ANALYSING THE DELAY, PENDENCY AND BACKLOG OF CRIMINAL MATTERS IN INDIA IN THE LIGHT OF COVID-19 WITH SPECIAL REFERENCE TO KERALA: AN EMPIRICAL STUDY

A Dissertation submitted to the National University of Advanced Legal Studies, Kochi in partial fulfilment of the requirements for the award of Degree of Master of Laws in Constitutional and Administrative Law

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LIST OF ABBREVIATIONS

&	And
313 EXAM	For Examination of Accused U/S 313 Cr.P.C
82 & 83 PROCL	For Proclamation Under Section 82 And 83 Cr.P.C.
89 CPC	For ADR under Section 89 CPC/ Counseling
ADMSN HEARING APEL	For Admission Hearing of Appeals
AIR	All India Reporter
Anr.	Another
APPEARANCE RELATED	For Appearance of Parties/ Advocates
APPEARANCE	Appearance of Accused
AWAIT ORDER	Awaiting Order From Higher Court
AWAIT RECORD	Awaiting Records
AWAIT REPORT	Awaiting Report
AWAIT SERVICE -SUMN	Awaiting Services of Notices/ Summons
Bom.	Bombay
CHARGE-PLEA	Framing of Charge/ Plea
COGNIZANCE - ISSUE PROCESS	For Issuance of Process / Service/Cognizance
COMPLIANCE	For Compliance
DORMANT	Dormant Cases Formal Listing
Ed.	Edition
EVIDENCE	For Examination of Witnesses
Guj.	Gujarat

HEARING - CHARGE	Hearing Arguments On Charge
HEARING	Interim Hearing / Hearing Applications/Bail
Hon’ble	Honourable
ISSUES	For Issues
JUDGMENT	For Judgment
ORDERS	For Orders
Ors.	Others
SC	Supreme Court
SCC	Supreme Court Cases
SCR	Supreme Court Reporter
Sec.	Section
STAYED BY HC	Stayed By Higher Court
STEPS	For Steps
UOI	Union of India
v.	Versus
Vol.	Volume
WS	For Filing Written Statement

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1. *Ajit Mohan & Ors v. Legislative Assembly National Capital Territory of Delhi & Ors*., WP(C) 1088 of 2020 decided by Supreme Court on 08.07.2021
2. *All India Judges Association v Union of India*, (2002) 4 SCC 247
3. *Ashak Hussain Allah Detha v. Collector of Customs*, 1990 CriLJ 2201 (Bom)
4. *Babu Singh And Ors v. The State Of U.P*, 1978 AIR 527
5. *Bharvada Gohinbhai Hirjibhai* v. *State of Gujarat* (1983) 3 SCC 217
6. *Charles Shobharaj v. Superintendent Tihar Central Jail*, 1978 AIR 1514
7. *Common Cause, a Registered Society v. Union of India,* 1996 (4) SCC 33
8. *Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 SCC 14
9. *Gurbachan Singh v.State of Bombay* AIR 1952 SC 221;
10. *G.X. Francis v. Banke Bihari Singh* AIR 1958 SC 209;
11. *Hussainara Khatoon v. Home Secretary, State of Bihar*; AIR 1979 SC 1369
12. *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors*, AIR 2012 SC 642
13. *In Re Cognizance for Extension of Limitation*, Suo Moto WP(C) No. 3/2020, decided by Supreme Court on 10.07.2020
14. *Kartar Singh v. State of Punjab* (1994) 3 SCC 569
15. *Khatri (III) v. State of Bihar*, (1981) 1 SCC 627
16. *Klopfer v. North Carolina* 386 US 213 (1967)
17. *Machander, Son Of Pandurang v. State Of Hyderabad*, 1955 SCR (2) 524
18. *Madhu Limaye, Re* (1969) 1 SCC 292
19. *Maneka Sanjay Gandhi v. Ram Jethmalani* (1979) 4 SCC 167
20. *Manoj v. State of Madhya Pradesh*, (1999) 3 SCC 715
21. *Neon Laboratories Ltd v Medical Technologies Ltd &Ors,* 2015 SCC Online SC 905
22. *Noor Mohammed v. Jethanand*, (2013) 5 SCC 202
23. *P. Ramchanadra Rao v. State of Karnataka*, [(2002) 4 SCC 578]
24. *R. v. Jordan*, (2016) 1 S.C.R. 631]
25. *Raj Deo Sharma v. State of Bihar* [1998 (7) SCC 507]
26. *Sakshi v. Union of India* (2004) 6 SCALE 15
27. *Shahzad Hasan Khan v. Ishtiaq Hasan Khan & Anr*, 1987 AIR 1613
28. *Shrawam Waman Nade v. State of Maharastra,* 194 Cri LJ 780(Bom)
29. *State of Maharashtra* v. *Champalal* [1982 SCR (1) 299]

30. *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384
31. *Supreme Court Advocates-on-Record-Association and Ors* v. *Union of India* MANU/SC/1183/2015
32. *Surinder Mohan Vikal v. AL Chopra*, (1978) 2 SCC 403
33. *Zahira v. Gujarat* 2006 (3) SCALE 104

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CHAPTER 1

BACKGROUND AND INTRODUCTION

1.1 INTRODUCTION

According to the social contract theory proposed by John Locke, all men are free by nature, and to secure absolute and inalienable rights such as life, liberty, and the property was the state constituted.[1] However, for liberty to be consistent and meaningful, it should be reasonably incorporated in a written document, aligned with the means to realise the same, so that it could be realised effectively in the event of any encroachment.[2] In other words, liberty is meaningless unless there is a law and a means of justice associated with it. Modern Constitutions have regarded due caution to incorporate these principles into their texts or practice, and an independent judicial system was proposed for the purpose. Such a system is also a guard against the arbitrary deprivation liberty by the State and hence, it is often regarded as an indication of the prevalence of constitutionalism. However, the task then encountered was to establish a judicial system in the manner in which people could repose their faith in it such that those people could submit their grievance with confidence.[3] In establishing such a system, the kernel notion underlining throughout is the phrase that 'justice should not only be done, but also seen to have been done'. This 'sight', however, emanating from the aura of confidence and respect placed by the public upon this institution charged with the responsibility of dispensing justice, is an essential pre-requisite. Once this public confidence and respect for the institution is lost, it loses this perception of sight alongside, and the institution becomes subtle as people would not wish to repose the adjudicatory power and their fate upon this institution[4]. Without the aura of public confidence and respect, the vesting of authority may remain, but the judicial function would have squandered.[5] Hence, for the judicial function to put into operation in the manner and for which it is designed, its vindication should be with such a prospect that the public confidence and respect is won by it. Several factors

[1] John Locke, *A Letter Concerning Toleration* 1, 13 (Mark Goldie ed., Liberty Fund, 2010).
[2] Alex Carroll, *Constitutional and Administrative Law* 96 (5th Ed., Lexis Nexis, 2009).
[3] 87. Shetreet, Shimon and Sophie Turenne, *Freedom of Expression and Public Confidence in the Judiciary*, In: JUDGES ON TRIAL: THE INDEPENDENCE AND ACCOUNTABILITY OF THE ENGLISH JUDICIARY, 357–418 (Cambridge University Press, 2013). doi:10.1017/CBO9781139005111.009.
[4] Thomas, Justice, *AM Judicial Ethics in Australia* 9 (LexisNexis Butterworth, 2003).
[5] *Id.*

contribute to the success of the institution backed by public confidence, and respect and accessibility is one such indicator.[6] Accessibility in this context connotes access to justice initiatives, otherwise termed as access to effective means of justice.[7] However, in the effort of establishing and maintaining a sound structure for adjudication, several impediments were tracked down and were attempted to be addressed. For instance, according to Garth and Cappelletti, it was the inadequate representation of economic minorities that got captured in the eyes of the scanner.[8] Attempts to address inadequate representation, however, did not solve the threat, rather exposed another hindrance existing in the form of diffused interest.[9] Solutions carefully knitted, rather exposed to an arena of issues that denies meaningful access for the public to the justice initiatives, in effect, rendering the means for the vindication of rights meaningless.[10] Therefore, when the means of vindication fails, it not only squanders individual liberty but also affects the very existence of the judicial system.[11] A catena of problems contributes to the same, amongst which delay occupies a prominent role.

When inadequacies within the system fail to ensure timely justice, especially when it comes to criminal litigation, the accused is put to severe and irreparable hardships, and on the other hand, victims, mostly having entrusted with the state, the obligation to garland them with the shroud of justice, faces secondary victimisation perpetrated by the slow-paced judicial machinery.[12] Hence, justice delayed is justice denied in another form. When justice is denied, the law becomes toothless and liberty becomes meaningless, questioning the fundamental purpose for which the state is constituted. Embracing the natural law, several United States Constitutions embodies the clause

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[6] *See Supreme Court Advocates-on-Record-Association and Ors* v. *Union of India* MANU/SC/1183/2015.
[7] Patricia Hughes, *Advancing Access to Justice through Generic Solutions: The Risk of Perpetuating Exclusion*, 31(1) WINDSOR YEARBOOK OF ACCESS TO JUSTICE 1 (2013).
[8] Garth, Bryant G. and Cappelletti, Mauro, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective 27 BUFFALO LAW REVIEW 190 (1978).
[9] *Id* at 221.
[10] Patricia Hughes, *Advancing Access to Justice through Generic Solutions: The Risk of Perpetuating Exclusion*, 31(1) WINDSOR YEARBOOK OF ACCESS TO JUSTICE 1 (2013).
[11] *See* Ranjan, Sudhanshu, *Justice versus Judiciary: Justice Enthroned or Entangled in India?* 97 (Oxford University Press, 2019). doi: 10.1093/oso/9780199490493.001.0001.
[12] Anto Sebastian, Albin Anto, *Secondary Victimization of Rape Victims With A Special Reference To Gender Equality: A Critical Study*, 3(2) SOCIAL SCIENCES INTERNATIONAL RESEARCH JOURNAL 79 (2017).

that justice in all cases shall be administered openly and without unnecessary delay.[13] Inspired by the US Constitutions, the Indian Constitution also guarantees the right to liberty as a fundamental right under Art.21.[14] However, its meaningful realisation to ensure timely justice is again impeded by a wide range of issues existing in both latent and patent form. Therefore, this dissertation attempts to highlight the extent to which judicial delay and backlog deprive the accused, of liberty, and victims, of justice.

1.2 NEED AND SIGNIFICANCE

Hon'ble Supreme Court of India, in *Arnab Manoranjan Goswami* v. *Union of India*[15], observed that liberty is not a gift for the few. A closer perusal of statistics, however, indicates large instances of criminal matters, whose disposal being delayed, raising the volume of backlogs year by year.[16] These matters, if disposed of in a timely manner, should have awarded the gift of personal liberty to many less privileged accused persons behind the bars.

In the context of this dissertation, the term 'criminal matters' means and includes criminal cases, criminal appeals, bail applications and criminal miscellaneous applications- filed in the subordinates courts in India. Subordinate courts, in this context, is strictly confined to courts ranging from the lowest forum having jurisdiction to entertain a criminal matter to the Principal Sessions Court in each state. Though there is not a precise enumeration as to the definition of delay and backlog, the Law Commission of India, in its 245th report prepared in response to the questions raised as to the definitions, terms delay as "*a case that has been in the Court/judicial system for longer than the normal time that it should take for a case of that type to be disposed*

[13]Arkansas Const. Art 11 § 13; Colorado, Constitution Art 2 § 6; Connecticut, Constitution Art 1 § 10; Delaware, Constitution Art 1 § 9; Florida, Const. Art 1 § 21; Idaho, Const. art 1 § 18; Indiana Const. art 1 § 12; Kansas, Const. Bill of Rights § 18; Kentucky, Const. § 14; Louisiana Const. art 1 § 22; Maine Const. art 1 § 19 and § 20; Massachusetts, Const. art XI; Minnesota Const Art 1 § 8; Missouri, Const Art II § 14; Montana, Const. Art. II § 16; Nebraska Const. Art 1 § 13; New Hampshire Const Bill of Rights § 14; North Carolina, Const. Art 1 § 18; North Dakota Const. Art. 1 § 16; Ohio Const 1 §16; Oklahoma Const Art II § 6; Oregon Const. Art. 1 § 10; Pennsylvania Const. Art. 1 § 11; Rhode Island Const. Art 1 § 5; South Carolina Const. Art. 1 § 9; South Dakota Const. Art VI § 20; Tennessee Const. Art 1 § 17; Utah Const. Art. 1 § 11; Vermont Const. Ch. 1 Art. 4; Washington Const. Art. 1 § 10; West Virginia Const. Art. III § 17.

[14] Art. 21. Protection of life and personal liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law.

[15] Criminal Appeal No. 742 of 2020 (Arising out of SLP (Crl.) No. 5598 of 2020) decided by on 27th November, 2020.

[16] *See Infra* Ch. 3.

of".[17] It also defines backlog as *"When the institution of new cases in any given time period is higher than the disposal of cases in that time period, the difference between institution and disposal is the backlog. This figure represents the accumulation of cases in the system due to the system's inability to dispose of as many cases as are being filed."*[18] Further, it advocates Practical Assessment Approach over Normative Assessment Approach to study the time frame within which the cases could be disposed. When Normative Assessment Approach fixes a stipulated time frame above which, the prolonging is categorised as delay, Practical Assessment Approach, rather than fixing a specific time frame, permits a relative assessment of the time frame taken by multiple Courts, and traces out, the Courts that spent more significant time and resources in disposing of a matter. This dissertation, for the time being, accepts these definitions and standards verbatim.[19]

Proceeding in such a line, a deeper analysis of the data available on the National Judicial Data Grid (NJDG), a platform managed by the e-committee of Supreme Court, clearly indicates the existence of vast instances of relative variation in the time span taken by Courts, extending from 1 day to more than 30 years, causing severe backlogs in some jurisdictions. Law Commission and other governmental and non-governmental agencies have attempted to trace the extent of delay and backlogs and could propose several causes and solutions to tackle the delay crisis.

Skimming through the Law Commission Reports that attempted to study the crisis of delay, backlog and arrears, six reports since 1958, viz., 14th,[20] 77th,[21] 78th,[22] 120th,[23] 121st,[24] and 245th[25] Reports identify the lack of judicial strength as the prime causation.

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[17] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 3 (Ministry of Law, Government of India, 2014).
[18] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 3 (Ministry of Law, Government of India, 2014).
[19] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 3-4 (Ministry of Law, Government of India, 2014).
[20] Law Commission of India, *14th Report of the Law Commission of India on Reform of Judicial Administration, Vol. I*, 129-160 (Ministry of Law, Government of India, 1958).
[21] Law Commission of India, *Seventy-seventh Report on Delay & Arrears in Trial Courts*, 49-61(Ministry of Law, Government of India, 1978).
[22] Law Commission of India, *Seventy-eighth Report on Congestion of Under-Trial prisoners in Jails*, 12-17 (Ministry of Law, Government of India, 1979).
[23] Law Commission of India, *120th Report on Manpower Planning in Judiciary: A Blueprint*, 2 (Ministry of Law, Government of India, 1987).
[24] Law Commission of India, *121st Report on A New Forum for Judicial Appointments*, 14-23 (Ministry of Law, Government of India, 1987).
[25] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 1-2 (Ministry of Law, Government of India, 2014).

This finding was also supplemented by Satish Chandra Committee Report in 1986[26], Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)[27] in 1990 and Malimath Committee Report on Reforms of Criminal Justice System in 2003[28]. Report of the National Commission to Review the Working of the Constitution[29] in 2002 also gave equal weightage to the infrastructural shortcomings. Report of the Working group for the 12th Five Year Plan (2012-2017) prepared by Department of Justice in 2011, however, besides infrastructural requirements, more systematically highlights few other points for consideration including lack of adequate standard to measure performance, and lack of alternative means to handle less grievous matters.[30]

Study conducted by Supreme Court Committee in 2006, titled '*Subordinate Courts of India: A Report on Access to Justice'* made an attempt to pull out reasons for long pending litigation in subordinate Courts in India, following a resolution passed by the Joint Conference of Chief Justices of Supreme Court and High Courts. The Committee pursued existing data as on 31.12.2015, 30 relevant documents including reports furnished by various committees and law commission over the years, plan of action and resolutions to conclude that the infrastructural requirement including shortage of court halls, inadequate court staff and huge disparity between the vacancies and working strength of judicial officers are prime causes for delay and backlog of cases in the subordinate judiciary.[31]

Daksh India Report titled '*State of the Indian Judiciary*' published in 2016, after having prepared its own database of pending cases across the country, however, identifies the lack of time frame in disposal as the major cause for the increasing delay.

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[26] Satish Chandra Committee, *Report of Satish Chandra Committee* (Government of India, 1986).
[27]Justices VS Malimath, PD Desai, and AS Anand, *Report of The Arrears Committee (Three Chief Justices Committee : Kerala, Calcutta & Madras)*, 54-69 (1989-90).
[28] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government Of India, Ministry of Home Affairs Report (Volume I)*, 133-145 (Ministry of Home Affairs, Government of India, 2003).
[29] Department of Justice, *Report of the Working group for the 12th Five Year Plan (2012-2017)* (Ministry of Law & Justice, Government of India, 2011).
[30] Department of Justice, *Report of the Working group for the 12th Five Year Plan (2012-2017)* (Ministry of Law & Justice, Government of India, 2011).
[31]*Subordinate Courts of India: A Report on Access to Justice* (Mar. 20, 2021) https://main.sci.gov.in/pdf/AccesstoJustice/Subordinate%20Court%20of%20India.pdf

The observation emanated from the varying number of adjournments granted in similar kind of matters by courts in different states.[32]

"*Justice India Report-2019*" released by Tata Institute of Social Sciences, also proceeds on the same line of findings of Supreme Court Committee to place the blame on infrastructural shortcomings,[33] manpower requirements,[34] increasing workload for judicial officers[35] and lack of adequate budgetary allocation.[36]

A number of committees, earlier, appointed by the Government to identify its causes could figure out non-appearance of witnesses,[37] inadequate witness protection scheme,[38] ineffective service of summons,[39] inadequate judge strength,[40] flawed case management,[41] infrastructural shortcomings[42] and frequent adjournments[43] as factors impeding speedy trial. Several policy reforms were suggested; however, Kerala opted to curb its ever-mounting tally of pending cases, with its fragmented implementation and an apathetic approach. It was when these factors reigned, transcending the limitations placed, pandemic threatening to shattered even the existing structure in to a state of flux.[44] In such a state of affairs, with restrictive policies in place, a statistical analysis accompanied by an empirical study is necessary to be conducted amongst the members of the Bar and the Bench to understand how the lingering legal system in an attempt to balance right to health with access to justice, fared during the COVID-19

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[32]Harish Narasappa Shruti Vidyasagar (Ed.), *State of the Indian Judiciary- Report)* (March 16, 2021) https://dakshindia.org/state-of-the-indian-judiciary/00_cover.html .

[33] Vidhi Centre for Legal Policy, *India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid*, 70 (Tata Trusts, 2019)

[34] *Id* at 105

[35] *Id* at 67

[36] *Id* at 61

[37] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. II*, 780 (Ministry of Law, Government of India, 1958).

[38] Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes*, 75 (Ministry of Law, Government of India, 1978).

[39] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. II*, 780 (Ministry of Law, Government of India, 1958).

[40] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 47 (Ministry of Law, Government of India, 2014).

[41]Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 142 (Ministry of Home Affairs, Government of India, 2003).

[42] Department of Justice, *Report of the Working group for the 12th Five Year Plan (2012-2017)* (Ministry of Law & Justice, Government of India, 2011).

[43] Law Commission of India, *78th Report on Congestion of Under Trial Prisoners in Jail*, 15 (Ministry of Law, Government of India, 1978).

[44] Tata Trust, India Justice Report (March 16, 2021). https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf .

phase. By COVID-19 phase, this dissertation for the purpose of study, however, means a period ranging from 01/04/2020 to 30/06/2021. The study intends to uncloak the gaps and lassitude in the policies adopted so far by the state to foster speedy trial, and its impact on with criminal justice system. Apart from the same, the study, focusing on the problems with the criminal justice system, with the aid of empirical study, further explores the emergence of fresh causes contributing towards the clogging of criminal cases and attempts to draw out a normative framework to address the same. Further, as inadequate judicial strength still remains a primordial cause for delay of cases in a plethora of cases since 1958,[45] it is pertinent to verify its current relevance and if relevant, to analyse the impact caused by the pandemic to the judicial workforce in Kerala.

Since delay and backlog possess several concerns, it warrants immediate redressal of the trust bestowed upon the judiciary by the people to remain intact. Since more frequent and manifest infringement of personal liberty is associated with criminal cases, this dissertation categorically analyses the extent to which the delay and backlogs affect access to justice and personal liberty, explicitly focusing on criminal matters.

1.3 STATEMENT OF PROBLEM

The time frame taken for the dispensation of justice in criminal matters in several jurisdictions across the states within the country varies widely. Amidst the crisis, COVID-19 aggravated the backlog crisis throwing everything into a state of flux. It demands a detailed revisit on the reasons identified and solutions framed so far and its relevance in the context of the delay and backlogs crisis in criminal matters that emerged anew.

1.4 OBJECTIVES

1. To examine the extent to which pendency, delay and backlogs of criminal matters in Kerala serve as an impediment to access to justice and affects personal liberty during the pre-COVID phase form 01/01/2015 to 31/03/2020 and COVID phase from 01/04/2020 to 30/06/2021.

[45] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* (Ministry of Home Affairs, Government of India, 2003).

2. To re-examine the relevancy of reasons identified and solutions formulated in the context of the crisis caused by COVID-19.
3. To find out and suggest other relevant causes and solutions, if any, as an impediment to access to justice and delay in the dispensation of justice.

1.5 SCOPE OF THE STUDY

The extent of this study is inside the ambit of criminal matters in subordinate courts and deals with the delay crisis in various states in India. Due to the inadequacy of data, the study is limited to the analysis of data over a period of the past five years ranging from 2015 to 2020. This dissertation also studies delay and backlog by categorically dividing criminal matters into sessions cases and warrant or summons cases. For the purpose of identifying the reasons for the delay since the advent of COVID-19, owing to the constraints of pandemics, this dissertation limits the study to the courts within Kerala.

1.6 LIMITATIONS

Due to the limitations of COVID-19 to conduct an exhaustive empirical study, the result of the study is used as an indicative result to support the findings arrived at through the doctrinal study rather than taking it as conclusive result in itself. Due to the restrictions of COVID-19 that were in place, causing difficulty in collecting large samples from across the state, the sample size is also kept at the minimum. Owing to the limitations of COVID-19 the reasons enumerated are not placed as conclusive rather is a suggestive indication of the existence of several causes that have egregiously contributed to the crisis of backlog, delay and pendency.

1.7 HYPOTHESIS

The time frame taken by several states in disposing of criminal matters vary widely from regular pattern to impede access to justice and affects personal liberty, and COVID-19 has nullified the countermeasures taken so far and increased the extent of backlogs in those respective states.

1.8 RESEARCH QUESTIONS

1. Whether there has been an increase in the categorical criminal matters in Kerala awaiting disposal over the Pre-COVID Phase?

2. Whether there has been an increase in the backlog creation rate of categorical criminal matters in Kerala over the Pre-COVID Phase?
3. What is the extent of relative- stage-wise- delay in subordinate criminal courts in Kerala?
4. What would be the impact of COVID-19 in causing delay and backlogs of criminal matters from 01.04.2020 to 31.12.2020 in Kerala?
5. What would be the pendency clearance time required by the subordinate judiciary to dispose of backlogging criminal cases as of 31.12.2020 in Kerala?
6. Whether the reasons cited so far for delay and backlog still holds good in Kerala in the context of the COVID crisis?
7. What solutions could be adopted in curbing the delay and backlog crisis in Kerala?
8. What would be the additional number of judges required to clear the backlogs in Kerala created as of 31.12.2020?

1.9 RESEARCH METHODOLOGY

The method of study will include both doctrinal and non-doctrinal approaches Original materials are accessed and analysed. Much of the material is gathered through the internet from the Official Websites of the Government of India, various Ministries and International Organizations and NGO's. The data and materials are collected from books, journals, reports and various documents relevant to the research. Data could also be obtained through RTI. Throughout the study, content analysis is undertaken for data collection. To identify the reasons for the delay questionnaires could be supplied to the judicial officers in person. The research work is purely analytical.

1.10 CHAPTERISATION

I. **Background and Introduction**

   This chapter gives an account of the need and significance of the study. The problem, objectives, hypothesis and research questions are also set out in this chapter. An account on the scope and limitation of the study is also provided in this chapter.

II. **Analysis of the Preventive Framework and its Impact on Backlogging and Delaying of Criminal Cases in India**

In this chapter, a detailed analysis on right to speedy trial and the consequences of its infringement upon the victim and the accused are made. The researcher attempts to trace out the existing preventive framework to curb the crisis of delay. Recommendations made by various committees appointed by Government overtime, including Law Commission of India, are also discussed.

III. Assessing Pendency, Delay And Backlog

In this chapter an attempt is made bring out a statistical analysis of the criminal cases that are pending and disposed. The delay in disposal of cases is calculated using Practical Assessment Approach. Pendency as well as backlog creation rate of criminal cases could also be drawn out. From these data, using the methods, elaborated by Law Commission of India, pendency clearance rate is calculated.

IV. Exploring Reasons for Delay, Backlog and Pendency

This chapter mainly focuses on identifying the reasons for the backlog, delay and pendency, with the help of empirical study. Owing to the limitations of COVID-19 the reasons enumerated are not placed as conclusive rather is a suggestive indication of the existence of several causes that have egregiously contributed to the crisis of backlog, delay and pendency.

V. Conclusion and Recommendation

This chapter concludes the study and places several recommendations to curb the crisis, with the help of empirical study. Recommendations made are also suggestive in nature.

1.11 REFERENCES

1. Law Commission of India, Reforms in the Judiciary: Some Suggestions, Report No.230,(January 2009)
2. Law Commission of India, Arrears and Backlog: Creating Additional Judicial (Wo)manpower, Report No.245 (July 2014)
3. Report of the Law Commission of India (Report No. 230) on Reforms in the Judiciary - Some Suggestions, 36 COMMW. L. BULL. 609 (2010).
4. Barry Walsh, *Judicial Productivity in India*, 1 IJCA 23 (2008).
5. Shivam Kaushik & Anushri Singh, *All India Judicial Services: Problems and Prospects*, 11 NUJS L. REV. 519 (2018).

6. Dushyant Mahadik, Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra, January 2018, available at https://doj.gov.in/sites/default/files/ASCI%20Final%20Report%20Page%20641%20to%20822.pdf
7. Allan, T. R. S. *Law, Liberty, and Justice: The Legal Foundations of British Constitutionalism*. (Oxford University Press, 1994)

1.12 LITERATURE REVIEW

Sudhir Krishnaswamy, Sindhu K Sivakumar & Shishir Bail in their article, '*Legal and Judicial Reform In India: A Call For Systemic and Empirical Approaches*',[46] questions the finding that the shortage of subordinate judges alone constitutes the delay crisis. The article written primarily to question the viability of the promise to reduce delay of cases by doubling the number of judges, criticises that the omnibus solution to the issue at the national level is of no assurance that the crisis would be resolved. Instead, authors points to the need to have a localised solution to the crisis, as the extend of delay varies from state to state and region to region. However, the authors are also mindful of the inadequacies of reliable data that could defeat the approach.

Jayanth K. Krishnan & C. Raj Kumar, in their article, '*Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*'[47] compares and attempts to draw parallel between the judicial process in United States and India in terms of delay in disposing of the cases and advocates for the need to have speedy trial. In the process, the authors trace down the jurisprudential evolution of the concept of speedy trial in United States and relates it to the development of the concept in India. The article beautifully brings into picture, judicial activism in 1970s to ensure speedy trial to the decision in *Imtiaz Ahamed*.

Srikrishna Deva Rao, '*Expediting the Delivery of Criminal Justice: Imtiyaz Ahmad and Beyond*'[48] begins from where Jayanth K. Krishnan & C. Raj Kumar concludes. This article illustrates how the decision in *Imtiaz Ahamed*, attempted to check the trail

[46] Amanda J. Perry, *The Relationship between Legal Systems and Economic Development: Integrating Economic and Cultural Approaches*, 29 J.L. & Soc'y 282 (2002).
[47] Jayanth K. Krishnan & C. Raj Kumar, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, 42 GEO. J. INT'l L. 747 (2011). https://www.repository.law.indiana.edu/facpub/155
[48] Srikrishna Deva Rao, *Expediting the Delivery of Criminal Justice: Imtiyaz Ahmad and Beyond*, 1 J. NAT'l L. U. DELHI 106 (2013).

of delay in criminal justice. The article also attempts to picture some of the causes for delay, and how the delay impacts the lives of the undertrial prisoners. The authors also elaborate as to how court culture and adjournments contribute to the delay crisis.

Rejecting the scope of comparative analysis to identify the issues of judicial delay and backlog, Barry Walsh in *Judicial Productivity in India*[49] says that the solution must be identified after exhaustively running through the Indian situation. In the process, the author identifies that the judicial productivity is seriously hampered by the lack of manpower as well as infrastructural short comings. The author, however, makes some unique analysis into how the unpopularity of criminal pleas (instances where accused pleads guilty before the commencement of the trial) in India and subsequent surge of criminal cases contributes the crisis. Procedural unfamiliarity in India in conducting continuous trial and adjournments are also discussed at length.

Shivam Kaushik & Anushri Singh in *All India Judicial Services: Problems and Prospects*[50], contends that the unsystematic and non-uniform procedure for appointment, transfer and promotion stands as an impediment in tackling the crisis of judicial delay and backlog. To assert the contention, the authors, study the shortage of judicial members at various states and tries to picture a modified version of All India Judicial Service as a possible solution in addressing the judicial backlog and delay.

Yashomati Ghosh in *Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency*[51] has made an exhaustive approach to study the committee reports that have come up since 1924 addressing the judicial delay and backlog in India. The author also attempts to pinpoint the causes for its persistence and list down 31 of them. The article further examines the viability of implementing some of the solutions proposed to address this crisis.

[49] Barry Walsh, *Judicial Productivity in India*, 1 IJCA 23 (2008).
[50] Shivam Kaushik & Anushri Singh, *All India Judicial Services: Problems and Prospects*, 11 NUJS L. REV. 519 (2018).
[51] Yashomati Ghosh, *Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency*, 5 ASIAN J. LEGAL EDUC. 21 (2018).

CHAPTER II

ANALYSIS OF THE PREVENTIVE FRAMEWORK AND IMPACT OF BACKLOGGING AND DELAYING OF CRIMINAL CASES IN INDIA

2.1 INTRODUCTION

Access to justice in common parlance means, access to fair, speedy and satisfactory means of justice. Amongst all the equally important limbs, speedy trial of cases is one of the most desirable aspect in a litigation and more particularly in criminal litigation. Though it is said that the justice hurried is justice buried, on the flip side, justice denied defeats justice. Speedy trial, literally means that the accused in a given case, is tried before a competent authority within a reasonable period. Therefore, the expectation out of this phrase is a balance of speed and justice.[52] It is also in the interest of the state as well as the individual, to ensure that trial in criminal cases is completed in a reasonable period that the rights and obligations would be given certainty and definitiveness.[53]

Right to speedy trial has its origin in the English law.[54] Origin of right to speedy trial could well be traced in *Assuze of Claredon* during the reign of Henry II.[55] This right was given a more concrete structure in Magna Carta.[56] Sir Edward Coke, elaborating on Chapter 29 of Magna Carta, further stated that every subject, when an injury is done to him may take recourse to law, and justice will be served without sale, denial and delay.[57] Virginia Declaration of Rights in 1776, declared that a man has the right to a speedy trial.[58] Bill of Rights and Petition of Rights, also indirectly incorporates the right to speedy trial. Right to speedy justice was one of the most cherished rights even

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[52] SN Sharma, *Fundamental Right to Speedy Trial- The Judicial Experimentation*, 38(2) JOURNAL OF INDIAN LAW INSTITUTE 236 (1996)

[53] Law Commission of India, *14th Report on Reforms of Judicial Administration,* Vol. I, 129 (Ministry of Law, Government of India, 1958)

[54] *Klopfer v. North Carolina* 386 US 213 (1967)

[55] FW Maitland, LL.D., *The Constitutional History of England*, 12 (Cambridge University Press, 1919)

[56] Magna Carta Chapter 40.- *"We will sell to no man, we will not deny or defer to any man either justice or right*"

[57] Darren Allen, *The Constitutional Floor Doctrine and the Right to Speedy Trial*, 26 CAMPBELL L. REV. 101, 103(2004)

[58] Section 8 of Virginia Declaration of Rights

> *"*That in all capital or criminal prosecutions a man has a right to demand the cause and nature of his accusation, to be confronted with the accusers and witnesses, to call for evidence in his favor, and to a speedy trial by an impartial jury of twelve men of his vicinage, without whose unanimous consent he cannot be found guilty; nor can he be compelled to give evidence against himself; that no man be deprived of his liberty except by the law of the land or the judgment of his peers."

in the history and is underlined by its explicit incorporation of the later day, particularly common law Constitutions.[59] As stated in before, in United States, most of the states confer the right to speedy trial in direct or indirect manner. Further, the United States, by Virtue of Speedy Trial Act, 1974, has enacted a legislation to give effect to the Constitutional guarantee provided under the Sixth Amendment. Provisions for right to speedy trial could also be seen the other common law jurisdiction such as Canada and New Zealand. However, Australian Constitution does not expressly recognise this right.

2.2 RIGHT TO SPEEDY TRIAL AND CONSTITUTION OF INDIA

Right to speedy trial, unlike United States and other common law jurisdictions, though not engraved in the Constitutional text, is firmly embedded in the roots and ideals purported to be exhibited by the Constitution. In order to keep the fundamentals of rule of law intact, it is vital that the virtues of justice rule supreme.[60] However, fundamentals of justice, rests in the speedy adjudication of disputes by the courts of law. Any delineation from the moral obligation to render quality justice so cast upon the judiciary, creates a dent in the perception of justice, reverence, nobility and the sense of divinity that would otherwise flow from the institution. Such a loss would hamper rule of law and put constitutional ideals at stake. As stated in *Charles Shobharaj v. Superintendent Tihar Central Jail*,[61] for the parrot cry of discipline for not to deter security, not to scare discretion, and not to dissuade the judicial process it is incumbent that *'whenever Fundamental rights are flouted or Legislative protection ignored, to any prisoner's prejudice'*, the court has to interfere, *'breaking through stone walls and iron walls, to right the wrong and restore the rule of law'*.[62] Therefore, to ensure that the rule of law is upheld and the public confidence on the institution is to be held strong, it is to be vital that any instance that would subvert the rule of law and make rights meaningless is addressed at the right timeframe, in the right manner and delay is one such instance. Therefore, for rule of law to remain intact with the

[59] Constitutions of United States, New Zealand and South Africa specifically incorporates right to speedy trial as a right, whereas by virtue of American Convention of Human Rights and European Convention of Human Rights, it extends to various other commonwealth countries that have assented to it.
[60] *Noor Mohammed v. Jethanand*, (2013) 5 SCC 202
[61] 1978 AIR 1514
[62] *Charles Shobharaj v. Superintendent Tihar Central Jail*, 1978 AIR 1514

democratic spirit held high, the 'endemic' of delay has to be treated at the right time with the right medication.[63]

Further as stated by Justice VR Krishna Iyar interpreting Article 38(1), speedy justice is an essential component of social justice, particularly speaking from the perspective of criminal justice.[64] Social justice, in the modern context, strives to ensure access to justice for all. When people decide to vindicate their right to prosecute a wrongdoer under the voluntariness and auspices of the state, social justice hence means treating them within the system in a fair and just manner[65] and towards the end producing results that are socially and individually just. Society urges to treat criminals being condignly punished and innocent being allowed to wield their full freedom that they are ought to enjoy.[66] Need to strike such a balance is well evident in *Machander v. State of Hyderabad*, where the Supreme Court, refusing to remand the case back to the trial court for a fresh trial owing to the long pendency between the commission of the offence and the hearing at the Supreme Court, observed that

"*We are not prepared to keep persons on trial for their life and under indefinite suspense because trial judges omit to do their duty. We have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape, it is even more necessary to see that the person accused of crimes are not indefinitely harassed .... While every reasonable latitude must be given to those concerned with the detection of crime and entrusted with administration of justice, but limits must be placed on the lengths to which they may go."*[67]

Therefore, state volunteering to act acting on behalf of the victim in the process not only safeguards the interest of the victim or its family rather that of the community as a whole and is ought to produce just result to the accused as well.[68] Further the quality of justice, as stated by Malimath Committee on Reforms of Criminal Justice, depends not only the determination of guilt but also on the timeliness at which the decision is

[63] *Neon Laboratories Ltd v Medical Technologies Ltd &Ors*, 2015 SCC Online SC 905.
[64] *Babu Singh And Ors v. The State Of U.P*, 1978 AIR 527.
[65] S Muralidhar, Law, *Poverty and Legal Aid: Access to Criminal Justice*, (LexisNexis Butterworths, 2004).
[66] *Babu Singh And Ors v. The State Of U.P*, 1978 AIR 527.
[67] *Machander, Son of Pandurang v. State Of Hyderabad*, 1955 SCR (2) 524.
[68] *Shahzad Hasan Khan v. Ishtiaq Hasan Khan & Anr*, 1987 AIR 1613.

rendered.[69] The 'slow motion syndrome'[70] thus hampers the expectation of the society of the fairness within the system and more frequent its happening, turns out detrimental to the effective realisation of the social justice. Any failure from the part of the state, even in a single case, blatantly infringes the personal liberty of the accused and puts victims to face the wrath of secondary victimisation emanating out of the same. Besides, the requirement of justice to the exclusion of aforesaid mishaps, is a primary morality of justice[71] and an expression of natural law in the form of fairness that is inseparably associated with the justice delivering process. Hence, even when it is contended that the right to speedy justice is not specifically enumerated in the texts of the Constitution, it inherently runs along with the procedure. Such an existence, on the flip side, places a duty upon the State, which is acting as guardian of fundamental rights, to ensure victims of callousness of the legal and judicial system[72] its effective realisation and to avoid inordinate delay in criminal cases attempting to guillotine any consequent miscarriage of justice at its root. However, judicial alertness, paved way for extending Article 21 to bring right to speedy justice within its ambit. Inconsequent of it being the fulcrum of judiciary,[73] especially in criminal matters, it remains attached to Article 21, as an indivisible component.[74] Clarifying what speedy trial essential means, the Supreme Court, in *Maneka Gandhi v. Union of India,*[75] was held it to be a reasonably expeditious trial. In *All India Judges Association & Ors. v. Union of India & Ors.*[76] it was held by the Supreme Court that "*it is our constitutional obligation to ensure that the backlog of cases is decreased, and efforts are made to increase the disposal of cases."*

2.3 PERSONAL LIBERTY AND RIGHT TO SPEEDY TRIAL

According to AV Dicey, "*personal liberty, as understood in English law, means in substance a person's right not to be subjected to imprisonment, arrest, or other physical coercion in any manner that does not admit of legal justification*".[77] However,

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[69] Justices VS Malimath, PD Desai, and AS Anand, *Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)*, 13 (1989-90).
[70] *Babu Singh And Ors v. The State Of U.P*, 1978 AIR 527.
[71] *Noor Mohammed v. Jethanand*, (2013) 5 SCC 202.
[72] *Hussainara Khatoon v. Home Secretary, State of Bihar*; AIR 1979 SC 1369.
[73] *Noor Mohammed v. Jetha Nand & Anr* (2013) 5 SCC 202.
[74] *Hussainara Khatoon v. Home Secretary, State of Bihar,* AIR 1979 SC 1369; *Ajay Kumar Choudhary v. Union of India Through Its Secretary,* AIR 1979 SC 1369.
[75] AIR 1978 SC 597.
[76] AIR 2002 SC 1752.
[77] A.V. Dicey, *Law of Constitution*, 207-208 (10th ed, 1962).

shift in focus from the negative aspect of to the positive aspects, spread the legal and moral force of the concept wide. Now, worth and dignity of the individual is placed at the heart of 'personal liberty'[78] and is viewed as an integral right that would make the enjoyment of other right meaningful.[79] Article 21 of the Indian Constitution precisely underscores that life and personal liberty shall be infringed except by procedure established by law and by virtue of *Maneka Gandhi v. Union of India,*[80] the procedure so prescribed should be, just, fair and reasonable. For an accused the actual restraint begins from the *arrest and consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision.*[81]Accused, being dragged into a trial, to get out of this restraint and for the meaningful retention of his good name and full realisation of personal liberty, it is of utmost importance that a speedy trial is afforded to him. It was further stated in a plethora of cases that the inadequacy of resources for the State shall not be cited as an excuse.[82] However, inordinate delay, admittedly still prevails and, in turn delays the right so curtailed and any restraint so imposed for a time frame than actually, it is necessary and over a period within which it could have been effectively addressed, renders the procedure so followed unjust, unfair and unreasonable. In *Hussainara Khatoon v. Home Secretary, State of Bihar*,[83] it was held that '*no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just.'* Justice PN Bhagawati's observation in *Kadra Pahadiya v. State of Bihar*,[84] on the fate of prisoners who are victims of inordinate delay acquires greater significance:

"They are still rotting in jail, not knowing what is happening to their case. They have perhaps reconciled to their fate, living in a small world of their own cribbed, cabined and confined within the four walls of the prison. The outside world just does not exist for them. The Constitution of India has no meaning and significance, and human rights no relevance for them."

[78] AIR. 1950 SC.27.
[79] W. Paul Gormley, *The Emerging Dimensions of Human Rights: Protection at the International and Regional,* 17 BANARES L.J. 1 (1981).
[80] AIR 1978 SC 597.
[81] *Kartar Singh v. State of Punjab* (1994) 3 SCC 569.
[82] *Hussainara Khatoon v. Home Secretary, State of Bihar,* AIR 1979 SC 1369; *Ajay Kumar Choudhary v. Union of India Through Its Secretary,* AIR 1979 SC 1369.
[83] AIR 1979 SC 1369.
[84] AIR 1997 SC 3750.

Any chord that restricts a procedure from being fair, just and reasonable therefore, creates, a likely victim in the form of personal liberty, thus falling foul of the most cherished human right guaranteed under Article 21. Any deprivation of the personal liberty of the accused by way of imprisonment for such long period would further aggravate the situation. Underscoring the same, Sixth Amendment to United States constitution, in explicit terms, specify that for a trial to be fair, it has to be completed with a speedy nature.[85]

In crystalising and structuring the right to speedy trial, *Hussainara Khatoon v. Home Secretary, State of Bihar*,[86] occupies a prominent position. Declaring right to speedy trial as a fundamental right and explicitly stating that '*no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just',* this decision could tilt the criminal jurisprudence to an angle that could shed light of hope on the creeping violations of arbitrary infringement of rights of the accused as well as that of the victim. *Abdul Rahman Antulay v. R.S. Nayak*[87], later addressed the gaps then existed, crystallised and gave a concrete structure to the right to speedy trial and its vindication. Elaborating on the then existing position, Supreme Court added pressure to the delay tactics employed by the State in prosecution, it was held that inordinate delay may be taken as the proof of prejudice. Stating in classical words that '*prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, depends upon the facts of a given case*'[88] a genuine attempt was made to curb the delay tactics from that end. Significantly it was added that the accused cannot be denied speedy trial solely for the reason that he did not demand a speedy trial. Further, it was made clear that any objection concerning the denial of right to speedy trial should first be addressed to the High Court and priority should be granted in disposing of the objections. However, High Courts are barred to stay the proceedings, except in a case of grave and exceptional nature. Construing the right to speedy justice as emanating from Articles 14, 19 and 21, Supreme Court of

[85]Sixth Amendment states as follows:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

[86] AIR 1979 SC 1369.

[87] 1988 AIR 1531.

[88] See also *Raj Deo Sharma v. State of Bihar*. 1998 (7) SCC 507.

India in *P. Ramachandra Rao v. State of Karnataka*[89], held that the constitutional obligation of the state to ensure speedy trial cannot be denied by citing the inadequacy of funds or resources and is no valid defence for the infringement of right emanating from Articles 14, 19 and 21 as well as Preamble and directive principle of state policy.

Addressing the plight of poor and languished held up in jail being unable to execute bail bonds and accused waiting for their trials for long periods in minor cases, the Supreme Court in *Common Cause, a Registered Society v. Union of India*[90] further issued guidelines to reduce the pendency and to prevent such pendency from being operating as an engine of oppression. The guidelines mainly classified various offences and stipulated the discharge or acquittal of accused in these cases, in the event of delaying of trial.[91]

[89] (2002) 4 SCC 578.
[90] (1996) 4 SCC 33.
[91] Guidelines issued in *Common Cause, a Registered Society v. Union of India*, 1996 (4) SCC 33 are as follows:

> (1) Where the offence under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding three years with or without fine and if the trial for such offences are pending for one year or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused on such conditions as may be found necessary.
> (2) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding five years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be found necessary.
> (3) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding seven years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be suitable in the light of Section 437, of Code of Criminal Procedure.
> (4) Where criminal proceedings are pending regarding traffic offences in any criminal Court for more than two years on account of non-serving of Summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close the case.
> (5) Where the cases pending in Criminal courts for more than two years under Indian Penal Code or any other law for the time being in force are compoundable with the permission of the Court and if in such a case trials have still not commenced, the Criminal Court shall, after hearing the public Prosecutor and other parties or their representatives before it, discharge or acquit the accused, as the case may be, and close the case.

2.4 DELAY OF CRIMINAL CASES AND SECONDARY VICTIMISATION OF VICTIMS

Secondary victimisation often sprouts from various intersecting factors. Human life is complex and multidimensional and are shaped by various other intersecting and interacting factors. It includes class, gender, caste prejudice, patriarchal norms, literacy, politics, economic deprivation, religion, family honour, social taboos, etc. If, a victim living in a contemporary society, if could still vindicate its rights, both factually and legally without any interference as before, it must be such that, the net result of all the abovesaid factors intersecting and intersecting is positive in nature and is in favour of victim. However, if some of these factors begin to act unfavourably while interplaying with the delay crisis, especially in criminal cases, they *interact and mutually transform one another*[92], to deprive the victim, mostly, de facto, of certain most cherished basic rights, thus constituting secondary victimisation. In other words, these factors, while intersecting and interacting with delay crisis and other positive or non-negative factors associated to it, has got the potential to transform those factors into negative factors, thereby constituting a range of factors unfavourable for a victim. This in turn produces a negative effect and contributes to secondary victimisation. For example, a victim of rape, if tends to react, immediately some of these factors including gender bias, patriarchal norms, political pressure, that at least remained non-negative, get activated and transform into a negative state and tend to restrict her vindication of her rights as she could do it before. This state of affairs mostly continue to exist, until, the allegation she raises is proven judicially. The oppressions arising out of intersection of two or more factors[93] continue to interact in varying proportion until the disposal of the case to her favour. More the time the system consumes for its final disposal, greater is duration for which the socio-cultural issues continue to restrict her in vindicating her rights as before.

Dealing with secondary victimisation through this perspective, it can be identified that, there exists several dangerous intersections and interactions which poses serious threats to the vindication of rights of the victim to the fullest. Once an injustice is

[92] Claudia Aradau, Jef Huysmans, Andrew Neal, Nadine Voelkne, *Critical Security Methods: New Frameworks for Analysis* 75 (Routledge Publishers, 2015)
[93] Crenshaw, K.W. *Traffic At The Crossroads: Multiple Oppressions*, 43-57 WASHINGTON SQUARE PRESS (2013)

caused to a victim, it translates into range of inequities, social taboos, pre-conceived notions of honour and patriarchal norms and the very nature of the Indian society that is traditional bonded and surrounded by conservative values[94] is a crucial contributor to it. Further the factors like outside pressures that could potentially influence the system, inadequate witness protection schemes that threaten the veracity of statements made by the witness and even that of the victim[95] and so on, would also get accelerated by virtue of the delay crisis, depriving victim of its right to get an impartial and fair trial. All factors tend to make the life of the victim undignified and miserable.[96] It may be argued that, "*each of these intersections tend to affect fewer people globally, but for those who are affected, these social divisions are crucial and traumatising."*[97] But where ever these factors intersect and interact, it would for sure, would constitute an infringement of a plethora of its rights and prove detrimental to the right of fair trial of the victim thus, bluntly violating Article 21 of the victim also.

Therefore, duty entrusted upon the government to ensure fair trial within reasonably expeditious period has to be performed to its realisation not only to safeguard the personal liberty of the accused but also to prevent secondary victimisation of the victim or her family, that to greater extent emanating directly or indirectly out the procedural delay.

2.5 STATUTORY PROVISIONS AND SPEEDY JUSTICE: NATIONAL AND INTERNATIONAL PERSPECTIVE

Various international instruments directly or indirectly, attempts to ensure fair trial and to avoid delay and delay tactics played in between.

Article 10 of Universal Declaration of Human Rights (UDHR) declares that whenever there is an adjudication criminal charge levelled against a person, he is afforded with equal fair public hearing by an independent and impartial tribunal. Article 14 (3) (c) of the International Covenant on Civil and Political Rights urges that in determination of any criminal charge, every person is entitled to be tried without undue delay. Article

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[94] *Bharvada Gohinbhai Hirjibhai* v. *State of Gujarat* (1983) 3 SCC 217

[95] The reports in the form of Law Commission of India, *84th Report on Rape and Allied Offences – Some Questions of Substantive Law, Procedure and Evidence*, 1980 Available at http://lawcommissionofindia.nic.in/51-100/Report84.pdf and Justice J S Verma (Retd.), *Report to the Committee on Amendments to Criminal Law*, 2013 were made to the government regarding the matter.

[96] Justice J S Verma (Retd.), *Report to the Committee on Amendments to Criminal Law*, 14 (2013)

[97] *Id* at 202-203

6[98] of the European Convention on Human Rights attempts to ensure that every person who is arrested or detained is guaranteed a trial within a reasonable amount of time and calls for a fair hearing as well. Draft Principles on Equality in the Administration of Justice under Article 16 bestows every person with the right to prompt and speedy hearing. Article 8[99] of The American Convention on Human Rights also reiterates the right to a fair trial.

As stated in the previous chapter, in the United States, right to speedy trial is constitutionally protected in most of the states. Further, the Sixth Amendment to the Constitution explicitly states that that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.

Having a detailed survey of legal framework there are a plethora of provisions in The Protection of Human Rights Act, 1993 as well as in the Code of Criminal Procedure, 1973 specifically intended to curb delaying of criminal cases and to foster speedy disposal of cases,

The Protection of Human Rights Act, 1993, Section 2(1)(d)[100] recognises all rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India, within the meaning of human rights. Consequently, right to speedy trial being a limb of Article 21, as per the definition could squarely fall within the meaning of

[98] Article 6 - Right to a fair trial
1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.
[99] Article 8. Right to a Fair Trial- 1. Every person has the right to a hearing, with due guarantees and within a reasonable time, by a competent, independent, and impartial tribunal, previously established by law, in the sub sanitation of any accusation of a criminal nature made against him or for the determination of his rights and obligations of a civil, labor, fiscal, or any other nature.
[100]Section 2 Definitions. —
(1) In this Act, unless the context otherwise requires,—
(d) "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Consti-tution or embodied in the International Covenants and enforce-able by courts in India

human rights. The Act also provides for establishment of Human Rights Courts with a view to provide speedy trial of offences and thereby avoiding the menace of delay.[101]

Criminal Procedure Code, 1973, incorporates several provisions to ensure that criminal cases are not delayed at various stages of trial starting from the arrest and ranging to stage of investigation, inquiry, trial, appeal and revision. Section 56[102] of Criminal Procedure Code, states that, a person arrested without warrant by a police officer shall, without unnecessary delay and subject to the provisions has to produce the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station. Section 76[103] places a similar condition before the police officer executing a warrant of arrest where he is required to produce the person arrested without unnecessary delay before the Court before which he is required to be produced. Proviso to the Section 76 stipulates a time limit of twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. Section 57[104] further bars the detention of a person arrested without warrant in custody for any period than what is reasonable, and that period could not exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. The object of these provisions is to secure the ends of personal liberty that a person would be denied of his personal liberty indefinitely immediately after the arrest. If it is not complied with the detention will be rendered unlawful,[105] and as held by Supreme Court in *DG and IG of Police v.*

[101] Section 30 Human Rights Courts.—For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences: Provided that nothing in this section shall apply if—
(a) a Court of Session is already specified as a special court; or
(b) a special court is already constituted, for such offences under any other law for the time being in force.

[102] Section 56. Person arrested to be taken before Magistrate of officer in charge of police station- A police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions herein contained as to bail, take or send the person arrested before a Magistrate having jurisdiction in the case, or before the officer in charge of a police station.

[103] Section 76. Person arrested to be brought before Court without delay.- The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to produce such person: Provided that such delay shall not, in any case, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.

[104] Section 57. Person arrested not to be detained more than twenty- four hours- No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty- four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate' s Court.

[105] *Manoj v. State of Madhya Pradesh*,(1999) 3 SCC 715.

Prem Sagar[106] could give raise to a ground to claim compensation. Further, Section 56 is the statutory enunciation of the fundamental right conferred under Article 22(2) of the Constitution.[107] These provisions further enable magistrates to have a check over the police investigations and to take necessary steps where it exceeds the limit to some extent.[108] To prevent the evasion of these provisions by wrongly recording the time of arrest, it was clarified that the arrest will commence from the moment from which restraint is placed on the liberty of the accused.[109]

In order to prevent any inordinate denial of personal liberty beyond a reasonable period under the guise of investigation and to pressurise the investigation agencies in such cases to conclude the investigation and to submit the chargesheet within a reasonable period, Section 167 places certain safeguards. Section 167(1)[110] stipulates that whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours, the police officer making the investigation subject to other provisions has to transmit copy of the entries in the diary to the nearest Judicial Magistrate. Section 167(2)[111] makes it clear

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[106] (1999) 5 SCC 700.

[107] Article 22. Protection against arrest and detention in certain cases
(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

[108] *Khatri (III) v. State of Bihar*, (1981) 1 SCC 627.

[109] *Ashak Hussain Allah Detha v. Collector of Customs*, 1990 CriLJ 2201 (Bom).

[110] Section 167. Procedure when investigation cannot be completed in twenty four hours-
(1) Whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty- four hours fixed by section 57, and there are grounds for believing that the accusation or information is well- founded, the officer in charge of the police station or the police officer making the investigation, if he is not below the rank of sub- inspector, shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

[111] Section 167(2) of Code of Criminal Procedure, 1973
(2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time, authorise the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction: Provided that-
(a) 1 the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-
(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
(ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail if he is

that no Magistrate shall authorise the custodial detention of the accused person beyond ninety days, relating to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years and sixty days, in case of any other offence. Any extended period of custody cannot be granted by accepting a rubber stamp endorsement[112] but only after a closer perusal of case diary.[113] Section 173[114] requires every investigation to be completed without unnecessary delay. Section 207[115] and Section 208[116] mandates the supply of copy of police report and other documents including the first information report; the statements recorded under Section 161(3); the confessions and statements, if any, and; all other relevant extract forwarded to the Magistrate with the police report under Section 173(5) to the accused without any delay furnish to the accused, free of cost.

prepared to and does furnish bail, and every person released on bail under this sub- section shall be deemed to be so released under the provisions of Chapter XXXIII for the purposes of that Chapter;]
(b) no Magistrate shall authorise detention in any custody under this section unless the accused is produced before him.

[112] *Shrawam Waman Nade v. State of Maharastra*, 194 Cri LJ 780(Bom).

[113] *Madhu Limaye, Re*, (1969) 1 SCC 292.

[114] Section 173. Report of police officer on completion of investigation-
(1) Every investigation under this Chapter shall be completed without unnecessary delay.

[115] Section 207. Supply to the accused of copy of police report and other documents- In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-
(i) the police report;
(ii) the first information report recorded under section 154;
(iii) the statements recorded under sub- section (3) of section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub- section (6) of section 173;
(iv) the confessions and statements, if any, recorded under section 164;
(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub- section (5) of section 173: Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused.

[116] Section 208. Supply of copies of statements and documents to accused in other cases triable by Court of Session- Where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable exclusively by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:-
(i) the statements recorded under section 200 or section 202, of all persons examined by the Magistrate;
(ii) the statements and confessions, if any, recorded under section 161 or section 164;
(iii) any documents produced before the Magistrate on which the prosecution proposes to rely: Provided that if the Magistrate is satisfied that any such document is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.

Section 468[117] further to put pressure on the agencies and organs of criminal prosecution to ensure the detection and prosecution of crime expeditiously,[118] bars taking cognizance after lapse of the period of limitation viz., (a) six months, if the offence is punishable with fine only (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for term exceeding one year but not exceeding three years.

Section 309[119] attempts to discourage adjournment and to promote expeditious disposal of matters, requires that in every inquiry or trial, the proceedings shall be held as expeditiously as possible. Section 309 further provides that when the examination of witnesses has once begun, to be continued from day to day until all the witnesses in attendance have been examined and the adjournment beyond the following day could only be granted only after recording the reasons. In *State of UP v. Shambhu Nath Singh*[120], the Supreme Court insisted the subordinate court to hold on to the mandatory nature of Section 309.

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[117] Section 468. Bar to taking cognizance after lapse of the period of limitation-
(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub- section (2), after the expiry of the period of limitation.

[118] *Surinder Mohan Vikal v. AL Chopra*, (1978) 2 SCC 403.

[119] 309. Power to postpone or adjourn proceedings-
(1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.
(2) If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:
Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:
Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing:
Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.
Explanation 1.- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.
Explanation 2.- The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

[120] (2001) 4 SCC 667.

Section 353(1)[121] of The Code of Criminal Procedure requires the pronouncement of judgment in every trial in any Criminal Court in open Court immediately after the termination of the trial.

2.6 MAJOR RECOMMENDATIONS TO CURB DELAY AND BACKLOG SO FAR

2.6.1 Efforts of Law Commission

14th Law Commission Report attempts to track several reasons that contribute to the delay crisis and makes suggestions to address the same. The Report in Volume II exploring the reasons for delay in criminal cases, identifies the over-reliance of the courts on the police forces and consequent issues concerning service of summons and non-appearance of witnesses as a major cause.[122] However, it is to be noted that the report was prepared well before the introduction of Section 485A, which provided for stern action in the event of non-appearance.[123] Lack of Magisterial strength,[124] prosecutors[125] and support staff[126] was also alleged to be contributing factor and recommended to improve their respective ratios. It further advocates the establishment of mobile courts to handle petty cases, such that its surge in the magisterial courts could be reduced to a considerable extent.[127] Supervisory system by High Court over subordinate courts to prevent delays arising out of unmethodological postings, was also recommended.[128]

Observation and recommendation in the 41st Law Commission report is quite unique and is an identification of a greater ground reality. Commission stated that the hardship caused by the frequent transfer of sessions judges, leaving behind partly heard cases,

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[121] Section 353. Judgment.
(1) The judgment in every trial in any Criminal Court of original jurisdiction shall be pronounced in open Court by the Presiding officer
immediately after the termination of the trial or at some subsequent time of which notice shall be given to the parties or their pleaders,-
(a) by delivering the whole of the judgment; or
(b) by reading out the whole of the judgment; or
(c) by reading out the operative part of the judgment and explaining the substance of the judgment in a language which is understood by the accused or his pleader.
[122] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. II*, 780 (Ministry of Law, Government of India, 1958)
[123] *Id* at 778
[124] *Id* at, 782
[125] *Id* at, 780, 781
[126] *Id* at 780
[127] *Id* at 787
[128] *Id* at 788

contribute to the pendency of cases, where the newly appointed judge would be required to hear the matter afresh at times to pronounce a decision therein. It was as result recommended that sessions trial may be conducted on a day-to-day basis and the decision be rendered within a few days. It also requires the formulation of systematic transfer scheme to avoid such hardships. [129]

77th Law Commission after carrying out a stage-by-stage introspection, could throw light into certain startling facts that could potentially threaten the foundation of justice dispensation mechanism and made several recommendations to reduce the arrears of cases pending in the subordinate courts. Acknowledging that the delay crisis shook the public confidence on the system, it recommended the disposal of criminal cases within a span of six months, including Sessions cases, where entire proceedings including committal proceedings have to be completed within the aforementioned timeframe[130]. Advocating to improve the quality of judicial officers, the Law Commission favoured the handing over of supervisory charge over a district to a High Court Judge, and inspection by Sessions Judge or High Court judge to the subordinate court once in a year to improve the quality of performance.[131] The High Court Judge in charge of a district should ensure the clearance of backlogging cases.[132] It was also urged that prompt consideration should be given to the recommendation provided by High Court to increase the judge strength and the service of retired judicial officers may be sought to reduce the backlog.[133] It was also brought to notice that two police officers should be appointed to issue summons and procure attendance of witnesses.[134] It also advocated separation of an investigating agency of police to that of law-and-order wing and it has to be placed independently.[135] Prosecution strength was also advised to be increased to meet the demand.[136]

78th Law Commission report, acknowledging the recommendations made in the preceding report, places the blame on the investigating agency. Reports identifies that

[129] Law Commission of India, *41th Report on Code of Criminal Procedure, Vol. I*, 217 (Ministry of Law, Government of India, 1969)
[130] Law Commission of India, 77th Report on Delay and Arrears in Trial, 3 (Ministry of Law, Government of India, 1978)
[131] *Id* at 34
[132] *Id*
[133] *Id* at 35
[134] *Id* at 42
[135] *Id* at43
[136] *Id* at 45

the deputation of investigating officials for the law-and-order duty, places additional burden on the investigating officers and hence causes serious delay in completing the investigation proceedings.[137] Report further points out the hardship caused due to the piecemeal recording of evidence and strongly objects to granting of adjournments except where it is absolutely necessary.[138]

120th Law Commission report, after carrying out a comparative analysis, recommended the determination and constant updation of judge strength taking into account the demographic factor and recommended for increasing the judge-population ratio from 10.5 to 50 per million over a period of 10 years in 1987. It also advocated considering litigation rate as well, along with the demographic factor in determining the judge strength.[139]

142nd Law Commission Report aiming to make criminal justice system more speedy, efficient and cost-effective, recommended re-examination and re-redefinition of crime under various penal statutes, so that speedy trial may be given to those cases depending on their grievousness. Further it also suggested devising alternative or new procedures to deal with cases that might consume more time and resources to get finally disposed. Plea bargaining was suggested as an alternative to handle the huge arrears of criminal cases.[140]

154th Law Commission working to make Criminal Procedure Code, more effective, made several suggestions to advance the pace at which the criminal cases are disposed of. Law Commission after exploring various aspects of recommending a time frame for disposing of cases, refused to fix a time frame for the reason that it would not be practical to do so for every case that are brought before a Court.[141] Further, Law Commission of India, supported the guidelines issued by Supreme Court of India in *Common Cause, a Registered Society v. Union of India*[142]. It recommended discharge of accused in traffic offences pending for than two years due to non-service of

[137] Law Commission of India, 78th Report on Congestion of Under Trial Prisoners in Jail, 15 (Ministry of Law, Government of India, 1978).
[138] *Id* at 16
[139] Law Commission of India, *120th Report on Manpower Planning in Judiciary: A Blueprint*, 3 (Ministry of Law, Government of India, 1978)
[140] Law Commission of India, *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to Plead Guilty without any Bargaining*, (Ministry of Law, Government of India, 1991)
[141] Law Commission of India, *154th Report on The Code of Criminal Procedure Code*, 90-116 (Ministry of Law, Government of India, 1996).
[142] (1996) 4 SCC 33; *See Id.*

summons. In compoundable cases, where trial has not commenced for more than two years, court shall discharge the accused and close the case. The same recommendation was made in the cases involving, and offenses punishable with imprisonment up to three years, so pending. Cases involving, bailable and non-cognizible offences, offences punishable up to one year imprisonment, if pending for one year without trial, it shall be close and discharge the accused. Commission also recommended separation of the investigating agency from the law-and-order wing of the police, as such a separation would reduce workload and improve scrutiny and supervision by courts. Further it advocated for effective coordination between the investigating agency and the prosecution.[143] Commission also recommended to avoid granting adjournment on the date fixed for the examination of the witnesses.[144] Suggestion for appointment of special magistrate to trial criminal cases of minor nature.[145] Service of summons and execution of warrants may be entrusted to a separate agency, specifically designated for the purpose.[146] It also recommended periodic review of judge strength and pending cases.[147]

245th Law Commission Report, advocating for the improvising of judge strength, after analysing the data on judicial strength, recommended the massive influx, efficient deployment and periodic assessment of manpower resources in the judiciary viz., judges and support staff, to the tackle the mounting backlog crisis. It also recommended the creation of special traffic courts staffed with recent law graduates.[148]

2.6.2 Other Reports

Rankin Committee in 1925, recommended the making improvements in the then existing method of criminal justice system so as to reduce workload of the judges. Lack of judicial strength as a contributing factor was also supplemented by Satish Chandra Committee Report in 1986[149], Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)[150] in 1990 and Malimath Committee

[143] *Id.*
[144] *Id.*
[145] *Id* at 117-125.
[146] *Id* at 90-116.
[147] *Id.*
[148] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 47 (Ministry of Law, Government of India, 2014).
[149] Satish Chandra Committee, Report of Satish Chandra Committee (Government of India, 1986)
[150]Justices VS Malimath, PD Desai, and AS Anand, *Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)*, 54-69 (1989-90).

Report on Reforms of Criminal Justice System in 2003[151]. Malimath committee further hints to the delay caused by inefficient court management system,[152] adjournment,[153] inefficient means of service of summons,[154] delayed investigation[155] and the untimely submission of expert and forensic reports.[156] Committee calls for easing the procedural complexities that that would contribute to unnecessary delay.[157] It was also highly advocated that quality of judges appointed to the post should be maintained.[158] Delay in pronouncement of judgements or orders was also identified as a cause.[159] Committee also advocates the efficient use of provisions from Sections 262 to 264 of the Criminal Procedure Code to reduce the arrears of cases in which punishment is for less than 2 years.[160] Report of the National Commission to Review the Working of the Constitution[161] in 2002 also gave equal weightage to the infrastructural shortcomings. Report of the Working group for the 12th Five Year Plan (2012-2017) prepared by Department of Justice in 2011, however, besides infrastructural requirements, more systematically highlights few other points for consideration including lack of adequate standard to measure performance, and lack of alternative means to handle less grievous matters.[162] Vohra Committee in 1993 travelled in a quite distinct manner. According to the Committee, the "nexus between the criminal gangs, police, bureaucracy and politicians" is contributory cause for the inefficiency and delaying of the disposal of criminal cases. It also recommended simplification of procedure to ensure quick justice.[163]

Rajya Sabha Department Related Parliamentary Standing Committee on Home Affairs, in its 85th Report further welcomed the determination of judge strength on the

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[151] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government Of India, Ministry of Home Affairs Report (Volume I)* 133-145 (Ministry of Home Affairs, Government of India, 2003).
[152] *Id* at 141.
[153] *Id* at 142.
[154] *Id* at 149.
[155] *Id* at 100.
[156] *Id* at 106.
[157] *Id* at 130.
[158] *Id* at 134.
[159] *Id* at 140.
[160] *Id* at 282.
[161] Justice Manepalli Narayana Rao Venkatachaliah Commission, *Report of the National Commission to Review the Working of the Constitution*, Volume I (Ministry of Law & Justice, Government of India, 2002).
[162] Department of Justice, *Report of the Working group for the 12th Five Year Plan (2012-2017)* Department of Justice, 3 (Ministry of Law & Justice, Government of India, 2011).
[163] Government of India, 'Vohra Committee Report on Criminalisation of Politics, Ministry of Home Affairs' (1993) http://indiapolicy.org/clearinghouse/notes/vohra-rep.doc accessed 13 January, 2014.

basis of demographic factors, as recommended by the 120th Law Commission Report. Variations were advised to be worked out on the basis of pendency and disposal rate, in different jurisdictions, wherever necessary in consultation with the judiciary. In 2001, Committee granted a period of three years was given to ensure zero accrual of arrears and recommended to increase the judge strength without compromising the quality and to augment infrastructural requirements in a phased-out manner.[164]

Study conducted by Supreme Court Committee in 2006, titled '*Subordinate Courts of India: A Report on Access to Justice'* made an attempt to pull out reasons for long pending litigation in subordinate Courts in India, following a resolution passed by the Joint Conference of Chief Justices of Supreme Court and High Courts. The Committee pursued existing data as on 31.12.2015, 30 relevant documents including reports furnished by various committees and law commission over the years, plan of action and resolutions to conclude that the infrastructural requirement including shortage of court halls, inadequate court staff and huge disparity between the vacancies and working strength of judicial officers are prime causes for delay and backlog of cases in the subordinate judiciary.[165]

A study on Court Management Techniques for Improving the Efficiency of Subordinate Courts submitted by the Department of Justice, identifies that the lack of efficiency of supporting staffs in the Courts also contributes to the delay crisis. As a solution for the same, it recommended effective hiring mechanism, creation of separate cadre and introducing executive program on Court Management.[166]

Further in *All India Judge's Association v. Union of India*[167] Supreme Court of India, argued vehemently, to improve the judicial strength in order to curb the mounting delay and backlog. In 2002, the Apex Court urged to improve the judge strength from 10.5 judges per 10 lakh people to 50 judges per 10 lakh people within a period of 5 years.

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[164] Rajya Sabha, *Department-Related Parliamentary Standing Committee On Home Affairs Eighty-Fifth Report on Law's Delays: Arrears In Courts*, Rajya Sabha Secretariat (March 20, 2021) http://164.100.47.5/rs/book2/reports/home_aff/85threport%20.htm.

[165]*Subordinate Courts of India: A Report on Access to Justice* (Mar. 20, 2021)https://main.sci.gov.in/pdf/AccesstoJustice/Subordinate%20Court%20of%20India.pdf.

[166] NALSAR University of Law, *A study on Court Management Techniques for Improving the Efficiency of Subordinate Courts* 136-146 (Department of Justice, 2016).

[167] (2002) 4 SCC 247.

In *Brij Mohan Lal v. Union of India*[168] it was held that if the policies of the State are liable to increase the case load of the judiciary, the court are required to intervene judicially.

2.7 CONCLUSION

Though right to speedy trial is not expressly guaranteed in the Constitution of India, judicial interpretation of Article 21, could broaden its ambit to bring right to speedy trial as a subset to Article 21 of the Constitution of India. It has grown on to become one of the touch stone of effective judiciary. It is also viewed as a part of social justice and an essential ingredient in upholding rule of law. Recognising its importance, this right has been allowed to occupy a prominent place in various Constitutions, Statutes and international instruments. Such an incorporation is reflection of the extent to which countries value the right to speedy trial. The concept of speedy trial has also been dealt at length in various Law Commission and other Committee Reports. However, it remains a question as to how effectively the judges could exercise the powers vested upon them by virtue of these provisions. This apprehension is backed by the fact that consistently mounting backlog and delaying of cases year by year, and COVID-19 pandemic has accelerated the crisis. Justice delayed is justice denied and also when such backlogs and delay happen, every such instance constitute the violation of Article 21 of the Constitution of India, not only of accused or victim but of both. Hence, what is important is to strike a balance between the limited resources and the interests of the state, victim and individual on the basis of the nature of offences, accused and witnesses involved, workload of the Courts and so on.

[168] (2012) 6 SCC 502.

CHAPTER III

ASSESSING PENDENCY, DELAY AND BACKLOG

3.1 INTRODUCTION

Law Commission, after having considered various statistics, social science research techniques and experimental inputs from the field, in its 245th Report on '*Arrears and Backlog: Creating Additional Judicial (Wo)manpower*', proposes two distinct approaches to determine the existence of delay viz., practical assessment approach and normative assessment approach. The practical assessment approach takes into account current filing and disposal rates, case length and pendency. This approach compares the results with that of other jurisdictions at the sub-national, national or international level facilitating a relative conclusion as to whether a particular jurisdiction lags in disposing of cases. The normative assessment approach fixes a standard for the disposal of cases. Cases disposed of within the time frame are considered not delayed; those disposed beyond the time limit as delayed, and those are delayed unwarrantedly as arrears. A rigorous and rational approach has to be made to define the time frame by considering the current filing and disposal rates, case length, and pendency. It also takes into account the experience as well as expert suggestions from various stakeholders of litigation.

However, opting to choose between practical assessment approach and normative assessment approach, there was a difference in opinion as reflected in 154th Law Commission Report[169] (as well as *P. Ramchanadra Rao* v. *State of Karnataka*[170]) and in 245th Law Commission Report[171] (as well as *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors*[172]). When 154th Law Commission Report[173], as well as Supreme Court in *P. Ramchanadra Rao v. State of Karnataka*,[174] rejected the proposition for

[169] Law Commission of India, *154th Report on The Code of Criminal Procedure Code*, 90-116 (Ministry of Law, Government of India, 1996).
[170] (2002) 4 SCC 578.
[171] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 47 (Ministry of Law, Government of India, 2014).
[172] AIR 2012 SC 642.
[173] Law Commission of India, *Supra n.1* at 90-116.
[174] Supreme Court stated that

> "it is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings…. At the most the periods of time prescribed … can be taken by the Courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before

fixing the time frame, Supreme Court in *Ramrameshwari Devi v. Nirmala Devi*[175] and *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors*[176] and the Law Commission in its 245th Report[177] prepared subsequent to *Imtiyaz Ahmad*, argued vehemently to fix a time frame for disposal.

It is true that fixing a rational time frame would bring a more normative approach in tackling the delay crisis, as evident from various jurisdictions like Canada, United States and the United Kingdom.[178] However, since the influence of COVID-19 at the varying degree at various places is affecting various proceedings in an unpredictable and unprecedented manner, it has become practically difficult to propose a standard across the nation, and even if fixed, it would be harsh in this peculiar circumstance to demand strict adherence for. The researcher, therefore, refrains from adopting the normative assessment approach in this study, to rely on the practical assessment approach.

In the following sections, delay, pendency, backlog and pendency clearance time for criminal matters are sought for. While assessing whether there exists a delay using the practical assessment approach since this method takes into account a comparative perspective for the purpose, the evaluation with respect to Kerala is made by adopting the national average as the counterweight. The national average is chosen as it gives an impression of the average performance of courts across the country. Such a

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them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted."

[175] (2011) 8 SCC 249.

[176] AIR 2012 SC 642; Supreme Court stated that

" To keep under review the system of judicial administration to ensure that it is responsive to the reasonable demands of the times and in particular to secure: -

i. Elimination of delays, speedy clearance of arrears and reduction in costs so as to secure quick and economical disposal of cases without affecting the cardinal principle that decisions should be just.
ii. Simplification of procedure to reduce and eliminate technicalities and devices for delay so that it operates not as an end in itself but as a means of achieving justice.
iii. Improvement of standards of all concerned with the administration of justice."

[177] Law Commission report says that

"The Commission emphasizes the need for establishing, based on rational criteria, non-mandatory time frames for the resolution of different types of cases. Unless judges and litigants have clear expectations of how soon their cases are likely to resolved, there will be little accountability for delays, and systemic problems are likely to increase."

[178] The U.S. Speedy Trial Act, 1974 (18 U.S.C. § 3161) stipulates certain time limits which, subject to certain exceptions and exclusions are to be followed strictly. In *R. v. Jordan*, (2016) 1 S.C.R. 631] Canadian supreme Court fixed a time limit for the conclusion of trial. Part 3 of the UK Criminal Procedure Rules, 2012 mandates specific case management for each cases and scheduling by the judge in non-binding consultation with the parties.

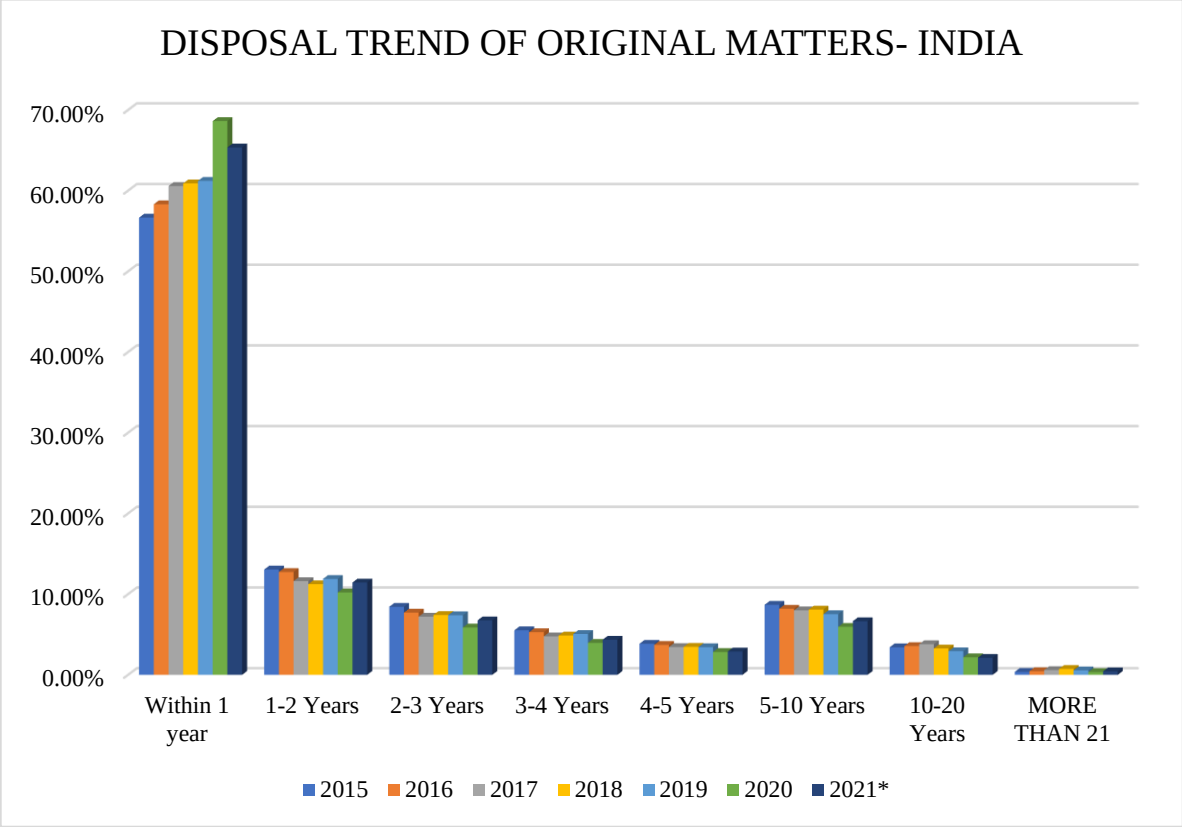
comparison enables the researcher to reach a relative conclusion. For the assessment of pendency, the state-wise institution-disposal trend of criminal trends is analysed. Backlog creation rate and pendency clearance time are calculated using the data tabulation prepared to analyse the institution-disposal trend using the formula narrated in the individual sessions.[179]

3.2 CALCULATING DELAY USING PRACTICAL ASSESSMENT APPROACH

For determining the existence of delay, disposal trends, age-wise pendency of various cases and stages wise pendency of various matters are compared with the national average. Delay in disposing of bail applications are also assessed

3.2.1 Disposal Trends

Figure 1: Disposal trend of original criminal cases in India for the years 2015-2021(Table 1)

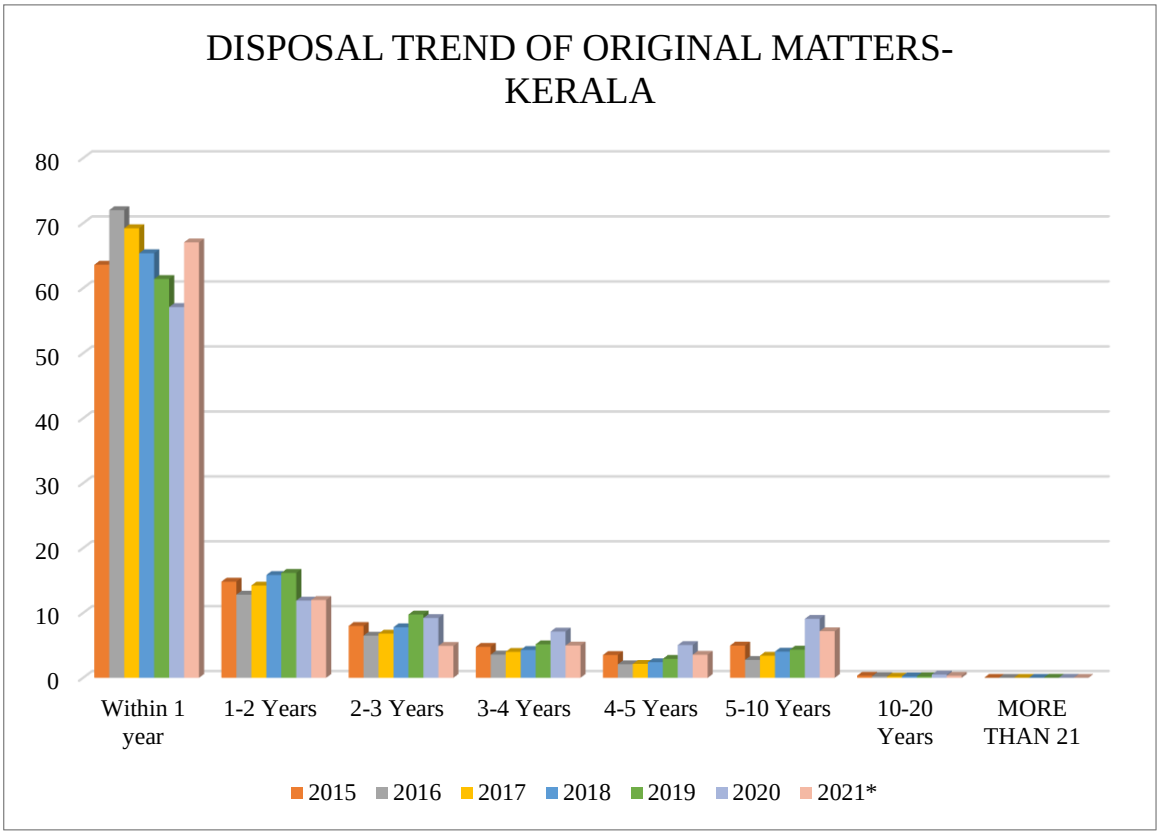


Data Courtesy: National judicial Data Grid as on 01.07.2021

*Up To June 30, 2021

[179] *Infra* pp. 14 and 19.

Figure 2: Disposal trend of original criminal cases in Kerala for the years 2015-2021(Table 2)



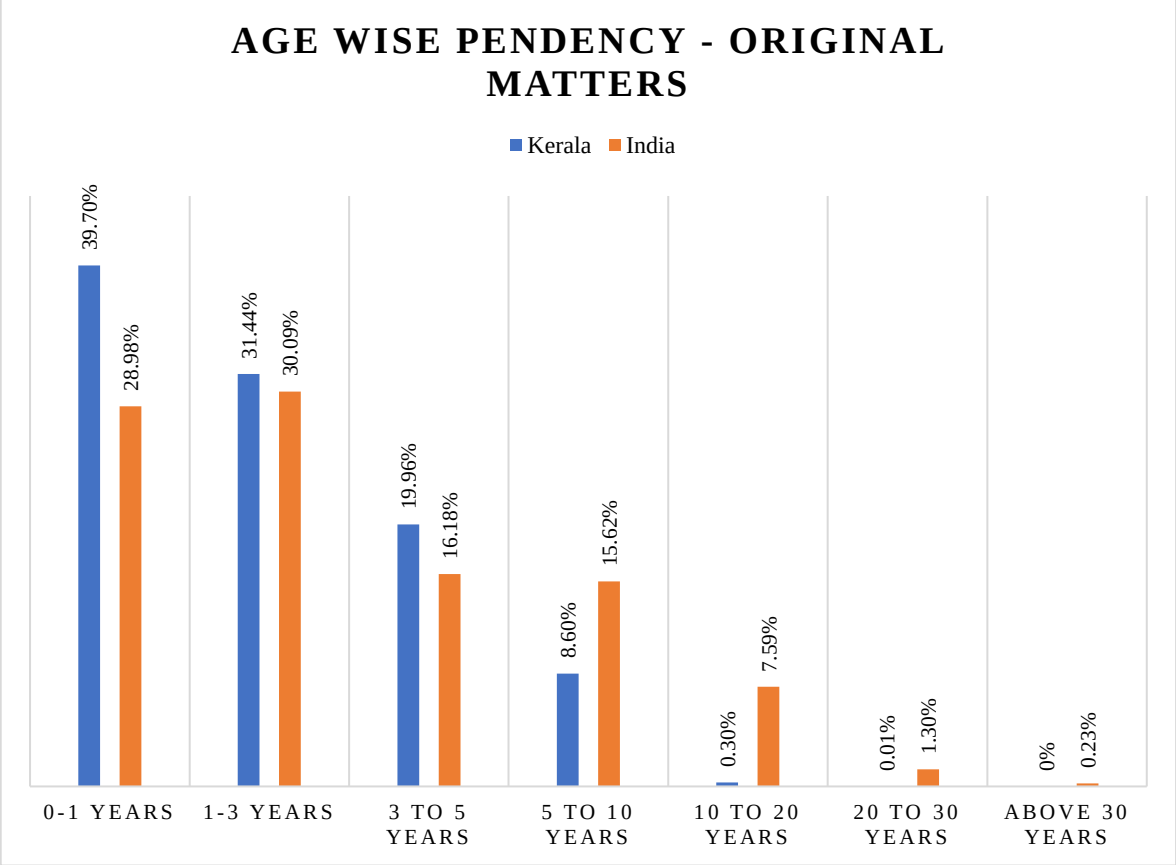
Data Courtesy: National judicial Data Grid as on 01.07.2021

*Up To June 30, 2021

Comparison of Figures 1 and 2 could easily conclude that Kerala stands well ahead in expeditious disposal of fresh matters, except in the year 2020. Kerala could dispose of 94.71%, 96.99%, 96.39%, 95.72%, 95.43%, 90.4% and 92.5%, of original cases in 2015, 2016, 2017, 2018, 2019, 2020 and 2021, respectively within 5 years, whereas, the national average was 87.53%, 87.78%, 87.62%, 87.90%, 88.99%, 91.51% and 90.80% respectively. Only 0.01% of criminal cases in Kerala waited for its disposal for more than 20 years, whereas 0.5% at an average at the national level takes so much time. However, in 2020, the disposal rate of fresh matters dropped to the lowest ebb, even below the National Average.

3.2.2 Age-Wise Pendency

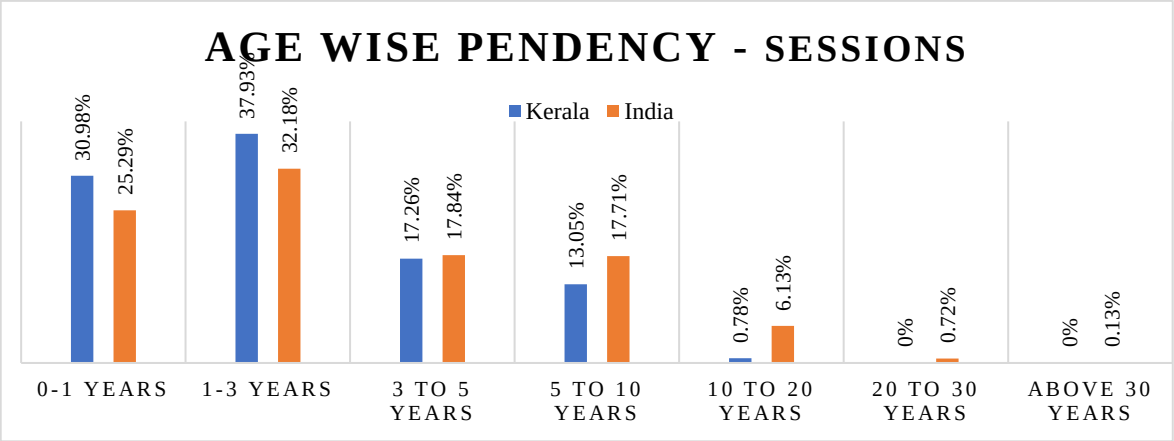
Figure 3: Current Age-wise pendency of original criminal cases – Comparing Kerala with the national average (Table 3)



Data Courtesy: National judicial Data Grid as on 01.07.2021

Glancing through the national average pendency of cases as narrated in Figure 3, 28.98% of the cases could be considered relatively fresh. 30.09% cases await disposal for 1-3 years. 16.18% of the cases are pending for 3 to 5 years. 24.75% of sessions cases in India are pending for more than 5 years, and out of which, a little less than 10% (that is 8.89%) are pending for more than 10 years. 1.53% of the cases are awaiting disposal for more than 20 years, and 0.23% have not been disposed of for 30 years since it was initiated. As far as Kerala is concerned, 39.7% are pending for 0-1 years. 31.44% await disposal for 1-3 years and 19.96% for 3-5 years. However, only 8.91% of cases are pending for more than 5 years, much less than the national average of 24.75%, indicating relatively speedy disposal of cases than the national average. The disposal rate from 2015 to 2021, as stated above, affirms this statement.

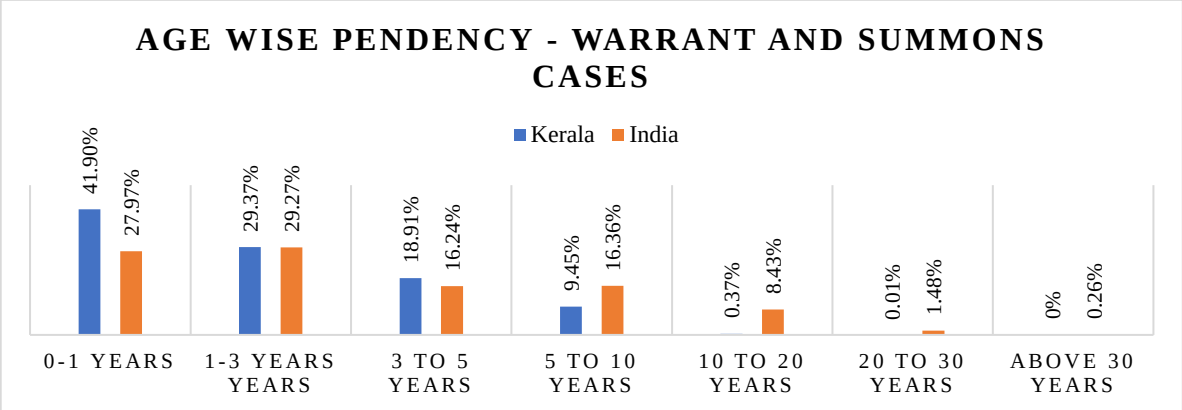
Figure 4: Current Age-wise pendency of session cases – Comparing Kerala with the national average (Table 4)



Data Courtesy: National judicial Data Grid as on 01.07.2021

Dissecting the cases pending into sessions as well as warrant and summons cases, Figure 4 shows that 30.98% of sessions cases in Kerala was instituted after June 2020, whereas 25.29% of the pending cases across India were instituted during the said period. 37.93% of cases in Kerala and 32.18% of sessions cases across India await disposal for a period of 1 to 3 years. In Kerala, only 13.4% of sessions cases are pending for more than 5 years, as opposed to the national average of 24.69%. However, Kerala has only 0.78% of the total sessions cases pending for more than 10 years. Across the nation, 6.13% of the total sessions cases instituted could not be disposed of even after 10 years.

Figure 5: Current Age-wise pendency of warrant and summons cases – Comparing Kerala with the national average (Table 5)

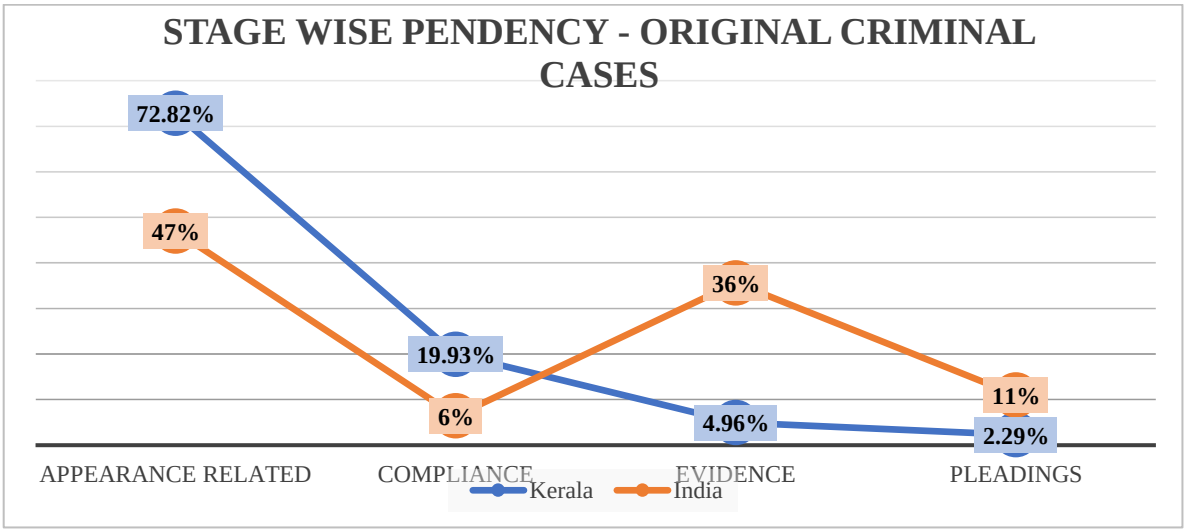


Data Courtesy: National judicial Data Grid as on 01.07.2021

As far as warrant and summons cases are considered, Figure 5 indicates that 27.97% of the cases in India are pending for less than 1 year, whereas in Kerala, 41.9% of the cases are relatively fresh. For the cases pending for 1-3 years, the national average and Kerala shows almost an equal distribution with a 0.1% hike on the Kerala side. 18.91% of cases in Kerala are pending for 3 to 5 years, whereas the national average is 16.24%. However, when Kerala remains, less than 10% of warrant and summons cases without being disposed of for more than 5 years, more than a quarter (26.53%) of the total warrant and summons cases instituted across India could not be disposed of for more than 5 years, out of which around 10% (10.17%) are pending for more than 10 years.

3.2.3 Stage-Wise Pendency

Figure 6: Current Stage wise pendency of original criminal cases – Comparing Kerala with the national average (Table 6)



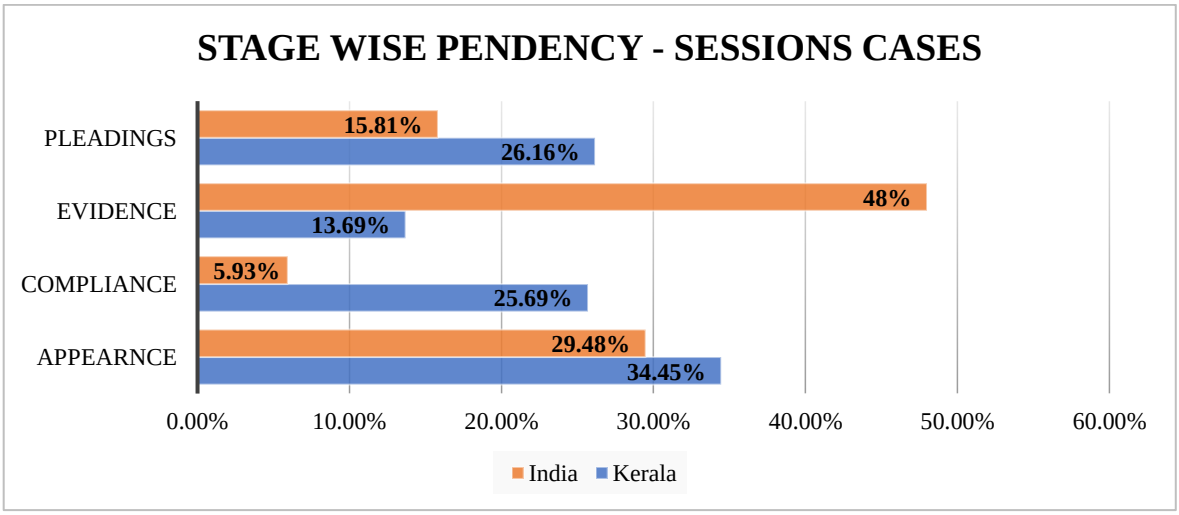
Data Courtesy: National judicial Data Grid as on 01.07.2021

Analysing the stage-wise pendency of cases, 47% of the cases at the All-India basis are at the initial phase, 6% at the compliance-related stage, 36% at evidence related stage and 11% of the cases have moved on to the pleading stage. Whereas in Kerala, a steep decline in the disposal rate since April 2019 is reflected in the stage-wise pendency. About three-fourth (72.82%) of the cases are at the appearance-related stage. 19.93% await their turn at the compliance stage, 36% at the evidence stage and 11% at the pleading stage.

In Kerala, as indicated by Figure 7, most of the cases pending sessions cases are in the appearance stage, 25.69% in the compliance stage, 13.69% in the evidence stage and

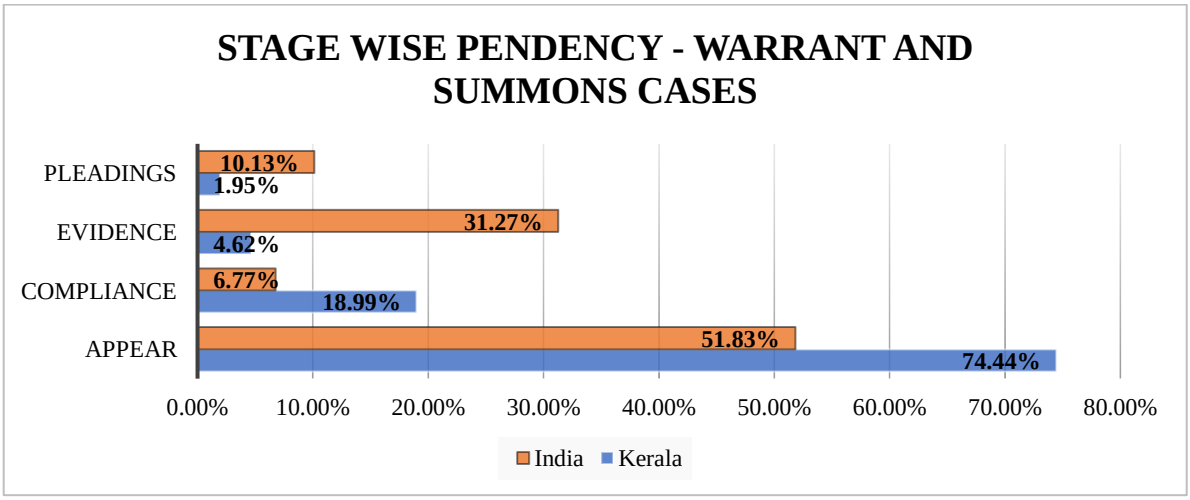
26.16% are in the pleadings stage. Whereas across the country, most of the cases pending are in the evidence stage (48%), followed by 29.48% in the appearance stage, 26.16% in the pleadings stage and 5.93% in the compliance stage.

Figure 7: Current Stage wise pendency of sessions cases – Comparing Kerala with the national average (Table 7)



Data Courtesy: National judicial Data Grid as on 01.07.2021

Figure 8: Current Stage wise pendency of warrant and summons cases – Comparing Kerala with the national average (Table 8)

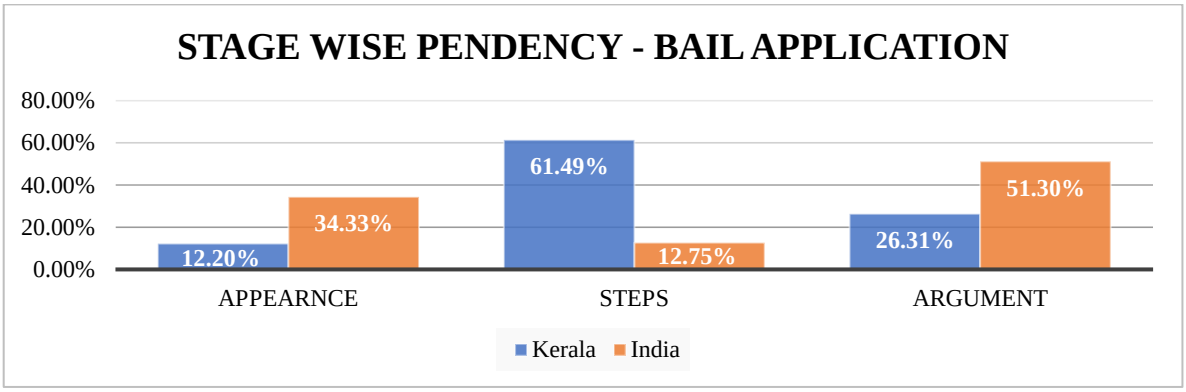


Data Courtesy: National judicial Data Grid as on 01.07.2021

In Kerala, as per Figure 8, 74.44% of warrant and summons cases are in the appearance stage, 18.99% in the compliance stage, 4.62% in the evidence stage and 1.96% are in the pleadings stage. Whereas across the country, most of the cases pending are in the appearance stage (51.83%), followed by 31.27% in the evidence stage, 10.13% in the pleadings stage and 6.77% in the compliance stage.

3.2.4 Bail Application

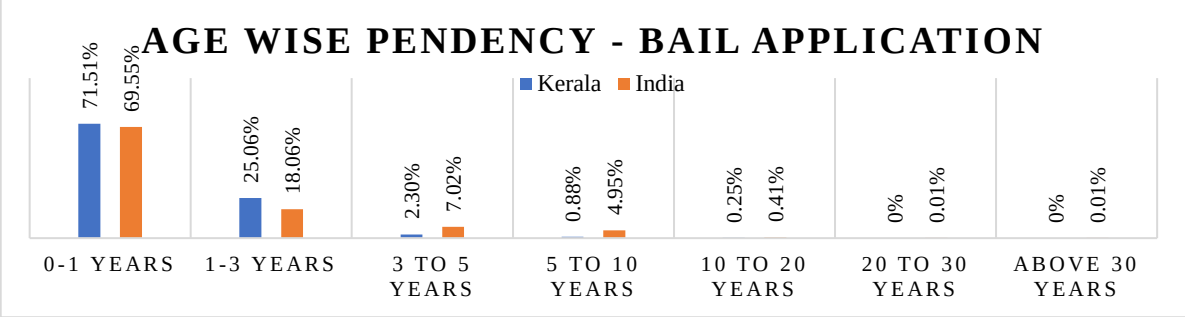
Figure 9: Current Stage wise pendency of bail applications – Comparing Kerala with the national average (Table 9)



Data Courtesy: National judicial Data Grid as on 01.07.2021

As far as bail applications are considered, Figure 9 reveals that across India, 34.33% of matters are at the appearance stage, whereas in Kerala, it is 12.2%. In Kerala, 61.49% of applications are at the compliance stage, opposed to 12.75% at the national level. More than half of the applications (51.3%) taking India as a whole stands at the argument/judgment stage, while in Kerala, only 26.31% has reached that stage.

Figure 10: Current Age-wise pendency of bail applications – Comparing Kerala with the national average (Table 10)



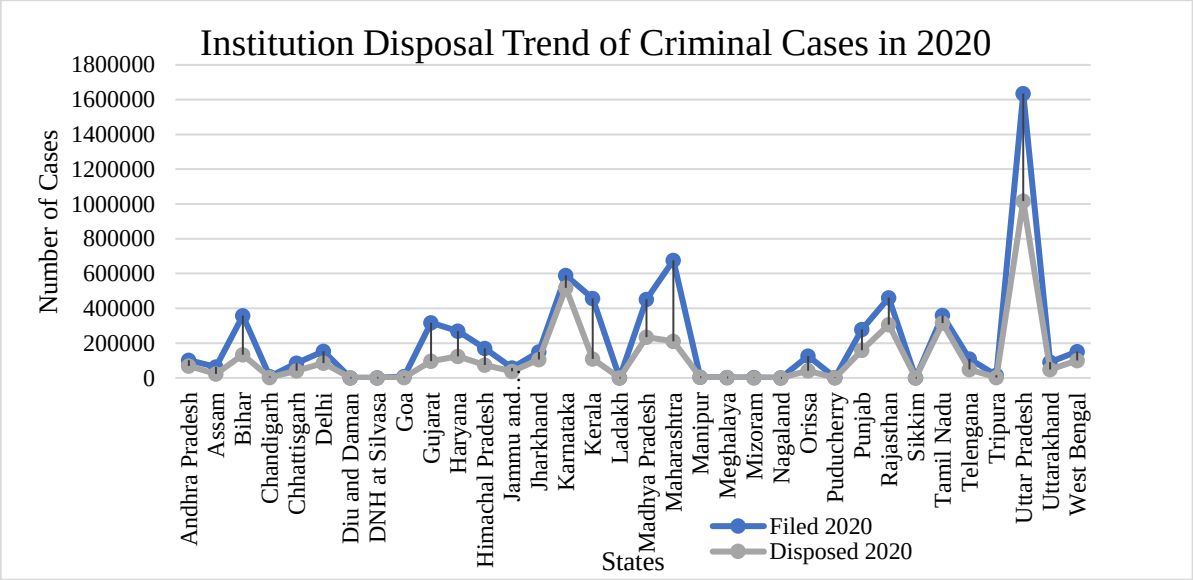
Data Courtesy: National judicial Data Grid as on 01.07.2021

Considering the pendency of bail applications in Figure 10, in the State of Kerala as of 10.07.2021, most of the bail applications, that is 71.51% that are pending as of now, are just aged 0—1 year. 25.05% of pending bail applications await disposal for 1-3 years from the date of filing. Only 3.45% of the bail applications are pending for more than 3 years. This rate is far better than the national average, where 12.35% of the bail applications await disposal for more than 3 years, and out of which, around 5% are pending for more than 5 to 10 years. Therefore, from the data, it could well be inferred

that the State of Kerala exhibits better performance in disposing of bail applications more promptly than the national average.

3.3 CALCULATING OF PENDENCY

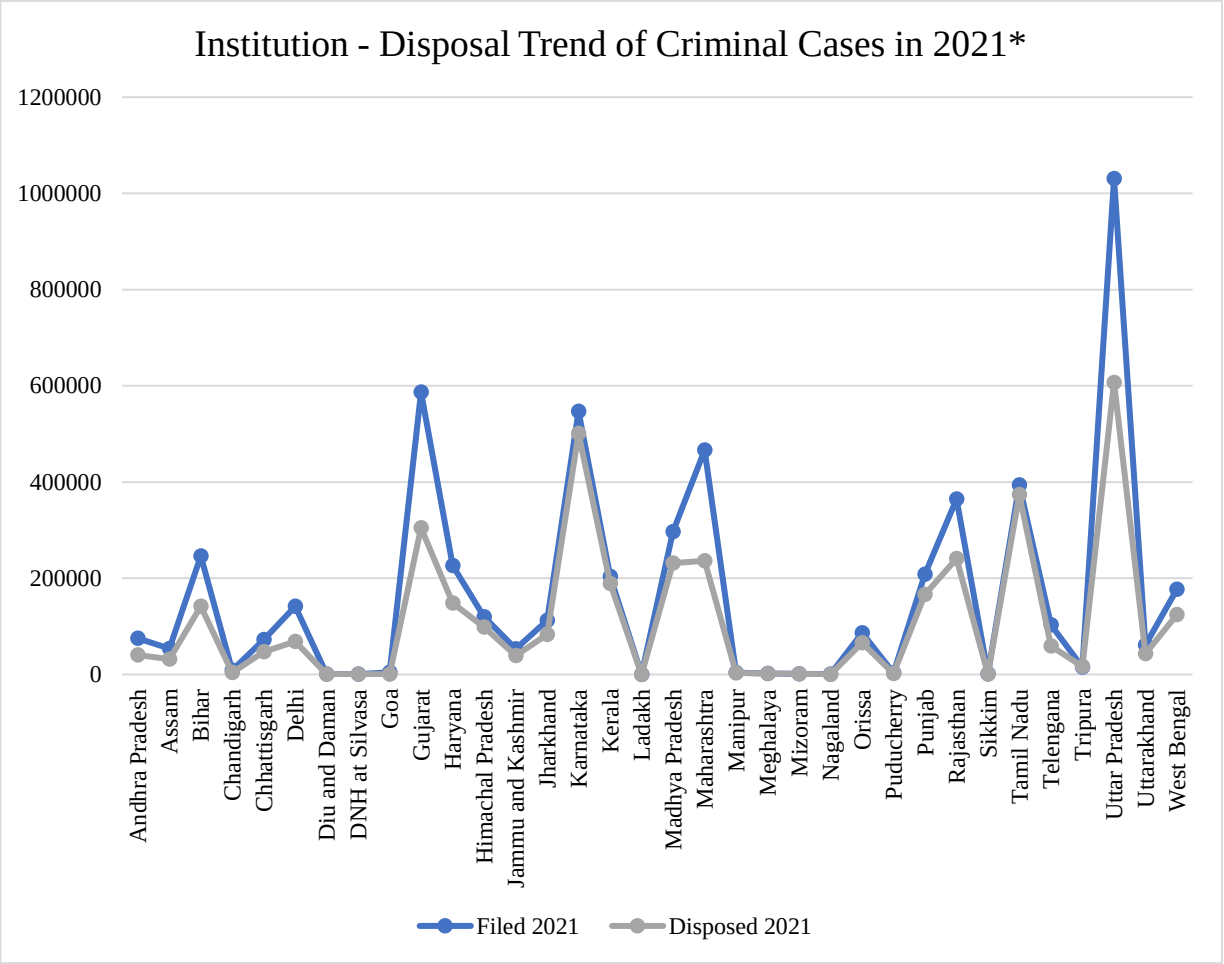
Figure 11: Institution- Disposal trend of overall criminal matters in India for the year 2020 - State-wise comparison (Table 11)



Data Courtesy: National judicial Data Grid as on 01.07.2021

Having a closer look at the difference between criminal matters instituted and disposed of in Figure 11, since April 2020, it could well be seen that the COVID-19 has created a considerable disparity. Uttar Pradesh shows the highest difference with a margin of 6,18,245 matters. Maharashtra also exhibited a variation of 4,65,810 matters. Strikingly Kerala that maintained a trend of disposing of as much as or even more than the number of matters that were filed with it for the previous years showed a steep decline in that trend, where it could dispose of only one-fifth of the matters as compared to the volume of criminal matters that were instituted from April 2020 to December 2020. Ladakh and Sikkim could maintain the difference between the number of matters initiated and disposed to the minimum, at least in terms of numbers. However, keeping the difference to a minimum in terms of number is not a conclusive indicator to judge the performance of the courts in various states and union territories as there are various other factors that have to be given due consideration at varying degrees.

Figure 12: Institution- Disposal trend of overall criminal matters in India for the year 2021 (Up to June 30, 2021) - State-wise comparison (Table 12)

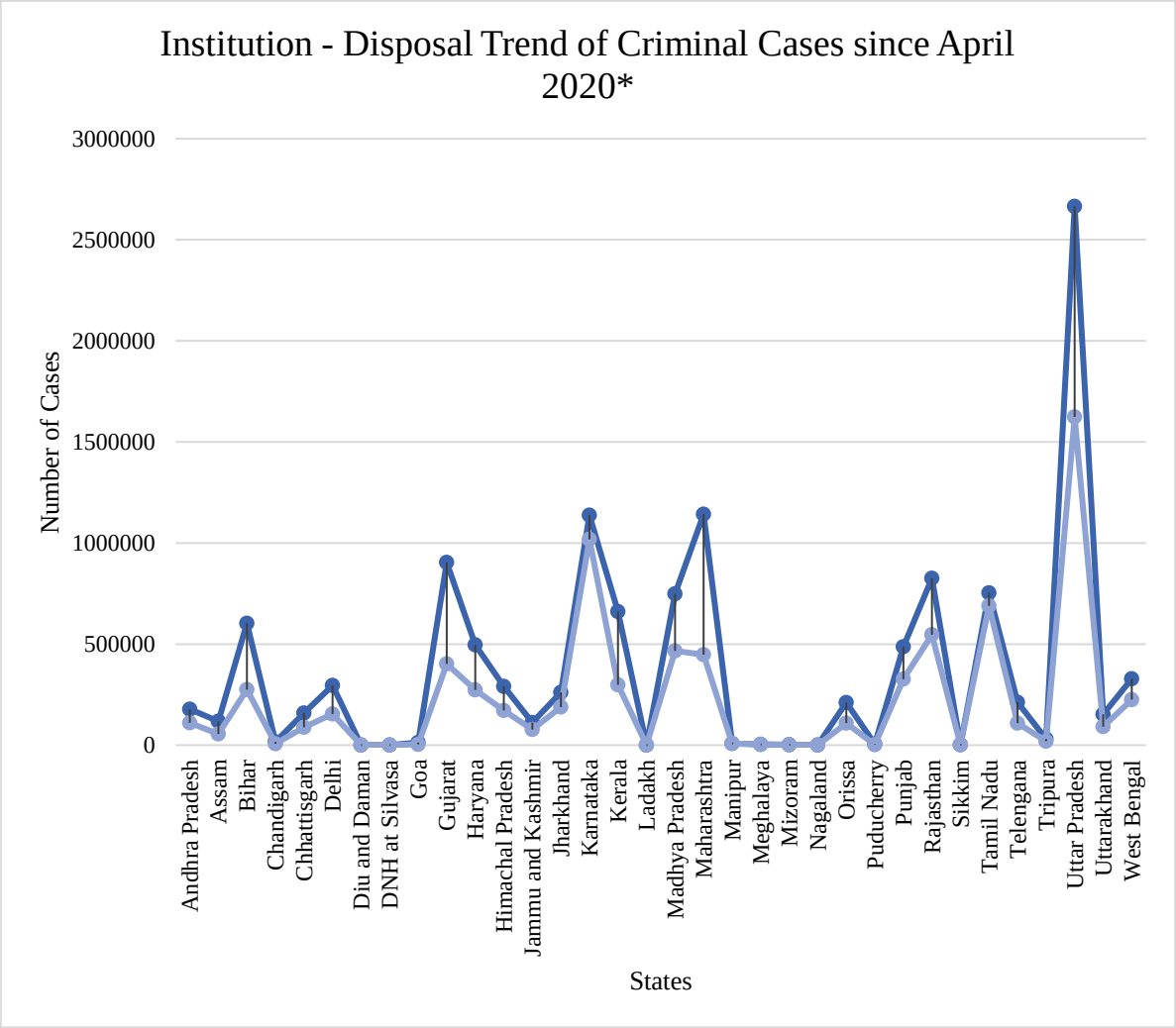


Data Courtesy: National judicial Data Grid as on 01.07.2021

* Up to June 30, 2021

Glancing at the institution-disposal rate from January 2020 to June 2020 in Figure 12, as usual, most of the matters were instituted in Uttar Pradesh (1020511) and Ladakh the least (345). Analysing the difference between the matters instituted and matters disposed of, Tripura could be inferred to outperform all other states by disposing of more matters than instituted. It is the first state since the outbreak of the COVID-19 pandemic to do so for any quarter or half-yearly period. Ladakh and Mizoram could keep the difference between the rate of institution and disposal of criminal matters, in terms of numbers, to the minimum. Kerala that showed a higher disparity between the institution and disposal rate attempted to manage the rate without much disparity during the period. Utter Pradesh recorded the most significant difference in terms of numbers, followed by Gujarat and Maharashtra.

Figure 13: Institution- Disposal trend of overall criminal matters in each state since April 2020 (Up to June 30, 2021) - State-wise comparison (Table 13)



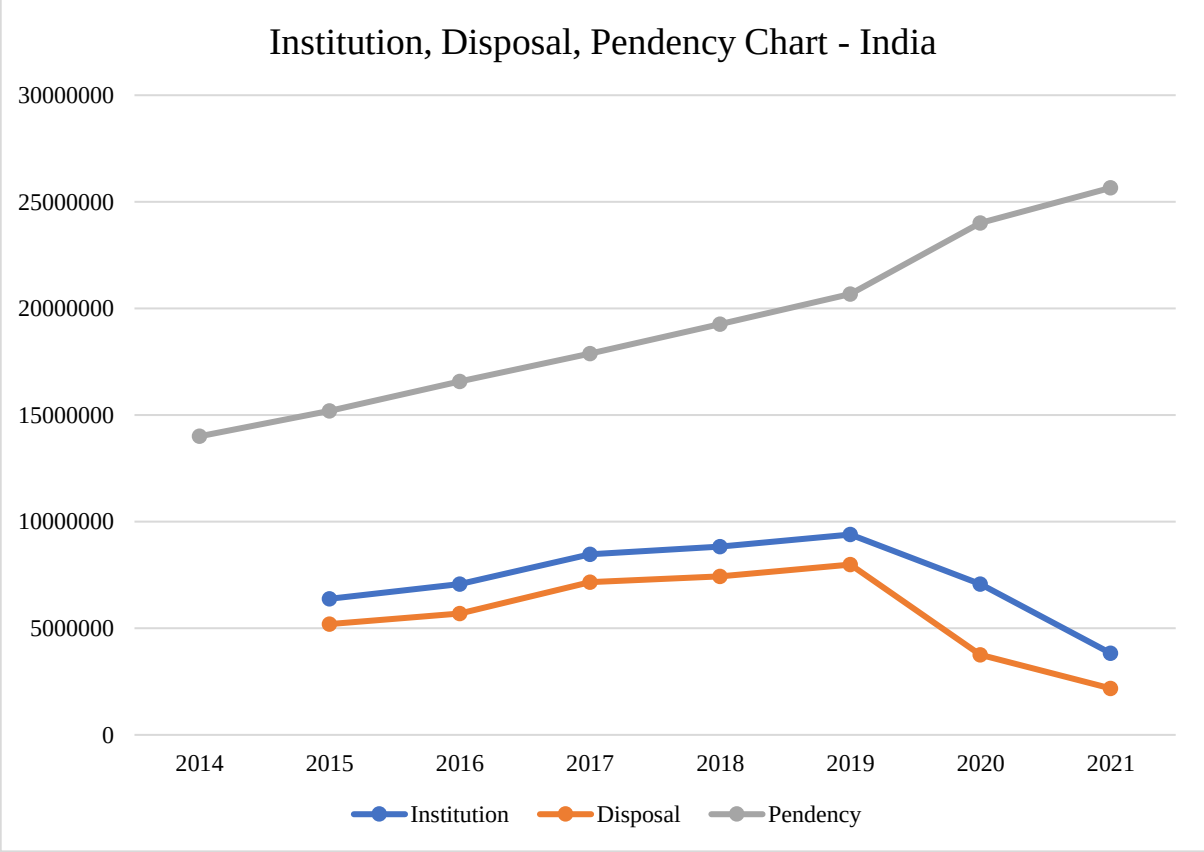
Data Courtesy: National judicial Data Grid as on 01.07.2021

* Up to June 30, 2021

A closer look at the institution disposal trend of criminal cases taken together in Figure 13, it could be inferred that none of the states could dispose of even a single matter more than that was filed during the said period and to curb down the mounting backlog creation trends for the past few years. The highest difference between the institution and disposal of cases could be found with Uttar Pradesh, where, when 26,65,355 matters were filed in the state, it could only dispose of 16,23,473 matters leaving behind, leaving creating a possible backlog of 10,41,882 matters in addition. However, it cannot also be ignored that it is the state where the maximum number of matters were filed over the time period under study. Uttar Pradesh is succeeded by Maharashtra, Gujarat and Kerala, in the list of the states that have added the greatest

number of matters to the existing backlog of criminal matters. The difference between the number of matters instituted and matters disposed runs to 696201 in Maharashtra, 501921 in Gujarat and 3,61,466 in Kerala. Going by the number of matters filed and disposed of, the disparity is minimum in smaller states and Union Territories such as Ladakh and Sikkim, where it is 74 and 186, respectively. However, it cannot be hailed to be states that have performed exceedingly well despite the adverse circumstances because it has to be read along with a comparison of the number of matters filed in these states.

Figure 14: Institution, Disposal, Pendency trend of original criminal cases in India for the years 2014-2021* (Table 14)

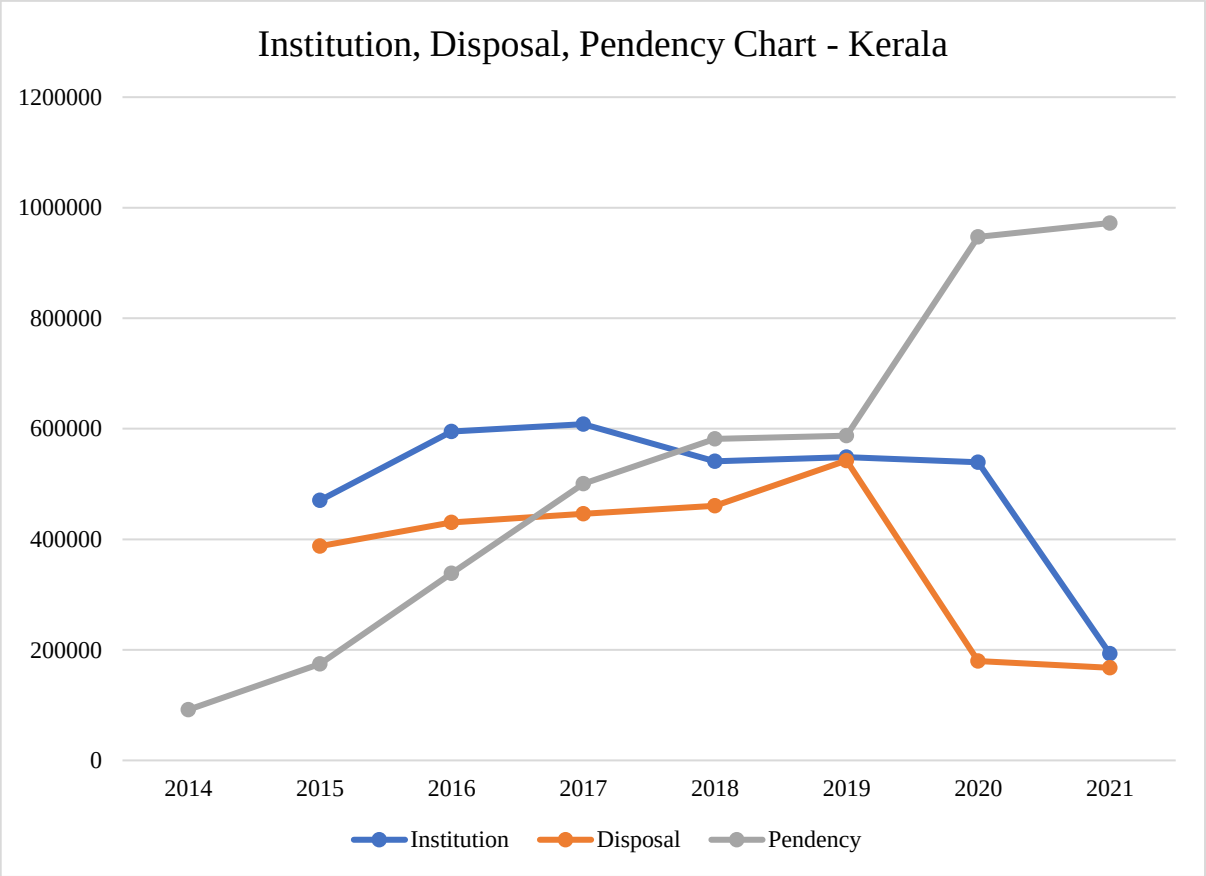


Data Courtesy: National judicial Data Grid as on 01.07.2021

* Up to June 30, 2021

Figure 14 clearly indicates that the pendency rate of original criminal matters in India, risen consistently from 2014 to 2021, even after a considerable dip in the filing rate since 2020. This increase in pendency is of no surprise, as over the period, in none of the instances, the disposal rate exceeded the institution rate.

Figure 15: Institution, Disposal, Pendency trend of original criminal cases in Kerala for the years 2014-2021* (Table 15)



Data Courtesy: National judicial Data Grid as on 01.07.2021

* Up to June 30, 2021

As far as Kerala is concerned, Figure 15 clarifies that the pendency rate during 2014 (i.e., 91626) was much below the yearly institution rate for the year (i.e., 387427). However, the disparity between the institution and disposal rate has resulted in a consistent rise in the pendency rate. In 2017, for the first time during the period, the number of pending cases (i.e., 500741) exceeded the number of cases disposed of that year (i.e., 446210), and in 2018, the number of pending cases (i.e., 581445) again for the first time exceeded the number of cases instituted that year (i.e., 541440). Since then, the total pendency remains higher. 2020 saw a massive rise in the number of pending cases to reach up to 946,890 cases. By June 2021, the pendency rate shoots up to 972,264. The rise in pendency matters since 2014 in Kerala is thus the number of pending cases rose to 10 times, which is quite alarming.

3.4 CALCULATION OF BACKLOG CREATION RATE

Backlog creation rate refers to the between institution and disposal in any given year. If the rate exceeds 1, it implies that more cases were instituted than the cases that could be disposed of during the given period, and there was an addition to the overall pendency of cases. If the ratio is less than one, it means that more cases could be disposed of than those that were instituted during the period under consideration. It also implies a decline in the overall pendency of cases during the meantime, indicating that the judicial system is capable of handling the newly instituted cases for the given timeframe.

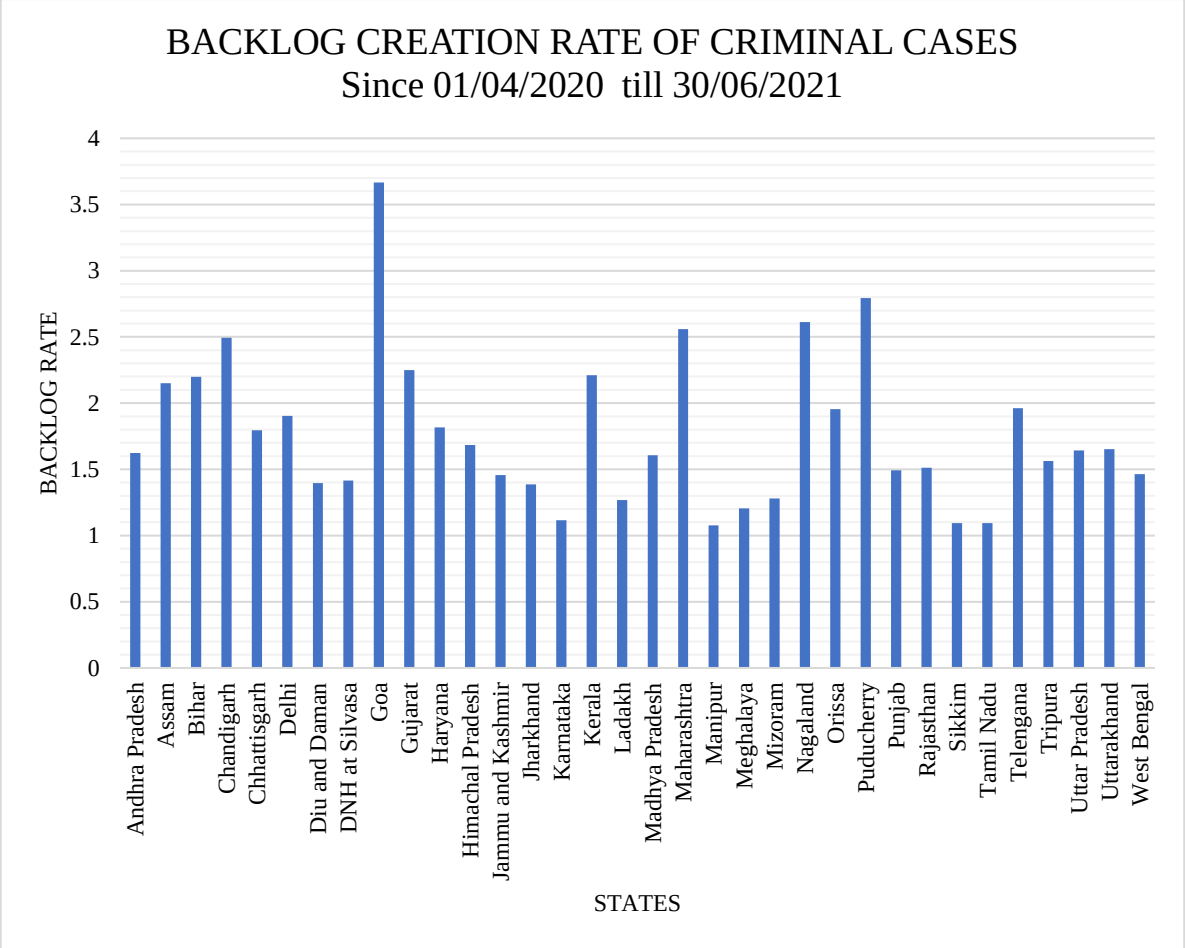
Backlog Creation Rate, BKR = I_p/D_p,[180] where

I_p = Cases instituted during a given year

D_p = Cases disposed of during a given year

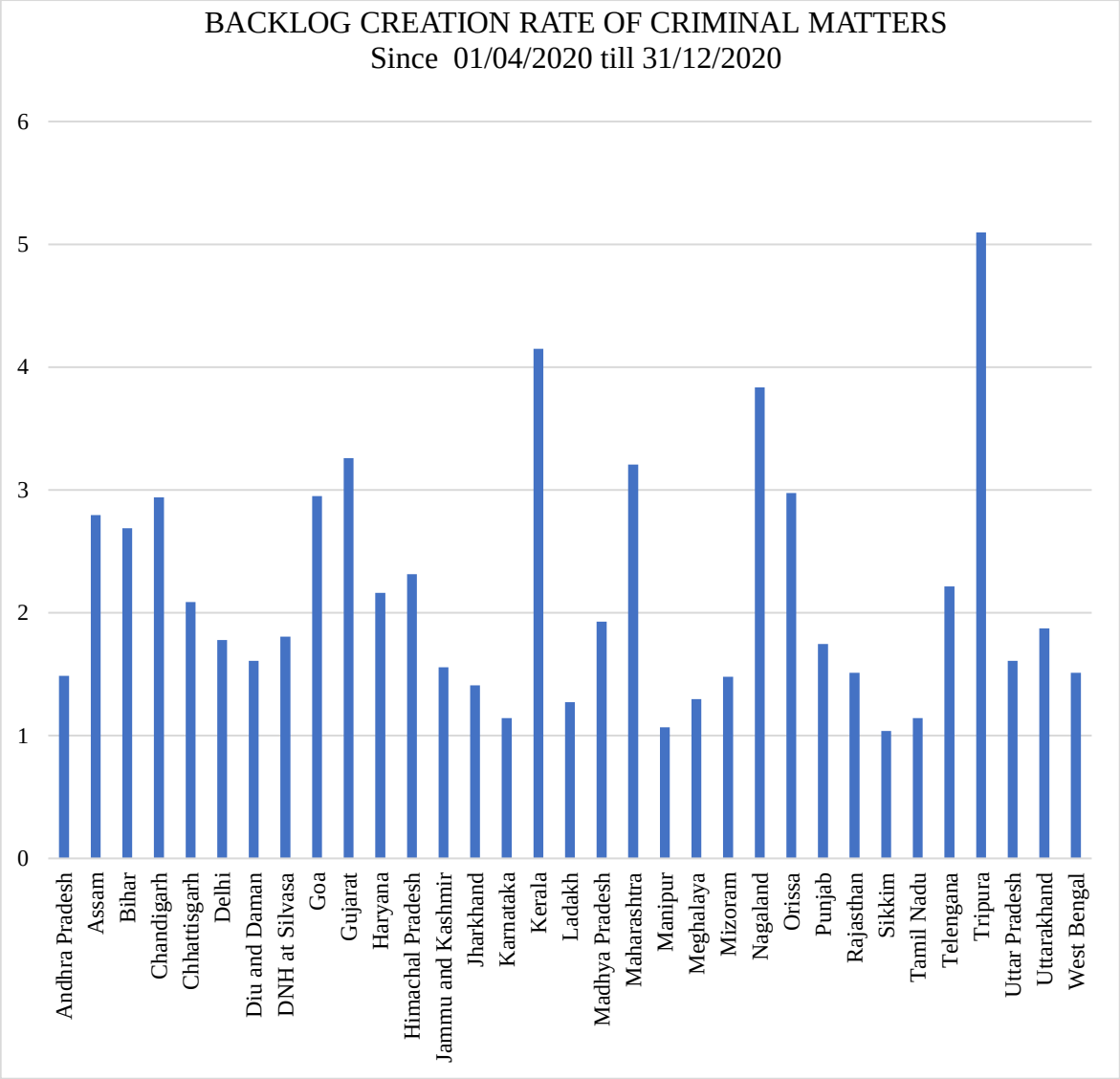
Figure 16: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state since April 2020 (Up to June 30, 2021) - State-wise comparison (Table 16)

[180] As formalised by the Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 15 (Ministry of Law, Government of India, 2014).



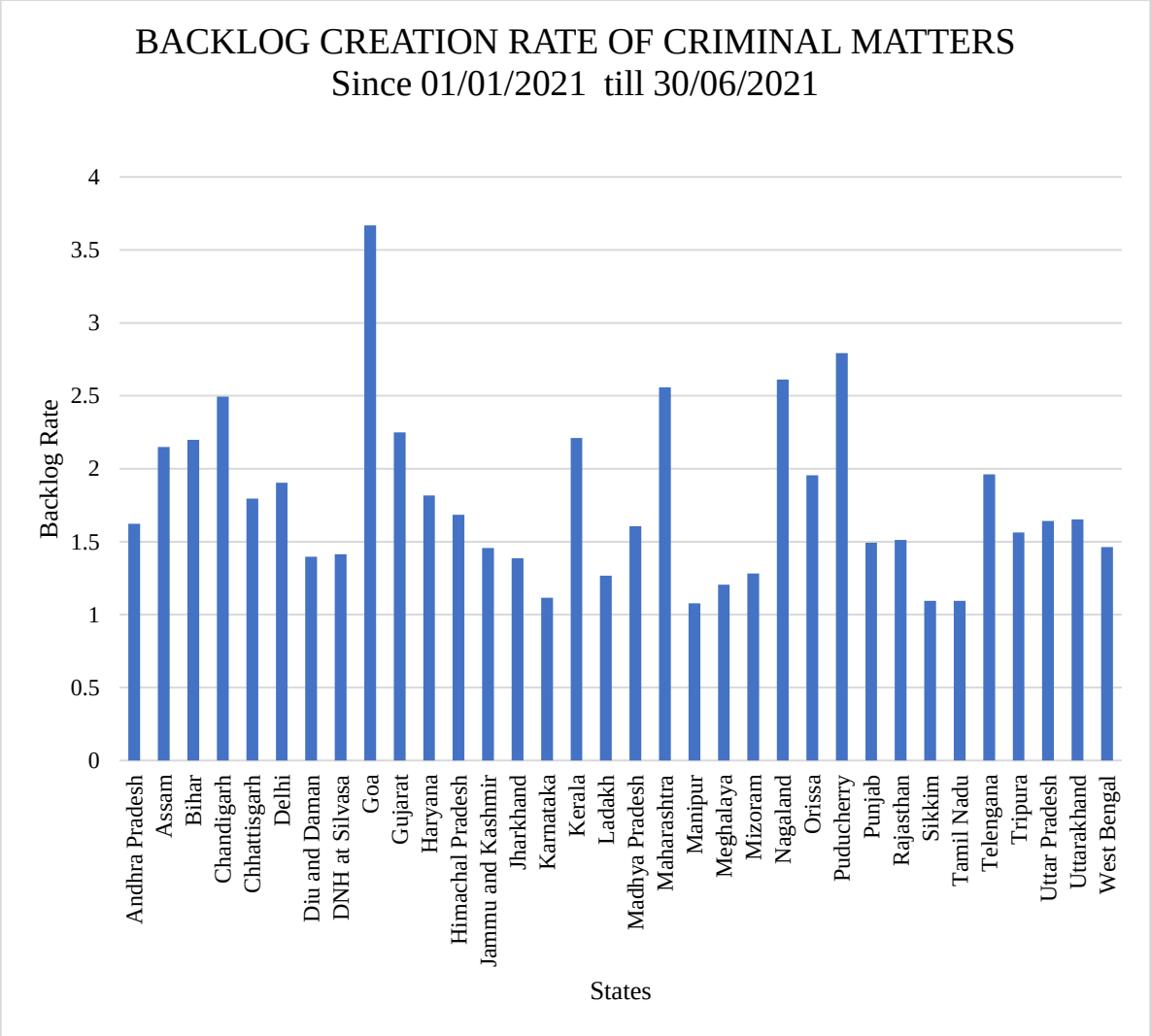
Analysing the backlog creation rate of the criminal courts in Figure 16, for a period extending from April 1, 2020, to June 30, 2020, it could be inferred that none of the states could dispose of criminal matters than that was instituted during the period. Rating the performance of criminal courts based on the criteria of the rate of disposal, Manipur heads the table with the backlog creation rate of 1.077, followed by Sikkim Tamil Nadu and Karnataka. The national average of backlog creation for the period was 1.63211. Tabulating the available data from 28 states and 6 Union Territories, 15 states and 3 Union Territories could manage to limit the backlog creation rate than the national average. However, 8 states and 2 Union territories could only dispose of as much as less than 50% of the matters as compared to the volume of matters filed with them. The backlog creation rate in Goa is quite alarming as the backlog creation rate exceeds more than 3. The backlog creation rate in Kerala is 2.21, which is only ahead of 3 states and two Union Territories. The state that created the highest backlog during the period was Nagaland (2.61).

Figure 17: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state since April 2020 (Up to December 31, 2020) - State-wise comparison (Table 17)



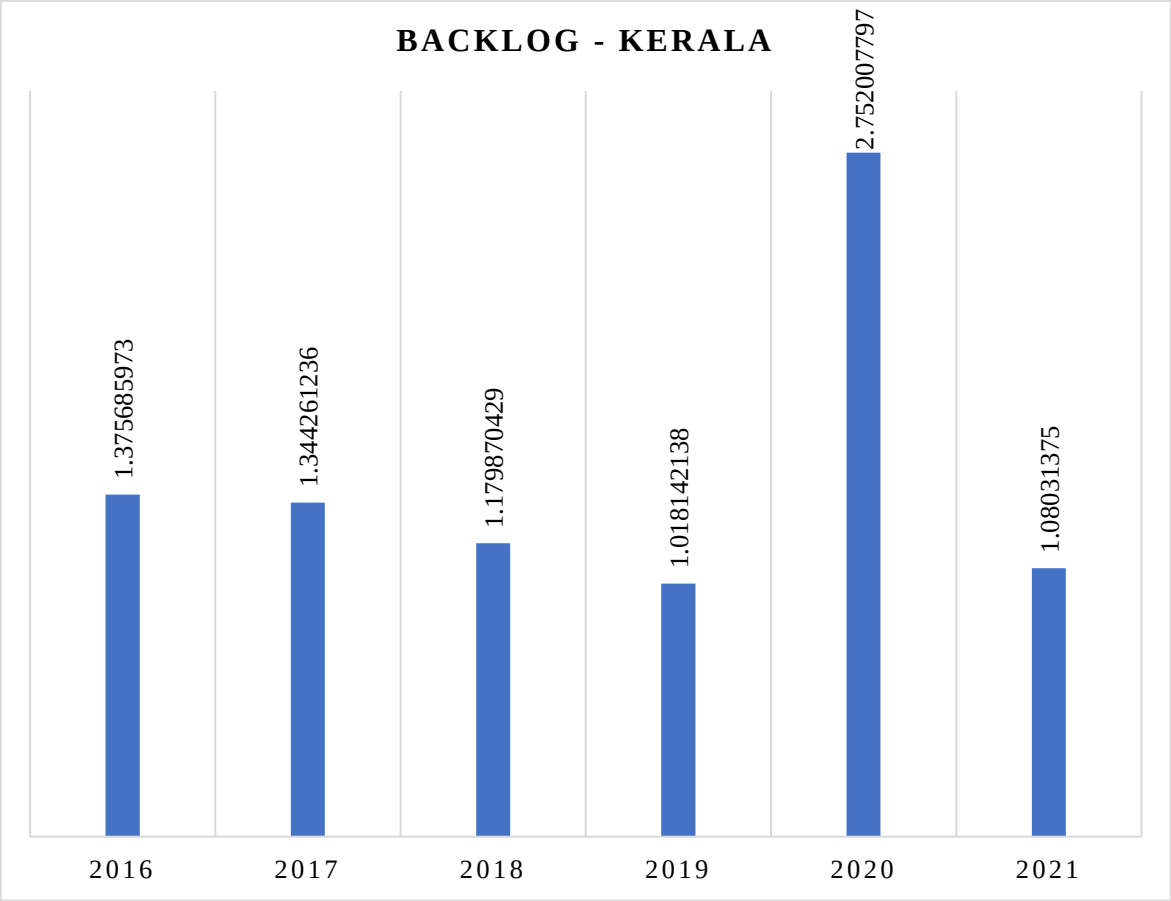
As seen from Figure 17, the backlog creation rate for the period ranging from 01/04/2020 to 31/12/2020, Tripura, records the highest backlog rate with 5.1. Kerala, which could manage its backlog creation rate well near to 1 for consecutive years, crossed the mark of 4.15 to become the second-highest backlog creating state. None of the states could bring down backlog creation rate below 1. However, Sikkim and Manipur could make it close to 1 with a backlog creation rate of 1.04 and 1.06, respectively. 13 states exceeded the mark of 2, 5 states even went on to create a backlog creation rate of more than 3.

Figure 18: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state in the year 2021 (Up to June 30, 2021) - State-wise comparison (Table 18)



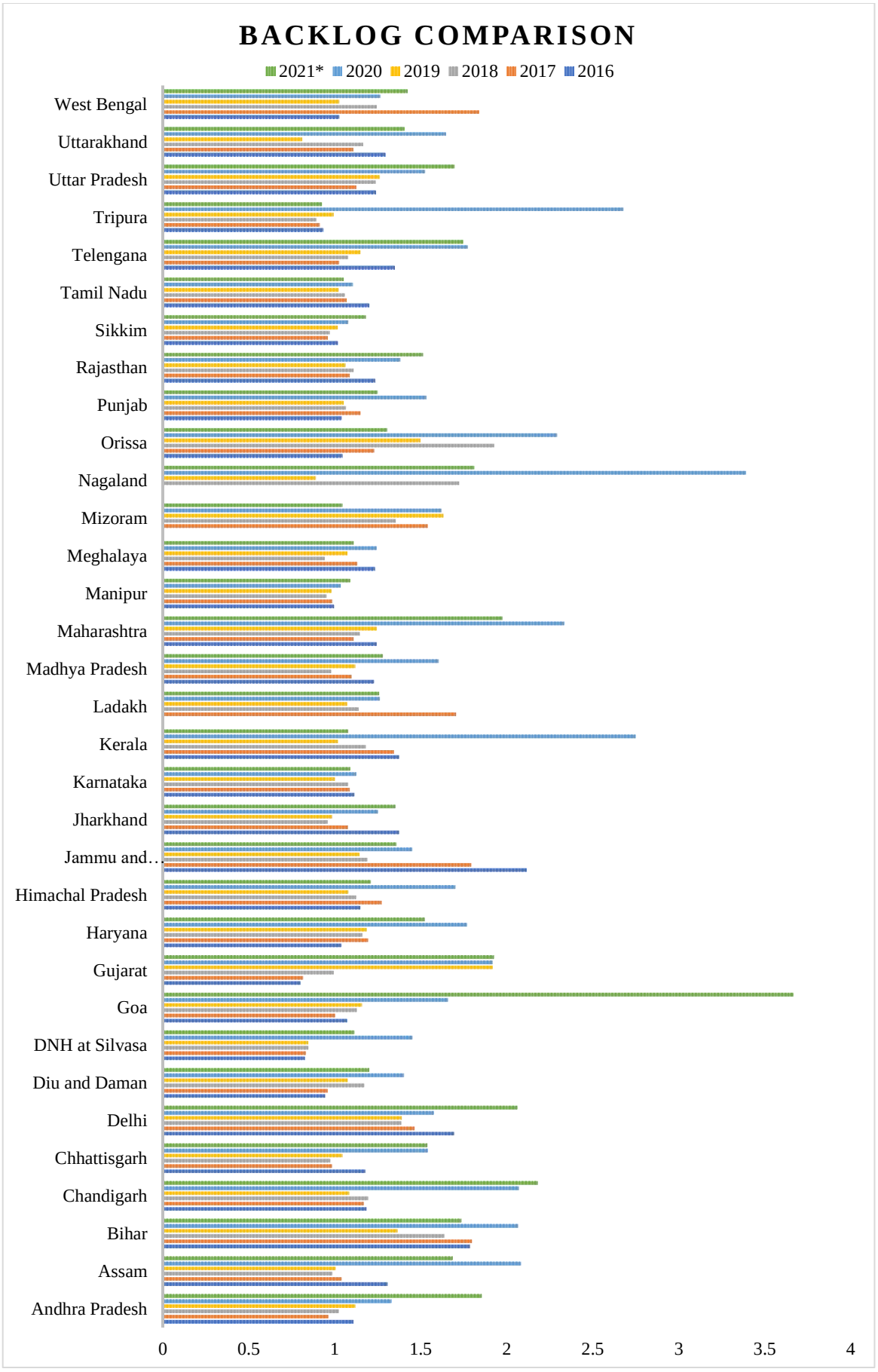
For a period of time from 01/01/2021 to 30/06/2021, Figure 18 states that Goa has the highest backlog creation rate (3.5). 4 states exceeded the mark of 3 and 9 states the mark of 2. None of the states could bring down the backlog creation rate below 1. Manipur and Sikkim, meanwhile, kept their backlog creation rate the lowest, with 1.08 and 10.9, respectively. Tripura, which had the highest backlog creation rate during the last leg, managed to bring it down to 1.6, and Kerala, which had a backlog creation rate of 4.15, could be brought down the backlog creation rate to 2.21, thanks to the efforts made during January and February.

Figure 19: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in Kerala for the years 2015-2021 (Up to June 30, 2021) (Table 19)



As Figure 19 suggests, in 2020, concerning criminal matters, for Kerala, in 2020 the backlog creation was extra-ordinarily high, which went up to 2.75. This was opposed to the trend of lowering backlog creation for the last few years. However, pursuing the 2021 statistics up to June indicates that the state could put in such efforts to manage this crisis to dispose of criminal matters.

Figure 20: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state in the years 2015- 2021 (Up to June 30, 2021) - State-wise comparison (Table 20)


BACKLOG COMPARISON
2021*
2020
2019
2018
2017
2016
West Bengal
Uttarakhand
Uttar Pradesh
Tripura
Telengana
Tamil Nadu
Sikkim
Rajasthan
Punjab
Orissa
Nagaland
Mizoram
Meghalaya
Manipur
Maharashtra
Madhya Pradesh
Ladakh
Kerala
Karnataka
Jharkhand
Jammu and…
Himachal Pradesh
Haryana
Gujarat
Goa
DNH at Silvasa
Diu and Daman
Delhi
Chhattisgarh
Chandigarh
Bihar
Assam
Andhra Pradesh
0
0.5
1
1.5
2
2.5
3
3.5
4

3.5 PENDENCY CLEARANCE TIME

Pendency clearance time for each year is calculated by dividing the pendency at the end of the year by the number of cases disposed of that year.[181] It narrates the amount of time courts would take to dispose of the cases pending before them, provided no new cases were filed during the period.[182] It is also an indication of how well courts could handle the cases that were filed with them.[183]

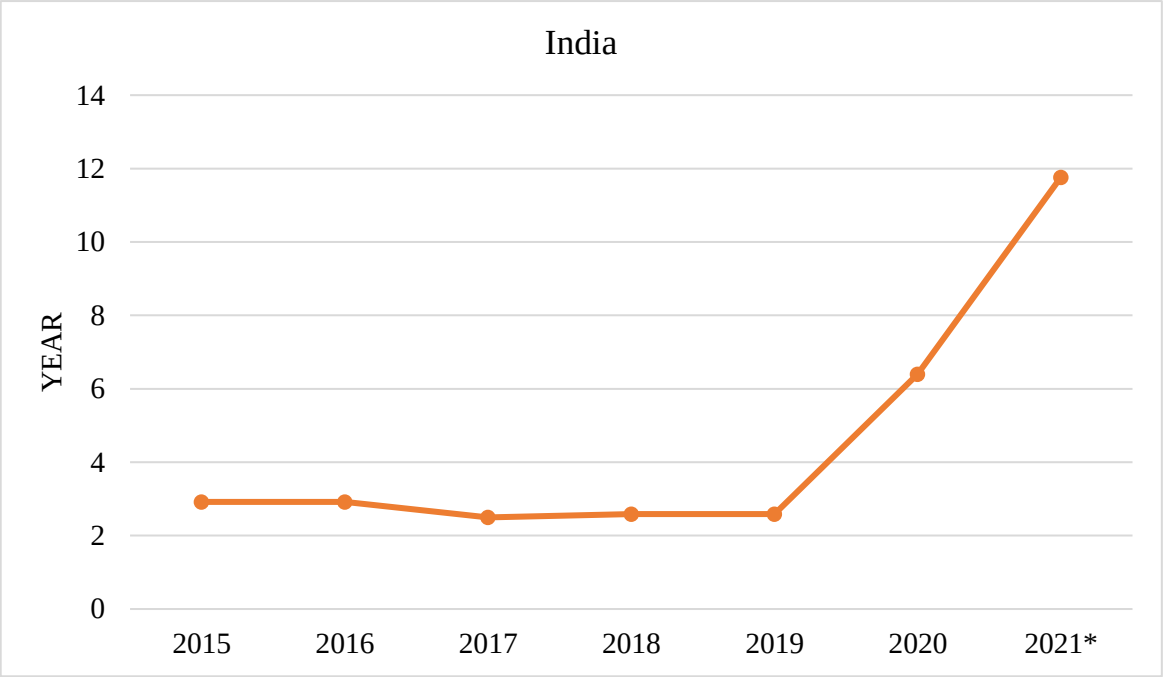
$P_t=P_y/D_y$,

P_t= Pendency clearance time,

P_y= Pendency at the end of the year

D_y= Cases disposed at the end of the year

Figure 21: Pendency Clearance Time of original criminal in India for the years 2015-2021* (Table 21)

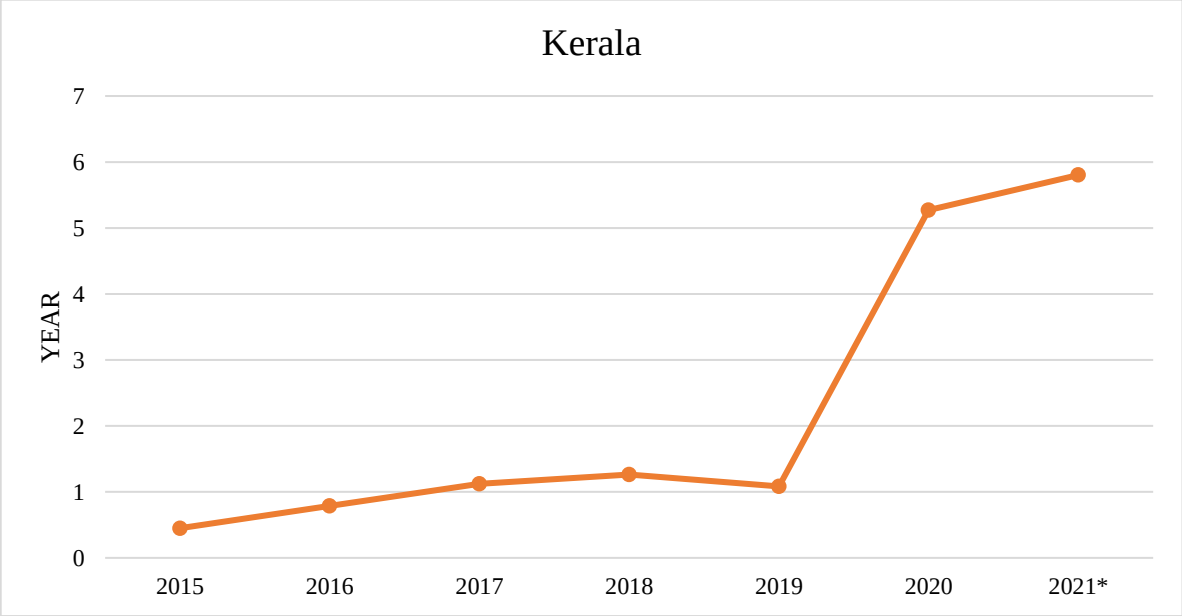


*Up to June 30, 2021

[181] As formalised by the Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 15 (Ministry of Law, Government of India, 2014).
[182] *Id.*
[183] *Id.*

As indicated by Figure 21, across the country, courts were attempting hard since 2016 to bring down the pendency clearance time. Consequently, it could bring down pendency clearance time from 2.92 years to 2.59 years by 2019. However, the entire efforts were shattered, by the year 2020, where pendency clearance time mounted to 6.4 years and to 11.76 years by June 2021. Assuming that if courts could dispose of criminal cases, as they did in 2019, it would take 3.21 years to dispose of pending cases alone, as of 30/06/2021.[184]

Figure 22: Pendency Clearance Time of original criminal cases in Kerala for the years 2015-2021* (Table 22)



*Up to June 30, 2021

As far as Kerala is concerned, pendency clearance time, as depicted by Figure 22, rose consistently from 2015 to 2018. Pendency clearance time for 2015 was just 0.45 years, from where it almost trebled and went up to a margin of 1.26 years in 2018. Leaving nothing to sigh for the dip in 2019 to 1.08 years, in 2020, the clearance time rose five times to reach 5.27 and 5.8 by 30/06/2021. Assuming that if courts could dispose of criminal cases, as they did in 2019, it would take 1.79 years to dispose of pending cases alone, as of 30/06/2021, provided no new cases were added to the tally.[185]

[184] The value is arrived at by dividing the pendency as on 30/06/2021, by total cases disposed in the year 2019.
[185] The value is arrived at by dividing the pendency as on 30/06/2021, by total cases disposed in the year 2019.

3.6 CONCLUSION

Detailed analysis of the statistics presented offers a clear indication of the impact of COVID-19 on the delay, pendency and backlog of the criminal cases. The rate at which criminal matters were disposed of fell considerably during the COVID-19 Phase at the national level, and Kerala is no exception to it. Even though the institution rate of new cases exhibited a similar dip, in Kerala, during the last year, there was a considerable surge in the freshly instituted cases awaiting disposal in a manner that is way higher than the national average. Kerala fell much below its average performance to remain almost on par with the national average in disposing of fresh matters instituted during 2020-2021. Hence, applying the practical assessment approach after comparing the performance of Kerala in relation to the national average, it could be inferred that though Kerala could expeditiously dispose of criminal cases during 2015-2019 and in 2021, it has consumed more time from April 2020 till December 2020 for disposing of criminal cases. Taken altogether, this fact forces us to draw out an inference that the judiciary in Kerala, during the COVID-19 Phase, have relatively exhibited a par equivalent performance with the national average in the disposal of criminal cases and obviously a surge of pendency and delay compared to its earlier performance. This accumulation and delay are reflected in terms of all the categories viz., sessions, warrant and summons cases. However, the inference that the performance of the judicial system was far above the average performance in the country during 2015-2019 need not necessarily mean that the state's performance establishes an indefectible standard and its performance being par with the national average during the COVID-19 Phase need not necessarily mean that the national average is to be taken as just and fair timeframe for a disposal of a case during the period. Whether the consumption of 5-10 years at an average for the disposal of the majority of sessions cases and 3 to 5 years for the disposal of warrant and summons cases is an ideal time frame, needs a further deeper and wider introspection in the light to comparative analysis, which, however, for the time being, is outside the scope of the present study.

Meanwhile, as far as the expeditious disposing of bail applications are concerned, during the COVID-19 Phase, Kerala outperformed many other states to stand ahead of the national average. It is glad that during the pandemic phase, the courts in the state have paved special attention to the personal liberty of undertrial prisoners, and to see that the prisons are not unwarrantedly crowded.

The number of pending cases has risen at the national as well as at the state level. At the national level, though, it culminated as a part of gradual progression; Kerala exhibited an exponential growth during the COVID-19 Phase. From January 2020 till June 2021, pending cases have doubled in Kerala. During the period ranging from April 1, 2020, to December 31, 2020, Kerala had the second-highest backlog creation rate in the country. Though the rate could be brought under control from January 2021 till June 2021, taken together, Kerala stands at the 4th place in the list of states that have recorded the highest backlog creation with respect to criminal matters during the COVID-19 Phase. Reflection of this underperformance is projected in the pendency clearance time as well. In Kerala, the state of affairs was that the judiciary in 2019, if worked solely on the pending cases, could have dispose of all the pending criminal cases within 1.08 years. However, COVID-19 Phase have created a huge mess, meaning that as of July, 2021, the judiciary functioning at the current pace, would consume 5.27 years for disposing of pending criminal matters alone.

Hence, taken together, statistics reveal that COVID-19 has inflicted a tremendous blow to the judiciary in Kerala, egregiously affecting the smooth flow of the courts in the disposal of criminal matters, causing a considerable dip in their performance. As revealed by the disposal trend, age-wise pendency, stage-wise pendency, and pendency rate, pendency of average volume of cases the initial phase of its proceeding, together they pose a considerable challenge to the judicial system in Kerala. This threat is brought into light when it is analysed co-relatively to the fact that almost three-fourth of the pending cases, particularly warrant and summons cases, are stagnant at the appearance stage itself and less than 8% of the total criminal cases pending as of June 30, 2021, have passed on to the trial stage, be it summary or otherwise. This state of affairs is mainly because, firstly, the judiciary has performed relatively excellently during 2015-2019 and during the COVID-19 Phase as indicated by the age-wise disposal trend[186] for 2020 and 2021, has taken special care to dispose of remaining long-pending cases. However, it ended up losing the balance to leave a large volume of freshly instituted cases unattended. Secondly, the drop in its performance during the COVID-19 Phase, as underlined by the backlog creation rate during 2015-2021,

[186] *See* Appendix-1 Table 2

aggravated the crisis, leaving a large volume of fresh cases at the initial phase of its proceedings.

Meanwhile, the backlog creation rate tells further a story that for 2015-2019 and 2021, the state is excellent in managing an average of 453505 cases[187] during its ordinary course of activity and has for a maximum handled 542571 cases in a year. However, anything more voluminous than the same would cause a genuine doubt of being managed without creating a backlog. Relating it to the institution rate, this means that the state judiciary in proportion to the aforesaid statistics could manage as much as cases that are newly instituted with it on a yearly basis, however, might struggle to clear off pending matters. Experience during 2020-2021 indicates the issue of losing the balance in attempting to reduce the volume of already backlogged cases. Therefore, for Kerala, special attention needs to be taken to balance the timely disposal of newly instituted cases with the need for expeditious disposal of pending matters without any delay.

[187] The number of cases disposed during 2015, 2016, 2017, 2018 and 2019 are 387427, 430582, 446210, 460736 and 542571 respectively. Therefore, the average disposal rate during the period is taken as 453505.

CHAPTER- IV

EXPLORING REASONS FOR DELAY, BACKLOG AND PENDENCY

4. 1 INTRODUCTION

COVID-19 has created an unprecedented situation wherein, in the event of infection it caused, and restrictions being enforced, courts mostly remained physically closed and had to switch its operation primarily to the virtual mode. However, as indicated by the statistics and responses from the field,[188] it could not carry out its operation in a full-fledged manner. Amidst the same, courts functioned on a limited scale, as noted in the previous chapter, by prioritising cases and charting schedules for their disposal. In such a state of affairs, an empirical study was conducted in order to gather a ground-level perception of the major stakeholders of criminal justice, to give indications as to whether the various reasons cited in the past for the delay, pendency and backlog of cases have acted and interplayed with a new set of impediments that has sprouted during the period, to aggravate the crisis and boom up the pendency chart. For the purpose, the population is divided into quotas, with each quota having a similar characteristic. The first quota consists of judicial officers having the jurisdiction to entertain and try criminal matters. The population is selected by convenience and responses of 20 judges spreading across all the fourteen districts in Kerala could be gathered, with at least one response from each district. The second quota consists of 70 lawyers, and the population is again collected by convenience. Fourteen districts were explored, and more responses were obtained from the districts such as Ernakulam, Thiruvananthapuram, Kozhikode, Alappuzha and Kottayam, jurisdictions that have half the share of criminal courts in Kerala, and account for the maximum number of criminal cases. Responses were obtained from judges and advocates as they are the key actors who could give first-hand information about the activities regarding the institution, treatment and disposal of cases.

Different set of questionnaires were supplied to judges and advocates. Questionnaires supplied to judges mainly attempted to draw out their perspective and experience as to the appearance of witnesses, role of witness protection scheme in curbing the crisis of delay, the effectiveness of service of summons, pattern of adjournments granted,

[188] *See* Appendix 2 Table 2 and 3.

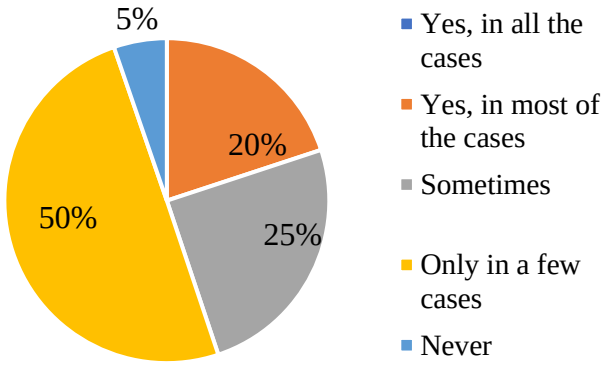
shortage of staffs and judicial officers, and infrastructural shortcomings. Questionnaire for advocates was intended to throw light into paucities of virtual courts, case management, infrastructural shortcomings, adequacy of judge strength, the effectiveness of service of summons and the role of witness protection scheme. Reasons for the delay are elaborated hereunder, taking aid and indications from the responses of the questionnaire supplied.

4.2 REASONS FOR BACKLOG, DELAY AND PENDENCY

4.2.1 Case Management

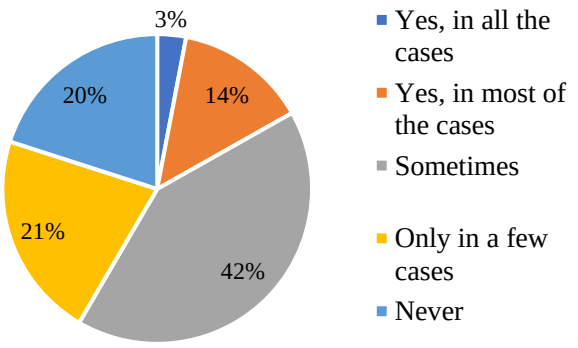
Proper case management is vital to ensure smooth functioning of courts and speedy disposal of cases.[189] Empirical study indicates that the case management of the courts was not satisfactory.

Figure 1: How far could judges stick to the schedules made for trial during the COVID-19 phase?



When judges were asked how far they could stick to the schedules made for trial during the COVID-19 phase, when one-fifth of the judges claimed that they could stick to the schedule made in most of the cases, 50% admitted that they could do so only in a few cases, whereas, 25% could stick to it sometimes, 20% could work accordingly only on a few occasions, and 5.3% confessed their total inability to stick to the schedules.

Figure 2: Satisfaction over case management- Advocates



When advocates were enquired about their level of satisfaction

[189] Niranjan J. Bhatt, *Case Management- A new Approach*, (Aug. 25, 2021) https://lawcommissionofindia.nic.in/adr_conf/niranjan%20case%20mnt12.pdf

with the criminal courts managing cases during the COVID-19 phase, 3% replied that they were satisfied in all cases, 13.8% in most of the cases, 41.6% sometimes, 21.5% in a few cases and 20% of the advocates were satisfied.

Prominent amongst the causes for dissatisfaction is the issue with the prioritisation of cases. Closer perusal of the yearly distribution of cases disposed of during 2020-21 indicates that the judicial system in Kerala has lost the balance of proportionate prioritisation of the fresh and pending cases, creating a massive pendency of newly instituted cases. In 2020, 539180 cases and in 2021, up to June 30, 192943 cases were instituted. Though it could be appreciated that in the meantime, the State could clear off cases that were pending for more than 3 years, least focus was given during the COVID-19 Phase to relatively fresh cases. Kerala, for the last five years prior to COVID-19 (that is since 2015) that had a trend of disposed of 66.33% of relatively new cases at an average, in 2020, owing to the same could disposed of, only 57.1% of the cases that were relatively fresh. However, unless backlog creation rate is brought below 1, the accumulation of newly instituted cases (for the years 2019-2021) at the initial phase of proceedings, with minimal functioning of courts at place, would in coming years create a surge of cases, that would go much beyond the capacity of the already ailing judiciary. It is to be also noted alongside, that Kerala for the last six years, has neither been able to bring down backlog creation rate below one nor could it pass on as much as cases initiated in a year to the following stages.[190] Such a state of affairs would constitute larger pendency at the initial phase of the proceeding.

Secondly, it is the problem of posting a huge number of cases in a sitting. Malimath Committee in 2003 cautioned against such a practice.[191] The net result of such a lengthy list of postings is that it considerably reduces the time spent per day on a file, resulting in a piecemeal perusal of matters.[192] Even during the COVID-19 pandemic, a perusal of special cause-list at various stations indicated such practice. However, needful to say, several courts managed cases excellently, by prior listing at the beginning of every month, with urgent cases given priority and finalised after taking prior objections from the parties.

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[190] *See* Appendix 1 Table 11-20.
[191] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 142 (Ministry of Home Affairs, Government of India, 2003).
[192] *Id.*

Thirdly, an enormous listing of cases and issuing summons to a considerable number of witnesses who could not be practically examined on that day, causes either piecemeal recording of evidence or non-examination of the witness. Case management, with absolute neglect to the convenience of the witness, further paves another reason for non-appearance of witnesses.[193] Further, it was earlier recommended that cross-examination and chief examination of the investigating officers may be conducted continuously to avoid delay in examining investigating officers.[194] Amendment to Sections 242(2), (3) and 246(4) be made to ensure that cases are not adjourned for further cross-examination.[195] 77th Law Commission also recommended the recording of evidence at a stretch. Piecemeal recording of the evidence could lead to delay as, considering that regular attendance of witnesses is not mostly secured, chances for absence are increasingly present and thus, possibilities for delay also arise.[196] Piecemeal recording of evidence further causes immense difficulty when a presiding officer is transferred in between.[197] This aspect of case management was well highlighted in a plethora of cases[198] and more notably in *State of UP v. Shambhu Nath Singh.*[199]

Fourthly, lengthy arguments often consume a large volume of court's working hours. The inability of judges to control advocates from making lengthy submissions was heavily criticised by 230th Law Commission.[200] Supreme Court, on a handful of occasions particularly in recent matters, cautioned advocates on making the arguments

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[193] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 149 (Ministry of Home Affairs, Government of India, 2003).

[194] Law Commission of India, *77th Report on Delay and Arrears in Trial*, 18-22 (Ministry of Law, Government of India, 1978).

[195] Law Commission of India, *154th Report on The Code of Criminal Procedure Code, 1976*, 32-36 (Ministry of Law, Government of India, 1996).

[196] Law Commission of India, *77th Report on Delay and Arrears in Trial*, 20 (Ministry of Law, Government of India, 1978).

[197] Law Commission of India, *41th Report on Code of Criminal Procedure, Vol. I*, 217 (Ministry of Law, Government of India, 1969).

[198] *Raj Deo Sharma v. State of Bihar* ,1998 (7) SCC 507,; *Common Cause, a Registered Society v. Union of India*, 1996 (4) SCC 33; *P. Ramchanadra Rao v. State of Karnataka*, (2002) 4 SCC 578; *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors*, AIR 2012 SC 642.

[199] AIR 2001 SC 1403, where Supreme Court stated that

> "It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at doorstep from morning till evening 4 only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

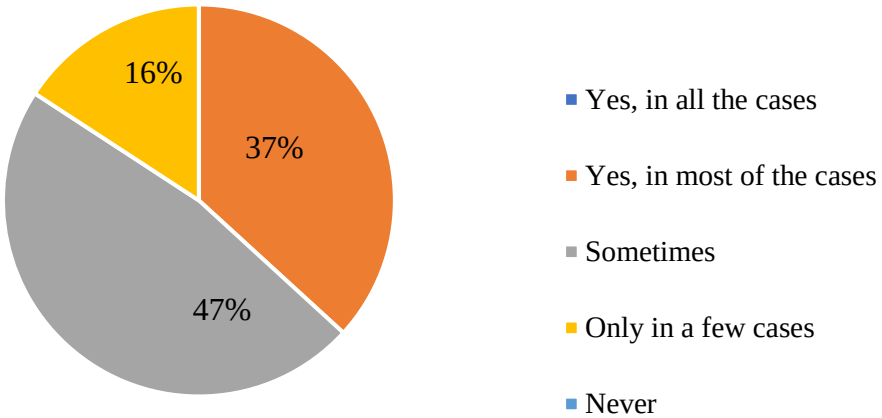
[200] Law Commission of India, 230th Report on Judicial Reforms-Some Suggestions, 35 (Ministry of Law, Government of India, 2009).

lengthy.[201] Reading out lengthy passages from judgements and citing a large volume of authorities than that is relevant would contribute towards lengthy arguments.[202] Despite the same, the practice persists all resulting in flawed case management. Flawed case management means reduced inefficiency, shattered schedules and hence delayed dispensation of justice.[203]

4.2.2 Absence of Witness

Witnesses form an integral role in the prosecution proceedings in a case. Absence or non-co-operation on the part of witnesses constitutes a sturdy hindrance to the timely dispensation of justice.[204]

Figure 3: Regular attendance pattern of witnesses (other than police, government officials and expert witnesses)



When judges were asked whether witnesses (other than police, government officials and expert witnesses) appeared regularly, 39% responded that there is a regular attendance concerning the witnesses, whereas for 44%, the attendance of the witness

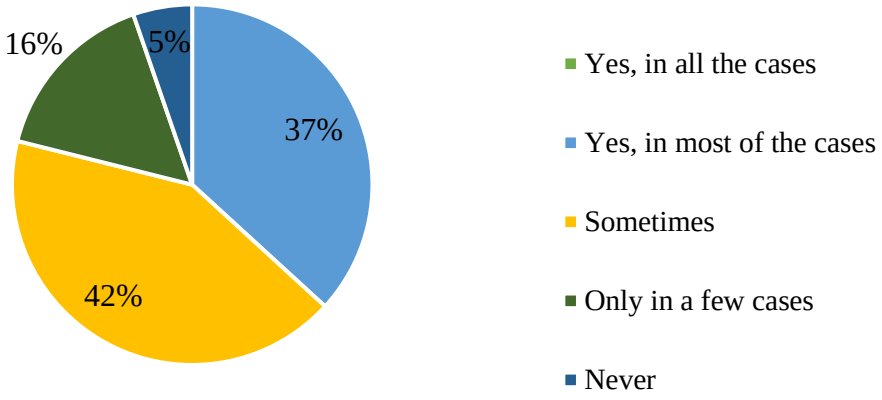
[201] *Ajit Mohan & Ors v. Legislative Assembly National Capital Territory of Delhi & Ors*., WP(C) 1088 of 2020 decided by Supreme Court on 08.07.2021.
[202] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. I*, 345 (Ministry of Law, Government of India, 1958).
[203] Niranjan J. Bhatt, *Case Management- A new Approach*, (Aug. 25, 2021) https://lawcommissionofindia.nic.in/adr_conf/niranjan%20case%20mnt12.pdf while commenting on the relevance of case management opined that

> "The problems have multiplied due to lethargy and passive handling of the administrative aspects of the case thereby creating an absence of answerability. Without dynamic control and continuous monitoring of the system, a passive indifference and despair creating a helpless acceptance of the existing situation prevail, resulting in multiplication of back logs."

[204] SN Sharma, *Fundamental Right to Speedy Trial- The Judicial Experimentation*, 38(2) JOURNAL OF INDIAN LAW INSTITUTE 236 (1996).

could be secured sometimes and 17% confessed that regular attendance happens only a few cases.

Figure 4: Frequency of resorting to grave steps (including issuing Non-Bailable Warrants, arrest, etc.) to procure the attendance of witness (other than police, government officials and expert witnesses)



When judges were enquired with the frequency at which they had to resort to grave steps including issuing non-bailable warrants, arrest and so on, to procure the attendance of those witnesses, most of them replied that they have thought of such measures; however, a majority (42.1%) have decided to do so only on a few occasions. Nevertheless, 36.8% of judges who participated have resorted to such measures in most cases, and 15.8% have only done it in a few cases. 5% of the judges have not taken such measures so far.[205]

However, when asked to analyse the pattern of their appearance during COVID -19 Phase, only 21.1% of the judges responded that witnesses other than police and expert witnesses appeared in most cases. 42.1% responded that these witnesses only turned up sometimes, and 31.6% of the judges replied that their attendance could only be procured in a few cases. 5.3% complained that witnesses never turned up on time.[206]

[205] *See* Appendix 3 Table 2A.
[206] *Id.*

Figure 5: Appearance trend of witnesses (other than police and expert witnesses) during the COVID Phase

When judges were asked about the usual trend of appearance of police, other government officials, and expert witnesses when they are summoned to appear, 10.5% of the judges said that these witnesses usually appear in all the cases, 47.4% opined that they appeared in most of the cases. According to 26.3%, these witnesses appeared sometimes, and 15.8% complained that their appearance was limited only to a few cases.

Figure 6: Appearance trend of Government officials including Police

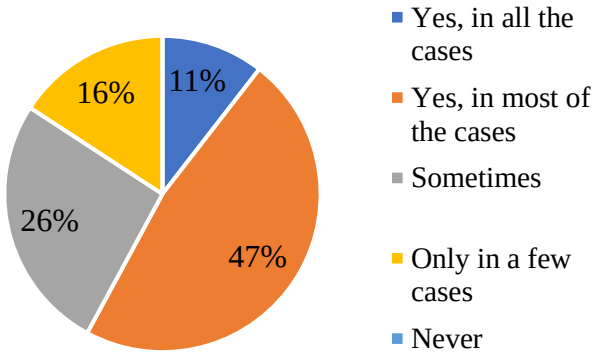
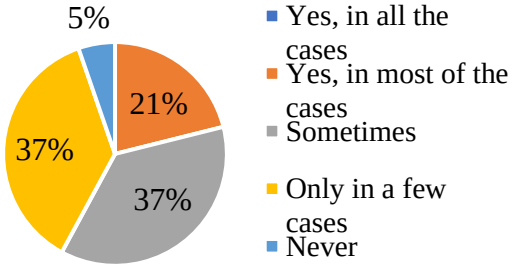


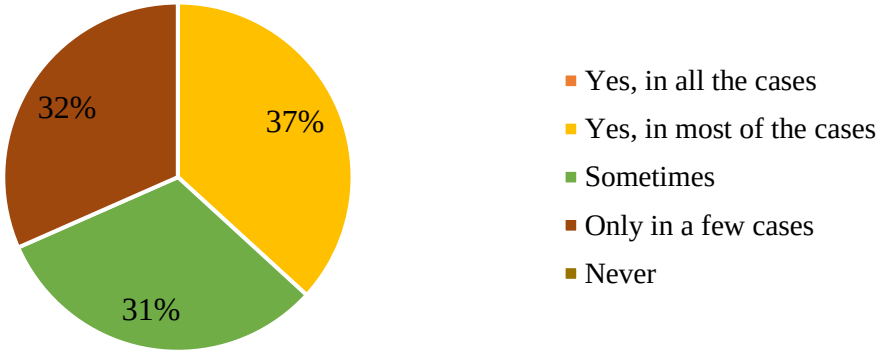
Figure 7: Frequency of resorting to grave steps to procure the attendance of government officials



Only 21.1% of the judges further opined that they had to resort to grave steps in most cases to procure the attendance of police, other government officials, and expert witnesses in normal circumstances. For 36.8%, it happened in a few cases, and for the same proportion, it happened sometimes. 5.3% never bothered to do so. [207]

[207] *Id.*

Figure 8: Appearance trend of government officials during COVID-19 Phase



However, when it comes to the COVID-19 phase, only 36.8% of the judges replied that police, other government officials, and expert witnesses appeared regularly. When 31.6% opined that their appearance was only secured sometimes, 31.6% hinted that these witnesses appeared only on a few cases.[208]

It is a trite that absence of witness is causation for the delay. If so, absence of witness, when called upon to appear, aggravated the crisis during the COVID-19 phase, in both the instances (i.e., witnesses other than police, other government officials, and expert witnesses and witnesses in the form of police, other government officials, and experts). Before, COVID-19 phase, if it was possible to resort to grave steps including issuing non-bailable warrants, arrest and so on to procure their attendance, during the COVID-19 phase, judges were practically disarmed from resorting to such measures.[209]

The absence of witnesses other than police, other government officials, and expert witnesses before the COVID-19 phase, despite several recommendations, remains an unsolved puzzle throughout Indian judicial history.[210] Though these factors largely exist per se, their high rate of non-appearance during the COVID-19 phase could be

[208] *Id.*
[209] *See* Appendix 2 Table 2.
[210] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol.* I, 335 (Ministry of Law, Government of India, 1958); Law Commission of India, *77th Report on Delay and Arrears in Trial*, 20 (Ministry of Law, Government of India, 1978)**;** Law Commission of India, *154th Report on The Code of Criminal Procedure Code, 1976*, 90-116 (Ministry of Law, Government of India, 1996); Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 151 (Ministry of Home Affairs, Government of India, 2003).

explained by attribution to various factors from being infected by COVID-19 to varying degrees of COVID-19 restrictions that were in place.

Acknowledging that absence of any witness when summoned to appear is a causation for the delay and hence is a matter to ponder over; however, it is to be stated precisely that lack of timely appearance of witnesses in the form of police, other government officials, and experts at the crucial stage in the lifecycle of a case, is a matter of more serious concern. It is primarily because the higher rate of non-appearance by the Government officials in a majority of cases, running up to more than 40% during the COVID-19 phase or even otherwise, is an indication of persisting lack of coordination between the prosecution as well as investigating agency and therefore, is continuing threat to not only to the timely disposal of cases but also for the dispensation of criminal justice as such. Suppose such a non-appearance is attempted to be countered by citing the COVID-19 and other deputation of these officials; in that case, such a defence directly hits the age-old need to separate investigating agency from other government functionalities to keep these agencies exclusively for the investigation proposes.[211] Further, the 154th Law commission, to facilitate the attendance of investigating officers, also recommended listing in such a way that two or three days continuously is provided to deal with cases from a particular station rather than a random or chronological listing

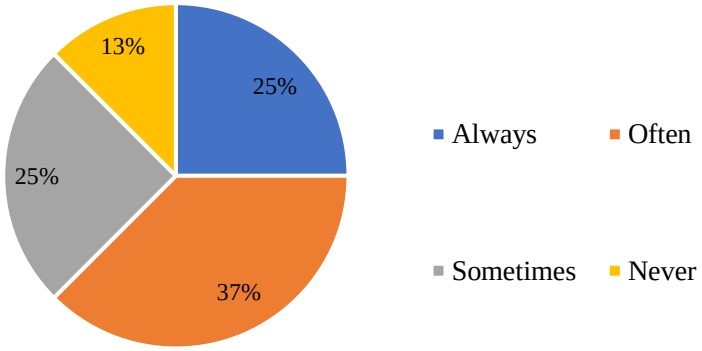
[211] 14th Law Commission recommended that all the judicial and non-judicial commissions appointed to address the paid of delay have given due attention to formulate a solution for the low appearance rate of witnesses. Law Commission of India, in its 14th Report address the problem in detail and recommended several key remedial measures. Prominent amongst them is the acknowledgement from that though prosecution being the carried out in the interest of the society as a whole, unless reimbursement of reasonable expenditure incurred by the witnesses to testify before the Court are not made, prosecution would suffer for the want of adequate evidence and hence recommended the state to provide adequate batta and allowances to ensure timely appearance of witnesses. Report further points fingers at the non-effective service of summons, non-examination witnesses whenever present to testify and lack of infrastructural support to ensure convenience of witnesses. Commission puts the blame on the presiding officers for careless postings of hundreds of cases, unnecessarily requiring their presence despite being impossible to be examined on that particular day. *See generally:* Law Commission, *14th Report on Reforms of Judicial Administration Vol. II*, 776 (Ministry of Law, Government of India, 1958); Two decades later 77th Law Commission again highlighted the persistence of same issues, particularly that of witnesses being sent back unexamined. *See generally*: Law Commission, *77th Report on Delay and Arrears in Trial*, 18-22 (Ministry of Law, Government of India, 1978) Though 154th Law Commission recommended several such measure to avoid absence of witnesses, case management does not see to pay attention to it. Vice of infrastructural requirements, that might adversely affect the attendance of witnesses include lack or unauthorised conversion of shelter sheds and seating arrangements. Despite providing these features still if witnesses refuse to turn up, Commissions grants green signal to initiate, criminal proceedings against the recusant witnesses. *See generally:* Law Commission, *154th Report on The Code of Criminal Procedure Code, 1976*, 90-116 (Ministry of Law, Government of India, 1996); Malimath Committee Report in 2003, emphasised again on ensuring reimbursement for the witnesses adequately. *See generally:* Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 151 (Ministry of Home Affairs, Government of India, 2003).

of cases. However, in practice, the recommendation does not seem to have been actuated.

4.2.3 Inadequate witness protection scheme

Inadequate witness protection scheme, leading to perjury[212] or absence of witnesses at trial, was highlighted by 198th Law Commission Report.[213] Since instances of accused threatening witnesses are not exceptional and particularly considering that delay opens up the opportunity for the accused to win over the witnesses, there is a dire need for an effective witness protection scheme.[214] Though measures were adopted to ensure protection for witnesses, responses of judges and advocates to the questionnaire unequivocally hints that these are not sufficient to secure the regular attendance of witnesses.

Figure 9: Whether an an improved witness protection scheme could have procured a better rate of witness appearance? (Judges)



25% of the judges expressed their opinion that an improved witness protection scheme would have always ensured a better rate of witness appearance. 37.5% said that it would have often done so, 25% opined that it would have sometimes helped, and 12.5% thinks

[212] Witnesses turning hostile and giving false evidence were identified by Malimath Committee report as a causation for delay. Perjury extents the examination proceedings further. Despite the existence and application of penal provisions, perusal of case records indicates that its existence, adding to the procedural complexities often ending up delayed disposal of cases. *See generally:* Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 151 (Ministry of Home Affairs, Government of India, 2003).

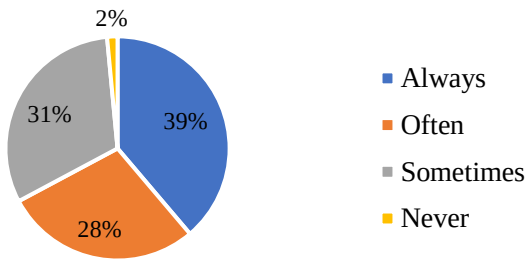
[213] Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes*, 75 (Ministry of Law, Government of India, 1978).

[214] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 284 (Ministry of Home Affairs, Government of India, 2003)

that an improved witness protection scheme would not have made any difference in the witness protection scheme.

However, advocates expressed a much stronger opinion, where 38.8% felt that paucities of existing witness protection schemes have impeded procuring a better witness appearance rate. 28.4% often felt the need for a better witness protection scheme, 31.3% have experienced its need at least in some cases, whereas 1.5% of the advocates never felt so.

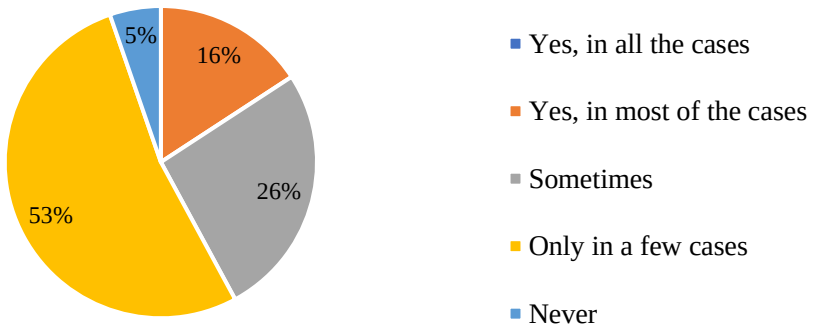
Figure 10: Whether an an improved witness protection scheme could have procured a better rate of witness appearance? (Advocates)



4.2.4 Ineffective Service of Summons

Ineffectiveness in the issuance of service of summons, highlighted by 14th, 77th and 154th Law Commission reports and Arrears Committee that, still haunts the speedy dispensation of justice, resurfaced with the COVID-19 phase.[215] Despite the unprecedented diversification of means of summons,[216] responses from the field

Figure 11: Effectiveness of Service of Process- Judges



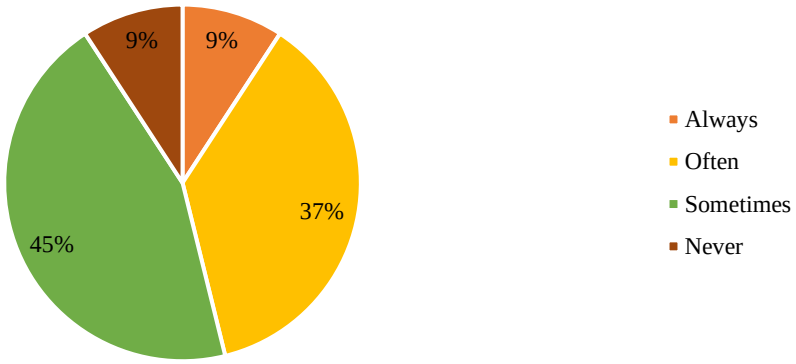
[215] Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. II*, 776-784 (Ministry of Law, Government of India, 1958); Law Commission of India, *77th Report on Delay and Arrears in Trial*, 11-12 (Ministry of Law, Government of India, 1978)**;** Law Commission of India, *154th Report on The Code of Criminal Procedure Code, 1976*, 90-116 (Ministry of Law, Government of India, 1996); Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 149 (Ministry of Home Affairs, Government of India, 2003).

[216] During the COVID-19 phase, Supreme Court has permitted serve summons including WhatsApp and other convenient media. *See: In Re Cognizance for Extension of Limitation*, Suo Moto WP(C) No. 3/2020, decided by Supreme Court on 10.07.2020.

indicate that summons could not be delivered effectively, thus constituting a contributing factor for the delay.

52.6% of the judges believed that service of process was effective only in a few cases during the COVID-19 phase, whereas 5.3% expressed the strongest disapproval as to its effectiveness. 26.3% stated that it was effective sometimes, whereas only 15.8% experienced service of process achieving their purpose in most cases. Perfection, however, remains idealistic.

Figure 12: Effectiveness of Service of Process - Advocates



44.6% of the participating advocates also felt that the service of the process could achieve its purpose only in a few cases. 36.9% could often perceive it as effective. When 9.2% of the advocates always felt that service of summons was effective, the same number of their learned friends rated its effectiveness just in the opposite manner.

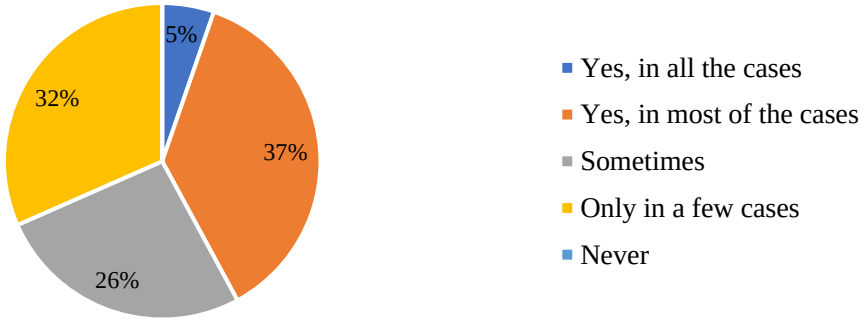
Inferring from the above responses regarding the service of process, which is vital in a criminal proceeding to intimidate the concerned parties of the need to be present in court, seems not to have achieved its purpose, at least in many cases. Principal reasons for the ineffectiveness of service of summons is attributable to the deployment of police personnel for COVID-19 prevention duties, to which, fingers, however, cannot be pointed at, particularly having shown through disregard to several recommendations of various committees on the matter. Once again, such a crisis prompts a recapitulation of the recommendations to devise a separate mechanism divorced from the police to ensure effective service of summons.

4.2.5 Co-operation from the part of Bar

For the expeditious disposal of cases, it is pertinent that the Bench and Bar should function hand in hand.[217]

However, judicial officers expressed concern over the cooperation from the Bar. When judges were asked as to how co-operative the Bar was, 5.3% of the respondents replied

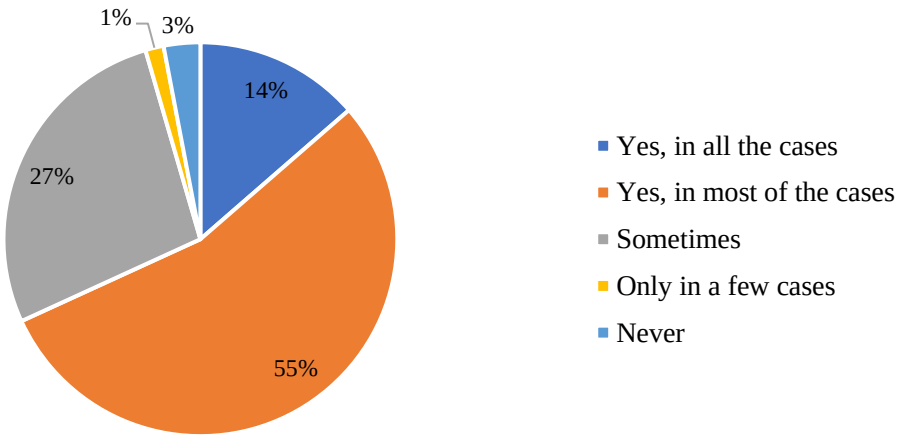
Figure 13: Co-operation of the Bar during COVID-19 for speedy disposal of cases



that it co-operated in all the cases, and for 36.8%, it happened in most of the cases. However, 26.3% could experience co-operation from the Bar only sometimes and 31.6% in a few cases.

When advocates were asked how much they could co-operate with the judges to see that the schedules made for criminal cases are followed, 13.6% responded that they did

Figure 14: Co-operation with the Bench- Advocates



[217] Niranjan J. Bhatt, *Case Management- A new Approach*, (Aug. 25, 2021) https://lawcommissionofindia.nic.in/adr_conf/niranjan%20case%20mnt12.pdf while commenting on the relevance of bar-bench relation in case management opined that, "*lack of will and joint co-operation of legal actors the judges and the lawyers – and total non-involvement of litigants have left the "unattended child to its fate".*

in all the cases, for 54.5% in most of the cases and 27.3% sometimes. 1.5% admitted that they could do so only in a few cases, and 3% replied that they never did so.

Comparing both the responses, differences in perception aired could be traced out, though not too wide to contradict each other. Nevertheless, the confessions, from more than a quarter of responding advocates and a complaint of non-co-operation from around half of the responding judges, indicates, the persistence of lack of cooperation between the Bar and bench at least to some degree, though it could not be traced with mathematical precision. Co-operation from Bar being vital to ensure speedy disposal of justice, any non-cooperation could cause a particular matter to be delayed than that is expected.

4.2.6 Adjournments

Section 309 of the Criminal Procedure Code, 1973 deals with the postponement and adjournment of criminal proceedings. In *A Lakshman Rao v. Judicial Magistrate,*[218] Supreme Court cautioned the use of this provision to wield it in accordance with the principles of justice and reason and strictly as per the guidelines provided in the statute and shall not be in any manner be fanciful and arbitrary. In *State v. Rasiklal K. Mehta,*[219] and later Supreme Court in *Vinod Kumar v. State of Punjab,*[220] stated that once the examination of witness has begun, it has to be conducted on a day-to-day basis unless an adjournment for necessary reasons are granted. However, provisions that were intended to postpone or adjourn cases when there is a reasonable and special reason got normalised, by its day to day and cases to case application on a frequent basis, and this constitutes a prominent reason for the undue accumulation of cases. The irony is that most of the adjournments are granted for not so sound

[218] 1971 SCR (2) 822.
[219] 1978 Cr.L.J.809(Bom).
[220] (2015) 3 SCC 220.

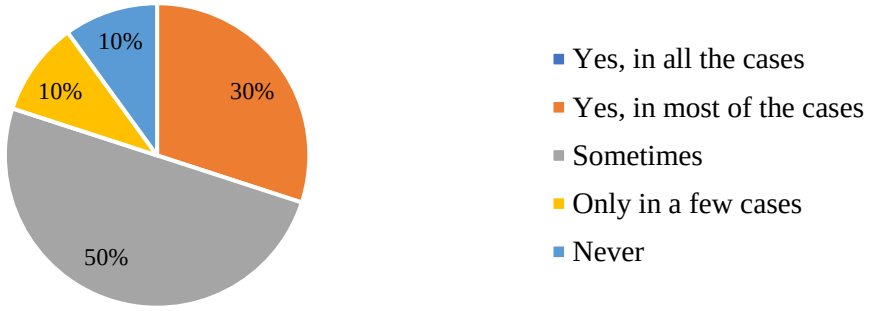
reasons,[221] paving the way for interested parties to play delay tactics,[222] which would, in turn, be a bitter violation of the rights of the other, often harder to uncloak and challenging to seek remedies for. Law commissions and other commissions employed to look into the pendency of cases have on every occasion taken pages together in their reports suggesting remedies to avoid the same. However, the empirical study indicates that this malady has not yet been cured. 30% of the judges revealed that in most cases, adjournments are not sought on reasonable grounds. 50% of judges indicated it as happening in some cases. When 10% of the population admits its existence in few cases, the other 10% claims that adjournments were sought before them only on reasonable grounds.

[221] 154th Law Commission report identifies that During the Trial adjournments are granted for following reasons. They include
1. Non-appearance of the accused.
2. Non-production of the accused from jail.
3. Copies of the documents not ready/not supplied.
4. Non-appearance of the witness after service.
5. Witness not served /summons not issued or not returned by police station.
6. Non-production of case property.
7. Non-availability of the Defence Counsel.
8. Non-preparedness of the Defence Counsel.
9. Non-appearance of the Prosecutor,
10. Non-preparedness of Prosecutor.
(1. Presiding Officer on leave,
12. No time left/Court busy with other case,
13. The day of hearing declared a holiday.
14. Judgment/Order not ready.
15. Stage completed (hence, adjourned for next stage).
16. Listed for misc. work. therefore, adjourned.
See generally: 154th Report on The Code of Criminal Procedure Code, 1976, 90-116 (Ministry of Law, Government of India, 1996).

[222] Justice Chinnappa Reddy in beautiful language elaborates on the delay tactics in *State of Maharashtra* v. *Champalal* [1982 SCR (1) 299]

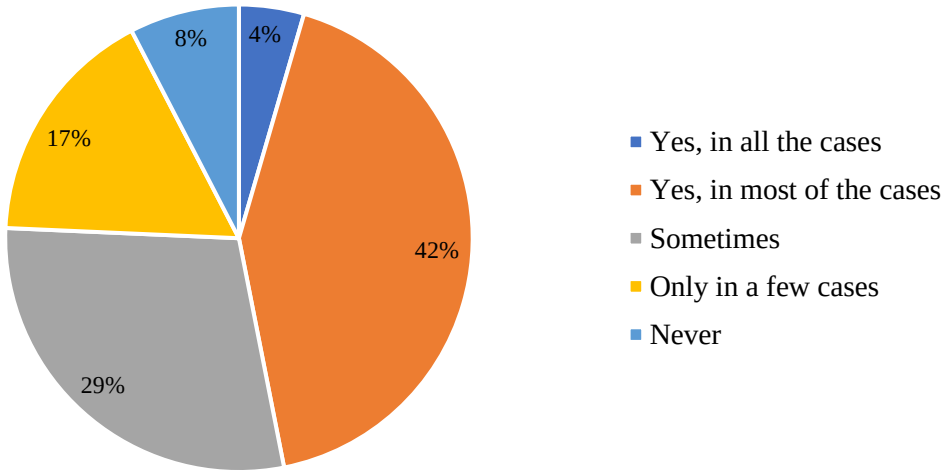
> We know of trials which are over delayed because of the indifference and somnolence of the deliberate inactivity of the prosecuting agencies. Poverty struck dumb accused persons too feeble to protest, languish in Prisons for months and years on and awaiting trial because of the insensibility of the prosecuting agencies..... Sometimes when the evidence is of a weak character and a conviction is not probable result the prosecuting agencies adopt delaying tactics to keep the accused persons in incarceration as long as possible and to harass them. This is a well-known tactic in most conspiracy cases.

Figure 15: Reasonability of adjournments sought- Judges



When enquired with the advocates of the frequency at which they have sought adjournments, 7.6% claims they did not seek any adjournment during the COVID-19 phase. For 16.7%, it was required only on a few postings, and 28.8% did so in some cases. When 42.5% have sought adjournments on most of the postings, 4.5% of the advocates have done so in all the postings. It is alarming that about half of the responding lawyers have sought an adjournment, at least on most postings. It becomes more serious when read with the revelation made by 30% of judges that such facility is not sought on reasonable grounds in most cases.

Figure 16: Frequency at which adjournment was sought- Advocates



4.2.7 Inadequate judge strength

Inadequacy in judge strength, particularly in the era of litigation explosion, increases the workload and therefore, qualitatively and quantitatively affect the disposal of cases.[223]

120th Law Commission report, after carrying out a comparative analysis, recommended the determination and constant updation of judge strength, taking into account the demographic factor and recommended improving the judge-population ratio. It advocated considering litigation rate as well, along with the demographic factor, in determining the judge strength.[224] Resorting to demographic approach in calculating the adequacy of judge-strength in the light of 120th Law Commission Report, the projected population of Kerala for 2021, based on the Census of 2011, is 35,849,000.[225] Reply received in response to the Right to Information application seeking the total number of judges present in the state states that the total sanctioned working strength is 541, and the total working strength as of 09.07.2021 is 468.[226] Comparing the total working strength with the projected population data shows that the state's judge-population ratio is 1: 76,600, which is far better than many other states in India. However, whether the current ratio in Kerala is sufficient enough to bring backlog creation rate below 1 to clear pendency rates is a different question and the consistently mounting backlog creation, and pendency rates answer the question in negative. Comparison with other jurisdictions like Sweden, where in 2018, the ratio is 1: 5,668, in United Kingdom subordinate courts, it is 1:45,939, in California (United States) subordinate courts 1:18,877 and in Connecticut (United States) subordinate courts, it is 1:19,565,[227] indicates that the quantitative ratio as per the demographic approach is higher. Benchmark ratio to improve qualitative measures is always further far ahead of the quantitative requirements.

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[223] Anto Sebastian and Albin Anto, *Judicial Governance: Barriers In Ensuring Accountability And Transparency Vis-À-Vis Reforming Lower Judiciary*, 3 IJTAG, 140-167 (2017).
[224] Law Commission of India, *120th Report on Manpower Planning in Judiciary: A Blueprint*, 3 (Ministry of Law, Government of India, 1978).
[225] National Commission on Population, *Population Projections for India And States 2011 – 2036*, 242 (Ministry of Health & Family Welfare, 2019).
[226] *See* Appendix 3.
[227] Dushyant Mahadik, *Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra*, 58-68 (Administrative Staff College of India, 2018).

245th Law Commission proposes rate of disposal method, where the number of judges is compared with the number of cases disposed of. As per the data available with www.ecourts.gov.in, there are around 340 judges available in Kerala to handle criminal cases.[228] Reverting to Appendix 1 to identify the number of cases disposed of per judge, assuming that the number of judges remained almost the same, for the entire period of 2020, 340 judges together have disposed of 213418 criminal matters including original cases, bail applications, appeals and miscellaneous criminal matters, meaning that a judge presiding over a criminal court has disposed of 627.7 matters in a year, however, in turn has resulted in creating a huge backlog. On analysing the performance per judge in 2019, where backlog creation rate was just a little above one, by assuming that the number of judges remained not higher than 340 for the entire period of 2019, the disposal rate per judge would run to 1774.87 matters per year. Breaking it down implies a disposal of 147.91 matters per month and 5.92 matters per working day. It is to be understood, in particular, that this disposal rate is in addition to the other civil matters that many amongst these judges have decided, as a large number of them are entrusted with the charge of civil matters as well. 245th Law Commission report, taking together civil and criminal cases, calculated that the number of matters disposed of by judges in Kerala in the years 2010- 2012 runs over 2696 cases per year, which is the second-highest rate of disposal per judge, just behind Chandigarh, and starkly opposed to 998.8 in Karnataka, 609.1 in Gujarat, 328.2 in Jharkhand, and 213.2 cases in Bihar, giving a clear reflection of the handwork rendered by the judges to keep the disposal rates under control.[229]

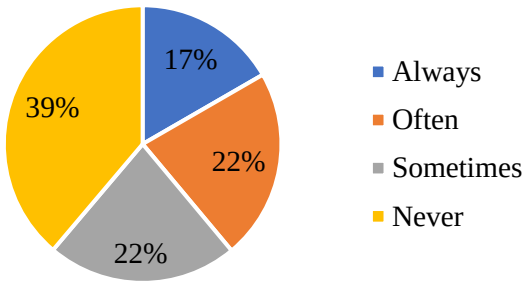
Adopting the rate of institution method, where the number of judges is compared with the number of cases instituted per year, assuming that the number of judges remained almost the same, for the entire period of 2020, 340 judges together have newly handled 587328 criminal matters, that is 1727.44 matters per judge. Assuming that the number remained not higher than 340 for the entire period of 2019, the number of newly instituted matters handled by a judge in that year runs to 1807.07.

[228]Present Judges, *E-courts Mission Project* (Aug. 23, 2021, 2:54 PM) https://districts.ecourts.gov.in/Present%20Judges

[229] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 30-46 (Ministry of Law, Government of India, 2014).

The empirical survey indicates that the respondent judges work at an average of 9.2 hours to 10.4 hours per day to sort out the matters brought to them. When judges were asked whether targets fixed by higher judiciary was an added pressure during the Covid-19 Phase, 15.8% stated that it was always pressurising, for 21.1% often it was, 21.1% responded that sometimes it appeared to them as pressurising and 36.8% never felt any pressure out of it.

Figure 17: Whether the targets fixed by the higher judiciary in the disposal of cases were an added pressure during the COVID phase



When judges were asked whether an increasing number of judges would improve the speedy dispensation of justice, 47.4% strongly agreed to it, and 36.8% agreed to it, whereas only 15.8% disagreed. When the same question was put to the advocates, 32.4% strongly agreed to it, and 60.3% agreed, while the disagreement was confined to just 7.4%.

Figure 18: Whether increased judge strength would help in the speedier disposal of cases? (Judges)

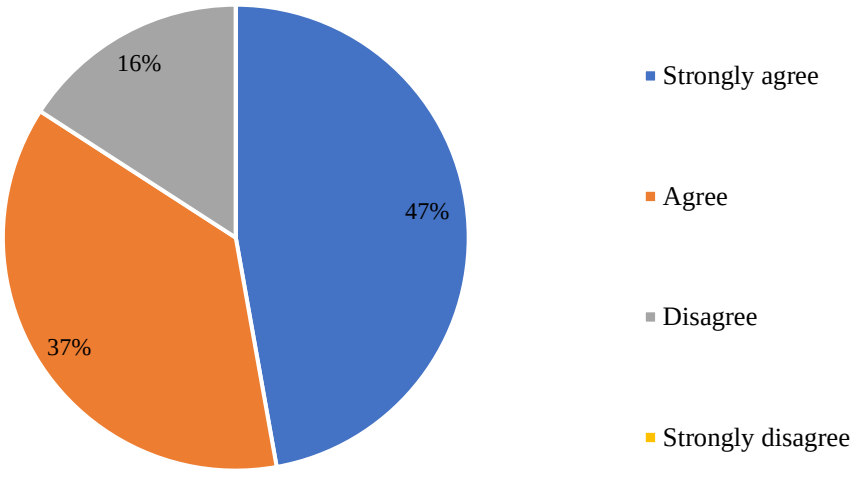
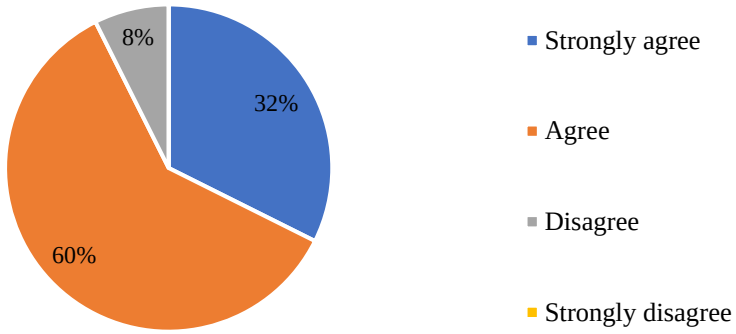


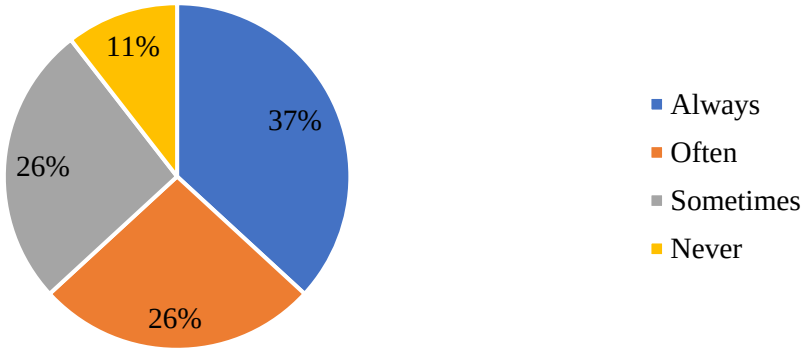
Figure 19: Whether increased judge strength would help in the speedier disposal of cases? (Advocates)



4.2.8 Inadequate staff

The working of courts usually does not only rest on the judicial officers and lawyers. Instead, courts staffs also play a vital role in the smooth functioning of the judicial mechanism.[230] Despite several recommendations,[231] inadequate revision of court staff often causes a delay in preparation and listing of cases for hearing, rendering assistance in timely pronouncements of judgements, supply of their copies thereof and so on.[232]

Figure 20: Shortage of Support Staff



When judges were asked whether they feel a shortage of staff, 36.8% of judges

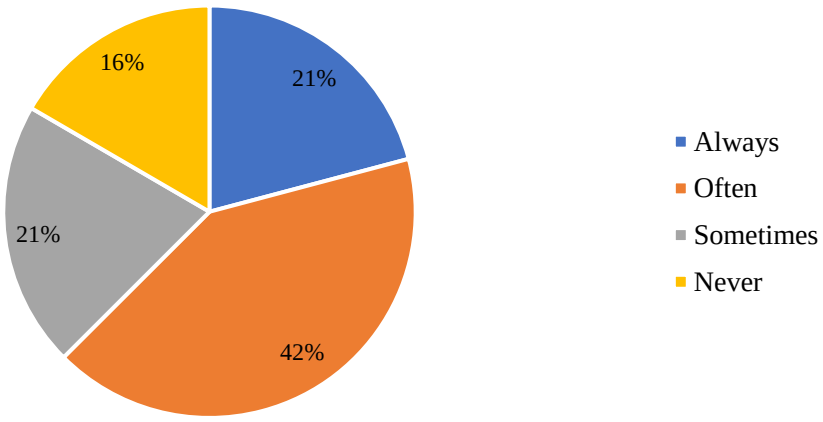
[230]Justice Lokur M.B, *Case Management and Court Administration*, (Aug. 22, 2021, 5:45 PM) http://lawcommissionofindia.nic.in/adr_conf/Justice_Lokur.pdf .
[231] Justice VS Malimath Committee, *Committee on Reforms of Criminal Justice System, Government of India, Ministry of Home Affairs Report (Volume I)* 91 (Ministry of Home Affairs, Government of India, 2003), Justices VS Malimath, PD Desai, and AS Anand, *Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)*, 46 (1989-90), Law Commission of India, *14th Report on Reforms of Judicial Administration Vol. I*, 245 (Ministry of Law, Government of India, 1958).
[232] NALSAR University of Law, *A Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts*, 136-148 (Ministry of Justice, 2016).

responded that they always feel a shortage of support staff. 26.3% often feel so, and 26.3% sometimes feel the same. Only 10.5% replied that they have adequate support staff.

4.2.9 **Infrastructural shortcomings**

Another factor contributing to the systemic delay is the infrastructural shortcomings. Courtrooms in several jurisdictions, with congested courtrooms deprived of any technological advancements to conduct video conferencing, and lack of technological know-how to handle the nuanced technology posed considerable problems to the smooth conduct of cases.[233] Courts that have opted for physical sittings could barely accommodate a limited number of advocates, by observing the COVID protocol, making it impossible to list the number of matters not more than a minimum. Responses of the judges and lawyers affirm the same.[234] When judges were asked whether they would have taken up more cases if infrastructure permitted so, 21.1% replied that they would have always done so. 42.1% often felt the need for a better infrastructure when thought of a more quantitative listing of matters, and 21.1% sometimes felt so. For 15.8%, refused to link infrastructural requirements with the number of matters listed per day. Amongst the lawyer community, 31.3% felt the need to improve infrastructural shortcomings in order to get the number of matters listed increased, and 37.3% have often felt so. 23.9% have sometimes hankered, that a more infrastructurally equipped

Figure 21: Whether a more infrastructurally equipped court system would have facilitated taking up more criminal matters in a sitting (during the COVID-19 phase)? (Judges)

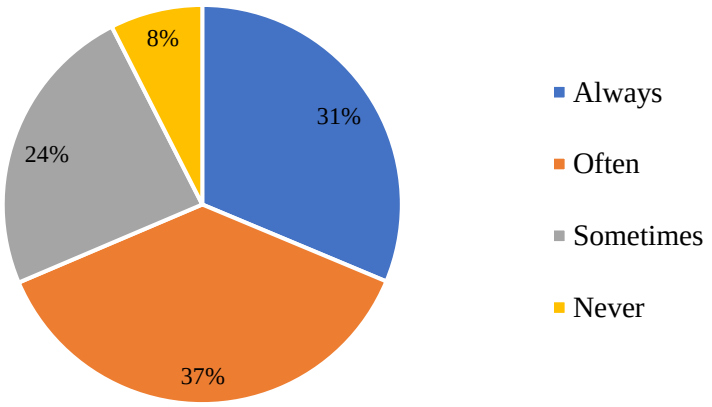


[233] *See* Appendix 2 Table 2 and 3.
[234] *See* Appendix 2 Table 2 and 3.

court system would have facilitated taking up more criminal matters in a sitting. 7.5% of lawyers never felt that infrastructural improvement would have facilitated an improved number of listing of cases.

Therefore, the responses of judicial officers and lawyers unequivocally linked infrastructural shortcomings to speedy disposal of cases, hinting that its inadequacy has contributed to a record hike in pendency of criminal cases, especially during the COVID-19 phase.

Figure 22: Whether a more infrastructurally equipped court system would have facilitated taking up more criminal matters in a sitting (during the COVID-19 phase)? (Advocates)

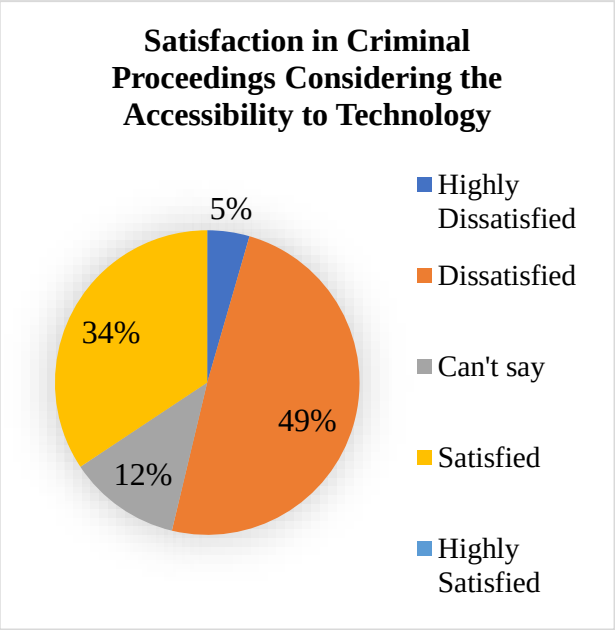


4.2.10 **Lack of access to technology**

COVID-19 and consequent restrictions in place have compelled courts to switch to the virtual mode of functioning. However, judicial officers, as well as advocates, expressed serious inconvenience to adapt to and access the technology. Lack of technological know-how and material competence, inequitable distribution of internet services and absence or inadequate training contributes to it.[235] Though judges were not posed with a question to this extent, several judges expressed their concern, in the descriptive column, that the lack of access to technology has limited the functioning of courts via virtual platforms.

[235] *See* Appendix 2 Table 2.

Owing to the concern raised, advocates were later asked as to their level of satisfaction considering the accessibility to technology; the respondents replied as follows: Out of lawyers who responded, 34% were pretty satisfied with the technology and accessibility to the online platforms. However, 49% seems dissatisfied and raises concern over the technology and accessibility to it. 5% of the respondents are highly dissatisfied. 12% stated they are not in a position to say whether they are satisfied or not. When asked for reasons to state if they are dissatisfied, common answers that were given include that the online platforms have their own limitations compared to the physical courts, lacking training, issues with bandwidth and network coverage, and inadequacy of technological advancements to meet the demands of the judiciary.



Hence, it could be concluded that access to technology has, in fact, posed ardent challenges to lawyers in making adequate representations, thus hindering speeding dispensation of justice.

4.2.11 **Other reasons**

There are a range of other factors that would possibly contribute to the crisis of delay. Restrictions of COVID-19 reducing the movement of various stakeholders, uncertainty in the tenure of jurisdiction exercised by a judge due to retirement or transfer often causes inconvenience and delay. When a presiding officer ceases to exercise jurisdiction, leaving partly heard or fully heard matters for the succeeding judge for judgement, it mostly creates a situation where the succeeding judge would be required to seek clarification and, at times even de novo hearing.[236] Cumbersome procedural laws as well as expending more time for the disposal of petty cases have also been cited

[236] Law Commission of India, *41th Report on Code of Criminal Procedure, Vol. I*, 217 (Ministry of Law, Government of India, 1969); Law Commission of India, *77th Report on Delay and Arrears in Tri*al, 42 (Ministry of Law, Government of India, 1978; *See also* Appendix 2 Table 3.

as causes for delay.[237] Delay in the receipt of forensic Scientific Laboratory was also cited as a cause for delay in several cases.[238]

4.2.12 **Stakeholders**

There are several stakeholders to a criminal trial. These stakeholders, to a varying degree, contribute to the pendency of cases. Respondents, both judges and lawyers, were asked to rank the contribution of various stakeholders to the delay crisis. For the reliable computation of data, the method of the weighted average is used. A weight of 10 points is given to the first rank, a weight of 8 points is given to the second rank, a weight of 6 points is given to the third rank, a weight of 4 points is given to the fourth rank, and a weight of 2 points is given to the fifth rank.

Judges

SL.NO	STAKEHOLDERS	POINTS	RANK
1	Laches from the part of prosecution witnesses, experts, and prosecutor	114	I
2	Police	82	IV
3	Laches from the part of accused witnesses, accused, and its counsels	66	V
4	Over-burdened judiciary	98	II
5	Non-modernization of the judicial system	90	III

When judges are asked as to the role of various entities to the delay crisis, laches from the part of prosecution witnesses, experts, and prosecutor were ranked first, followed by over-burdened judiciary, non-modernisation of the judicial system, police investigation and filing of reports and laches from the part of accused witnesses, accused, and its counsels.

[237] *See* Appendix 2 Table 2.
[238] *See* Appendix 2 Table 2.

Advocates

SL.NO	STAKEHOLDERS	POINTS	RANK
1	Laches from the part of prosecution witnesses, experts, and prosecutor	434	I
2	Police	424	II
3	Laches from the part of accused witnesses, accused, and its counsels	384	III
4	Over-burdened judiciary	314	V
5	Non-modernization of the judicial system	364	IV

When the same question was put to the advocates, they ranked in the following order- laches from the part of prosecution witnesses, experts, and prosecutor, police investigation and filing of reports, laches from the part of accused witnesses, accused and its counsels, non-modernisation of the judicial system, and over-burdened judiciary.[239]

Analysing the responses from both the categories, it unequivocally confers a prominent role to the prosecution itself. Lack of coordination between the prosecution and investigating agencies, lowered rate of appearance of police and government officials, and experts, coupled with the frequent seeking of adjournments, makes their role 'significant' in contributing to the crisis of delay.

It is ironic that the entity, part of the State, supposed to play a vital role in reducing pendency is rated unanimously as the prime contributor to delay crisis. Though judges rate over-burdened judiciary as the second top-most factor, advocates, have a different say and rank the police forces in its stead. From the judges' perspective, the judiciary is overburdened that without increasing the judge strength, cases cannot be effectively disposed of in time; meanwhile, responses from the lawyer community also seconds the same. However, for lawyers, the problem with police forces starts right from reporting the crime to disposing before the courts. Advocates believe that the laches in

[239] *See* Appendix 3 Table 4.

the role played by the police forces contributes to delay and, hence, is a vital point for closer introspection.

According to judges, the non-modernisation of courtrooms has impeded the speedy dispensation of justice. Inefficiency in case management, infrastructure and other physical requirements, according to judges, have prevented them from listing more cases. Advocates have not undermined its impact and ranked it as the fourth factor. In the past there were several reports investigating delay crisis that placed delay tactics played by accused in its forefront. However, at least during the period of study, it has not to be regarded so by the judges, though advocates place them in the third position in the list of contributory factors for the delay.

4.3 CONCLUSION

As put forth in the second chapter, the delay in dispensation of cases, particularly criminal cases, would at times perpetrate secondary victimisation and infringe personal liberty and several other rights of the victim and the accused, resulting in the gross human right violations. Larger its number and more frequent its occurrence, it shackles the confidence of the people reposed upon this institution and would be detrimental to the rule of law. However, as seen at length in the third chapter, its occurrence, relatively to the previous years was the highest during the COVID-19 phase. Multiple causes, including a catena of thwarts that existed prior to COVID-19 added to the new hindrances sprouting from the virtual mode of justice dispensation, could be regarded as the contributory factors for the boom in the tally of pending cases to a different level.

Prominent amongst them is the issue of flawed case management. Unsystematic prioritization, listing and management of cases, has derailed most of the schedules made. It has to be read along with the recent empirical study, recommending greater need for imparting training for judges and court staff on court management techniques and capability enhancement.[240] Paying the least heed to the recommendations of various committees to improve the appearance rate of witnesses, further, counter fired during the COVID-19 phase, in its all vigour. With regard measures that were attempted to be brought into effect, owing to its langured implementation, have been a fiasco in delivering the role that was expected out of it and the best example could be tracked in

[240] NALSAR University of Law, *A Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts,* 136-148 (Ministry of Justice, 2016).

the form of witness protection schemes. Alarmingly, the lack of co-ordination between prosecution and investigating officials, has grown on to become the greatest contributing factor for delay crisis. Over reliance on police forces for service of summons, as warned in detail by various prior reports, resulting in its inefficient service of summons, was an added cause for delay during the COVID-19 phase. Despite being in a crisis state, co-operation between bar and the bench was not always up to the mark. Unreasonable pleas for adjournment could not be averted even during the limited functioning of courtrooms. Despite having a hardworking butch of judges with high per judge disposal rate, systemic inadequacies in the form of shortage of judges and staff, further hampered the speedy disposal of cases. Logistical shortcomings and technological know-how to carry out effective virtual hearings, and the infrastructural constraints to conduct physical sittings, on a large scale, contributed tremendously to the crisis.

To prevent the instances of human rights violations sprouting out of crisis of delay, Law Commission of India, as well as various Committees, have made several recommendations from time to time. However, a tour through the reasons cited in this study indicates that a majority of the causes identified by these reports still remains unaddressed and medication prescribed is left without being applied. Many of these ailments became severe during the COVID-19 phase so as to put the system irresponsive, at least on a few occasions, as in a vegetative state. All the factors indicate that this State becoming the fourth highest State in the list of backlog-creating States during the COVID-19 phase, is not an accident, rather it is largely a result produced in the testing times, of the neglect shown to various practical, kernel and timely recommendations made by various Committees.

CHAPTER V

CONCLUSION AND RECOMMENDATION

Social justice attempts to realise access to justice for all. However, access to justice becomes meaningful only when there exists a fair, speedy and satisfactory means of adjudication. Speedy justice is, thus, an essential facet of access to justice. Speedy trial ensures that the shackles of the rule of law remain without being broken by holding up the public perception in favour of the justice delivering institution. Such a process, in turn, casts an obligation upon the institutions to respect the confidence bestowed upon them to render justice in the desired quality within a reasonable timeframe. Any delineation from the obligation placed, would be detrimental to the rights of those who have agreed to place their trust upon these institutions. The frequency and seriousness of the infringement are, however, directly proportional to the loss of public confidence and the more the loss, the more imminent is the collapse of the legal system. The speedy trial, however, does not contemplate a haste adjudication rather a balanced approach towards the determination of rights, wherein the pace and justice are not compromised for each other. Unlike the other principles of common law origin, the speedy trial could find its roots in traditional English statutory books, which later got transformed and translated into a more crystalised form thanks to its incorporation into the Constitution of several States. Several statutes later enacted in many jurisdictions, particularly in the United States and Canada, conferred normativity and enforceability to the concept. Indian Constitution, however, in clear terms, does not incorporate the right to a speedy trial as a fundamental right. Thankfully, judicial intervention, through a range of cases, could extend the application of Art. 21 to bring the right to speedy trial within its ambit and later construed as emanating from Art. 14, 19 and 21. Such judicial activism is the result of the judicial recognition that compromise in the quality of justice in terms of timeliness, is detrimental to a range of rights of the accused and victim. Restraint in the personal liberty beginning from the arrest, and consequent procedural incarnation till the final disposal of the case, if could not be culminated in a reasonable timeframe, falls foul to infringe a series of rights afforded to him, in a manner detrimental the proclaimed standards of human rights. The genuine attempts made on the part of the Supreme Court have ensured that the prosecution does not turn out to be a persecution for the accused. For the victim, delay in prosecution is the activating factor for the various catalysts of secondary victimisation. Intersection and interaction of various

factors such a class, gender, caste prejudice, patriarchal norms, literacy, politics, economic deprivation, religion, family honour, social taboos and so on, often kickstarting right from the commission of an offence, in the process mutually transform one another, to place a de facto restriction on the vindication of their rights, as before, until the allegation is judicially proved. More the delay more is its extent of restriction and hence the secondary victimisation. Laxity in the judicial notice of this state of affairs often places the victim in a disadvantageous position.

Various international instruments in the form of the Universal Declaration of Human Rights (UDHR), International Covenant on Civil and Political Rights and Draft Principles on Equality in the Administration of Justice further recognises the right to a speedy trial in the international realm. In India, the Protection of Human Rights Act, 1993, and Criminal Procedure Code, 1973 contain several provisions to facilitate speedy trial in direct and indirect terms.

Since the early 20th century, the crisis of delayed disposal of cases remains as a matter of high priority. Rankin Committee in 1914, and later Law Commission, Malimath and Satish Chandra Committee have placed a large deal of recommendations to curb the hindrances impeding speedy disposal of justice. Prominent amongst the recommendations were the calls for creating a separate body divorced from police forces for the service of summons; increasing judge strength; improving the number of support staff; mobile courts to handle petty offences; conducting the trial on a day-to-day basis,; separation of the law-and-order wing from investigation wing, continuous recording of evidence and avoiding piecemeal recording of evidence; improving infrastructural requirements and enhancing application for plea bargaining by bringing about amendments to Code of Criminal Procedure, 1973. However, experience casts shadow on its effective implementation.

Resorting to the tests laid down by 245th Law Commission Report on '*Arrears and Backlog: Creating Judicial (Wo)man Power'* to verify the effectiveness of the measures taken so far and to trace the extent of the delay, backlog and pendency of cases in Kerala during the COVID-19 phase, the practical assessment approach was preferred over the normative assessment approach. When the normative assessment approach fixes a specific time frame for the disposal of cases, the practical assessment approach compares the position in one jurisdiction with the other sub-national, national and

international jurisdictions to reach a relative conclusion as to whether a particular jurisdiction suffers from the crisis of delayed disposal of cases. It is true that normative assessment, which was advocated by Supreme Court in *Imtiyaz Ahmad* and Law Commission Report in its 245th report, brings in more normativity and is practised in the ordinary course of working by jurisdictions like the United States, United Kingdom and Canada. However, since COVID-19 has created a predicament where its impact is non-uniform, unprecedented and unpredictable, it is impractical to fix and judge the question of delay in a standardised manner. Hence, practical assessment approach was preferred over the normative assessment approach. Since the practical assessment approach needs a counterweight for comparison, the national average is taken for the purpose, as it indicates the average performance of courts across the country.

Disposal trends give a primary indication that Kerala, which has exhibited a better performance in the past years, has shown a relative delay than the national average in the year 2020 in disposing of fresh criminal matters. Though the State has made some counter attempt to make up its performance on par with the national average, still was not sufficient to make up the effect created in the pendency tally during 2020. Consequently, there is a huge rise in the pendency of newly instituted matters (i.e., 0-5 years), amongst which 31% are cases triable by court of sessions and 66% of cases triable by a Magistrate. 72% of these cases are, however, alarmingly in the appearance stage, which in relation to the ever-increasing rate of newly instituted cases per year is an indication of tremendous workload for the legal system. It further shows that State struggling to get past the already instituted cases beyond the appearance stage is not ready to welcome the newly instituted cases with the current judicial and administrative setting. However, despite the same, it is needful to say that the better performance of the state than the national average in the previous years has contributed towards the lessened pendency of matters instituted for more than five years. However, for the State to maintain this credit, disposal rates will have to be improved considerably. Meanwhile, since the national average of stage-wise pendency is closer towards the final disposal, its hands are wide open to receive newly instituted cases in the coming years and therefore workload across the nation is less likely to increase altogether.

Having a glance at the institution-disposal trend, throughout the COVID-19 phase, Uttar Pradesh had the highest institution and disposal of criminal matters in terms of numbers. However, with regard to the difference between the institution and disposal

of criminal matters, though still, Uttar Pradesh leads the table, several States, including Kerala, that had managed to keep the difference tally to the minimum, displayed a huge difference in terms of disparity during the COVID-19 Phase. Its reflection, particularly in the cases of Kerala, could well be seen in the backlog creation charts. During the COVID-19 Phase, Kerala became the fourth highest backlog creating state. Since the performance of the State was much better in the year 2021, much of its contribution towards it came from the year 2020. Backlog creation rate, in Kerala, in 2020, however, is far higher than its backlog creation rate for the past years. Institution-disposal chart further indicates that the national average pendency creation rate in 2019 was three times the number of cases disposed of in the same year and ten times the number of cases disposed of in 2021. For Kerala, if the pendency creation rate was almost equal to the number of matters disposed of in 2019, in 2021 it is almost eight times the number of matters disposed of for the year.

A considerable increase in the pendency clearance time for Kerala is also evident therefrom. Pendency clearance time is the amount of time courts would take to dispose of the cases pending before them, provided no new cases were filed during the period. Pendency clearance time in 2019 for Kerala, if it was 1.79 years, for 2020 it shoots up to 5.27 years and in 2021 to 5.8 years. Meanwhile, the requirement at the national level is 11.76 years in 2021.

Since, the practical assessment does not indicate the optimum time frame for the disposal of the cases; instead, it gives a relative conclusion as to the existence of delay. comparison with the national average does not, however, mean that the performance indicated by the State in certain instances is up to the optimum level and vice versa. For instance, in Kerala or even taking the national average, the pendency creation rate of criminal cases is almost 100% or more than 100% of the number of criminal cases instituted per year. Whereas in Malaysia it is 16%, in South Africa it is 24% and Sweden 35%. Such a thought, however, casts serious doubts on the reasonableness of the timeframe of disposal that is currently in practice in India.

Despite that being a fact, the practical assessment approach indicates that though Kerala has performed relatively well during the pre-COVID-19 Phase, there was a considerable drop in its performance to be on par with the national average. It indicates that the time frame taken for disposal of criminal matters by the State was almost

identical to the national average. The backlog creation rate doubled during the COVID-19 phase to place Kerala as the fourth highest backlog creating State.

Exploring the reasons for the delay, in the light of indications derived from the questionnaires supplied to judges and advocates, several causes could be identified. Issues with cases management, particularly the lack of balance in prioritising cases, the listing of a considerable number of matters in certain courts than that could actually be taken up in a sitting, piecemeal recording of evidence, and lengthy hearing could be traced. Lack of balance in prioritising cases, though it could be defended as a new phenomenon, the other issues cannot be cloaked under the blanket of COVID-19. Rather than being resurfaced, these issues are the result of the persistence of the unsolved problems identified by various committees. Malimath Committee in 2002 recommended devising a new mechanism of case management rather than the indiscriminate posting of a large number of cases; Supreme Court on several occasions have warned to put to an end to the practice of lengthy hearing in any courtroom in the country and 77th Report of Law Commission of India abhorred the practice of piecemeal recording of evidence.

Delay enkindled by the absence of witnesses is the extension of the perfunctory implementation of the recommendations penned by various Committees, such as the need to proffer convenience in terms of infrastructure and monetary reimbursement, minimising to the least dragging in of witnesses to courtrooms except whenever it is of utmost importance, timely examination of witnesses whenever called on to appear, affording adequate witness protection schemes, and so on. Though rudiments of the measures taken to this regard could be traced in statute books, reports and even in the reflections of the empirical study conducted, the same reports, empirical study and statistics, testify its apathetic implementation. Added to it, despite the introduction of ICT systems for the service of summons, ever emphasised cause on over-reliance of police has backfired to render the process ineffective. Despite being a trite that a healthy bar-bench co-operation is indispensable for solving the crisis of delay, it is disheartening to perceive from the field that it has not panned up so, even during the testing times of COVID-19.

No report investigating the crisis of delay would have ever capped off without jotting down an adjuration on unnecessary adjournments being granted. The empirical study

conducted to trace reasons for the crisis of delay figured out that any recommendations, judicial caution or amendments, could not be brought to halt the praxis of unnecessary adjournment and hence continued during the COVID-19 Phase.

Statistics and the empirical study reiteratively point towards the inadequacy of judge strength as a causation for the delay. The data shows that the current workforce could not effectively handle the ever-increasing institution of cases, coupled with the additional backlog created by COVID-19. In the current state of affairs, the State judiciary, in proportion to the previous institution rates, could manage as much as cases that are newly instituted with it every year; however, it might struggle to clear off pending matters. In addition to the inadequate judge strength, shortage of supporting staff, hampering the support services necessary for the disposal of cases also contributed to the delay in disposal of cases.

Logistical requirements and other infrastructural shortcomings further resulted in taking up fewer cases in a sitting. Less number of courtrooms per active cases, lack of technological requirements and know-how, and nuances of technology adopted could be listed under this head. Besides the same, limitations of virtual application used, lack of training and inequitable distribution of internet services further limited the functioning of courts during the COVID-19 Phase.

From the discussion, it could be concluded that any delay in disposing of criminal cases is a barrier to access to access to justice, infringes personal liberty and causes secondary victimisation to the victims. Therefore, COVID-19, nullifying the effect of countermeasures taken so far, to tremendously affect the speedy dispensation of justice, has egregiously limited the access to justice and infringed a plethora of litigants' rights.

5.2 RECOMMENDATIONS

5.2.1 Improving virtual courtrooms

It is an accepted fact that virtual hearing has contributed to the crisis of delay and posed several limitations to the effective vindication of litigants.[241] However, still, since pandemic has not subsided to balance public health requirements with the rule of law,[242]

[241] Deniz Ariturk, William E. Crozier & Brandon L. Garrett, *Virtual Criminal Courts*, 2020 U. CHI. L. REV. ONLINE 57 (2020).
[242] Michael Legg & Anthony Song, *The Courts, the Remote Hearing and the Pandemic: From Action to Reflection*, 44 U.N.S.W.L.J. 126 (2021).

it is always better at least to remain virtual than having nothing.[243] As it is practically impossible to conclusively state the future of the COVID-19 pandemic, rather than perceiving virtual courts as an 'unfortunate expedient', it is the time up to mutually transform and sink the ICT facilities with the notion of justice.[244] Therefore, it is about devising a system where our regards for the right to a speedy trial, open courtroom, and confrontation of witnesses are given effect to,[245] at the same time, without persecuting them for their lack of access to resources.[246] Moving ahead with virtual hearing requires a more significant overhaul in terms of witness examination, mainly when there exist limitations in capturing the demeanour in witness examination and difficulties with the identification of material objects and persons.[247] Concerns of bandwidth requirements and resultant lack of clarity in the arguments and conversations made via the virtual platform is another matter to be ponder over.[248] Though this being the situation, none of these concerns in the era of technological revolution seems impossible to warrant a solution. Despite the initial hiccups, since the potential of virtual courts are tremendous,[249] a preliminary perception indicates that if adequately introduced, virtual courts could be more convenient, reduce the rate of absenteeism and saves a lot of time and effort.[250] Further, since not all lawyers and judge are tech savvy, imparting proper training would facilitate the same in much better manner.

5.2.2 Meeting the Infrastructure requirements

A holistic approach towards infrastructural requirements is of utmost necessity in tackling the crisis of delay,[251] particularly during the COVID-19 Phase. COVID-19 has posited infrastructural requirements from a multi-pronged perspective; amongst them,

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[243] Foluke Dada & Emily Alemika, *Meeting the Need for a Technologically Driven Justice Delivery System: The Elixir of Rights and Judicial Expediency*, 11 BEIJING L. REV. 805 (2020).
[244] Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275 (2020).
[245]Deniz Ariturk, William E. Crozier & Brandon L. Garrett, *Virtual Criminal Courts*, 2020 U. CHI. L. REV. ONLINE 57 (2020).
[246] Foluke Dada & Emily Alemika, *Meeting the Need for a Technologically Driven Justice Delivery System: The Elixir of Rights and Judicial Expediency*, 11 BEIJING L. REV. 805 (2020).
[247] Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275 (2020).
[248] Linda Mulcahy et al., *Exploring the Case for Virtual Jury Trials During the COVID-19 Crisis*, U.K. MINISTRY JUST. (2020)
[249] Camille Gourdet Et Al., *Court Appearances in Criminal Proceedings Through Telepresence*, PRIORITY CRIM. JUST. NEEDS INITIATIVE 8 (2020).
[250] Jenia Turner, *Remote Criminal Justice*, TEXAS TECH L. REV. (forthcoming 2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3699045.
[251] Sudhir Krishnaswamy, Sindhu K. Sivakumar & Shishir Bail, *Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches*, 2 J. NAT'l L. U. DELHI 1 (2014).

physical requirements have always occupied the forefront.[252] Primarily it is all about creating new courtrooms. 11th Finance Commission recommended creating Fast Track Courts across the nation,[253] and the Ministry of Law and Justice keeps forwarding its proposal on the same again and again.[254] However, having conducted an empirical study and a journey through statistics, the researcher is of the opinion that what Kerala requires is not a set of fast-track court or certain ad hoc arrangements. It is because, firstly, Kerala stands a long way better in terms of the time frame taken to dispose of criminal cases than the national average in the ordinary course of its working. Though it is true that COVID-19 has brought down its performance and increased its pendency clearance time, it is to be borne in mind that the number of long pendency cases (i.e., cases pending for more than five years) is far lesser than the national average. However, the State struggles in disposing of new criminal matters and the judicial officers are placed with a heavy workload. It has to be read along with the analysis made in the third chapter that the State might find it difficult to handle the ever-increasing tally of fresh cases. Hence, thinking from that perspective, Kerala requires some permanent arrangements, after standardising the workload and in proportion to the projected rate of institution of cases per year. Secondly, easing the workload of fresh cases would to certain extent enhance the qualitative aspect of justice dispensation.[255]

Improving the supporting infrastructures are also vital. It includes constructing adequately spacious courtrooms, amenities for supporting staff; storage spaces; places for facilitating alternative dispute resolution and ancillary functions of courts; shelters and waiting rooms for advocates advocate-clerks, witnesses and litigants in general; and improving the quality of the court atmosphere in terms of infrastructural comfort according to the geographical requirements.[256]

Besides, COVID-19 and the rapid computerisation program implemented by the Supreme Court e-committee have further made it expeditious that the courts have

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[252] Chandra T. G. Jagadeesh, *Delays in Subordinate Judiciary as an Impediment in Materializing the Right to Speedy Justice - A Review*, 7 GNLU J.L. DEV. & POL. 53 (2017).
[253] Finance Commission, *Report of the Eleventh Finance Commission*, 65 (Ministry of Finance, Government of India, 2000).
[254] *Proposal of Department of Justice to the Fourteenth Finance Commission*, 5 (Ministry of Law and Justice, Government of India, 2014).
[255] Varsha Aithala, Rathan Sudheer & Nandana Sengupta, *Justice Delayed: A District-Wise Empirical Study on Indian Judiciary*, 12 J. INDIAN L. & SOC'Y 106 (2021).
[256] Vandana Peterson, *Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts*, 18 YALE HUM. Rts. & DEV. L.J. 59 (2016).

adequate IT infrastructure. It includes facilities for video conferencing, high-speed internet, equipment for printing, scanning and copying, computers equipped with necessary software for support staff to facilitate their nature of work and so on. [257]

These being the requirements, identifying that the budgetary allocation is so meagre that it is not sufficient for the purpose,[258] researcher calls for improving the budgetary allocation. Non-allocation of the adequate fund to meet the rising demands, in turn, acts counterproductive, multiplying the volume of pending cases, particularly in times of additional constraints imposed by COVID-19 restrictions.

5.2.3 Redesigning witness protection scheme

Speaking about witness protection schemes, it brings into consideration protection in two broad spheres. Firstly, it is about ensuring that the witness does not detract during the trial from the statements already at the stage of an investigation.[259] The second aspect deals with ensuring the physical and mental stability as well as security of the witnesses is that they never become vulnerable[260] to the attacks, threats, and lures of the other side.[261] Ill-effects in both these instances squarely affects the speedy disposal of cases.[262] Hence, to ensure that witnesses stand with the same spirit as before, while deposing under oath, adequate witness protection schemes need to be designed right from the stage of witness identification.[263] However, though Supreme Court, on various occasions, have emphasised its importance,[264] there are serious allegations that the witness protection is not adequate.[265] The empirical study, as presented in the fourth

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[257] *Report of the Law Commission of India (Report No. 230) on Reforms in the Judiciary - Some Suggestions*, 36 COMMW. L. BULL. 609 (2010).
[258] *Agenda Notes, Joint Conference of Chief Ministers of the States/UTs and Chief Justices of the High Courts*, April 24, 2016 (August 31, 2021) https://doj.gov.in/sites/default/files/AGENDA-NOTE-CMCJ.pdf .
[259]Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes*, 227 (Ministry of Law, Government of India, 2006).
[260]*Id.*
[261] Pawan Kr. Mishra, *Protection of Witnesses and Criminal Justice: Needs for a New Law*, 1 INDIAN J.L. & JUST. 47 (2010)
[262] Shrotriya, Eesha; Pachauri, Shantanu, A *Proposal for a Model Witness Protection Programme: Need and Legal Ramification*, 12 NALSAR STUD. L. REV. 86 (2017)
[263] Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes*, 227 (Ministry of Law, Government of India, 2006).
[264] *Gurbachan Singh v.State of Bombay* AIR 1952 SC 221; *G.X. Francis v. Banke Bihari Singh* AIR 1958 SC 209; *Maneka Sanjay Gandhi v. Ram Jethmalani* (1979) 4 SCC 167; *Kartar Singh v. State of Punjab* (1994) 3 SCC 569; *Delhi Domestic Working Women's Forum v. Union of India* (1995) 1 SCC 14; *State of Punjab v. Gurmit Singh* (1996) 2 SCC 384; *Sakshi v. Union of India* (2004) 6 SCALE 15 and *Zahira v. Gujarat* 2006 (3) SCALE 104.
[265] Shrotriya, Eesha; Pachauri, Shantanu, *A Proposal for a Model Witness Protection Programme: Need and Legal Ramification*, 12 NALSAR Stud. L. Rev. 86 (2017).

chapter, also indicates that the situation has not improved further and continue to affect the rate at which witnesses turn up to testify. Therefore, it is pertinent to have a closer look towards revamping the existing scheme that it might attain its object.

5.2.4 Separate Courts to deal with petty offences

Upon referring to the statistics as laid in Appendix 1, it is well evident that majority of the pending cases are with the matters triable by the magistrate courts. In the empirical study conducted, the opinion and comments of the judicial officers support the statistics. According to the respondents, since a significant fraction of working hours are consumed by petty offences, taking a load off these cases from the shoulders of magistrates would increase the efficiency and enhances the performances of these courts. Following the recommendations from several commissions, though mobile courts and virtual courts for petty offences have already been initiated, responses from the field call for its widened application. In the empirical study conducted 52.6% of judges strongly agreed to it, and 42.1% agreed to it. Only 3% showed their disagreement[266] 25% of advocates also agreed strongly to the sugession and 54.4% also indictaed that they in favour of the such disintegration. Only 20.6% either disagreed or disgreed strongly.[267]

5.2.5 Promoting plea bargaining

Plea bargaining introduced by Criminal Law (Amendment) Act, 2005,[268] was brought in the context of judiciary ailing with increasing backlog creation and pendency rates.[269] A system, from the American experience, which is more participatory,[270] cost-efficient and speedy,[271] when incorporated into the Criminal Procedure Code, was expected to catch the attention of the judicial officers; however, it has almost reached a standstill state of affairs.[272]

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[266] *See* Appendix 2 Table 2A.
[267] *See* Appendix 2 Table 4.
[268] Shaista Amin, *Plea Bargaining - An Indian Approach*, 4 GNLU J.L. DEV. & POL. 67 (2014).
[269] Kathuria, Sonam. *The Bargain Has Been Struck: A Case for Plea Bargaining in India*. 19, no. 2 STUDENT BAR REVIEW 55-68 (2007) Accessed August 31, 2021. http://www.jstor.org/stable/44306676.
[270] Reddi, P. V. *Role of the Victim in the Criminal Justice Process*, 18 (1), STUDENT BAR REVIEW, 1-24 (2006) Accessed August 31, 2021. http://www.jstor.org/stable/44306643.
[271] Thaman, Stephen C, *A Comparative Approach to Teaching Criminal Procedure and Its Application to the Post-Investigative Stage*, 56(3) JOURNAL OF LEGAL EDUCATION, 459-76 (2006). Accessed August 31, 2021. http://www.jstor.org/stable/42893986.
[272] Pradeep Kumar Singh, *Plea Bargaining and Criminal Justice in India*, 7 Athens J.L. 33 (2021).

When judges were asked whether the increased application of plea bargaining would have facilitated speedier and efficient disposal of applicable cases, 50% responded that sometimes it would have made the difference. 25% believe that it would have made a considerable difference in the rate of disposal in most of the cases, whereas the other quarter thought so only in a few cases.[273] However, shocking revelations could be gathered when judicial officers were asked whether the accused persons have sufficient knowledge about plea-bargaining. 22.2% of judges stated that the accused they confronted never had such knowledge, and 55.6% admitted that accused in a few cases possessed sufficient knowledge about the same, meaning that, as far as more than three-fourth of the judges participated in the study are concerned, majority of the accused they have tried did not possess sufficient knowledge about plea bargaining.[274] After having responded that the accused often do not possess sufficient knowledge of plea bargaining, judges were asked whether they have tried bringing the same to the notice and enlighten of the accused of the option of plea bargaining, 27.8% have never done so, 22.2% did it in a few cases, 33.3% sometimes and 16.7% have done so in most of the cases.[275]

When advocates were asked as to their thought on the widened application of pea-bargaining to facilitate more efficient and speedier disposal of cases, 7.9% responded that it would never facilitate so, 7.9% replied that it would happen in a few applicable cases, 39.7% was of the opinion that sometimes it would do, 38.1% agreed to it and 4.8% agreed that in all applicable cases it would facilitate speedy disposal of cases.[276] On enquiring about their experience of suggesting the accused of the option of plea bargaining, 23.1% have never done so, 24.6% have done it in a few cases, 33.8% sometimes, 15.4% in most of the cases and 3.1% have suggested in all the applicable cases.[277]

Hence, it could be concluded that though plea-bargaining remains in the statute book, the concerned stakeholders responsible to bring the option to the notice of the accused, rarely do so. If this self-restraint could be removed, it would be an added advantage in facilitating speedy disposal of cases.

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[273] *See* Appendix 2 Table 2A.
[274] *See* Appendix 2 Table 2A.
[275] *See* Appendix 2 Table 2A.
[276] *See* Appendix 2 Table 4.
[277] *See* Appendix 2 Table 4.

5.2.6 Effective utilisation of alternate dispute mechanism

Though there were apprehension of the efficacy of alternative dispute resolution and Lok Adalat in the past,[278] however, over the period, it has become more concretised to share the workload of the judiciary in permissible cases.[279] When judges and lawyers were enquired about the same, all the judges unequivocally agreed to it and 83% of lawyers also expressed the same opinion.[280]

Application of alternative dispute resolution in criminal justice aids in reducing the delay in a two-fold manner. Firstly, in the Indian context, it facilitates settling the compoundable criminal offences[281] and secondly, it proves helpful in bringing down the possible rate of commission of cases,[282] and thereby the rate of institution of cases. Experience of its widespread application in criminal cases in South Africa[283] and Nowra, Australia,[284] stands as a fitting example.

5.2.7 Electronic System for Submission of expert reports

In the empirical study, judges and advocates unequivocally indicate that the failure of experts and police to submit their reports on time is a major reason for the delay in disposing of criminal matters. Hence, as an alternative it is advocated to develop an electronic system of report submission, where experts and police could confidentially submit their reports to the concerned court. It saves the time required to make the physical submission of reports. When judges and lawyers were consulted to know their perspective on it around 80% of them recoded their responses in support of it.

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[278] Jayanth K. Krishnan & C. Raj Kumar, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, 42 GEO. J. INT'l L. 747 (2011).
[279] Pawan Kr. Mishra, *ADRS and Lok Adalat in India: Genesis and Functioning*, 9 INDIAN J.L. & JUST. 28 (2018).
[280] *See* Appendix 2 Table 2A, Appendix 2 Table 4.
[281] B.E. Ewulum, *Alternative Dispute Resolution Mechanisms, Plea Bargain and Criminal Justice System in Nigeria*, 8 NNAMDI AZIKIWE U. J. INT'l L. & JURIS. 119 (2017); Bengt Lindell, *Alternative Dispute Resolution and the Administration of Justice - Basic Principles*, 51 Scandinavian Stud. L. 311 (2007).
[282] Joseph F. Cimini, *Alternative dispute resolution in the criminal justice process* 105-125 (Taylor and Francis, 2010).
[283] Uwazie, Ernest E., *Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability*, AFRICA CENTER FOR STRATEGIC STUDIES, 2011, www.jstor.org/stable/resrep19066. Accessed 31 Aug. 2021.
[284] Ciftci, Sarah, and Deirdre Howard-Wagner, *Integrating Indigenous Justice into Alternative Dispute Resolution Practices: A Case Study of the Aboriginal Care Circle Pilot Program in Nowra*, 16, no. 2 AUSTRALIAN INDIGENOUS LAW REVIEW 81-98 (2012). Accessed August 31, 2021. http://www.jstor.org/stable/26423249.

5.2.8 Improving the bar-bench co-operation

The empirical study indicated that even during the COVID-19 Phase, the bar bench relation was not just more than an average. Practically, since the co-operation of Bar with the Bench is vital for speedy disposal of cases, it is much more warranted in the current circumstances.

5.2.9 Easing of cumbersome procedures

Following the suggestions made by judges as to simplifying the procedural requirements as a measure to tackle the crisis of delay, when advocates were asked about the same, 12.9% strongly supported the cause, and 74.2% agreed to it. 9.7% disagreed, and the rest strongly disagreed.[285] Though there were several suggestions and attempts to this regard, still the response from the field indicates the need to ease of the criminal procedure.

5.2.10 Replacing roll call with cause list system

Roll call often causes several problems. Lack of representation, particularly having misheard the roll call, results in non-representation, adjournments and hardship for the advocates. Even when there are representations, it has mostly become an affair to grant adjournments.[286] Whereas cause list brings in more certainty, avoids the problem of huge listings, could raise objections as to a particular posting at the earliest. In this light, there were calls for its abandonment.[287] Many of the trials courts have successfully opted for cause list system during the COVID-19 phase, yielding better results. In those circumstances, when judges and lawyers were asked whether the roll call system has to do away with, the following responses were obtained.

15% of judicial officers strongly responded that roll call should give way for the cause list system as in the High Courts, and 65% supported the cause. Only 20% disagreed with the suggestion put forth.[288] Advocates equally expressed their support, where 78.8% either agreed or strongly agreed to it, whereas only 21.2% showed their

[285] *See* Appendix 2 Table 4.
[286] Pillai, K.N.C. *Delay in Criminal Justice Administration — A Study Through Case Files*, 49, no. 4 JOURNAL OF THE INDIAN LAW INSTITUTE 525-28 (2007) Accessed August 31, 2021. http://www.jstor.org/stable/43952090.
[287] *Id*.
[288] *See* Appendix 2 Table 2A.

disagreement. Hence, the response from the field indicates that the roll call system is time-consuming and does not contribute to the efficiency of the judicial system.[289]

5.2.11 Providing training for support staff

It would be highly recommended that the support staff, if provided with an induction and training on court management and more particularly in the procedural laws. It helps in standardising the administrative proceedings in various courts, gives procedural clarity as to the nature of work they are entrusted with, and improves the overall efficiency. When judges were asked as to need to impart training on procedural laws to the supporting staff, majority supported the same where 36.8% of judges strongly agreed and 42.1% agreed to it. 21.1% of judges expressed their disagreement.

5.2.12 Improving support staff strength

Improving the judge strength will not solve the crisis of delay unless and until it is backed up by an adequate number of support staff, particularly for typing, copying and printing as well as for case management.[290] Empirical study also supports the same. It would, further be recommended that the staff so appointed if trained in managerial field, could be more beneficial.[291] It has to be further followed by a suitable performance appraisal.

5.2.13 Increasing judicial strength

Kerala, as per the 245th Report of Law Commission, standing just behind Chandigarh in terms of workload imposed on the judicial officers, if it does not suffer from qualitative shortcomings in terms of justice dispensation, owes full credit to the calibre exhibited by the judicial officers who are currently in service. According to the Report, during 2010-12, judicial officers in Kerala managed to dispose of 2696 cases per year,[292] including civil cases. It is as against 213.2 in Bihar,[293] 328.2 in Jharkhand[294]

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[289] *See* Appendix 2 Table 4.
[290] *All India Judges Association v Union of India*, (2002) 4 SCC 247.
[291] NALSAR University of Law, *A Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts*, 136-148 (Ministry of Justice, 2016).
[292] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 39 (Ministry of Law, Government of India, 2014).
[293] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 32 (Ministry of Law, Government of India, 2014).
[294] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 37 (Ministry of Law, Government of India, 2014).

and 609.1 in Gujarat.[295] During 2020, according to a rough calculation, 340 judicial officers in charge of criminal matters apart from handling civil cases, has disposed of 627.7 criminal matters and, in the whole working year of 2019, has disposed of 1774.87 criminal matters. Hence, statistics indicate that the state of affairs has not improved much. In this context it could only be indebted to the zeal of judicial officers that a huge backlog was never created except in 2020. Further, the quantitative techniques employed as of date neither standardises the workload of judicial officers across the country, nor gives importance to the qualitative aspects. Judicial officers in Kerala are the live victims of such discrepancies for years. For instance, discarding judge to population ratio (demographic method), the 245th Law Commission Report recommended rate of disposal method which calculates the projected judge strength for each cadre after arriving at a break-even number[296] and on the basis of the average disposal rate. It never attempted to standardise the break-even number across the country and take off the burden of the already ladened cadres. Consequently, a paradoxical state of affairs arises, where Bihar, disposing of 213.2 matters per year, will turn out to have a higher break-even number and hence shows higher requirement. Whereas Kerala disposing of 2696 matters per year, despite the huge workload, has a lower break-even number and calculated accordingly, is shown to have a satisfactory workforce.

In 2016, the Centre for Research and Planning of Supreme Court published a report titled '*Subordinate Courts of India: A Report on Access to Justice*,' where calculation based on the judge to population ratio was discarded as non-comprehensive and pushed forward HDI Index method[297] and Literacy method.[298] Though it could address the defects of the judge to population ratio but fell to the defects similar to that of the rate of disposal method, where it failed to standardise the workload of judicial officers across the country, and attempted to calculate, judge strength using the current average

[295] Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 34 (Ministry of Law, Government of India, 2014).
[296] The average institution was divided by the Average Rate of Disposal per judge for that cadre to give the number of judges required to keep pace with the current filings and ensure that no new backlog is created. This figure has been described as: The Break-Even Number. Subtracting the current number of judges from the Break-Even Number gives us the Additional Number of Judges required to ensure that the number of disposals would equal the number of institutions. *See:* Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 27-28 (Ministry of Law, Government of India, 2014).
[297] Centre for Research and Planning, Supreme Court of India, *Subordinate Courts of India: A Report on Access to Justice* 35-41 (Supreme Court of India, 2016).
[298] *Id*.

rate of disposal. Consequently, the cadre with a lower disposal rate per judge, projects the need for, proportionately, a higher number of judges than the cadre with a high disposal rate per judge. In contrast, any attempt to standardise the workload would yield the opposite results. This state of affairs though in another context, reminds one of the relevance of the arguments advanced by the proponents of the desert theory of distributive justice. Hence, as none of the methods employed for calculating judge strength is in no way beneficial to aid the already overburdened judiciary in Kerala and to improve its qualitative aspects, the researcher refrains from calculating the projected judge strength using these methods, since it would only help in creating a mirage of satisfaction than solving the actual cause. Thus, any such method of calculation, supplying more than enough human resources to a judicial cadre working with laxity, to continue to stay so, and limiting the supply to the already ladened, pushing that cadre to work even harder, does not seem to attain its object and hence is meant to be discarded.

245th Report of Law Commission then specifies the ideal caseload method[299]. The ideal caseload method is criticised for the inability to fix the ideal number of cases that would hit the optimal level. The researcher also agrees that it is highly subjective.

The fourth method, proposed by the 245th Report of Law Commission, is the time-based method[300]. The time-based method takes into account ideal or actual judicial hours taken on an average and existing caseload to find out the number of judges. This method is practised in the United States, standardises the effort taken by judges across the country and gives comparatively some degree of relevance to the qualitative aspects.

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[299] According to the 245th Report of Law Commission,

> "Ideal case load method requires a determination of the ideal number of cases that a judge should have on his/her docket. The total caseload (existing pendency plus new institutions) can then be divided by the ideal case load to estimate the number of judges required by the system. Where the number of cases per judge is disproportionately higher than the ideal case load, additional judges are required to be recruited." See also: Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 20 (Ministry of Law, Government of India, 2014).

[300] According to the 245th Report of Law Commission,

> "The time-based method involves determining the ideal or actual time taken by judges in deciding a particular type of case on average. Then it requires determining the average number of cases of that type being instituted and pending in the Courts. Multiplying the number of cases with the time required per case, gives the number of judicial hours required to deal with cases of that type. Dividing this by the number of judicial hours available per year gives the number of judges required to deal with cases of that type. Adding this information for all types of cases that a particular category of judges deals with gives the number of judges required for disposing of the caseload." See also: Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, 20 (Ministry of Law, Government of India, 2014)

However, it is pretty strange and surprising to see that the 245th Report of Law Commission, in its earlier part, arguing vigorously in support of *Imtiyaz Khan* to fix time standards for disposal of cases to bring about Normative Assessment Approach, at the later part discards time-based method as impractical, citing lack of information to fix ideal judicial hours required for a case. It is true that in some instances, there could be deviations; however, a scientific assessment of time frame as proposed in the 245th report and as implemented in the US, Canada and UK, brings more normativity in assessing the performance of judges well. Since, non-fixation of an ideal time frame for disposal of normativity in determining delay cannot be brought in,[301] the researcher calls for a detailed study into this regard, particularly learning from the experiences of the US, Canada and UK. If such a time frame could be identified, researcher feels no harm in applying the same time frame to determine the number of judges required for disposal of cases. However, the researcher does not favour calculating judge strength on the basis of existing workload; rather, it should be on the basis of the projected workload, calculated either by the HDI Method or the Literacy method. It is because only then, the institution rate for the upcoming year could be managed to bring backlog creation rate under control. Else, there would again be a dearth of judicial officers to manage the consistently increasing institution rate. Furthermore, a yearly audit of performance and judge strength has to be conducted.

5.2.14 Appointing Law clerk and law intern

Acknowledging the fact that a large-scale improvement in the judge strength and the number of supporting staff is not feasible overnight, to ease the workload in terms of research, taking down notes on arguments and dictation of judgements, case management and maintaining records of judgements and administrative correspondence to a certain extent, as a transitory arrangement researcher proposes a solution of appointing law clerks or law interns on a temporary basis. When asked whether the appointment of law clerk cum research assistant would facilitate speedy disposal of cases, almost 70% percent either agreed or strongly agreed to it, whereas the rest did not think so. When enquired about the need for appointing of research interns to facilitate the speedy disposal of cases, 25% strongly agreed and 60% agreed to it. Only 15% showed their disagreement. These responses are indications that judges

[301] *Imtiyaz Ahmad v. State of Uttar Pradesh and Ors*, AIR 2012 SC 642.

ladened with heavy workload need some sort of professional assistance in terms of the aforesaid activities.

Many of the recommendations advanced above with the aid of empirical study, though, might seem to be a reiteration of the recommendations made by various committees before, it is, rather than a reiteration, an indication that the steps taken to this regard so far have not been sufficient enough to tackle the crisis of delay. Every single instance of delay causes an infringement of a plethora of rights. Inviting the injured to have recourse to the law by professing to cure the infringement of rights, and blandly curtailing another set of rights in the process is not wise for a legal system founded in rule of law. Hence, the more the delay, the more will be infringements and devastation. Hence, it is high time, that the concerned authorities cease to sleep over the recommendations, that the trust and public confidence bestowed by the people in this institution may remain without posing a threat to rule of law. Therefore, for the rule of law to prevail and for the administration of justice to function effectively, it is pertinent for the entire system to be made systematic with immediate effect.

BIBLIOGRAPHY

BOOKS

1. A.V. Dicey, *Law of Constitution*, 207-208 (10th ed, 1962).
2. Alex Carroll, *Constitutional and Administrative Law* 96 (5th ed., Lexis Nexis, 2009).
3. Austin Granville, *The Indian Constitution: Cornerstone of A Nation* (Classic Reissue) (1st ed. 1999).
4. Basu, D.D., *Introduction to the Constitution of India*, (25th ed., Lexis Nexis, 1973)
5. Claudia Aradau, Jef Huysmans, Andrew Neal, Nadine Voelkne, *Critical Security Methods: New Frameworks for Analysis* 75 (Routledge Publishers, 2015).
6. Dushyant Mahadik, *Analysis of Causes for Pendency in High Courts and Subordinate Courts in Maharashtra*, 58-68 (Administrative Staff College of India, 2018)
7. FW Maitland, LL.D., *The Constitutional History of England*, 12 (Cambridge University Press, 1919).
8. Jain, M.P., *Indian Constitutional Law*, (8th ed., Lexis Nexis, 2018)
9. John Locke, *A Letter Concerning Toleration* 1, 13 (Mark Goldie ed., Liberty Fund, 2010).
10. Joseph F. Cimini, *Alternative dispute resolution in the criminal justice process* 105-125 (Taylor and Francis, 2010).
11. Kelkar, R.V., *Lectures on Criminal Procedure*, (6th ed., Eastern Book Company, 2018)
12. P.M. Bakshi, *Constitution of India*, (11th Edition, Universal Law Publishing, 2011).
13. Ratanlal & Dhirajlal, *The Code on Criminal Procedure*, (21st ed., Lexis Nexis, 2018)
14. Shetreet, Shimon and Sophie Turenne, *Freedom of Expression and Public Confidence in the Judiciary*, In: JUDGES ON TRIAL: THE INDEPENDENCE AND ACCOUNTABILITY OF THE ENGLISH JUDICIARY, 357–418 (Cambridge University Press, 2013). doi:10.1017/CBO9781139005111.009.

15. Shukla, V.N, *Constitution of India*, (10th ed., Mahendra P. Singh (edited)., Eastern Book Company, 2017).
16. Thomas, Justice, *AM Judicial Ethics in Australia* 9 (LexisNexis Butterworth, 2003).
17. NALSAR University of Law, *A study on Court Management Techniques for Improving the Efficiency of Subordinate Courts* 136-146 (Department of Justice, 2016).
18. *Proposal of Department of Justice to the Fourteenth Finance Commission*, 5 (Ministry of Law and Justice, Government of India, 2014)
19. Ranjan, Sudhanshu, *Justice versus Judiciary: Justice Enthroned or Entangled in India?* 97 (Oxford University Press, 2019).
20. S Muralidhar, Law, Poverty and Legal Aid: Access to Criminal Justice, (LexisNexis Butterworths, 2004).

ARTICLES

1. *Agenda Notes, Joint Conference of Chief Ministers of the States/UTs and Chief Justices of the High Courts*, (Aug. 31, 2021, 2:43 PM) https://doj.gov.in/sites/default/files/AGENDA-NOTE-CMCJ.pdf
2. Amanda J. Perry, *The Relationship between Legal Systems and Economic Development: Integrating Economic and Cultural Approaches*, 29 J.L. & Soc'y 282 (2002).
3. Anto Sebastian, Albin Anto, *Secondary Victimization of Rape Victims With A Special Reference To Gender Equality: A Critical Study*, 3(2) SOCIAL SCIENCES INTERNATIONAL RESEARCH JOURNAL 79 (2017).
4. Anto Sebastian and Albin Anto, *Judicial Governance: Barriers In Ensuring Accountability And Transparency Vis-À-Vis Reforming Lower Judiciary*, 3 IJTAG, 140-167 (2017).
5. B.E. Ewulum, *Alternative Dispute Resolution Mechanisms, Plea Bargain and Criminal Justice System in Nigeria*, 8 NNAMDI AZIKIWE U. J. INT'l L. & JURIS. 119 (2017)
6. Barry Walsh, *Judicial Productivity in India*, 1 IJCA 23 (2008).
7. Baxi, U. *Right to Speedy Trial: Geese, Gander And Judicial Sauce (State of Maharashtra v. Champalal)*, 25(1), JOURNAL OF THE INDIAN LAW INSTITUTE, 90–105 (1983). http://www.jstor.org/stable/43950857

8. Bengt Lindell, *Alternative Dispute Resolution and the Administration of Justice - Basic Principles*, 51 SCANDINAVIAN STUD. L. 311 (2007).
9. Bhagwati, P. N., *Human Rights in the Criminal Justice System*, 27(1), JOURNAL OF THE INDIAN LAW INSTITUTE, 1–22 (1985). http://www.jstor.org/stable/43950897
10. Camille Gourdet Et Al., *Court Appearances in Criminal Proceedings Through Telepresence*, PRIORITY CRIM. JUST. NEEDS INITIATIVE 8 (2020).
11. Chandra T. G. Jagadeesh, *Delays in Subordinate Judiciary as an Impediment in Materializing the Right to Speedy Justice - A Review*, 7 GNLU J.L. DEV. & POL. 53 (2017).
12. Chief Justice A.S. Anand, *Indian Judiciary & Challenges of 21st century*, 49(3), THE INDIAN JOURNAL OF PUBLIC ADMINISTRATION, 299 (1999)
13. Ciftci, Sarah, and Deirdre Howard-Wagner, *Integrating Indigenous Justice into Alternative Dispute Resolution Practices: A Case Study of the Aboriginal Care Circle Pilot Program in Nowra*, 16(2) AUSTRALIAN INDIGENOUS LAW REVIEW 81-98 (2012). http://www.jstor.org/stable/26423249.
14. CJI Justice K.G. Bala Krishnan, *Efficient Functioning of India's Justice Delivery System* 4 SCC 15 (2007).
15. Crenshaw, K.W. *Traffic at The Crossroads: Multiple Oppressions*, 43-57 WASHINGTON SQUARE PRESS (2013)
16. Darren Allen, *The Constitutional Floor Doctrine and the Right to Speedy Trial*, 26 CAMPBELL L. REV. 101, 103 (2004)
17. Deniz Ariturk, William E. Crozier & Brandon L. Garrett, *Virtual Criminal Courts*, 2020 U. CHI. L. REV. ONLINE 57 (2020).
18. Foluke Dada & Emily Alemika, *Meeting the Need for a Technologically Driven Justice Delivery System: The Elixir of Rights and Judicial Expediency*, 11 BEIJING L. REV. 805 (2020).
19. Frase, Richard S. *The Speedy Trial Act of 1974*, 43(2), U. Chi. L. Rev., (1976). https://chicagounbound.uchicago.edu/uclrev/vol43/iss4/2
20. Gallas, E. C, *The Court as a Social Force*, 31(2), PUBLIC ADMINISTRATION REVIEW, 125–133 (1971). https://doi.org/10.2307/974663
21. Garth, Bryant G. and Cappelletti, Mauro, Access to Justice: The Newest Wave in the Worldwide Movement to Make Rights Effective, 27 BUFFALO LAW REVIEW 190 (1978).

22. Gaur, K.D., *Human Rights of Detainees and Prisoners: Suggestions for Prison Reform*, COCHIN UNIVERSITY LAW REVIEW, 393 (1982)
23. George S. Bridges, *The Speedy Trial Act of 1974: Effects on Delays in Federal Criminal Litigation*, 73 J. CRIM. L. & CRIMINOLOGY 50 (1982)
24. Harish Narasappa Shruti Vidyasagar (Ed.), *State of the Indian Judiciary- Report* (Mar. 16, 2021, 4: 23 PM) https://dakshindia.org/state-of-the-indian-judiciary/00_cover.html
25. Jayanth K. Krishnan & C. Raj Kumar, *Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective*, 42 GEO. J. INT'l L. 747 (2011).
26. Jenia Turner, *Remote Criminal Justice,* TEXAS TECH L. REV. (forthcoming 2021). https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3699045.
27. Justice Lokur M.B, *Case Management and Court Administration*, (Aug 22, 2021, 5:45 PM) http://lawcommissionofi ndia.nic.in/adr_conf/Justice_Lokur.pdf
28. Kathuria, Sonam. *The Bargain Has Been Struck: A Case for Plea Bargaining in India*. 19(2) STUDENT BAR REVIEW 55-68 (2007). http://www.jstor.org/stable/44306676.
29. *Levels the Common Standard of Mankind*, 17 THE BANARAS LAW JOURNAL (1986)
30. Mahoney, B, *The Administration of Justice and Court Reform*, 31(3), PROCEEDINGS OF THE ACADEMY OF POLITICAL SCIENCE, 58–72 (1974). https://doi.org/10.2307/1173209
31. Marc I, Steinberg, *Right to Speedy Trial: The Constitutional Right and Its Applicability to the Speedy Trial Act of 1974*, 66 J. CRIM. L. & CRIMINOLOGY 229 (1975).
32. Michael Legg & Anthony Song, *The Courts, the Remote Hearing and the Pandemic: From Action to Reflection*, 44 U.N.S.W.L.J. 126 (2021).
33. Mulcahy, Linda and Rowden, Emma and Teeder, Wendy, *Exploring the Case for Virtual Jury Trials during the COVID-19 Crisis: An Evaluation of a Pilot Study Conducted by JUSTICE* (Jun. 15, 2020, 3:45 PM). https://justice.org.uk/our-work/justice-covid-19-response/.
34. Niranjan J. Bhatt, *Case Management- A new Approach*, (Aug. 25, 2021, 7:23 AM)https://lawcommissionofindia.nic.in/adr_conf/niranjan%20case%20mnt12.pdf

35. Patricia Hughes, *Advancing Access to Justice through Generic Solutions: The Risk of Perpetuating Exclusion*, 31(1) WINDSOR YEARBOOK OF ACCESS TO JUSTICE 1 (2013)
36. Pawan Kr. Mishra, *ADRS and Lok Adalat in India: Genesis and Functioning*, 9 INDIAN J.L. & JUST. 28 (2018).
37. Pawan Kr. Mishra, Protection of Witnesses and Criminal Justice: Needs for a New Law, 1 INDIAN J.L. & JUST. 47 (2010)
38. Pillai, Chandrasekharan, K.N., *Right to Speedy Trial in India - A Review*, COCHIN UNIVERSITY LAW REVIEW, 109 (1987).
39. Pillai, K.N.C. *Delay in Criminal Justice Administration — A Study Through Case Files*, 49(4) JOURNAL OF THE INDIAN LAW INSTITUTE 525-28 (2007) http://www.jstor.org/stable/43952090.
40. Pradeep Kumar Singh, *Plea Bargaining and Criminal Justice in India*, 7 ATHENS J.L. 33 (2021).
41. Present Judges, E-courts Mission Project (Aug 23, 2021, 2:54 PM) https://districts.ecourts.gov.in/Present%20Judges
42. Razdan, U., *Apex Court Towards Humanizing the Administration of Juvenile Justice*, 33(3), JOURNAL OF THE INDIAN LAW INSTITUTE, 366–389 (1991). http://www.jstor.org/stable/43951373
43. Reddi, P. V. *Role of the Victim in the Criminal Justice Process*, 18(1) STUDENT BAR REVIEW, 1-24 (2006) http://www.jstor.org/stable/44306643.
44. *Report of the Law Commission of India (Report No. 230) on Reforms in the Judiciary - Some Suggestions*, 36 COMMW. L. BULL. 609 (2010).
45. Shaista Amin, *Plea Bargaining - An Indian Approach*, 4 GNLU J.L. DEV. & POL. 67 (2014).
46. Sharma, S. N, *Fundamental Right To Speedy Trial: Judicial Experimentation*, 38(2), JOURNAL OF THE INDIAN LAW INSTITUTE, 236–242 (1996). http://www.jstor.org/stable/43927473
47. Shivam Kaushik & Anushri Singh, *All India Judicial Services: Problems and Prospects*, 11 NUJS L. REV. 519 (2018).
48. Shrotriya, Eesha; Pachauri, Shantanu, A Proposal for a Model Witness Protection Programme: Need and Legal Ramification, 12 NALSAR STUD. L. REV. 86 (2017)

49. Srikrishna Deva Rao, *Expediting the Delivery of Criminal Justice: Imtiyaz Ahmad and Beyond*, 1 J. NAT'l L. U. DELHI 106 (2013).
50. Sudhir Krishnaswamy, Sindhu K. Sivakumar & Shishir Bail, *Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches*, 2 J. NAT'l L. U. DELHI 1 (2014).
51. Susan A. Bandes & Neal Feigenson, *Virtual Trials: Necessity, Invention, and the Evolution of the Courtroom*, 68 BUFF. L. REV. 1275 (2020).
52. Thaman, Stephen C, *A Comparative Approach to Teaching Criminal Procedure and Its Application to the Post-Investigative Stage*, 56 (3) JOURNAL OF LEGAL EDUCATION, 459-76 (2006). http://www.jstor.org/stable/42893986.
53. Uwazie, Ernest E., *Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability*, AFRICA CENTER FOR STRATEGIC STUDIES, 2011, www.jstor.org/stable/resrep19066.
54. Vandana Peterson, *Speeding up Sexual Assault Trials: A Constructive Critique of India's Fast-Track Courts*, 18 YALE HUM. RTS. & DEV. L.J. 59 (2016).
55. Varsha Aithala, Rathan Sudheer & Nandana Sengupta, *Justice Delayed: A District-Wise Empirical Study on Indian Judiciary*, 12 J. INDIAN L. & SOC'Y 106 (2021).
56. Vidhi Centre for Legal Policy, *India Justice Report: Ranking States on Police, Judiciary, Prisons and Legal Aid*, (Tata Trusts, 2019) https://www.tatatrusts.org/upload/pdf/overall-report-single.pdf .
57. W. Paul Gormley, *The Emerging Dimensions of Human Rights: Protection at the International and Regional*, 17 BANARES L.J. 1 (1981).
58. Yashomati Ghosh, *Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency*, 5 ASIAN J. LEGAL EDUC. 21 (2018).

REPORTS

1. Centre for Research and Planning, Supreme Court of India, *Subordinate Courts of India: A Report on Access to Justice* 35-41 (Supreme Court of India, 2016)
2. Department of Justice, *Report of the Working group for the 12th Five Year Plan (2012-2017)* (Ministry of Law & Justice, Government of India, 2011)
3. Finance Commission, *Report of the Eleventh Finance Commission* (Ministry of Finance, Government of India, 2000)
4. Government of India, *Vohra Committee Report on Criminalisation of Politics*, (Ministry of Home Affairs, 1993)

http://indiapolicy.org/clearinghouse/notes/vohra-rep.doc accessed 13 January, 2014.

5. Justice J S Verma (Retd.), *Report to the Committee on Amendments to Criminal Law* (2013)
6. Justice Manepalli Narayana Rao Venkatachaliah Commission, *Report of the National Commission to Review the Working of the Constitution*, Volume I (Ministry of Law & Justice, Government of India, 2002)
7. Justice Rankin Committee, *Civil Justice Committee Report*, (1924-1925).
8. Justices VS Malimath, PD Desai, and AS Anand, *Report of The Arrears Committee (Three Chief Justices Committee: Kerala, Calcutta & Madras)*, 54-69 (Ministry of Law & Justice, Government of India, 1989-90)
9. Law Commission of India, *120th Report on Manpower Planning in Judiciary: A Blueprint* (Ministry of Law, Government of India, 1978)
10. Law Commission of India, *121st Report on A New Forum for Judicial Appointments* (Ministry of Law, Government of India, 1987)
11. Law Commission of India, *142nd Report on Concessional Treatment for Offenders who on their own initiative choose to Plead Guilty without any Bargaining* (Ministry of Law, Government of India, 1991)
12. Law Commission of India, *198th Report on Witness Identity Protection and Witness Protection Programmes*, (Ministry of Law, Government of India, 2006)
13. Law Commission of India, *230th Report on Judicial Reforms-Some Suggestions*, (Ministry of Law, Government of India, 2009)
14. Law Commission of India, *245th Report on Arrears and Backlog: Creating Additional Judicial (wo) manpower*, (Ministry of Law, Government of India, 2014)
15. Law Commission of India, *41th Report on Code of Criminal Procedure, Vol. I*, (Ministry of Law, Government of India, 1969)
16. Law Commission of India, *78th Report on Congestion of Under Trial Prisoners in Jail* (Ministry of Law, Government of India, 1978)
17. Law Commission of India, *84th Report on Rape and Allied Offences – Some Questions of Substantive Law, Procedure and Evidence*, (Ministry of Law, Government of India, 1980)
18. Law Commission, *14th Report on Reforms of Judicial Administration Vol.* I (Ministry of Law, Government of India, 1958)

19. Law Commission, *14th Report on Reforms of Judicial Administration Vol.* II (Ministry of Law, Government of India, 1958)
20. Law Commission, *154th Report on The Code of Criminal Procedure Code, 1976*, 90-116 (Ministry of Law, Government of India, 1996);
21. Law Commission, *77th Report on Delay and Arrears in Trial* (Ministry of Law, Government of India, 1978)
22. National Commission on Population, *Population Projections for India And States 2011 – 2036*, 242 (Ministry of Health & Family Welfare, 2019)
23. Rajya Sabha, *Department-Related Parliamentary Standing Committee On Home Affairs Eighty-Fifth Report on Law's Delays: Arrears In Courts*, (Rajya Sabha Secretariat, 2003) http://164.100.47.5/rs/book2/reports/home_aff/85threport%20.htm
24. Satish Chandra Committee, *Report of Satish Chandra Committee* (Government of India, 1986)
25. *Subordinate Courts of India: A Report on Access to Justice* (Mar. 20, 2021) https://main.sci.gov.in/pdf/AccesstoJustice/Subordinate%20Court%20of%20India.pdf

STATUTES

1. Arkansas Const. Art 11 § 13
2. Code of Criminal Procedure, 1973
3. Colorado, Constitution Art 2 § 6
4. Connecticut, Constitution Art 1 § 10
5. Delaware, Constitution Art 1 § 9
6. Florida, Const. Art 1 § 21
7. Idaho, Const. art 1 § 18
8. Indian Evidence Act, 1872
9. Indiana Const. art 1 § 12
10. Kansas, Const. Bill of Rights § 18
11. Kentucky, Const. § 14
12. Louisiana Const. art 1 § 22
13. Magna Carta Chapter 40
14. Maine Const. art 1 § 19 and § 20
15. Massachusetts, Const. art XI
16. Minnesota Const Art 1 § 8

17. Missouri, Const Art II § 14
18. Montana, Const. Art. II § 16
19. Nebraska Const. Art 1 § 13
20. New Hampshire Const Bill of Rights § 14
21. North Carolina, Const. Art 1 § 18
22. North Dakota Const. Art. 1 § 16
23. Ohio Const 1 §16
24. Oklahoma Const Art II § 6
25. Oregon Const. Art. 1 § 10
26. Pennsylvania Const. Art. 1 § 11
27. Rhode Island Const. Art 1 § 5
28. South Carolina Const. Art. 1 § 9
29. South Dakota Const. Art VI § 20
30. Tennessee Const. Art 1 § 17
31. The Constitution of India
32. The U.S. Speedy Trial Act, 1974
33. The Protection of Human Rights Act, 1993
34. U.S. Const. amend. VI
35. Utah Const. Art. 1 § 11
36. Vermont Const. Ch. 1 Art. 4
37. Virginia Declaration of Rights
38. Washington Const. Art. 1 § 10
39. West Virginia Const. Art. III § 17.

APPENDIX-1

TABLES

TABLE 1: Disposal trend of original criminal cases in India for the years 2015-2021

Duration/Year	2015	2016	2017	2018	2019	2020	2021
Within 1 Year	56.66%	58.32%	60.58%	60.90%	61.22%	68.63%	65.36%
1-2 Years	13.06%	12.75%	11.61%	11.24%	11.88%	10.21%	11.44%
2-3 Years	8.43%	7.71%	7.21%	7.42%	7.38%	5.87%	6.75%
3-4 Years	5.53%	5.29%	4.76%	4.87%	5.07%	3.97%	4.36%
4-5 Years	3.85%	3.72%	3.45%	3.47%	3.43%	2.83%	2.89%
5-10 Years	8.68%	8.19%	7.99%	8.09%	7.52%	5.95%	6.65%
10-20 Years	3.42%	3.57%	3.80%	3.27%	2.93%	2.18%	2.11%
More Than 21	0.37%	0.45%	0.59%	0.74%	0.56%	0.35%	0.44%

TABLE 2: Disposal trend of original criminal cases in Kerala for the years 2015-2021

Duration/Year	2015	2016	2017	2018	2019	2020	2021
Within 1 Year	63.61	72	69.22	65.38	61.42	57.1	67.05
1-2 Years	14.82	12.82	14.22	15.84	16.17	11.91	11.99
2-3 Years	7.99	6.5	6.81	7.79	9.76	9.22	4.92
3-4 Years	4.78	3.58	4	4.3	5.16	7.12	4.98
4-5 Years	3.51	2.09	2.14	2.41	2.92	5.05	3.56
5-10 Years	4.97	2.76	3.41	4.03	4.34	9.09	7.18
10-20 Years	0.32	0.25	0.19	0.22	0.23	0.5	0.32
More Than 21	0	0	0	0	0.01	0.01	0

TABLE 3: Current Age-wise pendency of original criminal cases – Comparing Kerala with the national average

Age-wise	Kerala		India	
	Number of cases	Percentagewise	Number of cases	Percentagewise
0-1 years	582968	39.70%	8271248	28.98%
1-3 years	461663	31.44%	8587852	30.09%
3 to 5 years	293192	19.96%	4618014	16.18%
5 to 10 years	126294	8.60%	4458059	15.62%
10 to 20 years	4340	0.30%	2166621	7.59%
20 to 30 years	112	0.01%	372243	1.30%
Above 30 years	4	0%	64659	0.23%

TABLE 4: Current Age-wise pendency of session cases – Comparing Kerala with the national average

Age wise Sessions	**Kerala**		**India**	
	Number of cases	**Percentage wise**	**Number of cases**	**Percentage Wise**
0-1 years	14697	30.98%	525231	25.29%
1-3 years	17992	37.93%	668159	32.18%
3 to 5 years	8187	17.26%	370459	17.84%
5 to 10 years	6189	13.05%	367749	17.71%
10 to 20 years	370	0.78%	127275	6.13%
20 to 30 years	2	0%	15023	0.72%
Above 30 years	1	0%	2647	0.13%

TABLE 5: Current Age-wise pendency of warrant and summons cases – Comparing Kerala with the national average

Age-wise warrant	Kerala		India	
	Number of cases	Percentage-wise	Number of cases	Percentage-Wise
0-1 years	388052	41.90%	6530748	27.97%
1-3 years	272035	29.37%	6833544	29.27%
3 to 5 years	175150	18.91%	3792758	16.24%
5 to 10 years	87507	9.45%	3819117	16.36%
10 to 20 years	3383	0.37%	1967373	8.43%
20 to 30 years	87	0.01%	345183	1.48%
Above 30 years	2	0%	59827	0.26%

TABLE 6: Current Stage wise pendency of original criminal cases – Comparing Kerala with the national average

Stage	Kerala		India	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
Appearance	701189	73%	11759674	47%
Compliance	191912	19.93%	1611652	6%
Evidence	47782	4.96%	8904875	36%
Pleadings	22018	2.29%	2750083	11%

TABLE 7: Current Stage wise pendency of sessions cases – Comparing Kerala with the national average

Stage- Sessions	Kerala		India	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
Appearance	11655	34.45	590593	29.48
Compliance	8692	25.69	118701	5.93
Evidence	4631	13.69	977411	48
Pleadings	8850	26.16	316642	15.81

TABLE 8: Current Stage wise pendency of warrant and summons cases – Comparing Kerala with the national average

Stage- Warrant and Summons	Kerala		India	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
Appearance related	462463	74.44	11422940	51.83
Compliance	11801	18.99	1492025	6.77
Evidence	28672	4.62	6892371	31.27
Pleadings	12134	1.95	2232303	10.13

TABLE 8A: Detailed breakup of current Stage wise pendency of original criminal cases – Comparing Kerala with the national average

STAGE	KERALA		INDIA	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
Appearance Related	701189	72.82%	11759674	47%
Cognizance	461808	47.96%	3301035	13%
Appearance	219425	22.79%	7059825	28%
Await Service -Sumn	19345	2.01%	1345096	11%
Admsn Hearing Apel	611	0.06%	53718	0%
Compliance	191912	19.93%	1611652	6%
Compliance	104263	10.83%	494091	2%
Steps	76307	7.92%	855054	3%
Await Report	6779	0.70%	45260	0%
Stayed By HC	1703	0.18%	53496	0%
Await Records	1174	0.61%	54457	0%
Dormant	306	0.03%	23596	0%
Awaiting Order	165	0.02%	29773	0%
Other	1215	0.13%	55925	0%
Evidence	47782	4.96%	8904875	36%
Evidence	22470	2.33%	5238752	20.93%
82&83 Procl	13311	1.38%	55635	0.22%
Hearing	9715	1.01%	2550430	10.19%
313 Examination	1115	0.12%	125054	0.50%
Judgment	610	0.06%	45022	0.18%
Orders	363	0.04%	491256	1.96%
Other	198	0.02%	398726	1.59%
Pleadings	22018	2.29%	2750083	11%
Charge Plea	21005	2.18%	1353522	5%
89 Cpc	901	0.09%	292793	1%
Hearing - Charge	522	0.05%	393282	2%
Issues	504	0.05%	139524	1%
WS	8	0.00%	570962	2%

TABLE 9: Current Stage wise pendency of bail applications – Comparing Kerala with the national average

Stage- Bail	Kerala		India	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
Appearance related	165	12.2	60510	34.33
Steps	832	61.49	22467	12.75
Hearing	356	26.31	90481	51.3

TABLE 10: Current Age-wise pendency of bail applications – Comparing Kerala with the national average

Age wise- Bail	Kerala		India	
	Number of cases	Percentage wise	Number of cases	Percentage Wise
0-1 years	1709	71.51%	138860	69.55%
1-3 years	599	25.06%	36061	18.06%
3 to 5 years	55	2.30%	14012	7.02%
5 to 10 years	21	0.88%	9875	4.95%
10 to 20 years	6	0.25%	820	0.41%
20 to 30 years	0	0%	24	0.01%
Above 30 years	0	0%	11	0.01%

TABLE 11: Institution- Disposal trend of overall criminal matters in India for the year 2020 - State-wise comparison

States	Filed 2020	Disposed 2020
Andhra Pradesh	102766	69180
Assam	64041	22914
Bihar	357153	132817
Chandigarh	7810	2656
Chhattisgarh	85818	41102
Delhi	153291	86182
Diu and Daman	668	415
DNH at Silvasa	621	344
Goa	8218	2785
Gujarat	316858	97205
Haryana	269362	124546
Himachal Pradesh	170558	73657
Jammu and Kashmir	58437	37545
Jharkhand	149290	105878
Karnataka	590298	517145
Kerala	456252	109940
Ladakh	345	271
Madhya Pradesh	451894	234492
Maharashtra	676880	211070
Manipur	5131	4807
Meghalaya	2307	1780
Mizoram	1636	1106
Nagaland	372	97
Orissa	125032	42039
Puducherry	1957	3
Punjab	279003	159747
Rajasthan	461589	305609
Sikkim	1243	1199
Tamil Nadu	359756	314877

Telengana	109324	49372
Tripura	15375	3016
Uttar Pradesh	1634844	1016599
Uttarakhand	91240	48727
West Bengal	152012	100529

TABLE 12: Institution- Disposal trend of overall criminal matters in India for the year 2021 (Up to June 30, 2021) - State-wise comparison

States	Filed 2021	Disposed 2021
Andhra Pradesh	75141	40468
Assam	53779	31887
Bihar	246176	141726
Chandigarh	8296	3802
Chhattisgarh	72628	47170
Delhi	141782	68763
Diu and Daman	548	456
DNH at Silvasa	502	450
Goa	4882	787
Gujarat	587073	304805
Haryana	226061	148271
Himachal Pradesh	119425	98579
Jammu and Kashmir	53211	39141
Jharkhand	112215	82902
Karnataka	546712	501108
Kerala	203839	188685
Ladakh	204	162
Madhya Pradesh	296856	231667
Maharashtra	466203	235812
Manipur	3746	3436
Meghalaya	1893	1704

Mizoram	976	933
Nagaland	268	148
Orissa	86293	66088
Puducherry	3497	1950
Punjab	207914	166332
Rajasthan	364379	240608
Sikkim	922	780
Tamil Nadu	393526	373871
Telengana	102809	58817
Tripura	15491	16731
Uttar Pradesh	1030511	606874
Uttarakhand	60863	43282
West Bengal	176813	124087

TABLE 13: Institution- Disposal trend of overall criminal matters in each state since April 2020 (Up to June 30, 2021) - State-wise comparison

States	Instituted Since April 2020	Disposed Since April 2020
Andhra Pradesh	177907	109648
Assam	117820	54801
Bihar	603329	274543
Chandigarh	16106	6458
Chhattisgarh	158446	88272
Delhi	295073	154945
Diu and Daman	1216	871
DNH at Silvasa	1123	794
Goa	13100	3572
Gujarat	903931	402010
Haryana	495423	272817
Himachal Pradesh	289983	172236
Jammu and Kashmir	111648	76686

Jharkhand	261505	188780
Karnataka	1137010	1018253
Kerala	660091	298625
Ladakh	549	433
Madhya Pradesh	748750	466159
Maharashtra	1143083	446882
Manipur	8877	8243
Meghalaya	4200	3484
Mizoram	2612	2039
Nagaland	640	245
Orissa	211325	108127
Puducherry	5454	1953
Punjab	486917	326079
Rajasthan	825968	546217
Sikkim	2165	1979
Tamil Nadu	753282	688748
Telengana	212133	108189
Tripura	30866	19747
Uttar Pradesh	2665355	1623473
Uttarakhand	152103	92009
West Bengal	328825	224616

TABLE 14: Institution, Disposal, Pendency trend of original criminal cases in India for the years 2014-2021*

Year	Institution	Disposal	Pendency
2015	6386140	5200567	15189716
2016	7071318	5687230	16573804
2017	8474585	7165501	17882888
2018	8829613	7441251	19271250
2019	9396347	7986390	20681207
2020	7073712	3750117	24004802
2021	3830482	2180803	25654481

TABLE 15: Institution, Disposal, Pendency trend of original criminal cases in Kerala for the years 2014-2021*

Year	Institution	Disposal	Pendency
2015	470214	387427	174413
2016	594767	430582	338598
2017	608353	446210	500741
2018	541440	460736	581445
2019	548477	542571	587351
2020	539180	179641	946890
2021	192943	167569	972264

TABLE 16: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state since April 2020 (Up to June 30, 2021) - State-wise comparison

States	Backlog
Andhra Pradesh	1.622528
Assam	2.149961
Bihar	2.197576
Chandigarh	2.493961
Chhattisgarh	1.794975
Delhi	1.904373
Diu and Daman	1.396096
DNH at Silvasa	1.414358
Goa	3.667413
Gujarat	2.248529
Haryana	1.815954
Himachal Pradesh	1.683638

Jammu and Kashmir	1.455911
Jharkhand	1.385237
Karnataka	1.116628
Kerala	2.210434
Ladakh	1.267898
Madhya Pradesh	1.606212
Maharashtra	2.557908
Manipur	1.076914
Meghalaya	1.205511
Mizoram	1.28102
Nagaland	2.612245
Orissa	1.954415
Puducherry	2.792627
Punjab	1.493249
Rajasthan	1.512161
Sikkim	1.093987
Tamil Nadu	1.093698
Telengana	1.960763
Tripura	1.563073
Uttar Pradesh	1.641761
Uttarakhand	1.653132
West Bengal	1.463943

TABLE 17: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state since April 2020 (Up to December 31, 2020) - State-wise comparison

States	Backlog 2020
Andhra Pradesh	1.485487
Assam	2.794842

Bihar	2.689061
Chandigarh	2.940512
Chhattisgarh	2.087928
Delhi	1.778689
Diu and Daman	1.609639
DNH at Silvasa	1.805233
Goa	2.950808
Gujarat	3.259688
Haryana	2.162751
Himachal Pradesh	2.315571
Jammu and Kashmir	1.556452
Jharkhand	1.410019
Karnataka	1.141455
Kerala	4.150009
Ladakh	1.273063
Madhya Pradesh	1.927119
Maharashtra	3.206898
Manipur	1.067402
Meghalaya	1.296067
Mizoram	1.479204
Nagaland	3.835052
Orissa	2.974191
Puducherry	652.3333
Punjab	1.74653
Rajasthan	1.510391
Sikkim	1.036697
Tamil Nadu	1.142529
Telengana	2.214292
Tripura	5.097812
Uttar Pradesh	1.60815
Uttarakhand	1.872473
West Bengal	1.512121

TABLE 18: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state in the year 2021 (Up to June 30, 2021) - State-wise comparison

States	Backlog 2021
Andhra Pradesh	1.8568
Assam	1.686549
Bihar	1.736985
Chandigarh	2.182009
Chhattisgarh	1.539707
Delhi	2.061894
Diu and Daman	1.201754
DNH at Silvasa	1.115556
Goa	6.203304
Gujarat	1.926061
Haryana	1.524647
Himachal Pradesh	1.211465
Jammu and Kashmir	1.35947
Jharkhand	1.353586
Karnataka	1.091006
Kerala	1.080314
Ladakh	1.259259
Madhya Pradesh	1.281391
Maharashtra	1.977011
Manipur	1.090221
Meghalaya	1.110915
Mizoram	1.046088
Nagaland	1.810811
Orissa	1.305729
Puducherry	1.793333
Punjab	1.249994
Rajasthan	1.514409

Sikkim	1.182051
Tamil Nadu	1.052572
Telengana	1.747947
Tripura	0.925886
Uttar Pradesh	1.698064
Uttarakhand	1.406197
West Bengal	1.424912

TABLE 19: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in Kerala for the years 2015-2021 (Up to June 30, 2021)

Year	Backlog
2016	1.375686
2017	1.344261
2018	1.17987
2019	1.018142
2020	2.752008
2021	1.080314

TABLE 20: Backlog Creation Rate (Institution/Disposal) of overall criminal matters in each state in the years 2015- 2021 (Up to June 30, 2021) - State-wise comparison

States	2016	2017	2018	2019	2020	2021
Andhra Pradesh	1.109774	0.964701	1.024358	1.119741	1.329927	1.8568
Assam	1.308343	1.041562	0.986554	1.006357	2.085646	1.686549
Bihar	1.787848	1.797981	1.637617	1.36516	2.067481	1.736985
Chandigarh	1.185967	1.168669	1.193543	1.085222	2.072028	2.182009

Chhattisgarh	1.179158	0.985684	0.973365	1.0458	1.542445	1.539707
Delhi	1.695207	1.463695	1.386082	1.390447	1.576631	2.061894
Diu and Daman	0.943933	0.959201	1.171329	1.076923	1.403226	1.201754
DNH at Silvasa	0.826255	0.832317	0.845638	0.846008	1.453978	1.115556
Goa	1.072805	1.002728	1.12769	1.158719	1.659339	3.667413
Gujarat	0.802577	0.816916	0.99295	1.919921	1.919936	1.926061
Haryana	1.03981	1.194773	1.160059	1.187201	1.770835	1.524647
Himachal Pradesh	1.149836	1.273325	1.124135	1.080172	1.702107	1.211465
Jammu and Kashmir	2.116003	1.79347	1.190675	1.143519	1.451843	1.35947
Jharkhand	1.375815	1.077957	0.958998	0.986752	1.252935	1.353586
Karnataka	1.11578	1.087637	1.078378	1.002378	1.12529	1.091006
Kerala	1.375686	1.344261	1.17987	1.018142	2.752008	1.080314
Ladakh		1.705882	1.139241	1.071782	1.264407	1.259259
Madhya Pradesh	1.228873	1.09884	0.979296	1.120038	1.605587	1.281391
Maharashtra	1.244038	1.109354	1.145443	1.245209	2.334029	1.977011
Manipur	0.996699	0.9866	0.953486	0.982487	1.036124	1.090221

Meghalaya	1.234912	1.131514	0.94187	1.075348	1.244305	1.110915
Mizoram		1.541298	1.354142	1.633721	1.621861	1.046088
Nagaland			1.723485	0.890909	3.391813	1.810811
Orissa	1.045195	1.230949	1.927015	1.49836	2.294036	1.305729
Punjab	1.041517	1.150892	1.065166	1.052278	1.533396	1.249994
Rajasthan	1.235835	1.087349	1.110598	1.064275	1.38242	1.514409
Sikkim	1.018965	0.959912	0.971476	1.017954	1.080488	1.182051
Tamil Nadu	1.20158	1.069234	1.058893	1.025115	1.106031	1.052572
Telengana	1.349263	1.025452	1.077456	1.150693	1.774698	1.747947
Tripura	0.934552	0.914118	0.893455	0.993132	2.679842	0.925886
Uttar Pradesh	1.240624	1.125943	1.237724	1.263477	1.526221	1.698064
Uttarakhand	1.295413	1.108206	1.164973	0.811624	1.647115	1.406197
West Bengal	1.02695	1.838954	1.244996	1.02695	1.267568	1.424912

TABLE 21: Pendency Clearance Time of original criminal in India for the years 2015-2021*

Year	Pendency Clearance Time (In Years)
2015	2.920781
2016	2.914214
2017	2.495693
2018	2.589786
2019	2.589556
2020	6.401081
2021*	11.76378

TABLE 22: Pendency Clearance Time of original criminal cases in Kerala for the years 2015-2021*

Year	Pendency Clearance Time (In Years)
2015	0.450183
2016	0.786373
2017	1.122209
2018	1.261992
2019	1.082533
2020	5.271013
2021*	5.802171

APPENDIX – II

QUESTIONNAIRES

QUESTIONNAIRE FOR JUDGES

Dear Sir/Ma'am,

I am Albin Anto, Master of Laws (LL.M) student at the National University of Advanced Legal Studies (NUALS), Kochi bearing Register Number. 10252. This questionnaire is prepared in pursuance to my LL.M Dissertation titled "ANALYSING THE DELAY AND BACKLOG IN CRIMINAL MATTERS IN INDIA IN THE LIGHT OF COVID-19 WITH SPECIAL REFERENCE TO KERALA". The objective of this questionnaire is to identify the probable reasons for the delay in disposal of criminal cases in the state of Kerala, particularly during the COVID-19 Phase ranging from 1st April 2020 to 30th June 2021. I would be extremely thankful, if your kind heart could devote a few minutes in answering the questions provided in the questionnaire. I hereby assure you that the information collected will be utilised for the purpose of this dissertation only.

Thanks

Albin Anto

QUESTIONNAIRE FOR JUDGES

1. Do you think that the introduction of an electronic case management system through which police and experts could file all the required reports to the criminal court concerned would speed up the disposal of cases

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

2. Rank the following factors according to the extent to which they contribute to the delay in disposal of criminal matters during the COVID Phase (highest concern first)

a) Lacks from the part of prosecution witnesses, experts, and prosecutor
b) Police investigation and filing of reports (including FIR, Chargesheet, etc)
c) Judges
d) Lacks from the part of accused witnesses, accused, and its counsels
e) Non-modernization of the judicial system (including case management, infrastructure and other physical requirements)

3. Does witnesses (other than police, government officials and expert witnesses) appear regularly whenever summoned to appear?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

4. How often are courts required to resort to grave steps (including issuing Non-Bailable Warrants, arrest, etc.) to procure the attendance of witness (other than police, government officials and expert witnesses)?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

5. Did witness (other than police and expert witnesses) appear regularly whenever summoned to appear during the COVID Phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

6. Do police, other government officials and expert witnesses appear regularly whenever summoned to appear?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

7. How often are courts required to resort to grave steps (including issuing Non-Bailable Warrants, arrest, etc.) to procure the attendance of police, other government officials and expert witnesses?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

8. Did police, other government officials and expert witnesses appear regularly whenever summoned to appear during the COVID Phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

9. How often are courts able to provide preferential treatment for police, government officials and expert witnesses when they are called to testify during the COVID Phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

10. Do you think that an improved witness protection scheme could have procured a better rate of witness appearance?

☐ Always ☐ Often ☐ Sometimes ☐ Never felt so

11. Did you feel that adjournments were sought on not so reasonable grounds during the COVID Phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

12. Did you feel that bar did co-operate in the speedy disposal of cases during the COVID phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

13. Did you feel that the targets fixed by the higher judiciary in the disposal of cases were an added pressure during the COVID phase?

☐ Always ☐ Often ☐ Sometimes ☐ Never

☐ There was no such target

14. Do you think that an increased judge strength would help in the speedier disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ We have sufficient strength

15. How many hours do you spend a day at an average for official works?

_____

16. Do you feel that the appointment of a Law Clerk cum Research Assistant would facilitate the speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

17. Do you feel that the appointment of a Research Interns would facilitate the speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

18. Do you think Lok Adalat and mediation are effective, in settling cases with respect to compoundable offences?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

19. Do you think that transfer of petty offences to special courts would reduce the workload and boost up the speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

20. How often have you felt during the COVID phase, that a better physical infrastructural support would have facilitated taking up more criminal matters in a sitting?

☐ Always ☐ Often ☐ Sometimes ☐ Never

21. Do you feel that an increased application of plea bargaining would have facilitated the speedier and more efficient disposal of applicable cases?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

22. Do you feel that the accused, in applicable cases, have sufficient knowledge about the option of plea bargaining?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the ☐ cases Never

23. Have often had you suggested the option of plea bargaining to the accused at the stage of framing of charges?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

24. How often could you stick to the schedules made for trial?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

25. How effectively could the service of process achieve their purpose during the COVID phase?

☐ Always ☐ Often ☐ Sometimes ☐ Never

26. Do you feel the shortage of support staff?

☐ Always ☐ Often ☐ Sometimes ☐ Never

27. Do you think that better training for support staff in procedural laws and case management would have facilitated the speedy disposal of cases?

☐ Always ☐ Often ☐ Sometimes ☐ Never

28. Do you think that replacing the roll call system with a cause list system and display board as in higher courts would facilitate speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

29. Any other suggestions

_____

30. Total Experience ☐ 0-3 years ☐ 3-5 years ☐ 5-7 years ☐ 7 or above

ANSWERS TO THE OPEN ENDED QUESTIONS

TABLE 1

15. How many hours do you spend a day at an average for official works?
12-15 hrs
9 Hours
8
Around 10 hours, including the sitting time in the court, excluding preparation at residence, which varies
9
10
10-12
10 hours
8 to 10 hours
10 to 15hrs
10
7 hour
Seven to twelve hours
8h
10 hours
9 to 10 hours
8-10
12-13
9.30 Hours
8 to 10 hours

TABLE 2

29. Any other suggestions
Increasing staff strength, improving e-connectivity, special courts for disposal of petty cases and giving proper training in conducting trial online can be very beneficial to the system
In practice, many offences attract only a fine in courts of law. It is ideal if legislature steps in and provide for compounding of the said offences either by directly paying fines to police or by paying fines online. Cases involving defaulters can be referred to regular courts.
Compliance of cumbersome procedures is to be minimized.
Only a few judges put in dedicated hard re are sufficient number of courts it the problem is mindset of most judges. There is no reward for merit hard work and efficiency in judiciary. Over a period of time lethargy creeps in and engulfs officers.
During the COVID-19 period, I have refrained from taking grave steps against witnesses for their non-appearance due to practical reasons.
Connectivity problems during the virtual sitting created difficulties in carrying out effective hearing
More courts are to be established proportionate to the population in India
Efficiency of judicial officers are more important than number of judicial officers. Hence judicial strength as well as efficiency of officers shall be maintained for effective and speedy disposal of cases.
Recording of evidence by the judge himself is a cumbersome time-consuming process. By the end of the day he will be fully exhausted. So change in that process will certainly felicitate speedy disposal.
We, the legal fraternity should put a collective effort to dispose of maximum number the cases. To achieve this goal, we need to change the mindset. There should be self-introspection and sincere efforts by all concerned in the system to improve their respective role.
Plea bargaining in matters like NI cases wherein the punishment restricted to agreed amount as fine and time for payment could be given. Sentencing in case of non-payment in time would facilitate speedy disposal of cases. In cases where plea bargaining is done with the provision for compensating the injured is another measure Network problem during VC was an issue. So, I have started physical sitting. During the COVID-19 period, I have refrained from taking grave steps against witnesses for their non-appearance due to practical reasons.
A lot of criminal cases are kept pending because of the delay in receiving the reports from Forensic Sciences Laboratories which are currently overburdened with the sheer number of cases. Establishing FSL laboratories in every district could reduce the time required for disposing a criminal case.

ANSWERS TO OTHER QUESTIONS

TABLE 2A

QUESTION 1	
STRONGLY AGREE	15.80%
AGREE	63.20%
DISAGREE	21.10%
STRONGLY DISAGREE	0%
QUESTION 2	
STRONGLY AGREE	26.30%
AGREE	73.70%
DISAGREE	0%
STRONGLY DISAGREE	0%
QUESTION 3	
YES, IN ALL THE CASES	0
YES, IN MOST OF THE CASES	16.70%
SOMETIMES	22.20%
ONLY IN A FEW CASES	55.60%
NEVER	5.60%
QUESTION 4	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	36.80%
SOMETIMES	47.40%
ONLY IN A FEW CASES	15.80%
NEVER	0%
QUESTION 5	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	36.80%
SOMETIMES	42.10%
ONLY IN A FEW CASES	15.80%
NEVER	5.30%

QUESTION 6	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	21.10%
SOMETIMES	42.10%
ONLY IN A FEW CASES	31.60%
NEVER	5.30%
QUESTION 7	
YES, IN ALL THE CASES	10.50%
YES, IN MOST OF THE CASES	47.40%
SOMETIMES	26.30%
ONLY IN A FEW CASES	15.80%
NEVER	0%
QUESTION 8	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	21.10%
SOMETIMES	36.80%
ONLY IN A FEW CASES	36.80%
NEVER	5.30%
QUESTION 9	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	36.80%
SOMETIMES	31.60%
ONLY IN A FEW CASES	31.60%
NEVER	0%
QUESTION 10	
YES, IN ALL THE CASES	26.30%
YES, IN MOST OF THE CASES	47.40%
SOMETIMES	15.80%
ONLY IN A FEW CASES	0%
NEVER	10.50%

QUESTION 11	
ALWAYS	25%
OFTEN	37.50%
SOMETIMES	25%
NEVER	12.50%
QUESTION 12	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	30%
SOMETIMES	50%
ONLY IN A FEW CASES	10%
NEVER	10%
QUESTION 13	
YES, IN ALL THE CASES	5.30%
YES, IN MOST OF THE CASES	36.80%
SOMETIMES	26.30%
ONLY IN A FEW CASES	31.60%
NEVER	0%
QUESTION 14	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	20%
SOMETIMES	25%
ONLY IN A FEW CASES	50%
NEVER	5.30%
QUESTION 15	
STRONGLY AGREE	15%
AGREE	65%
DISAGREE	20%
STRONGLY DISAGREE	0%
QUESTION 16	
ALWAYS	15.80%
OFTEN	21.10%
SOMETIMES	21.10%

NEVER	36.80%
QUESTION 17	
ALWAYS	21.10%
OFTEN	42.10%
SOMETIMES	21.10%
NEVER	16.80%
QUESTION 18	
STRONGLY AGREE	47.00%
AGREE	36.80%
DISAGREE	15.80%
STRONGLY DISAGREE	0%
QUESTION 20	
STRONGLY AGREE	20%
AGREE	50%
DISAGREE	25%
STRONGLY DISAGREE	5%
QUESTION 21	
STRONGLY AGREE	15%
AGREE	60%
DISAGREE	25%
STRONGLY DISAGREE	0%
QUESTION 23	
STRONGLY AGREE	52.50%
AGREE	42.10%
DISAGREE	5.30%
STRONGLY DISAGREE	0%
QUESTION 24	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	
SOMETIMES	50%
ONLY IN A FEW CASES	25%
NEVER	0%

QUESTION 25	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	16.70%
SOMETIMES	5.60%
ONLY IN A FEW CASES	55.60%
NEVER	22.20%
QUESTION 26	
YES, IN ALL THE CASES	0%
YES, IN MOST OF THE CASES	16.70%
SOMETIMES	33.30%
ONLY IN A FEW CASES	22.20%
NEVER	27.80%
QUESTION 27	
ALWAYS	36.80%
OFTEN	26.30%
SOMETIMES	26.30%
NEVER	10.50%
QUESTION 28	
ALWAYS	36.80%
OFTEN	42.10%
SOMETIMES	21.10%
NEVER	0%

QUESTIONNAIRE FOR ADVOCATES

Dear Sir/Ma'am,

I am Albin Anto, Master of Laws (LL.M) student at the National University of Advanced Legal Studies (NUALS), Kochi bearing Register Number. 10252. This questionnaire is prepared in pursuance to my LL.M Dissertation titled "ANALYSING THE DELAY AND BACKLOG IN CRIMINAL MATTERS IN INDIA IN THE LIGHT OF COVID-19 WITH SPECIAL REFERENCE TO KERALA". The objective of this questionnaire is to identify the probable reasons for the delay in disposal of criminal cases in the state of Kerala, particularly during the COVID-19 Phase ranging from 1st April 2020 to 30th June 2021. I would be extremely thankful, if your kind heart could devote a few minutes in answering the questions provided in the questionnaire. I hereby assure you that the information collected will be utilised for the purpose of this dissertation only.

Thanks

QUESTIONNAIRE FOR ADVOCATES

Name:

Station of Practice:

Total Experience:

1. Rank the following factors according to the extent to which they contribute to the delay in disposal of criminal matters during the COVID Phase (highest concern first)
    f) Lacks from the part of prosecution witnesses, experts, and prosecutor
    g) Police investigation and filing of reports (including FIR, Chargesheet, etc)
    h) Judges
    i) Lacks from the part of accused witnesses, accused, and its counsels
    j) Non-modernization of the judicial system (including case management, infrastructure and other physical requirements)

2. Do you think that the introduction of an electronic case management system through which police and experts could file all the required reports to the criminal court concerned would speed up the disposal of cases

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

3. How much satisfied you were with the online platform that was used during the COVID -19 Phase?

☐ Highly satisfied ☐ Satisfied ☐ Dissatisfied ☐ Highly dissatisfied

4. If not satisfied, reasons and suggestions

_____

5. Do you think that an improved witness protection scheme could have procured a better rate of witness appearance, more importantly, the timely appearance?

☐ Always ☐ Often ☐ Sometimes ☐ Never felt so

6. How frequent were you required to seek adjournment during the COVID Phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

7. Do you think that an increased judge strength would help in the speedier disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree ☐ We have sufficient strength

8. Do you think Lok Adalat and mediation are effective, in settling cases with respect to compoundable offences?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

9. Do you think that a transfer of petty offences to special courts would reduce the workload and boost up the speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

10. How often have you felt that a more logistically equipped court system would facilitate taking up more criminal matters in a sitting (during the COVID-19 phase)?

☐ Always ☐ Often ☐ Sometimes ☐ Never

11. Do you feel that an increased application of plea bargaining would have facilitated the speedier and more efficient disposal of applicable cases?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

12. How often have often had you suggested the option of plea bargaining to the accused?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

13. How often could you co-operate with judicial officers to stick to the schedule made?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

14. How effectively could the service of process achieve their purpose during the COVID phase?

☐ Always ☐ Often ☐ Sometimes ☐ Never

15. Do you think that replacing the roll call system with a cause list system and display board as in higher courts, would facilitate speedy disposal of cases?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

16. Are you satisfied with the manner in which the case management of criminal cases is carried out during the COVID -19 phase?

☐ Yes, in all cases ☐ Yes, in most of the cases ☐ Sometimes ☐ No, in most of the cases ☐ Never

17. Would you recommend a revisit on procedural laws to make it less cumbersome?

☐ Strongly agree ☐ Agree ☐ Disagree ☐ Strongly disagree

18. Any other Suggestions

ANSWERS TO THE OPEN-ENDED QUESTIONS

TABLE 3

4. If not satisfied, reasons and suggestions (if any)
Provided proper training should give to court staff.
Connectivity issues caused many problems
Most of the employees are unaware and uneducated of the online system
Direct communication is very important
Like physical court presentation of case
Network problems, results etc.
Open court system is better than online system.
Lack of training and technical knowledge of court staff in handling online technology as well as lack of technical resources for video conferencing caused issues with VC for both advocates and judges
The authority failed to provide adequate training to the advocates and the clerks as well. Thus there was a reluctance from the part of Advocates to opt for online filing system.
I am satisfied.
Problems with mobile range
Electronic Platforms is at an early stage and there is much development that is needed. the platforms should be accessible to only lawyers i.e if any IO, Orders/ judgements ..etc should and shall be accessed by advocates and not public. Concentrate more on E-filing applications than physical. ..etc
Online hearing has its own limitation compared to physical hearing. I personally believe that during the physical hearing an advocate do have better chance in convincing the judges presiding in the court. Considering the covid pandemic situation, it's virtual hearings are the only possible situation
No training was given
Connectivity issues
Court staffs does not have technological competence to handle online platforms.
The increase in number of courts shall help in speedy disposal of cases. During, the covid phase video conferencing methods may be used in all courts and a full fledged roll call system is to be introduced
The bar council concerned must equip the Advocates with sufficient knowledge on online court procedure of court before imparting them with these procedure. The bar council concerned must financially assist the Advocates to procure gadgets for online court procedure. The bar council should provide interest free loan as well to the eligible ones.
Online platform has its limitation. But there is no other means as mall courtroom often makes it difficult to take up all the listed matters during COVID

ANSWERS TO OTHER QUESTIONS

TABLE 4

QUESTION 1	
STRONGLY AGREE	32.40%
AGREE	60.30%
DISAGREE	7.40%
STRONGLY DISAGREE	0%
QUESTION 2	
ALWAYS	38.80%
OFTEN	28.40%
SOMETIMES	31.30%
NEVER	1.50%
QUESTION 4	
STRONGLY AGREE	16.20%
AGREE	67.60%
DISAGREE	14.70%
STRONGLY DISAGREE	1.50%
QUESTION 5	
STRONGLY AGREE	25%
AGREE	54.40%
DISAGREE	14.70%
QUESTION 6	
ALWAYS	22.10%
OFTEN	41.20%
SOMETIMES	32.40%
NEVER	4.40%
QUESTION 7	
ALWAYS	31.30%
OFTEN	37.30%
SOMETIMES	23.90%
NEVER	7.50%

QUESTION 8	
YES, IN ALL THE CASES	4.80%
YES, IN MOST OF THE CASES	38.10%
SOMETIMES	39.70%
ONLY IN A FEW CASES	7.90%
NEVER	7.90%
QUESTION 9	
YES, IN ALL THE CASES	3.10%
YES, IN MOST OF THE CASES	15.40%
SOMETIMES	33.80%
ONLY IN A FEW CASES	24.60%
NEVER	23.10%
QUESTION 10	
YES, IN ALL THE CASES	13.60%
YES, IN MOST OF THE CASES	54.50%
SOMETIMES	27.30%
ONLY IN A FEW CASES	1.50%
NEVER	3%
QUESTION 11	
ALWAYS	9.70%
OFTEN	37.10%
SOMETIMES	43.50%
NEVER FELT SO	9.70%
QUESTION 12	
STRONGLY AGREE	38.80%
AGREE	40.30%
DISAGREE	17.90%
STRONGLY DISAGREE	3%

QUESTION 13	
YES, IN ALL THE CASES	5.60%
YES, IN MOST OF THE CASES	14.30%
SOMETIMES	39.70%
ONLY IN A FEW CASES	22.20%
NEVER	20.60%
QUESTION 14	
STRONGLY AGREE	24.20%
AGREE	62.10%
DISAGREE	10.60%
STRONGLY DISAGREE	3%
QUESTION 15	
STRONGLY AGREE	12.70%
AGREE	74.60%
DISAGREE	9.50%
STRONGLY DISAGREE	3.20%
QUESTION 16	
YES, IN ALL THE CASES	9.10%
YES, IN MOST OF THE CASES	39.40%
SOMETIMES	34.80%
ONLY IN A FEW CASES	15.20%
NEVER	1.50%
QUESTION 17	
YES, IN ALL THE CASES	4.50%
YES, IN MOST OF THE CASES	42.40%
SOMETIMES	28.80%
ONLY IN A FEW CASES	16.70%
NEVER	7.60%