



REVIEW ARTICLE

INNOVATION PROPOSAL TO REDUCE MONUMENTAL BACKLOG OF CASES ACROSS THE INDIAN COURTS

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High Pendency of Cases Plagues Judiciary- H.L.Dattu, Former Chief Justice of India

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ABSTRACT

The conventional system of justice delivery is deeply flawed; as a result of which there is a backlog of pending cases in the Indian Courts. The judicial infrastructure is inadequate and is on the verge of a collapse. The question of delays in the Indian legal system has been the subject of a number of research initiatives. However, these reforms have not been able to keep pace with the growing pendency. The reason is that reformers have focused on the factors traditionally blamed for the delay without paying any heed to political-economic analysis. Marrying the conventional wisdom with the pragmatic approach, the author has concluded an imperative innovative mechanism to cater to the needs of the society.

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INTRODUCTION

The most challenging problem facing the administration of justice in India is the backlog of cases and the resulting delay in their redressal, which not only tarnishes the stature of the Judiciary but also impoverishes the Country socially and economically. Frustrated by long waits, parties lose confidence in the Judiciary and resort to corruption and violence, thus giving rise to the vicious circle of more litigations and more case load. High pendency dilutes the fear of deterrent punishments under the law of the land, giving rise to the instigators who ruin the peace and tranquil functioning of the Country. Obscure life span of litigation in India dissuades foreign investment and deters the proposition of 'doing business in India'. Businesses and credit markets hesitate to partner with new enterprises fearing 'delayed justice' in the event of a contractual dispute. Thus, court delays are expensive for both the party and the society as a whole. In the bigger picture, due to grave number of pending litigation, the Democracy (which relies on the adequate functioning of the Legislative, Executive and Judiciary) stumbles creating an opportunity for corruption, turmoil and unrest in the Country. The question of delays in the Indian legal system has been the subject of a number of research initiatives. However, these reforms have not been able to keep pace with the growing pendency. The reason is that reformers have focused on the

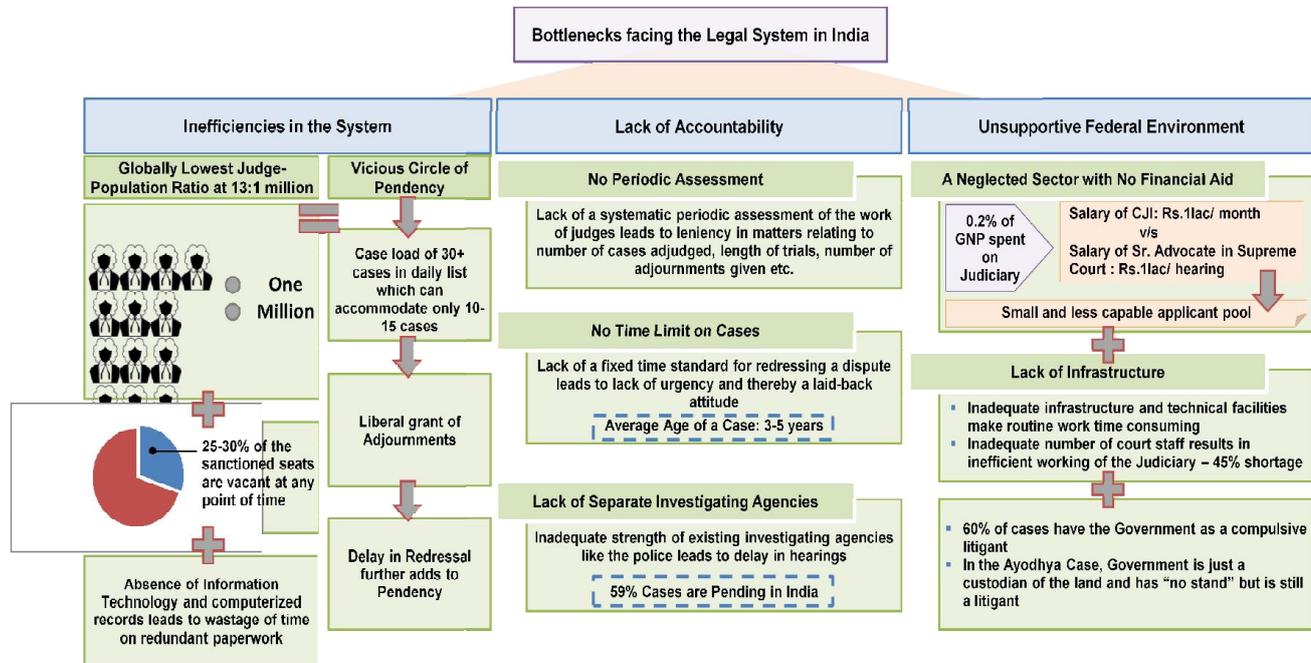
factors traditionally blamed for the delay without paying any heed to political-economic analysis. Marrying the conventional wisdom with the pragmatic approach, following have emerged as the bottlenecks for the grave pendency in litigation. Despite of substantive efforts to address the chronic and monumental problem of backlog of cases judicial reforms have failed far more often than they have succeeded. The traditional prescription for reducing delays called for technical fixes: hiring and training more judges and support staff, setting up specialized courts, introducing computer and information technology, and reforming procedures. Whereas, the traditional fixes are crucial, there was no heed given to the possibility of looking behind the formal structure of the courts and to examine how judges, lawyers, and clerks work together to conduct the courts' business and how their interests and incentives interact – in other words, a political-economy analysis. After objective and critical analysis of the position of Judiciary in Indian demography, deep study of judicial reforms in other geographies and recommendation of various Indian committees and a pragmatic approach towards its execution, the following recommendations have emerged as Noah's arc:

Overhauling the Judicial Machinery

Making Judiciary an attractive career option

- Incorporation of 'All India Judicial Services' to make a transparent entryway to the Judicial system

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- Making salary and emoluments industry-wide competitive
- Increasing the retirement age of High Court judges from 62 to 65 years, at par with the Supreme Court
- Regular training and orientation of the judicial officers

- Targeted distribution of judges to areas with the highest arrears

Improvement in Judicial Infrastructure to reduce Delays

- Allocation of adequate budget and financial aid by the Government and granting financial autonomy to the Judiciary
- Creation of Special Courts which club disputes of similar nature – eg. Traffic / Police *challan* cases (making 28% of pending cases), land revenue cases (contributing to 22% of pending cases) etc.
- Complete digitization and computerization of courts to ensure smooth, efficient and accurate maintenance of records
- Ensuring restatement of laws and on-the-spot precedents to be made readily available during court proceedings
- Establishment of additional buildings, physical facilities, updated library and an efficient security system
- Appointment of Desk Judges to study and eliminate non-compelling petitions

Innovative Mechanisms to enable better Administration

- Fast tracking cases related to women, children and senior citizens
- Institution of e-filing in order to save time and fasten execution
- Existing court be made to function in two shifts – morning & evening
- Magistrate to hold courts in jails for undertrials (75% of total prisoners) involved in petty offences
- Pre-trial proceedings to encourage narrowing down of specific issues of trials in order to save time
- Institution of Legal Literacy Camps and Legal Aid Clinics for redressing petty legal issues at bud stage

Strengthening Alternate Dispute Resolution System

- Enactment of the Arbitration & Conciliation (Amendment) Ordinance, 2015 without delay
- Statutory Arbitration for certain cases, like contractual disputes, motor accident claims etc.
- Setting up of Mediation Centre (which have a settlement rate of 26%) in every High Court
- Setting up of a permanent Lok Adalat in every state as 42% of pending litigation involve disputes over public utility services
- Institution and encouragement of Gram Nyayalaya to dispose cumbersome village litigation matters
- Training to be provided to prospective mediators and conciliators by the Bar Council

Strict Vigilance on the various Stakeholders of the Judiciary

- Periodic assessment of judges and basing promotion parameters on the number of quality and mutually agreed judgments delivered
- Rewarding judges, judicial officers and lawyers for dispatching cases expeditiously
- Penalties and costs to be imposed on advocates and parties seeking unreasonable adjournments or making frivolous motions or appeals
- Institution of an independent wing of Police (under the direct control of Judiciary) with special officers acting as watchdogs
- Execution of 'Case Management System' and regular assessment of performance of the courts to improve efficiency

Suggested Amendments to Legislation and Codes

- Formulation of 'Code of Compulsory Costs' on vexatious litigations and inclusion of the Government under its purview

- Implementation of 'National Litigation Policy' to reduce Government litigation (largest litigant)
- Execution of 'National Arrears Grid' to keep a check on arrears and intervene whenever the need arises
- Stay orders to be decided within 6–12 months by the court where the case has initiated

Policy proposals are the golden pages which adorn deliberations and research but are as good as paper scraps if not executed and implemented. The biggest hurdle in carrying out the above mentioned recommendations is the absence of strong leadership and lack of personal accountability, which is not only the onus of the Government but also of the three major groups of actors in the system – judges, lawyers, and court staff/process servers. A strong leadership from the Government under which Judiciary is not neglected and the reform-minded senior judges, unscrupulous judicial officers and responsible advocates and parties can not only help arrest the impending delays but also help Judiciary deliver better. Pressure from civil society, the media, and others outside the judicial branch will prove to be the sandalwood log for 'in the doldrums' Judiciary. We live in interesting times, where platforms, like International Innovations Corps (IIC), for change makers are available. I, as a significant member of these platforms, considering IIC, and a qualified advocate will not only research further on the root causes of the pending litigation and study the other geographies for recommendations, solutions and best practices but also play a key role in bringing about legal awareness amongst the masses, through legal literacy camps and by writing easy to comprehend handbooks about various laws. Legal awareness not only helps to reduce frivolous litigations from reaching the courts but also makes the social structure of the democracy executionable. Law is an important instrument of society and political change. For the Rule of Law to be a reality and to maintain the faith of the society in the legal system there is an urgent need to reduce the pendency of cases in the courts and also to reduce the average life span of litigation.

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