

**PENDENCY OF CASES IN SUPREME COURT: REASONS AND RECOMMENDATIONS**

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**ABSTRACT**

*A total of 60, 459 cases are pending in the Supreme Court as of March 01, 2020. The most commonly identified reason provided by the research studies for increasing pendency of cases is the insufficient number of judges in Country. The most under examined reason for the increasing pendency of cases is Supreme Court is the inefficiency of judges and non-adherence to specific procedural timelines. The Supreme Court through a series of its decisions diluted the specific procedural timelines introduced by the Code of Civil Procedure (Amendment Act) of the year 1999 & 2002. This problem of dilution became more serious with the absence of work culture in judiciary, huge number of holidays in upper judiciary and long adjournments.*

*The division of Supreme Court into Constitutional Division and Legal Division can be a potential solution to the problem of increasing pending cases. Separate Constitutional Courts can significantly help in directing the work pressure in the right direction and constitutional division will have the sufficient time to deal with the cases involving the interpretation of the Constitution. It has been observed that the number of pending cases in Supreme Court is increasing even after having a satisfactory rate of disposal. The reason before this is much higher rate of institution as compared to rate of disposal. The establishment of separate benches of Supreme Court in other parts of country will also help in a significant manner to reduce the tremendous pressure from the Supreme Court in New Delhi.*

*The Chief Justice of India with the permission of President can invoke and exercise the powers under article 130 of Constitution to set up Supreme Court Bench at places other than New Delhi. Further, CJI is not required to consult with anyone for invoking and exercising powers under article 130.*

## **I. PENDENCY OF CASES IN SUPREME COURT: REASONS & RECOMMENDATIONS**

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### A. INTRODUCTION TO JUDICIAL DELAYS

A total of 60, 459 cases are pending in the Supreme Court as of March 01, 2020.<sup>1</sup> Out of this total number of pending cases, 40723 are Admission matters and 19746 are Regular Hearing matters. Out of the 40, 723 cases, 28, 736 are complete miscellaneous matter where all Preliminaries are Complete, and are ready for hearing. And 11, 987 matters are Incomplete Miscellaneous matters where Preliminaries are not complete, like process fee not paid/notice yet not served/ pleadings not completed, etc.

Out of the 19, 746 Regular Hearing matters, 19, 662 are ready Regular Hearing matters where all preliminaries completed after admission. And 84 matters are not ready for Regular Hearing where preliminaries not completed like notice of lodgement of appeal not served/statement of case not filed, etc.

#### **CLASSIFICATION OF PENDING CASES IN SUPREME COURT**

<b>Pending Cases (60, 459)</b>			
<b>Admission Matters (40, 723) (Miscellaneous)</b>		<b>Regular Hearing Matters (19, 746)</b>	
<b>Complete (Miscellaneous) (28, 736)</b>	<b>Incomplete (Miscellaneous) (11, 987)</b>	<b>Ready (Regular Hearing) (19, 662)</b>	<b>Not Ready (Regular Hearing) (84)</b>

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<sup>1</sup> Supreme Court of India (March 1, 2020) Summary: Types of Matters in Supreme Court of India, Available at: <https://main.sci.gov.in/statistics> (Accessed: May 30, 2020).

In which all Preliminaries are Complete and ready For hearing.	Preliminaries not complete like process fee not paid/notice yet not served/Pleadings not completed, etc	All preliminaries completed after admission.	Preliminaries not completed like notice of lodgement of appeal of served/statement of case not filed, etc.
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19. 96% of the total pending cases in Supreme Court are matters which are Incomplete Miscellaneous or Not Ready for hearing matters which requires preliminaries to be completed. It means 12, 071 matters are pending in Supreme Court where the preliminaries are required to be completed. These matters cannot be listed for the hearing before the Honourable Supreme Court. Out of these 12, 071 matters, 11, 987 are miscellaneous matter and 84 matters are not ready for regular hearing.

In various cases, it has been observed that the Supreme Court has delivered the judgement after a very long pendency of a case. In *Safdar Hasmi Murder case*,<sup>2</sup> the victim was killed by his political opponents, but Supreme Court took around 15 years in punishing the offender. Further, in the *Tandoor Murder case*,<sup>3</sup> the accused was convicted with death sentence after 8-9 years, after he killed his wife. If the cases are pending for such a long time in Supreme Court then it is difficult to imagine the situation in lower courts.

## B. LITERATURE REVIEW

The 95<sup>th</sup> Law Commission Report analyzed the reasons of judicial delays and recommended for division of Supreme Court into: i) Constitutional Division; and ii) Legal Division.<sup>4</sup> Further, the 125<sup>th</sup> and 229<sup>th</sup> Law Commission Reports suggested that separate Supreme Court benches have to be established in different parts of the country.<sup>5</sup>

<sup>2</sup> Vidyarthi Chatterjee (2019) 'Safdar Hashmi: A death foretold', *The Telegraph*, 3rd January.

<sup>3</sup> Hemani Bhandari (2018) 'Tandoor murder: I regret murdering Naina Sahni, says Sushil Sharma', *The Hindu*, 22nd December.

<sup>4</sup> "Constitutional Division within the Supreme Court – A Proposal for", *Law Commission of India 95 (1984)*.

<sup>5</sup> "The Supreme Court – A Fresh Look", *Law Commission of India 125 (1988)*; "Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai", *Law Commission of India 229 (2009)*.

Brajesh Ranjan in his article titled ‘What causes judicial delay?’ (Times of India) has analyzed some of the Supreme Court judgements where the Supreme Court had diluted the strict timeframes introduced by the 1999 and 2002 Civil Procedure Code (Amendment Act). The Supreme Court is itself responsible for the increasing judicial delays as it diluted the mandatory specific procedural guidelines and declared them directory in nature only.

The Summary uploaded on the official Supreme Court website reveals a total of 60, 459 cases are pending in the Supreme Court as of March 01, 2020.<sup>6</sup> The article written by Pradip published on Legal Services India analyzed the various reasons for the increasing judicial delays and the increasing number of pending cases in Supreme Court.

## C. RESEARCH QUESTIONS

- What are the various fundamental reasons for the increasing number of pending cases in Supreme Court?
- Whether Supreme Court is itself responsible for diluting the specific procedural timelines provided by the Code of Civil Procedure (Amendment Act), 1999 & 2002?
- Whether the benches of Supreme Court can be established in different parts of Country without making any change in structure of Indian Judicial System?
- Whether CJI is required to consult with anyone for invoking article 130 of Constitution?

## D. HYPOTHESIS

The Dilution of procedural safeguards as provided under the CPC Amendment Act of 1999 & 2002 has significantly impacted the rate of adjudication in Supreme Court. The Benches of Supreme Court can be established in different parts of country without making any change in structure of Indian Judicial System.

## E. RESEARCH SCHEME & METHODOLOGY

The research paper is doctrinal in nature. The researcher aims at identifying the fundamental reasons before the increasing judicial delays and increasing pending cases. Further, the researcher critically analyzes the Supreme Court Judgements diluting the strict procedural

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<sup>6</sup> *Supreme Court of India (March 1, 2020) Summary: Types of Matters in Supreme Court of India, Available at: <https://main.sci.gov.in/statistics> (Accessed: May 30, 2020).*

timelines provided by legislature. The researcher has relied on the Law Commission Reports concerning the increasing pendency of cases in Supreme Court. The researcher has also relied on various articles and summary reports published by Supreme Court.

## F. CHAPTERIZATION

The *first* chapter of the research paper is the synopsis which introduces the problem of judicial delays and increasing number of pending cases. In *second* chapter, the researcher has identified the reasons of Judicial Delays and increasing number of pending cases. The *third* chapter of research paper deals with the analysis of Supreme Court judgements diluting the effect of strict procedural timelines introduced by Code of Civil Procedure (Amendment Act) of the year 1999 and 2002. The *fourth* chapter identifies the reasons before the inefficiency of judges in providing the justice timely. The *fifth* chapter analyzes the recommendations made by the Law Commission Reports for division in Supreme Court and establishing benches in different parts of country.

## II. REASONS FOR JUDICIAL DELAY

There are total of 23.1 million cases pending in the various forms of Courts all over the India which includes the cases pending in the Supreme Court.<sup>7</sup> The problem of Judicial Delay and the increasing number of pending cases is one of the most studied topics by the Law Commission of India.

As per the studies conducted by the Law Commission of India, the lack of infrastructural facilities is the most fundamental cause of increasing judicial delays and pending number of cases. Subsequently, the solution suggested by the Law Commission is to increase the number of judges. However, increasing the number of the judges cannot put an end to the problem of judicial delays. And one of the most important and appropriate reason for the judicial delay remains unexamined. This unexamined cause for the judicial delays is the non-adherence of judges to the strict procedural timelines. Increase in number of Judges in the apex court does not

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<sup>7</sup> Brajesh Ranjan (August 25, 2016) What causes judicial delay? Judgments diluting timeframes in Code of Civil Procedure worsen the problem of adjournments, Available at: <https://timesofindia.indiatimes.com/blogs/toi-edit-page/what-causes-judicial-delay-judgments-diluting-timeframes-in-code-of-civil-procedure-worsen-the-problem-of-adjournments/> (Accessed: June 15, 2020).

result in reduction of pending cases.<sup>8</sup> There are so many other reasons as well which causes judicial delay and increasing pendency of cases in Supreme Court other than the limited strength of Judges.

This chapter of the research paper deals with the causes for the increasing number of pending cases and the judicial delays. The possible reasons are as follows:

## A. NON-ADHERENCE TO PROCEDURAL TIMELINES BY JUDGES:

The one of the most appropriate and the under examined cause of judicial delays is that the Judges in India are not following the strict procedural timelines which can help in disposing the cases in a speedier manner.

However, it can be asserted on the basis of various Supreme Court decisions that the Supreme Court has the tendency of relaxing the strict time frames imposed by the amendments to the Legislations. And the Supreme Court has always dilutes these amendments by interpreting these amendments in accordance with the Court's perceived sense of Justice.

## B. INEFFICIENCY OF JUDGES

Another one of the important reasons for the increasing number of pending cases and judicial delays is the inefficiency of judges in Indian Judiciary. It has been observed by various Law Commissions, that judges are granting unreasonable number of adjournments on frivolous and flimsy grounds. Judges are not fulfilling their obligations to dispose the cases in an effect and speedier manner.

**ENDLESS AMENDMENTS:** Another reason for judicial delays. Frequent amendments require time to understand and apply the new provisions of law. It wasted valuable time of court and nations. Further, frequent amendments made legal system confusing and slow.

## C. LACK OF INFRASTRUCTURAL FACILITIES:

The other important reason responsible for the increasing number of pending cases and judicial delay is the lack of infrastructural facilities. Splitting the Supreme Court and setting up of

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<sup>8</sup> "Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai", Law Commission of India 229 (2009).

Supreme Court Bench at different parts of the country will help in reducing the burden and expenditure of the litigants in bringing their lawyers to Delhi.<sup>9</sup>

The problem of lack of infrastructural facilities can be resolved in two ways:

B.i. Division of Supreme Court to form Separate Constitutional Bench:

The tenth Law Commission in its 95th Report titled “Constitutional Division within the Supreme Court”, submitted in 1984, recommended that the Supreme Court of India should consist of two Divisions, namely, (a) Constitutional Division, and (b) Legal Division.

B.ii. Supreme Court Bench at other parts of Country:

The eleventh Law Commission in its 125th Report titled “The Supreme Court – A Fresh Look” suggested for setting up of Supreme Court Bench in other parts of the country. The rationale behind the setting up of Bench at different parts of Country is to reduce the burden on the litigants to bring their own lawyers to Supreme Court from all over the India.

The 2nd (2004), 6th (2005) and 15th (2006) Reports of the Parliamentary Standing Committee on Law and Justice have consistently suggested that in order to provide speedier justice to common, it is necessary to establish Supreme Court Bench in different parts of the country. The 20th (2007), 26th (2008) and 28th (2008) Reports of the Standing Committee suggested for setting up of Supreme Court Bench in Chennai.

D. JUDGE LITIGANT RATIO

The 120<sup>th</sup> Law Commission Report titled “Manpower Planning in Judiciary: A Blueprint” suggested that for resolving the problem of judicial delays and increasing pendency of cases, it is necessary to have at least 50 judges per million population. In the year 1987, there were only 10.5 judges for per million populations in India.<sup>10</sup>

The ratio between the 2011 Census Population & the Strength of Judges in Supreme Court, High Court and Subordinate Courts stands at 19.66 judges per million (10 lakh) people.<sup>11</sup> Still there is

<sup>9</sup> “The Supreme Court – A Fresh Look”, Law Commission of India 125 (1988).

<sup>10</sup> “Manpower Planning in Judiciary: A Blueprint”, Law Commission of India, 120 (1987).

<sup>11</sup>PTI (2018) India's Judge-Population Ratio goes up marginally, Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/indias-judge-population-ratio-goes-up-marginally/articleshow/62400461.cms#:~:text=Based%20on%20the%202011%20census%20and%20sanctioned%20strength%20of%20judges,figures%20put%20in%20public%20domain.> (Accessed: June 18, 2020).

a pressing need to improve this Judge-Population ration for addressing the problem of judicial delays. The inadequate number of judges is the clearest reason for increasing pendency of cases. The Government not only failed to increase number of judges, but also failed to fill vacancies.

#### E. TIMING OF COURT-ROOMS, LONG VACATIONS & HIGH NUMBER OF NON-WORKING DAYS PER YEAR

The absence of work culture in Indian Judiciary is one of the most under examined reason for the increasing judicial delays. The problem of absence of work culture becomes more severe with the high number of holidays, especially in the higher judiciary. The number of holidays in Supreme Court is so high that one can count the working days on finger tips. These Numerous holidays and long vacations result in unnecessary adjournments.

Further, it has been observed that the judges are running the courts for the time lesser than the prescribed in the Supreme Court Rules, 1966. This further adds to the increasing judicial delays and the increasing pendency of cases in Supreme Court.

### **III. NON-ADHERENCE TO PROCEDURAL TIMELINES**

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The one of the distinctive features of the reforms in the judiciary is the specific time limits. The specific time limits were introduced to reduce the judicial delay and the increasing number of pending cases. UK and Singapore are the countries from where the chain of these reforms started.<sup>12</sup>

#### A. THE AMENDMENT ACT OF 1999 & 2002

In India, the two major amendments in the Code of Civil Procedure 1908 can be considered as true attempts of bringing the reforms in Judiciary by way of specified time limits. The amendments to Code of Civil Procedure in the year 1999 and 2002 provided the specific timeframes for the procedural aspects of the suit. Further, the specific time periods were strict in nature. Both the Amendment Acts became effective from July 1, 2002.

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<sup>12</sup> Brajesh Ranjan (August 25, 2016) *What causes judicial delay? Judgments diluting timeframes in Code of Civil Procedure worsen the problem of adjournments*, Available at: <https://timesofindia.indiatimes.com/blogs/toi-edit-page/what-causes-judicial-delay-judgments-diluting-timeframes-in-code-of-civil-procedure-worsen-the-problem-of-adjournments/> (Accessed: June 15, 2020).



However, the amendments failed to solve the problem of judicial delay and increasing number of pending cases in a significant manner. It is very much important to examine the reason before the ineffectiveness of these amendments in bringing the significant judicial reforms. A close examination of the decisions of Supreme Court associated with these strict time frames can help in ascertaining the reason for the ineffectiveness of the amendments.

This chapter of the research paper analyzes the amendments made in the Civil Procedure Code and the interpretation of these amendments by Supreme Court.

## B. SPECIFIC TIME FRAMES PROVIDED BY THE AMENDMENT ACTS

Before the passing of the Amendment Act of 1999, there was no restriction on the courts concerning the number of adjournments. But the Amendment Act of 1999 restricted the maximum number of adjournments up to 3. Therefore, the Amendment Acts restricted the judges from granting adjournment more than three times to a party to the suit.

The Amendment Act of the year 1999 amended section 27 of the Code of Civil Procedure.<sup>13</sup> Section 27 of the Code of Civil Procedure provides for issuing of summons to the defendants. Before the passing of Amendment Act, there was no time limit prescribed within which plaintiff have to serve summons to the defendant.

The Amendment Act prescribed the time limit within which summons shall be issued to the defendants. But, the absence of time limit for the serving of summons resulted into decade long suits. However, the Amendment Act made it mandatory that defendants must be served with summons within 30 days from the date of institution of suit.<sup>14</sup>

The 1999 Amendment Act also provided a time frame over the court's general power to extend timelines. The Amendment restricted the court from enlarging the period as prescribed by the act for more than 30 days.

Another important time frame for solving the problem of judicial delay was provided by the Amendment Act of 2002. Before the implementation of the Amendment Act in 2002, there was no specific outer time limit for the filing of written statement. The only requirement was the

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<sup>13</sup> *The Code of Civil Procedure (Amendment) Act 1999, section 3.*

<sup>14</sup> *The Code of Civil Procedure 1908, section 27.*

permission of the Court. However, the 2002 Amendment Act specified the outer limit after which the court cannot accept the written statement. The Amendment Act provided that the court cannot accept the written statement after 90 days from date of service of summons.

## C. INTERPRETATION BY SUPREME COURT & DILUTION OF AMENDMENT ACTS

In the case of *Salem Advocate Bar Association v. Union of India*,<sup>15</sup> the Supreme Court held that the correct interpretation of Amendment Act does not restrict the power of court to allow more than three adjournments in a civil suit.

This decision of the Supreme Court has severely affected the effectiveness of amendments in brining the judicial reforms for reducing pendency of cases. This decision of Supreme Court was invoked by ten High Courts for proclaiming it with proud that the Courts have the power to endlessly adjourn the case.

Supreme Court in the same case of the year 2005 reduced the force of the 1999 Amendment Act. The Supreme Court said that correct interpretation of the Amendment Act says that the court can exercise its inherent powers to pass the order which are necessary to provide complete justice to the parties and to prevent the misuse of powers. The Supreme Court in the case of *Salem Advocates Bar Association, Tamil Nadu v UOI*,<sup>16</sup> held that the outer limit of 30 days provided by the amendment is to ensure that plaintiff is taking sufficient steps to enable the court for the issuing of the summons.

Thus, the court through its interpretation held that the time limit of 30 days does not require that court must issue summons to the defendant. It only requires the plaintiff to take all reasonable steps within 30 days to enable the court to issue summons.

Further, Supreme Court through its decision in the case of *Kailash v. Nanhku*,<sup>17</sup> held that the specific timeline for filing written statement provided under 2002 Amendment Act is not mandatory and directory in nature only.

The insertion of this specific timeline for filing of written statement under 2002 Amendment Act was necessary for curbing the unreasonable delays. However, it was held by Supreme Court that

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<sup>15</sup> *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.

<sup>16</sup> *Salem Advocates Bar Association, Tamil Nadu v UOI*, AIR 2003 SC 189.

<sup>17</sup> *Kailash v. Nanhku*, AIR 2005 SC 2441.

court can permit the filing of written statement beyond the 90 day period in exceptional cases by using its discretion. Further, with the passage of time, the exception has become the new normal.<sup>18</sup>

#### D. RELAXATION OF TIME FRAMES BY SUPREME COURT

In all the illustrations mentioned in the last section, the Supreme Court has relaxed the specific and mandatory time frames inserted by the Amendments Acts of 1999 and 2002 in the Code of Civil Procedure, 1908. The Supreme Court has also restored the court's discretion to dilute the amendments in accordance with the court's perceived sense of justice.

The instances when the Supreme Court has relaxed the procedural timelines are not restricted to the above mentioned illustrations only. Similar illustrations where Supreme Court has relaxed the time frames can be in almost every provision of the Code.

The above mentioned series of cases are an example of Supreme Court verdicts where the court has unknowingly or unintentionally supported the Judicial Delays and increasing number of pending case. The court has unintentionally contradicted the clear wordings of the Amendments Acts which were passed for bringing the Judicial Reforms.

Moreover, the phrases like 'procedures are the handmaiden of justice' are frequently used by the Supreme Court. The Supreme Court has tried to justify the departures from the specific time frames with the help of this phrase. Solving the problems associated with the lack of infrastructural facilities would not suffice to reduce the pending number of cases and judicial delays. It is also important to reform the problems of delays rooted in Indian Judiciary.

#### **IV. INEFFICIENCY OF JUDGES IN INDIAN JUDICIAL SYSTEM**

The one of the most important and under examined reason for the judicial delays and increasing pendency of cases in Supreme Court is the inefficiency of judges. The judges in the Indian Judicial System are not disposing cases in efficient and speedier manner. At various instances, questions were raised on punctuality of judges.

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<sup>18</sup> Brajesh Ranjan (August 25, 2016) *What causes judicial delay? Judgments diluting timeframes in Code of Civil Procedure worsen the problem of adjournments*, Available at: <https://timesofindia.indiatimes.com/blogs/toi-edit-page/what-causes-judicial-delay-judgments-diluting-timeframes-in-code-of-civil-procedure-worsen-the-problem-of-adjournments/> (Accessed: June 15, 2020).

Further, judges are granting unreasonable number of adjournments on frivolous and flimsy grounds. Endless and frequent Amendments in the Indian Legislations are one of the reasons for the inefficiency of judges.<sup>19</sup> Frequently amending the laws takes time to understand and apply new provisions of law.

## A. WORK CULTURE IN INDIAN JUDICIARY

Every work in Indian Courts and Indian Judicial System is carried out very slowly. This is another important reason before the increasing number of Pending cases in Supreme Court. Holidays are a major attraction in the Indian Judicial System.

Attraction towards the holidays results in making the work of judiciary slow. The slow work processes in the Judiciary, especially Supreme Court results into judicial delays and increasing pendency of cases.

The number of holidays provided under the Indian Judicial System, especially in the Supreme Court of India is so high, that the number of working days can be easily counted.<sup>20</sup> This further adds in increasing pendency of cases in Supreme Court.

## B. FREQUENT AMENDMENTS IN INDIAN LAWS & LEGISLATIONS

It is another important reason for the increasing pendency of cases. The Parliament keeps on amending the Indian laws and legislations again and again. Subsequently, it takes a lot of time for the judiciary to interpret and apply the amended provisions of law. Further, this makes the judicial processes slow and steady. The slow judicial processes results into the judicial delays and pendency of cases.

The one of the clearest example of the frequent amendments is the Income Tax Act. The Income Tax Act came into force in the year 1961. After the year 1961, it has been amended 4000 times.<sup>21</sup> Senior Advocate, Nani A. Palkhivala in his article wrote that the wastage of time by Judiciary is

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<sup>19</sup> Pradip (Legal Services India) Primary Causes behind Judicial Delay's, Available at: <http://www.legalserviceindia.com/article/l317-Justice-Delayed-is-Justice-Denied.html> (Accessed: June 15, 2020).

<sup>20</sup> "Backlog of Cases Causing Concern: CJI", *The Hindu*, Thursday, August 16, 2007.

<sup>21</sup> *ibid* 19.

tragic in nature. And, the countless amendments results into wastage of energy and time of nation.<sup>22</sup>

## C. INADEQUATE NUMBER OF JUDGES

The inadequate number of judges is the clearest reason for increasing pendency of cases. The Government not only failed to increase number of judges, but also failed to fill vacancies. There are only 10-12 judges per lakh population in India, which is 50-60 in US and UK.<sup>23</sup>

## D. LAWYERS' HABIT OF TAKING ADJOURNMENTS

In various cases, it has been observed that the lawyers are taking adjournments unnecessarily with the motive of extracting money from the clients and harassing the other parties. Some advocates keeps on producing the illogical and inadmissible arguments. Due to the insufficiency of staff in offices of Solicitor General, Advocate General and Attorney General, advocates freely seek adjournments for filing the Affidavits. However, this habit of lawyers seeking adjournment is serious threat like cancer which causes increasing pendency of cases.

## V. LACK OF INFRASTRUCTURAL FACILITIES

Under the Constitution, Supreme Court is the highest court in India to which appeals can be brought from all over the India. The Jurisdiction of Supreme Court of India is wider as compared to any other Federal Supreme Court. The Supreme Court of India has the original jurisdiction to adjudicate the issues between the State & Union or States *inter se*.<sup>24</sup>

Supreme Court of India is the Court of Record.<sup>25</sup> The Court of Record will have the power to: i) determine its own jurisdiction; and ii) punish for its contemp.<sup>26</sup>

Further, Supreme Court has the original jurisdiction under Article 132 of Indian Constitution for the protection of fundamental rights of people. Also, Supreme Court is the highest court in India for Criminal and Civil Appeal.<sup>27</sup>

<sup>22</sup> Nani A. Palkhivala (April 12, 2012) *Dear Finance Minister, Will You Listen To Nani Palkhivala Before It is Too Late?*, Available at: [https://itatonline.org/articles\\_new/dear-finance-minister-will-you-listen-to-nani-palkhivala-before-it-is-too-late/](https://itatonline.org/articles_new/dear-finance-minister-will-you-listen-to-nani-palkhivala-before-it-is-too-late/) (Accessed: 2nd June 2020).

<sup>23</sup> *ibid* 14.

<sup>24</sup> *The Constitution of India 1950, article 131.*

<sup>25</sup> *The Constitution of India 1950, article 129.*

<sup>26</sup> Krishna Keshav (2019) *Constitutional Law I, Eighth edn, Law Book Sellers & Publishers: Singhal Law Publication; The Constitution of India 1950, article 129.*

The Supreme Court of India has the power to grant special leave to appeal from any decree, judgement, sentence, determination or order made or passed by any tribunal court inside India except the order made by the tribunal constituted under the law associated with Armed Forces.<sup>28</sup> Further, Supreme Court has the power to review any order or judgement made by Supreme Court itself.<sup>29</sup> Also, Supreme Court has the advisory jurisdiction under the constitution.<sup>30</sup>

## A. ESTABLISHMENT OF SEPARATE CONSTITUTIONAL BENCH

About 55 countries across the world have the separate constitutional courts.<sup>31</sup> In the year 1920, Australia became the first country in the world to establish a separate constitutional court. The need to find the solution for releasing the unbearable load of the Supreme Court is very much necessary.

The 95<sup>th</sup> Report of Law Commission of India suggested that Supreme Court should consist of two divisions, which are: i) Constitutional Division; and ii) Legal Division. The Constitutional Division of Supreme Court will deal with the constitutional matters.

The cases involving a substantial question of law with regard to the interpretation of provisions of constitution, case involving a question of constitutional law, and cases involving rule issued under constitution will be entrusted to the Constitutional Division of Supreme Court. On the other hand, all other cases will be entrusted to the Legal Division of the Supreme Court.

Further, the Law Commission Report suggested that judges should be appointed in any particular division of Supreme Court right from the beginning. Also, for implementing the abovementioned recommendations of Law Commission Report, it will be necessary to amend the constitution.

Ordinary Legislation by invoking Article 246 (1) of Constitution read with Entry 77 of the union list by invoking Article 145 of Constitution would not be sufficient to form separate Constitutional Division of Supreme Court.<sup>32</sup>

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<sup>27</sup> *The Constitution of India 1950, article 133; The Constitution of India 1950, article 134.*

<sup>28</sup> *H. M. Seervai, Constitutional Law of India – A Critical Commentary, 3rd ed. (1984), Vol. 2, pages 2181-2182.*

<sup>29</sup> *The Constitution of India 1950, article 137.*

<sup>30</sup> *The Constitution of India 1950, article 143.*

<sup>31</sup> *“Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai”, Law Commission of India 229 (2009).*

<sup>32</sup> *“Constitutional Division within the Supreme Court – A Proposal for”, Law Commission of India 95 (1984).*

The establishment of separate Constitutional Division in Supreme Court can be an effective solution for reducing the judicial delays and pendency of cases. The 125<sup>th</sup> Law Commission Report titled “The Supreme Court – A Fresh Look” also reiterated the abovementioned recommendation. Further, the establishment of separate constitutional division is a better solution than establishing separate constitutional courts because it will not require any change in basic structure and framework of judiciary.

## B. ESTABLISHING SUPREME COURT BENCHES IN OTHER PARTS OF COUNTRY

There is urgent need to release Supreme Court from the tremendous pressure of pending cases and increasing judicial delays. The litigants living in the areas far from Delhi have to bear the huge cost for litigating in Supreme Court. It is not easy to imagine the difficulties and agonies faced by the litigants who are required to come to New Delhi from the states like Kerala, Karnataka, Maharashtra, Gujarat, and other states far from Delhi.

These litigants have to spend a huge amount on travelling. They might be required to bring their own lawyer who had dealt with their matter in the High Court. These huge amounts of costs get multiplied when unnecessary adjournments take place in Supreme Court.

The 125<sup>th</sup> Law Commission of India titled “The Supreme Court – A Fresh Look” also suggested the abovementioned recommendation of setting up of benches of Supreme Court in different parts of Country.<sup>33</sup>

The Law Commission Report further said that the setting up of Supreme Court Benches in different parts of country will be extremely helpful in reducing the costs at the end of the litigants. The litigants will further have the advantage of having the same lawyer who had dealt with their case in the High Court.

Further, the Parliamentary Standing Committee in its 28<sup>th</sup> Report suggested that delayed justice by the Supreme Court is defeating the purpose of the Indian Judicial System. The people in India have their faith in Judiciary rather than in Executive and Legislature.

The increasing number of pending cases and increasing judicial delays mostly affects the common man in this country. Therefore, justice delayed is justice denied. Government has taken

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<sup>33</sup> *ibid* 31.

various steps to cure the problem of increasing judicial delays. However, the pendency of cases in Supreme Court has kept on increasing constantly over the years.

## C. RATE OF INSTITUTION VS. RATE OF DISPOSAL

As on 1 March 2007, there were 41, 078 cases pending in the Supreme Court and the judges are working under tremendous pressure.<sup>34</sup> The rate of disposal has been satisfactory in the last few decades. However, the pendency of cases in Supreme Court has been increasing constantly because; the rate of institution of cases is higher than the rate of disposal.

In the year 1950, 1215 cases were instituted in Supreme Court. Out of these, 525 cases were disposed. Hence, 690 cases were pending at the end of the year where the number of judges was 7 in Supreme Court.<sup>35</sup> Further, the number of judges was increased to 10 in the year 1956. And this number was further increased in the years 1960, 1977, 1986, 2009 and 2019.

Recently in 2019, the number of judges was increased to a maximum 33 from 30, excluding the Chief Justice of India.<sup>36</sup> Even after the increasing the number of judges, the pendency of cases has increased in Supreme Court even with a satisfactory rate of disposal. Therefore, it became clear that the increasing the strength of judges is not sufficient to reduce the pendency of cases. And some other steps are required to be taken for addressing the problem of judicial delays.<sup>37</sup>

The Parliamentary Standing Committee in its 2nd (2004), 6th (2005) and 15th (2006) Reports suggested to establish the Supreme Court benches in the Western, Southern and North-Eastern parts of India. Setting up of Supreme Court benches in other parts of the country is necessary for promoting the availability of speedy justice to common man.

Further, Parliamentary Standing Committee in its 20th (2007), 26th (2008) and 28th (2008) Reports suggested to set up a bench of Supreme Court in Chennai on trial basis. Further, this step can significantly help in reducing the rate of institution of cases in the Apex Supreme Court Bench in New Delhi. Subsequently, the cases and appeals from High Court will be instituted in the Supreme Court bench of the specific zone.

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<sup>34</sup> "Personnel, Public Grievances, Law and Justice", *Parliamentary Standing Committee 28 (2008)*.

<sup>35</sup> "Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai", *Law Commission of India 229 (2009)*.

<sup>36</sup> *The Supreme Court (Number of Judges) Amendment Bill, 2019*.

<sup>37</sup> *ibid 27*.



However, the Supreme Court has never agreed to the recommendations and suggestions given by the Law Commission and Parliamentary Standing Committee Reports.<sup>38</sup>

#### D. SUPREME COURT BENCHES UNDER ARTICLE 130 OF CONSTITUTION

It is necessary to relieve the Supreme Court from tremendous work pressure. After the benches of Supreme Court will be established in different parts of country, the matters of a particular zone of the Country will be dealt by the Supreme Court Bench in that particular zone. Further, this will help Supreme Court in Delhi to have sufficient time to deal with the constitutional law matters. The Apex Supreme Court Bench in Delhi will be able to appropriately deal with the inter-state disputes, cases of national importance, reference made by the zonal benches, reference matters under Article 143 and Article 317 of Constitution, and with the election petitions associated with Presidential elections. Further, the apex bench of Supreme Court in New Delhi will deal with the Public Interest Litigations (PILs) so as to avoid any contradictions between the zonal benches of Supreme Court.

These recommendations can be effectively applied without any delay because the Supreme Court itself has the power under Supreme Court Rules 1966 to set up Supreme Court Bench.<sup>39</sup> Further, article 130 of Constitution enables the CJI with approval of President to establish the benches of Supreme Court at places other than New Delhi.

However, article 130 of Constitution is an enabling provision only and not mandatory in nature. Further, no Court in India has the power to direct Chief Justice of India or President to invoke article 130 of Constitution.<sup>40</sup>

*The most important thing in applying the recommendations is that there is no requirement of constitutional amendment for establishing the separate benches of Supreme Court in other parts of Country and a constitutional bench in Delhi.* The only requirement which must be met under article 130 is the approval from the President.<sup>41</sup> Other than this requirement, CJI is not required to consult with anyone for establishing benches of Supreme Court in other parts of country other than New Delhi.

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<sup>38</sup> *ibid* 35.

<sup>39</sup> *Supreme Court Rules 1966, Order VII.*

<sup>40</sup> *Union of India v. S. P. Anand, AIR 1998 SC 2615.*

<sup>41</sup> *The Constitution of India 1950, article 130.*

## VI. CONCLUSION AND SUGGESTIONS

A total of 60, 459 cases are pending in the Supreme Court as of March 01, 2020.<sup>42</sup> Out of this total number of pending cases, 40, 723 are Admission matters and 19, 746 are Regular Hearing matters. In various cases, it has been observed that the Supreme Court has delivered the judgement after a very long pendency of a case.

The most commonly identified reason provided by the research studies for increasing pendency of cases is the insufficient number of judges in Country. However, the insufficient number of judges is not the only reason before the increasing judicial delays and increasing number of pending cases. Further, the most under examined reason for the increasing pendency of cases is Supreme Court is the inefficiency of judges and non-adherence to specific procedural timelines.

The Supreme Court through a series of its decisions diluted the specific procedural timelines introduced by the Code of Civil Procedure (Amendment Act) of the year 1999 & 2002. This problem of dilution of specific procedural timelines becomes more severe in absence of work culture in India Judiciary. Huge number of holidays in upper judiciary and unnecessary adjournments are also major reasons for increasing judicial delays.

The division of Supreme Court into Constitutional Division and Legal Division can be a potential solution to the problem of increasing pending cases.<sup>43</sup> Further, the establishment of separate constitutional courts has become a trend globally. Separate Constitutional Courts can significantly help in directing the work pressure in the right direction and constitutional division will have the sufficient time to deal with the cases involving the interpretation of the Constitution. However, the establishment of separate constitutional court require changes in Indian Judicial System which is less feasible.

The establishment of separate benches of Supreme Court in other parts of country will also help in a significant manner to reduce the tremendous pressure from the Supreme Court in New Delhi.<sup>44</sup> Today, there is a pressing need to establish the Supreme Court bench in all the zones of

<sup>42</sup> *Supreme Court of India (March 1, 2020) Summary: Types of Matters in Supreme Court of India*, Available at: <https://main.sci.gov.in/statistics> (Accessed: May 30, 2020).

<sup>43</sup> "Constitutional Division within the Supreme Court – A Proposal for", *Law Commission of India* 95 (1984).

<sup>44</sup> "Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai", *Law Commission of India* 229 (2009).

India. Also, this will provide sufficient time to apex Supreme Court bench in New Delhi to deal with matters of national importance.

In the last few decades, it has been observed that the number of pending cases in Supreme Court is increasing even after having a satisfactory rate of disposal. The reason before this is much higher rate of institution as compared to rate of disposal. There is no improvement in problem of pending cases even after constantly increasing the strength of Supreme Court Judges through various Amendment Acts.

The establishment of separate benches of Supreme Court in different zones will result into the reduced rate of institution of cases in the Apex Supreme Court bench in New Delhi. The Apex Bench shall deal with the inter-state disputes or dispute between the Union & the States and PILs. Also, there is no requirement of any change in the structure of Indian Judiciary.

Further, the decision of the Apex Supreme Court Bench in New Delhi will be final in case of any contradictory order passed by different Supreme Court zonal benches. Also, the zonal benches can refer any matter to the Apex Supreme Court bench in New Delhi. These establishments can effectively reduce the problem of lack of infrastructural facilities in India. And, this will provide sufficient time to Apex Supreme Court Bench in New Delhi to deal with the matters associated with constitution and matter of national importance.

The Chief Justice of India with the permission of President of India can invoke and exercise the powers under article 130 of Constitution to set up Supreme Court Bench at places other than New Delhi. Further, CJI is not required to consult with anyone for invoking and exercising powers under article 130. Hence, the Supreme Court can itself solve the problem of increasing number of pending cases by establishing the benches of Supreme Court in other parts of country. And no separate legislation is required for implementing this.

It is therefore recommended that:

- Strict Adherence by judges to specific procedural guidelines provided under legislature.
- Efficient performance of judges and avoidance of unnecessary adjournments.
- Division of Supreme Court, namely i) Constitutional Division; & ii) Legal Division.
- The Constitution Bench of Supreme Court shall establish in New Delhi. And, separate Legal Division benches of SC shall be established in different zones of country.

- The CJI with permission of President of India can invoke article 130 for establishing Supreme Court benches at places other than New Delhi.
- If Article 130 of Constitution cannot be stretched to implement these recommendations, then appropriate legislation/amendment shall be enacted by Parliament.

## REFERENCES

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### LAW COMMISSION & PARLIAMENTARY STANDING COMMITTEE REPORTS

- “Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai”, *Law Commission of India* 229 (2009).
- “Constitutional Division within the Supreme Court – A Proposal for”, *Law Commission of India* 95 (1984).
- “Personnel, Public Grievances, Law and Justice”, *Parliamentary Standing Committee* 28 (2008).
- “The Supreme Court – A Fresh Look”, *Law Commission of India* 125 (1988).
- “Manpower Planning in Judiciary: A Blueprint”, *Law Commission of India*, 120 (1987).

### ARTICLES:

- Nani A. Palkhivala (April 12, 2012) *Dear Finance Minister, Will You Listen To Nani Palkhivala Before It is Too Late?*, Available at: [https://itatonline.org/articles\\_new/dear-finance-minister-will-you-listen-to-nani-palkhivala-before-it-is-too-late/](https://itatonline.org/articles_new/dear-finance-minister-will-you-listen-to-nani-palkhivala-before-it-is-too-late/) (Accessed: 2nd June 2020).
- Brajesh Ranjan (August 25, 2016) *What causes judicial delay? Judgments diluting timeframes in Code of Civil Procedure worsen the problem of adjournments*, Available at: <https://timesofindia.indiatimes.com/blogs/toi-edit-page/what-causes-judicial-delay-judgments-diluting-timeframes-in-code-of-civil-procedure-worsen-the-problem-of-adjournments/> (Accessed: June 15, 2020).
- PTI (2018) *India's Judge-Population Ratio goes up marginally*, Available at: <https://economictimes.indiatimes.com/news/politics-and-nation/indias-judge-population-ratio-goes-up->

[marginally/articleshow/62400461.cms#:~:text=Based%20on%20the%202011%20census%20and%20sanctioned%20strength%20of%20judges,figures%20put%20in%20public%20domain.](#) (Accessed: June 18, 2020).

- Supreme Court of India (March 1, 2020) *Summary: Types of Matters in Supreme Court of India*, Available at: <https://main.sci.gov.in/statistics> (Accessed: May 30, 2020).
- Pradip (Legal Services India) *Primary Causes behind Judicial Delay's*, Available at: <http://www.legalserviceindia.com/article/1317-Justice-Delayed-is-Justice-Denied.html> (Accessed: June 15, 2020).
- “Backlog of Cases Causing Concern: CJI”, *The Hindu*, Thursday, August 16, 2007.
- Vidyarthi Chatterjee (2019) 'Safdar Hashmi: A death foretold', *The Telegraph*, 3rd January.
- Hemani Bhandari (2018) 'Tandoor murder: I regret murdering Naina Sahni, says Sushil Sharma', *The Hindu*, 22nd December.

#### CASES:

- *Union of India v. S. P. Anand*, AIR 1998 SC 2615.
- *Kailash v. Nanhku*, AIR 2005 SC 2441.
- *Salem Advocate Bar Association v. Union of India*, (2005) 6 SCC 344.
- *Rudul Sah v. State of Bihar*, (1983) 4 SCC 141.
- *Salem Advocates Bar Association, Tamil Nadu v UOI*, AIR 2003 SC 189.
- *State v. Sushil Sharma*, 2007 CriLJ 4008 (SC).

#### BOOKS:

- M. Seervai, *Constitutional Law of India – A Critical Commentary*, 3rd ed. (1984), Vol. 2, pages 2181-2182.
- *The Statesman*, Bhubaneswar edn., The 13 February, 2004.
- Krishna Keshav (2019) *Constitutional Law I*, Eighth edn, Law Book Sellers & Publishers: Singhal Law Publication; *The Constitution of India 1950*, article 129.

#### LEGISLATIONS:

- The Constitution of India, 1950.
- Supreme Court Rules, 1966.
- The Supreme Court (Number of Judges) Amendment Bill, 2019.



# INDIAN JOURNAL OF LAW, POLITY AND ADMINISTRATION

ISSN: 2582-7677

- Code of Civil Procedure, 1908.
- Income Tax Act, 1961.
- The Code of Civil Procedure (Amendment) Act, 1999.
- The Code of Civil Procedure (Amendment) Act, 2002.



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