

MAJOR CAUSES OF PENDENCY FOR LITIGATIONS IN INDIA: AN ANALYSIS

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ABSTRACT

In India, the pending of court cases and the consequence of deprivation of basic human rights is a question of quality and effectiveness in the country's judicial system. Indian courts have a huge backlog of litigation, which would take several years to clear if the system continues to operate at its current level of efficiency. One of the grey areas in which our justice delivery system has fallen short of the public's expectations is the judiciary's failure to provide justice quickly. One of the most significant issues facing the judiciary is the delay in the administration of justice. In this research paper, the author discusses the problems with the Indian judiciary and the need to strengthen court management in order to reduce case pending times. The researcher on the basis of knowledge gained through International exposure has tried to convince that now we need to change our judicial system and upgrade the working with new advanced technology to save time and energy.

KEYWORDS: Litigation Pendency, Courts, Administration of Justice, Cases, Indian Judiciary

INTRODUCTION

We are also aware that the current justice system is incapable of dealing with the current level of litigation, and there is no particular explanation for this, but rather a number of them. Today, the courts' overarching goal is to provide justice to people as quickly as possible and at the lowest possible cost. One of the major expectations is that today's court procedures are more focused on customs than on job efficiency standards. With the rise in literacy, the number of new cases filed will increase in the coming years. As a result, the subordinate judiciary should develop management skills to deal not only with the existing backlog, but also with the possibility of a possible rise in the number of cases. We cannot neglect the importance of modern management techniques and technology in the current situation, which can be applied to the judicial system or its operation.³

The state has a responsibility to establish a social order in which the country's legal system offers justice to all people and access to justice regardless of social, economic, or political barriers. In India's democratic culture, the judiciary, in addition to the legislative and executive branches, plays an important role in securing and improving people's rights. Courts have been formed at all levels in the country to uphold citizens' rights and provide redress in the event that they are violated. Through its ruling, the Supreme Court confirmed that the right to a speedy trial is a fundamental right guaranteed by Article 21 of the Indian Constitution.

ACCESS TO JUSTICE

A vibrant democracy's main characteristic is "*access to justice*" and "*fast dispensation of justice*." As long as justice is deferred, it not only prohibits access to the system, but it also puts people both inside and outside the country in a psychedelic mindset. The administration of law by courts is what justice is all about. There are many elements of access to justice like:

First and foremost, all members of the polity's population should be treated equally.

Second, the laws of the land must guarantee complete equality without discrimination.

Third, a professional and impartial judiciary is required.

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³ Tsn Sastry, Access to justice and judicial pendency: confluence of juristic crisis, available at:<https://www.researchgate.net>

Fourth, there is easy access to the judiciary.

Fifth, a professional and fair legal profession, and

Sixth, well run courts

Seventh, the courts' laws and decisions are carried out effectively.

Finally, an appropriate mechanism to address all types of complaints as well as an effective mechanism to administer justice is required rather than at its own peril.

REVIEW OF LITERATURE

The researcher Rashmi Sawant pendency in judiciary of Pune district with special reference to regular civil has been discussed several times before. A number of recommendations have been made to address this issue, including the appointment of more judges, improvements in the distribution of business, amendments to the rules of procedure, and the abolition of delaying tactics. Various Law Commissions and other bodies have looked into this problem, which has become a source of concern even among legal professionals, but no solutions appear to exist.⁴

The researcher Gagan Gandhi according to Justice Chandrachud, is to think beyond the box in order to alleviate the issue of pendency. Our outdated methods of resolving cases have resulted in clogging of the system and overburdening of the judiciary with pendency

We must contemplate and must take urgent action to fix and overcome and its ability to impart justice.⁵

The image of justice and equality is imprinted in our minds when we hear the word judiciary, but one thing that leaves an enduring impact on our minds is the delay in justice delivery and the resulting pendency in courts. Litigation pending in courts is one of the most widely debated issues of judicial reform. In India's current judicial system, the legal principle "Justice Delayed is Justice Denied" is well known. The term "delay" in justice refers to the amount of time spent on case resolution that exceeds the amount of time that a case may reasonably be expected to be resolved by the Court. "An autonomous and effective judicial system is one of the fundamental foundations of our constitution," the Supreme Court said. It is our statutory duty to ensure that the case backlog is reduced and that attempts are made to improve case disposition." The word "pending" refers to a case that has yet to be settled by a court of law. The number of pending cases is growing every day, demonstrating the judiciary's inability to produce justice on time. When we compare the Indian judicial system to other judicial systems around the world, we can see that it is more professional and efficient. However, in comparison to other judicial systems around the world, the number of cases pending in India is higher.

The Supreme Court in *Hussainara Khatoon Vs. State of Bihar* held that, "speedy trial is of essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice". The terms inserted by amendment tend to set an outer time frame in *Salem Advocate Bar Association Vs Union of India*, by stating that summons must be issued within thirty days of the suit being instituted. Given the length of time that legislation take to pass and the small number of Judges available, it is now necessary to use an Alternative Dispute Resolution Mechanism to resolve the litigation between the parties as soon as possible.

Under Article 21 (Right to life and personal liberty) of the Constitution of India, 1950, the right to a fair and speedy trial is guaranteed as a constitutional right, and delays in the justice delivery system infringe on this right. According to the Law Committee, the delay in deciding is as old as the law itself. A miscarriage of justice occurs because of the excessive delay, and the cost of litigation rises. A quick case trail and resolution never equates to a hasty dispensation of justice. In certain extreme cases, reimbursement for these delays is completely ineffective.

CAUSES OF LITIGATION PENDENCY IN INDIA

Some of the causes of Litigation Pendency in India are as follows:

⁴ Rashmi Sawant, Causes of pendency in judiciary of Pune district with special reference to regular civil suits, (2019) (Gokhale Institute of Politics and Economic)

⁵ Gagan Gandhi, How to reduce the pendency in the courts, available at: <https://www.latestlaws.com>

Low Judge Strength and Appointment: The first question that comes to mind is whether the court has enough judges to handle the pending cases. There are a total of 1079 judges in India's high courts, with 680 serving. According to the Law Commission of India's Report No. 245, the issue of case pending has become much worse. To deal with this situation and resolve the cases, the court will need a large number of resources. To provide justice to society, judges must be strengthened in the courts. If the Indian government really wishes to address the issue of litigation pending, it must fill all vacant high court and subordinate judge positions.

Lengthy process of Law: People remain outside the courthouse for years waiting for the court to deliver justice because the hearings of a case take too long. When a prosecution has a lot of trials and a lot of adjournments, victims get tired of fighting for justice. The accused are abusing the legal system to their advantage. The government should take steps to shorten the time it takes to resolve a lawsuit. In certain cases, the Supreme Court of India issues instructions to lower courts requiring them to complete a trial within a certain time frame; however, courts only deal with certain cases and not others. There are several lawsuits that have been pending for over 50 years. The Supreme Court should issue guidelines to expedite the resolution of those cases.

Absence of Judges: Judges are often human beings with families, friends, and links to the community. Vacations are often necessary for them to spend time with their families and society. The judiciary provides vacations for them to spend time in society, but some judges want more vacations to enjoy their lives. When judges go on vacation without telling their superiors, justice is postponed in cases that are scheduled to be heard that day. For example, if a judge is absent on the day of a bail hearing for an under trial prisoner without consulting their superiors, is justice served to the under trial prisoner? There are several judges in the judiciary who only serve for a fee and who take vacations for no apparent cause. The cases for that day were postponed to a later date. Therefore, the judiciary's workload is growing every day, and the number of cases pending is increasing as well.

Lack of Infrastructure: If we look at the root cause of litigation pending, one factor that triggers more pending lawsuits by slowing down the trial process is court facilities. In an interview, Mr. Dipak Mishra, India's former Chief Justice, said that the main cause of the litigation backlog is a shortage of facilities for judges, litigants, and court workers. Basic amenities such as proper washrooms, canteens, parking, a library for advocates, seating areas for advocates etc. are all lacking in subordinate courts. The government must recognize that the infrastructure of the courts is the roadblock preventing judges and court workers from performing their duties effectively. The government should put money into the judiciary's growth. Land and building availability for court building computerization must be done to boost court facilities, which is why the government intends to launch online connectivity of 2992 quotes this year. If the technology is in place, litigants will be able to monitor and check their cases online. The court's next hearing date is at testis order judgment of the court's next hearing date is at Electronic trials have been set up in some districts, with plans to set up others as well.

Profession of Advocates turned into service based to money based: When you go to court, you will notice that no one is fighting for justice; instead, everybody is fighting for the money they'll get from their clients. On the court, there is a fierce rivalry to see who can win the most money. Some lawyers charge crores of rupees in a single case for their services. Some advocates charge a large fee for their services, but others accept the fee because no one is willing to work for less than the fee they earn from their clients. When attorneys take money from clients and do not work for it, the profession's value is diminished in the eyes of the public. Some lawyers bill by the hearing of a lawsuit, so they can take money from clients for years and years. No lawyer thinks about the litigation pendency or justice. They are all in it for the money. There is a need for advocates to act professionally rather than for profit. If activists battle for justice, the whole color of the judiciary will be changed one day. The Arrears Committee, chaired by Justice V. S. Mallimath, established several factors that contribute to the accumulation of case arrears in the High Courts. The following are some of the key reasons:

- (1) Litigation explosion.
- (2) Accumulation of first appeal.
- (3) Inordinate concentration of work in the hands of some members of the Bar.

- (4) Granting of unnecessary adjournments.
- (5) Indiscriminate resort to writ jurisdiction.

Procedural factors

The Supreme Court ruled that Article 21's right to a speedy trial applies to all stages of the process, including investigation, inquiry, trial, appeal, review, and retrial. When it comes to the procedural factors that cause cases to be delayed in being resolved, there are four categories to consider:

- Delays in the pre-trial phase,
- Delays during the trial phase,
- Delays during the appeal phase, and
- Delays during the execution phase.

Process in legal system for justice in cases

- A suit is filed at the counter for filing
- A individual from the Registry looks through the papers to make sure the appropriate Court fees are charged, the pleadings are correct, the case is not barred by restriction, and the papers are properly counted.
- The file goes to the Judge who is the Original side in-charge and he along with the Assistant Registrar of the original side marks the case to a particular Judge in the Original side.
- The case is presented to the Court and is accepted. The defendant in the lawsuit is served with a summons, and any applications (stays, etc.) are served with notice. An interim ex-parte order is also issued if the Judge deems it necessary.
- Another reason for the delay is the time it takes to serve summons to the opposing side. The defendant has been presented with papers. He enters his presence and requests time to file his written reply in response to the plaint as well as any applications that may have been filed. Time has been granted. The plaintiff is also granted time to file a replication or rejoinder to the defendant's written statement or reply. On a specific date, the matter is scheduled for acceptance or rejection of documents before the joint registrar.
- After admission denial is complete, the matter is placed before the Court by the Joint Registrar for scrutiny. This stage ensures that the case is prepared for trial. The joint registrar sees if the list of witnesses has been filed etc.
- Thereafter, the case comes up for trial and final arguments.

IMPACT OF PENDENCY

In the words of one of the papers in the First Post Magazine, the effect of pendency is as follows:

There are two aspects of delay that need to be considered in the context of a criminal trial. The first, as expressed above, deals with the time taken to complete a trial and give a judgment. The second aspect, related to pendency, pertains to the consequences of delay and its effect on under trials. Criminal law proceeds on the presumption of innocence, namely an accused presumed innocent until proven guilty. However, the pendency of a criminal trial has a substantive impact on the liberty of an accused person and their presumption of innocence, especially if they are put in prison pending trial.

On the civil side, there are consequences to constitutional rights among other issues. High pendency and delays have economic costs due to lost days and state of suspension of business. It is no wonder that India ranks poorly on the Ease of Doing Business Index developed by the World Bank Group. Apart from inefficiencies from government and public administration, the justice system also has a role due to laxity on contract enforcement.

Aside from the misery of citizens, there are also repercussions for the justice system because of the delays. These unfavorable results, according to South African Chief Justice Mogoeng, are:

- High cost of legal fees.
- Loss of memory by witness, thereby affecting the quality of justice.
- Disappearance of witnesses.
- Repeat offences.
- Economic loss

- Corruption within judicial system

Waste of limited resources

According to Vijay Joshi, an eminent Indian economist, issues arising from pending cases, such as the administration of justice, the security of contracts and property rights, and so on, are suffocating the Indian economy's development.

REMEDIES

The troubling condition necessitates immediate action. These should be useful and effective. These reforms should be capable of delivering fast and effective justice to the general public. Equally essential measures should be taken to ensure judicial transparency and independence. Several studies by law commissions have advocated for a variety of substantive and realistic judicial reforms. But, despite this, nothing has been done to resolve the escalating crisis. To begin, the government, judges, lawyers, and litigants must all have a deep desire and determination to eliminate these ills from our system.

The issue of delays in the administration of justice has been discussed previously. Several proposals have been made to address this problem, including the recruitment of more Judges, reforms in market delivery, rule changes, and the removal of delaying tactics. Various Law Commissions and other bodies have looked into the problem, and it has become a source of concern among legal professionals, but no solution appears to be available at the moment. The Indian legal system is built on the premise that justice will be delayed, if it is granted at all. For a nation of 800 million people, almost 20 million cases pending in different courts around the world is a massive amount. Unless something is done about it soon, this rate of pendency is likely to continue as the population increases.

Public dissatisfaction with the administration of justice was as high in the twentieth century as it had been in previous decades. It may seem easy to explain the widespread dissatisfaction in terms of structural changes during a period of particularly rapid change. However, if the phenomenon continues, it would be difficult to blame it solely on shifting circumstances. An explanation based solely on sociological differences would be adequate only if more fundamental factors are absent. It's tempting to attribute the increase in perjury, which has harmed the administration of justice in modern courts so frequently, solely to the decline in the influence of religious ideas. On the other hand, perjury has always been a serious crime.

Fearing this life's punishments can just as good as fear the torments of the afterlife. Despite the collapse of religious institutions, power has continued to survive in some form. According to **Justice Bhagwati**, the country's judiciary is on the verge of collapse due to a massive backlog of cases in the courts. *"The judiciary is on the verge of collapse due to a massive backlog of arrears, particularly in the High Courts and Lower Courts."* He states that there are more than 20 million lawsuits pending all over the world, with the bulk of the problems arising from the executive's insensitivity and ignorance. Furthermore, fewer appeals would be filed in the higher courts if the lower courts were staffed with qualified people. Since the beginning of time, it has been used to describe the state of civil litigation. The costs of launching a civil suit, as well as legal fees, are so high that bringing a case based on a small disagreement is no longer worthwhile. Technicalities interrupt the litigant at any point in the procedure, which is unnecessarily complicated. And after a decision has been made, the number of appeals filed will cause further delays. Even if the final judgment is secured, execution is more than likely to be returned unsatisfied. The ability of the honest litigant to claim his legal rights is hindered in such situations, whereas the dishonest litigant is encouraged to make misleading or exaggerated claims. Owing to the high costs of engaging in prolonged proceedings, parties can settle for lesser sums or go without relief and justice. Few prominent remedies which are recognized for the relief in cases of delayed justice are as follows:

- **There is a pressing need to fill old vacancies and create new positions:** Vacancies for judges in courts must be filled as soon as possible.⁶ Litigation should be avoided at all costs: Another way to minimize the backlog is to reduce the number of cases that come before the courts. The judges should be extremely stringent right from the start. They can differentiate between frivolous and

⁶ Vandana Ajay Kumar, Judicial delays in India: cause & remedies, Volume 3, Journal of Law 50 (2012)

legitimate litigation, and frivolous litigation should be discouraged.⁷Case and Court Management to Strengthen Judiciary: The way ahead. Alternative Dispute Mechanism: A useful tool for minimizing the length of time a case is pending.⁸

- **Use of Technology:** Technology can be a viable option for addressing delays and delivering swift justice.⁹
- **Expert Advice:** The court will enlist the assistance of management consultants to prepare cases for one-day hearings. Setting a Time Limit: A time limit should be set for both hearing a case and making a decision.¹⁰Restriction on Adjournments: Adjournments would be limited to emergencies and extraordinary circumstances. Every day, a well-known lawyer is likely to manage many cases that require his presence in various courts. This forces him to concentrate on one or two of them while seeking adjournments on the others.¹¹

CAUSES OF DELAY IN JUSTICE INCREASED COMMON MAN UNDERSTANDING OF RIGHTS

Recent socio-economic advancements, as well as the resulting awareness of legal rights, have given common citizens the confidence to approach courts of law for justice.¹²

- **There are not enough courts:** There are inadequate courts in India due to a lack of funding in the judiciary. Both the federal government and the states are opposed to rising spending on the courts. More courts and benches are required in India. Not all courts have been modernized or computerized.¹³
- **Pendency rates rise due to a lack of judges:** One of the causes of judicial backlog is a lack of judges. Cases continue to be heard, but no definitive decision is reached. Many people take advantage of the mechanism by using adjournments. According to activists, there is a pressing need to increase the number of judges per million people from the existing 11 to at least 50.¹⁴
- **Misuse of Public Interest Litigation:** Since the definition of PIL is so wide that even a letter may be considered a PIL, many people misrepresent themselves as PILs and file them in the High Court for monetary gain. When the number of PILs rises, so does the number of cases filed in the High Court and Supreme Court. It is necessary to limit the filing of PILs that are not necessary by establishing guidelines for filing PILs.¹⁵
- **High rate of filing of cases and low rate of disposal of cases:** The cornerstone of pending cases is the number of cases increasing day by day, and the disposal rate of subordinate courts is very poor, due to a lack of judges, absenteeism of judges, the phase of trial of a case, strike by advocates, and regular transfer of judges, among other factors in subordinate courts.¹⁶
- **From the government's hand, there is much too much litigation:** In India, the government is the most active litigant, accounting for nearly half of all pending cases. Many of them are simply cases of one government agency suing another, with the courts deciding the outcome.¹⁷

Constant Amendment of Laws: Another cause of delay is the constant amendment of laws. The majority of Indian laws have been changed many times. As a consequence, understanding and explaining the current legal rules takes time. It wastes precious court time.¹⁸

⁷ Ibid

⁸ Dipak Misra, National initiative to reduce pendency and delay in judicial system (2018) (The Indian Law Institution)

⁹ Ibid

¹⁰ Supra Note 14

¹¹ Supra Note 14

¹² Alex Andrews George, The problem of pending cases in Indian courts: how to tackle, available at: <https://www.clearies.com>

¹³ Ibid.

¹⁴ Supra note 1 at 294.

¹⁵ Sandeepdangi, Causes for litigation pendency in India, available at: <https://www.legalserviceindia.com>

¹⁶ Ibid

¹⁷ Supra Note 6

Lack of case management: Case management is lacking due to a lack of information technology applications for case management. Even for minor and minor cause of action cases, the same procedural law and procedure apply. Often the court's valuable time is spent deciding cases that should be settled by other bodies. Normally, the same judges are assigned to both civil and criminal cases, resulting in a longer time to understand the facts and circumstances of the cases.¹⁹

CONCLUSION

Various recent developments are taking place in India to investigate the issue of justice delays and to resolve cases as quickly as possible. In 2015, the country's top judges convened to draught a National Vision Document for 2015-2020, focusing on the judiciary's financial autonomy, case speeding, and the strengthening of the vigilance cell in district and high courts. The key issue is that no one wants to address the source of the issue. Even if problems are found, no appropriate solution is proposed. There is a need for court management to be recognized as a concept, as well as the inclusion of qualified, skilled, and competent court managers. The bar, the bench, and the government must all work together to reinforce this cornerstone of justice. However, no scheme, even the legal system, can be better than the men who run it. People are becoming more aware of their rights in this technological age, and they are aware of the remedies available to them if their rights are violated. They are going to court; Article 39 of the Constitution guarantees them this right. All receives equal treatment and free legal assistance.

The government should make the judiciary more compatible so that cases can be resolved as quickly as possible. Government should encourage solutions like Alternative Dispute Resolution, Lok Adalat, Fast Track Court, and Gram Nyayalay to provide justice more effectively and reduce the workload of the judiciary. Increase the number of judges: One way to reduce the backlog of cases is to increase the number of judges in the Indian judiciary. This will allow more cases to be heard and decided more quickly. The Law Commission of India (1987) recommended increasing the number of judges to 50 per million people. The Indian legal system is plainly pro-business and pro-industry, and this is how Indian law and legal procedure harm the poor. The legislature should assist. The enshrined conviction that the king can do no wrong is the fundamental precept it adheres to. In May 1956, the Law Commission released its first report, which looked at the issue of state liability in torts. In practically other democratic countries, the government is held accountable for all tortious acts committed by its employees, yet the legislation in India remains unchanged since 1858. Reforms in the financial sector, telecommunications, automobiles, and other sectors have increased efficiency and productivity; similar reforms in the judiciary are desperately needed. However, this is contingent on practicing attorneys being fully committed to enhancing the entire procedure. Despite the many problems that afflict our legal system, the overflowing docket of court cases is a proof of people's trust in the system. The Bar, the Bench, and the Government must all work together to enhance this cornerstone of justice. However, no system, even the legal system, can be better than the men who run it. Even if we pass the best laws and institute innovative procedures, it is possible that we will fall short of fulfilling the fundamental commitment of giving justice. Making even decent laws for bad people may be completely ineffective.

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¹⁸ Supra Note 1 at 296

¹⁹ Ibid

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