

# Challenges Afflicting Indian Courts

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## **Abstract:**

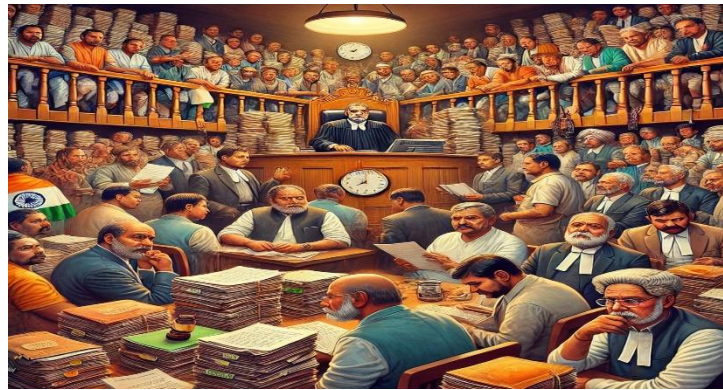
The Indian legal system faces numerous challenges that impact nearly every court across the nation. Key issues include a heavy caseload coupled with inadequate court facilities, personnel, and equipment. The wealth disparity exacerbates inequalities, placing the poor in a position where they struggle more intensely to access justice. Additionally, slow judicial proceedings, a shortage of judges, and a failure to adopt technology are contributing factors to ongoing delays. Allegations of corruption within the judiciary, lawyers' strikes, a lack of specialist expertise among judges, ineffective legal aid systems, linguistic barriers among individuals, irregularities in case listings, opaque processes for the appointment and transfer of judges, and the executive's tendency to disregard the Supreme Court collegium's recommendations for judiciary appointments and promotions based on selective intelligence reports are significant challenges. Furthermore, some judges exhibit political biases that may seek future favors, and the temporary nature of public prosecutor positions alongside biased selection processes complicates matters. Addressing these issues requires comprehensive reforms, increased funding for the sector, and a firm commitment to proper legal practices.

**Keywords:** Undertrials, Judiciary, Backlog of Cases, Legal Aid, Infrastructure, Judicial Process, Shortage of Judges, Lawyer's Strike, Technology, Appointment of Judges.

## **1. Introduction:**

The Indian legal system involves the Supreme Court, High Courts and Subordinate Courts including some tribunals and there are several challenges that the system is facing whose implications affect the entire legal system. Some notable issues in this regard include an enormous and unending backlog of pending cases that is especially pronounced in Allahabad High Court and also other courts. This is a constant problem which makes the proper and quick resolution of cases more difficult. Courts are also limited by a non-existent infrastructure, support staff, and technology equipment that are often unavailable. Moreover, it has become more difficult to resolve the situation with the backlog in complex legal proceedings, prolonged adjournments, vacancy of judges and procedural delays. Provision of justice to all is still a big task for the Indian judiciary, as reforms and adequate funds are needed to improve the administration and reduce the backlog in the courts.

The image below represents an imagined Indian courtroom.



## 2. Literature review on Challenges hindering Indian Judiciary:

Several challenges hinder the Indian judiciary from delivering timely justice. Justice B.N. Srikrishna has stated that the backlog of over 40 million cases in Indian courts has escalated to "unsustainable levels," identifying delays as one of the system's primary issues (Srikrishna, 2020). Experts such as Madhav Menon suggest that complex procedures and outdated legal structures contribute to these inefficiencies, which are further exacerbated by insufficient infrastructure (Menon, 2019).

Prominent American legal scholar Marc Galanter (2018) has consistently brought attention to the issue of litigation backlogs in India. He argues that a significant challenge affects not only India but also other countries, including the United States, which is the phenomenon of a "hyper-litigation culture" coupled with inadequate judicial resources. Galanter emphasizes the need for structural reforms - such as streamlined procedures and increased judicial personnel - to reduce delays. He draws comparisons with the legal systems of other democracies, noting that structural inefficiencies often contribute to backlog crises, rather than merely high rates of litigation.

Similarly, Hazel Genn, a specialist in British civil justice reform, focuses on the critical issue of access to justice, which holds particular significance for marginalized communities in India. Genn's investigation into the U.K.'s civil justice system highlights the challenges posed by social and economic barriers that hinder individuals from seeking legal recourse; this issue also affects India's impoverished and rural populations. To alleviate the burden on the courts and establish more accessible pathways to justice, she advocates for increased investment in legal aid initiatives and alternative dispute resolution methods.

David S. Law (2020), a prominent scholar in American constitutional law, underscores the importance of safeguarding the judiciary from political interference globally while addressing the topic of judicial independence. He points out that political pressure on the selection and decisions of judges can undermine public confidence in various democracies, India included. Law notes that political involvement has often led to disputes in India, particularly concerning appointments to the higher judiciary. He argues that maintaining the integrity of the judiciary necessitates reforms in the judicial nomination process, advocating for the protection of appointments from political influence.

Prominent British legal technology expert Richard Susskind (2021) emphasizes the importance of leveraging technology to modernize court systems globally. Susskind's research on the adoption of digital case management systems and e-courts offers valuable insights for India, suggesting that technological advancements could help alleviate backlog issues and speed up legal processes. He points out how countries such as Singapore effectively utilize technology to hasten case resolutions, a strategy that India might consider implementing.

Upendra Baxi highlights the obstacles that marginalized groups face in accessing justice, citing issues such as poverty, insufficient education, and rural setting. He argues that the high costs of legal proceedings and the scarcity of legal assistance further distance these populations from justice (Baxi, 2021). Similarly, Fali Nariman notes that political interference and corruption compromise the independence and neutrality of the judiciary, leading to a decline in public trust (Nariman, 2018).

A significant barrier is the lack of judges. Prashant Bhushan points out that the limited use of technology hinders case management, while unfilled positions in both lower and higher courts contribute to delays (Bhushan, 2021). Experts agree that comprehensive reforms, such as increasing staffing and leveraging technology, are essential to tackle these systemic issues and ensure the effective administration of justice.

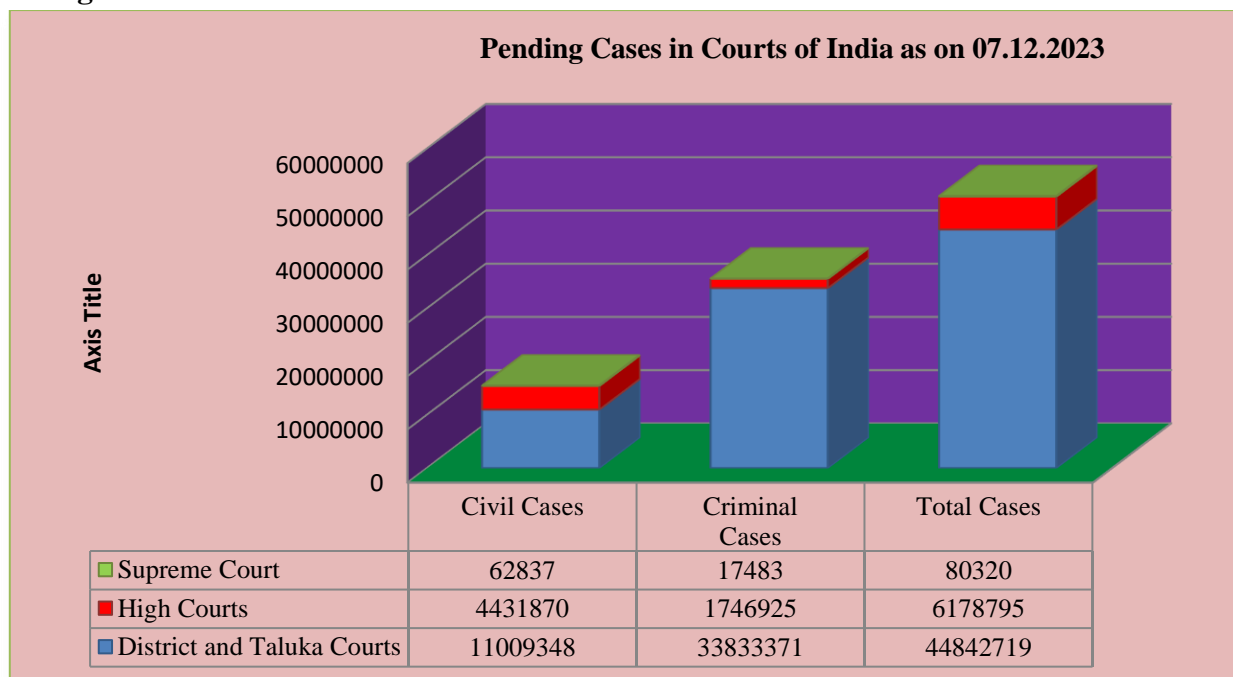
Political interference and corruption in judicial nominations and case rulings further weaken both judicial independence and public confidence. Fali Nariman (2018) points out specific cases where political meddling has influenced court decisions, thereby diminishing the judiciary’s credibility. He emphasizes the importance of maintaining a distinct separation of powers and ensuring transparency in the process of nominating judges.

### 3.Challenges Afflicting Indian Courts:

Some of the significant issues afflicting Indian Courts are noted below:

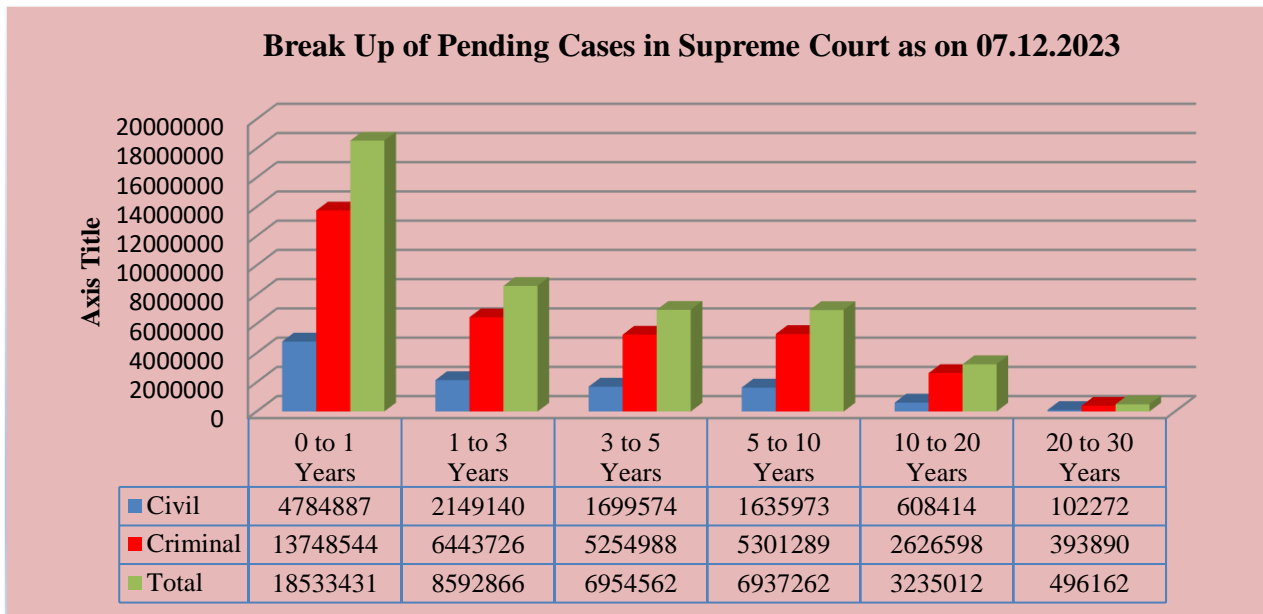
**i. Rich-Poor Divide:** This underscores the systemic biases in India's legal system that widen the divide between the rich and the poor. While the system aims for fairness, wealth allows individuals and corporations to secure top legal representation and leverage lengthy litigation tactics to achieve favorable outcomes. Conversely, economically disadvantaged individuals face significant challenges, including limited financial resources to hire competent lawyers and navigate complex judicial processes, resulting in delayed justice. To promote equal access, the Indian legal system needs to enhance legal aid, streamline procedures, and address case backlogs, ensuring that all litigants receive timely and equitable resolutions irrespective of their financial standing.

**ii. Backlog of Cases:**



The chart data given above illustrates the status of pending cases in Indian courts as of December 7, 2023, categorized into civil, criminal, and total cases across the Supreme Court, High Courts, and District/Taluka (Sub-divisional) Courts. It reveals a significant backlog, particularly in the lower courts. District and Taluka Courts hold the highest numbers, with over 11 million civil cases and more than 33 million criminal cases, totaling 44.8 million pending cases. In comparison, the Supreme Court has a much smaller caseload, with approximately 62,837 civil cases and 17,483 criminal cases, resulting in a total of 80,320 cases.

This assessment points to a major challenge within India's judicial system, especially in the lower courts, which are primarily affected by the backlog. The disproportionate number of criminal cases relative to civil cases illustrates an urgent need for reforms in judicial processes, particularly regarding case management and resource allocation. While the Supreme Court's lower number of cases may be attributed to its higher jurisdictional standards, the nearly 6 million pending cases in the High Courts further highlight the necessity for systemic improvements. This backlog obstructs the delivery of justice and may lead to delays or denials of justice for millions of individuals.



The chart above offers a comprehensive overview of pending cases in the Supreme Court of India as of December 7, 2023, classified by both the duration of the cases and their civil or criminal nature. A notable number of cases, exceeding 18.5 million, are awaiting resolution for up to one year, with a predominant share being criminal cases (13.7 million). This underscores the significant role that the influx of new cases plays in exacerbating the backlog. Following this, around 8.6 million cases are pending for 1 to 3 years, indicating that the backlog is not solely comprised of older cases but is an ongoing concern. Although civil cases are consistently fewer in number across all timeframes, they still account for a considerable segment of the total backlog.

Moreover, the existence of cases that have been pending for over 10 years (3.2 million) and some for as long as 30 years (approximately 496,162) points to enduring systemic delays that greatly affect the delivery of justice. The accumulation of criminal cases, particularly those that have been unresolved for extended periods, raises alarms regarding the timely administration of justice, especially in situations where individual liberties might be jeopardized. This scenario necessitates urgent reforms in judicial infrastructure, procedural changes, and potential technological advancements to expedite case

resolutions and alleviate the burden on the judicial system, ensuring that justice is not postponed indefinitely.

As of July 1, 2023, the Supreme Court of India had 69,766 pending cases. There was also a backlog exceeding three decades, with 71,204 unresolved cases across various High Courts. The district and subordinate courts face an even more dire situation, with over 100,000 cases pending for thirty years. The Union government reported in the Lok Sabha that a staggering 173,063 cases have been pending in various Indian courts for more than three decades. Currently, only 773 judges are serving out of the sanctioned capacity of 1,114 across 34 High Courts. In the subordinate judiciary, there are 25,246 approved positions, but a shortage of 5,388 judges exists.

Additionally, as of March 21, 2023, the Supreme Court had 22 cases pending for over thirty years, highlighting the chronic backlog issue. The Allahabad High Court leads in unresolved cases, with 1,039,879 pending. Following it are the Bombay, Rajasthan, and Madras High Courts, with 700,214, 652,093, and 551,953 pending cases, respectively. The district judiciary in Uttar Pradesh bears the brunt with an astonishing 11,635,286 unresolved cases, followed by Maharashtra and Bihar with 5,121,209 and 3,508,123 pending cases, respectively. Information regarding the sanctioned and working strength, as well as vacancies in various tribunals, remains unmaintained.

**iii. Slow Judicial Process:** The delay in India's judicial process hinders justice delivery, often prolonging cases for years. This lengthy duration creates stress for litigants - emotionally and financially - and undermines their trust in law enforcement, while also risking the loss of crucial evidence. Regular adjournments, often granted for minor issues, exacerbate slow litigation and contribute to case backlogs. To combat this, reforms are necessary to regulate adjournments, establish strict timelines, and expedite legal proceedings, ensuring timely justice for Indian citizens.

**iv. Lack of Adequate Infrastructure:** In India, many courts, particularly those in remote areas, struggle with inadequate resources, including insufficient facilities, support staff, and outdated technology. Cramped courtrooms can hinder fair trials, while a shortage of clerks and stenographers slows down case management, delaying access to justice. Additionally, traditional methods for handling records and communication create procedural backlogs and errors. To address these issues, significant reforms are needed, including investing in physical infrastructure, training more support staff, and implementing modern technology for case management. Improving these aspects is essential to enhance the efficiency and transparency of the judiciary and ensure timely justice for all.

**v. Shortage of Judges:** The Indian judiciary is experiencing a significant shortage of judges, impacting the delivery of justice across all levels, including the Supreme Court and high courts. This deficiency has resulted in an overwhelming backlog of pending cases, with delays often extending for years or even decades, frustrating litigants and undermining public confidence in the legal system, which constitutionally guarantees timely justice.

Currently, around 5,000 vacancies exist in trial courts, which are essential for providing hope to individuals seeking justice. Filling these positions quickly is crucial for alleviating the backlog and ensuring efficient judicial operations. One proposed solution is the implementation of an All-India Recruitment Exam for judicial appointments.

The shortage of judges is partly attributed to the controversial appointment process known as the collegium system, which is often influenced by political manoeuvring. This system was designed to safeguard judicial independence but has led to concerns over executive interference in appointing judges



to the High Courts and Supreme Court. The President of India typically acts on the advice of the Prime Minister and the Council of Ministers, causing disputes between the executive and the collegium.

Critics argue that the executive's power to block judicial appointments creates tension and raises questions about balancing judicial independence with transparency and accountability. Efforts to reform the collegium system aim to establish a fair process that upholds merit-based judicial appointments free from political influence, while still ensuring democratic transparency. Despite proposed reforms, the discussion surrounding this issue continues to be contentious in India.

**v. Complex Legal Procedures:** A significant issue in India is the complexity of legal processes, leading to confusion and inefficiencies in court proceedings. This intricate system can bewilder ordinary citizens, particularly those lacking legal representation. While efforts to simplify laws and introduce electronic filings aim to improve efficiency, comprehensive reform will require collaboration from legal professionals and policymakers to ensure accessibility and fairness in the justice system.

**vi. Corruption and Misconduct:** Corruption allegations within the judiciary, including bribery, have raised concerns about ethics and integrity in India's legal system. Trust in the judiciary is essential for democracy, and erosion of this trust can lead to unjust judgments and social disparities. To restore confidence, we must ensure transparency and accountability through clear court hearings, accessible information, and thorough investigations of corruption. Establishing independent institutions to uphold judicial ethics is crucial for maintaining public faith in the Indian justice system.

**vii. Strike by Lawyers:** The lawyers' strike significantly disrupts the judiciary, leading to delays and undermining justice. When legal practitioners fail to appear in court, it hinders the progress of ongoing hearings and trials, causing case postponements that are detrimental to litigants. This strike also affects the legal system's efficiency and erodes respect for the judiciary. The Supreme Court noted that between September 2012 and December 2016, Uttarakhand's High Court experienced 455 strike days, averaging 91 annually, with alarming trends in Uttar Pradesh.

**viii. Lack of Engagement with the Society:** An effective judiciary must integrate closely with society. Establishing regular and meaningful interactions between the judiciary and communities is essential. While many countries include citizen participation in judicial decisions, India lacks this approach. Therefore, encouraging citizen involvement is vital for creating a more effective and inclusive judicial system.

**ix. Inadequate Legal Aid:** Justice is a vital constitutional right in India, yet many cannot access it due to economic barriers and inadequate legal aid systems. Geographic challenges in rural areas further hinder access. Poor service from appointed lawyers and irregular payments further exacerbates the problem, leaving marginalized communities vulnerable to injustice.

**x. Hardships of the Undertrials:** In India, over 65% of the approximately 420,000 prisoners are undertrial detainees facing significant challenges, representing one of the highest rates of undertrial incarceration globally. These individuals are often jailed for non-bailable offences or because they cannot afford bail. As a result, many spend more time in prison than the potential sentence for their alleged crimes. It's essential to note that undertrials are presumed innocent until proven guilty. For instance, West Bengal's prison population rose from 17,586 in 2009 to 27,490 in 2023, with undertrial prisoners making up nearly 80% of this total.

**xi. Delays in Appellate Procedures:** The challenges of appellate procedure in India are a major factor in the sluggishness of the legal system, particularly when cases progress from lower courts to High Courts and, ultimately, to the Supreme Court. This complex process involves multiple steps, including

filing appeals and obtaining certified records, which prolongs legal proceedings. As cases reach higher courts, judges face increased workloads, further exacerbating delays. Such frustrations lead litigants to lose faith in the judiciary, making them hesitant to seek legal intervention. Although reforms are underway to streamline these processes, more effective strategies are necessary to ensure justice is accessible, timely, and equitable for all.

**xii. Underutilization of Technology:** The Indian judicial system has seen slow technological adoption, leading to various challenges in legal processes. Outdated methods, especially in rural courts, hinder case management, documentation, and information sharing. This reliance on traditional practices often results in time-consuming errors, complicating case tracking and record updates. Additionally, a lack of standardized digital frameworks restricts effective communication between courts, causing issues in case transfers and collaboration among legal professionals. Embracing suitable technology, like digital case management systems and remote court access, would greatly enhance efficiency and accessibility in the judiciary. However, increased investment and improvements are essential for comprehensive digital integration.

**xiii. Lack of Specialization:** The absence of specialized judges in certain courts can create challenges in addressing complex cases like intellectual property, cybercrime, crypto crime, commercial disputes, and environmental law. These areas demand a nuanced understanding of specific legal principles and intricate processes. Without judges who possess the requisite expertise, cases may face extended litigation, inconsistent rulings, and difficulty navigating intricate regulations. It is crucial to establish courts or divisions staffed with well-trained judges skilled in these fields. Ongoing support for these judges is vital to ensure the effective management of complex legal matters within their jurisdictions.

**xiv. Public Confidence:** Public confidence in the judiciary is essential for a functioning democracy and equitable legal system. Upholding the rule of law is crucial for ensuring justice for all. Allegations of misconduct, lobbying or corruption can erode this trust, leading to doubts about the fairness and efficiency of the judicial process. Therefore, the judiciary must uphold high ethical standards, transparency, and accountability to foster public confidence. Implementing effective mechanisms for addressing complaints against judges and cultivating a culture of openness within the judiciary are vital. Additionally, educational initiatives can inform citizens about the legal system and accountability measures, further strengthening their trust in the judiciary.

**xv. Language Diversity:** India values its diverse languages, but this diversity can create significant challenges for the justice system. Many individuals struggle to understand proceedings conducted in the court's official language, hindering their ability to engage with their cases. Legal documents and conversations typically occur in the region's primary language, leaving those who speak regional dialects at a disadvantage. This language barrier can lead to misunderstandings and impede access to justice. To ensure fairness, we must enhance language support in the courts through translators, translated documents, and legal education in local languages, fostering a more equitable judicial system for all.

**xvi. Irregularities in Listing of Cases:** Inconsistencies in case listings within High Courts and the Supreme Court can severely hinder the administration of justice. Factors such as favoritism, dishonesty, and political influence may lead to the improper prioritization of cases, resulting in some being expedited while others are unnecessarily delayed. This undermines public trust and erodes essential principles like impartiality and fairness, crucial for upholding the rule of law. Furthermore, such inconsistencies can disrupt court efficiency and contribute to significant delays in justice delivery. To

combat these challenges, courts must commit to transparent and unbiased case management, alongside robust review mechanisms to ensure equal treatment for all cases.

**xvii. Budgetary Allocation for the Judiciary:** In analyzing various institutions, the need for greater resources is often highlighted, along with the importance of their effective utilization. A notable example is the financial management of India's judicial system, where legal scholars argue that investments are insufficient. The India Justice Report 2019 indicated that, out of twenty-seven states and two union territories studied, twenty-one experienced a slower growth rate in judicial spending compared to overall expenditures. Furthermore, an examination of government outlays by the Indian central government and five states revealed persistent underuse of budgets, particularly in Bihar, which faced over 20 percent shortfalls in actual spending from FY 2014 to FY 2018, indicating ongoing budgetary and administrative issues.

**xviii. Unfair Appointment of Public Prosecutors:** Political interference poses a significant challenge when it comes to appointing public prosecutors in Indian courts, undermining the balance and autonomy of the legal system. Often, political entities influence the selection process, advocating for candidates who prioritize political loyalties over legal principles. This interference compromises fair legal administration and damages the integrity of court proceedings.

The issue is exacerbated by the lack of accountability for public prosecutors, who operate with minimal oversight. This void, combined with insufficient mechanisms for holding them responsible, raises concerns over potential abuses of power. Consequently, public prosecutors may exhibit partiality, favoring state interests over public welfare, which undermines their effectiveness. Transparency and accountability are essential for fostering trust in the judiciary and achieving justice.

Appointment should center solely on competence and skill, devoid of political bias. Establishing robust accountability measures, such as performance evaluations and disciplinary systems, can deter misconduct. In the Criminal Justice System, the role of public prosecutors is crucial, yet challenges like political influence and excessive authority remain. The Supreme Court advocates for selection criteria that prioritize capability and reputation, emphasizing the critical importance of impartiality in ensuring fair outcomes.

**xix. Case Management:** In case management, challenges arise in optimizing judges' time and cognitive resources due to inadequate preparations before court sessions, leading to wasted time. Scheduling issues cause numerous delays and adjournments. Since the early 1990s, India has initiated various computerization efforts within the judiciary, yet many simply added computers to existing processes without rethinking their design. An example is the e-filing system in the Supreme Court, which remains underused as advocates prefer traditional methods. Furthermore, the lack of preliminary conferences prevents accurate time estimates for proceedings, forcing lawyers to guess schedules, which undermines judicial efficiency and productivity.

**xx. Lack of Transparency:** The Right to Information Act excludes the judicial system, resulting in Indian citizens lacking essential information about its operations and accountability. Transparency in judicial appointments is vital as well. Although citizens have a constitutional right to free speech and expression, the current system hampers this fundamental right, leading to a lack of awareness regarding the fairness and integrity of the judiciary. This lack of clarity highlights the necessity for greater transparency within India's judicial system.

**xxi. Fewer Opportunities for Women:** Renowned Justice Sridevan criticized the Indian Judiciary, comparing it to an "old boys club." The Women's Lawyers Association raised this concern in the M/s



PLR Projects Pvt Ltd v. Mahanadi Coalfields Ltd case, providing data on the significant underrepresentation of women in the judiciary. Former Chief Justice Bobde acknowledged this imbalance but attributed it to women's domestic responsibilities. Achieving gender equity in the highest court is vital for inclusive decision-making. With fewer than 10% of judges being female, the situation is alarming; however, the recent appointment of four women judges at the Supreme Court offers hope for progress, potentially paving the way for Justice Nagarathna to become the first female CJI in 2027.

**xxii. Problem of Nepotism:** Nepotism in India remains a well-known yet largely unaddressed issue, primarily due to concerns about the independence of the judiciary. When appointing judges to the Indian High Courts and Supreme Court, favouritism can undermine both the authority and public trust in the judicial system. This practice often disregards the principles of meritocracy and justice, leading to the selection of judges based on connections rather than qualifications. Consequently, this can result in a less effective judiciary. Additionally, it raises concerns about transparency, potential corruption, and the overall efficiency of justice administration. A credible judiciary should be appointed based on merit, not familial ties, as evidenced by scrutiny over one-third of judges on the Allahabad High Court panel who were related to current or former judges.

**xxiii. Opaqueness in appointment, transfer and promotion of judges:** The process of appointing, transferring, and promoting judges within the judiciary allegedly faces substantial challenges, particularly when decisions are influenced by selective intelligence and other reports. These reports can bias the selection process, undermining the principles of impartiality and fairness. Furthermore, the political and ideological inclinations of judges purportedly often play a critical role in their selection, transfer, and appointment. This practice raises concerns about the integrity of the judicial system, as it can lead to a perception of partisanship and favouritism. Ensuring that judicial appointments are based solely on merit and qualifications, rather than external influences, is essential for maintaining public trust in the judiciary.

#### 4. Conclusion:

A significant amount of effort is required to improve various issues within the Indian court system, including revisions to court policies, enhanced infrastructure, and an increased number of judges and courts. However, achieving a more efficient court system in India is complex and necessitates collaboration among the judiciary, government, and legal professionals. Addressing these challenges calls for substantial and sustainable measures, such as legal reforms, increased funding and resources, modernized court systems, and a commitment to integrity and accountability within the judiciary. This includes enhancing legal education, allocating additional resources, streamlining the appointment process for judges, and expanding the judicial workforce to manage the surging backlog of cases.

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