Vol. XXXV No. 1 January-March, 2016

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COMMON CAUSE VISION

An India where every citizen is respected and fairly treated

MISSION

To champion vital public causes

OBJECTIVES

To defend and fight for the rights and entitlements of all groups of citizens

ARE WE LIVING IN A JUST SOCIETY?

Justice precedes all other values that we the people of India solemnly secure in the Preamble to our Constitution.It is not that the other values are less significant but the fact is simply this: Justice is the bedrock of democracy because injustice causes cynicism and alienation which eventually erode the society's sense of liberty, equality and fraternity.

Justice reinforces democracy and a just society is where the state institutions are fair, objective and impartial. By that logic every excessive police action or serious inaction, every preventable calamity, and every avoidable war is an act of injustice. A microcosm of our challenges is reflected in India's ongoing drought and drinking water shortage in several States. Every death attributable to shortage of safe water or its procurement is an act of remediable injustice to millions. It shows how water touches the lives of the rich and the poor differently and how poverty and discrimination are the biggest barriers to access to justice.

So, are we living in a just society? We at Common Cause believe that the answer to that question need not depend on who is asking because the citizens' access to justice must not hinge on the caste, class and power hierarchies. We know that the people are prepared to swallow some injustice for some time provided things are seen to be moving in the right direction. But it is no secret that the citizen's access to justice is becoming more and more illusionary in the world's largest democracy.

It was exactly this point that the Chief Justice of India, Justice T S Thakur, was making when he broke down in the presence of the Prime Minister. His point was that the efficacy of the judicial system was vital for the country's future, its growth agenda, and investment climate. But nothing is being done to fix India's collapsing judicial infrastructure, he told a conference of the State Chief Ministers and Chief Justices of High Courts. The Law Commission had recommended in 1987, the CJI pointed out, that the judges' number must be scaled up from 10 to 50 per million people which meant 40,000 more appointments of judges.

Today we have 13 judges per million population compared to about 50 in developed world. Worse still is that rather than aggressively creating new positions we are creating a backlog of existing positions. That is a double whammy for the district and subordinate courts where 21.8 million cases were pending until the last month, 58% of them for over two years, according to government figures. (The corresponding figure in the poorest states like Bihar, Uttar Pradesh and West Bengal ranges between 65% and 74%)

Obviously India's judicial gap is widening despite an ambitious E-Courts programme launched in 2007 as a Mission Mode Project (MMP). It involves creation of an ICT environment for making the outmoded judicial system smart, productive and user-friendly. Even though some progress has been made, the MMP is floundering at best. The programme takes special care to keep out India's nifty tech companies famous for giving global competition to the Western IT giants. Having missed many deadlines, the MMP has embarked on its second phase worth over Rs 1600 crore without a satisfactory closure of the first phase.It is official that at the end of the first phase judicial pendency and delays have gone up rather than coming own. The upshot of business-as-usual could be both dangerous and tragic for India's rule of law.

This issue of Common Cause journal is dedicated to common litigant's access to justice, particularly with the aid of better technology and systems, and is curated by Pallavi Sharma. Please write in to us or share your views via email, feedback@commoncause.in. Our team received very good feedback for the last issue on the Right to Education and we look forward to hearing from you again.

Vipul Mudgal

THE DIGITAL PILL FOR JUDICIAL MALADIES

Let's welcome ICT as a tool for judicial reform

By Pallavi Sharma*

We are in an age where we may delay our exposure to technology, but cannot evade it. Digital innovations and the ICT have revolutionized our interactions and altered our perceptions of distance and time. From virtual classrooms to electronic banking to tele-medicine, technology has made workflow efficient, more capable and transparent. But when it comes to the delivery of judicial services, we are still struggling.

Our judicial system today is crumbling under the pressures of increasing litigations, delay in disposal and a mounting backlog. Exacerbating the condition are the ageing, mostly manual, processes and practices of justice delivery followed in our courts. The overwhelming part is played by the discretion of lawyers, judges and court officials in deciding how fast or slow a case moves.

While ICT may not be a panacea for all ills, it could be our most viable option to reform the justice delivery system. Besides, automation of court processes and limiting the role of discretion is bound to improve the accountability of the system. Even something as simple as payment of court-fee online and accessing all pleadings and orders of one's case with an auto-generated unique id can go a long way in empowering the litigant and holding the lawyers accountable. Paperless filings and online certified copies of orders can further reduce the cost of litigation.

Simple facilities like dictaphones for judges, video recording and live streaming of hearings can revolutionize the system. Automation of cause list can make unjustified delays visible. E-delivery of summons and e-notification of upcoming hearings can further narrow the scope of unjustified adjournments.

As India is in the middle of a Digital Revolution tablets are replacing paper in the Parliament and e-governance is emerging as the mantra for the Executive. It is time the third pillar of democracy caught up with the rest. This special issue of Common Cause explores the immense possibilities that technology presents through the lens of all the key stakeholders, judges, lawyers, court officials and the common litigant.

The opening article is by Justice (Retd) G C Bharuka who was the first chairperson of the E-Committee of the Supreme Court of India. An authority on the subject, Justice Bharuka has authored numerous reports, papers and books on related themes. In his article, he walks us through the history of ICT implementation in the judiciary and the inception of the E-Courts project. Alok Prasanna, of Vidhi Centre for Legal Policy, discusses in depth the difference between pendency and delays. The issue also carries insights by Kavya Murthy and Ramya Tirumalai from DAKSH Legal, who go on to highlight the utter disarray of judicial data and expose the defects in judicial data management systems.

Indira Unninayar, a public spirited advocate, takes us through her perspective on video recording of court proceedings and shows how it can work wonders. Swapna, our Senior Legal Consultant, recapitulates the reports and suggestions by Law Commissions, courts and governmental committees to create the big picture of the reforms so far. In the end, our Senior Research Analyst, Anumeha, presents a slice of life from the ambitious 'Gram Nyayalaya' scheme, which is nowhere close to meeting its objectives.

It is our belief that in the wake of this digital revolution where internet users in the country have increased by nearly 49% percent over the last year to nearly 40 crores, the process of judicial reform cannot be imagined in isolation. We understand that technology may come with its own set of flaws but for all its pitfalls and expenses, it is the only viable option for a fast modernizing nation.

Pallavi is a legal consultant with Common Cause and is pursuing Master's in International Human Rights Law at University of Oxford.

TECHNOLOGY AND TIMELY JUSTICE

Intelligent use of ICT can revamp the Indian justice delivery system

Dr. Justice G.C. Bharuka*

It is now internationally accepted that the use of Information and Communication Technology (ICT) is one of the key elements to significantly improve the administration of justice. The rapid developments in technology have opened up new opportunities that were unthinkable a few years ago. It is now well established that use of ICT in judicial systems can enhance efficiency, improve access and encourage timeliness, transparency and accountability[1].

Automation of processes, increased transparency across levels and effective supervision and control may also help in eradicating corruption to a large extent. Keeping in view these aspects, almost all the countries in the world, including India, have made necessary amendments in their procedural and substantive laws to accommodate technology in their judicial systems.

The World Bank in its report on "Court Performance around the World' has said that "an effective, accessible justice system should provide justice and fairness to litigants with reasonable cost and speed, in a transparent and responsive manner and with as much certainty as possible"[2]. According to this report, efficacy of justice system has a direct bearing on development and good governance[3]. Speedy justice has also been recognized as a fundamental right under our Constitution[4].

It is indisputable that the Indian judiciary is in urgent need of enhancing its efficiency, accessibility, affordability, transparency and above all timeliness, without compromising on the quality. In order to enhance the judicial functioning of Indian judiciary, an investment of more than Rs 800 crore has been made in the last one decade towards ICT enablement of judiciary, but except dumping hardware in already crammed court halls, nothing more has been achieved in the true sense. The following section critically assesses the possible causes of this failure and suggests remedial measures.

1. Chronic Problems with the Indian judicial system

Judicial delays coupled with other deficiencies of judicial system and administration of courts has always been a matter of concern in India. Even in 1950s, the then Prime Minister, Jawaharlal Nehru, had expressed sorrow on this state of affairs and pleaded to make determined efforts to speed up the rusted and outmoded judicial machine[5]. In 2001, expressing its concern in this regard, the Supreme Court, in the case of *Gaya Prasad,* had observed,

"… the time is running out for doing something to solve the problem which has already grown into monstrous form. If a citizen is told that once you resort to legal procedure for realization of your urgent needs you have to wait and wait for 20 to 30 years, what else is it if not to inevitably encourage and force him to resort to

[1]Report of European Commissionfor the Efficiency of Justice on "Efficiency and Quality of Justice", Ed. 2014.
[2]Marina Dakolias , Court Performance around the World A Comparative Perspective, World Bank Technical Paper No. 430, 1999, http://bit.ly/22H7Vjn
[3]Ibid.
[4]*Subrata Chattoraj v Union of India*, (2016) 2 SCC 1
[5]Times of India, March11,1959, p.6

extra-legal measures for realizing the required relief. A Republic governed by the rule of law cannot afford to compel its citizens to resort to such extra-legal means which are very often contra-legal means with counter-productive results on the maintenance of law and order."[6]

In 2002, the report of the National Commission to Review the Working of the Constitution[7] had similarly remarked that, "About half a century of the Constitution at work has tossed up many issues relating to the working of the judiciary." It notes gravely that,

"particularly disturbing has been the chronic and recurrent theme of near collapse of the judicial trial system, its delays and the mounting costs. The glorious uncertainties of the law have frustrated the aspirations of an equal, predictable and affordable justice."

From the justice seekers' perspective, the situation has further deteriorated with added allegations of mounting corruption in judicial functioning. It appears that the Indian judicial system is showing signs of becoming an unscrupulous industry meant more to exploit the people seeking justice than to provide them with speedy and cost-effective relief.

2. Judicial Processes and Management

The gradual deterioration in the functioning of the Indian justice delivery system was for the first time voiced in the LokSabha on 19th November, 1954 through a non-official resolution. This led to the formation of the Law Commission of India. The Commission consisted of 11 members, all of outstanding legal knowledge and experience. Sri M.C. Setalvad, the then Attorney General for India, was appointed as its Chairman. After making an in-depth study about the functioning of the judicial system, it submitted its Report to the Law Minister of India on 26th November, 1958. The Report addressed in two volumes, the complexities of Judicial Processes and Judicial Management respectively that contributed to delays in access to justice.

(I) Judicial Processes

The Commission had, while negating the plea that the complexity of the procedural laws were the primary cause of judicial delays, said that the delay resulted not from the prescribed procedure, but for non-observance of many of its important provisions, particularly those intended to expedite the disposal of proceedings. According to the Commission:

"The view which attributes the delay mainly to the cumbersome procedure fails to take into account numerous extraneous and personal factors responsible for the delays like, an inefficient and inexperience judiciary, insufficient number of judicial officers, and incompetent and corrupt ministerial and process serving agency, the diverse delaying tactics adopted by the litigants and their lawyers, the un-methodical arrangement of work by the presiding judge and the heavy file of arrears.[8]

Notably, nearly two decades later, the 77th Report of the Law Commission resonated with the14th report, and stated that certain sections of the Code often left unenforced were those that provided the presiding officer the authority and discretion to expedite the onward flow of a case.[9]

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[6] *Gaya Prasad v. Pradeep Srivastava*, (2001) 2 SCC 604, pr.19
[7] Forwarded to the Prime Minister of India on 31 March 2002
[8] 14th LIC report,1958 at p.263
[9] Chapter 4 – 7 (1978)

(II) Judicial Management

Chapter 10 of the 14th Report was devoted to "Supervision and Control of Subordinate Courts". The Commission, based on available empirical data, concluded that, "… when adequately supervised, the courts in our country can under the existing procedure, dispose of proceeding expeditiously". The Commission further observed that the failure of judicial administration had occasioned because of unsystematic and dilatory methods of work. It suggested that the defects were capable of being remedied by the exercise of continuous vigilance on the part of the superior courts - which would ensure the adoption of proper methods of work.

The Commission, therefore, considered good and scientific management to be of paramount importance for increasing the efficiency in the judicial system.

Justice Krishna Iyer had also endorsed this view in his book "Justice at Crossroads"[10] and considered managerial overhaul of the judicial process the need of the hour[11]. He noted that the common man was overawed by the judicial process as "riddle wrapped in a mystery inside an enigma, with its baffling legalese, lottery techniques, habitual somnolence, expensive proclivities, multi-deck inconsistencies, tyranny of technicalities and interference in everything with a touch of authoritarian incompetence."

He further pinpointed the managerial incompetence of judges and courts as one of the primary reasons for such a crisis. To quote him:

"Management incompetence is writ so large in the system that a grocer's shop is better managed than a munsiff's court and a business house has infinitely superior management skills than High Courts and Supreme Court. Of course, judges, wise in other ways, are infants in judicial business management."[12]

According to him, "The call for overhaul must cover management of courts, research and development in justicing processes and projects prepared by a high-powered Judicial Planning Commission".[13]

Over the course of time, our policy makers have by and large ensured the implementation of all the suggestions relating to manpower, their strength, perks, salaries, training and infrastructural requirements. However, finding out appropriate methods and means for exercising effective control and supervision over subordinate courts and creating management tools by harnessing best of the present day technology has not been given the attention they deserve.

At this stage, it is necessary to notice that presently, there are about 15,000 district and subordinate courts located at almost 3000 towns across the length and breadth of the country. 24 High Courts supervise and control the subordinate courts under their jurisdiction, strangely adhering to the age-old manual methods, which have proved to be more ceremonial than of any effective use in terms of speedy and quality justice.

3. Lack of Judicial Data required for Management and Policy Making

Timely justice means resolution of a dispute of any nature within a set time frame. This requires framing of policies and its effective implementation. Judicial administration in the country is finding it difficult to devise

[10] Deep and Deep Publications,1992
[11] ibid at p. 151
[12] ibid at p. 150
[13] Ibid

and implement the required policies because we do not have accurate data to exactly locate the problem and frame, implement and evaluate the corrective policies.

We have two recent official reports, which acknowledge the unavailability of accurate data of actual state of affairs in our judiciary. The first is the "National Court Management System - Policy and Action Plan" of May 2011, released by the then Chief Justice of India. It notes,

"[judicial] data is manual, sometimes inconsistent, splintered and not available in real time. An accurate and complete national picture of the performance of the Indian judicial system is not readily available. It is therefore hardly surprising that there is considerable misunderstanding amongst policymakers and people at large about the performances of judicial system at the national level; and the challenge it faces."

The second is the Law Commission report of July 2014 on "Arrears and Backlog: Creating Additional Judicial Manpower". It says,

"For arriving at informed understanding of the problem at hand and for making any meaningful suggestion(s), to deal with it, the commission requested all the High Courts to provide data on litigation in each district within their jurisdiction. Some very useful data was produced. However, most High Courts due to variety of reasons could not fully provide the data/information sought".[14]

4. Infrastructural Requirements

As per the information available on the website of the Department of Justice, as on June, 2014, there were 15,419 court halls / court rooms available for district and subordinate courts. In addition to these, 1003 court rooms were available in rented premises. Comparing these figures against the working strength of about 15,634 judges as on 31st December, 2014 reported by the High Courts, it is noted that adequate infrastructure is available for the current judicial manpower. Further, there are about 2,251 additional court rooms under construction in States and UTs to take care of the increase in working strength of judges in district and subordinate courts on account of filling up of vacancies. The data, however, shows that the number of residential units presently available for judges is below the current working strength of judges. This issue is being remedied through the construction of additional residential units.

5. Requisites for Enhancing Judicial Performance

In America, from the beginning of the court reform movement in the twentieth-century until 1970s, efforts to reduce delay were focused on court structure, court resources, and rules of procedure - issues that arose from the cognitive framework of judges, law professors, lawyers, and legislators.[15] In 1973, at the initiative of the American Bar Association, the concept of case-flow management was developed for redressal of judicial delays. The value of this concept was confirmed in a study in 1977 by analyzing the US District Courts data. The Law Commission of India[16] had reached similar conclusions on analyzing causes of judicial delays in Indian context:

[14]Law Commission of India, Report No. 245: Arrears and Backlog: Creating Additional Judicial (wo)manpower, July, 2014, p.1
[15]Caseflow Management by David C.Steelman at p.xv
[16]Law Commission of India, Report No. 245, supra 15

A. Management of Courts and Cases:

Article 235 of the Constitution of India provides that the control over the district and subordinate courts shall be vested in the respective High Courts. This constitutional requirement is principally exercised by the High Courts in the following ways:

(i) Submission and scrutiny of periodical returns;

(ii) Inspections;

(iii) Appraisal of the quality of work of the subordinate Courts at the time of the hearing of appeals, revisions and other proceedings by the superior courts

This age-old method is still being followed. The High Courts till date secure periodical returns from the subordinate courts by seeking information in prescribed forms relating to incoming and outgoing of cases, their age, nature, case progression, work done by the individual officers, judicial hours consumed, under trial prisoners, about cases involving senior citizens, women, scheduled caste and schedule Tribes, children, anti-corruption cases and the like. This information is necessary for taking policy decisions for overall improvement of administration of justice. The entire process is manual, that is, prepared on paper and communicated through post or special messengers. The entire process can be automated by capturing the relevant data at source and communicated in digital form in desired formats on real-time basis.

B. Technology for Timely Justice and Effective Management

Keeping in view the findings of the expert studies following ICT-based systems/sub-systems are required to be developed for providing timely Justice and an effective management and control of subordinate courts,:

(1) Stage wise case progression tracking system - from initiation in finalization

(2) Case flow management system

(3) Adjournment tracking system

(4) Punctuality enforcement system

(5) Judicial hours management system

(6) Interlocutory applications management system

(7) Cause list management system

(8) Rate of case reduction management system

(9) Automation of registry level processes

(10) Automation of registers, periodical statements and returns

(11) Intelligent systems for capacity building of judges

(12) Online automated auditing system of judicial performances

By use of the present-day technology, the above systems can be conveniently developed to optimize the functioning of the Indian judiciary to facilitate litigants' access to justice. In order to achieve this, the system analyst must have a complete understanding of judicial processes, its complications, behavior of its internal and external users, the external interacting agencies and most importantly, the requirements of justice seekers apart from an expertise in development of the ICT infrastructure.

6. Technology in Indian Courts

Use of technology in different jurisdictions of the world including India had started in 1990. At that time, it was at its infant stage. In India, we started with preparation of automated cause list in Patna High Court. Gradually, with its growth, progressively its use was explored and applied to automate more functions/ processes. Over the years, similar exercises were taken up in the Supreme Court and other High Courts in India. Subsequent to my transfer from Patna High Court to Karnataka High Court in 1994, we successfully used technology for automating/digitalizing all the judicial processes, from initiation of the cases to grant certified copies.

Towards the end of 1998, the Karnataka High Court hosted its website publishing its cause list, information about case status, judgments and orders and the status of certified copy applications. In 1999, ICT enablement was taken up in all 600 district courts and subordinate courts in Karnataka and accomplished by 2003. For this purpose, user-friendly software was developed in the High Court itself by employing two young software engineers on its rolls. It was named "Litigation Management System (LMS)". The results were very encouraging.[17] It was based on my research project undertaken for analyzing the causes of judicial delays. It became an inspiring example for other states as well.

7. Genesis of E- Courts Project

Supreme Court of India felt that the Karnataka experience should be used to optimize the judicial functioning across the country with central funding. The then Chief Justice of India Mr R C Lahoti, made a proposal to the Central Government on 5 July 2004 for Constitution of an E-Committee for preparing a national plan and implementation strategies. Consequently, by a notification dated 24th Dec. 2004, the said committee was constituted with the author as its Chairman and three specialized members. The National policy and Action plan prepared by the E-Committee[18] was approved by the Chief Justice of India on 1st August, 2005.The requisite funds were sanctioned by the Union Cabinet after a prolonged procedural exercise in February 2007 and the National Informatics Centre (NIC) was appointed as the implementing agency of the project though by this time most of the ministries had started opting for "public private partnership" model. This was done despite strong objections raised by the E-Committee which found the NIC's capabilities inadequate to run such a project, as established by the failure of earlier three similar projects[19] entrusted to them.

NIC is one of the departments under the Ministry of Information Technology, manned mostly by techno-personnel. It was created in1980s as a wing of the Planning Commission to support government departments and institutions in adopting and using technology. Subsequently, it was attached with the Ministry. With the advancement of technology and its progressive use, best of the ICT manpower moved to the private sectors. Indian IT companies have earned credibility across the world for their professionalism, expertise, knowledge and commitment in successfully implementing ICT projects. From 2005 onwards, many ministries engaged in public services, e-Governance projects, and IT based regulatory measures started undertaking ICT projects on PPP models involving reputed Indian IT companies. The results were encouraging with successful PPP models running to provide public services including in passports, railways, company affairs, aviation, banking among other sectors. Despite success stories of the PPP model, the Department of Justice, whose main function is to promote the justice sector and to protect the interest of justice seekers, agreed on appointing the NIC as the implementing agency for the ambitious E-Courts project.

[17]See Chapter 9 of Author's Book "Rejuvenating Judicial System Through E-Governance and Attitudinal Change"
[18]See website of Supreme Court of India
[19]District courts on computerization project 1997, Metro Cities court computerization project 2001 and capital cities court computerization project,2002.

Many countries around the world have secured remarkable success in deploying ICT in their court systems for providing timely and optimized services to the court users. However, in India, the litigant public is still crying for timely justice despite significant investment in ICT enablement of judicial process and India's acclaimed IT expertise. Independent enquiries will show that in the past, the only interest of the NIC had been to buy and flood the court halls with hardware and some nominal software which has failed to deliver the desired result.

The Central Government has recently released an additional assistance of Rs. 1670 crores for spending on ICT implementation in the subordinate courts in India[20]. A close examination of the sanction order, available on DOJ's website, reveals that it is like reinventing the wheel. It is interesting to note that these fresh funds have been approved for the second phase for similar works, items, etc. for which funds had been approved and spent for the first phase of the e-courts project.

Again, the process of further flooding the court halls with additional hardware, undertaking process re-engineering exercises and other redundant steps have been proposed. At least, the renewed (proposed) exercise should be allowed to be undertaken after thorough examination by independent experts. For connectivity, no money should be wasted on creating local area networking (LAN) and wider area networking (WAN), since now, internet connectivity with Wi-Fi facilities is the most effective means of providing seamless connectivity. The core banking, passport services, railways, and income tax are good examples of smart use of Internet-based cloud computing.

I have no hesitation to say that NIC has taken the judicial system and its processes casually. It is globally accepted that courts present a highly structured environment from the technology point of view. The processes are defined by laws and regulations and with constitutional parameters, requiring the ICT architecture to be strictly in conformity with the judicial standards. In India, our judicial processes are governed by two procedural codes enacted by Parliament. These Codes along with the practice and procedures laid down by the High Courts, if broken into systems and subsystems for development of an effective software, may add up to several hundred services. Additionally, any software solution developed for judicial processes should be capable of tracking and handling the delay drivers.

It was incumbent on the NIC that at the very threshold they should have documented the process mapping and the required process re-engineering adhering to the procedural laws and well-defined objectives. This was never done. Instead, ignoring all these requirements, they made out a list of haphazardly selected 52 services out of which they have been able to provide only eight, that too in a half-baked manner. It appears that they have comfortably taken benefit of ICT ignorance of both the administration and the users. As a result, the only sufferers are the taxpayers and the helpless litigants. The countrywide "Nyaya Yatras" taken out by the citizens for speedy justice and continuous "dharnas" held for eradication of corruption in subordinate courts have all fallen on deaf ears.

The Questions

It is befuddling that despite lapse of more than 15 years and spending of hundreds of crores on technology upgradation in the Indian courts, litigants have not been provided an ICT environment as is available in many parts of the world. The sluggishness in implementation of the project makes one wonder if our efforts are but of cosmetic value to convince the litigants and public at large that "something is being done" to provide timely justice, or whether technology truly has the potential to remedy the needs of litigants crying for timely and hassle-free justice.

[20]F. No. 15018/3/2014-Jus-1I, Ministry of Law and Justice, Department of Justice, 4th August 2015

It is high time that a socio-economic audit of the outcome of these efforts is made in India in terms of timely justice, affordability and cost effectiveness. We should re-evaluate the policy with an open mind and seek alternatives for efficient and speedy implementation. In this regard experience of other ministries in the implementation of e-Governance projects may be of great value.

Suggestions

To my understanding, given the pattern of governance in India, the bureaucracy has a key role in making the policies and its implementation. Therefore a lot can be achieved if the Secretary, DOJ, plays an active role in properly instructing the Hon'ble Chief Justice of India and the Hon'ble Law Minister to make the e-courts project really fruitful on a private-public-partnership basis.

I believe that the ICT architecture designed by NIC requires a thorough revision to keep up with the latest innovations. More importantly, judicial independence can be maintained only if the judiciary is empowered to own, preserve and maintain the judicial data through its own manpower. This can be conveniently done by upgrading the existing computer rooms of some of the High Courts into judicial data centers and adopting the cloud computing technology. For connectivity, all the courts can be provided with Wi-Fi facilities. All the judges have already been provided with laptops. The court staff can very well work with "tablets" with Wi-Fi facility. The judicial software application can be hosted from the High Court data centers using distributed data technologies, which can be accessed and used by all the stakeholders including judges and the assisting staff across the entire judicial sector. This will relieve the subordinate courts of the hassles of maintaining computer rooms, LAN and also the software at local levels. This arrangement can make the use of technology a boon for enhancing judicial productivity and for providing timely justice to the citizens.

I am sure that if timely decisions are taken, we will start seeing desired transformation in our subordinate courts within a year. I am saying so because by and large all the judges in the country have been provided with laptops and the necessary training for using them. According to the NIC itself, at least 13,277 courts have been fully equipped with hardware and connectivity. Substantial amount has been spent on training of the functional court staff as well. Acceptance and use of technology is no more an issue in our judiciary. Therefore, if an appropriate, customized and user-friendly software is provided in the courts through cloud technology, the dream of judicial reform will soon become a reality.

"Overcoming poverty is not a task of charity, it is an act of justice. Like Slavery and Apartheid, poverty is not natural. It is man-made and it can be overcome and eradicated by the actions of human beings. Sometimes it falls on a generation to be great. YOU can be that great generation. Let your greatness blossom."

- Nelson Mandela

**** Dr. Justice Bharuka is the Former Acting Chief Justice of the High Court of Karnataka and former Chairman, E-Committee, Supreme Court of India.***

JUSTICE SO NEAR, AND YET SO FAR…

Video recording of hearings can facilitate real justice

Indira Unninayar*

Most people go to court to resolve their disputes and to obtain justice. They hope that a judge who is a figure of authority, will hear them out carefully, understand them, piece together their tales of woe and apply the law correctly to their cases. It is with that great hope of justice, that people seek redress from courts.

However, most people are unaware that the Indian judicial system does not allow the piecing together of their story. A judge (as presiding officer of the court) only hears a case very briefly on the first date in order to decide whether to allow it to proceed or not. For on that date as on others, he/she has to deal with 50-100 other cases. If it appears that the case might have merit, then the judge 'issues notice' to the other side and proceeds to 'give a date' to list it a few months later. Thus begins a slow and painful journey with many short piecemeal hearings. Most hearings are routinely adjourned to future dates, usually with long gaps of three to six months between hearings. The stories remain untold and unheard even after the passage of several years as each hearing or 'date' is limited to a fragment of the case and these fragments remain disjointed and seldom get connected to reveal the complete picture.

Is it possible to render justice without verbatim records of court hearings?

In India, judges are tremendously handicapped by the absence of verbatim records of court hearings. They do not have the benefit of relying upon accurate and detailed transcripts of what is discussed or argued for hours together in courts. So they must rely upon their memory or sketchy notes made during the course of almost 50-100 court hearings. Records of proceedings therefore end up as very short 'one-line orders' that say "Heard. Re-notify (re-list) on ___ date" or "Dismissed". Others end up as long rambling orders or 'judgments' which are written long after the hearing, with the limited and highly inadequate aide memoires mentioned above. The result is that orders and judgments are 'versions' of hearings as perceived by judges, often ridden with errors and inaccuracies.

Judges do not, and quite often, cannot, correct their orders/judgments

Even if the errors and inaccuracies are pointed out, judges either refuse to correct them or are barred from doing so as in criminal matters. Parties have little choice but to live with the errors, or in the alternative, to embark upon the next arduous journey in 'appeal'. By the stage of appeal however, the inaccuracies become so entrenched that it becomes virtually impossible to extricate the truth. Thus, the 'errors' get perpetuated and finally become the 'truth' and justice recedes further and further away to eventually become a distant dream.

Most people are unaware that there are no verbatim records of court hearings in India

Most people are unaware that there are no verbatim records of hearings in Indian courts. They see a court-stenographer sitting through all proceedings typing all day, so it is natural for them to presume that the stenographer meticulously records whatever is said in court by parties, lawyers and the judge. However, the fact is that the court-stenographer is only tasked to "take down" orders dictated by the judge, correct them and record witness-depositions which too are para-phrased and often changed in meaning. There is nobody who records or transcribes complete court hearings.

Conduct in court and remarks made during court hearings are often deleted and most dare not point out errors or mistakes

Judges, lawyers and parties make several statements during court hearings in order to make their points or counter-points. However, most of these statements remain 'off the record' even though they ought to be an integral part of it. These remarks range from offensive ones against 'jhuggi dwellers' or 'street vendors' in general to remarks against specific individuals. To illustrate, some judges of the Delhi High Court openly describe street vendors as "trespassers", "encroachers" and "hawker-menace" even before they examine the facts of the case and their lawyer as "someone who would defend them even if they came and encroached into the judge's home". They openly espouse elitist views and say "these people dirty our cities and should not be here." Yet these very judges are allowed to preside over matters dealing with street vendors, something impermissible in law as they already carry a 'bias' against them.

When parties or their counsel make loose remarks aimed at prejudicing the judge's mind during court hearings, they are often taken seriously but the objections to their remarks are seldom recorded in court orders.

When a judge chooses to adjourn a matter, the order usually reflects that the adjournment was sought with the consent of both parties, or else simply records "re-notified" without saying it was adjourned. When a judge has already made up his/her mind even before the hearing and therefore refuses to hear one of the parties, the order still seems to indicate that both parties were heard. Most people have neither the time nor the energy, nor indeed the courage, to challenge these orders.

The impact of all this is a steady erosion of public confidence in the judicial system. The lengthy list of extraneous considerations in deciding matters such as 'apparent judge-bias', 'refusal to listen to a specific party and the overt keenness to hear the other', 'unduly short hearings of few seconds with abrupt endings because the judge loses patience', 'wilful non-application of the law', 'wilful delays or long dates to punish the side that dares question any wrong-doing in court', 'threats of contempt or jail', etc., are simply not recorded. Consequently, there is no chance of pinning responsibility and accountability of judges in conducting and managing court hearings.

The underlying philosophy of our legal system, an inheritance from the colonial system, seems to be 'the judge can do no wrong. So woe betide anyone who points out any mistake made by the judge. The Bar Council Rules of India require lawyers to "fearlessly" point out any wrong-doing in court but most lawyers would rather avoid this, as any such attempt is seen as a threat to the "judge" and the "court" OR descends into an undesirable exchange with little chance of success.

Justice is thus routinely subverted everyday, over and over again.

A simple solution

There is a very simple, swift and inexpensive solution to these problems of miscarriage of justice by ensuring a complete and verbatim record of court hearings and proceedings. This can easily be done by 'digitally video-recording' all court hearings and proceedings and making these and their transcripts available to the litigant at nominal fee. Today, sports associations record 'high stakes' events such as cricket matches facilitating both their viewing as well as prompt correction of wrong decisions. The Indian Parliament records and telecasts its proceedings making them accessible to all citizens. The right to inform and be informed are both part of the right to freedom of speech and expression guaranteed under Article 19(1)(a) of the Constitution of India, yet an exception has been made in the most fundamental dimension of our lives justice.

Three stories where avoidable injustice grew to monumental proportions

These are three stories of glaring transgressions of rights and justice. In two of them, the initial violations that brought the victims to court could easily have been set right but because they were not, they spawned multiple cases over several years. The third shows how a court has passed a detailed judgment without even alluding to the law that was invoked. All three reflect how in justice grew to monumental proportions. However, the injustices arising from court hearings might not have occurred in the first place had there been digital video records of court proceedings. Each of these three stories reveals the kind of transgressions routinely practised by our courts.

Story 1: The case of a street vendor

The first is a story of a vegetable vendor and his co-vendors who were targeted in order to keep a flourishing extortion racket going, but whom the courts repeatedly failed to protect through their inaction. Roop Singh is a street vendor who sells vegetables to earn a living. He used to sit in Harkesh Nagar, near Okhla Sabzi Mandi, New Delhi, along a narrow street about 5 minutes away from the Okhla metro station. One day the police came to him and asked him to shift temporarily ("thodi der keliye hat jaao") to allow the Delhi Metro Railways Corporation (DMRC) to complete some repair work on the road nearby. However, it transpired that that was just a ruse to swiftly run a road roller on the vending site and illegally remove en masse, 130 street vendors who had been vending there for about 20 years. The Delhi Metro with the help of the Delhi Police had tricked them, with the Delhi Municipality in silent collusion. 130 vendors who survive on street vending to feed their families and send their children to school, were removed without notice even though the law does not permit any eviction or removal of any street vendor until a survey is conducted to establish whether he/she is 'fictitious or 'real'. After that, the Delhi Municipality claimed that these vendors had never existed in the first place and denied their removal altogether. Thus, 130 vendors were tricked on the same day by supposedly responsible government officials in one swift devious stroke.

Their public interest litigation before the Delhi High Court was swiftly "disposed of" directing the victims to seek their reliefs before the officials of the municipality, the very same persons who had colluded with Delhi Metro and Delhi Police. The vendors were sent back and forth as the municipality never bothered to grant them a hearing. They got back their sites and livelihoods two years later by a chance coincidence; a strong complaint to the then Chief Minister against the municipality for dumping garbage at their vending area resulted in its swift removal to facilitate their return.

However, their woes did not end there and they had to face constant extortion and daily harassment from the Police and Municipal officials. It was on their third petition before the Delhi High Court that the court finally passed an order of 'stay' against any further harassment and extortion by the police and municipality. It had taken the court 3 long years to pass a simple order of protection, and finally, about 400 street vendors in the entire locality stopped paying bribes to the municipality and the police.

Denied of their extra income, both municipality and police joined hands and launched an aggressive attack upon the vendors and spread terror among them after attacking a sweet-seller for his alleged "illegal" construction of a 'permanent structure'. The law requires proper eviction proceedings wherever necessary but the police and municipality paid little heed to the law and instead, lathi charged and arrested several persons on the concocted ground of "defying the State and obstructing officials from performing their duty". Finally, the High Court issued notices of contempt against 38 persons including the former Police Commissioner and his subordinates, the Municipal Commissioner and his subordinates, the dalaals/touts, the MCD counsellor, etc.

However, that respite also proved short-lived. A change of the judges' roster brought the case before another bench which despite the pendency of the contempt cases, one day, suddenly dismissed the entire matter abruptly, after having barely commenced its hearing. Although 11 serious errors were pointed out in a review petition against its very short judgment passed in great haste, the court refused to correct them. The errors included wrong facts, wrong presumption of mass trespassing, reliance on old obsolete laws and acceptance of an obviously tampered and doctored CD (compact disc) prepared by the Delhi Police falsely projecting a brick structure from another place, as an illegal construction put up by the vendors. Today, after a herculean effort of 3 writ petitions before the Delhi High Court and 2 representations before the MCD, and multiple arrests on false cases, the vendors are left with little faith in the law.

Had court proceedings and arguments been recorded, there would have been an unbiased report of how the hearing took place or did not take place the day the entire case was abruptly dismissed. The vendors' rights could have been immediately restored and the judges in question could have been brought to book.

Story 2: The case of a former wife of an influential person

The second is an ongoing case where the former wife of a well-connected person is being systematically persecuted through abuse of the law and the state machinery.

A young woman's rosy vision of her husband and his family were rudely shattered within a few days of marriage when she was abused and humiliated for not bringing them enough dowry and for not compelling her father to 'gift' her husband a car. She contributed her own earnings to feed her husband and his family's never-ending demands and tried hard to make her marriage work. But it was very difficult with a husband who stood by and watched silently as his father verbally abused his wife or flung at her, the hot food that she had painstakingly prepared for the family. When she sought his support, her husband would taunt her saying there was nothing she could do against him or his family as they were all very "well connected." Despite being mentally harassed and physically abused by her in-laws, she was forced to continue supporting her husband and his family until one day, after three years of this highly abusive marriage, she was unceremoniously told to pack her belongings and leave her home. She sought protection from the police against her husband and in-laws, as, apart from her own safety, she feared for the safety of her elderly parents and friends who had lent her their support. Having been looted of her family heirlooms and valuable jewellery worth lakhs of rupees by her husband and in-laws, she was constrained to file criminal cases against them under S 498A and S 406 of the Indian Penal Code (IPC) on counts of cruelty, dowry and criminal breach of trust. She also sought urgent orders of protection under the Domestic Violence Act (DV Act). The latter prompted her husband to swiftly initiate a settlement that she consented to in order to "buy peace" as she was advised that her fight for justice could stretch over several years and probably not end in her favour in any case. However, she was blatantly cheated even in this peace-deal, as her husband never honoured his part of the settlement after ensuring that the cases against him were withdrawn or closed.

Having thus secured his and his family's position, the settlement was suppressed from the court and false cases registered against the victim-wife by the police. The police used an edited1 page summary of her complaint prepared afterwards, to wrongly register it as her FIR (First Information Report) while in fact hers was a detailed 13 page complaint. She was then attacked by the same police for registering a weak FIR without specifics and projected as a 'liar' in court. This then became the basis for turning her own complaint against her, claiming that she had given false evidence to the police. Her lawyer was also compromised and made to give up her right to a protest petition.

She approached the concerned High Court seeking quashing of any investigation against her, but her case has been languishing without any order of stay for 1 ½ years with the judge repeatedly adjourning the matter despite there being compelling evidence of the settlement as well as the mala fides by the police on the record.

Had there been a digital video record of court proceedings, the victim might not have had to undergo the ordeal of the false case against her and would have been spared the unusually prolonged pendency of her appeal before the High Court. The Court would have been held accountable for repeatedly adjourning the matter and allowing the police to proceed against her despite evidence to the contrary.

Story 3: A PIL dismissed with a verbose 63 page judgment but without even a whisper of the law that was invoked, the Disaster Management Act

There was a large petroleum/oil storage depot coming up very close to a village in Delhi. The villagers were naturally concerned after a raging fire in Jaipur that had continued for 11 days and had killed 11 and injured a much larger number of people in October 2009. Buildings as far as 2 kms away were badly damaged, so the villagers who were at a distance of a few 100 metres from the proposed oil storage depot near them, asked the State whether they were safe and whether the oil storage depot was at an adequate distance from their village. Their numerous applications under the Right to Information Act (RTI Act) from February 2010 onwards before various authorities ranging from the concerned oil company to the Ministry of Petroleum and Natural Gas, Ministry of Environment, Petroleum Explosives Safety Organization, Oil Industry Safety Directorate, Prime Minister of the country, etc., fell on deaf ears as they elicited inadequate or misleading replies or no reply at all. Meanwhile, the company expedited construction of its depot and the villagers had no choice but to move the Delhi High Court which took several months to pass an order of stay restraining the company from commencing its operations. After repeated adjournments, eventually, the court heard the matter but inadequately and refused to hear 12 out of the 14 parties although all 14 were responsible government bodies. The court said that it did not have the time. An application was moved to conduct a proper hearing but the court swiftly dismissed that application. The court passed a lengthy order and judgment several months later without addressing violations of the specific law invoked, namely, the Disaster Management Act. It also wrongly recorded that the villagers had not filed replies to the 14 government authorities although they had filed detailed responses that are very much a part of the record.

Had there been a record of court proceedings, the court's restricted hearing followed by the repeated requests to hear the matter properly would have been on the record. Today, if the exhausted villagers have to move the Supreme Court, they will have to spend months to just re-organize all the information in the requisite format for the Supreme Court in order to commence their case in appeal all over again.

Concluding remarks

Several democracies record their court proceedings through audio or video devices to improve the efficiency and accuracy in preparing court records. In Australia and New Zealand for instance, the High Court which is the apex court, video records and puts up transcripts of proceedings on its website and in their remaining courts, transcripts can be applied for from the concerned court subject to their rules. A study by INPROL (International Network to Promote the Rule of Law), a project of the United States Institute of Peace with facilitation from other organizations, inter alia, shows that availability of court records improves public confidence in the judicial system.

The Indian judiciary cannot and must not continue to remain shrouded in opacity. Justice is far too important for us to carry on fumbling in the dark without detailed and accurate records of court proceedings. There is

an increasing demand from dissatisfied consumers of the justice-dispensation system to dispel opacity and ensure transparency. With accurate records, the dramatis personae in the courts would be under public scrutiny and act in a more responsible manner as they can be held accountable if required. There would be a significant reduction in judicial delays and justice would not only be done, but would also be seen to be done.

The Indian State guarantees equality before the law and justice to all under Articles 14 and 21 of its Constitution. The introduction of digital video-recording of court proceedings would be just a small step that would go a long way towards fulfilling this promise by ensuring transparency, equality and a fuller realization of justice.

- Illustration by Billy Chatterjee

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PENDENCY OF CASES IN HIGH COURTS AND DISTRICT COURTS

A comparative analysis of courts across India

Alok Prasanna Kumar

Popular discussions of the problems facing courts in India end up conflating two different issues, namely the pendency and the delay, as one and the same. A figure of overall cases usually between 3 to 4 crores, pending in the Indian judicial system, is cited as a reflection of this problem. Not only do statements such as this fail to identify the actual problem, but they can also mislead any effort to understand its root causes. It is therefore necessary that the issues of pendency and delay be separated before any analysis.

A court has a "pendency problem" when the number of cases pending disposal is large relative to the number of cases filed and disposed in that court. A court has a "delay problem" when resolving the cases which have filed before the courts takes a long time. A pendency problem will usually lead to a delay problem but merely because a large number of cases are pending, it does not automatically mean that it's a "problem" or that it necessarily leads to a "delay problem". A single figure telling us how many cases are currently in the judicial system in India does not help us understand or appreciate either problem. For this, we need to look at the data in much greater detail and with a bit more nuance.

It has to be kept in mind that the Indian judicial system is one of the largest in the world given the size of the economy and the population. Even though the number of cases filed per person is not as high as in developed countries and the bulk of the cases are in fact criminal cases filed by the Governments, it still remains a large system. At present, it involves three layers, the district and magistrate courts (subordinate courts for short) at the bottom, the High Courts in the middle and the Supreme Court right at the top. While the High Courts are responsible for the administration of the subordinate courts in their jurisdiction, the Supreme Court is not similarly responsible for the administration of High Courts. Apart from the appointment of judges to the High Courts, the Supreme Court does not have a substantial say in the manner in which High Courts function. This is unlike High Courts which closely supervise and monitor the functioning of the lower judiciary in their jurisdiction.

For this reason, to properly appreciate the scope and magnitude of the pendency problem, it is necessary to break down the data High Court wise and State wise (for subordinate courts). All other things being equal, a state with a larger population will need more courts than a state with a lower population. Likewise, as research has shown, states with a larger economy are likely to have more cases filed than those with a smaller economy, all other things being equal. That still doesn't tell us however, whether a High Court has a pendency problem or not. This tells us, at most, that an Allahabad High Court (with jurisdiction over the state of Uttar Pradesh) will have more cases filed in a given period of time than the Sikkim High Court (with jurisdiction over the State of Sikkim).

One way of examining and understanding the pendency problem is to see how long, at present rates, will a given court take to clear the pending cases. Another way is to fix a time limit, say three years, and see how many judges it will take for the court to reduce the pendency of cases at current rates of disposal. The latter method, adopted by the Law Commission of India in its 245th Report on the "Arrears and Backlog: Creating Additional Judicial (Wo)manpower", is the preferable one since it not only identifies one of the key reasons for the pendency problem, i.e. lack of judges, but also provides a measured solution for the same.

This is not to say that merely increasing judges is a one-shot solution to the problem of pendency or delay in

India's courts. It may be possible that the number of judges needed may vastly outstrip the capacity of the State to provide the infrastructure for judges. Further, it also does not address the "demand" aspect of the pendency problem resulting from a large number of cases filed in courts in the absence of adequate alternate dispute resolution mechanism and slow disposal due to weaknesses in procedural laws. Nonetheless, given the difficulty in comparing caseload from State to State, an assessment of shortfall judge-strength gives us a more useful indicator with reference to a particular State.

This paper will therefore adopt the Law Commission's approach in its 245th Report to assess the pendency problem in High Courts and District Courts in the States within India to see which States have the worst problems and which are comparatively better off on this front. It must be kept in mind that a case is "pending" as soon as it is filed and it is not necessarily a "problem" unless the numbers of such pending cases exceed significantly the number of cases filed. To that end, this article will look at how many such cases are "pending" and where does the problem lie precisely.

Number of additional judges required is calculated on the basis of the following formula:

Number of additional judges required = ((Cases filed in time period + pendency)/(number of cases disposed in time period per judge)) - present strength of judges

I. OUTLINE OF THE PAPER

This article is therefore a study of the "pendency problem" outlined above - to try and understand the magnitude of the problem of pendency in the Indian judicial system, addressing it court by court and also at the different levels.

For the purposes of this article, the numbers as far as the High Courts are contained have been obtained from the "Court News" Publication of the Supreme Court of India, which has been updated up to September 2015. For the District and Magistrate courts, the numbers have been collected from the National Judicial Data Grid as of 18March, 2016.

Based on the numbers collected, this paper will first analyze High Courts in the next chapter and District Courts in the chapter after that to analyze the extent of the pendency problem, if at all. The measure, adopting the methodology of the Law Commission of India in its 245th Report, is to see how many more judges it would take to resolve the pending cases in a period of three years. While the Law Commission assessed how many judges would be needed keeping in mind a one year, two year and three year period, the analysis here is being restricted to a three year time frame only in the interests of space.

There is one other reason why this method of the Law Commission is to be preferred. As the Law Commission has noted, there is a lot inconsistency in the manner in which the data is maintained across High Courts and District courts in India. The categorization of cases and the manner in which they are enumerated has wide disparities across the board with different States and courts adopting different definitions of what a "case" is. This makes simple comparisons based on absolute number of cases difficult.

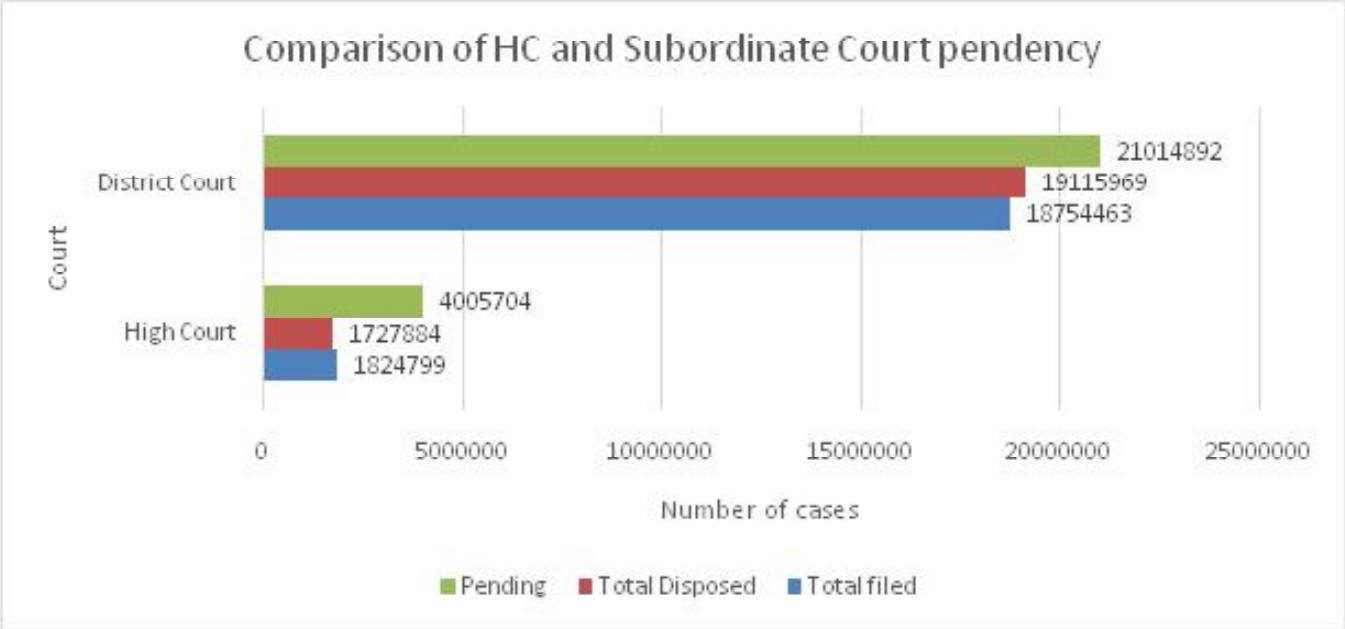
HIGH COURTS

As of March, 2016 India has 24 High Courts, with a sanctioned strength of 1,056 judges of which only 591 positions have been filled. As on 30.06.2015, District and Subordinate Courts had a sanctioned strength of 20,495 though as of 16.03.2015 only 15,708 of these were filled. The latest sanctioned strength figures for District Courts are not available so it is not clear how many vacancies are there are at the present moment.

While 40,05,704 cases were pending in the High Courts as of 30.06.2015, 2,10,14,892 cases are pending in the district and magistrate courts as of 18 March, 2016. Though latest figures are not available for High Courts, even if we assume that the number of cases has increased by 10% since June 2015, the total number of cases pending in the High Courts and Subordinate Courts as of March 2016 is not likely to exceed 2.6 crores. By itself this figure does not tell us anything useful.

Some perspective is gained by examining the total number of cases filed and disposed in the High Courts and subordinate courts in India over a year. Between April 2014 and March 2015, as per the latest Court News publications, 18,24,799 cases were filed and 17,27,884 cases were disposed of by the High Courts. This suggests that the High Courts are unable to handle the burden of cases being filed and ended up adding one lakh more cases to the total number of pending cases at the end of the year. The total number of pending cases are more than double of the number of cases being filed and disposed in the High Courts.

As far as subordinate courts are concerned, between April 2014 and March 2015, as per the latest Court News publication 1,87,54,463 cases were filed but 1,91,15,969 cases were disposed of in that time period. When compared to the 2.1 crore cases pending, this suggests that relatively, subordinate courts have a lower ratio of pending cases to filed cases when compared to High Courts.



However, this also does not give us a full picture. Fora more accurate assessment, this needs to be supplemented with a breakdown State by State, with respect to the number of judges in that State.

I examined the data for the quarter between June and September 2015 as available in the latest "Court News" publication for cases filed, disposed and pending in that quarter. I have compared them to the strength of the High Courts as it stood then. The data is summarized in the tables below.

Table 1:

High Court	Cases Filed between June-September 2015	Cases Disposed between June-September 2015	Cases Pending as of June-September 2015
Allahabad	74,335	59,939	1,032,077
Punjab & Haryana	29,318	20,660	293,808
Madras	37,814	32,010	277,721
Madhya Pradesh	30,981	27,104	264,594
Hyderabad	19,720	13,097	262,148
Rajasthan	22,517	16,342	235,620
Bombay	22,184	15,488	232,263
Karnataka	30,416	22,701	226,191
Calcutta	10,436	15,187	219,202
Orissa	16,689	19,279	170,597
Kerala	25,455	27,104	156,194
Patna	22,058	22,303	132,953
J&K	8,955	6,722	107,311
Gujarat	19,431	18,528	89,212
Jharkhand	7,812	7,183	80,219
Delhi	10,812	8,179	69,627
Chhattisgarh	3,221	5,461	46,114
Gauhati	7,446	7,394	43,258
Himachal Pradesh	6,611	8,829	33,708
Uttarakhand	4,009	3,120	25,252
Tripura	841	1,151	3,688
Manipur	398	408	3,071
Meghalaya	309	293	779
Sikkim	60	82	97
Total	420,915	348,767	4005,704

Table 2: Judges in the High Courts as of September, 2015

High Court	Sanctioned Strength (Sep' 2015)	Actual Strength (Sep' 2015)	High Court	Sanctioned Strength (Sep' 2015)	Actual Strength (Sep' 2015)
Allahabad	160	79	Kerala	38	38
Hyderabad	49	28	M.P.	53	33
Bombay	94	65	Madras	60	38
Calcutta	58	44	Manipur	5	3
Chhattisgarh	22	9	Meghalaya	3	3
Delhi	60	41	Orissa	27	22
Gujarat	52	29	Patna	43	33
Gauhati	24	17	Punj. &Har.	85	54
H.P.	13	7	Rajasthan	50	29
J & K	17	10	Sikkim	3	3
Jharkhand	25	14	Tripura	4	4
Karnataka	62	32	Uttarakhand	9	6
			Total	**1,016**	**641**

Table 3: Rate of disposal of cases by judge and number of judges needed to clear pendency(arranged by descending order of number of judges needed to clear pendency)

High Court	Judges needed in addition to dispose pendency in 3 years	Increase in sanctioned strength	% increase in sanctioned strength
Bombay	109	80	85%
AP + Telangana	61	40	81%
Punjab & Haryana	87	56	65%
J&K	17	10	57%
Rajasthan	46	25	50%
Calcutta	39	25	43%
Kerala	16	16	42%
Delhi	42	23	39%
Allahabad	132	51	32%
Uttarakhand	6	3	31%
Orissa	13	8	31%
Meghalaya	1	1	28%
Madhya Pradesh	32	12	22%
Madras	34	12	21%
Patna	16	6	14%
Jharkhand	14	3	13%
Karnataka	37	7	12%
Gauhati	8	1	6%
Tripura	0	0	0%
Manipur	2	0	-4%
Sikkim	-1	-1	-17%
Gujarat	13	-10	-19%
Himachal Pradesh	0	-6	-43%
Chhatisgarh	3	-10	-47%

Based on the figures, High Courts can be classified into three:

a. High Courts with no significant pendency problem, i.e., at or near present strength of judges, the pendency of cases can be cleared in three years: Chhattisgarh, Manipur, Meghalaya, Himachal Pradesh, Tripura and Sikkim

b. High Courts with a pendency problem that can be resolved through the appointment of sanctioned strength of judges or a reasonable increase (less than 30% increase in sanctioned strength required): Karnataka, Madras, Patna, Jharkhand, Gujarat, Orissa, Gauhati, and Uttarakhand.

c. High Courts with a severe pendency problem where a disproportionately large number of judges (more than 30% increase in sanctioned strength) are needed to clear pendency in three years: Allahabad, Bombay, Punjab and Haryana, Hyderabad, Rajasthan, Delhi, Calcutta and Kerala.

The difference between category b. and c. has been made as a rule of thumb and is not hard and fast. Even though Orissa and Uttarakhand require a little more than 30% increase in sanctioned strength, the absolute number of judges required is relatively smaller and hence have been put into category b.

Even though J&K requires only ten judges more than its sanctioned strength, it would amount to an expansion of the court to one and a half times its present size.

As Table 1 shows, the bulk of the pendency lies in the larger courts which would require enormous number of judges to be appointed beyond the sanctioned strength of the High Courts. A recent 25% increase in the sanctioned strength of the High Courts has not dramatically improved the number of judges in the High Courts. Rather, the inability of the collegium system of appointment to make these appointments in time has only meant that the overall number of vacancies has increased.

II. DISTRICT COURTS

Thanks to the National Judicial Data Grid, detailed information is available about the pendency of cases in the District Courts in India.

Table 4: Total number of cases pending in the Subordinate Courts as of 18.03.2016

State/UT	Civil	Criminal	Total
ANDAMAN AND NICOBAR	2,933	6,902	9,835
ANDHRA PRADESH	229,633	186,750	416,383
ASSAM	46,845	136,004	182,849
BIHAR	232,942	1,156,028	1,388,970
CHANDIGARH	15,534	17,612	33,146
CHHATTISGARH	41,557	141,789	183,346
DELHI	34,194	59,487	93,681
DIU AND DAMAN	965	724	1,689
GOA	25,091	34,906	59,997
GUJARAT	630,621	1,522,166	2,152,787
HARYANA	233,687	294,088	527,775
HIMACHAL PRADESH	85,739	80,183	165,922
JAMMU & KASHMIR	21,416	30,672	52,088
JHARKHAND	51,167	232,550	283,717
KARNATAKA	613,729	599,764	1,213,494
KERALA	295,693	505,155	800,848
MADHYA PRADESH	55,353	167,897	223,250
MAHARASHTRA	1,016,311	1,657,596	2,673,907
MANIPUR	5,239	4,619	9,858
MEGHALAYA	1,571	3,374	4,945
MIZORAM	786	1,102	1,888
ORISSA	221,776	677,565	899,341
PUNJAB	242,834	252,724	495,558
RAJASTHAN	417,688	878,893	1,296,581
SIKKIM	438	1,008	1,446
TAMIL NADU	555,388	336,885	892,273
TELANGANA	164,916	187,952	352,868
TRIPURA	8,390	18,166	26,556
UTTAR PRADESH	1,268,146	3,763,603	5,031,749
UTTARAKHAND	30,747	145,125	175,872
WEST BENGAL	456,711	958,684	1,415,395
Total Pending Cases	**7,008,040**	**14,059,973**	**21,068,014**

Table 5: Total number of judges, cases disposed, rate of disposal per judge and extrapolated disposal of case

State/UT	Count	Cases disposed	Cases/ judge/ month	Cases per year disposed (extrapolated)
ANDAMAN AND NICOBAR	13	277	21.31	3,324
ANDHRA PRADESH	505	22,199	43.96	266,388
ASSAM	295	6,959	23.59	83,508
BIHAR	1,328	28,296	21.31	339,552
CHANDIGARH	50	3,213	64.26	38,556
CHHATTISGARH	225	12,040	53.51	144,480
DELHI	70	3,338	47.69	40,056
DIU AND DAMAN	12	124	10.33	1,488
GOA	54	2,202	40.78	26,424
GUJARAT	1,145	58,794	51.35	705,528
HARYANA	719	40,258	55.99	483,096
HIMACHAL PRADESH	183	6,643	36.30	79,716
JAMMU & KASHMIR	93	2,515	27.04	30,180
JHARKHAND	527	9,161	17.38	109,932
KARNATAKA	755	81,718	108.24	980,616
KERALA	415	43,305	104.35	519,660
MADHYA PRADESH	258	6,907	26.77	82,884
MAHARASHTRA	2,351	74,395	31.64	892,740
MANIPUR	22	981	44.59	11,772
MEGHALAYA	17	410	24.12	4,920
MIZORAM	16	17	1.06	204
ORISSA	492	13,541	27.52	162,492
PUNJAB	735	37,102	50.48	445,224
RAJASTHAN	1,368	25,086	18.34	301,032
SIKKIM	17	509	29.94	6,108
TAMIL NADU	750	34,726	46.30	416,712
TELANGANA	296	12,822	43.32	153,864
TRIPURA	91	1,305	14.34	15,660
UTTAR PRADESH	2,110	144,021	68.26	1,728,252
UTTARAKHAND	207	11,069	53.47	132,828
WEST BENGAL	722	14,581	20.20	174,972
Total	**15,841**	**698,514**	**44.10**	**8,382,168**

While data is available about sanctioned strength of judges in each State, it is updated up to September 2015 and from a comparison of the data, it would seem that the sanctioned strength has increased since. Since there is no data available at present about sanctioned strength of District Court judges, this section will draw comparisons only with reference to increase in strength since each State can increase the sanctioned strength of District Court judges in that State at any time.

Table 6:

State (filed)	Current strength	Additional judges needed to dispose of pendency in 3 years.	% increase in strength required to dispose cases in 3 years
MIZORAM	16	57	356%
WEST BENGAL	722	2,307	320%
ORISSA	492	824	167%
BIHAR	1,328	1,663	125%
MAHARASHTRA	2,351	2,798	119%
RAJASTHAN	1,368	1,535	112%
ANDAMAN AND NICOBAR	13	14	104%
GUJARAT	1,145	1,032	90%
DELHI	70	58	82%
JHARKHAND	527	409	78%
HIMACHAL PRADESH	183	131	72%
UTTAR PRADESH	2,110	1,505	71%
GOA 54	37	68%	
TRIPURA	91	39	43%
ASSAM	295	124	42%
MEGHALAYA	17	7	39%
HARYANA	719	263	37%
PUNJAB	735	237	32%
JAMMU & KASHMIR	93	25	27%
MADHYA PRADESH	258	67	26%
TAMIL NADU	750	196	26%
CHHATTISGARH	225	50	22%
SIKKIM	17	2	14%
CHANDIGARH	50	6	11%
MANIPUR	22	2	10%
TELANGANA	296	22	8%
UTTARAKHAND	207	-1	-1%
DIU AND DAMAN	12	0	-2%
KARNATAKA	755	-20	-3%
KERALA	415	-31	-8%
ANDHRA PRADESH	505	-55	-11%
Cases Filed In Last Month	**15,841**	**9790**	

As with the High Courts, it is possible to classify State Subordinate Courts also into three distinct categories based on what the increase in judges would need to be.

a. States where there isn't a significant pendency problem (%increase in judicial strength needed <20%): Sikkim, Chandigarh, Manipur, Telangana, Uttarakhand, Daman and Diu, Karnataka, Kerala and Andhra Pradesh

b. States where the pendency problem is significant but the appointment of a reasonable number of judges could resolve it within three years (% increase in judicial strength needed <40% but >20%): Meghalaya, Haryana, Punjab, Jammu & Kashmir, Madhya Pradesh, Tamil Nadu and Chhattisgarh.

c. States which have a significant pendency problem where the number of additional judges required to resolve it is disproportionate to existing judicial strength: Mizoram, West Bengal, Orissa, Bihar, Maharashtra, Rajasthan, Andaman & Nicobar, Gujarat, Delhi, Jharkhand, Himachal Pradesh, Uttar Pradesh, Goa, Tripura and Assam.

III. CONCLUSION

The larger High Courts seem to have a considerable pendency problem - not just in absolute terms but even relative to the actual burden of cases filed and disposed by these High Courts. While some part of the problem can be solved by timely appointment of judges, filling up in the sanctioned strength in High Courts or marginally increasing the sanctioned strength in some cases, there are some High Courts where these measures are likely to prove inadequate or where the number of judges is too large to be managed in a High Court. A High Court may be constrained from expanding beyond a certain size by limitations like support staff, infrastructure, et al. Since High Courts sit in benches of one or two judges, there is every likelihood that increasing the number of judges will increase the uncertainty in law, reducing litigation to a pure gamble depending entirely on the judge to whom the matter has been allotted.

When it comes to the District Courts, although the numbers of judges can be increased without the concerns of creating chaos, there are concerns of adequate infrastructure and efficient management beyond a certain point. Like with the High Courts, the solution to tackle the pendency must go beyond the simple suggestion of appointing enough, or increasing the sanctioned strength of judges in the State.

The numbers suggest that the problem of pendency is not one that can be simply resolved by appointing more judges for a few reasons:

First, the burden of pendency is not the same across the board. Whereas pendency can be tackled in some states by simply filling all the vacancies, in other States it would require a manifold increase in the sanctioned strength of the judiciary.

Second, the appointment of more judges has to be accompanied by an increase in the infrastructure and support staff for such judges. Even if a State were to try and increase the sanctioned strength, it would have to spend significant resources in setting up the infrastructure for the judges.

Third, changes to procedural rules (such as limiting adjournments, making stricter timelines and imposition of costs for frivolous litigation) and alternate dispute resolution may be more cost effective mechanisms to reduce the number of cases coming to court. Greater use of information technology platforms could also assist and is currently underway through the E-courts programme.

Fourth, given the diversity of India, there may be no one size fits all solution. The reasons for the vast pendency in each state may be different and may require a tailored approach to solving the problem. Even as regards appointing more judges, there may be a need to identify exactly which districts and what level in the court hierarchy more judges are required.

Ideal solutions to resolving the "pendency problem" will vary between States. As the present data suggests that some states are worse than others in terms of judicial pendency, solutions need to be adopted on a multi-pronged front, on a war footing.

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COLLECTING DATA FROM THE HIGH COURTS

Daksh experience with the Rule of Law Project

Kavya Murthy and Ramya Sridhar Tirumalai

It is quite likely that the number of pending cases in the Indian courts - 60,000 cases in the Supreme Court, 41 lakh cases in the High Courts and 2.5 crore cases in the subordinate courts - are by now well-known to the reader. These numbers are usually referred to when discussing the effects of judicial pendency, which is said to affect the quality of the delivery of justice in the country. However, while it is widely agreed that pendency is a severe problem facing the judiciary, these numbers do not reflect the local, specific, or detailed causes of pendency.

The Rule of Law Project at Daksh

Our work in the Rule of Law Project at DAKSH has been to collect, amalgamate, and analyse judicial data towards a study of the problem of pendency in Indian courts. It not only brings judicial data together but is the first publicly available database for judicial data on a single platform. We also study this data for granular analysis of the causes of delay and pendency.

In this process, we faced numerous stumbling blocks, and though we had expected to meet hurdles given the course of our work, the sheer variety of challenges we faced was unanticipated.

While the High Courts and the subordinate courts in India make data available in the public domain, these databases are separate for each High Court and vary in form and content. In subordinate courts, while the form and content of the data are uniform, it is stored in separate databases. The first challenge has been for us to bring this multifarious data on to a single location. Beginning in January 2015, DAKSH started to collect and analyse data High Courts and the subordinate courts. As of March 2016, our database now contains information for 21 of 24 High Courts and 417 subordinate courts of approximately 4600 courts.[1]

1. Data Mining for High Courts

We began with the assumption that daily cause list is a repository of all cases appearing in the High Courts. We started to collate the cause list data for all courts which were digitally available.

Challenges in Data Mining in High Courts

Over the last 15 months, as we have been collecting and amalgamating judicial data, we have faced multiple challenges. The problems that we encountered ranged from the quantity of data that we worked with to the quality of the said data. The setbacks that confronted us and have impeded analysis can be broadly summarised as follows:-

[1] There is no case data available online for three of the 24 High Courts. Our process of data collection for subordinate courts is ongoing and will include as many as is possible. Data for subordinate courts is available only for 4589 courts of a total of 16400 court rooms said to be in operation in India. The DAKSH database can be accessed at <zynata.com/base/src/index.html#/access/signin?portal=dakshlegal.in>

(a) Non-availability of Basic Data

The non-availability of a large enough set of scientific data seriously affects our ability to assemble and analyse data across High Courts, thus hampering wide-ranging and significant analysis of pendency. This has been noted by the Law Commission of India in its 245th Report, where the following observation was made:*'(The) Lack of complete data was a great handicap in making critical analysis and more meaningful suggestions.'*[2]

The data that is available is varied and problematic to use. These problems are compounded by the fact that many High Court websites don't make available multiple pieces of basic data. For example, out of the first 10 High Courts that we started analysing, only half made data available on 'Date Filed'. This data element refers to the date on which a case was registered in the particular court. Of the five courts that do not make this data available, one has the information, but chooses to limit access with a captcha. The date on which a case is filed is arguably the most vital piece of information as in the absence of the date of filing, the exact duration for which a case has been pending cannot be calculated. The said courts do not provide any explanation as to why it is not available.

Captcha and public information

Placing case data behind a captcha is problematic. In general, captchas are used by a system to verify whether the user is a human or not. Case data is public and thus needs to be made available without preventing automated access. Once again, as with the case of lack of standardisation, the non-availability of such basic information gravely affects the prospect and scope of judicial data analysis.
Very few High Courts provide another key data point: details of the statute that a case is registered under. This is another confusing omission since the details of the legislation are mandatorily included in legal processes. Without information on the statute under which a case was filed, detailed subject-wise analysis is impossible.

Yet another gaping void in case data from many courts is the ability to view details of past hearings against each case. Only some court websites provide information on the history of the case from the date it enters the said High Court. While a few courts also offer the ability to see data about disposed cases, most do not.

Importance of mapping lifecycle of cases

Benchmarking pendency means quantifying and constructing the life cycle of a case from the date of its institution to the date of its disposal. By building a case's life cycle and studying the orders passed at each stage, a more comprehensive understanding of the operation of the judicial system can be built.

To build and analyse the life cycle of a case, the full date of filing (including the day, month, and year) is crucial. To identify the reasons for delay through the life cycle of each case, the details of each hearing are key to understand the manner and stages through which cases progress in the system. The order sheets of cases will provide information on the proceedings in each hearing, such as reasons for which adjournments were sought. Providing access to this information would go a long way to building the life cycles of cases.

[2]Law Commision of India. 2014. 'Arrears and Backlog: Creating Additional Judicial (wo)manpower' p. 16, Report no. 245, Law Commission of India, available online at http://lawcommissionofindia.nic.in/reports/Report245.pdf (accessed on 14 March, 2016).

(b) Lack of Data Standardisation

To simplify, every High Court is an island in the sea of Indian judicial data. The underlying problem with the data is undoubtedly the complete lack standardisation in the High Court data that is available on the internet. There is significant variation in terms of site layout and navigation, data availability, or data format. This lack of standardisation was puzzling since all High Courts are constituents of the same judicial system, logically implying that the manner in which they organise and present should be in a similar, if not identical.

This said, one has to bear in mind that this lack of standardisation in High Court data may not affect most users of the system, namely litigants and lawyers, given their focus on their own cases and may not be concerned with data from a bigger, analytical perspective.

The first place where ambiguity becomes evident is within the High Court websites. On a particular website, the same data will be displayed differently at different places. To illustrate, we can turn to case type lists. In order to classify and identify cases, the courts themselves have created categories known as case types. Lists of these are available in two places on High Court websites. One list can be found on the case status pages of the websites, where the status of cases currently pending are made available. The other list can be found inthe cause list, which is the daily list of cases that will be heard in all court halls of that High Court. The list of case types on the case status pages and cause lists is more often than not different. This difference is bewildering, since it is assumed that case nomenclature within a court would be standard.

There is also a tremendous variation in data availability from court to court. We looked at the data elements that each court makes available on a case and found that there are over 30 distinct obtainable data elements (for example, Combined Case Number, Case Type, Date of Filing, Petitioner and Respondent details). Of these, less than a third are found in all High Courts. In addition to current case information, there are some High Courts that provide lower court information and links to orders. This too, is not a standard feature.

Websites are different from each other, even on the most basic of information. While both case status pages and cause lists feature on most court websites, there are four High Courts, namely the High Courts of Jammu and Kashmir, Manipur, Meghalaya, and Sikkim which do not have case status pages. This means obtaining any current case information in these states is not possible.

Another major fount of judicial information found on the website that differs in form from court to court, is the daily cause list of each court. The daily cause lists contain a number of important elements such as the case number, the party name, the stage the case is currently in, petitioner and respondent names, the name of the lawyer and the name of the judge. However the data elements found on cause lists are not uniform across High Courts. For example the High Court of Delhi provides the name of the case ('X' vs. 'Y') however the High Court Kerala only makes the case number available.

The dearth of standardised and collated data obstructs even rudimentary analysis of case pendency in courts. At the moment, we do not have complete answers to many questions on pendency such as 'what are the kinds of cases pending for the longest/shortest time?', 'how long are cases pending for?' and 'which case types constitute a majority of pending cases?'

To carry out comparative analysis between different kinds of cases, to identify what kinds of cases are

pending in our courts, and how long they are pending, we need to standardise case data. It is only then that will we be able to postulate sustainable solutions for pendency.

(c) Quality of Information

The quality of a large portion of available High Court data is poor to say the least. Sizeable parts of this data are rendered unusable due to the fact that it is riddled with inaccuracies and mistakes. Thorough verification and clean-up is a pre-requisite to get this data in analysable form. Cleaning and standardising the data is an enormously difficult task, due to the massive volume of High Court data as well as the number and variety of errors it contains. Errors contained in the data can be roughly grouped as follows:

(i) Incorrect spellings: There area substantial number of incorrect spellings in the data. This is particularly visible in fields such as district name, judge name, and name of the current stage of the case. Manual entry of data is the most probable causal factor for the huge number of misspellings.

(ii) Wrongly entered information: Many a time we have come across data that should be under one field, mistakenly entered under another. For instance, most courts have a field known as 'stage', which indicates the current procedural status of the case. Several times we have found this information in the field where information on the legislation the case is filed under should be contained. While sometimes it is clear that wrong information has been entered, for instance, if the name of the stage is entered where the name of the judge should appear, often, the fact that the information is in a wrong field is not apparent. This happens when the two fields in question are not very clearly defined such as stage name and case category.

Another field where information can be wrongly entered is dates and numbers. Figure 1 below illustrates this problem. This case showed up as the oldest case in our database as per its date of filing-1 September 1900. However, from the information in the second column ('Type/No/Year/District') it becomes clear that the case was filed in 1990.

Figure 1: Screenshot of wrongly entered date of filing in the High Court of Allahabad

(iii) Incomplete information: Many a time information in a field is incomplete. This problem is particularly rampant in data fields of judge nameand statute name. Since there are a multitude of similar judge and statute names, completing the information by ourselves is not an option. These incomplete case records become irrelevant for analysis.

(iv) Data field specific problems: Certain data fields have problems specific to themselves. For example, many courts have a data field called 'case category' assigned to each case. In some courts, there is a defined case category to carry the name of the statute that the case is filed under, whereas in other courts, categorisation makes no reference to the statute and carries information on subject matter instead.

(v) Short forms or abbreviations: Whole sections of case-related data are expressed in short forms or abbreviations. Not only do these short forms vary from court to court, there is often no centralised key available to understand this data, which makes it undecipherable for users who do not have a legal background. In addition, due to the sheer volume and variation of data, even those possessing legal knowledge have no way of knowing whether they are interpreting the data correctly. A very good example for this problem are the case types that each court uses to categorise and label cases. Most of these case types are in the form of abbreviations. There is no key provided to make sense of the case type list on each High Court website. In the absence of a key, it is unfeasible for anyone other than a local lawyer to understand the case types.

2. Conclusion

As on date, the DAKSH database contains details of nearly 18 lakh cases and 59 lakh hearings from 21 High Courts. Using the information we have collected from the High Court websites, we have arrived at a range of statistics such as the average pendency for different kinds of cases, the number of days between hearings as well as average days to disposal. We have cleaned up, standardised, and added depth to the data so as to enable more focused analysis. To facilitate change in the system, the DAKSH database is a suitable starting point.

The lack of availability of standardised and high-quality error-free data hinders overall analysis of the judicial system, since it becomes nearly impossible to collate information. In essence, comparative analysis cannot be carried out without comparable elements.

The notion that in the sea of judicial data, each High Court is an island is one that needs to go. It is only when the judicial system is viewed as a whole, that optimal data management, efficiency, and productivity can be achieved.

Kavya and Ramya are associates at Daksh Society, Bangalore and have extensive experience in judicial data mining.

DELAY: THE STORY SO FAR

Initiatives for systematic solutions to judicial delays and pendency

Swapna Jha

Mr L N Mishra, the then Railway Minister was killed in a bomb attack in Samastipur, Bihar, on January 2, 1975. Nearly forty years later, the trial court passed the conviction order, that too after two years of holding hearings on a daily basis, on the directions of the Supreme Court. This happened in the case of a relatively important person! A lot has been done in the past four decades but more things change, more they remain the same!

This paper recapitulates some of the many reports, commissions, committees and procedures which have attempted to address this issue in order to help us learn. It also highlights best practices from other jurisdictions that have been adopted to increase the efficiency of the judicial process.

1. Tackling judicial delays systematically: The Law Commission in its 77th and 245th Report, has dealt with arrears and delays in the lower courts and the High Courts. The 77th Commission in its report of 1978 had suggested that civil cases be treated as old pending judgment, after a year of registration and criminal cases after six months. It had also suggested procedural changes, increasing the strength of judges, having better infrastructure including facilities and several other factors, most of which could not be carried out for administrative reasons. Similarly the 245th Commission had made suggestions regarding the rate of disposal, appointment of judges on priority basis, increase in retirement age of the judges of subordinate courts, creation of special courts, periodic assessments of judicial needs and systemic reforms.

2. More Benches of the Supreme Court: The Law Commission in its 229th Report submitted in August 2009 dealt with the need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai.

   Article 130 of the Constitution, an enabling provision, empowers the Chief Justice of India, with the approval of the President, to appoint place or places as the seat of the Supreme Court. It was suggested that these "Cassation Benches" would deal with appeals from the High Court in their respective region and the Apex Court could then deal with constitutional issues and other cases of national importance. The accumulated backlog of cases would gradually decline as the Apex Court would deal with day to day filings and the previous backlog would get transferred to the respective zones. The report also suggested that all public interest litigations from any part of the country should be decided by the Constitution Bench to avoid contradictory orders issued and to arrest the mushrooming of cases increasingly.

   The Parliamentary Standing Committee on Law and Justice in its 2nd, 6th and 15th report repeatedly suggested that in order to promote speedy justice available to the common man, benches of the Supreme Court have to be established in the Southern, Western and North-Eastern parts of the country. In its 20th, 26th and 28th reports, the Standing Committee suggested that a bench of the Supreme Court should be established at least in Chennai on trial basis. Despite these reports, the Apex Court has so far not agreed with the suggestion.

   Recently, Mr. V Vasanthakumar has approached the Apex Court vide WP No 36/2016 demanding the

establishment of a National Court of Appeal (NCA) that would act as an intermediate forum between the Supreme Court and the various High Courts of India. He has suggested in his PIL to carve out the NCA from the Apex Court, and set it up, through regional benches, in Chennai, Mumbai and Kolkata. With the new court taking over the appeal cases, the Supreme Court would be able to focus on those cases which require an interpretation of the Constitution.Interestingly, the Supreme Court has not only issued notice to the Union of India but also proposed to refer questions of law concerning the establishment of such a court to a constitution bench.

(In an earlier case in 2014 it was communicated to Mr. Vasanthakumar that it was not possible to establish NCA because such an idea had previously been opposed by successive Chief Justices of India and that an NCA would "completely change the constitution of the Supreme Court")

3. Reducing litigation between arms of the Government: In order to cut down on cost of litigation between various arms of the Government, save time of the Courts and to put a curb on waste of public money incurred in such litigations the Supreme Court in ONGC I (SCC432) asked the GOI and the Cabinet Secretary to ensure that such instances did not occur in future. The Supreme Court cautioned that "Public Sector Undertakings of Central Government and the Union of India should not fight their litigations in Court". Taking this further, in ONGC -II (SCC 541) the Court directed the Government of India "to set up a Committee consisting of representatives from the Ministry of Industry, Bureau of Public Enterprises and Ministry of Law, to monitor disputes between Ministry and Ministry of Government of India, Ministry and public sector undertakings of the Government of India and public sector undertakings between themselves, to ensure that no litigation comes to Court or to a Tribunal without the matter having been first examined by the Committee and its clearance for litigation". The Court cast an obligation on each Court and Tribunal to not entertain any such dispute where the clearance from the Committee had not been obtained. Thus the Supreme Court introduced a new system of dispute resolution, which, if handled well, could not only decrease litigation but also save wastage of public money, Courts time and other resources.

Unfortunately, the Committee on Disputes, which was to ensure that resources of the State were not frittered away in inter se litigations between entities of the State, could not handle the mammoth task assigned to it. Thus, the Court had to recall its earlier order and wind up the Committee, which if still in existence would have led to major decline in litigation and thus reduced pendency.

4. Special divisions in High Courts for commercial disputes: The Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act 2015 has been enacted to provide for the constitution of Commercial Courts/Division and Commercial Appellate Division in the High Courts for adjudicating commercial disputes and connected matters. Equivalent to district courts, these commercial courts seek to expedite settlement of commercial disputes and improve ease of doing business. Its success however is critically dependent on how well the states respond to the need for setting up new courts and divisions. Other factors which may pose challenges in implementation of the Act are funds for setting up of these courts, low financial threshold and inclusion of a wide range of issues under the ambit of commercial disputes. If the object of this Act is achieved, it will certainly decrease pendency of cases and help in imparting justice, though to the wealthy litigants.

5. Increasing access to justice for the marginalized groups:

This is an initiative to strengthen access to justice for the poor, marginalized castes and tribal communities and religious minorities carried out in partnership between the Department of Justice and the UNDP. The project began in 2006 with a preparatory phase, along with SAJI (Strengthened

Access to Justice in India) to carry out a justice sector diagnosis, identify entry points and support innovative small pilots to identify good initiatives for replication. Based on the lessons and results of the first phase and an extensive design mission, a four year project from 2008 to 2012 was developed. The project is being implemented in the states of Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Orissa, Rajasthan and Uttar Pradesh as well as at the national level with key institutions. Based on the outputs received, it may be replicated in other states.

6. Making right to justice a fundamental right:

It was reported in 2010-11 that the Union Law Ministry had come up with a proposal to make Right to Justice a guaranteed right under the constitution, which would have entitled every citizen of the country to time-bound justice, ensuring right to acquittal if trial did not commence within a specified time period. The ministry also planned to institutionalise the public interest litigation and streamline the system of 'letter petition,' the process of a citizen activating the court by simply writing a letter in matters concerning violation of fundamental rights. Another striking feature of the proposed law was that an undertrial would be entitled to be released on bail after spending a specified time period in jail. Unfortunately, this proposal also got lost in the web of bureaucratic inaction.

7. E-Court Project:

The E-project followed a report submitted by the E-committee on national policy & technology in the Indian judiciary. Under the National E-Governance Plan (NeGP), it was proposed to implement ICT in judiciary in three phases over a period of five years on a mission mode project. The project scope was to develop, deliver, install and implement automated decision making and decision support system in 700 courts of Delhi, Bombay, Kolkata & Chennai; 900 courts in the 29 capital city courts of states and UTs and 13000 district and subordinate courts.

In the first phase, computer rooms & judicial service centres had to be set up in all 2500 court complexes. About 15,000 judicial officers were to be provided with laptops. Digital inter-connectivity was to be established between all Courts from the taluk level to the Apex Court. The project also aimed at creation of e-filing facility in the Supreme Court & High Courts. The first phase also envisaged development of comprehensive & integrated customised software application for the entire judicial system with regional languages support.

In the second phase, it was envisaged to provide ICT coverage of judicial process including filing, execution & all administrative activities.

In third phase, it had to create information gateways between Courts & public agencies & departments. The project was expected to lead to complete demystification of the adjudicatory process thereby ensuring transparency, accountability & cost-effectiveness.

It is ironic that the project, which was undertaken to help judicial administrations of the Courts in streamlining their day-to-day activities has been unable to achieve most of the goals set out in it. Now the next plan approved by the executive has similar visions and is typically very far from the expected results outlined in the Policy Action Plan Document Phase II (approved).

(The E-Courts project has been critiqued earlier in this issue)

Best practices from other jurisdictions:

1. Fast Track List in addition to fast track courts:

To address the issues of costs and delay the Federal Court of Australia introduced a 'Fast Track List'. The list came into effect on 1 May 2007, in the Victoria District Registry of the Court as a pilot scheme.

The key elements of the fast track list is to streamline Court procedures and reduce the costs of litigation significantly. Proceedings arising out of or relating to commercial transactions, important issue in trade or commerce or personal insolvency, the construction of commercial documents, intellectual property rights, apart from patents or such other commercial matters as the presiding judge may direct are issues that can be entered into the fast track list. Matter whose trials are not likely to exceed five days may also be included in the fast track list. The fast track list excludes proceedings that would otherwise be allocated to the admiralty, corporations or taxation panel.

2. Increase in the retirement age of higher judiciary:

The practice in USA can be adopted as an interim measure to deal with the vacancy in High Courts till the number of judges are adequate to tackle the pendency in higher Judiciary.

3. Simple measures on the part of the bar and bench to reduce pendency:

A seemingly endemic cause for delay is the failure of parties to adhere to the timelines that the Court itself has set, either by its rules or by specific order. Judges are reluctant to take strong action for non-adherence to time limits because to do so will often have the effect of penalising the client for the default of its lawyers. Unless it is unavoidable, the counsels should try not to seek adjournments as a measure of self-discipline.

Conclusion:

It is clear that several suggestions are yet to be implemented or are being implemented at a slow pace in a piecemeal manner. Some new initiatives or innovations would be welcome. Any single administrative or procedural measure or increasing the number of courts and judges may not lead us to the solution. However, several measures combined together along with efficient use of judicial time, cooperation of the bar and adoption of progressive measures may help.

At the same time, we need to bear in mind that suggestions for improvement, creation of more Courts, increasing the number as well as retirement age of the judges, will fail to yield the desired results, if our Courts are not freed of heavy backlog of pending cases. For all these measures to be effective, the Courts or at-least some of them will have to begin the process with a clean slate. In the alternative, all measures will be ineffective and palliative in nature, as the new cases may be embroiled in the delay caused by previous pending cases.

We, the litigants, the lawyers, the judiciary, executive and the legislature need to come together and combine our efforts to enjoy the results that we dream of in a democratic manner. Blaming each other or lamenting the sad state of affairs will only lead to a further wastage of resources.

Swapna Jha is a Senior Legal Consultant with Common Cause.

GRAM NYAYALAYAS: SPEEDY JUSTICE FOR THE POOREST

Why are we floundering eight years after getting a new Act?

Anumeha

Justice is the foundation of any civilized society. Article 39A of the Indian Constitution mandates justice for all on the basis of equal opportunity. Over the years successive Governments have tried in their own ways to strengthen the judicial system. As a result, procedural laws have been simplified, lokadalats and fast truck courts introduced and alternative dispute resolution mechanisms such as arbitration, conciliation and mediation have been incorporated into the legal system. However, despite these initiatives, a large percentage of population, mostly of the rural and the disadvantaged sections, has been excluded from the ambit of justice delivery.

In order to dispense justice in the rural and the remotest of areas in the country, the Gram Nyayalaya Act was enacted in 2008. The Act was designed to bring speedy, affordable and substantial justice for those citizens who are denied access to justice in the formal system. (The Act has added the lowest tier of courts of subordinate judiciary in addition to the regular civil and criminal courts). One of the objectives was also to reduce pendency in courts and to improve India's dismal judge-to-population ratio. In this write up we will try to make sense of the Act, its principal features and provisions, some of which had also been recommended by the Law Commission (114th Report, 1986), and suggest steps to plug in the leakages /loopholes in the Gram Nyayalaya setup.

It is inexplicable, and even frustrating, that an Indian Law Institute report prepared on the effectiveness of Gram Nyayalayas in Madhya Pradesh and Rajasthan was not made available in the public domain. Common Cause secured a copy of the report through Right to Information (RTI)Act to be able to throw more light on the issue. Some government sources, who do not wish to be identified, also shared alarming information with us on the states' apathy towards making justice accessible to all.

Gram Nyayalayas - the rationale, functioning, jurisdiction and procedures

The Act was enacted "to provide for the establishment of the Gram Nyayalayas at the grass root level for the purpose of providing access to justice to the citizens at their door steps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities...[1] Under the Act, around 5000 Gram Nyayalayas were to be added to the existing structure of judiciary to reduce pendency and arrears in subordinate Courts as well as judge to population ratio in our country. It was made operational on October 2, 2009, the birthday of Mahatma Gandhi, the father of the nation. [2]

It was envisaged that the Central government would fund the initial costs in terms of non- recurring expenses for setting up these courts with an assistance limited to Rs.18 lakhs per Gram Nyayalaya and the recurring expenditure would be equally shared by the Centre subject to a ceiling of Rs. 3.20 lakhs per court per annum for the first three years.[3] The thirteenth Finance Commission had earmarked Rs 5000 crores for 5 years during 2010-15 for the state governments to set up these institutions.[4]

[1]http://doj.gov.in/sites/default/files/gramnyayalayas_0.pdf (Last accessed on April 4, 2016)
[2]Dept-Related Parliamentary Standing Committee on Personnel, Public Grievances, Law And Justice Sixty Seventh Report (Presented To The Rajya Sabha On 6th February, 2014) (Laid On The Table Of Lok Sabha On 6th February, 2014)
[3]Order No.J-12021/5/2009-JR dated Dec 16, 2009, GOI, MoL&J, Dept of Justice
[4]Rajya Sabha Department Related Parliamentary Standing Committee On Personnel, Public Grievances, Law And Justice Fifty Eighth Report On Demands For Grants (2013-14) Of The Ministry Of Law And Justice (Presented To The Rajya Sabha On 25th April, 2013) (Laid On The Table Of The Lok Sabha On 26 April, 2013)

A Gram Nyayalaya is established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district. The seat of the Gram Nyayalaya is located at the headquarters of the intermediate Panchayat, but the Judicial Officers are supposed to go to the villages, work there and dispose of the cases.

Each Gram Nyayalaya is a court of Judicial Magistrate of the first class and its presiding officer (Nyayadhikari) is appointed by the state government in consultation with the High Court. (It is to be noted that in regular civil / judicial courts, the High Court itself makes appointments).The judges who preside over the Gram Nyayalaya are strictly Judicial Officers. They draw the same salary, deriving the same powers as First Class Magistrates working under High Courts.

Justice Dispensation - A Gram Nyayalaya is a mobile court and exercises the powers of both Criminal and Civil Courts. They are empowered to try criminal cases, civil suits and claims or disputes which are specified in the First Schedule and the Second Schedule to the Act. These are summarized below:

- Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years.

- Theft as well as receiving or retaining stolen property, where the value of the property stolen does not exceed rupees twenty thousand.

- Offences related to central acts such as payment of wages, minimum wages, Protection of civil rights, bonded labour, protection of women from domestic violence, etc. Offences under States Acts which are notified by each state government.

- Civil and Property suits such as use of common pasture, water channels, farms, right to draw water from a well or tube well etc.

- The First schedule and Second schedule of the Gram Nyayalaya act can be amended by both the central and state governments.

- Each Gram Nyayalaya exercises the power of a Civil Court with some modification such as special procedure as mentioned in the act.

- The primary focus of the Gram Nyayalaya is to bring about conciliation between the parties. The judgment and order passed by the Gram Nyayalaya is deemed to be a decree and to avoid delay in its execution, they can follow summary procedure for its execution.

- A Gram Nyayalaya is not to be bound by the rules of evidence provided in the Indian Evidence Act, 1872 but is guided by the principles of natural justice and subject to any rule made by the High Court.

Appeals procedures- Appeals lie in the court of District Judge in civil cases not above a specified pecuniary value, and in the Sessions Court for criminal cases where the accused has not pleaded guilty, or has been ordered to pay a fine over one thousand rupees.

The juridical construction of Gram Nyayalayas[5]

Law Commission's Recommendation versus the Gram Nyayalaya Act

The 114th report of the Law Commission was the originator of the idea of a Gram Nyayalaya. The Law Commission settled on the form of a rural court that would be set up at the Taluka level across the Country. While this court would be headquartered at the seat of each individual Taluka, it was expected to travel to the various villages within a Taluka and would therefore be a mobile court. This forms one of the fundamental ideas on which Gram Nyayalayas are based, that of providing justice at the door step of persons residing in rural areas. This feature of Gram Nyayalayas is contained in Section 9 of the 2009 Act.

One of the other major thrusts of the Law Commission in its report in 1986, was to create a model which could provide a version of participatory justice to persons in rural areas.

An extension of this desire to achieve a model of participatory justice is also found in the Law Commission's prescription of a consensual, conciliatory process in Gram Nyayalayas, in place of a strictly adversarial system. This was sought to be ensured by the presence of lay-judges and a mobile court, but also rather amorphously by the reduced application of procedural law. The Act of 2009 contains a different version of this desire for consensual dispute resolution, and places an obligation on the Gram Nyayalaya that all civil cases be first attempted to be resolved by the consent of the parties, or through a formal conciliation procedure. However in case neither of these proves fruitful, the Act provides for the trial of cases, albeit with reduced procedural requirements. It should be clear then that the Act does not impose the consensual resolution of disputes on parties; they may seek adversarial adjudication and engage lawyers to appear for them before the Gram Nyayalaya if an amicable resolution does not appear possible.

In terms of jurisdiction, the Law Commission was in favour of granting Gram Nyayalayas a relatively wide jurisdiction, roughly co-extensive with those of the Judicial Magistrate First Class and the Civil Judge (Junior Division) in criminal and civil cases respectively. The Act of 2009 does not adopt this proposal entirely, but instead clearly delineates the subject matter jurisdiction of Gram Nyayalayas in both criminal as well as civil cases in its First and Second Schedules respectively, while allowing the High Court to prescribe pecuniary limits. The tone of the discussion in both the Law Commission's Report, as well as the legislative debate before the enactment of the Act in 2009, reveals the familiar, somewhat patronising desire to trust Gram Nyayalayas with the relatively simple cases typically arising in rural areas. The upshot of all this is that Gram Nyayalayas possess a comparable jurisdiction to the Judicial Magistrate First Class or Civil Judge Junior Division.

The Act of 2009 also circumscribes the number of appeals that may be allowed from decisions in the Gram Nyayalaya. This however does not operate as an absolute bar on appeals of the kind witnessed in Lok Adalats. Instead, the Act restricts the provision of appeal to civil cases above a specified pecuniary value, and criminal cases where the accused has not pleaded guilty, or has been ordered to pay a fine over one thousand rupees. This abridgment of the right to appeal from decisions in Gram Nyayalayas has been a source of concern for some. Appeals from Gram Nyayalayas in criminal cases are to be heard by Courts of Session, while those in civil cases are to be heard by District Judges. Once again, this puts them at the same level as Judicial Magistrates of the First Class, and Civil Judges of the Junior Division.

Lastly, while the Law Commission prescribed the creation of a distinct cadre of Nyayadhikaris in each state, the Act of 2009 does not do so. Instead, the Act simply prescribes that only persons eligible to be appointed

as Judicial Magistrates of the First Class shall be qualified to be appointed as Nyayadhikaris, leaving the question whether these persons shall be members of the regular judiciary or may be drawn from outside, unanswered.

Have the Gram Nyayalayas been effective?

The Department of Justice, Ministry of Law & Justice, Government of India had commissioned a study on the effectiveness of the Gram Nyayalayas in the States of Rajasthan and Madhya Pradesh (MP) to the Indian Law Institute (ILI), New Delhi. Besides, insufficient infrastructure and manpower, the ILI Report highlighted the issue of concurrent jurisdiction of regular courts and reluctance on the part of state functionaries to invoke the jurisdiction of Gram Nyayalayas.

Common Cause has accessed this report which reveal the glaring inadequacies in the functioning of the Act in these trophy states. A brief of the Report is presented below:

The main objectives of Gram Nyayalayas included justice at the doorstep of rural populace, speedy and effective disposal of cases, reduction in pendencies in regular courts, use of non-adversarial techniques such as conciliation and plea-bargaining for resolution of disputes, etc. From the viewpoint of these objectives, Gram Nyayalayas in these two states have not been very successful and the reasons for the same are plentiful.

Gram Nyayalayas have been established on part-time basis (weekly once or twice) and are not in addition to the existing courts. In the absence of a separate cadre of Gram Nyayadhikari, the Gram Nyayalayas are presided over by First Class Judicial Magistrates or Civil Judges (grade I or grade II) or in a few cases Chief Judicial Magistrates who are already over burdened with their regular judicial work. Further, the spirit of the legislation requires that as far as possible Gram Nyayalayas should be established where it would be of maximum utility to the villagers. But in practice some of the Gram Nyayalayas are established in cities/towns along with other regular courts having parallel jurisdiction. For example, in Indore the Gram Nyayalaya functions within the regular court premises.

It has also been pointed out that the infrastructure and security are grossly inadequate in MP. In Rajasthan, however the situation is better.

Besides, many of the stakeholders including the litigants, lawyers, police officers and others are not even aware about the existence of Gram Nyayalayas in the district court premises and no conferences or seminars have been organized for creating awareness about this institution. Further, there is ambiguity and confusion regarding the specific jurisdiction of Gram Nyayalayas, due to the existence of alternative forums such as labour courts, family courts, etc.

As stated above, one of the objectives of the Act was to reduce pendency and burden on lower courts in the district but the study revealed that even this has not been fulfilled. The number of cases disposed by Gram Nyayalayas is negligible and that they do not make any substantial difference in the overall pendency in the subordinate courts.

Other reasons for the institution falling short of expectations have been the lack of cooperation from lawyers and Public Prosecutors. The reasons cited range from lack of economic viability or incentives/allowance to security issues, unsafe location of a Gram Nyayalaya (sometimes being close to a forest, where crime rates are high), etc.

Some suggestions have been offered for optimizing the efficiency of Gram Nyayalayas of which the significant ones are:

- Establishment of permanent Gram Nyayalayas: Gram Nyayalayas may be established in every Panchayats at intermediate level or group of contiguous Panchayats at intermediate level depending upon the number of disputes which normally arise from that area. While determining the location of the Gram Nyayalayas the location of courts having parallel jurisdiction may also be considered.
- Infrastructure and Security: Separate building for the functioning of the Gram Nyayalaya as well as for the accommodation of the Gram Nyayadhikaris and other staff need to be constructed. Provision also has to be made for providing adequate security.
- Creation of a regular cadre of Gram Nyayadhikari: Officers recruited to this service ought to have a degree in social work apart from a law degree. However, some of the Gram Nyayadhikaris opined that creation of such a separate cadre might not be advisable due to the absence of chances of promotion. Instead, this could be made a compulsory service for a certain period for a newly recruited judicial officer to the regular cadre of first class judicial magistrates or civil judges.
- Training of Gram Nyayadhikari: This is imperative keeping in mind the objectives of Gram Nyayalayas. Apart from the legal and procedural requirements of Gram Nyayalayas, training may also include the local language of the community amongst whom they are posted.
- The Jurisdiction of the Gram Nyayalayas may be redefined in order to remove the ambiguities regarding the jurisdiction of Gram Nyayalayas, and the Act amended.
- Creation of awareness among various stakeholders: Suitable steps may be taken for creating awareness among various stakeholders including the revenue and police officers.

The Department-Related Parliamentary Standing Committee[6], in its report to Parliament, expressed dismay that the Gram Nyayalayas which were supposed to usher in a revolution at the lowest level of the judicial system were being held back because of fund sharing problem between the Central and the State Governments. It minced no words when it noted that very few States had shown eagerness to establish the Gram Nyayalayas and that there was not a single Gram Nyayalayas in any of the North- Eastern States.

The Committee acknowledged that there were shortcomings in the functioning of these bodies of which the slow pace of utilization of funds, in the absence of proposals by the States was purported to be the primary cause. Besides, inadequate infrastructure, non-availability of judicial officers to function as Gram Nyayadhikaries and problem of concurrent jurisdiction of regular courts were also impeding the speedy operationalization of the scheme.

Current Status

It is unfortunate that even after eight years of the Act's enactment and the Standing Committee's stinging observations, the implementation left to the States, has been dismal across the country. The then Union Minister for Law and Justice M. VeerappaMoily had assured in Oct, 2009 that the Centre would set up 5,000 village courts in the country in the next four-and-a-half years.[7]

[6]Comments of the Department-Related Parliamentary Standing Committee, Rajya Sabha On Personnel, Public Grievances, Law And Justice -Sixty Seventh Report (Presented to the Rajya Sabha on 6th February, 2014)(Laid on the Table of Lok Sabha on 6th February, 2014) -Infrastructure Development and Strengthening of Subordinate Courts

[7] http://www.thehindu.com/news/cities/Mangalore/5000-village-courts-to-be-set-up/article33920.ece (October 14, 2009, The Hindu, last accessed on April 4, 2016)

However, as per information accessed under RTI by Common Cause in May 2015, only the following State Governments have notified and operationalized Gram Nyayalayas.

S No	State	Gram Nyayalayas Notified	Gram Nyayalayas Operationalised
1	MP	89	89
2	Rajasthan	45	45
3	Karnataka	2	0
4	Orissa	16	12
5	Maharashtra	18	10
6	Jharkhand	6	0
7	Goa	2	0
8	Punjab	2	1
9	Haryana	2	2
10	Uttar Pradesh	12	0
	Total	194	159

Presented below is an overview of the status of implementation of the Act in the states and Union Territories. This information was provided to the writer by a government official who did not wish to be quoted.

Andhra Pradesh	Proposal for setting up of 139 Gram Nyayalayas pending. No notification as yet.
Assam	Proposed that the Scheme may be brought under a Centrally sponsored scheme and that the quantum of Central Assistance towards recurring expenditure be enhanced.
Goa	Notification of 2 Gram Nyayalayas. Yet to become operational
Haryana	Proposed setting up of 2 Gram Nyayalayas. Notification yet to be received.
Jharkhand	6 Gram Nyayalayas have been notified. Yet to become operational.
Karnataka	2 Gram Nyayalayas have been notified. Yet to become operational
Kerala	30 Gram Nyayalayas have been sanctioned. Copies of Notification yet to be received.
Madhya Pradesh	89 Gram Nyayalayas have been notified. All have started functioning.
Maharashtra	10 Gram Nyayalayas have been notified. 9 have started functioning.
Manipur	Has requested the Centre to extend financial assistance beyond 3 years. Intends to set up 15 Gram Nyayalayas
Orissa	14 Gram Nyayalayas have been notified. 8 have started functioning.
Punjab	Requested central assistance for setting up of 2 Gram Nyayalayas.
Rajasthan	45 Gram Nyayalayas have been notified and all have become operational.
Uttar Pradesh	Agreed to set up 1132 Gram Nyayalayas but only if Centre provides 100% assistance by way of funds.
West Bengal	Proposed to seek full financial assistance for implementation of the Act.

While Bihar, Gujarat, Lakshadweep, Daman & Diu, Puducherry and Dadra & Nagar Haveli have not even bothered to send in their comments on the proposal to set up Gram Nyayalayas, the states of Himachal Pradesh, Chhattisgarh, Tamil Nadu, Uttarakhand, Delhi and Chandigarh have decided not to establish Gram Nyayalayas, the latter two claiming urbanization for this decision.

The tribal areas in Mizoram and Nagaland have been exempted and for non-tribal areas, these North Eastern states have expressed their willingness to set up Gram Nyayalayas subject to elimination of certain legal impediments, not specified.

The way forward

The Preamble to the Gram Nyayalaya Act envisages access to justice to the citizens at their doorstep with the assurance that opportunities for securing justice are not denied to any citizen by reason of any disability whatsoever. Hence, the success of these institutions should not only be measured by the number of courts established in different states, but also in terms of reaching out to deprived sections of the society and its role in the overall reduction in the pendency of cases. However, as described in the earlier section, data analysed for Gram Nyayalayas in MP and Rajasthan indicate a not so positive outcome in respect of the latter.

When we begin to analyse the reasons for this failure, we see that there are a number of fault-lines in the functioning of these institutions in these two states. These range from procedural aspects such as ambiguity about its jurisdiction, absence of alternative methods of dispute resolution like conciliation or plea, etc, to substantive issues like part-time nature of Gram Nyayalayas, absence of a separate cadre of Gram Nyayadhikari, inadequate infrastructure and security, lack of seriousness and lukewarm response of the Public Prosecutors and lawyers, reluctance of police officials and other State functionaries to invoke the jurisdiction of Gram Nyayalayas, etc.

Also, the state wise responses detailed above, reveal that many of the states have been procrastinating, citing reasons such as absence of sufficient work for Gram Nyayalayas and some even expressing their apprehensions about increased work load in the District and Session Courts. Most of the states have expressed their dissatisfaction at the inadequate amount of funds and land allocation for the establishment of Gram Nyayalayas. Other issues include the non-availability of notaries and stamp vendors and problem of concurrent jurisdiction of regular courts. Further, majority of States have now set up regular courts at Taluk level, thus reducing the demand for Gram Nyayalayas .

Interestingly, a recurring question during various discussions prior to the passing of the Act was that whether speedy disposal meant speedy and effective justice for the poorer litigant. An emphasis on speedy disposal alone raised concerns about the objective of these institutions- whether to manage the arrears of the cases or to enable better access to the litigants?

However, despite these shortcomings, the institution of Gram Nyayalayas has been a positive step. Above everything else they need concrete, well planned and continuous efforts to make them work. The policy makers need to review, reflect and act upon the suggestions offered by stakeholders and firmly resolve to fulfil the mandate of Sec 39 A. This may need an amendment to the Act in order to iron out ambiguities on the basis of experiences of the past 8 years. Failing this, the dispensation of inexpensive and 'effective' justice to each person in the farthest and the remotest rural corners will remain a distant dream.

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COMMON CAUSE UPDATES

Developments in earlier interventions:

Supreme Court:

Challenging the vires of the appointments made to the CVC: The Petition challenges the arbitrary and non-transparent appointments of the new CVC and VC as violative of the principles of 'impeccable integrity' and 'institutional integrity' laid down in *Vineet Narain* case (1998) and Centre for Public Interest Litigation (CPIL) case (2011). The matter was heard on February 22, 2016 and listed for hearing on a non miscellaneous day.

Contempt Petition in Large Scale Advertisements: Common Cause filed a contempt petition against the State Governments of Uttar Pradesh, Delhi and Tamil Nadu for publishing publicly-funded advertisements in violation of the letter and spirit of the Apex Court's guidelines regarding large scale advertisements, which had carved out exceptions for the Prime Minister, the President and the Chief Justice of India. The matter was last taken up on March 9, 2016. The Centre and seven States, including the poll-bound West Bengal and Tamil Nadu, sought revision of the verdict, pleading that it infringed the fundamental rights and the federal structure.

The Bench headed by Justice Ranjan Gogoi reserved its verdict on the review pleas of the Centre and the seven States which demanded that besides the PM, pictures of Central ministers, CMs and other State ministers be allowed to be carried in public advertisements.

Preventing the export of logs of red sandalwood: The intervention of the Supreme Court was sought to foil a determined bid by the Government of Andhra Pradesh to export a huge quantity of confiscated red sandalwood, an endangered species. This move flies in the face of international conventions, express provisions of the Import-Export Policy and repeated admonitions of the Ministry of Environment & Forests. The matter was taken up on February 23, 2016, when the Union of India and the State of AP were granted four weeks as a last opportunity to file their counter affidavits. The Court has directed that the matter be listed on May 6, 2016.

Living Will: The petition sought the enactment of a law on the lines of the Patient Autonomy and Self-determination Act of the USA, which sanctions the practice of executing a 'living will' in the nature of an advance directive for refusal of life-prolonging medical procedures in the event of the testator's incapacitation. The matter was disposed of on February 25, 2014. Without pronouncing any order on the specific prayer made in our petition, the Court invited a Constitution Bench to resolve the inconsistencies involved in the issue and the matter was taken up on July 16, 2014. After notices were issued to all States and UTs, the matter came up on January 15 and February 15, 2016. The ASG submitted that the government was considering a legislation on the subject. Hence, the matter was adjourned for July 20, 2016.

Decriminalisation of politics: The Supreme Court had on March 10, 2014 passed an interim order directing that trials in criminal cases against MPs and MLAs must be concluded within a year of the charges being framed. The Court also directed that if the trial court is unable to complete the trial within a year, it would have to submit an explanation to, and seek an extension from, the Chief Justice of the High Court concerned. While seeking compliance of the Supreme Court order we sought specific time-bound directions for closer monitoring of all such cases. The matter was referred to the constitution bench on March 8, 2016.

Slaughter House Pollution: This petition praying for remedial measures against the rampant malpractices in slaughter houses was taken up on January 29, 2016, and the court asked the Ministry of Environment and Forests to file the affidavit in terms of the orders issued in March and August 2015. The Court made it clear that no further opportunity would be granted to the Ministry and listed the matter for February 26, 2016. Although the Court granted further adjournment at the hearing, it imposed a cost of Rs. 25,000 on the Union of India. The Welfare Board of India too was impleaded as a respondent. The matter is likely to be listed on May 2, 2016.

Illegal allocation of captive coal blocks: During the hearing on April 6, 2016 the Report of the Committee constituted in compliance of the order of September14, 2015 was taken on record. A copy of the Report was handed over to the Attorney General with the request to assist the Court on the further course of action. The Court decided to take up the reports filed by the Enforcement Directorate and the CBI for consideration on May 4, 2016, the next date of hearing.

Illegal Mining in Odisha: Our petition to curb illegal mining in Odisha, as highlighted by the Central Empowered Committee and the Justice M. B. Shah Commission was taken up on April 21, 2014. The Court issued notices to the respondents and directed the CEC to submit a report on illegal mining. On May 16, 2014, the Court granted an interim stay on the operation of 26 mines and directed the State Govt. to dispose of all renewal applications as per the law. These matters were later taken up several times and the Court directed the amicus curiae, Mr. A D N Rao, to file his response. The Court also requested the Attorney General to assist it on the interpretation of Section 8A for disposing the IAs filed, specially the one filed by the Steel Authority of India.The bench of Justices Khehar and Nagappan citing provisions of the amended Mines and Minerals (Development and Regulations) Act, 1957 on April 4, 2016 disposed the petition, concluding that applications of miners filed before January 2015 or at least 12 months prior to expiry of the lease would have to be considered by the State.

Contempt Petition against lawyers strike: The contempt petition filed by Common Cause against the strike of lawyers in Delhi HC and all district courts of Delhi on the issue of conflict over pecuniary jurisdiction, in WP (C) 821/1990 *(Harish Uppal vs Union of India)* was again taken up on February 1, 2016. At the hearing, Mr. Ram Jethmalani sought more time to convene a meeting of the Bar Association. Granting the request, the Court listed the matter for April 5, 2016.

Inquiry against ex-Chairman, NHRC Shri K.G. Balakrishnan: This matter was taken up on March 14, 2016. The Attorney General submitted that the individuals (relatives of Mr. Balakrishnan) in whose names the properties stood were income tax assesses. He informed the Court that he had all the assessment orders of the said assesses. In view of this submission,the Attorney General was directed to file a chart indicating the said facets and also keep the assessment orders and the orders passed by the appellate authorities, if any, for perusal of the Court. The matter has been listed for July 12, 2016.

Delhi High Court

Misuse of BSP reserved symbol: The petition challenging the order of the Central Election Commission rejecting our request for freezing the reserved symbol of BSP on account of its misuse by its government in UP could not be taken up during 2015 due to adjournments sought by the respondent, lawyers' strike and non-availability of the bench. On February 25, 2016, the counsel for the BSP contended that the said order of the ECI was passed pursuant to an order of in another petition which was still pending before the Supreme Court. The Court demanded to know why the respondent in the last five years did not seek the transfer of the petition to the Supreme Court, or seek a clarification. The Court has reserved its judgment after hearing the counsels.

Petition on electrocution by live wires: The Petition highlights the issue of recurring fatalities due to live wire electrocution, especially during the monsoon. Notice has been issued and the matter was listed on March 17, 2016. The Action Taken Report filed by respondent no 9 was taken on record and May 25, 2016 given as the next date of hearing.

Allahabad High Court

Extension of C&AG's audit jurisdiction to NOIDA, Greater Noida and Yamuna Expressway Authorities: The PIL on the subject was initially filed before the Supreme Court but was dismissed as withdrawn on February 24, 2015. The Allahabad High Court was approached on September 1, 2015 as per the leave granted by the Supreme Court. Notice was subsequently issued and counters and rejoinders filed. The affidavit of disclosure filed by the State government has revealed nothing new regarding the nature of its financial relationship with the authorities in question. However, the CAGs office has sought an adjournment to file a supplementary affidavit. The matter was listed for March 30, 2016, when the Court granted two weeks time to the parties to file their response on the supplementary affidavit filed by the office of C & AG of India. Next date of hearing has been fixed for April 26, 2016.

PREAMBLE

TO THE CONSTITUTION OF INDIA

"WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;
EQUALITY of status and of opportunity; and to promote among them all
FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION."

APPLICATION FORM FOR MEMBERSHIP OF COMMON CAUSE.

1. Name: _____
2. Father's Name: _____
3. Mother's Name _____
4. Date of Birth: _____
5. Educational Qualification: _____
6. Occupation: _____
7. Permanent Address: _____

   _____
8. Mailing Address: _____

   _____

(a) Email ID : _____

(b) Phone :_____Mobile: _____

9. Next of Kin (Name & Address): _____
10. Membership Sought. (Tick any one block):

Categories	**Ordinary**	**Life**
Individual (with voting rights)	Rs. 500.00 P.A. ☐	Rs. 5000.00 ☐
Associate (without voting rights)	Rs. 100.00 P.A. ☐	Rs. 500.00 ☐

11. Why do you wish to join COMMON CAUSE (up to 80 words)

_____

_____

_____

_____

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_____

12. Your expectations from COMMON CAUSE (up to 40 words)

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Place & Date: Signature

FUNDAMENTAL RIGHTS AND DUTIES

Rights beget empowerment for citizens. They enable them to participate in public affairs and to lead a life of dignity. Rights are also the bedrock of the citizens' legitimate entitlements from the State, their freedom and personhood. Every great nation is defined by the rights of their citizens. In most modern liberal democracies, citizens are meant to be sovereign, equal before the law, and morally autonomous beings, free to pursue their enlightened self-interest.

However, it is equally true that citizenship comes not only with Fundamental Rights but also with Fundamental Duties. After all great power comes with great responsibility.Those who make demands on the system for their Fundamental Rights must give back to the system by fulfilling their responsibilities as citizens. These duties should not be taken lightly, for they are just as important to our national identity as our Fundamental Rights. The notion of Fundamental Duties does not run counter to our freedoms, but rather the two occur in harmony, for a country is run for its citizen and by its citizens, and as citizens we cannot simply take without giving back.

It is perhaps in this spirit that Article 51(a) of the Constitution of India enlists the Fundamental Duties that cast upon the citizens a moral obligation to:

1. To abide by the Constitution and respect its ideas and institutions, the National Flag and the National Anthem;
2. To cherish and follow the noble ideals which inspired our national struggle for freedom;
3. To uphold and protect the sovereignty, unity and integrity of India;
4. To defend the country and render national service when called upon to do so;
5. To promote harmony and spirit of common brotherhood among all the people of India, transcending religious, linguistic, regional or sectional diversities, to renounce practices derogatory to the dignity of women;
6. To value and preserve the rich heritage of our composite culture;
7. To protect and improve the natural environment including forests, lakes, river, and wildlife and to have compassion for living creatures;
8. To develop the scientific temper, humanism and spirit of inquiry and reform;
9. To safeguard public property and to abjure violence;
10. To strive towards excellence in all spheres of individual and collective activities so that the nation constantly rises to higher levels of endeavor and achievement;
11. To provide opportunities for education to his child or, as the case may be, ward between age of 6 and 14 years;

"Ask not what your country can do for you, ask what you can do for your country."

Printed & published by Vipul Mudgal on behalf of Common Cause, 5 Institutional Area, Nelson Mandela Road, Vasant Kunj, New Delhi 110070, Printed at Gaylord Printers, F-128/2 Mohammadpur, RK Puram, New Delhi 110066, Editor-Vipul Mudgal
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