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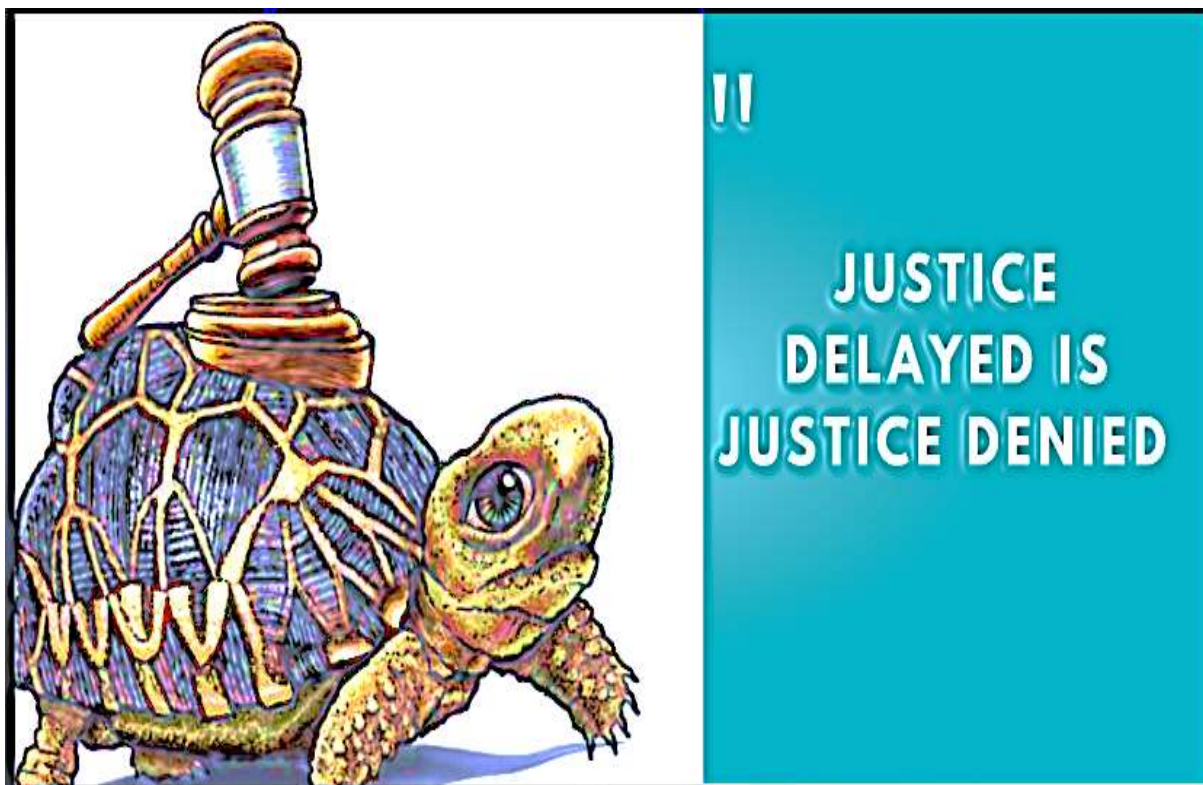
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INDIAN JUDICIAL DELAYS AND CASE BACKLOGS. **CREATIVE AND CRITICAL EVALUATION.**

AUTHORED BY - SOVI GEORGE & GEORGE KO

Last month, the President of India, Droupadi Murmu, highlighted the issue of court delays. In her speech at the National Conference of the District Judiciary, she noted that these delays are what are making people hesitate approaching courts, as they fear that the pursuit of justice will complicate their lives further. She referred to this as the 'black coat syndrome'



Supreme Court on Friday Oct 19 2024 refused to entertain a PIL seeking to fix a three-year outer limit for all courts to clear their cumulative backlog of more than five crore cases, bench led by CJI D Y Chandrachud told the petitioner.

Evaluation on causes for Pending Cases

1) Judge Shortages:

- a) One of the primary causes of case pendency in India is the shortage of judges. In 2022, the country had a sanctioned strength of 21 judges per million people, far below the recommended number for effective judicial functioning. However, courts often operate

below this capacity due to persistent vacancies. These vacancies arise periodically due to various reasons such as the retirement, resignation, demise, or elevation of judges. The process of appointing judges is lengthy and complex, further exacerbating the problem.

2) Procedural Delays & Lengthy Legal Proceedings

a) Procedural delays and lengthy legal proceedings are significant contributors to the pendency of cases in the Indian judicial system. These delays arise from outdated procedures, excessive formalism, and various procedural inefficiencies that extend the duration of legal cases.

3) Outdated Procedures and Excessive Formalism

a) The Indian judicial system is often burdened by archaic procedures that have not kept pace with modern needs. These outdated processes involve numerous steps and extensive paperwork, which can significantly prolong the time required to resolve a case. Some of the key issues include:

b) Complex Filing Requirements:

The process of filing a case involves a series of complex steps, including the preparation of detailed pleadings, affidavits, and supporting documents. These requirements can be cumbersome and time-consuming, especially for litigants who lack legal expertise.

4) Frequent Adjournments and Legal Strategies

a) Another major factor contributing to procedural delays is the frequent adjournments sought by lawyers for various reasons. This may remind us of one of the famous Hindi Films, Damini dialogues delivered by Sunny Deol - tarikh pe tarikh, tarikh pe tarikh (adjournments after adjournments and yet no end of it). These adjournments can be requested for purposes such as:

b) Preparation Time:

Lawyers may request adjournments to prepare their case, conduct additional research, or gather more evidence. While some requests are legitimate, repeated adjournments can unnecessarily prolong the case.

c) Strategic Delays:

In some instances, adjournments are used strategically by lawyers to delay proceedings. This can be done to gain a tactical advantage, such as buying time to negotiate settlements or to put pressure on the opposing party.

5) Systemic Inefficiencies:

A Major Contributor to Case Pendency is Systemic inefficiencies within the judicial system

significantly exacerbate the issue of case pendency in India. These inefficiencies span various stages of the legal process, including investigation, prosecution, and case management. They contribute to prolonged delays and hinder the timely resolution of cases, creating a substantial backlog in the courts.

a) Delays in Investigation and Prosecution

Slow Pace of Police Investigations: One of the primary factors contributing to case pendency is the sluggish pace of police investigations. Delays in gathering evidence, interviewing witnesses, and conducting forensic analysis can result in a slow start to legal proceedings. The quality and timeliness of investigations are crucial for building a strong case, and inefficiencies at this stage can lead to delays in bringing cases to trial.

b) Inefficiency in Prosecution:

The inefficiency of the prosecution can further prolong the trial process. Prosecutors often face challenges such as insufficient resources, heavy caseloads, and a lack of coordination with other branches of the legal system. These issues can result in delays in filing charges, presenting evidence, and arguing cases in court. As a consequence, cases may languish in the judicial system for extended periods.

c) Manual Processes:

The reliance on manual processes for case management and record-keeping exacerbates inefficiencies. Paper-based systems are prone to errors, misplacement of files, and slow retrieval of information. The transition to digital case management systems can help streamline processes and reduce delays.

6) Lack of Coordination between Legal System Branches

a) Fragmented System:

The legal system in India consists of various branches, including the police, prosecution, judiciary, and administrative departments. A lack of coordination and communication between these branches can lead to inefficiencies and delays. For instance, delays in obtaining case files from the police or administrative departments can slow down judicial proceedings.

7) Legislative Bottlenecks

The legislative framework governing the judiciary in India often plays a significant role in contributing to the delays and backlogs in the legal system. Frequent amendments to laws, overlapping jurisdictions, and ambiguities in legal provisions can lead to prolonged litigation and hinder the efficient resolution of cases. Simplifying and streamlining laws and legal procedures is essential to reducing the pendency of cases and ensuring timely

justice for all

a) Frequent Amendments to Laws

- i) **Constant Changes:** The Indian legal system is frequently subjected to amendments and modifications in its laws. While updates are necessary to keep laws relevant and responsive to current needs, excessive and frequent changes can create confusion and inconsistency. Legal practitioners, judges, and litigants may struggle to keep up with the evolving legal landscape, leading to delays in case proceedings.

b) Overlapping Jurisdictions

- i) **Jurisdictional Conflicts:** Overlapping jurisdictions between different courts and legal bodies can create confusion and lead to jurisdictional conflicts. For instance, certain cases may fall under the purview of both civil and criminal courts, or between state and central jurisdictions, resulting in delays as courts determine the appropriate jurisdiction for the case.

c) Ambiguities in Legal Provisions

- i) **Unclear Laws:** Ambiguities and inconsistencies in legal provisions can lead to prolonged litigation as parties dispute the interpretation and application of the law. Vague or poorly drafted laws require extensive judicial interpretation, which can delay case proceedings and create uncertainty.

8) Inability to attract talent at lower Judiciary

The lower judiciary in India faces significant challenges in attracting and retaining talented judges, which exacerbates the issue of case pendency and affects the overall efficiency of the judicial system. Key factors contributing to this problem include inadequate remuneration, lack of career progression, and the lure of more lucrative opportunities in private practice or law firms. Addressing these challenges is essential to ensure a robust and effective judiciary at the grassroots level.

a) Inadequate Remuneration

i) **Low Salaries:**

Many states in India have been criticized for the relatively low pay offered to judges in the lower judiciary. Despite the critical role these judges play in the judicial system, their compensation often does not reflect the importance of their work. This disparity discourages talented legal professionals from pursuing careers in the judiciary.

ii) **Supreme Court Orders:**

The Supreme Court of India has issued orders to increase the salaries of lower court

judges, recognizing the need for better compensation to attract and retain talent. Despite these directives, compliance by state governments has been inconsistent, further contributing to the problem.

b) Lack of Career Progression

i) Limited Advancement Opportunities:

Career progression in the lower judiciary is often perceived as slow and limited. Unlike their counterparts in private practice or higher judicial positions, lower court judges may face a lack of clear and timely pathways for advancement, leading to frustration and attrition.

c) Attrition to Private Practice and Law Firms

i) Lucrative Opportunities:

Many judges in the lower judiciary are drawn to the private sector, where they can earn significantly higher remuneration. Top private law firms and corporate legal departments offer attractive compensation packages, making it difficult for the judiciary to compete.

ii) Work-Life Balance:

The demanding nature of judicial work, coupled with relatively lower compensation, can lead to a poor work-life balance. In contrast, private practice and law firms may offer more flexibility and better work conditions, further enticing judges to leave the judiciary

9) Very Low Non-Judicial Staff has Impact on Judicial Efficiency

a) The Indian judiciary faces a significant challenge due to the very low number of non-judicial staff, which hampers the efficiency and effectiveness of the judicial system. The total working strength of judicial officers under the 21 high courts is 19,292. However, only 15,391 of the 17,020 judicial officers are working exclusively as judicial officers, while the rest are assigned additional responsibilities.

10) Diversion of Judicial Officers to Non-Judicial Work

a) Engagement in Administrative Duties:

Many judicial officers are assigned non-judicial responsibilities, including administrative tasks, financial management, and overseeing legal aid services. This diversion of judicial time detracts from their core function of adjudicating cases, leading to delays in case resolution.

b) Special Committees:

High courts have constituted numerous committees comprising judicial officers to

handle various administrative and miscellaneous tasks. These include financial management, implementation of e-courts projects, legal aid coordination, and appointments to judicial academies and legal service authorities at district, state, and national levels.

11) Need for a Specialised Cadre of Court Managers at local levels

a) Administrative Expertise:

Creating a specialized cadre of court managers can address the issue of judicial officers being diverted to non-judicial work. Court managers with expertise in administration and management can take over the administrative responsibilities currently shouldered by judges, allowing them to focus on their primary judicial duties.

b) Efficient Court Administration:

Court managers can streamline court administration, ensuring efficient management of resources, scheduling of hearings, and maintenance of court records. Their involvement can lead to better organization and functioning of courts, reducing delays and improving the delivery of justice.

12) Inadequate funding:

Except the Supreme Court which is funded by the central government, all the expenses of the High Court and the District Courts in a state are funded by the respective state government. As of 2018, 92% of all expenditure on the judiciary was borne by the states. This includes salary of judges, non-judicial staff and all operation costs. In 2019, India spent 0.08% of its GDP on the judiciary.

13) Procedural Delays

Procedural delays constitute a significant cause of case pendency in India's judicial system. These delays can be attributed to several interrelated factors, which together contribute to the slow progression of legal cases from filing to resolution.

a) Cumbersome Procedures:

The legal process in India is often characterized by cumbersome and outdated procedures. Many steps involved in the judicial process are highly formalistic, requiring extensive documentation and adherence to numerous procedural requirements. This formalism can cause delays at every stage of a case, from filing petitions and submitting evidence to conducting hearings and delivering judgments. Additionally, the intricate and complex nature of legal procedures can lead to misunderstandings, errors, and further delays as parties navigate the system.

b) Frequent Adjournments:

Another critical factor contributing to procedural delays is the frequent adjournments granted by courts. Adjournments, or postponements of court proceedings, are often sought by lawyers for a variety of reasons, including unavailability, the need for additional preparation time, or strategic purposes. While adjournments are sometimes necessary to ensure fairness and due process, their overuse can significantly extend the duration of cases. In some instances, repeated adjournments can stretch a case over several years, exacerbating the backlog of pending cases.

c) Delays in Submitting Evidence:

The timely submission and examination of evidence are crucial for the swift resolution of legal cases. However, delays in collecting, presenting, and scrutinizing evidence can stall proceedings. Several factors contribute to these delays, including the slow pace of police investigations, inefficiencies in the forensic examination, and logistical challenges in producing witnesses. Furthermore, procedural requirements for the authentication and verification of evidence can add additional layers of delay, particularly in complex cases involving extensive documentation or expert testimony.

Approximate Key Statistics

1) Government as the Major Litigant:

The Indian government is the largest litigant in the country, accounting for 50% of the pending cases. This heavy involvement of the state in litigation contributes significantly to the overall backlogs

2) Land and Property Disputes:

Land and property disputes constitute the largest segment of pending cases. About 66% of all civil cases in India are related to these disputes, and 25% of cases decided by the Supreme Court involve land issues. The prevalence of such disputes exacerbates the backlog and complicates the judicial process.

3) Judicial System Challenges:

India has one of the highest numbers of pending court cases globally. Judges and government officials alike have identified case pendency as the most significant challenge facing the Indian judiciary. According to a 2018 Niti Aayog strategy paper, at the then-current rate of case disposal, it would take over 324 years to clear the existing backlogs

4) Economic Cost:

The pendency of court cases imposes a significant economic burden, costing approximately

1.5% to 2% of India's GDP. This economic impact reflects the inefficiencies in the legal system and the costs associated with prolonged legal processes.

Implications

1) Impact on Case Duration and Enforcement

The cumulative effect of procedural delays and lengthy legal proceedings is a slow and often inefficient judicial process. This has several implications:

a) Prolonged Case Durations:

Cases in the Indian judicial system can drag on for years, with some cases taking decades to reach a final judgment. This prolonged duration not only delays justice but also adds to the mental and financial burden on litigants.

a) High Costs of Litigation:

The extended duration of legal proceedings increases the cost of litigation. Litigants may incur significant expenses related to legal fees, court costs, and other associated expenditures. This makes enforcing contracts and resolving disputes a costly affair.

2) Impact of Systemic Inefficiencies

a) Prolonged Trials:

Systemic inefficiencies contribute to prolonged trial durations, with cases often taking years to reach a resolution. This delay not only affects the parties involved but also undermines public confidence in the judicial system.

b) Increased Costs:

Delays in the legal process can result in increased costs for litigants, including legal fees, court costs, and other related expenses. The financial burden of prolonged legal proceedings can be significant, particularly for individuals and businesses involved in lengthy trials.

3) Affordability of Legal Representation

a) High Cost of Legal Services:

The cost of legal representation in India can be prohibitively high for a significant portion of the population. Many individuals, particularly those from lower socio-economic backgrounds, struggle to afford legal fees, court costs, and other associated expenses.

b) Limited Access to Legal Aid:

Although legal aid services are available for those unable to afford private representation, access to these services is often limited. Legal aid schemes may lack

sufficient funding, resources, and awareness, leading to gaps in service delivery. As a result, many individuals are left without adequate legal support, further contributing to delays in the judicial process.

c) Inequality in Legal Resources:

There is a disparity in the availability and quality of legal resources between different regions and socio-economic groups. Individuals from disadvantaged backgrounds may not have access to competent legal counsel or resources necessary to pursue their cases effectively. This imbalance can result in prolonged legal battles and an increased backlog of cases.

4) Nature of Disputes and Minor Offenses

a) Petty Disputes:

A substantial number of cases in the Indian judicial system pertain to petty disputes and minor offenses. These cases, which often involve trivial matters, contribute to the overall case load and strain the judicial system. The high volume of such cases can lead to delays in addressing more serious and complex matters.

b) Minor Offenses:

Many criminal cases involve minor offenses that could be resolved through alternative means rather than through lengthy court proceedings. For example, disputes related to minor property issues, small claims, and petty criminal offenses may not require formal judicial intervention and could be settled through simpler resolution mechanisms.

5) Socio-Economic Impact on Case Pendency

a) Delay in Filing Cases:

The inability to afford legal representation can lead to delays in filing cases, as individuals may wait until they have the necessary financial resources. This delay in initiating legal action can contribute to the accumulation of pending cases.

b) Increased Burden on Courts:

The large volume of petty disputes and minor offenses that reach the courts can strain judicial resources and contribute to delays in resolving more significant cases. Courts may become overwhelmed with low-value claims and minor matters, impacting their ability to handle complex and urgent cases efficiently.

c) Social Inequities:

Socio-economic disparities can result in unequal access to justice, with disadvantaged individuals facing greater challenges in pursuing their legal rights. This inequity can perpetuate delays and contribute to a backlog of cases, as those who cannot afford legal

representation may experience extended periods of unresolved disputes.

Recommendations

1) System Recommendations:

a) Modernizing Investigation Processes:

Investing in technology and resources for police investigations can improve efficiency and reduce delays. Forensic tools, data management systems, and specialized training can enhance the quality and speed of investigations.

b) Enhancing Prosecution Efficiency:

Providing adequate resources and support for prosecutors can improve their effectiveness. Streamlining case preparation, increasing staffing, and implementing performance metrics can help address inefficiencies in the prosecution process.

c) Implementing Case Management Systems:

Adopting modern case management systems that prioritize and track cases effectively can streamline court processes. Digital systems can improve case tracking, scheduling, and document management, reducing delays.

2) Court Vacation Recommendations:

To address the impact of court vacations on case pendency and improve the efficiency of the judicial system, several recommendations can be considered:

a) Reduction of Vacation Periods:

Reassessing and potentially reducing the duration of court vacations to increase the number of working days available for case hearings and resolutions.

b) Staggered Vacations:

Implementing a system of staggered vacations for judges, ensuring that a sufficient number of judges are always available to hear urgent and pending cases.

c) Extended Court Hours:

Considering extended working hours or additional sittings during non-vacation periods to compensate for the time lost during vacations.

d) Use of Technology:

Leveraging technology to conduct virtual hearings and administrative work during vacation periods, ensuring that critical judicial functions continue without interruption.

e) Efficient Case Management:

Enhancing case management practices to prioritize and expedite cases that have been delayed due to vacations, ensuring timely resolution once courts resume regular

operations.

- f) **Public Awareness:** Informing the public and legal practitioners about the scheduling of vacations and the availability of alternative dispute resolution mechanisms to manage expectations and reduce reliance on court proceedings during vacation periods.

3) Socio-Economic Factors Recommendations

Socio-economic factors play a crucial role in exacerbating the problem of case pendency in India. These factors affect not only the ability of individuals to access legal representation but also the types of disputes that contribute to the growing backlog of cases. Addressing these socio-economic issues is essential for reducing the strain on the judicial system and improving access to justice.

a) Enhancing Legal Aid Services

b) Promoting ADR Mechanisms

- i) **Benefits of ADR:** Alternative Dispute Resolution (ADR) mechanisms, such as mediation and arbitration, offer an effective way to resolve disputes without resorting to traditional court proceedings. ADR can expedite the resolution of cases, reduce the burden on courts, and provide more accessible and cost-effective solutions for parties involved in disputes.

- ii) **Promotion and Implementation:** Promoting the use of ADR mechanisms and integrating them into the legal system can help alleviate case pendency. Encouraging parties to seek resolution through mediation or arbitration before pursuing formal litigation can prevent the escalation of disputes and reduce the number of cases filed in courts.

- iii) **Awareness and Training:** Increasing awareness about ADR options and providing training for legal professionals and mediators can enhance the effectiveness of these mechanisms. Educating the public about the benefits of ADR and how to access these services can also contribute to reducing case backlogs.

c) Improving Public Legal Education

d) Addressing Regional Disparities

4) Other Recommendations

- a) **Creation of Court Manager Cadre:** Establish a dedicated cadre of court managers in all courts, with clearly defined roles and responsibilities. This cadre should be recruited through a competitive selection process and provided with specialized training in court administration.

- b) Legislative and Policy Support: Enact legislative and policy measures to support the creation and functioning of court manager positions. Provide adequate funding and resources to ensure their effective implementation and operation.
- c) Capacity Building Programs: Develop comprehensive capacity building programs for court managers, focusing on areas such as administrative management, financial oversight, technology integration & constant updating in emerging technologies and legal aid coordination.
- d) Regular Monitoring and Evaluation
- e) Collaboration with Judicial Officers

