

New perspectives on the workload of the National Company Law Tribunal in India

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Structure

- ▶ Motivation
- ▶ A dataset on the NCLT cause-lists: a description
- ▶ Using the cause-list data:
- ▶ Limitations
- ▶ Suggestions and further work

Judicial capacity in India: some facts

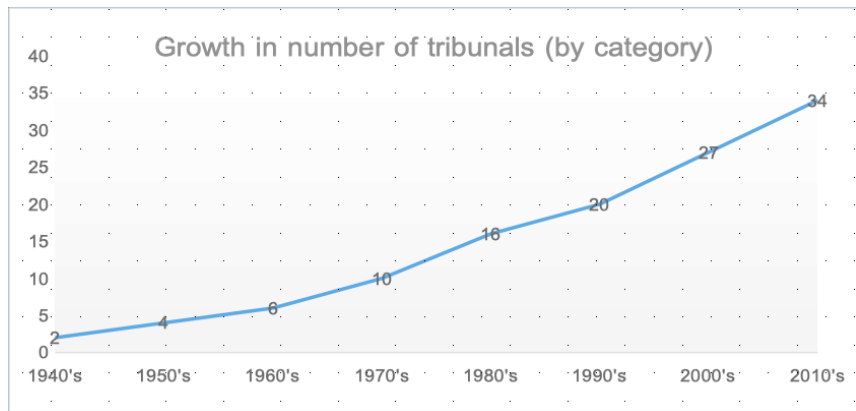
Judicial capacity is seen as a central issue in India's weak contract enforcement.

No. of years	District courts (in%)	Bombay HC (in%)
0 to 1	44.1	19.16
1 to 3	23.11	21.80
3 to 5	12.01	13.51
5 to 10	13.28	18.89
10 to 20	6.11	19.55
20 to 30	1.15	6.86
More than 30	0.23	0.23

Table: Pendency of cases across district-level judiciary

Source: NATGrid, as on December 2019.

Tribunal capacity



Source: Hand-collected from lists of statutes that set up tribunals in India.

Estimating judicial capacity at courts and tribunals in India: a literature review

1. Robinson 2013: workload and pendency in the SC from 1993 to 2011. (From Supreme Court docket.)
2. Chandra, Hubbard, and Kalantry 2018: characterization of the caseload, litigant type, judges and case outcomes. (Hand-coded data from decisions of the Supreme Court from 2010-2015)

Estimating judicial capacity at courts and tribunals in India: a literature review

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3. Kaul, Pathan, and Narasappa 2018: workload and pendency analysis across high courts and district courts. (E-courts data)
4. Datta, B.S., and Sane 2017: pendency and trajectory of appeals before the Income Tax Appellate Tribunal. (Income Tax Appellate Tribunal)
5. Damle and Regy 2017: estimate judicial capacity required for bankruptcy cases at the NCLT. (Data on pending cases at other courts and tribunals.)

Limitations

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Limited information on how this helps in estimation of judicial capacity

Adjusting estimated judicial capacity by weighted caseload method

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In India: applied to the Supreme Court workload by Hemrajani and Agarwal 2019.

Cause-lists of the NCLT: creating a new dataset

New visibility on the working of the NCLT

- ▶ Matters heard the NCLT: IBC and Companies Act.
- ▶ For every court day, there is a cause-list at every bench.
- ▶ This is html and accessible publicly from the NCLT website.
- ▶ Reasonably consistent across benches.
- ▶ Gives a potential insight into how NCLTs prioritise and hear cases.

Variables

Sr. No.	Field	Captured or hand-coded
1.	Sr. No. in cauelist	Captured
2.	Date on which it is scheduled to be heard	Captured
3.	Year	Hand-coded
4.	Quarter	Hand-coded
5.	Bench and courtroom	Hand-coded
6.	Case number	Captured
7.	Purpose of the hearing	Captured
8.	Act under which case is instituted	Hand-coded
9.	Section under which the case is instituted	Captured
10.	Parties involved	Captured
11.	Outcome of the hearing	Hand-coded
12.	Representative Advocates	Captured
13.	Top 10	Hand-coded
14.	Top 20	Hand-coded

Table: Data-fields captured

Sample size

Sample period	23 rd February, 2018 - 23 rd July, 2019
Benches observed	12/15 ¹
Total calendar days	515
Total court days (any court functioning)	349
Total hearings	1,36,441
Unique matters	35,967

Table: No. of days and hearings observed

¹During the exercise period, benches at Kochi and Amravati were inactive; cause-lists for Allahabad bench were not retrievable

What do we get with this data

- ▶ Our variable of interest is hearings **and** cases.
- ▶ Three dimensions of the functioning of NCLT for both hearings and cases:
 - ▶ At the level of matter,
 - ▶ At the level of benches,
 - ▶ In a time-series
- ▶ And this can be consistently created.
- ▶ We get is (1) matter-mix, (2) NCLT prioritisation of matters, (3) productivity over time, and (4) capacity over time.
- ▶ Possibly useful to understand pendency.

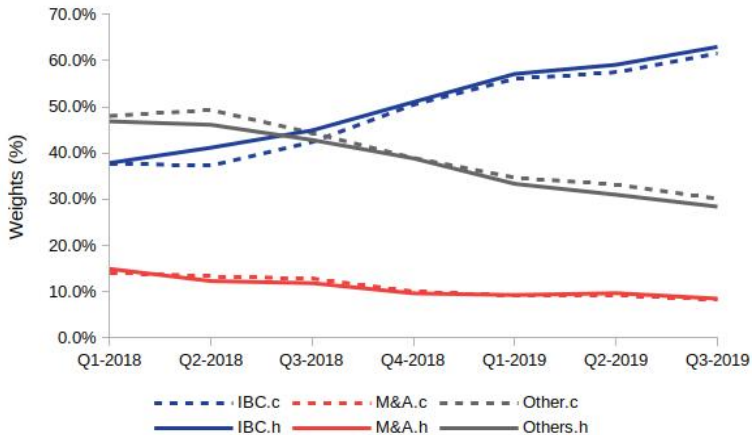
A look at the dataset

Aggregate-level case-weights

Case-type	Weight (as a % of total)		
	2018	2019	Total
IBC	45.4	58.7	51.7
M&A	11.5	9.4	10.5
Others	42.6	31.8	37.5
Unclear	0.4	0.2	0.3
Total	100	100	100

Table: Case-weights by type of matter

Quarterly time-series of weights and cases



Case-weights and ordering of matters

New Delhi

	Top 10	Top 20	Entire causelist
Court Room I (Principal Bench)			
IBC	72.9	71	67.4
M&A	16	15.9	15.5
Others	10.7	12.6	16.6
Court Room II			
IBC	38.3	37.6	45.2
M&A	5.7	5.4	2.2
Others	56	57	52.6
Court Room III			
IBC	34.8	33.4	40.1
M&A	17.3	17.2	9
Others	47.9	49.5	50.9
Court Room IV			
IBC	66.2	62	50.2
M&A	0	0	0
Others	33.8	38	49.8

Table: Case-weights and ordering of matters

Case-weights and ordering of matters

Mumbai

	Top 10	Top 20	Entire causelist
Court Room I			
IBC	76.2	74.9	54.6
M&A	3.5	4.7	11.8
Others	20.3	20.4	33.5
Court Room II			
IBC	83	88.4	58.8
M&A	6	9	10.1
Others	5.5	8	30.9
Court Room III			
IBC	75.1	78.9	59.9
M&A	0.5	1.9	10.7
Others	24.4	19.2	29.4

Table: Case-weights and ordering of matters

The share of benches in the workload

Bench	% share of total hearings
New Delhi	36.28
Mumbai	28.89
Kolkata	14.44
Bengaluru	9.63
Chandigarh	4.48

Table: No. of days and hearings observed

Case-type wise statistics

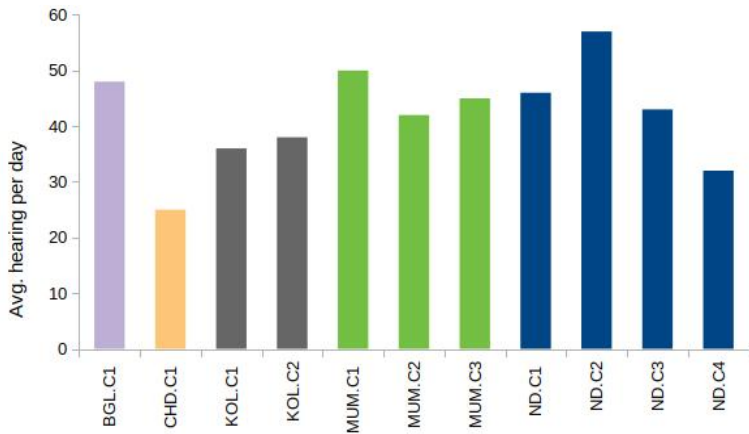
	Min.	Max.	Mean	Median
IBC	1	49	3.8	2
M&A	1	26	3.2	2
Others	1	42	1	3

Table: No. of hearings for different case-types

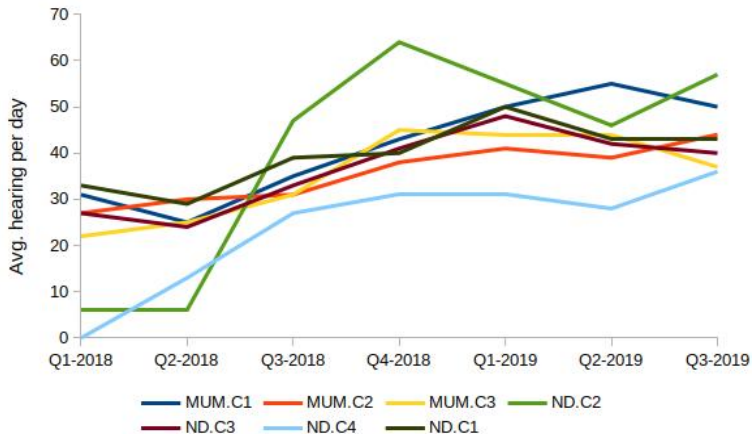
No. of hearings	IBC	M&A	Others
More than 30	0.2	0	0
21 to 30	0.8	0.2	0.2
11 to 20	5.4	3	5.5
4 to 10	30.6	27.6	35.9
Upto 4	63	69.3	58.5

Table: Distribution of cases by % of hearings

Average number of hearings per day



General workload taken up



Limitations of this data

- ▶ Causelist data can be a proxy for amount of time spent
- ▶ Some judgement required:
 - ▶ In assigning matter category
 - ▶ In assigning post-hearing status.

Key takeaways

1. Ordering of cases in the causelist matters.
2. At an aggregate level, IBC get higher weight in cause-list priority.
3. M&A and other Companies Act matters get a relatively lower priority.
4. Weightage has been increasing in proportion to number of different kinds of matters.
5. In absolute terms as well, an upward trend in number of hearings scheduled.






Suggestions and further work

- ▶ Cause-list data allows us to understand a number for the current capacity of the NCLT.
- ▶ Capacity has three dimensions: mix of cases, judicial throughput and number of benches.
- ▶ From these, we can attempt the following alternative choices if there is an increase in workload:
 - ▶ how many new judges should be put in place to keep the system delivering at the same capacity.

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 - ▶ how many new judges should be put in place to keep the system delivering at the same capacity.
 - ▶ How can we empower or strengthen judicial throughput through better court administration, support systems for the judges to keep the system delivering at the same capacity.

Questions/ comments
www.ifrogs.org

-  Chandra, Aparna, William Hubbard, and Sital Kalantry (2018). *The Supreme Court of India: An Empirical Overview of the Institution*. Tech. rep. University of Chicago.
-  Damle, Devendra and Prasanth Regy (2017). “Does the NCLT Have Enough Judges?” In: *LEAP blog*. URL: <https://blog.theleapjournal.org/2017/04/does-nclt-have-enough-judges.html>.
-  Datta, Pratik, Surya Prakash B.S., and Renuka Sane (2017). “Understanding Judicial Delay at the Income Tax Appellate Tribunal in India”. In: *NIPFP Working Paper 208*. URL: https://macrofinance.nipfp.org.in/releases/DattaPrakashSane2017_UJDIT.html.
-  Hemrajani, Rahul and Himanshu Agarwal (2019). “A temporal analysis of the Supreme Court of India workload”. In: *Indian Law Review*. URL: <https://www.tandfonline.com/doi/pdf/10.1080/24730580.2019.1636751?needAccess=true>.
-  Kaul, Arunav, Ahmed Pathan, and Harish Narasappa (2018). “Deconstructing Delay: Analyses of Data from High Courts

and Subordinate Courts”. In: *Approaches to Justice in India*.
Ed. by Shruti Vidyasagar, Harish Narasappa, and
Ramya Sridhar Tirumalai. Lucknow: Eastern Book Publishing
Pvt. Ltd. Chap. 8.



Robinson, Nick (2013). “A quantitative analysis of the Indian
Supreme Court’s workload”. In: *JELS*.