



How To Speed Up Judiciary

Let's make India's slow courts, currently exacting an enormous human and economic toll, world class

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The order for arrest of Justice Karnan, as well as that even the extremely high profile Nirbhaya case took more than four years to resolve, are pointers to India's larger judicial crisis. About three crore cases are currently pending in various courts of India. According to an analysis, if the nation's judges closed 100 cases every hour without eating or sleeping, it would take more than 35 years to catch up. 57% of district and subordinate court cases take more than 10 years to dispose of.

India ranks 178th among 189 countries on the Enforcing Contracts indicator, making it one of India's worst performing indicators in World Bank's Ease of Doing Business study. This largely accounts for India's overall poor ranking and has acted as a major barrier for investments to India.

Chief Justice Khehar's call for judges to give up five days of their summer vacation for the sake of the nation could not have been more timely. In fact, one wonders why the judiciary has a summer vacation at all.

The glut of cases in the lower courts is where the root of the problem lies. Most importantly, we need to acknowledge it and monitor it on a continuing basis. We need to have access to high resolution data on judicial processes at both the high court as well as the lower court level. A number of courts do not have data under the "Date filed" column, the most crucial piece for identifying delays.

The quality of data is circumspet and is non-uniform between courts, which use different abbreviations, categorisation, and formats which makes comparing data between courts an arduous and costly process. Significant progress has been made towards computerisation of courts. However, computerisation must include within its ambit the standardisation of data collection across courts and not merely computerisation within silos.

Allahabad high court has an average of 77 hearings per judge per day whereas



Calcutta high court does 148 hearings. No judge specific metrics are available. If we even had simple metrics like frequency of case disposal per judge or categorisation of subject matter with respect to judges, a great deal of accountability and trust would be brought into the system.

The collegium would have more data points to objectively decide on elevation of judges. The CJI's office and high courts should have a live dashboard which can update them on the performance of the high courts, justices, and the aggregated data of the lower courts, with simple colour coded markers for the various KPIs.

New technology should be leveraged, and not just technology for data collection. Artificial Intelligence is fast maturing and with further advances in machine learning, standardised data collection can assist judges in forming judgements. A software developed by Nine Research Institute in China helped 300 judges handle 1,50,000 cases, reducing their workload by a third.

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Today, civil society is increasingly inclined to blame judges alone for delays. This is unfair. The office of a judge of the Delhi high court was barricaded by lawyers because he imposed costs on flippant requests for adjournment! Lawyers, who charge per appearance have a vested interest in getting repeated adjournments so that cases can drag on further. Video conferencing is statutorily provided but rarely available in practice and infrequently used even if available. Accountability needs to be fixed on individuals causing repeated delays in dispensing justice.

The time taken for the disposal of cases is also widely divergent across different categories of cases. According to a report

by DAKSH, the number of steps required to decide a Civil Revision Petition are not fewer than those needed for Civil or Criminal Appeals. However, Civil Revision Petitions are decided on average in 77 days at Bombay high court whereas Civil Appeals take 2,303 days on average. This suggests that case management in procedure law in India needs to be overhauled.

"Case management hearings" should be introduced after pleadings have been completed by both parties where timelines are set and the court should impose sanctions against parties that fail to adhere to these timelines. Also, we should have a consolidated "Adjournment Manual" applicable across all courts which codifies the conditions under which adjournment should be granted in order to reduce arbitrariness.

Economic uncertainty in decision making is further compounded by periodic encroachment by the judiciary in the domain of the executive. Two recent examples are the high court of Tamil Nadu asking the state government to waive farmers' loans and the highway liquor ban imposed by the Supreme Court. The short term perspective furthered by these encroachments is severely impacting long term predictability, consistency, and clarity of policies. In several cases they involve livelihood losses for citizens who are not even a party to the case.

To substantially de-risk investments into India, we need to quickly operationalise commercial courts in Delhi and Mumbai as a first step and update the rules of procedure for commercial cases to reduce the backlog of these cases and to improve India's rank in the "Doing Business" report of the World Bank.

The high pendency in courts can decline only with effective measurement, process overhaul, constant feedback, and by equipping the judiciary with technology and modern tools. This alone can enable the emergence of a new and modern judicial system with the capacity to dispense justice speedily - for, as we all know, justice delayed is justice denied.

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