

Supreme Court's caseload during COVID-19 (April 2020) – A look at the numbers

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The errors, if any, rest with the authors.

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List of Abbreviations

ARBIT. CASE (C)	Arbitration Case (Civil)
C.A.	Civil Appeal
CONMT.PET.(C)	Contempt Petition (Civil)
CONMT.PET.(CrI.)	Contempt Petition (Criminal)
CrI.A.	Criminal Appeal
CURATIVE PET	Curative Petition
MA	Miscellaneous Application
ORGNL. SUIT	Original Suit
R.P.(C)	Review Petition (Civil)
R.P.(CrI.)	Review Petition (Criminal)
SLP(C)	Special Leave Petition (Civil)
SLP(CrI)	Special Leave Petition (Criminal)
SMC(C)	Suo Moto Contempt Petition (Civil)
SMC(CrI)	Suo Moto Contempt Petition (Criminal)
SMW(C)	Suo Moto Writ Petition (Civil)
T.C.(C)	Transferred Case (Civil)
T.C.(CrI.)	Transferred Case (Criminal)
T.P.(C)	Transfer Petition (Civil)
T.P.(CrI.)	Transfer Petition (Criminal)
W.P.(C)	Writ Petition (Civil)
W.P.(CrI.)	Writ Petition (Criminal)

Introduction

The COVID-19 induced lockdown and the introduction of long-term social distancing norms have posed an unprecedented challenge to the judiciary. World over, the responses of the courts to the pandemic have been varied, ranging from total shut down to limited *in-person* litigation. The Supreme Court of India (“SC”), to tackle this crisis, decided to mandate virtual hearings of ‘urgent’ matters across courts in all three tiers of the judiciary. It seized the opportunity to leverage the infrastructure created under the e-courts project and issued guidelines for operationalising video conferencing (“VC”) facilities installed therein. High Courts and District Courts across the country followed suit and commenced hearings through VC for ‘urgent’ matters, keeping the dispensation of justice a limited, but continued process.

This paper looks at how these two unique developments – embedding of virtual hearings as part of judicial process and listing of only ‘urgent’ matters, have impacted the workload of the SC.

As the legal fraternity is increasingly looking towards virtual courts and online dispute resolution systems for the future, virtual hearings as part of judicial processes is bound to increase. Therefore, this development should be subject to scrutiny in order to understand the extent to which it is being employed and identify probable areas of improvement to enhance judiciary’s accessibility and performance.

It is critical to ensure that adjudication of disputes, be it in physical courtrooms or through virtual platforms, is justice-centric and upholds principles of fairness and due process. During the lockdown period, one specific area of concern that has made its way into public discourse is the criteria of ‘urgency’ to consider a matter for listing. As the working of the courts are likely to continue in a restricted manner for a few months, it warrants a study to see what this “urgent litigation” landscape looks like. Particularly, the nature of disputes being brought before the courts and the likelihood of virtual hearings, requires deeper examination. This is as much to inform the stakeholders on what to expect from the SC in times to come, as it is to inform the judiciary on any course correction that may be necessary.

The study of above mentioned two points can be undertaken suitably through an empirical lens. We at Justice, Access, Lowering Delays in India (“JALDI”) initiative at the Vidhi Centre for Legal Policy have undertaken this study to present an evidence-based picture of the functioning of the SC during the month of April 2020. While a few news outlets have reported aggregated figures of virtual hearings before the SC,¹ these do not go into the granular details of the nature of hearings. It is hoped that this paper will fill the gaps in data as well as its understanding.

¹ Press Trust of India, *Top Court Says “Virtual Courts System” Will Ensure Justice Amid Pandemic* (NDTV, May 03, 2020) <<https://www.ndtv.com/india-news/coronavirus-supreme-court-says-virtual-courts-system-will-ensure-justice-amid-pandemic-2222336>> accessed 10 July 2020

Methodology

To ascertain the workload of the SC during the period of COVID-19, specifically during the period of the nation-wide lockdown, we decided to undertake an analysis of the daily causelists for the month of April 2020. During this period, there were no physical hearings and SC conducted only virtual hearings. Keeping in mind that the SC published the circular announcing the commencement of virtual hearings on 26th March 2020,² the month of April 2020 was chosen.

In addition, we have compared the workload of the SC under normal circumstances to its workload during COVID-19. For this purpose, we undertook a comparative analysis of the daily causelists of April 2020 and April 2019. This was to identify the changes in patterns of cases entering the court and analyse the differences in composition of matters being listed before the SC benches.

Typically, cases are listed before the SC in two causelists - Regular list³ and Miscellaneous list⁴. During this period, the SC intended to only hear matters involving extreme urgency⁵ and hence, all cases were listed in the Miscellaneous causelist, while the Regular causelist was suspended.

For April 2020, we undertook a manual study of the causelists while for April 2019, data was scraped from the SC website.

For detailed overview of the data, please refer to the **Annexures**.

April 2020:

Total number of working days	14
Miscellaneous (Main) Causelist	14
Miscellaneous (Supplementary) Causelist	6

April 2019:

Total number of working days	19
Miscellaneous (Main) Causelist	19
Miscellaneous (Supplementary) Causelist	19
Regular (Main) Causelist	8
Regular (Supplementary) Causelist	5

² Supreme Court of India Circular (March 26, 2020) < https://main.sci.gov.in/pdf/cir/26032020_134544.pdf >

³ Matters before the Supreme Court which have been admitted for which a date has been given in advance by the Hon'ble Court are listed in the Regular Causelist.

⁴ Miscellaneous Causelist refers to the short-term Daily Causelist of cases listed before the Supreme Court which includes urgent cases, cases that can be disposed by the Court expeditiously, etc.

⁵ n (2)

The total number of cases for April 2020 & April 2019 include the cases listed in the Miscellaneous and Miscellaneous (Supplementary⁶) causelists. For this analysis, the collected data was segregated under the following heads:

1. Date of Listing
2. Case Type
3. Stage
4. Bench dealing with the case
5. No. of cases and connected matters⁷

Cases before the SC are broadly categorized into civil cases and criminal cases in the causelists. There is also a third category of cases, i.e, *diary* cases, which refer to such cases in which filing defects are yet to be identified by the Registry and cleared by the Advocate on Record and hence, the court is yet to assign a permanent case number. During the analysis, we also tracked and recorded the categorization that would be assigned to such diary cases once admitted by checking the details of these cases from the SC website. Based on this mapping, these cases have also been included as a part of our data set, appropriately segregated under civil or criminal cases.

Limitations

1. While the data extraction has been done with care, and has undergone rounds of reviews, we would still caution that there may be a 3-5% error rate in the data collated.
2. We have undertaken an analysis of data for only one month which may not be representative for drawing generalisations for the entire COVID-19 lock-down period.

⁶ Cases that have been missed out in the Daily Causelist are listed in the Supplementary Causelist.

⁷ In such circumstances where a listed case had multiple connected cases, only the main case has been counted.

Observations

1. Rise in Criminal Cases

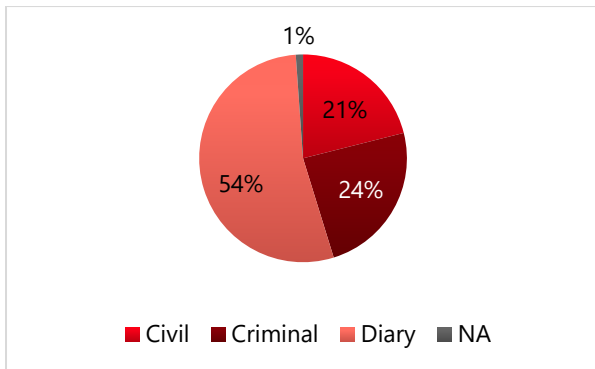


Chart 1: April 2020 [Annexure A.1.]

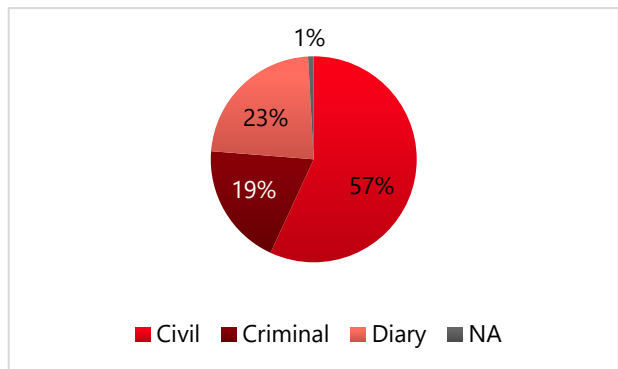


Chart 2: April 2019 [Annexure B.1.]

During the month of April 2020, the majority of SC's caseload consisted of fresh diary matters. The second largest category of cases belonged to criminal cases, which contrasts with the April of previous year where the largest share of cases belonged to the civil category of disputes, followed by diary cases. This can be seen in the figures above.

However, it is essential to dissect diary cases to give a complete picture of the overall civil and criminal workload of the court. We have accounted for this by categorising diary cases into civil and criminal and adding them to the total numbers in the graphs above. The consequent breakup of cases is depicted in the graph below and the corresponding numbers are available in **Annexure A.2. and B.1.2.**

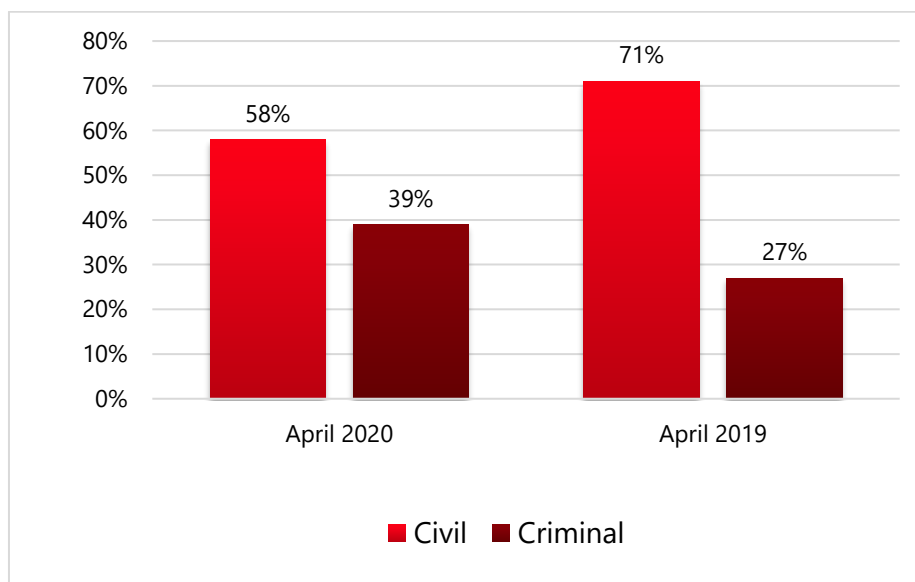


Chart 3: Comparison between the numbers of civil & criminal cases in April 2019 & April 2020 (including diary cases).

Notably, in April 2020, as compared to April 2019, there was a significant 12% increase in the total number of criminal cases. On the other end, the number of civil cases has dropped by 13% in April 2020 as compared to April 2019.

Clearly, criminal matters have gained primacy as *urgent matters* before the SC during the lockdown. The fact is further confirmed by the following data which gives a breakup of the different case types heard during this period.

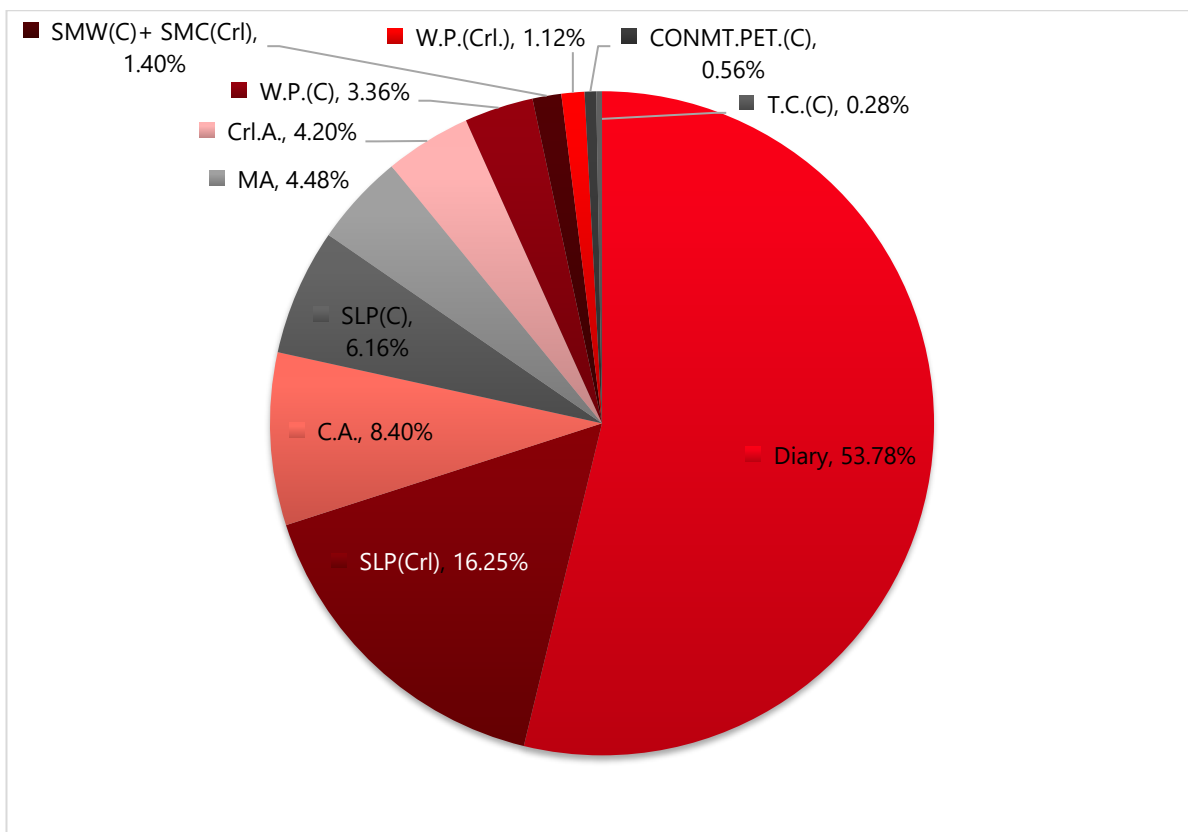


Chart 4: The number of different case types listed before the SC in April 2020 [Annexure A.3.]

It becomes evident that a large share of judicial time was spent on SLP (CrI.). Deep diving into SLP numbers and comparing them with the previous year shows just how much the picture has changed. Last year the number of SLP (CrI.) was significantly lower compared to SLP(C), as shown in the following graphs:

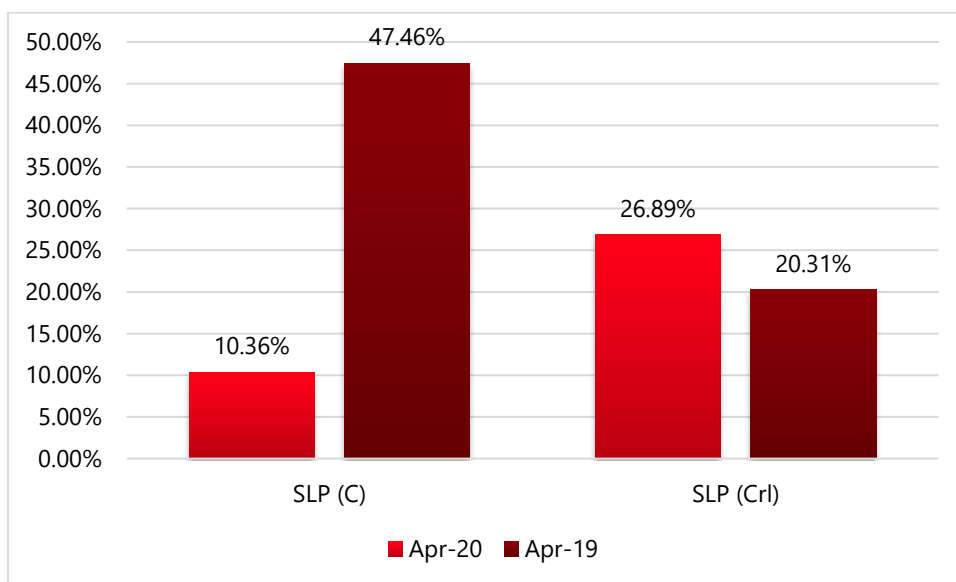


Chart 5: Comparison of SLP(C) and SLP(CrI) figures (including diary cases)

The proportion of SLP (CrI.) vis-a-vis SLP (C) being listed has shot up significantly with a 30% drop in SLP(C) and a 2% increase in SLP(CrI.). This change is also evident in the SLPs which are still at the diary stage.

This goes to show that the propensity for listing criminal cases has increased during April 2020 as compared to a regular month. The rationale for this could perhaps be that criminal cases are being prioritised as *urgent* and are hence getting listed. Anecdotal evidence collected through earlier consultations also confirms the fact that criminal litigation has shot up before the SC as even the bench seems inclined to list criminal cases as urgent matters.⁸

The reasons for this could be many. For instance, the spike in criminal filings could be a result of the push for bail applications to be resolved expeditiously due to the fear of transmission of COVID-19 in prisons.⁹ Moreover, since filings and use of VC for criminal trials has been limited at the district level as is the case with criminal cases at the High Courts, it may have resulted in increased filing before the SC for immediate relief in criminal cases.

2. Increase in the filing of Civil Writ Petitions

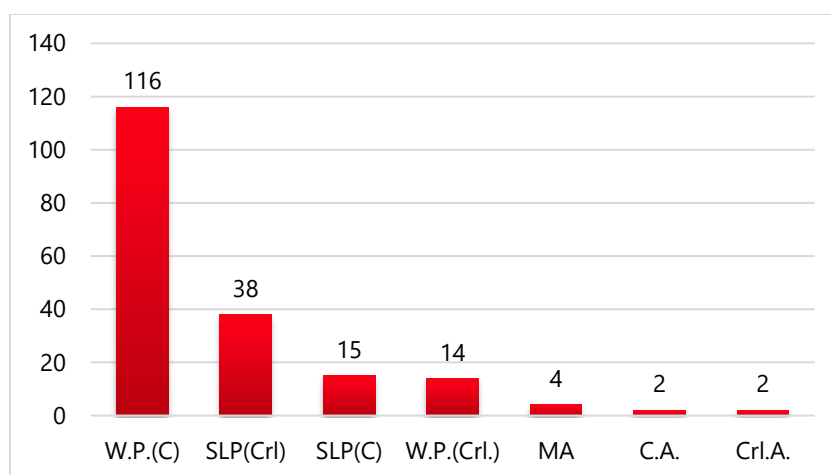


Chart 6: Break-up of Diary Cases before the SC for April 2020

The chart above shows that 116 (i.e., 60%) of the diary cases were civil writ petitions. Moreover, the data shows that almost all these cases were at the admission stage. This raises a pertinent question for enquiry that can further be investigated - What were the state actions during COVID-19 which resulted in the sudden spike in fresh filing of civil writ petitions?

⁸ The views were expressed by some of the panelists during the online roundtable discussion on Virtual Courts in India, organized by Vidhi Centre for Legal Policy (April 25, 2020)

⁹ Press Trust of India, Bombay High Court seeks details of bail applications from trial courts in Maharashtra (June 12, 2020) <<https://www.thehindu.com/news/national/other-states/bombay-high-court-seeks-details-of-bail-applications-from-trial-courts-in-maharashtra/article31813951.ece>> accessed 10 July 2020.

3. Increase in the number of suo moto cases

Table 1

Total number of Suo Moto Contempt Petitions & Suo Moto Writ Petitions [SMC(C) + SMW(C)]		
	Absolute Numbers	Percentage out of total cases
April 2019	5	0.03%
April 2020	5	1.4%

From the comparative data shown in the table above, it becomes apparent that the SC has been more proactive in taking *suo moto* cognizance of matters in the early days of the COVID-19 induced lockdown¹⁰ as compared to April 2019. This hints at the responsibility that fell upon the judiciary to maintain law and order and issue directions for smoother administration of justice in discharge of its sovereign function during the pandemic.

4. Increase in the number of Judgements & Fresh Applications (Analysis of Stage)

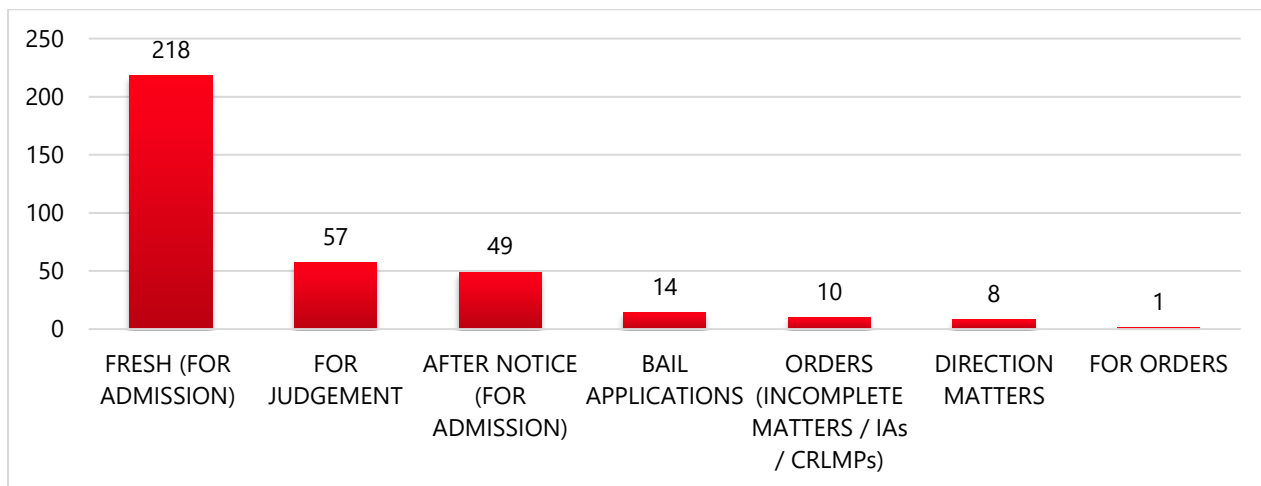


Chart 7: Stage break-up of cases before the SC for April 2020 [Annexure A.4.]

Table 2

	2020		2019	
	Absolute	Percentage	Absolute	Percentage
Fresh	218	61%	5197	37%

¹⁰ *In Re: Contagion of COVID-19 Virus in Prisons* Suo Moto Writ Petition (Civil) No. 1 of 2020 (listed 2 times in April 2020); *In Re: Contagion of COVID-19 Virus in Children Protection Homes* Suo Moto Writ Petition (Civil) No. 4 of 2020; *In Re: Guidelines for Court Functioning Through Video Conferencing During COVID-19 Pandemic* Suo Moto Writ Petition (Civil) No. 5 of 2020; *Re: Vijay Kurle & Ors.* Suo Motu Contempt Petition (Criminal) No. 2 Of 2019

Judgment	57	16%	59	0.4%
After Notice	49	14%	3029	21%

A. Increase in number cases listed at Judgements Stage

A significant trend that can be noticed while comparing data between 2019 and 2020, is the percentage increase in the number of cases listed at judgements stage by the SC. While only 0.4% (59 cases) of listings in the 2019 Miscellaneous causelist were at judgement stage, in the 2020 Miscellaneous causelist, it was as much as 16% (57 cases) of listings. A perusal of the 2019 Regular causelist also showed only 4% (61 cases) of cases at judgement stage. The increasing percentage number of cases listed for judgements in 2020 could be indicative of the judges having more time to write judgements as compared to a regular busy month.

B. Increase in number of Fresh Applications

Another trend that may be seen from the case data analysis is the sharp increase in the number of Fresh Applications. Fresh Applications accounted for as many as 61% of the cases listed before the SC as compared to 37% of cases listed in the 2019 Miscellaneous causelist.

The break-up of the case types of Fresh Applications filed before the SC is as follows:

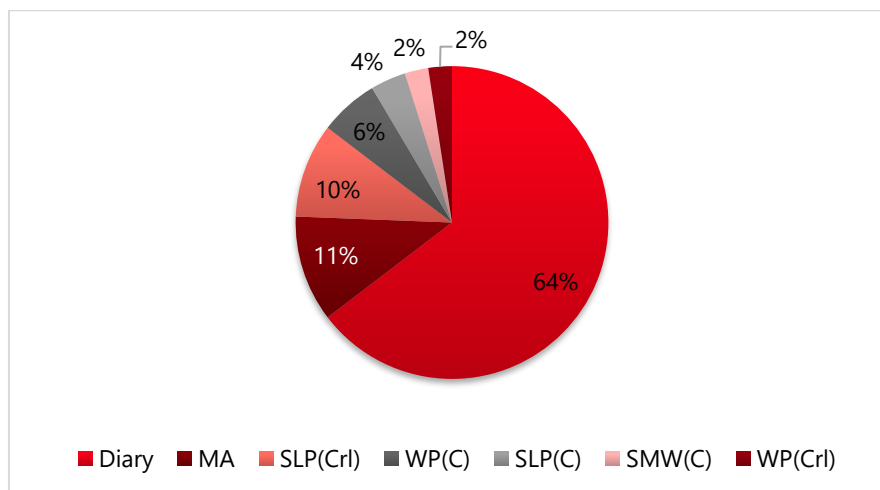


Chart 8: Break-up of Fresh Applications (April 2020) [Annexure A.6.]

A close up of the diary cases reveals that 66% of the fresh cases were civil in nature while the remaining 34% were criminal in nature.

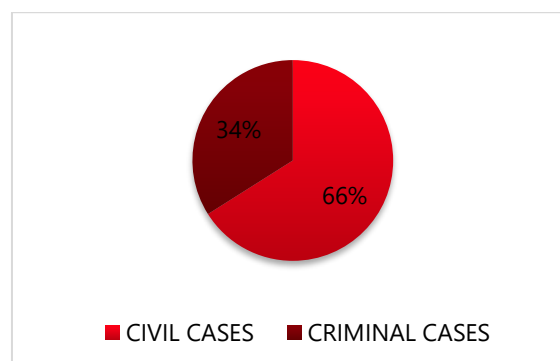


Chart 9: Break-up of Fresh Application diary cases (April 2020) [Annexure A.7.]

5. Disparity in Work Allocation

Another observation is the fact that there appears to be a large disparity on the workload allocation before the judges. While some judges like Justice Kaul (with 102 cases) and Justice Gavai (with 95 cases) had the maximum number of cases listed before them, a few judges only appeared on the causerlists for pronouncing judgements. This raises questions as to whether introduction of technology has created capacity constraints in a few judges. The system probably must invest in training and good quality technological equipment along with stable bandwidth and internet connections for all judges to ensure that technology does not act as a handicap in delivering justice.

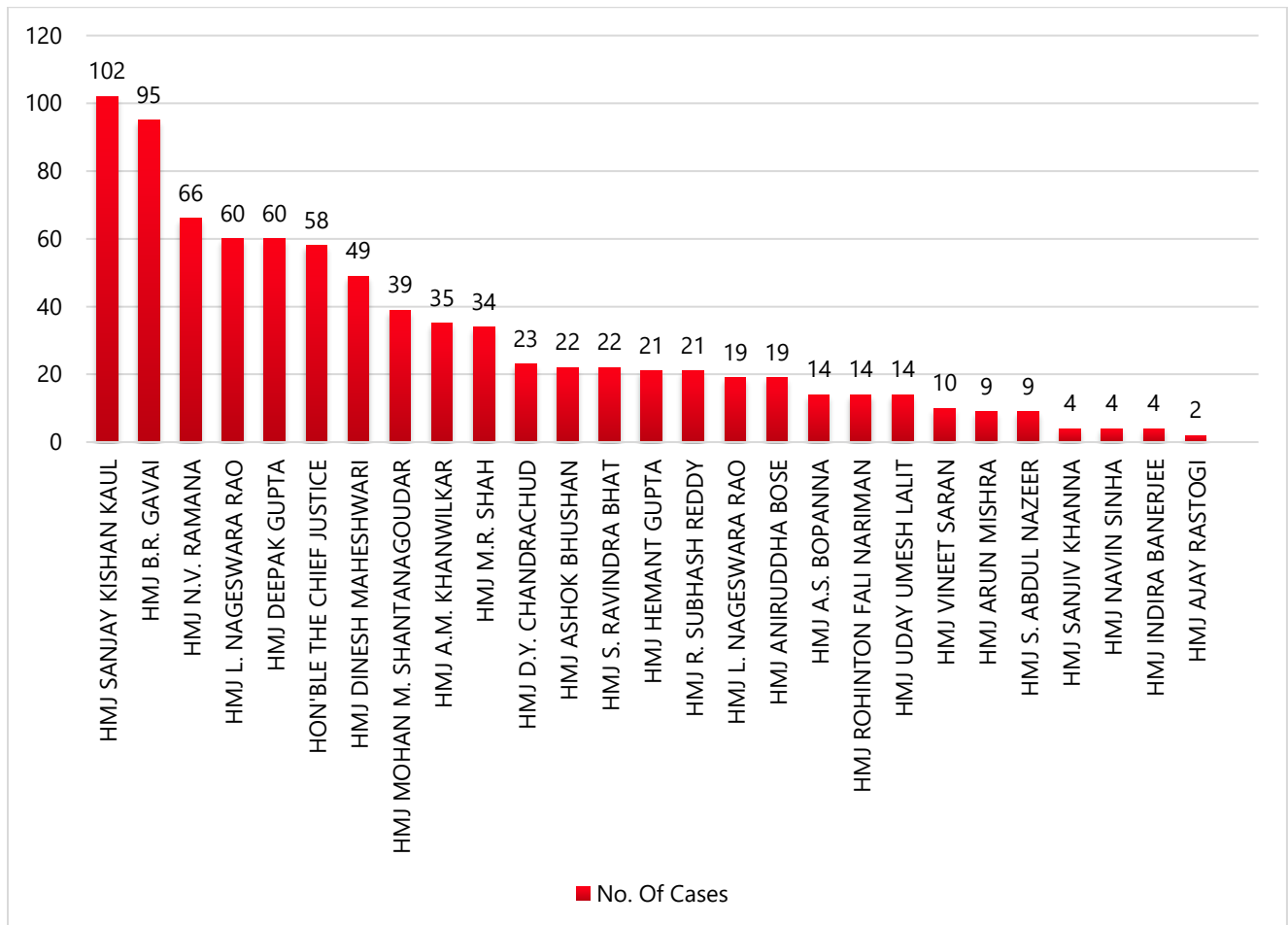


Chart 10: Judge-wise break-up of listings (includes double counting¹¹) [Annexure A.5.]

¹¹ The figures represent the number of cases that were listed before each individual judge, irrespective of the size of the bench. So for instance, if a case was listed before a Division Bench, it will be counted twice in the total numbers- one for each of the two judges. Similarly, a case heard a by a three-judge bench will be reflected for each of the judges, adding +3 to the total numbers.

Conclusion

1. For April 2020, fresh diary matters constituted the majority of SC workload followed by criminal cases which is in stark contrast to the April 2019 where the largest share of cases belonged to the civil cases followed by diary cases.
2. Of all the cases listed in 2020, 58% are civil cases and 39% are criminal cases whereas of the diary cases listed in 2019, 71% are civil cases and 27% are criminal cases.
3. There has been a significant increase in the proportion of criminal SLPs vis-a-vis civil SLPs with a 16% drop in SLP(C) and a 27% increase in SLP(CrI).
4. SC has been more proactive in taking *suo moto* cognizance of matters during the lockdown period (1.4%) in April 2020 as compared to April 2019 (0.03%).
5. There has been an increase in filing of civil writ petitions with 116 (i.e., 60%) of the diary cases being civil writ petitions.
6. There has been an increase in the number of cases listed at judgements stage- it constituted only 0.4% of total listings in April 2019 while it is 16% in April 2020.
7. There has also been an increase in the number of Fresh Applications from 37% of listings in April 2019 to 61% in April 2020.

This study has investigated the limited way in which the litigation landscape has changed due to the listing of only urgent matters during the COVID-19 induced lockdown. There remains large scope for expanding the study by expanding the dataset to a longer duration and examining additional variables such as the substance of the daily orders. Further interrogation at the High Court and district level could also give perspective on the regional variations in the adoption of VC and its resulting impact on the nature of cases being heard.

We hope that in future, by gathering and analysing the required data, we can undertake a more detailed study to understand the present and long-lasting impact of the current unique situation on the Indian judiciary.

Annexes

Annexure A: April 2020 Figures

A.1. Overall

Case Category	No. Of Cases
Diary	191
CRIMINAL CASES	86
CIVIL CASES	75
NA	4
Total	357

(The NA cases here are either contempt petitions or miscellaneous applications which were not categorized as civil or criminal in the causelist.)

A.2. Overall Case Categories with Diary Cases Bifurcated as Civil / Criminal / NA

Case Category	No. of Cases	Percentage Share
CIVIL CASES	208	58%
CRIMINAL CASES	140	39%
NA	9	3%
Total	357	100%

A.3. Case Types

Case Type	No. of Cases
Diary	192
SLP (Crl)	58

C.A.	30
SLP (C)	22
MA	16
CrI.A.	15
W.P. (C)	12
SMW (C)+ SMC (CrI)	5
W.P. (CrI.)	4
CONMT.PET. (C)	2
T.C.(C)	1
Total	357

A.4. Stages

Stages	No. of Cases
FRESH (FOR ADMISSION)	218
FOR JUDGEMENT	57
AFTER NOTICE (FOR ADMISSION)	49
BAIL APPLICATIONS	14
ORDERS (INCOMPLETE MATTERS / IAs / CRLMPs)	10
DIRECTION MATTERS	8
FOR ORDERS	1
Total	357

A.5. Listings before judges (includes double counting)

S.No.	Judge Name	No. Of Cases
1	HON'BLE MR. JUSTICE SANJAY KISHAN KAUL	102
2	HON'BLE MR. JUSTICE B.R. GAVAI	95
3	HON'BLE MR. JUSTICE N.V. RAMANA	66
4	HON'BLE MR. JUSTICE L. NAGESWARA RAO	60
5	HON'BLE MR. JUSTICE DEEPAK GUPTA	60
6	HON'BLE THE CHIEF JUSTICE	58
7	HON'BLE MR. JUSTICE DINESH MAHESHWARI	49
8	HON'BLE MR. JUSTICE MOHAN M. SHANTANAGOUDAR	39
9	HON'BLE MR. JUSTICE A.M. KHANWILKAR	35
10	HON'BLE MR. JUSTICE M.R. SHAH	34
11	HON'BLE DR. JUSTICE D.Y. CHANDRACHUD	23
12	HON'BLE MR. JUSTICE ASHOK BHUSHAN	22
13	HON'BLE MR. JUSTICE S. RAVINDRA BHAT	22
14	HON'BLE MR. JUSTICE HEMANT GUPTA	21
15	HON'BLE MR. JUSTICE R. SUBHASH REDDY	21
16	HON'BLE MR. JUSTICE L. NAGESWARA RAO	19
17	HON'BLE MR. JUSTICE ANIRUDDHA BOSE	19

18	HON'BLE MR. JUSTICE A.S. BOPANNA	14
19	HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN	14
20	HON'BLE MR. JUSTICE UDAY UMESH LALIT	14
21	HON'BLE MR. JUSTICE VINEET SARAN	10
22	HON'BLE MR. JUSTICE ARUN MISHRA	9
23	HON'BLE MR. JUSTICE S. ABDUL NAZEER	9
24	HON'BLE MR. JUSTICE SANJIV KHANNA	4
25	HON'BLE MR. JUSTICE NAVIN SINHA	4
26	HON'BLE MS. JUSTICE INDIRA BANERJEE	4
27	HON'BLE MR. JUSTICE AJAY RASTOGI	2

A.6. Fresh Applications- Case Types

Case Type	No. of Cases
Diary	53
MA	9
SLP(C)	3
SLP(CrI)	8
SMW(C)	2
W.P.(C)	5
W.P.(CrI.)	2
Total	82

A.7. Fresh Applications- Diary Cases Bifurcated as Civil & Criminal

Diary Cases	No. of Cases
CIVIL CASES	35
CRIMINAL CASES	18
Total	53

Annexure B: April 2019 Figures

B.1. Miscellaneous list

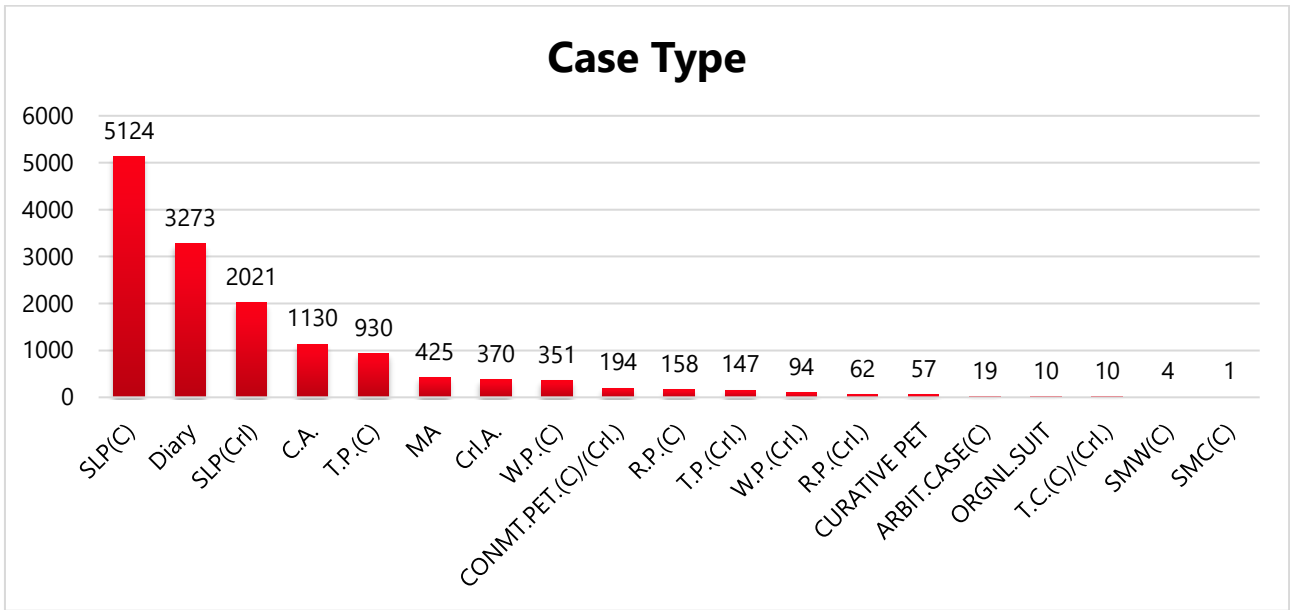
B.1.1. Overall

Case Category	No. Of Cases
Diary	3127
CRIMINAL CASES	2554
CIVIL CASES	7581
NA	1119
Total	14381

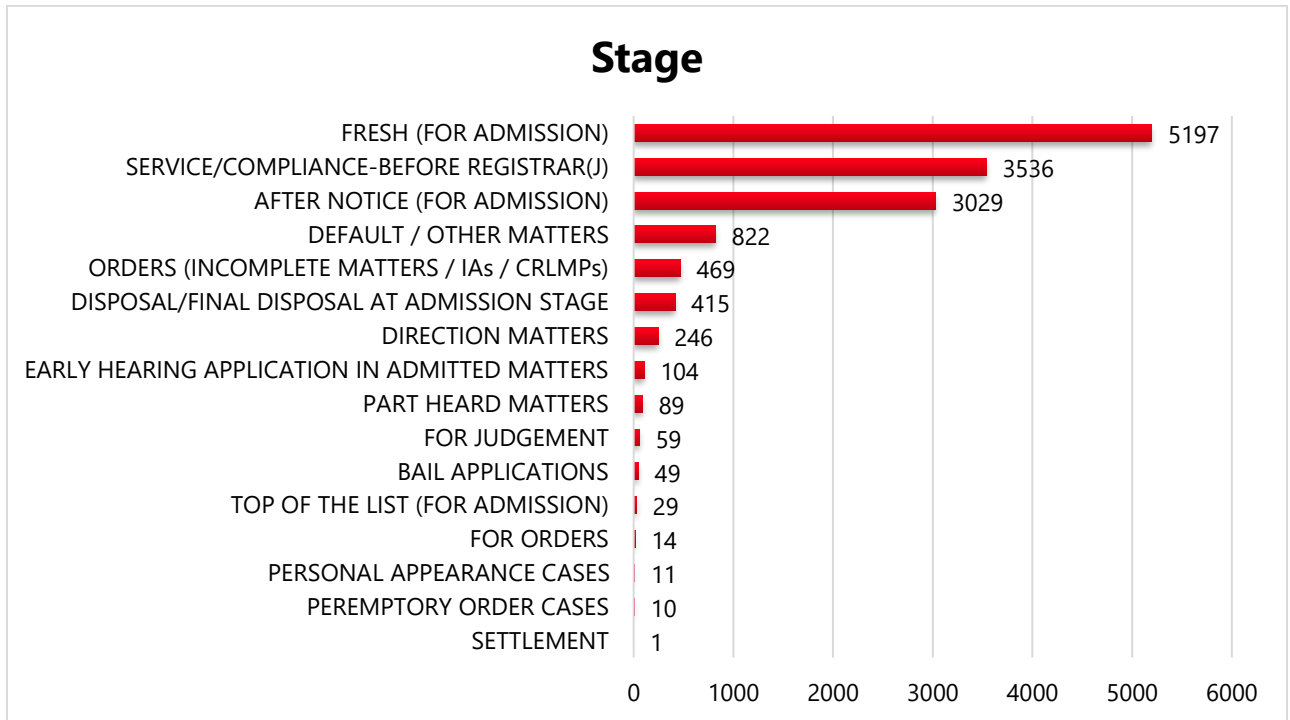
B.1.2. Overall Categories Types with Diary Cases Bifurcated as Civil / Criminal / NA

Case Category	No. of Cases	Percentage Share
CIVIL CASES	10299	71.93%
CRIMINAL CASES	3866	27%
NA	154	1.08%
Total	14319	100%

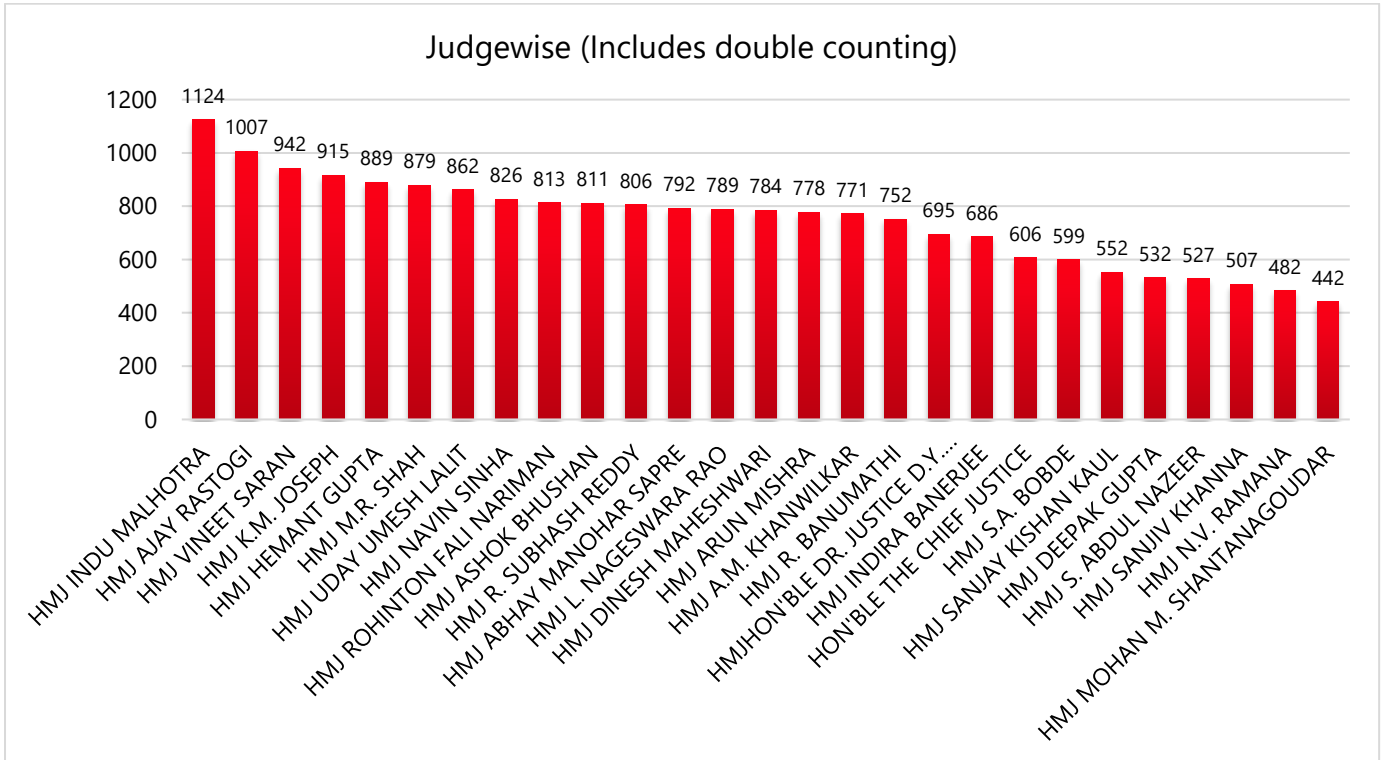
B.1.3. Case Types



B.1.4. Stages

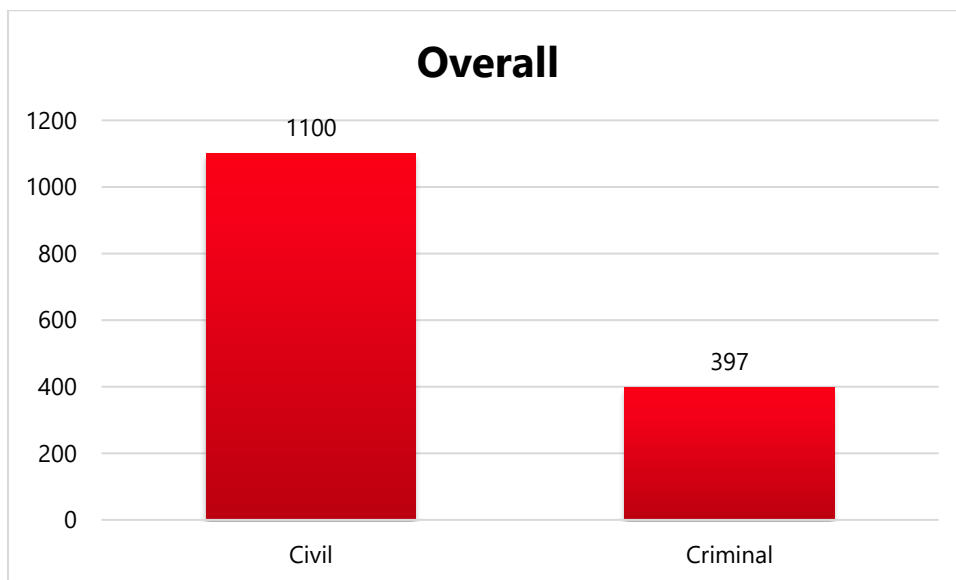


B.1.5. Listings before judges (includes double counting)

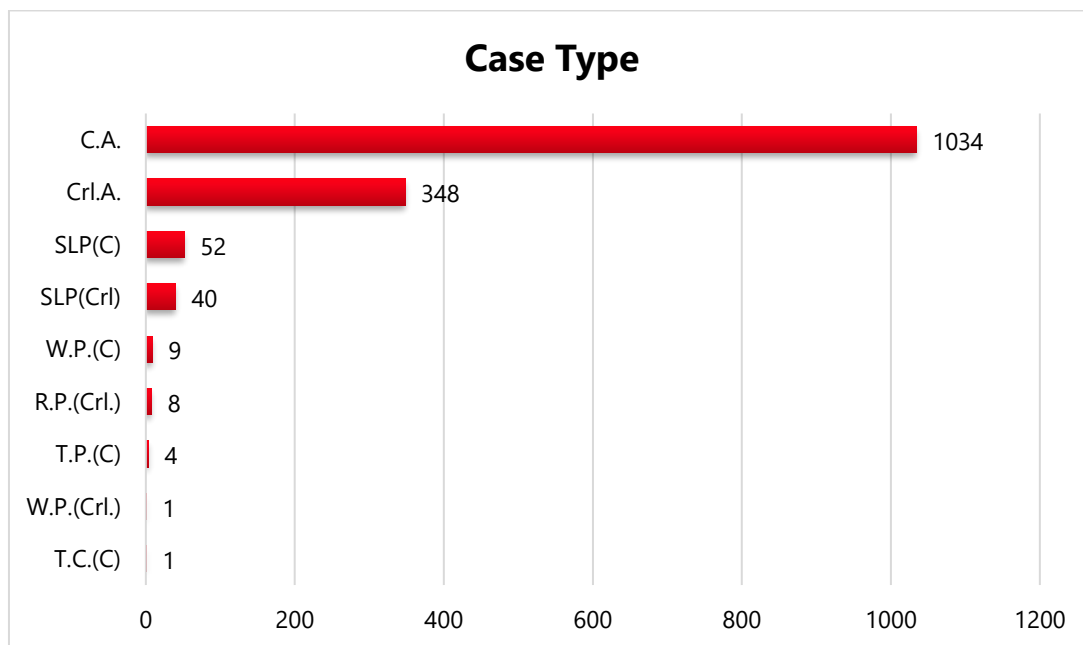


B.2. Regular Causelist

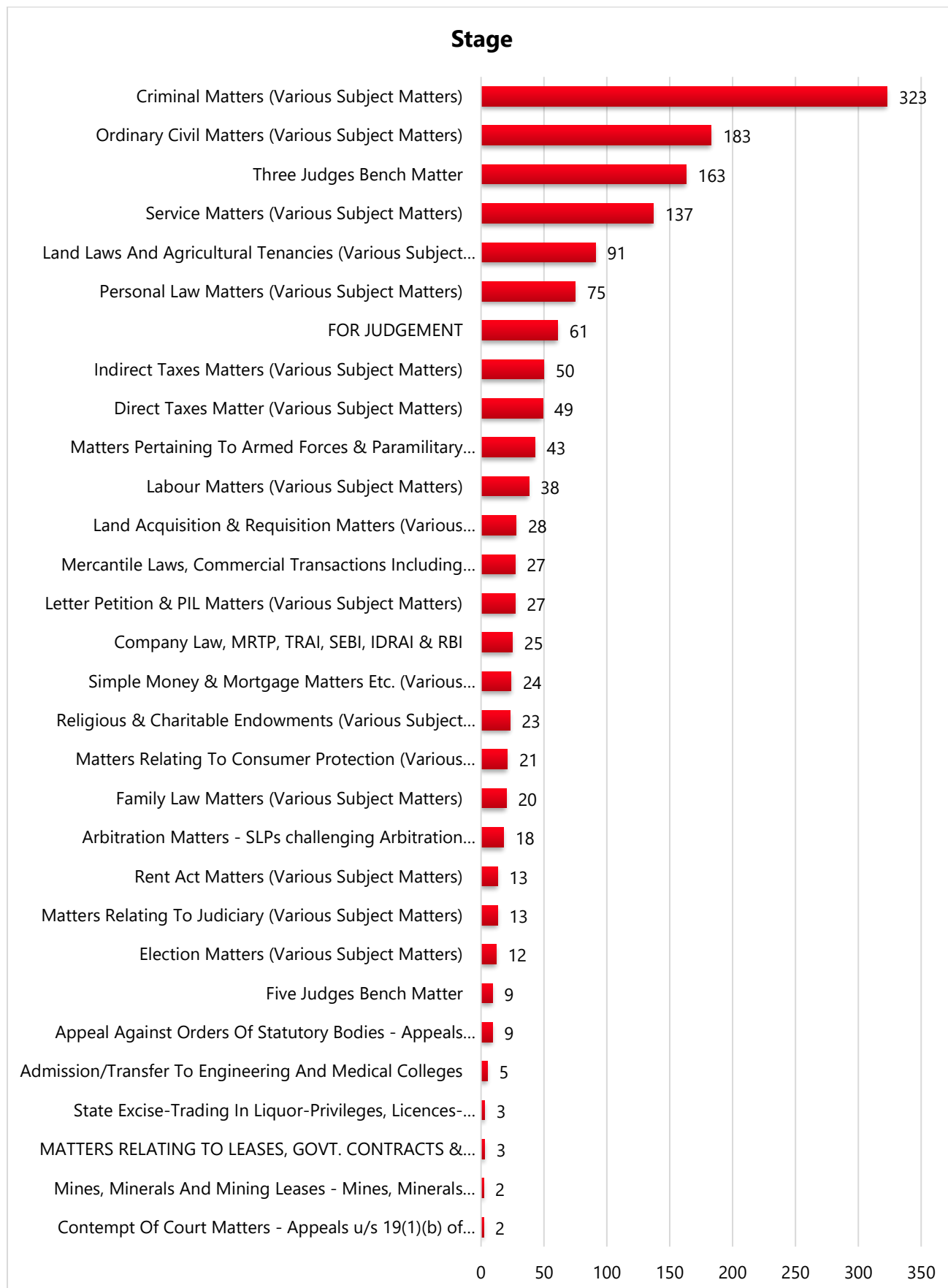
B.2.1. Overall



B.2.2. Case Types



B.2.3. Stages



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