



**DRAFT PAPER ON COURT MANAGEMENT  
AND CASE MANAGEMENT –THE PAST,  
PRESENT, AND THE FUTURE**



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## INTRODUCTION

Reducing judicial delay and improving litigation processes by court management and case management techniques are important elements of increasing access to justice. The intrinsic value of the justice system lies in its role in contributing to an effective social and economic framework.<sup>1</sup> Time is often of essence in resolving a case and it should be a fundamental aim of court management to reduce delay and ensure effective adjudication.

Merely being able to initiate a case in a court does not ensure access to justice. This is true, especially due to the mounting backlog of cases which proves to be a barrier in ensuring timely resolutions and fair procedures. This makes court management and case flow management fundamental to access to justice in India. The National Judicial Data Grid projects a total pendency of 4,00,85,553 cases in the District and Taluka courts of India.<sup>2</sup> This number is 56,10,967 in the High Courts.<sup>3</sup> Even accounting for any overestimation in these figures, the numbers present a considerable challenge for justice delivery mechanisms.

This Draft Paper sets the context for a forward-looking discussion on court and case management. To look at the future, we need to understand the challenges of the past. This paper discusses the development of court and case management, drawing within its discussion law commission reports, draft rules, and case law. The discussions highlighted in this paper on court management, case flow management, and organisational methodologies are all important to contribute to a better justice system.

The paper particularly highlights the need for technology tools alongside court management and case flow management initiatives. While many international reports and discussions place technology as a game-changer for the management of courts, the time is now ripe to see what improvements can be made in court management with technology in India. The use of advanced technology tools, if applied in a robust manner, can make a profound difference to the implementation of court management.

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<sup>1</sup> Hazel Genn. 2012. 'What Is Civil Justice For? Reform, ADR, and Access to Justice', *Yale Journal of Law & Humanities*, 24 (1): 397.

<sup>2</sup> National Judicial Data Grid, *District and Taluka Courts of India*, available online at [https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard) (accessed on 27 September 2021).

<sup>3</sup> National Judicial Data Grid, *High Courts of India*, available online at <https://njdg.ecourts.gov.in/hcnjdgnew/> (accessed on 27 September 2021).

## INTRODUCTION TO COURT MANAGEMENT

Court management is a mechanism that “deals with leadership inside a court, the relationship between the judges and court staff, the allocation of cases, the evaluation of judges and court staff, the court budget, the real estate, the maintenance and security of the building, the new technology, human resources, and judicial communication.”<sup>4</sup> Understanding what court management means for a particular legal system depends on the context of the respective legal system.

Court management involves an organisational approach involving stakeholders, the citizens, judges, lawyers, police, court staff, to name a few. There is uncertainty associated with this kind of management, as there are grey zones of responsibility between court staff and judges, the dynamic nature of public expectations, etc.<sup>5</sup> An example of grey areas of responsibility will be best elaborated by tasks such as scheduling cases. Judges may specify preferences for scheduling a case, but the final responsibility of the same may fall on the court staff. Court management is not purely managerial as concepts of the justice system will impact the managerial process.<sup>6</sup> Court management cannot solely focus on efficiency, disregarding due process and the rule of law which involve legal concepts like right to be heard, fair process protocols, etc. There must be a balance, focusing on procedural aspects of law alongside managerial goals that will enable efficiency.

One succinct summary of court management states that “court management is the way to deal with legal relations in the courts with citizens, legal professionals, the staff and other judges. It is a non-litigious task having a strong influence on procedure and requires competences, which are not all legal.”<sup>7</sup> This definition highlights the need to recognise tasks as administrative or legal, and identify which stakeholders ought to be responsible to manage the respective tasks. For instance, a case management schedule<sup>8</sup> can be a task for the judge and the lawyers, while

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<sup>4</sup> Emmanuel Jeuland. 2018. ‘Towards a New Court Management? General Report’ Université Paris 1 - Panthéon Sorbonne, available online at <https://hal.archives-ouvertes.fr/hal-01680418/document>

<sup>5</sup> Jeuland, ‘Towards a New Court Management? General Report’ p. 7.

<sup>6</sup> Jeuland, ‘Towards a New Court Management? General Report’ p. 8.

<sup>7</sup> Jeuland, ‘Towards a New Court Management? General Report’ p. 12.

<sup>8</sup> One component of court management is case management. Case management involves organising hearings of cases and allocating timelines in various stages of the case. This allows for a streamlined disposal of a case.

ensuring that the case is listed according to the case management schedule is a task for court staff.

The Supreme Court in *Imtiyaz Ahmad v. State of Uttar Pradesh and Others* recognised that achieving rule of law and access to justice entails better management of courts to reduce delay.<sup>9</sup> This is one of the ways the Indian judiciary recognised the importance of court management. An attempt at court management in the Indian context was made by introducing the post of court managers.<sup>10</sup> Court managers were not successfully absorbed into the system for a multitude of reasons and the introduction of this role did not culminate in any change to the management of the courts.<sup>11</sup> As early as 2006, some of the court management approaches that were discussed included the infusion of technology, digitisation, and streamlining rules of the court.<sup>12</sup> The initiation of the eCourts project in India is an indication of the judiciary implementing a form of court management.<sup>13</sup> The eCourts project, implemented in High Courts and district/subordinate courts of the country was conceptualised on the basis of the “National Policy and Action Plan for Implementation of information and communication technology (ICT) in the Indian Judiciary – 2005” submitted by e-Committee (Supreme Court of India), with a vision to transform the Indian Judiciary by ICT enablement of courts.

The Supreme Court’s ‘National Court Management Systems Policy and Action Plan’ highlighted the need to focus on court management and case management in India.<sup>14</sup> The need for court management was considered important to “enhance quality, performance, and timelines of the courts.”<sup>15</sup> Court management encompasses various elements, including case flow management (CFM), technology tools, and data-centric analysis of performance of the courts. Aspects of court management in India should include a holistic view of the court

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<sup>9</sup> *Imtiyaz Ahmad v. State of UP*, available online on <https://indiankanoon.org/doc/50352079/>.

<sup>10</sup> DAKSH. 2020. ‘Role of Court Managers in Indian Judiciary’, DAKSH, available at <https://www.dakshindia.org/wp-content/uploads/2020/08/ROLE-OF-COURT-MANAGERS-IN-INDIAN-JUDICIARY.pdf>

<sup>11</sup> DAKSH, ‘Role of Court Managers in Indian Judiciary’.

<sup>12</sup> [https://doj.gov.in/sites/default/files/Final%20DOJ%20Report\\_Revised%20%281%29.pdf](https://doj.gov.in/sites/default/files/Final%20DOJ%20Report_Revised%20%281%29.pdf) p. 43, accessed February 2022.

<sup>13</sup> [https://doj.gov.in/sites/default/files/Final%20DOJ%20Report\\_Revised%20%281%29.pdf](https://doj.gov.in/sites/default/files/Final%20DOJ%20Report_Revised%20%281%29.pdf) p. 45, accessed February 2022.

<sup>14</sup> Supreme Court of India. 2012. *National Court Management Systems (NCMS) Policy and Action Plan*, p. 2, available online at <https://main.sci.gov.in/pdf/NCMSP/ncmspap.pdf>

<sup>15</sup> Supreme Court of India. 2012. *National Court Management Systems (NCMS) Policy and Action Plan*, p. 7.

processes, including filing mechanisms, scheduling of cases, and CFM.<sup>16</sup> The efficiency of the courts and increasing access to justice depend on the efficient management of the courts. Court management is pivotal for resolving cases in a timely manner, while following due process.<sup>17</sup> The discussions around court management also involves personnel who assist in implementing CFM, apart from assisting in administrative functions of the court.<sup>18</sup>

One of the benefits of court management is to allow judges more time to handle cases, while allocating administrative tasks to court personnel.<sup>19</sup> The role of technology tools has been particularly emphasised all through the last decade in terms of improving court management.<sup>20</sup> This will only gain more importance with the implementation of Phase III of the eCourts project in India.

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<sup>16</sup> [https://doj.gov.in/sites/default/files/Final%20DOJ%20Report\\_Revised%20%281%29.pdf](https://doj.gov.in/sites/default/files/Final%20DOJ%20Report_Revised%20%281%29.pdf) p. 30, accessed February 2022.

<sup>17</sup> Hon'ble Mr. Justice P.Sathasivam. 2013. 'Effective District Administration and Court Management', available online at <http://tnsja.tn.gov.in/article/Effectuve%20Dist%20Admn-PSJ.pdf>.

<sup>18</sup> DAKSH, 'Role of Court Managers in Indian Judiciary' p. 5, 6.

<sup>19</sup> DAKSH, 'Role of Court Managers in Indian Judiciary' p. 2.

<sup>20</sup> Supreme Court of India, *National Court Management Systems (NCMS) Policy and Action Plan* p. 36.

## INTRODUCTION TO CASE FLOW MANAGEMENT (CFM) IN INDIA

One component of court management is Case Flow Management (CFM). CFM involves organising hearings of cases and allocating timelines in various stages of the case. This allows for a streamlined disposal of a case. CFM is about ensuring efficiency in the justice system for all cases. The public trust in the justice system induced by CFM will also contribute to upholding the rule of law. The justice system is an important public good. Attempts such as the CFM will contribute to making the system efficient and will invariably contribute to the underscoring of the justice system as a public good.

The approaches to CFM often focus on how to initiate a cultural shift in the justice delivery system. It encompasses various components, including analysing the role played by all stakeholders in the justice delivery system. The need for maintaining a CFM mechanism is particularly necessary in India's adversarial justice system. The backlog of cases reported to be more than 4 crore cases across India<sup>21</sup> is telling of the excruciatingly slow pace of litigation. There have been numerous Indian reform proposals studying Indian litigation and the same have not been successful in transforming the pace of litigation. CFM recommendations in India are situated in the analytical framework of pendency of cases and delay.

### Law Commission Recommendations

The CFM reforms in India initially started as reforms looking into pendency, delay, and administrative efficiency of the courts. In 1958, the 14<sup>th</sup> Law Commission decided to look into judicial delay.<sup>22</sup> This report of the Law Commission reiterated that it is important to allot the time and attention every individual case deserves and not to engage with 'mass production methods' in disposing the cases.<sup>23</sup> Nevertheless, the report insisted that it should be possible to ensure cases are resolved within a time frame.<sup>24</sup> Twenty years on, the 77<sup>th</sup> Law Commission Report analysed delay yet again, noting that delay is causing a loss of trust in the judiciary.<sup>25</sup>

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<sup>21</sup> National Judicial Data Grid, *District and Taluka Courts of India*, available online at [https://njdg.ecourts.gov.in/njdgnew/?p=main/pend\\_dashboard](https://njdg.ecourts.gov.in/njdgnew/?p=main/pend_dashboard); National Judicial Data Grid, *High Courts of India*, available online at <https://njdg.ecourts.gov.in/hcnjdgnew/>.

<sup>22</sup> Law Commission of India. 1958. Report No. 14: Reform of Judicial Administration. New Delhi: Government of India, available online at <http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf>.

<sup>23</sup> Law Commission of India, Report No. 14: Reform of Judicial Administration p. 130.

<sup>24</sup> Law Commission of India, Report No. 14: Reform of Judicial Administration p. 130.

<sup>25</sup> Law Commission of India. 1978. Report No. 77: Delay and Arrears in Trial Courts. New Delhi: Government of India, p. 1, available online at <http://lawcommissionofindia.nic.in/51-100/Report77.pdf>.



Further, the report cautioned that reducing delay and faster disposal of cases should not mean relegating substantive justice.<sup>26</sup> Judicial delay was also linked to the need for additional judicial resources and courts. The 79<sup>th</sup> Law Commission Report was particularly cynical, hinting that delay may never be resolved and the focus should also be on diligent implementation of reforms to mitigate the delay.<sup>27</sup> The 230<sup>th</sup> Law Commission Report looked at adjournment culture as a fundamental problem hindering the functioning of the judiciary and advocated for effective usage of the court hours by both lawyers and judges.<sup>28</sup>

The 245<sup>th</sup> Law Commission Report<sup>29</sup> conducted an analysis of court data from the lower and higher judiciary for the years 2002-2012 and framed the discussion of delay on the basis of the court data. The genesis of this report is the decision in *Imtiyaz Ahmad v State of Uttar Pradesh*.<sup>30</sup> This report looks at the need to define terms like pendency, arrears, backlog, etc. from the perspective of allocating additional judges.<sup>31</sup> It shows an understanding that different cases may take different durations to get disposed.<sup>32</sup> The report discussed case management while analysing the inter-relationship between judge strength and delay, The Law Commission in a consultation paper also proposed draft CFM rules.<sup>33</sup> The draft CFM rules were meant to serve as a template for the states to draft rules for their respective courts. This attempt seems in vain, as many states have not managed to pass suitable case management rules on the basis of the model draft rules.<sup>34</sup> This is telling as to the level of synchronisation in the efforts to impose CFM.

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<sup>26</sup> Law Commission of India, Report No. 77: Delay and Arrears in Trial Courts.

<sup>27</sup> Law Commission of India. 1979. Report No. 79: Delay and Arrears in High Courts and Other Appellate Courts. New Delhi: Government of India, p. 76. 77, available online at <https://lawcommissionofindia.nic.in/51-100/Report79.pdf>.

<sup>28</sup> Law Commission of India. 2009. Report No. 230: Reforms in the Judiciary- Some Suggestions. New Delhi: Government of India, p. 36, 37, available online at <http://lawcommissionofindia.nic.in/reports/report230.pdf>.

<sup>29</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower. New Delhi: Government of India, available online at [http://lawcommissionofindia.nic.in/reports/Report\\_No.245.pdf](http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf).

<sup>30</sup> *Imtiyaz Ahmad v. State of UP*, available online on <https://indiankanoon.org/doc/50352079/>.

<sup>31</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower p. 2.

<sup>32</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower p. 21.

<sup>33</sup> Law Commission of India, 'Consultation Paper on Case Management', available online at [https://lawcommissionofindia.nic.in/adr\\_conf/casemgmt%20draft%20rules.pdf](https://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf).

<sup>34</sup> DAKSH. 2017. 'Case Flow Management Rules in India' DAKSH, available online at <http://www.dakshindia.org/wp-content/uploads/2015/11/Case-Flow-Management-Rules-in-India-by-DAKSH.pdf>.

It is evident that numerous reform attempts have been made in India from various enquiry standpoints to engage with CFM and court management.

### **Reform attempts and the approach to case management**

The aim of the Indian justice system is to ensure substantive justice in a case. This often means that parties and lawyers are provided all the possible opportunities to present their case and the court decides the case on facts and laws, without much emphasis on a stringent timeline for processes, including evidence, arguments, etc. This approach has an inherent tension with the need to resolve cases in a timely manner. The reform attempts often reveal that while the reformers are looking at case management, they end up stating that the same will not take precedence over substantive justice. The 14<sup>th</sup> report and 77<sup>th</sup> report support substantive justice, by reiterating that every case deserves attention.<sup>35</sup> This is an indication of procedural aspects taking a backseat. The 77<sup>th</sup> report and 230<sup>th</sup> report started to explore the dimensions of delay as a call for increased judicial resources<sup>36</sup> and better judicial time utilisation,<sup>37</sup> respectively. The 245<sup>th</sup> report's recommendation on non-mandatory timelines for a case<sup>38</sup> is indicative of not intending to prioritise issues such as adjournments sought by lawyers (a problem noted in the 230<sup>th</sup> report).<sup>39</sup> Further, the 245<sup>th</sup> report looks at judicial backlogs from purely a resource crunch perspective without looking at the role of organisational challenges, infrastructure needs, or the role of different stakeholders.

### **Challenges to court management and CFM**

Lack of comprehensive data: Accurate and comprehensive data is fundamental in informing any proposals for reforming the justice system. The availability of data to inform large scale reforms in India is an ongoing challenge. Various reports underline the challenges pertaining to data collection in India,<sup>40</sup> and echo the findings of the 245<sup>th</sup> Law Commission Report regarding challenges in collating court data in India. The problems with data range from non-

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<sup>35</sup> Law Commission of India, Report No. 14: Reform of Judicial Administration p. 130; Law Commission of India, Report No. 77: Delay and Arrears in Trial Courts p. 1.

<sup>36</sup> Law Commission of India, Report No. 77: Delay and Arrears in Trial Courts.

<sup>37</sup> Law Commission of India. 2009. Report No. 230: Reforms in the Judiciary- Some Suggestions.

<sup>38</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower p. 61.

<sup>39</sup> Law Commission of India. 2009. Report No. 230: Reforms in the Judiciary- Some Suggestions.

<sup>40</sup> DAKSH. 2016, 'State of the Indian Judiciary', available online at <http://dakshindia.org/state-of-the-judiciary-report/>.

availability to inconsistencies, which hinders the application of data in a useful manner.<sup>41</sup> The variable data problem is one where different courts use different ways of collecting information for cases resulting in a scenario where comprehensive collation or comparison of data is not feasible.<sup>42</sup>

Litigation culture: Another challenge for case management is the existing litigation culture in India. Various elements of the litigation system can induce delay, and adjournments sought by lawyers are of particular concern.<sup>43</sup> An adjournment is an extension of time given by the court on the request of a lawyer. Such adjournments can be sought either to extend procedural compliances<sup>44</sup> or for any other aspect, eg. extension of date to complete a cross examination of a witness. Court records seldom specify the reasons for adjournment.<sup>45</sup> Cost sanctions have been suggested as a way to tackle adjournments.<sup>46</sup> This is challenging in the absence of a normative basis for procedural aspects of the case timeline. The general consensus is that effecting changes to increase the efficiency of the justice system, procedurally speaking, is as much about culture as it is about the content of the rules.<sup>47</sup> Litigation is not purely rule-centric, legal representatives and their practice skills also define litigation.<sup>48</sup> Thus, lawyers and litigants have a crucial role to play in any reforms, including CFM.

Procedural framework: The Code of Civil Procedure, 1908 used in India is an inspired adaptation of the English procedural framework.<sup>49</sup> When the amendments were made to the code to tackle delays, these were challenged. The Supreme Court decided to issue clarifications regarding the various amendments in *Salem Advocates Bar Association v Union of India*.<sup>50</sup>

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<sup>41</sup> DAKSH. 2016, 'State of the Indian Judiciary'.

<sup>42</sup> DAKSH. 2016, 'State of the Indian Judiciary'.

<sup>43</sup> Vidhi Centre for Legal Policy. 2017. 'Inefficiency and Judicial Delay: New Insights from the Delhi High Court', available online at <https://vidhilegalpolicy.in/2017/03/29/2017-3-29-inefficiency-and-judicial-delay-new-insights-from-the-delhi-high-court/>.

<sup>44</sup> Procedural compliances can mean the various steps a lawyer has to take in the process of a case – for example sending notices to other parties in the case.

<sup>45</sup> Vidhi. 2017, 'Inefficiency and Judicial Delay' p. 9.

<sup>46</sup> UK and Australia's attempts include imposing costs for procedural non-compliance.

<sup>47</sup> C.H. van Rhee. 2007. 'Introduction' in C.H. van Rhee (ed), *Judicial Case Management and Efficiency in Civil Litigation*, Intersentia Antwerp pp. 5.

<sup>48</sup> R. Verkijk. 2007. 'Beyond Winning: Judicial Case Management and the Role of Lawyers in the Principles of Transnational Civil Procedure' in C.H. van Rhee (ed), *Judicial Case Management and Efficiency in Civil Litigation*, Intersentia Antwerp pp. 57.

<sup>49</sup> M.C. Setalvad. 1960. *The Common Law in India*, 1st edn, Steven & Sons p. 117.

<sup>50</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344.

While elucidating on the amendment that fixed the maximum time to file a written statement,<sup>51</sup> it held that procedure is not to be used to defeat justice and is only the ‘handmaid of justice’.<sup>52</sup> Further, such timelines can be extended if court deems it fit, as they are not mandatory.<sup>53</sup> The courts acknowledged that parties do misuse their discretion in conducting a case and that this is often the norm in litigation.<sup>54</sup> The Supreme Court has recommended the use of a case timetable to be set up by the trial judge for the whole case and advocated a strict adherence to the same in *Ramrameshwari Devi v Nirmala Devi*.<sup>55</sup>

The Supreme Court while dealing with strict adherence to the number of adjournments granted in a case, held that the courts can extend the same if the facts of the case so needed it.<sup>56</sup> The Civil Procedure Code provides for inherent powers for the court,<sup>57</sup> which are often used to make the applications for extending timelines and adjournments. The subordinate and high courts are hard-pressed for time to sometime hear cases, thus enabling the adjournment culture.<sup>58</sup> This longstanding adjournment culture has created a vicious cycle wherein more adjournments are liberally granted due to the already existing backlog of cases, adding to judicial delays.

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<sup>51</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344 para 20,21.

<sup>52</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344 para 20,21.

<sup>53</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344 para 20,21.

<sup>54</sup> *Ramrameshwari Devi v Nirmala Devi* (2011) 8 SCC 249 para 28.

<sup>55</sup> *Ramrameshwari Devi v Nirmala Devi* (2011) 8 SCC 249 para 52 [J].

<sup>56</sup> *Ramrameshwari Devi v Nirmala Devi* (2011) 8 SCC 249 para 30,31.

<sup>57</sup> Section 151, Code of Civil Procedure, 1908.

<sup>58</sup> DAKSH. 2017. ‘Case Flow Management Rules in India’.

## COURT MANAGEMENT AND CFM AS PART OF JUSTICE DELIVERY

As the preceding chapter demonstrates, court management is relatively a recent development in India. Nevertheless, going forward, no holistic reform in justice delivery is conceivable without including the management of courts. This is emphasised in the National Court Management Systems Policy and Action Plan (NCMS).<sup>59</sup> As per the NCMS, the constitutional obligation to ensure access to justice necessitates improved quality, timeliness, and responsiveness of justice delivery mechanisms in India.<sup>60</sup> The third element in the scheme of NCMS is case management. The Scheme purports to establish “[a] system of Case Management to enhance user friendliness of the Judicial System”.<sup>61</sup>

### Discussions on case management

The scope of case management as per NCMS is largely limited to settling issues, encouraging parties to resort to ADR, extensive use of Order X of Code of Civil Procedure, 1908 in civil matters to narrow down issues, and fixing time schedules for specific steps. While it is true that an efficient case management will vastly improve user-friendliness of longwinded and complex judicial processes, case management has other benefits too. Case flow management forms the core of court management. Court supervision and control of the progress of the cases from their earliest stages till the final decision and organisation of court personnel and resources ensure fairness and transparency in justice delivery.<sup>62</sup>

In light of unmanageable judicial delays and also the progress over the years in larger court management endeavors, there is a need to understand how case flow management mechanisms should be implemented in India. The baseline for such a reassessment is usually the Jagannadha Committee report and model procedures on case management.<sup>63</sup> The Supreme Court in *Salem Advocates Bar Association v Union of India*<sup>64</sup> endorses these Model Draft Rules for case flow management, both for the High Courts and for the subordinate courts. However, these have not been enacted uniformly across the High Courts. As of March 2017, 17 High Courts had brought

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<sup>59</sup> Supreme Court of India, National Court Management Systems (NCMS) Policy and Action Plan, 2012.

<sup>60</sup> Supreme Court of India, National Court Management Systems (NCMS) Policy and Action Plan, 2012.

<sup>61</sup> Supreme Court of India, National Court Management Systems (NCMS) Policy and Action Plan, 2012.

<sup>62</sup> Caseflow and Workflow - NACM Core, available online on <https://nacmcore.org/competency/caseflow-and-workflow/> (accessed on 20 August 2021).

<sup>63</sup> Law Commission of India, ‘Consultation Paper on Case Management’.

<sup>64</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344

Case Flow Management Rules into effect.<sup>65</sup> In some states, the Rules cover only subordinate courts, while in others they cover only civil courts. The central feature of the Case Flow Management Rules is recognising that different kinds of cases have varied progression and thus need to be handled differently. To further this objective, the Rules classify cases into ‘tracks’ based on their subject matter of dispute or nature of the offence. The timelines to dispose cases under each track is different and range between nine months and two years in most states. Out of 24 state High Courts surveyed, 12 jurisdictions had enacted case management rules for all three, i.e. High Court, subordinate civil courts and subordinate criminal courts.<sup>66</sup> The NCMS Baseline Report on Case Management System by the Sub-Committee headed by Justice Khanwilkar is an advisory paper on achieving minimal common national standards and reiterates the need for clear segregation or ‘tracks’ and places emphasis on case management information system (CMIS).<sup>67</sup> The discussion of the CMIS recognises the need to focus on technology and prototype building. The CMIS is supposed to calculate real-time progress of the case, factoring in management issues and other challenges. The CMIS calculation will help the judges draw up case schedules. These and other tools for court management such as courts digitisation, statistics reporting, case allocation have been recommended in the paper.<sup>68</sup>

### **Recent case law reiterating the need for case management**

In *Krishnakant Tamrakar v. State of Madhya Pradesh* (hereinafter *Krishnakant*),<sup>69</sup> the Supreme Court took into consideration four important aspects that is necessary to ensure speedy justice and to avoid any unnecessary delay in disposal of cases – first, the need for re-engineering of the judicial structure; second, the need for re-visiting the appointment mechanism of judges so as to ensure adequate number of talented judges at all levels; third, the need for a mechanism to plan and oversee the best management practices, including employment of technology, for optimum performance, and fourth, putting an end to frequent strikes by the lawyers that obstruct speedy justice. On the third aspect i.e. relating to adopting best management practices in case disposal, the court in *Krishnakant* said that there is a need

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<sup>65</sup> DAKSH. 2017. ‘Case Flow Management Rules in India’ p. 4.

<sup>66</sup> DAKSH. 2017. ‘Case Flow Management Rules in India’ p. 4.

<sup>67</sup> Supreme Court of India, National Court Management Systems (NCMS) Policy and Action Plan, 2012.

<sup>68</sup> Supreme Court of India, National Court Management Systems (NCMS) Policy and Action Plan, 2012.

<sup>69</sup> *Krishnakant Tamrakar v. State of Madhya Pradesh* (2018) 17 SCC 27.

to evaluate and measure the performance of the judicial system as per the observations in the 245<sup>th</sup> Report of the Law Commission so that there is a non-mandatory timeline for decision of cases and accountability consistent with the right of speedy justice.

Another recent case where the court advocated for the need for case management was *Kalawati (D) through L.Rs. and Ors. v. Rakesh Kumar and Ors.*<sup>70</sup> This case concerned the specific performance of an agreement for sale. It took 31 years for the parties to reach the final stages of appeal in this case and this prompted the court to reiterate the need for case management. Taking note of this unreasonable delay, the court observed that this case exemplified the need to introduce case management programmes to streamline the system so that suits and appeals can be decided more efficiently.

The enforcement of rights not only need to be correct in law and in fact but need to be administered in time so that the remedy can still benefit the parties.<sup>71</sup> This brings to focus the stakeholders in this process who are important in making court and case management attempts successful.

### **Stakeholders**

In any effort to improve court practice and management, the impact on the human elements of the justice system like the judge, court staff, litigants, lawyers, etc must be considered.<sup>72</sup> In other words, ‘part of developing an improved approach to handling cases is to discover how it would change the work that people do’,<sup>73</sup> especially if technology tools are used. The role of the stakeholders needs to be analysed and the challenges faced by them ought to be overcome if we are to attempt case management and court management.

### **Judges**

The defining feature of CFM is that it enables the judges and court to retain control over the management of time and events in the proceedings of a case from the start of the case to the

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<sup>70</sup> *Kalawati (D) through L.Rs. and Ors. v. Rakesh Kumar and Ors* (2018) 3 SCC 658

<sup>71</sup> Adrian Zuckerman. 2015. ‘The continuing management deficit in the administration of civil justice’ *Civil Justice Quarterly* p. 1.

<sup>72</sup> David C. Steelman. 2008. ‘Improving Caseflow Management: A Brief Guide, National Center for State Courts’ p. 32-33, available at <https://ncsc.contentdm.oclc.org/digital/collection/ctadmin/id/1022/>.

<sup>73</sup> David C. Steelman. 2008. ‘Improving Caseflow Management: A Brief Guide, National Center for State Courts’ p. 32-33.

end. The leadership role of the presiding judge is very crucial for effective case management and avoidance of delay.<sup>74</sup> The judge must actively engage with other key participants in the justice delivery mechanism, including the court staff, the lawyers, etc, for the successful implementation of CFM. But this is a difficult task, as the priorities of the various stakeholders are different.<sup>75</sup> While many argue for judges to not grant adjournments, they overlook the fact that the judges face a lot of ire, if they refrain from granting adjournments. The caseload of the judges can also hinder them from committing time to oversee the CFM system and to play a leadership role in it.<sup>76</sup> These challenges need to be countered if judges are to be able to participate actively in case management.

### **Court staff**

The overall functioning of a court depends heavily on the interplay between judges and administrative staff. It is important to set up a system capable of building a shared responsibility between the head of the court and the court administrator for the overall management of the office.<sup>77</sup> A study on CFM and delay reduction in urban trial courts in the United States of America found that the successful courts were those that involved “court staff members at all levels—from court managers through the secretaries and courtroom clerks”—in their efforts to address problems of delay”.<sup>78</sup> It is necessary to impart the necessary training and sensitisation to the court staff in order to induct them into the demands of CFM, especially when technology tools are involved.<sup>79</sup> They need to be made aware of CFM's purposes and fundamental concepts. The role of court staff needs to be delineated well, if they are to be able to perform their tasks in case management.

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<sup>74</sup> David C. Steelman. 2008. ‘Improving Caseflow Management: A Brief Guide, National Center for State Courts’ p. 62.

<sup>75</sup> David C. Steelman. 2008. ‘Improving Caseflow Management: A Brief Guide, National Center for State Courts’ p. 62.

<sup>76</sup> David C. Steelman. 2008. ‘Improving Caseflow Management: A Brief Guide, National Center for State Courts’ p. 62.

<sup>77</sup> P Sathashivam, Lecture on Effective District Administration and Court Management, p. 6, available at <https://www.google.com/url?q=http://tnsja.tn.gov.in/article/Effectuve%2520Dist%2520Admn-PSJ.pdf&sa=D&source=docs&ust=1641561083203292&usg=AOvVaw06ZsYP07Oi5HgHO4JCFsfG>.

<sup>78</sup> Mahoney et al. 1988. *Changing Times in Trial Courts*, pp. 202-203.

<sup>79</sup> GN Nthomiwa, ‘Presentation on Case Flow Management System: An Efficient and Transparent Means to Deliver Justice, South Africa,’ available at [https://sacjforum.org/sites/default/files/reports/files/2020/PRESENTATION\\_CASE\\_FLOW\\_%20MANAGEMENT.doc](https://sacjforum.org/sites/default/files/reports/files/2020/PRESENTATION_CASE_FLOW_%20MANAGEMENT.doc).



### **Litigants and lawyers**

Case management can only become purposeful with the support of the litigants and their lawyers. The judges ought to conduct special hearings with lawyers to discuss the complexity and nature of the case and the evidence required. These pre-trial hearings are fundamental to create a case management schedule. While the courts have tried to balance efficiency with opportunities for the parties and lawyers to present their case, they are yet to identify the underlying tension CFM can cause. The Supreme Court's analysis of procedure playing second fiddle in the process to obtain justice is reflective of this tension.<sup>80</sup> The same thought process will also plague litigants and lawyers. Sensitising litigants and lawyers about how CFM will not hinder their access to justice and allowing for a transparent case management schedule will be a challenge for the effective implementation of CFM.

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<sup>80</sup> *Salem Advocates Bar Association v Union of India* (2005) 6 SCC 344 para 20,21; *Sangram Singh v Election Tribunal, Kotah* AIR (1955) SC 425.

## CFM AND CIVIL JUSTICE

The need to find the right balance between parties controlling litigation and the court controlling procedures has plagued civil justice for the better part of the century.<sup>81</sup> As far as civil cases are concerned, one way to impose the checks and balances on an adversarial system is ensuring that there is a CFM in place to balance the opportunities given to litigants and lawyers without allowing too many liberties to them.<sup>82</sup> CFM in civil cases could entail: (i) demarcating procedural tasks and substantive tasks and hearings; (ii) building case timetables based on the nature and complexity of the case; and (iii) encouraging pre-trial conferences with judges and litigants.

Research indicates that a substantial number of hearings in civil cases in subordinate courts are taken up by procedural stages such as filing written statement, issuing summons, etc.<sup>83</sup> There is a need to empower subordinate judges to deliver timely justice by freeing up the time they spend on procedural stages. Moving these procedural tasks to the registry may have an impact on managing the cases in a streamlined manner and using judges' time more effectively. Thus, the need to demarcate procedural tasks will go a long way in effectively managing a case. The draft CFM rules committee also advocated for timely filing of the written statements and a proactive role by the court staff to finish pre-hearing formalities related to a case.<sup>84</sup>

Procedural tasks are not limited to tasks that are after the filing of the case, including sending summons, etc. They can also include other tasks, including filing related formalities, listing of cases, etc. There are elaborate procedures before the case is even numbered and listed for hearing. The case papers go through a series of checks with the court's filing staff and examining these stages is also important to understand the lifecycle of a civil case. Understanding how the courts spend their time and energy on these tasks can also better inform the CFM.

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<sup>81</sup> C.H. van Rhee, 'Introduction' p. 2.

<sup>82</sup> Lawyers and litigants will strategise their litigation basis their case requirement. Some litigants can even benefit from delay, and CFM will have to step in to deal with strategies to intentionally delay a case.

<sup>83</sup> DAKSH. 'Zero Pendency Project', p. 20, available online on [https://www.dakshindia.org/wp-content/uploads/2019/05/PublicNotice\\_3MRRIN3QTHN.pdf](https://www.dakshindia.org/wp-content/uploads/2019/05/PublicNotice_3MRRIN3QTHN.pdf).

<sup>84</sup> Law Commission of India, 'Consultation Paper on Case Management' p. 9.

The 245<sup>th</sup> Law Commission report recognised the need for case timetables.<sup>85</sup> Some stages within a case, for instance, filing of a written statement in a civil case, have a prescribed timeline,<sup>86</sup> but timeframes are not prescribed throughout a case in the civil procedure code in India. For instance, non-appearance of witnesses in the evidence stage and frequent adjournments sought by lawyers are a common problem in civil cases.<sup>87</sup> Better planning in terms of stages of the case will enable lawyers and parties to be aware of what to expect on a particular hearing date. Research on using case management techniques in civil cases reveals that cases reaching on pre-determined dates accompanied for reasons for listing the cases make a difference to the efforts taken at disposing a case. Such steps enable all stakeholders to have the same vision or in other words this allows to ‘focus the minds of all the participants’.<sup>88</sup>

### **Recalibrating the approach to civil litigation**

Indian courts have a proclivity to ensure that cases are heard without paying heed to procedural efficiency. There are no mandatory restrictions on adjournments or cost sanctions for not adhering to a timeline. of the consequences of this approach are obvious in how the civil justice system functions. The Indian approach is tethered to the belief that the adjudication process should afford maximum participation for the parties and thus does not enforce procedural discipline. Remaining faithful only to substantive justice without thinking about efficiency and importance of procedural rules indirectly becomes a formidable opposition to achieving justice. There should an awareness that procedural efficiency is an important aspect of justice.<sup>89</sup>

Case management allows for party’s participation. It is noted that the two ends of the spectrum in managing cases can include ways to tailor the procedure to fit the case or have different sets of procedures for different cases.<sup>90</sup> Many common law jurisdictions follow the procedural track approach to ensure different options for procedural processes, depending on a case.<sup>91</sup> The draft

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<sup>85</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower p. 7.

<sup>86</sup> Law Commission of India. 2014. Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower p. 5; Order VIII Rule 1, Code of Civil Procedure, 1908.

<sup>87</sup> DAKSH. ‘Zero Pendency Project’, p. 25.

<sup>88</sup> John Peysner and Mary Seneviratne, *The management of civil cases: the courts and the post-Woolf landscape* (1st edn, Department for Constitutional Affairs 2005) p. 30.

<sup>89</sup> Tidmarsh J. 2010. ‘Resolving Cases “On The Merits”’ 87 *Denver University Law Review* 411.

<sup>90</sup> R.R. Verkerk, ‘What is Judicial Case Management? A Transnational and European Perspective’ in C.H. van Rhee (ed), *Judicial Case Management and Efficiency in Civil Litigation* (Intersentia Antwerp 2007) p. 43.

<sup>91</sup> Verkerk, ‘What is Judicial Case Management? A Transnational and European Perspective’ p. 44; United Kingdom’s Civil Procedure Rules, Part 27-29.

CFM rules committee suggested the track system for the lower judiciary<sup>92</sup> and the higher judiciary.<sup>93</sup> In civil cases, it is important to remember that the complexity of the case may vary according to the subject matter of the dispute. Complexity can be in the nature of the facts or on the nature of the procedure that control the case. CFM should allow for both variations. Further, the amount of time taken to resolve a case may differ according to the geographical location. Thus, the courts must be studied before making procedural tracks for the various types of civil cases.

While we may not be able to strictly manage each stage of a civil case, in the interest of substantive justice, many portions of the lifecycle can be managed with a timeline. For example, the case can be listed regularly along with the purpose of listing by using a listing schedule, this will allow a regular and purposeful opportunity to present the case. Technology applications can be a useful tool in managing some portions of the civil case, including notices, filing of responses promptly using e-filing, etc. The power of technology in enabling CFM to transform the conduct of civil cases is already recognised in international jurisdictions where they have started using technology-oriented CFM.<sup>94</sup> It is also acknowledged that CFM in terms of technology should permeate through the lifecycle of a civil case and including filing, pre-hearing, and hearing stages of the case.<sup>95</sup>

In civil cases, the challenges to CFM will be about accommodating interim applications that may interfere with the course of the case. These interim applications must be accommodated by the court according to the circumstances in which they have raised. These applications can arise at the beginning of the case or during the case and may have to be suitably scheduled for disposal. Other procedural challenges are outlined above (see chapter on “Introduction to CFM in India”). The Civil Procedure Code provides for inherent powers for the court,<sup>96</sup> which are often used to make the applications for extending timelines and adjournments. While case timetables are used, it is important to remember that provisions such as ‘the inherent powers of the court’ may sometimes hinder the strict application of a case timetable. In the Indian

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<sup>92</sup> Law Commission of India, ‘Consultation Paper on Case Management’ p. 8.

<sup>93</sup> Law Commission of India, ‘Consultation Paper on Case Management’ p. 16.

<sup>94</sup> Zuckerman on Civil Procedure: Principles of Practice 3<sup>rd</sup> Edition – Chapter 11 (Court Management and Party Compliance – The Use of Technology in Case Management).

<sup>95</sup> Zuckerman on Civil Procedure: Principles of Practice 3<sup>rd</sup> Edition – Chapter 11 (Court Management and Party Compliance – The Use of Technology in Case Management).

<sup>96</sup> Section 151, Code of Civil Procedure, 1908.

context recalibrating the approach to civil cases by employing technology tools and evaluating the procedural goals can go a long way in implementing CFM.

## CFM AND CRIMINAL JUSTICE

Case flow management in criminal cases is an idea that might seem odd to criminal practitioners. A criminal case is different from a civil case for the reason that a criminal case is typically prosecuted by the state against an individual. Procedural safeguards guaranteed under the Code of Criminal Procedure, 1973 and the Constitution of India are vital in ensuring a fair trial to an accused, who is faced with the might of the state machinery.

Before examining whether case flow management exercise is possible in criminal cases in India, it is important to briefly outline the different types of criminal cases and the procedure for the prosecution delineated in the Code of Criminal Procedure, 1973. Based on the severity of the offence and judge who will hear the trial, there are four kinds of cases- cases triable by courts of sessions<sup>97</sup>, warrant cases triable by magistrates<sup>98</sup>, summons cases triable by magistrates<sup>99</sup> and summary trials.<sup>100</sup> Summons cases involve offences punishable with imprisonment upto two years<sup>101</sup> and warrants cases involve offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years.<sup>102</sup> As can be seen, warrants cases are more serious and summons cases involve less serious offences. The procedures for the conduct of these cases are also different, which have been elaborately delineated with under the Code of Criminal Procedure, 1973. The stages involved in the case and the complexity progressively increase as the offence in question becomes more serious in nature. Therefore, all criminal cases cannot be categorised together for the purpose of exploring opportunities to introduce case flow management to the trial of criminal cases in India. What is important to consider however, is that this means that case flow management can perhaps be introduced in criminal cases through test runs in offences of less severe nature.

Recognising the importance and complexity of criminal cases, a constitution bench of the Supreme Court had cautioned against fixing time limits for the completion of criminal trials.<sup>103</sup> This is despite the fact that the right to speedy trial has been recognised as a fundamental

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<sup>97</sup> Chapter XVIII, Code of Criminal Procedure, 1973

<sup>98</sup> Chapter XIX, Code of Criminal Procedure, 1973

<sup>99</sup> Chapter XX, Code of Criminal Procedure, 1973

<sup>100</sup> Chapter XXI, Code of Criminal Procedure, 1973

<sup>101</sup> Section 2(w), Code of Criminal Procedure, 1973

<sup>102</sup> Section 2(x), Code of Criminal Procedure, 1973

<sup>103</sup> *A.R. Antulay v R.S. Nayak* (1992) 1 SCC 225 [83].

right.<sup>104</sup> However, recent amendments, especially in case of sexual offences have sought to cap the outer limit for the conclusion of trials in such cases to two months from filing of the chargesheet.<sup>105</sup> The Law Commission of India has, in its Draft Case Management Rules, recommended classifying offences into five separate tracks in order to fix timelines for their completion, which range from six months to fifteen months.<sup>106</sup> One flaw of these Draft Rules that is immediately evident is the manner in which cases are sought to be categorized. The five Tracks are- offences punishable with death (I), other cases where accused in in jail (II), cases affecting a large number of persons (III), cases being tried by special courts (IV), all other offences (V). There is no coherent thread running through in these categories, especially of case type and whom it is triable by. Further, the most serious cases (offences punishable with death) are sought to be completed within the shortest period (six months) whereas special courts are sought to be given the most time to complete their trials, which typically should have lesser lesser burden of cases than other courts.

It might be nearly impossible to fix a timeline at the beginning of a trial in cases involving serious offences, which often involve multiple accused and several witnesses. These witnesses may be members of the public as well as public officials such as police officials. The Final Report on the Zero Pendency Pilot Project by the Delhi High Court<sup>107</sup> notes:

“As observed in the previous section a majority percentage of hearings in the life cycle of a criminal case comprise of prosecution evidence stage. During the evidence stage witnesses form a key role, be it a civil or a criminal case. Absence of witnesses during the evidence stage causes a serious impediment to the progress of the case. Hence, witnesses’ day to day presence during the evidence stage is crucial. Across the Sessions Courts and the District Courts, delay due to absence of witnesses was seen to be one of the main reasons for adjournments. There are various reasons for absence of witnesses- absence due to personal issues, delay due to nonreceipt of the Forensic Science Laboratory (FSL) results, unserved summons due to incomplete/change of addresses, incomplete list of

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<sup>104</sup> *Hussainara Khatoon v. State of Bihar* [(1980) 1 SCC 81]

<sup>105</sup> Section 309, Code of Criminal Procedure, 1973.

<sup>106</sup> Law Commission of India, ‘Consultation Paper on Case Management’ p. 14.

<sup>107</sup> DAKSH, ‘Final Report on the Zero Pendency Pilot Project by the Delhi High Court’ available online at [http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice\\_3MRRIN3QTHN.PDF](http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_3MRRIN3QTHN.PDF).

witnesses in the charge-sheet, nonavailability of police witnesses due to pre-occupation in other duties etc.”

From a perusal of the above paragraph, it becomes evident that more serious offences typically involve a large number of players and the coming together of different aspects of the state machinery, sometimes resulting in unavoidable and unintentional delays. Further, the NCMS Baseline Report on Case Management System,<sup>108</sup> recognized that proposing timelines is meaningless in the absence of adequate judges, human resources and infrastructure to dispose of the cases.<sup>109</sup>

Timelines to complete trial apart, case management in criminal cases has been the subject of limited policy research in India. The Law Commission of India has identified the lack of case management as one of the most significant causes of pendency of criminal cases in India.<sup>110</sup> The NCMS Report recommended that judges draw schedules for completion of trials in completion of criminal trials.<sup>111</sup>

Recently, the Draft Criminal Rules on Practice, 2021 issued by the Supreme Court<sup>112</sup> in case titled *In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials v. State of Andhra Pradesh & Ors* contain provisions for case management hearings in criminal cases. The Supreme Court has observed:

“This court is of the opinion that the courts in all criminal trials should, at the beginning of the trial, i.e. after summoning of the accused, and framing of charges, hold a preliminary case management hearing. This hearing may take place immediately after the framing of the charge. In this hearing, the court should consider the total number of witnesses, and classify them as eyewitness, material witness, formal witness (who would be asked to produce documents,

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<sup>108</sup> NCMS Baseline Report on Case Management System, available online at <https://main.sci.gov.in/pdf/NCMS/Case%20Management%20System.pdf>.

<sup>109</sup> NCMS Baseline Report on Case Management System p. 12.

<sup>110</sup> Law Commission of India. 2012. Report No. 239: Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities’ [2.4] (“Trial Judges not putting in place effective case management measures such as fixing up proper time-schedules and ensuring continuity in trial and dealing with the advocates with firmness and tact.”)

<sup>111</sup> NCMS Baseline Report on Case Management System p.13.

<sup>112</sup> *In Re: To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials v. State of Andhra Pradesh & Ors* (2021) SCC Online SC 329.



etc) and experts. At that stage, the court should consider whether the parties are in a position to admit any document (including report of experts, or any document that may be produced by the accused, or relied on by her or him). If so, the exercise of admission/denial may be carried out under Section 294, Cr. PC, for which a specific date may be fixed. The schedule of recording of witnesses should then be fixed, by giving consecutive dates. Each date so fixed, should be scheduled for a specific number of witnesses. However, the concerned witnesses may be bound down to appear for 2-3 consecutive dates, in case their depositions are not concluded. Also, in case any witness does not appear, or cannot be examined, the court shall indicate a fixed date for such purpose. The recording of deposition of witnesses shall then be taken up, after the scheduling exercise is complete. This court has appropriately carried out necessary amendments to the Draft Rules.”

These Draft Rules have not yet been notified by the Delhi High Court, however, they can serve as an important first step. As a preliminary step, case flow management can certainly be introduced in the trial of offences which are less serious in nature, or complaints cases triable by magistrates, as well as cases under Section 138 of the Negotiable Instruments Act, 1881 for the dishonor of cheques. Criminal cases instituted under Section 138 of the Negotiable Instruments Act, 1881 are quasi criminal in nature or “civil sheep” in a “criminal wolf’s” clothing<sup>113</sup>, as they are essentially contested between two private parties. Section 143(3) of the Negotiable Instruments Act provides that an endeavor should be made to complete the trial in cases of dishonor of cheques within six months of the filing of the complaint. The Project Implementation Guidelines of the Digital NI Act Courts in Delhi, 2020<sup>114</sup> issued by the Hon’ble Delhi High Court in pursuance of the order dated 05.03.2020 passed by the Supreme Court in *Makwana Mangaldas Tulsidas v. State of Gujarat*<sup>115</sup> notes that dishonor of cheque cases account for more than 54% of criminal cases pending in Delhi. It is clear that dishonor of cheques cases are not being decided within six months. Similarly, offences which are triable as complaint cases by magistrates, for example defamation punishable under Section 500 of the Indian Penal Code can also be considered for a pilot case flow management programme.

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<sup>113</sup> *P Mohanraj & Ors v. Shah Brothers Ispat Private Limited* (2021) 6 SCC 258.

<sup>114</sup> Delhi High Court. 2020. ‘Digital NI Act Courts in Delhi: Project Implementation Guidelines’, available online at <https://delhidistrictcourts.nic.in/DigitalNIActCourtsProjectImplementationGuidelines.pdf>.

<sup>115</sup> Special Leave Petition (Criminal) No. 5464 of 2016.

These cases are also adjudicated between two private parties, and do not generally involve many witnesses. Further, the problems encountered at the initial stages of a criminal case such as service of summons to the accused which take up judicial time are same across categories of cases. The findings from the impact of case flow management on service of summons in less serious offences can perhaps then be replicated to more serious offences, like warrants cases and cases triable by court of session.

## CONCLUSION

The overall pendency of cases across courts is being documented to a large extent, however, that data alone is not enough to successfully put in place court management systems in the country. In other words, it can be said that exponential pendency of cases is a symptom of the malaise, not the malaise itself. As has been discussed in the paper, comprehensive data and its analysis is key to meaningful discussion for reforms on court management in India. Technology can be effectively utilised to put in place court management systems. Technology can assist in calculating the time taken in the lifecycle of a case, from filing to disposal. Further, it can also assist in organisational schemes involving scheduling cases and listing cases.

Attempts to evolve and integrate court management systems in India have focussed thus far on devising tracks to classify cases, depending on their average duration. But these average durations can at best be said to be based on intuitive estimates, not readily backed by any analysis of real time data or nuanced data allowing for accuracy. What is the 'normal' amount of time that a case ought to spend in the system before its final disposal? The urgent need of the hour is an analysis of real time data of cases, in order to identify bottlenecks and causes for delay in disposal of cases.

One way to initiate innovative approaches to court management and case flow management is by undertaking pilot projects which are inter-disciplinary in nature. When policy experts come together with practitioners and technical experts, court data can be simulated in a manner which yields usable results and help identify any bottlenecks which may unknowingly be clogging up the system. It is immensely tempting to pin the blame for seemingly endless pendency of cases on *adjournment culture*. However, that is perhaps too simplistic an explanation. Examining the system from a fresh perspective with the help of technical experts will be useful in identifying time consuming processes and procedures and to devise ways in which the same can be streamlined to make the overall system time effective. This also fits into the thought that any effective court management system would have to entail within its ambit the best practices required for filing of cases, scheduling of cases as well as case flow management.

Another problem that has been highlighted in existing literature is the lack of adequate infrastructure and man power (both in terms of judges and court staff). Once the underlying causes of delay are identified through interdisciplinary projects, ways can also be thought of to better utilise the existing resources in the interim, while the judicial system receives an infrastructural upgrade. One reason for delay in disposal of cases could possibly be the non-

optimal utilisation of resources and duplicity of work. These reasons can fully be explored only when real time data is analysed from the time the case enters the system, i.e. the stage of filing, as it moves along the system and interacts with various stakeholders like lawyers, registry officials, judges and court staff.

Technological advancements can be utilised effectively by taking help of technical experts who can use tools such as data analysis, modelling, and simulation. What is also essential is an examination of the manner in which judicial time is spent on adjudicating cases and to identify any tasks which ordinarily end up consuming a lot of judicial time, but which are more administrative in nature and do not need to consume the precious time of judges. This can be achieved by process mapping the lifecycle of a case in detail. Process mapping as a concept has several uses in the business industry, allowing corporates and other organisations to improve efficiency. However, it can be used in the backdrop of judiciary too. If judiciary is viewed as an institution that works like any other organisational entity, process mapping can be used to analyse the various stages of a case. Process mapping will allow us to understand the impact of each stage on a case as a whole.

There can be no dispute with the fact that court management systems (including case flow management) are an urgent part of judicial reforms. The question which requires urgent consideration now is ways to achieve it effectively. The paper indicates reports where Indian judiciary shows an existing inclination to involve management and information technology in court management. This highlights the foray of the Indian judiciary to transition towards reforming the justice system using administrative capacity building approaches. These approaches can derive from best practices in the organisational realm such as process mapping and use technology tools to elevate administrative tasks in the justice system.