

**The Delhi High
Court Roster
Review: A Step
towards Judicial
Performance
Evaluations**

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an independent,
non-commissioned
piece of work by
the Vidhi Centre
for Legal Policy,
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think-tank doing
legal research to
help make
better laws.**

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Errors, if any, in the report are the authors' alone.

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I. Introduction

Traditionally, the debate on judicial reforms in India has focused on the lack of judges, courtrooms and funds. This has begun to change over the last decade as more Indian stakeholders have begun a much-needed conversation on the need for judicial performance evaluations.¹ To this end, some of the work in the recent past include theoretical work on judicial performance evaluations², empirical studies on the quantitative workload of courts³ and related issues of pendency⁴. These empirical studies range from research on the Supreme Court⁵ to various High Courts, such as those at Andhra Pradesh and Kerala,⁶ Karnataka,⁷ and the Delhi⁸ and extend even to District Courts⁹. The common trend amongst these studies is that they revolve around analysing aggregated numbers (on disposal and pendency) as opposed to adjudicating on the individual performance of a judge.

The limitation of studying such aggregated numbers is that it fails to identify trends amongst different judges. It is however important to study trends amongst different judges because it is very clear from a conversation with the Bar that not all judges perform with the same efficiency. Simply put, some judges are simply not authoring enough judgments.¹⁰ From a judicial accountability perspective, assessments of a judge's performance can provide citizens with valuable information on how the judiciary is functioning and help instil trust and faith in the judicial system.¹¹ Throwing more light on the productivity of individual judges is also likely to spur judicial productivity. There have been some initiatives suggested on these lines, which however have been confined to evaluating the performance of the district judiciary. Historically, such evaluations of the district judiciary have taken place through Annual Confidentiality Reports (ACRs).¹² More recently, there has been a discussion regarding the creation of a "District Court Monitoring System" (DCMS), that draws its data from the e-courts system to monitor the daily performance

¹ Government of India - Niti Aayog, 'The Year Action Agenda 2017-218 to 2019-20' at 126 <<http://niti.gov.in/writereaddata/files/coop/IndiaActionPlan.pdf>> accessed 26 May 2020 and N.R. Madhav Menon, 'Evaluating Judicial Performance: A Consumer Perspective' 2008 Indian Law Institute 468-477 <http://14.139.60.114:8080/jspui/bitstream/123456789/12820/1/011_Evaluating%20Judicial%20Performance_A%20Consumer%20Perspectives%20%28468-477%29.pdf> accessed 26 May 2020

² See Srikrishna Deva Rao, Rangin Pallav Tripathy et. al, Performance Evaluation and Promotion Schemes of Judicial Officers in India: A Comparative Report at pg. 129 <<https://doj.gov.in/sites/default/files/Comparative%20Report.pdf>>. Also see, Medha Srivastava, Shalini Seetharam et al., Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary in India, (Vidhi Centre for Legal Policy, 18 August 2017) pg. 15 <<https://doj.gov.in/sites/default/files/document%282%29.pdf>> accessed 26 May 2020

³ Robinson, Nick, A Quantitative Analysis of the Indian Supreme Court's Workload (December 13, 2012). Journal of Empirical Legal Studies (Forthcoming) <<https://ssrn.com/abstract=2189181> or <http://dx.doi.org/10.2139/ssrn.2189181>> accessed 26 May 2020. Also see, Alok Prasanna Kumar, Faiza Rahman et al. Towards an Efficient and Effective Supreme Court: Addressing Issues of Backlog and Regional Disparities In Access (Vidhi Centre for Legal Policy, 26 December 2018) <<https://vidhilegalpolicy.in/wp-content/uploads/2019/05/TowardsanEffectiveandEfficientSupremeCourt.pdf>> accessed 26 May 2020

⁴ Alok Prasanna Kumar, Faiza Rahman et al., Consultation Paper: The Supreme Court of India's Burgeoning Backlog Problem and Regional Disparities in Access to the Supreme Court (Vidhi Legal Policy, October 2015) <<https://vidhilegalpolicy.in/wp-content/uploads/2019/05/sBurgeoningBacklogProblem-1.pdf>> accessed 26 May 2020

⁵ Nick Robinson, 'A court adrift' Frontline (03 May 2013) <<https://frontline.thehindu.com/cover-story/a-court-adrift/article4613892.ece>> accessed 26 May 2020 and Rahul Hemrajani and Himanshu Agarwal (2019) A temporal analysis of the Supreme Court of India's workload, Indian Law Review, 3:2, 125-158, DOI: 10.1080/24730580.2019.1636751

⁶ Siddik Rabiyyath and Ramanamurthy Venkata Rupakula, Disposal Rates, Pendency, and Filing in Indian Courts: An Empirical Study of the two States of Andhra Pradesh and Kerala (Research Gate, October 2010) <https://www.researchgate.net/publication/228228431_Disposal_Rates_Pendency_and_Filing_in_Indian_Courts_An_Empirical_Study_of_the_Two_States_of_Andhra_Pradesh_and_Kerala> accessed 26 May 2020

⁷ Deepika Kinhal and Alok Prasanna Kumar, A Study of Karnataka High Court's Writ Jurisdiction (Vidhi Centre for Legal Policy, 2018) <<https://vidhilegalpolicy.in/wp-content/uploads/2019/05/AstudyofKarnatakaHighCourtsWritJurisdiction1-ilovepdf-compressed.pdf>> accessed 26 May 2020

⁸ Nitika Khaitan, Shalini Seetharam and Sumathi Chandrashekar, 'Inefficiency and Judicial Delay: New Insights from the Delhi High Court' (Vidhi Centre for Legal Policy, March 2017) <https://vidhilegalpolicy.in/wp-content/uploads/2017/03/InefficiencyandJudicialDelay_Vidhi-1.pdf> accessed 26 May 2020

⁹ Deepika Kinhal & Akhileshwari Reddy, Litigation Landscape of Bengaluru - Bengaluru Rural Courts (Vidhi Centre for Legal Policy, 14 August 2019) <<https://vidhilegalpolicy.in/2019/08/14/litigation-landscape-of-bengaluru-bengaluru-rural-courts/>> accessed 26 May 2020

¹⁰ V. Venkatesan, 'Judges have to watch their scorecard' (*The Hindu*, 13 June 2016) <<https://www.thehindu.com/opinion/lead/judges-have-to-watch-their-scorecard/article4753636.ece>> accessed 19 December 2020

¹¹ Rebecca Kourlis and others 'Shared Expectations Judicial Accountability in Context' (The Institute for the Advancement of the American Legal System, 2006) at 13-14 <https://iaals.du.edu/sites/default/files/documents/publications/publications/shared_expectations_judicial_accountability_context2006.pdf> accessed 19 December 2020

¹² See Registrar General at Jammu, 'Notification No. 1062' (High Court of Jammu and Kashmir, 08 March 2015) <http://jkhighcourt.nic.in/cir_old/acr_guidlines.pdf> accessed 20 December 2020

of district judges in real-time.¹³ While it should be technically possible to put in place a similar system for High Courts and the Supreme Court, there has been no initiative from the judiciary to put in place such a mechanism. The introduction of such a mechanism or tools for judicial performance evaluation would aid in holding the judiciary accountable.

In the realm of Indian civil society, solutions for accountability have generally come through impeachments and attempts at legislations such as The Judicial Standards and Accountability Bill, 2010. Unfortunately, however, such initiatives are either cumbersome (in the instance of impeachment) or have met with resistance from the legal fraternity (in the instance of the bill).¹⁴ It is probably for such lack of avenues, the Bar has sought to discipline judges by resorting to unconventional methods such as passing resolutions demanding their resignation and boycotting their courts.¹⁵ Even the media and academia have seen limited attempts to conduct performance evaluations, most likely because of the threat of contempt actions. An instance involving *Wah India* is a clear example of how critiques of the judiciary are in the threat of being struck down on account of contempt. In the said case, a questionnaire was circulated among 50 senior counsels to evaluate judges of the High Court of Delhi on grounds such as integrity, understanding of the law, punctuality, among others. The assessment was then published with a photo of each judge along with their scores. As a consequence of this evaluation, the Editor-in-Chief was at the receiving end of a criminal contempt case, forcing her to issue an unconditional apology.¹⁶ In the judgement, the court noted that,

“A bare reading of the article in question makes it clear that the statements made amount to a scurrilous attack on the integrity, honesty and judicial competence and impartiality of Judges. It is offensive and intimidating. The contemners by their conduct as well as by making such scandalising statements and invective remarks have interfered and seriously shaken the system of administration of justice by bringing it down to disrespect and disrepute. It impairs confidence of the people in the court. Once door is opened to this kind of allegations, aspersions and imputations, it may provide a handle to the disgruntled litigants to malign the Judges, leading to character assassination.”

The above judgement, from the year 2001, captures the resistance within the judiciary towards attempts at performance evaluation of individual judges. Through this judgment, the judiciary seems to have avoided demands for accountability on the grounds that it would shake the confidence of people in the judiciary. As a consequence, the debate on judicial accountability, over the years has seen a chilling effect.

The opposition to any mechanism oriented towards assessing performance continues even today. The government think tank, NITI Aayog was reportedly developing an annual performance review system for India's judiciary and there was also a discussion on making judges' rankings public to incentivise performance. The proposal, however, faced resistance from members of the bench such as a Chief Justice of a High Court and the All India Judges Association.¹⁷ Independently, former members of the higher judiciary have also clearly opposed any efficiency-based assessments. Justice Rajendra Prasad, president of the All India Judges Association and a former judge at the Patna High Court has been quoted as saying that “[j]udges or the justice delivery system in India is not a factory where you can measure productivity, output or performance”. A former Chief Justice of a High Court, on

¹³ Mandrekar Rao, District Courts: Another New Tool for An Age-Old Problem?, Bloomberg Quint (02 January 2019) <<https://www.bloomberquint.com/law-and-policy/district-courts-another-new-tool-for-an-age-old-problem/>> accessed 20 May 2020

¹⁴ The bill saw resistance from sections of the legal fraternity which felt that it would compromise judicial independence. For this reason, the Bill lapsed once in the Lok Sabha in 2010 and then again, in the Rajya Sabha in 2012 with no immediate possibility of it being reintroduced. See Ananthkrishnan G, No proposal at present for judicial accountability Bill: Govt, The Hindu (23 July 2018) <<https://indianexpress.com/article/india/no-proposal-at-present-for-judicial-accountability-bill-govt-5270336/>> accessed 20 May 2020

¹⁵ N.R. Madhav Menon, Evaluating Judicial Performance: A Consumer Perspective, JILI (Oct - Dec 2008) at 477 <[http://14.139.60.114:8080/jspui/bitstream/123456789/12820/1/011_Evaluating%20Judicial%20Performance_A%20Consumer%20Perspectives%20\(468-477\).pdf](http://14.139.60.114:8080/jspui/bitstream/123456789/12820/1/011_Evaluating%20Judicial%20Performance_A%20Consumer%20Perspectives%20(468-477).pdf)> accessed 20 May 2020

¹⁶ Surya Prakash Khatri v Madhu Trehan 2001 SCC OnLine Del 590 <<https://indiankanoon.org/doc/734756/>> accessed 20 May 2020

¹⁷ 'Niti Aayog working on appraisal system for judges, judiciary opposes proposal: report' Business Today (07 May 2019) <<https://www.businesstoday.in/current/policy/niti-aayog-working-on-appraisal-system-for-judges-judiciary-opposes-proposal/story/344059.html>> accessed 20 May 2020 Yogima Sharma, 'Niti Aayog working on proposal to appraise judges' performance, make rankings public', The Economic Times (07 May 2019) <<https://economictimes.indiatimes.com/news/politics-and-nation/niti-aayog-working-on-proposal-to-appraise-judges-performance-make-rankings-public/articleshow/69210175.cms>> accessed 20 May 2020

the condition of anonymity, has said that “[p]erformance rating does not exist anywhere. It is a terrible idea with an objective to weaken the institution. It is a serious encroachment of the executive on the judiciary”.

This, however, is factually incorrect because, as explained earlier, the district judiciary in India is subject to performance evaluation by High Court judges during the preparation of Annual Confidential Reports (ACRs). The format of these ACRs differs from state to state with a mix of qualitative metrics such as temperament and quantitative metrics focused on productivity.¹⁸ Some of these evaluations are reportedly based on a unit system, wherein each case is assigned a certain number of units depending on the witnesses, complexity etc.¹⁹ The Supreme Court and the High Courts have generally been insistent on conducting such performance evaluation of the district judiciary. It would only follow, as the bar equivocally recognises, that similar performance evaluation schemes should be put in place at least for the High Court judges.²⁰

The rare exception to the general reluctance within the higher judiciary to judicial performance evaluation is Justice G.R. Swaminathan, a sitting judge of the Madras High Court. On completion of two years on the bench, in July 2019 he conducted his own performance evaluation.²¹ Through a letter that he shared with members of the bar, he gave a case-wise break-up of the number of cases he was able to finally dispose of, laying the foundation for a data-driven approach to evaluate judicial performance at a High Court level.

While there are such singular instances, assessments of the performance of judges at the level of the higher judiciary are almost absent. This report hopes to address this lacuna and, in the process, also identify the causes why such evaluations are difficult to conduct in the Indian context. As the test of such assessment, the purpose of this report, we have focused only on the Delhi High Court. Our report can be divided into three parts. The **first part** outlines the challenges of conducting a judicial performance evaluation in the Indian context and the many limitations of our study. The **second part** is an institutional overview of the workload of the Delhi High Court and the allocation of judges to different case types. We explain the distribution of cases across the roster and its implication for various stakeholders in the justice system. The **third part** is focused on the individual performances of judges of the High Court based solely on the number of judgements they delivered **after reserving the same for pronouncement**. We have therefore not covered judgements or orders where cases were disposed of after dictation of oral orders in open courts. There is a reason for this approach, which is explained later in this report. A detailed methodology to extract data from the Delhi High Court website has been attached as an annexure to the report. The final chapter of the report also explains the scope of the automated analysis of judgement data across High Courts, with a focus on the current limitations and potential areas of improvement. Our analysis provides some useful insights, which we hope contributes to a better understanding of how the Delhi High Court discharges its functions. We are hopeful that the contribution of this study will not just be in terms of its findings but also in terms of furthering the narrative of how judicial performance evaluations should and could be conducted in the country.

¹⁸ Srikrishna Deva Rao, Rangin Pallav Tripathy Performance Evaluation and Promotion Schemes of Judicial Officers in India a Report on Odisha <<https://doj.gov.in/sites/default/files/Final%20Report%20Odisha.pdf>>, Madhya Pradesh
<<https://doj.gov.in/sites/default/files/Madhya%20Pradesh.pdf>>, Maharashtra
<<https://doj.gov.in/sites/default/files/Final%20Report%20Maharashtra.pdf>>, Gujarat
<<https://doj.gov.in/sites/default/files/Final%20Report%20Gujarat.pdf>> all accessed 20 May 2020

¹⁹ ibid

²⁰ Medha Srivastava and others, ‘Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary in India’ (Vidhi Centre for Legal Policy, 18 August 2017) at 35 <<https://doj.gov.in/sites/default/files/document%282%29.pdf>> accessed 26 May 2020

²¹ Self-critical High Court judge raises the bar, The Hindu (01 July 2019) <<https://www.thehindu.com/news/national/tamil-nadu/self-critical-high-court-judge-raises-the-bar-justice-gr-swaminathan/article28237249.ece>> accessed on 20 May 2020. Letter available at Meera Emmanuel, Madras HC’s Justice GR Swaminathan releases his own Performance Card, resolves to do better, Bar and Bench (30 June 2019) <<https://barandbench.com/madras-hc-justice-gr-swaminathan-performance-card/>> accessed 20 May 2020

II. Challenges of Conducting a Judicial Performance Evaluation

Given the limitations in data availability, at the outset, it is important to disclose that the performance evaluation conducted in this report is a modest one. For an ideal performance evaluation, there is a need for the development of performance standards which assess various attributes of a judge. The combined weighing and assessment of these attributes can lead to standards which measure a judge's accountability, legal ability, impartiality, independence, integrity, temperament, communication skills, management skills, settlement skills and administrative performance.²² For achieving this evaluation, comprehensive datasets are essential on various facets of the judiciary. Unfortunately, however, the analysis that is often conducted, as cited in the introduction, ends up being on broad-based statistics such as the number of cases instituted, disposed and pending across courts.

In contrast, a comprehensive analysis would also be able to study the amount of time spent to decide a particular type of case, the class of cases that are being disposed of more often than other case types, the complexity of cases and the impact that the changing roster has on case disposals. An even richer analysis would also further include subjective information such as the analytical rigour required for judgement writing and the case management skills of the judge in conducting court and disposing of cases. Curtailed by the lack of data on these parameters, some of the major roadblocks faced while conducting the judicial performance evaluation, in the Indian context, specifically for the Delhi High Court, are identified below.

1. Absence of granular statistics

The National Judicial Data Grid ("NJDG"), as developed by National Informatics Centre under the eCourts Project is a significant step in collecting judicial statistics. However, in its present form, it only provides pendency figures under the broad category of civil, criminal and writ cases for the High Courts. The data that is published also does not provide monthly figures in machine readable formats such as PDF or XLSX, making it difficult to do periodic research on archival information. As a result, the data that is uploaded is insufficient to conduct the analysis of the kind described above since it does not tell us about the complexity of the case, the type of the case or the time taken for disposal at individual judge or court hall level.

While the data provided on the Delhi High Court website is slightly more granular,²³ there still exists inadequate information to conduct the exhaustive performance evaluation described above. For instance, the website provides information of 1500 writ petitions pending in a month but fails to show the specific subject matter or the legislation under which these were filed or whether the writ petition was heard by a division bench or a single judge. A simple alteration in the nomenclature of such cases can reflect the bifurcation. Similarly, no information is published about the stages of the case, the duration of a hearing or even the bench or the courtroom which heard the matter. When such information was sought through an RTI, the High Court only provided consolidated information on the number of cases instituted, disposed and pending across case types.

At the level of individual judges, no information is uploaded. There is also no data on whether any internal timelines exist for specific tasks to be performed by judges and if these are met.

²² Stephen Colbran (2006), 'A comparative analysis of judicial performance evaluation programmes', *Journal of Commonwealth Law and Legal Education* 4(1)

²³ Delhi High Court, 'Public Notices' <<http://delhihighcourt.nic.in/generalnotices.asp?currentPage=8>; http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_SCIRKHS8KF8.PDF> accessed 17 September 2020

Interestingly, the eCourts website, as envisaged will include a judge-wise report for judicial performance assessment through ICT.²⁴ However, even at its conception, this is confined to the District judiciary and only records broadheads like the number of civil and criminal cases fixed, heard, and disposed of, without greater bifurcation.²⁵

2. Absence of performance standards

The other major impediment to conducting a judicial performance evaluation of the High Courts is the lack of any standards against which the performance of judges can be measured. With the digitisation of data, it can potentially be possible to collect some of the raw data required to create such standards. For example, as demonstrated in an academic paper recently,²⁶ the display board for courts which flashes the case number being heard in court can be harvested for data to measure the time taken for cases to be heard at each hearing. If this data can be used to calculate the median/average time taken to resolve different case types, it would be possible to create performance standards to evaluate judges. Similarly, standardised techniques can be created to measure the complexity of a case. Depending on the type of case, the number of witnesses or the amount and the form of evidence being recorded can be used to determine the complexity of the case.

Given that there is enough scope to collect data, the judiciary, if it so intends, can track workload and performance for empirical analysis. While in the past the importance of judicial statistics has been harped on many platforms, High Courts generally fail to employ statisticians for this purpose.²⁷ Unless this information is systematically collected and published, meaningful performance evaluation will not be possible.

3. Absence of qualitative information and survey data

At present, High Courts do not publish critical information about the rationale followed while deciding on the roster allocation or the reasons behind changing it. Instead, it is purely contingent on the discretion of the Chief Justice. There is also inadequate information that is published about the allocation of the various administrative committees and the roles performed by judges in those committees. It is therefore nearly impossible to assess the strength and weaknesses of the institution and individual judges. Barring a few attempts, there is also almost no information that is collected on how the public views the bar and the individual judges.²⁸ In contrast, several jurisdictions across the globe periodically collect such information with the use of questionnaires and verify the information collected therein.²⁹

For the above reasons, the scope of the performance evaluation that was therefore conducted is very limited. During the study, we had to confine ourselves to the limited sources of information which could be verified openly. The first source was daily orders for the different judges and second was information obtained from the pronouncements causelist. This information was correlated with the information provided on the lobis server of Delhi High Court to obtain further details about the case. Details about the methodology for this study are given in **Annexure A**.

²⁴ eCommittee, Supreme Court of India, 'Objectives Accomplishment Report as per Policy Action Plan Document Phase II' (*Supreme Court of India*, 2019) 11 <https://ecourts.gov.in/ecourts_home/static/manuals/Objective%20Accomplishment%20Report-2019.pdf> accessed 15 June 2020

²⁵ eCommittee, Supreme Court of India, 'Annexure to Report' (*Supreme Court of India*, 2019) 353 <https://ecourts.gov.in/ecourts_home/static/manuals/Annexures%20of%20the%20report.pdf> accessed 15 June 2020

²⁶ Rahul Hemrajani & Himanshu Agarwal (2019) A temporal analysis of the Supreme Court of India's workload, *Indian Law Review*, 3:2, 125-158

²⁷ Prashant T Reddy and others, 'Open Courts in the Digital Age: A Prescription for an Open Data Policy' (*Vidhi Centre for Legal Policy*, 2019) 9 <https://vidhilegalpolicy.in/wp-content/uploads/2019/11/OpenCourts_digital16dec.pdf> accessed 15 May 2020

²⁸ Chitrakshi Jain and others, 'A Survey of Advocates Practicing Before the High Courts' (*Vidhi Centre for Legal Policy*, 07 May 2020) <<https://vidhilegalpolicy.in/research/a-survey-of-advocates-practicing-before-the-high-courts/>> accessed 21 December 2020

²⁹ Stephen Colbran (2006), 'A comparative analysis of judicial performance evaluation programmes', *Journal of Commonwealth Law and Legal Education* 4(1); for further discussion on information needed for judicial performance evaluation in the Indian context please Medha Srivastava and others, 'Development and Enforcement of Performance Standards to Enhance Accountability of the Higher Judiciary In India' (*Vidhi Centre for Legal Policy*, 18 August 2017) <<https://doj.gov.in/sites/default/files/document%282%29.pdf>> accessed 26 May 2020

III. Analysis of the Delhi High Court Roster System

Historically, until the creation of the Federal Court under the Government of India Act, 1935 the High Courts used to be the most powerful judicial institutions in India. Subsequently, the Constitution of independent India envisaged a High Court for every state in the Union. It was in this light, that the Delhi High Court was set up in 1966, by an Act of Parliament making it significantly younger than the oldest chartered High Courts which were set up in 1861.³⁰

Like the oldest chartered High Courts, the Delhi High Court traditionally exercised three important roles. The *first* is its appellate and supervisory jurisdiction over the district judiciary in Delhi as well as certain specialised tribunals like the Income Tax Administrative Tribunal (ITAT). The *second* is its power of judicial review over the administrative decisions of the executive and legislative enactments of the Union and State. The *third* is its power to hear, at first instances, civil and commercial litigation above a certain value as well as criminal cases such as bail and petitions under Section 482 of the Code of Criminal Procedure (CrPC).³¹ With the creation of a range of specialised tribunals, the High Courts were divested of significant powers.³² For example, the National Company Law Tribunal (NCLT), the Intellectual Property Appellate Board (IPAB), the National Green Tribunal and the administrative tribunals for service disputes have resulted in shifting cases away from the High Courts. However, due to the Supreme Court decision in *L. Chandra Kumar*³³, the High Courts continue to exercise supervisory writ jurisdiction over these tribunals under Article 226 of the Constitution.

When faced with a wide variety of cases and only a limited number of judges, it becomes the duty of the Chief Justice of the High Court, as the 'Master of the Roster' to allocate cases to the various judges of a High Court.³⁴ All High Courts in India have created a roster system wherein a certain courtroom hears only certain type of cases. For example, some courts will only hear criminal appellate cases, while others will hear only civil cases. Judges are rotated between different rosters at the discretion of the Chief Justice, usually after they are consulted. There is a distinct trend of some judges being allocated to particular rosters given their efficiency in those areas. As judges become more senior they may sit permanently on a Division Bench (consisting of two judges), exercising appellate powers over cases heard by single judges. Junior judges are rotated through the Division Benches. On certain occasions, the Chief Justice may setup a bench of three judges or five judges to either resolve conflicts between earlier decisions from different benches or hear cases of great constitutional importance.

Apart from achieving administrative efficiency, the allocation of judges may also reflect strategic objectives or compromises. For example, assigning more judges to hear criminal appeals rather than commercial cases could be a reflection of a High Court that values the liberties of citizens, over commercial disputes. It is also possible that the allocation of judges across the roster could be the result of a negotiation between the bar and the bench on the prioritisation of cases. While these are possible explanations, there is very little known of how exactly Chief Justices of High Courts make these decisions. The process is not transparent and there is little academic work published on this important issue.

In this backdrop, we analyse two aspects of the Delhi High Court. First, this chapter analyses the institutional performance of the Delhi High Court and therefore includes all the cases that came before the court. Second, the

³⁰ Delhi High Court Act, 1966 <<https://indiacode.nic.in/bitstream/123456789/1700/1/196626.pdf>> accessed 20 May 2020

³¹ See Delhi High Court Judges Roster as on 02 January 2018 <http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile_IS7PLUGZ.PDF> accessed 20 May 2020

³² K. Vivek Reddy, 'Devaluing high courts' (The Hindu 30 October 2017) <https://www.thehindu.com/opinion/op-ed/devaluing-high-courts/article19944799_ece> accessed 20 May 2020

³³ *L. Chandra Kumar v Union of India* 1997 2 SCR 118 <<https://indiankanoon.org/doc/1152518/>> accessed 20 May 2020

³⁴ *Shanti Bhushan v Supreme Court of India* (2018) 8 SCC 396 <<https://indiankanoon.org/doc/51165139/>> accessed 20 May 2020

next chapter analyses the performance of 33 judges of the Delhi High Court³⁵ who were distributed across the criminal, civil appellate, civil original and writ matters. **The analysis has been done for the year 2018.**

A. The criminal roster of single judges and division benches

In 2018, on the criminal roster, there were 10 judges who sat on six single benches and two division benches.³⁶ The cases before both these benches consists primarily of criminal appeals, bail applications, and criminal miscellaneous petitions. Each set of cases involves different rights and stakeholders in the criminal justice system. The division of work of these cases, between the Single Judges and the Division Bench is determined through the High Court Rules, the CrPC and discretion of the Chief Justice of that High Court.³⁷ For instance, one of the integral cases that are heard by judges in the criminal roster are criminal appeals.³⁸ The provision to file these appeals to the High Court arises from Section 374 of the CrPC.³⁹ However, the classification of whether they shall be filed before a Single Judge or Division Benches is determined by the High Court Rules.⁴⁰ As per the rules, the Division Benches on the criminal roster, for instance, hear appeals involving death sentence references, criminal leave petitions, criminal contempt petitions and contempt references, cases where the enhancement of sentence is appealed or where the sentence granted is one of life imprisonment or death.⁴¹ The list provided for the Division Bench is exhaustive. The residuary types of cases are heard by a Single Judge.

Similarly, both Single Judges and Division Benches hear criminal writ petitions.⁴² For instance, writ petitions involving habeas corpus and preventive detention go before a Division Bench.⁴³ Conversely, petitions involving writs in the nature of mandamus, prohibition, quo-warranto or certiorari go before a Single Judge.⁴⁴

On a whole, the number of cases that have been instituted, disposed and pending before these benches is provided below. The figures are as per the information provided by the Delhi High Court are in response to an RTI application that was filed in 2019. Since the reply does not provide a bifurcation between the types of writ petitions that go before the Division Bench and the Single Judges, the numbers in Table No. 1 have been combined for writ petitions.

Table 1: No. of cases instituted, disposed, and pending before the criminal roster of the Delhi High Court

Case type	Instituted	Disposed	Pending
No. of criminal writ petitions cumulatively pending before single judges and division benches	3,997	4,165	1,337
No. of criminal cases pending before single judges (barring writ petitions)	12,974	12,102	17,320
No. of criminal cases pending before division benches (barring writ petitions)	317	557	1,589

³⁵ In 2018, at total of 45 judges have performed the duties of a judge at the Delhi High Court. However, only 33 judges have done so through the whole year. The remaining 12 judges have either been freshly appointed, retired or transferred during 2018. To maintain the consistency in the data set only the 33 judges have been analysed.

³⁶ In most cases, the numbers that have been identified, reflect the uniform practice across the year. However, in some cases, given the movement of judges across rosters, there can be a variance of one to two judges. In such cases, the number that reflects a majority of the year have been recorded.

³⁷ Delhi High Court Rules, Volume 5, Chapter 3: Jurisdiction, Part A, Rule 2 <http://delhihighcourt.nic.in/writereaddata/upload/CourtRules/CourtRuleFile_VS6ZCVJ4.PDF> accessed 23 December 2020

³⁸ These appeals often involve important questions of life and liberty and for this reason dealt with in detail in the next chapter.

³⁹ Section 374 is an umbrella provision that lists out all the appeals that can be statutorily filed. Therefore, apart from appeals that lie before the High Court, Section 374 also identifies appeals that can be filed before the Supreme Court and the Court of Sessions. Further, Section 372 states that only appeals listed out in the CrPC can be filed.

⁴⁰ n 37 at Volume 5, Chapter 3: Jurisdiction Rule (xx)

⁴¹ n 37 at Rule 1 (xx)

⁴² n 37 at Part B: Rule 1 (xviii)

⁴³ n 37 at Part B, Rule 1 (xxi) explanation

⁴⁴ n 37 at Part B, Rule 1 (xviii) (a)

To further explain the classification, the first type of case that are heard by the single benches on the criminal roster, are bail applications. Under Section 439 of the CrPC, both the Sessions Courts and High Courts have jurisdiction to hear bail applications. These bail applications are relatively simple proceedings when compared to criminal appeals and judges tend to dispose such applications quite swiftly since the standards of scrutiny expected of judges is not very high.

The second type of case that are heard by the single benches on the criminal roster are criminal miscellaneous cases. Referred to as 'quashing petitions' a vast majority of these petitions are filed under Section 482 of the CrPC. This provision bestows upon High Courts certain 'inherent powers' that allows for them to quash criminal cases to prevent abuse of processes or to secure the ends of justice.⁴⁵ The range of cases heard by High Courts under Section 482 are vast and could involve everything from quashing of an investigation or FIR⁴⁶, to compounding offences that can otherwise not be compounded under criminal law⁴⁷ to the quashing of charge-sheets.⁴⁸ Given that the nature of power under this provision is almost entirely discretionary, the success rate of these petitions is quite minute and most of these petitions are dismissed at the outset after hearings that often conclude in less than a few minutes. The reason for this approach is that High Courts prefer to let the process of law take its course before the lower courts. Only in extraordinary cases do they intervene to set aside the proceedings.

B. The civil original and appellate roster for single benches

In 2018, a total of 16 judges of the High Court heard cases on the civil side. The civil side of the Delhi High Court constitutes two categories of cases.

The first category involves cases where the High Court exercises "original civil" jurisdiction - these are suits filed either under the Commercial Courts Act, 2015 or relate to other civil disputes over a certain pecuniary value, below which they go to the district courts in Delhi. The number of cases filed in this category dropped substantially after the pecuniary limits to file cases at the District Courts i.e. Commercial Courts was increased to Rs. 2 crores in 2018.⁴⁹ Also included in this category are all cases related to arbitration. There is an additional class of original suits that fall under this original side and include those suits which might not be of a commercial nature. These cases could be classified as resource intensive since the court has to conduct a trial to decide questions of facts.

The second category of civil cases, are statutory appeals filed under laws that give parties the right to appeal to the High Court. These include appeals, for instance, under Section 173 of the Motor Vehicles Act, 1988 and Section 74 the Land Acquisition Act, 2013. They also include first appeals which arise out of orders delivered by the District Court and are termed as 'regular first appeals' under Section 96 of the Code of Civil Procedure, 1908 (CPC) and 'civil revision petitions' filed under Section 115 of the CPC. These judges also oversee all the cases pertaining to execution of decrees i.e. execution first and second appeals. The complexity of these cases differs vastly but can generally be considered resource and time intensive in that judges will have to give most of these cases a patient hearing. They often take time because the court has to address issues of both fact and law.⁵⁰ These cases give the High Court an opportunity to assess the workings of the district judiciary because it is their judgements that are being scrutinised during these appeals. Over the calendar year 2018, the following are the

⁴⁵ Narinder Singh v State of Punjab (2014) 6 SCC 466 <<https://indiankanoon.org/doc/160278245/>> accessed 20 May 2020

⁴⁶ Parbatbhai Aahir v The State of Gujarat <<https://indiankanoon.org/doc/7293093/>> accessed 20 May 2020

⁴⁷ State of Madhya Pradesh v Laxmi Narayan <<https://indiankanoon.org/doc/149247382/>> accessed 20 May 2020

⁴⁸ Anand Kumar Mohatta v State (Govt. of NCT of Delhi) <<https://indiankanoon.org/doc/14567786/>> accessed 20 May 2020

⁴⁹ High Courts of Delhi, 'Notification regarding pecuniary jurisdiction of Commercial Courts at the District Judge Level' No. 3070-80/DHC/Gaz/G-1/2018' (09 July 2018) <<https://delhidistrictcourts.nic.in/Circulars/2018/july/4a.pdf>> accessed 25 May 2020

⁵⁰ Rajesh Babu, Sumanta Basu and Indranil Bose, 'Study of Court processes and re-engineering opportunities for Improving Court efficiencies for Justice Delivery in India' (Indian Institute of Management Calcutta, 2019) <<https://doj.gov.in/sites/default/files/IIIm%20Kolkata.pdf>> accessed 20 May 2020

total number of cases instituted, disposed, and pending by the civil original and appellate jurisdiction, as per the figures provided by the Delhi High Court in response to an RTI application:

Table 2: No. of cases instituted, disposed, and pending before the civil original and appellate side of the Delhi High Court

Bench	Instituted	Disposed	Pending
Civil Original	5,658	6,140	9,120
Civil Appellate	7,638	6,919	17,797

C. The civil appellate roster for division benches

The Delhi High Court has six Division Benches hearing civil cases. All the judges on this roster hear multiple subject matters before them.⁵¹ Of these, four benches hear statutory appeals against order of single judges in commercial cases. They hear these cases in addition to their other roster which may include cases such as first appeal from orders from the original side, tax matters or land acquisition matters. Two out of four of these benches also primarily hear statutory appeals against the Income Tax Appellate Tribunal or (ITAT) or other tax related cases and references. Two benches hear letters patent appeals against orders of Single Benches on the writ roster in addition to their other workload, which primarily contains writ petitions while one bench hears writs against tribunals like the Debt Recovery Tribunal, Debt Recovery Appellate Tribunal (DRAT) and Lokayuktas.⁵² As a consequence of such a roster, all division benches on the civil side also hear writ petitions challenging the constitutional validity of legislative Acts, rules and notifications related to a range of issues from tax to municipalities.

Over the calendar year 2018, Table 3 depicts the total number of cases instituted, disposed and pending under the civil roster before the division bench. These figures were provided by the Delhi High Court in response to an RTI application. The numbers regarding writ petitions are provided in the next section.

Table 3: Total no. of cases instituted, disposed, and pending before the civil appellate roster for division benches

Bench	Instituted	Disposed	Pending
No. of cases before the civil appellate roster for division bench	3,423	3,146	4,827

D. The writ roster for single judges and division benches

Out of a total of nine single judges on the civil side, around two to three judges (depending on which roster for 2018 is selected) are dedicated to mostly hearing different types of writ petitions against all organs of the state (as defined under Article 12 of the Constitution). Most of these petitions are filed against the Municipal Corporation of Delhi, the Delhi Development Authority, labour courts, the Delhi Jal Board (DJB), the University Grants Commission (UGC), nationalised banks, railways, other statutory authorities ranging from the Competition Commission to the Drug Controller General of India. Additionally, three judges also hear writ petitions along with statutory civil appeals and are hence shared between the class of cases identified earlier i.e. civil appellate cases. Over the calendar year 2018, the following are the total number of cases instituted, disposed and pending under

⁵¹ High Court of Delhi, 'The Roster of Sitting of Hon'ble Judges of this Court effective from 2nd January, 2018' <http://delhihighcourt.nic.in/writereaddata/upload/Roster/RosterFile_IS7PLUGZ.PDF> accessed 28 November 2020

⁵² Delhi High Court, 'Public Notices' at 3 <<http://delhihighcourt.nic.in/generalnotices.asp?currentPage=8>; http://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_SCIRKHS8KF8.PDF> accessed 17 September 2020

the writ roster, as per the figures provided by the Delhi High Court in response to an RTI application. Since the reply to the RTI application does not bifurcate the number of civil writ petition filed before a single judge and a division bench, combined numbers have been provided in Table 4 below.

Table 4: Overview of statistics pertaining to civil writ petitions across the entire Delhi High Court

Type	Instituted	Disposed	Pending
No. of civil writ petitions cumulatively pending before single judges and division benches	14,367	11,118	22,803

A further richer analysis could have been conducted on writ petitions filed before the Delhi High Court, if the High Court clearly demarcated the difference between the various kinds of writ petitions based on the subject matter that was being litigated. As on date, all writ petitions regardless of the subject matter involved are named as 'WP'. Therefore, for instance, they can pertain to service matters that are listed before a Single Judge or even debt recovery matters which are placed before a division bench.

E. High Court's disposal of pending cases

Based on the information obtained through an RTI application, the Figure 1 below shows how the Delhi High Court has prioritised its cases by explaining its institution, disposal, and pendency figures. The data demonstrates that writ petitions saw the largest proportion of cases instituted (14,367) and pending (22,803), by a very high margin. It also had the most number of judges adjudicating them i.e. 18 judges. While one could argue that such proportionate allocation would be the appropriate method of allocating judges responding to the criteria of pendency, it fails to account for the nature and subject matter of the case.

Other subject matters such as criminal appeals, saw a very high number of pending cases (11,032) in comparison to the number of cases that were disposed (1,677). Apart from high pendency figures, these cases especially require urgent attention for they deal with the rights and liberties of individuals. As opposed to writ petitions, where the court exercises discretionary jurisdiction, these appeals are statutory in nature and deal with the rights of an individual. It is therefore arguable that the court should be allocating greater resources in disposing such cases. The court also seems to be disposing (1,364) less number of original side civil suits as compared to their pendency (3,294). A similar trend can be seen for suits of a commercial nature (955 disposed and 2,136 pending). These cases probably see such low disposal figures because they require a lot of investment in terms of time to peruse evidence and conduct the process of trial. Finally, other statutory appeals such as land acquisition cases, regular first appeals and motor vehicle claims also saw comparatively much lower disposal figures in comparison to their pendency, suggesting that courts are not disposing these cases at the required rate to prevent creation of massive backlog.

On the other hand, as can be seen in the chart, some cases such as criminal miscellaneous cases saw very high disposal numbers (7,024) as compared to institutions (6,682) and pendency (4,392). A similar trend case be seen with bail applications (with 3,253 institutions and 698 pending cases). This means that the court was inclined to hear and dispose these types of cases as compared to other case types. This could be because such cases do not require intensive deliberation on questions of law and are therefore comparatively easily disposed or because they are prioritised by judges because of the urgency associated with such cases. The Delhi High Court also seems to be inclined to dispose arbitration related cases on an expeditious basis thereby building a reputation as a court that is favourable for the resolution of arbitration disputes. The disposal figures of arbitration cases both commercial (1,827) and regular (1,342) were much higher than their institution (1,967 for commercial and 1,061 for regular) and pendency figures (1,403 for commercial and 791 for regular).

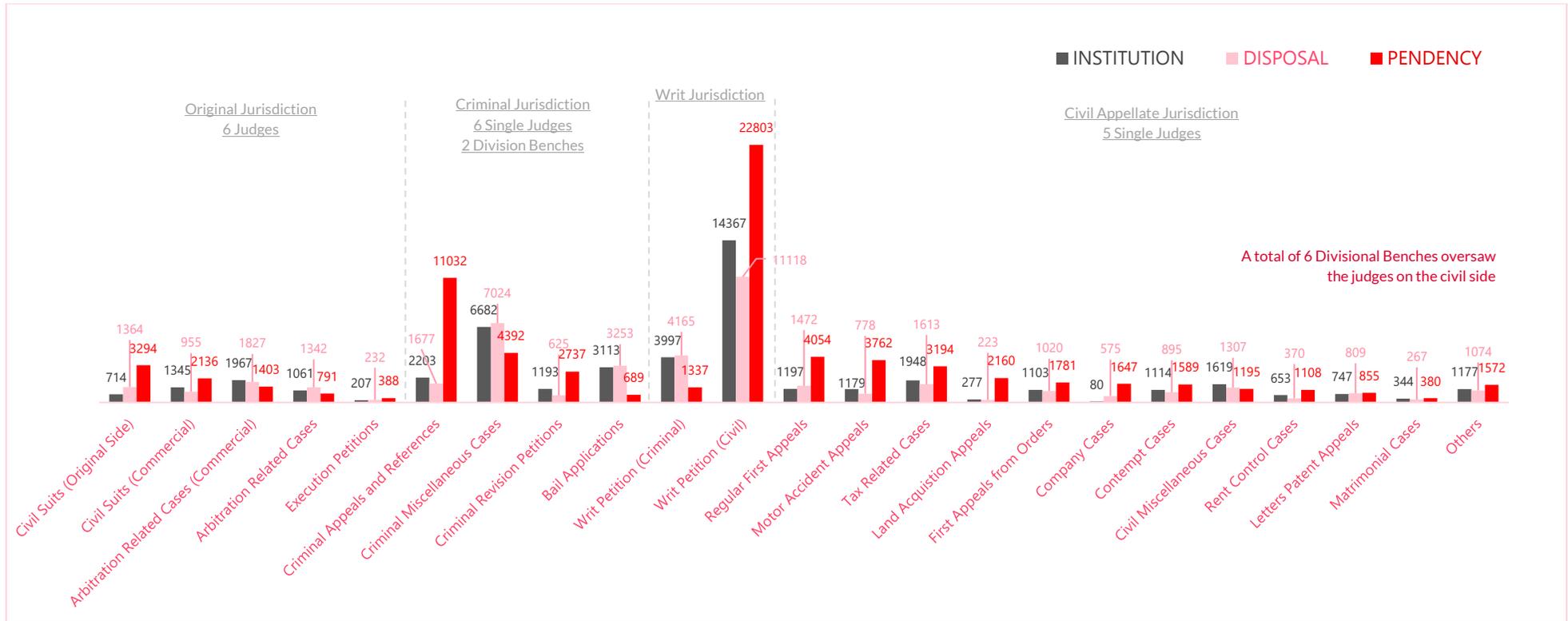


Figure 1: Overview of the number of instituted, disposed, and pending cases across various case types in the Delhi High Court for the year 2018

F. Problems with court's apportionment of time

In order to determine how the court spends its time, we collected data on three variables. First, we identified the number of times that cases have been 'listed' before the court.⁵³ Such listing data indicates the number of times that cases are listed before the courts and thus eventually heard. Second, we collected information on the number of judgments that were 'pronounced' by the courts.⁵⁴ Third, to contextualise these numbers to the pendency of the courts, we have identified that number of cases that are pending for that particular case type. A detailed explanation of how the data was collected is identified in the **methodology** section of this report. It is important to note that the analysis done in this section is limited by the information that we were able to obtain. An ideal performance evaluation would also be able to take into account the time spent by the court on cases, account for better duplicates and have better classification between case types.

In 2018, the sum of all the listings in the year 2018 is 2,70,420. However, after removing duplicates i.e. the repeat listings for a particular case, the number of cases listed before High Court judges is 1,54,231. The numbers suggest that most hearings are used for writ petitions and criminal miscellaneous cases. As one would expect, the writ petitions numbers seem to be high because they account for the largest volume of cases before the High Court.

In terms of pronouncements, in the year 2018, a total of only 2297 judgments have been reserved and pronounced. In terms of pending cases, the number of cases pending as on 31 December 2018 is 80,616. The numbers for a select category of cases for the three variables are identified below in Table 5.

Table 5: Total number of listings, pronounced judgments, and pending cases across select case types

Case Type	Total no. of listings (A)	Total no. judgements pronounced (B)	Total no. of cases pending before the court (C)	Ratio of listings to pendency (D = A ÷ C)
Writ Petition (Civil)	58,993	336	22,803	2.58
Criminal Appeals and References	7,722	236	11,032	0.69

⁵³ Total number of 'listings' in a causelist, for a day, is the sum of the number cases (or items) that are scheduled to be heard by all the judges on a particular day. Listing a case does not mean that the case was actually heard by the court or that a substantive order was passed in the case. Instead, it is only representative of the number of cases that are scheduled to be heard. We counted the number of listings, as opposed to the number of cases that were actually heard, for two reasons. *First*, because regardless of whether the case is heard by the court, a judicial order is issued by the court and therefore accounts for judicial time. For instance, even if the judge was on leave or if the board was dismissed for the day an order is delivered in the case. *Second*, the High Court data does not bifurcate between cases where such non-substantive orders are given as opposed to where the judges have applied their mind. Additionally, since the same case can be listed multiple times in the year, we have accounted for such repeat listings and removed them. Therefore, the total no. of listings is not the sum of all the items in the causelist for the year 2018. Finally, the way to scrape this data from Delhi High Court website is by scraping data on the number of orders that are delivered by a judge (or the number of cases listed before a judge). Therefore, for division benches the same order will be counted for two different judges. Thus, the number of listings should not mean to represent the sum of cases that have been heard by the Delhi High Court in 2018. It is instead, the sum of cases that have listed before all the judges in 2018.

⁵⁴ Cases are disposed everyday by the Delhi High Court either by reserving them and pronouncing them at a subsequent date (thereby featuring in the pronouncement cause list) or disposing them in the same day (thereby featuring as a daily order on the Delhi High Court website). We extracted data from the pronouncement cause lists for 2018, since we felt that it is these cases that required greater deliberation on part of the judges to deliver their decisions. Before arriving at this metric, we also tried to scrap data from the lobis website of the Delhi High Court which keeps a record of all the judgements that have been delivered by the Delhi High Court. On further conversation with the members of the Delhi High Court Registry, we found that there was no such rationale on why decisions were classified as judgements on the lobis website or as daily orders on the Delhi High Court website. It is for this reason that cases from the judgements tab on the Delhi High Court website have not been used as a metric for assessing the disposal of cases. However, extracting data from the lobis website was able to provide us with the number of pages for every judgement. On average, all judgements were for 10.24 pages with a median of 6 pages. The reserved judgements had an average of 23.89 pages and a median of 17 pages. The non-reserved judgements had an average of 7.4 pages and a median of 6 pages. While there are limitations in assessing judgements on the number of pages, it can be inferred that, on average reserved judgements require greater deliberation.

Criminal Miscellaneous Cases	13,896	44	4,392	3.16
Arbitration Related Cases (Commercial)	3,501	111	1,403	2.49
Civil Miscellaneous Cases	3,870	16	1,195	3.23
Motor Accident Appeals	3,437	7	3,762	0.93
Regular First Appeals	3,789	193	4,054	0.93
Tax Related Cases	6,881	29	3,194	2.15

The above data demonstrates two probable conclusions which corroborate the findings of the previous section of the report. First, that some cases are listed more frequently than others in proportion to their pendency. For instance, even though criminal appeals saw very high pendency figures (10,032), the number of times that they were listed was low (7,722). On the other hand, criminal miscellaneous cases seem to have the largest number of listings (13,896) even though the number of pending cases (4,392) is much lesser than criminal appeals. A clearer picture can be seen in the final column (D) in the table above, which provides a ratio between the listings and pendency. If cases were to be listed directly proportionate to their pendency then the value in column D of the chart would be equal to one. If cases were listed more frequently, in comparison to their pendency the value would be higher than one. Similarly, values lower than one mean that the court is hesitant in listing the cases, even though they are pending. Higher numbers are representative of the court wanting to list matters, of that subject matter category, regardless of their pendency and with urgency. These results suggest that the court was more inclined to hear matters which are of a commercial nature i.e. tax matters and arbitration matters, writ petitions, and criminal miscellaneous cases. Further, cases that often require more time of the court such as criminal appeals and regular first appeals are not being listed as frequently by the court.

Second, when comparing pronouncement numbers with pendency figures, it is further clear that judges are choosing to hear and pronounce judgements of a certain type of case and not always responding to the pendency figures. Further, the figures for tax related cases also show that while the number of listings could be high (at 6,881) they might not always correlate to judgements being pronounced (29).⁵⁵

Given these two conclusions, it is important to ask as to why some cases get heard at a disproportionately (based on their pendency) higher rate compared to others? More importantly, it is desirable that all different types of cases be heard at the same rate and should the roster be designed accordingly?

The likely answer to the first question is that judges seem to be listing cases that are easier to dispose such as criminal miscellaneous cases as opposed to more complex cases such as regular first appeals and criminal appeals. A more certain answer to the second question, is that it is desirable that court carefully and intentionally organise their rosters to cater to the urgency of the cases and the important consequences that follow their judgments. For instance, criminal appeals are more important than others as they deal with the life and liberties of persons in jail. They are thus clearly of higher priority than criminal miscellaneous petitions which deal with discretionary remedies such as quashing of cases.

How then should rosters be organised?

If a court were governed solely by the ideas of efficiency, it would be oriented towards disposing the largest number of cases in the shortest amount of time with the least amount of judicial resources. Given such a goal, the

⁵⁵ It is important to note that in some cases the judgment might not be 'pronounced' and therefore not feature in the pronouncement cauelist. Instead, these cases might be delivered by a daily order or dictated in the court. It is probably for this reason that criminal miscellaneous cases do not see a high number of pronouncement.

court would be inadvertently motivated to dispose cases that require shorter amounts of time, such as bail applications and miscellaneous cases like criminal quashing petitions, in comparison to cases such as regular first appeals or criminal appeals. However, most efficient systems might not be most just.

If the court were driven only by the need to be equitable, then the court would aim to dispose all cases similarly, without accounting for the urgency of the case. Criminal appeals and some criminal writ petitions, for example, require urgent action as they deal with the life and death of individuals or preventive detention as opposed to some cases regarding evictions or other commercial cases. Therefore, responding to urgency might be very desirable in organising a roster.

The previous section is evidence that there does not seem to be a clear rationale in roster allocation. In fact, even the roster that is formulated by the Chief Justice does not provide a clear rationale as to why a certain number of judges have been allocated to a particular case type. The system therefore seems ad-hoc to an external observer and suggests a lack of clear prioritisation of cases on part of the court. The easiest method to adopt a prioritisation framework at the Delhi High Court is to draw inspiration from the Case Flow Management Rules across courts.⁵⁶

Introduced by the Supreme Court in *Salem Bar Association v Union of India*⁵⁷ and mandated by the court, some High Courts across the country have indeed drafted case flow management rules for both the District Courts and the High Courts. These courts include (but are not limited to) Himachal Pradesh, Bihar, Madhya Pradesh and Rajasthan.⁵⁸ Interestingly, however, none of the presidency High Courts at Delhi, Bombay, Madras and Calcutta have drafted these rules for their respective High Courts. The draft Rules which have been prepared by the Law Commission⁵⁹ and then customised by the High Courts, provide timelines and tracks within which the cases are required to be disposed. There are different timelines in place for civil and criminal cases. While these rules have seen limited success across courts, the timelines that have been prescribed can be realistically modified to respond to the present pendency of the court. This can then allow for further transparent modifications to determine urgency of cases.

Having a system of such tracks and a clear set of timelines will provide information to both judges and present and future litigants on the issues that the particular High Court might deem more important than others. The Delhi High Court, for example might choose to establish and maintain its reputation as a commercial court. While such information is often circulated within closed circles, it is important for courts to transparently lay out their mandate. It can also be speculated that the prioritisation of cases across courts is often governed by the influencing power of the bar in favour of revenue generating cases. Having a transparent system of prioritisation can keep such forces under check. Establishing timelines will also help identify judges that are being inefficient and realistic amendments of timelines will provide litigants a clear picture of the amount of time proceedings are likely to take.

For instance, currently, the Delhi High Court bundles all civils suits together. However, through the implementation the rules these cases can be classified into four different tracks. As per the rules, Track 1 (to be completed within 6 months) comprises of family matters, divorce, child custody, adoption, maintenance cases and other cases related to this subject matter. Track 2 (to be completed within 9 months) comprises of money suits, cases involving negotiable instruments and other suits based primarily on documents. Tracks 3 (to be completed within a year) comprises of suits concerning partitions, property disputes, trademarks, copyright and other intellectual property matters. Track 4 (to be completed within 1 ½ years) includes rent, lease, eviction matters. The further bifurcation of cases along these lines can help the court understand their workload on a more granular basis and also provide evaluators data to assess the performance of judges.

The adoption of these Rules is evidence that courts can, as some have, adopt a hierarchy of cases based on their urgency and priority. Further, equal allocation of cases from different tracks, to judges, would ensure that there is

⁵⁶ NALSAR University of Law, 'A Study on Court Management Techniques for Improving the Efficiency of Subordinate Courts (Department of Justice)' <https://doj.gov.in/sites/default/files/Final%20DOJ%20Report_Revised%20%281%29.pdf> accessed 20 May 2020

⁵⁷ Salem Bar Association v Union of India (2005) 6 SCC 344 <<https://indiankanoon.org/doc/342197/>> accessed 20 May 2020

⁵⁸ Daksh, 'Case Flow Management Rules in India' (Daksh, March 2017) <<https://dakshindia.org/wp-content/uploads/2015/11/Case-Flow-Management-Rules-in-India-by-DAKSH.pdf>> accessed 20 May 2020

⁵⁹ Law Commission of India <http://lawcommissionofindia.nic.in/adr_conf/casemgmt%20draft%20rules.pdf> accessed 20 May 2020

parity between the judges on their rosters allocation. The disposal numbers arrived after this exercise will then be a valid indicator of efficiency of the court and will also provide fairer metrics to assess and compare the performance of individual judges vis-a-vis each other. Such a priority system will also ensure that there is greater transparency on part of the court in how it decides to prioritise certain types of cases. It will also provide a mechanism to hold the Chief Justices of the various High Courts accountable for the manner in which the roster system is designed.

IV. Judge-wise Evaluation

As mentioned in the introduction of the report, the district judges are subject to evaluation through ACRs. There are three distinctive assessment methods used in ACRs - self-assessment by judicial officers, assessment by a reporting authority, and supervisory remarks by the accepting authority. A study commissioned by the DoJ, identifies that the content of such reports is intended to assess parameters such as - knowledge of the law, character traits, temperament, communication skills, and workload management.⁶⁰ However no such mandate exists for the higher judiciary. As a result, there is little to no accountability for the judges in terms of efficiency and it is difficult to identify the best performing judges. In the absence of regular performance evaluation internally or any data in the public domain as regards performance of individual judges, the decisions by the often appear to be shrouded in mystery.

For the purpose of this study, we looked at the performance of those individual judges who were sitting in the Delhi High Court throughout 2018.⁶¹ We looked at one primary criterion for this - the number of judgements that were 'pronounced'⁶² after the case was reserved by a judge. As explained earlier, the number of pronouncements is an indicator of the judicial time taken for resolving complex cases as they were required to be deliberated upon by the judge before writing a judgement. The length of these 'pronounced' judgments can also serve as an indicator of their complexity, as on an average, the length of these judgments is far longer than the orders that are dictated in court on the same day as soon as the hearing concludes. These 'pronounced' judgments also tend to be the ones that are 'reported' in law journals and serve as precedents for future judges. In our opinion, and in the absence of any other performance indicators, 'pronounced' judgments have been used as a marker of judicial productivity.

These pronouncements do not include daily orders which are dictated on the same day as the hearing but are simply the judgements which were delivered on a future date by the judge after reserving the matter. This data was scraped from the pronouncements causelist published by the Delhi High Court and then co-related with the data from the lobis website of the Delhi High Court to identify the author of the judgment. Moreover, to give further context to the judicial time required for disposing of a case, we have retained the number of times that cases were listed before a judge.⁶³ The judge-wise data is given in chart on the next page.

This chart demonstrates that it is clear that there is no discernible consistency in the performance of the judges. There does seem to be an apparent pattern between the number of times a matter is listed before a judge and the number of pronouncements given by the judges. Arguably there can be multiple justifications for this. *First*, not all judges are listening to similar matters or matters of equal complexity and therefore there is variance in the number of matters that are listed. For instance, judges hearing original side cases might list fewer matters as opposed to those hearing criminal miscellaneous petition or bail applications. *Second*, judges may have their own preferred way of managing their respective roster. As a consequence, some judges might list only those many matters that can be heard in a day while others might have longer causelists even if it is not possible to hear them all in one

⁶⁰ Srikrishna Deva Rao, Rangin Pallav Tripathy et. al, pg. 129 <<https://doj.gov.in/sites/default/files/Comparative%20Report.pdf>> also Performance Evaluation and Promotion Schemes of Judicial Officers in India a Report on Madhya Pradesh at 21 <<https://doj.gov.in/sites/default/files/Madhya%20Pradesh.pdf>> accessed 20 May 2020

⁶¹ A total 45 judges performed their duties across the Delhi High Court in 2018. Out of these judges, only 33 judges were at the Delhi High Court throughout the year. The rest of the 12 judges were either transferred, retired or newly appointed during the year. These 12 judges for whom the analysis was not conducted include Hon'ble Ms. Justice Jyoti Singh, Hon'ble Mr. Justice Pratik Jalan, Hon'ble Mr. Justice Anup Jairam Bhambhani, Hon'ble Mr. Justice Sanjeev Narula, Hon'ble Mr. Justice Manoj Kumar Ohri, Hon'ble Mr. Justice Rajendra Menon, Hon'ble Ms. Justice Pratibha Rani, Hon'ble Mr. Justice P.S. Teji, Hon'ble Ms. Justice Gita Mittal, Hon'ble Mr. Justice S.P Garg, Hon'ble Ms. Justice Deepa Sharma, Hon'ble Ms. Justice Indermeet Kaur

⁶² In this study we have excluded connected matters from the list of pronouncements given by a judge. For example, if three cases were disposed via a common judgement only one pronouncement was recorded. A detailed methodology has been provided in Annexure A.

⁶³ As mentioned in the previous chapter, this is not the number of cases that were listed before a judge in 2018, but a cumulative of all the orders delivered by the judge in 2018 i.e. the number of times that cases were listed before a judge.

day.⁶⁴ *Third*, some judges might be more inclined to pass interim orders that decide on the rights of the parties instead of passing final orders thereby allowing them to hear more matters in a day. Other judges may list limited number of matters in a day so that final orders can be passed in a majority of the matters. They might have a small number of listings but comparatively higher number of pronouncements.

Regardless of the variance in listings, the data demonstrates that some judges are indeed pronouncing more judgments in comparison to others. While it is true that these pronouncements are not representative of the number of cases that have been disposed by a judge, they do represent cases where judges have had to deliberate, reserve and pronounce their judgments. Such judgments are therefore likely to have seen more judicial time being spent by the judges over and above those spent during court hours. To make the names of the judges more accessible, only the last names of the Hon'ble Judges have been mentioned below.

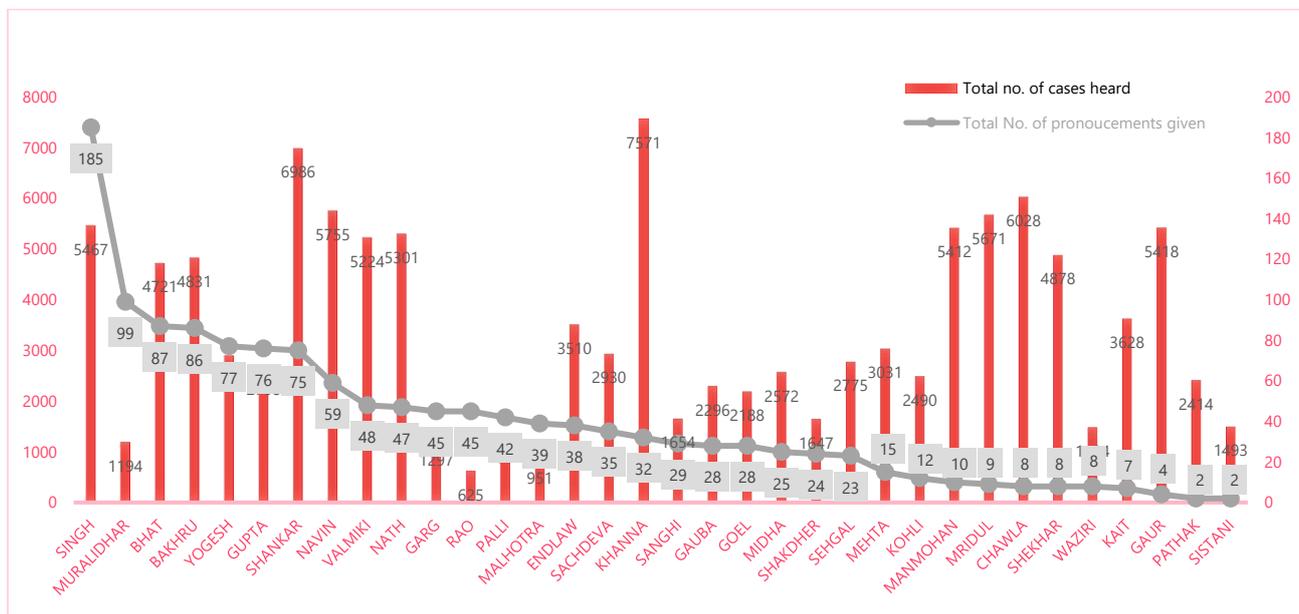


Figure 2: Overview of the number of cases heard vis-à-vis pronounced by judges at the Delhi High Court in 2018

To better understand the complexity of the cases that are heard, the following sections look at three case types in further detail.

A. Writ petitions

Writ petitions, including both civil and criminal writ petitions, before a single judge and division bench, constitute the biggest volume of litigation before the Delhi High Court. As per data provided to an RTI application, there are 24,140 cases pending and over 18,000 cases being instituted within the year under this case type. Approximately 1 lakh out of the total of 2.7 lakh listings, that is approximately 37% of all the listings at the Delhi High Court, concerned writ petitions in 2018.

Figure 3 identifies three metrics that have been compared. *First*, it looks at the number of times that writ petitions have been listed at the Delhi High Court. *Second*, it looks at the number of writ petitions which have been listed. *Third*, it looks at the number of writ petitions which have been pronounced. Out of all the judges before whom writ petitions have been listed, only the judges which have seen a significant number have been identified in the next graph.

⁶⁴Harish Narsappa, 'Maximising Judicial Time: Measures to Combat Delay and Pendency in Subordinate Courts' *Approaches to Justice in India* (Daksh India, 29 November 2017) <https://dakshindia.org/Daksh_Justice_in_India/20_chapter_02.xhtml> accessed 20 May 2020

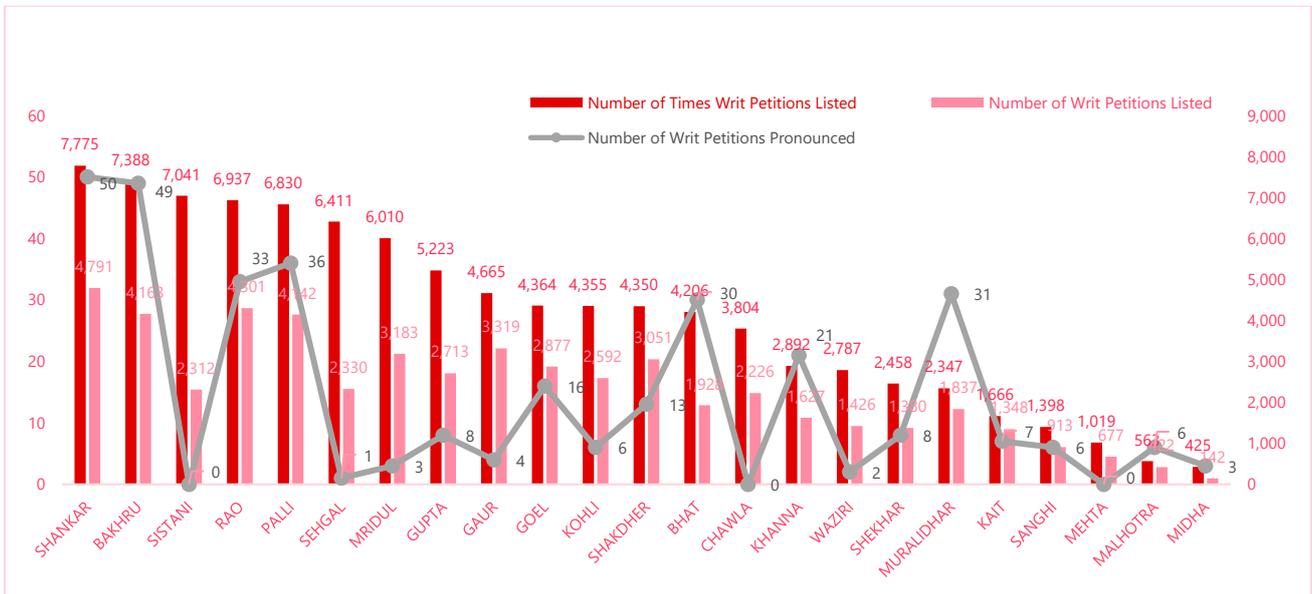


Figure 3: Comparison between the listing and pronouncement patterns of writ petitions before the Delhi High Court

Roster Allocation: Generally, the roster division in the Court is such that, at a given time, all 8 Division Benches of the Court are assigned writ petition cases. Additionally, five out of nine single benches (civil jurisdiction), two or three out of six to seven single benches (criminal jurisdiction) are also assigned writ petitions on different subject matters. Civil writ petitions are divided on subject matters like tax, tender, service matters, land acquisition, preventive detention, and constitutional validity of laws. Criminal writ petitions are divided among judges based on years in which they were instituted. However, the roster does not explain such a nomenclature bifurcation between writ petitions. As mentioned in the previous section, such a bifurcation could help further investigate the kinds of writ petitions which are being disposed in comparison to others.

Observations from the data: Out of 34 judges who were appointed to the court for the entire duration of the year, 23 had writ petition matters listed before them at some point of the year. It is interesting to note that while the Delhi High Court in its data records that 15,283 writ petitions were disposed in 2018, we could only find 364 judgements that were reserved for pronouncement by these 23 judges. This indicates that almost all of the writ petitions were disposed on the same day as the final hearing⁶⁵, presumably by oral order in an open court. Moreover, there is no uniformity in the ratios between the listings and the pronouncements for different judges. For example, while Justice Muralidhar authored 31 judgements after reserving the matter, which is a high pronouncement rate vis-a-vis listing. In comparison, other judges, pronounced no judgements despite having a high number of writ petitions being listed before him. Both these judges had writ petition rosters for the entire year. We also see that about 229, that is, about 62% of all the pronouncements were given by only six out of the 23 judges.

⁶⁵ A detailed explanation on daily orders has been provided in Annexure A

B. Criminal miscellaneous cases and criminal appeals

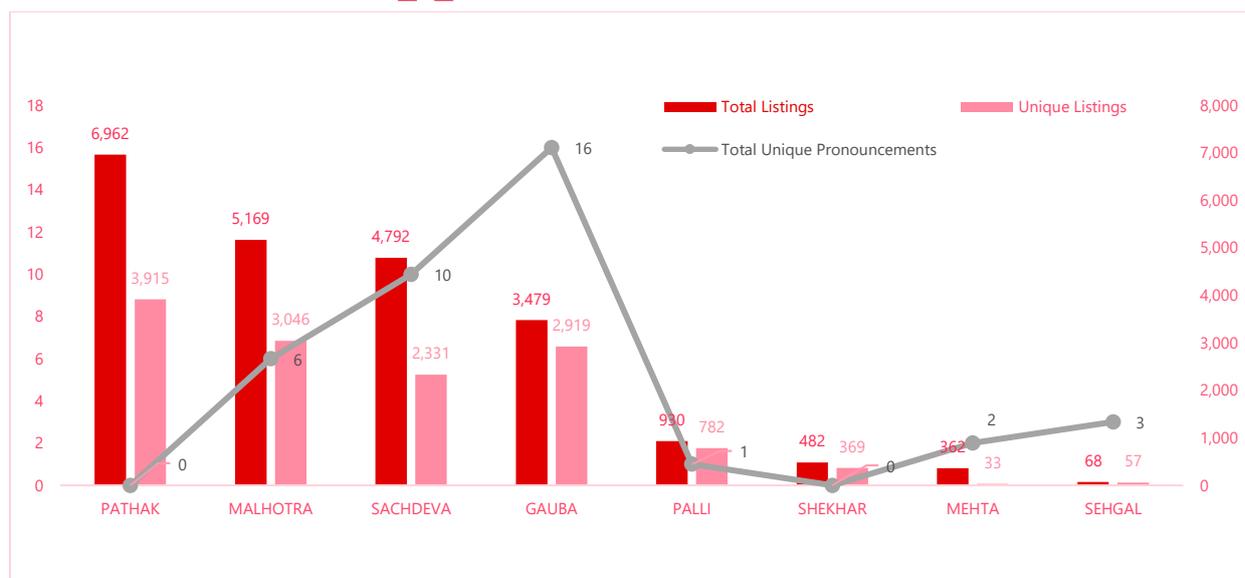


Figure 4. Overview of listing and pronouncement patterns of criminal miscellaneous cases at the Delhi High Court

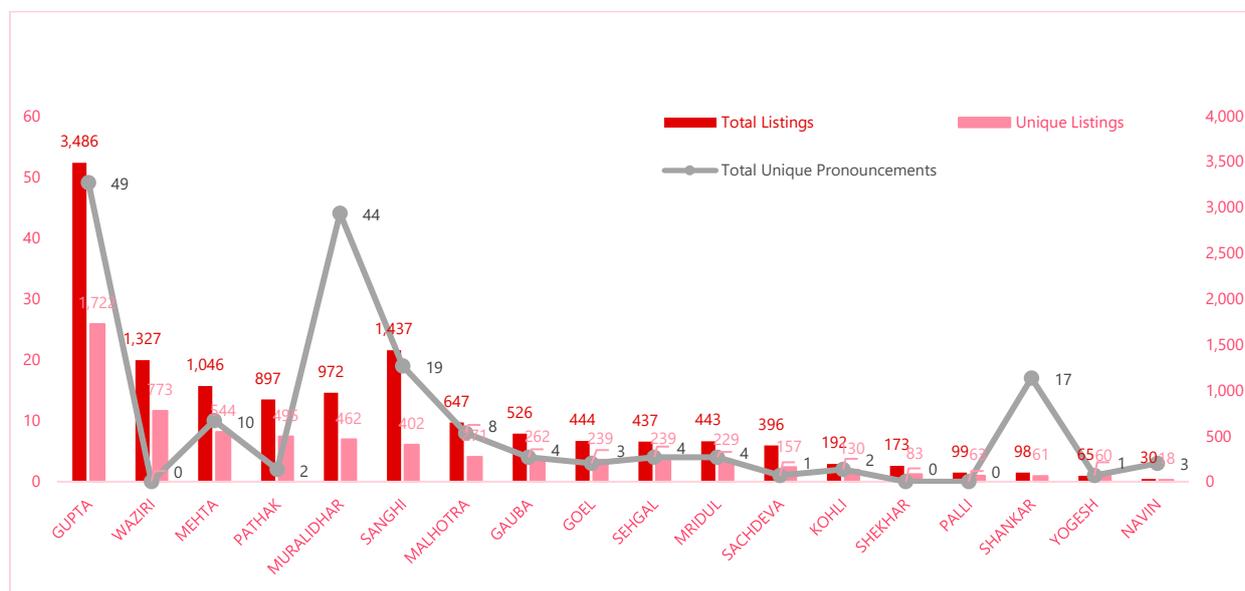


Figure 5: Overview of listing and pronouncement patterns of criminal appeals at the Delhi High Court

Roster Allocation: About four out of seven judges on a single bench (criminal jurisdiction) had criminal miscellaneous cases listed before them. For criminal appeals, two out of eight division benches have criminal appeals listed before them. Moreover, five to seven single benches (criminal jurisdiction) have criminal appeals listed before them.

Observations from the data: A comparison of the two datasets is given in Table 6 in the next page

Table 6: Comparison of data concerning criminal miscellaneous and criminal appeals

	Criminal Miscellaneous	Criminal Appeals	Ratio of Criminal Miscellaneous vis-à-vis criminal appeals
Institution	6,682	2,203	3.03
Disposal	7,024	1,677	4.19
Pendency	4,392	11,032	0.40
Pronouncement	44	236	0.19
Listings	22,836	15,502	1.47

From the above, it becomes clear that even though criminal miscellaneous cases were instituted thrice as many times as criminal appeals, they were disposed of four times more. Moreover, cases under this category were listed about 50% more than the criminal appeals. Interestingly, substantially more criminal appeal cases were disposed of after being reserved as compared to criminal miscellaneous cases. This indicates that criminal miscellaneous cases, which involve relatively less complex questions of facts and law as compared to criminal appeals are being listed and disposed of more frequently. Moreover, the mode of disposal is also different between the two, with judgements in criminal appeals, which potentially have a high impact on the criminal justice system, being reserved for a future date whereas criminal miscellaneous cases being disposed of on the same day as the final hearing via oral order. This is perhaps the causation and effect of high pendency in criminal appeals. It can also be inferred from the data that some judges were clearly pronouncing more judgements than others such as Justice Gupta and Justice Muralidhar.

C. Key Takeaways

The listing and pronouncement patterns are important indicators of a judge's performance for they are reflective of the core judicial functions performed by the judge individually. They also help in a comparative evaluation of the judges. This becomes clear from the above two examples, where despite listening to similar types of cases, there is no uniformity in the pronouncements and listings numbers. The differences are in fact quite stark in some cases. This exercise perhaps admittedly raises more questions than it answers:

- A. What are the factors which explain the difference in listing numbers for same case types for judges who had similar rosters for similar duration?
- B. Why is it that some judges appear to be reserving more cases in comparison to their peers?
- C. To what extent does the personal preference of a judge affect the case management in the High Court?
- D. Are the listings and pronouncement numbers influenced by the case type, to the effect that less complex cases are listed and disposed of more while complex cases are reserved more?
- E. What other factors determine the listing patterns for a judge?
- F. Are judgements which are pronounced at a future date more deliberative? Do they contribute more to the jurisprudence created by the court assuming that cases which are reserved involve complex, previously unsettled questions of law?

To enable a thorough individual judge performance evaluation to take place in the future, we recommend that the following steps be taken by the High Court:

1. Develop scientific standards and norms for disposal of cases and for setting specific targets

Such norms will help the High Court to act in cohesion rather than each courtroom acting independently which seems to be the case presently. While it is understandable that judges require flexibility to design their own approach for adjudication and factor in their respective preferences, having an institutional framework for performance standards not only helps to establish accountability but also helps the citizens and the judges maintain realistic expectations from the justice system.

2. More granular nomenclature of case types based on subject matter

Case types like writ petitions include a vast variety of cases within them and can originate out of a number of legislations. The rosters in the High Court account for these differences by allocating only specific writ petitions to benches. For example, 'Writ Petitions (Land Acquisition)', 'writ petitions pertaining to Service Matters required to be listed before the Division Bench', 'writ Petitions relating to MTNL, MCD & NDMC', and 'writ petitions (Tax)' are some of the subdivisions recognised during the roster allocation. However, these are not reflected in the case nomenclature which remains broad and generic. As a result, even when the data is recorded by the High Court and NJDG, it becomes difficult to analyse the resources required for these specific subject matters. Therefore, we recommend that broad case types such as writ petitions be further broken down based on subject matters and legislations which is then reflected in the case number at the very outset.

3. Collecting and publishing more data

Information such as the number of cases assigned to a bench, the progression of cases, the working hours of a judge and feedback from the stakeholders about individual judges needs to be necessarily collected and published by the High Court for meaningful performance evaluation.

V. Scope for Automated Analysis of Judgment Data

The Delhi High Court served as a good case study for multiple reasons. First, some of the required documents are available in an accessible manner and metadata (the case name, the judgement date, the judges associated and others) for each case are stored in the court's database that enabled us to program the data extraction process. Second, the judgements and orders were available in machine-readable formats making it easier to extract text from the documents. Third, there are discernible patterns across documents that serve as cues to extract the relevant information in an automated manner as shown in **Annexure-B**.

Using the programming language Python, we created a program that fetched the documents based on the judge name and duration considered and performed the textual analysis using cues. The information extracted was stored in a tabular format as shown in **Annexure-C**. However, the process was fraught with difficulties as we had to modify our program multiple times to accommodate the discrepancies across documents such as the differences in spacing between text/lines/paragraphs, locations of key data points – the dates, the bench information, and the textual representation of references to other judgements. In the case of Delhi HC, we observed more than 20 different combinations of patterns across documents. Some examples are shown in **Annexure-D**. To achieve accurate results, we had to expend considerable manual effort to identify these differences and modify the patterns that defined our textual cues.

The discrepancies in structures and formats in the documents indicates that rigorous and consistent standards for case document formatting do not exist across court complexes. The reasons might be two-fold – firstly, the court complexes are operating as independent functioning bodies with dedicated staff with their own conventions (based upon the high court's guidelines) on how the information must be digitally recorded, and secondly, the department responsible for digitisation and storage of case documents lacks a clear directive on the utilisation of such digital records. While the first reason is of concern, it can be tackled at a High Court level, wherein the High Court authorities can establish specific formatting standards in terms of the parameters such as the location of information, spacing/indentation, font size/format, attributing connected matters, and others. These specific standards then translate to consistency in formats across case documents and therefore the corresponding digital records, if followed with care. Further, these standards can be imposed using tools that can be developed in-house that verify if the documents adhere to the standards.

The second reason is of concern, as with a lack of clear goals for the digitisation efforts, the judicial system will experience inefficiencies due to IT overheads. To check this, we analysed the *case/judgement service* offered by each High Court in December, 2020 on aspects such as the formats of documents available, the metadata stored for each case, and the ease of accessing data (particularly for automated data scraping), and the results are documented in Figure 6.

S. No.	High Court	Formats		Metadata Stored							Search Functionalities					Data Access	
		TXT	PDF	Case No.	Parties	Judgment Date	Case Type	Judge(s)	Bench ¹	Link to Judgment	Case wise	Party wise	Judge wise	Date wise	Free-Text	via NJDG	Ease of Access
1	Allahabad	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
2	Andhra Pradesh	Yes	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (Text)	No	Yes	Yes	High
3	Bombay	Yes*	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (List)	Yes	Yes	No	Medium
4	Calcutta	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes (Text)	Yes	No	Yes	High
5	Chhattisgarh	No	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
6	Delhi	No	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	No	High
7	Guwahati	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
8	Gujarat	Yes*	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes (List)	No	Yes	Yes	Medium
9	Himachal Pradesh	Yes*	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (List)	Yes	Yes	Yes	Low***
10	Jammu & Kashmir	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
11	Karnataka	No	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (List)	Yes	No	No	High
12	Madhya Pradesh	Yes*	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes (List)	Yes	Yes	No	High
13	Madras	Yes	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (Text)	No	Yes	Yes	High
14	Manipur	No	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes (Text)	Yes	No	Yes	Low**
15	Meghalaya	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
16	Orissa	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
17	Patna	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	Yes (slow)	Yes	Medium
18	Punjab & Haryana	Yes	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	Yes (slow)	No	Low***
19	Rajasthan	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	Yes	Yes	Yes	Yes	Yes (List)	Yes	Yes	Yes	High
20	Sikkim	Yes*	Yes	Yes	Yes	Yes	No	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	Yes (slow)	Yes	Medium
21	Telangana	Yes	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (Text)	No	Yes	Yes	High
22	Tripura	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
23	Uttarakhand	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
24	Jharkhand	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
25	Kerala	Yes*	Yes	Yes	Yes	Yes	Yes*	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	Yes	Low**
26	Bombay at Goa	No	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes (List)	Yes	No	No	High

* not directly accessible

** CAPTCHA required to access information

*** Javascript used - requires advanced web scraping tools

¹ Indicator of single/division/full bench

Figure 6: Overview of the formats and the metadata stored for all cases across each High court, along with the available search functionalities as per the case/judgment service, and availability of access to judgment data through the NJDG. Each high court is also rated on the Ease of Access to data (measured as the ease of developing and deploying automatic tools)

To access the judgment data of High Courts there are three ways:

- 1. Via the National Judicial Data Grid (NJDG):** eCourts services information system that stores the judgment data of most high courts. Currently, High Courts of Bombay, Delhi, Karnataka, Madhya Pradesh, Punjab & Haryana are not accessible through this website. A CAPTCHA is required to access the judgment data which requires human intervention each time a document needs to be accessed, and hence prohibits automated data scraping.
- 2. Via the Judgment Information System (JUDIS):** JUDIS was established by the National Informatics Centre (NIC) and provides links to each high court where the judgment data is accessible. The primary objective of JUDIS is to provide Supreme Court judgment data from 1950 till date. However, some High Courts store their judgment data on the JUDIS, but majority of the High Courts have their own information systems.
- 3. Via Individual High Courts websites:** High Courts provide the service of searching and accessing their judgment data through their websites. However, these services differ with each High Court based on the metadata that they store and the search functionalities.

Certainly, there seems to be a high degree of similarity across all high courts in terms of the document formats available and the metadata stored for each case. All high courts primarily store the case documents in the pdf format and store key metadata such as the case number, the party names, the judgement date, the associated judge(s), and the link to the case document. While most high courts store case documents in a plain-text format which is essential for a free-text search that provides the capability to search for any term or phrase, they do not provide direct access to this textual data. Apart from 3 high courts, the rest also store the case type metadata, which however are not always directly accessible. Interestingly, the old High Courts of Bombay, Calcutta and Karnataka also store information on the bench type (single/division/full) which in our study was extracted using textual cues. Nevertheless, the primary concern is that the standards for recording information in case documents differ across high courts as seen in **Annexure-E**.

We also observe that there is a huge variation in the ease of accessing judgement data. The variations can be attributed to the different methods of security employed in storing data and making it accessible. High courts that are built using technologies like JavaScript and PHP secure the data by not providing direct access to the web links of the documents. Some high courts and the NJDG servers utilise CAPTCHA, to mitigate computer programs from accessing the data. Bypassing CAPTCHA is again an extremely difficult task and requires the use of Artificial Intelligence methods that can reciprocate human capabilities of recognising digits and alphabets from distorted images. Automated data scraping, the backbone of the judicial performance evaluation framework proposed in this report becomes difficult with added levels of security, nevertheless, programs using advanced AI can enable the task but at a higher cost and lower efficiency.

Clearly, there is a significant variation in the ways High Courts make their judgement data digitally accessible and in the document formats they use to record information. As mentioned earlier, the second aspect of variation can be tackled at a high court level. The first aspect indicates that there are deficiencies in central efforts to make the judgement data accessible in a manner that is easy for automated analysis. This can be traced to the eCourts Phase – II plan in which the implementation model has taken a decentralisation route. Citing the problems of sourcing vendors and the differing costs of hardware, the e-committee decided to decentralise the procurement, setup and maintenance of both hardware and software while maintaining the status of a standard setting body. This has led to a proliferation of software to store and make digital case documents accessible, causing inefficiencies in the IT infrastructure of the Indian Judicial System. The eCourts Objective Accomplishment Report of 2019 notes that the creation of Judicial Knowledge Information System is successful, and the judgement repository can be used in automation and analysis, however, often the search for case documents on NJDG runs into a CAPTCHA failure and the case documents are in the same formats as stored on high courts' servers rendering automated analysis a difficult task.

The digitisation of the Indian Judicial System has been a fruitful exercise, opening doors to citizen-centric services such as case search, cause list search etc., and websites for legal document search such as Indiankanoon.org.⁶⁶ Indian Kanoon currently offers access to over 1.4 million cases from all high courts and Supreme court and identifies the sections of laws and the acts cited in case documents, making the search process for the law and its interpretation easier. As of 2020, the website also provides access to the orders and judgements from a few high courts which are updated on a daily basis. Judicial case data has often been used in the context of legal research, and with our proposed methodology, it can be used to evaluate judicial performance as well. While we argue for a judicial performance evaluation system based on automated data analysis, the potential of standardising document formats and making them easily accessible extends beyond this application. Reforms in these directions are necessary to improve the efficiency of the judicial systems, strengthen integration across multiple actors, and enable further innovations.

A noteworthy pioneering effort in the direction of enabling innovations in Law by making case law publicly available is the Harvard CaseLaw Access Project⁶⁷ launched in October, 2018 which provides access to 6.7 million legal documents pertaining to the US court cases for over 360 years. The project has attracted research from the academic community interested in applying Artificial Intelligence techniques to generate insights on interpretation of law and evaluation of differences in judicial opinions. It has also spurred innovations such as the H2O project⁶⁸ which helps academicians create customised casebooks and a Stanford graduate course on using data science in law offered for computer science or law graduates. The proponents of the project tout that the creation of tools that leverage this trove of information will immensely benefit the public and lawyers, especially the private lawyers with meagre pay.

⁶⁶ Indiankanoon <<https://indiankanoon.org/>> accessed 20 May 2020

⁶⁷ Harvard Law School, 'Caselaw Access Project' <<https://case.law/>> accessed 20 May 2020

⁶⁸ Harvard Law School, 'Open casebook' <<https://opencasebook.org/>> accessed 20 May 2020

VI. Conclusion

Undertaking performance evaluations is an arduous task, especially in the context of higher judiciary where no objective evaluation standards exist for this purpose. For performance evaluation studies, such as this, to be undertaken, it is important that courts not only maintain data under broad heads such as the number of cases instituted, disposed and pending but also granular data such as the amount of time taken by the court in disposing a particular case type and categorise their nomenclature to distinguish between the subject matters under the bracket of writ petitions. Ideally courts should also maintain judge-wise data on the number of cases (per case-type), the number of cases disposed and number of judgements authored by the judge as opposed to the number of cases listed on their board. Further richer analysis can be done by obtaining time stamps information from the display board of the courtrooms for each case so as to record the duration of each hearing.

To enable analysis of the data by third parties, it needs to be ensured that all data and records are published by the High Court in standardised and easily accessible formats. Such a move is essential to encourage objective automated analysis and spur innovation for application of artificial intelligence in the area of judicial performance evaluation. This study has utilised the limited data points available on the Delhi High Court website to place statistics before a reader and come up with a few conclusions. While the exercise has had only limited success in terms of assessing the actual individual performance of each judge due to the lack of data, it has been useful for identifying exactly the action points for the judiciary to enable and facilitate independent judicial performance evaluation by third parties as well as for itself, while considering judges for elevation.

Institutional evaluation of the Delhi High Court has found that there is a complete lack of transparency in the manner in which rosters are allocated to judges and the manner in which the court priorities the disposal of its case backlog. Data has found that it is arguable that judges might be disposing cases based on their ease of disposal such as disposal of criminal miscellaneous cases as opposed to dealing with long standing issues of fact and law like in the case of criminal appeals. There is thus a need for the court to dispose cases on the basis of not just efficiency i.e. disposing as many cases in the least amount of time but also on the basis of the urgency that the case type demands regardless of the complexity of the case. Further, a transparent explanation of how rosters are organised and the adoption of case-flow management rules will provide a clear prioritisation of the cases on part of the courts. It will provide strict timelines that can be adopted by courts and a realistic alternation of such timelines will give litigants information on how long their cases are going to last.

Evaluation of the individual performance of High Court judges has found that there are some judges that are pronouncing more reserved judgements than others. While the report is cognizant of the limitations of assessing just reserved orders, there are indicators to suggest that some judges are simply not authoring judgements. It is therefore absolutely imperative that judges are held accountable for their actions while discharging their professional duties. Based on the results of the evaluation, as a follow up mechanism, certain soft measures need to be envisaged to reprimand the low performing judges.

Performance evaluation is an accepted norm in the professional world to ensure accountability and efficiency of the actors. There is absolutely no reason for judges to be absolved of such a requirement, especially given the significant role they play in our democracy and by extension the development of the country. However, any such formal institutional performance evaluation would first require the answering of an important question - what is the baseline against which the individual judges and the judiciary as a whole need to be evaluated? Are disposal numbers and judicial time in themselves an adequate measure of performance or does the threshold need to be set higher to include deliberation and quality of reasoning as relevant factors? Attempting to answer these questions can set the platform for richer evaluative model for judicial performance evaluations in the future.

Annexure A: Methodology

The aim of this study is to determine the productivity of the Delhi High Court, as an institution and of the individual judges vis-a-vis each other. The study was conducted for the year 2018 i.e. from 01 January 2018 to 31 December 2018. This chapter explains the sources that were used to obtain the data, the mechanism in which the data was collected, cleaned and finally organised.

Firstly, we filed an application under the Right to Information Act, 2005 seeking the number of cases instituted, pending and disposed across case types for the year 2018. The data so received used in the **Chapter 3**, which evaluates the institutional performance of the High Court and assesses its roster allocation system. However, any analysis on efficiency would require the study of the cases disposed by the court. Therefore, to populate our dataset further, we also undertook a data scraping exercise of the Delhi High Court website.

A. Scraping Data from Daily Orders

Like most other High Courts, the Delhi High Court maintains information on all orders delivered by the court. By doing a judge wise search of their daily orders tab, we extracted all orders delivered by the judges in 2018. We conducted this exercise for the 45 judges that took office at some point in 2018 at the Delhi High Court. In 2018, in total cases have been listed 2,70,700 times across all judges. A judge wise break up of these listings can be found in **Chapter 4**, which evaluates the performance of the judges via-a-vis each other.

The number of cases listed also counted those orders which merely state that the judge is on a holiday or if the matter was adjourned to a future date. These are procedural daily orders with no adjudicatory value. These could not be eliminated by data scraping. Additionally, there are many cases which are presided over by a division bench, that is, a bench comprising two judges who collectively hear a case. Since we conducted a judge wise search, the same order appears twice, one for each of the judges on a division bench. Therefore, 2,70,700 includes the values twice in case of daily orders given by division benches.

In the report the number of times that cases have been listed before a judge are identified as 'listing' they can also be understood to mean as the number of orders that have been delivered by the judge. Since cases could have been listed multiple number of times before a judge, the total no. of cases listed before a judge has been termed as unique listings.

B. Scraping data from Lobis

The goal of this exercise was to determine the number of judgements delivered by the Delhi High Court in 2018. The Delhi High Court captures information on the judgements delivered by the court on various tabs on its website.

First, information is recorded on lobis.nic.in. This has a searchability feature to obtain the number of judgements delivered based on the case number, name of the judge, date of judgement and the party name. In 2018, 45 judges took office at the Delhi High Court. Therefore, all the judgements delivered in 2018 would be a sum of the number of judgements authored by all these 45 judges. We scraped this data assuming that the 'judgements' tab on lobis was an exhaustive and correct database of all the final disposals of Delhi High Court. However, as we proceeded with our analysis on this data, we learned that this was far from the truth.

1. Errors in recording data on lobis

First, it was found that the case number identified by lobis did not always correlate to the actual number of the case. For example, lobis states that a judgement has been delivered in CS (OS) 279/2016 on 01 November 2018 by Justice Sanjeev Khanna. On opening the text of the case, it was found that the decision was actually in the case

of FAO(OS) 278/2016. Conversely, when we attempted to find the judgement in the case of FAO(OS) 278/2016, no judgement was available. To identify all such cases, a manual checking of cases would be necessary. Given the large data set, we have not conducted such a cumbersome cleaning exercise.

Second, we found that some of the judgements listed as delivered by a particular judge were not related to the judge at all. For example, MAT. APP. (F.C.) 169/2018, as per lobis, appears to have been delivered by Justice Sangita Dhingra Sehgal. However, on opening the text of the case, it was found that the judgement was actually delivered by a bench consisting of Justice G.S. Sistani and Justice P.S. Teji.

Third, we found that orders for final disposal of cases were sometimes not published on lobis at all. As mentioned above, information about cases is published on multiple links of the Delhi High Court website. In addition to lobis, final orders of disposal can be found on the 'Daily Orders' tab of the High Court website instead of the 'judgement' tab (which redirects one to lobis). To try and understand the rationale behind why the judgements were published in different tabs, we filed an RTI application with the High Court and approached the members of the Delhi High Court Registry. We were informed that all final disposals requiring a 'considerable application of mind' were published on lobis. It was only in some cases, which tend to be speedily disposed such as bail petitions and criminal miscellaneous cases often involving appeals to cheque bouncing cases and compounding of offence that orders were published on the daily orders tab. This bifurcation made by the registry completely refuted our original assumption that lobis was an exhaustive dataset of the final orders.

2. De-duplication of connected matters

In many cases, parties file multiple cases arising from a common cause of action. Alternatively, multiple parties file cases against a common respondent. In such 'connected matters' the High Court might choose to dispose of these cases with a common judgement as it has to apply its mind to only one set of facts. Therefore, while counting the number of judgements delivered in 2018, we thought it prudent to count only the number of unique judgements delivered in 2018. It is for this reason that we have counted only one case when there a batch of connected cases. The de-duplication exercise was performed based on the observation that the text of the judgements is the same for duplicate judgements. These cases were marked as 'duplicate' in our data set. Further, there were cases that redirected the reader to the case, which contained the elaborate judgement by using textual references, and these cases were marked as 'not-detailed' in our dataset. Both these sets of cases were eliminated in the counting the total number of judgements delivered by a judge. Please see **Annexure C** to note how cases were classified.

3. 'Author' of a judgment

Like all other High Courts, cases at the Delhi High Court are adjudicated by Division Benches and Single Judges. In cases with a single judge, the author of the judgement is obvious and is the judge presiding over the case. In the case of a Division Bench or cases that are presided over by more than two judges, there are often only one author of the judgement. It is only in the rare case where a dissent or a concurring judgement is authored, that there is more than one author. It was found that there were no concurring judgements or dissents delivered in 2018. Therefore, in our analysis we have associated only those cases in which the judge of the High Court has authored the decision and not those cases where the judge was a part of the bench deciding on the case.

C. Scraping data from 'judgments pronounced tab'

Given the lack of clarity in classifying decisions as orders vis-a-vis judgements, we saw a need to scrape data from a different source. Every day, the Delhi High Court also publishes cause lists which identify the cases in which the judgement will be delivered on a particular date. These are the judgements, which are delivered by the judge after having been reserved on a previous date for deliberation and writing. Subsequently, when the judgement is ready, the judge declares the date of pronouncement on the cause list of the next day. Ideally, as decided by the Supreme Court in the case of Anil Rai v. State of Bihar, (2001) 7 SCC 318, all judgements which are reserved for pronouncement should indicate the date of order reserving judgement as well as the date of judgement on the

final judgement sheet to indicate the duration for which the case was reserved. We found that only one judge did not follow the practice of indicating the dates on the final judgement sheet while all others did.

These causelists are available on the 'latest announcement' tab. We scraped information from these sheets for the time period of the study. Since it was not possible to obtain the author of the judge from the data available in the pronouncement cause list or the link to the actual case to do further analysis, we sought the aid for dataset that had been scraped from the lobis website.

Akin to the lobis portal, there were also errors in recording the pronouncement information on the website. In 2018, a total of 2,299 cases were pronounced. Out of these cases, 2,276 cases had a corresponding judgement under lobis. However, in 23 cases there was no corresponding judgement on lobis. On closely examining these cases three different errors were found. **First**, it was found that in some cases, these final judgements were not available on lobis, but were available on the 'orders' tab. **Second**, it was found that in some cases while the cases had been finally disposed on the same day as the pronouncement causelist had stated, no order to that effect had been uploaded on the Delhi High Court website either on the orders tab or on the lobis tab. **Third**, in some cases it was found that the pronouncement causelist had incorrectly noted that the judgement had been pronounced. In such cases, the date of the judgement was re-notified or the case was still pending before the Delhi High Court.

In all these cases, since there was no corresponding judgement available on lobis, these have been excluded from our analysis. As the result, a total of 2,276 cases, with judgements available on lobis, have been pronounced by the Delhi High Court. After accounting for de-duplication of those connected cases which have been disposed with a common judgement, it was found that in a total of 1,431 cases, with judgement available on lobis, have been pronounced by the Delhi High Court. Throughout the report, the use of the term 'pronouncement' refers to this category of cases.

However, it must be clarified at this point that not all judges reserve judgements for disposal. Many prefer to give the final judgement on the same day as the final hearing in open court. In this background, we decided to analyse the statistics of pronouncements to understand how the practice of reserving cases varied among judges and whether certain case types were being reserved more than the others. Our hypothesis here was that certain case types are complex by their very nature and require the judge to take time out to deliberate over the matter and deliver a detailed reasoned judgement.

Annexure B

Example of case document, and use of textual cues to extract relevant information

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 31.07.2018 → Reserved Date

% *Judgment pronounced on:* 23.08.2018 → Judgment Date

+ **FAO(OS)(COMM) 197/2017** → Connected Matters

INSTITUTE OF GEO INFORMATICS (P) LTD

..... Appellant

Through: Mr.Jai Savla and Mr. Rajpal Singh, Advs.

versus

INDIAN OIL CORPORATION LTD

..... Respondent

Through: Mr.Abhinav Vashisht, Sr.Adv. with
Mr.Nishant Menon, Ms.Reeta Mishra,
Ms.Priya and Mr. Shafiq Ahmed, Advs.

CORAM: → Bench Information

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE A.K.CHAWLA

JUDGMENT → Order/Judgment

S.RAVINDRA BHAT, J. → Author

For detailed judgment see FAO(OS)(COMM) No.189/2017. → Reference to a detailed judgment

S. RAVINDRA BHAT
(JUDGE)

A.K.CHAWLA
(JUDGE)

AUGUST 23, 2018

Annexure C

Snapshot of the output of the programs used in the data extraction and cleaning stages

Sl. No	Initials	Case Number	Party	Order Date	Judgment Date	Reserved Date	Case Type	Author	Bench	Type	Main-case	Page Count
1	BAKHRO	W.P.(C)--5067/2018	M/S NIMBUS AUTOMOTIVE PVT. L	21-12-2018	21-12-2018		writ petition (civil)	Yes		Detailed		10
2	BAKHRO	W.P.(C)--8479/2016	SURESH Vs.DELHI STATE INDUSTRI	19-12-2018	19-12-2018		writ petition (civil)	Yes		Detailed		7
3	BAKHRO	W.P.(C)--10451/2018	SANJEEV BANSAL Vs.INDRAPRAST	18-12-2018	18-12-2018		writ petition (civil)	Yes		Detailed		12
4	BAKHRO	W.P.(C)--8842/2018	ALL INDIA IDBI OFFICERS ASSOCIA	17-12-2018	17-12-2018		writ petition (civil)	Yes		Detailed		52
5	BAKHRO	CS COMM--690/2018	CARLSBERG BREWERIES A/S Vs.SO	14-12-2018	14-12-2018	27-08-2018	Civil Suit (Commercial)	No	MIR. S. RAVINI	Detailed		67
6	BAKHRO	W.P.(C)--9281/2017	SHAPOORJI PALLONI & CO. PVT. I	13-12-2018	13-12-2018		writ petition (civil)	Yes		Detailed		19
7	BAKHRO	W.P.(C)--9364/2015	SAKSHI MISHRA MINOR Vs.LIFE IN	12-12-2018	12-12-2018		writ petition (civil)	Yes		Detailed		10
8	BAKHRO	W.P.(C)--3518/2011	M.B. KHAN Vs.GOV.T. OF N.C.T. OF	04-12-2018	04-12-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--6797/2008	37
9	BAKHRO	W.P.(C)--6797/2008	JOYCE BENJAMIN & ORS Vs.GOV.T.	04-12-2018	04-12-2018		writ petition (civil)	Yes		Detailed		37
10	BAKHRO	W.P.(C)--6905/2014	SUBHASH CHANDRA KHURANA & I	04-12-2018	04-12-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--6797/2008	37
11	BAKHRO	W.P.(C)--12377/2005	KULJIT SINGH & ORS. Vs.GOV.T. OF	04-12-2018	04-12-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--6797/2008	37
12	BAKHRO	W.P.(C)--3329/2017	SACHDEVA INSTRUMENT COMPAT	03-12-2018	03-12-2018		writ petition (civil)	Yes		Detailed		6
13	BAKHRO	CS COMM--1120/2016	LUXEMBOURG BRANDS S.A R.L. & A	26-11-2018	26-11-2018		Civil Suit (Commercial)	Yes		Detailed		73
14	BAKHRO	W.P.(C)--9509/2018	KGA INVESTMENTS Vs.UNION OF I	20-11-2018	20-11-2018		writ petition (civil)	Yes		Detailed		16
15	BAKHRO	W.P.(C)--2787/1983	BHUPINDER PAL SINGH Vs.K.C.GEI	19-11-2018	19-11-2018		writ petition (civil)	Yes		Detailed		10
16	BAKHRO	W.P.(C)--12294/2018	RAJEEV BEHL Vs.STATE & ORS	16-11-2018	16-11-2018		writ petition (civil)	Yes		Detailed		14
17	BAKHRO	W.P.(C)--7289/2015	CONSTRUCTION INDUSTRY DEVELI	16-11-2018	16-11-2018		writ petition (civil)	Yes		Detailed		13
18	BAKHRO	W.P.(C)--6597/2017	VIJAYA KUMAR ANUGANDULA Vs.	14-11-2018	14-11-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--4278/2018	26
19	BAKHRO	W.P.(C)--4851/2017	NAVNEET KUMAR MEHTA Vs.DEDI	14-11-2018	14-11-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--4278/2018	26
20	BAKHRO	W.P.(C)--520/2018	JAGMOHAN SINGH RAWAT Vs.DEI	14-11-2018	14-11-2018		writ petition (civil)	Yes		Duplicate	W.P.(C)--4278/2018	26

Annexure D

Examples of differences in formats across case documents of Delhi High Court

Different Date Formats

* IN THE HIGH COURT OF DELHI AT NEW DELHI % <i>Date of decision:</i> 10.04.2018	* IN THE HIGH COURT OF DELHI AT NEW DELHI Reserved on: 24.05.2018 Pronounced on: 21.12.2018	* IN THE HIGH COURT OF DELHI AT NEW DELHI % <i>Judgment reserved on:</i> 31.07.2018 <i>Judgment pronounced on:</i> 23.08.2018
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Different Forms of Reference to Detailed Judgments and Authors

<u>MR. JUSTICE S. RAVINDRA BHAT</u> (OPEN COURT) % 1. The appeals are allowed. 2. For reasons, the judgment dated 10.4.2018 in ITA 811/2017 may be referred to.	<u>S.RAVINDRA BHAT J.</u> For detailed judgment see FAO(OS)(COMM) No.189/2017.
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Annexure E

Examples of differences in formats of case documents across High Courts

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **16.02.2018**
CORAM:
THE HONOURABLE MR.JUSTICE P.N.PRAKASH
Cri.M.P.(MD)No.8264 of 2017
in
Cri.R.C.(MD)SR.No.24377 of 2017
and
Cri.R.C.(MD)SR.No.24377 of 2017
V.Palanisamy : Petitioner/Petitioner
Vs.
Tmt.K.Jayalakshmi : Respondent/Respondent

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.8678 OF 2012

Sou. Shashikala Balkrishna Nerlikar .. Petitioner

Versus

The Secretary, Social Welfare, Cultural,
Sports and Special Assistance
Department and ors .. Respondents

...

Mr.A.M. Kulkarni for the petitioner.
Mrs.S.D. Vyas 'B' Panel Counsel for the State V.P. Mali, AGP for
the State.

CORAM: S.C. DHARMADHIKARI &
SMT. BHARATI H.DANGRE, JJ.

RESERVED ON : 14th AUGUST 2018

PRONOUNCED ON : 7th SEPTEMBER 2018

JUDGMENT:- (Per SMT.BHARATI H. DANGRE, J)

IN THE HIGH COURT OF KARNATAKA AT BENGALURU
DATED THIS THE 2ND DAY OF FEBRUARY 2016
BEFORE
THE HON'BLE MR.JUSTICE A. N. VENUGOPALA GOWDA
CRIMINAL APPEAL No.1039 OF 2015

BETWEEN:

MAREK JAROSLAW LEWANDOWICZ
S/O ZYGMUNT LEWANDOWICZ
AGED ABOUT 50 YEARS
MITTAPHEAP, SIHANOUK VILLE
CAMBODIA

(BY SRI.KALEEMULLAH SHARIFF, ADV..) ... APPELLANT

AND:

SUPERINTENDENT OF CUSTOMS
AIR INTELLIGENCE UNIT
BENGALURU

... RESPONDENT

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No.431 of 2018.

Judgment reserved on : 12.12.2018.

Date of decision: 17th December, 2018.

Uttam RamAppellant/Complainant.

Versus

Devinder Singh Hudan and anotherRespondents.

Coram

The Hon'ble Mr. Justice Tarlok Singh Chauhan, Judge.

Whether approved for reporting? Yes

For the Appellant : Mr. J.L. Bhardwaj and Mr. Sanjay
Bhardwaj, Advocates.

For the Respondents: Mr. Vinay Kuthiala, Senior Advocate
with Mr. Diwan Singh Negi,
Advocate, for respondent No.1.

Mr. Sudhir Bhatnagar, Additional
Advocate General with Mr.
Bhupinder Thakur, Deputy Advocate
General, for respondent No.2.

Tarlok Singh Chauhan, Judge

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