

JUSTICE DELAYED

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

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The writer retired as a justice of the Supreme Court of India in December 2018.

The [Economic Survey](#) of 2017-18 and of 2018-19 provided new insights into traditional areas of judicial reform. These surveys, along with the World Bank's Ease of Doing Business of 2018 and 2019 debunked and also confirmed some myths associated with justice delivery. These four reports tell us that knee-jerk reactions do not work and the need is for systemic and structural reforms.

The government is the biggest litigant and the problem starts at the grass-roots. Therefore, government adjudicators performing quasi judicial functions or taking administrative decisions must improve the quality of their orders. Judgment writing is an art and it must be developed by the adjudicating authorities. Poorly drafted orders have resulted in contested tax revenues in the region of Rs 7.58 lakh crore as on March 31, 2017. This is equal to 4.7 per cent of the GDP and it is rising. The success rate in government litigation relating to tax is less than 30 per cent and, in some instances, goes down to 12 per cent and further, while litigation is increasing. Decision-making is often complex and putting down the reasons in an intelligible and logical form is challenging.

Roughly Rs 50,000 crore are locked up in stalled projects and investments are reducing. Both these complications have arisen because of injunctions and stay orders granted by the courts primarily due to poorly drafted and poorly reasoned orders. The Economic Survey points out that the only beneficiaries are lawyers who get about 31 per cent of the total claim.

Increasing the number of judges or criticising judicial activism is not a solution. About 87.54 per cent of the total pendency of cases is in the district courts where judicial activism does not exist. Let's not expend energy over a mere fraction of public interest litigation out of the remaining 13 per cent pendency. Increasing the number of judges is also not necessary. The Economic Survey states that in the district courts only 2,279 vacancies need to be filled up to achieve 100 per cent clearance rate and 2,580 posts can be left vacant. In the high courts, 93 vacancies need to be filled up to achieve 100 per cent clearance rate and 315 positions (roughly 30 per cent) can be left vacant. Sure, if there are no vacancies, the clearance rate will increase dramatically, provided support staff is also provided. Increasing the number of judges has never reduced the pendency of cases.

But where is the money? Assuming that increasing judge strength and providing adequate staff does make a difference in the pendency figures, the fact is that the budget allocated to the judiciary is between 0.08 and 0.09 per cent of the GDP. Only four countries — Japan, Norway, Australia and Iceland — have a lesser budget allocation and they do not have any problem of pendency like we do. How do we define pendency? A case filed half an hour ago should not be counted in the pendency figures, as at present. For a start, let's decide (arbitrarily) that only cases pending for more than one year will be counted. This will make a substantial and realistic difference and introduce some sense in understanding figures.

Judges take too many holidays — really? District court judges work the same number of days as

government officers — 242 days in a year. The annual average disposal of cases by each judge is 746. This is quite good considering that evidence has to be weighed and sifted in every trial. High court judges work for 212 days in a year but their annual average disposal is 2,348. How much harder should high court judges work when only 93 more are required to achieve 100 per cent clearance rate? Cutting down on holidays is not a realistic answer — better case and court management is key.

Case and court management are the most important areas which, unfortunately, have not been adverted to in the Economic Surveys. The Ease of Doing Business Report of the World Bank for 2018 and 2019 shows that the time taken to decide a case has remained static at 1,445 days. Why is that? The quality of judicial process (out of 18 points) has marginally increased from 10.3 in 2017 to 10.5 in 2018. Clearly, judicial process in India needs huge investment to bring about significant improvement. Fast track courts or special courts or increasing the number of judges are not viable solutions, but ad hoc measures. About 30 per cent of the life of a case is spent in something as simple as service of notice. Will an increase in the number of courts or judges speed up the process? By way of a solution for expeditious service of notice and summons, the eCommittee of the Supreme Court launched a mobile application called National Service and Tracking of Electronic Processes (NSTEP). But it is seldom used, if at all.

A number of other tools have been provided to judges and the administrative staff through the eCourts Project of the Supreme Court. The sole aim is to make justice delivery more responsive to the needs of litigants. The latest is the launch of a Virtual Court in Delhi. Unfortunately, computerisation and automation are not being fully and effectively utilised by the high courts and district courts.

Yet another managerial solution that needs serious consideration was suggested by the 13th Finance Commission which introduced the concept of professional managers, an idea that has gained traction in the Economic Survey. However, when court managers were introduced in some of the courts, only a handful of chief justices took their engagement seriously, resulting in the experiment turning out to be a complete flop. In my view, court managers or equivalent professionals are the need of the hour and justice delivery can improve only if the courts accept and adopt professional help in their administration.

The usual suspects — vacancies, adjournments and vacations — are bogies and it is time we stop thinking about them and get down to identifying the causes of delays in our justice delivery system and providing meaningful solutions. The Economic Surveys have provided food for thought and we must digest it and have detailed discussions and debates, experiments and innovations, on a variety of proposals with a long-term perspective.

If we take up judicial reforms with seriousness, expeditious and effective justice can see the light of day and improve India's standing in the reports of the World Bank and other institutions and organisations that study judicial processes.

The writer is a retired judge, Supreme Court of India

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