

● **PROFIT AND LAWS**

Judicial leg-up for ease of doing business

CALL TO ORDER. Piling pendency, staff shortage, resource crunch, digital vacuum hamper justice delivery and, in turn, economic revival

Vasanth Rajasekaran

One of the key factors that determine ease of doing business in a country is the effectiveness of its judicial system.

Like many other countries, India has its challenges when it comes to judicial infrastructure, including a rising pendency rate, shortage of staff and essential resources, and lack of a digital ecosystem. In 2020, the pandemic served as a litmus test for the ability of Indian courts to function virtually. Most cases could not be taken up or listed afresh due to inadequate infrastructure. This, in turn, caused a post-pandemic docket explosion. By August 2022, the number of pending cases touched 71,000 in the Supreme Court, and nearly 60 lakh in the High Courts. In the lower courts the backlog crossed a staggering 4.2-crore mark.

The link between judicial infrastructure and ease of doing business has been discussed extensively at executive and judiciary levels. In July 2022, Prime Minister Narendra Modi emphasised that “ease of justice” is as important as ease of doing business, indicating the government is cognisant of the challenges facing the judicial system.

There is a glaring inadequacy of primary resources at court complexes in India. As of August 2022, roughly one in every four (27 per cent) courtrooms was equipped with a computer for video-conferencing; almost half (46 per cent) did not have purified drinking water facilities; and only 5 per cent had basic medical facilities.

Notably, the government is the biggest litigant in the country, accounting for nearly half the pending cases. In early 2022, the then Chief Justice of India opined that the executive arm of the State could tackle the piling litigation by dealing efficiently with departmental and PSU-related disputes.

TOO FEW JUDGES

There are just 21 judges per million people, against the recommended



LEGAL HURDLE. The number of pending cases has touched 71,000 in the Supreme Court, 60 lakh in high courts and 4.2 crore in lower courts RV MOORTHY

50-70 judges. In fact, in 1987, the Law Commission of India recommended having 107 judges per million people by 2000.

While the appointment of judicial officers has increased only by 16 per cent in six years, the corresponding rise in case pendency at the lower judiciary increased by almost 55 per cent.

While the inadequate number of judicial positions is an issue, the vacancy in judicial positions is an entirely different problem. From 2010 to 2020, vacancies in the judiciary increased from 18 per cent to an average of 21 per cent across all levels of courts.

The judiciary is aware of these issues. In *Gimpex Pvt Ltd vs Manoj Goel*, the Supreme Court observed that the pendency of cheque dis-

honour cases has dampened ease of doing business in India, impacted business sentiments, and hindered investments.

In another public interest litigation, a seven-judge bench of the Allahabad High Court, while expressing dissatisfaction, observed that State bureaucrats were taking no action to improve issues pertaining to, among other things, infrastructural facilities and shortage of staff.

FUNDING JUDICIAL EFFICACY

In *Imtiyaz Ahmad vs State of UP*, the Supreme Court recommended the creation of an umbrella national organisation to undertake the task of alleviating the shortfall in Indian judicial infrastructure.

In March 2022, it was reported that the then Chief Justice of India

had proposed setting up a ‘national judicial infrastructure authority of India’ (NJIAI) to tackle the infrastructural needs of the Indian judicial system.

While the proposal went to state governments for their views, no consensus was reached.

To augment the resources of state governments, the Union government has been implementing a centrally sponsored scheme (CSS) to develop infrastructural facilities in lower courts.

To date, the government has sanctioned more than ₹8,700 crore under CSS to states and Union territories.

It has decided to extend the scheme for another five years, until 2026, allocating ₹9,000 crore.

While the funds may tackle the

inadequacy of judicial infrastructure to some extent, more needs to be done, such as addressing the issue of underutilisation of funds — a large portion of the funds allocated for judicial infrastructure remains unspent every year.

An important step in improving ease of doing business is to resolve the backlogs, delays, and pending cases in the judicial system.

The shortfall in judicial infrastructure hampers quick resolution of disputes and enforcement of contracts, deters investment, delays projects, and makes it hard to collect taxes while simultaneously stressing out taxpayers and driving up legal fees.

The writer is the founder and head of Trinity Chambers, Delhi