The Currency of Delay: A Political Economy Analysis of Judicial Incentives in Indian High Courts

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ABSTRACT

In 2023, the Delhi High Court disposed of more than 87,000 cases, a record-breaking figure. Yet its backlog grew. Across India, governments have doubled judicial strength in some states, built state-of-the-art e-courts, and implemented case management software. Still, over 5.1 crore cases remain pending. The standard explanation treats this as a resource problem: too few judges chasing too many litigants. But what if the real answer is more uncomfortable? What if delay is not a bug in the system, but a feature, a currency that judges spend, save, and strategically deploy? This paper advances a heretical proposition: that for the Indian High Court judge, disposing of cases is not always the rational choice. In a system where the government is simultaneously the largest litigant and the arbiter of judicial careers, where a controversial judgment can trigger a punitive transfer while a "safe" adjournment goes unnoticed, and where forty dismissals at the admission stage count the same as one laboriously reasoned final verdict, delay emerges as the equilibrium strategy. The crisis of pending cases is not an accident of overload; it is the predictable outcome of incentives working exactly as designed.

Employing a political economy framework, we model the High Court judge as a strategic actor maximizing a utility function comprised of reputation (professional prestige), leisure (workload aversion), promotion prospects (chances of elevation or post-retirement appointment), and the cost of dissent (risk of punitive transfer or career backlash). The paper proposes an empirical model to test whether judicial delays correlate with political cycles and the identity of the litigant (State vs. Citizen), suggesting that "strategic delay" is a rational response to the institutional constraints of the Indian judiciary.

Keywords*: Judicial Incentives, Political Economy of Courts, Strategic Delay, Indian High Courts, Judicial Behaviour, Institutional Design and Adjudication.*

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1. INTRODUCTION

The Indian judiciary is often described as operating in a state of perpetual crisis. The statistics are numbing over 5.1 crore cases pending across the hierarchy, with the High Courts, the designated Constitutional courts for the states, choked by a backlog that defies arithmetic solution. Judicial discourse and Government policy have largely treated this "arrears crisis" as a resource problem, too few judges and courts to handle the volume of litigation (Yasir, 2024). The symptom is captured in a stark statistic, India has only about 21 judges per million people, far below the 50 judges per million recommended by the Law Commission (Kumar & Dutt, 2021). The diagnosis is invariably Malthusian (Abramitzky & Braggion, 2003): the population of litigants is growing exponentially, while the population of judges grows arithmetically. Consequently, the prescriptions are technocratic: appoint more judges, digitise registries, increase judicial budget, and modernise court infrastructure (Dutta & Rai, 2021).

Yet, this administrative lens fails to explain a persistent anomaly: why does productivity often stagnate even when vacancies are filled (Kumar & Dutt, 2021)? Why do "sensitive" constitutional challenges languish for years while commercial matters are expedited? To answer this, we must pivot from an administrative viewpoint to a Political Economy view. We must stop viewing the court merely as a dispenser of justice and start viewing it as a marketplace of incentives, constraints, and strategic interactions.

The prevailing discourse on the Indian "arrears crisis" has historically been dominated by a Malthusian diagnosis: an exponential growth in litigation met with an arithmetic increase in judicial capacity. This perspective, supported by the Law Commission's recommendation of increasing judge strength to 50 per million people, treats the judiciary as a production line where delay is simply a byproduct of an underfunded system. However, modern empirical assessments suggest that simply increasing judge staffing levels, while potentially reducing backlog in front-line district courts (Rao, 2024), may not be a panacea for the systemic inefficiencies in High Courts. Recent scholarship highlights that technocratic solutions—such as digitizing registries and increasing budgets—often result in stagnating productivity because they fail to address the fundamental problem of misaligned incentives (Aithala & Suresh, 2025).

Recent scholarship in law and economics has pivoted toward the "Strategic Judge" model to explain this anomaly. Building on the seminal work of Richard Posner, judges are increasingly modeled as rational actors maximizing a multi-variable utility function rather than mere dispensers

of justice (Berti & Tarabout, 2018). In the Indian context, this utility is shaped by unique institutional contingencies, including the prospect of elevation to the Supreme Court and the risk of punitive transfers. This creates a "Quantity-Quality" trade-off: as performance metrics prioritize raw disposal counts over the substantive weight of cases, judges are incentivized to substitute "Quality" (labor-intensive final hearings) for "Quantity" (brief admission-stage dismissals) to satisfy administrative requirements (Aithala et al., 2024).

Furthermore, the institutional design of the Indian judiciary introduces significant "Principal-Agent" problems, particularly through the "Master of the Roster" system. The Chief Justice's absolute power to allocate cases is often seen as a source of authority that lacks sufficient structural or legal constraints (Chandra et al., 2025). This unchecked discretion allows for "strategic allocation," where sensitive matters can be directed toward specific benches, potentially serving as a tool to manage the court's political exposure or public image (Sethi, 2025). When combined with the "State as a predatory litigant"—where the government files meritless appeals to avoid bureaucratic audit objections—the court becomes a "Tragedy of the Commons" where strategic delay becomes the most rational equilibrium for a judge facing an insurmountable and politically charged docket (Datta, 2025).

This paper interrogates the "Political Economy of Judicial Delivery" by focusing on the behaviour of the agents (judges) and the rules of the game (institutional design). It hypothesises that delay in the Indian High Courts is not always an accident of workload; in specific contexts, it is a currency, i.e., a tool that can be transacted or deployed for strategic ends (Spurrett, 2014). Delay can be used to manage workload pressure, to signal compliance to the executive without formally ruling in their favour (the "pocket veto" by inaction), or to prioritise "visible" work (admission hearings) over "invisible" work (final hearings for disposal).

By integrating the pioneering work of Richard Posner on judicial utility with the specific institutional realities of the Indian Constitution, transfer threats, the opacity of the Collegium, the "Master of the Roster" system, and a political environment where nearly 50% of litigation is state-sponsored, this paper offers a novel theoretical framework. The paper argues that the Indian High Court judge operates under a unique set of incentives where disposal is not always the utility-maximising choice.

2. THE THEORETICAL FRAMEWORK: MODELING THE 'STRATEGIC JUDGE'

To understand judicial output, we must first model the judge as a rational actor. Unlike legislators who maximize votes, or firms that maximize profit, what does a judge maximize?

a. The Judicial Utility Function

In the Anglo-American tradition, judges are often modeled as maximizing "prestige" or "ideological satisfaction" (Songer, 2012). Public choice and economic analyses, however, treat judges as individuals with utility functions like any other person. Judges derive satisfaction (or disutility) from various aspects of their job. In Posner's seminal account (Posner, 1993), judges are "ordinary people responding rationally to ordinary incentives," and their behavior can be explained by an economic-style utility function (Entermann, 1998). Over time, scholars have refined this model to include factors like effort aversion (preference for leisure), reputation or prestige among peers, ambition for higher office, enjoyment of the judicial work itself, and avoidance of criticism or sanction (Jubelirer, 2013). However, an Indian High Court judge faces a more precarious existence. Indian High Court judges have tenured appointments until retirement, but they face two (or three, if you factor in the differential age of retirement for High Court judges at 63, and Supreme Court judges at 65) significant career contingencies: the prospect of Elevation (promotion to the Supreme Court or appointment to a prestigious post-retirement position) and the risk of Transfer (being shifted to another High Court outside of their Home state, often seen as a punitive measure if done without consent). These contingencies make the Indian judge's utility calculation more complex than that of, say, a U.S. federal judge with life tenure and no higher court ambitions.

We can express the utility function of a representative High Court judge *j* as:

$U(j)= \alpha(R)+ \beta(L) + \gamma(P) – (\delta)C$

Where:

- **R (Reputation)**: the professional reputation or esteem a judge gains, whether through authoring significant judgments, maintaining high disposal rates (efficiency), or being cited by other courts. Reputation is valuable to judges as much as it is to academics or other professionals; it can satisfy personal ego, advance prospects of elevation, and confer a lasting legacy. A judge's reputation might be enhanced by bold decisions in important cases or by demonstrating administrative acumen in reducing backlog. The underlying

assumption is $\alpha > 0$, since judges generally value their standing in the legal community and with the public while writing judgments.

- **L (Leisure)**: the preference for minimising work-related effort. Judges, like anyone in a job, value leisure time and a manageable workload. Importantly, in the judicial context, salary is fixed and does not increase with output, and removal is nearly impossible except in extreme cases (through an impeachment, which has never happened in India; Justice Yashwant Verma's case is sub-judice as we speak). Thus, the opportunity cost of exerting extra effort is largely borne by the judge with little direct pecuniary reward. In our utility function, L captures the disutility of labor, i.e., long hours, heavy reading, writing detailed judgments, and thus $\beta > 0$ (more leisure contributes positively to utility). This term implies effort aversion: all else equal, a judge might prefer to dispose of cases in a way that conserves effort (e.g. delivering brief orders or seeking shortcuts) rather than through labor-intensive processes
- **P (Promotion/Elevation)**: the likelihood of elevation to the Supreme Court or appointment to lucrative commissions and tribunals after retirement. Ambition can be a powerful motivator: in the Indian system, approximately 30-35 High Court judges (out of several hundred) get elevated to the Supreme Court in their careers, often those perceived as high-performing or in the good graces of the collegium. Moreover, post-retirement opportunities (heading tribunals, commissions, governorships, etc.) are plentiful; by one estimate, 70% of retiring Supreme Court judges have taken government-appointed posts (Aney et al., 2021), Judges know that favorable reputation and avoiding clashes with the executive or collegium may improve their promotion prospects. Thus, P is generally valued positively ($\gamma > 0$). Notably, while U.S. judges might not emphasize promotion (since few positions beyond the circuit bench exist), Indian High Court judges often have a careerist orientation much like the "judge as careerist" model Epstein, Landes & Posner (Epstein et al., 2013) describe, seeking advancement to higher courts.
- **C (Cost of Dissent)**: the expected cost or negative repercussions of rulings that displease powerful actors (often the government or one's own judicial superiors). In India's judiciary, this primarily refers to the risk of punitive transfer or stalled promotion if a High Court judge earns a reputation for being "uncooperative" or too independent in politically sensitive cases. Historically, transfers have been used to penalise or sideline inconvenient

judges, famously, during the Emergency (1975-77), 16 High Court judges were abruptly transferred, reportedly as punishment for decisions against the government (Venkatesan, 2025). Even in recent times, there have been instances raising eyebrows: e.g. Justice S. Muralidhar of Delhi HC was transferred to Punjab & Haryana HC days after reprimanding the police during the 2020 Delhi riots, Justice Jayant Patel of Karnataka HC, who ordered a CBI probe into a politically sensitive case, was moved to Allahabad HC, prompting his resignation. Such episodes reinforce a perception among judges that taking on the executive carries career risks. The Chief Justice of India (or of the High Court), who wields the "Master of the Roster" power and influences collegium decisions (Supreme Court Advocates on Record Ass'n v. Union of India, 1993), can affect a puisne judge's future. The cost term **C** thus encompasses fear of transfer, non-elevation, or loss of administrative favour. Rational judges may seek to minimise this cost by avoiding direct confrontation: rather than issuing a bold judgment against the government and risking retaliation, a judge may delay the case (adjourn repeatedly, not deliver a final verdict), effectively a way to 'escape the dilemma' by neither ruling for nor against. In the utility function, **C** enters with a negative sign (since it's a cost), so increasing the risk of incurring displeasure lowers utility. Hence, a larger **δ** means the judge is more risk-averse to displeasing powers thy be.

- α, β, γ, δ are weights assigned by the individual judge to each component. Each judge will weigh these components differently. A judge with strong idealism or integrity might set δ (fear of consequences) near zero, not letting it affect decisions; another with ambition may put heavy weight on P; a complacent judge nearing retirement might prioritize L (a quiet life) over R (making a mark). Crucially, the institutional context influences these weights. In an environment where post-retirement posts are abundant and politicized, **γ (P)** looms large as a carrot. Where transfers are opaque and occasionally punitive, **δ (C)** becomes a real concern. Thus, the hypotheses of the paper that in Indian High Courts, disposal of cases (efficiency) is not always the judge's top priority, because being too efficient or assertive can sometimes undermine other utilities like leisure or avoiding controversy. This stands in contrast to the public expectation that judges single-mindedly pursue timely justice. Instead, judges balance competing utilities, which can lead to suboptimal outcomes for litigants (like delays) that are nevertheless privately optimal for the judge.

b. The Economics of "Admission" vs. "Final Hearing"

A striking manifestation of judicial incentive effects is the well-documented imbalance between how courts handle preliminary hearings (admissions) and final merits hearings. (National Judicial Data Grid, 2026). In High Courts, most cases begin with an admission or motion stage where the judge decides if the matter warrants a full hearing. These are typically brief proceedings, a few minutes per case (sometimes even seconds), often resulting in interim orders or notices. In contrast, a final hearing on the merits can consume days or weeks of courtroom time and require a lengthy reserved judgment. The institutional metric used for judicial performance in India has historically been the number of cases disposed, not the weight or complexity of cases (Department of Justice & NLUO, 2018). Every case, whether dismissed at admission or decided after trial, counts as a single disposal. This creates a perverse incentive: a judge can maximise disposals (and thus appear "productive") by focusing on admissions rather than final hearings.

From a Game Theory perspective, the Admission stage offers a high payoff for low effort. It is not uncommon for a High Court judge to list 40–50 (some High Courts are notorious for listing cases numbering in 100s) admission matters in a day's docket, disposing of many by dismissing them or granting interim relief. Each such action adds to the statistics of disposals, "gratifying the Chief Justice and the Registry" that measure output in quantitative terms. In contrast, a Final Hearing requires reading bulky evidence, weeks of arguments, and writing a detailed judgment, perhaps months of work, all for "one" disposal unit. In Posner's terms, judges may behave as "lazy maximisers", finding ways to appear busy without doing the hardest work (Landes & Posner, 1975).

If the institutional metric for performance is purely quantitative (number of disposals), the rational judge will substitute Quality (Final Hearings) for Quantity (Admissions). This leads to the "interim order trap," where courts readily grant stays (preserving the status quo) to clear the daily board, pushing the substantive resolution of the dispute years into the future (Asian Resurfacing v. C.B.I., 2018; Imtiyaz Ahmad v. State of U.P., 2017).

Over time, the case languishes in the system. As a consequence, final judgments may come so late that they are effectively meaningless: a recent commentary (Gupta & Bansal, 2022) noted that courts issue interim orders that remain in effect for so long that by the time a contrary final judgment comes, it has little practical value. The metric problem is key: if judges are evaluated (formally or informally) on numbers, they will maximise numbers. Indeed, the Indian judiciary's

own annual reports historically emphasised disposals and pendency figures. Scholars have warned of this exact issue: when incentives are misaligned and focus only on quantitative outputs, judges may engage in "gaming" behaviour, disposing of many easy cases while procrastinating on hard ones. In our utility terms, pursuing *R* (reputation for efficiency) via raw counts and preserving *L* (leisure) both push towards heavy admission disposals and light final decision-making.

The interim order trap also serves as a shield against reversal or criticism. An interim order is by nature temporary; it doesn't create a precedent or invite as much scrutiny as a final judgment on merits. Judges know that a poorly reasoned final judgment may be overturned on appeal or draw criticism, harming *R* (reputation). By contrast, no one appeals an interim adjournment, and interim orders (except in rare high-profile cases) don't usually invite academic critique. Thus, a judge concerned with avoiding potential criticism (a component of C) has an incentive to defer the moment of final decision. Posner observed that judges "enjoy hearing cases and making decisions" in the sense of the power it gives (akin to spectators enjoying a drama), but "they do not enjoy writing opinions", especially knowing that a written judgment exposes them to critique. (Posner, 2008, pp. 174-176) This rings true in our context, a detailed judgment is more work and more risk, whereas an interim order or endless hearing is less risky and can even be enjoyable as an exercise of power without final accountability.

Empirically, one could measure this behaviour by looking at the ratio of interim orders to final judgments per judge, or the average age of pending cases. Data indicate a huge portion of cases pending over 10 years in High Courts (Sinha, 2019), symptomatic of the tendency to grant stays and then let matters lie. This is not simply laziness; it is rational inertia given the incentives.

c. The Political Business Cycle of the Judiciary

Judicial behaviour does not occur in a political vacuum. Judges, especially in higher courts, are aware of the political climate and may adjust their decisions in anticipation of or reaction to political events (Cakir, 2018). The paper hypothesizes that High Court assertiveness and speed of decision-making follow a political cycle, analogous to how policymakers alter decisions around elections (the classic "political business cycle" in economics). In particular, consider the tenure of an elected government in a state or at the Centre and its phases: early (honeymoon), mid-term, and late (approaching next election). A rational judge, concerned with both promotion prospects (P) and avoiding adverse consequences (C), will note the incumbent government's strength and the likelihood of its continuation in power. The hypothesis is that judicial assertiveness follows a U-

shaped curve relative to the government's tenure.

1. **Early Tenure (Honeymoon Phase):** Right after an election, when a government is freshly in power (especially if with a strong mandate), the judiciary may exhibit high deference to the executive. This could translate into rulings favoring the government, or more subtly, granting the government more leeway by delaying decisions that could embarrass it. In our utility framework, when the incumbent is strong and expected to remain so, the Cost of Dissent (C) is high, a judge who rules against a powerful government might fear real repercussions (transfer, stalled career). Moreover, early in the term, there is no "next regime" to curry favour with, so the upside of defying the government is minimal. Thus, at Time 0 of a political cycle, judges have incentives to either align with or at least not antagonise the executive. Empirical studies in comparative politics support this idea: for example, in authoritarian Argentina, judges initially aligned with the regime to avoid punishment (Helmke, 2002). In democratic India, overt punishment is rarer but as noted, mechanisms like transfer exist.
2. **Mid-Tenure:** As time passes, the government's invincibility might wane, or the immediate political pressure is less acute. Our hypothesis proposes a more balanced judicial behaviour in the mid-term. Here, judges might decide cases on merits a bit more, being neither too deferential nor too oppositional, call it a normal period of jurisprudence. If a government is mid-term and still appears likely to be re-elected, judges may continue caution, but generally mid-tenure is when courts globally have sometimes asserted themselves (perhaps because any backlash might fade by next election, and there's some distance from the last appointment or transfer round). We characterise this stage as one of "balanced scrutiny", where neither incentive to defer nor to resist is dominant (Flinders, 2001; Burbank, 2009).
3. **Late Tenure (Election Mode):** As the next election approaches, two scenarios arise: (a) The incumbent government appears weak or likely to lose; (b) The incumbent seems strong or likely to return. If the incumbent seems likely to be voted out, judges have an incentive to distance themselves from that regime and demonstrate independence, effectively to signal to the potential incoming power that they were not stooges. This is akin to what political scientists call "strategic defection": judges start ruling against the outgoing government to ingratiate themselves with the next one (Cakir, 2018). In India, while High Court judges are not openly partisan, we might expect a spate of activist or assertive

judgments in the twilight of a weak regime – for instance, quashing arbitrary actions or pushing back on executive policy, thus bolstering the judge's reputation (*R*) for independence just in time for a new government to notice. Conversely, if the incumbent is likely to return to power (or where the election is very tight and the judge prefers not to gamble wrongly), the safest course might be to avoid deciding highly sensitive cases until after the election. In our terms, when the ruling party is strong, the *Cost of Dissent C* remains high, so a judge might reason: better not to issue a verdict that could anger the powers if they are coming back. Empirically, observers have noted that courts sometimes delay hearings or judgments on politically charged matters around election years. For example, in 2019, the Supreme Court of India held off urgent hearings on certain controversial issues (like the electoral bonds case) until after the general elections, effectively putting them on the back-burner during the campaign (BBC, 2023).

Therefore, our theoretical model views the High Court judge as a strategic utility-maximizer facing multiple objectives and constraints. Delay of cases emerges as a recurring strategy that can serve various ends: conserving effort, avoiding negative repercussions, and timing decisions advantageously.

3. EMPIRICAL STRATEGY AND MODEL SPECIFICATION

To test the theoretical propositions above, this paper proposes a mixed-methods approach, combining panel data regression with game-theoretic modelling. The goal is to detect patterns consistent with "strategic delay", for instance, whether cases involving the government indeed take longer (especially around election times), or whether judges facing career risks behave differently. The paper also considers how to measure the impact of incentives like transfer threats quantitatively.

a. The Regression Model: Determinants of Delay

As a first step, we specify a regression model to identify factors associated with longer case durations in the High Courts. Let the dependent variable **Delay (D)** represent the time (in days, logged to reduce skewness) from filing to disposal of case ***i*** that is disposed of in year ***t***. Drawing from our theory, we include explanatory variables capturing judicial capacity, political context, and litigant identity: The baseline econometric specification is:

$$\text{Log}\,(\text{Delay}_{it}) = \beta_0 + \beta_1\,\text{JudgeStr}_{st} + \beta_2\,\text{GovLit}_i + \beta_3\,\text{Election}_t + \beta_4\,(\text{GovLit}_i \times \text{Election}_t) + X_{it}\,\beta + \epsilon_{it}.$$

Where:

- **Log (Delay$_{it}$)** : The log of days taken from filing to disposal for the case.
- **JudgeStr$_{st}$:** the judge strength or capacity in the state's High Court at time *t*, measured inversely by the vacancy rate (i.e., positions vacant as a percentage of sanctioned strength). This controls for the standard resource hypothesis: more judges per caseload should reduce delay. We expect $\beta_1 < 0$, meaning the higher the filled judge strength, the shorter the delay (conversely, more vacancies, i.e., fewer judges, lead to longer delays). This is the conventional assumption in policy discussions, although one of our contentions is that simply adding judges may not solve delays if incentives aren't fixed. Still, it's important to account for capacity.
- **GovLit$_i$** : an indicator (dummy) for whether the government (state or central) is a litigant in case *i*. This variable is 1 for cases where a government entity is a party. Our hypothesis, based on the "State as predatory litigant" discussion and judges' incentives, is that government-involved cases might experience systematically different treatment. In particular, we suspect Government cases may face longer delays on average, perhaps because judges accord them lower priority or use adjournments more (as deciding such cases can be politically sensitive). The government, being the largest litigant (~50% of pending cases) (Dutta & Rai, 2021), also tends to file numerous appeals even on settled law. If many of those appeals are ultimately dismissed, they might still clog dockets for years. Thus, we expect $\beta_2 > 0$ (cases with GovLit = 1 take longer, ceteris paribus). This can be empirically verified. Notably, if β_2 is significantly positive, it provides evidence that delay is not uniform, it correlates with who the parties are, bolstering the notion of strategic delay or at least differential handling.
- **Election$_t$** : a dummy for whether the year (or period) *t* is an election year. We can define this in India's context either at the central level (e.g. 2014, 2019 general elections) or state level (year of the state assembly election for that High Court's state). Ideally, we incorporate both, since High Court judges might respond more to state political changes (especially in matters involving state governments) but also to major national elections if they aspire to the Supreme Court (since the central government's fate changes). For simplicity, one could start with a parliamentary election year indicator (the Centre's cycle), assuming those are times of heightened political sensitivity nationally. Our interest is in β_3

as it captures whether all cases slow down or speed up during election periods. It could be that courts as a whole slow their pace on controversial matters around elections (hence $\beta_3 > 0$ for delay), or perhaps push to clear certain cases before elections. We hypothesise modest effects unless interacted with GovLit. The more crucial term is the interaction next.

- **$GovLit_i \times Election_t$** : The interaction term, i.e., the interaction between government-involved cases and the election year timing. This term β_4 directly tests our political cycle hypothesis: do cases involving the government experience extra delay during election times? A significantly positive β_4 would mean that, after controlling for baseline differences, a government case filed or pending in an election year takes longer to dispose than a similar private case in an election year or a government case in a non-election year. This would be strong evidence of strategic delay, consistent with judges holding back decisions in government matters until the election uncertainty passes (when incumbents are strong), or perhaps an uptick of caution generally. If, conversely, β_4 were zero or negative, it might indicate no special delay (or even faster disposal of government cases during elections, which could hint at courts trying to showcase independence at that time). However, our expectation, drawn from qualitative observation, is $\beta_4 > 0$. For example, consider a High Court hearing a sensitive case on a major policy; if an election is looming and the judges fear either side effects or want to wait for the next government, they might continuously adjourn it, and the data would show that the case is dragging longer than usual.

We would control for other factors via $\mathbf{X_{it}}$, a vector of controls. This could include case-type fixed effects (e.g. criminal vs civil vs writ; some types inherently take longer, like civil suits with evidence vs criminal appeals, etc.), court fixed effects (to capture differences in efficiency culture across High Courts), and possibly time trends. We might also include a variable for case complexity if proxyable (e.g. number of litigants, or whether the case is a constitutional bench matter).

b. Modelling the "Transfer Threat"

To empirically capture the "independence" constraint, we can utilize the "Transfer Probability" index. The idea that judges moderate their decisions due to fear of being transferred (or otherwise penalised). How can we detect this? One approach is to construct a proxy for judicial independence or dissent in decision-making and see if it correlates with transfer frequency (Chandrachud, 2014).

We define a simplistic measure: for each judge *j*, let's say we measure the proportion of their decisions or orders that went against the government's interest (in a defined set of sensitive cases). For example, one might look at all interim orders on writ petitions against the government, did the judge grant stays against government action frequently, or did they routinely side with the government? Call this measure $Dissent_j$ (though "dissent" is colloquial here for rulings not in the executive's favour). Also consider $Tenure_j$, perhaps years of experience or whether the judge is close to retirement. We then model the probability of a transfer T_j as:

$T_j = f(Dissent_j, Tenure_j)$

If the data shows that judges with higher rates of "anti-government" interim orders have a statistically higher incidence of transfer (controlling for administrative reasons), the term **δ (C)** in our utility function is validated. This creates a "chilling effect," where the rational response for a risk-averse judge is not to dismiss the case, but to adjourn it, using delay as a shield against retribution.

While the data on transfers and individual judge decisions might be hard to compile, anecdotal evidence, as discussed, suggests some pattern: e.g., Justice K. in High Court X was known for ruling against the state government and was suddenly transferred to a smaller High Court with no explanation, which fits (Bhatia, 2019) (examples of Justice Akil Quereshi and Justice Muralidhar from recent times) (Supreme Court Observer, 2022; Bar & Bench, 2023).

c. Limitations of the Data

It must be acknowledged that empirical analysis of judicial behaviour in India faces significant data limitations. The National Judicial Data Grid (NJDG), while revolutionary in opening up court statistics, does not classify cases by "political sensitivity" or by litigant identity in an easily extractable way. One often has to rely on proxies. For instance, one proxy for politically sensitive cases is to look at Article 226 (India Const. art. 226) writ petitions involving government authorities or major statutes (since constitutional or administrative challenges often take this form). Another is to identify PILs (public interest litigations) from titles – though NJDG doesn't label PIL vs others. We may need to merge multiple sources: e.g., cause lists or judgments can be parsed to see if the state is a party. Furthermore, NJDG provides aggregate pendency counts but not always complete life-cycle data for each case. For rigorous analysis, a researcher might need to manually collect data on sample cases or analyse the collegium recommendation reasoning whenever they are released by the Supreme Court (Supreme Court of India, 2026; BBC, 2023).

Another limitation is establishing causality. If we find a correlation between election years and delays, is it due to judges' strategic behaviour or due to, lawyers seeking adjournments more during elections (because some are busy in politics) or governments requesting delays? We would need to rule out alternative explanations. Similarly, if government cases take longer, part of that could be because government litigation often involves more paperwork, or deliberate delay tactics by government lawyers (the state might itself delay proceedings, independent of judges, e.g., counsel asking for more time). In reality, the blame for delay is shared: the bureaucratic culture of appeals means many frivolous appeals clog courts, and government counsels often seek repeated adjournments because the bureaucracy hasn't sent necessary documents or clearances on time. Our focus is on judicial incentives, but the empirical patterns we observe might also reflect these executive-side issues. Distinguishing judge-driven delay from party-driven delay is challenging. However, one might argue that judges have ample tools to curtail party-driven delay (like refusing adjournments, imposing costs, or mandating personal appearances of the bureaucrats), so if those delays persist, it may indicate judicial acquiescence.

In our analyses, we will have to interpret findings in light of these nuances. If, for example, we see a big jump in hazard ratio (Part V) for government cases around elections, we'll argue it's consistent with judicial strategy, though an alternative story could be that governments deliberately drag their feet on certain cases until after elections (requesting the court to defer, etc.). In many scenarios, those alternatives blend; judges might be happy to grant the deferral the government wants.

4. INSTITUTIONAL DESIGN: THE ARCHITECTURE OF INEFFICIENCY

While the utility function of the individual judge explains why they might prefer delay, the institutional design of the Indian High Courts explains how delay is manufactured and sustained. We identify two specific features of the Indian judicial architecture that act as force multipliers for pendency: the "Master of the Roster" system and the "State as Litigant" phenomenon. These structural factors help translate individual incentive problems into systemic backlog and delay.

a. The 'Master of the Roster' and Principal-Agent Problems

In Indian jurisprudence, the Chief Justice of the High Court is "Master of the Roster" (State of Rajasthan v. Prakash Chand, 1998). This is not merely a scheduling role; it is a substantive power to constitute benches and allocate specific subject matters to specific judges. In practical terms,

the Chief Justice decides which judge hears what: for example, Judge X may be assigned to tax cases, Judge Y to bail matters, Judge Z to all PILs, etc. This authority is virtually unchecked, it is an accepted convention (affirmed by the Supreme Court) that the Chief Justice's roster-setting power is exclusive and supreme (Campaign for Judicial Accountability & Reforms v. Union of India, 2018). The rationale is administrative need and efficiency. However, from a political economy perspective, this creates a unique Principal-Agent problem.

- The Principal: The Chief Justice (CJ) of the High Court, who has goals that may include managing the court's workload, maintaining the court's public image, and in some cases, currying favour with political authorities or the Supreme Court collegium. The CJ also might have their own utility function, valuing perhaps a promotion to the Supreme Court or a post-retirement post.
- The Agent: The Puisne Judge, who actually hears and decides the cases assigned to them. They have individual incentives as discussed earlier. The CJ, in assigning work, is like a manager distributing tasks to subordinates.

This arrangement can be efficient, the CJ can allocate cases to judges best suited for certain matters (expertise matching) and balance workload. But it also introduces agency costs and opportunities for strategic behaviour. Unlike the US Supreme Court, where all judges sit en banc (together) on critical cases, Indian High Courts sit in varying combinations (Single Judge or Division Bench). The CJ's power to assign a "politically reliable" judge to a sensitive roster (e.g., cases challenging government tenders) or a "slow" judge to a backlog-heavy roster introduces allocation bias. If a Chief Justice wants a particular outcome or delay, he or she can pick a judge known to be sympathetic or known to be very slow.

The agency problem here is that the Chief Justice's interests may not align perfectly with the public interest in prompt justice. If the Executive can influence the Chief Justice (perhaps through the promise of a post-retirement Governorship or Commission Chairmanship), the CJ can essentially "pocket veto" a case by assigning it to a bench known for granting adjournments. Even if the puisne judge is upright and fast, the CJ can always reshuffle the roster. In extreme cases, we have seen bench hunting: right before a judgment is about to be delivered that might displease the powerful, the case gets re-assigned to a new bench, restarting the hearing. In economic terms, the Master of Roster system introduces a layer of *moral hazard*. The CJ has wide discretion with little transparency; reasons for roster changes are not published. If a Chief Justice quietly ensures that

"Case A will be heard by Judge B," there is no requirement to explain or justify this allocation. A Chief Justice inclined to delay a politically sensitive matter need not instruct "please delay"; they can simply pick a judge known for backlog or who is amenable to adjournments, and the outcome (delay) will follow "naturally." In effect, the institutional design allows delay to be engineered top-down. The lack of transparency in roster decisions makes this a serious institutional failing from an accountability perspective (Bhatia, 2017). Thus, delay becomes a product of administrative discretion rather than judicial incapacity (Bhatia, 2019).

b. The State as the 'Predatory Litigant'

The Government of India (and state governments) are collectively the single largest litigant in the country, accounting for nearly half of all pending cases (The Print, 2023; Tribune India, 2022). This statistic, alarming as it is, has deeper implications when combined with the incentive structures of bureaucracy. In economic terms, a private litigant will settle a dispute if the expected cost of continuing litigation (C_L) exceeds the expected benefit (the value of judgment × probability of winning). Private parties internalise litigation costs; protracted delay hurts them financially, so they have some incentive to resolve disputes efficiently (or not appeal every single loss).

If, $C_L > P(\text{Win}) \times \text{Amount} \rightarrow$ Settle

However, the State does not behave like a rational private litigant.

The State, however, operates with a soft budget constraint. The decision makers (bureaucrats) authorising the appeal do not pay the legal fees from their own pocket; the Government lawyers, on the other hand, earn their legal fees out of this. Conversely, the bureaucrat faces a high asymmetric risk:

- If they appeal and lose: It is blamed on "the system" or "bad lawyers."
- If they settle or do not appeal**:** They risk a vigilance inquiry or an audit objection for "causing loss to the exchequer."

This asymmetry, appealing is "safe," not appealing is "risky" to one's career, leads to what we term "Bureaucratic Risk Aversion" (Sneha et al., 2021).

This creates an incentive structure where the State appeals every adverse order, regardless of merit. This floods the High Courts with "dead" cases, appeals where the law is settled, but the government refuses to concede. These include, for example, endless service matters where employees win in lower tribunal and the government appeals reflexively, tax cases on settled points, routine tort claims where the state's liability is clear, etc. This crowds out genuine private disputes, artificially

inflating the "Admission" lists and forcing judges to spend valuable hours dismissing frivolous state appeals (Datta, 2016). Empirical studies have noted, for instance, extremely low success rates for government appeals in certain domains (indicating many should not have been filed). One study of income tax litigation found the tax department lost about 70-80% of appeals, suggesting many were unwarranted to begin with (Mohan, 2023).

Now combine this with judges' incentives. Handling these voluminous government appeals provides the fodder for the admission-stage disposal game: a judge can summarily dismiss dozens of hopeless government appeals in a day's motion list, which boosts the numbers (each dismissal is a disposal). In fact, judges often complain (Live Law, 2025) that they spend a disproportionate amount of time just dismissing meritless government cases, an activity that contributes to statistics but not to substantive justice, since those cases shouldn't have been there in the first place. The government's litigation policy (Ministry of Law and Justice, 2010), or lack thereof, effectively externalises the cost of its risk aversion onto the judiciary and private litigants. Every frivolous appeal the state files uses up court time that could have gone to a serious case. It also inflates the backlog artificially. Nearly half the pending cases might be ones in which the government is a party. It is a key part of the political economy of delay, essentially, a supply-driven backlog. Thus, the state's litigation conduct and the judges' incentive to accumulate disposals can feed off each other in an unhealthy symbiosis.

5. ADVANCED EMPIRICAL SPECIFICATION: A DURATION ANALYSIS APPROACH

To robustly test the "Strategic Delay" hypothesis proposed in Section III, a simple OLS regression is insufficient because judicial delay is a "time-to-event" variable. Data on pending cases is often "right-censored" (the case is sub-judice, so the final duration is unknown).

Therefore, to robustly test the "Strategic Delay" hypothesis, we thus propose using a survival analysis framework, specifically the Cox Proportional Hazards Model, to estimate the probability of a case being disposed of at any given time *t*.

a. The Hazard Function

In survival analysis, instead of modelling delay length directly, we model the hazard rate **h(t)**, the instantaneous probability that a case that has lasted until time *t* will be resolved in the next instant, given it's still pending. For our context, define $\mathbf{h_i(t)}$ as the hazard that case *i* gets disposed at time *t* (measured perhaps in months since filing), conditional on it being undecided up to time *t*.

$h_i(t) = h_0(t) \exp(\beta_1 Gov_i + \beta_2 Election_t + \beta_3 (Gov_i \times Election_t) + \gamma Z_i)$

Where:

- $h_0(t)$ is the baseline hazard function (the natural speed of the court) if all covariates are zero. This captures the underlying disposition rate of cases over time, which can vary (for instance, courts might dispose a lot of cases at certain ages, some studies find hazard of resolution may increase after a certain waiting time, or decrease as cases get very old and stuck).
- Gov_i is the Dummy variable (1 if the Government is a party, 0 otherwise). $\boldsymbol{\beta_1}$ would reflect the factor by which the hazard (i.e. speed of disposal) differs for government cases relative to private cases. If, say, $\boldsymbol{\beta_1} = 0.8$, it implies at any given time, a government case is only 0.8 times as likely to be disposed as a similar private case, or put inversely, a 20% reduction in the hazard rate (hence slower resolution).
- $Election_t$ is the time-varying covariate indicating an election year. This variable can change value for a given case as time passes (e.g., a case filed in 2017 will see Election=1 in 2019, then 0 again in 2020, etc., for central elections). $\boldsymbol{\beta_2}$ captures overall shifts in hazard during election periods.. We will see via $\boldsymbol{\beta_3}$ the differential effect.
- $Gov_i \times Election_t$ is the interaction of the dummy variable and the time varying covariate for the election year. $\boldsymbol{\beta_3}$ measures how the hazard for the government cases specifically changes during election times.
- Z_i is the Vector of controls (Bench strength, Case Type, Writ vs. Appeal).

b. Interpretation of Coefficients

The coefficient of interest is the interaction term $\boldsymbol{\beta_3}$.

- **Hazard Ratio < 1:** Indicates that the variable reduces the probability of disposal (i.e., increases delay).
- **Hypothesis:** We expect the Hazard Ratio for $Gov_i \times Election_t$ to be statistically significantly less than 1. This would confirm that during election cycles, cases involving the government are less likely to be decided than private cases, controlling for all other factors.

One can also test robustness by including fixed effects for High Courts (some High Courts are more efficient than others, for e.g., data often shows Madras HC disposes faster than, say, Allahabad HC (Sinha, 2019), possibly due to differing processes). Including court dummies would

soak up differences like backlog magnitude or local legal culture, letting βs focus on within-court variation.

c. Robustness Check: The "Retirement Horizon"

We add another dimension to our analysis: the idea that a judge's behavior (and hence case outcomes) may change as they near retirement, especially regarding sensitive matters. Recall our utility function included *P* (post-retirement prospects). A judge about to retire might either hurry to clear work (for legacy or because they finally have nothing to lose) or might become extremely cautious on controversial cases to avoid ending their career with a bang that could jeopardize any last-minute appointments or simply invite backlash in retirement.

We can further refine the model by adding the judge's Remaining Tenure ($T_{\{rem\}}$) as a variable.

$Delay_{\{it\}} = \alpha + \lambda (T_{rem}) + \epsilon_{it}$

To incorporate this, one approach is to include $T_{\{rem\}}$ as a covariate in the hazard model or a separate regression. But $T_{\{rem\}}$ is judge-specific, and cases are assigned to judges. This complicates things because, as judges retire, their pending cases get transferred. Perhaps a simpler approach would be to check how disposal probabilities change for cases that were being handled by judges in their last 6 months. Alternatively, use a two-step approach: first see if judges' output composition changes near retirement, or more granularly, an interaction of GovLit with a near-retirement indicator, to see if government cases indeed are disproportionately adjourned by retiring judges.

If judges are seeking post-retirement jobs, we hypothesize a non-linear relationship.

- **High $T_{\{rem\}}$:** Judges with a long horizon might behave in a more moderated way, they have time to engage with big cases (especially mid-career judges who might aim for elevation, they might actually take on significant cases to build reputation up to a point).
- **Very Low $T_{\{rem\}}$ (< 6 months):** We expect a sharp drop in the disposal of *sensitive* government matters (to avoid controversy before retirement) but a spike in *routine* matters (to boost disposal statistics).

In any event, adding the retirement horizon consideration serves as a robustness check for our political economy thesis: it's another angle of strategic behavior – here, individual career timeline influencing speed on sensitive vs non-sensitive matters. The paper aims to paint a more dynamic empirical picture: one that shows how hazards (or speeds) of case resolution vary systematically with who is involved (government or not), what time it is (election or not), and even which judge

(nearing retirement or not). A convergence of evidence from these analyses would provide a compelling empirical validation for the "Strategic Judge" model proposed, moving the discussion beyond anecdote to measurable patterns.

6. CONCLUSION

The crisis of judicial delays in the Indian Judiciary is not an arithmetic one. The dominant narrative of backlog, that simply hiring more judges, building more courts, or tweaking procedures will eliminate delays, is incomplete and potentially misleading. Through the lens of political economy and rational choice theory, we have shown that delay is often a rational response by judges operating within a system of perverse incentives. In other words, the persistence of long pendency is not just an administrative failure but in part an equilibrium outcome given how judges' career concerns, the institutional structures, and litigant behaviour intersect.

Our "Strategic Judge" model argues that High Court judges maximise a utility function where factors like reputation, leisure, promotion prospects, and avoidance of sanctions all play a role. In many scenarios, delivering speedy justice is not the utility-maximising choice for the judge. We demonstrated several such scenarios: judges may delay final decisions to handle easier interim matters; they may hold back politically sensitive judgments to avoid conflict or time them for a more opportune moment; they may acquiesce as the State floods the docket with appeals, using delay as a buffer against executive displeasure. These behaviours, individually rational under current incentives, aggregate to systemic delay.

The institutional critique highlights how certain design features entrench these incentives. The unchecked Master of the Roster power means a great deal hinges on the Chief Justice's own incentives; a reform-minded CJ could push through backlog clearance, but a self-interested one can tolerate or even encourage delay on select matters for personal or political reasons. The opacity of the Collegium similarly means judges are often guessing what behaviour will please those who decide their promotion, which likely encourages risk-averse and status-quo behaviour . The transfer threat, constitutionally allowed and sometimes misused, hangs like Damocles' sword, reinforcing cautious adjudication in sensitive cases. The State's litigious nature means the courts are mired in an avalanche of cases that arguably do not even belong, diluting the focus and resources from true disputes.

What, then, is to be done? The analysis suggests that unless the incentive structure is altered, simply adding more judges or courtrooms will yield diminishing marginal returns. Indeed, without

incentive reform, increasing capacity could even lead to more filing by the State (faster disposal might encourage more appeals as the opportunity cost drops) or more complacency.

In closing, the paper emphasises the need to move the discourse from "How many judges do we need?" to "What makes judges decide?". The former treats judges as machines where adding more increases output; the latter recognises judges as human actors responding to incentives. By focusing on the latter question, policymakers and court leaders can devise reforms that align judges' incentives with the public interest in swift and fair justice. The analytical clarity provided by the political economy approach helps in pinpointing leverage points for reform that pure resource-based thinking might miss.

In essence, the "arrears problem" of Indian courts is as much about incentive arrears as judge arrears. Addressing it requires not just filling vacancies but filling the gaps in the incentive structure that currently make delay a rational currency in the hands of judges and litigants. Only by re-aligning those incentives towards timely resolution, through institutional, procedural, and cultural changes – can the equilibrium of inefficiency be shifted towards an equilibrium of efficiency and justice. The framework and analysis in this paper aim to contribute to that shift by illuminating the often-unspoken calculus behind the glacial pace of justice, so that reforms can be crafted to change that calculus for the better.

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