Differentiated Case Management for Indian Judiciary

Working Paper II – Timing Oral Submissions: A way forward

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V | D H | Centre for Legal Policy

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Context

In the last six months the Supreme Court has held a record 62 Constitution Bench hearings in 18 different cases.[1] A far cry from the disappointing lull experienced in the previous year, the court's relentless momentum meant that several long pending seminal legal and constitutional matters were heard on a priority basis. This also meant that an upwards of 1000 judge hours were spent just on the hearings.[2] While most Constitution Bench cases are important and deserve substantial attention and deliberation of larger benches, a priority issue that the Supreme Court should now aim to tackle is to determine how much time to reasonably devote to each of these cases.

Recently, attempts have been made to curb the time spent on Constitution Bench hearings which were, until now, long-drawn and protracted. In the Constitution bench hearings held so far, advocates have been asked to restrict their arguments as per the time limits communicated by the court or self-determined by the advocates. While the cases of *Janhit Abhiyan* v. *Union of India* and *Supriyo @ Supriya Chakraborty* v. *Union of India* had the nodal counsels submit time estimates for all advocates, in *Subhash Desai* v. *Principal Secretary* and *Cox and Kings* v. *SAP India Ltd.* timelines were prescribed unilaterally by the court. In this manner, the court has managed to vest some level of control over how it allocates its precious judicial time. However, in a country where the litigation culture is deeply steeped in the tradition of oral hearings, exercising this control becomes a tall order.

Difficulty in equitably distributing time between parties, resistance from lawyers to prescribed timelines and advocates routinely exceeding the said time limits are just some of the issues that the court now seems to be facing. This can perhaps be attributed to the subjective nature of the timelines prescribed; in many instances the court has stipulated time limits while the advocates are in the midst of arguing. This is not to say that the court should revert to its earlier 'free for all' practice or arbitrarily prescribe equal time limits for all. This recent pivot in the court's practice is definitely a step in the right direction. The court may however benefit from developing a scientific system which allows it to predict and allocate only as much time to each case as is necessary for it to arrive at a decision.

I. Differentiated Case Management System – a work in progress

The principle alluded to above is commonly known as Differentiated Case Management.[3] As the name suggests, Differentiated Case Management (DCM) is based on the understanding that cases vary in their requirements, complexity and trajectory and therefore should not be treated alike. Some cases for instance may be fairly simple and straightforward and may not require as much time and investment as a relatively complex case. Judicial time must therefore be allocated according to the specific needs of cases. This would mean that lesser time and resources are devoted to the simpler cases so that space within the system is freed up to focus intensively on the challenging ones.

[1] See annexure 1

[2] Judge Hours can be understood as the time devoted by a judge to a particular case and includes time spent on reading briefs, hearing arguments, and writing judgments. In the context of the paper, however, the term is being used to refer to the time spent by judges on hearing oral submissions since that is a metric easily gauged from the available livestream footage. Assuming the average number of hours for each hearing to be around four, we can say that one hearing in a five-judge bench case takes up 20 judge hours (5 judges x 4 hours). 59 five judge bench hearings would therefore consume 1,180 hours in total.

[3] US Department of Justice, 'Differentiated Case Management: Program Brief' (1993) <https://www.ojp.gov/pdffiles/difb.pdf.> accessed 5 April 2023; C Cooper, M Solomon and H Bakke, 'Differentiated Case Management: Implementation Manual' (1993) <https://www.ojp.gov/ncjrs/virtual-library/abstracts/differentiated-case-management-implementation-manual> accessed 25 August 2023

The application of DCM requires courts to empirically determine the judicial resource 'needs' for individual cases and then categorise cases basis those needs to ensure timely disposal. A few prerequisites for an effective DCM system are –

1. Vesting with the courts the power to meaningfully manage and steer their caseload
2. Exercise of this power to develop a system based on empirical evidence and data-driven assessments and
3. Sufficient flexibility to ensure periodic review and alterations to the system

The first Working Paper published by the Justice, Access and Lowering Delays in India (JALDI) Initiative on DCM for the Indian judiciary proposed a scientific framework for ascertaining the maximum number of hearings required to conclude a Constitution Bench case.[4] The suggested formula had two components to it -

1. The maximum number of hearings an advocate should take in a Constitution Bench matter (0.45 hearings) based on the average number of hearings historically taken by advocates in such cases and
2. Weighting the average with the complexity of the pending case to approximate the maximum number of hearings required.

Given that DCM is being proposed for the first time for the Indian judiciary, it might require some trial and testing to contextualise it to the functional realities of the Indian courts. The framework is, therefore, a work in progress. DCM has been implemented and retained in a wide range of jurisdictions, such as the U.S.A,[5] U.K.,[6] Australia,[7] Singapore[8] and Philippines[9]. In many of these countries, save the U.S., the principle of DCM can be seen to be implemented in a phased manner. Similarly, introduction of DCM in India may not necessitate a systemic overhaul in one go, but may be implemented incrementally.

In an effort to take forward the discussion on introducing DCM for Constitution Bench matters, this second Working Paper in the series builds upon the case complexity metrics provided in the first. It aims to provide a mechanism to assess the inherent complexity of issues under consideration so that the court may prescribe only as many hearings for a case as are warranted. With only a few tweaks to the current practice, the court may be able to develop a system to objectively gauge case complexity levels and consequently pre-determine the approximate time required for hearing of each case.

This Working Paper is divided into three sections. The first section will look at how argument or hearing time is allocated by courts across other jurisdictions, further delving into whether the DCM principle is applied while doing so. The second section will use case data sourced from the Supreme Court livestream archives to analyse the emerging practice around oral arguments. Finally, the last section will suggest some steps that the Supreme Court may take now so that a form of DCM can be implemented sometime in the future, empowering the court with the tools to optimise judicial time.

[4] Deepika Kinhal, Aditya Prasanna Bhattacharya, Jyotika Randhawa, 'Differentiated Case Management for the Indian Judiciary – Working Paper I' (2023) Vidhi Centre for Legal Policy <https://vidhilegalpolicy.in/research/differentiated-case-management-for-indian-judiciary/> accessed 27 July 2023

[5] Nineteenth Judicial Circuit, 'Differentiated Case Management' <https://www.circuit19.org/dcm> accessed 11 April 2023; Montgomery County <https://www.montgomerycountymd.gov/cct/departments/dcm.html> accessed 25 July 2023

[6] Civil Procedure Rules 1998 (U.K.) Part 26 <https://www.legislation.gov.uk/uksi/1998/3132/contents> accessed 11 April 2023

[7] Practice Note No. 88 (Supreme Court, New South Wales) 1995 <http://www.lawlink.nsw.gov.au/practice_notes/nswsc_pc.nsf/a15f50afb1aa22a9ca2570ed000a2b08/000826d145b5a1b5ca2572ed000cec85?OpenDocument> accessed 25 July 2023

[8] Waleed Haider Malik, Judiciary -led Reforms in Singapore: Framework, Strategies and Lessons (World Bank, 2007) 54

[9] Associate Justice Presbitero J. Velasco, 'The Philippine Experience in Case Management' (2019) <https://www.aseanlawassociation.org/wp-content/uploads/2019/10/workshop2-phil.pdf> accessed 11 April 2023

A cross-jurisdictional analysis of timing oral submissions

The time devoted by courts to oral arguments across jurisdictions differs. While some courts prescribe blanket time restrictions on arguments, others exercise absolutely no control over the time or content of the oral submissions made in open courts. Somewhere in the middle of this spectrum lie courts that prescribe different timelines for different cases depending on the perceived complexity of the issues involved. The table below gives an overview of the practices on timing oral arguments in a select few jurisdictions. While not all jurisdictions are covered, an attempt is made to provide a representative snapshot.

Table 1: Oral arguments in other jurisdictions

Court of law	Time allocated	Other restrictions	Deciding authority
Supreme Court of the United States	30 minutes for each side (additional time granted by leave of the court)[10]	Only one attorney heard for each side (divided arguments allowed by leave of the court)	Presiding Judge/s
Supreme court of the United Kingdom	2 days (time estimates prepared by the parties)[11]	Only two attorneys heard for each side	Presiding Judge/s and attorneys appearing in the case
Bangladesh Supreme Court	Time fixed for each counsel on a case-to-case basis[12]		Presiding Judge/s
Norwegian Supreme Court	Time fixed on a case-to-case basis[13]		Justice, Appeals Selection Committee
Supreme Court of Canada	One hour unless the court specifies otherwise[14]	Only two attorneys heard for each side and one for each intervenor	Presiding Judge/s
High Court of Australia	45 minutes cumulatively both		Presiding Judge/s

[10] Rule 28, Rules of the Supreme Court of the United States, 2019 < https://www.supremecourt.gov/ctrules/2019RulesoftheCourt.pdf> accessed 4 August 2023

[11] Practice Direction no. 6, Supreme Court of the United Kingdon < https://www.supremecourt.uk/procedures/practice-direction-06.html> accessed 4 August 2023

[12] Order XXXIV Rule 7, the Supreme Court of Bangladesh Rules 1988 < http://www.supremecourt.gov.bd/resources/rules/apprule1.pdf> accessed 4 August 2023

[13] Henrik L. Bentson, Gunnar Grendstad, William R. Shaffer & Eric N Walternburg, 'A High Court Plays the Accordion: Validating Ex-ante Case Complexity of Oral Arguments (2021) 42(2) Justice System Journal 130 -149

[14] Supreme Court of Canada <https://www.scc-csc.ca/parties/before-avant-eng.aspx#:~:text=No%20more%20than%20two%20counsel,and%2071(5)).> Accessed 4 August 2023

	sides[15]		
Supreme Court of Ireland	Time fixed on a case-to-case basis[16]		Case Management Judge

Perhaps no other court is referenced as much in the current discourse on oral arguments as the U.S. Supreme Court (SCOTUS). With its strict 30 minutes rule for oral arguments, it is often touted as the standard to aspire for. However, what is often not known is that in the 161 years prior to the establishment of the Supreme Court of India, the SCOTUS more or less grappled with the same issues. In the initial years of the U.S. Supreme Court's working advocates were allowed unrestricted time to put forth their arguments.[17] In what is now referred to as the Golden Age of American Oratory, written briefs were unheard of and attorneys often argued not only for the benefit of the Bench but also the public which came in large droves to witness the proceedings.[18] With the increasing caseload of the court however time for oral arguments was curtailed and restrictions were placed first in 1925[19] and then in 1970, with the result that the U.S. now has a 30 minutes per side rule. The SCOTUS has clearly made a choice between optimising judicial time and being a stage to display oratory skills, however impressive they may be.

The rules and practice in SCOTUS as they stand today require written briefs to be filed mandatorily for each case. In fact, it is a prerequisite for presenting arguments - oral arguments are not allowed on behalf of any party that has not filed the briefs. Oral arguments are therefore seen more as opportunities for the judges to query the lawyers and determine the soundness of their arguments. The idea, however, that the U.S. Supreme Court allocates the same time to every case, regardless of the case's differential needs, is misplaced. There have in fact been a significant number of cases where the court has scheduled hearings for more than the standard 1 hour. *Brown v. Board of Education I* the school desegregation case in 1952 took about 8.5 hours over three days and was reargued in 1953 for 6.5 hours. Another desegregation case, *Brown v. Board of Education II*, had the longest argument post introduction of the restrictions. It lasted for 13.25 hours over 4 days. More recently, the challenge to Obama's healthcare law in *Bush v. Gore* was scheduled for 5.5 hours.[20] While few and far between, such instances indicate that the U.S. Supreme Court does not implement a blanket 1 hour rule in every case. However, since we do not have access to materials on the Justices' decision-making process, what factors motivated them to allocate more time to some cases over others cannot be identified and would require a more in-depth quantitative analysis with a larger sample size.

In contrast to the U.S., we have the Supreme Court of the United Kingdom which provides a generous 2 days' time for oral arguments. Not unsurprising considering that the United Kingdom has spawned the Common Law system which is known for its reliance on oral arguments. U.K.S.C. does however place restrictions on the number of advocates (two) who can argue on each side.[21]

Amongst the jurisdictions that have some form of DCM in practice, Bangladesh Supreme Court and the Norwegian Supreme Court are on the other end of the spectrum in comparison to the SCOTUS. These courts do not prescribe any time limits via their rules. Instead, they evaluate the individual requirements of the case and accord and adjust time accordingly. In a practice similar to what is emerging in our Supreme Court, the

[15] Rule 41.08.3 of the High Court Rules 2004, High Court of Australia <https://www.hcourt.gov.au/assets/registry/DLS/Info-SLA-appearances.pdf> accessed 4 August 2023

[16] Henrik L. Bentson, Gunnar Grendstad, William R. Shaffer & Eric N Walternburg, 'A High Court Plays the Accordion: Validating Ex-ante Case Complexity of Oral Arguments (2021) 42(2) Justice System Journal 130 -149

[17] Stephen M. Shapiro, 'Oral Argument in the Supreme Court: the felt necessities of time" <https://www.mayerbrown.com/en/perspectives-events/publications/no-date/oral-argument-in-the-supreme-court-the-felt-necess> accessed 2 August 2023

[18] Ibid

[19] The Judiciary Act, 1925

[20] Andrew Christy, "Obamacare' Will Rank Among The Longest Supreme Court Arguments Ever' <https://www.npr.org/sections/itsallpolitics/2011/11/15/142363047/obamacare-will-rank-among-the-longest-supreme-court-arguments-ever> accessed 2 August 2023

[21] The United Kingdom Supreme Court Rules 2009, Rule 22(3)

Bangladesh Supreme Court acquires estimates from counsels at the time of the final hearing and then accordingly fixes time. It can be assumed that the timeline so fixed is based on the perceived case complexity collectively adjudged by the court and the lawyers.

The Norwegian Supreme Court on the other hand takes a much more structured approach to setting time limits. Once the Appeals Selection Committee chooses a case for review on merits, one of the Justices evaluates the complexity of the case and accordingly sets the limits for oral arguments.[22] Though here as well the factors considered by the court to determine case complexity are not publicly available, a 2021 research paper analyzing 1402 decisions of the Norwegian Supreme Court was able to identify predictors of case complexity. It was able to establish that the presence of factors such as international law, civil law, amicus curiae, third party interveners, and cross appeals contribute to the complexity of the case and thereby require greater time for oral arguments.[23]

The manner in which these countries manage oral arguments is often rooted in their history. Common Law countries, with Anglo-Saxon influences, exhibit much more flexibility towards oral arguments. Whereas, Civil Law countries exercise much more control over oral submissions. However, with passage of time, each country has developed and molded its practice on oral arguments to suit the needs of its judicial system. India too needs to evaluate the viability of its existing practices and come up with a system better suited to its present exigencies. As this section has demonstrated there are several frameworks to choose from and tailor to the needs of the Indian Supreme Court.

[22] Henrik L. Bentson, Gunnar Grendstad, William R. Shaffer & Eric N Walternburg, 'A High Court Plays the Accordion: Validating Ex-ante Case Complexity of Oral Arguments (2021) 42(2) Justice System Journal 130 -149
[23] Ibid

India's judicial practice on oral submissions

The history of oral arguments in India can effectively be traced back to the ancient period where grievances were brought before and heard by various adjudicators ranging from the family arbitrators at the lowest level to the king at the highest level.[24] This tradition continued throughout the medieval period under the Mughal empire until it was finally formalised and codified by the British with the enactment of the Code of Civil Procedure, 1859 and the Criminal Procedure Code, 1861. Since then, oral arguments have become so entrenched in India's legal traditions that any attempts to curtail them have often met with swift backlash from some sections of the legal community. In the context of the 99th Law Commission Report which looked at the possibility of limiting time for oral arguments in higher courts, noted scholar H.M. Seervai gave an impassioned response calling the act of interrupting a counsel on ground of lack of time as an "outrage".[25] In the end, the opinions solicited from the legal community were so divided that the Commission recommended no time limits and suggested that estimates could be sought from the counsels who could then be asked to adhere to them.[26] No changes in rules followed this report and so the status quo continued.

Until now, when the Supreme Court dusted off cobwebs from the forgotten Constitution Bench cases and began listing them again. For the longest time in 2022, competing demands on the court's time meant that no Constitution Bench cases were listed.[27] It was a choice between hearing multiple appeals and Special Leave Petitions in a day versus hearing one case for weeks on end and the court inevitably chose the former. The systemic de-prioritisation of these cases meant that the Supreme Court, as the highest Constitutional court, was not performing its key function of interpreting the Constitution. That is, until the pressure from several Constitutional scholars and various organisations compelled the court to sit up and take notice.[28] This period of inactivity also heightened the paradoxical effect that allocating unlimited time to Constitution Bench cases had on the actual listing and prioritisation of these cases.[29] Therefore, when it began listing these cases again, the court adopted the unprecedented practice of limiting oral arguments.

The practice commenced with *Janhit Abhiyan v. Union of India*,[30] the case challenging extension of reservation benefits on the criteria of economic backwardness (EWS case). Without any amendments to the underlying rules, the then Chief Justice of India, Justice U.U. Lalit, introduced the practice of submission of written briefs and restrictions on oral arguments. Two lawyers appointed as nodal counsels were tasked with coordinating with other advocates to submit written briefs and estimate time for oral arguments. The estimate given in the case was 18 hours, roughly about 4.5 hearings in all.

[24] Mr. Justice S. S. Dhavan, 'The Indian Judicial System' <https://www.allahabadhighcourt.in/event/TheIndianJudicialSystem_SSDhavan.html> accessed 25 July 2023

[25] Law Commission, *Oral and Written Arguments in Higher Courts* (Law Com No 99, 1984)

[26] Ibid

[27] Apoorva, 'Substantial questions of law in cold storage? 35 Constitution Bench matters pending before Supreme Court' (Vidhi: Centre for Legal Policy, 1 February 2022) <https://vidhilegalpolicy.in/blog/substantial-questions-of-law-in-cold-storage-35-constitution-bench-matters-pending-before-supreme-court/> accessed 4 August 2023; Vaidehi Mishra, 'Supreme Court needs to set up Constitution Benches, now!' (Vidhi: Centre for Legal Policy, 8 February 2022) <https://vidhilegalpolicy.in/blog/supreme-court-needs-to-set-up-constitution-benches-now/> accessed 04 August 2023

[28] Aarathi Ganesan, 'Will a Constitution Bench finally sit this year?' (Supreme Court Observer, 17 May 2022) <https://www.scobserver.in/journal/will-a-constitution-bench-finally-sit-this-year/> accessed 4 August 2023; Shreya Tripathy, 'Oldest Constitution Bench case before Supreme Court pending since 1986: Vidhi's Pendency Project Report (Vidhi Centre for Legal Policy, 15 February 2022) <https://vidhilegalpolicy.in/blog/oldest-constitution-bench-case-before-supreme-court-pending-since-1986-vidhis-pendency-project-report/> accessed 2 August 2023; Shrutanjay Bhardwaj, 'Constitution Benches and Article 145(3): what if no reference is made?' (CCLG RGNUL, 10 February 2021) <https://cclgrgnul.in/2021/02/10/constitution-benches-and-article-1453-what-if-no-reference-is-made/> accessed 4 August 2023

[29] 'Impossible To List Constitution Benches Unless Time Rationed: Supreme Court' <https://www.ndtv.com/india-news/impossible-to-list-constitution-benches-unless-time-rationed-supreme-court-3965068> accessed 27 July 2023

[30] Writ Petition (Civil) 55 of 2019

While the practices of appointing nodal counsels and obtaining written briefs have continued in the subsequent cases, the practice of time allocation for oral arguments has become much more sporadic and informal. In the EWS case not only was the estimate obtained in a hearing prior to commencement of the main arguments, it was also officially recorded in an order sheet of the court. Compared to that, time allocation in the recent cases, such as the Marriage Equality case,[31] has been very ad-hoc, with the bench sometimes interrupting advocates after they have argued for a significant amount of time and then asking for estimates and prescribing time limits. At other times, like in the 'Group of Companies Doctrine'[32] and the 'Maharashtra Assembly' cases,[33] the court has unilaterally prescribed timelines without seeking estimates from the advocates.

However inconsistent, the new practices have successfully fettered the advocates' free rein to place the temporal needs of the court front and centre. While earlier, counsels, particularly senior ones, would be indulgently allowed to explicate for hours at length, the court has now introduced a strict non-repetition policy and advocates on the same side are only allowed to supplement each other's arguments. As a result, the court has so far been able to conclude cases in 3.5 hearings on average despite the presence of multiple counsels.[34] There is, however, extreme variations in the actual number of hearings that took place in these cases, with some cases taking as long as 10 hearings and others being decided in just 1 hearing. This section will, therefore, zoom in on some of the cases that took considerable hearings and for which data on oral argument time is available with the researchers.

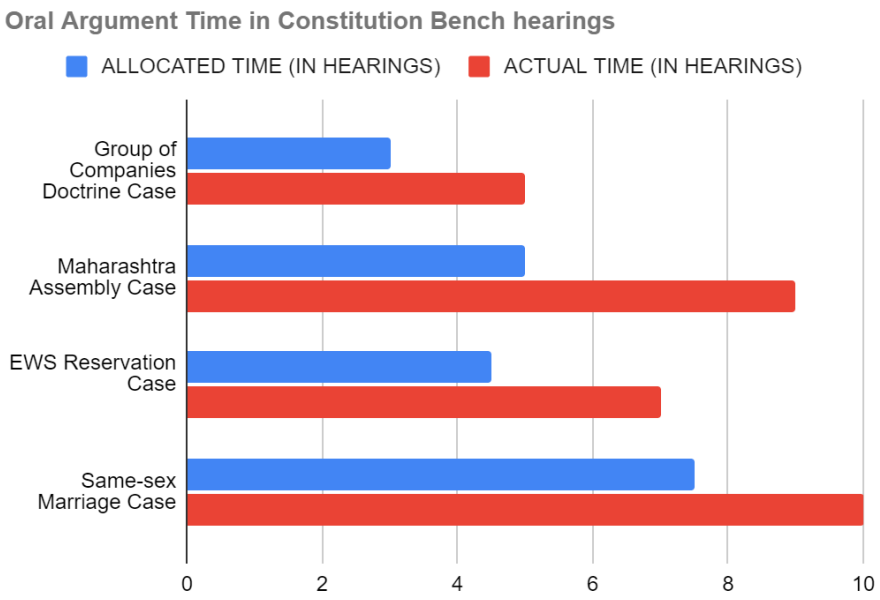


Fig. 1

Figure 1 depicts the difference between the number of hearings allocated by the court and the number of hearings actually taken by the counsels for oral arguments in 4 Constitution Bench cases. While the schedule for the EWS case was available in an order sheet, for the other 3 cases archived livestream videos were accessed from the court's website to construct a schedule based on the time orally allotted by the court at the time of hearings.

[31] *Supriyo @ Supriya Chakraborty & Anr. v Union of India*, Writ Petition (Civil) no. 1011 of 2022
[32] *Cox and Kings Ltd. v SAP India Pvt. Ltd.*, Arbitration Case no. 38 of 2020
[33] *Subhash Desai v Principal Secretary, Governor of Maharashtra*, Writ Petition (Civil) no. 493 of 2022
[34] R. Sai Spandana, 'In 5 Months, the SC Conducted a Remarkable 55 CB Hearings' <https://www.scobserver.in/journal/constitution-bench-cases-and-judgements-2023-jan-may/> accessed 25 July 2023

The number of hearings allocated by the court in the four cases ranged from 3 to 7.5. The 'Group of Companies Doctrine' case, which looked at whether non-signatories could be included as parties to an arbitration agreement, was allocated the least number of hearings. While the 'Same-sex Marriage' case which dealt with the right to marriage of the LGBTQ+ community was allocated the most number of hearings.

The number of hearings taken by the lawyers to complete oral arguments, on the other hand, ranged from 5 to 10. The Group of Companies Doctrine case took the least number of hearings at 5 while the Same-sex Marriage case took the most number of hearings at 10. On average, the cases took 2.75 more hearings than what was allocated by the court. Now, one potential reason could be that the needs and requirements of the cases, i.e. the case complexity levels, were not fully assessed by the stakeholders thereby resulting in timelines that were unrealistic and consequently unattainable to begin with. Another probable cause could be that the lawyers took more than the required time to complete their arguments.

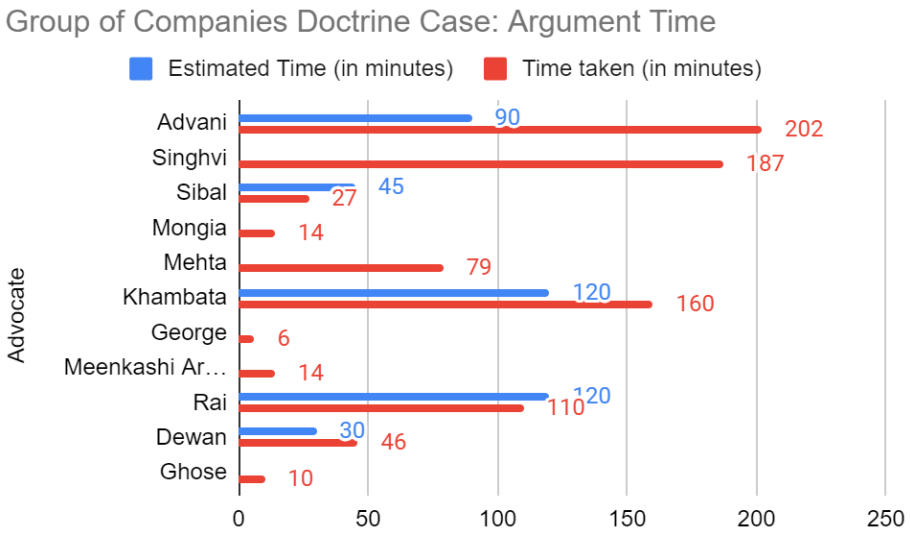


Fig. 2

Figure 2 shows the time taken by lawyers on both sides to complete their oral submissions in the 'Group of Companies Doctrine' case. The lawyers cumulatively took 855 minutes or 14 hours over a span of 5 days for their arguments. Mr. Hiroo Advani, who opened the arguments for the petitioners and laid the factual matrix of the case, took the longest time at 202 minutes. While Mr. Nitin Rai, who opened the arguments for the respondents, took only about half as much time as Mr. Advani. As can be seen from the chart above, only two of the advocates, Mr. Sibal and Mr. Rai, were able to complete their arguments within the allocated time. Six of the eleven advocates, however, were not allocated any time whatsoever by the court. Out of them, Dr. AM Singhvi took a significant amount of time at 187 minutes (about 3 hours), second only to Mr. Advani, without any interruption from the court.

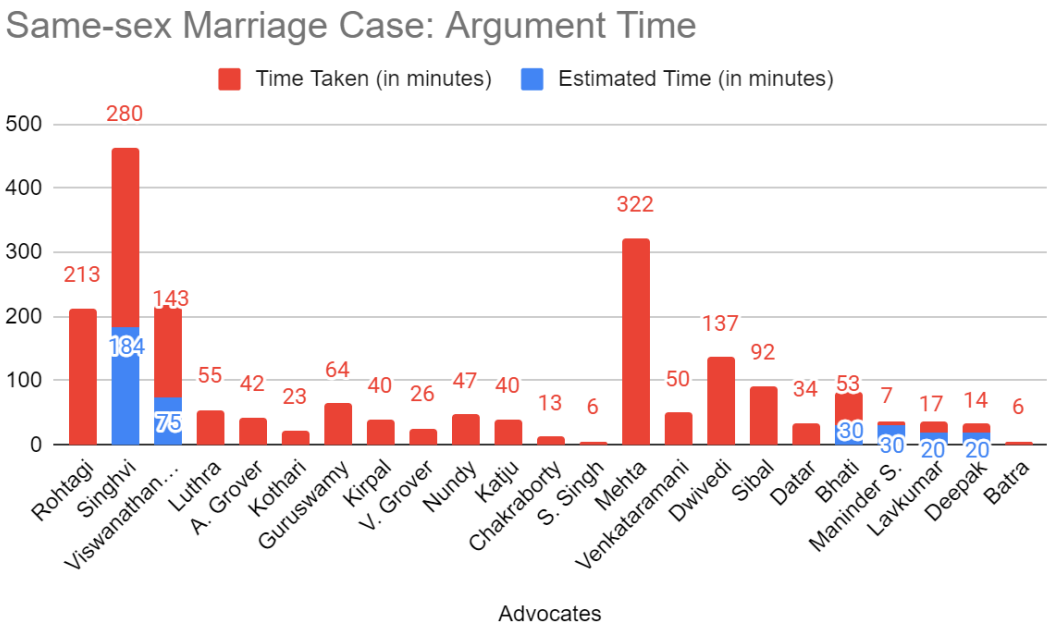


Fig. 3

Figure 3 depicts the time taken by advocates to complete the oral arguments in the 'Same-sex Marriage' case.[35] As can be seen, the court did not provide a time limit to most advocates in the case. Of the six advocates who had any sort of time estimates to adhere to, only three were able to complete their arguments within time. Mr. Singhvi overshot his timeline by about 1 hour and 30 minutes, while Mr. Viswanathan and Mr. Ramachandran took 1 hour more than the time cumulatively allotted to them and Ms. Aishwarya Bhati took approximately 20 more minutes than estimated. Cumulatively, the advocates took a whopping 28 hours (1,724 minutes) to complete arguments over a period of 10 days.

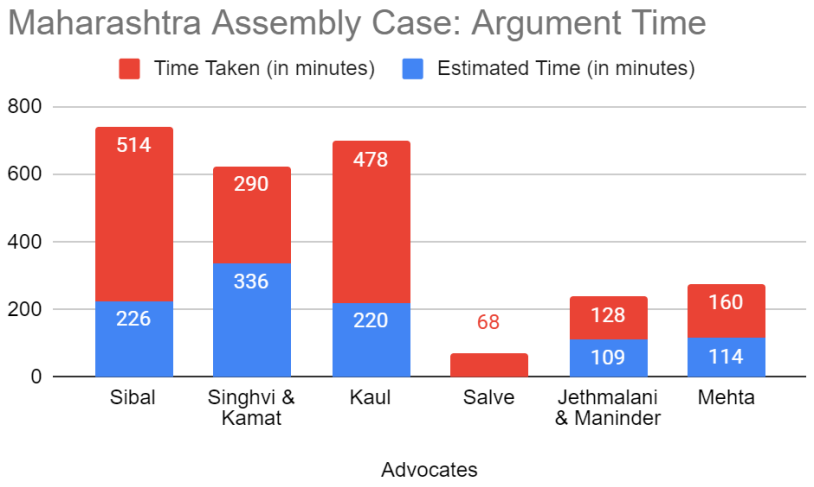


Fig. 4

Figure 4 depicts the time taken by advocates to complete their oral arguments in the Maharashtra Assembly case. The allocated time has been calculated by converting into minutes the number of hearings allocated to the advocates by the court. For instance, Mr. Sibal was allocated 1 hearing for his arguments and approximately 0.25 hearings for the rejoinder. On the day Mr. Sibal began his arguments, the court heard the case for 170 minutes.

[35] Only those advocates have been included who argued for more than 5 minutes

That is, therefore, considered to be the time in minutes which the court had allocated to Mr. Sibal for his arguments. Similarly, for the rejoinder both Mr. Sibal and Mr. Singhvi were allocated 0.5 hearings. Taking that to mean 0.25 hearings each, Mr. Sibal is said to have been allocated 0.25 of 226 minutes (time taken for hearing the rejoinder) i.e. 56 minutes. Mr. Sibal, however, took 410 minutes for his arguments and a total of 104 minutes for the rejoinder. Adding both, it can be seen that Mr. Sibal took 288 minutes, that is, 4 hours and 48 minutes more than the time allocated to complete his arguments and rejoinder. Similarly, Mr. Kaul took 1 hour 18 minutes more than the time allotted to him. Of all the advocates only Mr. Singhvi and Mr. Kamat were able to complete their arguments within time, taking about 45 minutes less than the allocated time.

In all the three cases discussed above, advocates have, on average, exceeded their allocated time by 1 hour 36 minutes, leading to an average of 2.8 more hearings in than envisaged. Overall, the court spent 4,217 minutes or a whopping 70 hours on hearing these three cases. Accounting for the time of 5 judges, the court spent altogether 350 judge hours on 3 cases. While the lawyers may still receive proportionate financial compensation for the time spent, the court does not benefit in any way by allocating more than the requisite judicial time to a case.

What is, therefore, needed is a scientific formula that would allow the court to objectively determine the approximate number of hearings required in a Constitution Bench case, predicated on its complexity levels. One such framework, proposed in the DCM Working Paper I,[36] was based on the historical average of the number of hearings conducted in prominent Constitution Bench cases. It took into consideration differential case complexities calculated using the preliminary metrics of the number of issues, laws, and precedents involved. While these are most certainly significant factors that impact the judicial time required by a case, what the framework omitted to consider was the differential complexities inherent in the issues of law. No two issues of law under consideration before the court are the same and while one case may have a greater number of issues the other may have fewer but more complex issues requiring the same amount of judicial time, if not more. The following section will therefore lay down a roadmap to further refine the framework by factoring in the intrinsic complexities of legal issues.

[36] Deepika Kinhal, Aditya Prasanna Bhattacharya, Jyotika Randhawa, 'Differentiated Case Management for the Indian Judiciary – Working Paper I' (2023) Vidhi Centre for Legal Policy <https://vidhilegalpolicy.in/research/differentiated-case-management-for-indian-judiciary/> accessed 27 July 2023

Roadmap for implementation of DCM

This section proposes a model that would enable the court, in the long run, to objectively determine the judicial time required by a case based on both the quantitative and qualitative case complexity factors. ***Case complexity*** has usually been defined as the amount of information required to be presented to and understood by the Judges to satisfactorily render a decision.[37] The more novel and intricate an issue, the more the information that must be processed by the judges to understand the crux of the issue. As disseminators and recipients of this information, lawyers and judges are therefore best placed to assess the case complexity levels of individual cases. Any such exercise undertaken by persons external to the system would only be speculative.

For a full and effective implementation of DCM, the court needs to take charge. It may adopt the framework suggested or it may come up with a scientific system of its own. Whichever route it chooses to go, the court must begin taking its first steps now. Successful application of DCM hinges on the creation, collation, and analysis of relevant data. The steps given below demonstrate one way of doing this. Of course, any framework or system developed would have to undergo multiple iterations before a suitable model can be arrived at.

Step 1: As the foundation for implementation of DCM, this model therefore requires judges and lawyers to mutually assess the complexity levels per case and allocate time accordingly. This may be done in a ***pre-hearing conference*** and the time schedule must be recorded in the case order sheet.

Step 2: It is imperative that the court keeps track of the time schedule. Repetitions, deviations, and reading from submissions and judgments must be immediately shot down and the reasons for any unavoidable rescheduling must be discussed and recorded in an order. This would allow the court to practically verify the time requirements of issues with varying complexities and to course correct where necessary.

Step 3: The next step in the implementation of the model is to ***institutionalise*** and ***formalise*** the aforementioned practice. This would not only ensure uniformity in court practice but would also provide a statistically significant sample for the final step of the model.

Step 4: Once a significant sample of the Constitution Bench cases has been obtained, ***statistical analysis*** can help ascertain the impact of the identified case complexity factors on the oral argument time. A regression analysis with the case complexity factors as independent variables and the oral argument time as the dependent variable will help the court determine which case complexity factors warrant more oral argument time vis-a-vis others.

Such an analysis for the Norwegian Supreme Court has helped researchers identify 7 sources of case complexity that result in increased argument time in that court.[38] Computing the predicted natural logarithm of oral arguments for each of these variables further allowed the researchers to estimate by how many hours the argument time increased.[39] For instance, it was found that involvement of International law in a case increased the oral argument by 1 hour and 15 minutes while the presence of additional legal assistance prolonged arguments by 3 hours and 45 minutes. A similar analysis with data generated by the Supreme Court Constitution Benches will not only help identify case complexity factors specific to the Indian courts but will also help compute how many hours the court must allocate to cases with these complexity factors.

[37] Henrik L. Bentsen, Gunnar Grendstad, William R. Shaffer & Eric N. Waltenburg, 'A High Court Plays the Accordion: Validating Ex Ante Case Complexity on Oral Arguments' (2021) 42(2) Justice System Journal 130-149.
[38] Ibid, Extract in Annexure 2
[39] Ibid, Extract in Annexure 3

Conclusion

We may well be witnessing a historic moment at the Supreme Court of India, with the court embarking on the journey of limiting oral argument time for advocates. This combined with livestreaming of Constitution Bench hearings has not only triggered a discourse on how much time the court should be spending on hearing cases but has also led to the availability of hitherto unavailable data on oral argument time of various lawyers. One could argue that the court now finds itself at a juncture where the SCOTUS was around 100 years ago, when it took the pivotal decision of drastically limiting oral argument time. It is therefore imperative for the court to now take deliberative steps to scientifically evaluate its practices and arrive at a workable model for time allocation for oral arguments.

To prevent backlog of cases and to simultaneously ensure continuous functioning of Constitution Benches, it is important for the Supreme Court to optimize on judicial time. Courts across jurisdictions have developed their own practices on oral argument time, tailored to their unique needs. This paper has argued that India must do the same. To this end, the paper proposes the implementation of the principle of Differentiated Case Management in Constitution Bench cases. It suggests that the time allocated by the court for hearing arguments should be based on the requirements of that particular case, as determined through the case's complexity levels.

Borrowing from research done on the Norwegian Supreme Court, this paper suggests a preliminary model to generate and assess data on case complexity factors in Constitution Bench cases, which can eventually be used to create a framework for objectively determining the necessary oral argument time. If the court implements this, it may well be the first ever court to do so and will position itself as a pioneer on the global stage. Of course, the court can come up with its own metrics and assessment frameworks for determining case complexity levels. Whether the court adopts and builds upon this framework or develops one of its own, it is necessary for it to ensure that the time allocated to Constitution Bench cases is proportionate to the complexity levels of those cases. As the court has already understood, this is key to ensuring that Constitution Benches are set up in a timely manner in order to fulfill the Supreme Court's key constitutional duty.

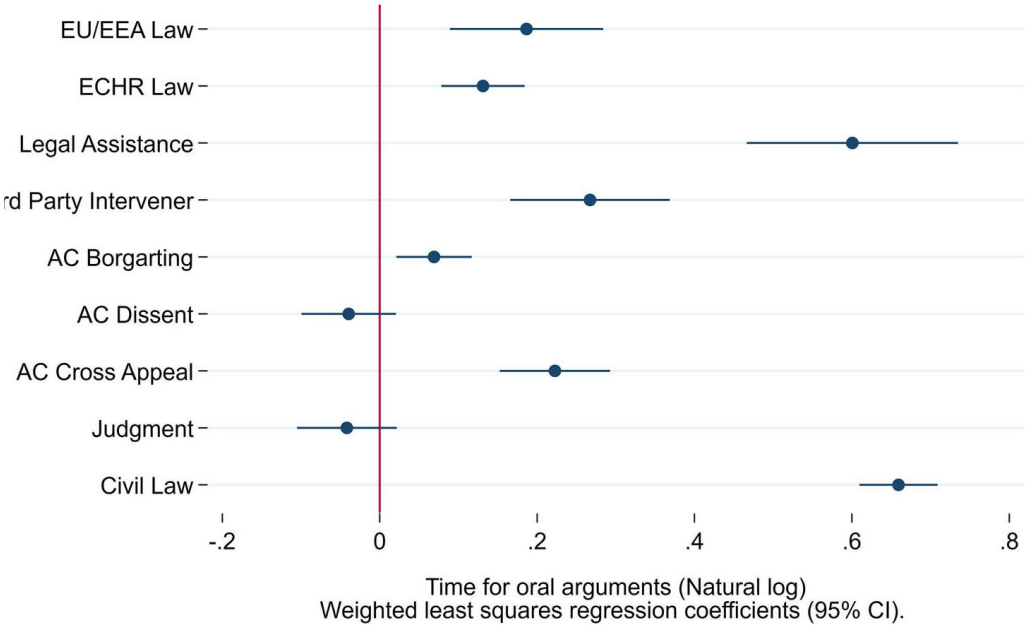
Annexures

Annexure 1 – Number of Constitution Bench hearings conducted in 2023

S. no.	Case Name	No. of hearings
1	*Subhash Desai v Principal Secretary, Governor of Maharashtra*, Writ Petition (Civil) no. 493 of 2022	14
2	*Supriyo @ Supriya Chakraborty & Anr. v Union of India*, Writ Petition (Civil) no. 1011 of 2022	10
3	*Government of NCT of Delhi v Union of India*, Civil Appeal no. 2357 of 2017	6
4	*Cox and Kings Ltd. v SAP India Pvt. Ltd.*, Arbitration Case no. 38 of 2020	5
5	*Common Cause v Union of India*, Writ Petition (Civil) no. 215 of 2005	4
6	*Union of India v Union Carbide*, Curative Petition (Civil) no. 000345 - 000347 of 2010	4
7	*Karmanya Singh Sareen v Union of India*, Special Leave Petition (Civil) no. 804 of 2017	3
8	*Tej Prakash Pathak v Rajasthan High Court*, Civil Appeal no. 2634 of 2013	2
9	*Bajaj Allianz General Insurance v Rambha Devi*, Civil Appeal no. 841 of 2018	2
10	*Animal Welfare Board v Union Of India*, Writ Petition (Civil) no. 23 of 2016	1
11	*M/S NN Global Mercantile Pvt. Ltd v. M/S Indo Unique Flame Ltd*, Civil Appeal no. 3802-3803 of 2020	1
12	*Joseph Shine v. Union of India Secretary*, Miscellaneous	1

	Application no. 2204 of 2020	
13	*Anoop Baranwal v Union of India*, Writ Petition (Civil) no. 104 of 2015	1
14	*Shilpa Sailesh v. Varun Sreenivasan*, Transfer Petition (Civil) no. 1118 of 2014	1
15	*Bar Council of India v. Bonnie Foi Law College*, Special Leave Petition (Civil) No. 22337 of 2008	1
16	*Central Board Of Dawoodi Bohra Community v State Of Maharashtra*, Writ Petition (Civil) no. 740 of 1986	1
17	*Vivek Narayan Sharma v Union of India*, Writ Petition (Civil) no. 906 of 2016	1
18	*Kaushal Kishore v State Of Uttar Pradesh*, Writ Petition (Criminal) no. 113 of 2016	1

Annexure 2 – Case complexity factors in the Norwegian Supreme Court



All but two independent variables exhibit statistically significant associations with the hours of oral arguments dedicated to the cases to be decided by the Supreme Court. On the basis of the regression coefficients displayed in Figure 3, we can safely conclude that both Hypotheses 1 and 2 enjoy strong empirical support. As expected, harmonizing European and national law is a complex process as indicated by the increased time the Norwegian Supreme Court has devoted to cases involving EU/EEA laws and ECHR laws. The fact that both hypotheses were significant supports the argument that EU/EEA laws and ECHR laws are different domains.

Hypotheses 3 and 4 suggest that the addition of legal assistance and presence of third parties that introduce additional information are associated with greater case complexity and will require additional time in oral arguments. As to the former, more legal resources that are brought to bear in a case is an indicator that the case is complex and will require more time for oral arguments. Similarly, the presence of third parties, and the concomitant additional information presented to the justices, is associated with increased time allocated for oral arguments.
Hypotheses 5 through 7 all concern forces associated with lower courts. Hypothesis 5—the contention that the case complexity of suits appealed from Borgarting, the court of appeal located in the capital city of Oslo, bears upon the time reserved for oral arguments—gains scant, but statistically significant, support. Hypothesis 6, positing a relationship between lower court dissent and oral arguments time, fails to achieve statistical significance. However, as expressed in Hypothesis 7, cross-appeals do indeed drive up the time devoted to oral arguments.

Hypothesis 8, suggesting that rulings are allocated more time for oral arguments than are judgments is not supported. However, whether a case involves civil law has a powerful direct association with the time devoted to oral arguments, thus confirming Hypothesis 9, which is grounded in the assumption that criminal cases typically involve sentencing issues alone, while civil cases can embody quite a range of legal questions.[40]

[40] Excerpt from 'A High Court Plays the Accordion: Validating Ex Ante Case Complexity on Oral Arguments' (2021) 42(2) Justice System Journal 130-149, p. 142

Annexure 3 – Number of hours per case complexity factor in the Norwegian Supreme Court

To gain some traction on the matter of substantive significance, we compute the predicted natural log of oral arguments for each level of our independent variables, and then transform the predicted values to hours of oral arguments, the original measure.

Turning first to international law, if a case involved an EU/EEA law, the oral arguments time on average was increased by about one hour and a quarter; a matter addressing the ECHR increased oral arguments by a bit less than three-quarters of an hour. Third Party Intervention elevated the deliberation time by about one and three-quarter hours, a sizable increase. Although significant, a case appealed from the Borgarting Court of Appeal increased oral arguments by a scant 22 minutes. A case with multiple appeals increased oral arguments time by about one and one-third hours.

That brings us to the two most powerful determinants of time devoted to oral arguments—the presence of legal assistance and whether the appeal involved civil or criminal law. While there are very few cases where legal assistance was present—less than 3 percent of the time—its availability increased oral arguments time by approximately three and three-quarters hours. In other words, when legal assistance was present for one of the parties, the total time for oral arguments nearly doubled from one day to almost two full days in Court. The impact of whether a case involved criminal or civil law was almost as powerful as legal assistance. A criminal case consumes less than four hours of time, whereas a civil case generates on average over seven hours of oral arguments.[41]

[41] Excerpt from 'A High Court Plays the Accordion: Validating Ex Ante Case Complexity on Oral Arguments' (2021) 42(2) Justice System Journal 130-149, p. 143

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