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LIMITING THE CASES OF CIVIL NATURE: A PROSPECTIVE SOLUTION TO PENDENCY IN JUDICIARY

AUTHORED BY - PROF. (DR.) ANUPAMA GOEL[1] AND SOMIYA JOSHI[2]

Abstract

The concept of disposal of civil disputes between parties in India has moved from private settlement (in a gathering under the tree in ancient India) to the institution of cases in the courts. The cases of civil nature contribute largely towards the issue of pendency in courts at both sub-ordinate and higher level. Economic development, globalization, recognition of human rights such as literacy and gender justice has raised the number of institution of cases of civil nature. Simultaneously, the complexities of laws, scarcity of infrastructural resources and manpower has delayed the rate of disposal of these civil cases. The paper aims to map the journey of civil justice system in India from the tenets of settlement of civil disputes in ancient India to the present course of proceedings in the courts. It further highlights the magnitude of issue of pendency followed by the reasons for pendency in civil matters in the courts. The research paper proposes to limit the institution of cases in civil nature one of many viable solutions towards huge backlog of civil cases, which will subsequently reduce the burden on courts in coming years. The research paper accentuates the need to weed out the unnecessary cases before the trial proceeding begins and authorize ADR mechanisms with increased powers so as induce the notion of finality and trust on the awards declared by them.

Keywords: Civil Justice System, pendency of cases, procedural complexities, ADR and tenets of ancient civil justice system

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I. Introduction

'*Justice delayed is justice denied'* is an underlined statement that is often associated with the legal system in India. Ironically, the classic literature of ancient Indian jurisprudence such as Rigveda, Dharmashastra, Smritis, Ramayana and Mahabharata had conceived the idea of imputing culpable delay as an act of injustice.[3] This age-old notion continues to transpire in modern legal and judicial milieu of India with its numerous vicious consequences.

The delayed justice in present Indian judicial system[4] is evident from statistical figures depicting its pendency, especially the cases of civil in nature. Hiram E. Chodosh *et al* (1998) exhibits failure of the Indian civil justice system to manage the dispute resolution in the evolving market-oriented society.[5] Krishnaswamy *et al* (2014) in their empirical study argues the need to reform the judicial system owing to pendency and delay through non-conventional methods.[6] The literature makes a dire need of speedy measures to be adopted to work on the gaps of pendency evident, thereby ensuring social justice and speedy settlement of disputes.

The conventional ways of addressing the issue have failed to pull India out of the quagmire of pendency and inefficiency of Indian judicial system. However, one prospective way could be to have an inner mechanism of reduced institution of cases that are civil in nature. The nature of cases in civil matters is (inter) personal. It can be addressed as a solution by limiting its institution in the temples of justice. In order to develop it as a solution, thorough research is necessary to fill in the gaps in available research material. It aims to evaluate the reasons for re-visiting the Indian civil justice system and investigate possible solutions to re-align its civil justice system in lines with its ancient roots.

The paper has focused upon evolution of civil justice system, its challenges and probable solutions towards its pendency, rather than criminal cases. Adjudication and pendency of criminal cases are excluded as crimes are considered to be committed against society. The

[3]Bhatia, K. L., et al., Delay: A Riddle Wrapped in a Mystery Inside an Enigma, Journal of the Indian Law Institute, vol. 37, no. 1 42–72 JSTOR (1995)
<http://www.jstor.org/stable/43951589> Accessed 24 Apr. 2024
[4]Refer to Page number 9
[5]Hiram E. Chodosh, Stephen A. Mayo, A.M. Ahmadi & M. Abhishek Singhvi, Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process, 30 N.Y.U. J. INT'l L. & POL. 1 (Fall 1997/Winter 1998).
[6]Krishnaswamy, S., K Sivakumar, S., & Bail, S. (2014). Legal and Judicial Reform in India: A Call for Systemic and Empirical Approaches. Journal of National Law University Delhi, 2(1), 1-25. https://doi.org/10.1177/2277401720140101

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nature and gravity of crimes ought to be taken up in courts under guidance of judicial minds of judges as it intends to penalize the accused and serve justice to the victim.

II. Historical Development of Civil Justice System in India

The civil justice system finds its genesis in its ancient roots of Indian legal system, with different structure and contours. This part attempts to map the journey of the very contours of civil justice system in India from ancient times to our current system.

1. Ancient Legal System for Civil Cases

The ancient judicial system for civil cases in India was motivated by formally constituted groups or council. The constitution of members in the council was based on judicial positions and their landholding. The leaders of the councils acted as mediators. The essence of arbitration was to bridge the gap between various rings of society. All interested parties (directly or indirectly) concerned with the dispute were free to attend the meeting, which enabled to form the public opinion. The council members enabled the parties to talk out their share of issues regarding disputes of civil nature. [7] The underlying idea of arbitration was "compromise" and the principal basis of settlement was arbitration.

a. Methods of conciliation in civil cases

The justice system for civil cases in ancient India advocated for creating a climate of peace and prosperity amongst parties, thereby avoiding conflict. The landscape of conciliation was based on principles of *sama, dana, bhed and danda.*[8] *Sama* was understood as opposite to fighting or beating in cases related to civil matters or troubles between families.[9] It is a method of pacifying the parties. The act of "*talking"* out was said to relieve much of aggression built up in disputes. The parties were made to talk for many hours. Eventually, a compromise would be suggested which must be accepted by all, even if it was deemed favorable to one party and unfavorable to other. Both parties were/ had to be satisfied with the compromise.[10]

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[7]Bernard S. Cohn, "Some notes on Law and Change in North India, Economic Development and Cultural Change" 8(1) page 79-93 (1959)

[8]*Sama:* It includes practices such as appreciating the merits or personal qualities of the parties followed by exploring any kind of relationships between parties. It would be followed by explaining the advantages that would be ensued to both the parties as a result of *sama.*

[9]L.N. Rangarajan, Kautilya : The Arthashastra, Penguin Classics 92 (1992)
(Guna samkirtanam-praising the merits of others; Samvandhopakhyanam- extolling common relationships; Parsparopakara sandarsana-mutual benefit; Ayati pradarsana-future benefit; Atmopanidhana—finding identity of interest)

[10]*Ibid.* at 2

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Second method, that is, '*Dana'*[11] was a mean of realizing the fruits of *sama* or executing the award decided in *sama*. However, when *sama* or *dana* failed to resolve the dispute, *bheda*[12] was practiced. Herein, the parties were reluctant in meeting the solutions even half way. Therefore, power dynamics (coercion or threats) was used as strategic idea for negotiation. *Dandaniti* was the last method pursued to encourage people to walk on path of righteousness.[13] Physical force in proportionate manner was used as the last resort, on natural failure of passive measures.

The civil natured cases primarily consisted of family issues, between husband and wife. They were private matters, with minimum or no state intervention.[14] The principles referred for dispute resolution by virtue of community participation were *dharma* (duty of righteousness) and *karma* (action and its consequence).[15] Thus, the foundations of civil dispute resolution in India was not an agenda of 'welfare State'. It was regulated by internally developed mechanisms within the community and solved on personal basis.

b. Judicial Structure: Hierarchy of the courts

The institutional structure of dispute resolution temples was graded into a hierarchy with *kula* as family councils. It was headed by the elder people of the families. Alongside, *shreni* or councils of trade/profession was established. It was presided over by impartial persons belonging to the same profession. Thereafter, the legal system had placed village assembly or *gana* as a large council with impartial and learned people. They tried both civil and criminal cases. *Nripa* or King was the supreme authority who guided his decisions by principles of *dharma.*[16] The trial was done according to Dharmashastras which ensured the trust and confidence of public on judiciary. It would not be flawed to say that even without any influence from western concepts, judicial system in India was governed by well-established framework of Dharma principles.

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[11]*Dana* is the actual deed to realise the efforts made in conciliation. It works as a motivation and implies granting favours or rewarding the opponent with money, exempting from taxes or giving employment

[12]*Bhed* It is also akin to coercion which is often played out in any difficult negotiation, where the parties remain locked up in their stated positions.

[13]Raghavendra Vajpeyi, Term Matsyanyaya in Kautilya Arthashastra Proceedings of the Indian History Congress Vol. 34, Vol. I 64-69 (1973)

[14]Stephen B. Presser, "Marriage and the Law: Time for a Divorce?" Cambridge University Press (2011).

[15]Werner Menski, "Ancient and Modern Boundary Crossings Between Personal Laws and Civil Law in Composite India", SOAS 226 (2011)
<*ancient_and_modern_boundary_crossings_between_personal_laws_and_civil_law_in_composite_india.pdf>

[16]Rajendra Kumar M., Concept of Judiciary in Ancient India, Global Research Analysis 9 (2013)

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The contemplation of structural and normative idea of dispute dispensation of personal matters highlights that '*settlement*' by *kula* or *gana*, was the main objective in ancient Indian jurisprudence, instead of idealizing the notion of justice. Invasion of territories of India by foreign powers such as Mughuls and Europeans changed the social and political set-up of India.

2. British System of Justice for Civil Cases

The British Empire had settled its claws tightly in India by 19th century. India witnessed gradual but sea changes in political, legal, economic and its social ambience. There was a rise in population which put pressure upon the land and agricultural prices. Higher standard of education, rise in urban occupation in commerce and industry exposed village life to urban setting. Land reforms and migration for economic well being led to up lift of lower castes. The legal and administrative spectrum changed with social settings. The courts were established with British employees as judges (presiding officers).[17]

a. Judicial Structure: Hierarchy of the courts

The nature of principle disputes changed with the alterations in the social fabric of India. Principle disputes pertained to ownership of land and rates of revenue and rates. Personal laws related to family matters were reformed under the umbrella of Hindu and Muslim laws. The guiding principles of criminal laws were a mixture of British and Muslim law.[18] They continued the courts as in Mughul time like the Moffussil Diwani Adalats (courts of civil jurisdiction established in each district), Sadar Diwani Adalats (civil courts of appeal) and Diwani Adalats. Subsequently, the Supreme Courts of Calcutta (1773), Madras (1797) and Bombay (1797) were established which also had appellate jurisdiction in civil matters.[19] The hierarchy of court system was well cemented by 1908. It included Subordinate Civil Courts with territorial and pecuniary jurisdiction, Courts of District Judge (at District Level), High Courts and Supreme Court having appellate jurisdiction in civil matters.

The community-based structures such as *ghana* or *shreni* from ancient India were considered as most capable mode of dispute resolution.[20] The capabilities of such dispute resolution

[17]Sathe, S. P. Review of Crisis of Indian Legal System, by Upendra Baxi. Economic and Political Weekly 18, no. 32: 1388–93 (1983) http://www.jstor.org/stable/4372382. Also refer to Crisis of Indian Legal System

[18]Halperin, J.L., Western Legal Transplant and India, Jindal Global Law Review 2(1), 14 (2010)

[19]Soma Dey Sarkar, Rathin Bandyopadhyay, Bidisha Bandyopadhyay, Administration of Civil Justice and Its Glorious Uncertainty in the Indian Legal System: A Long, Expensive Journey to Justice, IGI Global

[20]Jaff (J), Layering Law upon Custom, The British in Colonial West India (FIU Law Review) 10:85

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institutions were put to test by British administration, as to check whether it would serve their interest (in contrast to their common law tradition). However, it failed to yield the desired level of interest and was evaded because of lack of cost-benefit ratio.[21] Instead, the British rule managed to surface a legal order suitable to them.

b. Procedural Law and its complexities

In the initial era of British rule, the courts largely relied on common law, statute laws (as it prevailed in England) and various regulations made by Governor-General (example: Act of 1833). Post 1857, the Parliament (under the rule of the Queen) took over the governance of India.[22]

Despite having a pluralistic society at all spheres of society in India, British Parliament introduced new uniform laws for administration of justice, for example Civil procedure Code (1861), Indian Evidence Act (1872), Indian Penal Code (1860), Indian Contract Act (1872) and Transfer of Property Act (1886). Though the seeds of a separate judicial system for civil and criminal judicature were propagated by the Mughal rulers, a segregated arrangement of the civil and criminal judicature was done by the British rulers. The underlying idea behind introducing these laws was developing a judicial structure and legislations convenient for British officials and their administration.[23] The legal development of India was designed to adapt trade and commercial practices of British colonies and their respective traders and merchants. This unique process of acculturation[24] assured the legitimization of colonial practices.[25]

The trajectory of development of Indian legal system had submerged the ancient tenets of Indian jurisprudence. The statement is evident in itself as the current civil justice system formed post –Independence was tailored in British styled judicial system only.

3. Modern Civil Justice System

The attainment of independence (1947) had given supreme powers to the policy makers to

[21]Elphinestone (M), Report on Territory Conquered from Paishwa (originally published in 1821), Cambridge University Press (2011)
[22]Woodroffe J.G. & Ameer Ali M.S. Commentary on Code of Civil Procedure Act, 1908 (6th ed., Delhi: Delhi Law House) (2015)
[23]*Ibid.* at 5
[24]Acculturation: cultural modification of an individual, group, or people by adapting to or borrowing traits from another culture *(Merriam Webster)*
[25]*Ibid*. at 10

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develop a legal system suitable to Indian social and economic structure. The new legal system of India was consolidated of systematic reforms of colonial laws. Unfortunately, these reforms envisioned "*western"* concepts of individual rights, secularism and equality. The new Indian Civil Justice system reflected the canons of common law. Furthermore, the modern Indian legal model respected the pluralistic order of its society, in respect to cultural and religious multiplicity, alongside increasing State control. There was a major dilution of "*Indian"* aspects of peaceful settlement of civil cases. Moreover, it consists of various elements which mirror the judicial system of British style.[26]

a. Judicial Structure: Hierarchy of courts

The objective of this part of the research paper is to describe the unified judicial hierarchy of courts for civil matters in current judicial system of India. Supreme Court stands on the top of the pyramid as a final court of appeal. The Supreme Court consists of Chief Justice of India alongside 33 other Judges appointed by the President.[27] They can be removed on ground of proved misbehavior or incapacity.

The wide jurisdiction of Supreme Court for cases of civil nature includes its original jurisdiction, appellate and writ jurisdiction. Apex court deals with the disputes between or amongst Union and State governments (Article 131). The writ jurisdiction under Article 32 appreciates various kinds of writs[28] against actions of the State violating the rights of people. The Supreme Court entertains appeals against civil and criminal cases if High Court verifies the "*Certificate of Appeal"*[29]. Article 133 entails the procedure for jurisdiction of civil cases.[30] The advisory jurisdiction[31] of the Supreme Court to President and Special Leave Petition[32] is

[26]Hiram E. Chodosh , Stephen A. Mayo, A.M. Ahmadi & M. Abhishek Singhvi, Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process, N.Y.U. J. INT'l L. & POL. 1 30 (1997).
[27]Constitution of India, Article 124
[28]Refer to Habeas Corpus, Quo Warranto, Certiorari, Prohibition and Mandamas
[29]Constitution of India, Article 134A
[30]An appeal shall lie to the Supreme Court from any judgment, decree or final order in a civil proceeding of a High Court in the territory of India if the High Court certifies under article 134A-
(a)that the case involves a substantial question of law of general importance; and
(b) That in the opinion of the High Court the said question needs to be decided by the Supreme Court.
(2) Notwithstanding anything in article 132, any party appealing to the Supreme Court under clause (1) may urge as one of the grounds in such appeal that a substantial question of law as to the interpretation of this Constitution has been wrongly decided.
(3) Notwithstanding anything in this article, no appeal shall, unless Parliament by law otherwise provides, lie to the Supreme Court from the judgment, decree or final order of one Judge of a High Court
[31]Constitution of India, Article 143
[32]Constitution of India, Article 136: Notwithstanding anything in this Chapter, the Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

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yet another peculiar feature of Indian judiciary. The recent grown appellate power against decisions of Tribunals has added to the existing burden of Supreme Court.

High Courts stand next in the judicial hierarchy after Supreme Court. * The High Courts are empowered to have superintendence over sub-ordinate courts (except military and tribunals). It also has a wider writ jurisdiction[33] that Supreme Court followed by appellate jurisdiction against decree, order or judgments of District Judges.

The next level on the hierarchy is District Courts for civil and criminal matters. The courts entertaining the civil cases are District Judge with original and appellate jurisdiction. They hear appeal from sub-judges, Small Causes Courts, Family Courts, City Civil Courts and Munsif courts. The last level of adjudicating authority along the Indian judicial hierarchy is "*nyaya panchayats*".[34]

b. Procedural law and its complexities

The jurisprudence of civil law system in India is symmetrical to the common and statute law of England. India had tilted towards the adversarial system of procedural system for the civil matters.[35] The evidentiary system of litigation (in both civil and criminal system) is a distinguishing feature in British model of judicial format. The underlying idea behind this format was formation of an equation of win and loses. The decree or order would favor one party and be rendered unfavorable to other, instead of compromise or conciliation. India had lifted the procedural laws for civil cases along the same lines.[36]

The legislations such as Civil Procedure Code (1908) (herein after referred to as 'CPC') were inherited *verbatim* (as it is) in its letter and spirit. The procedural code regulating the civil cases finds its genesis in the first uniform Civil Code of Procedure (1859).[37] The structure of proceedings encompasses myriad stages and procedural technicalities from filing of complaint

(2) Nothing in clause (1) shall apply to any judgment, determination, and sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.
* There must be a High Court for each State and two or more states may have a common High Court.
[33]Constitution of India, Article 226
[34]Dam, Sukumar, Judiciary in India, The Indian Journal of Political Science, vol. 25, JSTOR 276–81 (1964) <http://www.jstor.org/stable/41854040> Accessed 23 Apr. 2024
[35]J.K. Das, Rethinking Theoretical Foundations Of The Code Of Civil Procedure: Prospect And Retrospect, Journal of the Indian Law Institute, January-March 2011, Vol. 53, 1-31(2011)
[36]*Ibid.* at 20
[37]The Code of Civil Procedure, 1859 (Act No. 8). Prior to the Code of 1859, the procedure of the *mofussil* courts was regulated by the Special Acts and Regulations repealed by Act 10 of 1861

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to the provisions of appeal, revision and review. Amidst this, technical provisions such as filing of written statements, rejoinders, examination of parties and their filed documents, framing of the issues, examination of the parties/witnesses, oral arguments and pronouncement of the judgment[38] encapsulates a tiring proceeding. This procedure has a potential to delay the cases for even twenty to thirty years[39], inasmuch the appeals and review/revision petitions leaves the civil cases pertaining to petty personal issues in waters of uncertainties.

III. Magnitude of Pendency of Civil Cases in Courts

Democratic set-up of the nation strives for administration of justice. Judiciary being an integral part of this set-up must ensure importing of constitutional values and ethical norms in the judicial process, thereby promising speedy and equal justice.[40] Thus, the efficiency and effectiveness of courts must be achieved at all levels of the functioning. However, there are numerous challenges faced by the judicial system that are necessary to be addressed in order to maintain order in the society.[41] Surprisingly, the Table 1.0 depicts the data of pendency of cases.

Pendency of cases in the Indian courts

S. NO.	COURTS	TOTAL PENDENCY	PENDENCY IN CRIMINAL CASES	PENDENCY IN CIVIL CASES	% OF CIVIL CASES
1.	SUPREME COURT	80481	17087	63394	78.77%
2.	HIGH COURTS	6183547	1755558	4427989	71.60%
3.	SUB-ORDINATE COURTS	44694397	33710625	10983772	24%

[38]Civil Procedure Code, 1908
[39]Department of Justice, National Judicial Data Grid, Government of India (Welcome to NJDG - National Judicial Data Grid (ecourts.gov.in) last accessed on April 25, 2024 (around 30 thousand civil cases pending in sub-ordinate courts which are more than 30 years old, around 54604 such 30-years old cases in High Courts and around 200 such 20-30 years old civil cases in Supreme Court)
[40]Yashomati Ghosh, Indian Judiciary: An Analysis of Cyclic Syndrome of Delay, Arrears and Pendency, Asian Journals of Legal Education, Vol. 5 (2017)
[41]*Ibid.* at 19

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Table 1.0 Pendency of cases in Supreme Court, High Courts and Sub-ordinate Courts[42]

The paper intends to highlight the comparative analysis of the pendency of cases in civil and criminal cases in India, which is the highest in Supreme Court, followed by that in the High Courts. The magnitude of pendency of cases is evident from above figures. It illustrates the unqualified need to spring novel approaches/reforms towards dealing with growing backlog of cases in civil matters. Before that, it becomes indispensable to learn the root causes of such backlog of cases. Amongst many, the research accentuates few of those reasons that must be addressed for policy-makers and higher judiciary, so as to frame the laws and guidelines alongside.

IV. REASONS OF PENDENCY IN CIVIL CASES

Civil Justice Committee Report (1924) or the Rankin Report was the first initiative that highlighted the reasons for issue of pendency and need of speedy and economical disposal of cases.[43] Report of High Court Arrears Committee set up by S. R. Das (1949) criticized delay in filling up judicial vacancies as reason for growing pendency.[44] Satish Chandra Committee Report and Arrears Committee Report (1990) has made a comprehensive and analytical study of various reasons for arrears of cases in the courts such as increased litigation, plurality of appeals and radical changes in the patterns of litigations.[45] 14th Law Commission Report (1958) had also blamed unnecessary litigation and raised the need to get rid of it.[46]

Civil Procedure Code (1908) is an adjective law that prescribes the procedure for enforcement of legal rights by a court. It enables to facilitate justice and further its ends.[47] The procedural code has been amended subsequently owing to growing pendency in cases of civil matters.[48] However, it has failed to limit the institution of cases. The given amendments focused upon loosening the procedural formalities. There still exists absence of such provisions which could enable the disposal of civil cases such as family disputes without referring to the courts. It is

[42]*Ibid.* at 25 (refer to pendency of cases 20-30 years old in Supreme Court, High Courts or District Courts and Talukas)
[43]Civil Justice Committee 1924–1925.
[44]The increase in the workload of the High Courts was observed by the High Courts' Arrears Committee, 1949, as quoted in the fourteenth Law Commission Report.
[45]Government of India, Report of the Arrears Committee 1989–1990, http://dakshindia.org/wp-content/uploads/2016/08/Malimath-89-90.pdf
[46]Law Commission of India, Fourteenth Report: Reform of Judicial Administration, at 64 (1958), http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf
[47]Shalimar Chemical Works Ltd. v. Surendra Oil, 2010 (8) UJ 3979 (SC): MANU/SC/0645/2010; A. P. Public Service Commission v. Baloji Badhavath (2009) 5 SCC 1 : 2009 (4) UJ 1692 (SC)
[48]Civil Procedure Code (Amendment) Act, 2002, Act no. 22 of 2002,

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evident from the growing menace of arrears in cases.[49]

The Amendment Act (1955) of CPC[50] and Law Commission Report (1976) on '*Reforms in Judicial Administration'* had proposed revision of CPC. However, it was unable to consider possible dimensions for restricting the future litigation. It is worth mentioning that the Amendment Act of 1976 (CPC) was introduced solely aiming to expedite disposal of civil suits/proceedings, fair trial and fair provisions for indigent parties. Later, Malimath Committee was also formed which proposed ideals for policies for speedy disposal of cases. In its pursuance, Amending Acts of 1999 and 2002 were introduced placing caps of limits to filing of documents and rejoinders.[51] However, subsequently the over-enthusiastic courts had frequently extended time for filing of documents on petty requests of parties or lawyers, which fails to achieve the objectives of proposed amendments of speedy trials.[52]

Another possible reason acquired in the literature review was the actions of stakeholders such as lawyers or litigants in the civil justice system. The casual and ignorant behavior of lawyers and litigants causes burden to the arrears of cases and efficiency of the courts.[53] The acts or omissions on part of advocates such as frequent tendency to request adjournments on false pretexts, filing of incomplete/inaccurate paper work, non-payment of court fees or process fees, failure to serve summons or attend objections by the courts, fails to uphold the ethics of the legal profession. It affects the efficiency of courts which consequently hampers the sole purpose of law and justice.[54] No evidence could be found of any legal provision of rewards or remuneration that encourages the lawyers (and parties) for non-institution of cases, except for ADR mechanisms.

Mechanisms of ADRs[55] are mentioned in s. 89 (CPC) and Arbitration and Conciliation Act[56].

[49]As evident from the statistical figures in NJDG (Welcome to NJDG - National Judicial Data Grid (ecourts.gov.in)
[50]The Civil Procedure Code (Amendment Bill) 1955 <jcb_01_1955_civil_procedure_bill.pdf (eparlib.nic.in)>
[51]*Ibid* at 22, page 14-18
[52]Saikh Salim Abdul Khyumsals v. Mr. Kumar IR 2006 SC 396 : (2006) 1 SCC 46
[53]Re Sanjiv Dutta (1995) 3 SCC 619
[54]*Ibid* at 39
[55]ADRs: It is a dispute settlement method that is a very effective alternative to costly and time taking justice delivery system in courts. Section 89 CPC deals with the resolution of disputes outside the court by mode of conciliation, mediation, arbitration, Lok-Adalats and other forms of judicial settlements. Arbitration and Conciliation Act, 1996 (A &C Act) based on the UNCITRAL Model Law on International Commercial Arbitration, 1985 and UNCITRAL Conciliation Rules, 1980 was enacted. The Act mainly focuses on the arbitration in disputes of domestic and commercial nature.
[56]An Act enacted by Legislature in 1996

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The uncertainties in laws and excessive judicial interventions[57] makes the concept of arbitration ambiguous. The legislations and legal provisions governing ADRs lack institutions of providing Arbitrators to financially challenged parties. It ends up favoring dominant parties.[58] The above reasons establish the need of research work on identifying solutions to the increased pendency of cases.

V. SOLUTIONS TO THE PROBLEM: RETHINKING OF NOVEL APPROACH TOWARDS THE ISSUE

The abundance of institution of cases and simultaneous slow disposal of cases has resulted in an imbalance of scales of "*justice"*. The docked-up arrears of cases of civil nature have invited the need to craft novel solutions, driving away conventional ways of dealing pendency.

a. Procedural Reforms- Beyond formalized procedure

The judicial system is to be encouraged to function beyond the water-tight compartments of codified laws. Civil courts have seldom valued the approach of *pragmatism*. The concept of pragmatism (within the judicial contours) can be understood as referring to ethical principles that reflect drops of culture, locality and history.[59] The procedural aspect of judicial system is to be encouraged to function and interpret the procedural laws beyond the water-tight compartments. The legal cap on number of applications for injunctions and other interlocutory orders must be placed. The lawyers and judicial officers must be sensitized about issue of arrears of cases. The ethics and principles of harmony and solidarity in cases pertaining to civil matters must be encouraged.

Furthermore, the code does not explicitly carry any provision for case management mechanism. The Supreme Court of India circulated the e-circular CIS 3.0[60] in 2008. The circular pertains

[57]Refer to ONGC v Saw Pipes, (2003) 5 SCC 705, Phulchand Exports Ltd v. 0.0.0 Patrio (2011) (10) SCC 300 and Ssangyong Engg. and Construction Co. Ltd. v. National Highways Authority of India (2019) 15 SCC 131
[58]Union of India v. MIS Singh Builders Syndicate, (2009) 4 SCC 523
[59]*Ibid.* at 20, page 2
[60]The Case Information System 3.0 (CIS 3.0) , <2020082670.pdf (s3waas.gov.in)>
CIS 3.0 has been developed by NIC Pune:

- to further opens the doors of district judiciary digitalization towards the much awaited e-filing, e-payments, & e-process
- To enhance the existing CIS 2.0 based on the suggestions received for CIS 2.0 from all over the country through all the High courts
- To move a step forward towards the ICJ visionary project of integrating the court, police station, prison
- In CIS 3.0 there are two types of enhancement made by the NIC Pune
  (i)Technological enhancement

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to Case Management System aiming to make procedure litigant- friendly and transparent. However, the issue/challenge regarding CIS system is the extent to which it has successfully penetrated in the courts of various states.

The discontinuity of cases and subsequent institution of cases also burdens the resources of the courts.[61] The relevant provisions relating to case management must be introduced in procedural law.

b. Weed out the unnecessary cases

The legislature must amend the procedural law in such manner, so as to balance the role of stakeholders (judges, lawyers and litigants) between the legal provisions (procedural) and its undue burden on pending cases (civil in nature). For example, the lawyers/advocates are an important part of the institution of judiciary.[62]

The increased scope of counselling can reduce the number of potential and prospective litigants. Increased documentation and free communication are few factors that prevent parties from indulging in unwarranted legal mesh.[63] Ghosh (2018) has concluded for a balanced approach between constraints on unnecessary litigation and inclusive justice (including vulnerable and actual litigants).[64]

c. An empowered and Indianizeds Alternate Dispute Resolution

The civil justice system in ancient India reflected a personal issue to be remedied by personal interaction with the mediator. The aggrieved and opposite parties used to be equally involved, despite their caste or financial conditions. The decisions of the elders or *councils* were respected and abided by without hesitance.

The dynamics between civil matters and ADR is the most espousing equation in current legal system of India. The current provision of section 89[65] has limited scope and powers as

(ii)Functionalities enhancement

[61]*Ibid.* at 22

[62]T. Arvindandam v Satyapal (AIR 1977) SC 2421 (Krishna Iyyer J)

[63]Parthapratim Gupta, Avoiding Litigation in Clinical Practice, Journal of Indian Association of Paediatric Surgeons 24(3): p 158-161, Jul–Sep 2019. <DOI: 10.4103/jiaps.JIAPS_78_19>

[64]Ghosh, Y. (2018). Indian Judiciary: An Analysis of the Cyclic Syndrome of Delay, Arrears and Pendency. Asian Journal of Legal Education, 5(1), 21-39. https://doi.org/10.1177/2322005817733566.

[65]Civil Procedure Code, 1908

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compared to its need. There has been surge of cases in matrimonial disputes, dysfunctional families, contractual breaches between companies of various nations and varied forms of torts.[66] The policy makers must reframe the ADR mechanism for civil matters in symmetry with social structure of India. This will help re-introduce the ancient doctrines of judicial settlement of India in lines with present global and liberal economy.[67] The proposed provisions must aim to induce a notion of finality and trust on the awards granted in the ADRs. This would gradually pave path towards inducing the seeds of settlement of disputes amongst community itself by aligning the morals with *karma* and *dharma*.

VI. CONCLUSION

"*Ubi jus ibi remedium*", which means "where there is a right, there is a remedy", is the underlying principle of civil justice system in India, adopted from British legal system. The question is about its suitability to the Indian society. Economic development, globalization, recognition of human rights such as literacy and gender justice has raised the number of institution of cases of civil nature. However, scarcity in resources of infrastructure and manpower has delayed the rate of disposal of these cases. The consequences of such arrears of cases are not unknown.

The fractured civil justice system in India has resulted in overwhelming litigants. Consequently, the public tolerance is put to test and tends to erode public trust and confidence on the judicial institutions. The delayed proceedings and high arrears of cases dampen the concept of social justice and economic development of India.

Therefore, there is a dire need to opt for non-conventional approach such as reduce the institution of cases. The cases of civil matters are domestic in nature concerned about personal relations between family members and commercial trade relations. The institution can be controlled by aligning the civil justice system characteristics from ancient Indian jurisprudence.

[66]Neelam Tyagi, Women, Matrimonial Litigation and Alternative Dispute Resolution (ADR) 1 (2021)
[67]Harshita Bajla, Flaws of Ad-Hoc Arbitration in India, 4 INDIAN J.L. & LEGAL RSCH. 1 (2022)