

How to list cases better

Chief Justice of India Dipak Misra recently flagged rising pendency in appeals lying with High Courts based on the findings of the Supreme Court's Arrears Committee. He has since directed High Courts to prepare action plans for disposal of five and 10-year-old cases. He has also asked for High Court Arrears Committees to periodically review the situation. While it is crucial that a disposal review mechanism is put in place, the manner in which judicial performance is measured and accountability is exercised must be carefully revisited.

For decades, the primary measure of court efficiency has been case disposal rates. Public perception of court performance and individual judges now hinges on the number of cases pending before them. Though a crucial indicator, it also puts pressure on judges to dispose of as many cases as possible, a problematic situation as it does not consider the quality of adjudication itself. Neither does it shed light on the exact nature of cases that have remained pending the longest, or the stage at which pendency recurs the most. Since these parameters are not measured, they are often disregarded in the discourse on court performance.

To begin with, courts themselves must start analysing historical case data and introduce focussed interventions to counter specific case types or stages at which the case pipeline is clogged.

Impact of listing techniques

The discourse on case pendency has largely revolved around delayed appointments and vacancies. Our study of case data of a High Court over five years showed how certain cases listing practices influenced case movement and harboured pendency.

First, listing patterns were generally erratic, with the number of matters listed for the same courtroom ranging from 1 to 126 a month. In some courtrooms, it was 80-120 cases for a month.

Second, a large number of cases listed in a day meant that inevitably, matters listed towards the end of the day remained left over. Thus, cases in the final stages of hearing most often clogged the case pipeline.

Third, old pending matters barely made it to court. Our case data over three years showed that 91% of them remained unheard despite being allotted a separate day and specific judges. Some experts point out that these cases were listed for the second half of the day but would eventually never come up for hearing because of the large number of other urgent and routine matters listed. Advocates also tend to become disinterested in older cases in which clients have given up or stopped paying.

Spurring case movements

One way to accelerate case movement is by making case listing more systematic. Here, courts must assess their performance based on the actual number of cases being heard. Listing more than 100 cases a day may look to be an impressive work schedule for a judge, but we found that it is very rare for all of them to be heard. Cause list preparation can be made more scientific if

supported by a consistent study of the variance in the number of cases listed across courts, identifying the exact stages at which cases are clogging the pipeline for the longest duration, and the nature of cases left over. This will also ensure that only as many cases as can be reasonably heard will be listed on a daily basis.

Second, the cause list should have cases methodically distributed by type and stage. The court can decide on a minimum and maximum number for particular matters. A senior counsel of the Supreme Court emphasised the need to tweak listings such that final hearings are the first matters a judge hears in a day as it requires his complete attention. In the cause list we studied, such hearings were listed at the end, inevitably accounting for the largest leftovers.

Third, disposing of old and pending matters must be prioritised. Despite allotting two days in week to hearing these matters for most of the day, the High Court we studied had a massive docket of old pending cases. Their rate of case movement in newer matters (taken up on all other days of the week) was much faster than case movement recorded on specific days where old cases were listed. A solution would be to implement a policy where no adjournments are granted for frivolous reasons.

Scientific listing has clear benefits. It will introduce standardisation across courts and help disincentivise judges from using discretionary practices in the number and nature of cases listed before them. It will promote fairness — a reasonable number of cases would be listed every day, and distributed across the day based on stage and case type.

Another benefit would be better quality of adjudication. With an ever-increasing caseload, it is only fair to question the quality of decision-making. The Supreme Court, in April, remanded a case back to a High Court due to the poor quality of judgment (there were neither recorded submissions of the parties nor references to the relevant legal provisions used).

The quality and efficiency of court functioning can be improved with simple tweaks. Therefore, it is time that the judiciary as an institution opens itself to the services of competent external agencies that can help them record, manage and analyse their data better, to build and sustain a healthy institution.

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