

Why are there so many cases pending in Indian courts?*

There are so many cases pending in Indian courts that it takes several years before a case can come up for hearing in the regular course of things. For a case, it can take as much as twenty years or more before it is finally disposed of. What are the reasons for there being so many cases pending given that Indians are not a particularly litigious people? In order to locate the real reasons of there being such a large number of cases pending in courts we have to first look at the genesis of court cases on the one hand and implementation of judgments on the other hand.

A case can arise if the wording of a statute or government order is ambiguous and a person is affected adversely because of the interpretation that is put on it by the official dealing with the person concerned.¹ In the process of the disposal of the case by the courts the correct interpretation of the the statute or the government order is determined. If the final court judgment is in favour of the affected person, the affected person gets relief for which the litigation was undertaken. As a statute or government order affects many people, the important question that arises is what happens to the people other than the litigant who had also been adversely affected by the incorrect interpretation construed by the government officials. If the government does nothing in the case of other people adversely affected, then each of these persons will be forced to file a case. Thus a large number of cases will be filed in courts notwithstanding that the legal issue in the matter has already been decided by the court. Just by issuing a circular how the the statute or the government order in question is to be interpreted in view of the court decision and what follow-up actions are to be taken regarding the persons adversely affected by the incorrect interpretation, the government can prevent the filing of all those unnecessary cases.

*(A slightly different version of it was published in India Legal, October 30, 2017.)

¹Cases can arise for any number of reasons. The focus of this short note is on those reasons that are resulting in the clogging of courts.

The remarkable thing about the Indian system is that not only does the government not issue any such circular, but by filing appeals in every single case, it takes every case to the level of the Supreme Court unless the litigant loses or gives up.² Thus the system of applying the final interpretation of a statute or government order only to the person who has won the case in the Supreme Court and not to others similarly situated; and contesting every petition filed for relief notwithstanding the Supreme Court interpretation results in every case of ambiguity of a statute or government order in a large number of cases. So the real reason for Indian courts being overwhelmed with cases is this system in vogue for last several decades.

Needless to say, so much unnecessary litigation involves enormous waste of national resources, and injustice and harassment to ordinary citizens. Why do we have such a peculiar system? Why do the government officials not issue the appropriate circulars which would obviate the need to litigate the same point by every affected person separately?

There are three inter-related reasons for this phenomenon, namely, rampant corruption, shockingly high levels of incompetence, and almost complete lack of accountability of the concerned officials. We discuss these in the sequel.

Corruption in India is many-faceted. One important facet is that a large number of appointments are made in exchange for money or other considerations. When a person is appointed to an office for which he is unfit, wrong decisions in plenty are bound to be there. Mention was made above of court cases arising on account of ambiguity in interpreting a law or government order. If officials in charge of applying laws and orders do not have the requisite level of competence, then even if there is no ambiguity in the law or the government order in question, its misapplication can give rise to court cases. As much of learning for a job takes place by trying to do the job properly, officials whose actions are primarily determined by corrupt considerations, even if to begin with they were appointed on merit, they do not acquire the required expertise for the job. Thus,

²Nothing exemplifies the system of government officials appealing every case currently in vogue better than the case of the Delhi Transport Corporation (DTC) conductor Ranvir Singh who in 1973 allegedly charged a passenger 10 paise rather than the correct amount of 15 paise. The departmental inquiry found him guilty of causing a loss of 5 paise to the public exchequer. The litigation started after his dismissal in 1976. The labour court in 1990 decided in the conductor's favour. DTC appealed in the High Court. In 2008 the High Court dismissed the DTC's appeal. DTC again moved the High Court through a review petition in 2008.

corruption invariably leads to some incompetence. When corruption becomes rampant so does incompetence. There is no denying the fact that Indian bureaucracy is seriously afflicted both by shockingly high levels of corruption and incompetence. While a large number of court cases arise because of problems of interpretation of poorly drafted rules, regulations, and orders (an outcome of lack of requisite level of competence); a large number of them also arise on account of misapplication of the relevant orders either because of incompetence or corruption.

There is one aspect of Indian bureaucracy which just does not make any sense in the context of a democracy governed by the rule of law. When a person is adversely affected by an act of omission or commission by a bureaucrat, all costs of the act of omission or commission are borne by the victim. The bureaucrat's action or non-action could be contrary to the law, or a misapplication of law, or a dereliction of duty, but the perpetrator-official will not have to pay any price. It is for the victim to decide whether to accept the injustice and loss or file a court case and wait for several years for justice to be delivered.

Everyone in the country knows that it takes years and years to get any relief through the legal route, so most individuals have no alternative but to put up with the injustice. Closing of the legal route for most people for all practical purposes has turned even petty bureaucrats into minor despots.

One of the most basic features of a democratic system is the rule of law. There are two aspects to it. One, everyone is bound by law, that is to say, if anyone transgresses the law of the land then he would be held accountable for it. Two, everyone is protected by law, that is to say, if a person's rights or entitlements are threatened because of actions of others then the person would have legal recourse for relief. Because of the peculiar bureaucratic system in the country, neither of these two fundamental characteristics hold uniformly in the country. Bureaucrats in India can and do act against the law of the land and victimise those with little economic or political clout, for monetary gains or because of incompetence or because of a perverse sense of power. Violations of law by the bureaucrats in India impacting those with little clout invariably go unpunished. Thus, with respect to a class of violations of law, Indian bureaucrats for all practical purposes are above law. Furthermore, because of the courts having such a large number of pending cases, for all those with little political or economic clout there is no protection of law.

This state of affairs has some serious negative implications for the country. Such a large quantum of litigation as is the case in India implies enormous waste of national resources which if freed can be used for wealth creation. Also, a very large number of cases signifies too many cases of injustice. Too much injustice in the society can seriously hamper nation-building. Thus it is of the utmost importance to solve this problem of the courts being choked with cases on an urgent basis.

As the genesis of this problem lies in the corruption and incompetence of a large section of the bureaucracy, a permanent solution to the problem would have to involve some mechanism by which in the long run competence levels of bureaucrats are raised and the extent of corruption goes down. A dent in the situation can be made if there is a law which makes bureaucrats personally accountable for acts of omission and commission. Under the right to information anyone can seek information regarding any public matter regardless of whether the person has locus standi in the matter. A similar law is needed for filing cases against bureaucrats in courts especially created for the purpose. Anyone should be able to file a case against a bureaucrat for acts of omission and commission regardless of the locus standi question. This will enable some public interest lawyers to file cases against bureaucrats who are not acting in conformity with laws and regulations. This aspect is essential as most victims of bureaucratic violations of laws and regulations happen to be people whose overall circumstances make it difficult for them to litigate against arbitrary acts of bureaucrats. As the problem cannot be solved without making erring bureaucrats personally responsible, it is important to structure monetary penalties in such a way that there is substantial decrease in bureaucratic acts that are contrary to law. The imposition of penalties which will reduce economic benefits, in case of actions contrary to law, of holding bureaucratic offices will have another extremely beneficial effect for the country as the incompetent persons on account of reduced economic benefits would tend to self-select out of these offices.

Enactment of the requisite law for penalizing the erring bureaucrats is the only way to solve the problem in the long run on a permanent basis. In the short run, however, much can be done by the government as well as the courts. The Central Government as well as the State Governments can set up departments solely for the purpose of examining court judgments; and for issuing the requisite circulars, whenever any judgment of court has applicability for a class of persons rather than only for the litigant so that the other

affected parties do not have to take recourse to courts for the relief that has already been granted in the particular case. The courts, particularly the Supreme Court and the High Courts, can also help in the matter a great deal. When the litigation is regarding the meaning, interpretation, or applicability of a law, statute, or order and the court has made a definitive pronouncement in the matter, the court can also direct the government to issue relevant circulars so that the other affected parties do not have to take recourse to litigation for the same matter.

For resurgence of India, it is essential that all the impediments to wealth-creation are systematically done away with; and that all institutional distortions that demoralize ordinary citizens are removed. Unclogging the courts by reforming the bureaucracy and by the requisite proactive steps by the government and the courts will go a long way towards establishing both these necessary preconditions for national resurgence.

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August 4, 2017