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INEFFICIENCY AND JUDICIAL DELAY

NEW INSIGHTS FROM THE DELHI HIGH COURT

Nitika Khaitan
Shalini Seetharam
Sumathi Chandrashekaran

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This Report is an independent, non-commissioned piece of academic work.

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About the Authors

Nitika Khaitan is a Research Fellow in the Judicial Reforms Initiative at the Vidhi Centre for Legal Policy.

Shalini Seetharam is a Research Fellow in the Judicial Reforms Initiative at the Vidhi Centre for Legal Policy.

Sumathi Chandrashekaran is a Senior Resident Fellow heading the Judicial Reforms Initiative at the Vidhi Centre for Legal Policy.

Cover image taken from the website of the High Court of Delhi, http://delhihighcourt.nic.in/.

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The endemic delay in Indian courts is one of the most widely discussed topics in judicial reform. There have been concerted efforts to improve the performance of judicial institutions on this front. But with limited data-driven research, judicial policy-making continues to rely on outdated or inaccurate methodologies and estimates. This severely hampers the judiciary's efforts to improve its performance and adapt itself to the changing needs of the litigating public.

This report outlines a new approach to studying delay. It is based on an extensive analysis of data on recent cases filed in the Delhi High Court (DHC). We attempt to move beyond mere aggregations of case information, which reveal little about the nature of delay. Instead, we present clear quantitative evidence to aid reform measures to improve court efficiency.

To diagnose causes for delay, we first segregated normal cases from delayed cases. Delayed cases are cases that have spent more time in the court than a case of their type should have. Relying on established benchmarks, we treated two years as the time over which a case was presumed to be delayed. In a first-of-its-kind exercise, we manually analysed 8,086 individual orders in 1,129 cases filed between 2011 and 2015 in the DHC across eight case types. The cases we studied are a representative sample of all cases in the eight selected case types filed in 2011-2015 in the DHC, totalling 1,21,245 cases. We identified and recorded several types of inefficient behaviour, such as the absence of judges and of counsel, adjournments, lack of adequate court time to hear listed cases and so on.

We found instances of inefficient behaviour in nearly 97% of delayed cases and were also able to identify which types of inefficiency affected cases most often: adjournments, and the absence of counsel and judges. Adjournments, in particular, occur in alarming proportions in delayed cases. 91% of delayed cases involved at least one adjournment, and 70% involved more than three. In total, inefficiencies attributable to the counsel made up for 80% of all inefficient behaviour, whereas inefficiencies attributable to the court made up for 20%. By identifying the incidence of specific kinds of inefficiency, we can diagnose reasons for delay, and move beyond the information void that has so severely hampered research in this area.

The report also examines why certain cases are able to get disposed of relatively quickly. While the DHC has high disposal rates, we observe that several kinds of cases disposed of quickly by the court did not require prolonged adjudication. These include cases that are settled or withdrawn early, or dismissed for non-prosecution or frivolity. These cases skew the court's disposal rates upwards but tell us little about how speedily the court can handle a case that requires a full hearing.

We conclude with recommendations on tackling counsel-side and court-side inefficiencies, and explore 'demand-side' solutions to delay. We also suggest ways to improve data collection and management, to enable a more holistic assessment of the court's performance.

II. INTRODUCTION

A. Background

The Delhi High Court (DHC), which has jurisdiction over the National Capital Territory of Delhi, completed 50 years of its functioning in 2016. This golden jubilee provides a good opportunity to take stock of the performance of one of the busiest High Courts in the country.

The DHC has enjoyed many successes, having undertaken several initiatives to improve its own functioning and further the interests of litigants. It has proactively introduced measures such as penalising court adjournments,[1] setting up a case management system, and encouraging alternative dispute resolution.[2] It has also piloted technological solutions to address justice access and transparency issues. For instance, it was the first court to launch e-courtrooms in India,[3] making case information easily available online, and the first to facilitate e-filing and e-payment of court fees.[4] In addition, the court has repeatedly demonstrated its commitment to reducing the problem of pendency, introducing case flow management,[5] and launching programs such as 'Mission Mode Programme For Reduction of Pendency' and 'Five Plus Free,' for early disposal of cases that are more than five years old.[6]

Notably, the DHC has made sincere efforts to take stock of its achievements and failures. It was the first High Court to compile periodic reports, publishing the first report for 2006-2007.[7] These reports present granular statistics on filing, pendency, and disposal of cases according to case type; comparisons of these rates across months and years; calculations of the average time judges have to hear cases; and the average cost incurred by the DHC in hearing a case. They even outline recommendations made by Arrears Committees, and the efforts of the DHC Registrar towards reducing pendency—from changing procedures to improving infrastructure and computerising records.[8] Further, the Statistics Branch of the DHC prepares daily, weekly, and monthly reports on

[1] Kanu Sarda, 'Now, Unnecessary Court Adjournments to Attract Fine' (The New Indian Express, 6 March 2016). Accessed at http://www.newindianexpress.com/thesundaystandard/2016/mar/06/Now-Unnecessary-Court-Adjournments-to-Attract-Fine-900479.html. Last accessed on February 16, 2017. Unless otherwise specified, last access dates for all URLs in this report are the same.

[2] Kanu Sarda, 'Government Set to Enact Law of Mediation to Cut Pendency' (The New Indian Express, 21 February 2016). Accessed at http://www.newindianexpress.com/thesundaystandard/2016/feb/21/Government-Set-to-Enact-Law-of-Mediation-to-Cut-Pendency-895094.html.

[3] Smriti SIngh, 'Delhi HC gets India's first e-court' (The Times of India, 16 December 2009). Accessed at http://timesofindia.indiatimes.com/city/delhi/Delhi-HC-gets-Indias-first-e-court/articleshow/5341875.cms.

[4] 'Delhi High Court to inaugurate e-filing of case papers Friday' (Business Standard, 24 October 2013). Accessed at http://www.business-standard.com/article/news-ians/delhi-high-court-to-inaugurate-e-filing-of-case-papers-friday-113102401225_1.html.

[5] 'Brief Note on Legislative, Policy, and Judicial Initiatives for the Expeditious Delivery of Justice,' West Bengal Judicial Academy. Accessed at http://www.wbja.nic.in/wbja_adm/files/Brief%20Note%20on%20Legislative,%20Policy%20and%20judicial%20initiatives%20for%20the%20expeditious%20selivery%20of%20justice%20prepared%20by%20the%20National%20Mission%20for%20Justice%20Delivery%20and%20Legal%20Reforms.pdf.

[6] Smriti Singh, 'Cases pending for 3 decades' (The Times of India, 27 January 2017). Accessed at http://timesofindia.indiatimes.com/city/delhi/Cases-pending-for-3-decades/articleshow/29428057.cms.

[7] 'Biennial Report: 2006-07' (High Court of Delhi). Accessed at http://delhihighcourt.nic.in/writereaddata/upload/AnnualReport/AnnouncementFile_MA9W29RG.PDF.

[8] 'Biennial Report: 2008-2010' ((High Court of Delhi). Accessed at http://delhihighcourt.nic.in/writereaddata/upload/Report/AnnouncementFile_H7V0XXUU.PDF; 'Biennial Report (2010-2012). Accessed at

Bench-wise disposal of the previous day, as well as a report of cases instituted, disposed of, and pending. These are sent to DHC judges, its Chief Justice, and the Ministry of Law and Justice to help them evaluate the court's functioning.[9] DHC-related statistics are also available in *Court News*, a quarterly publication of the Supreme Court. But this provides only basic information about the number of civil and criminal cases filed, disposed of, and pending in each High Court from 2006 onwards, making it difficult to infer much.[10]

The DHC's reports present a few concerns. DHC reports are not always published regularly—understandably so, since some of the responsibility for compiling the reports falls upon judges already burdened with other tasks—and may sometimes contain errors.[11] Further, as this report details, analysis of different metrics would help these reports give a fuller picture of the DHC's functioning.

There is little independent research on the court's performance, both in terms of measuring court functioning and evolving new parameters to evaluate judicial performance. To address this, the Vidhi Centre for Legal Policy has undertaken a data-driven study of the DHC. While many aspects of the court's performance merit such studies, this report focuses on the *amount* and *quality of time* that cases spend in the DHC, with a view to diagnose what delays a case, and what helps early disposal.

B. Understanding delay

Delay in justice delivery, consequent pendency, and ballooning backlog in courts are the most frequently discussed topics in judicial reform. Though the problem of delay and its increasingly horrifying dimensions are widely recognised, there is little data-driven research that has quantified this delay or diagnosed its causes.

Several reports have been commissioned on the issue of large arrears and excessive delays in High Courts. The Law Commission of India alone has dealt with arrears in at least fourteen reports since 1958, and while it has made significant contributions to the literature on delay, it too has been limited by the data High Courts have provided it.[12]

Besides official reports, news publications have covered delay extensively, but usually without examining its causes in any detail. Recently, organisations like Daksh have begun large-scale data collection on High Courts, circumventing some of the flaws in the High Courts' own statistics-collection by independently scraping data off High Court websites.[13] But since High Courts provide

http://delhihighcourt.nic.in/writereaddata/upload/Report/AnnouncementFile_3AYQRLFA.PDF.

[9] 'Biennial Report: 2010-2012' (High Court of Delhi), p. 71. Accessed at http://delhihighcourt.nic.in/writereaddata/upload/AnnualReport/AnnouncementFile_XFRPVEPD.PDF.

[10] 'Court News' (Supreme Court of India). Accessed at http://supremecourtofindia.nic.in/courtnews.htm.

[11] The 245th Law Commission report describes how the DHC showed that -40,054 Negotiable Instrument Act cases, a negative number of cases, had been instituted in 2010. The Law Commission speculated that this number may have been "inserted to balance the backlog tally" or make up for a previous error in reporting. Law Commission of India, 'Arrears and Backlog: Creating Additional Judicial (wo)manpower,' Report No. 245 (July 2014), p. 11. Accessed at http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf.

[12] The earliest Law Commission report to mention arrears was issued in 1958. Since then, it has issued three reports specifically on arrears in the judiciary, two of which focus on addressing arrears as part of larger judicial reforms, and at least eight others which in part aim to reduce arrears, through alternative dispute resolution, oral argument rules, commercial division of courts, and so on. Accessed at http://lawcommissionofindia.nic.in.

[13] DAKSH, 'Understanding Pendency,' State of the Indian Judiciary Report (2016). Accessed at

limited data per case on their websites, aggregating such data can yield only tentative insights into causes of delay (as is explained in-depth later).

Inadequate research on delays is symptomatic of a bigger problem—the in-depth empirical study of judicial institutions in India is still nascent.[14] As a result, public opinion and policy decisions relating to the courts are informed by anecdotal evidence, 'guesstimates,' and sometimes, misreported numbers.[15] Empirically-backed reform is especially needed in the context of High Courts, since they are arguably the slowest, least efficient, and most overburdened of the three levels of courts in India, given their wide-ranging jurisdiction.[16] Relative to the Supreme Court and the district courts, High Courts also have the highest percentage of seats vacant and have the most number of cases pending per judge.[17]

These systemic problems are likely to be further exaggerated in the DHC as, unlike most High Courts, the DHC also has original jurisdiction in certain types of cases. Daksh's *State of the Indian Judiciary* report also noted that the number of days between hearings was longest in the DHC out of the High Courts it surveyed,[18] confirming inefficiencies in the DHC's functioning. This alone makes the prospect of identifying causes for delay in the DHC more urgent, and potentially relevant for studying delay across other High Courts.

Other features specific to the DHC make its study particularly interesting. Founded with a mere four judges, it has grown to be the sixth-largest Indian High Court in terms of the number of judges. It is equal to the Madras High Court in its sanctioned strength of 60 judges, although its working strength has fluctuated between 70-80% of this. With its seat in the ninth-most literate state[19] in India, which has the highest Net State Domestic Product per capita,[20] the DHC shows consistently high civil filings since its inception, like other High Courts in developed states.[21] This could be because active economies see more transactions and therefore more disputes; wealthier and better-educated people are more able to access courts; and people in more developed states might

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http://dakshindia.org/understanding-pendency.

[14] Prashant Iyengar, 'Adjudicating 'Litigotiation:' Cases Filed in the Mumbai Family Court' (Economic and Political Weekly 51, no. 23; 4 June 2016).

[15] In estimating how many more judges we need, for instance, many judges and news reports still rely on a figure of 50 judges per 10 lakh people, taken from a 1987 Law Commission Report. Not only is this figure outdated, but also unscientific, as the report itself admitted—the report merely cited the judge-to-population ratios in various countries, and proposed an in-between number for India. Law Commission of India, 'Manpower Planning in Judiciary: A Blueprint,' Report No. 120 (July 1987). Accessed at http://lawcommissionofindia.nic.in/101-169/report120.pdf.

[16] As the head of a State's judicial administration, they exercise possibly the widest jurisdiction of the three levels of the judicial hierarchy in India, for they have jurisdiction vested upon them by the Constitution of India, by Central legislation, and by State legislation. Consequently, besides being principal civil courts with original jurisdiction in States, High Courts also have original writ jurisdiction under Article 226 of the Constitution, as well as supervisory and appellate powers over courts below them.

[17] Sumathi Chandrashekaran and Smriti Parsheera, 'An incredible number of cases are pending before our judges. How many vacancies need to be filled? How many more judges do we need?' (myLaw.net, 15 September 2014). Accessed at http://blog.mylaw.net/an-incredible-number-of-cases-are-pending-before-our-judges-how-many-vacancies-need-to-be-filled-how-many-more-judges-do-we-need/.

[18] DAKSH, 'Decoding Delay: Analysis of Court Data,' State of the Indian Judiciary Report (2016). Accessed at http://dakshindia.org/state-of-the-indian-judiciary/11_chapter_01.html#_idTextAnchor009.

[19] 'Census of India: State of Literacy' (2011). Accessed at http://censusindia.gov.in/2011-prov-results/data_files/india/Final_PPT_2011_chapter6.pdf.

[20] This is as per the latest available official figures from 2014-15. NITI Aayog, 'Per capita NSDP at current prices (2004-05 to 2014-15).' Accessed at http://niti.gov.in/content/capita-nsdp-current-prices-2004-05-2014-15.

[21] Sital Kalantry, Theodore Eisenberg, and Nick Robinson, 'Litigation as a Measure of Well-Being' (62 DePaul Law Review 247, 2013). Accessed at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5037&context=journal_articles.

also trust court processes more.[22] The DHC also registers high filings because it is located in the "most legally concentrated state in India,"[23] and is geographically proximate to the Supreme Court. Further, Delhi is where the offices of most Central Government offices and many quasi-judicial authorities are located, making the DHC the court of jurisdiction for writs under Article 226 and Article 227 of the Constitution. But the number of filings over the years has in fact reduced, due to the massive backlog of cases and its "dampening effect on citizens going to court."[24] With delays and backlog in the DHC becoming an actual impediment to a litigant's access to justice, the problem needs immediate attention and focussed study.

[22] 'Civil litigation rates tied to growth, Human Development Index, literacy: Study' (The Times of India, 10 April 2012). Accessed at http://timesofindia.indiatimes.com/india/Civil-litigation-rates-tied-to-growth-Human-Development-Index-literacy-Study/articleshow/12603390.cms.

[23] 'RTI reveals number of lawyers' (Legally India, 18 February 2013). Accessed at http://www.legallyindia.com/201302183448/Bar-Bench-Litigation/rti-reveals-number-of-lawyers-india.

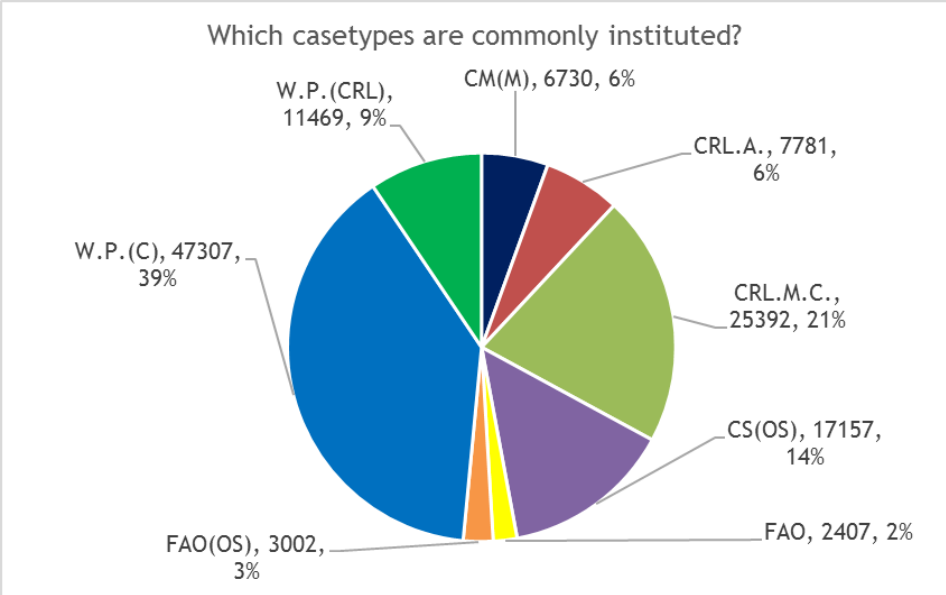
[24] Sital Kalantry, Theodore Eisenberg and Nick Robinson, 'Litigation as a Measure of Well-Being' (62 DePaul Law Review 247, 2013), p. 275. Accessed at http://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=5037&context=journal_articles.

III. RESEARCH METHODOLOGY

We extracted primary data from the DHC website of all cases filed between 2011 and 2015 across eight case types.[25] Our objective was to move beyond the statistics provided by the DHC in its periodic reports.[26] The DHC records the following metadata on its website for each case: case type and status; petitioner and respondent name; advocate for petitioner; dates of orders, filing, and disposal; and the orders and judgements passed.[27]

We chose the 2011-2015 time period since we believe that recent cases are more relevant and appropriate for understanding the DHC's current performance. The case types analysed in this report were selected to represent each major category of cases, viz. original side cases, appeals, writs, and suits. A total of 2,02,595 cases were filed between 2011 and 2015 in the DHC. Of these, 1,21,245 cases belonged to the eight case types we selected. Thus, we worked with a comprehensive dataset constituting 59.85% of all cases filed in the DHC between 2011-2015, which is a significant indicator of the state of institutional functioning of the DHC.[28]

Figure 1



[25] All the data extraction, database management and programming tasks necessary for this project were conducted by Sandeep Reddy, a freelance programmer. Vikram Bahure, a non-resident expert and associate fellow at Vidhi, and Kartik Srivastava helped with the statistics, analytics, and data visualisation for this project. All the software used for data extraction for this project is open source. More specifically, extraction of data was done using a Rasberry Pi on a Linux operating system, using Javascript (node.js framework), and MySQL database. First, a binary search algorithm was used to 'fetch' the total number of cases of each case type in each year from the website, and an empty data set was created in the database for all these cases. Next, a web scraper (also referred to as web harvesting or web data extraction) module was created to scrape data directly from High Court websites and the dataset was populated by running the scraping script with error-retry logic until the complete data was fetched. Querying all the cases and mining data was completed in a fifteen-day period (See Annexure A for dates). Once the data was extracted, we used the statistical software R, version 3.3.0. Using R, the analysis was automated to minimise error, and this can be replicated for similar databases.

[26] The last of these periodic reports was published for 2010-12.

[27] It is not clear if the orders listed are a comprehensive set of orders issued in a case.

[28] Income tax cases and income tax appeals are some of the major case categories that were excluded.

Box 1

Case types and what they mean

1. Civil Miscellaneous Application (Main) (CM(M)): This is usually filed during the pendency of a civil case asking for certain procedural measures (e.g., injunction, permission to file documents, amend pleadings, etc.)

2. Civil Suit (Original Side) (CS(OS)): This is a civil suit claiming damages, enforcement of contract, permanent injunction, or any civil remedy under any law, provided that the value of the claim is more than Rs. 2 crores. DHC's pecuniary jurisdiction was raised to two crores by the enactment of the Delhi High Court Amendment Act, 2015, which was notified in October 2015.

3. Criminal Appeal (CRL.A.): This is an appeal against a judgment by a trial court in a criminal trial.

4. First Appeal from Order (FAO): This is an appeal against any order in a civil suit, of a court lower in rank to the High Court.

5. First Appeal from Order (Original Side) (FAO(OS)): This is an appeal against the DHC's orders in a Civil Suit (Original Side) case.

6. Criminal Miscellaneous Application (CRL.M.C.): This includes only those criminal miscellaneous applications under Section 482 of the Code of Criminal Procedure, 1973. These are filed during the pendency of a criminal case either in a lower court or in the DHC itself, asking for certain procedural measures (e.g., permission to recall witnesses, quashing of FIRs or charges, etc.)

7. Writ Petition Criminal (W.P.(CRL)): This is a petition filed under Article 226 or 227 of the Constitution of India in a criminal case, and includes *habeas corpus* petitions, and may overlap with criminal miscellaneous applications in some kinds of cases such as quashing of FIRs.

8. Writ Petition Civil (W.P.(C)): This is a petition filed under Article 226 or 227 of the Constitution of India in a civil case. In a civil writ, a petitioner can seek to review any decision of, or get a direction issued to, a governmental authority (Centre, State, or Municipal) located in Delhi, where 'governmental authority' includes quasi-judicial bodies such as tribunals.

As part of our research, we interviewed several legal practitioners. 11 such interviews were conducted in-person with legal practitioners who practice in or are familiar with the DHC. In the interviews, we briefly presented our method of data extraction, and our initial calculations of average disposal times and other metrics. We asked for possible explanations of our findings based on their experience with the DHC—e.g., why certain case types might be associated with lower disposal times than others, whether average disposal times reflected what they had encountered in their practice, and so on.

A. Causes of delay

In the first part of our analysis, we tried to identify the nature and extent of reasons that commonly contribute to delay in case disposal.

1. Pendency is not delay

To identify causes of delay, it is important to first isolate delayed cases from cases that are merely pending in the ordinary course of proceedings. As the Law Commission clarified in its 245th Report, pendency refers to all cases that have not been disposed of, regardless of whether they were filed in the last week or last decade. Delayed cases, on the other hand, are cases that have been in the judicial system for longer than the normal time that cases of their type should have taken.[29] 'Delay' and 'pendency' are often used interchangeably, which can confuse efforts to understand a court's functioning. Clearly, the number of pending cases is not the best measure of how a court handles delay, since even cases filed a few days ago, which may be on track for a speedy disposal, fall within this figure.

The difficulty lies in ascertaining the 'normal time' a case type should take, beyond which a 'pending' case becomes 'delayed.' Developing such standards requires large-scale quantitative research across courts, combined with surveys of legal practitioners and litigants, and studies of procedure across case types, of a kind that has not been undertaken before. Some government reports have attempted to set such standards, although these are far from being treated as conclusive. In its 14th (1958) and 79th (1979) Reports, for instance, the Law Commission laid down timeframes within which different case types should be disposed of.[30] In 2003, the Malimath Committee suggested that cases pending for more than two years should be considered delayed.[31] More recently, the Jagannadha Rao Committee devised model case management rules endorsed by the Supreme Court,[32] also containing timelines for different case types, the upper limit of which is two years.[33] Drawing from these reports, the present report treated two years as the benchmark over which a case is presumed to be delayed.[34]

2. Moving beyond aggregates

After separating delayed cases from pending cases based on this two-year benchmark, we looked at ways to diagnose factors that lead to delay.

The data that could be scraped off the DHC website proved too sparse to help in this analysis. Merely aggregating information from order details along with broad case type classifications says very little about why an individual case took as long as it did. From this data, we were only able to calculate, for different case types, the averages and medians of the number of days taken to

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[29] Law Commission of India, 'Arrears and Backlog: Creating Additional Judicial (wo)manpower,' Report No. 245 (July 2014). Accessed at http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf.

[30] Law Commission of India, 'Reform of Judicial Administration,' Report No. 14, vol. 1 (September 1958) p. 130, accessed at http://lawcommissionofindia.nic.in/1-50/Report14Vol1.pdf;
Law Commission of India, 'On Delay and Arrears in High Courts and Other Appellate Courts,' Report No. 79 (May 1979) p. 9-10, accessed at http://lawcommissionofindia.nic.in/51-100/Report79.pdf.

[31] Ministry of Law, Government of India, 'Committee on Reforms of the Criminal Justice System (Malimath Committee)' (2003) p. 164, ¶ 13.3. Accessed at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf.

[32] *Salem Advocate Bar Association, Tamil Nadu* Vs. *Union of India* (2010) INSC 615.

[33] Jagannadha Rao Committee, 'Consultation Paper on Case Management.' Accessed at http://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf.

[34] As most of the reports mentioned acknowledge, timelines must be different for different case types. A civil suit, for instance, is one of the most time-intensive case types in the Delhi High Court since it involves a trial, whereas, say, a parole case may be procedurally simpler and far shorter. Different benchmarks must thus be used for when a civil suit is considered delayed, and for when a parole case is. Due to data and capacity constraints, we had to adopt a uniform timeline for all case types in our dataset, and hence adopted the outer limit of two years for all.

dispose of a case, the number of orders per case, and the number of days between orders (see Annexure B).

Such aggregates are a useful starting point for analysis and form a bulk of the empirical research that is being conducted on Indian courts presently.[35] But aggregates are limiting in various ways and cannot be the premise for judicial reform efforts. For instance, the DHC classifies cases into broad categories such as 'Criminal Miscellaneous' applications, which comprise many different kinds of cases, from procedurally simple parole matters to more complex interlocutory applications. Calculating the average number of days for disposing of a criminal miscellaneous case would not accurately reflect either kind of case. The DHC website does not facilitate calculating more specific averages for, say, parole matters exclusively, since one has to manually read a case's orders to determine what kind of criminal miscellaneous case it is. Further, as the legal practitioners we interviewed emphasised, some cases are settled or withdrawn early and can disproportionately lower these averages if not accounted for (discussed in the second part of our analysis). Comparing yet other averages, such as the number of days between orders, might help us diagnose how the DHC is managing the allocation of cases across judges and benches. But nothing in this aggregate data can help us diagnose causes of delay.

3. Analysing orders

To overcome these limitations, we undertook a first-of-its-kind exercise and analysed the text of the orders passed by the DHC in cases adjudicated by it.

Towards this, we generated random samples of cases, which were representative of the entire dataset with a 95% confidence level and 5% error margin. We then manually read all the orders for these randomly selected cases. To sort out normal cases from delayed cases, we generated different random samples for cases that had spent less than two years and more than two years in the court system respectively. In the former category, we included only cases that had been disposed of within two years, which are called '**normal cases**' in the report for convenience.[36] In the latter category, we included cases that had remained in the system for more than two years (irrespective of whether they were disposed of or pending when we concluded our data collection[37]), since the moment a case crossed the two-year benchmark, it was presumed delayed. These are called '**delayed cases**' for the rest of the report.

We then attempted to identify kinds of information that were commonly contained in orders and that could help us diagnose delay. Many orders simply state the next hearing date for the case, and a few others provide reasons for a decision, but neither type of order helps us analyse why a case takes as long as it does. The complexity of a case is also a factor that affects the time taken in court, but this, too, is not reported in orders. We thus decided to focus on the behaviour of parties, which was recorded regularly in orders. For example, orders recorded instances when a case was adjourned because a judge or counsel was absent, or the court was out of time, or because a counsel failed to meet a deadline and sought additional time.[38] These types of behaviour clearly

[35] See for instance Maja B. Micevska and Arnab K. Hazra, 'The Problem of Court Congestion: Evidence from Lower Courts' (2004). Accessed at http://ageconsearch.umn.edu/handle/18750.
[36] We excluded cases pending for less than two years from the 'normal' category, since we cannot know how long they will take to get disposed, and hence cannot assume they are 'normal' cases.
[37] See Annexure A for dates when data collection was concluded.
[38] A study of 22 cases disposed of in the Debt Recovery Tribunal (DRT) in Delhi identified similar types of behaviour, classifying avoidable and unpenalised adjournments as failures. It sub-categorised failures based on

impact how long a case spends in court, since they cause the work scheduled for a certain hearing to be postponed to the next.

In a perfectly efficient court system, counsel and court functionaries should meet the deadlines imposed on them and be present in court when they are scheduled to be; and court staff should list only as many matters in a day as can be heard. When we observed the opposite kinds of behaviour in orders, thus, we classified them as inefficiencies.

We recognise that, sometimes, circumstances may justify a particular instance of inefficiency. But since the court controls the next listing date, even if counsel require additional time for a case, this should generally be decided in the previous hearing itself and hearings should not be wasted with counsel appearing merely to seek more time. If judges or counsel are on leave, or too many cases have been listed for a day, this too should be communicated to the other parties before the hearing. We hence presume for convenience that whenever these kinds of behaviour are recorded in an order, they reflect inefficiency.

4. Diagnosing inefficiency

Based on a preliminary reading of some orders, we identified several types of inefficient behaviour (listed below), attributable either to the court or the counsel/litigant, which we estimated would contribute to delay. We then proceeded to record how often each of the following occurred in every case:

1. Court-side inefficiencies
    a. Insufficient time to hear a case
    b. Absent judge
2. Counsel/litigant-side inefficiencies (referred to in this report as counsel-side inefficiencies for convenience)
    a. Counsel sought time
    b. Absent counsel
    c. Delay condoned
    d. Restoration

On the court-side, ‘absent judge’ was recorded whenever the order specifically noted this, and ‘insufficient time to hear a case’ was recorded whenever the order noted that no time was left in court on that day to proceed with a hearing. Inefficiencies attributable to either the counsel or litigant were clubbed together, since for each of these categories, it is impossible to identify which actions of lawyers were due to their own lapses or strategic decisions, or their clients’. Under ‘counsel sought time,’ we included two kinds of instances—first, where the counsel failed to meet a deadline imposed by the court and asked for an adjournment; and second, where the court noted that a deadline had not been met and granted additional time. ‘Delay condoned’ includes orders where the court condoned a counsel-side failure to meet a statutory deadline. ‘Restoration’ refers

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the party that caused them—the petitioner, defender, tribunal, or unknown. See Prasanth Regy, Shubho Roy, and Renuka Sane, ‘Understanding Judicial Delays in India’ (May 18 2016.) Accessed at https://ajayshahblog.blogspot.in/2016/05/understanding-judicial-delays-in-india.html.

to orders in which the court reinstated a case dismissed for non-prosecution. Both condonation of delay and restoration indicate counsel-side failures to meet a deadline or appear in court; and they postpone substantive work on a case, since applications for both must be heard and decided before the case can proceed.

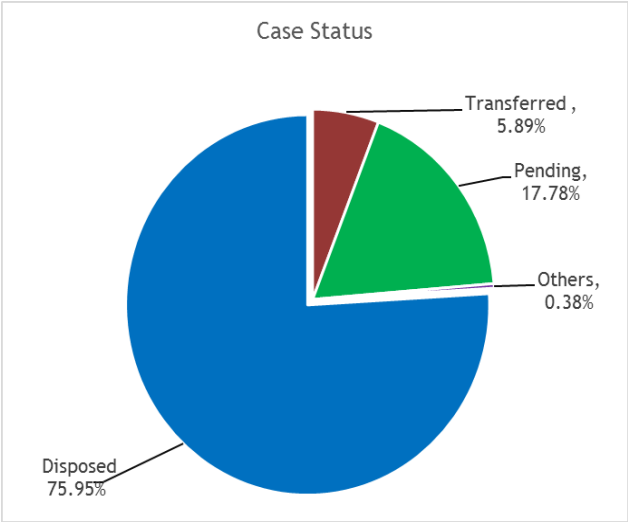
We found that inefficiencies were widespread in delayed cases, and present in significantly higher proportions than in normal cases. We also found a higher incidence of counsel-side inefficiency than court-side inefficiency in both normal and delayed cases. This has been detailed in Part IV.

B. Disposal of normal cases

Besides the causes of delay, we also examined why normal cases took as little time as they did.

The pervasiveness of delay in Indian courts is widely recognised, but in the DHC's case, this is difficult to reconcile with the high percentage of disposed cases and fast disposal times. As the last DHC Biennial Report pointed out, in both 2010 and 2011, DHC judges managed to dispose of more cases than were filed, hence reducing court backlogs.[39] Our own data set from the last five years suggests similarly optimistic numbers, for both disposal rates and disposal times. Around 76% of cases filed between 2011 and 2015 were disposed of by December 2015.

Figure 2



Not only were the majority of cases disposed of, but most of them were also disposed of extremely quickly, whether speed is calculated in terms of time, or the number of orders passed in any given case. Around 60% of all disposed cases were disposed of within six months (this is around 45% of all cases filed), and more than 81% of disposed cases were disposed of within the two-year benchmark (this is around 62% of all cases filed). (See Figure 3). Further, nearly 60% of all disposed cases were disposed of within three orders, a clear indication of speedy disposal (see Figure 4). In our dataset, 11,450 cases had missing dates and missing orders, and have thus been marked 'Unknown' in Figures 3 and 4.

[39] High Court of Delhi, Biennial Report (2010-2012) available at http://delhihighcourt.nic.in/writereaddata/upload/Report/AnnouncementFile_3AYQRLFA.PDF.

Figure 3

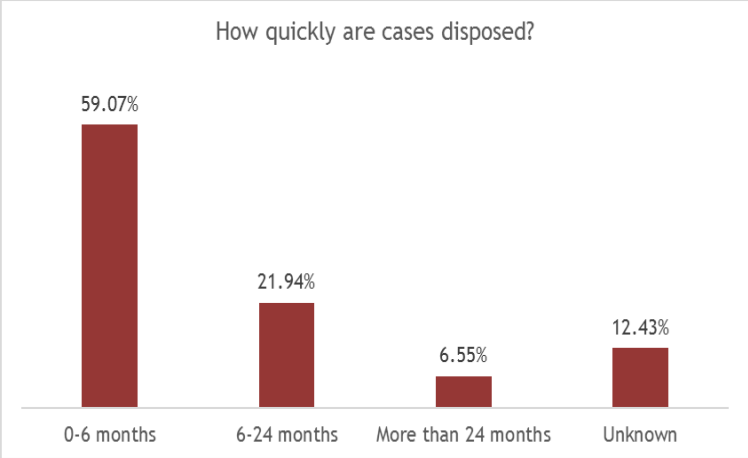
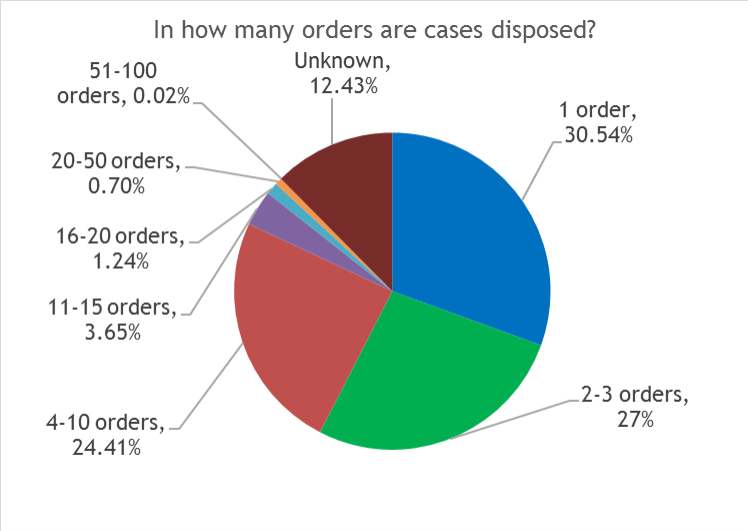


Figure 4



To reconcile the widespread recognition of delay with the fact that most cases were disposed of within the 'normal' two-year benchmark, we decided to take a closer look at these normal cases. We separated out cases that were disposed of extremely quickly (within six months) for an even more fine-grained analysis since, as Figure 3 shows, nearly 60% of all cases were disposed of in this time-frame. Using the randomly generated samples described earlier, we read through case orders to record each case's manner of disposal, classifying cases into the following categories:

1. Settlements. These are cases dismissed by the court when it is satisfied that parties have reached a settlement outside court.

2. Withdrawn or disposed of as withdrawn. These include cases withdrawn for improper filing (e.g., missing documents, filed in the wrong forum, remedy not available under law, etc.) and cases withdrawn for any other reason.

3. Dismissed for non-prosecution, or not pressed. These are cases dismissed by the court when the petitioner or appellant has failed to appear for hearings multiple times.

4. Infructuous. These are cases where a remedy is no longer available under the law, due to a change in circumstance etc., though it may have been available when the case was filed.

5. Frivolous. These include cases in which the judge had explicitly called a case 'frivolous,' 'vexatious,' or 'without merit' (see Box 3).

6. Disposed of with directions. These are cases that did not fall under any of the above five categories, in which the court granted the relief sought by the petitioner, or decided not to, presumably after examining the merits of the case.

7. Order unavailable

The first five categories were constructed to identify cases that did not warrant prolonged adjudication by the court, and therefore did not engage much judicial time. We hypothesised that if such cases constitute the majority of cases disposed of quickly, this might explain why the DHC is able to manage an impressive disposal rate in a short time, while struggling with delay in more complex cases.

The precise reasons behind disposal of a case, of course, vary widely. But it is possible to make some generalisations. For instance, cases withdrawn early and cases dismissed for non-prosecution are usually cases that were cut short of their full life-cycle due to lapses on the part of the counsel or litigant. Cases that were settled or became infructuous might have taken up some judicial time but were ultimately not decided on their merits.

We found that a large percentage of normal cases, and of cases disposed of extremely quickly, belonged to the first five categories in the above list. This suggests that the speedy disposal of a normal case may say more about the case's relative simplicity, rather than the court's ability to handle its entire workload. This is discussed in-depth in Part IV.

IV. FINDINGS

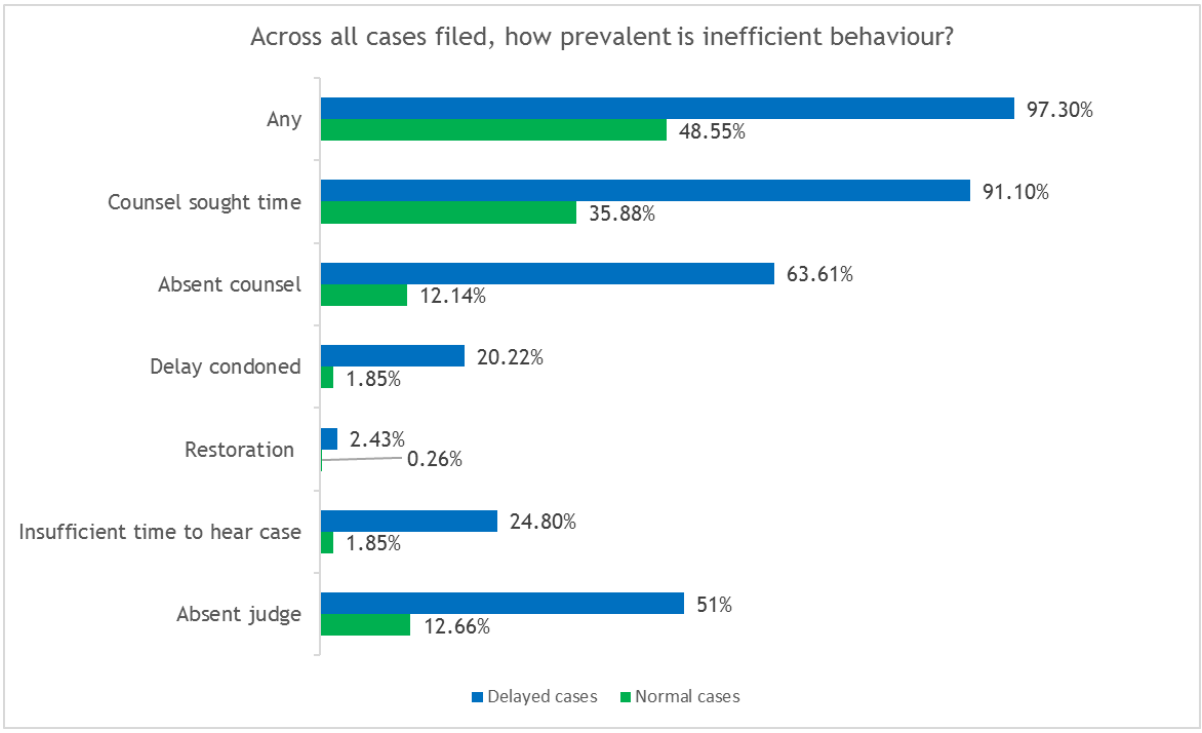
A. Correlating inefficiency and delay

In our analysis of inefficient behaviour, we found instances of court-side and counsel-side inefficiency in the vast majority of delayed cases. While such instances were present even in normal cases, they were far fewer in occurrence.[40]

1. Inefficiency across cases

Figure 5 shows the **percentage of all cases filed,** where one or more instances of inefficient behaviour occurred. This helps us identify how widespread inefficient behaviour is across cases.

Figure 5



Inefficiency is almost ubiquitous in delayed cases. 97% of delayed cases encountered some type of inefficiency at least once in their lifecycle.

In contrast to delayed cases, only half of all normal cases encountered some type of inefficiency. This difference between delayed and normal cases is evident for each type of inefficient behaviour. Figure 5 shows that 91% of all delayed cases contain one or more orders where the counsel sought time, whereas only around 36% of normal cases do so. While the majority of delayed cases experienced one or more instances of an absent judge or an absent counsel, only around 12% of normal cases were ever affected by such inefficient behaviour. Between 20-25% of delayed cases

[40] For normal cases, we calculated inefficiencies across two samples representative of cases disposed of in under six months, and cases disposed of between 6-24 months, respectively. We added instances of the different types of inefficiencies across these two samples, and calculated percentages out of the total number of cases and orders in the two samples.

contain one or more orders where delay was condoned, or where there was insufficient time left to hear the cases. In comparison, only about 2% of normal cases do so.

The disparity between court-side and counsel-side inefficient behaviour in normal and delayed cases is telling. Even with the presence of some inefficiency, many cases are disposed of within two years. When these factors reach a high magnitude, and several instances of multiple inefficient factors are observed in the same case, cases spend more than two years in the system.

Figure 5 also shows that some types of inefficiency are more prevalent than others. Counsel seeking time, absent counsel, and absent judge affected more than half of all delayed cases at least once in their lifecycles. Condonation of delay and insufficient time left to hear a case were observed at least once in 20-25% of all delayed cases. Restoration affected a marginal 3% of delayed cases.

2. Inefficiency across orders

Figure 5 showed that 97% of delayed cases were affected at least once by inefficiency. Figure 6 indicates *how often* cases are affected by inefficiency, capturing the **number of times** that different types of inefficient behaviour appeared in the **orders** studied.

Here, every instance of inefficient behaviour has been recorded separately. If, say, out of 7 orders in a case, the counsel was absent four times, this was counted as four separate instances to calculate the percentage under the 'Absent counsel' heading. This helps us identify the number of times a particular type of inefficiency occurs or reoccurs, which can aid procedural reform appropriately.

Figure 6

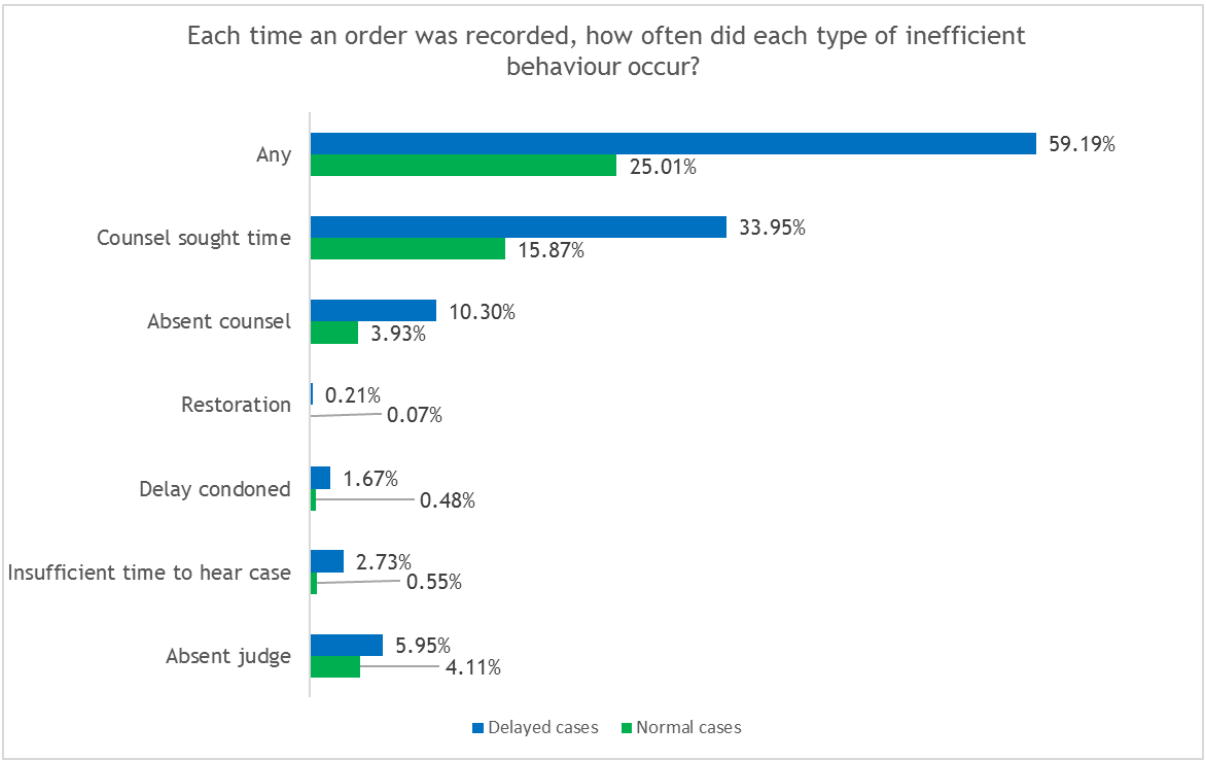


Figure 6 reveals that nearly 60% of orders in delayed cases involved some type of inefficiency. This number is sobering, since it effectively reflects hearings where the work scheduled to occur was

postponed because the judge or counsel was absent, or because no time was left to hear the case, or because the counsel failed to meet a deadline. Condonation of delay and restoration also indicate a counsel-side failure to meet a statutory deadline or to appear in court, and involve similar postponement. Applications for condoning delay or restoring a petition must first be presented and decided upon before substantive work to advance a case can resume, likely in a different hearing.

In a perfectly functioning system, eliminating inefficiency from these orders would allow substantive work on cases to proceed instead. Figure 6 suggests that delayed cases could consist of 60% fewer orders than they do now, if all these types of inefficiency were eliminated. By extension, these cases would take less time to resolve, and free up valuable judicial work-hours.

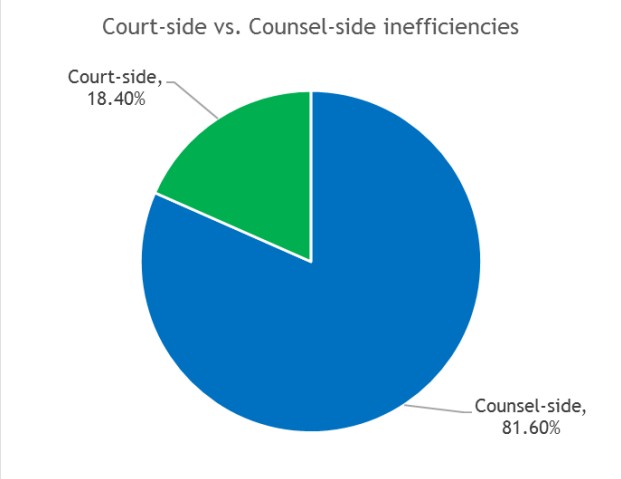
Like Figure 5, Figure 6 reflects a disparity in how often inefficient behaviour occurs in normal and delayed cases. While 60% of orders in delayed cases involved some type of inefficiency, only 25% of orders in normal cases did. This suggests that even if all inefficiency cannot be eliminated, a reduction in inefficient behaviour would allow many cases to get disposed of within the normal timeframe.

Further, also like Figure 5, Figure 6 shows that some types of inefficiency affect cases more often than others. Of all the types of inefficiencies recorded, counsel seeking time and remaining absent evidently occur the most number of times, whereas restoration and condonation of delay occur rarely. Court-side inefficiencies too affect only a small percentage of all orders.

3. Comparing inefficiencies

Counsel-side inefficiencies far surpass court-side inefficiencies, both in normal and delayed cases. Out of all instances of inefficient behaviour (i.e. out of all orders in normal and delayed cases in which inefficiency was recorded), nearly 82% could be attributed to counsel, and 18% to courts.

Figure 7



Further, the frequency of counsel seeking time and remaining absent reach disturbingly high thresholds in delayed cases, occurring multiple times within the same case. Out of all delayed cases, counsel sought time more than thrice per case in almost 70% of cases, and more than six times per case in nearly 30% of cases (see Table 1). Counsel remained absent more than once in nearly 40% of delayed cases (see Table 2).

Table 1: Frequency of counsel seeking time in delayed cases

Occurrence	Percentage of cases
0 times	8.89%
1-3 times	32.53%
4-6 times	38.45%
7-10 times	23.36%
11-25 times	5.60%

Table 2: Frequency of absent counsel in delayed cases

Occurrence	Percentage of cases
0 times	36.43%
Once	25.60%
Twice	17.52%
Thrice	9.43%
4-8 times	11.02%

4. Inefficiency leading to delay?

Inefficient behaviour is widespread across delayed cases, with 97% of delayed cases encountering some type of inefficiency at least once. 60% of orders in delayed cases involve inefficient behaviour, suggesting that if all inefficiency were eliminated, delayed cases would consist of 60% fewer orders than they do now. This confirms that the duration of a case is related not only to justified factors such as its complexity, but also to unwarranted reasons involving inefficiency.[41] By searching for the presence of specific kinds of inefficiency, this analysis helps us diagnose unwarranted reasons for delay.

Inefficiency is less prevalent and less frequent in normal cases than in delayed cases. This indicates that cases can still be disposed of within the normal timeframe with some inefficiency, and are delayed once inefficient behaviour crosses a certain threshold.

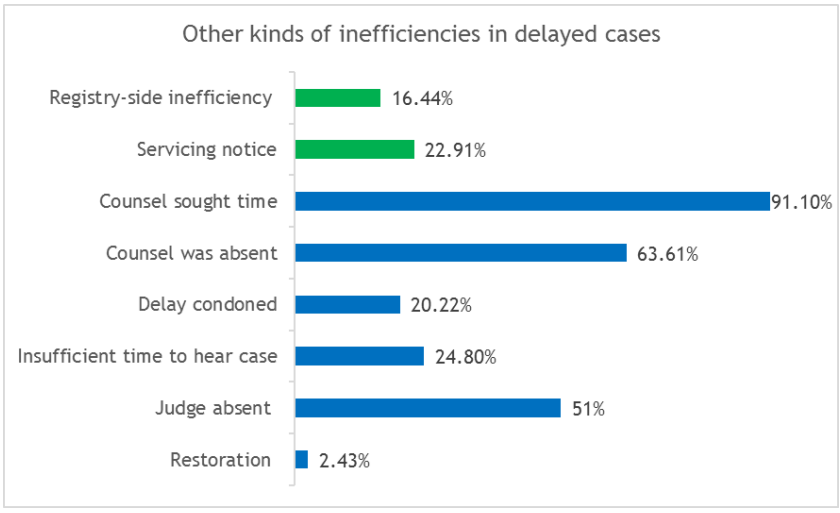
[41] As the Law Commission cautions, not all kinds of delay can be judged as equally 'unwarranted,' since certain cases may be delayed for valid reasons, and mere speed in disposal should not come at the cost of hearing cases properly. Law Commission of India, 'Arrears and Backlog: Creating Additional Judicial (wo)manpower,' Report No. 245 (July 2014). Accessed at http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf.

Box 2

A closer look at delayed cases

After starting our order analysis, we encountered two other types of inefficiency: firstly, relating to the registry, where the registry failed to perform its tasks on time; and secondly, relating to the servicing of notice, where notice could not be served to the respondent for various reasons, such as an incorrect address. We carried out a micro-study of these inefficiencies for delayed cases only, and our findings suggest that they too may significantly contribute to delay. While registry-side behaviour is attributable to the court, inefficiencies surrounding the servicing of notice cannot be neatly attributed either to the court or counsel, since this was not made explicit in the orders. Both these types of inefficient behaviour occurred at least once in a sizeable proportion of delayed cases.

Figure 8



We also occasionally encountered a few other inefficiencies, such as changes in rosters that lead to hearings starting afresh before a new judge, etc. We did not find these often enough to merit recording them consistently, but they may be useful in future projects.

B. Disposal of normal cases

We next turned towards cases that had been disposed of within the normal time frame of two years to examine what aided their quick disposal. For a more fine-grained analysis, we separated out normal cases that had been disposed of extremely quickly, i.e. within six months. Our findings for the manner of disposal of cases disposed of within six months, and cases disposed of between six months to two years, are presented in Figures 9 and 10 respectively.

Figure 9

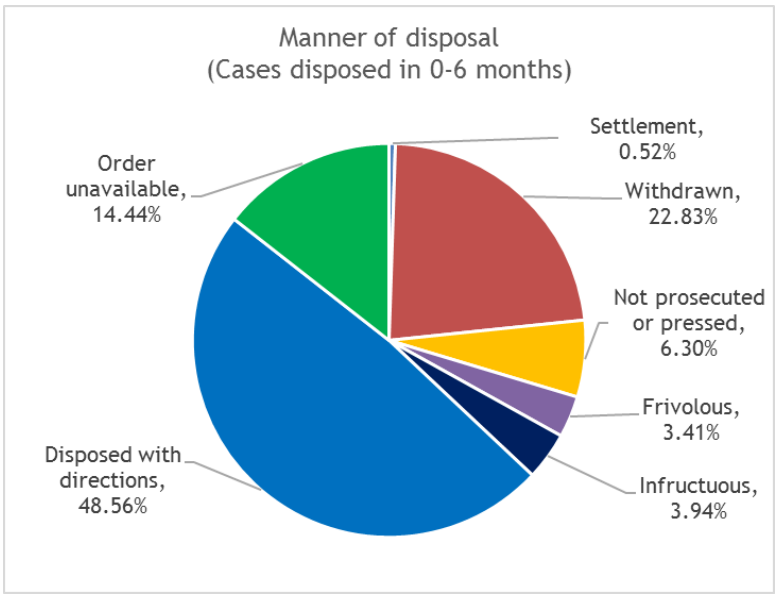
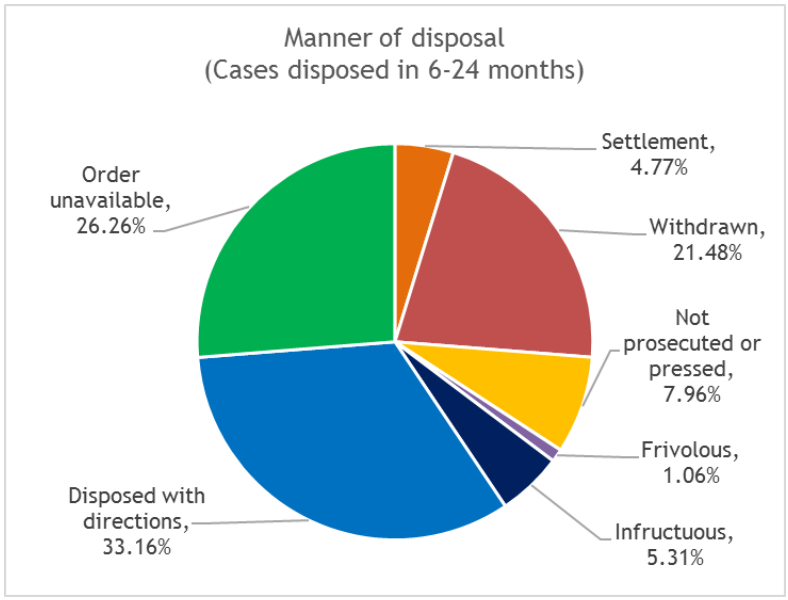


Figure 10



Any conclusions from these findings are necessarily tentative. A significant number of cases (between 14-27%) contributed nothing to this analysis, since orders for them were unavailable on the DHC website. Further, since DHC orders rarely contain information on a case apart from one-line outcomes of hearings, it is impossible to evolve criteria to judge a case's complexity.

Regardless, if 30-40% of normal cases were in fact cases that were withdrawn early, settled, not pressed, or became infructuous, DHC's high disposal rates must be interpreted with caution. DHC's Biennial Reports focus on how the court's high disposal rates have reduced pendency.[42] But these rates reveal little about how speedily the court can handle a case that goes through all stages in the lifecycle prescribed for its case type. Our data makes it clear that a high disposal rate does not

[42] See, for instance, 'High Court cuts down on time per case, reduces pendency' (The Hindu, May 31 2013). Accessed at http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/high-court-cuts-down-on-time-per-case-reduces-pendency/article4767962.ece.

mean that disposed cases have required a full hearing or a thorough application of judicial mind. Even cases disposed of with directions contain many parole and FIR quashing cases that are procedurally simpler and more straightforward, relative to other cases that come before the DHC (In fact, parole and FIR quashing matters constitute nearly 17% of all normal cases disposed of within six months). Our findings help explain how the DHC's disposal rates remain consistently high, even as it is plagued by inefficiency and backlog—the quick disposal of certain kinds of cases likely skews its overall disposal rates upwards.

Box 3

Frivolous litigation

In analysing the manner of disposal of cases, we also attempted to examine the issue of 'frivolous' or 'vexatious' litigation. The DHC itself has termed frivolous litigation the 'greatest challenge' facing the judiciary, and recently issued guidelines to its District Courts to prosecute litigants raising false or frivolous claims.[43]

Despite widespread recognition of the problem of frivolous litigation, and multiple pronouncements that exemplary costs should be imposed to curb this problem, no attempt to quantify the prevalence of such litigation has been made. In common usage, we might associate 'frivolous' with cases that lack a proper cause of action and are improperly or needlessly filed, or with cases that are fake and have been filed with an ulterior motive or malice. But it is difficult to infer any of these facts merely from a case's record. The legal practitioners we interviewed often described how many cases that are withdrawn or settled in the first few hearings are filed merely to intimidate someone into a settlement, or filed even when parties know that the cases are not maintainable in court. In our study, while we could record which cases were quickly settled or withdrawn by reading orders, the motives of parties are almost never mentioned in a case's history. It would be wrong to assume that quickly settled or withdrawn cases in general involve frivolity, since such cases could still have involved a substantial question of law, or required the judge's active involvement in guiding the parties towards a settlement.

In our analysis, we noted cases where the judge had explicitly called a case 'frivolous,' 'vexatious,' or 'without merit'. We found that only about 4% of cases dismissed within six months were identified by judges to be frivolous, vexatious, or without merit. We understand from popular discourse and litigator interviews that this number should be significantly higher. It is likely that a larger percentage of cases were lacking in merit but that orders have failed to record this clearly or regularly.

Even if judges might quickly identify certain cases as not being maintainable or not having a cause of action, and dismiss them, these cases still take up registry time and judicial resources, and add to the massive caseload. As an academic paper on lower court congestion suggests, instead of looking only at supply-side solutions to judicial problems, recent efforts towards judicial reform have also considered "the problem from the demand side by looking at the areas wherein litigation is at the maximum, and then devising methods to curtail frivolous litigation."[44] Better data collection and management is necessary to identify cases that institutional reform can fairly and responsibly curtail.

[43] 'Delhi HC: Take action against litigants for false claims' (The Asian Age, January 24 2016). Accessed at http://www.asianage.com/delhi/delhi-hc-take-action-against-litigants-false-claims-651.
[44] Maja B. Micevska and Arnab K. Hazra, 'The Problem of Court Congestion: Evidence from Lower Courts' (2004). Accessed at http://ageconsearch.umn.edu/handle/18750.

V. RECOMMENDATIONS

A. Improving efficiency in case proceedings

1. Addressing counsel-side inefficiencies

Our findings corroborate the widely-acknowledged role of excessive adjournments in delaying a case. As our findings show, in 91% of delayed cases, counsel sought time at least once. In 70% of delayed cases, counsel sought time more than thrice; and in 30% of delayed cases, counsel sought time more than six times. The Code of Civil Procedure, meanwhile, suggests that no more than three adjournments should be granted.[45] Certain High Court rules suggest imposing costs for excessive adjournments to discourage them, but this is rarely if ever followed.

As a study on delay in Debt Recovery Tribunals states, lawyers would reasonably prefer additional hearings if they have perverse incentives to prolong a case—if, for instance, they are paid according to the number of appearances, and not according to how speedily they help conclude a case in favour of their client.[46] Such perverse incentives must be outweighed by other incentives to dispose of a case as speedily as possible without compromising the quality of litigation. If judges have the ultimate discretion in granting counsel additional time, the number of adjournments that counsel can seek should not be allowed by the court to reach such massive proportions. One important step forward is the strict imposition of costs on excessive adjournments.

Box 4

Costs

Levying heavy costs on parties may serve as a deterrent to vexatious litigation and to dilatory tactics that parties and their counsel indulge in. According to section 35B of the Code of Civil Procedure, a court can levy any amount it deems fit on parties if they fail to take a step that is required or if they obtain an adjournment to perform it. The DHC has repeatedly stated the need for imposing higher costs on frivolous litigation, but barring a few stray cases recently, where it imposed exemplary costs rising up to Rs. 3 lakhs,[47] data from our study revealed that the DHC has failed to pay heed to its own advice. The court imposed costs in only 2% of all the cases that it held to be frivolous, vexatious, or without merit. In cases where the counsel sought time more than thrice, the DHC imposed costs in only around 20% of cases.

Absent counsel is another frequently occurring inefficiency, affecting 64% of all delayed cases. Penalising this inefficiency may prove slightly more complex, since it may be hard for the court to determine when an absence is unwarranted. In many of the orders we read, counsel were said to be absent as they were appearing for another matter at the same time. A solution for these kinds of absences lies in the hands of the registry, which should ensure that cases with the same lawyer are not listed soon after one another. The DHC could consider assigning a unique identification number

[45] Order 7, Rule 1 of the Civil Procedure Code makes this suggestion for the hearing of a suit.
[46] Prasanth Regy, Shubho Roy, and Renuka Sane, 'Understanding Judicial Delays in India' (May 18 2016). Accessed at https://ajayshahblog.blogspot.in/2016/05/understanding-judicial-delays-in-india.html.
[47] 'Delhi HC Imposes Rs. 3-Lakh Costs On Petitioner For Filing Successive Writ Petitions On Same Issue' (Live Law, December 6 2016). Accessed at http://www.livelaw.in/delhi-hc-imposes-rs-3-lakh-costs-petitioner-filing-successive-writ-petitions-issue/.

to lawyers, as the Patna High Court does for its Advocates-on-Record.[48] This could help the DHC track the different cases a lawyer is involved in, both in the DHC and in lower courts in Delhi.

2. Addressing court-side inefficiencies

While court-side inefficiencies were present in a lower proportion than counsel-side inefficiencies, judges were absent at least once in 51% of delayed cases. Reasons were rarely recorded for a judge's absence, and orders often merely stated that judges were on leave that day. We have no way of assessing whether, for instance, cases were mistakenly listed on days when judges were scheduled to take leave, or whether judges were taking unscheduled absences. Regardless, efforts must be made both to curb the loss of valuable working hours and to inform parties in advance of judicial absences.

The other major court-side inefficiency analysed in this report was the lack of sufficient time left to hear a case, which affected nearly 25% of delayed cases. Since the court registry is in charge of listing cases, this inefficiency should be remediable by streamlining registry procedures. In our interviews, legal practitioners cited some registry practices in need of reform, such as listing multiple complex matters in the same day, over-listing new cases, and so on.

3. Prioritising demand-side solutions

As mentioned in Box 3, recent efforts in judicial reform have also examined demand-side solutions to court delay. These efforts focus on litigation that can fairly and responsibly be curtailed, or resolved through alternative dispute resolution outside courts. Many frivolous cases may be deterred by the imposition of costs, and many cases that are withdrawn or settled early may be prevented from burdening the court by encouraging mediation, arbitration, and pre-trial settlements.

Our interviews with legal practitioners also highlighted how broadly-phrased sections in civil and criminal procedural law enable several less substantive cases to come before the court. These cases must be prevented from clogging up judicial time at the expense of say, criminal appeals, 54% of which remain pending (see Annexure C). In our interviews, several complained of the forum-shopping and frivolity that the DHC has allowed through its interpretation of these broad provisions, which constitute a promising area for further research and reform.

B. Improving data collection and management

Inadequate data collection and management hampered our analysis at various stages. The preparation of this report highlighted the following major areas in need of reform:

1. Website

As the data available on the DHC website is public, the website must also be easy for the public and for developers to access. But the data maintained on the DHC website is not organised as per best practices in web design. The website is not user-friendly for either litigants or researchers. While litigants must navigate multiple tabs on the website to gather all information related to their case

[48] High Court of Judicature at Patna, 'IT Activities at Patna High Court & District Courts of Bihar' (18 April 2012). Accessed at http://patnahighcourt.bih.nic.in/pdf/itphc.pdf.

history, researchers encounter active barriers to programmatic extraction and mining of data.

Further, data uploaded onto the website is often incomplete. Orders and their dates were missing for around 11,450 cases of our total dataset. For around 14-25% of the cases that we analysed, even where order dates had been mentioned, the final order was missing or no order had been uploaded (see Figures 9 and 10). This not only inconveniences litigants and lawyers involved in the individual cases, but also hampers policy research on judicial reform. Digitisation efforts in the DHC must monitor and correct these lapses in the uploading of data.

In addition, the DHC can follow the lead of its counterparts and make more case data publicly available. A case status search on the Gujarat or Patna High Court websites, for example, shows the entire case history in the same place, including filing and registration dates, all listing dates, all miscellaneous applications, orders passed, documents sought and received, etc. But the same search on the DHC website yields only rudimentary information such as party names, order dates, and disposal status.

2. Recording adequate data

Other gaps in the recording of data also frustrated our attempts to study delay. For instance, we tried to see if the number of parties to a case had an effect on the time it spent in court, but the DHC does not always record the names of all the petitioners and respondents in a case, instead clubbing them together under '& others'.

Box 5

Government litigation

Government litigation reportedly constitutes nearly half of all litigation in the Indian judiciary.[49] As a major driver of judicial backlogs and delays, this is another area where poor data collection impeded our research efforts. Cognisance of excessive government litigation, and the strain it places on the public exchequer, led to the framing of a National Litigation Policy in 2010. But no official sources have determined the actual quantum of such governmental litigation.

In our study, we could not diagnose the extent of government litigation, as we faced multiple problems with separating government from private litigation. To figure out whether a party to a case was a governmental or private entity, the only information available was the names of petitioners and respondents. But since multiple parties are often clubbed under '& anr.' or '& ors.,' it proved impossible to classify each party. Further, there is no consolidated list of governmental authorities against which we could cross-check each case's parties. We manually went through 500 cases for each year to prepare a list of every governmental body that had been party to a case. This exercise proved even more challenging than we had expected, because the same governmental entity was recorded under several different names. For example, we found the following names for the Delhi government alone in our sample: 'GOVT OF NCT DELHI,' 'GOVT OF NCT OF DELHI,' 'GOVT. OF NATIONAL CAPITAL TERRITORY OF DELHI,' 'NCT OF DELHI,' and at least 40 other variants, all of which had to be independently accounted for in our coding. Standardising the names of governmental bodies, providing the full names of all parties to a case, and possibly classifying parties as governmental or private entities would assist reform in this area.

[49] Ameen Jauhar, 'Time to move towards a new litigation policy' (The Hindu, 18 November 2016).

Further, orders rarely record reasons behind granting adjournments or condoning delay, or behind petitions for a settlement or withdrawal, hampering empirical analysis. We found a large number of orders that simply stated the next listing date of the matter, with no information as to what happened in that particular hearing or why the matter had been adjourned. Reforming this would require additional investment in infrastructure—providing audio-recording facilities, or hiring more stenographers—as well as a systemic change in the culture of the court, percolating down to how judges dictate orders.

3. Publishing and analysing data

As mentioned earlier, the Statistics Branch of the DHC compiles reports for its judges and the Law Ministry, but these are not made public. The data that is made publicly available is not always regular—the last Biennial Report, for instance, was issued for 2010-2012.

All data already compiled by the DHC must be made accessible to the public, on a periodic basis. Further, as this report shows, a focus on pendency and disposal statistics may not give the full picture of DHC's functioning. Wherever feasible, the DHC must record and publish other metrics, such as the number of adjournments granted, and the number of cases settled or withdrawn, to enable a better assessment of its performance.[50]

[50] For a more detailed discussion of the types of statistics courts should collect, *see* Arnab Kumar Hazra and Bibek Debroy, 'Judicial Reforms in India: Issues and Aspects' (2007), p. 190.

VI. ANNEXURES

A. Data fetch dates

The dates on which the data fetch for different case types was completed are given below:

Casetype	Date
CM(M)	21/04/2016
CRL.A.	21/04/2016
CRL.M.C.	25/04/2016
CS(OS)	22/04/2016
FAO	19/04/2016
FAO(OS)	20/04/2016
W.P.(C)	24/04/2016
W.P.(CRL)	22/04/2016

B. Aggregates

1. Number of days taken to dispose a case (calculated across disposed cases)

Casetype	Average (days)	Median (days)
CM(M)	175.2	42.0
CRL.A.	483.3	26.0
CRL.M.C.	132.9	31.0
CS(OS)	470.0	154.0
FAO	271.3	374.0
FAO(OS)	103.9	352.5
W.P.(C)	173.5	23.0
W.P.(CRL)	80.1	7.0

2. Number of orders passed

Casetype	Disposed cases		Pending cases	
	Average orders	Median orders	Average orders	Median orders
CM(M)	2.8	2	6.3	5
CRL.A.	6.4	1	4.3	6
CRL.M.C.	2.3	2	7.2	5
CS(OS)	8.5	3	12.9	5
FAO	4	5	6.4	3
FAO(OS)	2.5	7	7.6	11
W.P.(C)	3.1	2	6.9	5.5
W.P.(CRL)	2.5	1	6.7	6

3. Number of days between orders

Casetype	Disposed cases		Pending cases	
	Average days	Median days	Average days	Median days
CM(M)	81.5	71	89.4	84.0
CRL.A.	106.1	64	97.5	84.0
CRL.M.C.	71.5	55.7	85.3	80.5
CS(OS)	63.5	80.5	68.9	77
FAO	84.1	75.4	87.3	71
FAO(OS)	57	58.8	77.3	64.1
W.P.(C)	67.8	36.7	90.4	64.3
W.P.(CRL)	46.4	41.5	69.9	64.0

C. Case status and case type

1. Number of cases in our dataset, according to case status and case type

	Disposed	Pending	Transferred	Others
CM(M)	6215	501	0	14
CRL.A.	3135	4273	0	373
CRL.M.C.	23098	2286	1	7
CS(OS)	6536	3632	6983	6
FAO	1791	596	1	19
FAO(OS)	2816	184	0	2
W.P.(C)	37600	9533	156	18
W.P.(CRL)	10890	554	1	24

2. Percentage breakdown of case status, according to case type

	Disposed	Pending	Transferred	Others
CM(M)	92.35	7.44	0.00	0.21
CRL.A.	40.29	54.92	0.00	4.79
CRL.M.C.	90.97	9.00	0.00	0.03
CS(OS)	38.10	21.17	40.70	0.03
FAO	74.41	24.76	0.04	0.79
FAO(OS)	93.80	6.13	0.00	0.07
W.P.(C)	79.48	20.15	0.33	0.04
W.P.(CRL)	94.95	4.83	0.01	0.21

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Please direct all correspondence to:
Sumathi Chandrashekaran,
Vidhi Centre for Legal Policy,
D-359, Lower Ground Floor, Defence Colony,
New Delhi – 110024.
Phone: 011-43102767
Email:
sumathi.chandrashekaran@vidhilegalpolicy.in