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## Judicial Delays: Causes, effects and way out

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### Introduction:

In the landmark case, *Hussainara Khatoon v. Home Secretary, State of Bihar*<sup>1</sup> the Supreme Court discussed the speedy trial necessity to uphold the fundamental and human rights. It was held by the apex court that a prompt trial is a necessary component of a "reasonable, fair, and just" outcome. It is the State's constitutional duty to design a system that would guarantee the accused a prompt trial as per the procedure established by the law as enshrined in Article 21 of the Constitution. Judicial delay and speedy trial or fair trials are opposite terms to each other. In general terms, we do divide the litigations in civil, criminal, family and administrative related cases. Except criminal cases everything is civil but for the sake of discussion we may divide the civil into different forms of litigations. Though the speedy justice required in each and every case but still speedy justice is more important in criminal, family and service matters in particular. Delay in family/matrimonial cases, criminal cases and service matters time is more important than any other thing. In civil cases, the decree-holder, at last gets his due, though decree-holder too suffer a lot. In criminal cases, an under-trial, especially who is in jail during pending trial, lose his important years of life. The end of trail in acquittal cannot give his lost years back. In family/matrimonial issues, unreasonable delay in deciding the issue takes away all hopes from the parties. It further spoils the whole life of husband, wife and their children. In services related cases, delay in deciding cases caused very heavy loss to the litigants and their families. Therefore, this article is trying to analysis the causes, effects of judicial delay and way out.

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There are more than 4 crore cases pending in all the courts in India. On very serious note, we all need to understand the reason of such growth in filing cases in different courts in India. Increasing the civil litigations is indications of awareness of rights and I feel its good sign for healthy and rule of law society. Litigations related to Consumer, labour, revenue, banking etc. increased due to awareness of rights and law. But increasing of criminal cases indicates of bad law & order situation. Increasing matrimonial issue is much concern of family institution. The State must intervene and strive hard to minimise the criminal litigations and matrimonial litigations. Better law & order situation will reduce the criminal cases.

### Causes of judicial delay:

There is no one reason of such judicial delay. It's a combination of different causes of delay. It is not that the State or judiciary is not concerned about such delay. They may be trying best to address the issue. We have seen that in many cases, the High Courts and Supreme Court direct the subordinate court to speed up certain cases. The problem will not be solved just by directing to speed up few cases; it is about each and every case. Let discuss the causes of such delays;

### Less Number of Judges:

In 1987, the Law Commission of India recommended an increase in the number of judges from 10 judges per 10 lakh people to 50 judges per 10 lakh people. In 2002 also Law Commission recommended to increase the strength of judiciary. The parliamentary Department Related standing committee on law also recommended increasing the judges to people ratio to 50 from 10. As of now, India has 21 judges for 10 Lakh people. Former Chief Justice of India pointed out this fact and broke down in presence of the Prime Minister. Recently the Supreme Court judge Shri. Abhay Oka also expressed his thought about relation between the number of judges and judicial delays. He said,<sup>1</sup> "There is a requirement of 50 judges for every 10 lakh population in the country, but it has only 21 judges per million people. Hence, there is large-scale pendency of cases in different courts." The Supreme Court of India, in the case of *Intiyaz Ahmed versus State of Uttar Pradesh [(2017) 3 SCC 658]* and *All India Judges' Association (3) vs. Union*

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<sup>1</sup> <https://www.ndtv.com/india-news/50-judges-per-10-lakh-needed-to-reduce-case-pendency-in-india-supreme-court-judge-3660831>

of India stated about Judge to Population ratio of fifty Judges per million be achieved. Similar observations were made in cases such as *P. Ramachandra Rao vs. State of Karnataka (2002) 4SCC 478* and *Brij Mohal Lal vs. Union of India (2002) 5 SCC 1*. The requirement is 50 judges per 10 Lakh and we are having less than 20 judges per 10 Lakh, it is very obvious that delay will occurs in disposal the cases.

Just have a look of number of judges in other countries;

Country	Number of Judges per million
Australia	41
Canada	75
England	51
USA	107

#### Judges inability:

The judge's inability is another factor of delaying and pending the cases. The study shows lakh of matter where very small issue involved is not disposed of by the judges. Number of bail applications is pending before the criminal courts. The bail matter does not require any examination, cross examination and other proceeding like trial. The judges need to see whether it is fit case for bail or not. If judges found its fit case they shall grant bail and if not deny bail. There is no point in keeping the bail matters pending. Large portion of the cases coming to Supreme Court are the cases related to bail matters. The bails matters in large number are reaching the High Courts and the Supreme Court. Many cases relating to child visit by either parents in family courts are kept pending for years together. Actually, such issues hardly require one or two hearing, but the judges inability keep it pending for such a long time. The Supreme Court and High Court must organise the special training programme periodically for the judges of subordinate courts.

#### Unnecessary adjournments:

Lawyers are frequently taking adjournments these days just to keep the matter pending. This happens when the party seeking adjournment has any favourable order or delaying the case by way of adjournment giving them any sort of benefit. If advocate ask for adjournment, I do not count it as fault of lawyers. As lawyers need to protect the interest of their client. Rightly or wrongly, the advocates can simply make prayer of adjournment; ultimately it is for the judges to consider the prayer for adjournment. The Civil Procedure Code (CPC) deals with adjournments in a suit. It states that the court may grant time and adjourn the hearing if sufficient cause is shown by the parties. The judges must not adjourn the matter, unless the reason given

is really prevent them from proceeding. Imposing heavy cost may reduce the adjournment.

#### Preventable inflow of litigation:

The another cause of judicial delay can be seen in inflows of such litigation which can be preventable, avoidable and amicably settle in extra-judicial way or outside the courts with the help of different legal mechanism such as Lok-Adalat. The legal maxim '*de minimis non curat lex*' provides that law should concern itself with pity cases, trifles matters. But in reality we see the large inflows of such cases. Such cases are not only filed by the private litigants but also by the States. Apart from these major causes there are other causes too contribute the judicial delay, such as filing appeals, multiplication of litigations, the working hours and days of the courts, infrastructure issues, non-adoption of video conferencing proceedings etc.

#### The effect of judicial delay:

In one sentence the effect of judicial delay can be summarised in a statement that indicate '*Justice delayed is justice denied*'. Recently, the Supreme Court of India acquitted a person from the charge of double murder case.<sup>2</sup> This case has gone through Session Court, High Court and the Supreme Court. Three courts took 20 years to finally decide the faith of the case. The court grants the divorce after 20 years<sup>3</sup>. These 20 years the couple were living separately. Can anyone imagine the mental stress, trauma, financial issues the couple faced during these 20 years and a man in jail for 20 years? Therefore, disposing the cases in reasonable time is very important for the human life. Merely delivering the justice has no value unless that justice enjoyed. It is concerning how long cases in India often take to be resolved. According to the data, it typically takes 15 years for a civil case to be resolved, although criminal cases can be resolved in around 8 years. In severe cases, the delays might last for several decades, resulting in a protracted condition of uncertainty for victims and litigants.

Losing faith in Judiciary: Delays in justice have far-reaching effects. As a result of being caught in an endless circle of waiting for justice, people begin to lose faith & trust in the judicial system. Protracted legal disputes deplete their funds, harm their emotional well-being, and impede socio-economic advancement. The former Lok Sabha Speaker Smt. Sumitra Mahajan also opined that 'it is very sad that the number of pending cases in our country is very high. Supreme Court has 63,800 pending cases, High Courts have 44 lakh such cases, while districts and lower courts have around two crore pending

<sup>2</sup> Krishnan vs. State of Haryana Criminal Appeal No. 2351 of 2011

<sup>3</sup> <https://www.indiatoday.in/mail-today/story/marriage-divorce-seperation-city-court-legal-battle-wife-arrest-981139-2017-06-06>

cases. Due to these pending cases, our citizens lose faith in judiciary,"<sup>4</sup> Even the Supreme Court has expressed their concerned about people losing their faith in judiciary due judicial delay in deciding the litigations.

Inordinate delay in deciding the criminal and family cases especially affect the litigants very badly. It spoils their personal and family life. The children life get affected. Such delay further caused multiplication of litigation such as bigamy, adultery etc. Leaving separately for unreasonable time ends all the possibility of their reunion as both couple lost confidence for each other and even if they come together, there are less chances of their living together happily in their further life. Judicial delay in criminal cases, especially when the accused is in jail during trial is pending, make him criminal minded. His release on bail or acquittal after remaining in jail for long ends his re-acceptance in society.

#### Way out

Certain way out can be as follows;

**Compulsory approach to Lok Adalat:** Lok Adalat is a good platform where the dispute can be solved immediately. But it is not mandatory for the litigants to approach the Lok Adalat. It up to their willingness and hence unless and until parties are ready no dispute can be referred to Lok Adalat. Hence I suggest that certain legal dispute should not be allowed to file before the regular court unless it has not been firstly entertained by the Lok-Adalat. This suggestion would serve two purposes; *firstly*, it will reduce the time, money and other resources of the litigants and courts also and *secondly*, it may possible that dispute would be resolved in Lok-Adalat itself and ends all possibility of further litigation.

**Video conferencing proceeding:** In digital world, many cases can be entertained through video conferencing. We have seen many cases being filed before the High Courts and Supreme Court seeking transfer the pending case from one place to another. Filing transfer petition itself contributing the litigations and delayed the original cases. This happens mostly in family/matrimonial cases. Video conferencing no way damage the case of either party, in fact it saves the time and money of both parties. Many times, a wife files an interim application for seeking monetary order for transport. (Multiplication of the case) Through video conferencing all these issues can be prevented.

**More hour and more days of courts working:** There is no reason for us to blame the judges for working less but the days allotted for judicial

working are itself less. Much vacation such as Diwali, Christmas, summer and other vacations days are required to be minimised. The subordinate courts can work in shifts.

**More number of judges:** Requirement of more judges has already been discussed above and this has been recommended by the law commission also. That needs to be consider seriously.

**Special/devoted courts for bails cases:** Most of the bail matters contribute more in total number of pending cases. A special court may be created who will deal with only the issue of bail matters. No doubt rejections of bail create appeal in higher courts but special courts can reduce reasonable number of bail cases at their level. The regular court gives more time to bail and less time to actual trial. Separating the bail cases from regular courts may change the picture.

**Obvious rights in certain cases:** There should be obvious rights created in the litigants, especially in matrimonial dispute. Such as right to visit the child, right to talk to child over the phone etc. In recent time we have seen an application from either party seeking visiting right or seeking direction to other parent to allow talking to the child over phone. These should be the obvious rights of the each parents and for that there should be application or litigation required. The court should prevent both the parents from disturbing the parental rights during the pending of any matrimonial dispute. Apart from this ADR mechanism should be promoted, State should not go in appeal before the higher court if it is not at all necessary, more subject wise tribunal are required where summary procedure of suit and trial can be conducted.

<sup>4</sup> <https://economictimes.indiatimes.com/news/politics-and-nation/people-losing-faith-in-judiciary-due-to-delayed-justice-sumitra-mahajan/articleshow/46247366.cms?from=mdr>