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EDITORIAL ANALYSIS

Luxury Litigation and the Unequal Cost of Delay

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CURATED & WRITTEN BY

Bharat Choudhary

UPSC Educator & Content Creator

linkedin.com/in/epicbharat

Luxury Litigation and the Unequal Cost of Delay

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INTERVIEW ANGLE

"Judicial delay is usually discussed as an efficiency problem. If the same delay is a minor expense for a wealthy litigant and a catastrophe for a poor one, is it better understood as a question of equality before the law under Article 14?"

Source: Original editorial ↗ The Economic Times

Every fact web-verified against primary sources

THE LIFT LINE

Two influential parties spent eleven years, a Bar Council, a High Court and the Supreme Court on a quarrel the Court has now called what it was. The five lakh in costs is the headline. The queue behind them is the story.

WHY THIS EDITORIAL MATTERS FOR YOUR EXAM

Judicial pendency is among the most predictable GS2 topics, and most answers on it are interchangeable lists of causes and remedies. This editorial supplies the one thing those answers usually lack: a **distributional argument**. Reframing delay as a burden that falls unequally converts a governance-efficiency question into a constitutional one about **equality before the law and access to justice**, which is a considerably stronger answer.

GS Paper 2: Structure, organisation and functioning of the Judiciary; mechanisms, laws and institutions for the protection of vulnerable sections; important aspects of governance; transparency and accountability.

BACKGROUND AND CONTEXT

The immediate occasion is a Supreme Court order in **Rehana Khan v. Rizwan Siddhiquee**, decided on **21 August 2026**, in which the Court, upholding the two-year suspension imposed on the advocate by the Bar Council of India, brought to an end a dispute that had run for approximately **eleven years**. The Economic Times describes the outcome as the Court having **"dismissed the dispute and imposed costs of Rs 5 lakh each on the litigants"**; the judgment record shows the disposal took the form of upholding the Bar

Council of India Disciplinary Committee's suspension and awarding costs against both sides. The dispute had run across the **Bar Council of India**, a **High Court** and the **Supreme Court**, and the Court directed **each party to deposit five lakh rupees** with the **Supreme Court Legal Services Committee** within four weeks. The Court's observation, in the Economic Times' rendering, was that **courts could not become instruments for settling personal vendettas or pursuing cases without genuine cause**, and that judicial time consumed in such litigation is time denied to litigants awaiting genuine relief.

> *The Economic Times editorial, headlined "Luxury Litigation, Poor Pay the Price", states in print:* **"Hearing an 11-yr-old dispute between two influential parties, a bench of Justices Surya Kant and Joymalya Bagchi said courts could not become instruments for settling personal vendettas or pursuing cases without genuine cause. It dismissed the dispute and imposed costs of Rs 5 lakh each on the litigants." That Bench attribution is incorrect.** *Rehana Khan v. Rizwan Siddhiquee,* **2026 INSC 907***, decided* **21 August 2026***, was heard and decided by a Bench of* **Justice Vikram Nath, Justice Sandeep Mehta and Justice Vijay Bishnoi***, with the judgment authored by Justice Vikram Nath.* **Surya Kant***, who has been* **Chief Justice of India since 2025***, sworn in on* **24 November***, did not sit on this matter. Cite the case as decided by* **a three-judge Bench led by Justice Vikram Nath***, and do not reproduce the newspaper's Bench composition in an answer.*

> *The editorial's* **more than 5.6 crore** *pending cases and* **over 11 lakh pending for more than twenty years** *are both supported. As* **background***, the Government told Parliament that* **11,73,509 cases** *have been pending for more than twenty years, and that* **4.76 crore** *were pending in the* **district and subordinate courts alone as of 2025***, on 31 December, which with* **63.66 lakh** *in the High Courts and* **92,101** *in the Supreme Court gives roughly* **5.39 crore** *at that date. Pendency has risen since: the NJDG district-court dashboard showed* **over 5.10 crore** *on 26 August 2026, putting the all-India total in the region of* **5.6 to 5.8 crore***. Cite the NJDG, give the date of extraction, and say whether you are quoting the* **district-court figure** *or the* **all-India total***, because the two are routinely confused.*

The structural context is that the **overwhelming majority of pending cases sit in the district and subordinate judiciary**, not in the constitutional courts, which is where reform attention least often goes. **Judge vacancies** run at roughly a fifth of sanctioned strength in the subordinate courts and higher in several High Courts, and India's judge-to-population ratio remains far below the level the **Law Commission's 120th Report (1987)** recommended.

THE ANALYSIS

The editorial's first move is to accept the Court's premise and then widen it. Yes, litigation pursued as vendetta wastes public resource. But the editorial declines to let the story rest on the misbehaviour of two wealthy parties, because framing pendency as a problem of frivolous rich litigants would misdescribe a backlog of tens of millions of cases, the vast majority of which are ordinary disputes moving too slowly.

The second move is the causal list, and it is worth reproducing because it is complete. The editorial attributes the backlog to **vacancies, inadequate infrastructure and support staff, repeated adjournments, delays in investigation and evidence, procedural complexity, and weak case management.** Note that only the first is commonly discussed. **Case management** in particular is the quiet variable: in most Indian courts there is no differentiated tracking of cases by complexity, no judicially enforced timetable, and no consequence for an adjournment sought as a matter of routine.

The third and central move is distributional, and it is what elevates the piece. The editorial holds the *same* delay constant and varies the litigant:

- For a **wealthy litigant**, a prolonged case means **another legal bill and another hearing**.
- For a **poor litigant**, it means **repeated journeys to court, lost wages, mounting legal expenses and years of uncertainty**.
- For an **undertrial**, it can mean **losing years of liberty before guilt is established**.

That third case is the sharpest, because it is not merely a cost but a punishment inflicted before adjudication. India's undertrial population has long formed the majority of its prison population, which means the modal experience of Indian criminal justice is incarceration without conviction.

The fourth move is to observe that delay is not merely suffered but used. The editorial's implication, and it deserves to be made explicit in an answer, is that **postponement is a strategy available to the party with resources**. Delay preserves possession for the person in possession, defers payment for the person who owes, and exhausts an opponent who cannot sustain years of hearings. A system in which time can be purchased is a system in which the outcome depends partly on the ability to wait.

The fifth move is to note that none of this is a new discovery. The **Law Commission** and successive **parliamentary standing committees** have repeatedly identified vacancies and systemic inefficiency as the principal contributors. Civil society research has documented that poorer and less-educated litigants are disproportionately vulnerable. The diagnosis has been settled for decades; what has not followed is implementation.

The sixth and concluding move is the caution against mistaking a gesture for a remedy. Exemplary costs address the abuser at the margin. They do not fill a vacancy, build a courtroom, appoint a stenographer, or discipline an adjournment. The editorial's remedy set is therefore administrative: **tighter case management, fewer adjournments, faster filling of vacancies, better infrastructure, and wider use of mediation and alternative dispute resolution.** And its closing standard is the line to carry into an answer: **the objective is not merely to reduce the pile of pending cases, but to ensure that the person least able to wait is not made to wait the longest.**

DATA AND INSTITUTIONS VAULT

The case:

- **Rehana Khan v. Rizwan Siddhiquee**, decided **21 August 2026**
- Bench: **Justice Vikram Nath, Justice Sandeep Mehta and Justice Vijay Bishnoi**; judgment authored by **Justice Vikram Nath**; citation **2026 INSC 907**
- Dispute duration: approximately **eleven years**, spanning the **Bar Council of India**, a **High Court** and the **Supreme Court**
- Costs: **five lakh rupees on each party**, payable to the **Supreme Court Legal Services Committee** within four weeks
- The Economic Times formulation to quote: litigation as **"a privilege for those with deep pockets"**, and the closing standard that **"the person least able to wait is not made to wait the longest"**

Pendency:

- All-India pendency: **more than 5.6 crore** (mid-2026). District and subordinate courts **about 4.76 crore as of 2025**, on 31 December, rising past **5.10 crore** by August 2026; High Courts **about 63 to 65 lakh**; Supreme Court **about 92,000 to 94,000**
- Pending more than **twenty years**: **11,73,509** cases (Government of India, NJDG data placed before Parliament)
- The bulk of pendency sits in the **district and subordinate judiciary**
- Judge vacancies: roughly **a fifth** of sanctioned strength in subordinate courts, higher in several High Courts

Constitutional provisions:

- **Article 14**: equality before the law and equal protection of the laws
- **Article 21**: right to life and personal liberty, from which the **right to a speedy trial** is derived
- **Article 39A**: equal justice and free legal aid, a Directive Principle inserted by the **42nd Amendment, 1976**
- **Articles 124 and 217**: appointment of Supreme Court and High Court judges
- **Article 142**: power to do complete justice, the source of the costs jurisdiction in practice

Case law:

- **Hussainara Khatoon v. State of Bihar (1979)**: speedy trial is part of the right to life under Article 21; the foundational undertrial case
- **Anita Kushwaha v. Pushap Sudan (2016)**: access to justice recognised as a fundamental right under Articles 14 and 21
- **Hussain v. Union of India (2017)**: Supreme Court directions on timelines for bail and criminal appeals

Statutes and institutions:

- **Legal Services Authorities Act, 1987**: **NALSA**, State and District Legal Services Authorities, and **Lok Adalats**
- **Mediation Act, 2023**: pre-litigation mediation and enforceability of mediated settlements; the establishment of the **Mediation Council of India**, with its head office at Delhi, was notified on **27 August 2026** under **Section 31(1)**, roughly three years after the Act; the notification does **not** name a Chairperson or Members, so the Council is established but **not yet staffed or operational**
- **Arbitration and Conciliation Act, 1996**, as amended
- **Section 89, Code of Civil Procedure, 1908**: reference to alternative dispute resolution
- **Bharatiya Nagarik Suraksha Sanhita, 2023**: **Section 479** on release of undertrials who have served a specified fraction of the maximum sentence, with a more liberal rule for first-time offenders
- **Gram Nyayalayas Act, 2008**; **Fast Track Courts** and **Fast Track Special Courts**
- **National Judicial Data Grid (NJDG)** and the **e-Courts** project, now in **Phase III**
- **Law Commission 120th Report (1987)** on judicial manpower; **245th Report (2014)** on arrears and backlog

The four principal ADR mechanisms, and how they differ:

- **Arbitration**: binding award by a private tribunal chosen by the parties
- **Conciliation**: a neutral proposes terms; settlement is binding once accepted
- **Mediation**: a facilitator helps the parties craft their own settlement; binding as a decree under the 2023 Act
- **Lok Adalat**: statutory forum; award has the force of a civil court decree and is not appealable

THE DEBATE

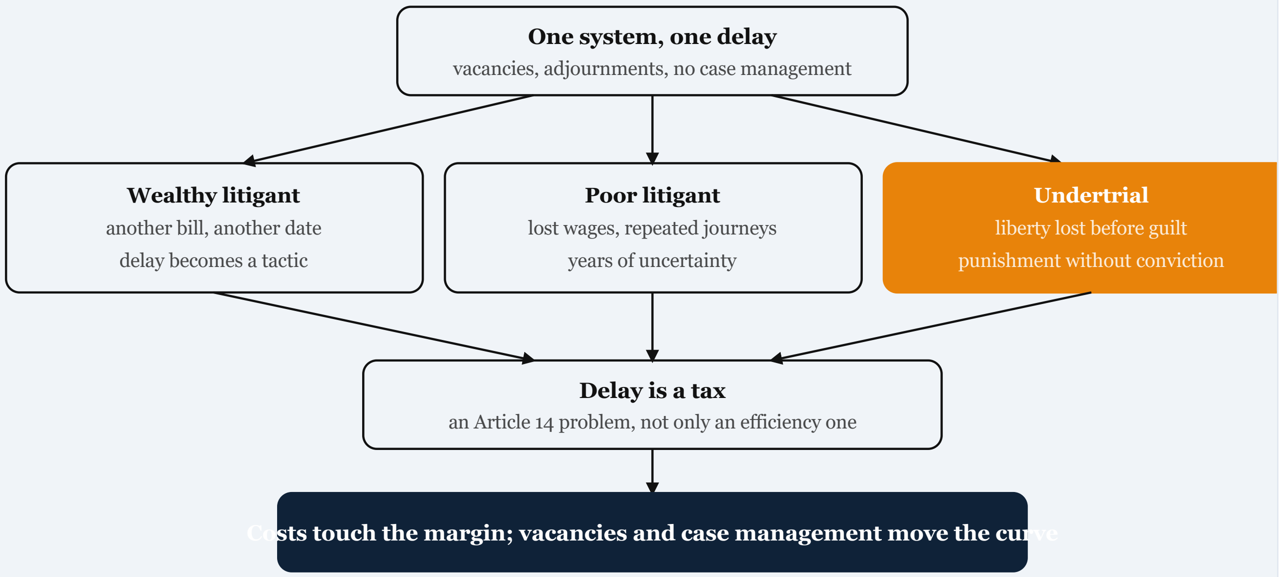
The case for exemplary costs is stronger than the editorial allows. Costs are one of the few instruments entirely within judicial control, requiring neither legislation nor budget. Their function is partly expressive: by pricing judicial time, the Court asserts that it is a public resource rather than a free good. Indian courts have historically been reluctant to impose realistic costs, with the result that the losing party frequently pays nothing approaching the expense it imposed, which quietly subsidises weak litigation.

The case against relying on them is arithmetical. Even aggressive costs jurisprudence touches a handful of cases a year against a backlog measured in crores. Worse, an indiscriminate costs regime carries a chilling risk: a genuinely aggrieved poor litigant with a weak case is deterred more effectively than a wealthy litigant with a vexatious one, because five lakh rupees means something entirely different to each. **A remedy that bites in proportion to poverty aggravates the very inequality the editorial identifies.** This is the strongest reason to treat costs as marginal rather than central.

On the systemic remedies, the disagreement is about sequencing rather than substance. Filling vacancies is the most cited fix, but appointments alone do not clear a backlog if procedure permits unlimited adjournment and there is no case-flow management. Conversely, case management without judges simply redistributes an impossible workload. The realistic position is that vacancies and case management are complements, and that both must be aimed at the **district judiciary**, where the cases actually are, rather than at the constitutional courts, where the attention usually is.

On mediation there is a genuine and unresolved tension. Mandatory pre-litigation mediation reduces court load, but it also adds a step, and where one party is using delay as a strategy it adds delay. Its success depends entirely on the accreditation and quality of mediators, which is why the notification establishing the Mediation Council of India in August 2026, three years after the Act that created it and still without a Chairperson or Members, is both welcome and an illustration of the implementation gap that defines this whole subject.

DIAGRAM-IN-WORDS



Holding the delay constant and varying only the litigant is what turns pendency from an administrative statistic into a constitutional question. Because the same wait is an expense for one party and a deprivation of liberty for another, the fair test of reform is not the size of the backlog but whether the person least able to wait still waits longest.

HOW TO THINK ABOUT THIS

The transferable frame is **disaggregating a uniform burden by the capacity to bear it**, and it is one of the highest-yield analytical habits available in GS2.

A great deal of governance failure looks neutral at the level of the rule and turns out to be sharply unequal at the level of the person. Delay is the clearest example: the *rule* applies identically to everyone, and the *effect* varies by an order of magnitude. Once you have the habit, you will find the same structure everywhere.

Apply it to **flat user charges**, where an identical fee is trivial for one household and prohibitive for another. To **compliance burdens**, where the same filing requirement is a line item for a large firm and an existential cost for a small one. To **digital-only service delivery**, where the same portal is convenient for the connected and exclusionary for the unconnected. To **cash-only bail**, where the same bond amount buys liberty for one accused and prison for another. In each case the rule is formally equal and substantively regressive, which is precisely the distinction between **formal equality** and **substantive equality** that Article 14 jurisprudence has developed.

The second habit is **checking whether a remedy operates at the same scale as the problem**. Exemplary costs are a real instrument, but they act on individual cases while the problem is measured in crores. Whenever you evaluate a reform, ask what proportion of the affected population it reaches. This is what separates a symbolic remedy from a structural one, and examiners reward the distinction.

Third, note that **delay is not a passive failure but an actively exploited asset**. Any analysis of judicial reform that treats delay purely as a resource constraint will miss the incentive: some parties want it. That is why adjournment discipline and case-flow management matter more than they appear to, and why filling vacancies alone will not deliver what it promises.

WAY FORWARD

Fill judicial vacancies to sanctioned strength on a time-bound basis, with the district judiciary first. The backlog is where the cases are, and that is not the constitutional courts.

Adopt differentiated case-flow management. Cases should be tracked by complexity with judicially set timetables, and adjournments should require recorded reasons and carry costs, in line with the limits the Code of Civil Procedure already contemplates but which are rarely enforced.

Resource the courtroom, not only the bench. Stenographers, court managers, digitised records and functioning e-filing determine throughput as much as judge strength. The e-Courts Phase III investment is the vehicle.

Operationalise the Mediation Act, 2023 properly. With the Mediation Council of India now notified, the priority is accreditation standards and a genuine register of mediators, without which pre-litigation mediation becomes an additional step rather than an alternative route.

Prioritise undertrial release. Section 479 of the Bharatiya Nagarik Suraksha Sanhita provides the statutory route; district legal services authorities and undertrial review committees should be tasked and monitored on it, because this is where delay does its most severe harm.

Expand legal aid capacity and quality under NALSA. Access to justice is meaningless where representation is nominal, and the litigants most exposed to delay are precisely those relying on legal aid.

Publish and act on court-level performance data. The NJDG already makes pendency visible by court and by judge. Making disposal and adjournment rates a routine object of administrative review is the cheapest available accountability mechanism.

PYQ LINKAGE AND PRACTICE

Connects to standing UPSC themes on **judicial reforms and pendency**, **access to justice and Article 39A**, **alternative dispute resolution**, and **undertrial rights**, and pairs naturally with questions on the collegium system and on the e-Courts programme.

Practice question: *"Judicial delay in India is formally neutral and substantively regressive. Critically examine this proposition, and evaluate whether the remedies currently being pursued operate at the scale of the problem."* (250 words)

Sources: The Economic Times, Supreme Court of India, National Judicial Data Grid

KEY ARGUMENTS AT A GLANCE

The Economic Times welcomes the Supreme Court's warning against "luxury litigation", delivered while dismissing an eleven-year-old dispute between two influential parties with costs of five lakh rupees on each, but argues that the deeper problem is not frivolous filing by the rich so much as the profoundly unequal way delay distributes its costs, and that punitive costs alone cannot remedy it.

✓ SUPPORTING

- The scale of pendency is structural rather than episodic, with the editorial citing more than 5.6 crore pending cases and over 11 lakh pending for more than twenty years, driven by judicial vacancies, inadequate infrastructure and support staff, repeated adjournments, delays in investigation and evidence, procedural complexity and weak case management.
- The consequences of the same delay are radically unequal: for a wealthy litigant a prolonged case is another legal bill and another hearing, while for a poor litigant it means repeated journeys to court, lost wages, mounting expenses and years of uncertainty, and for an undertrial it can mean losing years of liberty before guilt is even established.
- The diagnosis is not new and has been made repeatedly by the Law Commission and by parliamentary committees, which have consistently identified judicial vacancies and systemic inefficiency as the principal contributors to backlog, while civil society research shows poorer and less-educated litigants are disproportionately vulnerable to the costs of delay.
- The remedy must therefore go beyond punitive costs to tighter case management, fewer adjournments, faster filling of vacancies, better infrastructure and wider use of mediation and other dispute resolution mechanisms, with the objective being not merely a smaller pile of pending cases but ensuring that the person least able to wait is not made to wait longest.

⚠ COUNTER

Exemplary costs are among the few instruments a court can deploy immediately and without legislative or budgetary support, and their value is expressive as much as deterrent, since they establish that judicial time is a public resource; dismissing them as insufficient risks discouraging the only lever fully within judicial control while the vacancies and infrastructure that require executive action remain unaddressed.

→ WAY FORWARD

> Fill judicial vacancies to sanctioned strength on a time-bound basis, adopt differentiated case-flow management with judicially enforced adjournment limits, resource the subordinate judiciary where the overwhelming majority of cases sit, operationalise the Mediation Act, 2023 through the newly notified Mediation Council of India, expand legal aid capacity under the Legal Services Authorities Act, 1987, and prioritise undertrial release under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023.

MAINS ANSWER FRAMEWORK

QUESTION

Judicial pendency in India is conventionally framed as a capacity problem. Examine the proposition that delay operates as a regressive tax on the poor, and evaluate the adequacy of punitive costs, case management and alternative dispute resolution as remedies. (250 words)

INTRODUCTION

The Supreme Court's censure of "luxury litigation", accompanied by costs on parties who had occupied eleven years of judicial time across the Bar Council, a High Court and the Supreme Court, restates a principle that is easy to endorse: judicial time is a public resource and its consumption without genuine cause displaces someone else's claim. The harder question is who is displaced, and the answer makes delay a question of equality rather than of efficiency.

BODY

Indian pendency is measured in tens of millions of cases, with the overwhelming majority in the district and subordinate judiciary, and a substantial tail of matters pending beyond twenty years. The standard explanations are accurate as far as they go: judicial vacancies running at roughly a fifth of sanctioned strength in the subordinate courts and higher in the High Courts, inadequate court infrastructure and support staff, liberal adjournments, delays in investigation and production of evidence, procedural complexity and the near-absence of active case management.

What these explanations omit is distributional. Delay is not experienced uniformly.

For a well-resourced litigant it is an operating cost and frequently a strategy, since postponement preserves possession, defers payment and exhausts the weaker opponent. For a daily-wage litigant each hearing is a lost day of income and a journey; for an undertrial, delay is punishment imposed before adjudication, which is precisely the harm Article 21 read with the speedy trial jurisprudence in Hussainara Khatoon was meant to prevent.

Delay therefore operates as a regressive levy, and punitive costs, though welcome, address only the marginal abuser rather than the structural asymmetry.

CONCLUSION

The remedy set is known and largely uncontroversial: time-bound filling of vacancies, differentiated case-flow management, adjournment discipline, investment in the subordinate judiciary where the backlog actually sits, and genuine institutionalisation of mediation now that the Mediation Council of India has been constituted. The measure of success should not be the size of the pending pile but whether the litigant least able to wait has stopped waiting longest.

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Bharat Choudhary

UPSC Educator & Content Creator

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