

# Pendency during the Pandemic

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Even before the imposition of a national lockdown on 24 March 2020 to fight the spread of COVID-19 in India, the Supreme Court of India had started taking measures to limit the gathering of people indoors.<sup>1</sup> While only “urgent matters” were being heard initially during the lockdown (Tripathi and Jain 2020), as restrictions eased and lawyers and judges alike grew more comfortable with online hearings, the number of cases being heard by the Court increased likewise. A recent press release issued by the Supreme Court on the occasion of the 71st anniversary of its first sitting noted that the Court was functional for 231 days in the calendar year 2020; beyond the usual minimum of 190 days (*Bar and Bench* 2021). The press release also notes that the Court had held 43,713 hearings through videoconferencing as of 31 December 2020.

While the efforts of the judges, lawyers and the Supreme Court registry are commendable, one must examine whether this avoided the piling up of the backlog of cases. Since 2012, the Court has been putting out monthly statements on the number of cases pending in the Court<sup>2</sup> and one can assess if the measures were sufficient to prevent the piling up of cases. Comparing the pendency position between 1 March 2020 and 1 March 2021 should tell us how the Court’s measures to function in the time of COVID-19 have fared. Likewise, comparing this data for the previous year will also give context to the Court’s performance.

## Pendency Data

The monthly statement which gives the number of pending cases as on date breaks them up into two categories: admission/miscellaneous matters and regular hearing matters. “Miscellaneous matters” are those which have been filed in the Court and the Court has not yet decided to take them up for full hearing.

Regular matters are those which the Court has decided it will take up for a full hearing (Robinson 2013). These two broad categories are further divided into two categories each: miscellaneous into “complete” and “incomplete,” and regular into “ready” and “not ready.” “Miscellaneous complete” and “ready regular” matters are those where all the preliminary steps have been completed by the parties and the matter is in the queue waiting for a hearing date. “Incomplete miscellaneous” and “not ready regular” matters are those where preliminaries are not completed by the parties. These preliminaries vary in cases of “miscellaneous” and “regular” matters but include such steps as service of notice, filing of statement of case, etc.

In short, “complete” and “ready” matters are only pending action on the part of the Court and registry to list the case for hearing, whereas “incomplete” and “not ready” matters are awaiting action on the part of parties. A steady increase in “incomplete” and “not ready” matters would show that parties are being lax about carrying out their procedural responsibilities in pursuing a matter whereas an increase in “complete” and “ready” matters would suggest that the Court is unable to list and hear matters sufficiently

quick enough to prevent a backlog from building up.

## What Does the Data Say?

As on 1 March 2021, there were 66,727 matters pending in the Supreme Court. This is the highest number since monthly statements started being published in 2012, and possibly the highest since the early 1990s (Robinson 2013). However, the same figure was 60,469 on 1 March 2020, suggesting that the number of cases pending in the Supreme Court has increased by 6,258 over 12 months. This amounts to a 10.35% increase in the number of pending matters. The increase has been slow and steady over the course of the year as Table 1 shows.

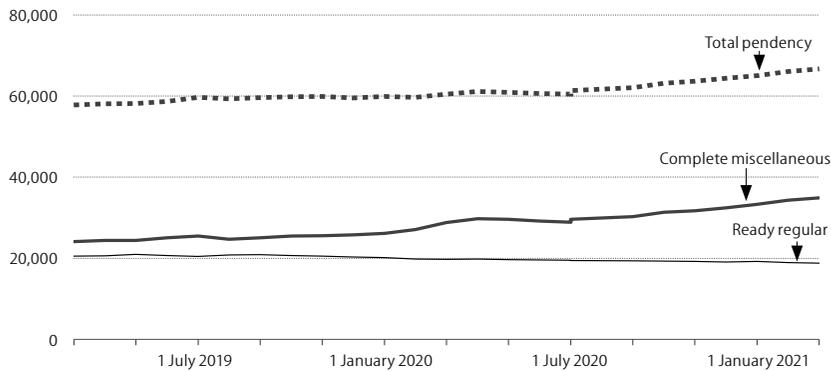
These numbers point to certain observations. While the Court has been able to reduce the number of pending regular matters over the year, it has been unable to do the same for miscellaneous matters. This is possibly due to the fact that far fewer miscellaneous matters have been listed for online hearings than they were when hearings were done in person.<sup>3</sup> The opposite trends for complete miscellaneous matters and ready regular matters are seen clearly in Figure 1 (p 11). However, while the number of pending miscellaneous cases increased by 17.68%, for pending regular cases, it actually dropped by 4.78%. Did COVID-19 therefore contribute to a sudden rise in pendency in the Supreme Court?

Table 2 (p 11) shows the pendency position between 1 March 2019 and

**Table 1: Monthly Position of Pending Cases in the Supreme Court between 1 March 2020 and 1 March 2021**

Date	Complete Miscellaneous	Incomplete Miscellaneous	Total Miscellaneous	Ready Regular	Not Ready Regular	Total Regular	Total Pendency
1 March 2020	28,736	11,987	40,723	19,662	84	19,746	60,469
1 April 2020	29,678	11,608	41,286	19,771	85	19,856	61,142
1 May 2020	29,539	11,635	41,174	19,625	84	19,709	60,883
1 June 2020	29,140	11,881	41,021	19,523	84	19,607	60,628
1 July 2020	28,852	12,017	40,869	19,492	83	19,575	60,444
31 July 2020	29,586	12,256	41,842	19,414	82	19,496	61,338
1 September 2020	30,248	12,381	42,629	19,345	80	19,425	62,054
1 October 2020	31,272	12,532	43,804	19,261	81	19,342	63,146
1 November 2020	31,690	12,750	44,440	19,175	78	19,253	63,693
4 December 2020	32,403	12,877	45,280	19,049	97	19,146	64,426
1 January 2021	33,273	12,593	45,866	19,144	76	19,220	65,086
1 February 2021	34,279	12,857	47,136	18,862	74	18,936	66,072
1 March 2021	34,851	13,073	47,924	18,732	71	18,803	66,727

Source: Data collected from the Supreme Court website by the author. Dates for statements are taken from the statements themselves.

**Figure 1: Comparison of Overall Pendency with Ready Regular and Complete Miscellaneous Matters**

Source: Data collected from the Supreme Court website by the author.

**Table 2: Monthly Position of Pending Cases in the Supreme Court between 1 March 2019 and 1 March 2020**

Date	Complete Miscellaneous	Incomplete Miscellaneous	Total Miscellaneous	Ready Regular	Not Ready Regular	Total Regular	Total Pendency
1 March 2019	24,053	12,757	36,810	20,475	500	20,975	57,785
1 April 2019	24,328	12,670	36,998	20,571	503	21,074	58,072
1 May 2019	24,309	12,547	36,856	20,945	367	21,312	58,168
1 June 2019	24,967	12,788	37,755	20,624	290	20,914	58,669
1 July 2019	25,419	13,563	38,982	20,424	289	20,713	59,695
1 August 2019	24,643	13,558	38,201	20,818	272	21,090	59,291
2 September 2019	25,013	13,460	38,473	20,876	267	21,143	59,616
1 October 2019	25,425	13,567	38,992	20,629	174	20,803	59,795
1 November 2019	25,498	13,703	39,201	20,502	164	20,666	59,867
2 December 2019	25,755	13,337	39,092	20,282	161	20,443	59,535
2 January 2020	26,098	13,494	39,592	20,111	156	20,267	59,859
1 February 2020	27,038	12,632	39,670	19,741	259	20,000	59,670
1 March 2020	28,736	11,987	40,723	19,662	84	19,746	60,469

Source: Data collected from the Supreme Court website by the author. Dates for statements are taken from the statements themselves.

1 March 2020, the 12 comparable months prior to the pandemic. While there is an increase in the number of pending cases in these 12 months as well, the pattern is similar to what is seen in 2020–21: an increase in the number of pending complete miscellaneous cases and decrease in the number of pending regular cases. However, there is a significant difference in the magnitude of the increase between 2019–20 and 2020–21. The comparison is given in Table 3.

**Table 3: Comparison of Increase in Pending Cases in the Supreme Court**

2019–20	Increase/Decrease (%)	2020–21	Increase/Decrease (%)
Miscellaneous	10.63	Miscellaneous	17.68
Regular	-5.86	Regular	-4.78
Total	4.64	Total	10.35

Source: Calculations by the author.

What these numbers suggest is that even prior to the COVID-19-inspired measures hampering the full functioning of the Supreme Court, the number of pending cases had been growing for the past year, but the lack of full functioning has

meant that the rate of increase of pending cases has gone up.

### Challenges for the Next CJI

The present Chief Justice of India (CJI) S A Bobde will demit office on 23 April 2021, leaving him little time to address the concerns of pending cases. When he retires, the Supreme Court will be down to 28 judges; five fewer than the number of judges when he became CJI in November 2019. One possible explanation for the increase in pending judges might have to do with the falling judge strength; all the four judges who retired during CJI Bobde's tenure did so in the last 12 months. However, even when the Supreme Court was almost at full strength between 2019 and 2020, we see an increase in the number of pending cases.

Nevertheless, filling up vacancies may allow for the constitution of more benches of the Court and speed up disposal of cases to some extent. While the functioning of the collegium was not seriously affected during the pandemic

(Kumar 2020), no judges have been appointed to the Court since September 2019. The 540 days (and continuing) gap between appointments to the Court is the longest in the last decade<sup>4</sup> and has been attributed to an impasse in the collegium (Viswanathan 2021).

Even if the impasse is broken and appointments made quickly in the coming days, if the experience of 2019–20 is anything to go by, it may only slow down, but not entirely reverse the growth of pending cases in the Supreme Court. Keeping a check on the concerning rise in the number of pending cases in the apex court may require some deep reforms on the part of the institution.

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### NOTES

- See notification dated 13 March 2020 issued by the Supreme Court limiting the functioning of courts from 16 March 2020 to only "urgent matters" and restricting access to the Court complex itself ([https://main.sci.gov.in/pdf/Notification/13032020\\_120544.pdf](https://main.sci.gov.in/pdf/Notification/13032020_120544.pdf), viewed on 16 March 2020).
- All "Monthly Statements" are available at <https://main.sci.gov.in/statistics> and have been collated by the author.
- For instance, in the pre-pandemic days, Mondays and Fridays saw 50 to 70 miscellaneous matters listed before each bench, whereas post pandemic, the number has come down to about 25–35.
- The longest gap prior to this was 501 days in 2010 and 2011 during the tenure of CJI SH Kapadia.

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