

# INDIA'S CRUSHING COURT BACKLOGS, OUT-OF-THE-BOX REFORM

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'An Indian Mediation Service can be created on the lines of the judicial service' | Photo Credit: Getty Images/iStockphoto

Two important voices have weighed in recently on delays in the justice delivery system. The Chief Justice of India D.Y. Chandrachud stated that increasing the number of judges will not demolish the perennial problem of pendency, and that it is difficult enough now to find good High Court judge material. Sushil Kumar Modi, Chairman of Parliament's Standing Committee on Personnel, Public Grievances, Law and Justice has called for out-of-the-box thinking to solve the problem. Joining the dots, it seems clear that reforms inspired by convention will be pretty much like rearranging the deck chairs on the sinking Titanic. So, do we have other instruments, resources and methods? Here are three which are doable, do not cost much, and yield solutions.

We have difficulty in finding good talent to be appointed as judges of the High Court, but year after year we see the spectacle of large numbers of experienced and fine judges retiring from the High Courts because they have reached the age of 62. Many have several good years of work left in them which goes waste, much like the richest sediment on river banks getting washed out to sea. All that needs to be done is to continue them with pay and perquisites, and we would have kept the best for their last run of service.

Extend the out-of-box thinking and bring back retired Supreme Court judges to hear admission of Special Leave Petitions. These are appeals filed in hundreds every week against all kinds of orders of lower courts and tribunals across the length and the breadth of the country. They are the biggest clog to justice in the Supreme Court (SC) because they take away half the time of the country's senior most judges in just reading these mountainous files to decide which minute fraction to hear and dismiss the rest. It is stretching an analogy, but imagine the board of governors of the central bank sitting to examine doubtful currency notes. Many SC judges are in fine fettle at 65 when they retire, and this is better work for them than arbitrations where they become subject to scrutiny by District Judges. And working hours and schedules can be flexibly designed for retired judges to operate. This will enable the current judges to take up important cases in adequate Bench strength and composition. Extend this a little more and have a scheme

by which experienced High Court senior advocates sit as judges once a week to hear matters from another State High Court. Many would sign up for the novel and contributing experience, and many would do an excellent job.

But, the question arises, do we then not need more brick and mortar structures, office infrastructure and an army of staff? No, we do not, and that leads us to the second suggestion. Cultivate online justice. The courts responded splendidly to the COVID-19 shutdown by harnessing online facilities, and, pretty soon, judges and lawyers were quite well-versed in this new medium and welcomed its ease and flexibility. The environment too must have been relieved to be saved of carbon footprint. Unfortunately, we have gone back to the old days of only physical hearings in crowded courtrooms, jettisoning even the benefits of hybrid methods. However, enabling these *ad hoc* judges to work online from home with minimum support staff is an excellent harness of human and technology resources; it will enable a vast number of cases to be disposed of. And disposed of well, not just disposed off which is what will happen if we appoint inept new judges. The last not only produces injustice galore but needs two good ones to sit in corrective appeal.

Lastly, employ mediation. As a method of dispute resolution, it is far superior to litigation in cases where it can be applied. Those cover a wide range, from personal and matrimonial to civil and commercial and property disputes. India has had a marvellous introductory run with this process; in less than 20 years it has firmly established itself in the court annexed mediation schemes with thousands of trained and enthusiastic lawyers and other mediators handling lakhs of cases. If well planned and executed, mark my words, we have the capacity to lift half the load of such cases off court dockets and onto mediation tables. And, even now, most mediation centres have a success rate of over 50%, several much more. When you realise that it costs much less, takes a fraction of the time litigation does, brings about settlements which all sides can agree to, eliminates appeals, is easy to enforce if necessary, and respects and restores relationships then you know why Singapore's Chief Justice Sundresh Menon says, "What's not to like about mediation?" It is a no-brainer to use mediation as a central peg of reform. What is necessary, however, is to devise and implement sensible policies and strategies to encourage resort to it; and principal amongst these is to make it a professionally attractive career option for mediators who are willing to make a living by being peacemakers. An Indian Mediation Service can be created on the lines of the judicial service. And both incentives and disincentives must be devised for existing and prospective litigants to try this consensual method in good faith. That is all that is necessary; guide the horse to the pond, and more often than not, he will drink from it and savour the nectar of settlement and amity.

When we look at the crushing backlogs of Indian courts even the bravest feel daunted, and every Chief Justice probably feels like the Greek mythological figure of Sisyphus vainly, and in eternity, rolling the boulder up the hill only for it to roll back. Conventional reform prescribes more of the same — more judges, more courts, more staff, more infrastructure. But we know that we do not have the resources of either money or men and women. And, surely, we are tired of constant bewailing of the obvious and ever present problems. These suggestions offer a strikingly different approach, one which garners and puts to best use excellent available resources, technological and personal, and can make a telling impact. And they will show that innovation and reform can succeed, a message that is much needed. When necessity and possibility converge, sparks get ignited. To recall Sri Aurobindo in his great writing *The Hour of God*, the moment has arrived; but will we lose it because the lamp has not been kept trimmed for the welcome and the ears are sealed to the call?

Sriram Panchu is a senior advocate and mediator

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