



# CAUSES OF LITIGATION PENDENCY IN INDIA

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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:

1. **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.
2. **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.
3. **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

undertrial prisoner without consulting their superiors, is justice served to the undertrial 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.

4. **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 judgement 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.

5. **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:

1. Delays in the pre-trial phase,
2. Delays during the trial phase, 3. Delays during the appeal phase, and
4. Delays during the execution phase.

### **Here is how a case travel-**

1. A suit is filed at the counter for filing
2. 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.
3. 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.
4. 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.
5. 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.

6. 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.

7. 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 be just as good as fearing 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 judgement 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.

## **CONCLUSION**

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.