JUSTICE DISPENSATION IN INDIA

INITIATIVES TO REDUCE PENDENCY AND EFFICIENT USE OF ALTERNATIVES

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JUSTICE DISPENSATION IN INDIA: INITIATIVES TO REDUCE PENDENCY AND EFFICIENT USE OF ALTERNATIVES

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INDIAN COUNCIL OF SOCIAL SCIENCE RESEARCH

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FOREWORD

The book "*Justice Dispensation in India: Initiatives to Reduce Pendency and Efficient Use of Alternatives*" is a crucial contribution to the ongoing discourse on judicial efficiency and the need for innovative reforms in India's justice system. In a time when judicial backlogs and delays have become a persistent challenge, it is imperative to explore and implement mechanisms that ensure the timely and effective dispensation of justice.

India's justice system, while rooted in a rich legal tradition, faces significant hurdles due to an overwhelming caseload and procedural complexities. The sheer volume of pending cases in courts at various levels underscores the urgency for reform. While the judiciary continues to work towards clearing these backlogs, it is evident that traditional litigation alone cannot serve as the sole means of justice delivery.

This book highlights various initiatives and alternative methods that can be employed to enhance judicial efficiency. Measures such as fast-track courts, Lok Adalats, and arbitration and mediation have already shown promise in expediting dispute resolution. The growing integration of technology, including e-courts and artificial intelligence in case management, further opens new avenues for reducing pendency and improving accessibility to justice.

Beyond procedural enhancements, a shift towards alternative dispute resolution mechanisms can play a transformative role in justice delivery. Mediation and arbitration provide efficient, cost-effective, and amicable resolutions, reducing the burden on courts while ensuring that justice is both swift and equitable. Strengthening these mechanisms and encouraging their widespread adoption is essential for a more resilient and responsive judicial system.

The Centre for Comparative Studies in Personal Laws at National Law University, Delhi, has played an instrumental role in facilitating research and discussions on judicial efficiency and reform. Through its commitment to academic inquiry and policy engagement, the Centre has contributed significantly to shaping perspectives on justice delivery in India. By fostering meaningful dialogue, the Centre continues to support efforts aimed at reducing judicial pendency and enhancing alternative dispute resolution mechanisms.

This volume not only examines these pressing issues but also offers practical solutions, making it an invaluable resource for policymakers, legal professionals, and scholars. The insights provided herein serve as a roadmap towards a more effective and inclusive justice system in India. I commend the authors and contributors for their efforts in bringing forth such a timely and pertinent discussion. It is my hope that the ideas and recommendations in this book will inspire actionable reforms and help shape the future of justice dispensation in India.

Prof. (Dr.) G.S. Bajpai
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PREFACE

The book "*Justice Dispensation in India: Initiatives to Reduce Pendency and Efficient Use of Alternatives*" is a timely and significant contribution to the discourse on judicial efficiency and reform in India. This volume is a curated selection of insightful papers that were presented during discussions organized by the Centre for Comparative Studies in Personal Laws at National Law University, Delhi. It aims to address one of the most pressing challenges faced by India's legal and judicial systems—judicial delays and case backlogs—and explores practical solutions to enhance the effectiveness of justice delivery. Access to justice is a fundamental right enshrined in the Indian Constitution. However, the current judicial system, influenced by colonial legacy, is often perceived as slow, cumbersome, and expensive. Despite various reforms over the decades, the pendency of cases and procedural complexities continue to hinder the timely dispensation of justice. The consequences are far-reaching, affecting societal trust, economic stability, and the rule of law itself.

This book delves into the causes and implications of judicial delays while presenting viable alternatives to traditional litigation. It explores mechanisms such as fast-track courts, Lok Adalats, and Alternative Dispute Resolution (ADR) methods including mediation and arbitration. Additionally, the book examines how digital technologies like e-courts and artificial intelligence can revolutionize case management and streamline judicial processes.

The Centre for Comparative Studies in Personal Laws has consistently worked towards enhancing legal scholarship and fostering impactful dialogues on justice administration. This book is in furtherance of the Major Reasearch Project , undertaken in collaboration with the Indian Council for Social Sciences Research (ICSSR). Titled "*Indigenous Mechanism for Dispensation of Justice in India: An Analytical and Comparative Study with UK and China,*" the ICSSR Project aims to analyze India's justice administration system, particularly focusing on delays and judicial arrears. This book aligns with the objective of the Project to explore indigenous mechanisms and comparative insights to improve justice dispensation in India.

This volume serves as a valuable resource for policymakers, legal practitioners, academicians, and scholars interested in judicial reforms. It not only critiques the existing system but also provides actionable solutions aimed at reducing pendency and enhancing judicial efficiency. The ideas presented here reflect a collective effort to shape a more effective and inclusive justice system in India.

I express my gratitude to all the contributors for their rigorous research and thought-provoking analyses. I also appreciate the efforts of the editorial team and organizing committee whose dedication made this publication possible. It is my sincere hope that this book will inspire meaningful discussions and inform policy decisions that can shape the future of justice dispensation in India.

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ABOUT NATIONAL LAW UNIVERSITY DELHI

National Law University, Delhi is one of the premier law universities in India, accredited with 'A' Grade by NAAC and is ranked second (for the last consecutive five years) in the National institutional Ranking Framework (NIRF), Ministry of HRD, Government of India. It aims to impart comprehensive and interdisciplinary legal education. The primary objective of the University is to evolve and impart legal education that is socially relevant. Its chief mandate is to promote legal and ethical values, objectives enshrined in the Constitution of India and to foster rule of law. The University hereby, plans to organize a National Conference on Administration of Justice in India: Aims, Challenges and Alternatives.

ABOUT INDIAN COUNCIL FOR SOCIAL SCIENCES RESEARCH

The Indian Council of Social Science Research (ICSSR), established in 1969, is the apex institution under the Ministry of Education, Government of India. It is dedicated to promoting research in social and human sciences. It plays a crucial role in advancing scholarly inquiry and providing research-based insights for policymakers and stakeholders.

ICSSR supports research projects, fellowships (doctoral, postdoctoral, and senior), capacity-building programs, and research internships. It also funds national and international conferences, workshops, and collaborative research initiatives, fostering academic discourse and policy development. Additionally, its National Social Science Documentation Centre (NASSDOC) serves as a key resource hub for researchers. By supporting publications like this volume on Justice Dispensation in India, ICSSR continues to contribute to the growth of legal and social science research, strengthening the link between academic study and real-world impact.

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A PROPITIOUS ALTERNATIVE TO REDUCE PENDENCY IN JUSTICE DISPENSATION: INVOKING THE NAGALAND TRADITIONAL VILLAGE COUNCIL COURT

Dr. Sentikumla*

ABSTRACT

Informed citizenries have an undeniable interest in unhindered access to justice dispensation more so in a functioning democracy. The pendency of cases in the Indian legal system exposed us to its alarming statistics data that calls into question the legitimacy and affirmation of Constitutional rights on citizens access to justice also explicated in Hussainara Khatoon, that has a jurisprudential source from the seminal US sixth Amendment case of Barker v. Wingo and on the wider aspects of Article 21. The enormous challenge of case pendency impels India to explore for alternatives from its diverse social-cultural context. Significantly, to mitigate the pendency in the judicial

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sphere missions such as National Litigation policy, National Mission for Justice Delivery and Legal Reforms, utilising Information and Communication Technology (ICT) systems are applied, yet the issue of pendency looms large.

In aligning with Arend Lijphart argument of India as a case for consociational democracy the element of cultural autonomy pervades into the justice administration in diverse societies. Nagaland Village Council Courts remains a statutorily recognised customary institution for indigenous justice dispensation akin to Panchayati Raj system implemented in other parts of India excepting Nagaland. The essence of these courts is primarily rooted in democratic deliberations, resolving the competing interest speedily without delays according to customary law. The article aims to trace the evolution of the Village Council Courts, providing their characteristics and structure, analysing their mode of settlement and deliberations. The paper will also explore how to strengthen these institutions to be proposed as an efficient alternative to reduce pendency in the prevailing colonial legacy court system in India.

Keywords: *Justice Dispensation, Nagaland, Village Court, Alternative Justice*

I. INTRODUCTION

Constitutional reform was one of the essences of the Simon Commission purported objective in 1928 colonial India. Fascinatingly, the remoteness and perceived backwardness and 'barbarians' of the people and place did not deter the Simon Commission members. They officially paid a visit to Kohima led by John Simon, Clement Attlee and E. Cadogan on 10th January 1929 *(Franke, 2009).* With the purpose to ascertain the wishes of the Nagas on their critical political destiny.

Significantly, the articulation of the idea of an alternative justice dispensation for the Nagas through an official representation to the colonial regime can be traced to the historic Naga peoples Memorandum to the Simon Commission signed by 20 native Nagas, which was submitted. The crux of the Memorandum was an appeal to respect the Nagas as a distinct entity and to insulate them from the rest of India in any reform measures they intend to introduce as their identity are totally different and they do not share slightest social affinities. It also articulated with apprehension, "we also have much fear the introduction of foreign laws and customs to supersede our customary laws which we now enjoy." *(Bendangangshi, 2000)*. The happenings in 1929 yielded approving results, in response to the Memorandum, Naga Hills was designated as an 'excluded area', in the Govt of India Act 1936 and thus recognised legal pluralism and Nagas's way of justice dispensation was duly acknowledged. Subsequently, post-independence India's commitment to democratic tradition reverberated when Nagaland State was created, and Nagaland's indigenous people and their social and cultural practices were explicitly safeguarded under special provision of Article 371A of the Constitution of India.

Over the years, Indian judiciary becomes inundated with mammoth pendency of cases. Concerted efforts are initiated at a war footing with several schemes and policies that includes virtual courts and advancing alternative dispute resolutions to combat the backlogged cases, yet the challenges remain profound. As India search for a sustainable solution through varied robust initiatives, eventually several alternatives will be forged, referenced and applied. Nevertheless, a modest demonstration of Village Council Court in Nagaland as an alternative is explored in this paper.

II. SITUATING NAGALAND IN THE CONSTITUTION: ARTICLE 371 (A) AND JUSTICE DISPENSATION

Federalism is one of the basic structures in the Constitution of India including the separation of power (*Keshavananda v State of Kerala,* 1973) This was reflected classically when the Union of India and the Naga Peoples Convention signed the 16 Point Agreement and created Nagaland through the 13 Constitutional Amendment and incorporated a special provision, Art. 371A for the state of Nagaland, a non obstante clause that resonate with the theory of Arend Lijphert consociotaional democracy.

This special Article is the basis for the applicability of constitutionally recognised customary law and practices in the state including the Village Council Court that aptly echoes the statement, "the Indian Constitution confers, and distributes, legislative and executive powers between the Union and the States in an identical fashion. Besides these general powers, some special powers are conferred on each unit through special provisions. These special powers are subject to particular conditions that need to be satisfied before they are exercised" *(Khrishnaswamy, 2009).*

Nagaland have 16 administrative districts with 17 major indigenous tribes. Some of the Tribes includes Ao, Angami, Sema, Lotha and Konyak among others with divergence in their village governance for instance Ao tribe by tradition exercises a democratic form of institution and governance in contrast the Konyaks practice chieftainship known as *Angh* system and *Gaonbora* system in Sema tribe that are hereditary. These institutions exercise recognised administrative and adjudicatory function within their jurisdiction that further reflected India's respect for diversity.

III. TRADITION TO STATUTORY: EVOLUTION OF THE VILLAGE COUNCIL AND ITS COURT

Largely outside the realm of standard civilization the native Nagas long before the advent of contact with the Britishers first between Angami tribe and Captain Pemberton and Captain Jenkins in 1832 (*Bendangangshi, 2000*). They were existing as independent self-governed indigenous people in villages akin to the Panchayati Raj system presently in India. As a result when the Panchayati Raj system was brought in through the 73rd Constitutional Amendment it was not statutorily instituted in Nagaland as the Village Council was already in operation that empower the villages in the State. For instance, among Ao tribes since ancient times their villages were governed through the institution of *'Putu Menden'* or Village Council. The Village Council consists of elected/selected male representatives from different clans and sub-clans within the villages that continues to present day apart from governance it also acts as the village court. S C Jamir former governor and a signatory to the 16 Point Agreement emphasized on the nature of this court, "minor disputes in villages are often settled by village elders or the village council, and those between villages are settled at a meeting attended by the elders of both sides; but in olden days some powerful village would be called in to arbitrate on the matter and enforce its decisions. Civil and criminal disputes are heard by village council". *(Jamir,1989).*

After statehood the traditional practice of the Village Council system that embodies the essence of local self-government was statutorily recognised through an Act of the State Government, Nagaland Village and Area Councils Act, 1978 (NAGALAND ACT. NO. 1 OF 1979) and replicated in all the recognised villages by the Government of Nagaland.

Making of the Village Council and Court

Nagaland Village and Area Councils Act, (1978) in Section 3 stated that every recognised village shall have a Village Council. A Village means and includes an area recognised as such by the government of Nagaland that fulfils the conditions mentioned:

(a) The land in the area belong to the population of that area or given to them by the Government of Nagaland, if the land in question is a government land or is a land given to them by the lawful owner of the land; and

(b) The Village is established according to the usage and customary practice of the population of the area.

Parallelly, the statutory law governing legal structure in Nagaland, The Rules for Administration of Justice and Police in the Naga Hills District, 1937 amended 1984 and 1989 presents three classes of Customary Court that includes the Village Courts and provided in Section IVA that, "there shall be a Village Court for each village. (2) Each Village Court shall be composed of members of the Village Council constituted under the Nagaland Village and Area Councils Act, 1978 (Nagaland Act No. 1 of 1979) including *Gaonburas* and *Angs* of the respective village".

Significantly, alternative justice dispensation in the State and by implication in rest of India was given constitutional recognition by the Supreme Court of India in *State of Nagaland v. Rattan Singh* (1965) which emphasised that, "laws many be designed for effective justice in different ways in different parts of India if people are not similarly circumstanced".

IV. RECONCEPTUALISING AN ALTERNATIVE JUSTICE DISPENSATION

Justice Oliver Wendell Holmes understood that law is what society will sustain, "the first requirement of a sound body of law is, that it should correspond with the actual feelings and demands of the community whether right or wrong." *(Devins & Fisher, 2005)* As enormous pendency of cases bogs down the Indian judiciary that stands at a staggering 5,16,72,784 as of 25.11. 2024 with the highest pending cases in District and Subordinate Courts at 4,54,79,245, the quest continues for an efficient alternative justice dispensation for speedy and easy access to justice as the framers imagined and to play a constructive role to reshape the courts in ways that resonated with the Mission Statement of National Legal Services Authority "*to provide for informal, quick, inexpensive and effective resolution of disputes and minimize the load of adjudication on the overburdened judiciary.*"

The Nagaland Village Council Court can be considered as a reference for multitude of reasons to combat the pendency and stressing the importance of embracing alternative justice dispensation. Nagaland has a total of 1280 recognised villages *(Department of Economics and Statistics, Survey on Number of Villages in Nagaland, 2021)* and Village Council and Court are functioning in all the recognised villages instituted and recognised by the Government of Nagaland as stated before the Village Council as an institution is the village self-governing body that also functions as the Village Court.

Administration of Justice, Tenure and Composition

There are three classes of customary court in Nagaland i) Village Courts. (ii) Subordinate District Customary Courts,

(iii) District Customary Courts (also known as *Dobashi* Courts). The members of the Village Council constitute the Village Court and administer justice within the village limits according to the customary law and procedure and as accepted by the canons of justice established in Nagaland and the law in this respect enforced from time to time. *(The Nagaland Village and Area Council Act, 1978)*. The Village Council and Court consists of members, selected/elected by villagers in accordance with the prevailing customary practices and usages. The tenure of the Council is for five years which is generally follows by all the tribes with explicit exception for Ao tribe. A term of the Village Council in Ao tribe varies from village to village and lasts from 5 up to 30 years. A person to be qualified to be a member of the Village Council must be a citizen of India and must have attained the age of 25 years. Among the village council member, a Chairman and Secretary are selected.

Dispute Resolution, Deliberations and Effect

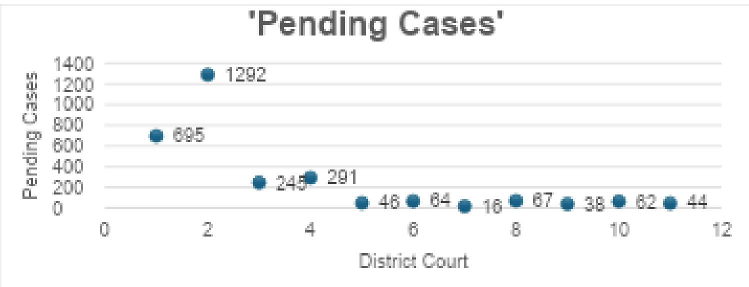
The Village Councils have wide discretionary powers. Apart from acting as a court of law they assist the State Government in affairs of development. Both the civil and criminal nature of cases are decided according to the customary practices of the community.

A fundamental novelty of the Village Council Court is the absence of any court fees, zero pendency that fulfills the principles of speedy justice. The usage of their own community language ensures that there is no language barrier, and any aggrieved persons can confidently approach the Village Council Court. Disputes brought before the Village Courts are deliberated and decisions are taken based on the idea of equity, justice and good conscience. Parties to the disputes are given opportunities to be heard, testimonies and witnesses accounts are considered. Rulings include fines, banishment from village and outcasts in community governance. The Village Council Court can also initiate Suo moto cases on matters that infringe on laws and regulations that are committed within their jurisdiction, including on environmental protection and violations. For instance, many villages restrict hunting and fishing within their jurisdiction to preserve the flora and fauna in particular months. Violators are dealt with by the Village Council Court and impose hefty fines as deterrence with strong reprimand.

As a democratic institution the decisions of the Village Council Court can be appeal to the Subordinate Customary Court/ District Customary (*Dobashi's*) Court and the formal courts including the High Court and the Supreme Court. However, seldom are Village Council Court decisions appealed.

In contrast to the national average District courts in Nagaland have minimal pending cases Given below is the data available from the National Judicial Data Grid till 30/11/2024 from 11 districts in the State. (though there are 16 administrative districts the newly created district courts are yet to be functional and are covered by the parent district from where they were created)

Chart 1. Pending Cases in District Court



The chart evidenced Dimapur considered as the commercial city in Nagaland having the highest pending cases at 1292 followed by capital Kohima -695 the pending cases in other District Courts are minimal for example Mokokchung has a pending case of 245, Zunheboto -46, Wokha -291, Mon 67, Kiphiri 16, Phek 38, Tuensang -44, Peren-62, Longleng-64 with total of 2787 pending cases in the District Courts.

Gauhati High Court, Kohima Bench have a pending case of 1525. The negligible pending cases in the State apart from other factors can be primarily attributed to the active functioning of the Village Council Court that reflects an efficient use of alternatives in justice dispensation. Notably, the services of the members in Village Council and Court are voluntary. The features of Village Court system as easy to access, cheap and providing speedy justice and enforcement, ensures that it remains a popular first court of justice for indigenous communities and aptly connects with the Department of Justice, Govt of India vision of, “facilitating administration of Justice that ensures easy access and timely delivery of Justice to all”. The Village Court coalesce with the constitutional principles of fundamental right to access justice and fulfils the Directive principles of State Policy under Article 40 of the Constitution of India.

V. CONCLUSION

The consistent challenge of pendency of cases in a resilient democracy like India and its battles necessitates a relook into identifying the bounteous indigenous legal traditions and initiate constitutional dialogue to draw upon its enormous potential for effective justice delivery for the teeming millions in India. Strengthening the Village Council Court by ensuring mechanisms to avoid unfair influence in decision making, introducing fair representation of culturally appropriate women in its composition and incorporation of technology including virtual courts in dispute resolution mechanisms will contribute substantially to its appeal in contemporary legal tapestries of India The metamorphosis of judicial pendency of cases will profoundly depend on how well India will manage to integrate and strengthen the indigenous legal practices and advocate the replication of its advanced version in similarly situate conditions and communities. In the scenario, the Nagaland Village Council Court can be explicably invoked as a propitious alternative in the wider judicial landscape that will further reiterate our nation's commitment to Rule of Law.

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RELEVANCE OF ADR IN CRIMINAL TRIALS IN SECURING RESTORATION OF REAL JUSTICE

Dr. Abhishek Sharma Padmanabhan[*]

Prof. (Dr.) K V K Santhy[*]

ABSTRACT

The present article delves into the theoretical considerations that underlie the current use of Alternative Dispute Resolution (ADR) within the Criminal Justice System. Our argument is that ADR can address the Social Causes of Crime while still honouring strong beliefs in individual accountability and societal standards by looking at it through the perspective of Restorative Justice, which draws on seminal works on Transitional Justice and Philosophical writings on Free Will and Responsibility. ADR processes fail to uphold fundamental public values and instead privatize conflicts. This article posits that ADR, when approached from a Restorative perspective, has the potential to address these perceived difficulties.

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The first part of the article examines how ADR emerged in the Criminal Justice System and the Complaints that followed over its purported tendency to privatize Public disputes. Part II lays the groundwork for the discussion of Free Will and moral responsibility and defines the conceptual issues in light of Sociological evidence that points to Environmental factors as potential causes of Criminal behavior. In Part III, a path of Naïve moralism is mapped out by detailing the function that ADR mechanisms play. These processes restore trust in the operation of public standards by addressing not just victim-offenders relationships, but also offenders' moral character. Instead of letting environmental factors dictate a Criminal's behavior, ADR processes can trace his social history and Crimes to help him overcome his shortcomings by creating opportunities for Economic and Educational advancement and by establishing socially acceptable norms. The conclusion reached in Part IV is that ADR is more capable than conventional methods of securing real Justice.

Keywords: *Criminal Trials, ADR, Restorative Justice, Normative Values, Real Justice*

I. RELEVANCY OF ADR IN CRIMINAL PROCEEDINGS

In the 1970s and 1980s, alternative dispute resolution (ADR) emerged as a catch-all term for a variety of unorthodox methods that sought to simplify dockets and find mutually agreeable solutions to disputes *(Dodge, 2020)*. In the years that followed, ADR processes came to light as a means for courts to reduce the amount of time spent on adversarial hearings while still clearing their dockets. An example of an evolving ADR practice is arbitration, wherein a neutral third party makes a binding decision; another example is negotiation, wherein the parties or their lawyers collaborate to resolve a dispute; yet another example is mediation, where a neutral third party facilitates a voluntary settlement; and finally, settlement. This innovative movement gave rise to several forms of ad hoc ADR that varied in the degree of formality, the involvement of advocates, the function of neutral third parties, and the enforceability of any resulting agreements. These ADR processes often use hybrid mechanisms that draw on judicial procedural elements and make use of certain public authorities or quasi-public figures, private judges, and private "neutral" persons.

From its origins in previous forms of informal justice, ADR processes also advanced inside the criminal court system. Victim-Offender Mediation Programs were one of the most popular types of mediation, and they brought together victims and offenders in person with the goal of restitution and reconciliation guided by experienced mediators *(Gifford, 1985)*. “The idea was to set up a level playing field where people could talk about the offense and come to a mutual understanding of how to make amends. Adapted on a Canadian model, comparable programs now serve adult and adolescent offenders in both urban and rural parts of many countries. Criminal offenses such as rape, armed robbery, negligent murder, and burglary fall within these programs' purview. The criminal justice system became overloaded with little disputes, thus community dispute resolution procedures were developed to handle them *(Rabinovich-Einy & Katsh, 2017)*. Its proponents aimed to divert attention away from the rights of the offender and toward the empowerment of communities to settle disputes without the interference of the state. Since then, many other types of ADR have emerged in the criminal justice system.

These include victim-offender panels, victim aid programs, and sentencing circles, programs for ex-offenders, school programs, community service, and specialty courts. These impromptu protocols may vary, but they have a common goal: empowering the victim to take the lead in their own recovery *(R. Condlin, 1992)*. These ad hoc ADR proceedings might differ from or run parallel to the court process and happen at different points in the criminal process. The goal of ADR is to resolve disputes outside of the courtroom, which is beneficial for all parties concerned, since it reduces the amount of time and money spent on litigation and helps to avoid future lawsuits. As an alternative to going to court, the parties may attempt to work out their disagreements peacefully via alternative dispute resolution programs.

II. ADR IN CRIMINAL TRIAL AND PRIVATIZATION OF ADJUDICATION

The proponents ADR by downplaying the importance of litigation as a means of redress and by privatizing conflicts at the expense of public justice, have foolishly portrayed settlement as an ideal replacement for judgment *(Fiss, 2021)*. Affirming public ideals via adjudication is an important responsibility for the courts. Since it prioritized private conflict settlement above public standards and individual rights, ADR was seen as too individualistic and unfit for public objectives. It also removed the neutral umpire judge from the resolution process.

Although amicable resolution between the parties is possible through ADR, society is still left without a solution, therefore eliminating the social purpose of litigation. It may be noted that adjudication made good use of its basic principles by legitimizing, expanding, and reinforcing fundamental public ideals enshrined in the Constitution and democratically created in legislation by the use of publicly funded entities, publicly appointed people, publicly controlled authority, and a publicly accessible forum. It is believed that by settling conflicts outside of public forums, settlement strips courts of their opportunity to be proactive institutions that may educate society, promote justice, and fulfill the government's social obligation. Settlement, however, infringed upon that very capability, which was necessary for the legitimacy of courts and, by extension, the law. By simply broadcasting (if at all) the terms of the settlement without proclaiming how it was achieved, reasserting public standards, or admitting underlying moral responsibility, settlement abolished the publicity principle at the core of democratic political morality *(R. J. Condlin, 2012)*.

ADR emerged as a consequence of cultural imperialism, championed by notable legal scholars and other powerful figures who collaborated to enhance discourse in reaction to a surge in litigation; their significant influence rendered their assertions mostly unchallenged *(Paye, 1999)*. ADR offers a more accessible, peaceful, and efficient method of justice that allows parties to retain control during conflict resolution. It is hard for ADR to fulfill the social role of the court without addressing racial, class, and gender inequalities and their underlying causes. Public law and the safeguards of public institutions were, and continue to be, challenged by the rise of ADR, say these opponents. All of these worries are valid. But shifting to ADR does not always mean compromising on public standards. Under sound theoretical direction, however, criminal ADR processes may address these worries by strengthening public norms and providing substantial restorative benefits to both criminals and their communities *(Sturm, 2003)*.

III. Determination of Cognitive Elements in Crime And ADR Process

Traditional notions of moral and criminal culpability need free choice. A free activity is the only one worthy of praise or criticism. To be responsible, one must have free will, unfettered by external factors that dictate it. Punishment and responsibility should not be based on "luck" or external factors; if a person is not intentionally harmful, careless, or irresponsible, then she should not be held responsible *(McThenia & Shaffer, 1985)*. Assuming a person can think, control, or select their actions before blaming and punishing them is a leap in logic. Determinists, on the other hand, contend that groups of environmental circumstances limit free will and so reject this assumption.

A person is not liable according to common law if he acts in ignorance, such as when he mixes arsenic and sugar in his tea. To establish responsibility for such blunders, such as carelessly mixing sugar and arsenic, the burden of proof falls on the party responsible for the mistake. The burden of evidence lies with establishing that a procedural epistemic responsibility was disregarded or that reasonable precaution were not taken to acquire correct understanding in order to prevent the error. A person's knowledge of what they ought to know when the time comes to act is guaranteed by these procedural epistemic obligations *(Sternlight, 2007)*. The process starts to backtrack when culpability is founded on the inability to fulfill these procedural epistemic obligations; subsequent errors in judgment imply earlier errors in procedure. A fall is only culpable if it culminates in the intentional breach of an epistemic obligation. New research on the correlation between socioeconomic status and criminal behavior only serves to amplify the logically problematic issue.

A growing body of sociological evidence lends credence to the claims of those who reject free choice in favor of determinism, which holds that environmental risk factors are associated with criminal development. Moral responsibility might be undermined if environmental risk factors could be used to forecast the beginning, continuation, or worsening of an individual's violent behavior *(McPheeters, 1992)*. All of these things may lead to a lack of awareness of moral principles, faulty judgments, or problems in carrying out procedural epistemic responsibilities. Common ideas of blame and accountability may be cause for skepticism for those impacted by these environmental circumstances.

Assumptions of free choice that underpin criminal culpability and punishment, according to determinists, are fiction, and they cite social scientific evidence that shows a strong relationship between the environment and crime *(Lieberman & Henry, 1986).* Those who are against ADR point out that it privatizes public wrongs and does not do enough to uphold and expand upon public standards of behavior and the promises of justice that are inherent in the judicial system. On the other hand, criminal ADR sidesteps both criticisms by using them. It is necessary to establish a criminal punishment system that rehabilitates criminals to a blameworthy state through the use of a link to societal standards that permits the future attribution of blame *(Acharya, n.d.).* The most important thing to remember about criminal alternative dispute resolution is that the victims and the offender's community are the greatest resources for achieving this goal. By strengthening and expanding the mutual respect and empathy inherent in both criminal law and more conventional court processes, these procedures, when designed with a restorative perspective, may also help to mend the offender's breach. These links and opportunities can only be seen after a quick return to the determinism issue.

IV. ADR IN CRIMINAL TRIAL TO ATTAIN RESTORATIVE JUSTICE

Through the use of a restorative perspective, the issue and its resolution may be better understood, allowing ADR to stand out as a more fair and equitable philosophy of criminal punishment that takes into account both the offender's and the community's shortcomings *(Green, 2017)*. The offender's connection with the victim and his community must be restored since the solution to the issue is seen as a breach of relationships". ADR makes this solution a reality by bridging the gap between public standards and community relations by using the community as a "ultimate consumer" to generate justice and reshape the offender-community dynamic on a personal and societal level *(Hensler, 2003)*. By addressing the harm caused and requiring the offender to accept moral responsibility for his acts and make restitution, ADR also honors conventional ideas of blame and accountability. Rehabilitation and reintegration address environmental issues. In response, the emphasis has shifted from conventional methods of blaming and deterrent to tracing the offender's shortcomings back to their place in society through the crime's social context. In order to address societal shortcomings in character development, ADR programs might be used proactively to replace risk factors with procedural answers that create socially accepted standards and provide educational and economic possibilities *(Bakker, 1994)*. By resolving internal systemic issues and restoring norms, justice may be attained beyond utilitarianism and vengeance. Instead of relying only on adjudication, the restorative justice paradigm encourages community involvement in creating and disseminating standards of behaviour. Instead of being put against the state as he would be in a trial, the criminal is given the opportunity to work together with his community *(Galanter, 1986).*

In this light, ADR builds on the idea that attitudes are normal reactions to wrongdoing, but it goes on to say that the community, not the government or the courts, is responsible for restoring social norms. Beyond assigning guilt and meting out punishment, the new emphasis seeks to reestablish fundamental public standards, acknowledging that the offender's actions were counter to expectations and therefore caused the damage. To fix the wrongdoing and punish the perpetrator, one must rely on the reactive attitudes inherent in moral judgment. Instead of a judge sitting on his bench and passively reading public standards, members of the community engage with the offender to teach him or her the right way to behave and think. The perpetrator is rehabilitated by the community by instilling suitable public standards, just as a child learns proper behavioural responses from birth. Public norms are more effectively reinforced by the internal mechanisms of social norm formation than by the exterior procedural judicial system.

Not only does the criminal have to face the results of his actions and reevaluate his own public beliefs, but society as a whole has to adjust its reactionary attitudes and reinforce its public standards. Society is compelled to see the criminal as a person, not just a monster, when they take part in the process. As a result, confrontation with the offender is the best way to address reactive attitudes; after rehabilitation, a more complete acceptance is possible when labels are separated from people, leading to less negative reactive attitudes or, more accurately, proactive attitudes that focus on the potential for reform. Participating in the offender's internalization of appropriate standards allows society to better publicize standards than a court while also reconstructing the connection in public terms. By integrating public standards into the offender's private decision-making process, ADR processes, as seen via the restorative lens, also mitigate the harm caused by environmental risk factors. Following the offender's admission of guilt, the community may instill standards of behavior. Taking into consideration the social history of the act, ADR combines reintegration and rehabilitation to repair the damage caused by changing the offender's perspective on the law, the community's perspective on the offender, and underlying social circumstances.

ADR processes help rehabilitate offenders so that they may contribute positively to society after their sentence. Through the use of individualized punishment plans, rehabilitation programs aim to change criminals' mindsets and actions so that they adhere more closely to social standards and commit fewer crimes in the future. After acknowledging that extraneous causes may have had a role in the criminal behavior, it urges mental health professionals to intervene by providing education and vocational training, among other remedial measures *(Samuelson, 1986)*. Instead of taking full responsibility for the offender's actions, the future-oriented approach to rehabilitation tries to modify the offender's character so that they don't do damage again.

ADR methods help the offender become more assimilated into society, which is crucial for successfully integrating public standards into their private decision-making process. After serving their sentence, offenders may work toward complete reintegration into society via reintegrating into it by modifying reactionary attitudes toward the offender and societal processes that generate criminal behaviours. By fostering strong family bonds and nurturing community connections that encourage individual support, the approach offers constructive alternatives to law-breaking conduct. This helps the criminal establish social values in a manner that they may put to use even after serving their sentence.

V. CRITICISM AGAINST DETERMINISM

One possible argument against ADR is because it does not adequately address the determinist criticism *(Feinberg,* *2009)*. To some extent, it is correct; these processes do recognize the significance of environmental variables in agent development. Nevertheless, by reestablishing the prerequisites for reactive attitudes and establishing legitimate assignments of responsibility, the attention is shifted from the past to the future via the link formed between public standards and private relationships in ADR proceedings. Since the offender was not forced to act and the conduct may have been associated with rather than caused by risk factors, the method does not totally remove culpability. On the contrary, this method presents punishment in a more palatable form. When we think about how the risk variables will affect the person and the act, we can and should be less reactive, even if we want people to have some good intentions as a society. ADR does not totally eschew judgmental, reactive attitudes. Its emphasis on compassionate punishment is not based on a complete rejection of sympathetic impulses, so it does not completely accept harsh moralism *(Moffitt, 2009)*.

Rather, opting for ADR shows our epistemic humility by striking a balance between sympathetic responses and too reactive attitudes. Punitive punishment is not the answer;

rather, we should work toward rehabilitating offenders and reintegrating them into society so that public norms can be ingrained as essential components of public agency. This will help us understand the role that environmental factors had in shaping criminal responses. In addition to reducing punishment, ADR addresses the harm caused by environmental risk factors by refocusing attention on the social history of the conduct. This plan lays the groundwork for future suitable reactive attitudes by rehabilitating and reintegrating the offender with appropriate public standards for private decision-making and by establishing actions to counteract the impact of risk factors. Risk considerations that might impede the performance of procedural epistemic obligations are replaced by ADR's "incorrect" normative and unbalanced assessments.

Individuals are better able to identify the agent as a possible akratic actor, adopt suitable reactionary attitudes going forward, and impose moral judgments via ADR's focus on the social history of crime and criminal *(Mamo, 2020)*. In order to respond appropriately the next time a student resorts to physical force to resolve a disagreement with a fellow student, we must keep in mind that the student did not act violently because he lacked knowledge; rather, he was aware of the relevant facts, understood that his actions were wrong, and should not have been violent under the circumstances, but he did it. So, the right response is the moral censure that follows.

ADR centers the endeavor to return the offender to a state of public agency that is susceptible to the entire range of reactive attitudes by establishing a relationship between proper reactive attitudes and public norms. This ensures that substantive and procedural standards of public justice are upheld. Since the community is so integral to this paradigm, public standards are reinforced for society as a whole, and the offender is ingrained with public norms for his future private decision-making. Additionally, the community—especially through the development of responses corrects real wrongs by concentrating on the social history of the act to enable suitable future moral judgment. Proactively addressing environmental variables allows ADR to sidestep the criticism that it is procedurally incapable of addressing core problems since its main focus is on facilitating settlement. *(Phillips, 1986)*

VI. CONCLUSION

ADR offers a comparable, if smaller-scale, solution to the problem by allowing the state to uphold its constitutional principles while also tackling the impact of environmental conditions on private-public interaction. It provides a means for teaching people the values and principles that should guide their actions so that they conform to societal standards and obey the law without thinking about it or feeling threatened". Thus, ADR accepts that private character is an outcome of public enculturation by providing the state with tools outside of the courts to more effectively carry out the requirements of a fair society. By supporting ADR, the government may re-legitimize itself while also using the community to educate public principles.

It is argued that legitimate criminal punishment methods should resolve both the offender's and society's shortcomings in completely propagating public standards, rather than concentrating on just one. From a restorative perspective, ADR becomes a philosophy of criminal punishment that takes into consideration both successes and failures, and is more capable than conventional systems of achieving complete justice. With the use of ADR techniques, we may move the offender's reality closer to our chosen ideals in a compassionate, meaningful, and comprehensive way by focusing on the interpersonal relationships reflected in public standards and correcting environmental risk factors.

On a more pragmatic note, the proposed theory of criminal punishment provides a possible foundation for starting to build ADR processes. While reestablishing public standards and honoring personal responsibility, these processes help rehabilitate ex-offenders so that they may contribute positively to society. This theoretical framework will be further developed and improved in subsequent research, which will focus on the complexities of character development, the most efficient methods of implementing these procedures, and the identification of the most vulnerable offenders.

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CASE COMMENT ON HIGH COURT BAR ASSOCIATION, ALLAHABAD V STATE OF UTTAR PRADESH AND ORS

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ABSTRACT

The Supreme Court in the High Court Bar Association, Allahabad v State of Uttar Pradesh and Ors (2023) (Criminal Appeal No. 3589/2023) critically examined the Asian Resurfacing Case that allowed automatic vacation of the interim orders. In the present case, the Apex Court rendered automatic vacation of interim orders violative of applicant's rights. The Supreme Court held that automatic vacation of interim orders without application of judicial mind contravenes natural justice. It reasoned that the automatic vacation of interim order after the expiry of 6 months, could affect the party who claimed it, as his order was vacated without hearing and affect his right to fair trial. It does not only affect the claimant but also to the court's

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functioning. This case analyses the scope of powers regarding interim orders, emphasizing their objectives, duration, and conditions for vacation or modification. The Court also explored the impact of procedural timelines on pending civil and criminal cases, emphasizing the necessity of balancing expediency with justice. However, the question remains whether we can compromise timely delivery of justice. The imbalanced equation between substantive justice and speedy justice has been the talk of the nation and its issue of pending cases for decades now. The author raises concerns about the significance of the judgement amidst a huge backlog of cases in the courts. Furthermore, the Apex Court was reluctant in drawing a framework capable of empowering the magistrates and judges in the judicial system for expeditious disposal of long pending cases. However, it remains to see the impact of framework in court functioning which does not carry time-bound operation of stay order.

I. INTRODUCTION

The present chapter is a case comment that pertains to the Supreme Court judgement of ***High Court Bar***

Association, Allahabad v State of Uttar Pradesh and Ors. authored by the 5-Judges Bench. The Apex court struck off the rule of 'automatic vacation of stay against proceedings of a civil or criminal trial after the expiry of six months and ruled over the decision made in Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation (2018).

A. Background

The Apex Court decided to revisit the High Court judgement **Asian Resurfacing of Road Agency Private Limited v. Central Bureau of Investigation (2018)**. In this case, an FIR was registered against Asian Resurfacing Limited under various provisions of IPC and Prevention of Corruption Act. The case was heard by Special Judge of Central Bureau of Investigation ('CBI') who passed an order for framing charges. A Revision petition was filed by the Asian Resurfacing Agency in the High Court of Delhi. The Learned Single Judge in Delhi High Court adjudicated that an order of framing charges is an interlocutory order and cannot be questioned by virtue of Article 226/227 in the High Courts. Amidst accumulated pendency of cases, the interim orders of staying the legal proceedings suspends further procedure and delays the expedition to speedy justice. In the given circumstances, the Asian Resurfacing case law had adjudged automatic vacation of such interim reliefs and not to adjourn the proceeding further, unless they are renewed by speaking order. The court stated that –

"*To give effect to the legislative policy and the mandate of Article 21 for speedy justice in criminal cases, if stay is granted, matter should be taken on day-to-day basis and concluded within two-three months. Where the matter remains pending for longer period, the order of stay will stand vacated on expiry of six months, unless extension is granted by a speaking order showing extraordinary situation where continuing stay was to be preferred to the final disposal of trial by the trial Court*."

The Allahabad High Court Bar Association contested the directions of High Court judgment of Asian Resurfacing in the Supreme Court which is under consideration in this case.

B. *Issues*

1. Does automatic vacation of interim orders contravene the principle of natural justice?

2. Whether Supreme Court, in the exercise of its jurisdiction under **Article 142** of the Constitution of India, can order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period?
3. What is the scope and limitation of High Courts' powers under Articles 226 and 227 concerning interim reliefs and procedural directives?
4. What procedure could be adopted by High Court while granting order of stay?

C. ***Summary of the Arguments***

The submissions of learned senior counsel appearing on behalf of appellants, Shri Rakesh Dwivedi and Shri Tushar Mehta, the learned Solicitor General could be summarized as follows:

- The automatic vacation of interim reliefs is judicial legislation in nature and courts must not be allowed to vacate the interim reliefs.

- An order granting interim relief cannot be passed without an application of judicial mind. Application of mind is a pre-requisite of judicial decision making.

  The Constitution benches of *Abdul Rehman Antulay & Ors. v. R.S. Nayak & An*r. *(1992) 1 SCC 225 4* and *P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578* has held that court is not permissible to fix the time limit for completion of trial.

- The vacation of stay order would be a decision in absence of the parties, which violates the Principles of Natural Justice.

- In need of speedy trial, fairness as basic element of justice must not be ignored.

The respondent's arguments could be culminated as follows:

- Directions in **Asian Resurfacing** aimed to reduce judicial backlog and prevent misuse of interim orders as tools for indefinite delay.

- Automatic vacation of stay orders ensures **accountability** and expedites justice.

- **Article 142** empowers the Supreme Court to pass directives necessary for ensuring procedural fairness and justice delivery.
- Stay orders often obstruct trial courts from proceeding, defeating the purpose of expedient dispute resolution.

II. ANALYSIS OF THE CASE LAW

The Apex Court had extensively discussed the nature and object of interim orders, followed by powers of High Courts by virtue of Art. 226 before deciding the case. The interim orders are passed in aid of final relief, while the proceeding is pending final disposal. Courts have the power to pass ad interim reliefs or interim reliefs. The ad interim reliefs are passed while the *lis* is pending without giving one of the contesting party an opportunity of being heard. The interim reliefs are passed after having heard the contentions of both the parties. The factors considered before passing an interim relief order are: *prima facie case, irreparable loss to the applicant* and *balance of convenience between the parties*. The Court also held that the High Court had failed to address the objective of passing interim reliefs in Asian Resurfacing Case, which is in question in current case hearing.

The Constitutional Court goes on to discuss power of High Courts to vacate or modify the interim reliefs in following cases:

1. If the parties prolong the proceedings by seeking adjournment on unwarranted grounds
2. If the party supresses or misrepresents material facts
3. In case of any material change in circumstances

Further, the interim reliefs may come to an end by automatic vacation in following cases:

1. Generally due to lapse of time
2. By disposal of main case by the High Court
3. By passing a judicial order of vacating the interim relief by hearing the contesting parties.

The Principles of Natural Justice prescribes that Interim order must be vacated only after hearing all the affected parties. The automatic vacation of interim relief orders without hearing both the parties must be criticized. It is deemed against basic tenet of justice or merely on ground of lapse of time when litigants are not responsible for delay. The Supreme Court bench made correspondence with maxim '*actus curiae nemi gravebit*'; and criticized the High Court judgement of Asian Resurfacing of ignoring the maxim and allowing automatic vacation of interim reliefs without any fault of the party. The Apex court referred to *Deputy Commissioner of Income Tax & Anr. v. Pepsi Foods Limited*[1] where this very Court had struck down the provision of Section 254 (2A) of the Income Tax Act, 1961. The referred case struck off the provision that provided that if an appeal preferred before the Appellate Tribunal was not disposed of within 365 days, the stay shall stand vacated even if the delay in disposing of the appeal is not attributable to the party. The legislative action of introducing the section 254 (2A) was found to be arbitrary and violative of Article 14.

The second issue was whether the highest court of India order automatic vacation of all interim orders of the High Courts of staying proceedings of Civil and Criminal cases on the expiry of a certain period. The 5 judges' bench had furthered the judgement with thread bare analysis of Article 142 of the Constitution of India. Article 142 is the plenary power inherent with the court. They are of wide amplitude and supplementary in nature which aims to prevent injustice in the process of litigation and to do complete justice between the parties. It must be appreciated that it has evolved its nature and scope with time to further the cause of justice and secure complete justice. It must not be invoked to pass blanket order. Instead, the provision of Article 142 must be visited to deal with extra ordinary situation for doing complete justice between the parties before the court. The bench referred to *Prem Chand Garg & Another v. The Excise Commissioner, U.P. and Ors., 1962 SCC Online SC 37* and *Supreme Court Bar Association v Union of India*, *1998 4 SCC 409* to deal with scope of power under Article 142. As held in Prem Chand case "…. An order which this Court can make in order to do complete justice between the parties, must not only be consistent with the fundamental rights guaranteed by the Constitution, but it cannot even be inconsistent with the substantive provisions of the relevant statutory laws", the Supreme Court preferred not contravene Article 32 by exercising power under Article 142 (1). The power under Article 142 can be exercised to add parties to the proceedings pending before it, or admitting additional evidence, or setting the case to remand, or in allowing a new point to be taken for the first time.

However, the Supreme Court made it pertinently referred to Supreme Court Bar Association *(supra)* to mention that the plenary power of Supreme Court is not devoid of restrictions. It highlighted that "…. It, however, needs to be remembered that the powers conferred on the Court by Article 142 being curative in nature cannot be construed as powers which authorize the Court to ignore the substantive rights of a litigant while dealing with a cause pending before it."

Thus, the Supreme Court upheld its jurisdiction to exercise its power under Article 142 to do complete justice between the parties, but must not nullify the benefits derived by litigants based on judicial orders passed in their favor who were not parties in the proceedings before this court or must not ignore the substantive rights of the litigants.

It must be highlighted that Supreme Court in the present case upheld the importance of substantive right of the party in question in this case. The substantive right of the litigant in question in this case was "**to be heard before an adverse order is passed**". The vacation of interim relief of stay order automatically on lapse of time or failure of courts to hear the proceedings on allotted time takes place without giving fair opportunity to the parties. This substantive right is an integral part of a litigant and must not be done away with by resorting to any power of court (either Article 142 or Article 226).

The third issue raised before the Hon'ble court was scope of powers of High Courts derived by virtue of Article 226 and 227. The Supreme Court observed that the constitutional scheme framed for the higher judiciary places both Supreme Court and High Courts on place of record. But in no way is the High Court sub-ordinate to the Apex court of the nation. The powers with High Courts to issue prerogative writs under Article 226 for enforcement of rights under Part III of the Constitution or any other purpose, is wider as opposed to confined jurisdiction of Supreme Court to issue writs and few matters specifically allocated to Supreme Court such as Presidential elections or inter-state disputes. By referring to *L. Chandra Kumar v. Union of India & Ors*, *(1997) 3 SCC 261* it highlighted that "If the Supreme Court and the High

Courts both were to be thought of as brothers in the administration of justice, the High Court has larger jurisdiction but the Supreme Court still remains the elder brother". It accentuated the power under Article 226 (3) of the High Courts which is an independent right and must not be interfered with by the Supreme Court.

Article 226 (3) reads as follows:

"…… (3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—

(a) furnishing to such party copies of such petition and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favor such order has been made or the counsel of such party,

the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated."

The Supreme Court made a literal interpretation of the constitutional provision and analyzed that the automatic vacation of the interim relief of staying the proceeding can be exercised by the High Court under article 226 is only when an *ex parte* ad interim relief order was passed, aggrieved by which an application is made by the aggrieved party and the court fails to hear it withing specified time period. Thus, the primary objective of this provision is to make up for the court to have passed the relief order after failing to have heard or giving an opportunity to hear the parties.

The present petition was filed as an appeal against the High Court judgement in Asian Resurfacing case (*supra*). The High Court had directed that any petition in which High Court has stayed the proceedings of the trial must be decided within 6 months, failing which interim order of stay will be vacated automatically. The present case formulated the issue regarding jurisdiction of the courts to fix timeline for disposal of cases. The Constitution bench referred to *Abdul Rehman Antulay*, *(1992) 1 SCC 225* and P. Ramachandra Rao, *(2002) 4 SCC 578*, wherein the cases had contemplated the concept of 'speedy trial'. The cases had considered the concept vague, specifically in case of criminal proceedings. For example, in case of Ranjan Dwivedi (petitioner in Writ Petition No. 268 of 1987), 151 witnesses were cross examined by the prosecution which took a time period of 5 years.

The above cases mentioned various other reasons enumerated in the referred case laws such as non-availability of the counsel, non-availability of accused, interlocutory proceedings and other systemic delays which were reiterated in the present judgement. Further, trials un few offences such as conspiracy cases, cases of misappropriation, embezzlement, fraud, forgery, sedition and acquisition of disproportionate assets by public servants were also deemed to be time consuming. Inadequate number of courts and variability in work load amongst various courts makes it impossible to set any time limit beyond which the trial is prohibited to proceed.

In light of above reasons, the bench of Apex court opined that it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It drew attention to eruption of undue judicial law making, thereby encroaching upon field of legislature. The court drew thin yet perceptible line between judicial and legislative fields of their functions. It condemned all such directions of the court that provides for automatic vacation of stay orders, even though they are directory in nature.

III. SPECIAL COMMENTS OF THE AUTHOR

The author would like to draw attention to specific application of this decision in civil proceedings before the trial courts. The Supreme Court had vigorously captivated the challenges such as pendency and urgent need of expeditious disposal of cases. It specially mentioned that the High Courts are flooded with umpteen applications against interim orders passed in civil and criminal proceedings. Once the High Court registers such applications and stays the proceedings, the longevity of the life of the case sees no end point. Apart from such applications, the High Courts are flooded with criminal appeals against acquittal and conviction, bail petitions, writ petitions, and other proceedings that involve the issues of liberty under Article 21 of the Constitution of India. The poor judge population ratio and staggering figures of pendency is worse in trial courts. *(All India Judges' Association & Ors. v. Union of India & Ors. ((2002) 4 SCC 247 15); Imtiyaz Ahmed v. State of Uttar Pradesh & Ors ((2017) 3 SCC 658))*

The ever-increasing arrears of cases has defied the time limit prescribed in legislative/statutory enactments such as Section 309 of Criminal Procedure Code, Hindu Marriage Act, Negotiable Instruments Act or Domestic Violence Act. The Court addressed the unfortunate truth of pendency of fewer applications such as bail which may need urgent attention. Nevertheless, the Supreme Court was hesitant in suggesting directions for timely disposal of cases. Having acknowledged the power of higher courts under Article 142 and 226, addressed the issue of pendency and need of expeditious disposal of cases, the Supreme Court of India was reluctant in drawing a framework capable of empowering the magistrates and judges in the judicial system for expeditious disposal of long pending cases. It merely suggested the High Courts to grant ad-interim relief for a limited duration.

IV. CONCLUSION

The non-interventionist approach of the courts and litigant centric policy adopted the Constitutional Court in the present case aims at balancing the backlog of cases and principle of natural justice. On one hand it protects the litigant by prohibiting the courts to pass blanket orders such as vacating the stay without hearing the parties, and on other hand suggests ad interim orders of reliefs. However, it remains to see the impact of framework in court functioning which does not carry time-bound operation of stay order.

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10. Imtiyaz Ahmed v. State of Uttar Pradesh & Ors ((2017) 3 SCC 658)

THE IMPACT OF WOMEN JUDGES ON THE INDIAN JUDICIARY: AN ANALYSIS

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ABSTRACT

The women's representation in the Indian judiciary was unsatisfactory across the different levels of the judiciary, the SC and HCs and women's representation in the judiciary remained low. This gender disparity persists despite a gradual increase in the number of women judges, from 27% in 2018 to 34.6% in 2023. As of June 2023, none of the 25 High Courts have a woman Chief Justice, and only 13% of the 788 judges in these courts are women.

This lack of representation has very important repercussions because justice should not only be done to, but also be seen to be done, by a balanced and independent judiciary that includes persons from all backgrounds. Women are not only deserving their place in the court; they are a necessity to change the traditional thinking and to produce better legal

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decision and increase the public trust in the legal sector. Gender diversity in the judiciary means that female judges can provide more gender-sensitive solutions to unique gender-sensitive problems such as sexual assault. Moreover, through the women involved in the judiciary, young women and girls will emulate to join the judiciary to have leadership and legal careers in the future. With the above premise, this paper aims at analysing the current position as well as the prospects of women's representation in the Indian judiciary, the challenges encountered and the general effects of the judiciary, as an institution, in justice delivery.

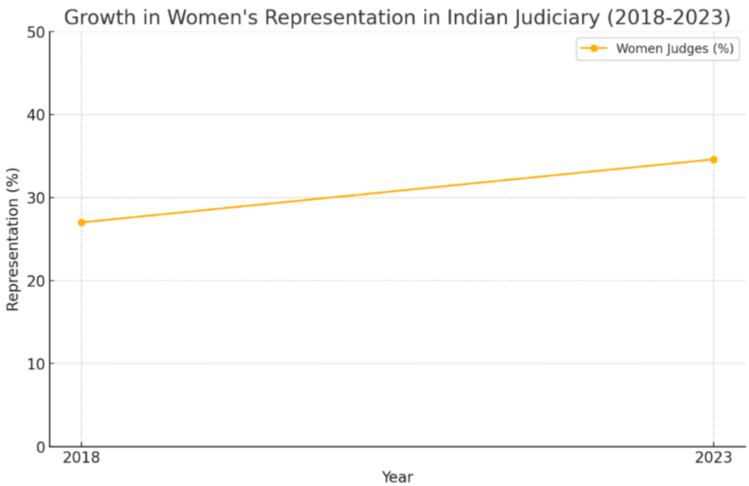
I. INTRODUCTION

Indian judiciary always had its representation of women historically limited, mirroring broader societal inequalities. Despite some advancement over the recent few years, still, the judiciary remains male-dominant. The female is at a very minimal percentage at 34.6% of the total judges across the system as of 2023, which is an increase by 27% from 2018. None of the 25 High Courts in India have a woman Chief Justice on board, and women judges make up only 13% of the 788 High Court judges.

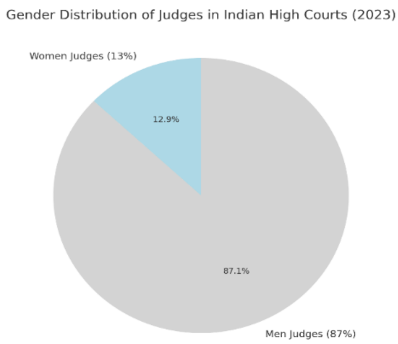
This gender balance within the judiciary is crucial because it directly reflects upon the perception of and delivering justice. A balanced judiciary comprising of diverse backgrounds, such as gender, increases public trust and ensures that justice is delivered and seen to be delivered fairly. The lack of adequate female representation sabotages the judiciary's effectiveness in addressing gender-sensitive issues, for instance, sexual assault cases and workplace harassment cases. Women judges bring certain perspectives that may make legal interpretation and policymaking more inclusive as the judiciary reflects more accurately the population it serves. Further, the presence of women in judicial courts will inspire the next generation of female potential practitioners in legal professions. A more representative judiciary also acts as a tonic to social change by inspiring younger women to seek key leading positions within legal systems to nurture a culture of equality and meritocracy. The argument calls for structural reforms in appointment processes, mentorship initiatives, and larger strides towards shifting the entrenched gender stereotypes in the judiciary and society at large. This paper seeks to critically examine the current status of women's representation within the Indian judiciary, uncover the challenges they face, and evaluate the broader implications of their presence for justice delivery. By highlighting the vital contributions of women judges and proposing actionable strategies to achieve greater gender equity, this study aims to contribute meaningfully to the ongoing discourse on building a more inclusive and representative judicial system in India.

II. CURRENT REPRESENTATION OF WOMEN IN THE INDIAN JUDICIARY

Although there is some improvement, still, women's presence in the Indian judiciary is disproportionately low at every level. As of 2023, women comprise only 34.6% of the total number of judges, a minor increase from 27% in 2018. The High Courts, being the pivotal appellate and constitutional courts, represent an even cruder form of gender disparity. As of June 2023, not a single one of the 25 High Courts had a woman Chief Justice while women constituted only 13% of the 788 judges in these courts *(Tribune India, 2023; Bar & Bench, 2024)*. In subordinate courts, which are the backbone of the Indian judiciary, women's representation too has been uneven. While some states have been progressive toward more inclusion, the percentage of women judges as a whole in the lower courts still remains drastically below parity. Punjab and Haryana stand out for having the highest number of women judges of all High Courts, a yardstick for other states to aim for. Compared to international standards, gender representation in the judiciary of India is lagging behind.



It can be illustrated by examples of some of the countries like Canada and United Kingdom, which have consistently striven to attain an equal share of women in the judicial posts. There, women are provided with significant leadership positions. Such analyses are indicative of Indians implementing such policies to bring gender equality. The under-representation of women in leadership positions within the judiciary, such as Chief Justices of the High Courts or the Supreme Court, has resulted in the continuation of gender inequalities. Women judges tend to be relegated to lower or mid-level judicial positions with minimal opportunities to advance in their careers. Such under-representation affects the capability of the judiciary system in appropriately handling gender-sensitive issues because diverse views are necessary for justice delivery balanced on fairness. The contributions of notable women judges, such as Justice Fathima Beevi and Justice Leila Seth, show the tremendous impact women can have on the judiciary. Justice Fathima Beevi, the first woman Supreme Court judge in 1989, and Justice Leila Seth, who was the first woman Chief Justice of a High Court in 1991, did remarkable work on gender-sensitive issues and progressive legal interpretations, which are inspiring precedents but, again exceptions rather than the norm.



III. CHALLENGES TO WOMEN'S REPRESENTATION IN THE JUDICIARY

Despite some improvements regarding an increased number of women judges, major challenges continue to impede equitable representation in the judiciary. These are all arising from structural, cultural, and systemic barriers along which contribute to the continuance of gender balance in the legal system.

D. ***Structural Barriers***

The opaque nature of the appointment process, which is heavily dominated by males at many points, remains one of the main structural barriers. The collegium system for judging appointments to High Courts as well as the Supreme

Court system frequently lacks transparency and does not favor gender diversity. Moreover, gender representation is not ensured through mechanisms such as quotas or affirmative action policies, which has led to a slow and inconsistent increase in the number of female judges.

Another issue is the failure of the judiciary to provide support structures for women. For instance, amenities such as childcare and flexible hours at work are rather wanting, which deters many women from joining or even staying in the judiciary.

E. Cultural Barriers

Another challenge would be the deep-rooted patriarchal attitude in the legal profession. Women judges often question their capability and decision-making capabilities, especially in male-dominated courts. This prevents them from entering higher services besides making the working environment hostile to women considering judicial positions. In addition, social responsibilities always add extra pressure on women holding leadership positions. A considerable number of female judges talk about the challenge of juggling professional responsibilities with societal expectations of their roles as caregivers, thereby complicating their participation in the judiciary *(Tribune India, 2023).*

F. Systemic Issues

Systemic challenges include the limited pipeline of women entering the judiciary from the legal profession. A general underrepresentation of women in senior positions in the bar and other legal institutions leads to a reduced number of candidates being advanced for judicial appointments. This is further compounded by a lack of mentorship opportunities and institutional support for female lawyers who would wish to transition into judicial roles. All of these factors are compounded by the lack of a gender-sensitive legal ecosystem. Women in judiciary often face harassment and discrimination, which in turn discourages many potential candidates from pursuing judicial careers.

IV. THE IMPACT OF WOMEN JUDGES ON JUSTICE DELIVERY

The presence of women judges in the Indian judiciary not only promotes gender equality but also enhances the quality of justice delivery. Their diverse perspectives and empathetic insights into gender-sensitive issues have significantly transformed the legal system, addressing societal biases, fostering inclusivity, and restoring public confidence in the judiciary.

A. ***Enhanced Legal Decision-Making***

Women judges have been instrumental in delivering judgments addressing systemic issues like sexual harassment, domestic violence, and workplace discrimination. For instance, Justice Sujata Manohar's role in the landmark *Vishaka v. State of Rajasthan* case laid the foundation for workplace harassment laws in India, underscoring the critical importance of women's leadership in shaping progressive legal norms. Yet, as per the IJR (2022), only 13.1% of High Court judges and 35.1% of subordinate court judges are women, reflecting significant underrepresentation. These statistics highlight the disparity in gender representation, especially at leadership levels, which limits the judiciary's ability to handle gender-sensitive issues comprehensively.

B. ***Representation and Public Confidence***

The inclusion of women in the judiciary symbolizes equality, fostering trust and legitimacy in the justice system. A judiciary that reflects the society it serves enhances its moral authority. Women litigants, for instance, often feel more comfortable presenting their cases before women judges. However, the IJR (2022) reveals that women comprise only 8% of judicial officers in India, a figure that lags behind the global averages in many countries. Furthermore, their presence in panel lawyers (14%) and paralegal volunteers (24.7%) is equally sparse, underscoring the systemic need for more inclusive policies.

C. ***Institutional Reforms Towards Progress***

Women judges act as catalysts for institutional reforms, challenging traditional norms and advocating for inclusivity. According to the IJR (2022), no state in India has fulfilled all its diversity benchmarks in the judiciary. Structural gaps, such as chronic judicial vacancies and the slow pace of gender representation, remain pervasive. For instance, as of 2022, the judge-to-population ratio in India stands at a meager 15 judges per million, far below the Law Commission's recommended 50 per million. Addressing these gaps through affirmative action and mentorship initiatives can create a more equitable judiciary.

D. *Catalysts for Social Change*

Women judges serve as role models for younger generations, inspiring more women to pursue careers in law and leadership roles. Their presence challenges patriarchal stereotypes and fosters societal shifts towards gender equality. Yet, the IJR (2022) emphasizes that achieving 33% representation of women in police, legal aid, and judiciary remains a long-term challenge; some states may take up to a century to reach this benchmark at their current pace.

E. *The Need for Systemic Change*

To enhance gender equity in the judiciary and other pillars of justice, India requires targeted interventions such as:

2. **Diversity Quotas**: Affirmative action for women across judiciary appointments.
3. **Infrastructure Support**: Enhanced facilities like childcare and gender-sensitive workspaces.

4. **Capacity Building**: Expanding access to legal education for women, particularly in marginalized communities.

Despite incremental progress, systemic challenges in women's representation persist across India's justice delivery mechanisms. Addressing these issues requires robust reforms driven by data, such as that provided by the India Justice Report, to bridge gaps in gender equity and foster a more inclusive judiciary. Women judges are pivotal to creating a justice system that embodies fairness and equality for all.

V. FUTURE DIRECTIONS AND OUTLOOK

The continuous underrepresentation of women in the Indian judiciary calls for careful efforts to overcome structural barriers and make the legal system more inclusive. Building on the insights from the preceding sections, a comprehensive and nuanced discussion based on targeted reforms, changes in institutions, and broader transformation in society can be undertaken to explore the possibilities of equity.

The immediate short-term inducement that can raise the level of women's representation in the judiciary is the observance of gender quotas in judicial appointments. For instance, in Canada and South Africa, affirmative action has helped to significantly increase the proportion of females within legal systems. In India, the same can be done by adding quotas at each level of the collegium system. This would bring more qualified women into consideration for judicial positions at all levels.

Revision of the appointment procedure with a focus on openness and inclusivity is necessary. Institutional measures such as diversity audits and gender-balanced panels in judicial appointments would strengthen the policy of inclusion further. Access to legal education for women in such a scenario should be expanded, particularly in rural and marginalized communities, to create a robust pipeline of future women judges. Scholarships, mentorship programs, and other forms of leadership training available to women in law schools are meant to encourage participation and retention in the profession.

Within judicial institutions, gender-sensitization workshops and anti-harassment policies are also required in order to build an environment for women judges. In addition, having infrastructure for work-life balance, like childcare facilities and flexible schedules, could address many of the problems women face in the judiciary. Best practices globally can also be studied with focus. The UK Judicial Diversity Forum and the focus in Canada on mentorship networks for women in law have been a resounding success in addressing gender disparity. Such strategies shouldered over in the Indian setup would make better strides. Second, civil society and advocacy groups are now much more involved in demanding gender equity within the judiciary. The judiciary, government, and NGOs working together may resolve systemic biases and reform demands. Public campaigns raising awareness that women in judicial leadership positions are necessary can further mobilize support in the community. Increased counts of women appointed as judges would only be a significant achievement if accompanied by sustained engagement and comprehensive change. In fact, diversity must become one of the core values for this arena of justice delivery-the judiciary-of which a gender-balanced institution is key to deliver justice that lives by the motto of equity and fairness.

The inclusion of women judges is part of the stature of equality, but it's also a step into improving the credibility and efficacy of the judiciary. Diverse perspectives can only be possible in the decision-making processes of the courts if and only if the judiciary feels it has something to gain in such actions.

VI. CONCLUSION

This paper seeks to analyze the contemporaneous standpoint of women representation in the Indian judiciary, analyze the reasons that have done disservice to their equal inclusion and provide insights on the overall implications of their presence on the justice delivery. However, the slight progress has not dented the scale of under-representation of women across all levels within the judiciary where women only constitute 34.6% of all judicial appointments and no woman has ever served as Chief Justice in any of the High Courts. This margin is true even as the judiciary has the largest share of responsibility in shaping the rule of law and serving justice in societies. The focus of the analysis is on the prevalence of structural, cultural, and systemic roadblocks that are the greatest impediments to women's representation in judicial positions. From the opaque nature of appointment processes to the entrenchment of patriarchal norms, women in the judiciary continue to face several hurdles in obtaining and maintaining careers. Moreover, the interface between gender with caste, class, and community intensifies these problems, especially for women belonging to marginalized backgrounds.

Even today, the justice delivery system remains far from gender equal with alarming underrepresentation of women in the Indian judiciary. Despite these measures, progress has been modest: women account for 34.6% of all positions across the judiciary, with structural, cultural and systemic barriers preventing full participation and advancement of women. It comes to judgeship, women bring unique perspectives towards the issues, especially with gender-sensitive issues such as sexual harassment and work place discriminations and their presence promotes inclusivity, fairness and public confidence over judiciary. Indeed, although female judges were few and far between, the trailblazers contributed to shaping progressive interpretations of the law and paving the way for generations to come. Relatedly, gender parity will require targeted reforms through transparent appointments, diversity quotas, mentorship programs and gender-sensitive work environments. Dismantling patriarchal norms and addressing the challenges faced by women from marginalised communities will require alignment of institutional and societal efforts. Diversity at the bench is critical not just for improving the delivery of justice — but also for advancing wider social change. Any gender-balanced judiciary is a more accurate reflection of the population that it serves, one that makes the legal system fairer and impartial and earns the trust of the people in it. By valuing gender equity, the judiciary can better achieve its aspirational goals of being equal and equitable to all, and thereby become a better institution to serve a broader swathe of society.

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VIRTUAL HEARINGS IN FAMILY COURTS: ADDRESSING THE CHALLENGE OF CASE PENDENCY

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ABSTRACT

The pendency of cases across India has been a consistent concern in our legal system, including family courts. Drawing upon insights from the National Judicial Data Grid (NJDG), this chapter examines the key reasons for delays across India. The two primary causes of delays—unavailability of counsels and lack of interest from parties—suggest that the physical distance between courts and litigants as well as their counsels is likely a contributing factor to these delays. The chapter argues that this distance acts as a barrier to access to justice and affects the timely resolution of cases, particularly in family courts. It suggests that the implementation of virtual hearings in family courts could mitigate the challenges posed by this distance and

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potentially contribute to reducing the pendency of cases. However, considering the emotional and sensitive nature of family matters, virtual hearings may not be suitable in all cases. Therefore, courts must adopt a balanced approach that seeks to maximise the benefits of virtual hearings while not losing sight of the specific requirements of each case in family court proceedings.

Keywords: *Pendency of Cases, Family Courts, Virtual Hearings, Access to Justice, Family Disputes.*

I. INTRODUCTION

The pendency of cases in Indian Courts has been a persistent concern that raises questions about the efficiency of our judicial system. This concern affects courts throughout the country, and family courts are no different. As of October 2024, 1195738 cases are pending in the family courts across India *(Department of Justice, Ministry of Law and Justice, 2024)*. The State of Uttar Pradesh has the most pending cases, followed by Kerala and Punjab. The high pendency rate can be attributed to delays in proceedings caused by various factors. One such factor is the physical distance between courts and litigants as well as their counsel. This distance often acts as a significant barrier to access to justice and timely resolution of cases. The issue came into focus during the COVID-19 pandemic when lockdowns and restrictions on movement severely affected the functioning of courts. This led the Supreme Court of India (SCI) to introduce guidelines on video conferencing for Courts across the country. While the Courts have since resumed their normal functioning, virtual hearings have not lost their relevance.

The central tenet of this chapter is that virtual hearings can mitigate some of the challenges posed by the physical distance between courts and litigants and their counsels in family matters. It suggests that the implementation of virtual hearings as an option in family matters can improve access to justice and ultimately contribute to reducing the pendency of court cases in India. Though virtual hearings are not a panacea for reducing the pendency of cases, they have the potential to lessen the burden on litigants and better their experiences in family matters, considering the unique challenges such disputes present.

Following this introduction, Section 2 provides an overview of the functioning of family courts in India. Section 3 develops into the key reasons for delays across India, focusing on how the physical distance between courts and litigants and their counsels acts as a barrier to access to justice, particularly in family matters, thereby contributing to delays in the timely resolution of cases. Thereafter, Section 4 explores the potential of virtual hearings in family courts in reducing the pendency of cases. It also draws upon insights from other jurisdictions and discusses the challenges involved. Section 5 concludes the chapter.

II. FAMILY COURTS IN INDIA: AN OVERVIEW

The rationale for establishing family courts in India was to create a specialised forum for resolving family-related disputes arising out of issues such as marriage, divorce, maintenance, child custody, and domestic violence *(The Family Courts Act, 1984, Preamble)*. Before family courts were established, such disputes were addressed in the regular civil courts as provided in Order XXXII-A of the Code of Civil Procedure, 1908 (CPC), *(Bhagiratha Rao, 2008),* causing delays and a lack of sufficient focus on the emotional and social aspects of family disputes *(Law Commission of India, 1974)*. Thus, family courts were created to be responsive to these issues and ensure that individuals involved in family cases have speedier, more affordable, and more humane access to justice *(Sood & Verma, 2024)*.

A. ***Infrastructure of Family Courts***

The Family Courts Act, 1984 governs family courts in India to streamline and expedite the process of adjudicating family disputes. Family courts have been established in various districts and cities having a population of more than one million *(National Institute of Public Cooperation and Child Development, 2007)*. However, family courts are not available in many rural areas *(Bail, 2015)*. At present, 822 family courts are functional in India. The state of Uttar Pradesh has the highest number of family courts (189), followed by Madhya Pradesh (62), Maharashtra (51) and Rajasthan (50). However, Arunachal Pradesh, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Goa, Jammu and Kashmir, Ladakh, Lakshadweep, Meghalaya, Mizoram have no family courts in operation *(Department of Justice, Ministry of Law and Justice, 2024)*.

Family court infrastructure typically consists of courtrooms designed to allow disputes to be settled in a less formal and more sensitive setting than traditional courtrooms in light of the emotional and psychological character of family disputes. The characteristics, like cubicles and low barriers, foster a less formal and less frightening environment, essential for addressing delicate family issues *(Mulcahy, 2011).* However, the quality of this infrastructure can vary widely. Larger family courts often have access to better resources, whereas smaller courts face problems such as overcrowding, *(Saini, 2024)* shortage of staff, and lack of infrastructure, which hinder timely justice *(Katta, 2024).* Additionally, the establishment of these courts is marred by poor funding, which results in inefficiencies and delays in the working of these courts *(Sriram & Duggal, 2016).*

B. ***Functioning of Family Courts***

Family Courts are established as District Courts or subordinate Civil Courts, and the provisions of the CPC are applied to them by way of Section 10 of the Family Courts Act, 1984 (Rao, 2008). They also function as Criminal Courts, similar to the Courts of a First-Class Magistrate, when exercising the powers and jurisdiction conferred under

Chapter IX of the Code of Criminal Procedure (CrPC) *(Singla, 1992)*. Family Courts have exclusive jurisdiction over family-related legal issues *(The Family Courts Act, 1984, s. 8).* They operate within a procedural structure that prioritises conciliation and mediation over adversarial litigation *(The Family Courts Act, 1984, Preamble).* Section 9(1) of the Act stipulates that no family court shall proceed to determine any matter in a trial unless an attempt at conciliation and settlement has been made in cases of divorce, maintenance, and custody unless the court thinks that no such effort is desirable *(R. Durga Prasad v. Union of India, 1998).* Judges in family courts are encouraged to use their discretion to allow for amicable settlements between parties *(The Family Courts Act, 1984, s. 9).* In this respect, the family court judges perform a dual function– judicial and conciliatory. They are empowered to initiate settlement negotiations, which allows the parties to explore amicable and mutually agreed solutions, such as in mutual consent divorce and maintenance cases. Nevertheless, despite these efforts, the Family Courts struggle to provide timely justice to litigants, particularly women seeking maintenance, protection from financial deprivation, and expedited case resolution *(Rajasthan State Women Commission, 2003).*

III. PENDENCY OF CASES IN INDIA: INSIGHTS AND CAUSES

The National Judicial Data Grid (NJDG), a national repository of case data for courts across India, provides statistics on the pendency and disposal of cases. As per the NJDG, over 4.5 crore cases are currently pending in the district courts of India, which are the courts of first instance *(National Judicial Data Grid, 2024)*. This section draws on key insights from the NJDG regarding the causes of delays, with a focus on how physical distance acts as a barrier in family court cases and contributes to delays in their timely resolution.

A. ***Key Insights from NJDG***

The NJDG provides insights into the key reasons for delay in case disposals. These reasons include, inter alia, counsel not available, stayed for reasons, parties not interested, awaiting documents, witnesses, frequent appeals, and record unavailable *(National Judicial Data Grid, 2024)*. Here, we focus on two reasons– unavailability of counsel and parties losing interest.

Table 1: Ranking of 'counsel not available' and 'parties not interested' as causes for delay across States and Union Territories

S.N.	State	Counsel not available	Parties not interested	S. N.	State	Counsel not available	Parties not interested
1	Andaman & Nicobar	4	1	19	Ladakh	1	6
2	Andhra Pradesh	1	2	20	Madhya Pradesh	4	5
3	Arunachal Pradesh	5	-	21	Maharashtra	1	4
4	Assam	3	6	22	Manipur	2	7

5	Bihar	1	3	23	Meghalaya	6	-
6	Chandigarh	2	9	24	Mizoram	-	3
7	Chhattisgarh	4	5	25	Nagaland	3	5
8	Dadra & Nagar Haveli	3	2	26	Odisha	1	8
9	Daman and Diu	2	1	27	Puducherry	1	4
10	Delhi	1	7	28	Punjab	1	10
11	Goa	3	10	29	Rajasthan	1	5
12	Gujarat	1	4	30	Sikkim	-	5
13	Haryana	1	6	31	Tamil Nadu	2	3

14	Himachal Pradesh	1	9	32	Telangana	2	8
15	Jammu and Kashmir	2	6	33	Tripura	3	6
16	Jharkhand	1	3	34	Uttar Pradesh	1	3
17	Karnataka	1	5	35	Uttarakhand	2	8
18	Kerala	4	9	36	West Bengal	1	4
Note: Rank 1 indicates that the particular cause is the top most common cause of delay in the State whereas Rank 10 indicates the cause is the least common cause reason of delay.							

(i) Unavailability of Counsels

A closer examination of the data obtained from NJDG reveals that in 22 States and Union Territories, the non-availability of counsel ranks among the top two causes of delays in cases. While it is the top-most reason in 14 states, it is the second most common cause in the remaining 8 States. Here unavailability of counsel could mean that a lawyer has not been appointed for a party or that the counsel could not come for the hearing. Nevertheless, the latter is a common issue that could be attributed to the immense workload, unavailability of dates, and conflicting schedules. Lawyers often have multiple hearings at the same time across different courts which frequently causes adjournments and delays.

(ii) Parties Losing Interest

If we look at the issue of 'parties being uninterested', it comes within the top five causes of delays in 19 States. Though the data does not specify what leads parties to lose interest, the reasons are not unknown or difficult to identify. Financial constraints, emotional distress, family obligations, lengthy proceedings, and physical distance are common factors that affect a litigant's ability to remain engaged in legal proceedings. These, in turn, generally cause parties to lose both hope and interest in their cases *(Relis, 2002)*. These factors are not mutually exclusive and can exacerbate the impact of one another. For instance, prolonged proceedings can contribute to the emotional turmoil of litigants and their families *(Relis, 2002).* Similarly, financial constraints and family obligations worsen the challenge posed by physical distance, making it difficult for parties to attend court proceedings in person.

Thus, physical distance between courts and litigants as well as their counsels is likely a contributory factor to the two primary causes of delays behind the pendency of cases.

B. ***Distance as a Barrier in Family Court Proceedings***

The issue of physical distance faced by lawyers can have a similar effect across all cases, irrespective of the kind of matter they are handling. However, the impact of physical distance between litigants and courts is particularly significant in family matters such as divorce, separation, maintenance, and custody. In these cases, the parties often no longer reside together; some may even move to different cities or states. They are required to balance their work and family obligations which makes attending court hearings in person a great challenge. Some litigants may not even have sufficient means to afford frequent travel expenses. The litigants also face additional challenges due to their personal circumstances which vary from case to case and are heavily affected by the ongoing family disputes.

All these issues further exacerbate the difficulties experienced by parties involved in family disputes, especially women. As per a study conducted in Varanasi, several women litigants in family courts expressed that 'they found it very difficult to visit the court from their homes, which was situated very far away. They were not in a position to pay the fares as they did not earn any money and were dependent on their illiterate, poor parents for their livelihoods.' *(National Institute of Public Cooperation and Child Development, 2007, p. 38).* Given that most women are primary caregivers, many mentioned having difficulties leaving their children to attend court hearings *(National Institute of Public Cooperation and Child Development, 2007, p. 46).* It was also found that the primary cause of delay in passing decrees in family court cases was the failure of parties to be present for court hearings *(National Institute* *of Public Cooperation and Child Development, 2007).* Further, a social stigma surrounds the idea of women visiting police stations and courts.

Thus, the physical distance between the courts and the litigants creates a significant barrier to justice for various reasons. Even those who manage to attend these hearings in the hope of justice often experience immense frustration and exasperation. This not only causes delays in ongoing cases but also affects future cases, thereby contributing to the continuing pendency of cases across courts. It is argued that implementing virtual hearings as an option could help ease some of this burden and offer accessibility and convenience to both parties and their counsels.

IV. THE POTENTIAL OF VIRTUAL HEARINGS IN FAMILY COURTS

The increased use of virtual hearings during the COVID-19 pandemic appears to have significantly helped reduce the case backlog. Every year the number of cases filed in court has risen, except in 2020, when the COVID-19 pandemic struck. Until 2022, the number of cases filed always surpassed the number of cases disposed of. However, in 2023 and 2024 the case disposals exceeded case filings for the first time in years.

Table 2: Case Filings and Disposals in Districts Courts of India		
Year	**No. of cases Instituted**	**No. of cases Disposed**
2018	3440328	3188284
2019	3573401	3373858
2020	2400207	1462588
2021	3192080	2520780
2022	3781180	3719432
2023	3824333	3867089

2024	3656892	3779500

The above trend can be attributed, at least to some extent, to the increased use of video conferencing which started during the COVID-19 phase. The lockdowns and restrictions during the pandemic posed substantial barriers to the functioning of courts. In response, the SCI issued guidelines to implement video conferencing in all courts nationwide. Prior to this, video conferencing was allowed only in limited circumstances, such as when witnesses were abroad, in criminal cases involving serious offenders, and or when the safety of individuals was a concern *(Daksh India, 2020)*. Today, Indian courts are increasingly turning to digital solutions to manage their workload. As a part of the National eGovernance Plan, Phase III (2023 onwards) of the eCourts Mission Mode Project aims to, inter alia, enhance video conferencing and live streaming facilities within the judiciary. Measures include the establishment of 1,072 eSewa Kendras which seeks to bridge the digital divide by helping litigants with eFiling and virtual hearings, especially in the rural areas. The eCourts Project has supported several state initiatives that are paving the way for a more inclusive and efficient judicial system. As of 30 June 2024, video conferencing allowed District and Subordinate courts to hear 2,35,64,731 cases and High Courts to hear 87,08,727 cases. Further, the SCI conducted 7,54,443 video-conference hearings until 04.06.2024 *(Ministry of Law and Justice, 2024).* Thus, court hearings through video conferencing are the future of the judicial system and should be actively implemented in the family courts.

A. ***Developing Jurisprudence of Virtual Hearings in Family Courts***

The evolving jurisprudence of virtual proceedings in family courts has attempted to prioritise access to justice while simultaneously balancing procedural safeguards. In *Rajesh Sharma & Ors. v State of U.P. & Anr. (AIR 2017 SC 3869),* the SCI held that it is not necessary for family members, particularly those from outstation, to appear in person and directed that trial courts should allow them to appear via video conferencing. Similarly, in *Amardeep Singh v. Harveen Kaur*, (2017 (8) SCC 746), the Court remarked that in cases where a couple seeks divorce by mutual consent, they may appear virtually.

In *Santhini v. Vijaya Venketesh (2017 INSC 1023),* the majority opined that family courts have the discretion to permit video conferencing with the consent of both parties only after the failure of the settlement proceedings and no order for virtual hearings can be passed in any transfer petition. However, Chandrachud J., in his dissenting opinion, asserted that the provisions of the Family Court Act 1984 support the use of video conferencing at all stages of proceedings, including settlement. Later, in the backdrop of the pandemic, in *Anjali Brahmawar Chauhan v Navin Chauhan (2021 INSC 40),* a trial court was ordered to conduct virtual hearings even in a transfer petition. Most recently, the Madras High Court in *G. Shrilakshmi v Anirudh Ramkumar (2024 LiveLaw (Mad) 392*) permitted parties to appear virtually at all stages of mutual consent divorce proceedings. The Court observed that 'Virtual proceedings provide an opportunity to modernise the system… enabling access to justice from any part of the country in the world. Thus, the Family Court ensures that such a system of conducting the proceedings through videoconferencing is put into usage without insisting on the presence of the petitioner from the time of the first presentation till the conclusion of proceedings.'

Currently, a public interest litigation seeking hybrid hearings in Family Courts across the country is pending before the SCI *(Kishan Chand Jain v. Union of India & Ors, 2024)*. The petition underlines how delays in the disposal of cases place both financial and emotional pressure on litigants, especially women and children *(NDTV, 2024).* In view of the high number of pending cases in family courts, it urges for the establishment of video conferencing systems in family courts. Since the matter is still sub-judice, it remains to be seen what interventions the apex court will make. However, these developments emphasize the growing needs and demands to actively modernize family court proceedings.

B. ***Jurisdictions where virtual hearing has been operationalized/ Experience with Virtual Hearings***

Internationally, virtual hearings have been widely embraced, especially in the family courts of the U.K., U.S., Canada, and Australia. During the pandemic, the use of technology became central to family court hearings in the UK. Previous discussions about virtual hearings had been polarizing, however, consultations by organizations, including the

Nuffield Family Justice Observatory, have developed a nuanced understanding of when video or telephone-based hearings are suitable and effective *(Harker & Ryan, 2022)*. While remote hearings are still the norm in family courts that deal primarily with procedural matters, a gradual return to face-to-face hearings in cases involving children and injunctions in domestic abuse cases shows a sensitivity to individual justice delivery *(George & Marsh, 2024)*.

When we look at Canada, virtual hearings were already in use in family courts even before the pandemic (*Bailey, 2012*). In fact, the Department of Justice, Government of Canada's 2021 National Justice Survey found that 71% of respondents preferred hearing and mediation platforms like Zoom and MS Teams *(Department of Justice, Government of Canada, 2021)*. There are detailed guidelines addressing challenges and highlighting opportunities and innovative practices to modernize court operations and improve access to justice for family court users *(Action Committee on Modernizing Court Operations, 2024)*. The United States also found little difference between judicial engagement in virtual versus in-person hearings and recognises virtual hearings as an efficient forum for family law cases *(Summers & Gatowski, 2024)*.

Australia has also turned to online family dispute resolution (OFDR) with new and novel alternatives to ensure access to justice, particularly for rural and remote communities. The expansion of online and multimedia platforms shows the country's resolve to make family dispute resolution more convenient and accessible, even before the pandemic *(Wilson-Evered & Zeleznikow, 2021)*. Thus, these international developments highlight that the implementation of virtual hearings in family courts could prove to be an efficient way to resolve family disputes and improve access to justice.

C. Challenges

While the introduction of virtual hearings may help address some of the challenges faced by litigants and their counsels, it also raises certain issues. Family matters revolve around emotional and sensitive topics that are inherently complex. The intensity of these emotions may not be effectively conveyed through the virtual mode of hearings which could make it difficult for judges to fully comprehend the nuances of issues at hand. The litigants may also struggle to express themselves when delicate issues are being discussed. The facial expressions, body language, or non-verbal gestures of parties often tell a lot about the nature of the relationship between parties and help judges assess the context of these cases. This type of assessment is particularly crucial in matters involving child custody. However, such important indicators are likely to be obscured or lost behind the computer screens in virtual hearings.

When criminal proceedings are ongoing simultaneously with family disputes, in-person hearings act as a check on the well-being and safety of the persons involved. Examples include situations where incidents of domestic violence, cruelty, or demands of dowry give rise to maintenance, divorce, or child custody issues. In such situations, family matters are so intertwined with criminal cases that courts must adopt a more careful and sensitive approach. Further, the digital divide can also act as an impediment to the effective implementation of virtual hearings, which casts an additional responsibility on the courts to ensure that virtual hearings do not become an added barrier to access. Moreover, the use of online platforms for court proceedings also presents issues of privacy and confidentiality which are even more critical in such personal and sensitive matters.

V. CONCLUSION

The implementation of virtual hearings in the family courts could potentially help reduce the pendency of cases, at least to some extent, as it mitigates some of the difficulties that litigants and their counsels face due to physical distance. However, the emotional and sensitive nature of family matters presents certain challenges. Therefore, it is recommended that virtual hearings must be used as an alternative option, and not as a replacement for in-person hearings. The Courts must adopt a balanced approach that differentiates between proceedings that necessitate personal appearance and those that do not. The physical appearance of parties may be not necessary in mutual consent divorce cases, proceedings where substantive issues are not in focus yet, or cases where personal circumstances prevent parties from appearing in person. However, in matters that are intertwined with criminal cases or proceedings where substantive issues are in focus, virtual hearings may not always be suitable. Nevertheless, no rigid distinction should be made, and courts should endeavour to maximise the benefits of virtual hearings in family matters while not losing sight of the specific requirements of each case.

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OPERATIONALISING THE AUSTRALIAN LIGHTHOUSE PROJECT IN THE INDIAN SOCIO-LEGAL MILIEU

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ABSTRACT

The article seeks to disinter the cause behind a marked dearth in training and legal equipment among family law professionals. A deeper study into the dynamics of family justice administration points out an inadequately-equipped family court infrastructure, that in turn, occludes judicial functioning with bias, inexperience, and the rigours of an adversarial setup. It has been gleaned that the observation put forth by Lynda Walters in contriving a three-pronged approach to deal with the special jurisdictional and jurisprudential requirements of the complex family dispute mechanism is only sketchy without the aid of a triage mechanism (illustrated in the Lighthouse Project). Walters' skeletal remarks on the need to overhaul the existing family-justice dispensation mechanism meet a full-fledged and rather more refined blueprint in the Lighthouse Project

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piloted by the Australian Family Courts in 2021. The Lighthouse Project enlists a three-winged (stage-wise) strategy to deal with family law issues. The three-pronged strategy involves, firstly, an appreciation of distinctiveness of each family law structure and a concomitant judicial appraisal to refrain from classifying every family law case that comes up to the court of law into watertight compartments. Pithily, the first step involves judicially appreciating each family law dispute per its peculiar facts and circumstances. Secondly, it has been proposed that a risk-assessment procedure should be undertaken to discern the effect of judicial decisions upon the interests of a family(ies) under dispute. Once the family-dispute is carefully screened for any risks, a special resolution-mechanism is tailored while heeding the novel peculiarities that each family dispute brings up. Finally, a well-suited legal response mechanism is devised pro rata for the degree of risk involved in the dispute. More simplistically, this approach evinces the need to structure family law dispute resolution techniques on a case-to-case basis as opposed to the rigours of the adversarial procedure. Thirdly, a collaborative methodology must form part of the procedural

niceties of a family law legal dispute where family and child professionals, lawyers and judges proactively work in harmony while bearing in mind the need to protect the institution of marriage and family through reconciliatory and resettlement endeavours.

Keywords: *Triage Mechanism, Lighthouse Project, Collaborative Methodology, Reconciliation, Resettlement*

I. INTRODUCTION: DEARTH IN TECHNICAL EXPERTISE AMONG FAMILY LAW PROFESSIONALS

Despite the recent upsurge in domestic disputes (that account for almost one-third of all family-conflict case filings put together) *(Burke, 2005),* a glaring dearth in technical know-how and softer analysis among family court professionals has impeded reconciliatory endeavours. Scores of academic accounts throw light upon the unpopularity of reconciliatory and inquisitorial procedures in the Indian family justice administration.

There is no gainsaying that reconciliatory mechanisms form the very bedrock on which family-justice-administration is premised *(Walters, 1983)*. However, a substantial number of accounts evince that family court professionals often fall back to their enterprise while administering these reconciliatory mechanisms *(Walters, 1983)*. This 'personal enterprise', that insufficiently trained family court professionals resort to, often comes in handy with individual experience and bias *(Walters, 1983)*. Such hasty resort to personal experience bears the potentiality of colouring judicial decision-making capacity with skewed generalisations, a propensity which upsets the substantive import of family law statutes that place singular reliance upon reconciliation,

> Yet, professionals within the legal system have little on which to base their arguments and decisions beyond their personal experience within their family of orientation and family of procreation. As family specialists, we are all aware of the problems associated with efforts to understand other families when we have only our own family experiences as our best source of information. *(Walters, 1983)*

An in-depth perusal of Lynda H. Walters' account underscores that the societal urge to standardise every distinct family issue under watertight compartments must be desisted. While there is no gainsaying that incumbent judges are as well raised and socialised in the same society, generalisations contrived by regular adversarial mechanisms in resolving legal disputes must be avoided. Unlike adversarial court procedures adopted in criminal cases wherein the judges are required to demonstrate perfect neutrality, family disputes rather mandate judges to assume a positive, informed and proactive role,

> It would seem understandably difficult for a judge to remain neutral and not interfere in the lives of a family when he or she is making decisions that may ultimately change the way that family functions in everyday situations *(Burke, 2005).*

Erika Burke's account renders it amply clear that for the preservation and welfare of the institution of family, judges ought to overstep the confines of neutral behaviour to appraise each family dispute as having its own special needs and novel merits,

> In these courtrooms, a judge must rely entirely on the present facts and every bit of his or her experience to come to an acceptable judgment. They often take an active role in finding, shaping, and organising collected evidence because judgments require complex information and will have long-term consequences for the lives of children *(Burke, 2005).*

It is inferable that for the judges to be receptive to the peculiar exigencies and special needs of each family dispute, they ought to embrace an inquisitorial judicial approach, one that is markedly distinct from the passive 'umpire-like' neutrality exhibited by judges in an adversarial setup. For proper observance of such inquisitorial mechanisms, it is imperative that the judges be professionally trained and holistically counselled in child development, family dynamics and reconciliatory procedures. In family law, justice dispensation is best effectuated when 'reconciliation' and 'positive inquiry' substitute adversarial procedures that principally focus on fact-finding, evidence-collection, shifting the burden of proof, and legal victory of one party over the other. Such reconciliatory and inquisitorial practices can be fostered by imparting training and sensitisation among judicial officers in "child development, attachment theory, abuse and neglect, domestic violence, and substance abuse. *(Burke, 2005)*" Having stated the utility of reconciliatory and softer inquisitorial mechanisms in family justice administration, it is also vital to remark that there ought to be placed a real-world 'working-formula' that streamlines solution-oriented communication, meaningful judicial intervention and appreciation of each family law conflict as distinct.

Most saliently, as judicial evaluators of family conflicts, judges ought to apprise themselves of the means to assess the impact of the decisions so rendered on the welfare, health and safety of the institution of family. They ought to ensure that the bilateral (or multi-lateral) communication processes that are ordained on the premise of reconciliation are not mere formalities. The significance of such measures, and the need to impart training to family-court judges has been acknowledged by the Family Court of Australia and the Federal Circuit Court of Australia *(Law, 2023).* This step taken by the Australian Family Court serves as a promising blueprint in as much it recognises the salience of engaging eminent experts to "train judicial officers such as judges, registrars and family consultants" in the dynamics of family-conflicts. Measures adopted in imparting the requisite training among judicial officers include identification of risks of family violence, coercive controlling behaviours and their ramifications on children. While these strategies appear to have been particularly moved by child rights' violations and the ensuing need to reinstate their best interests, the Light House Project *(Neagle, 2023),* piloted by the Family Court of Australia and the Australian Federal Circuit Court, sketches a working formula for capacity-building in family-justice-dispensation. The precepts of this project are worth emulating in the Indian socio-legal milieu as it presents a pointed, phased and sequential blueprint that operationalises family conflict resolution and protection of segments who are at risk of family violence. Through its framework that relies chiefly on risk-management, the Lighthouse Project seeks to triage each family-law dispute so that those at risk are offered protection at the "earliest point possible" *(Dreyfus, 2022)*. As forthcoming as the mechanism seems, it endeavours to nip the bud in its very incipient stages so that any instance of escalation of physical, financial or mental hardship is averted. The Attorney-General, in his address on the launch of the Lighthouse Project, rightly described the need for a "specialist multi-disciplinary court" that capitalises on capacity-building, identification of risks and allocation of resources based on the urgency of the dispute *(Dreyfus, 2022)*. One conspicuous contribution of the Lighthouse Project is its classification tactics on the basis of the magnitude of the issue at hand. The 'Evatt List' features as the "specialised case management pathway" developed to "resolve high risk matters". The resolve to exercise utmost care and diligence for matters under the Evatt List is evident from the following statement (as enunciated by the Attorney-General),

> "…Across the three pilot sites just over 1000 matters have been triaged into the Evatt List. This ensures matters identified as high risk are before a registrar at the earliest point in time after screening. The success of the Lighthouse Project is how it has been seamlessly integrated into the Courts' other measures to improve case management and responses to family violence in the family law system. Parties who are identified through risk screening as being at lower

risk are directed to family dispute resolution where appropriate, which supports the earlier and more efficient resolution of their disputes (*Dreyfus*, *2022*)."

II. AN ANALYSIS OF THE AUSTRALIAN LIGHTHOUSE PROJECT

The academic as well as on-ground impetus lent by the Light House Project is pivotal for the distinct treatment it ordains to each family law conflict, as each family law dispute bears its own special merits.

As an illustration of judicious planning, oversight and forthcoming redressal, the execution of the Light House Project comprises a three-pronged strategy,

(a) risk screening,

(b) triage, and

(c) case management (Emerson, 2023).

In totality, the Light House Project in its first step, seeks to professionally screen the family conflict at hand through a well-placed and secure intelligence system. This risk-assessment mechanism proffers real-life solutions to the peculiarities of each family conflict by assessing/screening specially circumstanced parties or their children for any vulnerability or special treatment.

Once family-court professionals are adequately apprised of the risks involved in the family conflict at hand, they proceed to the second step which constitutes tailoring a response mechanism which is exclusively formulated to cater to the special risks/ needs of the particular family conflict. In this penultimate stage, the Light House Project 'triages' the case based on identified risks and special requirements collected as part of risk screening. As the professionals triage the case at hand for a well-suited response mechanism, they undertake a preliminary assessment through information acquired regarding risks and requirements before progressing to the final stage of case management.

The author surmises that in acknowledging the "dire need to triage family law matters," a safety net is orchestrated wherein nuances of each family dispute are appreciated to tailor a new and special legal response mechanism for each case falling into judicial arms. Gaetani goes on to draw a quick conclusion around catalysing the "best outcome" once the case has been triaged for risks by way of online questionnaires called 'Family DOORS Triage *(Gaetani, 2023).*' Ergo, the Lighthouse Project recognises the need to accord special treatment to each family conflict in consideration of the fact that in such disputes, the fundamental unit of society – that is, the institution of family lies at stake. Instead of placing family conflicts under a blanket categorisation constituting regular civil and criminal disputes, the Lighthouse Project endeavours to highlight differences in family-conflict dynamics rather than subsuming them under straitjackets.

The final process of case-management entrusts family court professionals with the task of scientifically manoeuvring data/ information collated through the preceding stages. Acquired data is systematically applied in a manner appropriate to the special merits of the conflict-at hand. After a meticulous review of the special factum of each case, cases are categorised in earmarked 'lists' so that appropriate legal treatment can be provided in due consideration of the "severity of risk involved *(Armstrong Legal, 2023)*". A high-risk case is classified in the 'Evatt list.’ Such high-risk cases invoke immediate referrals wherein the expertise of a family counsellor and a “judge-led support team” is sought *(Law, 2023)*.

Enhanced standard(s) of care, restraint and sensitivity are ensured through the intervention of such sensitised family professionals in such cases.

Categorisations are devised in the Lighthouse Project in order to streamline differential and specialised treatment on a case-to-case basis. The judicial response mechanism varies with the degree of risk reported. Cases classified along scales of ‘low to moderate’ are “offered safety planning and appropriate service referrals *(Law, 2023).”*

The concerted expertise proffered by lawyers, judges and family professionals under the Lighthouse Project effectively functions as grist to the mill. One of the most promising takeaways of the Lighthouse Project is its strategic channelisation of professional resources (available in the form of trained counsellors, psychologists, and family/child experts) towards the refurbishment of the family court infrastructure.

III. PROGRESS REPORT OF THE AUSTRALIAN LIGHTHOUSE PROJECT: ITS FUNCTIONING IN THE REAL WORLD

The Family Court of Australia has presented a six-monthly report that assesses the progress of the Lighthouse Project since its inception in December, 2020 *(Federal Court and Family Court of Australia, 2025)*. The assessment undertaken up till July 2021 paints a blithe picture in as much as it indicates that,

- Clients have been proactive and highly-participative in filling out the risk screen questionnaire and raising concerns with the Court;
- The Evatt List mechanism has proved to deliver "safe and positive resolutions". Owing to encouraging degrees of participation demonstrated by the parties in completing the risk screening, the process of identifying risk-factors and prioritising the needs of the vulnerable parties and children has been streamlined;
- Matters listed under the Evatt List are taken up by "a highly skilled team of Evatt list Registrars and Senior

Registrars, family counsellors/consultants and c*ourt staff (Federal Court and Family Court of Australia, 2025)*". These experts rely upon "intensive and tailored case management wherein the parties are encouraged to settle the dispute through consent *(Federal Court and Family Court of Australia, 2025)*."

- Drawing from the performance registered by the Lighthouse Project ever since its roll out in December, 2020, it has been gleaned that the benefits flowing from the risk screening mechanism are not just confined to identification of any risks/ serious concerns, but it also helps rummage any extra assistance that might be required to manage/ resolve the risks so identified.

Moreover, the impressive turnout rate in participatory screening indicates the success of the self-reporting mechanism in triaging risks and other necessary personal information *(Kukuruzovic, 2025).* Since the risk screening portal does not merely seek to identify risks, but also strives to provide safety, well-being and service referrals, little or no reluctance has been witnessed among the parties in disclosing personal information circling the dispute at hand. However, it must be noted that the risk screening mechanism devises strict observance to confidentiality requirements of the clients especially when parenting orders are sought,

> "One or more of the parties may self-report and notify the Court about the risk and concerns they are facing or believe they may face during their proceedings. The information obtained during the screening process cannot be admitted as evidence in any case, with the aim that parties will feel more comfortable and willing to be accurate with their reporting of risk *(Kukuruzovic, 2025).*

IV. AN APPRAISAL OF THE DEGREE(S) OF TECHNICAL EXPERTISE EMPLOYED IN THE INDIAN FAMILY COURTS ACT, 1984: NEED TO BORROW THE AUSTRALIAN LIGHTHOUSE PROJECT?

We shall now situate our lens to the Indian statutory setup around family-justice-administration. In the present segment, we shall seek to determine if the present legal system on family-justice-dispensation in India needs to be overhauled along the parameters set by the Australian Lighthouse Project.

Paras Diwan quips that in matters about family law issues that comprise divorce, maintenance, adoption, custody of children and succession, among others, the adversarial system adopted by the justice administration must be dispensed with. Diwan opines that litigation arising from family law conflicts must not be viewed in terms of the end result either being a success or failure, but as a "social therapeutic problem needing solution *(Diwan, 1985)",*

> Family law issues must be viewed as a litigative process where parties and their counsels are engaged in resolving family conflicts where humane considerations outweigh everything else *(Diwan, 1985).*

Special procedures, (as opposed to the regular procedures employed by the courts while trying cases on other civil and criminal matters), must be resorted to while addressing family law issues. The chief constituents of such special procedures must involve judicial endeavours aimed at "resolving and reconciling differences, and where necessary, obtaining assistance *(Diwan, 1985)"*.

This squarely leads to the inference that in matters involving familial conflicts, the traditional adversarial setup needs to be supplanted by a less formal (inquisitorial) procedure. Furthermore, to address the practical realities and abrupt exigencies that percolate a family conflict, each case needs to be scientifically monitored for a better selection of appropriate justice-dispensation mechanism/ case management techniques as evinced in the Lighthouse Project.

1. *Special Provisions in the Family Courts Act, 1984: Appointment of Specially Qualified Judges to Deal with Family Law Matters*

In the present segment, we shall gauge if the Indian Family Courts Act, 1984 mirrors the resolve around allocation of professional resources, risk-assessment and phased-planning adopted by the Lighthouse Project in dealing with family law matters.

The Family Courts Act, 1984 *(The Family Courts Act, 1984)* brings about a welcome departure in the trial of cases in the sphere of family law in as much as it overhauls the erstwhile structure where family matters were entrusted to the same district judges who would try ordinary civil and criminal cases. Hitherto, such judges were inadequately equipped and lacked the softer interpersonal enterprise to address family conflicts. Under their background to try regular civil and criminal cases, judges in the erstwhile setup would invariably invoke regular adversarial procedures even while deciding family law cases.

As a corollary to the preceding premise, we fall back to Diwan's averment where he contends that family law matters exert and mandate a "different matter, different culture and hence, a different jurisprudence *(The Family Courts Act, 1984)*".

Section 4(4)(a) (The Family Courts Act, 1984, Sec. 4(4)(a), Family Courts Act, 1984, which stipulates conditions for appointment and selection of judge(s) of a family court ensures that only those person(s) are appointed who are "committed to the need to protect and preserve the institution of marriage and to promote the welfare of children, and are qualified because of their experience and expertise to promote the settlement of disputes by conciliation and counselling.”

Furthermore, to ensure better representation, an inclusive outlook and an enhanced understanding of family law matters, Section 4(4)(b) (The Family Courts Act, 1984, Sec. 4(4)(b)) of the Act of 1984 provides that “preference shall be given to women” in the appointment of judges of the family court.

2. *Collaborative Processes Ingrained in the Family Courts Act, 1984*

To further apprise the family courts of the dynamic and buoyant character of family law issues, Section 5 (The Family Courts Act, 1984, Sec. 5(a–d) of the Family Court Act, 1984 endeavours to confer a comprehensive design upon the working of family courts in India by associating the functioning of family courts with social welfare organisations, professionals engaged in promoting family welfare, persons engaged in the field of social welfare, and any other individual who could effectively contribute to the fulfilment of the purposes of the Family Courts Act, 1984. Section 12 of the Act enumerates the provision of seeking assistance from medical and welfare experts (preferably women) while discharging the functions of family courts.

Section 6 (The Family Courts Act, 1984, Sec. 6), Act of 1984, caters to the collaborative approach discerned by *Lynda Walters* in the first segment since it carves out a provision for seeking the assistance of counsellor(s) in discharge of the functions of a family court.

3. *Mandatory Reconciliatory Procedure(s) in the Family Courts Act, 1984: A Statutory Bid to Preserve the Institution of Family*

In line with Paras Diwan's proposition that reconciliatory mechanisms should occupy centre stage while dealing with family matters so that the institution of marriage and family is preserved, Section 9 (The Family Courts Act, 1984, Sec. 9) of the Family Courts Act, 1984 makes it mandatory and incumbent upon the court to endeavour assisting and persuading the concerned parties in arriving at a settlement before passing any decree. At this juncture, it is noteworthy that Section 9 of the Act of 1984 which mandates an endeavour towards a settlement on the part of the state is not a discretionary provision, it rather is a mandatory statutory requirement. The terminologies resorted to in Section 9(1), Act of 1984 underscore the mandatory character of the provision where recourses are taken to the phrases, "shall" and "in the first instance", Furthermore, Section 9(2) enables the Court to adjourn the proceedings in view of effectuating a settlement "at any stage" when there exists a "reasonable possibility of settlement between the parties".

It is noteworthy that statutory provisions corresponding to the essence and import of Section 9, Act of 1984 have as well been formulated in Section 23(2) of the Hindu Succession Act, 1955(The Hindu Marriage Act, 1955, Sec. 23), Order 23A, Code of Civil Procedure, 1908 (The Code of Civil Procedure, 1908, Order XXXII-A), and Section 34 (3), Special Marriage Act, 1954(The Special Marriage Act, 1954, Sec. 34(3)), wherein reconciliatory and settlement endeavours on the part of the judiciary are mandatory.

V. THE NEED TO INCORPORATE THE LIGHTHOUSE PROJECT IN INDIAN FAMILY ADMINISTRATION: UTILITY OF SCIENTIFIC RISK ASSESSMENT IN FAMILY CONFLICTS

Prof. Daniel Mathew's exhaustive account on the practical functioning of the Family Courts Act, 1984, underscores an array of problems in the existing framework around the role of judges and counsellors in family dispute settlement *(Mathew, 2014)*. While the Act of 1984 calls for a mandatory reconciliatory mechanism in family law disputes, it does not concretely provide the means to achieve the desired reconciliation/efficacious settlement. The Family Courts Act of 1984 does not lay down a blueprint for operationalising inquisitorial and participatory tactics in family justice administration. One glaring loophole is the absence of concrete guidelines to be observed by the judges, counsellors and court staff in effectuating settlement of disputes. The absence of "minimum necessary requirements" are essential to avoid the settlement effort(s) from turning counterproductive. In the absence of proper guidance, the counsellors may resort to their personal enterprise, which may often be fragmentary (and at times deleterious) to the resolution of family disputes that mandate softer redressal tactics. Family counsellors have been reported to be involved in manipulation and misrepresentation of facts around "cost, time and possibilities" in reaching a settlement. There have been instances when counsellors have been "accused of intimidating and tricking the parties into accepting unfair claims *(Mathew, 2014)*. If the statutory scheme were to be remain devoid of proper guidelines, the very objective of the Family Courts Act, 1984 would be defeated. The avowed purpose of the Act of 1984 is to "provide a safe and secure environment for resolving family disputes with an understanding that such disputes should be resolved in an amicable and consensual manner" *(Mathew, 2014)* The purpose of the Act can be achieved as a living reality only when family court professionals have a well-defined standard operating procedure to follow. Another structural deficiency in the Family Courts Act is its overzealous enunciation of the need to essentially take recourse to Alternative Dispute Resolution (ADR) without spelling out the modus operandi. This procedural silence leaves undue and overarching leeway for the judges and counsellors to dictate their terms at the expense of the parties. In consonance with the preceding premise, Prof. Mathew cautions that even though the focus on "ADR is admirable, the legal fraternity should not turn a blind eye to the problems created due to an excessive push in the direction of ADR (*Mathew, 2014, p. 380*)." The purpose of the Family Courts Act, 1984 can be attained through "adequate support in terms of proper infrastructure, trained counsellors and cogent guidelines *(Mathew, 2014, p. 381)*." While the Act provides substantive underpinnings of the need to establish a reconciliatory framework, it fails to spell out the procedural nuances that would help translate ideals into reality. It is in this backdrop that lessons flowing from the Australian Lighthouse Project ought to be incorporated in the Indian setup. The Lighthouse Project presents a sequential methodology in identifying, triaging and resolving family disputes.

Further, the Act of 1984 fails to offer any safety net to ensure that the confidentiality concerns are secured (there merely exists a fleeting reference to the dry letters of confidentiality safeguards). There is little gainsaying that in the Indian social context, sharing domestic or familial grievances/ issues with the 'outer world' (or third persons) is considered to be a taboo. Ergo, while approaching the court of law, parties to family disputes generally might have to overcome "deeply entrenched social norms, patriarchal attitudes, gender biases, preconceived notions around marginalised and vulnerable sections *(Sood & Verma, 2024)*." In the Indian societal framework, seeking third-party intervention for resolving matrimonial/domestic disputes is often frowned upon. In this light, the confidentiality yardsticks set forth in the risk screening portal in the Lighthouse Project can be adopted. The parties ought to be assured of the softer interpersonal tactics invoked by the counsellors and family court professionals, who are in turn, extensively sensitised in the delicate nature of family matters. This level of sensitisation is evident in the example set by the Lighthouse Project. Henceforth, the resource constraints and socio-cultural roadblocks in effectuating family justice administration can be redressed through the precepts in the Lighthouse model.

This juncture coaxes us to pinpoint the real-world-working-formula presented by the Lighthouse Project as opposed to the mere substantive underpinnings on the scattered state of family law infrastructure. After having apprised ourselves of the grist of the Australian Lighthouse Project, we objectively deduce the central driving spirit behind its strategic outlook towards achieving justice in family conflict administration,

1. Appreciation of each family law case that comes up to the court of law as distinct, wherein it is acknowledged

that family law issues are incapable of being resolved by way of an umbrella framework, and hence ordain a tailored approach of careful judicial inquisition. It also reiterates the need to undertake a preliminary risk assessment before the conflict is triaged for risks or any other information vital to the case at hand;

2. The preceding mechanism can be operationalised through in-depth, technical, and professional research on the influence of statutory laws on the dynamics of the family as a unit of society. Statutes and legislation must be worded in a fashion that leaves sufficient room for appreciation of special necessities/ requirements of each family dispute. Succinctly, the letter and spirit of the Australian Lighthouse Project can be borrowed in the Indian legal framework for better appreciation of family risks, application of softer judicial tactics, and appropriate redressal mechanisms;
3. The working and dynamics of the family law system can be scientifically assessed through a collaboration among family and child specialists, lawyers and judges.

There exists little doubt that legislative and justice endeavours towards making the Indian Family Courts Act, 1984 (The Family Courts Act, 1984) progressive and contemporary galore. As a fitting response to the requirements of time and justice, the Act of 1984 has already been remodelled to enhance the role of family court professionals, softer legal techniques and reconciliatory mechanisms. However, one ostensible arena where lessons could yet be learnt from the Australian Lighthouse Project is the introduction of a mechanism wherein a comprehensive assessment is scientifically undertaken and cases-at-hand are,

- Classified (based on their criticality after a preliminary assessment), and;
- Triaged for risks.

Capacity-building techniques can also be introduced through proper collaboration and training of family-court professionals.

In a nutshell, as T. Brown and R. Alexander remark, the specialised court program mechanism unveiled by the Lighthouse Project seeks to introduce,

- An inquisitorial framework in family justice administration;

- a safety assessment portal that seeks to ensure safety plans at home, in the community and in court;
- expertise and education of key staff – specialised initial and ongoing education ought to be the guiding light when imparting training to family court professionals *(Brown & Alexander, 2022).*

One arena where the Lighthouse Project falters is its disregard in taking into account the concerns of the economically disadvantaged groups. Quite palpably, the costs of case management that involve pre-filing expenses to be incurred by the parties are hefty for the economically vulnerable *(Ingleby, 2023)*. If the Lighthouse Project were to be an efficacious blueprint towards resolving family disputes, provisions must be made to provide legal aid and financial support to the underprivileged parties seeking justice.

VI. CONCLUSION

A careful examination of the Family Court's Act, of 1984 reveals certain structural fallouts that call for reform along the lines of the Australian Lighthouse Project. The following arenas have been pinpointed for further statutory/ legal refinement,

(a) appreciation of the need to try each family law case distinctively given the peculiar merits of each case,

(b) the need to triage each family conflict for risks by way of a preliminary assessment, and

(c) in comport with Paras Diwan's observation, it is essential to adopt the softer inquisitorial method of justice administration in family-law conflicts in contradistinction to regular adversarial techniques. Family law issues must be dealt by a participatory method wherein the judges, counsellors and court staff conscientiously engage on a common platform to look for solutions (through risk identification, risk-management and triage classifications) instead of delivering a verdict where a victor (decree-holder) and a judgement-debtor is decided.

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BALANCING JUSTICE WITH HUMANITY: MODERNIZING INDIAN FAMILY LAW THROUGH GLOBAL PERSPECTIVES

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ABSTRACT

India's family laws, while aimed at justice and balance in personal disputes, often fail to meet these objectives and hence become devastating for the parties involved. The tragic case of Atul Subhash shows the human cost of systemic flaws within such frameworks. This paper critiques selected issues in Indian family law—namely, alimony, domestic violence, presumption of paternity, and child custody—through a qualitative and comparative analysis. It uses insights from legal frameworks of countries like Canada, Sweden, and Australia to suggest actionable reforms toward a more balanced and humane system. Recommendations include incorporation of prenuptial agreements, gender-neutral laws, shared parenting models, and fast-track judicial proceedings. The goal is to strike a

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balance between justice and empathy, bringing forth a modern approach to familial relationships while safeguarding the rights of all individuals involved.

Keywords- *Family Law Reform, Comparative Legal Analysis, Judicial Efficiency, Gender-Neutral Legislation.*

I. INTRODUCTION

Family laws play a critical role in shaping the structure and dynamics of modern societies, particularly in a country as diverse and complex as India (*Agnes, 2023*). These laws are intended to uphold justice, provide stability, and ensure fairness in familial relationships (*Law Commission of India, 2023*). However, the tragic death of Atul Subhash highlights the dire consequences of their failure to address contemporary challenges. Atul's story is emblematic of a larger crisis in Indian family law—a system that often perpetuates emotional, financial, and social harm instead of offering relief.

Research conducted by the '*National Crime Records Bureau'* (NCRB) reveals an alarming increase in suicides linked to matrimonial disputes (*National Crime Records*

Bureau, 2023). These numbers underscore the urgent need for reform, as the current framework frequently leaves individuals ensnared in prolonged legal battles that strip away their dignity and hope *(Supreme Court of India, 2023).* This paper seeks to investigate the shortcomings of Indian family laws, offering a comprehensive analysis of key issues, and proposing reforms that draw on successful practices from other countries *(Parashar, 2023).*

The central questions driving this research are: How can Indian family laws better balance justice and compassion? What lessons can be drawn from international legal frameworks to address the systemic flaws inherent in India's approach? *(Elizabeth, 2023)* By addressing these questions, this paper aims to contribute to the global discourse on family law reform and provide practical solutions to alleviate the suffering of individuals and families caught in its web. *(Ministry of Law and Justice, 2023)*

II. ALIMONY: STRIKING A BALANCE BETWEEN EQUITY AND INDEPENDENCE

The concept of alimony—a financial arrangement wherein one spouse provides monetary support to the other following a divorce—is deeply embedded in Indian family law, governed primarily by Section 125 of the '*Code of Criminal Procedure'* (CrPC), the *'Hindu Marriage Act, 1955*', and the '*Special Marriage Act, 1954'(India, 1973).* Originally intended as a safeguard for economically dependent spouses, alimony has increasingly become a contentious issue (Jaising, 2023). The existing framework often fails to distinguish between genuine cases of financial need and those that exploit the system for undue advantage *(Supreme Court of India, 2023).*

Indian courts frequently award alimony without fully considering the financial independence or earning potential of the recipient spouse *(Aruna Parmar v. Ranjit Parmar, 2023)*. This has led to cases where financially capable individuals continue to receive substantial support, imposing an undue burden on the payer. Comparative analysis reveals a more balanced approach in countries like Canada and the United Kingdom. In these jurisdictions, courts prioritize rehabilitative alimony *(Department of Justice Canada, 2023)*, designed to provide temporary support while the recipient transitions to financial independence. This approach minimizes long-term dependency and encourages self-reliance *(Sweden, 1987).*

Sweden, known for its progressive family policies, takes an even stricter stance. Spousal support is generally limited to cases where clear financial hardship is evident, and the duration of payments is typically short-term. Introducing similar criteria in India could help ensure that alimony serves as a tool for empowerment rather than a source of prolonged conflict.

One transformative measure would be the formal integration of prenuptial agreements into Indian law. While prenups are legally enforceable in many developed countries *(International Bar Association, 2023),* they remain underutilized in India due to cultural resistance and legal ambiguity *(Law Commission of India, 2023).* Prenuptial agreements allow couples to predetermine financial arrangements in the event of divorce, reducing the scope for disputes *(Kaul, 2023)*. To ensure fairness, safeguards against coercion and exploitation must be included. A clear legal framework for prenups would not only provide clarity but also promote a more transparent and equitable approach to marital finances *(National Commission for Women, 2023).*

As India modernizes, it must align its legal system with the complexities of contemporary relationships. Implementing alimony reforms grounded in global best practices would not only create a more compassionate and equitable framework but also respect the evolving rights and responsibilities of both parties. These measures would pave the way for a legal system that promotes financial independence, mitigates disputes, and reflects the changing dynamics of Indian society.

III. DOMESTIC VIOLENCE: SAFEGUARDING JUSTICE WHILE PREVENTING MISUSE

The '*Protection of Women from Domestic Violence Act, 2005'*, was a landmark piece of legislation aimed at providing relief and protection to women facing abuse within their households. While it has been instrumental in addressing domestic violence, its implementation has raised concerns due to allegations of misuse *(National Commission* *for Women, 2023)*. Data from the National Commission for Women (NCW) indicates that 10-15% of cases filed under this law are eventually deemed baseless *(Ministry of Women and Child Development, 2023)*, highlighting concerns about the potential for false accusations. At the same time, countless genuine victims continue to face barriers in accessing justice due to societal stigma, lack of awareness, and procedural delays *(Grover, 2023).*

International Practices in countries like Canada and Australia provide valuable lessons for India (Australia, 2008). These nations have adopted gender-neutral frameworks that extend legal protections to men and LGBTQ+ individuals. By broadening the scope of the law, they ensure that all victims of domestic violence receive equitable treatment. Incorporating similar provisions into the Indian legal framework could enhance its inclusivity and fairness, ensuring that justice is not compromised by gender bias *(Sweden, 2011).*

One effective reform would be the introduction of mandatory pre-litigation mediation *(Law Commission of India, 2023)*, as practiced in Sweden. Such mediation programs help distinguish between genuine and malicious cases, allowing courts to focus their resources on serious complaints. Mediation also offers an opportunity for reconciliation or amicable settlement in less severe cases, reducing the emotional and financial toll on all parties involved.

To address misuse, stricter penalties for false accusations should be implemented cautiously, ensuring they do not deter genuine victims from seeking justice *(Supreme Court of India, 2023)*. Concurrently, efforts must be made to strengthen support systems for genuine victims, including access to legal aid, counselling services, and shelter homes *(Elizabeth, 2023).*

Reforms in this area must strike a delicate balance between safeguarding the rights of victims and preventing the misuse of legal provisions. By adopting a more nuanced and inclusive approach, India can ensure that its domestic violence laws serve as a shield for the vulnerable rather than a weapon for the vindictive *(Delhi High Court, 2023).*

IV. PRESUMPTION OF PATERNITY: BALANCING SCIENCE AND SOCIAL WELFARE

Indian family law operates on the presumption that a child born during a valid marriage is the legitimate offspring of the husband. This principle, rooted in Section 112 of the Indian Evidence Act, 1872, aims to safeguard the welfare and legitimacy of children. However, advancements in genetic testing have introduced complexities, as scientific evidence can sometimes contradict legal presumptions *(Nandakumar v. State of Kerala, 2023).*

Consider the emotional and financial turmoil faced by a man who, through DNA testing, discovers that the child he has raised is not biologically his. Current Indian law provides limited recourse in such situations, often compelling the presumed father to continue fulfilling paternal responsibilities *(Law Commission of India, 2023).* While this protects the child's welfare, it can also lead to emotional and financial distress for the individual involved *(Journal of Indian Law Institute, 2023).*

In countries like Germany and Sweden, legal frameworks allow men to contest paternity through DNA evidence while maintaining provisions for the child's financial support *(Germany, n.d.)*. These systems strike a balance between scientific truth and the child's welfare, ensuring that no party is disproportionately harmed *(Sweden, 1949)*. India could benefit from adopting similar reforms, permitting the use of DNA evidence in paternity disputes while prioritizing the best interests of the child *(Supreme Court of India, 2023)*.

Reforms must also address the broader social implications of paternity disputes. Preserving the legitimacy of a child is critical for safeguarding inheritance rights and social standing. Any legislative amendment should be carefully crafted to balance these concerns, ensuring that the pursuit of truth does not undermine the child's welfare *(International Journal of Law and Policy, 2023)*.

Additionally, courts must be equipped to handle the emotional and psychological complexities of paternity disputes. Providing counselling services for parents and children can alleviate the emotional impact and foster a more humane resolution process. By prioritizing welfare and incorporating scientific advancements, India can align its family laws with contemporary realities while upholding principles of justice and compassion *(Indian Journal of Medical Ethics, 2023).*

V. CHILD CUSTODY: PRIORITIZING THE BEST INTERESTS OF THE CHILD

Custody disputes in India often devolve into protracted and emotionally charged battles, with children becoming unintended casualties of parental conflict (*India, 1984*). Historically, Indian courts have favoured maternal custody, guided by the principle of the "*Tender Years Doctrine*," which presumes that young children are better cared for by their mothers *(Sheela Barse v. Secretary, Children's Aid Society, 2023)*. While this approach has merit in certain cases, it often overlooks the importance of a father's role in a child's upbringing *(Law Commission of India, 2023).*

In contrast, countries like the United States and Australia have embraced *'shared parenting models'* as the default arrangement in custody cases. These frameworks emphasize joint decision-making and equitable division of parenting time, ensuring that children maintain meaningful relationships with both parents *(Australia, 1975).* Research consistently shows that children in shared parenting arrangements exhibit better emotional, academic, and social outcomes compared to those in sole custody arrangements *(Journal of Family Psychology, 2023).*

Indian courts have begun to recognize the benefits of shared parenting in cases such as *Vivek Singh v. Romani Singh* (2017), where the Supreme Court underscored the importance of both parents' involvement in a child's life *(Vivek Singh v. Romani Singh, 2023)*. However, the implementation of shared parenting remains inconsistent, hindered by societal norms and logistical challenges.

To institutionalize shared parenting, legislative amendments are necessary. The '*Guardians and Wards Act, 1890*', and the '*Hindu Minority and Guardianship Act, 1956*', should be revised to establish shared parenting as the presumptive arrangement, barring exceptional circumstances such as abuse or neglect. Additionally, parenting plans outlining responsibilities and schedules should be mandated to minimize conflicts and provide clarity.

Furthermore, the establishment of family counselling centres within court premises can facilitate amicable resolutions and reduce the adversarial nature of custody disputes (Supreme

Court of India, 2023). These centres can also provide psychological support to children, helping them navigate the emotional challenges of their parents' separation *(International Journal of Law and Family Studies, 2023).*

By prioritizing the best interests of the child and promoting shared parenting, India can create a more balanced and child-centric approach to custody disputes. This reform not only aligns with global best practices but also reflects a commitment to fostering the emotional and psychological well-being of children caught in the crossfire of familial discord. *(Child Rights Law Journal, 2023)*

VI. STREAMLINING JUDICIAL PROCESSES: ENSURING ACCESSIBILITY AND EFFICIENCY

One of the most significant challenges facing India's family law framework is the inefficiency of judicial processes. Lengthy delays, procedural bottlenecks, and overburdened courts exacerbate the distress experienced by litigants. According to data from the National Judicial Data Grid (NJDG), family court cases often remain unresolved for years, compounding the emotional and financial toll on individuals involved in disputes *(National Judicial Data Grid, 2023).*

Specialized family courts were introduced in India under the *'Family Courts Act, 1984'*, to expedite resolution and create a supportive environment for litigants. However, the system has struggled to achieve its intended objectives due to a lack of infrastructure, insufficient judicial personnel, and inadequate training. For instance, judges often lack expertise in handling the sensitive psychological and emotional aspects of family disputes, resulting in adversarial proceedings rather than conciliatory resolutions.

Countries like Singapore and Japan offer valuable insights into improving judicial efficiency in family matters. Singapore's *Family Justice Courts* prioritize mediation and counselling as integral components of case management. This approach not only reduces case backlog but also fosters amicable settlements *(Singapore, 2023).* Similarly, Japan emphasizes collaborative dispute resolution through non-adversarial court procedures and dedicated family counsellors *(Japan, 2023).*

To address these challenges, India must implement systemic reforms aimed at streamlining judicial processes. These include:

1) **Integrated Mediation Centres -** To reduce the adversarial nature of family disputes, independent mediation centres should be established as part of court complexes or standalone entities *(Law Commission of India, 2023).* These centres can encourage settlements before litigation, reducing court backlogs. Mediators trained in both legal and psychological aspects can help parties navigate their issues more amicably, fostering long-term resolutions. For example, *Singapore's Family Justice Courts* integrate mediation as a cornerstone of case management, significantly reducing case pendency and promoting collaborative solutions *(International Journal of Court Administration, 2023)*. By implementing similar models, India can address the stress and delays that plague its family court system *(Family Court Review, 2023).*

2) **Uniform Civil Code for Matrimonial Laws -** A '*Uniform Civil Code'* (UCC) can simplify and

harmonize matrimonial laws across all religions *(Law Commission of India, 2023)*. By addressing inconsistencies in personal laws related to marriage, divorce, and inheritance, the UCC would promote gender neutrality and reduce religious biases. Jurisdictions like France and Turkey have long adopted uniform civil codes, ensuring equality and accessibility for all citizens, regardless of faith *(France, n.d.)*. The adoption of a UCC in India could reduce litigation stemming from conflicting interpretations of personal laws and enhance access to justice.

3) **Introduction of Parenting Coordinators -** Parenting coordinators, commonly used in the United States, can be appointed in high-conflict custody cases to mediate disputes and ensure compliance with parenting plans. For instance, courts in California have mandated parenting coordinators in contentious cases, leading to improved compliance rates with court orders and reduced emotional distress for children. Introducing this practice in India could enhance the enforcement

of shared parenting frameworks and foster healthier post-divorce family dynamics.

4) **Legal Aid Clinics for Vulnerable Groups -** Establishing legal aid clinics for marginalized groups, including single parents, rural populations, and LGBTQ+ individuals, can address accessibility barriers. These clinics would offer free or subsidized legal representation, advice, and assistance, ensuring that economic constraints do not hinder access to justice. South Africa's *Legal Aid Board* provides a model for such initiatives, delivering widespread support to vulnerable citizens. Adopting similar programs in India would bridge gaps in access to legal resources and empower disadvantaged communities to assert their rights.

5) **Education and Awareness Programs -** Nationwide awareness campaigns should educate citizens about their rights and responsibilities under family laws. Collaborating with educational institutions to include basic family law concepts in curricula can foster a legally aware society, empowering individuals to make informed decisions. Countries like Finland

have integrated legal education into high school syllabi, equipping young citizens with the knowledge to navigate legal systems effectively. Implementing this reform in India could cultivate a culture of legal literacy, reducing conflicts and unnecessary litigation.

6) **Post-Divorce Follow-Up Mechanisms -** With the intent of collecting averments regarding an alimony, child support, and a child custody order enforcement, courts should create follow up monitoring mechanisms. An interesting model for these issues might be the '*United Kingdom's Child Maintenance Service'* which has certainly improved matters concerning children and the custodial parents. In a similar vein, the introduction of these mechanisms in India would enhance the compliance of family court orders.

7) **Revising Maintenance Criteria -** The maintenance regulations and laws are to be revised to the standards of modern time realities. Economic changes, remarriage or in the absence of marriage and self-sustaining after the divorce among others

are also issues that must be addressed in order to make maintenance awards applicable and just in the present-day world. A more self-sufficient society with more emphasis on bounded maintenance can be found in the maintenance laws of Germany and may be adopted by India in due time.

8) **Expansion of Specialized Family Courts -** To address regional disparities in access to justice, family courts should be expanded to underserved areas. Increasing the number of trained judges and staff in these courts will improve efficiency and ensure timely resolution of cases. Brazil's network of family courts has successfully reduced case pendency and enhanced litigants' access to justice. Replicating this model in India would alleviate the burden on overworked urban courts and extend justice to rural populations.

9) **Mandatory Pre-Litigation Mediation -** Just like the Swedish model, adopting pre-litigation mediation as a requisite for filing family cases can early settlement of disputes. It lightens the load on courts while strengthening the amount of amicable settlement,

emotional, and financial suffering of the litigants. According to Sweden's National Mediation Office, 70% of cases referred to mediation settle without going to court. Instituting this reform in India would bring great relief for the overload family courts in addition to reconciling disputing parties.

10) **Time-Bound Case Resolution** – Putting in place fixed times for the different kinds of family dispute resolution, especially with regard to children's grievances or claims for emergent assistance related to finances, was one of the most important reforms. The system of family courts in South Korea sets forth time-bound proceedings, which has helped in the improvement of efficiency and satisfaction from litigators.

11) **Psychological and Emotional Support Services -** Family courts should integrate psychological counselling services to support litigants and children. These services can help individuals cope with the emotional toll of family disputes, ensuring a more humane and comprehensive approach to justice *(Mental Health Law Review, 2023)*. New Zealand's

Family Court Counselling Service has been instrumental in addressing the psychological impact of disputes, leading to healthier outcomes for families. Establishing similar services in India would promote emotional resilience and holistic justice for all parties involved *(New Zealand, 1980)*.

By prioritizing efficiency and accessibility, these reforms can transform India's family courts into a system that delivers timely and compassionate justice. Addressing procedural inefficiencies is not merely a matter of legal reform but a critical step toward alleviating the suffering of those entangled in protracted family disputes.

VII. CONCLUSION

The intricacies of Indian family law reveal a framework that, while well-intentioned, often falls short of delivering justice and compassion to those it seeks to serve. Tragic cases, such as that of Atul Subhash, underscore the urgent need for systemic reforms to address the complexities of contemporary familial relationships. Through a critical analysis of key issues such as alimony, domestic violence, presumption of paternity, child custody, and judicial inefficiencies, this paper has sought to identify gaps and propose actionable solutions.

Comparative lessons from jurisdictions such as Canada, Sweden, and the United States serve to buttress the transformative potential of such measures as rehabilitative alimony, gender-neutral laws, shared parenting models, and streamlined judicial processes. These reforms not only comport with global best practices but have been an adaptive response to the peculiar socio-cultural realities of India. In other words, prenuptial agreements will bring clarity and reduce conflict in alimony disputes; also, the stipulation of mandatory pre-litigation mediation will serve to expedite case disposal and alleviate further emotional and financial burdens.

This paper highlights the need for interdisciplinary approaches to reform. The legal changes must be complemented with psychological support systems, community-based initiatives, and education campaigns that will help build resilience, facilitate healing, and empower litigants. The introduction of parenting coordinators, integrated mediation centres, and time-bound case resolution mechanisms can go a long way in making family courts more accessible, efficient, and humane in India.

At the heart of these reforms is a commitment to balance justice with empathy, the realization that family disputes are not just legal battles but something very personal. The proposed changes will create a system that protects the rights of all individuals, prioritizes the welfare of children, and restores dignity to families going through the darkest of times. Such measures can help India change the face of its family law framework to become one that truly reflects equitable and compassionate justice.

Ultimately, achieving these goals requires a collective effort from legislators, the judiciary, civil society, and individuals. The proposed reforms are not an end but a beginning-a roadmap toward a more just and inclusive legal system that reflects the evolving needs and aspirations of its people.

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THE MAURYAN EMPIRE'S LEGACY: A GOLDEN AGE OF JUSTICE IN ANCIENT INDIA

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ABSTRACT

The Mauryan empire (322 BCE – 185 BCE) a pivotal point in Indian history. The romanticized notion of the Mauryan era as a "golden age" of justice is not enough, and this paper delves deeper into the empire's legal system and its lasting impact. We will analyse administrative structures and legal principles that were established during Mauryan rule. Furthermore, it will examine the role that concepts like dharma (righteous law) played in shaping judicial processes and outcomes within the context of prevailing social order. One important theme to be discussed is emperor Ashoka who converted to dharma after witnessing the ravages of war. This section will examine how far his edicts and reforms translated into a more just society. Thus, we will take a look at whether he was able to bring about a fairer and more just society through his edicts and reforms. This part also

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examines if there is any evidence to suggest that these edicts or reforms led to any positive changes in society.

Beyond Ashoka: however, this analysis does not confine itself only within Ashoka's reign. By considering archaeological data, political treatises such as Artha shastra, and historical records; this paper seeks to trace the development of Mauryan legal system over time from its inception till its termination with emphasis on its implications for India as whole. In doing so, one can gain better insight into what has been termed as 'the legal legacy' of the empire.Comparative analysis: it should however be noted that research is never carried out in isolation but it is always part of an ongoing conversation with other scholars thus; "compare" should replace "isolate." Comparatively therefore, there are many different policies which have been implemented by governments over time when compared with those used by other countries in India like post-independence period law systems.

Keywords: *Mauryan, Ashoka, Legal, Indian, Indigenous Justice Dispensation, Comparative Analysis.*

I. INTRODUCTION

To understand the grandeur of the Mauryan Empire, we turn to a blend of ancient texts and inscriptions. Megasthenes ***"indica"*** (*Rangachari, 2022*) provides a foreign observer's account, while Kautilya's "***arthashastra***" reveals the empire's complex governance, additionally Buddhist texts and ancient chronicles like "***divyadana"*** & "***ashokvadana***" also provide valuable references. However, the most significant source remains the inscriptions of Ashoka, marking the inception of Indian epigraphy. The nation with the greatest might at the height of Alexander's conquest of India was Magadha, which was led by the Nanda. During the reign of Nanda's successors, the Maurya's, Magadha's power peaked. However, a new era dawned for India as the Mauryan Empire rose from the ashes of the oppressive Nanda dynasty. Chandragupta Maurya's inspiring leadership ignited a new era for India as the Mauryan Empire emerged in 322 BCE. For the first time, a unified India emerged, stretching from the subcontinent's heartland to its north-western frontier. This was made possible by his alliance with the astute strategist, Kautilya, the mastermind behind the rise of the empire. Seizing the opportunity presented by

Alexander's retreat, Chandragupta Maurya ascended to the throne as ‘Maharaja’, ushering in the Mauryan Empire and a revolutionary era for India.

II. SIGNIFICANT RULERS OF THE MAURYAN EMPIRE

A. ***Chandragupta Maurya (324-297 BCE)***

Chandragupta Maurya's origins remain a subject of debate, with various accounts suggesting humble beginnings, royal lineage, or a combination of both. While some sources portray him as a low-born individual or a Nanda scion, others claim a noble Kshatriya ancestry. The Buddhist texts, written centuries after the Mauryan dynasty, describe Chandragupta as a Kshatriya, linking him to the Shakya clan of Gautama Buddha. However, Greek sources and some Hindu texts depict him as a commoner or a member of a lower caste. Regardless of his origins, Chandragupta emerged as a powerful ruler, establishing a vast empire that stretched from the Indus Valley to the Ganges plains. His military prowess, evident in his conquests and treaty with

Seleucus I Nicator, solidified his position as a significant figure in Indian history.

B. *Bindusara (297 BCE – 272 BC)*

Bindusara, Chandragupta Maurya's son, inherited a vast empire and maintained it through military prowess and diplomacy. While known as Amitraghata ('Slayer of Enemies') (*Mitra, 2017*) In Indian texts, he was Amitrokhates to the Greeks. He joined the Ajivika sect founded by Makkali Gosala & continued the diplomatic ties with the Greek rulers, exchanging gifts and philosophers.

C. *Ashoka (268 BC – 232 BC)*

Ashoka, initially known for his ruthless conquests, notably the Kalinga War, underwent a profound transformation after witnessing its horrors. He embraced Buddhism, renounced violence, and dedicated his reign to peace and religious tolerance. His edicts, inscribed on stone pillars and rocks, promote Dhamma, a philosophy of non-violence and ethical living. Ashoka's legacy endures as a beacon of peace and a pivotal figure in the spread of Buddhism.

III. THE MAURYAN LEGAL SYSTEM

Since before the Mauryan dynasty, there existed a fountain source of the administration of justice in the form of sovereign. The main attributes of this sovereign were dispensing justice and punishing the convicts. According to the "***Puranas***", there existed a hierarchy of courts in post Vedic period which started with the family courts and concluded with the King. Such hierarchy when translated into today's judicial system has similarities with the districts courts as the lowest in the chain of power and the Supreme Court acting in similar ways as to a King's Court. Such similarity can also be observed in the role and conduct of a Judge and the judicial code of conduct prescribed for a king when adjudicating disputes, requiring him to be impartial, and decide cases without bias. The earliest mentions of the Rule of law in Ancient India can be found in Vedic historical texts like the "***Ramayana***" and the "***Mahabharata***" where it was laid down that it was the duty of the King to protect its subjects and such king who shall fail in his duties is no king at all. What is interesting in the Mauryan period is that this was the first time in history that traces of an attempt to give a set structure to these Vedic practices was found.

The Mauryan Empire has been defined by historians as a period of much sophisticated and elaborative Bureaucracy and administration of a state. The methods used for governance were transformative, complex, and unknown any time before the Maurya's. The thought of having a centralized power system with the king in charge of the entire kingdom but with a council of ministers to assist him has been translated into modern legal system of Prime Minister and the Parliament. Kautilya, popularly known as Chanakya or Vishnu Gupta, has been credited as being the mastermind of the establishment of the Mauryan empire. Described by many as a philosopher and statesman, he is accredited with providing guidance to Chandragupta Maurya. Kautilya's "***Arthashastra"***, is perhaps one of the most important sources of information in respect of the study of Mauryan period. It is a theoretical text describing the economy, statecraft, political administration, military strategy, and social institution in a state. Even though it does mention any state, it is widely believed to be written and used during the Mauryan administration since there exists a correlation in the methods employed during the period and the methods described in the texts. There exist four goals or aims of a human existence called the *Purushartha* according to Hinduism, which are "***Dharma***" (right way of living), "***Artha***" (means of life), "***Kama***" (love and pleasure), and "***Moksha***" (liberation). ***Arthashastra*** (Mookerji, 1966) for kautilya aimed to, addresses the twin responsibilities of a ruler: the preservation of the realm and the expansion of dominion. The ultimate objective of the Arthashastra is ***Yogakshema*** i.e., the safety and prosperity of the state, he identifies four core subjects that act as pre-requisite for achieving this, ***Anvikshiki*** (logic), the Vedas (theology), ***Vartta*** (economics), and ***Danda-Niti*** (politics). While the latter three are well-understood, *Anvikshiki*, the foundational discipline, is unexplored. *Anvikshiki*, the foundational discipline of logical inquiry, is rooted in the knowledge of philosophy & central to his philosophy, the development of a well-rounded leader, had to be one who possesses all 4 principles which can be summarised as follows:

1) Self-Discipline and Ethical Conduct - Kautilya stresses self-discipline and ethics as necessities for effective leadership. He advocates moderation, non-

violence, truthfulness, and compassion and self-control.

2) Intellectual rigor and critical thinking - Kautilya advocates for a comprehensive education in philosophy, logic, economics, and politics. A sharp intellect and discerning mind enable leaders to analyse complex problems and develop innovative solutions.

3) The Art of Intelligence - He prioritizes intelligence gathering and analysis & emphasizes direct observation and indirect information, recognizing the value of collective deliberation for accurate and timely resolution.

4) The Balance of Power - He recognizes the importance of power in international relations & advocates a balanced approach, combining military strength with diplomacy and economic power.

5) The power of adaptation - Kautilya stresses continuous learning and adaptation & preaches openness to new ideals ensures adaptability to changing circumstances.

In its essence, *Arthashastra* offers a timeless exploration of the intricate relationship between *Dharma* and *Artha*. Their dynamic interplay, is a central theme in Indian philosophy and statecraft, is essential for effective governance. While *Dharma* provides a moral compass, guiding leaders towards ethical conduct, *Artha* necessitates strategic action, involving complex political manoeuvres. A successful ruler, according to Kautilya, must skilfully balance these two seemingly opposing forces. Employing *Dharma* as a guiding principle & simultaneously, by utilizing *Artha* as a practical tool, a ruler can effectively achieve their political objectives and secure the well-being of their kingdom. Kautilya's insights into the relationship between *Dharma* and *Artha* continue to resonate with contemporary policymakers & remain relevant in today's complex world. *(Sen, 2022)*

IV. DANDA-NITI

Kautilya, in his *Arthashastra*, presents a hierarchy of law sources, with ***Dharma*** (sacred precepts based on truth) holding the highest position, followed by ***Vyavahara*** (agreement), ***Charitra*** (custom), and finally, ***Rajasasana*** (royal decree). (*Dikshitar, 1932*) While *Rajasasana* appears as the lowest, it is ultimately grounded in *Nyaya*, or what the king deems right and just. In essence, the king's application of law, or judge-made law, is determined by his understanding of *Nyaya*. *Nyaya*, therefore, emerges as the ultimate source of law. The *Arthashastra* acknowledges potential conflicts between established customs, *Dharmashastras* (like Manu's), and royal decrees. In such instances, *Dharma*, as interpreted from *Dharmashastras*, takes precedence over both witness testimony and the king's immediate opinion. However, when a conflict arises between *Dharmashastra* and *Nyaya*, supported by *Charitra*, *Nyaya* prevails. The text emphasizes that in such cases, the authority of *Dharmashastra* maxims diminishes. Kautilya highlights the King's role as the upholder of '*Danda,'* the embodiment of law that governs all, irrespective of caste or social status. This "*Raja-dharma*", which ensures equal application of law to all, not only maintains order in this world but also paves the way for a virtuous afterlife.

The core of ancient Indian political philosophy, notably expressed in the *Arthashastra,* is the idea of '*Danda*', or coercive authority. According to an iconic origin story, monarchs were given the divine skill to enforce order since the gods were unable to properly supervise humans. This highlights the royal obligation to uphold social cohesion and administer justice. The significance of *Danda* was further proven by early jurists such as Gautama and Vasishtha. Vasishtha stressed the need of applying *Danda* to those who transgress *Dharma*, irrespective of their social status, while Gautama underlined the king's duty to defend all beings and assure fair punishment. Manu dwelt on this, underlining the value of a moral leader and the implications of abusing *Danda*. Through Bhishma and Yudhisthira's dialogue, the *Mahabharata* reveals *Danda's* vital role in preserving *Dharma* and its essence. The vital role of *Danda* in sustaining social order and penalizing those who defy social norms was noted by future thinkers such as Yajnavalkya and Narada. Kautilya investigated the effects of several *Danda* tactics, he stated, its absence would lead to social anarchy and the "law of the jungle" (*Matsyanyaya*) would apply, with the strong preying on the weak. On the contrary, he argued that just and equitable application of *Danda* would uphold morality, foster positive behaviors, and insure a tranquil functioning of society. (*Mehta, 1980*)

Whereas in the Indian constitution, a fair and independent judiciary was always a top priority. This is accomplished by maintaining clear functions for the legislative, executive, and judicial departments as well as by preventing any one of them from gaining undue authority. A key aspect that shields the court from undue political influence is judicial independence. The supremacy of the rule of law ensures that all citizens, regardless of their socioeconomic or political status, are treated equally before the law. Constitutions protect fundamental freedoms and rights, giving the judiciary the authority to administer them through judicial review. Furthermore, the constitution spells out basic obligations for each citizen, stressing their duty to the country, including maintaining its integrity and sovereignty.

Drawing parallels from *Arthashastra* and the *Smriti* literature, the *Dharmashastra* embodies the modern-day constitution which contains laws whose foundation is laid by the concepts of *Dharma* and *Charitra*. The concept of *Nyaya* is tricky to navigate as if literally translated means ‘Justice’ but when perceived in a holistic view is open to many possible interpretations. Amartya Sen in his book ***“The Idea of Justice,”*** (*Sen, 2009*) has interpreted *Nyaya* as a way of people's lives and not just the largely accepted notions of right and wrong by the society whereas, Rawls has related it to fairness. (*Srivastav, 2016*)

The complex concepts of *Nyaya* and *Niti*, having undergone centuries of interpretation, have today commonly been accepted as Justice Dispensation by the judiciary and rule of law derived from customs which ensures fairness. The process and procedure of *Nyaya* in ancient India included *Danda* or loosely translated to punishment. Many modern-day philosophers and law makers have embodied the theories of Kautilya in developing tactics of *Danda* to ensure social order and has a negative reinforcement for people. The new age *Danda* or punishment is basis of any modern democracy to survive and develop a peaceful society. Upon understanding the concepts of the Judicial system of ancient India, it would not be inappropriate to conclude that today's Judiciary and Administrative system are following the same footsteps.

V. JUDICIAL REFORM

Since its inception in ancient books such as the *Vedas*, *Puranas*, *Manusmriti*, and *Arthashastra* etc., Indian legal thought has seen immense transformation. While these texts offer valuable insights into medieval beliefs on justice, their sociocultural setting had a major influence on them, and they often portray limited autonomy and social pyramids. Whilst the *Vedas* embraced the idea of justice, they braided it with religious and ceremonial customs, anchoring it within a divine order unlike codified law. Despite its diligent legal pledges, the *Manusmriti* contributed to social disparities, with regulations that differed widely via gender and caste. In a similar vein, the *Puranas* reinforced ethics but lacked a code of law that could handle every facet of contemporary life. Though more pragmatic, the *Arthashastra* set the reign in the grasp of the ruler and endorsed the idea of *Dharma*. Kautilya felt that societies ought to thrive on "norms of cooperation" and social duty. He envisioned a socialistic world where people were obligated to give back to the society in various ways, comprising labour or kind, and failure to accomplish so would result in fines. Along with focusing on public welfare and state backing, social exclusion was used as a form of punishment, and societal barriers and rewards for the greater good were touted, all of these contributed to feelings of collective responsibility.

Although these models may have been fruitful in the past, they are not suitable for use in the diverse, modernized, and democratic society of today for an array of reasons, involving:

1) Lack of liberty: Whilst it placed a high priority on the good of the community, the old system might have flouted people's rights and liberties. Individual liberties and rights are given prominence in modern legal systems, which aim to shield people from undue social pressure and coercion. Engaging with others is vital, but individual freedoms should not be jeopardized.

2) Exclusion or Archaism: The use of social exclusion as punishment, such as denying access to community events, is considered archaic and potentially discriminatory. Modern legal systems emphasize impartial and legally-based punishments, not social judgments. Such exclusion can exacerbate social

inequalities and contribute to societal fractures, which modern legal systems strive to address.

3) Responsibility v. Accountability: The prior system often relied on collective responsibility, honouring, or chastising large groups based on the deeds of one individual. Personal liability receives prominence today's legal systems, that ensure punishments are awarded by acts of particular people rather than the group which they associated with. The bedrock of an egalitarian society is the premise of own accountability.

However, by taking cues from these periods, modern towns can create more equitable and active models of leadership that tackle current problems while fostering a feeling of belonging and shared accountability, such as:

1) Community participation: Programs like volunteer efforts, community policing, and community service as a form of penalty can help raise awareness. Not solely relying on punitive measures, and considering restorative justice and reconciliation, wherever possible.

2) Decentralization: Kautilya suggested devolving the legal system while setting explicit procedural timeframes, stating the necessity for prompt justice.

3) Literacy: Kautilya held that information enables citizens, and promoted outreach efforts this can be done by education programs and community-based literacy projects to close the legal awareness gap.

4) Prevention and investigation: Kautilya advocated the notion of using informants and spies to track societal concerns like at-risk youth and preventive policing to uphold law and order.

5) Technology: Although Kautilya did not address technology, his priority on efficiency and orderly execution of affairs coincides with today's emphasis on utilizing technology for effective management, such as digitizing court records and overseeing case backlogs with artificial intelligence. Utilizing e-courts for better administration of justice.

VI. CONCLUSION

We understand via Kautilya's *Arthashastra* and its vivid memory that India's pre-modern political ethos is not just "dead letters" that were once preserved in archives. In the sense of "modernity of tradition" and "re-use of the past," pre-modern politics is still key in India. The prudent thinking and behaviour patterns of Indian elites inadvertently include Kautilyan principles. The basics of Kautilya are ingrained in Indian techniques. A buried factor that is firmly rooted in the primary political thought of the Indian folk are Kautilyan tenets. This trend, which is in sync with India's resurgence, may open the door for a global political theory that serves as an epistemic link between the varied political groups in our intertwined globe.

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NEW REFORMS IN DISTRICT JUDICIARY FOR SPEEDIER JUSTICE

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ABSTRACT

District courts are the most plagued with pendency of cases. They face persistent challenges of case backlog and procedural inefficiencies, undermining the promise of timely justice. There have been numerous reforms in the legal landscape before, such as the introduction of ADR mechanisms and technology-driven courts to reduce pendency, but there is still room for further reforms. These include reforms both at the institution level and at the individual judge level. In light of this, the paper presents new reforms that have not been explored or fully exploited by the legal system yet. It includes centralized research wings, staff training in ICT, training in non-law areas, emphasis on written submission, etc. Each suggestion is discussed in

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detail to effectively implement it, highlighting the need for such change to be done. These are suggested keeping in mind the viability of implementation given the existing infrastructure and framework of working of the district judiciary. Further, most of these reforms are actionable by the judicial institution itself without much aid from the executive or the legislature. To identify such gaps in speedy justice, personal experience has played an important role, which has been assessed by academic literature to bolster the suggestion. Therefore, this paper provides for practical and cost-effective methods for improving the rate of case disposal.

Keywords: *district judiciary, speedy disposal, new reforms, pendency.*

I. INTRODUCTION

It has been established through years of study and research that the Indian judiciary is plagued with an astronomical number of cases. *(Ghosh, 2018)* The huge crunch of cases has been tried to be dealt with by reforms in the field of technology, setting up fast-track courts, and encouraging

ADR processes (Ministry of Law and Justice, 2024). However, there still needs to be further reform in the subordinate judiciary to provide speedier justice. Though the situation has eased with the introduction of ADR and technology in litigation, it remains bleak. There is a need for new reforms today that address the speedy disposal of pending cases in a fair and just manner.

This paper attempts to address the challenges faced by the subordinate judiciary which slows down the process of law. It does so not by suggesting already suggested methods of speedier justice, but by making attempts to revolutionize the judiciary and introduce new techniques to provide speedier justice. It involves reforms both at the level of an individual judicial officer and at the level of the judicial institution.

Most of these suggestions originate from personal experience in the courtroom. Cues have also been taken from research papers and books to further understand the problems faced by the judiciary. It has been tried to avoid the solutions already suggested before in order to make room for new thinking and new innovation. Though the previously suggested reforms over the years have been wonderful, there is a need for new approaches to strengthening the judiciary and equipping it with solutions for the new generation of problems.

The reforms suggested in this paper are not easy to implement as they require structural and managerial reforms to be made by the High Courts and legislatures. Nevertheless, it is hoped that the suggestions will be taken forward by the judicial institutions and come out positively in the real world.

II. ESTABLISHMENT OF A CENTRALISED RESEARCH WING

The Supreme Court and the High Courts appoint law clerks to assist the Hon'ble Justices. These are usually appointed through examinations and assist in research work for judgments. However, no such equivalent position is there in the district judiciary to assist the judicial officers in district courts. All judicial officers need to do a lot of research, not just on law but other subject areas as well to understand and adjudicate a case *(Lokur & Singh, 2024).*

Without a researcher with them, judicial officers themselves have to do all the research which can take up significant amount of time. With extreme pendency of cases and complex crimes that are time consuming and require thorough research, judges often resort to non-ideal choices like adjournments, relying only on material provided by the counsel, and hasty orders without application of judicial mind. *(Lokur & Singh, 2024)*

It is suggested that a Centralised Research Wing be established in all District Court complexes to answer the queries and research on law points as required by all judicial officers in that court complex. This system of a central research wing will be economically more feasible than providing each judge with a personal researcher or law clerk, as with this only few researchers can cater to the needs of a large number of judicial officers. Through a proprietary system of intranet, the queries can be anonymously posted by the judicial offers, and an anonymous researcher can provide the required research work. Moreover, the research wing can engage law interns to help them understand the intricacies of practical law and also run the wing more efficiently and cost-effectively without utilising much human resources by engaging employees by the state.

III. Training of Court Staff in Technical Aspects

A bench headed by the former Chief Justice of India DY Chandrachud verbally remarked,

"The question is not whether a judge is tech-friendly or not. If you have to be a judge, you have to be tech friendly. If you want to be a judge in this country, you must know technology and every judge needs to be trained." (Supreme Court of India, 2023)

The remark from the Apex Court signifies how vital technology training is for the judicial staff and officers. From virtual hearing, video conferencing, accessing orders and judgement online, technology and digitisation have bridged the gap between the court and the litigant, ensuring justice not at doorstep but at fingertip. *(Supreme Court of India, 2023)*.

Recently, there have been many initiatives launched under the e-Courts Project that were based on the National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005. This included digitisation of courts in three phases, formation of National Judicial Data Grid, e-Courts Services, Virtual Courtroom Systems and video conferencing, e-filing, National Service and Tracking of Electronic Processes (NSTEP), Fast and Secured Transmission of Electronic Records (FASTER) etc.

All these reforms are aimed at strengthening the judicial institution and the judicial officers with technology. However, equally important is the training of court staff in practical ICT skills. Staff such as stenographers, reader (or courtmaster), and *ahlmed* (file keeper) must be trained in multimedia ICT skills too. This includes video editing, photograph editing, audio editing, conversion and correction of corrupted files, etc. These applications are necessary to save time in court proceedings.

Oftentimes, CCTV footage is presented as evidence but is not very clear or bright. Normally, the party submitting the footage is asked to submit another copy of the footage on the next date of hearing, which should be more clearly visible. This practice wastes time of the court. Videos are very easy to brighten up, increase contrast, slow down, and convert to a more technologically friendly format. These basic editing skills can be taught to court staff so the court itself can apply video editing tools to see the video and not waste a date. Similar training needs to be imparted in photograph editing, whereby a digital photo can be brightened or made clearer. Editing audio recordings is also possible to remove noise and increase volume. Apart from this, it is common that digital files submitted are corrupted or are in an incompatible format. A corrupted file can be repaired or corrected by the court and an incompatible file can be converted to a compatible format for easy use. All these multimedia editing skills should be taught to the court staff so that a date is not wasted of the court in asking for a better version of the digital file. Instead, the file can be worked upon in the courtroom itself as per need.

Further, there has to be some structural changes in technical support for e-filing and e-payment processes in courts as it is often handled by contractual or outsourced staff from external agencies. Currently, the IT Cells of the High Court and district judiciary rely heavily on State/Central Government bodies like the Department of Information Technology and NIC, leading to delays in implementing ICT initiatives. *(Supreme Court of India, 2023).*

The existing IT infrastructure needs strengthening to independently address technological requirements and troubleshooting. District courts in 25 states have a working technical workforce of only 364.2 against the sanctioned strength of 985.5, highlighting significant gaps in the system for effective ICT implementation. *(Supreme Court of India, 2023).*

A well-equipped, dedicated workforce is essential for efficient ICT enablement in the judiciary. To address this, there is a pressing need for a permanent technical cadre within the district judiciary. *(Supreme Court of India, 2023)*

IV. IMPROVING INTERACTIONS BETWEEN JUDICIAL ACADEMY AND COURTROOMS

Judicial officers are often faced with questions of great importance, ethical or legal, which are not taught to them in the judicial academy as routine. This leaves them with a dilemma in choosing what is the right thing to do, especially when the law is also silent on the question posed to them. *(Supreme Court of India, 2024)*. During these times, the judicial academy can be of great importance, with retired judges and professors from the academia helping judicial officers. For this there needs to be a tighter integration of the judiciary and the judicial academy of all states so that judicial officers can easily contact the academies to pose the challenges they are facing, and academies can hold training programmes on the same. Such problem-focused training by academies will be much more beneficial to the judiciary as the specific challenges which arise in the practical courtroom will be resolved, instead of undergoing mere general training programmes.

The second recommendation is specific to civil suits. Civil suits often involve complex issues arising from non-legal factual contexts. For instance, a breach of contract related to supplying engine parts to an airline may require some understanding of aviation. Similarly, cases of medical negligence benefit from knowledge of basic medical procedures, and in electricity-related cases, a judge must grasp the workings of electricity supply to better comprehend its theft. Therefore, judges must not only be well-versed in legal principles but also understand the factual background of disputes from a non-legal perspective.

In specialized courts, such as those dealing with electricity matters or motor accident claims, the types of disputes are easier to identify. However, general civil courts face a broader range of disputes. It becomes necessary to identify the most common types of disputes based on factual contexts rather than legal principles. By narrowing these down to three or four key categories, judges can receive targeted training in non-law areas. Judicial academies in each state could invite experts from relevant non-legal fields to provide lectures, offering judges practical insights into these specific areas.

Such training would greatly benefit the judiciary by enhancing judges' understanding of litigants' problems, reducing dependence on expert witnesses, and minimizing the need for advocates to explain the factual aspects of disputes to the presiding officer.

V. INSISTENCE ON WRITTEN SUBMISSIONS

In district courts, advocates commonly rely on oral arguments rather than written submissions. During hearings, advocates present their arguments orally, while judges take handwritten notes for future reference. These notes, though intended for convenience, can be incomplete and may overlook important details or nuances due to the limitations of capturing everything the advocate says in real-time. Consequently, judges typically have only their notes to refer to when deciding cases, which can lead to critical points being missed.

To address this, it is advisable for advocates to submit written arguments in court, as these provide a comprehensive account of the case. Oral submissions could be limited or even omitted in some instances. Courts could require advocates to provide written arguments when necessary and, in certain cases, allow advocates to submit their arguments in writing and leave without presenting them orally. This approach would save court time by reducing the need for lengthy oral hearings, enabling judges to focus on reviewing written submissions and adjudicating efficiently.

While the Law Commission of India has recommended against mandating written submissions *(Law Commission of India, 1984)*, implementing such a requirement could significantly reduce the time spent on oral arguments and improve record-keeping. Notably, in Maharashtra, 69% of judges and 50% of advocates favour written submissions over oral arguments, reflecting a shift in litigation practices and preferences among legal professionals. *(Mahadik, 2018).* It is noteworthy that through this practice, neither party's right to put forth his case is jeopardised while time is also saved.

VI. OVERSEEING WITNESS EVIDENCE OUTSIDE COURTROOM

While a witness in a civil suit is being examined, the presiding officer has a very limited role and merely oversees the examination. Under Order XXVI, courts have the discretion to appoint commissions for specific duties outlined in Section 75, with the expenses for such appointments being borne by the requesting party. It is proposed that commissions should be mandatorily appointed for the examination of witnesses. A panel of retired judges could be established to serve as commissions, ensuring fair and impartial examinations. Witness examinations could then be conducted outside the courtroom, either in designated areas or at locations convenient for the parties, thereby saving valuable court time. The associated costs could be covered by the state, either through an increase in court fees to account for such commissions or through an alternative funding mechanism.

This proposal is based on the rationale that during witness examinations, the presiding officer primarily supervises the proceedings to ensure that the parties' rights are protected and the principles of natural justice are upheld. Retired judges could perform this supervisory role just as effectively. The time saved from these proceedings could be better utilized by presiding officers for hearing additional cases, conducting legal research, or drafting orders and judgments.

VII. DECENTRALIZATION OF ADMINISTRATIVE WORK

A District Judge has both administrative and judicial functions. For example, the Principal District Judge is responsible to ensure registration and filing of cases in the district, issuing certified copy of judgements/orders, maintaining registers and records and organising legal aid programmes under his supervision. *(Lokur & Singh, 2024).* Most often, the excessive administrative burdens the district judiciary and consumes valuable time and resources, thereby hindering the efficient disposal of cases. (*Kumar, 2024*)

The current administrative structure of the subordinate judiciary is outdated and inadequate for addressing the huge caseloads and pendency. There is an urgent need to reform this system by integrating modern managerial skills and expertise. To assist the judges in their administrative duties, the post of Court Manager was introduced by the 13th Finance Commission. *(Thirteenth Finance Commission, 2010)*. The vision was to recruit MBA qualified managers, however, even after fifteen years much was not reflected in practice. Presently, mostly court managers are *ad hocs*; they lack authority and have ambiguities in their duties. *(Kaul, 2020)*

To address this issue, decentralization of administrative duties from the office of the District Judge is essential. There should be provision of Administrative Judges in the District Judiciary as implemented in High courts. There has to be full integration of court managers in the district judiciary with initiatives like regularization and permanency of their post, delineation of their roles in High courts and District Courts, devising proper curriculum, providing reasonable pay and promotion etc. *(Daksh 2020).*

With these attempts, the goal should be to shift the burden of the administrative work from the District Judges to Court mangers and other administrative staff, which will provide judges with sufficient time to carry on their judicial functions.

VIII. CONCLUSION

This paper addressed the causes of persistent delays and inefficiencies in the sub-ordinate judiciary and attempts to propose certain new reforms which can aid in speedier justice. It is true that despite previous attempts made by both government and judiciary via the introduction of ADR and ICT techniques, the backlog of cases remains significant. These inefficiencies and delays not only compromise the litigant's right to access justice, but also hampers the confidence of the public in the judiciary.

The research focuses on addressing the structural and managerial issues in subordinate judiciary with a multifaceted approach like the establishment of Centralised

Research Wing, advanced training of ICT for court staff and decentralization of administrative functions. These recommendations hold immense potential to alleviate existing bottlenecks. Additionally, encouraging integration of judicial academies and courtroom can act as pathway between theoretical legal knowledge and practical challenges faced by the judiciary. Procedural enhancements like insisting on written submission over oral arguments can aid in preventing delays and saving court's time. These recommendations do not just aim to meet the immediate demands but can contribute to transform judiciary to be more active and responsive in the long term. However, there are various challenges in the implementation of these reforms like creating a permanent cadre for court managers and introducing state funded commission for witness examination which requires strong political and legislative policy interventions.

In conclusion, even though the road to a revamped sub-ordinate judiciary may be challenging, it is imminent to strengthen the first doors to a litigant. The recommendations made in this research have the potential to revitalize the sub-ordinate judiciary in India and ensure that justice is not only done but also delivered on time. These reforms, which are based on practical difficulties, have the potential to create a judiciary that meets the needs of the twenty-first century.

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