal system.

CHAPTER 4: UNDERSTANDING JUDICIAL DELAYS IN INDIA THROUGH ANALYSIS OF CASE FLOW DATA

“People keep raising the issue of cases pending in courts. It's the lower courts where we need to look at with urgency. When a person of a humble background or from a rural area looks up to get justice, he gives it his all. Sometimes he even has to sell off his land and other assets”.

- Former Union Law Minister of India, Kiren Rijiju, September 2021

Chapter Overview

The World Bank EODB report (World Bank, 2019) shows that Indian courts take, on average, almost 4 years to enforce a standard sales agreement in a local court, and the legal costs are up to 31% of the claim's value. Comparing with similar economies in Asia, the time taken is much higher than the average for South Asia (3 years) and China (1.3 years). Without an effective and efficient judicial system, the state will not be able to protect the rights of the citizens and the people will resort to extra judicial measures to get justice (Moog R. , 1993). It is high time that the Indian judicial system is revamped.

However, any reform must first begin with a comprehensive understanding of the underlying problem. In the case of judicial delays, it begins with developing an understanding how much and where do cases spend their time i.e., a stage-wise analysis of the case duration, particularly for cases in the Indian district courts that account for 88% of the 50 million cases pending in the Indian courts.

This chapter is dedicated to achieving our second research objective:

Investigate the case flows and analyse the stage wise case duration for different case types in India's district courts:

1. Identify a representative district court system to study.
2. Study the case duration of different case types from the representative district court.

3. Analyse the case duration for different types of cases through time spent in each stage and draw conclusions on the reasons for delays.

Recently, the Supreme Court of India has opened access to the court case data to the public. This has allowed for rigorous quantitative analysis of the case data and a deeper understanding of the reasons behind the judicial delays. In the following sections this chapter takes us through this journey – understanding the aggregate pendency across different levels in Indian courts, looking at the Indian caseflow management rules to understand the established norms for delays, a quantitative analysis of case durations in a representative district, and a fine-grained analysis of caseflow for different case types.

This is the first of its kind fine grained quantitative analysis of judicial delays in Indian courts. It gives us a comprehensive understanding of how much and where the cases spend their time. This perspective allows us to make more informed recommendations for addressing the dogged problem of judicial delays.

Pendency in Indian Courts

The pendency and delays in Indian courts has been described in Chapter 1 of this thesis. Some salient points are reiterated here for quick reference:

1. 49.5 million cases are pending in Indian courts.
2. 88% of them are in India's district courts.
3. 10% of the cases in India's district courts are pending for more than 10 years.
4. The civil and criminal cases, both have a similar pendency profile.
5. The case institution rates have exceeded the disposal for several years now. This is causing the pendency to increase each year.

The caseload on the courts has continued to rise year on year. For the last 100 years, several reforms have been proposed by various agencies (Chandra J. , 1986) to improve the situation and reduce the pendency. But there has been limited success. Most of these reforms relate to the supply-side i.e., increasing number of judges, increasing the retirement age of judges, reducing the number of court holidays, increasing number of court rooms, adding court managers (NALSAR Hyderabad, 2015), increasing the use

of technology, etc. These reforms have not been effective due to several reasons, primarily because of the resource constraints. It is time to explore how the efficiency of the court processes can be improved – because that is the only viable way out in the near term.

Before the researcher attempts to provide suggestions on improving the efficiency of the district courts in India, it is important to understand them in more detail. It is particularly important to undertake a statistical study, so that our recommendations are backed by evidence. There have been limited quantitative studies on Indian district courts undertaken earlier due to lack of data. One of the significant quantitative studies was done in 2004 (Hazra & Micevska, 2004), 2017 (Khaitan, Seetharam, & Chandrashekar, 2017). Fortunately, with data now available in public domain, we can undertake a comprehensive study.

Deep Dive into a Representative District of India

As mentioned in the preceding section, more than 87% of the total cases pending are in district and subordinate courts. They are the first court for people of India to access justice. Any marginal improvement in their efficiency will have a huge impact because of the sheer size of the population accessing these courts for justice. However, before we get there, we need to look deeper to identify the details of the problem. India is not homogenous and making an analysis on the aggregate district court data would not give us the right understanding of the problem. We need to deep dive into one representative district and analyse the case data. Sonapat district was the natural choice for our research. It is the researcher's resident district, and consequently he has a cultural understanding of the district. Given the geographical proximity, the analysis of the secondary data was corroborated with first-hand information of qualitative interviews with the judges done in Chapter 3. For extrapolating the analysis to a pan-India level, it is important to make sure that Sonapat is not an outlier district and fairly represents the typical Indian district solely from the court performance perspective (because that is the sole purpose of this study). From the chart below, it turns out that Sonapat is a valid choice for the study undertaken.

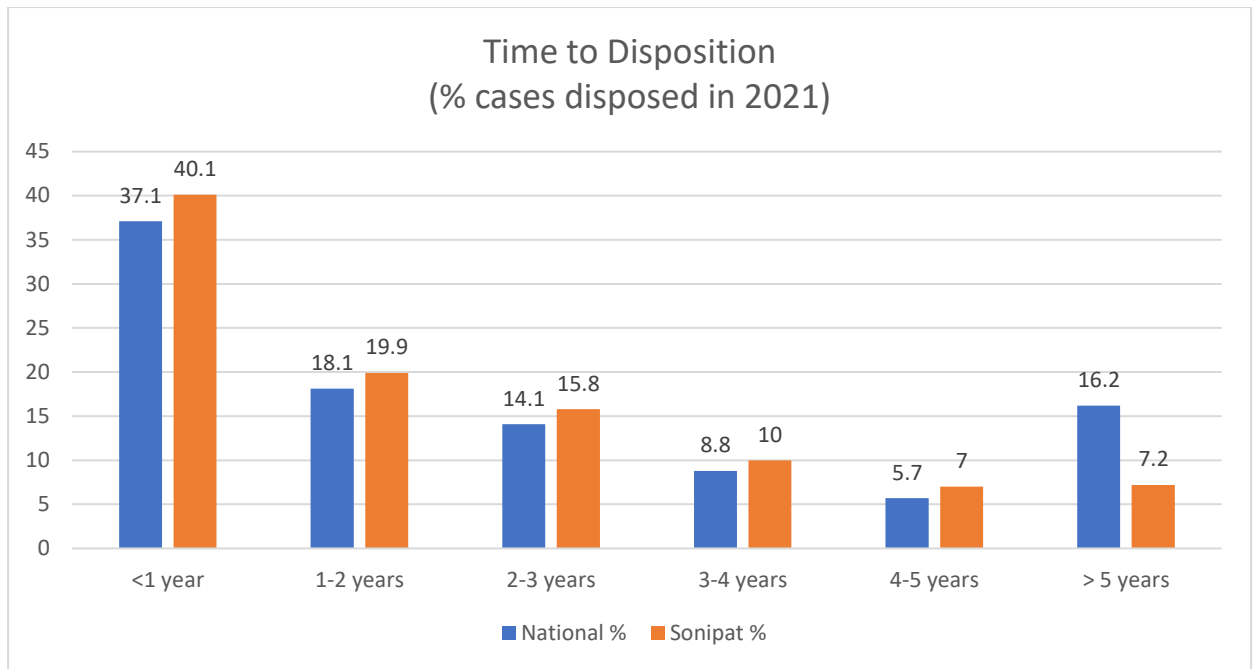


Figure 6 : Time to disposition of cases in India and in Sonipat District Courts

Data Source (extracted on 29th May 2022):

National data:

https://njdg.ecourts.gov.in/njdgnew/?p=disposed_dashboard&get_year=2021

Sonipat data:

https://njdg.ecourts.gov.in/njdgnew/?p=disposed_dashboard&get_year=2021&state_code=6~14&dist_code=13

We first look at the ‘time for disposition of cases’ i.e., the time it takes to dispose a case from institution to disposal. This gives us a measure of how fast the cases are getting resolved. We compare this statistic between Sonipat district and India as a whole. As seen from the charts above, Sonipat district performs better than the Indian national average by disposing cases faster. In all time brackets (less than 1 year, between 1-2 years, etc.), the courts in Sonipat resolve a higher percentage of cases within that time bracket than the national trend. This helps us conclude that Sonipat is a relatively better performing district and not very different from the National average. We have not deliberately chosen a poorly performing district for our analysis. Our representative district is slightly better than the national average on the metric of court performance.

The Data – Source, Extraction, Filtering

The eCourts Portal: eCourts¹⁴ is an initiative by the Department of Justice Government of India and eCommittee Supreme Court of India. The eCourts portal has a wealth of data pertaining to the case proceedings of cases in all courts of India. Detailed data of cases, both pending and disposed, has been digitized and uploaded on this portal. The portal allows users to check case status, cause lists, orders/judgments and other information related to courts online. It also enables electronic filing of legal papers through e-Filing application. The portal is part of the eCourts Project, which aims to improve transparency, efficiency and accessibility of judiciary in India. A sample of the case flow data available in the eCourts website is given in Appendix 1. The data is rich and detailed. The digitized case data is in the public domain for the first time. This allows for very detailed analysis of the case flow.

We have chosen to use official government data for our research purposes, because it is beneficial in many ways:

1. **Reliability and Validity:** Official government data is collected through a standardized process and is subject to quality checks and validation before it is released to the public. This ensures that the data is reliable and valid, and the results obtained from its analysis are accurate.
2. **Large Sample Size:** Official government data is often collected from a large sample size, making it more representative of the population being studied. This increases the statistical power of the research and makes it more generalizable.
3. **Longitudinal Studies:** Government data is often collected over long periods, providing researchers with the opportunity to conduct longitudinal studies that can identify trends and changes in the population over time.
4. **Transparency and Accessibility:** Government data is usually available to the public, making it easy for researchers to access and use it. This transparency also makes it easier for researchers to replicate studies and compare their results with those of others.

¹⁴ <https://ecourts.gov.in/>

5. **Cost-Effective:** Official government data is often collected at no cost or at a low cost, making it more cost-effective for researchers who may not have the resources to collect their own data.
6. **Policy Implications:** Government data often includes information that can inform public policy decisions. By using this data, researchers can provide evidence-based recommendations for policymakers, making their research more impactful.

In summary, using official government data for research purposes is a good idea because it is reliable, representative, available over time, transparent, cost-effective, and has policy implications.

Daksh¹⁵ is a research institution focused on law and justice reforms in India. Daksh maintains a database¹⁶ of eCourts data for analysis by researchers. It regularly scrapes the data on eCourts portal. The researcher used the Daksh database to analyse the aggregate case data. As mentioned before, 88% of the cases are pending at the district courts. Hence, the researcher particularly looked at the district court data from the chosen district of Sonipat (also written as Sonepat).

Data Source:

Aggregated eCourts data sourced from the Daksh database.

Data Filters:

- Courts: Subordinate courts in Sonipat District
- Type of cases: Civil and Criminal disposed cases (to ensure that entire case flow has completed).

Data extraction date: 2-4 Aug 2021

A total of 231,565 cases were downloaded from the 12 subordinate courts that are in Sonipat district. Appendix 10 gives the details on the downloaded cases. These cases are the disposed cases i.e., those cases that have gone through the complete the process and the judgements have been declared. We do not look at the cases that are in progress, because their information would be incomplete. Since the data is constantly being

¹⁵ <https://www.dakshindia.org/>

¹⁶ <https://www.dakshindia.org/login-to-database/>

updated (as cases progress and get disposed) we chose to take a snapshot of the data in August 2021. This is the population data that the researcher chose to work with.

Now that we have the data, in accordance with our research objectives, we can calculate the duration a case spends in different stages and this can be analysed for different types of cases. We can also test whether the cases are getting ‘delayed’ according to the benchmarks. There are no clear or uniform criteria for determining whether a case is delayed in India. Caseflow management rules are the only established norms on the duration a case is supposed to take. They give us an indication whether a case is ‘delayed’. Let us investigate the adherence to CFM first. Then we can take a deeper look at the cases that are ‘delayed’ according to the CFM benchmarks, identify the stages where they spend the maximum time and then make inferences on the reasons for the delay.

The Caseflow Management Rules and their Adherence

The CFM rules convey to us the established norms for judicial delays. The High Courts in India proposed their case management rules in 2007. Our research focus is on the subordinate courts in Sonapat district. Sonapat lies within the state of Haryana in India. Appendix 11 gives the relevant sections of the Punjab and Haryana High Court Case Flow Management Rules 2007 for subordinate civil courts (Punjab and Haryana High Court, 2007).

As can be seen in the CFM rules in Appendix 11, the attempt of the High Courts in India is to categorize the cases into various tracks according to their importance and define deadlines for each type of case. The intent is to put the judge in control of the case flow and improve efficiency and throughput of the courts in resolving cases. The rules give us an indication of what is a ‘delayed case’ i.e. delayed cases are those cases that are not resolved within the time limits specified in the CFM rules. If the cases do get resolved within the specified time limits, we can conclude that the court is performing well. On the contrary, if we find that the cases do exceed the time limits, then we can conclude that the court is not performing well.

Though the rules were framed and promulgated in 2007, even after 15 years, there has been no academic study on whether the courts are implementing the rules. The availability of digitized data for the first time allows us to explore this important

question i.e. are the district courts adhering to the caseflow management rules promulgated in 2007? By testing the average of case duration to the duration norms established by the CFM we can establish whether the cases adhere to the caseflow management rules or not.

Next, with the data we have, we can look into the stage wise case data and can analyze the time spent on various stages. This will give us a deeper insight into the bottlenecks stages in the case flow and whether the situation can be remedied.

Testing different Case Types for Adherence to CFM defined case duration benchmarks:

We identified a total of 30 case types that are handled by the representative district court system. These are 15 types of civil cases and 15 types of criminal cases. Civil cases are divided into two tracks – Track I and Track I. Track I represents the more urgent cases according to CFM. Criminal cases are divided into Track II, Track IV and Track V. There are no Track I and Track III cases in the representative court system under study. Track II cases are the more urgent cases according to CFM.

We first check how the representative court of Sonipat performs according to the different tracks of cases and the CFM benchmarks.

We then compare the average case duration for these cases with the case duration benchmark from the CFM rules. We test whether they are delayed or not. The results are shown in the table below:

Case Category	CFM Track	Average Disposal Time (days)	CFM Limit (days)	Delayed?
CIVIL	Track I	537	180	Yes
CIVIL	Track II	488	365	Yes
CRIMINAL	Track II	5	365	No
CRIMINAL	Track IV	628	450	Yes
CRIMINAL	Track V	488	540	Yes

Figure 7: Adherence to CFM limits of different case types

Observation

Overall, the analysis of the performance of Sonipat district courts in disposing cases, shows that almost all types of cases do not adhere to the CFM benchmarks. Only very urgent Criminal matters get disposed within the time limits specified by CFM rules. Given that Sonipat performs better than the national average, we can say that other districts would perform worse off than Sonipat. Hence it is fair to conclude that:

The performance of district courts in India is poor. They do not always adhere to the time limits specified in the Caseflow Management Rules promulgated in 2007.

Stage wise case duration analysis

In line with the research objective, we next dive deeper into the case flow and investigate the stage wise duration for the cases. This will allow us to get a complete understanding of where the cases spend their time and if any inefficiencies can be addressed. We first look at the aggregated civil cases (both Track I and Track II) from our data set and investigate the stage wise percentage of time spent by these civil cases. We know from the previous section of our research that these cases exceed the time limits set by the CFM rules. The distribution of the total case time is shown in the chart below.

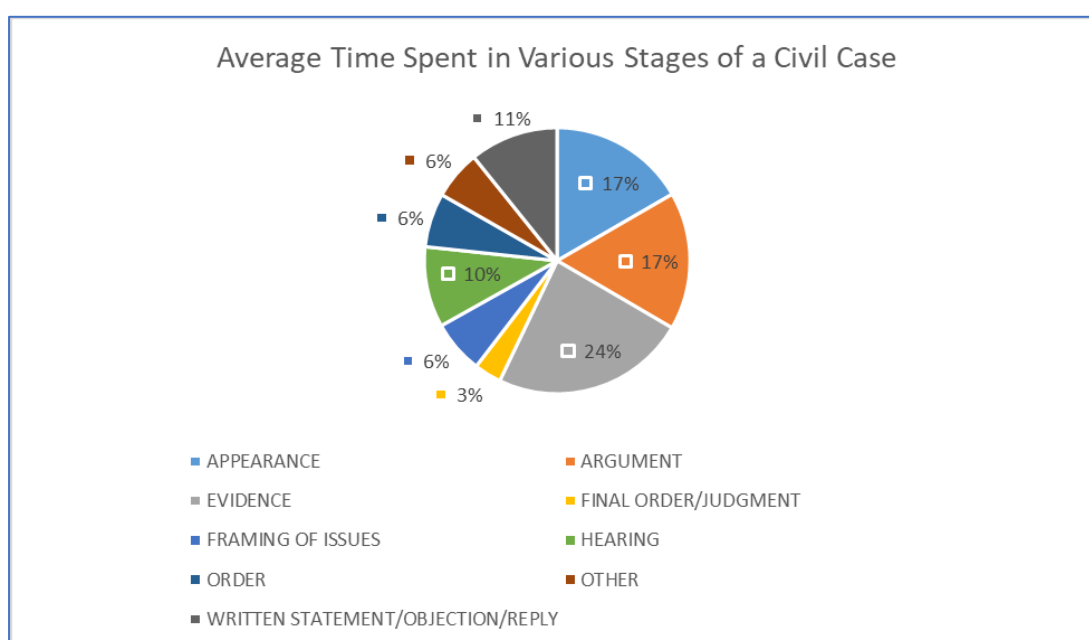


Figure 8: The average stage wise time spent for all civil cases in Sonipat

From the chart shown, we see that 24% of the case time is spent in the ‘Evidence Collection’ stage and 17% in the ‘Appearance’ stage. Together they constitute 41% of the case duration. Both these stages are at the initial stage of processing the case. They do not have an active judge involvement and take place outside the court room. The judges cannot help in expediting these stages of the case. Having additional judges or imposing a time constraint on the overall case duration will not be effective without reducing the time taken in these stages. An integrated systemic view is important before proposing efficiency reforms. This corroborates the findings in Chapter 3, where the judges mentioned a lack of consultative process in framing the efficiency reforms i.e., the CFM rules, and consequently they were bound to be resisted in their implementation.

Next let us look at the aggregated non-urgent criminal cases (Track II-V) from our data set and investigate the stage wise percentage of time spent by these criminal cases. We know from the previous section of our research that these cases exceed the time limits set by the CFM rules. The distribution of the total case time is shown in the chart below.

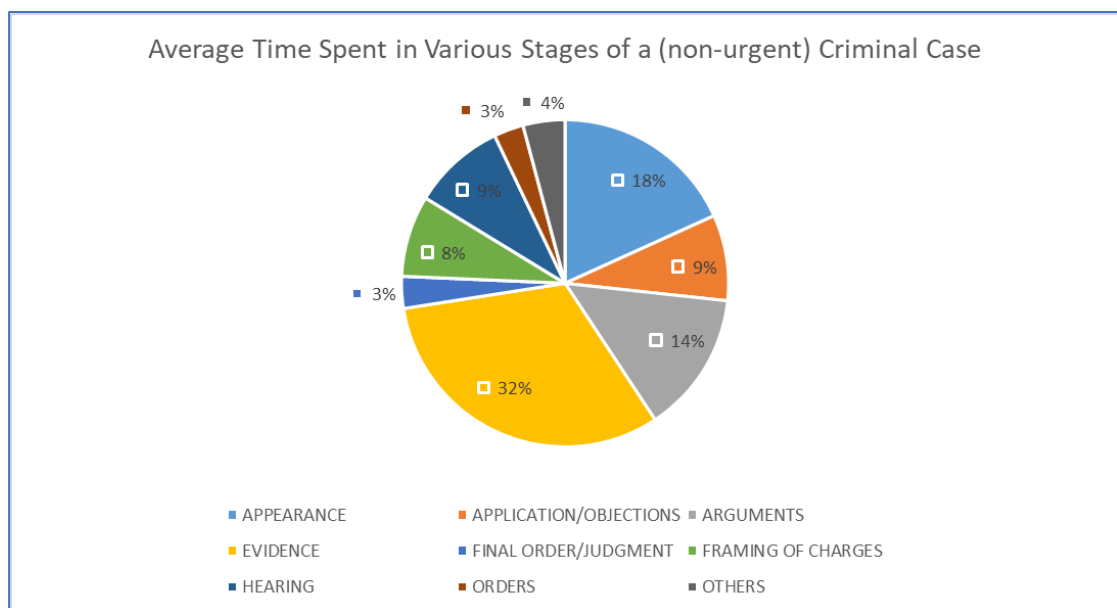


Figure 9: Figure 13: The average stage wise time spent for all (non-urgent) criminal cases in Sonipat

In these cases, on an average, the ‘Evidence collection’ stage takes 32% of the case time and the ‘Appearance’ stage takes 18% of the case time. Together they take 50% of the case time. This is very significant. Both these stages take place outside the court room and do not involve an active involvement of the judge. Reducing the case time

would involve improving efficiency of these stages. However, we know that they cannot be tackled by adding more judges. Other systemic reforms are needed to reduce the time taken in these stages as there is dependency on law enforcement agencies as well.

In Appendix 13, we disaggregate the civil and criminal cases and look at the specific case types within them. We investigate the case flow durations and make more nuanced observations on the stage duration, the potential reasons for the time taken and the possible remedies. The conclusions we derive from a finer analysis continue to be the same as above - delays and inefficiencies are not solely attributable to the actions of judges. Instead, they are influenced by systemic factors, including dependence on law enforcement agencies and the availability of resources and staff.

Conclusion

Our research has led to an unequivocal conclusion: the endeavour to reduce case duration necessitates a comprehensive and holistic reform approach, one that encompasses the entirety of the judicial landscape and the law enforcement agencies. Attempting to address these issues piecemeal, segment by segment, is destined to fall woefully short of the mark. Such an approach not only risks overlooking the intricacies of the system but also leads to erroneous conclusions regarding the root causes of its failure to achieve efficiency and effectiveness.

Furthermore, our findings serve as an eye-opening validation of the idea that external constraints, including the imposition of time limits on case duration, are, in essence, cosmetic remedies that fail to address the underlying internal constraints deeply embedded within the system. This crucial insight resonates strongly with the research findings presented in Chapter 3 of our comprehensive study. It resoundingly highlights the imperative need for a more scientific, participatory, and inclusive approach when it comes to the intricate realm of designing and implementing efficiency reforms within the judicial system.

In essence, our research underscores the urgency of transcending traditional, compartmentalized thinking and embracing a more comprehensive, integrated, and systemic view to usher in a new era of judicial efficiency and fairness.

Insights and Implications for Indian District Courts

A quantitative approach to analysing case duration (both overall and stage wise) has not been done in a scholarly manner before. Our attempt to do so for the cases at a representative district court in India gives us a lot of insight into the courts' performance. We started with our research objective to understand whether cases in the Sonapat district courts adhere to the case flow management rules promulgated by the Haryana and Punjab High Court. This was important and novel. The study of implementation of CFM rules has not been undertaken so far, though about 15 years have passed since the CFM rules were issued. It is a common understanding of the Indian citizen that the courts take significant time to deliver judgements and it is perhaps also a deterrent for many to approach them for justice. This is a very crude and simplistic assumption, and perhaps a bit too critical on the courts.

When we discovered through simple statistical tests that the civil cases and most of the criminal cases do not adhere to the specified time limits, we undertook the next stage of our research objective - delving deeper into the stage wise time taken. This revealed a lot more information that is crucial for suggesting any change.

The rigorous quantitative analysis undertaken in this research on the case flow was insightful and novel. An immediate take-away that scholars in this domain could glean from the analysis is that there is a lot of diversity within the courts of one single district. Performance varies between civil and criminal cases, between tracks within each category of cases, and the flow between cases under the same track. Simplistic conclusions are misinformed, and solutions prescribed according to them will perhaps be ineffective and in the worst-case counterproductive. A nuanced approach is needed. We share some of the observations and their implications on public policy below.

The study on stage wise case duration serves as a profound reminder of the intricacies and challenges inherent in the Indian judicial system, underlining not only the essence

of judges' experiences, as captured in our first research objective but also spotlighting broader policy-making issues that demand sincere attention and acknowledgment.

Firstly, the study highlights the importance of viewing the judicial system as part of a larger network that includes other legal and law enforcement institutions. It suggests that we cannot examine the judiciary in isolation since it is closely connected to broader legal processes and law enforcement activities. A significant finding of this study is that a major portion of time in various case types is consumed by the processes of 'Evidence Collection' and 'Appearance.' This draws attention to the overall condition of the law enforcement system, especially focusing on the role of the police.

It becomes evident that implementing reforms in the police force is crucial for enhancing the efficiency of the judicial system. The current inefficiencies in the police system have a ripple effect, causing delays and congestion in the judiciary. Therefore, addressing these systemic issues in the police force is essential for creating a more effective and responsive legal framework. This approach will not only improve judicial efficiency but also contribute to a more streamlined legal process overall.

Secondly, the research emphatically underscores the urgent need for a collaborative relationship between academia and the judiciary in the realm of policy reforms. Academia, with its research capabilities and unbiased perspective, can play a pivotal role as a research and feedback body, offering insights and analysis to inform and improve the judiciary's functioning. While the district courts have embraced the Case Flow Management (CFM) rules, there is a call for increased transparency regarding the rationale behind these rules, particularly in the context of case tracks and their associated time limits. This collaborative partnership between academia and the legal system emerges as a pressing imperative highlighted by the research. The synergy between these two domains can lead to more evidence-based policy decisions and a stronger, more adaptive judicial framework.

Thirdly, the research brings to the forefront the significance of open data, a phenomenon that is transforming the landscape of transparency and accountability within the judiciary. The availability of eCourts data, made accessible by the Supreme Court of India, marks a remarkable leap forward. It not only offers researchers and analysts a treasure trove of information for quantitative research on case flow and court

performance but also symbolizes a commitment to transparency. This newfound openness invites collaboration among civil society, academia, and the media, who can work alongside the legal fraternity to harness this data for research, analysis, and informed advocacy. This collective effort can foster a more informed and engaged citizenry while promoting a culture of accountability within the judicial system.

Moreover, the research underscores the importance of elevating public awareness, particularly regarding the CFM rules introduced in 2007. Despite the mounting backlog of nearly 50 million pending cases in India, these rules have not received the attention they undeniably merit. Amplifying public awareness about CFM rules holds the potential to propel their implementation forward as understanding grows and demands for their effective application increase. Public engagement in the reform process can become a catalyst for change, fostering a sense of shared responsibility for the administration of justice.

Additionally, the research highlights the critical need for policy agility within the judicial system. Over the past 15 years, while the CFM rules remained static, profound changes swept through the legal landscape. The burgeoning caseload, rapid technological advancements, the introduction of new legislation, and shifting societal dynamics have all rendered the existing rules outdated and inadequate. This underscores the necessity of revisiting and adapting these rules to align with the evolving needs of the judiciary. A flexible and responsive policy framework can better address the challenges and complexities of modern jurisprudence.

Lastly, and crucially, the research elucidates the dire need for capacity building within the judicial system. Mere promulgation of rules and reforms is insufficient if the essential training, allocation of resources, and institutional support are lacking. Judges and court staff require comprehensive and ongoing training to adapt to evolving legal processes, utilize modern technology effectively, and manage the stress inherent in their roles. Capacity building initiatives ensure that the individuals responsible for the administration of justice are well-equipped and prepared to meet the demands of their roles effectively.

In sum, this research study paints a comprehensive panorama of the Indian judicial landscape, unveiling a tapestry of challenges and opportunities that demand a

multifaceted response. It calls for a holistic approach that embraces institutional collaboration, transparency, capacity building, and adaptive policy formulation to enhance the efficiency and effectiveness of the judicial system, ensuring that it serves as a cornerstone of justice and fairness in India.

Future Work

In this section we identify the future possibilities of research to improve court efficiency.

Firstly, there is a compelling need to revisit and revise the Case Flow Management (CFM) rules, which were initially formulated 15 years ago without access to comprehensive court data. These rules were crafted from a normative standpoint, emphasizing ideal timeframes for case resolution without considering the distinct caseloads and resource availability of individual courts. With the wealth of data now at our disposal, we have the opportunity to create more tailored CFM rules that reflect the specific needs and capacities of each court across the country. By adopting a differentiated approach, we can garner greater support from judges, lawyers, and court staff, all of whom will benefit from rules that align with their unique circumstances. Furthermore, transparency in the methodology behind CFM guidelines can hold courts accountable for their implementation.

Secondly, the detailed stage-wise analysis we have conducted offers invaluable insights for policymakers. Targeted reforms, process enhancements, and the implementation of technology can be strategically employed to increase case throughput. This approach is more pragmatic and politically feasible than a sweeping, resource-intensive expansion of the judiciary, instilling confidence that the system is committed to efficiency improvements without requiring additional resources. It is a financially viable and administratively manageable path forward. Future research can be undertaken to propose such reforms.

Thirdly, there is a valuable opportunity to draw lessons from different case categories. Notably, urgent criminal cases tend to perform better than civil cases in meeting CFM limits, possibly due to judges' greater control over criminal proceedings and the higher

visibility and pressure associated with such cases. However, performance wanes for non-urgent criminal cases. By cross-pollinating process improvements and strategies between case categories, we can bridge performance gaps and promote overall efficiency. A further investigation into such best practices can be undertaken going forward.

Fourthly, we propose the development of a dynamic court performance dashboard. Rather than retrospectively evaluating courts' adherence to CFM rules, such a dashboard would offer real-time insights into court performance. By integrating available data and incorporating metrics that account for case load diversity and manpower availability, this tool would encourage high-performing courts to excel further and enable the government to identify underperforming courts. It would provide public recognition for the diligent efforts of overworked judges, promoting a culture of acknowledgment for their commendable work.

Lastly, we emphasize the importance of targeted training for judicial staff, particularly in lower courts, which bear the heaviest caseloads and serve as the first point of contact for the common citizen. Investment in training programs that incorporate the ideas and reforms proposed above, including peer-to-peer learning of innovations, can empower judges and court staff with the tools and knowledge necessary to enhance their efficiency and effectiveness in managing cases.

In summary, these recommendations collectively offer a multifaceted approach to address the challenges faced by the Indian judicial system. By adopting these strategies, we can unlock significant improvements in the administration of justice, fostering a more responsive, accountable, and efficient legal framework that benefits both legal professionals and the citizens they serve.

Chapter Summary

Recently, the Supreme Court of India has opened access to the court case data to the public. This has allowed for rigorous quantitative analysis of the case data and a deeper understanding of the reasons behind the judicial delays in India. We have used this data in our study. This chapter took us through this journey – looking at the aggregate

pendency in Indian courts, the Indian caseload management rules, quantitative analysis of case duration in a representative district court, and fine-grained analysis of caseload for specific case types to understand the case flow. We first made a broad conclusion that Indian district and subordinate courts do not adhere to the case flow management rules, i.e., the cases are delayed, and justice is not delivered in time.

We then pursued our study into the case flows and stage wise case duration. We got a new insight into the time cases spend in their stages and we identified potential bottleneck stages. The analysis that followed, corroborates the findings in Chapter 3 in which we captured the essence of the judges' experience in implementing efficiency reforms. This is the first of its kind fine grained quantitative analysis of case flow in Indian district courts.

CHAPTER 5: ADDRESSING INDIA'S JUDICIAL CRISIS - A DEMAND-SIDE APPROACH

“Our system, practices, rules being colonial in origin may not be best suited to the needs of the Indian population. The need of the hour is the Indianization of our legal system. When I say Indianization, I mean the need to adapt to the practical realities of our society and localize our justice delivery systems”.

- Former Chief Justice of the Supreme Court of India, NV Ramana, Sep 2021

Chapter Overview

In the quest for a more equitable and just society, the distinction between 'Nyaya' and 'Niti,' as profoundly articulated by Amartya Sen in his seminal work, 'The Idea of Justice,' (Sen, 2011) serves as a reminder for reevaluating our approach to justice. While conventional theories, most notably John Rawls' 'justice as fairness,' have primarily concentrated on the architecture of institutions and the fairness of processes (*Niti*), Sen urges us to look beyond, towards the actual outcomes and realizations (*Nyaya*) that these institutions and processes engender in the lives of individuals. Sen's argument is that a just society cannot be fully understood or achieved through the lens of institutional fairness alone. Instead, it necessitates a deeper, more comprehensive analysis that accounts for the tangible impacts of these institutions on human lives. With this thought in our mind, we embarked on a nuanced exploration of justice that transcends mere procedural fairness to embrace the actual well-being and capabilities of individuals, thereby aligning our pursuit of justice with the lived realities and aspirations of the people it seeks to serve.

India has a history of indigenous and traditional justice systems. They are examples of restorative justice systems that have withstood the test of time and continue to be popular to this day despite being informal. Given their restorative nature, they have been effective and have held the trust of the society for centuries. These are accessible - geographically, culturally, and financially – and offer affordable, fair, and speedy justice. Unfortunately, many such traditional systems of justice in India have been outlawed after independence. Recognizing the informal justice systems allows the

Indian State to regulate them and leverage their capacity to dispense justice at the local level.

Recently some tribal regions under PESA (Panchayats Extension to Scheduled Areas) Act of 1996 have been given autonomy to continue their community justice systems according to their customary laws. This initiative has been successful to a large extent. An integration of the best practices of the formal court system and the traditional justice systems can offer a sustainable solution to the urgent judicial crisis India is facing today. This is what we explore in this chapter.

This chapter is dedicated to the third research objective of our study:

Study the impact of formalization of community justice systems in India.

1. Study examples of successful community justice systems in India and globally and how they have been formalized.
2. Study the impact of formalization and integration of a community justice system in India.
3. Propose how to integrate community justice systems into the formal system.

The Challenges of the Indian Judicial System

Despite over a century of reforms proposed by various agencies, the Indian State is unable to implement them to good effect. The reason being, most of these reforms proposed look at the supply-side i.e., adding more resources to unclog the system. For a resource constrained country that doesn't give a big priority to adding resources to the court system, these reforms are difficult to implement. A major blind spot has been the demand-side. A lot can be achieved by reducing demand on the existing system. We first examine the reasons why the suggested reforms which are focused on improving the supply-side were not implemented to their full effect.

Inflexible Supply-side Constraints

Judicial resources are scarcely available in India. That is why, even though several recommendations have been made to add resources, the government of India has been unable to do so. The National Commission to review the working of the constitution in 2001 noted several supply-side constraints in its consultation paper (A Consultation

Paper on Financial Autonomy of the Indian Judiciary, 2001) which exist to this day. Some notable points include:

- In the last 5 decades, there has been no proper allocation of funds commensurate with the corresponding increase in population, legal awareness, and increase in legislation. The Indian judiciary has not received even a proportion of its due share in the last 50 years.
- Lack of long-term planning and lack of finances have been the main causes for the shortage of courts and judicial officers in all parts of India.
- Even if officers up to the full strength of the Indian judicial service are recruited, some of them must sit idle for want of court rooms.

Financial constraints

Dispensing justice is a sovereign function and cannot be performed by the private sector. This makes the allocation of funds to the judiciary even more important. However, only 0.09% of the GDP is budgeted for the judiciary each year (Lokur, 2019), which is among the lowest in the world. The high costs of accessing justice have been mentioned previously. There are larger costs of delays to the society as well. These costs would include reduced economic activity due to property disputes, commercial disputes, tax litigation, stalled government projects etc.

There is an urgent need for increasing the budgetary allocation to the Indian judiciary. This has been a long-recognized need. As early as in 1988, the Law Commission of India in its 127th report (127th Report on Resource Allocation for Infra-Structural Services in Judicial Administration, 1988), highlighted that the judiciary is not allocated enough budget. This is because the Indian government does not regard administration of justice as a developmental activity and is thus budgeted as a non-plan expenditure. This situation has further exacerbated in recent times. The most recent 14th Finance Commission of India has reduced spending by the central government and has given more fiscal space to the state governments. This has reduced the central grant to judiciary and now the onus is on the state governments to support the judiciary. This move devolves the decision making to the state governments which have their own share of fiscal constraints.

Manpower constraints

Financial constraints lead directly to manpower constraints. In 1987 the Law Commission of India highlighted in its report (120th Report on Manpower Planning in Judiciary: A Blueprint, 1987) that 70-80% of the expenditure of the judiciary is on manpower. This percentage has not changed much since then. There are about 5000 vacancies (Thakur, 2018) in the 16,500 subordinate courts of India, which account for about 22% of the total strength. These vacancies have persisted for decades. Add to this the fact that, about 90% of the caseload is at the lower judiciary. These vacancies exist is due to financial constraints and a complicated bureaucratic recruitment process of both the judges and the staff. Similar processes are pervasive in other fields of Indian governmental services. This has resulted in severe vacancies in all sectors of the government. Moreover, there is no scientific analysis done yet on the number of judges and administrative staff needed due to present caseload. Even if the fiscal space for judiciary is increased, the answer does not lie only in hiring more judges. Each additional judge comes with the requirement of additional staff and infrastructure.

Easing the recruitment process to fill the vacancies and increasing budgetary allocation for the judiciary is a long-term reform. Though we wish them to go away, the constraints of finances and manpower are here to stay. Procedural reforms, enforcing case management, and use of technology can ease some of the supply side issues.

Towards a demand-side solution

Given the rapidly eroding faith of the Indian people in the judiciary to deliver quick and fair justice, we need to reimagine how the judiciary can deliver speedy and fair justice within the existing constraints. This is where Government of India needs to draw out demand side solutions i.e., finding ways to reduce the incoming caseload on the existing overburdened system. The Government needs to develop and strengthen alternate means of redressing grievances. These methods should not just be speedy and fair, but also accessible (geographically, financially, and culturally) to the justice seeker.

Looking into the experience of human civilization worldwide, India can perhaps find a direction to look for answers to our modern challenges. In India, historically, indigenous, and other traditional or customary justice systems have provided justice in

a more geographically, culturally, and financially accessible way. Many people to this day, choose traditional and non-formal dispute resolution methods.

The Indian experience with village courts

The Indian judicial system is very old and had developed decentralized and robust institutions to deliver restorative justice. Village panchayats formed an integral part of national life since times immemorial. While empires rose and fell, the village panchayats in India ensured that democratic traditions continued to flourish at a decentralized level. Village Courts or Nyaya panchayats played the important role of dispute resolution in villages of India.

Nyaya Panchayats had several benefits (Mathur S. , 1997):

1. They provided a fair and speedy resolution of village disputes at the local level.
2. Hearings were conducted in the open for everyone to participate.
3. The costs of justice delivery were low as people could represent themselves and did not need an intermediary lawyer.
4. They were based on restorative justice that employed the means of mediation and conciliation. This allowed relationships to be retained and not strained.
5. Since the hearings were within the village in front of the community, it was easy to bring forth evidence and witnesses and difficult to perform perjury.
6. The court hearings and operations were conducted in the local language which made the process of justice delivery comprehensible to the last person.

In his book H. Tinker (Tinker, 1954) mentions that these institutions were replaced by formal courts by the British during their colonial rule over India. During India's freedom struggle there were attempts to boycott the official courts and restore the Nyaya Panchayats (Galanter, The Aborted Restoration of 'Indigenous' Law in India, 1972). However, during the Constituent Assembly (1947-49) the attempt by Gandhians to form a polity based on village autonomy and self-sufficiency was rejected by the assembly. The Constitution of India endorsed the formal court system and village panchayats (local self-governments) were relegated in the Directive Principles of the Constitution of India (Constituent Assembly Debates, 1948). There were continued attempts to give a formal backing to the Nyaya Panchayats post-independence. With little or no support from the bar and the bench, these institutions became moribund and died a natural death during the 1970s (Meschievitz & Galanter, 1982). According to

Krishnan and Galanter the Nyaya Panchayats tried to recreate an idealized version of the traditional Indian society based on democratic fellowship (Krishnan & Galanter, "Bread for the Poor": Access to Justice and the Rights of the Needy in India, 2004). They failed because they became a combination of the formality of official law and the political malleability of village tribunals. However, increasingly there is a need felt to revitalize the institution in today's context (Bandyopadhyay, 2005). There is a need for empirical research in the functioning of these institutions to redesign them (Baxi U. , Access, Development And Distributive Justice : Access Problems Of The Rural Population, 1976).

Modern Experience in India

One would imagine that as the traditional institutions that offered restorative justice faded, the Indian citizen would move to the formal system to access justice. But the evidence is to the contrary. An 'access to justice' survey was conducted by Daksh in 2015 (Daksh India, 2015). This was the first survey of its kind in India. The survey interviewed current litigants in subordinate courts of India to see if they can use the judicial system effectively to resolve their problems. It evaluated how social profile determined the ease of access. The sampling objective of the survey was to ensure nationwide representation. 9329 litigants from 170 districts in 24 states of India were interviewed using an android app. Several noteworthy findings emerged from the study.

1. A substantial portion, accounting for 32% of the litigants, explored alternative methods of dispute resolution before resorting to formal courts. These approaches encompassed engaging with law enforcement, consulting family elders, turning to village panchayats, seeking guidance from religious institution leaders, and seeking the intervention of influential local figures.
2. Among those who pursued alternative dispute resolution methods, a striking 96.3% hailed from lower income brackets, with annual incomes below \$4000, underlining the financial constraints faced by a significant segment of the population.
3. A notable 15.6% of all litigants embarked on journeys spanning distances of 50 km to 300 km to attend court hearings, illustrating the geographical challenges they encountered in accessing the judicial system.

4. 44% of litigants identified the cost factor as a major deterrent when contemplating filing appeals in the High Court, especially if their cases did not result in a favourable outcome at lower court levels. The financial burden associated with pursuing legal recourse at higher echelons of the judicial hierarchy posed a significant obstacle for many.
5. A mere 2% of respondents reported being assigned lawyers appointed by the court through legal services authorities, without incurring any fees. This finding shed light on the limited accessibility to pro bono legal representation within the judicial system.

This survey was extended and repeated in 2017 (Daksh India, 2017) to further understand the expectations and experiences of Indian citizens in resolving their disputes. This time the survey collected 45,551 responses across 385 districts, and 28 states. This survey had a detailed questionnaire on understanding on how people use non-institutional justice mechanisms. The study's findings reveal several notable insights regarding dispute resolution preferences among respondents.

1. A significant majority, constituting 70% of those facing disputes and seeking resolution, expressed a preference for recourse to the formal court system, while the remaining participants opted for non-court methods.
2. In the initial stages of dispute resolution, individuals often turn to informal mechanisms to gain a better understanding of their grievances. Among these, friends and family emerged as a prominent choice for 74% of respondents, followed by engagement with village elders or local leaders (49%), and reliance on caste or religious panchayats (25%). This trend highlights a profound level of trust in familial and communal institutions.
3. Conversely, when asked about the institutions they would avoid approaching for dispute resolution, a substantial portion, accounting for 40% of respondents, expressed reluctance to involve the police, followed closely by reservations regarding lawyers (32%). These findings suggest a relatively low level of trust in the formal structures of law and justice.
4. Among the non-court methods employed by individuals seeking dispute resolution, negotiation with the opposing party emerged as the preferred approach for the majority, with 71% choosing this method. Additionally,

mediation or intervention by family and friends was favoured by 37%, and recourse to gram panchayats or Nyaya panchayats was opted for by 20%.

5. Negotiation with the opposing party proved to be the most effective means of achieving out-of-court settlements, with over half of the respondents (54%) reporting success through this method.
6. Family and friends played a significant role in resolving disputes for 32.5% of participants, while gram panchayats or Nyaya panchayats facilitated resolutions for 21.8%. These mechanisms demonstrated effectiveness in both civil and criminal cases.
7. The study highlighted distinct preferences based on income levels, with a majority of individuals with lower incomes (annual income less than \$4000) favouring non-court mechanisms, while others exhibited a preference for the formal court system. This divergence may be attributed to the prohibitive costs associated with pursuing litigation in courts, the potential loss of regular income due to court-related engagements, and other financial considerations.

The observations mentioned above have also been validated through research studies. There is evidence to say that public is turning away from courts to resolve disputes. This is due to a crisis of legitimacy that the Indian courts are facing (Moog R. , 1993).

Global Examples of Restorative Community Justice Systems

The experience mentioned in the previous section, is not unique to India. Indigenous and other traditional restorative justice systems are the primary means for seeking justice by a large percentage of the world's population. This could be due to preference or necessity but is a reality. In line with articles 5, 34, 40, and 46 of the UN Declaration on the Rights of Indigenous Peoples, constitutional or other legal provisions should recognise the role of indigenous justice systems. The declarations states that this should be done within the overall framework of protection and promotion of international human rights standards. The sustainable development goal 16 is to provide access to justice to all and build effective, accountable, and inclusive institutions at all levels. To achieve these outcomes, globally there is an increasing need felt for interaction and integration of the formal and traditional justice systems (Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region, 2018).

There are examples from around the world in which formal systems and traditional systems work together to provide justice. India has its own share of successful experiments in which traditional systems have been given a formal recognition.

Neighbourhood decision-making models in India and the world

Gordon Bazemore illustrates models of restorative and community justice in USA and Canada (Bazemore, 1997). Family Group Conferences (FGCs) in USA are facilitated by a community justice coordinator or a police officer. They are aimed at ensuring that juvenile offenders face up to community disapproval of their behaviour and the community attempts reintegrate the offender after he or she makes amends. FGC was adopted into national juvenile justice legislation in New Zealand in 1989. The State of Vermont in USA has a local citizen reparative board (RB), which recommends a plan that requires offenders to repair harm to the victim and reintegrate into society.

Mumbai in India has a similar functional model of Police Panchayats. These are informal dispute settlement bodies that have been flourishing in Mumbai since the past two decades. The police panchayat is entirely staffed and run by unpaid community workers in and from the slums, most of them women of little education. The Panchayat also has the official license to function by the Mumbai police force. The women who run the Panchayat with the help of the Mumbai police have made the institution amazingly effective through their voluntary service (Mendelsohn, Hope beyond the squalor—the police panchayat of Mumbai, 2018). Through bottom-up community action they fulfil the unmet legal needs of millions of poor people living in the slums of Mumbai.

Indonesia's dual-track justice System for juveniles

Every country faces a dilemma in punishing young offenders. While justice must be done to the victim, the best interest of the juvenile perpetrator has to be protected as well. Indonesia has a dual-track justice system for juveniles (Windari & Widjajanti, 2015). It utilized both formal and traditional systems, which takes a restorative (rather than retributive) approach to justice. To find a solution to a child's case, initially the parents, police, social services, religious leaders, school leaders and customary leaders - all play a role (Indigenous and other Traditional or Customary Justice Systems in the Asia-Pacific Region, 2018). If a solution is not found at this stage, the case reaches the formal courts. The courts take into consideration the input from the initial stage and

deliver a judgment which is restorative for the community as a whole while upholding the best interest of the child as well. The number of children imprisoned in Indonesia has significantly decreased following the implementation of such an integrated system.

Village Courts in Bangladesh

The village courts in Bangladesh offer a swift and cost-effective method for resolving disputes, taking an average of 25 days and costing around taka 233 (UNDP, 2022). Since 2009, these courts have addressed over 2,36,000 cases across 1,080 unions in 30 districts, with 84% of these cases being resolved. They have also managed to collect more than taka 150 crore as compensation. Initially introduced through the Village Courts Ordinance in 1976, it wasn't until the "Activating Village Courts in Bangladesh" project, a collaboration between UNDP Bangladesh and the Local Government Division from 2009-2015, that the system was effectively strengthened. The Village Court Act was enacted in 2006 and later amended in 2013. With funding from the European Union, the second phase of the project ran from 2016 to 2022, and there are plans to expand its operations further. These courts handle a variety of disputes, from stolen property to compensation for damaged crops, eliminating the need for police or regular court intervention. The government aims to expand the village court operations nationwide, with the Union Parishad conducting regular village courts. This system also reduces the need for lawyers and aims to decrease the number of cases in the main trial court, fostering harmony within village communities. A detailed evaluation of the Activating Village Courts in Bangladesh (AVCB) program was supported by The International Initiative for Impact Evaluation (Mattsson & Mobarak, 2020).

Dispute free villages in India

The *Tanta Mukh Gaon Muhim* (dispute free villages initiative) was introduced in 2007 in the Indian state of Maharashtra. The motivation was to reduce disputes in villages which would in-turn reduce the burden on the police and the lower judiciary. Maharashtra has seen several such social reformist movements in the past. This initiative wanted to tap into the reformist ethos of the state. *Tanta Mukh Samities* (dispute free village committees) were set up in 1134 villages in the Pune district. The role of these committees was to resolve the village disputes through a democratic, fair and participative process. 8 years later in 2015, it was observed that 790 out of the 1134

villages were dispute-free (AU, 2015). The committees also have preventive measures to ensure that disputes do not take place in future.

Customary courts of Nagaland, India

Nagaland is a small state in the hilly Northeast of India. It has several tribes which have been self-governed through customary laws for millennia. These laws predate the written laws and courts. The British recognized and gave special status for the autonomous operation of customary laws and procedures in the administration and judiciary (Ao M. , 2014). After India got freed from colonial rule, the customary laws of the tribes of Nagaland were given legal backing. Article 371A of the Indian Constitution has recognized and provided special safeguards to the Naga customary law. The judges of these courts are people called *Dobhasis*, who traditionally were Naga elders who knew the tribal dialect and English. Customary courts were set up under the deputy commissioner of each district in Nagaland. In these customary courts litigants can plead and argue their own cases. Usually, these cases deal with disputes related to land, money lending, and marriage. The court fee in the customary courts is a nominal \$0.30 irrespective of the pecuniary limits of the case. Equality of representation in these courts was ensured by appointing representation from each village under the jurisdiction of the court (Ao M. , 2019). The customary courts of Nagaland are an example of geographically, culturally, and financially accessible restorative justice system.

Mobile village courts in India

To provide speedy and accessible justice to the last person in rural India, the Government of India created the institution of *Gram Nyayalays* (Village Courts) by passing an act in the Parliament in 2008 (The Gram Nyayalays Act, 2008). The intention behind the creation of this institution was to expand the formal system by further decentralizing it. The institution was first proposed by the Law Commission of India in 1986 to address the unconstitutionality and politicization of the Nyaya Panchayats (114th Report on Gram Nyayalaya, 1986). The act envisioned to create one village court in each sub-district of India. There are about 5000 sub-districts in India; consequently, the vision was to establish 5000 Gram Nyayalays. These courts were supposed to be mobile courts which will visit the villages under their jurisdiction. Unlike traditional courts, these courts would be run by professional judges and lawyers

would be involved. In this aspect the Gram Nyayalays were different from the traditional Nyaya Panchayats and closer to the formal courts. The courts were to be presided by the *Nyayadhikari* who was appointed by the state government in consultation with the respective High Court and having the rank of a First Class Judicial Magistrate. The procedures were simplified to make the courts accessible by the rural people. The Gram Nyayalays were an extension of existing formal system and not a replacement.

However, this experiment has failed in its implementation. The funds for setting up these institutions were not released by the central government in time and were not sufficient to operationalize these courts. The State Governments avoided starting these courts due to conflicting jurisdiction and the effort needed to hire the heads of these courts. Also, the auxiliary legal services such as notaries, stamp vendors are not available at the village level. This made operationalizing the well-intended institution more difficult. Gram Nyayalays also faced criticism from experts. The setting up of the institution was seen as a way to move vulnerable people outside the protection of the formal court system (Guruswamy & Singh, 2010).

Lok Adalats in India

One of the means of alternate dispute resolution (ADR) in India is *Lok Adalats* (people's courts). These courts are a forum for solving cases by bringing them out of the formal court system in any stage and solving them through mediation and conciliation. They are a non-adversarial system of dispute resolution. These courts have been given statutory status under Legal Services Authorities Act, 1987 pursuant to the constitutional mandate in article 39-A. The decision of the Lok Adalat is final and binding upon the parties to the dispute. However, the aggrieved party may challenge the decision of a Lok Adalat by filing a writ petition to the concerned High Court. If the Lok Adalat is unable to arrive at a compromise or a settlement, the case is returned back to the court from where it was sent to the Lok Adalat. The procedural laws and the Indian Evidence Act of 1872 are not strictly followed, hence making the procedures simplified. There is no court fee in a *Lok Adalat*. *Lok Adalats* are organized regularly on specified dates, where they can take up cases in their jurisdiction. They are typically presided over by a sitting or a retired judicial officer who is the chairman. The two other members are usually a lawyer and a social worker.

Lok Adalats in India are restorative in nature. They institutionalize the process of mediation and conciliation to solve cases languishing in the formal system. This provides speedy and low-cost justice. However, *Lok Adalats* come with their own share of challenges. The presiding officer is usually a retired judge who has served in the formal system follows adversarial proceedings in which the judge plays a passive role. In *Lok Adalats* the judge has to play an active role and solve cases using mediation and is not trained for it. Critics claim that this attempt to ‘formalize’ an informal system has subverted the rights of the poor and caused the decline of *Lok Adalats* (Whitson, 1992). The concern is also expressed by others who claim that the “consent” of the parties could be forced, to move cases out of the formal system and inflate the performance of *Lok Adalats* (Krishnan & Galanter, "Bread for the Poor": Access to Justice and the Rights of the Needy in India, 2004). However, Krishnan and Galanter accept that despite its limitations, *Lok Adalats* overall improve the legal system because the presiding judge is an experienced adjudicator with a documented record of public service and has legal acumen. Upendra Baxi also mentions about the potential benefits of *Lok Adalats* in his book (Baxi U. , From Takrar to Karar: The Lok Adalat at Rangpur : a Preliminary Study, 1976).

The Experience of PESA Implementation in Palghar, India – A Phenomenological Insight

PESA and Palghar

The Panchayats (Extension to the Scheduled Areas) Act, 1996 (in short PESA) is a legislation which extends the provisions of Panchayats to the Fifth Schedule Areas which have a high tribal population. PESA recognizes the unique needs and circumstances of these areas and aims to empower the local communities. The act recognizes the customary laws, social practices, and traditional systems of governance of the Scheduled Tribes in the Scheduled Areas and provides for their inclusion in the decision-making process.

The implementation of PESA has been uneven across the nine states to which it applies (Sudipta, 2015). While some states have made significant progress in implementing the provisions of the act, others have been slow in adopting and enforcing the rules. In

recent years, there has been a growing awareness about the rights and issues of STs in Palghar district, and several NGOs and civil society organizations are working to empower these communities and promote their socio-economic development. In 2017, tribals of Palghar district demanded that the Panchayats (Extension to Scheduled Areas) Act (PESA) be implemented in their hamlets. The State government relented, and many villages started being governed under PESA since 2017. With this change, the traditional governance and particularly the dispute resolution systems of the tribal communities got a formal legal recognition. A dying system got a fresh lease of life and is an interesting area of study due to the ongoing transformation of community life.

Dispute Resolution under PESA

Dispute resolution under PESA is in the domain of the community. These disputes may include minor disputes of any description. Typically, these disputes relate to property, land, sharing of crops, inheritance, easement rights, use of community resources, issues involving customary practices and usages, credit, molestation, etc. PESA provides for constitution of a 'Peace Committee' for dispute resolution and maintenance of law and order. On the direction of Gram Sabha, the Peace Committee tries to resolve the dispute and report back to the Gram Sabha. In some cases that require external intervention the Peace Committee with approval of Gram Sabha can report to designated Magistrate. Such dispute resolution will be as per customs and traditions and through open hearings. All decisions on the proposal of Peace Committee will be taken by Gram Sabha based on majority. In case of any threat of breach of peace or law & order in the village, local Police will report to Gram Sabha or Peace Committee except where immediate action is necessary. Police will register an FIR only in the case of serious crimes (with provision of punishment more than 2 years under IPC, 1860) and send a copy to Gram Sabha/Peace Committee. Gram Sabha will try to resolve the conflict in its next or special meeting. In case of a dispute that spans villages, a joint Peace Committee representing multiple PESA villages may be constituted with the consent of concerned Gram Sabhas.

Research Method

The research method followed has been described in detail earlier in Chapter 1. We next look at the results of the method followed.

Results - Dominant Themes

Within the heart of Palghar district's experience with PESA implementation, a triad of intricate themes unravelled through our phenomenological research, each accompanied by poignant reflections from the community's diverse voices. The three themes that emerged are (1) Cultural Integration of Customary Laws (2) Accessibility and Affordability of Community Justice (3) PESA Support to Customary Laws and Institutions. The key concepts associated with each theme and the supporting quotes from stakeholders are given in Appendix 12. We provide a summary below.

The first theme that emerged from the phenomenological study was **Cultural Integration of Customary Laws**. This theme delves deeply into the intrinsic essence of tribal customs, affirming their pivotal and integral role in the fabric of tribal identity. For example, a male community member poignantly expressed, *"Customary laws are our identity, not mere guidelines. They've evolved over time, adapting to our changing world while preserving the essence of our tribal heritage."* Within this theme, the concept of 'Significance and Evolution' of these laws is palpable, not as static codes but as living testaments to the tribe's journey. A representative from a non-profit organization observed, *"Customary laws are intrinsically tied to the tribe's cultural fabric. It's not just the acceptance but the pride with which they validate these laws,"* emphasizing the concept of 'Acceptance and Cultural Validation.' Moreover, a Panch member underlined the concept of 'Impact on Community Justice,' noting, *"Customary laws have a profound impact on how justice is dispensed here, with a focus on restoration and harmony rooted in community traditions."*

The next theme that emerged was **Accessibility and Affordability of Community Justice**. This theme spotlights the inclusive nature of the tribal justice system. For example, a female community member highlighted the concept of 'Geographical and Financial Access,' stating, *"Through customary justice, access isn't confined to geographical proximity or financial capacity. It's about making justice reachable and affordable to every community member."* Further deepening this theme, a Panch member elucidated the concept of 'Elimination of Intermediaries,' expressing, *"In our system, there are no intermediaries. We directly participate in the justice process, which not only makes it transparent but also instils a sense of ownership and trust."* Another Panch member praised the concept of 'Swift and Enforceable Decisions,'

emphasizing, *"The swiftness and enforceability of decisions ensure timely justice, rooted firmly in community acceptance."*

The third theme that emerged from the interviews was **PESA Support to Customary Laws and Institutions**. It shines a spotlight on the transformative power of PESA in bridging customary laws with formal legal frameworks. For example, on the concept of 'Community Participation,' a *Panch* member shared, *"The implementation of PESA has been pivotal in recognizing and preserving customary laws, facilitating dialogue among stakeholders, ensuring their perspectives are heard and considered."* The theme further emphasizes the concept of 'Empowering Community Judicial Bodies,' with a *Panch* member stating, *"PESA has reinforced the authority of our judicial bodies, validating our role in maintaining social order in accordance with our customs."* Moreover, the essence of the concept 'Creating Culturally Accessible Justice' was captured by a female community member who remarked, *"With PESA, justice reflects our customs, making it more accessible and in sync with our cultural ethos."*

Together, these themes, anchored by the resonant voices of Palghar's tribal community, paint a profound picture of the transformative impact of PESA on tribal justice and cultural identity.

Observations and Reflections

Tribal hamlets are typically in forest areas and distant from the formal State apparatus. They have been self-reliant and homogenous for centuries and perhaps millennia. Due to this, they have been self-governed and have highly evolved governance mechanisms that function in their respective contexts. Particularly, they follow their customary laws i.e., customs that are accepted as law. These laws are typically not codified or written. They draw their validity from the cultural context. They are learned by the community members from the tribal elders through oral teachings and examples. Due to the homogenous and long co-habitation in that geography, these laws are well recognized and accepted.

The Indian State did not formally recognize the customary laws until PESA was enacted in 1996. This was significant and interactions of the author with the various stakeholders revealed the same repeatedly. The power to formally use customary laws to resolve conflicts allows the community judicial body to make justice approachable,

understandable, and acceptable. The customary laws are primarily designed for reconciliation and maintaining harmony – a crucial aspect in tribal villages. The application of the law is customized according to the context and guilty. The punishment is commensurate to the person's ability. This flexibility and cultural accessibility are missing in the formal judicial system that had an alien legal system foisted on the tribal people.

The primary judicial body that resolves disputes in the tribal communities is the *Panch*. The *Panch* consists of the Gram Panchayat head, the elders, and the married members of the village. It may also include unmarried youth of the village if their family has a legacy of being in the Police or in the Gram Panchayat. The *Panch* is also called the 'Peace Committee' under PESA. The *Panch* is dynamically convened as per need. It can involve members from other villages if the dispute spans multiple villages. The *Panch* may seem like a huge committee that has a large membership – but that is the reason for their acceptance as well. It is accepted as the representation of the community. The *Panch* is part of the community events and rites of passage of its members. This increases their cultural integration and acceptance. Within the *Panch*, the members look up to the elders for their advice. Though the membership is large, elders' distinctively have a weighty influence in the decision making and this was evident in the interviews.

The idea of right and wrong is ingrained in the young minds of the tribal children right through their upbringing. This is primarily through stories, anecdotes, and myths. These values are also emphasized during festivals and rites of passage by the *Panch*. The *Panch* hearings are in the open and serve as a method of education. The typical method of dispensing justice is restorative in nature. It first involves disclosure of the crime by the *Panch*, followed by discussions between the two parties, and resolution to make amends and 'heal'. The final goal is to bring back harmony while being fair. Both parties are also supposed to bring soft drinks to the hearing. In earlier times they would bring Mahua liquor. For minor disputes, the guilty party gives sugar in the hands of the aggrieved and the issue is settled amicably and publicly. More serious disputes might involve a penalty, voluntary work or even a temporary excommunication from the village. These rituals and penalties have evolved so that harmony is restored, and justice is delivered.

The community justice system of the tribal communities is culturally, geographically, and financially accessible. These attributes are missing in the formal system. The physical set up is informal and hearings are conducted in the open. Each party can present their case without the need for an intermediary like a lawyer. Since the hearings are held within the community who have the local knowledge and context, the chances of perjury are reduced. The decisions are swiftly taken and enforced. One doesn't have to travel far away that otherwise results in lost wages and additional expenses. There is no cost imposed on the petitioner to convene the *Panch*.

For those outside the tribal community, one may have valid concerns that the rights of vulnerable minorities may not be protected through the informal courts. This can be due to the dominance of specific subgroups like powerful tribes and males. However, the experience was to the contrary. Across the spectrum everyone felt comfortable with approaching the *Panch* for justice. This is particularly because tribal villages are homogeneous and different tribes do not cohabit. The *Panch* has an almost equal representation of males and females as it involves the family and not individuals. Mechanisms have evolved that make the female members of the community feel welcome to approach the *Panch*. For example, an aggrieved woman can approach a group of women to share her grievance. Following this, the group makes a representation to the *Panch*.

The modern legal system is geared towards punishing the guilty i.e., it is non-restorative. It is based on the philosophy of retribution where the aim is to satisfy the victim or his/her family and friends that justice is delivered. The laws are framed (and not evolved), the judge is an outsider who decides the case and the guilty are secluded by putting them into jails. Given the widely divergent ways of delivering justice, there are increasing instances of friction between the customary courts and the formal courts as their jurisdiction overlaps. This is a cause of concern for the community elders. There are now efforts to write down the customary laws and document the *Panch* proceedings to use them as formal evidence in higher courts. How soon can the community adapt with the changing need will be known in due course of time.

Policy and Social Implications

Our exploration of PESA implementation in Palghar district has illuminated the intricacies of tribal justice, customary laws, and their interplay with formal legislative

frameworks. The themes we identified through the phenomenological study underline the a few important social and public implications for India and similar countries around the world.

Expanding the implementation of PESA

PESA has provided a shot in the arm to the tribal communities. The dying justice community justice systems have now been given a legal backing in the form of a 'Peace Committee' under PESA. However, the awareness of the act remains poor among the tribals that benefit from it. There is a need to spread awareness, organize communities and demand the implementation of PESA. This is not politically favourable to the ruling dispensation as it takes away the power of the Indian State Governments. The gap can be filled by civil society organizations. Very few non-profit organizations are working on this objective in India. At the global level, similar acts can be enacted to empower local communities to run their own justice systems that have a restorative nature.

Formalizing the informal

The growing friction between the traditional and modern institutions demands that the State formalizes the traditional institutions and regulates them without letting go of their restorative character. In the Indian case, this would include codifying the customary law, documenting the proceedings of the *Panch* (or other similar bodies), and advocating that arguments and evidence from the *Panch* are accepted in the higher legal institutions. The same can be applied to other similar institutions globally. Bringing the informal systems into the formal fold without tampering with their inherent character is the need of the hour. The challenges are immense, but the State should accept their importance and extend its hand to support them. Not recognizing these institutions or delegitimizing them would not help either the State or the people. They would continue to exist due to their deep cultural integration and would become difficult to regulate.

Adapting and scaling PESA like laws

PESA particularly applies to areas that are protected under Schedule V of the Constitution of India. These areas are tribal dominated and fall under 10 states of India. The rural areas of India are covered under the Panchayati Raj Act of 1992. However, the Panchayati Raj Act, only decentralizes administration but does not permit local

justice institutions. Can the Indian Government learn from the success of PESA and apply the learnings to the Gram Panchayats (village administrative units)? At the global level, countries that do not have decentralized (village-level) restorative justice systems, can contemplate creating such institutions on the lines of the Indian experience. These institutions will be the first point of accessing justice by the people. They would help reducing the demand on the existing judicial system and reducing the costs and time expended to access justice. The quality of justice would also improve since it is restorative in nature and the village communities prefer that over an adversarial form of justice delivery. A strawman legislative proposal for a Village Court in India is given in Appendix 8.

Reflections

The phenomenological exploration undertaken in this study provides insights into the lived experiences of tribal communities vis-à-vis the PESA Act. The themes reveal the intricate interplay of culture, tradition, community, and justice, highlighting the pivotal role of customary laws in tribal societies. They underscore the PESA Act's potential in enhancing the accessibility of justice while preserving the cultural heritage, particularly the customary laws, of the tribal communities. Simultaneously, there is a need for caution in its implementation to avoid exacerbating social schisms and conflicts of the traditional system with the formal justice system.

As a researcher, these findings prompt me to reflect upon the interplay of culture, community, and law and urge us to advocate for culturally sensitive and inclusive justice delivery mechanisms. From a policy perspective, they underscore the need further expanding the implementation of PESA to other tribal regions, formalize and document the processes within community justice systems and design more laws and governance structures that are based on the principles of PESA (i.e., decentralizing decision making the communities through a formal process). In sum, the phenomenological research undertaken originally contributes insights to the understanding of tribal justice mechanisms. It helps us gain valuable insights into the experience of the tribal communities as their justice systems formally integrate into

mainstream legal frameworks through the implementation of PESA. Such integration could alleviate the burden on the current formal system, reduce costs, and improve access to justice.

Chapter Summary

India has a rich history of indigenous and traditional justice systems that serve as good models of restorative justice. These systems along with their limitations have been effective and have earned the trust of society for centuries due to their restorative nature. They are accessible in terms of geography, culture, and affordability, offering just, swift, and economical justice. However, several traditional justice systems in India have been deemed illegal, although some tribal regions have recently been granted autonomy to uphold their community justice systems as per their customary laws, which has been mostly successful. The formal court systems can learn from the success of community justice systems in India. Integrating the best practices of the formal court system and traditional justice systems can provide a sustainable solution to India's urgent judicial crisis. Such integration could alleviate the burden on the current formal system, reduce costs, and improve access to justice. This was the subject we explored in this chapter.

Through primary research we studied one community justice system in detail. We presented the experience of PESA implementation on the people as a phenomenological study. We looked at other successful examples from India and the world. We identified the best practices of community justice systems globally and how these institutions have the potential to not just make justice delivery efficient, but better quality, fair and accessible as well. Towards the end we proposed ways in which these informal systems can be integrated with the formal system, for a win-win to both.

CHAPTER 6: CONCLUSION AND FUTURE RESEARCH

“Human progress is neither automatic nor inevitable... Every step toward the goal of justice requires sacrifice, suffering, and struggle; the tireless exertions and passionate concern of dedicated individuals” - Martin Luther King, Jr.

India gained independence from British rule 76 years ago. Yet fair and timely justice, a basic need remains denied to the population that comprises about 1/5th of humanity. This problem needs to be addressed urgently. Although India is progressing in many areas, its judicial system lags, resulting in a consistently poor experience for those who interact with it. Unfortunately, this issue has not received the recognition it deserves, and the researcher was motivated to study the problem in its entirety.

Delayed justice in India affects approximately 35% of the population directly, but it is not discussed enough in public. While some believe that outdated legal systems, overburdened courts, and a lack of resources are to blame, formal research can reveal the root causes and suggest potential solutions. Beyond the need for fair and timely justice, there are other dimensions to consider.

Delayed justice is a significant issue in a developing country like India, where access to justice is essential for promoting the rule of law, protecting individual rights, and fostering economic growth. Addressing this issue is vital to maintaining a vibrant democracy and serving as a model for the rest of the world. Additionally, studying the negative consequences of delayed justice can help policymakers and stakeholders understand the urgency of addressing this issue and promoting change.

Researching delayed justice can also identify best practices and potential solutions, such as successful judicial reforms, innovative approaches to legal aid, and strategies to expedite the delivery of justice in developing countries. Sharing best practices and successful examples can help other countries adopt similar strategies and promote positive change.

There are two ways to tackle the issue of judicial delays in Indian district courts: through the supply side and the demand side. To improve the efficiency of the current system, our attention is on case management, which is a novel approach that can enhance predictability and efficiency in a severely resource-constrained judicial system. Meanwhile, on the demand side, we seek to strengthen community justice systems, which can absorb the case load and improve access to justice. Through decentralization, this approach reduces the burden on the formal system while enhancing cultural, economic, and geographic access to justice.

Hence, we proposed our research title as:

“Addressing Delays in Indian District Courts – Improving Efficiency and Reducing Demand”

Through our study that has been documented in this thesis, we have studied this problem in depth, analysing the various dimensions of it.

In Chapter 2, we started with a literature review of the literature in the domain of:

1. Understanding judicial delays and their reasons, the past reforms suggested, and the global approach to the problem.
2. Understanding case management as an approach to improve judicial efficiency, the international experience, and the Indian context.
3. Understanding community justice systems, the models worldwide, and the Indian context.

After the literature survey, we identified the research gaps to address the research problem. These were the areas of knowledge or understanding that were missing or incomplete in the existing literature on the research problem.

Based on the literature survey we conducted, we identified the following gaps in the areas of understanding judicial delays, understanding case management and community justice systems:

- RG1: Understanding the nature of systemic resistance to efficiency reforms from within the judicial system.

In recent times, the drive to implement case flow management rules has been a prominent aspect of efficiency reforms within the judicial system. While these rules were introduced by high courts for their lower counterparts in 2007, their effective implementation seems to be lacking. It is imperative to delve into the fundamental reasons behind the systemic resistance to embrace these rules. Are resource constraints a primary obstacle? Could technological challenges be hindering progress? Is it a matter of unclear responsibility, or perhaps a lack of motivation for change among the stakeholders? These considerations must be thoroughly explored as we develop and propose new case management guidelines.

- RG2: Understanding stage wise case flow for cases in the lower courts.

In India, there exists a noticeable gap in quantitative research that offers insights into the journey of cases as they move through various phases within the legal system. How do cases navigate through the distinct stages of Indian courts, particularly in lower courts where the bulk of cases are handled? What is the average duration spent in each phase? The flow of cases may vary based on factors such as the nature of the case, demographics, and the specific court type. The study of case progression within Indian district courts has not received extensive attention in academic circles. A deeper understanding is imperative before suggesting any modifications aimed at enhancing the efficiency of the current system.

- RG3: Understanding the experience of integrating community justice systems into the formal system.

The official legal framework has become inaccessible for many due to prolonged delays, expenses, and geographical barriers. India boasts ancient community justice systems dispersed across its territory. These systems continue to function, with numerous individuals seeking justice through them. It is crucial to first acknowledge their existence, comprehend their operations, and then reinforce these community justice mechanisms. There is potential for

these systems to be harmonized with the formal legal system while upholding the constitutional rights of individuals. Such integration could alleviate the burden on the current formal system, reduce costs, and improve access to justice.

Identifying research gaps helped to justify the need for the research and guided the development of research questions. These were specific, focused questions that the research aimed to answer. They were designed to address the research problem and research gaps, and importantly were chosen to be feasible to answer with the available resources and methods. This larger research question on improving efficiency and reducing demand was answered by researching deeper into the following sub-questions:

- RQ1: What is the nature of resistance to efficiency reforms from within the judicial system?
- RQ2: What are the fine-grained procedural reasons for delays of court cases?
- RQ3: How can community justice systems integrate with the formal justice systems?

This was followed with specifying the research objective. These were the specific goals or aims of the research that were derived from the research questions. They provided a roadmap for the research project.

To address the research questions, the following objectives were proposed:

1. Study and factor the reasons for systemic resistance to implementing the case flow management rules in the district courts:
 - a. Select different stakeholders in the lower tier of the judicial system – lawyers, judges, researchers, etc.
 - b. Interview the stakeholders to understand the reasons for systemic resistance to case flow management rules.
 - c. Recommend reforms for better design and effective implementation of case flow management rules.
2. Investigate the case flows and analyse the stage wise case duration for different case types in India's district courts:
 - a. Identify a representative district court system to study.

- b. Study the case duration of different case types from the representative district court.
 - c. Analyse the case duration for different types of cases through time spent in each stage and draw conclusions on the reasons for delays.
- 3. Study the impact of formalization of community justice systems in India.
 - a. Study examples of successful community justice systems in India and globally and how they have been formalized.
 - b. Study the impact of formalization and integration of a community justice system in India.
 - c. Propose how to integrate community justice systems into the formal system.

In the chapters that followed the literature review, we dedicated one chapter to each of the above research objectives.

Summary of Research Findings

Let us revisit the research objectives we started with and summarize our findings on each of them.

Research Objective 1: Study and factor the reasons for systemic resistance to implementing the case flow management rules in the district courts.

The study uncovered a complex web of challenges impeding the adoption of efficiency reforms within the judicial system, particularly from the perspective of judges. The essence of judges' experiences can be distilled into three key themes: "Overburdened," "Lack of Confidence in the System," and "Disempowerment."

The "Overburdened" theme underscores the critical issue of workload management within the courts. Judges grapple with strain due to inadequate training and resources, political pressures stemming from lawyer lobbies, mounting stress from courtroom proceedings, an extensive non-judicial workload, and a rising caseload. Collectively, these factors contribute to the immense pressure and workload borne by judges.

The "Lack of Confidence in the System" theme highlights systemic issues within the judicial system that erode trust and confidence. Judges perceive the Case Flow Management (CFM) rules as arbitrary and disconnected from the realities on the ground. Furthermore, they believe that reform initiatives lack an understanding of the unique dynamics of each court and fail to account for the necessary resources for effective implementation. The misalignment of incentives further undermines their willingness to embrace these guidelines.

The theme of "Disempowerment" sheds light on the prevailing sense of frustration and helplessness among judges. This sentiment is primarily fueled by client unawareness, frivolous litigation, a lack of support from the union government, and limited career advancement opportunities. Judicial personnel often find themselves trapped in a system that does not adequately acknowledge or address these pressing issues.

Research Objective 2: Investigate the case flows and analyse the stage wise case duration for different case types in India's district courts.

A noteworthy aspect illuminated by our research is the substantial amount of time that cases spend in stages outside the courtroom, including various phases such as appearance and evidence collection. Importantly, this protracted duration is often beyond the control of judges and is exacerbated by the understaffed nature of the justice system. This finding underscores the multifaceted challenges faced by the judiciary in India. While judges play a pivotal role in the adjudication process, our research underscores that delays and inefficiencies are not solely attributable to their actions or decisions. Instead, they are influenced by systemic factors, including the dependency on law enforcement agencies, and including the availability of resources and staff, which significantly impact the pace of case progression. This realization prompts a critical examination of the broader structural issues within the judicial system that hinder its ability to swiftly and effectively manage cases. Addressing these systemic constraints is crucial for achieving meaningful reform and improving the overall efficiency of the Indian judicial system.

Research Objective 3: Study the impact of formalization of community justice systems in India

The research findings illuminate three overarching themes that underscore the profound impact of PESA (Panchayats Extension to Scheduled Areas) Act on tribal justice systems and cultural identity in Palghar.

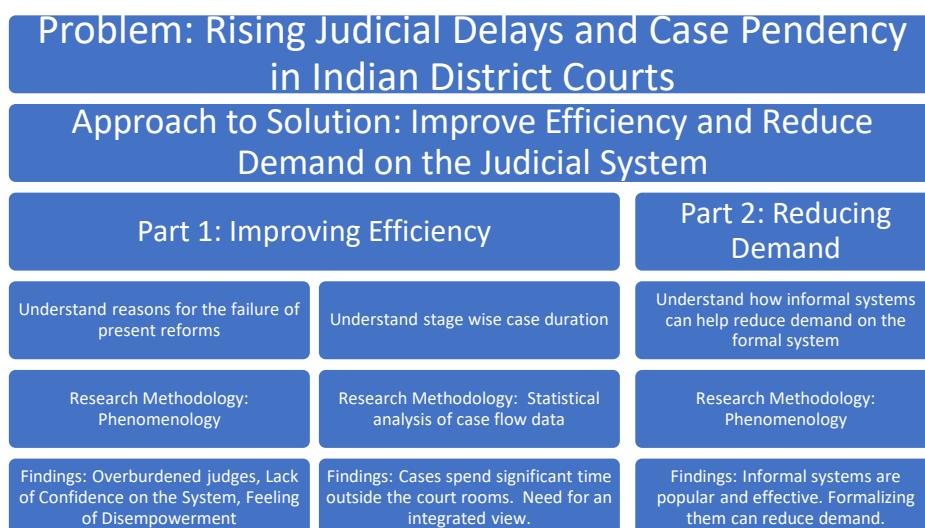
Firstly, there is a notable theme of “Cultural Integration of Customary Laws”. This theme underscores the intrinsic significance of tribal customs in shaping the identity of the community. Customary laws are viewed as more than mere guidelines; they represent the evolving essence of tribal heritage. The concept of the 'Significance and Evolution' of these laws highlights their dynamic nature, adapting to changing times while preserving tradition. 'Acceptance and Cultural Validation' emphasize the pride with which these laws are embraced, and their 'Impact on Community Justice' becomes apparent through their focus on restoration and harmony rooted in community traditions.

Secondly, the theme of “Accessibility and Affordability of Community Justice” takes centre stage. It underscores the inclusivity of the tribal justice system, ensuring access to justice irrespective of geographical proximity or financial capacity. This inclusivity is reflected in its being 'Geographically and Financially Accessible.' The absence of intermediaries fosters transparency, as exemplified by the 'Elimination of Intermediaries,' leading to swift, enforceable decisions that ensure timely justice aligned with community values, as highlighted by 'Swift and Enforceable Decisions.'

Lastly, there is a theme highlighting the pivotal role of “PESA support to customary laws and institutions”. 'Community Participation' emerges as a cornerstone in preserving customary laws and facilitating stakeholder dialogue. 'Empowering Community Judicial Bodies' reinforces the authority of these bodies and their crucial role in maintaining social order in alignment with customs. 'Creating Culturally Accessible Justice' ensures that justice is not only accessible but also deeply rooted in and congruent with cultural values, thereby bridging the gap between formal legal frameworks and tribal customs.

Collectively, these themes, as voiced by the Palghar tribal community, illustrate the far-reaching influence of PESA in transforming tribal justice systems and preserving cultural identity.

An overall summary of our approach and findings can be captured in the infographic below:



Contributions of this Research

New Approach to Solve the Judicial Crisis in India

For a century now, there has been a consistent pursuit of judicial reforms in India aimed at improving the efficiency of its judicial system. Notably, the reforms have largely focused on increasing the supply-side elements such as enhancing the number of judges, utilizing retired judges, expanding the courtrooms and adopting new technologies, hiring court managers, and so forth. However, given the resource constraints faced by India, investing additional resources into the system should only be considered when it is clear that no opportunities for improving efficiency exist. Moreover, even if it were possible to invest more resources, doing so may not always lead to the desired outcomes.

Despite the historical emphasis on the supply-side elements of judicial reforms, there are numerous obstacles to implementing such measures. Consequently, given the scarcity of resources, it is necessary to increase the efficiency of the judicial system

while simultaneously reducing the demand for it. This approach has not been thoroughly explored, and it represents a novel contribution of this research study. As such, this research presents a pragmatic approach that can be applied moving forward.

Novel Impact Evaluation of Judicial Reforms

There is a dearth of scholarly studies of policy reforms in the Indian judicial system. The bulk of the volume of cases, is in the district courts and they have not got the attention they deserve. For example, despite the promulgation of case flow management rules 15 years ago, no studies have been conducted on their implementation and impact. There are no research studies that have taken a perspective of the district court judges in the implementation of these reforms. Neither has there been a scholarly data backed study of the case flow and the reasons for cases to progress slowly through the district courts.

We conducted a scholarly qualitative study capturing the experience of district court judges on the resistance to implementation of efficiency reforms. We then looked at granular data on case flow and case duration in various stages of a case. The quantitative analysis of this data is again a first of its kind. It gave us unique insights into the case flow and most importantly, corroborated the findings of the qualitative study i.e., a systemic view is essential, and it should be factored into designing and implementing judicial reforms. A siloed approach so far has resulted in the failure of reforms reaching their intended outcomes.

This research study uniquely adds to the literature on studying the impact of policy reforms in India, particularly in the judicial system. It contributes a rigorous study of the implementation and impact of CFM rules. This serves as a template for other similar research to be undertaken for other judicial reforms.

Exploring cross-learning between formal and informal justice systems

The formal and informal justice systems operate in separate domains. The informal systems are dismissed as extra-constitutional by the formal system. The formal system is seen as an alien imposition by the informal system. We have not explored ways of integrating them, to get the best out of both. At the very least, they do not learn best

practices from each other. The research study explores this very novel domain – why and how we can integrate the best of both the systems.

Specific to judicial load, the attention of the researchers and policy makers so far has been primarily on adding resources to ease the formal system – but reducing demand on the system can do much more with less. The community justice systems demonstrate a new way to unclog the formal system by reducing incoming case load to the formal system. Governments need not design new institutions that have uncertain outcomes. The community justice systems have a proven, low cost, well accepted working model that needs to be supported further by the state. There needs to be a formal study specifically on how community justice systems have helped in reducing case load on the formal system. This can help making the case for them stronger.

The growing friction between the traditional and modern institutions demands that the State formalizes the traditional institutions without letting go of their restorative character. In the Indian case, this would include codifying the customary law, documenting the proceedings of the informal courts, and advocating that arguments and evidence from the informal courts are accepted in the higher legal institutions. The same can be applied to other similar institutions globally. Bringing the informal systems into the formal fold without tampering with their inherent character is the need of the hour. The challenges are immense, but the State should accept their importance and extend its hand to support them.

Implications of the study on judicial delays

The study on judicial delays reinforces the essence of the judges experiences we capture in the first research objective and brings to light broader policy making issues that need to be acknowledged.

- **Need for an integrated view:** One can't look at the judicial system in isolation. Perhaps we are being too critical of the judicial system while it is dependent on other associated institutions for its functioning. Evidence collection and presentation take the bulk of the time across case types. This opens a larger question on the overall law enforcement system i.e., the police. The police play a significant role in ensuring that related evidence is collected and produced in

time. Police reforms have been long pending and the inefficiencies in the system have ripple effects on the judicial system.

- **Need for Academia-Judiciary collaboration:** Academia and the judicial system need to work together in designing, implementing, and evaluating policy reforms. Academia can serve as the research and feedback body. While the district courts in India have accepted the CFM rules as proposed, more transparency is needed. It is not clear what was the rationale behind the case tracks and their respective time limits as mentioned in the CFM rules. More transparency and participation in the formulation of the rules would have helped in better acceptance of the rules by the bar and the bench. The need for this collaboration is further highlighted through this research.
- **Importance of Open data:** The eCourts data provided by the Supreme court of India has for the first time has opened rich possibilities for quantitative research on the case flow and court performance. This is commendable since the otherwise insular judicial system has opened itself to scrutiny by the people and the research community. Civil society, academia, and media should welcome this effort and work together with the legal fraternity in improving the data quality and using it for research and analysis.
- **Importance of public awareness:** The Caseflow Management (CFM) rules in India were released 15 years ago in 2007 by the High Courts for different district courts to implement. The CFM rules were framed to expedite the caseflow. They never received the prominence in public discourse as they should have. They have not received their due attention even when as a country, India is staring at almost 50 million pending cases that are growing each year. Increasing the public awareness of CFM rules can have a huge impact on their implementation. They will gain more awareness and consequently the demand for their implementation will increase.
- **Need for policy agility:** There is a larger concern of agility in the policy formulation process. This is highlighted through our research study. The CFM rules have not been updated in the last 15 years while there have been substantial changes underneath. The cases have been mounting, technology has become

accessible and affordable, new laws have been drafted, etc. The rules framed have lost relevance.

- **Need for capacity building:** When one looks from the perspective of the judges and the court staff, mere promulgation of rules is insufficient. Necessary training, resources and institutional support was to be provided by the respective High courts in the implementation of the rules. The need for capacity building in the system comes out starkly in the research.

Implications of the study on community justice systems

The recommendations to formalize community justice systems hold several significant societal and public implications:

- **Cultural Accessibility and Understanding:** By emphasizing the importance of learning from the informal community justice systems, the formal legal system can bridge the cultural gap that often exists between the legal process and the Indian people. Using local languages in proceedings, simplifying legal language, and providing legal education can make the formal system more accessible and culturally relevant. This would lead to greater public understanding and trust in the legal system.
- **Empowering Tribal Communities:** Wider and deeper implementation of PESA has the potential to empower tribal communities to govern themselves according to their own terms. This would not only strengthen community justice systems but also enhance tribal self-governance. However, spreading awareness of PESA among tribal communities is essential, and this process could be facilitated by civil society organizations. The implications include greater tribal autonomy and a potential shift in power dynamics between local communities and state governments.
- **Formalizing Traditional Institutions:** Formalizing traditional institutions without compromising their restorative character can help bridge the gap between traditional and modern institutions. Codifying customary law, documenting the proceedings of local bodies like the Panch, and recognizing their arguments and evidence in higher legal institutions can lead to a harmonious coexistence of both systems. This would require a careful balancing

act to preserve the unique qualities of these traditional institutions while ensuring their compatibility with the formal legal system.

- **Scaling PESA-Like Laws:** Extending the success of PESA-like laws to other areas, such as Gram Panchayats, can decentralize justice administration and empower local communities. This could lead to more efficient and responsive justice systems at the grassroots level. However, it would require adapting the principles of PESA to suit the specific needs and characteristics of different regions, which could result in more equitable and community-driven governance structures.
- **Reducing Demand on the Formal System:** Recognizing and formalizing community justice systems can reduce the burden on the formal legal system by diverting cases away from it. This approach is cost-effective and has been proven to work, offering a viable solution to the issue of overburdened formal courts. The state's recognition and support for these systems can lead to improved access to justice and more efficient case management.

In essence, these recommendations have the potential to enhance cultural understanding, empower marginalized communities, foster coexistence between traditional and modern systems, decentralize governance, and reduce the strain on the formal legal system. However, their successful implementation will depend on the commitment of policymakers and stakeholders to prioritize these reforms and work collaboratively towards their realization.

Limitations in the Study

Limitations in phenomenological research with judges

In this study, we utilized a phenomenological research method, to explore the concept of "resistance to efficiency reforms." Despite the inherent challenges of phenomenological research, we managed these challenges through established procedures and methodologies.

A common limitation of phenomenological research is its detailed, context-specific insights, which may not be widely applicable. We addressed this by using purposive criterion sampling to select a consistent group of participants, all of whom had experienced the phenomenon under study. This approach achieved thematic saturation, indicating an adequate sample size for our research objectives.

Phenomenological research can be prone to researcher bias during data interpretation. To mitigate this, we adopted a transcendental phenomenology approach, carefully setting aside our biases and assumptions, which helped maintain the validity of our data analysis.

Recruiting suitable participants from sensitive sectors like the judiciary can be challenging, but we successfully gathered valuable anonymous insights from judges. Although this research method is resource-intensive, the in-depth understanding we sought necessitated these efforts.

In summary, while phenomenological research has its limitations, our methods, allowed us to navigate these challenges effectively. These limitations should be seen as factors influencing the interpretation and application of our findings.

Limitations of the stage wise case duration research

Our quantitative research, which analysed eCourts data, acknowledges several potential limitations. The data quality from eCourts was compromised by manual digital conversion, leading to errors and inconsistencies. Cleaning the data may have introduced other issues. The research's focus on Sonipat district may not represent wider conditions. However, given the long-term scope of the data, we believe Sonipat is a reasonable representative district.

Researcher bias in selecting variables and analysis methods could also influence results. We chose a variety of case types to minimize this but recognize the potential for overlooked variables. Quantitative research may not fully capture complex phenomena like emotions, requiring complementary qualitative methods. Our qualitative research on resistance to efficiency reforms adds depth but has its own limitations due to differing time periods and subjects.

In conclusion, while our quantitative research has limitations, it was complemented by qualitative methods for a more holistic understanding.

Limitations in the phenomenological research on community justice systems

The phenomenological research on tribal communities in Palghar district has strengths but also limitations. Its findings may not be applicable to other populations due to the study's specific focus. Translator bias in interviews might have influenced data interpretation, despite efforts to minimize it. The study's replicability is limited by its single-district focus, hindering validation by other researchers. Furthermore, the research was demanding in terms of time and resources due to the extensive data collection and analysis required.

In summary, while our study in Palghar offered detailed insights, its limitations should be acknowledged in the context of this specific research.

Future Research

- **Extend the scope of research:** The research done primarily focused on district courts, because 87% of the case pendency lies there. However, the research can be extended to the higher courts i.e., High Courts and the Supreme Court. Though the case pendency here is lower in terms of numbers, the impact of cases pending at a higher court is much greater.
- **Simulation to show impact of targeted reforms:** While the scope of the present research was to show that there are specific stages in the case flow that take significant time, we didn't get into the potential impact if the bottlenecks are released through procedural reform. A modelling of the case flow as an operations process and potential changes in specific stages can be a powerful way to demonstrate the impact of reforms. It will also give a quantitative measure of the cost-benefit impact of the reforms.

Closing Note

As I come to the end of this doctoral dissertation, I would like to express my profound gratitude to all those who have contributed to the successful completion of this research endeavour. It has been an arduous and demanding journey, but I am grateful for every moment of it, for it has helped me to grow both as a scholar and as a person.

First and foremost, I would like to express my deepest appreciation to my supervisors for their unwavering support, guidance, and encouragement throughout this journey. Their insightful comments and constructive criticism have been instrumental in shaping this thesis, and I am indebted to them for their tireless efforts and patience.

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As I reflect on this research journey, I am reminded of the words of Isaac Newton: "*If I have seen further, it is by standing on the shoulders of giants.*" Indeed, this thesis would not have been possible without the contributions of many great minds who have come before me. To them, I offer my humble gratitude and acknowledge their immense contribution to the advancement of knowledge in this field.

Finally, to you, dear reader, I offer my heartfelt thanks for engaging with this research and investing your time and energy into it. I hope that this thesis has provided you with insights into the topic at hand and has inspired you to further explore this area of research. While this study has addressed some of the important questions in this field,

there is still much to be explored and discovered. I encourage you to build upon the findings presented here and to continue this research further.

In conclusion, I am honoured and humbled to have had the opportunity to undertake this research journey. I am grateful for the support and guidance that I have received along the way, and I look forward to contributing to the advancement of knowledge in this field in the years to come.

BIOGRAPHY OF THE AUTHOR

Shobhit Mathur is the co-founder and Vice Chancellor of Rishihood University, India. From pursuing an international corporate career to building a grassroots volunteering movement to creating a higher education institution, Shobhit carries rich experience of building mission driven projects. He brings all his education and work experience together to reinvent higher education and to serve the needs of society, nation, and the world. He has an avid research interest in technology, education, and public policy. He writes often in leading newspapers and speaks on many international platforms on these issues. He holds a BTech in Computer Science and Engineering from IIT Bombay. He completed his MS Computer Science and Engineering from the University of Washington in 2006. He did he is MBA from the Indian School of Business in 2015.

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Appendix 1: Sample Case Data Available on eCourts Portal


E-COURTS
 OFFICIAL WEBSITE OF DISTRICT COURTS

[Back](#)

District and Sessions Court, Sonapat
Case Details

Case Type	: CA - CIVIL APPEAL		
Filing Number	: 186/2020	Filing Date:	14-01-2020
Registration Number	: 18/2020	Registration Date:	14-01-2020
CNR Number	: HRSO01-000389-2020		

Case Status

First Hearing Date	: 14th January 2020		
Decision Date	: 14th February 2020		
Case Status	: CASE DISPOSED		
Nature of Disposal	: Contested--DISMISSED		
Court Number and Judge	: 17-Additional District and Sessions Judge		

Petitioner and Advocate

1) Dharambir
 Advocate- Sh. Vinay Chhikara

 2) Kailash Devi

 3) Kapil

 4) Sagar

Respondent and Advocate

1) Sumitra

Acts

Under Act(s)	Under Section(s)
Code of Civil Procedure	98

Subordinate Court Information

Court Number and Name	: Sh. Ashok Kumar, CJJD, Sonapat		
Case Number and Year	: CS - 0000468 - 2016		
Case Decision Date	: 07-01-2020		

History of Case Hearing

Registration Number	Judge	Business On Date	Hearing Date	Purpose of hearing
18/2020	Additional District and Sessions Judge	14-01-2020	21-01-2020	Appearance
18/2020	Additional District and Sessions Judge	21-01-2020	23-01-2020	Arguments
18/2020	Additional District and Sessions Judge	23-01-2020	29-01-2020	Reply
18/2020	Additional District and Sessions Judge	29-01-2020	12-02-2020	Arguments
18/2020	Additional District and Sessions Judge	12-02-2020	14-02-2020	Arguments
18/2020	Additional District and Sessions Judge	14-02-2020		Disposed

Figure 10: Sample case data available on eCourts portal

Appendix 2: Sample Human Subjects Consent-to-Participate Form for Phenomenological Study

"Experiences of implementation of Case Flow Management reforms: A Phenomenological Study"

Dear Participant.

The following information is provided for you to decide whether you wish to participate in the present study. You should be aware that you are free to decide not to participate or to withdraw at any time without impacting your employment. The purpose of this study is to understand how the judges understand and react to CFM rules proposed by various High Courts of India and particularly the Punjab and Haryana High Court. Data will be collected through 1-1 in-person interviews over a week. Data will also include observation field notes (of the functioning of the court). Individuals involved in the data collection will be the judges, court staff and practicing lawyers. Do not hesitate to ask any questions about the study either before participating or during the time that you are participating. We would be happy to share our findings with you after the research is completed. However, your name will not be associated with the research findings in any way, and only the researcher will know your identity as a participant. We agree to keep all information about the interview completely confidential further agree not to disclose the interview transcript to any other party. Only aggregated data and relevant findings will be revealed for research purposes.

There are no known risks and/or discomforts associated with this study. The expected benefits associated with your participation are the information about the experiences in learning qualitative research, the opportunity to participate in a qualitative research study, and co-authorship for those students who participate in the detailed analysis of the data. If submitted for publication, a by-line will indicate the participation of all interviewees of the study. Please sign your consent with full knowledge of the nature and purpose of the procedures. A copy of this consent form will be given to you to keep.

Date:

Signature of Participant

Shobhit Raj Mathur. PhD student, OP Jindal Global University. Principal Investigator

Figure 11: Sample Human Subjects Consent-to-Participate Form for Phenomenological Study

Appendix 3: Sample Interview Protocol for Phenomenological study

Interview Protocol Project: Resistance to Implementation of CFM Reforms at various District Courts in India: Date: Place: Interviewer: Interviewee: Position of interviewee: (Briefly describe the project) Questions: 1. What is your role and responsibility in the court? 2. Are you aware of the CFM rules proposed by the High courts? (if response is no, brief interviewee of the rules) 3. Are these rules implemented in your court? (If response is yes, brief interviewee of our quantitative findings and ask for comments. If response is no, ask why) 4. Can you discuss the challenges and opportunities for change within the judiciary? 5. What can be done to improve the situation? Thank the individual for participating in this interview. Assure him or her of confidentiality of responses and potential future interviews.

Figure 12: Sample Interview Protocol for Phenomenological study

Appendix 4: Sample Human Subjects Consent-to-Participate Form for Case Study

"Understanding the functioning of Community Justice Systems of Palghar: A Case Study"

Dear Participant.

The following information is provided for you to decide whether you wish to participate in the present study. You should be aware that you are free to decide not to participate or to withdraw at any time. The purpose of this study is to understand how the community justice systems of Palghar function. Data will be collected through observations and 1-1 in-person interviews over a month. Data will also include observation field notes (of the functioning of the justice system). Individuals involved in the data collection will be the community leaders, litigants approaching the *Panch*, community leaders and members, local politicians and local administration including the police. Do not hesitate to ask any questions about the study either before participating or during the time that you are participating. We would be happy to share our findings with you after the research is completed. However, your name will not be associated with the research findings in any way, and only the researchers will know your identity as a participant. There are no known risks and/or discomforts associated with this study. The expected benefits associated with your participation are the information about the experiences in learning qualitative research, the opportunity to participate in a qualitative research study, and co-authorship for those students who participate in the detailed analysis of the data. If submitted for publication, a by-line will indicate the participation of all interviewees of the study. Please sign your consent with full knowledge of the nature and purpose of the procedures. A copy of this consent form will be given to you to keep.

Date

Signature of Participant

Shobhit Raj Mathur. PhD student, OP Jindal Global University. Principal Investigator

Figure 13: Sample Human Subjects Consent-to-Participate Form for Case Study

Appendix 5: Sample Interview Protocol for Interviewing *Panch* Members

Interview Protocol

Project: Case study on functioning of community justice system in Palghar, Maharashtra

Date:

Place:

Interviewer:

Interviewee:

Position of interviewee:

(Briefly describe the project)

Questions:

- What is your role and responsibility in the *Panch*?
- What is the composition of *Panch*? Are women and weaker communities represented?
- What type of disputes do you get to the *Panch*?
- What does 'justice' mean to you?
- What is the methodology you use to deliver justice?
- Why do people approach the *Panch* for justice?
- How much time does it take for you to resolve a dispute?
- Do you advise people to go to court?
- What type of punishments does the *Panch* prescribe?
- How does the *Panch* enforce their decisions?

Thank the individual for participating in this interview. Assure him or her of confidentiality of responses and potential future interviews.

Figure 14: Sample Interview Protocol for Interviewing *Panch* Members

Appendix 6: Sample Interview Protocol for Interviewing Community Members

Interview Protocol Project: Case study on functioning of community justice system in Palghar, Maharashtra Date: Place: Interviewer: Interviewee: Position of interviewee: (Briefly describe the project) Questions: • Why did you approach the <i>Panch</i> for justice? • What does 'justice' mean to you? • Would you approach the <i>Panch</i> over other formal means of redressal like the Police or Courts? Why or why not? • How much time did it take to get a decision from the <i>Panch</i>? • How much did you spend in the process? • Did the decision get implemented? • Did you feel comfortable with the process? Why or why not? • Would you approach the <i>Panch</i> again in future? • Would you recommend the <i>Panch</i> to others? Why or why not? Thank the individual for participating in this interview. Assure him or her of confidentiality of responses and potential future interviews.
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Figure 15: Sample Interview Protocol for Interviewing Community Members

Appendix 7: Sample Interview Protocol for Interviewing Civil Society Members

Interview Protocol Project: Case study on functioning of community justice system in Palghar, Maharashtra Date: Place: Interviewer: Interviewee: Position of interviewee: (Briefly describe the project) Questions: • What is your role and responsibility in the NGO? • What does ‘justice’ mean to you? • What is your view of the <i>Panch</i>? • Do you play a role in its functioning? • Do you encourage community members to approach the <i>Panch</i>? • What would be your suggestions for reform in the <i>Panch</i>? • Should the <i>Panch</i> be integrated in the formal system? Thank the individual for participating in this interview. Assure him or her of confidentiality of responses and potential future interviews.
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Figure 16: Sample Interview Protocol for Interviewing Local Administration, and Politicians

Appendix 8: Proposal for a New Institution of Decentralized Dispute Resolution - Village Courts

In Chapter 5, the researcher made a case for decentralizing formal justice delivery to the village level and formalizing the informal justice systems. However, the argument is complete only when we have a constructive proposal to fill the gap. Here we propose decentralization of the present Indian judicial system to create village courts with a constitutional backing. The design of these courts should learn from the experiences of the past attempts and address their lacunae. They would institutionalize decentralized dispute resolution using through mediation, reconciliation, and people's participation. They would also ensure that people's fundamental rights are protected, and political malleability of the institution is avoided. This proposal to create a new institution that takes the formal court system further closer to the people from the district level to the doorsteps. It is based on the draft Nyaya Panchayats Bill 2009 (The Nyaya Panchayats Bill, 2009), which was not introduced in the Parliament and got lapsed in 2014. This proposal is slightly enhanced version of the same. The draft outline we propose is a strawman proposal and is meant to initiate a conversation and debate. It is not conclusive in any form.

Background

The Ministry of Panchayati Raj, Government of India had prepared the Draft Nyaya Panchayat Bill, 2009 with the aim of revitalizing the concept of participatory grass roots level dispute resolution through mediation, conciliation, and compromise outside the formal judicial system. The Bill provided for the establishment of Nyaya Panchayats at the level of each village Panchayat or cluster of Village Panchayats. Under the Bill, the Nyaya Panchayats were to be constituted through the election of Nyaya Panchas by people residing in the area to which the jurisdiction of the Panchayat extended. The Ministry of Panchayati Raj had prepared the Bill in exercise of the legislative powers of the Union Government under the Constitution of India.

The proposal below is aimed at presenting a proposal that strengthens the mechanisms mooted in the Draft Nyaya Panchayat Bill, 2009 where needed.

Constitutional Mandate for village courts

The Constitution of India has accorded a position of great significance to the realization of justice for all citizens. The Preamble enunciates the determination to ensure justice, which encompasses social, economic and political aspects, to all individuals in India. Notably, the Preamble elevates justice above the principles of liberty, equality, and fraternity. The concept of justice in the Preamble is comprehensive and extensive and extends beyond the conventional legal justice dispensed by the Courts.

Furthermore, Article 38 encapsulates the spirit of justice expounded in the Preamble, by underscoring the importance of a social order in which justice- social, economic and political- pervades all aspects of national life. The Supreme Court of India has explicated that the constitutional mandate of social justice as a dynamic and ongoing process, seeks to grant justice to all segments of society by eliminating disadvantages and disabilities faced by the poor, and ensuring their dignity.

Justice- social and economic- must be expeditiously rendered to enable the realization of the socialistic structure of society envisaged by the framers of the Constitution, and to preclude future generations from being mired in darkness and clamouring for social and economic justice.

The Law Commission of India in its 114th Report (114th Report on Gram Nyayalaya, 1986) in 1986 mentions this in the Chapter V Para 5.3 (emphasis by researcher):

“Article 39A of the Constitution of India directs the State to secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by economic or other disabilities. This is the constitutional imperative. Denial of justice on the grounds of economic and other disabilities is in nutshell referred to what has been known as problematic access to law. The Constitution now commands us to

remove impediments to access to justice in a systematic manner. All agencies of the Government are now under a fundamental obligation to enhance access to justice. Article 40 which directs the State to take steps to organize village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government, has to be appreciated afresh in the light of the mandate of the new article 39A ”.

The Constitution (Seventy-Third Amendment) Act, which became effective on 24th April 1993, accorded a constitutional status to the Gram Sabha and Gram Panchayats, while conferring significant powers upon them to enable their effective functioning as institutions of local self-governance at the village and panchayat levels. However, it is noteworthy that certain states such as Andhra Pradesh, Gujarat, Haryana, and Karnataka failed to incorporate provisions for Nyaya Panchayats in their post-73rd Amendment legislation, despite having included them in their earlier laws. This has been perceived as a regressive step that undermines the constitutional authority of the panchayats.

In this regard, an oft-cited argument is that since the 11th Schedule of the Constitution, which delineates the subjects in respect of which the powers and functions of the panchayats may be vested, does not explicitly include "administration of justice," panchayats are precluded from dealing with this subject. However, this contention is flawed for two reasons. Firstly, the 11th Schedule is illustrative rather than exhaustive, implying that the absence of "administration of justice" from its list of items does not preclude panchayats from engaging with this subject. Secondly, and more significantly, under the Constitution, the primary function of panchayats at every level is to prepare plans for economic development and social justice. The inclusion of "social justice" here unequivocally establishes that the administration and dispensation of justice in local village societies is a constitutional mandate that falls within the purview of the panchayats.

Constitutionality of Elected Panchas

According to judicial rulings, the question of whether elected *panchas* can be conferred with judicial power has been answered in the affirmative. In *Kishna Kumar Mishra Vs.*

State in 1996, the Patna High Court, while deliberating on the validity of the Constitution of *Gram Kutchery* (Village Court) through election, held that "So far as appointment of members of *Gram Kutchery* by way of election is concerned, I find no illegality in the same. It is for the Legislature to decide as to what will be the mode of appointment. If the election is made one of the mode of appointment, that will not render the provision as unconstitutional."

Similarly, in *Gurdial Singh Vs. The State* in 1957, the Punjab and Haryana High Court, while faced with the same issue of deciding on the validity and constitutionality of the provision of elective judiciary as contained in Punjab Gram Panchayat Act, 1952, held that "The validity of the Punjab Gram Panchayat Act cannot be challenged on the ground that it has sanctioned the appointment of an elective judiciary and has thereby contravened the provisions of the Constitution. It is true that the method of the recruitment of judicial officers like judges of the Supreme Court, Judges of High Courts & District & Subordinate Judges has been set out in the appropriate Articles of the Constitution, but items 3 and 5 of the List II (State Legislative List) confers ample power on the State Legislature to provide for administration of justice, constitution and organization of Courts and the constitution of local authorities for purposes of local self-Government or village administration".

Unique Character of Village Courts

Village courts should not be seen as a part of the subordinate judiciary. They have their own unique character. They are a decentralized dispute redressal system that should be understood and defined as such. Various reports, such as the Law Commission of India's report in 1958, the Study Team on Nyaya Panchayats in 1962, the High-Level Committee on Panchayati Raj of the Government of Gujarat in 1972, the working paper that formed the basis for the One Hundred Fourteenth Report of the Law Commission in 1985, and the Committee on Nyaya Panchayats' report submitted to the Union Ministry of Panchayati Raj in 2007 have consistently and consciously refrained from regarding Nyaya Panchayats as a judiciary in the proper sense of the term. Rather, they

have viewed Nyaya Panchayats as 'tribunals' that must 'inspire the confidence of villagers.'

The Nyaya Panchayat system is characterized by its simplicity, accessibility, and affordability. Panchas, who possess knowledge and experience of local customs, usage, and culture, rather than formal knowledge of law, preside over these tribunals. The Nyaya Panchayat system has a specially defined and limited jurisdiction and emphasizes dispute resolution through mediation and conciliation. These factors distinguish it from regular district or subordinate courts and give it a character of a tribunal. A 'tribunal' is defined as a seat of justice, and while it exercises judicial powers and decides matters brought before it judicially or quasi-judicially, it does not constitute a court in the technical sense.

The Supreme Court has held that tribunals differ from courts in an important way. Not all personnel in a tribunal have legal training/certification or prior judicial experience. Furthermore, technical rules of procedure and evidence that are otherwise binding in regular courts are often relaxed in the case of tribunals. Additionally, while judicial appointments in courts of the lowest rung require consultation with the High Court in accordance with the Constitution of India, no such consultation is required for appointments made in tribunals.

Key features of the proposed new institution of village court

In the light of the context placed above, we list the key features of the new proposed institution of village courts in India. We hope that this proposal will spark a conversation on how we can create a new institution that will reduce the demand on the existing district courts, while improving access to justice and quality of justice.

Purpose

The creation of village courts, at the level of each Village Panchayat or a cluster of Village Panchayats, depending on population and area, is aimed at establishing a platform for resolving disputes with the active involvement of the people. This is intended to ensure that there is a fair and expeditious system in place for resolving disputes that arise in rural areas, thus providing access to justice, both civil and criminal,

to citizens at the grassroots level. The establishment of these village courts is also expected to cover matters that are connected to or incidental to this objective.

Composition of the village court

1. A village court will be constituted for every group of villages based on the population. They will be notified by the respective State Government.
2. The village court will have 5 judges who are elected by the voters registered in that area. Any person who is at least 25 years of age and cleared his class 10th examination is eligible to be a judge (no educational qualification was mentioned in the draft Nyaya panchayats bill).
3. All judges on assumption of office will affirm their faith to the Constitution of India and particularly follow Part IVA of the Constitution relating to Fundamental Duties.
4. Among the 5 judges, seats shall be reserved for the weaker communities of Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion of their population to the total population of the area. This will ensure protection of the weaker communities from domination by the more powerful communities.
5. At least 50% of the total seats shall be reserved for women, both among those reserved for SCs and STs and of the total five seats. This will ensure protection for the interests of women and ensuring that their voice is represented fairly.
6. The duration of the elected bench of 5 judges will be 5 years. Elections to the village court will be held simultaneously with the elections to the village administration i.e., *Gram Panchayat*
7. A judge is disqualified if he has been convicted of an offence and awarded imprisonment for a period longer than 6 months. New elections will be held within 3 months to fill the vacancy. This will ensure that the bench consists of clean individuals.
8. A judge is barred from hearing a case if any party is a near relative or having an economic relation (employer, employee, debtor, creditor, or business partner). This is a further elaboration from the draft bill that mentions only near relative or business partner. This will ensure that there is no direct conflict of interest.

9. The judges through their actions ensure communal harmony and remain vigilant about the same.
10. The salaries of the judges and the expenses of the village court shall be prescribed and borne by the respective State Government. The salaries would be nominal to encourage the spirit of service and voluntarism in the judges.
11. The training of the Nyaya Panchayat members shall be arranged by the respective State Government. Training the Panch members is very important and the draft bill does not mention any aspect of training.

Jurisdiction of the Village Court

The village court will have exclusive jurisdiction over civil and criminal matters in its geographical area. It will be the principal court of original jurisdiction. This will ensure that cases are first brought to the notice of the village court. This reduces the case load from the existing district courts which have about 90% of India's pending cases. It gives a chance for speedy, low cost and fair justice at the local level.

Procedure and Powers of the Village Courts

1. The village courts will not be bound by the Code of Civil Procedures, 1908 or the Code of Criminal Procedure, 1973, but shall be guided by the principles of natural justice. They shall follow persuasion, conciliation and mediation as means to resolve disputes. Reducing procedural hurdles and using principles of natural justice will make the courts culturally accessible and decisions would be speedy.
2. There will be no court fees. This will ensure that the court is financially accessible to all. Given the low cost of setting up and running the village courts, this will not be a fiscal burden on the respective state government.
3. Parties to disputes shall appear in person. No women should be compelled to appear in person and a mediator can be used in the case a woman is uncomfortable appearing in-person. This reduces the role of intermediaries such as lawyers which in-turn reduces legal costs.
4. The proceedings shall be held in public at a time convenient to all parties to the dispute. The language used in the proceedings shall be that which is commonly

used in that area and particularly that which is understood by the parties to the dispute. This will ensure transparency of the proceedings and reduces chances of perjury.

5. The final decision will be the majority decision taken the bench. In case there is a dissenting view, it will be recorded by the Village Court. The dissenting opinion will be useful for future reference or by reference by the appellate courts.
6. An appeal against the decision of the village court can be taken to the appropriate Sub-ordinate Court or District Court. This will ensure that there is an option of legal recourse to the higher courts which exist today.

Appendix 9: Themes, Concepts and Quotes of Interviews with District Court Judges

Theme	Key Concepts and Supporting Quotes
Overburdened	Lack of sensitization and training <i>"While the High Courts have introduced the Case Flow Management (CFM) rules, there has been insufficient guidance, particularly in enhancing the skills of judicial staff. Their inefficiency only leads to more delays. And the court managers? They've hardly been a help as they lack proper training and court experience."</i> No additional resources provided <i>"The implementation of the CFM rule calls for quicker case processing, but we're expected to achieve this without any additional resources. There's no extra manpower, no new infrastructure – how are we supposed to improve under these conditions?"</i> Political power of the lawyers' lobby <i>"The challenge isn't only implementing new rules; it's contending with the entrenched lawyer's lobby that resists these changes. We come in as outsiders, and they're the ones with the lasting relationships and the backing of the High Courts. The scales are tipped against us from the start."</i> Unwillingness to take on additional courtroom stress <i>"The caseload is already immense, with copious amounts of written work and judgements to dictate at the end of the day. Trying to enforce CFM guidelines on top of all that, especially against resistant lawyers, just adds to the stress in an already high-pressure environment."</i> Non-judicial workload <i>"Apart from handling cases, we're loaded with a plethora of administrative tasks, from issuing summons to attending committee meetings. The idea of court managers looked promising on paper, but in practice, it hasn't taken the load off because the lawyers and litigants trust only us judges with these duties."</i>

	Increasing litigation and appeal rates <i>"The sheer volume of litigation is overwhelming. With clients having more financial resources and High courts becoming more accessible, appeals have skyrocketed. Even if more judges are added, the cases are mounting at an even higher pace. We feel helpless, as our efforts seem like mere drops in this vast ocean of increasing caseload."</i>
Lack of Confidence on the System	Unscientific basis of the CFM rules <i>"CFM guidelines have been passed on from the High Courts with minor adjustments without considering the unique challenges of our diverse country. It's impractical to expect the same tracks and timelines for all courts."</i> <i>"The CFM rules do not take into account the severe shortage of judges and staff in our courts. The rules are static and fail to adapt to resource disparities across different courts."</i> <i>"The rules do not account for existing pendencies. It is unfair to assume courts with higher pendencies and workloads can implement CFM rules as effectively as those with lesser workloads."</i> <i>"The classification of cases into tracks seems arbitrary and detached from reality. A lower track case could be more severe than one in a higher track, yet the latter is given more priority."</i> Reforms disconnected from reality <i>"The committees proposing reforms don't seem to consider the ground realities or the consequences of their recommendations, as their tenure usually ends before the implementation stage."</i> <i>"Most committee heads lack recent experience in district courts. Their perspectives might be outdated and detached from the current realities we face."</i> <i>"These committees often don't perform literature surveys to leverage existing research. They end up reinventing the wheel, often imperfectly."</i> <i>"They are not comfortable with technology and do not incorporate it into their proposed reforms."</i> <i>"There is a stark lack of involvement of the main stakeholders: district court judges, lawyers, and staff. Their insights are invaluable and yet ignored."</i> Lack of alignment of incentives <i>"There is no incentive to put extra effort into implementing CFM guidelines. Judges can meet their performance targets by</i>

	<i>disposing of old cases, so there is no real incentive to embrace CFM."</i>
Disempowered	Clients being unaware of lawyers' tactics <i>"It's disheartening to witness the tactics employed by lawyers to prolong cases. Their earnings stem from repeated hearings, leading to a lack of motivation to expedite case resolution. The clients, unfamiliar with courtroom protocols and the law, often remain oblivious to these delaying tactics. As a judge, it's distressing to see clients taken advantage of in this way."</i> Lack of support from the union government <i>"The central government's lack of concern for the state of affairs in district courts is palpable. There's a dearth of reform initiatives or support measures aimed at district courts, probably because they don't have a direct stake in the cases heard here. Such apathy does little to motivate the judicial personnel."</i> Frivolous litigation <i>"We often face frivolous litigation aimed at stalling proceedings or commercial transactions. It's incredibly challenging to deal with these cases, particularly because there's no penalty for wasting the court's time. In the absence of any deterrence, people exploit the system, complicating the resolution process."</i> Poor career progression <i>"Career progression for district judges is, unfortunately, lacklustre. We get transferred from one district to another, with only a few getting the chance to serve in the High Courts and that too, quite late in their careers. This absence of growth and learning opportunities, coupled with a monotonous work life, is quite disheartening and does not inspire one to strive for better performance."</i>

Figure 17: Themes, key concepts from judges' perspectives, and supporting quotes

Appendix 10: Court wise Numbers of Cases Downloaded for Case Flow Analysis

In India, district and subordinate courts are those courts that operate under the authority of the High Court of a particular state. These courts are responsible for hearing and deciding civil and criminal cases that are brought before them. Some of the different types of subordinate courts in India include:

1. District Courts: These courts are located in every district of the country and are responsible for hearing and deciding civil and criminal cases that originate within the district.
2. Subordinate Judges' Courts: These courts are located in every taluk or sub-division of the district and are responsible for hearing and deciding civil cases up to a certain value limit.
3. Civil Judge (Junior Division) Courts: These courts are also located in every taluk or sub-division of the district and are responsible for hearing and deciding civil cases up to a certain value limit.
4. Civil Judge (Senior Division) Courts are responsible for hearing and deciding civil cases that exceed a certain value limit. They have jurisdiction over civil cases that are beyond the jurisdiction of the Civil Judge (Junior Division) Courts. These courts are located in the district headquarters and have the power to hear and decide both original and appellate civil cases.
5. Judicial Magistrate Courts: These courts are responsible for hearing and deciding criminal cases that are punishable with imprisonment of up to three years.
6. Chief Judicial Magistrate Courts: These courts are responsible for hearing and deciding criminal cases that are punishable with imprisonment of up to seven years.
7. Family courts are specialized courts that deal with matters related to family law such as divorce, child custody, alimony, maintenance, and adoption. These

courts are presided over by a judge who has special training and expertise in family law matters.

8. Metropolitan Magistrate Courts: These courts are located in metropolitan cities and are responsible for hearing and deciding criminal cases that are punishable with imprisonment of up to seven years.

These are some of the common subordinate courts in India, but the exact hierarchy and nomenclature of these courts may vary depending on the state and region. This information would be useful as we delve deeper into the subordinate courts data in Sonipat.

Data used for analysis of stage wise case flow:

	Subordinate Court Name within Sonipat District	Cases Downloaded
1	CHIEF JUDICIAL MAGISTRATE, SONIPAT	73,658
2	CHIEF JUDICIAL MAGISTRATE, TALUKA COURT, GANAUR	8,816
3	CHIEF JUDICIAL MAGISTRATE, TALUKA COURT, GOHANA	15,736
4	CHIEF JUDICIAL MAGISTRATE, TALUKA COURT, KHARKHODA	5,225
5	CIVIL JUDGE SENIOR DIVISION, SONIPAT	27,099
6	CIVIL JUDGE SENIOR DIVISION, TALUKA COURT, GOHANA	9,476
7	CIVIL JUDGE SENIOR DIVISION, TALUKA COURT, GANAUR	5,694
8	CIVIL JUDGE SENIOR DIVISION, TALUKA COURT, KHARKHODA	3,200
9	DISTRICT AND SESSIONS COURT, SONEPAT	81,750
10	FAMILY COURT COMPLEX, GANAUR SONEPAT	192
11	FAMILY COURT COMPLEX, GOHANA SONEPAT	462
12	FAMILY COURT COMPLEX, KHARKHODA SONEPAT	257
	Total	231,565

Figure 18: Court wise cases data downloaded from the subordinate courts in Sonipat District

Appendix 11: Caseflow Management (CFM) Rules Promulgated by Haryana and Punjab High Court, 2007

Vol. I.

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[17] PUNJAB AND HARYANA HIGH COURT CASE FLOW MANAGEMENT RULES, 2007

In exercise of the powers conferred by Part X of the Code of Civil Procedure 1908 (5 of 1908), amended up to date and all other enabling powers, the High Court of Punjab and Haryana hereby makes the following Rules, in regard to case flow management in the subordinate courts with an object to set a time-table and to monitor every case from its filing to its disposal; for enhancing and expediting the disposal; and to control the delay in dispensation of justice by the Subordinate Courts and the High Court.

These Rules will be called Punjab and Haryana High Court Case Flow Management Rules, 2007.

These Rules will come into operation w.e.f. the date of publication in the official Gazettes of States of Punjab, Haryana and U.T., Chandigarh.

RULES FOR SUBORDINATE COURTS (TRIAL AND APPELLATE)

(A) Division of Civil Suits into Tracks.- (1) Based on the nature of the dispute, the quantum of evidence to be recorded and the time likely to be taken for the completion of trial of suits, the suits shall be channeled into different tracks.

Track I (Fast Track):

- (i) Rent petitions on the ground of personal necessity including petitions filed by specified landlords and Non-Resident Indians;
- (ii) Cases of maintenance, custody of children including visitation rights;
- (iii) All cases relating to senior citizens i.e. where plaintiff is above 65 years of age on the date of filing of the suit;
- (iv) Cases relating to grant of succession certificates;
- (v) Money suits based on Negotiable Instruments filed under Order XXXVII where leave to defend has been granted.
- (vi) Uncontested applications for grant of probate and letters of administration.

Track II:

All other cases.

All efforts shall be made to decide the cases of Track I within a period of 6 months and suits of Track II shall be decided within a period of one year. The time period for deciding the suit shall commence on the date of framing of issues. However, on the date of settlement of issues, the Trial Court may, for reasons to be recorded, place any suit not covered under Track I in track, if circumstances of the case so demand.

V. CRIMINAL TRIALS AND CRIMINAL APPEALS BEFORE
CRIMINAL COURTS (AT SUBORDINATE LEVEL):

(a) Criminal Trials :

1. Criminal trials should be classified on the basis of offences, sentence and whether the accused is on bail or in jail. Capital punishment cases, rape cases and cases involving sexual offences or dowry deaths should be kept in Track I. Other cases where the accused have been denied bail should be kept in Track II. Cases which affect a large number of persons, such as cases of mass cheating, economic offences, illicit liquor tragedy and food adulteration cases etc. should be kept in Track III. The offences, which are tried by special courts such as POTA, NDPS Act, Prevention of Corruption Act, etc. should be kept in Track IV whereas all other offences are to be listed in Track V.

The endeavor should be to complete Track I trials within a period of nine months, Track II and Track III trials within a period of one year, Track IV within fifteen months and Track V trials within eighteen months. The period shall commence from the framing of charges.

Appendix 12: Themes, Key Concepts, Supporting Quotes of Interviews of Various Stakeholders at Palghar

Theme 1: Cultural Integration of Customary Laws		
Key Concept	Stakeholder Interviewed	Supporting Quote
Significance and Evolution	Community Member (Man)	<i>"Customary laws are our identity, not mere guidelines. They've evolved over time, adapting to our changing world while preserving the essence of our tribal heritage. They guide us, uniting us through shared values and mutual understanding."</i>
Acceptance and Cultural Validation	Non-Profit Organization Volunteer	<i>"Customary laws are intrinsically tied to the tribe's cultural fabric. It's not just the acceptance but the pride with which they validate these laws, seeing them as the embodiment of their cultural identity, which amazes me."</i>
Impact on Community Justice	Panch Member	<i>"Customary laws have a profound impact on how justice is dispensed here. There's a focus on restoration and harmony, which is firmly rooted in the community's traditions and culture."</i>

Theme 2: Accessibility and Affordability of Justice		
Key Concept	Stakeholder Interviewed	Supporting Quote
Geographical and Financial Access	Community Member (Woman)	<i>"Through customary justice, access isn't confined to geographical proximity or financial capacity. It's about making justice reachable and affordable to every member of the community."</i>
Elimination of Intermediaries	Panch Member	<i>"In our system, there are no intermediaries. We directly participate in the justice process, which not only makes it transparent but also instils a sense of ownership and trust."</i>
Swift and Enforceable Decisions	Panch Member	<i>"The swiftness and enforceability of decisions in this system stand out. It's an efficient process that ensures timely justice, rooted firmly in the community's acceptance."</i>

Theme 3: PESA Support to Customary Laws and Institutions		
Key Concept	Stakeholder Interviewed	Supporting Quote
Community Participation	Panch Member	<i>"The implementation of PESA has been pivotal in recognizing and preserving customary laws. It facilitates a dialogue among various stakeholders, ensuring their perspectives are heard and considered."</i>

Theme 3: PESA Support to Customary Laws and Institutions		
Key Concept	Stakeholder Interviewed	Supporting Quote
Empowering Community Judicial Bodies	Panch Member	<i>"PESA has reinforced the authority of our judicial bodies, validating the role we play in maintaining social order. It's a testament to our ability to dispense justice in accordance with our customs and traditions."</i>
Creating Culturally Accessible Justice	Community Member (Woman)	<i>"With PESA, justice isn't a distant, elusive concept but a reality that reflects our customs. It's made justice more accessible, less alien, and in sync with our cultural ethos."</i>

**Appendix 13: Adherence of cases to CFM rules, Analysis of Stage
Wise Case Duration, and Proposed Reforms**

	Case Category	Case Type	Case Track as per CFM rules	Average Disposal Time (days)	CFM Limit (days)	Delayed?
1	CIVIL	SUCC - SUCCESSION CASE	Track I	689	180	YES
2	CIVIL	RA - RENT APPEAL	Track I	420	180	YES
3	CIVIL	H.M.G ACT	Track I	461	180	YES
4	CIVIL	RENT - RENT APPLICATION	Track I	686	180	YES
5	CIVIL	HMG ACT - H.M.G ACT APPEAL	Track I	427	180	YES
6	CIVIL	LAC - CASE U LAND ACQU ACT 1894	Track II	1271	365	YES
7	CIVIL	EP - ELECTION PETITION	Track II	881	365	YES
8	CIVIL	MACP - MOTOR ACCIDENT CLAIM PETITION	Track II	484	365	YES
9	CIVIL	CA - CIVIL APPEAL	Track II	739	365	YES
10	CIVIL	CS - CIVIL SUIT	Track II	794	365	YES
11	CIVIL	BR ACT - BENGAL REGULATION ACT	Track II	136	365	NO
12	CIVIL	DMC - DIVORCE AND MATRIMONIAL CASES	Track II	257	365	NO
13	CIVIL	MACM - MOTOR ACCIDENT CLAIM MISC PET	Track II	190	365	NO

14	CIVIL	TA - TRANSFER APPLICATION	Track II	16	365	NO
15	CIVIL	CM - CIVIL MISC. APPLICATION	Track II	109	365	NO
1	CRIMINAL	BA - BAIL APPLICATION	Track II	5	365	NO
2	CRIMINAL	PC - CORRUPTION ACT	Track IV	826	450	YES
3	CRIMINAL	NDPS - NDPS ACT	Track IV	878	450	YES
4	CRIMINAL	NACT - 138 NIA ACT	Track IV	179	450	NO
5	CRIMINAL	ELC - ELECTRICITY ACT	Track V	494	540	NO
6	CRIMINAL	127 CR.P.C - PETITION U/S 127 CR.P.C.	Track V	642	540	YES
7	CRIMINAL	REMP - REMAND PAPER	Track V	69	540	NO
8	CRIMINAL	MNT125 - MAINTAINANCE U/S 125 CR. P.C.	Track V	498	540	NO
9	CRIMINAL	COMI - COMPLAINT IPC	Track V	989	540	YES
10	CRIMINAL	COMA - COMPLAINT ACT	Track V	731	540	YES
11	CRIMINAL	SC - SESSIONS CASES	Track V	482	540	NO
12	CRIMINAL	CHI - CHALLAN IPC	Track V	818	540	YES
13	CRIMINAL	TRF - TRAFFIC CASES	Track V	218	540	NO
14	CRIMINAL	JJB - JUVENILE	Track V	359	540	NO
15	CRIMINAL	TRAFFIC - TRAFFIC CASES	Track V	63	540	NO

Figure 19: Testing various case types for adherence to CFM defined time limits

Civil Cases:

1. Of the 5 case types in Track I, none of them adhere to the CFM defined limits. We can conclude that the representative court is unable to dispose Track I civil cases in time.
2. The court performance for Track II cases is better. 5 of the 10, i.e., 50% of the case types that are categorized as Track II get disposed within defined limits.

Criminal Cases:

1. There are no Track I cases in the representative court the researcher has chosen. These cases would relate to capital punishment, rape, dowry related deaths, etc.
2. Only 1 case type heard by the court i.e., Bail Applications falls under Track II. There is no statistical evidence to prove that Track II cases are not disposed within defined limits. In other words, the court can dispose the Bail Applications within the defined Track II limits.
3. There are no Track III cases heard at the court.
4. Two of the three case types under Track IV i.e., 67% of the case types breach the defined CFM rules limit.
5. There are 11 case types heard at the court which fall under Track V. 4 of these i.e., 37% of the case types breach the defined CFM rules limit.

Case flow of Typical Civil and Criminal Cases

So far, we have concluded that the Indian district courts on average do not perform well with respect to the CFM rules defined by the High Courts. We next deep dive into the case flow and looks at the stage wise data in the case flow.

Understanding Case Flow

It is important to understand how the case flows in a typical civil and criminal case. Understanding the stages allows us to identify the bottlenecks and recommend policies to ease the flow.

A civil case is filed by a plaintiff against a defendant, when the plaintiff feels that a legal obligation is not met by the defendant. The court reviews the suit filed and issues a summon for the defendant to appear in front of the court. The defendant defends their

case against the evidence presented. This is the stage of filing written statements with the court. When there is a difference between the claims of the plaintiff and the defendant, an issue arises. As the case proceeds, evidence is collected and submitted in the court, which is cross-examined by either party.

The judge gives the judgement based on the evidence presented and the facts of the case. The parties involved in the case have an option to appeal the judgement in a higher court. Otherwise, the case comes to a closure with execution of the decree provided by the court.

Unlike a civil case between a plaintiff and defendant, filing a First Information Report (FIR) initiates a criminal case. The law enforcement authorities i.e., the police are required to carry on an investigation in view of the FIR filed. As a first step, a charge sheet is created against the accused. If there is substantial evidence proving that the accused has committed a crime, the charges are framed. A public prosecutor represents the victims of the crime and the society at large within the courts. The evidence is presented by the prosecution in the court of law. This evidence can be cross examined by the advocates who represent the accused. The statement of the accused is noted. This is officially the response of the accused against the evidence presented in the court.

This statement along with any new evidence provided by the defence is cross examined in the court. As the court proceeds the judge hears the arguments in the court and can proceed to deliver the judgement. The sentence pronounced can be argued upon. The judge hears these arguments and can revise the punishment after which the final judgment is delivered. As in a civil case, in the criminal case also the accused has an option to approach the higher courts with an appeal.

Focus on stages that take maximum time for completion.

Focusing on the stages that take the maximum time to complete in the court system is a good strategy because it can help to speed up the overall process of resolving cases. When cases take a long time to move through the court system, it is primarily due to spending more time in specific stages.

By targeting the stages that take the most time, you can identify the bottlenecks in the system and implement targeted reforms to address them. This can involve streamlining

procedures, simplifying paperwork, or increasing staffing levels at key stages of the process.

Civil Cases

In India, civil cases are those legal disputes between two or more parties that relate to private rights and remedies. These cases generally involve disputes over property, contracts, torts, and other civil matters that are not criminal in nature.

Civil cases in India are governed by the Civil Procedure Code (CPC), which provides the procedural rules and guidelines for the conduct of civil litigation. The CPC lays down the procedure for filing a civil suit, the service of summons, the conduct of trial, the enforcement of judgment, and the appeals process.

The process for civil cases in India typically involves filing a plaint or a written statement of claim before the appropriate civil court, serving summons on the opposing party, and attending court hearings to present evidence and arguments. The court then considers the evidence and arguments presented by both sides before making a decision in the matter.

Below are the stages in a typical civil case in India.

Civil case - Stages in sequence:

1. Institution, Preliminary stage
2. Notice/summons/LCR
3. Appearance
4. Written statement/objection/reply
5. Framing of issues
6. Evidence
7. Arguments
8. Final order/judgment

Additionally, we have the following stages that may occur anytime in the case flow: ADR (alternate dispute resolution), Amendments, Call on, Hearing, Order. These are exceptions to the linear case flow, and the researcher does not consider them in their analysis.

Stage Wise Caseflow Analysis of Civil Cases

We deep dive into the time spent in each stage for a few typical civil case types. We choose 3 case types from 2 tracks defined by the CFM rules – One case type from Track I and two case types from Track II. This should help us get a good understanding of where the case spends its time, the possible reasons for delays and how we can address the potential causes of delay.

Civil Cases: Succession cases

These are cases that come under the purview of the Indian Succession Act 1925. These cases relate to the distribution of assets of a deceased individual. They fall broadly under two categories – where deceased has left behind a will and that in which the person has not left a will. If the deceased person has not left behind a will, then the distribution of assets will be according to the personal laws which are different for Hindus, Muslims, and Christians. There could be many reasons for delay in Succession Cases, such as lack of proper documentation, disputes among legal heirs, complexity of inheritance laws, backlog of cases in courts etc. From the previous section we know that statistically succession cases do not get resolved within the 180-day time limit specified in the CFM rules. We can see below, the time spent in each stage for a typical succession case.

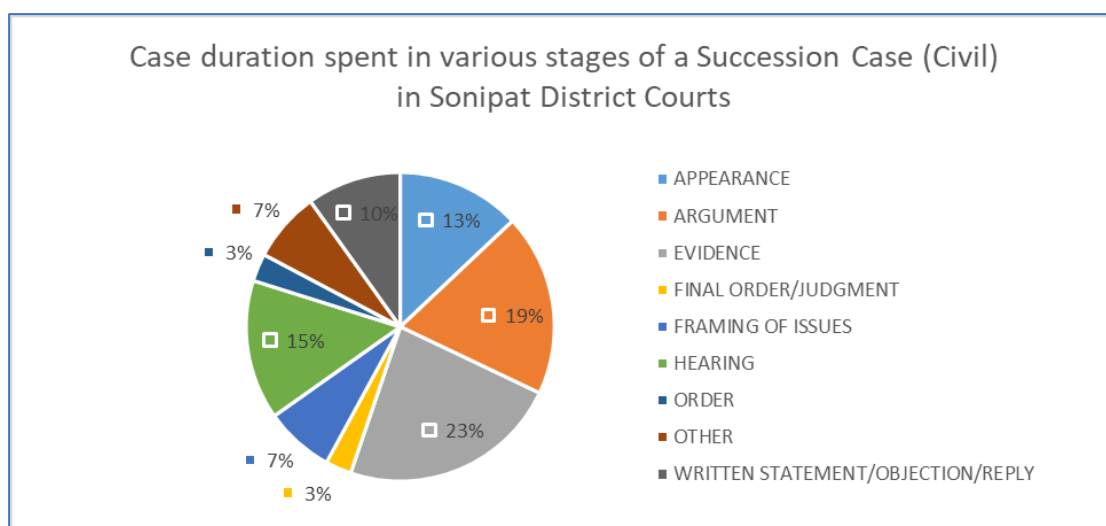


Figure 20: Percentage of total case duration spent in various stages of a Succession Case (Civil) in Sonipat District Courts

From the above chart we can see that evidence collection takes 23% of the case time. This is perhaps because substantial evidence needs to be collected to make the case

strong. The delay in collecting evidence could be due to the complex procedures or frivolous cases that find it difficult to collect evidence. Appearance stage takes 13% of the case time which can also be reduced with better and time bound scheduling of the cases. Together the initial stages (appearance, written statement, framing of issues) contribute to 30% of the case time. This is significant. With simplification of procedures, digitization, and support staff this time can be reduced. We can see how looking at the micro level case flow allows us to give specific policy suggestions than merely giving broad level supply side recommendations like addition of judges.

Civil Cases: MACP – Motor Accident Claim Petition Cases

As the title suggests, these are cases that relate to motor accident claims. As we are aware, India has a very high rate of road accidents, and many people lose their lives in such accidents. An injured person or the representatives of the deceased person may apply for compensation under the Motor Vehicles act, 1988. This act was passed to prevent motor vehicle accidents, provide adequate compensation to the injured or deceased and to punish the wrongdoers. Section 168 of the act deals with “just compensation” which ought to be determined based on the foundation of fairness, reasonableness, and equitability. This is a complicated process since the compensation should not be exploitative and at the same not be inadequate.

When we deep dive into the stage wise average time spent, we see the following distribution of case time.

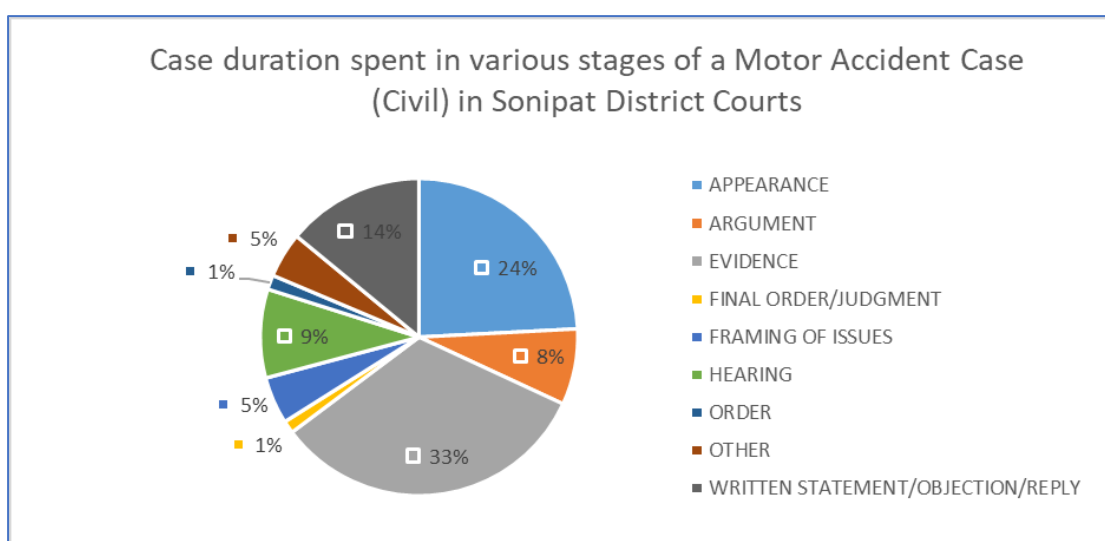


Figure 21: Percentage of total case duration spent in various stages of a Motor Accident Case (Civil) in Sonipat District Courts

Before we investigate the stage wise durations, we can speculate some of the reasons for delays in Motor Accident Claim Petition Cases are:

- Delayed registration of First Accident Report by police
- Disputes over liability, negligence, quantum of compensation etc.
- Lack of proper evidence, documents, witnesses etc.

This is supported by the data we have. The maximum time spent by a MACP case is in the appearance and the evidence stages. While appearance delays could be due to poor scheduling and non-availability of the parties, clearly there is a challenge in collecting and presenting evidence. This is perhaps because it is difficult to ascertain who is the negligent party. It also depends on support from the law enforcement agencies i.e., the police. Now that we know which stages of the case take the maximum time, we can focus on saving time through specific interventions.

Civil Cases: DMC – Divorce and Matrimonial Cases

As the title of the cases suggests, these cases relate to divorce and other matrimonial issues. Depending on the religion of the people involved in the marriages, marriages are governed by various personal laws in India. These include – Indian Divorce Act 1869, Hindu Marriage Act 1955, Muslim law, Indian Christian Marriage Act 1872, Parsi Marriage and Divorce Act 1936. In addition, Special Marriage Act 1954 applies to all religions for those who choose to marry under it. Issues of alimony, property and children are typically discussed in these cases.

Some of the reasons one can imagine for delays in Divorce and Matrimonial Cases are:

- Pendency and backlog of cases in family courts.
- Frequent adjournments and appeals by parties.
- Lack of proper mediation and counselling services.
- Complexity of matrimonial laws and personal laws.

Matrimonial cases have typically taken long to get resolved. The Delhi High Court has also directed lower courts to resolve cases under the Hindu Marriage Act within 6 months (Mathur A. , 2014).

Now, let us look at the data we have. The stage wise distribution of the DMC case time is shown below. We know that these cases statistically get disposed within the time bound of 365 days specified by the CFM rules. We see that the case does not spend time significantly in any one of the stages, though it takes about 27% of the time in the evidence stage and 17% in the written statements stage. One needs to delve deeper to understand the reasons for the time taken in the stages and propose recommendations on how it can be reduced. That will help in further reducing the time to resolve such disputes.

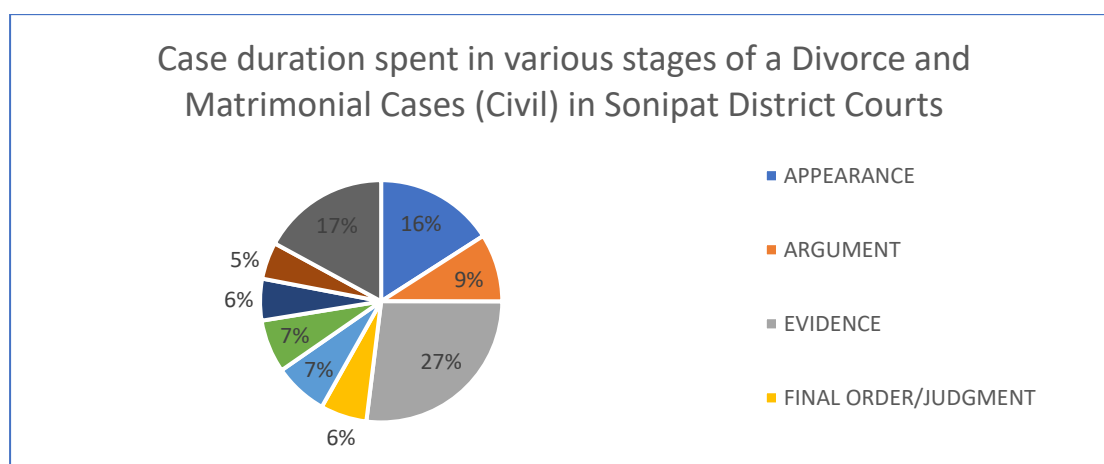


Figure 22: Percentage of total case duration spent in various stages of a DMC case (Civil) in Sonipat District Courts

Criminal Cases

In India, criminal cases are those in which an individual or entity is accused of committing a crime, which is a violation of a law or statute. Criminal cases are typically initiated by the government or the state, and the accused party is prosecuted by a government-appointed prosecutor.

Criminal cases in India can range from minor offenses, such as traffic violations and petty theft, to serious crimes such as murder, rape, and terrorism. The criminal justice system in India is governed by the Indian Penal Code, which defines and classifies criminal offenses, and the Code of Criminal Procedure, which outlines the procedures for the investigation, trial, and punishment of criminal offenses.

When a crime is committed, a complaint is filed with the police, who then conduct an investigation and file a charge sheet with the court. The court then proceeds with the trial, which can be conducted by a judge or a jury, depending on the nature and severity of the offense. If the accused is found guilty, he or she can be sentenced to

imprisonment, fines, or other forms of punishment. If the accused is found not guilty, he or she is acquitted and released.

Criminal cases are an important part of the Indian legal system and are designed to protect the safety and security of its citizens and deter criminal activity.

Below are the stages in a typical criminal case in India.

Criminal Case - Stages in sequence:

1. Admission
2. LCR
3. Notice/warrants/summons
4. Appearance
5. Application/objections
6. Framing of charges
7. Evidence
8. Arguments
9. Final order/judgment

Additionally, we have observed that the following stages that may occur anytime in the case flow: ADR (alternate dispute resolution), Call on, For Bail, Hearing, Order. These are exceptions to the linear case flow and the researcher does not consider them in their analysis.

Stage Wise Caseflow Analysis of Criminal Cases

To deep dive into the time spent in each stage, the researcher chooses different criminal case types. Let us look at the 3 different case types under Track IV of the Case flow management rules.

PC – Corruption Act Cases:

These are cases related to the Prevention of Corruption Act, 1988. This act was enacted to combat corruption in Government agencies and public sector enterprises in India. Primarily these cases relate to taking bribes or abetting bribery or using influence for personal gain. From the previous section we know that statistically these cases exceed the 450-day time limit specified in the CFM rules. Let us look at the time spent stage wise in such cases, so that we can get a better perspective.

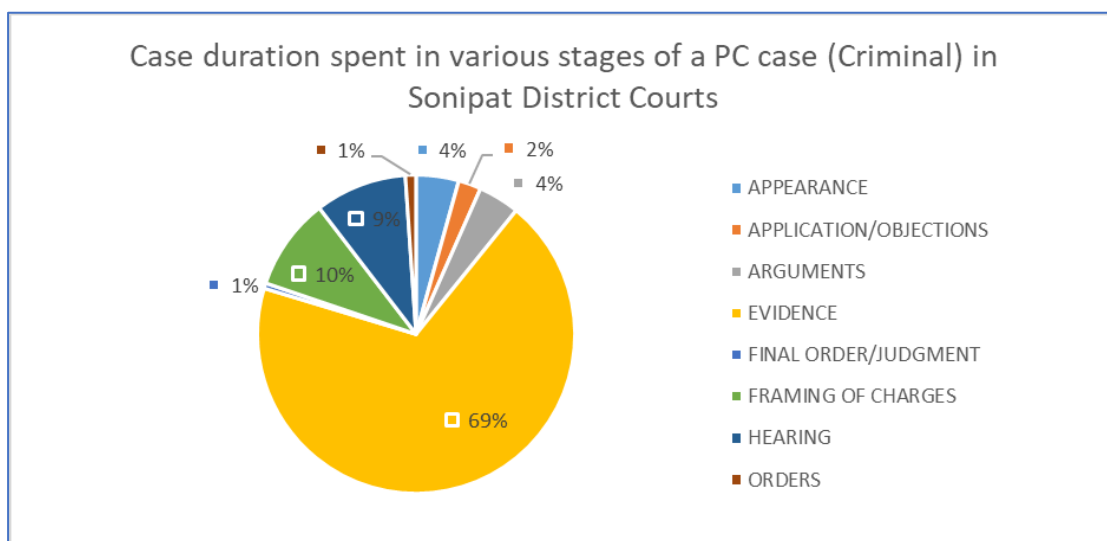


Figure 23: Percentage of total case duration spent in various stages of a PC case (Criminal) in Sonipat District Courts

It is clear that evidence collection takes the maximum time and every other stage dwarfs relatively with respect to the time spent. Almost 70% of the time spend is in the evidence collection stage. While we can only speculate the reasons without first-hand analysis, this delay demonstrates the difficulty in gathering evidence in such cases. It could be due to protection of corrupt officials by the political executive, filing of fake cases due to political vendetta, or simply inefficiency of the law enforcement agencies. Clearly reducing the time spent in this stage can help resolving these cases significantly faster.

NDPS Cases:

These cases relate to the Narcotic Drugs and Psychotropic Substances (NDPS) Act, 1985. This act provides stringent provisions for the offences related to drug abuse and trafficking. From the previous section we know that these cases do not get resolved within 450-day time limit specified under the CFM guidelines for Track IV criminal cases.

The possible reasons for the delays in NDPS cases could be the following:

- The stringent provisions of Section 37 of NDPS Act, which impose a heavy burden on the accused to prove that they are not guilty and that they will not commit any offence while on bail.

- The long duration of investigation by the agencies, which may exceed the prescribed time limits depending on the quantity of contraband seized.
- The lack of adequate infrastructure, manpower and expertise in handling NDPS cases.

These delays may result in violation of the right to speedy trial and grant of default bail to some accused who may be involved in serious offences.

With the data we have, let us look deeper into the average time spent in each stage.

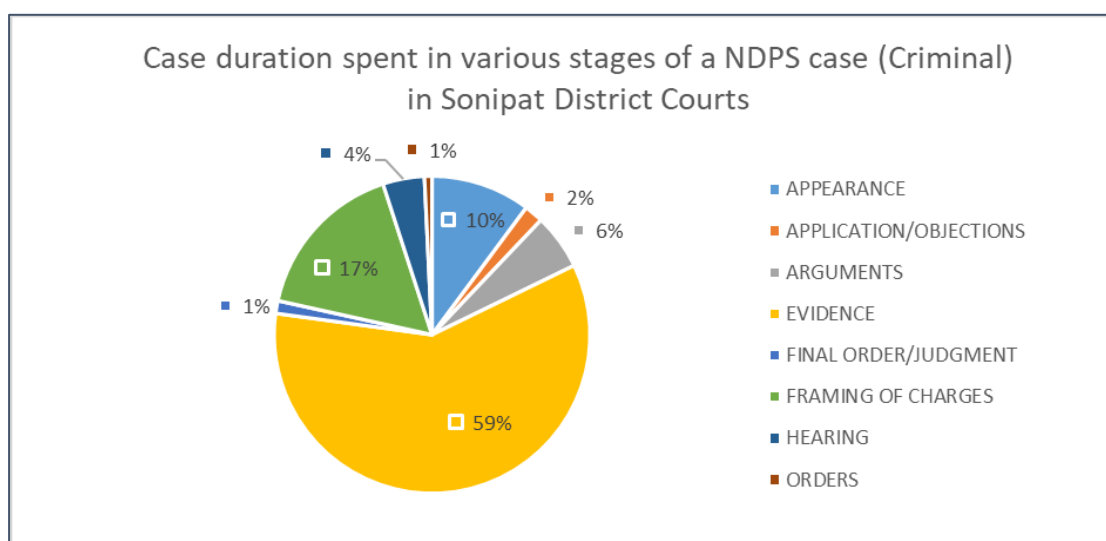


Figure 24: Percentage of total case duration spent in various stages of a NDPS case (Criminal) in Sonipat District Courts

Yet again, it is the evidence stage that takes the maximum time. These cases spend about 60% of the case time in the evidence stage and about 17% time framing the charges. It is well known that evidence collection in these cases is difficult. The law enforcement agencies also face a lot of media and political pressure in high profile cases. Recently the Supreme Court of India, in a landmark ruling held that confessional statements made before an investigating officer of an agency other than the police force (e.g., Narcotics Control Bureau) are barred from being used evidence to convict an accused under NDPS act. While this ruling is made to protect any coercive confessions, it may make it further difficult to gather evidence to prosecute the accused. Since this is a non-bailable offence, many jailed undertrials, about 10%, are under the NDPS act (Mandhani, 2021). This makes it a lot more important to expedite these cases and particularly the evidence stage.

NACT cases.

These are cases that deal with Section 138 of the Negotiable Instruments Act also known commonly as cheque bounce cases. From the previous section we know that statistically NACT cases do get resolved within the 450-day time limit specified in the CFM rules.

Some of the possible reasons for delays in NI Act cases in India could be:

- The strict time limit of 30 days for filing a complaint under Section 138 of NI Act, which may be missed by some complainants due to various reasons.
- The large number of pending cases under Section 138 of NI Act, which has resulted in a huge backlog and delay in disposal.
- The lack of adequate infrastructure, manpower and expertise in handling NI Act cases.

These delays may result in injustice to both the complainants and the accused, who may have to suffer prolonged litigation and uncertainty.

With the data we have, we can see below, the time spent in each stage for a typical NACT case.

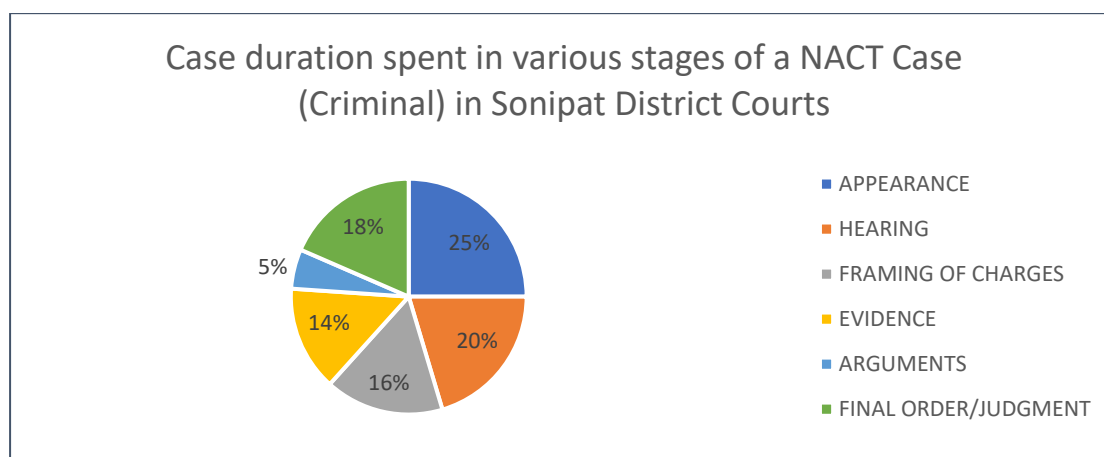


Figure 25: Percentage of total case duration spent in various stages of a NACT Case (Criminal) in Sonipat District Courts

We know that the courts dispose these cases within the time limit specified by the CFM rules. However, let us analyse where we can further save time. From the above chart, we can see that 25% of the time is spent at the appearance stage of the case. This is

perhaps due to non-appearance of the parties in court. It is important that the procedural inefficiencies or loopholes in this stage are addressed. The non-appearance can be due to genuine scheduling issues which involve the public prosecutor and the advocates of the defendant. Once the case goes through the final orders take 18.5% of the case time. This needs to be reduced and it is likely due to the lack of support staff for the judges. We can see that the non-court time of the case takes about 45% of the criminal case. Rather than a blunt macro understanding of delays, with this micro analysis we are better equipped to make policy interventions that are effective and efficient.

A Case for Data Backed Micro Reforms

Thus far, available information concerning case data has primarily been limited to aggregate figures, including the number of pending and disposed cases, and the length of time required for cases to be resolved. However, this data has not provided insight into the inner workings of the "black box" of the legal system, such as how much time each case spends at various stages in its progression. By collecting and analysing this detailed information, it is possible to gain a wealth of knowledge regarding the progression of cases and the points at which bottlenecks arise. In turn, this knowledge can be used to identify the specific resources, processes, or institutions responsible for delays in case progression.

A detailed analysis of the different stages of case progression for various case types has revealed valuable information that is essential for proposing any necessary reforms. By conducting a granular analysis of the time required for each stage, we have been able to identify procedural changes and policy reforms that can have the greatest impact with the least disruption. These suggestions are far more practical and politically feasible than broader, macro-level reforms that involve costly and expansive measures, such as the addition of judges, reductions in vacation time, increased numbers of court rooms, and the hiring of a cadre of court managers or the infusion of technology.

The approach of seeking micro-level reforms through a finely tuned quantitative study of case progression is a novel contribution of this research and has significant implications for other reform efforts.

ॐ पूर्णमदः पूर्णमिदं पूर्णात्पूर्णमुदच्यते ।

पूर्णश्च पूर्णमादाय पूर्णमेवावशिष्यते ॥

- Brihadaranyaka Upanishad

Om! That is infinite, and this (universe) is infinite. The infinite proceeds from the infinite. (Then) taking the infinitude of the infinite (universe), It remains as the infinite alone.