

12th March, 2018

# PENDENCY OF CASES IN INDIA

## INTRODUCTION

Denial of ‘timely justice’ amounts to denial of ‘justice’ itself. Two are integral to each other. Timely disposal of cases is essential for maintaining the rule of law and providing access to justice which is a guaranteed fundamental right. However, as the present report indicates, the Indian judicial system is unable to deliver timely justice because of huge backlog of cases for which the current judge strength is completely inadequate. Further, in addition to the already backlogged cases, the system is not being able to keep pace with the new cases being instituted, and is not being able to dispose of a comparable number of cases. The already severe problem of backlogs is, therefore, getting exacerbated by the day, leading to a dilution of the Constitutional guarantee of access to timely justice and erosion of the rule of law.

The Law Commission of India and various other committees has also discussed the matter of arrears and backlogs in its various reports and expressed its concern for reducing the pendency of cases. Similarly, the Apex Court in its various judgments has expressed its concern regarding the pendency of cases in courts. Despite these efforts, Indian judiciary is still overburdened with phenomenal growth in litigations and very low disposal rate.

## REPORTS AND RECOMMENDATIONS

The Law Commission of India in its 77th Report<sup>[1]</sup> (1978) expressed concern regarding the long delay and huge arrears of pending cases in various courts in the country. The Law Commission stressed that delay in justice could destroy the faith and confidence of people in the judiciary. The Law Commission to reduce the pendency in various courts recommended the following:

- (a) that Alternate Dispute Resolution (ADR) techniques such as conciliation shall be adopted in civil cases,
- (b) cases which have an element of emergency (i.e. Matrimonial and eviction cases, cases filed before Motor Accident Claims Tribunals (MACT), cases

under Succession Act, labour disputes) should be given priority and should be disposed off within less than a period of one year,

- (c) there should be adequate court rooms equipped with proper facilities and sufficient accommodation,
- (d) inspection of courts and training of judicial officers.

Malimath Committee Report (2003)<sup>[2]</sup>: The committee expressed concern regarding enormous pendency and new inflow of cases in the courts across India. To tackle the situation of arrear and pendency, the Committee recommended the following:

- (a) Setting up of an “Arrear Eradication Scheme” to tackle cases pending for more than 2 years;
  - (b) that the working days of the Supreme Court be raised to 206 days and High Court by 231 days to deal with arrear of cases;
  - (c) the summary procedure prescribed by Section 262 to 264 of the Criminal Procedure Code should be exercised in large number of cases in which punishment is two years and less to quicken the pace of justice;
  - (d) the Committee noted that the steps should be taken to increase the number of judges and a National Judicial Commission should be constituted at the national level to deal with the appointment of judges to the High Courts and the Supreme Court and to deal with the complaints of misconduct against them.
- Justice Sobhag Mal Jain Memorial<sup>[3]</sup> (2006) on ‘Delayed Justice’ by the then Chief Justice of India, Justice Y.K. Sabharwal, expressed concern regarding delay in dispensation of justice and noted that delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the very capability of the system to impart justice in an efficient and effective manner. The following was recommended to reduce the arrears in the courts:
- (a) Increase in the strength of judges by creating additional courts and by appointing additional



**Pratibha**

B.A.LL.B from  
Campus Law Centre  
University of Delhi

## Expertise:

Corporate, Compliances  
and Litigation

✉ pratibha.p@mcolegals.in

[1] <http://lawcommissionofindia.nic.in/51-100/report77.pdf>

[2] <http://www.pucl.org/Topics/Law/2003/malimath-recommendations.html>

judicial officers in the subordinate courts. Appointment of Ad hoc Judges under Article 224A of the Constitution to clear the backlog in the High Courts for a period of five years or till the backlog is cleared.

(b) Augmenting of infrastructure (i.e. increase in the no. of court rooms and setting up of standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes. Further, use of shift system to reduce the accumulated arrears in the existing courts.

(c) Financial autonomy to the judiciary should be given regarding the creation of posts, allocation of project and incurring of expenditure. Use of case management and court management techniques to reduce the arrear in the courts.

(d) Use of ADR techniques (i.e. arbitration, negotiation, mediation and conciliation). Use of Lok Adalat in civil matters relating to title to properties, boundaries of fields, irrigation facilities, cooperative loans, buying and selling transactions, rights concerning women and similar other disputes typical to the village community, including their family disputes, etc. It was also recommended that the cases involving technical or commercial expertise can be handled in institution of arbitration by a panel of arbitrators.

(e) Setting up of fast track courts of magistrates and fast track courts for civil cases to decide the pending civil cases expeditiously. Setting up of additional courts to deal with cases under section 138 of Negotiable Instruments Act. (As on 31.12.2005, 16,66,873 cases under Section 138 of Negotiable Instruments Act were pending in Magisterial Courts).

(f) Procedural improvements in trial of criminal cases and civil cases to reduce the arrears. Modernization and computerization of the courts to simplify and improve the Day-to-day management of Courts.

The Parliamentary Standing Committee on Law and Justice in order to promote speedy justice available to the common man and to reduce the unbearable load of arrear under which the Supreme Court is functioning, recommended in its 2nd (2004), 6th (2005) and 15th (2006) Reports that benches of the Supreme Court have to be established in the Southern, Western and North-Eastern parts of the country. In its 20th (2007), 26th (2008) and 28th (2008) Reports, the Standing Committee suggested that a bench of the Supreme Court should be established at least in Chennai on trial basis as this would be of immense help to the poor who cannot travel from their native places to Delhi.

Similarly, the Law Commission of India in its 229th (2009) [4] report recommended that the Supreme Court should be split into a Constitutional Bench to be set up at Delhi to deal with constitutional and other allied issues and four cessation Benches be set up in the Northern region/zone at Delhi, the Southern region/zone at Chennai/Hyderabad, the Eastern region/zone at Kolkata and the Western region/zone at Mumbai to deal with all appellate work arising out of the orders/judgments of the High Courts of the particular region. Despite these Reports, the Hon'ble Supreme Court has so far not agreed with the suggestion regarding setting up of its benches.

The Law Commission of India in its 230th Report<sup>[5]</sup>(2009) recommended the following reforms in the judiciary to reduce the pendency of cases/liquidate the huge backlog in the courts:

(a) There must be full utilization of the court working hours. The judges must be punctual and the grant of adjournment must be guided strictly by the provisions of Order 17 of the Civil Procedure Code.

(b) Cases filed on similar points should be clubbed with the help of technology and should be disposed on a priority basis to reduce the arrears.

(c) Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the Apex court in the case of “**Anil Rai v. State of Bihar, (2001) 7 SCC 318**” must be scrupulously observed, both in civil and criminal cases.

(d) Considering the staggering arrears, vacations in the higher judiciary must be curtailed by at least 10 to 15 days and the court working hours should be extended by at least half-an hour.

(e) Lawyers must curtail prolix and repetitive arguments and should supplement it by written notes. The length of the oral argument in any case should not exceed one hour and thirty minutes, unless the case involves complicated questions of law or interpretation of Constitution.

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(f) Judgments must be clear and decisive and free from ambiguity, and should not generate further litigation.

(g) Lawyers must not resort to strike under any circumstances and must follow the decision of the Constitution Bench of the Supreme Court in the case of ‘**Harish Uppal (Ex-Capt.) v. Union of India (2003) 2 SCC 45**’.

The Law Commission of India in its 120th Report (1987) and as well as 245th Report (2014)<sup>[6]</sup> in light of the huge arrear and pendency of cases in the courts. Some of the recommendations are stated below:

(h) Appointment of judges on priority basis to deal with the problem of pending cases and to ensure timely justice and facilitate access to justice for all sections of society.

(i) Creation of Special Courts for Traffic/Police Challan cases which constituted 38.7% of institutions and 37.4% of all pending cases in the courts.

(j) Need for system-wide Reform: That a systemic perspective, encompassing all levels of the judicial hierarchy, is needed for meaningful judicial reform.

(k) Encouragement of ADR Methods to fulfill the goal of providing timely justice to litigants.

## JUDGMENTS OF THE APEX COURT

➤ The Apex Court in **Abdul Rehman Antulay and ors. v. R.S. Nayak and anr**<sup>[7]</sup>, held that speedy trial at all stages is part of right under Article 21 of the Constitution, and further held that if there is violation of right of speedy trial, instead of quashing the proceedings, a higher court can direct conclusion of proceedings in a fixed time. The Apex Court in **Hussainara Khatoon Case**<sup>[8]</sup> noticed that speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21 of the Constitution.

➤ In **Akhtari Bi Case**<sup>[9]</sup> the Apex Court observed that it is incumbent upon the High Courts to find ways and means by

[3] [https://www.highcourtchd.gov.in/sub\\_pages/left\\_menu/publish/articles/articles\\_pdf/DelayedJustice.pdf](https://www.highcourtchd.gov.in/sub_pages/left_menu/publish/articles/articles_pdf/DelayedJustice.pdf) (Pg 6-27)

[4] <http://lawcommissionofindia.nic.in/reports/report229.pdf>

ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case.

➤ In **Imtiyaz Ahmad v. State of Uttar Pradesh and Ors** [10] the Apex Court observed that long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery. These observations have been reiterated in recent Constitution Bench judgment of the Apex Court in **Anita Kushwaha etc. etc. v. Pushap Sudan etc. etc.**, [11] wherein it was noticed that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

➤ In **Bhim Singh v. Union of India** [12], it was observed that central government must take steps in consultation with the state governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously.

➤ The Apex Court in recent case of **Hussain and Anr. v. Union of India** [13] issued significant directions to tackle the pendency of cases in criminal courts. The Apex Court observed that the position of five year old cases in subordinate courts and High Courts continues to be alarming in many States. Total number of more than five year old cases in subordinate courts at the end of the year 2015 is said to be 43,19,693. The Supreme Court to reduce the pendency in courts, directed that the High Courts may issue directions to subordinate courts that a.) Bail applications be disposed of normally within one week; b.) Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years; c.) Efforts are made to dispose of all cases which are five years old by the end of the year; d.) The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time; etc.

## CONCLUSION

Justice Delayed is Justice Denied. If cases continue to be pending like this due to the negligence of judiciary as well as the government, the whole idea of the judicial system shall become futile. So, if the judiciary has to truly serve its purpose of delivering justice, it should take immediate steps to increase the speed of disposal of cases.

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[5] <http://lawcommissionofindia.nic.in/reports/report230.pdf> (Pg 36-37)

[6] [http://lawcommissionofindia.nic.in/reports/Report\\_No.245.pdf](http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf)

[7] (1992) 1 SCC 225

[8] (1995) 5 SCC 326

[9] (2001) 4 SCC 355

[10] (2012) 2 SCC 688

[11] (2016) 8 SCC 509

[12] (2015) 13 SCC 605

[13] Criminal Appeal No.509 of 2017