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Conceptualising Economics of Justice Delivery – Demand, Supply and Costs

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ABSTRACT

The paper is aimed at conceptualising the functioning of Judicial system in terms of economics. Justice delivery is considered a core State function universally, and a huge amount of government budget goes into it. An economic analysis of the cost of producing justice would help define the efficiency of justice-systems across the globe, and take appropriate measures to improve efficiency and access. The central idea of the paper is to look at "justice" as a good being produced by Courts. The structure of the justice delivery system would be analysed from this market lens and a major part of the paper would focus on discussing and conceptualising the index for computing the cost of per unit of justice which would define an objective efficiency standard. The next part of the paper would focus on computing the cost of justice in the Supreme Court of India based on the data for the year 2009-2010.

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INTRODUCTION

An approximate of 45% of the legal problems people experience remain unsolved ("Paths to Justice" surveys, ABA 1994, Genn & Beinart 1999, Van Velthoven & Ter Voert 2004, Pleasence et al. 2004) Although some of those problems are solved, withdrawn or become less urgent over time, a substantial majority of the interviewed persons report that pursuing the issue would cost too much time, effort, and money, or even that an effective avenue is lacking.

The analysis by the State on the efficiency of delivery of justice has been as dismal as the delivery of the justice itself. In the last couple of decades the law ministry was preoccupied with the efficiency of the judicial system to deliver justice. There have been several efforts by the Law Commission of India to prepare reports and recommendations on the subject but no earlier study has been based on a concrete theoretical base, and therefore has led to no substantial reform.

The paper attempts to map efficiency of the justice sector by conceptualizing cost computations for the court system and its benefits for the citizens.

The first part describes the prevailing literature on this topic. While there have been several studies on the inefficiencies of court system which look at pendency of cases, and court fees, lawyers' costs etc., none of the studies attempts to analyse the production of justice as a whole based on economic concepts and principles.

Part II discusses fundamental question of this study: what is justice? We have dealt with two central questions in the process – 'whether justice is a means to an end?' and 'whether informal sources of dispute resolution could also produce justice?' Finally the part concludes with conceptualizing 'a unit of justice'.

Part III discusses the multifarious dimensions that network in the justice sector market, and make it extremely complex. We explain how the market forces work in the justice sector, and also discuss the spillover effects of the justice delivery mechanism. The two-way interaction in the market and justice sector is often over-looked in most studies and therefore the data produced is not analyzed in a broad spectrum. Several conceptual issues are raised in this section.

Part IV is a case study of the Supreme Court to compute the cost of justice production. Though the computation is based only on State costs, it entails a discussion of the conceptual and empirical difficulties in formulating a mechanism to calculate the costs of producing justice in a particular tier of the Court system.

HISTORY & LITERATURE REVIEW

As elaborately discussed earlier, this study is an endeavour to conceptualize the economics of the production of justice. There has not been any earlier research effort on this particular premise not only in India but even in any other judicial system across the globe. A study by the Tilburg University Research Centre was the closest previous material on this idea of 'justice delivery as a market', but the focus of that paper was quite different, a comparison in the two studies is presented later in the chapter.

This research is aimed at laying a foundation for computing a standard of efficiency of justice delivery.[1] It is most essential to begin with a conceptual clarity by analysing the structure of the justice sector, in order to finally determine the efficiency and inefficiencies of the justice production. So the study begins with the most fundamental question of "what is justice delivery?" here it discusses the nature justice as a good and its characteristics. This is used as a base to conceptualize a unit of justice and it then proceeds to analyse the structure and players of the justice delivery market and the factors that are involved in the production of this good.[2] From this understanding of the justice sector in economic terms it then attempts to theorise the computation of costs involved in litigation, and conduct an empirical study on the costs entailed by the Supreme Court of India to produce a single unit of justice.

Justice delivery has always been considered a core state function and the economic theory of markets does not explain the judiciary in direct terms. Various arguments have been advanced to support this position. The most fundamental argument is that the state trades a group of services, which could be called protection and justice, for revenue. *Since there are economies of scale in providing the services*, total income of the society is higher as a result of an organization specializing in these services than it would be if each individual in the society protected his own property. (Douglass North, 1981, p. 23) Another argument is of intimidation advanced by Buchanan, "when we examine it carefully, anarchy does not seem to be able to set down the ground principle allowing the organization of social order, even if we stay within the boundaries of strictly interpersonal relationships." (James Buchanan, 1975, p. 4) Scholars have also produced highly sophisticated mathematical models arguing the instability or the non-viability of anarchy (Hirschleifer 1995).[3]

It is essential to understand and analyse the structure of the justice sector – the role of State and market in the production of justice, in order to determine the inefficiencies; and suggest different models of production either within the same framework or advocate an alternate framework. Such a theoretical base is very significant as it lays a foundation for the empirical study, and advances an holistic scrutiny of the system.

"Whether Legal Rights and Relationships are Economic Goods" in Shorter Classics of Eugen von Böhm-Bawerk discusses the subject in brief applying the fundamentals of economics to the goals sought from the legal system. And Gael J. Campan provides an extension to this paper and discusses whether Justice qualifies as an *Economic Good* giving a Böhm-Bawerkian perspective. But both the studies define legal rights and relationships only as property rights and enforcement claims, which is a very narrow and constricted understanding of 'justice'. While it brings the issue to the surface it does not lay a concrete foundation in order to conduct an empirical study and determine the inefficiencies in the system. My

[1] Formulating an index and conducting an empirical study is beyond the scope of the current project.
[2] Also the question of whether private market in the sector of justice production would be a more economically efficient system of production is beyond the scope of this paper.
[3] For an exhaustive presentation of these arguments see Landes and Posner (1975, pp. 1–46; 1979, pp. 235–84).

attempt in this paper is to create this missing link by laying a theoretical foundation of the economics involved in the functioning of the justice delivery mechanism.

The research conducted by the Tilberg University envisions the idea of Micro justice[4] which is explained as an approach to tackle the problem of access to justice for those with limited resources. The idea of justice system as a market is used only as an approach to put in place the mechanism of micro justice wherein a complete privatization of the justice sector is recommended to make justice delivery more accessible to the poor. They argue that the procedures of micro justice are on the one hand affordable to users with limited resources, and on the other hand attractive to supply for providers of justice. (Barendrecht, Maurits et al. 2008). The study mentions the concept of 'per unit justice' and 'justice sector as a market' but discusses this only in light of viability and functionality of micro justice.

This study uses the Tilburg research as a starting point, and attempt a detailed analysis of the production of justice in the market system, rather than working with it as an assumption to test other hypothesis.

The research is aimed at providing answers to form a basis for further research on the computing an 'Efficiency standard' of the production of justice. Efficiency of courts has been analysed and studied by a couple of research institutes earlier but without laying down an economic understanding of the topic. The emphasis of these studies is on qualitative data and unscientific assumptions and most importantly it lacks the backing of a concrete economic theory which we have endeavoured to envision.

One such research was directed at producing a handbook for calculating cost of access and quality of justice. (Martin Gramatikov et al. 2010). The study aimed to address questions of accessibility and satisfaction with the procedure and outcome of different paths of justice. This methodology aimed to provide answers to such questions so that citizens using the justice system can voice their needs and providers of justice services can improve their processes. While the handbook provides an elaborative mechanism for computing the cost of access and quality of justice through various paths to justice from the responses of litigants it does not study the economics involved in the justice delivery system which would be a more reliable and precise measure of its inefficiencies.[5]

A Law Commission of India report[6] titled "Cost of Litigation" delved into the various cost variables that burden a litigant in Indian Court system and came up with recommendations to form *gram-nyayalayas* for easier and cheaper access to justice for the poor, set ceilings on lawyers' fees, ameliorate the legal aid program of the courts, and differentiate court-fees for corporate, tax and other high-stakes matters. The major drawback of this study was that it did not base its analysis on statistical findings rather on perceptions and opinions, so computing a figure of cost of justice was not possible. The Report began with high cost of litigation as the assumption and it aimed to formulate a set of recommendations to make litigation more affordable to the common person. The very idea of this project is that no planned reform in improving the efficiency (with least wastage of resources in the wrong direction) is possible without having a clear framework of the justice delivery mechanism and the factors affecting production

[4] Analogy to microfinance and microcredit is drawn to make a case for microjustice.

[5] The handbook as well as other research of TISCO in this area was easily accessible on the internet and the researchers involved were also most cooperative when approached for assistance. <http://www.measuringaccesstojustice.com/>

[6] LCI Report 128, in 1988 under the chairpersonship of former Justice D.A.Desai
The Law Commission of India Report is also easily available on the Law Commission of India web page<LCI website>, but the poor quality of the text makes is quite difficult to read. Also the Law Commission of India does not have any recorded resources or research on which the report is based, so our study did could not rely on any relevant earlier collected statistics.

of justice. And thus it retraces a few steps to work without any assumptions regarding efficiency and costs of the system.

The economic model of litigation is concerned with identifying the circumstances under which a legal dispute will be litigated rather than settled out of court.[7] And there exists no theory on the economic model of production of justice by courts and other mechanisms of dispute resolution. The literature about the supply of legal services mostly regards the market for lawyers as agents for one of the parties, not about the market for mediators, arbitrators, courts, or other neutral institutions. (Hadfield 2000, is an interesting exception) So, we have to explore this novel territory without much guidance and we have endeavoured to limit out curiosity by caution and thoughtful analysis while working on novel un-treaded subjects.

[7] It calculates the rationality in pursuing litigation through various tiers of Courts based on cost-benefit analysis on monitory terms and explains the system of incentives to sue due to different distribution of the costs of litigation. Robert Cooter and Thomas Ulen. Introduction to Law and Economics (3rd ed). , 2000.

JUSTICE

The philosophers, political and legal theorists formulate and advocate a different understanding each, of what is '*just*' and what constitutes '*justice*'. But this debate of what really is *just* is entirely at a jurisprudential level, and we are not much concerned with it.

This study confines its question to understand that connotation of *'justice'* that people seek in order to resolve their disputes, and that which is sought to be provided by the justice delivery mechanisms (which include all the institutions like Courts, Arbitration Tribunals, Negotiation and Mediation Centers). So we have not discussed at length the meaning and import of an action being '*just*' or the elements that would define '*justice*'. Rather our endeavor to comprehend the nature of *justice* as a good is defined by discussing the following questions:

1. Is justice an end in itself, or a means to an end?

2. Can justice be achieved/delivered through informal media also?

Plato in *Republic* argued that justice was an end in itself and advocated the virtue of 'justice for the sake of justice'. But it is important to distinguish that understanding of justice from the justice delivered through dispute resolution and right enforcement mechanism.

Justice in this sense is abstract. It is neither the means as it is not a real tangible good, like say property; nor is it an end in itself like happiness or satisfaction. Happiness, satisfaction, peace are the plausible ends one seeks to achieve from the use of the goods (means) in question. But *justice* is merely a fair allocation of the good or resolution of disputes which helps the parties attain the ends (happiness, satisfaction etc.) from the means (disputed goods like property, professional or personal relationships etc.). And in this sense it is not a means or an end but an essential facilitator, because without the ends being attained the means hold no value.

A similar argument is advanced by Böhm-Bawerk in saying that legal enforcement is only complementary to the effective power of disposal, and merely extends the latter in scope:

> *If legal rights carry economic significance only if and to the extent that they embody physical control, or at least imply a means of acquiring such control, then we are safe in setting down the following conclusions: in the first place: (1) Legitimate power of control, however distinct it may be from ordinary physical control (based on possession or backed by the owner's power of brute strength), needs to be characterized by a quality akin to the power of physical control and indeed, needs, by its nature to be convertible into physical force; and in the second place: (2) This very characteristic (the absence of which reduces all law to impotence, to a desiccated form sans content) constitutes the essential quality which endows legitimate rights with economic value, or, indeed with economic character.* (Böhm-Bawerk 1962, p. 58; emphasis in original)

Both judicial services - dispute resolution and rule creation are more accurately described as intermediate goods (inputs) than as final goods. Dispute resolution is not a good in itself but an input into compliance with socially desired standards of behaviour. Rule creation is not desired in itself either but is a means of particularizing the standards of socially desired behaviour in order to promote

compliance with them. It is the final products as far as the judicial system is concerned but it is an input into the real final product - which is right behaviour. (Landes and Posner, 1978)

While dealing with the second question of whether justice can be achieved/delivered through informal media, it is germane to discuss the concept of legal need. There is little systematic research about the situations in which the need for access to justice is most urgent. (Maurits Barendrecht et al. 2008). Even the concept of a legal need is difficult to define without using words like justice, legal, or rights, which tend to make the definition circular. We may assume, however, that legal needs are something like the needs of a person for protection against the conduct of another person, or more broadly for help with solving a problem in a relationship with another person. (Barendrecht, Maurits et al. 2008) Personal security is important, but also the peaceful settlement of conflicts of interests that may arise between employee and employer, tenant and landlord, or neighbours. This basically includes all the situations where external force is required to bring back the situation to fairness.

This shelter comes from outsiders, and is preferably neutral. It can come from norms and from interventions that structure behaviour. Seen from this angle, it is immediately clear that the shelter provided by formal norms and interventions competes with informal norms and interventions, and also with other tools to protect one-self.

Can we then say that justice is delivered by friends, social groups, counselors and other such informal media also besides the courts, mediators, negotiators and arbitrators? This would imply that the person in legal need, who is trying to access an intervention, will compare its costs and benefits with other paths to similar outcomes. The choice may be between the formal media of justice delivery, an informal plea to a village elder, or hiring a person who can use force against the defendant. In such a situation the formal legal system would compete with informal ways to cater for legal needs. Maurits Barendrecht (2009).

According to Rawls justice is to fairly specify the terms of social cooperation. (Rawls *Theory,* §I) The principles of justice specify the basic rights and duties to be assigned by the main political and social institutions, and they regulate the benefits arising from social cooperation and allot the burdens necessary to sustain it. This position clarifies that justice has to be delivered by a formal agency only, so as to ensure enforceability. Also what a person facing a dispute wants is a change of behavior of somebody else in order to enforce the fair terms of cooperation, and thus needs a neutral intervention. Another characteristic central to such a neutral intervention would be the ability to enforce the terms i.e. the nature of the justice delivered should be binding on the parties. Hence, counselors, friends and the like would not be considered capable of providing justice.

Justice that is sought by the people and is required to be provided by the delivering agencies, is nothing but an external intervention to put straight a problematic relationship in order to abide by the fair terms of social cooperation and facilitate attainment of the purpose of desired goods, by either declaring what is right, enforcing a right, preventing a wrong, or punishing a wrong. It is to be understood as a distinct kind of good which compliments the other goods (real and tangible) by aiding them achieve the ends they are valued for.

It is clear from this definition that justice is not an aggregate good like national defense & security, railways etc. It has an individualist approach and cannot be understood in aggregate terms. The external intervention is specific to each particular case, but while justice to one person has no direct value to the others in terms of resolution of other disputes but it certainly affects business relations and decisions taken, unsettles the bargaining power between parties which have not approached the Courts and most

importantly sets a benchmark for people to adhere to. At this juncture it is prudent to mention the law of precedents, or the judge made law. It being the outcome of a judgment or the resolution of a case, does it concur with our definition of justice because a precedent is not an intervention that is helping two parties to resolve an issue? It may be argued to be of indirect value to the society at large, as it creates a standard of appropriate behavior, which may still be defaulted and which would then lead to *justice* being sought in the terms of an intervention.

The paper does not analyze the measures of justice distortions by considering the error-percent of cases in Courts and tribunals which get over-turned in appeals or are criticized later by academicians etc. We have attempted to theorize the most basic understanding of the economics of production of justice and worked on the assumption that justice is delivered by the Courts, Tribunals, and Mediation and Negotiation centers in every matter that is resolved.

Per Unit of Justice

Since justice conceptually is not an aggregate good defining per unit of justice is not very problematic. Every case that is resolved or disposed by a Court or by any other mechanism of dispute resolution would then be a single unit of justice.[8]

[8] A question that arises is of the different tiers of the court system and the possibility of an appeal, and alternative dispute settlement mechanisms. Tracking a case from its Court/ Tribunal of first instance to the highest appellate court that it reaches would be an impossible task, and moreover it would not mean much because the results would be incomparable. Every case will have a different origin and may or may not be appealed. So comparing the costs or efficiencies would be erroneous. So we must consider the case disposed at every level/tier to be a unit of justice in it. And the object of computation must be mapping the efficiency of justice production within a particular mechanism.

COMPLEX DYNAMICS OF THE JUSTICE SECTOR

To appreciate the complex network of dynamics of the justice sector we begin by discussing the myriad players in this sector.

Suppliers

As we have discussed in the Part II, justice is produced not only in the Courts but also through other formal mechanisms like Arbitration Tribunals, Negotiations and Mediation. So the entire Court system with its Justices, Registry and other employees become the suppliers of justice. The Arbitrators, Negotiators and Mediators also come under the same umbrella. But a great conceptual difficulty in categorizing them under a common head is the nature of the institutions and the role of state in it. The suppliers of justice in the alternative dispute resolution mechanisms are largely governed by market forces and the State does not play a significant role unlike in the Court System. Making appointments, providing infrastructure and bearing costs of the suppliers is all done by the parties.[9]

Lawyers

This having been said these suppliers cannot produce justice in isolation and require aid and facilitation from the lawyers. The lawyers are neither the suppliers nor consumers *per se*. But they form a vital part of the chain. They are like the raw material suppliers to the Courts and other alternative dispute resolution mechanisms, based on which these institutions produce justice. Now again as was discussed in Part II it must be remembered at all times that justice is not an aggregate good rather is produced in individual cases based on earlier established principles of law and the current facts of the case.

Also the lawyers work within a market structure. The lawyers who have greater demand become the price makers and charge sky-rocketing fees for each appearance in the Courts. Lawyers are also hired for arbitration proceedings. Lawyers' fees is also the most uncertain and volatile part of the costs of producing justice.

But the important point to note here is that State is not the sole producer and supplier of justice, the production is largely dependent on the lawyers' market. The justice production can be looked at either as a kind of public private partnership but with varied dimensions, or the services of a lawyer could merely be considered an input that goes into the production of justice.

Consumers

The consumers of Justice are not only the people who file the cases in the Courts and before the ADR mechanisms but there is also a large chunk of unregistered demand which is often overlooked. This demand is created by the players in several markets who make their regular market decisions based on the certainty and inclination of Court decisions and Arbitral Awards. These are basically the spill overs of justice production and such unregistered demand may convert into settlements or understandings, but situation would have been different if the

[9] At this juncture another question is raised as to then why do parties choose these alternative means of dispute resolution if they have to bear the costs that the State would have otherwise borne. We work on an assumption that men are rational beings and choose the best available alternative; does then the very fact that parties choose these alternative means above the regular Courts imply a comparatively higher efficiency of the ADR mechanisms?

justice production was at lower monitory and time costs. Say for instance if there are two parties ['A' and 'B'] to a contract and one of them ['A'] breaches the contract, now if there is certainty in legal principle both parties would have the knowledge that the Court would most-certainly give a judgment in favour of one of the parties ['B'] so most logically they come to an understanding based on the expected nature of justice. But if the justice production is very time consuming it may be satisfying for A's trivial interests to insist on approaching the justice system to get a better bargaining power.

MARKET FORCES IN JUSTICE SECTOR

There are deficiencies that need to be remedied both at the supply and at the demand side (Abregu 2001, Anderson 2003).

At the supply side, the legal system may not provide legal services adequately because of poor organization, discrimination towards specific groups or individuals, lack of accessibility, lack of adequate legal aid system, and slowness of the system. Laws, regulations, and case law can be difficult to understand. Procedures may be formalistic, and not fitting for the problem.

At the demand side, problems such as distance to the institutions, lack of legal knowledge, lack of practical know-how and skills, lack of financial resources to cover the costs, lack of power to address the legal and administrative institutions in order to supply better services, or lack of power to confront an opposing party exist.

Demand: Justice Sought

At the demand side, people are most active in trying to get access to justice in situations of conflict. Research suggests three types of relationships in which they are looking for dispute resolution services (Barendrecht 2008; Barendrecht, Kamminga et al. 2008).

Personal security presents the most urgent category of problems. Threats may come from outside the community where a person lives: robbing, looting, maybe even supported by factions in governments. In these situations, people seek basic protection of their human rights. Such protection against violence, unlawful taking of property and unlawful detention is needed in relationships with outsiders and with the state.

The second type evolves from long term relationships with substantial specific investments, such as family, work, land use, neighbour, and business relationships. Institutional economists have identified the reasons behind this need for protection. In these relationships, parties have to cope with changes in circumstances, preferences, and abilities, which they cannot predict, so their contracts are incomplete. Adaptation to change through negotiation is a necessity, but this takes place in a situation of bilateral monopoly. The parties are dependent on each other, because they invested in the relationship, and cannot walk away from it without leaving these investments behind. Here, some type of dispute resolution is part of the governance structure needed to adapt to these changes, hence the term trilateral governance (Williamson 1981; Barendrecht 2008; Robson and Skaperdas 2008). Disputes in this category have private law as their basis, with doctrines such as unforeseen circumstances, mistake and impossibility to perform (Chakravarty, MacLeod et al. 2008). Examples of disputes that arise in this context are property conflicts within a community, inheritance issues, problems between landlord and tenant, divorce, neighbour conflict and termination of long term cooperation in work or business.

A third category of conflicts emerges from arms-length relationships between buyers and sellers, or from obligations of the bureaucracy to its citizens. Here, the dispute resolution process typically begins as a complaint about conduct that falls short of what the plaintiff may expect. Legal dispute resolution in this area is largely a matter of investigating what the plaintiff could expect (interpretation of contracts and regulation), how the defendant contributed to these expectations by giving or withholding information (duties to inform, which can come from different legal sources), and whether the defendant delivered goods or behaviour that live up to the legitimate expectations of the plaintiff.

The way the defendant reacted to the initial problem and the ensuing communication is another point of attention. Fact-finding regarding quality of goods and finding proof regarding the actual behaviour of the defendant may be necessary here as well. The dispute processes regarding these issues may fit in legal categories such as civil procedure, criminal procedure, or administrative procedure.

Demand for justice services is not always related to an actual conflict. In order to prevent conflict, and to make relationships work, people may find it useful to make explicit what they can expect from each other in the future. They thus agree on rules of conduct and write contracts. They may also delineate property rights, for instance by registering them, because these 'stabilization-services' are also needed after a conflict is resolved.

Supply – Justice Delivery

Exploration of the supply side suggests that justice services do not always meet this demand. Lawyers have a reputation of being costly; courts of being slow and at times unpredictable. For most relationships and disputes between individuals, or with small businesses as the clients, the formal legal system is expensive to use in comparison to the value at stake (Zuckerman, Chiarloni et al. 1999). For the majority of people in developing economies, this is true in particular. Access to justice through police, lawyers and courts is outside their reach for protection of property, employment problems, family issues, neighbourhood conflict and disputes regarding their businesses. According to the Commission on Legal Empowerment of the Poor, 4 billion people can only hope that some informal way of getting justice is around when a conflict arises (Commission on Legal Empowerment of the Poor 2008).

Many people addressing the formal justice system express dissatisfaction: they feel that lawyers and courts do not acknowledge what they find important, experience a loss of control, and complain about unexpected costs (Relis 2002).

Analysing the Market for Justice

If justice services are valuable, not inherently costly, but still difficult to deliver, and the state has an active role, this suggests that the market for justice has substantial imperfections. No comprehensive analysis of the market for justice exists as yet. But several strands of literature contribute to our understanding of the ways justice is obtained. This paper builds on these bodies of knowledge.

The literature on the market for legal services rendered by lawyers tends to frame legal services as similar to other professional services. A transaction cost problem discussed in this context is the asymmetry of information between lawyer and client (Stephen 2006). Another issue derives from the way the customer can judge the value of legal services. Before the service has been provided the client is unable to judge whether what was supplied was appropriate, and even afterwards establishing the added value of the lawyer is problematic. The term credence good has been used to describe this situation. If clients cannot distinguish good legal services from mediocre or bad ones, the better value but high cost services can be driven out by the bad quality and lower cost services.

This adverse selection problem, described by Akerlof as the market for lemons in relation to second hand cars, may be addressed by regulating entry to the market by setting quality standards (Akerlof 1970; Stephen 2006). Another problem is that of moral hazard, where the lawyer diagnoses the problem and advises a service that is profitable for him, but not adequate for the client (Stephen 2006). Regulation of the legal profession is usually self-regulation by the bar, so there is the possibility of

regulation that is more in favour of the profession than of the consumer. The literature concludes that legal services are regulated too heavily, resulting in limited market entry and innovation, as well as costs that are higher than necessary (Stephen and Love 1999; Hadfield 2000; Baarsma, Felsö et al. 2008). Some analysts see commercial lawyers and other legal professionals as a closed shop, with a common interest to keep the law complex (Hadfield 2000; Hadfield 2008).

Others are far more optimistic and believe that a trend towards commoditization of legal services and ever lower prices is inevitable (Susskind 2008). Access to courts is mainly been studied by researchers with a legal background, but the literature on the efficiency of court services is growing. The incentives on courts have been analysed theoretically (Posner 1993; Cabrillo and Fitzpatrick 2008). Empirical studies have shown that judges mainly answer to higher courts, which they tend to depend on for their career perspectives (Schneider 2005). Another piece of helpful literature evaluates justice sector reform efforts in third world countries (López de Silanes 2002; Hammergren 2007). This line or research tends to conclude that inadequate incentives and unnecessarily complex procedures are the main causes of underperformance of courts (Botero, La Porta et al. 2003). Increased funding by itself is unlikely to lead to better performance. Incentive-oriented reforms that seek to increase accountability, competition, and choice seem to be the most effective in tackling the problem (López de Silanes 2002; Botero, La Porta et al. 2003). Evaluation and monitoring, as well as opening up the reform efforts and the dispute system itself to non-lawyers, is thought to be necessary as well (López de Silanes 2002; Hammergren 2007). Linking informal dispute systems to formal systems could be a solution through recognition of the procedures and results of informal systems, with targeted constraints, and if necessary improving them within the formal system (Buscaglia and Stephan 2005; Commission on Legal Empowerment of the Poor 2008).

The usual analysis in terms of two types of services – lawyer-like and court-like – is incomplete, however. It ignores some important properties of justice markets that have to be integrated in the analysis.

First, court services and the services of lawyers are usually rendered to two parties who interact in a conflict. The disputants negotiate in the shadow of a court intervention. An extensive literature on these settlement negotiations exists (Tullock 1980; Pinkley, Neale et al. 1994; Huang 2007; Korobkin and Doherty 2007; Daughety and Reinganum 2008). The resulting trilateral relationship between opponents and a third party complicates justice transactions with courts or other neutrals, as we will see. In the relationship between the client and his lawyer, the interaction with the other party also makes life more difficult. For the client it is harder to monitor a lawyer than another professional services provider, because the amount of work the lawyer does depends on reactions of the opponent, which may be triggered by the lawyer himself. The literature shows how the parties may become trapped in an arms race, fuelled by the interests of the lawyers, and try to outspend each other in attempts to convince the court to give a decision in their favor (Tullock 1980; Daughety and Reinganum 2008). Thus while calculating the efficiency of the justice delivery system we are actually looking at the efficiency of the bench as well as the bar.

Secondly, the interaction between the parties is influenced by rules. Negotiations in disputes take place in the shadow of the law (Mnookin and Kornhauser 1978; Cooter, Marks et al. 1982). Norms and other objective criteria inform the parties about outcomes deemed to be fair, particularly for distributive issues. The supply of these norms to the clients can be seen as a transaction in itself.

There is adequate academic literature about the thesis that common law systems are more likely to produce efficient norms than civil law, tending to conclude that both legal traditions will evolve towards a mixed system with courts and legislators as complementing producers of law (Djankov, La Porta et al.

2003; Gennaioli and Shleifer 2007; Ponzetto and Fernandez 2008). The broader question of how norms are produced has been studied less intensively (Posner and Rasmusen 1999), and seldom through the lens of the demand for norms by clients and supply by private parties or government agents (Hadfield 2004; Hadfield and Talley 2006; Barendrecht and Verdonschot 2008). Moreover, the delivery of information about these norms may be a problem in itself, as knowledge about useful norms may be accessible to the legal profession, but not by the clients who need the norms.

Third, the existing literature on markets for legal services tends to ignore the costs of access to justice that are not related to hiring a lawyer. Economists usually assume that property rights and contract enforcement exist and are guaranteed by the state at no cost. Only a few of them have discussed the accessibility of property rights as a problem of supply and demand. Hernando de Soto famously investigated the costs and benefits of property rights registrations in Peru and other developing countries (De Soto 2000).

Besides costs of lawyers and court fees, the costs of delay and the emotional costs of a dispute resolution procedure can be substantial. Another important category of costs is the time spent. Collecting information about the facts, documenting this information, travel, waiting, searching for expertise, settlement negotiations, and attending hearings by neutrals can be time consuming affairs (see Gramatikov 2008 for a review of the literature).

Fourth, the usual analysis of legal services tends to consider them as one type of service (Stephen and Love 1999; Stephen 2006; Baarsma, Felsö et al. 2008; Susskind 2008). But if we break down services by lawyers, who often lead their clients through several steps in the dispute resolution process, into constituent parts: assistance with negotiation, informing about norms, helping to access courts, and supplying formats for relationships (contracts, property rights), we will see these services each have their own characteristics, with different sources of transaction costs.

Determinants of demand: Benefits and Costs

At the demand side, for instance, according to the market perspective justice is a good that has benefits for the litigant, as well as a price. A person with a disputed good for instance a plot of land, or problematic relationship say between a landlord and tenant on grounds eviction, or a divorced couple over the custody of their child, approaches the court or any other justice delivery mechanism to invite intervention which will resolve the dispute on a neutral and just ground. And this resolution or *justice* as we prefer to call it is the benefit for the litigant. But for this he will also have to spend money, time and effort. These costs of a path to justice can be fees for lawyers or payable to bureaucrats, the time spent, the costs of uncertainty during the procedure, or the damage to relationships (Barendrecht, Mulder & Giesen, 2006).

If the expected costs exceed the benefits for the complainant, he will not try to access the intervention. That the poor often cannot afford access to the legal system has been documented extensively by Hernando de Soto and other researchers. They have shown that registering property, or getting the licenses necessary for starting a business, entails costs of several times an average yearly income in many developing countries (De Soto 1990, 2000).

We could not find a parallel study in the Indian context but the Law Commission of India Reports though mostly being qualitative studies were of help in this regard. We believe high costs are a major deterrent to the demand of seeking formal intervention, while efficiency is a major factor on the supply side in the monopolistic setting of the judiciary. This entire study to analyse the production of *justice* is aimed at

comprehending the efficiency standard to for a base for improving the same. The long term goal of the study is to formulate an economic model of production of justice in order to improve efficiency of the service provided. If *justice* or Court intervention is made available to the people at minimal time-costs, and determinable other costs which would reflect in the quality of the service the demand and supply forces would work well to take care of the shape of the market.

COMPUTATION OF PER UNIT COST OF JUSTICE IN SUPREME COURT: CASE STUDY

The Annual Budget of the Supreme Court for the year 2009-2010 is Rs. 1,00,69,00,000[10], while the number of cases disposed by the Supreme Court in that year 2010 is 76,712[11].

To get a simplistic figure for state costs per unit of justice in the Supreme Court we simply divide the government spending by the total number of cases disposed which would come up to Rs. 13,125.7 for the year 2010. But this is a much unsophisticated calculation as it does not take into account many aspects like the pending cases that were heard by the Supreme Court in this year but could not be disposed. The state costs were spent on all the cases that were heard during that year and therefore these numbers must also be considered.

On the other hand all these cases disposed in the year 2010 may not have been instituted in this very year and hence the expenditure on them has to be calculated as a percent of judicial budget from the year of their institution. Of the disposed cases some would have been instituted that very year in which case we do not need to consider the budget of earlier year to compute the costs for these cases; while some would have been instituted the year before and would have therefore used the services of the Supreme Court for two years before disposal, and the per unit cost must therefore reflect the part of the state costs for two years that was used in resolving these cases. So the costs must depend on the year of institution of the disposed cases. While 81,413 cases were instituted from 1 April 2009 to 31 March 2010, 54,846 cases were pending cases at the end of March 2010. (Supreme Court Records)

Putting together such an empirical research is a herculean task and would require months to get all the data under the RTI, as the Supreme Court is rather hesitant in providing any specific data other than the broad framework of numbers of instituted, disposed and pending cases; which do not mean much unless we are aware of the specifics of each case disposed in a year as to when they were instituted and how many years were they pending.

Also we must at this juncture also remember that these are only the State costs, and it does not reveal the actual per unit cost of justice. The costs for production of the good justice is borne partly by the state (through the taxes collected from the public, so essentially by the public) and partly by the parties seeking justice in terms of lawyers costs, travel costs, court fees, time costs etc. To compute a near accurate per unit cost of justice all these factors must be taken into consideration.

[10] Revised Estimate 2009-2010, See Annexure 1.
[11] Addition of cases disposed from 1 April 2009 to 31 March 2010 available at <http://supremecourtofindia.nic.in/courtnews/2009_issue_2.pdf>, <http://supremecourtofindia.nic.in/courtnews/2009_issue_3.pdf >, <http://supremecourtofindia.nic.in/courtnews/2009_issue_4.pdf >, <http://supremecourtofindia.nic.in/courtnews/2010_issue_1.pdf >.

Considerations: There are several conceptual as well as empirical hurdles here.

1. Lawyer Costs - not only is finding the parties and lawyers involved in every case disposed in that year very difficult, also once found the lawyers would not be open about their actual fees and the client unless a corporate body may not have proper accounts of expenses on lawyers' services and therefore the figures may not be authentic.
2. Travel Costs – these costs could be very high in case of the Supreme Court because most parties instituting a matter in the Court are not residents of NCT and are travelling from all over the country to seek the highest intervention to resolve their dispute. These costs are also not documented by parties, and even if a survey is conducted it may not be completely authentic information. But is an interview method is used the interviewer can cross check the information by asking questions like from which place do you hail, how many times have you appeared in the Court, what mode of transport did you use etc. But again an interview method may not be feasible unless the project is sufficiently funded to hire adequate number of people to interview about two lakh or more clients whose cases were disposed in the year of computation.
3. Court Fees – this data is not currently available with the Supreme Court separately for the cases disposed each year; rather it is available for the cases instituted each year. And deriving our desired figure from the available data would be possible only if per case-wise documentation of Court fees are available in the Court records. And this computation will also involve immense labour.
4. Time Costs – Here we wish to calculate the amount of time a person has spent on the resolution of his dispute and it would therefore be in the units of years or months, we would need to convert this factor cost in terms of unit of money to be homogenous with other costs. Conceptualizing a standard of conversion could be a complicated issue.

The figure of per unit cost of justice would therefore reflect the public as well as the private costs that have been spent on producing that particular intervention. Once we have a detailed categorization it would not be difficult to determine the factors that raise the costs significantly and make the production inefficient.

An interesting find in the Supreme Court Records was the records of e-filing. The practice of filing cases online by submitting a draft of the plaint and written statement on the website was an endeavour of the Supreme Court to mechanise Indian litigation and it was brought into effect in 2006. But the data shows that even in the last 5 years[12] the number of matters filed through this mechanism was a mere 256, while the number of matters that were successfully registered was a dismal 118. These numbers in light of the hundred thousand matters filed physically by the litigants every year in the Supreme Court is rather disturbing. While e-filing can substantially reduce the travel costs as well as time costs of the litigants, if the management of the e-filing is so dubious that only a half of the matters filed are found to be without any technical glitches it would not be a truly cost effective option for the litigants. Another consideration that could arise if this remains as unknown as it is currently is the possibility of additional charge of the lawyers for filing a matter through the internet. If such means are popularised and lawyers are trained to prepare briefs for online submission the technical glitches would reduce and this will not only bring down travel and time costs for the litigants but also the lawyers' dependency and expenditure on clerks for filing would reduce, which could be reflected in the fees.

[12] From 2 October 2006 to 12 March 2011, E-Filing Report Regeneration, Supreme Court of India.

SUMMARY AND CONCLUDING REMARKS

The paper has discussed at length the nature of justice delivery as a good, and the dynamics of market structure involved in its production. The following are the set of conclusions that the paper highlights:

Justice that is sought by the people and is required to be provided by the delivering agencies, is nothing but an external intervention to put straight a problematic relationship in order to abide by the fair terms of social cooperation and facilitate attainment of the purpose of desired goods, by either declaring what is right, enforcing a right, preventing a wrong, or punishing a wrong. It is to be understood as a distinct kind of good which compliments the other goods (real and tangible) by aiding them achieve the ends they are valued for. Enforcement of the decision of the intervening body would be problematic without state involvement, owing to which informal agencies are not capable of producing justice.

The trilateral relationship between the litigants (consumers of justice), the suppliers (the courts and other mechanisms of dispute resolution) and the lawyers (facilitators of the suppliers) makes justice delivery a very unique model of production. Thus while computing the efficiency of the justice delivery system we are actually looking at the performance of the Court system (which includes the judges as also the entire administrative staff, infrastructure etc.) as well as the lawyers relative to their costs. Also concepts like profit or revenue do not hold a place in the incentive structure of production of justice.

The computation of State and Private costs of production of justice face various conceptual as well as empirical difficulties. But these questions must be further discussed and studies, whereafter mathematical and statistical principles could be applied to breakdown the costs to reach a figure which would symbolise the cost of the production. Once we have a detailed categorization it would not be difficult to determine the factors that raise the costs significantly and make the production inefficient.

The Annual Budget of the Supreme Court for the year 2009-2010 is Rs. 1,00,69,00,000[13], while the number of cases disposed by the Supreme Court in that year 2010 is 76,712[14]. The per unit cost of justice in the Supreme Court borne by the State would come up to Rs. 13,125.7 for the year 2010. The shortcomings and difficulties of the simplistic assumptions involved in arriving at this have been discussed in the paper at length.

An interesting finding was with regards to the statistics pertaining to e-filing and its dismal state due to the lack of training of lawyers in the technicalities of the procedure, and lack of awareness amongst the litigants of the same.

The long term goal of the study is to formulate an economic model of production of justice in order to improve efficiency of the service provided. Now that a conceptual base is present, the questions raised in the paper must be answered and then an empirical study could be carried out to determine the efficiency standards of justice delivery. If justice or Court intervention is made available to the people at minimal time-costs, and determinable other costs which would reflect in the quality of the service the demand and supply forces would work well to take care of the shape of the market.

[13] Revised Estimate 2009-2010, See Annexure 1.
[14] Addition of cases disposed from 1 April 2009 to 31 March 2010 available at <http://supremecourtofindia.nic.in/courtnews/2009_issue_2.pdf>, <http://supremecourtofindia.nic.in/courtnews/2009_issue_3.pdf >, <http://supremecourtofindia.nic.in/courtnews/2009_issue_4.pdf >, <http://supremecourtofindia.nic.in/courtnews/2010_issue_1.pdf >.

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