

INDIRA JAISING

Senior Advocate, Supreme Court of India

By Email

Dated the 11th June 2024

To

**Shri Arjun Ram Meghwal
Union Minister of Law and Justice
Government of India
4th Floor, A-Wing,
Shastri Bhawan, New Delhi**

Dear Shri Meghwal Ji,

At the outset, I congratulate you on your appointment as the Minister of State, Ministry of Law and Justice (Independent Charge). We the people of India, look forward to productive interaction with you on the issues raised in this letter in the spirit of consensus building and the noble aim of assuring speedy access to justice to the people in the matter of life and liberty.

I write to you out of a deep sense of concern about the implementation of three criminal laws namely 'Bharatiya Nagarik Suraksha Sanhita, 2023', 'Bharatiya Nyaya Sanhita, 2023', and 'Bharatiya Sakshya Adhinyam, 2023'. These three laws are due to come into effect from July 1, 2024. The existing Indian Penal Code, 1860; the Indian Evidence Act, 1872 and the Code of Criminal Procedure, 1973 have been repealed and replaced by the aforesaid new criminal laws. Many existing provisions of the law have been reformatted and reworded to convey a completely different meaning from what they bear in the original three laws.

It may be noted that existing statutes have been in existence for over a century and the content of almost every section has received judicial interpretation at the hands of several High Courts of the country as well as the Supreme Court of India. Often different Benches of the Supreme Court have differed with each other over the interpretation of a particular provision of the law and reference are pending to larger Benches. As and when the new three criminal laws come into force, the existing laws will continue to apply perhaps for another 20 years or more

until cases filed under them reach their fruition beginning with the Magistrate Court and ending with the Supreme Court of India. This we know as the average lifespan of a case in our country.

There is no doubt about the fact that the three-criminal laws which are sought to be given effect from July 1, 2024, deal exclusively with the matters of life and liberty and criminal harm that can be caused to an individual in other different ways. They also deal with the civil liberties of citizens more particularly in the matter of freedom of speech, right to assembly, right to associate, right to demonstrate, and their other civil rights, which can be criminalized as part of the law and order provisions of these three codes. In effect, we will be having two parallel criminal justice systems for the foreseeable future, which can range from 20-30 years.

There seems to be no judicial audit conducted of the three new laws on the already overburdened judiciary. The National Judicial Data Grid shows the mounting pendency of the cases before the courts as follows:

TABLE WITH REGARD TO PENDENCY OF CASES IN DISTRICT AND TALUKA COURTS

Report

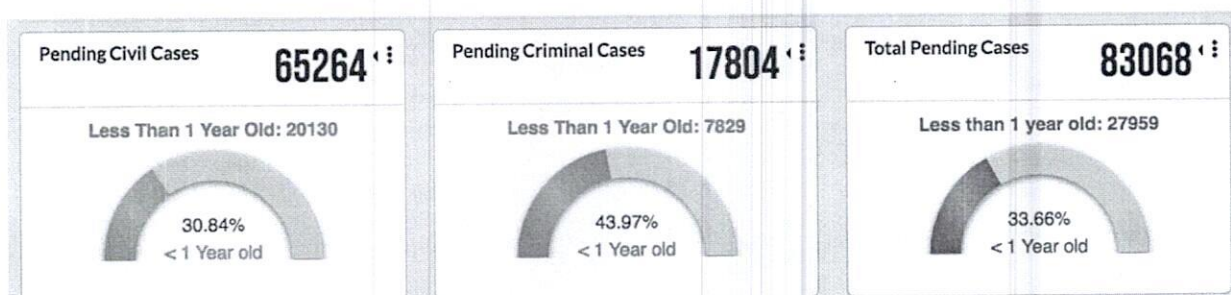
Particulars	Civil	Criminal	Total
0 to 1 Years	3778493(34.58%)	10400277(30.66%)	14178802(31.62%)
1 to 3 Years	2864546(26.22%)	8539961(25.18%)	11404507(25.43%)
3 to 5 Years	1556069(14.24%)	5113318(15.08%)	6669388(14.87%)
5 to 10 Years	1894840(17.34%)	6300219(18.58%)	8195052(18.27%)
10 to 20 Years	695061(6.36%)	3047046(8.98%)	3742111(8.34%)
20 to 30 Years	106813(1.23%)	444345(1.23%)	551158(1.23%)
Above 30 Years	30888 (0.28%)	72191(0.21%)	103079(0.23%)
Total	10926710	33917357	44844097
Original	8147256	30538072	38685337
Appeal	482405	423049	905447
Application	653240	2580294	3233538
Execution	1425193	69441	1494634
Appearance/Service Related	2597908	15714354	18312262
Compliance/Steps/stay	1898316	2089907	3988235
Evidence/Argument/Judgement	4349933	10736374	15086295
Pleadings/Issues/Charge	1469229	2577273	4046512
Cases Instituted in Last Month	278973	1444612	1723585
Cases Disposed in Last Month	249458	1104703	1354166
Filed Cases By Senior Citizen	2192746	680622	2873368
Filed Cases By Woman	1753931	1910182	3664113
Delay Reason	4400936	15320056	19720992

TABLE WITH REGARD TO THE PENDENCY OF CASES IN HIGH COURTS

Report

Particulars	Civil	Criminal	Total
0 to 1 Years	946184(21.37%)	450241(25.54%)	1396425(22.56%)
1 to 3 Years	781874(17.66%)	274054(15.55%)	1055928(17.06%)
3 to 5 Years	621469(14.03%)	203225(11.53%)	824694(13.32%)
5 to 10 Years	1084169(24.48%)	388247(22.03%)	1472416(23.78%)
10 to 20 Years	751701(16.98%)	352408(19.99%)	1104109(17.83%)
20 to 30 Years	188465(4.2%)	71719(4.2%)	260184(4.2%)
Above 30 Years	54302 (1.23%)	22786(1.29%)	77088(1.25%)
Total	4428164	1762680	6190844
Writ Petition	1628296	74269	1702565
Second Appeal	287871	1	287872
First Appeal	481558	263	481821
Appeal	393913	722019	1115932
Case/Petition	372703	195627	568330
Revision	83658	239070	322728
Reference	3630	524	4154
Suit	31202	4	31206
Review	22100	26	22126
Application	447479	415960	863439
Cases Instituted in Last Month	80110	60324	145245
Cases Disposed in Last Month	61270	51071	120228
Filed Cases By Senior Citizen	539780	171621	711401
Filed Cases By Woman	328268	86346	414614

CHART WITH REGARD TO THE PENDENCY OF CASES IN SUPREME COURT



The aforesaid data shows a galloping pendency of criminal cases across all the courts in India. **I am not aware if the Government of India has conducted any study on the impact of new criminal laws on the backlog of cases. If there is any, the same is not available in the public domain. It is requested that the same may kindly be made available to me.**

Also, no efforts have been made to the best of my knowledge to upgrade the infrastructure of the existing judicial system or to sufficiently

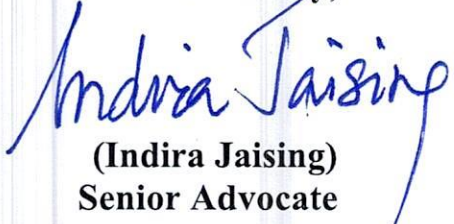
train the courts including the Magistrate Court, Sessions Court, High Court, and the Supreme Court of India on how to deal with the vexed constitutional issue of retrospective application of the new laws and speedy access to justice. We as lawyers are aware that substantive criminal law cannot be applied retrospectively whereas the procedural law may apply to a pending case depending on whether or not prejudice will be caused to the accused. In every single pending case, the question will arise which law will apply in a particular case. This is quite apart from the question of challenge to the constitutionality of several provisions of the three new criminal laws, which is looming large in people's minds. I am, however, making no comments on this aspect because these are questions for the judiciary to decide.

It is under these circumstances that I write to you with an earnest request to delay the implementation of the aforesaid criminal laws until all stakeholders including the judiciary at all levels, the investigative agencies, the state government, the union government, and the citizenry of this country have an opportunity to debate and discuss the implementation of these laws and its implications on access to justice.

We, the people of India, have confidence that you will understand our concerns and address them promptly so that the Damocles sword hanging on us does not fall on the nation on July 1, 2024.

With regards,

Yours sincerely,


(Indira Jaising)
Senior Advocate

Copy to:

- 1. Hon'ble the Chief Justice of India, Supreme Court of India, Tilak Mark, New Delhi- 110001**
- 2. Hon'ble Union Home Minister, North Block, New Delhi- 110001**
- 3. Hon'ble Chief Justices of all the High Courts.**