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Judicial Inefficiency and Delay

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The problem of judicial inefficiency and the resulting delay in processing cases is present in much of the world but is especially serious in developing countries. For instance, in India, officials consider inefficiency of the judicial system one of the country's most challenging issues. Indian courts are some of the most congested in the world. In 2002, there were 23 million pending court cases: 20,000 in the Supreme Court, 3.2 million in the high courts, and 20 million in lower courts. It is common for cases to take decades, and sometimes generations, to resolve.

Serious backlogs and delays in the judicial process have far-reaching implications for those interested in making legal and social policy changes. Many law and society observers who study India note that this emerging constitutional democracy is at risk of losing legitimacy because citizens are losing faith in the judicial process. Social policy advocates, in particular, who work on behalf of groups such as the poor, lower castes, women, people who are ill, or religious minorities, have found that the legislature is not responsive to their needs. It may also not be worth-while to redress their grievances in what has become a time-engulfing legal process. Instead, activists have chosen other ways to advocate for causes, focusing more on grassroots tactics. The problem is that India's constitutional system—important parts of which were drawn from the American model—envisions the judiciary as serving as the countermajoritarian protector of minority interests. It is disturbing that so many citizens in need, who have lost faith in the legislative process, are now quick to dismiss the courts as a forum in which their social policy concerns could be heard.

Impediments to Accessing Justice in India

The Indian court system has three levels of power and prestige. As in most countries, the vast majority of cases are litigated in lower district courts. Each of India's twenty-nine states has district courts, with a high court in each state serving as the court of appeal. (In addition, six union territories also have district courts. The government assigns a high court in a nearby state to serve as the court of appeal for each territory.) The highest court in India, the place of last resort for litigants, is the Supreme Court, which is located in the country's capital, New Delhi.

Although both the Supreme Court and the state high courts act as appellate courts, these courts may also be courts of first instance, due to the writ petition feature in India. Ordinary citizens may file petitions or claims in a state high court if the state government has violated a statutorily or constitutionally protected right. Similarly, if the central government has infringed a constitutionally codified, fundamental right of an individual, that person may file a claim in the Supreme Court. Such accessibility has enabled many types of litigants, including social policy activists, to pursue public interest litigation (PIL) claims on such issues as civil rights, civil liberties, the environment, and women's rights.

Millions of cases currently clog all levels of the Indian judiciary. One explanation might be that Indians view the courts with great respect, that is, the massive number of cases is a sign that people believe the courts work. Others believe that the volume of cases has resulted from openness, especially in the upper courts, to accepting writ petitions. Those who closely study Indian court dockets know, however, that the real reason for delay is that so few cases are resolved by the courts. Existing empirical research indicates that on a per capita basis, India has one of the lowest cases-decided rates in the world.

The institutional structure of the courts is more prone to abuse than to resolution of cases. Provisions in the Indian Civil Procedure and Criminal Procedure Codes, for instance, allow lawyers for clients who oppose resolving cases to submit endless interlocutory appeals. This results in long delays before judgment and vast backlogs. Moreover, because these lawyers are paid for each court appearance, they have little incentive to resolve cases. Such “delay lawyers,” as they are called, become masters in the art of manipulation of the civil and criminal codes to force cases to remain in the system for decades.

In addition, the legal profession is not structured to assist ordinary citizens with general legal issues or [p. 853 ↓] questions. Most lawyers are courtroom litigators in solo practice. The tasks of negotiating, strategizing, fostering a shared understanding of the law, advising, and participating in nonlitigious tactics are left to others. Lawyers tend to become involved in legal disputes late in the game, and most have traditionally been educated and conditioned to think in narrow terms and focus their efforts on litigation strategies. Most lawyers are atomistic actors who deal with clients, cases, and causes in a discrete, isolated fashion. Rarely do lawyers have long-term objectives regarding

clients, nor do they have the incentive (or specialization) to perform any but the most basic courtroom services. Furthermore, because most individuals and groups in need of legal assistance tend to have few resources, they do not provide a market for lawyers who may wish to specialize in non-courtroom activities but, given economic realities, are unable to do so.

The result of this situation is that ordinary citizens, as well as organizations interested in social change, tend to shy away from the legal profession and the courts. That a great number of Indians feel excluded from the legal system has not been lost on some governmental policy makers, who have attempted to increase ordinary citizens' access to the courts. For example, a 2002 proposal in Parliament that would have reduced the permitted number of interlocutory appeals and revamped the pay system for lawyers met with fierce resistance. Lawyers demonstrated and went on strike. A watered-down version of the proposal was passed later that year, but most observers are skeptical that real change is on the way.

Others interested in reform have recognized that India desperately needs more judges and more court buildings. At the state high court level, only about 610 positions are reserved for judges throughout the country, a woefully small number for a nation of over one billion people. As of 2003, 129 of these positions remained vacant; in the lower courts, the percentage of vacancies is even greater. Therefore, each sitting judge is saddled with thousands of cases on her docket each year. As for court buildings, they are poorly equipped and the personnel are often unable to perform even the most basic tasks (for instance, keeping systematized records, transcribing statements). If more resources were devoted to building courts and training competent judges, many additional points of access could be provided for individuals and social advocacy groups interested in seeking to address claims.

Judicial and Legal Aid Reforms in India

Although the problems with the Indian judicial system and legal profession are deep seated and long standing, certain courts and certain members of the bar have made important contributions to society. In the early 1980s, just a few years after the end of Indira Gandhi's Emergency Rule era, a small number of Supreme Court judges

seeking ways to actualize the constitution's promises of justice embarked on a series of unprecedented, electrifying initiatives. They included relaxation of requirements of standing, appointment of investigative commissions, appointment of lawyers as representatives of client groups, and introduction of the "epistolary" jurisdiction, in which judges took the initiative and responded proactively to grievances brought to their attention by third parties, letters, or newspaper accounts. These initiatives were aimed at using judicial power to protect excluded and powerless groups and to secure constitutional entitlements that were languishing.

Around the same time, the government and the bar moved to implement the Constitution's long-standing commitment to legal aid. An entity was established, under the aegis of the chief justice of India, to coordinate the implementation of legal aid programs. Several innovative schemes emerged in which social action groups, for the first time, sought to use the law systematically and continuously to promote the interests of various constituencies.

Proponents of the post–Emergency Rule initiatives have tried to move beyond the prevailing notion of "service" legal aid, which is episodic, *ad hoc* representation in court by generalist lawyers. Instead, they have envisioned "strategic" operations of a scale, scope, and continuity that would enable lawyers to acquire specialized expertise, coordinate efforts on several fronts, select targets, manage the sequence and pace of litigation, monitor developments, and deploy resources to maximize the long-term advantage of a client group. The goal was to relieve disadvantaged [p. 854 ↓] groups from dependence on extraordinary, spontaneous personal interventions and enable legal workers to plan and be purposeful rather than atomistic.

The post–Emergency Rule reforms have promoted important social changes, raised public awareness of many issues, energized citizen action, improved governmental accountability, and enhanced the judiciary's legitimacy. However, this judge-orchestrated effort has proved to be a frail vessel for empowering disadvantaged groups who seek justice. Among its limitations are the inability to resolve disputed questions of fact, weakness in delivering concrete remedies and monitoring performance, reliance on generalist volunteers with little organizational staying power, and dissociation from the organizations and priorities of disadvantaged people. Although the courts have affirmed

and dramatically broadcast norms of individual rights, they frequently have been unable to secure systematic implementation of legal norms.

Reforms in the Indian Legal Profession

The government's 1991 decision to open up India's economic markets and embrace foreign investment has affected the legal profession as well as the courts. After 1991, new possibilities—never before offered—were available to Indian lawyers. Private multinational companies from the United States, Europe, and other parts of the world began coming to India. Many of these foreign companies, not surprisingly, sought to lure intellectually capable lawyers to their businesses. The salaries were exponentially higher than typical salaries of Indian practitioners, and for lawyers who had the opportunity, it was financially logical to pursue these exciting (and lucrative) private sector ventures.

At this time, more lawyers started to organize law firms. Although most lawyers continue to have a solo practice, more have begun to establish firms, particularly in commercially active cities such as Mumbai, Bangalore, and New Delhi. In addition, the courts began to hear different types of cases. Whether the case involved a foreign multinational corporation that was challenging a local or state government regulatory policy or a public interest group protesting a corporation's employment or environmental practices, these kinds of disputes have become more common on court dockets over the past two decades.

How the legal profession and the courts will respond to India becoming an important global economy is now unfolding. One worry is that the newer types of cases filed in the already clogged court system will compete for docket time with more traditional civil and criminal cases, thereby taxing the courts further. As a means of lessening the time between the case filing and the final decision, judges, in particular, have been promoting alternative forums for common people. *Lok adalats* (people's courts) and a host of other tribunals have been established that have exclusive jurisdiction over cases involving a particular topic, such as motor vehicle accidents, consumer complaints, or labor disputes.

In addition, in 1993 the government established the National Human Rights Commission (NHRC), an institution statutorily charged with ensuring that every individual's constitutional rights are protected by the Indian state. (The NHRC, most notably, investigated the brutal riots that took place in the state of Gujarat in early 2002.) Generally, these alternative institutions are empowered to depose witnesses, conduct discovery, evaluate evidence, issue reports and recommendations, and ask the government to enforce their opinions. The hope is that these forums will do a superior, more efficient job of adjudication than the regular courts. Preliminary evidence indicates, however, that many of these alternative institutions suffer from delays, overcrowded dockets, inefficiency, and other problems similar to those found in the regular courts.

India is facing significant challenges in the twentyfirst century, including the need for better access to the courts and more opportunities for citizens to have their constitutional rights recognized. Full democratic consolidation will require further development of both the judicial system and the legal profession.

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See also

- [Access to Justice](#)
- [Cause Lawyers](#)
- [Civil Liberties](#)
- [Court Caseload Statistics](#)
- [Dispute Resolution, Alternative](#)
- [India](#)
- [Judges](#)
- [Judicial Activism](#)
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