The need for ‘special’ attention

Last December, the Supreme Court greenlit the Centre’s proposal to set up 12 fast-track courts to adjudicate and speedily dispose of 1,581 cases against Members of Parliament and Legislative Assemblies. Apart from uncertainties about the adequacy of such a measure, a more glaring issue is that the order conflates two distinct judicial features by using them interchangeably: special courts and fast-track courts.

Special courts, which have existed in the subordinate judiciary since before Independence, are set up under a statute meant to address specific disputes falling within that statute. Over 25 special courts were set up between 1950 and 2015 through various Central and State legislations. However, despite being an old means of addressing the specificities of certain statutes and judicial backlog, there seems to be little if any evaluation of how this system works. Nearly four decades ago, a Bench of the Supreme Court gave its judgment in a decision, titled *In Re: The Special Courts Bill, 1978* (Special Courts Case), pertaining to special courts and meant to deal with excesses during the Emergency. Here, the court opined on the constitutionality of and the legislative competence with which Parliament could establish special courts. Based on the discussion on special courts in the judgment, a prima facie definition of a special court can be: A Court which was established under a statute, to deal with special types of cases under a shortened and simplified procedure.

Fast track courts were the result of recommendations made by the 11th Finance Commission which advised the creation of 1,734 such courts to deal with the judicial backlog. They were actualised though an executive scheme (as opposed to a statute of the legislature) and were meant to be set up by State governments in consultation with the respective high courts. Though meant to be wound up in 2005, the scheme was extended till 2011. Since then, six such courts have been set up in Delhi to take up rape cases.

Inconsistent drafting

While there is sufficient discussion around fast track courts and tribunals, the same cannot be said about special courts. This vacuum in research and analysis with respect to special courts has led to inconsistencies in legislation and operation. While opinions may differ anecdotally, there is no doubt that this is best demonstrated by Parliament. A look at 28 pieces of Central legislation such as the Special Criminal Courts (Jurisdiction) Act, 1950 to the Prevention of Money Laundering (Amendment) Act, 2012 leaves one with a dizzying set of varied provisions to enact such courts. The Special Courts case clearly uses the phrase “established under statute”, which, in most cases, should imply the creation or establishment of a new court. However, all of two statutes use the term “establish”, while four use “constitute”, two use “create”, eight use “designate”, two use “notify”, and one uses “appoint”. Even the Protection of Children from Sexual Offences Act, 2012 uses the words “establish” and “designate” in different places. The unifying thread in these statutes is that these terms have not been defined or procedurally explained. For States and high courts, this leads to ambiguities in operation in setting up such courts. For example, do they require new buildings? Should more judicial officers be hired? If a judge is designated under a special statute, should those matters be added to or replace her roster? This could create confusion with respect to appointments, budgetary allocation, infrastructure, and listing practices.

What purpose do these courts serve? On a secondary level, 13 pieces of legislation state that the government “may” set up special courts, while 15 say the government “shall”. However, going by the definition, the answer as to whether a law requires a special court or not is a binary: yes or no. In such a situation, leaving options such as “may”, add to the ambiguities. It is also unclear what the legislature intends to accomplish by creating special courts. For instance, there seem to be

more special courts under the Prevention of Corruption Act, 1988 as compared to the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 despite data showing the former having a tenth of the number of registered cases as the latter (2015). This points to unclear legislative intent while drafting such provisions. If a special court is meant to address the volume of cases under a statute, then why use “may” as the enabling provision instead of “shall”? When combined with the question of how exactly such courts must be set up, a range of possibilities confront the judiciary and the government, with little to no clarity on how these decisions are made.

The status quo

Apart from the Supreme Court addressing their constitutional status, policy questions pertaining to the need and efficiency of special courts have seldom been analysed. As of October 2017, as many as 71 out of Delhi’s 441 judges in civil and sessions court (or 17% of Delhi’s subordinate judiciary) were designated as special courts under 12 statutes. More recently, the Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2016 drafts contain a provision for special courts. Therefore, special courts continue to be ubiquitous, despite being under-analysed.

There are over 2.8 crore cases in the subordinate judiciary, which is the most out of the three tiers of the judiciary — subordinate, high courts and the Supreme Court. Parameters such as the frequency and number of effective hearings and calculating the number of pending cases need to be developed to study the workings of special courts. Without such inquiries, their number continues to grow. Both organs of state continue to believe that special courts are a panacea for judicial efficiency, despite there being virtually no evidence to support this assumption. Finally, it is important to ask questions and determine whether or not this special courts system is in fact helpful in addressing the judicial backlog.

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The India-Japan economic relationship remains underwhelming in relation to strategic ties

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