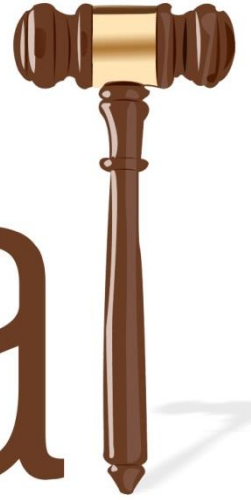




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# Judicial Pendency

Challenges & Solutions



# INDEX

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<i>S.No</i>	<i>Title</i>	<i>P.No</i>
.		
I.	<i>Event Description</i>	<i>01</i>
II.	<i>Brief Introduction of Eminent Panellists</i>	<i>02</i>
III.	<i>Event Proceedings</i>	<i>05</i>
IV.	<i>Questions &amp; Discussions</i>	<i>11</i>
V.	<i>Overall Outcomes</i>	<i>13</i>

# EVENT DESCRIPTION

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The nation has been, for the longest time, grappling with an insurmountable burden of Judicial Pendency. By some estimates, we would need decades to clear the backlog, unless strong, corrective action is taken immediately. The judicial system has become irrelevant for common citizens, and this is responsible for many ills plaguing India, like disrespect for laws and corruption. In such an environment, the ease of doing business suffers and the rule of law cannot reach its full potential.

There is a dire need to discuss and deliberate this problem in the public domain. It requires a sustained effort to reach out to citizens and policy makers, working to find a timely solution to this chronic and debilitating problem. Mumbai First, in collaboration with K.C. College, invited few prominent judges, lawyers, urban thinkers and citizens from Mumbai to contribute to this discussion.

The panel discussion was organized on Saturday, 16th March, 2019 at K.C. College, Churchgate.

# BRIEF INTRODUCTION OF EMINENT PANELLISTS

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## ***1. Justice B.N. Srikrishna***



He is an Indian jurist and a retired judge of the Supreme Court of India. He was the Chairman of Committee responsible for providing Telangana Statehood. He is also the Chairman of Financial Sector Legislative Reform Commission. He headed the 10 member committee to make India a hub for International Arbitration. More recently, he headed the 10 member committee which proposed Draft Personal Data Protection Bill.

## ***2. Justice Vijay C Daga***



He is a retired judge of Bombay High court and an expert in tax laws. He has pronounced many important judgements on direct and indirect taxes during his tenure. He is also the Chairman of SEBI High Powered Advisory Committee on settlement orders and compounding of offences.

## ***3. Anil Harish***

He is a Partner at DM Harish & Co. He is an expert in the field of property law, income-tax and arbitration. He is involved with several educational and charitable trusts and is the President of Hyderabad (Sind) National Collegiate Board, which



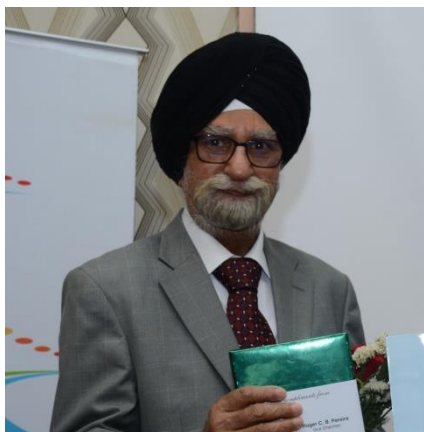
runs more than 25 educational institutions and has about 50,000 students. He was also Executive Vice President of the Society of Indian Law Firms. He is one of the most sought after speakers in India in the Legal field.

#### ***4. Justice Roshan Dalvi***



She is the former Judge of the Bombay High Court. She is a passionate activist, fighting for gender equality in the public sphere. She recently authored a book '*Tangible Justice- Glimpses of a Judicial Life*'. It is essential reading for anyone who cares about gender, delay in the courts, alternative dispute resolution and legal culture in India.

#### ***5. Justice J H Bhatia***



Former Judge of the Bombay High Court, he earlier worked as the Registrar, Inspection of Bombay High Court and then as Principal Secretary, Law and Judiciary Department, Government of Maharashtra. He worked as a Judicial Member of the Armed Forces Tribunal. As per directions of Supreme Court in Common Causes case in 1996, he chalked out plans for the District Courts headed by him and help in disposal of huge pendency and helped implement similar plans in other parts of Maharashtra.

## ***6. Firoze Andhyarujina***



all over India.

Senior Advocate at the Supreme Court, he has presented a number of important and landmark cases under the Income Tax Act and is an authority on direct tax laws. He is a visiting Professor at various Universities and is a regular Speaker before various Financial Institutions, including Institute of Chartered Accountants. He has delivered a number of Memorial Day lectures

## ***7. Sanjay Asher***



He is a senior partner with Crawford Bayley & Co, which is India's oldest law firm, established in 1830. He specialises in the fields of M&A, joint ventures, and capital markets. He has authored several articles published in national and international publications and also co-authored a book on the Companies Act, 2013, which was published by CCH, a Wolters Kluwer publication.

## ***8. Shailesh Gandhi***



has been awarded the Nani Palkhivala Civil Liberties award, and the MR Pai award.

The only RTI activist to have been chosen as a Central Information Commissioner, he disposed of a record of over 20,000 cases in 2 years and 9 months, and ensured that most cases were decided in less than 90 days. He is passionately pursuing the cause of evolving ways for a time bound justice delivery system, and improving governance systems. Amongst many awards, he



# EVENT PROCEEDINGS

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**Dr. Neville Mehta**, moderator of the Panel Discussion and Chief Executive Officer of Mumbai First, welcomed all participants and introduced former Central Information Commissioner Mr. Shailesh Gandhi, who kick started the event with a presentation on the problem of Judicial Pendency.

**Mr Shailesh Gandhi** through his power point presentation '*Judicial Backlog can become history*' highlighted the challenges of case backlogs and provided a simple solution to overcome the challenges. In his presentation, Mr. Gandhi highlighted the average vacancies of judges in the Supreme Court, High Courts and Subordinate Courts during the last decade (2006-2017) as 12%, 32% and 21% respectively. According to Mr. Gandhi, if all the existing vacancies are filled with essential infrastructure in place, judicial backlog can be nullified. His argument is contrary to popular myth that suggests the requirement for 70,000 judges to clear the backlog.

Mr. Shailesh Gandhi's solution enlists 3 steps to fill vacancies of judges and to solve the issue of Judicial Pendency.

- A. Draw up a list of retirements for the next five years and update it every year - A.
- B. Estimate vacancies due to deaths, resignations, promotions, based on earlier three years data – B.

C. Every year, forecast the number of cases for the next three years and factor in the additional judges required – C.

(A+B+C). Add all three and start the process of exams and collegium recommendations every six months for requirements after 12 months.

The whole solution depends upon the level of mutual trust between the Judiciary and the Executive. According to Mr. Shailesh Gandhi, it is time for both the Judiciary and the Executive to work in a co-ordinated manner to solve the issue of Judicial Pendency. While speaking about the socio-economic burden on the common man due to pending cases, he narrated the touching story of Tukaram, a young migrant from Vidarbha who gave up his life after being falsely accused in a case that remained pending in court for 3 years.

Dr. Neville Mehta introduced the panellists, experts in the area of dispute settlement at the event. The Panellists were:

1. Justice B.N. Srikrishna – Former Judge, Supreme Court.
2. Justice Vijay C Daga – Former Judge, Bombay High Court.
3. Justice Roshan Dalvi – Former Judge, Bombay High Court.
4. Justice J.H. Bhatia - Former Judge, Bombay High Court.
5. Mr. Anil Harish – Partner, D.M. Harish & Co.
6. Mr. Firoze Andhyarujina – Senior Advocate, Supreme Court.
7. Mr. Sanjay Asher – Senior Partner, Crawford Bayley & Co.

**Justice B.N. Srikrishna** noted that judicial pendency has been a concern for judges for several years. He agreed that the solutions provided by Mr. Shailesh Gandhi were valid and achievable. According to him, judicial case disposal depends on four variables which includes number of judges, quality of judges, quality of legislation and quality of lawyers. His experience in courts suggests that 95/100 cases could be deliberated upon and disposed off at the very first reading itself. He suggested categorizing cases into three groups; cases to be dismissed, cases to be admitted immediately, and cases to be heard before being admitted. In this way, 2/3<sup>rd</sup> of the court's time can be saved by eliminating frivolous cases and eventually, clearing the vast backlog.



He admitted that the selection of judges is a very complicated affair and advised that we take more time for selection as the retirement dates of judges is known well in advance. He illustrated how in foreign countries, managerial student experts (usually MBA graduates from the top colleges), conduct time motion studies, personal management and estimation of worker & workload handling to ensure maximum efficiency in the judicial process and wondered why the same has not been implemented for the judicial selection process in India as well. He felt that it was due to a lack of will and initiative on the part of both the Executive and the Judiciary.

**Justice JH Bhatia** reiterated the age old saying, “Justice Delayed is Justice Denied”. He also claimed that legislation is one of the most important reasons for the increase in backlog of cases. He took the example of the Negotiable Instruments Act, where Sec 138 was incorporated and cheque bouncing was converted from a civil to a criminal matter without anticipating the increase in the number of related cases. Today, lakhs of cases are pending because of that single amendment. As per law, the matter has to be disposed off in six months but the reality is that in 6 months, even verification of the claimant is not done. When it comes to these cases, it takes more than 6 years for case disposal. He also lamented that increase in the number of courts is not proportional to pendency and new cases.

According to him, socio-economic reasons dictate the making of some laws such as Prohibition of liquor, which would work in a utopian society; in practice, it is an utter failure. Under the Prohibition law, any case should be supported by evidence such as a chemical analyst’s report to show that a particular percentage of liquor was present in the blood, contents of the bottle seized from the accused etc. The laboratories established by the Government are so few that reports are not available quickly enough. This seriously hampers judicial disposability capacities. During his tenure as District Judge of Chandrapur, he almost cleared 40% pendency within a year. His argument, was to dispose off cases (under Sec 258 of CrPC) if the chemical analyst’s report is not available in the stipulated time frame. His advice was that lawmakers should not bring unnecessary legislation to the Courts. He proposed a Legislation Impact Assessment to reduce pendency.

**Mr.Sanjay Asher** discussed finding solutions to judicial pendency without increasing the number of judges. He illustrated how in World Intellectual Property

Organisation (WIPO), if you have a domain name which somebody has used, the pleading is completed electronically and judgements are received within 6 months. He also provided the example of the recent IBC code where, you have corporate insolvency processes completed in a time bound mechanism and the process gets completed within a period of 270 days. He agreed with Mr. Shailesh Gandhi that filling up the vacancies would work but also suggested some other mechanisms. In the Companies Act, 2013, there are certain matters where there is no need for evidence; the entire process has to be completed electronically and pleading is filed within a specified time frame ensuring that the entire process is completed in a time bound manner.

His advice was for lawyers to complete their pleadings electronically so that case backlog might be reduced to a great extent. His suggestion was to resolve the issue out of court and take the help of mediation centres. He raised two questions:

1. “Why can’t we use digital mechanisms without complicating the matter and solve disputes wherever the law permits?”
2. “Is it necessary to carry every matter to court?”

**Mr Firoze Andhyarujina** noted that the panel is placing too much emphasis on filling of the vacancies. Rather he proposed five alternate solutions to solve the issue of Judicial Pendency. First, is the creation and popularisation of e-courts in the present digital age. Second, a system for developing alternative judicial mechanisms consisting of an arbitration panel or a dispute resolution panel to solve cases before going to Courts. Third, formulation of some particular modalities for establishments of tribunals. He provided the successful example of Income Tax tribunal to prove his point. Fourth, to set up human resource departments in the judiciary and legal system. He also suggested the setup of institutions for the training of judges. Lastly, he questioned the entire law structure which has become unnecessarily complicated, increasing the time taken for each judgement and providing avenues for lawyers to manipulate and delay the process. He called for an assessment of the existing law structure to make it simple. To conclude, he agreed with Mr. Shailesh Gandhi on the filling of vacancies without compromising on the quality of judges.

**Justice Roshan Dalvi** asserted the famous saying "Successful people don't do different things, they do things differently". She agreed with other panellists'

suggestions and offered a few more solutions to overcome the challenge of Judicial Pendency. One, was Case and Court management which is currently in a disorganised state. She suggested that we segregate non value added cases from relevant cases to reduce the time to dispose cases. Another solution was, the elimination of frivolous cases and having designated judges to look into old as well as new cases so that today's case does not become tomorrow's pendency. Lastly, she agreed with the working of Alternative Dispute Resolution (ADR) mechanism parallel with judicial system.

**Mr. Anil Harish** quoted Shakespeare to conclude that delay in justice is not a 21<sup>st</sup> century phenomenon but it was present even in the 16<sup>th</sup> century. He agreed with Mr. Shailesh Gandhi that India doesn't need 70,000 judges to mitigate pendency, rather it would help to fill up of 21% vacancies of sanctioned strength. He mentioned the need for 4,000 courtrooms to accommodate the full strength of judges which will cost around Rs. 2,000 crores excluding the land cost to The Government of India. According to him, this is a small sum to pay in return for the huge benefit of zero pendency.

He pointed out certain anomalies in Courts which increase pendency. Sec 309 of CrPC which says a trial must be carried forward on a day to day basis which is not at all practiced by Courts. He provided his personal experience that in many cases; judges know exactly what the parties will say in a particular case. In those cases, judges should politely ask the parties whether they have anything new to say; if not, the case can be disposed off very quickly.

There are some laws which are very good and which lay down objective tests, such as Section 3(1) (b) of the Maharashtra Rent Control Act, 1999 but these are not being efficiently administered by the Court. To conclude, he agreed with Justice B.N. Srikrishna that there should be common will among all stakeholders, including the judiciary, legislature, executive and citizens to address judicial pendency.

**Justice Vijay C Daga** claimed that the issue of pendency will persist if the Government is reluctant to appoint judges. He pointed out that rejection is more than selection, where even after the Collegium has recommended names for appointment, there is a reluctance from the Government to appoint them. He provided the anomaly of political parties wherein if a certain party is in power, they want a judiciary committed to their interests but while in opposition they want an independent

judiciary. He advised that all political parties provide a coherent solution to the issue of pendency.

During his tenure, by the use of efficient docket and case management strategies, he cleared 1,200 cases in 3 judgements. He demanded working judges where judges come on time and provide extra time to dispose of older cases. He also advised that litigants use ADR mechanisms through which they could save on time and resources. He also advised Governments to utilise retired judges for tribunals by providing them a cooling period after retirement. Explaining the virtues of the ADR mechanism, he said “compromise is always better than a good judgement”.

# QUESTIONS & DISCUSSIONS

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Moderator: Dr. Neville A. Mehta

- Members of the audience thanked Mumbai First, KC College and the Panellists for the event and expressed their support in addressing the issue of judicial pendency.
- Everyone was in agreement that the need of the hour was to fill the vacancy of sanctioned strength of judges.
- One of the participants requested clarity on e-courts. In response to this, Mr. Andhyarujina provided relevant facts regarding its use in rural and N-E region of India. In the case of e-courts, suit filing and reply is processed electronically in cases where elaborate investigation and evidence is not required.
- A young lawyer asked the Panellists whether arbitration fees is an important roadblock for its popularization. “Would a decrease in arbitration fees, make it a preferred choice?” Responding to the question, Justice Dalvi proposed client counselling as an important tool for arbitrators to increase its popularity. She also provided clarity about the fee structure in arbitration process which is now regulated by statute.
- Possibilities of judges, lawyers along with government deciding on a strict time frame for case disposal: Justice Srikrishna explained the difficulties judges face to decide on time frames beforehand in certain cases.
- Issue of nepotism in appointment of judges in the Supreme Court was raised: To counter, Justice Srikrishna mentioned that it was too generalised an assumption to make of all judges.
- A participant proposed replicating the contingency fee system in America, where lawyers are not paid fixed fees, but are rewarded after winning the case. Regarding the feasibility of the same in India, Justice Srikrishna argued that there is a tremendous cost involved in such cases in America which is not the case in India. He mentioned that, although illegally, this happens in India in the Motor Accidents Tribunal.



- Other questions including monopolisation of cases by few lawyers, deterrent legislation against frivolous cases, use of AI in e-courts and the feasibility of filling of vacancies in lower Courts were raised.



Dr. Mehta concluded the session by acknowledging the contributions of the Panellists and audience members. He said that the next step would be a persistent advocacy program by Mumbai First to bring responsive changes in overcoming the challenges of Judicial Pendency. Dr. Mehta reiterated the invaluable support by the media in the success of such an advocacy program. He requested the press to provide Mumbai First the platform to raise the awareness among common citizens about the issue of Judicial Pendency. He urged all stakeholders to come forward and bring necessary changes in the way justice is delivered.

# OVERALL OUTCOMES



Based on the panel discussion and Q&A at the end of the session, a list of solutions emerged which will not only mitigate the problem of judicial pendency but also increase the overall efficiency of the judicial process in India. These are:

1. To appoint judges upto numbers already sanctioned so as to increase the number of cases being heard at any point in time. The additional expenditure on infrastructure should not exceed Rs. 2,000 crores nationwide.
2. Ensuring that time frames are set and abided by in all cases that are brought to court.
3. Bridging the gap between the legislature and the judiciary to ensure a reduction in the number of amendments to the Constitution and an increase in judicial efficiency. The making or amendment of laws on the basis of personal or political agendas needs to be discouraged.
4. To encourage a more evidence based judicial process (i.e. no evidence, no case), to ensure effective use of judges' time. There should be a stop to all practices that add negative value to the time of all people involved in the judicial process.
5. Law making in the country should factor in required infrastructural support such as quality laboratories for evidence analysis and court room space.

6. Judges with the required skill set and adequate years of experience should fill in vacancies. While we address the issue of judicial pendency, we must ensure that the quality of our judges is not compromised.
7. Replacement of judges should be planned at least a year in advance. MBA graduates who specialize in resource and time management could bring about efficiency in seamless transition between incoming and outgoing judges.
8. The introduction of e-courts could be beneficial to ensure that pleadings are filed online- a fixed amount of time is given for judges to deliberate and the reply is given electronically as well. This will increase efficiency within the judicial system and also make the judicial system more accessible to those people who live in more remote areas of our country.
9. Encouraging the citizens to stay out of the courts until it is absolutely necessary, is important as well. This means encouraging them to try mediation or arbitration instead. The setting up of more tribunals can help decrease the number of cases going to courts as well.
10. It is suggested to have an HRD unit separately to handle all the back end case work for the judges for them to enable them to hear more cases.
11. Dealing with new cases is just as important as dealing with the older ones- shorter deliberation time should serve as a deterrent to people filing frivolous lawsuits. This could be managed by having designating judges to handle old cases and newer ones respectively.
12. The role of local social organizations should not be ignored. The trust that the people of a region have in local social organizations makes them key stakeholders. In fact, there have been instances where social organizations have resolved cases that Courts could not, solely because they were so trusted by the people.

13. The laws of our country could be simplified for common people to be able to understand them, which will lead to lesser infractions, and eventually, fewer new cases in court. Perhaps a law commission should be recommended in the Union Government and each state :
  - a. To advise laws which had become outdated or impractical.
  - b. To simplify and codify laws.
  
14. Article 128 and 224A of the Constitution dealing with the appointment of retired judges of Supreme Court or High Court to the sittings of such court, should be invoked. These provisions have never been tested before. Till fresh appointments are secured, such arrangement can help in checking the accumulation of cases.
  
15. In lower courts, judges do not always have copies of relevant laws. Hence, access to digitally searchable versions of statutes and case laws could help resolve judicial pendency.

We recommend that the President of India, the Prime Minister, the Chief Justice of India, the Attorney General, the Minister of Law and Justice, State Governments and the Bar Council carefully consider the suggestions mentioned in the report. This would soon help address the large volume of pending cases in courts.