POLICY PAPER SERIES 2, APRIL 2017

Delays in Courts: Subverting Justice for the Common Man

Making Judiciary Work for the Citizen

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2017

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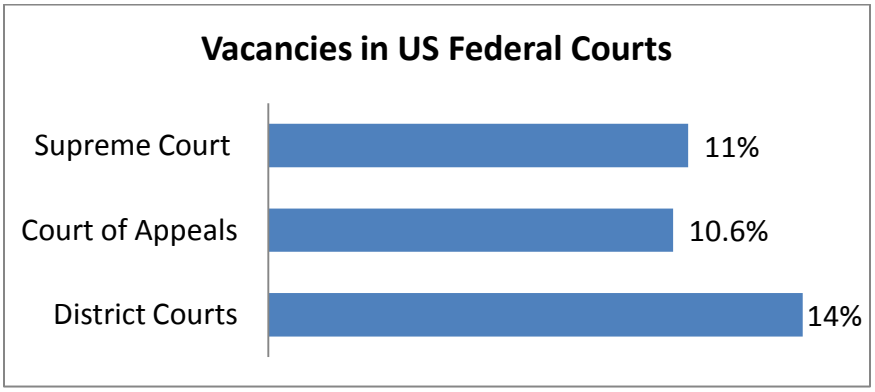
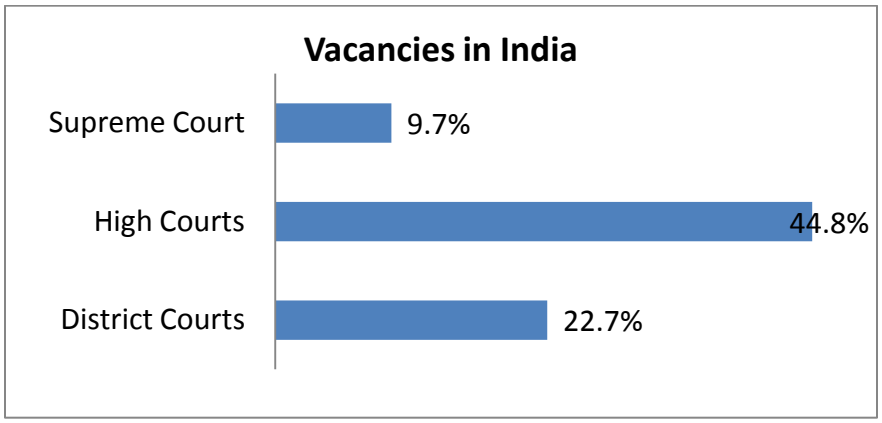
Delays in Courts: Subverting Justice for the Common Man

Not an issue of capacity alone?

Recruitment and management of vacancies may be an issue in judiciary today. But to say that HR is the sole issue for delayed justice is to negate the reality. Vacancies, no doubt, affect the capacity to handle the workload but this is not the situation peculiar to India alone. The world over, positions remain vacant. There is a continuous process of filling these slots so as to minimize the gap at a given point of time as illustrated in the graphic shown below. We therefore, have to admit that there are also the issues of inefficiency and case management in judiciary today. An attempt is being made to analyze some of the important issues and suggest the workable solutions.

Empty chair



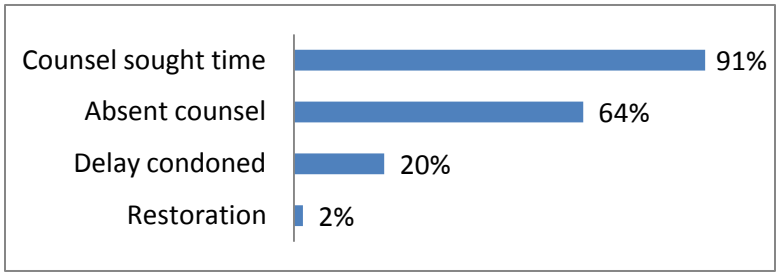


Source: A study by VCLP (Vidhi Centre for Legal Policy)

Inefficiency

Time sought by the counsel is often one of the important reasons for getting the entire justice process delayed. In a study, conducted by VCLP (Sengupta, 2017), in 91 percent of the cases, counsel sought time thereby being unable to maintain time lines in these cases. In as many as 64 percent of the cases counsel did not attend the hearings as per the same study. To make matters worse Hon.

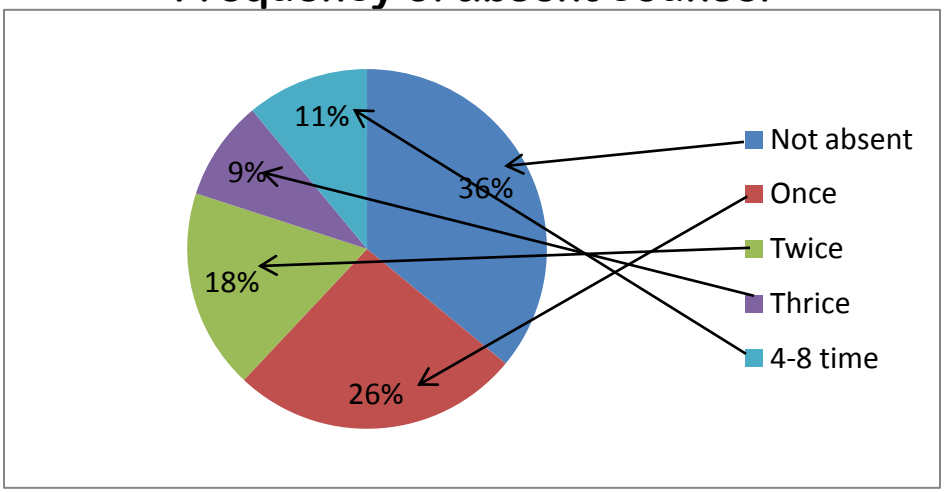
Reason for delay by the counsel



Source: A study by VCLP (Vidhi Centre for Legal Policy)

Judges even condoned such absenteeism without cost. Furthermore judges restored closed cases. All these inefficiencies encroach upon the Judges time, delay justice to the client and cost the exchequer. Such delaying tactics also block the judicial time, deteriorate effective case management and denies justice to the litigants.

Frequency of absent counsel

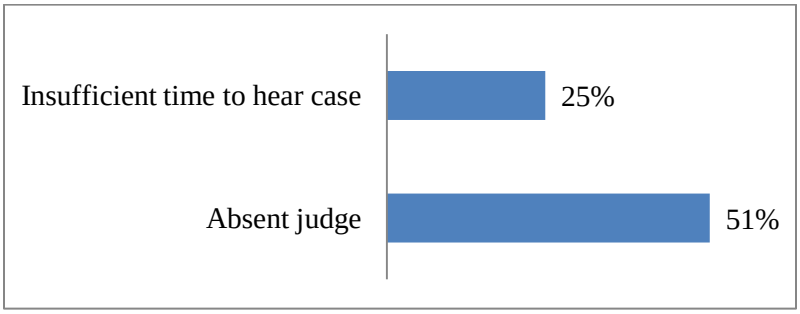


In 64% cases, the counsel was absent at least once

Source: A study by VCLP (Vidhi Centre for Legal Policy)

Because of these uncertainties' in hearing, many cases are listed daily and many of them are summarily disposed. This leads to a situation whereby important cases are given insufficient time by the Hon. Judges. Studies have found as many as 25% cases being heard insufficiently in High Courts. The same study, by VCLP, has found out that in 51% of the cases, (sengupta, 2017), the Judges have been found to be absent for hearing. The same situation is found to be prevailing in subordinate courts as well.

Reason for delay by the court

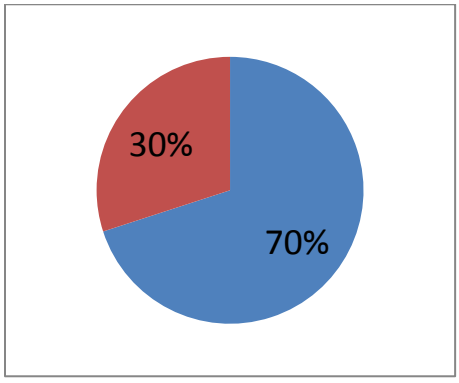


Source: A study by VCLP (Vidhi Centre for Legal Policy)

Another significant factor is granting of adjournments at the whims of lawyers. In 70% of the cases more than three adjournments have been found to be given which ultimately not only obliterates the justice but also enhances the cost of justice for the litigants and the exchequer.

Adjournments

Over 3 adjournments granted in nearly 70% of delayed cases



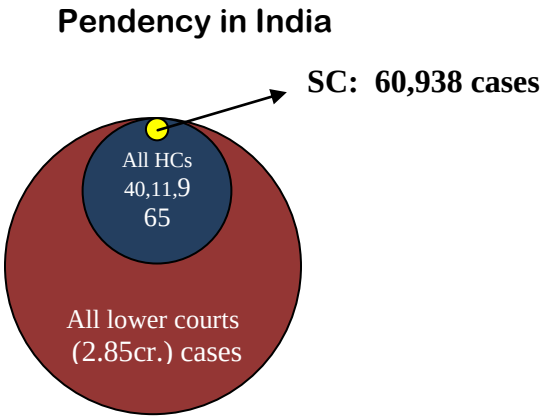
Though courts can impose costs on unnecessary adjournments, the Delhi high court imposed costs in only 20% of delayed cases adjourned over 3 times.

Source: A study by VCLP (Vidhi Centre for Legal Policy)

Although harsh penalties are sometimes awarded by the courts in stray cases but what is missing is the institutional framework to deal all such tactics as an established SOP. By and large, granting adjournment is subjective and lawyers often indulge in this delaying tactic. Oral arguments are often too long followed by long judgments. This has been happening for far too long. Even movies have been depicting this malaise many a times to the anguish of many concerned.

Suggested reforms

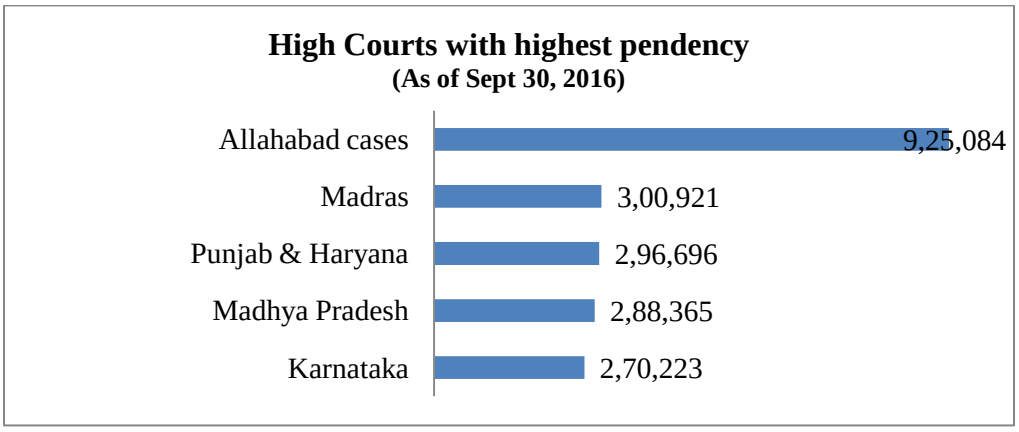
All these problems have been known for far too long. Delay in cases was first acknowledged by the Law Commission report for the first time in 1958. Malimath committee fixed the period of two years for normally disposing the case in 2003. Jagannath Rao committee devised the case management rules with timelines for each type of case which were subsequently consented by Supreme Court. But all these benchmarks have had little impact on the pendency of cases as these have never been followed in practice. This has been mainly because of non existence of any accountability framework in judicial set up to evaluate and monitor the progress against pre decided targets for individual Judges by the judiciary. The net result has been that as of 30, September 2016, there are 61000 pending case in the Supreme Court, forty lakhs cases in the High courts and 2.85 crore cases at level of subordinate courts (sengupta, court news, 2016). Further analysis shows that as many as 55% of the cases are pending for more than two years and 10% cases have been hanging for more than a decade.

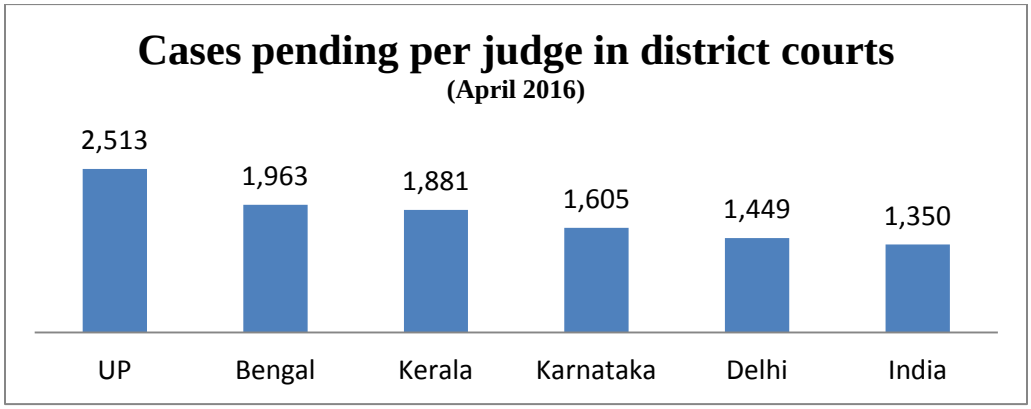


Source: A study by VCLP (Vidhi Centre for Legal Policy)

Problem acute in High and district Courts

The five High Courts the highest number of pending cases account for nearly half of all pendency in high courts





Source: Court News (Sept, 30 2016) National Judicial Data Grid

Case management:

For pendency of this magnitude HR may not be the only issue. Our courts have not let in the managerial professionals to handle the case management. Judges have neither the time nor the expertise to handle these cases. It is high time that we create a cadre of professional managers to look after and manage these cases so that courts are spared of their valuable time and put it to productive use in hearing the cases. It will also lead to better data management by the professionals. Computerization of the entire criminal justice administration system can go a long way in ensuring transparency and efficiency in the long run. Courts going on line, will also reduce the sole dependence of the litigants on their lawyers as they will be able to see the movement of their cases on the net.

Lack of technology application:

The use of technology can also help promote efficiency and transparency in another way. The live video recording of cases in the courts can go a long way in eliminating red tape of all stakeholders. But aversion of judiciary to the introduction of such modern age techniques is not understandable, especially at a time when other organs of the state such as parliament have already done so. Similarly, the use of video conferencing for taking evidence can help save time and money and at the same time can reduce the risk in sensitive cases. It is time that judiciary makes use of these modern technologies for enhancing its creditworthiness and educating the common man on various issues of jurisprudence. But, the manner and the pace at which it is proceeding does not auger well from the point of view of the judiciary as well as the common man.

Beginning to be made:

As a first step of reform, we have to start with the review of government litigation. More than half of the cases come from the state side. Many of them land even on flimsy grounds. It is amazing that, despite having a full flagged law department at central and state level, with sufficient legal inputs, such cases make their way and land in the courts. It is clear that present mechanism of scrutiny is not effective and needs reform. The government is not proving to be a responsible government. Litigation policy initiated in 2012 is yet not finalized by GOI. The least that the Government can do is to finalize it. It will also be prudent to constitute a high power Empowered Committee to look into all non serious cases and recommend withdrawal of such cases to the government of the day, both at federal and provincial level. Litigation policies, of the states too, need revision to avoid creating such a situation in future. Also, an institutional framework need to be put in the policy itself to review such cases periodically so that we do not run into same situation again and again. We also need to ensure enforcement of the policy. Such an action on the part of the government can help reduce the work load of courts as a first step.

Side by side we need to review our procedures for litigation as well. In the present circumstances, it may be worthwhile to make it mandatory for every case to go through a mediation process before landing in the court. This will not only help in making the use of hitherto underutilized system of alternate dispute resolution but also avoid the strain on judicial resources. Other procedures for

admission and various sections of the limitation act also need revision so that the discretion thereby, can be removed. This may seem insignificant but the fact is that courts condone delay and restore cases in as many as 20% and 2% cases respectively (Arghya Sengupta, VCLP). There are cases known to have been opened as late as 7to 10 years in certain instances. Streamlining procedures can have significant impact on the no of cases pending in our courts.

Above reforms, inter alia, are just indicative. Many more have been suggested by various studies, eminent jurists and commissions. Then, does the citizen have any hope? Yes indeed! There have been instances in Asian countries where the reforms were initiated in the right earnest. Within a decade, the entire backlog was cleared. Not only that, the average length of hearing was also drastically reduced, subsequently. What is needed is that public discourse should focus on these substantive matters rather than on recruitment alone. Even more important than that is the change in the mind set about the passive acceptance of the present situation by both, the judiciary and the government.

Bibliography

sengupta, A. (2016, September). court news. *National judicial Data Grid* .

sengupta, A. (2017, March Thursday). Hidden factors that slow our courts. *Times of India* , p. 7.

Sengupta, A. (2017). *study by Vidhi centre for legal policy* . New Delhi: VCLP.