

Study of Legal Corruption in Indian Courts and Reforming Civil Court System to reduce Pendency

인도법조계의 부패와 적체감소를 위한 법제개혁에 관한 연구

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국문초록

인도법원의 적체현상은 이미 많은 연구를 통해 널리 알려진 사실이다. 적체현상은 상·하급 심판만 아니라 인도의 모든 주 법원에서 광범위하게 퍼져 있는 현상이며 그 심각성이 다른 나라와 비교할 수 없을 정도로 심각하다. 인도 법학계 및 법조계가 해법을 도출하려는 여러 노력을 경주하고 있으나, 아직까지 뚜렷한 해법을 도출해 내지 못하고 있다. 전통적인 시각에 의하면 사법 시설의 열악함과 법관수의 부족을 한 원인으로 지적하고 있다. 실제로 판사 결원이 정원의 40퍼센트에 이를 정도로 실질적 법관의 수가 부족하다. 그러함에도 불구하고 시설의 확충과 결원에 대한 보충이 시의적절하게 이루어지지 않고 있다. 또한 인도변호사의 30퍼센트 정도는 비정상적인 방법으로 그 자격을 취득하였다는 조사가 있을 정도로 변호사의 자질도 적체현상의 한 원인으로 지목된다. 또한 정상적으로 자격을 취득한 변호사라고 하더라도 수입료 책정을 함에 있어 여러 가지 꼼수가 등장하고 있다. 예를 들어 법원에 출석하는 날을 기준으로 수입료를 책정하는 방법을 통해 변호사들이 의도적으로 기일을 연기하는 등 법원 행정에 무리를 야기하는 경우도 잦다. 이러한 의도적 기일 연기를 알고 있는 판사들도 이를 허가해 줌에 거리낌이 없다는 것도 문제다. 이 글을 통해 인도법원의 적체현상을 확인함과 동시에 판사, 변호사 등 개별 법조인의 행태에 의해 유발되는 적체현상, 즉 법조계 구성원의 부패를 원인으로 적체현상을 구체적으로 살펴보고자 한다. 인도의 현 상황에 비추어 볼 때, 이러한 적체현상에 대하여 해결책으로 제시되는 시설 및 인원의 보충은 단기간에 이루어지기 쉽지 않은 해결책으로 보인다. 현재 인도법원에서 도입하고 있는 조정센터와 Online Dispute Resolution (‘ODR’) 을 그 대안적 수단으로 삼아, 구성원의 적극적인 참여를 통한 적체현상을 관리하는 것이 오히려 더 적절해 보인다.

주제어: 법조계 부패, 소송계류, 지체, 적체현상, 수입료

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I . Background

The purpose of this paper is to stray fundamental problem in Indian judiciary system, such as delay and backlog caused by huge pending cases. Under the perspective of the judicial corruption caused by the huge backlog and pendency in Indian, it analyses the causations of a delay and some elements of obstacles raised by current judges and lawyers in India. This paper will review misbehavior by legal participants, focusing on judges and lawyers. Then, it provides examples to check on legal corruption by judges and lawyers in India.

Corruption might be a disease of our civilized social system and has continuously menaced our foundation of the system. Then, the concept of corruption could be a threat to our polity because it has been spreading out all areas of societies, such as government and judiciary organizations in the world.¹⁾ It could be a huge and fundamental threat to our democracy and rule of law under constitutional governance. In India, this legal corruption could not be limited particular area and could be a normal phenomenon.

William Gladstone stated that ‘Justice delayed is justice denied’ in the judiciary administrative system.²⁾ The Indian judiciary could not clearly applied its understandings after it might define and obtain the causations of delay and pendency in its judiciary.³⁾ For the last decade, the Indian judiciary was criticized the court did not promptly hear or try cases because of the huge backlog and already it exceeded the capacity of the court.⁴⁾ In addition, it is continuously accumulating the number of pending cases. Furthermore, the pandemic of COVID-19 and some period of lockdown aggravate the pendency worse than ever.⁵⁾

1) Madhav S. Aney, Shubhankar Dam, & Giovanni Ko, Jobs for Justice(s): *Corruption in the Supreme Court of India*, Research Collection School of Economics 1, 2 (2017); Gangotri Chakraborty, *Legal Framework for Prevention of Corruption in India: An Overview*, 4 Indian J. L. & Just. 12, 12-13 (2013); C. Raj Kumar, *Corruption and Human Rights: Promoting Transparency in Government and the Fundamental Right to Corruption-Free Service in India*, 17 Colum. J. Asian L. 31, 33-34 (2003); Maria Dakolias & Kim Thachuk, *Attacking Corruption in the Judiciary: A Critical Process in Judicial Reform*, 18 Wis. Int'l L. J. 353, 356-57 (2000)

2) Pranav Tripathi & Tripti Tripathi, *Delay Defeats Justice: Issue of Large Pendency of Cases in Indian Courts*, 2-6 Int'l J. of Legal Development and Allied Issues 68, 83 (2019); Hiranmaya Nanda & Jayadev Pati, *Disposal of Backlog cases: A Milestone to Achieve*, 4-2 Indian J. of Research 88, 88 (2015); See, Marc Galanter & Jayanth K. Krishnan, *Bread for the Poor: Access to Justice and the Rights of the Needy in India*, 55 Hastings L. J. 789 (2004).

3) Nanda & Pati, *supra note 2*, at 88.

4) Id.

Several articles already revealed the Indian judiciary has suffered from huge backlog and a large number of pending cases. The large pendency and delay of legal services in India have been prevalent for a long time.⁶⁾ Also, based on these previous researches, the Indian judiciary is losing its capability to hear or try the cases promptly bringing before the public its inability of court on institutional functions.⁷⁾ In fact, large number of research papers already provided a correlation between the legal corruption and pendency in India. I also agree that the legal corruption was caused by a large number of pending cases and huge backlog caused for last three decades in India. In the other perspective, the legal corruption might cause slow and long process and brought pendency in India. This paper will review not only pendency as a cause of legal corruption, but also to look up other causes, such as lack of judges and fake lawyers. These might cause a slow legal process and further legal corruption in India.

The first chapter will provide the current circumstances in India that cause the pendency in the India legal system. It will review two different parts of pendency; the backlog and arrear in the judiciary proceedings and regional disadvantage to access to the courthouse. Besides, it will reveal the further worse backlogging caused by the massive filing numbers during the pandemic period in 2020. In the second chapter, it will review possible causes of delay and slow process in the India legal system based on empirical research, such as interviews with Indian lawyers and scholars. In the third chapter, it will review the possible solutions; 1) efficient mediation program in Delhi High Court, 2) problems of unfavored attitude by participants, such as judges and lawyers, and 3) as a possible solution, Online Dispute Resolution (“ODR”) operation. The sub-chapter will share the observation in the mediation center in Delhi High Court in 2019. Even though The Delhi High Court established the mediation center with the high qualified facilities, the participants are currently responding in an inactive to usage rate. Also, it will point out an unfavorable attitude by participants, such as judges and lawyers, to cause the

5) <https://www.sundayguardianlive.com/legally-speaking/delay-disaster-solutions-pendency-pandemic> (last visited on Mar. 3, 2021).

6) Generally See, Galanter & Krishnan, *supra note 2*; Abhinav Sekhri, *Pendency in the Indian Criminal Process: A Creature of Crisis or Flawed Design?*, 15-1 Socio-Legal Rev. 1, 2-3 (2019); Tripathi & Tripathi, *supra note 2*, at 68-69; Nitika Khaitan, Shalini Seetharam & Sumathi Chandrashekar, *Inefficiency and Judicial Delay: New Insights from The Delhi High Court*, Vidhi Center for Legal Policy, 1-2 (Mar. 2017).

7) Alok P. Kumar, Faiza Rahman & Ameen Jauhar, *Consultation Paper: The Supreme Court of India's Burgeoning Backlog Problem and Regional Disparities in Access to the Supreme Court*, Vidhi Center for Legal Policy, 33 (Oct. 2015).

pendency and requirement to reduce the pendency and arrear in the jurisdiction. Finally, it will review other possible solution by establishing the ODR platform in India because the India judiciary accumulated further pending cases during the pandemic caused by COVID-19. During the complete lockdown period, the number of filing cases was over 1.4 million in two months in 2020. To prepare for other pandemic and possible lockdown, it is necessary to reconsider the possible causes and solution of the huge backlog for the next generations.

This research tries to gather accurate information through an empirical research with a neutral position, such as an interview with actual practitioners in India. Due to the unexpected pandemic caused by COVID-19, it applied the methods of telephone and e-mail.

II. Huge pendency cause of legal corruption in the Indian

Justice “delayed” is justice “denied” on the judiciary administrative system. It means that the judiciary could not hear or try the cases “in a timely manner” and cause the delay and arrear of legal process based on the huge backlog of cases in which the current judges could not complete their responsibilities on time. Finally, because the legal system lost its capability to keep pace with the new cases, the people in India might suffer from delayed legal proceedings.⁸⁾

1. The aspects of pendency in India

A Delhi High Court Judge is reported to have calculated in 2009 that if we are to clear the arrears in the Delhi High Court, it might take up to 464 years.⁹⁾ At that time, the Indian Judiciary did not seriously consider it and expected it could be resolved soon. The Indian judiciary expected it could progressively control several pending cases in 2010 because the rate of pendency had been stable until 2012. However, in 2013, the number of pending cases would be more than double the previous year.¹⁰⁾ In the other

8) Law Commission of India, Government of India, Report No. 245, Arrears and Backlog: Creating Addition Judicial (wo)manpower, 1 (July 2014); Nanda & Pati, *supra note 2*, at 88-89.

9) <https://theguardian.com/the-delay-disaster/> (last visited on Mar. 3, 2021).

10) Dushyant Mahadik, Analysis of Causes for Pendency in High Courts and Subordinate Courts in

perspective, during the pandemic period in 2020, there has been a huge increase in the number of pending cases in Indian courts by about 20,000 cases per day.¹¹⁾ Based on a current report, the number of pending cases was 31,400,000 in 2009 and several pendency dramatically increased to 33,400,000 in July 2020. Furthermore, the number of pending cases increased 1,200,000 more for two months by September 2020.¹²⁾ In India, 20,700,000 cases were pending in the High Courts and subordinate courts in 2015. And, about 1,760,000 cases were pending in the High Courts and the remaining 18,940,000 cases were pending in all restrict and Session courts.¹³⁾ In 24 High Courts in India, 3,850,000 cases are pending in 2019. And there are 1056 judges in High Courts to hear the pending cases.¹⁴⁾

Regarding a sudden and high level of pendency in 2013, the government report stated that “a severe shortage of courtrooms, secretarial and support staff and residential accommodation for judges” might increase the huge number of pending cases in subordinate courts. It also added that a deficiency of 5,018 courtrooms out of the existing 15,540 court halls.¹⁵⁾

2. Pendency in the Indian Supreme Court

In 1950, the Indian Supreme Court had only 1,215 cases and obtained 81,853 filed in 2014. The Supreme Court finally had 70,837 admission cases in 2014. Based on a rough calculation, the cases in the Supreme Court increased 6.8 percent of a cumulative annual growth rate in filing per year.¹⁶⁾ In addition, 72,082 admission cases were disposed and remaining 34,421 cases that are still pending in Indian Supreme Court in 2015.¹⁷⁾ Some Indian legal scholars point out the geographic or regional-based obstacle to access to the court. The national average appeal rate is 2.7 percent in India. However, the distance to the High Courts and Supreme Court based on a residential location strongly affected the

Maharashtra, Dept. of Justice, Gov. of India, 658-59 (2018).

11) <https://www.sundayguardianlive.com/legally-speaking/delay-disaster-solutions-pendency-pandemic> (last visited on Mar. 4, 2021).

12) Id.

13) Mahadik, *supra note* 10, at 653.

14) Tripathi & Tripathi, *supra note* 2, at 69.

15) Mahadik, *supra note* 10, at 659.

16) Kumar, Rahman & Jauhar, *supra note* 7, at 11.

17) Id.

appeal rate; the appeal rate is in inverse proportion on the distance from the courts of the High Courts and Supreme Court. For example, the appeal rate in Delhi ranked in the top and other major cities ranked in the top positions. However, the southern small cities ranked in a lower position than the major cities.¹⁸⁾ It means that accessibility strongly affected the appeal rate. And, the regional and geographic location could block access to the court. Furthermore, the Indian Supreme Court is located in Delhi, the capital of India. But, the transportation system is not well established and the geographical residential location could be a huge concern that the Supreme Court might be losing its institutional functions based on its Constitutional role.¹⁹⁾

Balakrishnan, Chief Justice of India, emphasized the poor condition of infrastructure could directly affect the efficiency and function of legal institution. Currently, the subordinate courts covered 90 percent of cases of litigation but they could not produce a satisfying outcome yet. It expected the fast track in court or expedite program in the subordinate courts to provide infrastructural needs but its expectation might not be reachable.²⁰⁾ Then, the central government tried to establish the special courts for disposal of corruption and other dispute cases.²¹⁾

Furthermore, the Indian judges have already recognized the concurrent issues of arrear and delay caused by a huge number of pending cases. Based on their perception of pendency, the Indian judiciary might change the judicial structure to enhance and provide speedy proceeding.²²⁾

However, this approach could not be an appropriate way to reform it because the Indian judiciary already applied to expand its jurisdiction by intervening in the execution of arbitration awards in India.²³⁾ As the purpose of this paper, because it requires timely and speedy justice with a properly functional judicial system, it simply reconsiders reduce the pendency by recognizing the improper attitude by the participants in the Indian legal system. Then, it will review the judge and lawyer's perspectives and causes of functional problems in the next chapter.

18) Kumar, Rahman & Jauhar, *supra* note 7, at 15-16.

19) Interviewed on Feb. 8, 2021; Kumar, Rahman & Jauhar, *supra* note 7, at 15-16.

20) K.G. Balakrishnan, *Judiciary in India: Problems and Prospects*, 50-4 J. of the Indian L. Institute, 461, 462 (2008)

21) *Id.*; Generally see Krishnan, *supra* note 2.

22) *Id.*

23) Generally see, Sekhri, *supra* note 1, at 2; See, Yonghwan Choung, *Reviewing Current India Backlog of Pending Cases and Excessive Judicial Intervention in Arbitration: Focusing on Setting aside and Enforcement with Ssangyong* 24-4, Kor. Asso. for Corruption Studies 29 (2019).

III. Malfunctions by judges and lawyers in India

1. Judges

Based on my experience, I interpret that the a legal pendency might be a main cause of the legal corruption and it could be caused by legal participants, such as judges and lawyers in India. Because lack of judges might delay the legal proceedings, the judiciary could not complete the process in timely manner. Furthermore, almost 30 percent of fake-documented lawyers currently are practicing and have brought an arrear of process to chare more legal fees. These are related with the lack of transparency in the Indian legal system. In addition, a slow and long process might urge people to pay bribe to the judges in order to expedite their proceedings for speedy and favorable judgments

This section will present that Indian judges are pandering the arrear and increasing pendency by allowing lawyers to delay the proceedings in types of corruption.²⁴⁾ Also, former Judge of the Indian Supreme Court, Markandey Katju mentioned in 2015, based on his assessment, that “about 50 percent of the higher judiciary has been corrupt.”²⁵⁾

Indian former Prime Minister Jawaharlal Nehru addressed that “Justice in India should be simple, speedy and cheap” in the Punjab High court in 1955.²⁶⁾ But, Indian judges are still suffering from overloaded cases on their shoulders and could not avoid delayed legal management in their jurisdiction. In their excuses, they could not ensure better fairness by speedily dispose of delayed pending cases because there is lack of adequate infrastructure, both physical facilities and manpower.²⁷⁾

(1) Vacancies in the Indian judiciary

Even though 31 judges are required in the Indian Supreme Court, only 28 judges are working and other postions are vacant. Furthermore, only 604 judges are currently working out of a total number of 1017 seats.²⁸⁾ Under the report in 2018, only 59 percent of appointed judges currently worked and about 41 percent of positions for the

24) Aney, Dam, & Ko, *supra note 1*, at 3; Khaitan, Seetharam & Chandrashekar, *supra note 6*, at 2.

25) www.jmr.com/upload/corruption-in-indian-judiciary_1511777721.pdf (last visited on Mar. 3, 2021).

26) Nanda & Pati, *supra note 2*, at 88.

27) *Id.*

28) Tripathi & Tripathi, *supra note 2*, at 69.

judge was vacant in 2015.²⁹⁾ Then, it revealed that “civil appeals might take 2,303 days to decide on average” in the High Court of Bombay.³⁰⁾ The current research indicates that the India judiciary is suffering from a severe backlog and doubtfully can keep pace with current filings. Due to lack of proper judicial resources, it could not dispose of the backlog promptly.³¹⁾ In my opinion, the Indian judiciary hesitated to hire judges in necessary because it has struggled from a strict hierarchy system even it is suffering from a lack of financial supports from the Central government.

(2) Lack of supporting manpower and facilities

Even though new types of disputes, cyber-related offences, were emerged, the judicial officers do not catch up with special knowledge. Furthermore, due to the lack of a monitoring or tracking system for hearing, it does not properly provide the courts to manage the pendency of cases.³²⁾

In the other perspective, the Indian judges allow frequent adjournments and it causes the main cause of delay.³³⁾ The report stated that “no such adjournment shall be granted more than three times to a party during hearing of the suit in the Code of Civil Procedure” but the Indian courts did not follow the code. Then, it causes a large number of pending cases and continuous delay.³⁴⁾ Furthermore, the judges also allowed the defendant to file the written statement later than 30 days.³⁵⁾ Therefore, the judges do not follow the civil procedures and allow parties to prolong the proceedings and allowed them to adjourn it and extend legal ambiguities.

2. Lawyers

(1) Fake lawyer license and certificate

The Bar Council of India stated that about 30% of lawyers in India are fake in 2015.³⁶⁾

29) Mahadik, *supra* note 10, at 659.

30) *Id.*, at 661; Abhishek Singhvi, *Reforms in the Administration of Justice: Beating the Backlog*, 58-1 *J. of Indian L. Institute*, 115 (2016).

31) Tripathi & Tripathi, *supra* note 2, at 71.

32) *Id.*, at 72.

33) *Id.*, at 73.

34) *Id.*

35) *Id.*

Based on the newspaper, the law minister of Delhi obtained his bar license based on the fake law degree. As the probe began, it was found by the Bar Council of India that, there were many more of such advocates, who did not fulfil the norms required for professional lawyers. There were lawyers from Delhi, Maharashtra and Uttar Pradesh about whose degrees there was confusion. The verification process started in 2016.

However, the Law Commission refutes the Bar Council's claims following a two-year-long verification. Law Commission said the figures might not be that high.³⁷⁾ Then, Bar Council of India has launched a country-wide verification process. The Bar Council of India has also imposed a three-year ban on new colleges during which it will take stock. It will plan the development of new colleges and shut down “non-performing” ones. Then, the Bar Council of India stated that only about 60 percent of Indian lawyer are genuinely based on the two-year-long verification process.³⁸⁾ Then, about 30 percent of fack-documented lawyers could survive and practice in India because there is a lack of control towel to maintain its transparency process. Furthermore, these lawyers could bring ethical issues to delay the process in order to chare additional legal fees based on the particular charging method.

(2) Legal fee by lawyers

There is a difference in the fee structure of lawyers in the subordinate courts, High Court and Supreme Court. Generally, there is no fixed scheme of fee charging as well as no legal regulation over it. Lawyers may charge per appearance or for the entire case, ranging from 10 thousands of rupees, to thousands or even a few hundred rupees depending on the case. Some lawyers may even be prepared to charge far less as compared to others for the same type of case, hence it is difficult to maintain a decent level of case fee structure.³⁹⁾ In addition, some number of lawyers try to adjourn the schedule because there can additionally charge based on the extra appearance. Then, the judge allowed them to request to adjourn it. Therefore, it might cause delay and

36) <https://timesofindia.indiatimes.com/india/30-of-lawyers-in-india-are-fake-bar-council-chief-says/articleshow/48215119.cms> (last visited on Mar. 3, 2021).

37) <https://www.dailymail.co.uk/indiahome/indianews/article-4302396/Indian-Law-Commission-denies-45-lawyers-fake.html> (last visited on Mar. 3, 2021).

38) <https://www.freepressjournal.in/india/bid-to-weed-out-fake-lawyers-bci-launches-country-wide-verification-process> (last visited on Mar. 3, 2021).

39) Interviewed on Feb. 28, 2021.

accumulate the pendency in the Indian legal system.

(3) Young lawyer's perspective

During the pandemic, the fresh law graduates whose options were reduced and opportunities lost. The young lawyers who are not well established as yet found it hard to make ends meet as the number of cases entertained in the courts by video conferencing had reduced drastically. The lawyers, in general, faced hardships procuring work due to the lockdown in all departments. Then, protecting themselves from the COVID-19 was a big challenge as often hard copies had to be physically submitted at the registry, which was difficult due to lockdown and partial opening subsequently, also some lawyers are not well versed with the internet usage and hence confused.⁴⁰⁾

While the Indian judiciary recognized the serious pendency and overloaded case on the judges' works, it has adopted several possible resolutions in order to reduce a huge number of pending cases for the last decades. At the first stage, it increased the number of judges in vain for these conflicting causes but the outcome revealed that it did not properly work in this jurisdiction.⁴¹⁾ In addition, the Indian Judiciary adopted the mediation program in their jurisdiction but it could not revitalize to expedite the legal procedures in the courthouses. The Indian Code of Civil Procedures already recognized and adopted the Alternative Dispute Resolution ("ADR") in Section 89.⁴²⁾ Under the name of the transformation of the court system for reducing the number of pending cases, the India judiciary mistakenly expanded its jurisdiction, increasing other causes to be inaccessible to the court system. For example, the Indian Supreme Court interpreted the court to intervene in the arbitration process in recognition and enforcement of arbitration awards based on the Indian Arbitration and Conciliation Act.⁴³⁾

40) Interviewed on Mar. 2, 2021.

41) Kumar, Rahman & Jauhar, *supra note 7*, at 33.

42) It includes the terms "the Court may reformulate the terms of a possible settlement and refer the same for- (a) Arbitration, (b) Conciliation, (c) Judicial Settlement including settlement through Lok Adalat, or (d) Mediation" in section 89 of the Code of Civil Procedures.

43) Yonghwan Choung, *supra note 23*, at 29.

IV. Suggestions

Disposal of backlog cases is the most importance and high priority to resolve the legal ambiguities in the Indian legal system.⁴⁴⁾ As previously mentioned that the India judiciary already tried to reduce the huge backlogged case numbers for several decades in vain. Furthermore, a large number of states have declared the complete lockdown of the entire states or regional-based communities. Then, India declared the complete lockdown in March 2020 for several months, requested the court system to close their courthouses' door in the same period. Therefore, in these periods, the pending case numbers are dramatically increased and the impacts of the complete lockdown affected the life of Indian citizens. Especially, it raised the barrier to reach the court to the poor in that society in a perspective of access to justice. In this regard, the Indian judiciary needs to apply for mediation programs in their jurisdictions. In my opinion, the current Indian legal corruption might be caused by a huge number of pending cases and backlogged process. To resolve the pendency could be one of way to reduce the legal corruption in India. Then, I suggest appropriate methods in order to reduce the number of pending cases, expecting a next lockdown caused by other pandemic.

1. Efficient mediation program in court

It has been well over a decade that the initial push for mediation was made by the Courts. However, mediation as an independent industry has yet to flourish in India. Certainly, mediation centers in the courts have seen a fundamental rise in disputes being settled since 2005 when the first mediation center was established in the Madras High Court. The next wave of mediation, notable private mediation can only be given a push ahead with some new tools. Justice DY Chandrachud of the Supreme Court has rightly suggested a “hybrid procedure” for court hearing that in case of a physical hearing, if any lawyer cannot appear in open court due to any reason, for example, he is out of town or due to any health reason then he is allowed to resort to video conference.

However, based on empirical research, the Indian judiciary did not efficiently implement this program in the court territory. Two Australian lawyers and I visited the mediation center that was located in Delhi High court.⁴⁵⁾ There were more than 10

44) Nanda & Pati, *supra note 2*, at 89.

mediation rooms with fancy facilities and networks with other devices, such as computers, printers and TV. It already provided a forty (40) hour training course for lawyers who wanted to practice as a mediator. As an artificial observation, the basic element of operators (mediators) and facilities were already well prepared. However, none of the mediation rooms was occupied by the mediator for using for the mediation day when we toured the mediation rooms. Compared with other courtrooms the downstairs, occupied the entire floor of the court building even though it looked to be completely remodelled recently. Then, it looks like an operational problem not to properly use the mediation facilities inside of the Delhi High Court.

2. Progressive participations required

Even though some seriously criticized the current legal pendency, the practitioners are not ready to adopt the programs. First, as mentioned early, the Indian lawyers are not interested in adopting the mediation program for their legal practice because there is no financial benefit for them.⁴⁶⁾ Second, there is no preparation or unfair attitude by the legal participants to the usage of mediation program under the Indian judiciary. Then, it still restricted better access to justice for the people. Based on the empirical research and observation in the mediation center, the Indian lawyers do not aggressively use the mediation in the Delhi High Court. And that mediation program was not actively used by them.⁴⁷⁾

3. New platform as Online Dispute Resolution (“ODR”)

While it is called a term of “alternative,” some scholars and practitioners called it “appropriate.” It tries to emphasize an efficient and expedite resolution program in the judicial proceedings. Under the current Indian legal system, it is not sufficient for the judiciary to adopt new programs or expand jurisdiction to provide a better access to the court. What it has to do is to reduce the caseload accumulated in the process. Then, it might decrease a period of delay and arrear caused by a huge backlog. Furthermore, all

45) I personally visited and observed the mediation center and interviewed the mediators and officers in that center on Oct. 30, 2019.

46) Generally see, Galanter & Krishnan, *supra note 2*.

47) I observed the mediation center in Delhi High Court on Oct. 30, 2019

related participants, such as judges and lawyers, should be available to understand and use an efficient method. This paper emphasizes the problems caused by the related participants to delay the process and to increase the number of pending cases, and proposes to adopt speedily and expedite ways by pointing out participants' attitudes in the proceedings.

In the light of the COVID-19 pandemic, many parties were inclined to settle their disputes outside of the Court. This led to a rise in private institutions providing Online Dispute Resolution (“ODR”) services. Many new ventures came up solely dedicated to providing state-of-the-art tools to facilitate ODR both ad hoc and institutional whether private or public. It is unlike any institution and enables all ADR service providers to upgrade their technology with custom-made tools designed for dispute resolution. They are not competitors of any institute or private practitioner but rather enablers that help them expand the range of their services.⁴⁸⁾

The interviewee emphasized that “If more institutions and private players were to seize this opportunity, they would greatly influence the way disputes are resolved. ODR can increase access to justice by greatly reducing costs, time taken and increasing the overall efficiency of mediation. Clients are now not limited to service providers in their immediate geographical vicinity. The future of dispute resolution is already starting in India.”⁴⁹⁾ Another young lawyer also added that in the absence of physical appearance, court functioning via the internet video/audio conferencing was not very useful but was time-consuming and often confusing due to the lack of continuous connectivity and disturbances due to failure of net connection.⁵⁰⁾

V. Conclusion

Delay in hearing prevents people from accessing justice and the poor urgently need it during the pandemic. The overburdened court could not deliver justice in a timely manner. The Indian Judiciary figure out the lack of adequate infrastructure in the legal

48) Author interviewed an actual ODR platform provider, who currently working as a mediator in India on Feb, 28, 2021. Actually, the interviewee made an online platform and began that service as a new venture.

49) Id.

50) Interviewed on Mar. 2, 2021.

system and corruption-related to judges and lawyer as soon as possible.

In conclusion, Indian judiciary has departed from its capability to hear cases as intended mandate, such as delay and arrear of process due to the huge number of pending cases. Then, some scholars and practitioners request that the Indian legal system needs to transform to its own routine appeals, criticizing corruption of its legal participants, such as judges and lawyers.⁵¹⁾ Furthermore, the judiciary is negligently responding current problems on its legal system, such as fake bar license and improper fee charging. The courts are also allowing lawyers to abuse its proceedings by rescheduling the court date. Then, the current legal corruption was caused by a huge backlog and pendency and the Indian judiciary reconsiders the causes of it. In other perspective, a lack of transparency also cause it because about 30 percent of lawyers are fake-documented and they might cause delay the process to charge an additional legal fee.

In addition, during the complete lockdown in pandemic caused by COVID-19, physical hears in court were suspended for several months and observed an additional number of pending cases. Then, it needs to prepare new methods to overcome a new wave of pandemic in Indian legal system.

51) Kumar, Rahman & Jauhar, *supra note 7*, at 30.

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<Abstract>

Study of Legal Corruption in Indian Courts and Reforming Civil Court System to reduce Pendency

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Based on several kinds of research, some scholars and legal practitioners already reveal that there are a huge number of pending cases and delay in the Indian legal system. They stated that there is no difference in pendency based on the subordinate and higher courts, and geographical locations. This research will review the causes of pendency and delay, and possible appropriate solutions in the Indian judiciary. Under the traditional perspective, the Indian judiciary has been suffering from a lack of adequate infrastructure, both physical facilities and manpower. In addition, it was reported that about 41 percent of positions for the judge was vacant in 2015. However, it is not fulfilled the vacancy of necessary positions. Furthermore, there are other causes to increase the delay and arrear in the Indian legal system, caused by judges and lawyers. About 30 percent of Indian lawyers obtained their bar licenses based on a fake law degree. In addition, Indian lawyers are currently charging their fees based on physical presenting. In order to charge more, they might adjourn the court's schedule and some judges allowed them to reschedule to another date even though they recognized the improper intent. As possible solutions, this paper suggests that the Indian judiciary should aggressively apply for the current mediation center program in its courts. Also, during the pandemic, the Indian judiciary already suffered from a complete lockdown. In order to prepare for another pandemic, it needs to adopt a secure platform for Online Dispute Resolution, with participants' positive attitude to reduce pendency and delay.

Key words: Legal corruption, Pendency, Delay, Arrear, Legal fee

