

WELCOME

To

Chapter FIVE of Vol.1

ENDING MATSYANYAYA



Before we go through the details, let's go through a

Quick Summary

summary

- Delays in **contract enforcement** and **disposal resolution** are arguably now the single biggest hurdle to the ease of doing business in India and higher GDP growth.
- Around **87.5 per cent** of pending cases are in the **District and Subordinate courts**. Therefore, this segment must be the focus of reform.
- **100 per cent** clearance rate can be achieved by merely **filling out the vacancies** in the lower courts and in the High Courts.
- The states of **Uttar Pradesh, Bihar, Odisha and West Bengal** need special attention.

Now, it's time for the
Details



INTRODUCTION



- The relationship between **economic governance and the Rule of Law** (Dandaniti) has been emphasized by Indian thinkers since ancient times. It is seen as the key to prosperity, and a bulwark against **Matsyanyaya (i.e. law of the fish/jungle)**.
- Economic success and prosperity are **closely linked** to the ability to enforce contracts and resolve disputes.
- India continues to lag on the indicator for **enforcing contracts**, climbing only one rank from 164 to **163** in the latest report of EODB, 2018.
- Economic activity is being affected by the long shadow of **delays and pendency** across the legal landscape.
- The Indian judicial system has over **3.53 crore pending cases**. This number looks very large and insurmountable, but it is a potentially solvable problem. Indeed, given the potential benefits, this may be the best investment that the Indian economy can make.
- District and Subordinate courts (D&S courts) account for **87.54 per cent** of pending cases.

PENDENCY & DISPOSAL



- The **pendency** of a case on a given date is the time since the date of filing.
- The distribution of pendency of both **civil and criminal cases** is more or less the same.
- More than **64 per cent** of all cases are pending for **more than one year**.
- **Odisha, Bihar, West Bengal, Uttar Pradesh and Gujarat** have higher average pendency for both civil and criminal cases as compared to the national averages whereas Punjab and Delhi have the least average pendency of cases.
- **Disposal** time is measured as the time span between the date of filing and the date when the decision is passed.
- 74.7 per cent of the civil cases and 86.5 per cent of the criminal cases are disposed **within three years**.
- **Bihar, Odisha and West Bengal** have higher average disposal time than the national average for both civil and criminal cases. Further, Punjab and Delhi have the lowest average disposal time.
- The **average disposal time** for civil and criminal cases in Indian D&S courts is 4-fold and 6-fold higher respectively when compared with the average of Council of Europe members. This indicates that

there is huge scope for improvement in the disposal time for Indian D&S court.

CASE CLEARANCE RATE



- The Case Clearance Rate (CCR) is the **ratio** of the number of cases disposed of in a given year to the number of cases instituted in that year, expressed as a percentage.
- The gap between institution and disposals allows cases to accumulate and results in an increase in pendency. This is because the CCR remains structurally **below 100 per cent**.
- With a **CCR below 100 per cent** and a heavy backlog of pre-existing cases, Indian courts suffer from increasing delays.

CAN THE LEGAL LOGJAM BE CLEARED?

There are two key issues at hand that need to be dealt with in order to make the judiciary more efficient.

- **Firstly**, to achieve a 100 per cent clearance rate must be achieved so that there is zero accumulation to the existing pendency.
- **Secondly**, the backlog of cases already present in the system must be removed.

CASE TYPES



- The **civil cases** contribute a mere **28 per cent** of total pendency while **criminal cases** contribute about **72 per cent** in D&S courts.
- Average **CCR** for all civil and criminal cases in D&S courts for 2018 was 94.76 per cent and 87.41 per cent respectively.
- This means that not only the backlog of **criminal cases** is about 2.5-fold higher than civil cases, criminal case type also has lower CCR (even lower than the national CCR of 88.7 per cent).

MAKING INDIAN COURTS MORE PRODUCTIVE



- **Increase number of working days:** It has often been pointed out that Indian courts close down for significant periods due to vacations. The length of these vacations varies a great deal from court to-court, but appears to have a palpable impact on the number of working days.
 - Increasing the number of working days may improve productivity of the Supreme Court and in some High Courts,

but is unlikely to significantly impact lower courts. Subordinate courts, which account for the bulk of pendency, seem to work almost as many days as government offices.

- **Establishment of Indian Courts and Tribunal Services:** In the current system, the main responsibility for administration in Indian courts is assigned to the chief judicial officer. This approach is not conducive to systemic reforms and gradual accumulation of institutional knowledge on administrative matters.
 - In this context, it has been proposed to create a specialized service called Indian Courts and Tribunal Services (ICTS) that focuses on the administrative aspects of the legal system.
- **Deployment of Technology:** Technology can significantly improve the efficiency of courts. One major effort in this direction is the eCourts Mission Mode Project that is being rolled out in phases by the Ministry of Law and Justice.
 - This has allowed the creation of the National Judicial Data Grid (NJDG). The system is already able to capture most cases, their status and progress.

Thank
You