



# JUDICIAL DELAYS IN INDIA - MALADIES AND REMEDIES

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## ABSTRACT

**“To highlight the root cause of judicial delay and to suggest remedial measures for improving the functioning of the judicial system.”**

## INTRODUCTION :

There is a well-known saying that **“Justice delayed is Justice denied.”** Denial of ‘timely justice’ amounts to denial of ‘justice’ itself. Two are integral to each other. Timely disposal of case is essential for maintaining the Rule of Law and providing access to justice which is a guaranteed fundamental right. In India, Justice delivery system, which is considered to be the third pillar, is in a bad shape. A survey of working of more than half a century of Indian Judicial System reveals that this system which had worked smoothly and satisfactorily for centuries has now failed to deliver Justice expeditiously.

## MALADIES AND REMEDIES:

### (I) **The Law Commission of India in its Report No.245 on Arrears and Backlog: Creating Additional Judicial (wo)manpower.**

The focus of the report is to examine and suggest additional Judicial (Wo)manpower needed and its optimal utilization. The report is largely driven by the Hon’ble Supreme Court when in the matter of *Intiyaz Ahmad v.State of U.P*<sup>1</sup>; Criminal Appeal nos. 254-262 of 2012 (Arising out of SLP (Crl.) Nos. 1581-1598 / 2009) it asked the Law commission to undertake an inquiry and submit its recommendations in relation to creation of additional courts to help in eliminations of delays, speedy clearance of arrears and deductions in costs. This report submitted to help the government in framing its policy with regard to judicial reforms.

<sup>1</sup> See *Intiyaz Ahmad v. State of Uttar Pradesh and Ors.*, AIR SC 2012 642

(1) The Commission is fully aware as thus undermined in the report that terms, such as ‘arrears’, ‘pendency’ and ‘backlog’ which are so commonly used in almost all kinds of discourse on working of justice administration system in India are used very vaguely and beg clear and precise definition. The report is an attempt to reflect and throw more light on some of these terms, and it is hoped that the policy makers and other stakeholders in the system may find these reflections and attempt to introduce some clarity by the present work of some use during their course of deliberations on judicial reforms.

## (2) DEFINING KEY CONCEPTS: PENDENCY, DELAY, ARREARS, AND BACKLOG

There is no single or clear understanding of when a case should be counted as delayed. Often, terms like “delay,” “pendency,” “arrears,” and “backlog” are used interchangeably. This leads to confusion. To avoid this confusion and for the sake of clarity, these terms may be understood as follows:

- a. **Pendency:** All cases instituted but not disposed of, regardless of when the case was instituted.
- b. **Delay:** A case that has been in the Court/judicial system for longer than the normal time that it should take for a case of that type to be disposed of.
- c. **Arrears:** Some delayed cases might be in the system for longer than the normal time, for valid reasons. Those cases that show unwarranted delay will be referred to as arrears.
- d. **Backlog:** When the institution of new cases in any given time period is higher than the disposal of cases in that time period, the difference between institution and disposal is the backlog. This figure represents the accumulation of cases in the system due to the system’s inability to dispose of as many cases as are being filed.

## (3) REMEDIES:

Analysis of data and information thus made was then examined in light of various methods of judicial (wo)manpower planning practised in many other systems while keeping in view peculiarities of Indian judicial and profession’s culture. Adopting this approach, the Commission has finally arrived at making following suggestions and recommendations:

### a. Number of judges to be appointed on a priority basis

The system requires a massive influx of judicial resources in order to dispose of the backlog and keep pace with current filings.

### b. Increasing the age of retirement of Subordinate Court Judges

That, in order to meet the need for a large number of appropriately trained Subordinate Court Judges, the age of retirement of Subordinate judges be raised to 62. The benefit of increase in the retirement age be made available to judicial officers in terms of the directions of the Supreme Court in *All India Judges’ Association v. Union of India*.<sup>2</sup>

### d. Creation of Special Courts for Traffic/Police Challan Cases

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<sup>2</sup> In *All India Judges’ Association v. Union of India*, Supreme Court of India, order dated August 24, 1993.

That special morning and evening Courts be set up for dealing with Traffic/Police Challan cases which constituted 38.7% of institutions and 37.4% of all pending cases in the last three years, before the Subordinate Judicial Services.

#### e. Provision for Staff and Infrastructure

That, adequate provisions be made for staff and infrastructure required for the working of additional Courts.<sup>3</sup>

#### f. Periodic Needs Assessment by High Courts

The High Courts may be required to carry out Periodic Judicial Needs Assessment to monitor the rate of institution and disposal and revise the judge strength periodically, based on institutions, disposals, pendency and vacancy.

#### g. Need for system-wide Reform

That a systemic perspective, encompassing all levels of the judicial hierarchy, is needed for meaningful judicial reform. Taking measures for the timely disposal of cases at all levels of the judicial system, including by monitoring and increasing judge strength throughout the system; encouraging Alternative Dispute Resolution Methods, where appropriate and more efficient allocation and utilization of resources is required to fulfill the goal of providing timely justice to litigants.

**II) “Releasing India’s Supreme Court from the shadow of delay- A proposal for policy Reform”** submitted by Simi Rose George in fulfillment of requirements for the degree of Master in Public Administration in International Development, John F. Kennedy School of Government, Harvard University on 16<sup>th</sup> March 2014.

- (1) This paper concludes that the primary factors underlying the problem of delay in the Indian Supreme Court are the **high rate of institution of cases**, and judges’ overly **lenient approach** to the admission of cases. The two factors are intertwined. By admitting a large proportion of cases filed, the Supreme Court is encouraging litigants to approach it with ordinary disputes and grievances, which in turn, is increasing its backlog over time. Interventions aimed at **reducing the Court’s high rate of admission of cases** are therefore likely to be most effective in reducing delay. Experimental studies have underscored the importance of information in influencing behavior. It is therefore proposed that the Ministry of Law and Justice, in partnership with the National Judicial Academy, make efforts to enable Supreme Court judges on the extent to which their leniency in admitting cases contributes to case backlog and delay, through the dissemination of relevant data on the nature and type of admitted cases.
- (2) **The implications are serious. Firstly**, inordinate delays militate against the essence of justice. **Secondly**, the economic implications are hard to miss. A growing pool of empirical studies suggests that slow court systems discourage the growth of new businesses. **Finally**, there is a law and order angle to consider. Over time, inefficient court systems erode faith in the rule of law, which could have serious law and order implications.<sup>4</sup>

<sup>3</sup> See All India Judges Association v UOI, (2002) 4 SCC 247 (“We are conscious of the fact that overnight these vacancies cannot be filled. In order to have Additional Judges, not only the post will have to be created but infrastructure required in the form of Additional Court rooms, buildings, staff, etc., would also have to be made available”)

<sup>4</sup> See generally 239<sup>th</sup> report of the Law Commission of India on “Expedition Investigation and Trial of Criminal Cases Against Influential Public Personalities”, available at <http://lawcommissionofindia.nic.in/reports/report239.pdf>.

- (3) **Maladies:** Using empirical and other evidence, we find that further increases in the Supreme Court's size are unlikely to curb backlog and delay, will be administratively and financially burdensome, and harmful from the perspective of the Court's mandate to evolve a coherent and consistent jurisprudence for lower courts to follow. It concludes that **high rates of institution of cases by litigants and admission of cases** by the Court are the primary factors underling delay and case backlog in the Supreme Court.
- (4) **Remedies:** It is recommended that the Ministry of Law and Justice, in partnership with the National Judicial Academy, organize sessions to disseminate information to Supreme Court judges on the extent to which the high rate of admission of cases contributes to the problem of backlog and delay. It is further recommended that these sessions be held regularly (e.g. monthly or quarterly) to facilitate follow-up and continuous dissemination of information. To facilitate this, it is recommended the **establishment of a National Authority for Judicial Statistics at the federal level with the Chief Justice of India** at its helm, responsible for the collection of detailed statistics about cases filed in the Supreme Court. This agency would be responsible for collecting detailed statistics on cases before the Court (including the names of judges who heard these cases, names of lawyers who argued them, time taken to dispose of each case etc.). We believe that these innovative policy interventions will, over time, release the Court from the long shadow of backlog and delay.

#### **CONCLUSION:**

I conclude by quoting the words of Hon'ble the Chief Justice of India, Justice Dipak Misra suggested **our motto should be- shaping our judicial future: inspiring change through "Timely and Effective Justice"** in order to avoid judicial delay in the **National Conference on 'initiatives to reduce pendency and delays in judicial systems'** held on July 27, 2018.