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Process Reforms: *Fixing the Nuts-and-Bolts*

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Process Reforms: Fixing the Nuts-and-Bolts

Sanjeev Sanyal and Aakanksha Arora[1]

Abstract

Discussions about economic reforms tend to focus almost entirely on large-scale structural reforms aimed at reshaping the fundamental framework of an economy. Structural reforms in India began with economic liberalization in 1991. Over the years, various other structural reforms were undertaken including opening of sectors to private investment, establishment of regulators, introduction of GST, an inflation-targeting framework, and the implementation of the Insolvency and Bankruptcy Code, among others. However, there is another category of reforms that mostly goes unnoticed called 'process reforms'. They are missing from the economic literature and this paper attempts to remedy this gap.

What are process reforms? Process reforms are the nuts-and-bolts reforms, often microeconomic in nature, with a specific focus on an individual sector or issue. Their core objective is to simplify and streamline operational processes and enhance the efficiency of a particular activity. Implementing such reforms tend to involve a series of small changes. These are different from structural reforms in that they do not normally attempt to alter the overall architecture of the economy but to make the existing system work better. This is not to suggest that these small changes, often improved with feedback-loops, do not have high impact. Indeed, as this paper illustrates, process reforms can lead to significant improvements in economic performance.

The mechanics of process reform can vary depending on the specific circumstances. In this paper, we discuss five types of process reforms and illustrate each with a case study. The first type, which is the simplest of all, requires administrative streamlining of existing processes, as we illustrate with the example of voluntary liquidation of companies. The second type of process reforms requires changes in regulations under the existing law, as illustrated in the case of telecom regulations for the IT-BPO sector. The third type requires amendments to the legislation. We illustrate this with the case of decriminalisation of various offences under the legal meteorology law. The fourth type requires adding capacity at some level of the government, as illustrated by the expansion of India's Intellectual Property Rights ecosystem. Finally, the fifth type of process reforms involve removing of a state mandated activity as in the case of compulsory mediation before litigation. All of these types can be used in different permutations and combinations to bring about change.

Key Words: Process Reforms, Structural Reforms, Feedback-loop, Administrative Processes, Regulation

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I. Introduction

Since 1991, India has been systematically reforming its economy. Most of the attention and discussion, however, has almost entirely focused on "structural reforms". Structural reforms are a class of reforms that alter the overall architecture of an economy – the framework in which economic entities operate. The country has now witnessed more than three decades of various structural reforms: the ending of industrial licensing, privatization, establishment of sectoral regulators and so on. Recent years have also seen the implementation of structural changes such as the Goods and Services Tax (GST), introduction of an inflation-targeting monetary policy framework, and the Insolvency and Bankruptcy Code (IBC), among others.

Almost all of the economic literature focuses on such structural reforms. It should not be surprising as these are visible, large-scale changes. However, there is another class of economic reforms, called '*process reforms*', that have largely remained unnoticed in the economic literature. This paper is an attempt to remedy the gap.

The Economic Survey of 2020-21 had discussed the idea of process reforms. The Survey argued that over-regulation and opacity in Indian administrative and legal processes stem from an emphasis on exhaustive regulations accounting for every possible scenario, culminating in complex procedures. Thus, it advocated the merits of simpler regulations and smoother processes. In this paper, we will expand on this line of thought.

So, what exactly are process reforms? Process reforms refer to the nuts-and-bolts reforms that are done to simplify regulations or processes related to a particular activity or sector. These changes are targeted changes, often microeconomic in nature, with an emphasis on a specific issue. They often require no more than a series of small tweaks, but can have significant overall impact. These are different from the overarching structural reforms mentioned earlier in that they do not attempt to alter the overall architecture of the economy. This has the additional advantage that feed-back loops can be easily used to make repeated adjustments.

While process reforms can have significant impact, they have largely escaped the attention of economists. Individual changes may be discussed but they are not studied as a class. This is unfortunate as these reforms can be very impactful and, in several cases, prove essential for the success of structural reforms. There are many such examples. For instance, a major structural reform like GST, requires ongoing refinements to its processes to keep it functional. As Sanyal and Dikshit (2022) demonstrated, the effective functioning of the GST has happened due to continuous improvements through a feedback-based system.

Another example of iterative process reforms that were needed to implement a structural reform relates to the Insolvency and Bankruptcy Code (IBC). The Code, a very significant

structural reform, has witnessed various legislative interventions and amendments to regulatory framework since its enactment to deal with the emerging market realities. In fact, the Ministry of Corporate Affairs had constituted the Insolvency Law Committee to monitor the progress and implementation of the Code, consider issues raised by various stakeholders, identify gaps and bottlenecks, and recommend corrective measures for optimal functioning of the Code. This again shows the importance of feedback loops and iteration in policy making.

Process reforms can take various forms, tailored to the specific context. In this paper, we illustrate that they can be of at least five broad types:

- **Type 1: Streamlining of the existing administrative processes:** We illustrate this type of process reforms using the case of voluntary liquidation of corporates. The voluntary liquidation of companies used to take inordinate amount of time in India. There are two main methods of voluntary liquidation in India- Section 248 of the Companies Act, 2013 and IBC, out of which the former is by far the more important. We discuss how simple streamlining of administrative processes under both routes have shown significant results.
- **Type 2: Changes in regulations:** This relates to changes in rules and regulations without changing existing laws. The case that is discussed in the paper to illustrate this type of process reform is the telecom regulations for Information Technology (IT)- Business Process Outsourcing (BPO) sector. The IT-BPO sector suffered from many outdated regulations with onerous compliance requirements till recently. Recognising these issues, Government undertook a reform of liberalizing the Telecom regulations for Other Service Providers. This has had far-reaching impact on the ease-of-doing-business.
- **Type 3: Changes in the legislation:** This relates to process reforms where underlying laws need to be changed. We illustrate this type with the case of excessive criminalisation of offences under the Legal Meteorology Act 2009. Given the hardship imposed by the criminalisation of second and subsequent offences under this Act, the balance between empowering the legal metrology inspector and protection of legitimate entrepreneurs had got distorted. Process reforms in this case required legislative changes. To address this issue, the government has decriminalized several provisions of the 2009 Act under the Jan Vishwas Bill 2022 which was recently passed by the parliament. However, many provisions accounting for a very large share of cases are still criminalised. Hence, more needs to be done.
- **Type 4: Adding capacity in some level of government:** This relates to expanding capacity where a bottle-neck is developing in a necessary government activity. For is the case of Intellectual Property Right ecosystem, it was found that one of the major reasons that India lags behind its peers is that the manpower in the Indian

Patent Office is too little to handle the workload. In this case, hiring and additional resources need to be added in targeted way to the process pipeline.

- **Type 5: Removing requirement or a state-mandated activity:** This type relates to getting rid of a requirement or mandatory activity that is not adding enough value to a process. We illustrate this in case of mandatory mediation required before going for commercial litigation. The Mediation Bill 2021, when first introduced had a provision to make pre-litigation mediation mandatory for all civil cases. However, based on feedback from stakeholders and report of the Parliamentary Standing Committee, this provision was dropped in the Mediation Act passed in August 2023, thereby making pre-litigation mediation voluntary for civil cases. However, it still remains mandatory for commercial cases. The available evidence strongly suggests that the mandating of mediation is clearly not working in commercial cases. Hence, there is a need to remove the condition of mandatory mediation in commercial cases as well.

II. Types of Process Reforms

Type 1: Administrative Streamlining: Illustrated by process of voluntary liquidation

The first type of process reforms are the simplest which merely require streamlining of administrative processes. It does not require any changes in the legislation or adding of any resources or capacity by the government. We illustrate this using the changes done in voluntary liquidation process.

The concept of ease of doing business extends beyond commencing and managing a business; it also encompasses the ease of exiting. The issue of ease-of-exit in India is not new[2]. Liquidation can be involuntary as in the case of insolvency or bankruptcy. However, companies do not always close involuntarily, it is routine for owners to shut down a solvent company voluntarily due to personal reasons, change in technology or consumer behaviour, restructuring of group companies, regulatory changes and so on. Since its implementation, IBC overhauled the involuntary liquation process of companies. However, the voluntary liquidation processes still needed to be relooked at. The Economic Survey for two years (2020-21 and 2021-22) pointed out that the voluntary liquidation of companies takes inordinate amount of time in India. Sanyal & Arora (2021) also identify the issues in the process of voluntary liquidation leading to delays.

There are two main methods of voluntary liquidation in India: Section 248 of the Companies Act, 2013 and Section 59 of IBC.

[2] https://www.indiabudget.gov.in/budget2016-2017/es2015-16/echapvol1-02.pdf

Section 248 is by far the more important route as it is used by many more companies. This is used by companies that have exhausted all their assets and liabilities, and have no outstanding litigation. After the company files a STK-2 form with the respective Registrar of Companies (RoC) along with the declaration of no dues towards any government department, the RoC has to issue a public notice in a prescribed manner on (i) MCA website; (ii) Official Gazette; (iii) Largest circulating newspaper, one in English and other one in vernacular language. RoC provides a 30 days' notice time. After expiry of notice period, RoC may strike off companies' name and publish dissolution notice in Official Gazette.

This is considered to be a faster route. However, in practice, the process was found to be very time consuming. Some of the key reasons leading to the delays were the lack of any strict timeline for RoCs to follow, inordinate time taken by RoCs to publish the final notice of strike off in newspapers, no standard format of affidavit to be submitted to RoCs and so on. Consequently, as of June 2021, there were 28,536 pending cases. Out of these nearly 10% were pending from more than 1000 days and 54% were pending for more than one year.

Once the issues were identified in 2021, efforts were made to clear the backlog of applications and fast track this process by making simple administrative changes, for instance publishing the note of winding up of companies by RoCs in a newspaper quickly. This may sound trivial but was a major cause of delay. Speeding up newspaper notices did not need any legislative changes, and was achieved by merely smoothening the administrative process. The result of the changes is visible in faster processing of applications. As of July 2023, not only have the pending cases reduced to 8,820 (from 28,536 in June 2021), only about 12% (down from 54% in June 2021) are pending for more than a year. This is a substantial improvement in a span of two years.

In May 2023, the government created a one-stop window, Centre for Processing Accelerated Corporate Exit (C-PACE), for companies applying for voluntary liquidation under this section to further centralize and expedite the process. This will further streamline not just the application uploading, but also its processing.

Under the second route, Section 59 of IBC, liquidator files the resolution to Insolvency and Bankruptcy Board of India (IBBI) and RoC and then makes public announcement (in English and Regional Newspapers) calling stakeholders to submit claims within fixed timelines prescribed under the act. After opening a designated bank account, they apply for a No Objection Certificate in Income tax, GST, PF/EPFO departments and sectoral regulators etc. After giving the final remittances, liquidator submits the final report to shareholders, RoC, IBBI and National Country Law Tribunal (NCLT). Then the NCLT passes an order and RoCs strikes off the name of the company.

The actual time taken in this process used to be much more than the stipulated timelines. As on September 2021, 1042 cases had been initiated, final reports had been submitted for 483, out of which 257 had been dissolved. The remaining 549 cases were still ongoing, out of which 35% were then more than 2 years old.[3]

The most important issue which used to prolong the process was identified as the practise of seeking multiple No Objection Certificates (NOC) from the various departments by liquidators, even though the Code and Regulations did not mandate them. Further issues were there were no clear Standard Operating Procedures (SoPs) with the departments and NCLTs to deal with the voluntary liquidation process etc.

To address these issues, a clarification[4] was issued stating that there is no requirement of NOC from the Income Tax Department. Moreover, Voluntary Liquidation Regulations were amended (in April 2022[5] and September 2022[6]) with various changes. One such change was that the applicants were required to submit a compliance certificate, essentially like a checklist along with the final report. This is to facilitate the Adjudicating Authority to adjudicate the applications expeditiously. In this case, a change in regulation was also required alongwith the administrative changes, illustrating that in order to address issues in some sectors, process reforms of more than one type may be needed.

Some impact of these changes has already started showing. As on June 2023, 1607 corporate persons had initiated voluntary liquidation under IBC, out of which final reports had been submitted for 1104 cases (69% cases). However, we found that so far only 571 cases had been closed by dissolution, and the rest were ongoing[7]. Out of the remaining 486 cases that were ongoing, 37% were ongoing from more than 2 years, 19% were between 1 to 2 years old. In other words, the pipeline has become smoother but the final disposal rate did not seem to have improved proportionately. This suggests that the NCLT stage still needs improvement, but identifying the exact point of blockage is an important first step.

As can be seen, simple administrative changes have the potential for bringing about significant change, in this case improving the ease-of-exit for businesses.

Type 2: Changes in Regulations: Illustrated by Other Service Provider reforms in IT-BPO sector

The Information Technology (IT)- Business Process Outsourcing (BPO) sector is such a prominent part of the "*India*" story. Yet, the sector suffered from many outdated regulations till recently. Before the recent changes in the regulations of the sector, IT and

[3] Quarterly newsletter of Insolvency and Bankruptcy Board of India July-September 2021
[4] https://ibbi.gov.in/uploads/legalframwork/cc881169aad7ee239aea7954505a76ab.pdf
[5] https://ibbi.gov.in//uploads/legalframwork/e488bdc6b6fd043c9afdac1256ae8b81.pdf
[6] https://ibbi.gov.in//uploads/legalframwork/502221417edc8c995e6971fad60d3184.pdf
[7] Quarterly newsletter of Insolvency and Bankruptcy Board of India April-June 2023

IT enabled service companies carrying out services like tele-medicine, e-commerce, call centre, network operation centre and other IT Enabled Services, by using services provided by Authorised Telecom Service Providers were required to be registered as Other Service Provider (OSP). They were regulated under the '*Revised Terms and Conditions- Other Service Provider 2008*' leading to several key issues:

- **Lack of clarity on definition of OSPs:** OSP regulation defines, 'Applications Services' as providing services like tele-banking, tele medicine, tele-education, tele-trading, e-commerce, call centre, network operation centre and other IT Enabled Services, by using Telecom Resources provided by Authorised Telecom Service Providers.
- **Local infrastructure requirement:** Regulations insisted on use of a local Electronic Private Automatic Branch Exchange (EPABX), thus disallowing global cloud based systems whereas most BPOs/ international logistics companies/ airlines etc. have moved to cloud based systems. India was the only major country placing such a requirement on companies.
- **Separate Registration for each OSP:** The regulation stated that, "The registration is location specific, so a Company may have more than one registration. Any change in the location of OSP Centre shall require amendment in the original registration." This was a completely outdated regulation in the age of Work from Home.
- **Restrictive infrastructure sharing:** Infrastructure sharing between domestic and international OSPs was not allowed and international OSP operations could not service domestic customers.

These requirements not only wasted lot of time of the management, it led to high compliance and financial costs to the company. *Recognising these issues, Government liberalized the Telecom regulations for these Other Service Providers. New revised and simplified OSP guidelines were first issued in November 2020*[8] *and further in June 2021*[9]. The revised guidelines simplify the regulations and processes. Some of the key changes that were made in the regulations are:

- **Clear definition of OSP:** The applicability of new guidelines is limited to entities that provide "Voice based BPO services" to its customers. Voice based BPO services is now defined to mean call center services.
- **Removal of registration requirement:** No registration certificate will be required for OSP centres in India.
- **Removal of distinction between domestic and international OSPs***:* The categorization of OSPs has been done away with and one single OSP category has been introduced regardless of their domestic/ international business operations.
- **Work from home and remote locations allowed***:* The agents at home/anywhere shall be treated as remote agents of the OSP centre. The interconnection between remote agents is permitted using any technology including broadband over

[8] https://dot.gov.in/sites/default/files/2020_11_05%20OSP%20CS.pdf
[9] https://dot.gov.in/sites/default/files/Revised%20OSP%20Guidelines.pdf

wireline/wireless. The remote agent can now directly connect to customer EPABX /centralised EPABX without the need to connect with the OSP centre.

- **Interconnectivity and infrastructure sharing between OSPs allowed***:* Interconnection between two or more OSP centres of the same or unrelated company is now permitted. Infrastructure sharing among OSPs is also allowed. The guidelines allow the use of EPABX at foreign locations.

After these reforms were done, NASSCOM conducted a survey between October to November 2021 to assess market's reaction to the reforms[10]. The survey found that 92% of the participants found that the OSP reforms have helped reduce compliance burden. While 28% of the participants responded that their compliance burden reduced by more than 50%, 20% of participants acknowledged compliance reduced by 40-50% and 15% of participants responded that compliance reduction by 30-40%. Further, 83% of the participants responded that these reforms will help in reducing the financial burden.

This illustrates how the change in processes brought about via changing the regulations have the potential to give a major impetus to a sector - in this case, the IT-BPO sector.

Type 3: Legislative changes: Illustrated by changes in Legal Metrology Act

In some cases, to improve the process, the related legislation needs to be amended. Here we illustrate this in case of the Legal Metrology Act 2009 which regulates manufacture and sale of measuring instruments and trade and commerce in goods which are sold by weight, measure or number. Uniformity and predictability in measurement of products is the foundation of all commercial activity in a society. The effective implementation of this law must strike a balance between safeguarding consumer interests and avoiding undue burdens on enterprises. This is very important in reducing the cost of conducting business in the country.

The Legal Metrology Act 2009 has long been subjected to criticism for the provision of imprisonment as a punishment for offences under it. Sections 25-47 in Chapter V of the 2009 Act enumerate various offenses related to weights and measures. They include use and manufacture of non-standard weighing and measuring instruments, undertaking commercial transactions in violation of prescribed standards and transacting in pre-packaged commodities without requisite declarations on the package.

As per this Act, the first violation of any of the offences under Chapter V by an enterprise entails a monetary penalty. Upon receiving a notice by the legal metrology officer, the person concerned may concede their mistake, decide not to contest the charges and pay a fee to end all legal proceedings. However, upon a second/subsequent offence committed

[10] https://www.indiabudget.gov.in/budget2022-23/economicsurvey/doc/eschapter/echap09.pdf

under the same provision, the Act provides for imprisonment along with a possible fine. In the case of companies, a contravention of the provisions of the 2009 Act can make the nominated director of a company criminally liable for the offence (Sanyal & Mishra, 2023).

The problem was that the criminalisation of second and subsequent offences under this Act distorted the balance between the legal metrology inspector and legitimate entrepreneurs. This gives the legal metrology inspector an opportunity to indulge in rent-seeking by filing a first offence on trivial grounds and then threatening criminal prosecution for subsequent offences.

Evidence for this behaviour is available in the data released by Press Information Bureau (PIB) in its May 2022 report[11] on the National Workshop on Legal Metrology Act, 2009. In the year 2021-22, the number of first offences booked under the 2009 Act was 74,721 by states and UTs, however the number of second offences booked by the government's own records were just 11, out of which only 7 were files in court of law. The data for 2018-19, 2019-20 and 2020-21 also show similar trends (Table 1). Over a four-year period from 2018-2022, for an average of approximately 1,00,000 first offences booked per year, only EIGHT instances of second offences being booked are reported around the country.

Table 1: Number of 1st and 2nd offences

Cases/Years	**2018-19**	**2019-20**	**2020-21**	**2021-22**
1st Offence				
No of cases booked	1,13,745	1,26,409	82,279	74,721
No of cases compounded	97,690	1,24,902	74,230	55,779
2nd Offence				
No of cases booked	12	5	3	11
No of cases filed in the court of law	4	3	3	7

Source: PIB

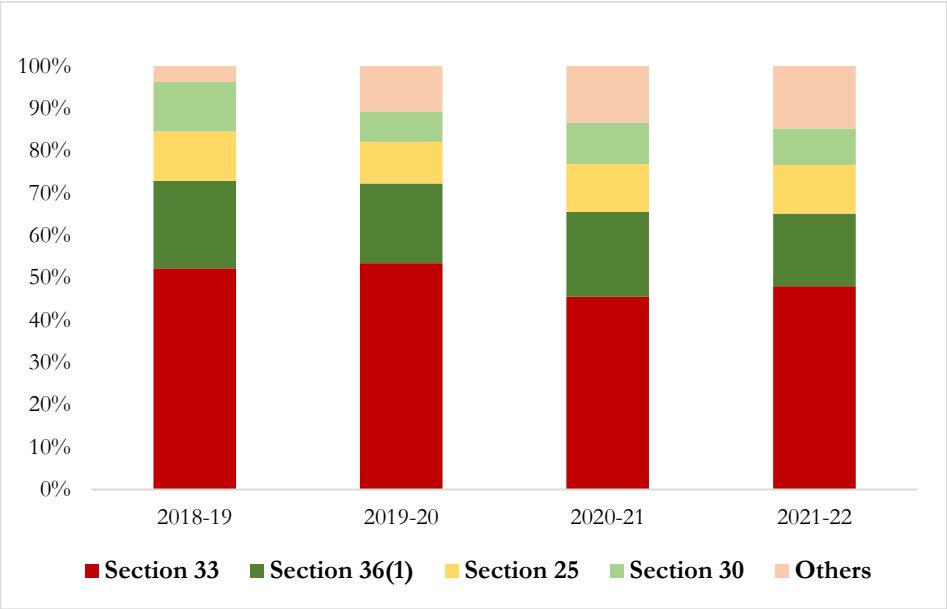
Recognising the severity of the problems, the government decriminalized several provisions of the 2009 Act under the Jan Vishwas Bill 2022 which was recently passed by the parliament (Lok Sabha on 27th June 2023 and Rajya Sabha on 2nd August 2023)[12].

While this is a good beginning, Sanyal and Mishra (2023) point out that this only solves a part of the problem. The offences under section 30 (penalty for transactions in contravention of standard weight or measures), section 33 (penalty for use of unverified weight or measures) and section 36 (penalty for selling of non-standard packages) are responsible for over 80% of the cases under the 2009 Act. Offences under these three

[11] https://pib.gov.in/PressReleasePage.aspx?PRID=1823947
[12] https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1945263

sections are still criminalised (*Figure 1*). The government needs to re-examine these sections. This is an example where the legislation itself needs to change to rectify the issue.

Figure 1: Number of 1st offences



Source: PIB
Note: Section 33: Penalty for use of unverified weight or measure
Section 36(1): Penalty for selling etc of nonstandard packages
Section 25: Penalty for use of non-standard weight or measure
Section 30: Penalty for transactions in contravention of standard weight or measure

Type 4: Increasing state capacity: Illustrated by case of Intellectual Property Rights ecosystem

Some areas may require increase in the capacity of Government at various levels in order to increase efficiency or resolve the issues in the area/sector. One such area is the Intellectual Property rights (IPR) ecosystem, specifically patents.

Changes ranging from procedural simplification and use of digital technology have been done in past few years to improve India's performance in patenting ecosystem which led to some improvements. The number of patent applications rose from 45,444 in 2016-17 to 82,805 in 2022-23. The patents granted in India has gone up from 9,847 to 34,153 during the same time period.

Despite these improvements, India lags far behind its global peers. The number of patents applied and granted in India is still a fraction compared to patents granted in China, USA, Japan, and Korea. Number of patents granted in India were merely 4.3% of China and 10.5% of USA in 2022 despite recent increases (Table 2).

Table 2: Patent applications and grants in China, US and India

Year	China		United States of America		India	
	Filing	**Grants**	**Filing**	**Grants**	**Filing**	**Grants**
2016	13,38,503	4,04,208	6,05,571	3,03,049	45,444	9,847
2017	13,81,594	4,20,144	6,06,956	3,19,829	47,854	13,045
2018	15,42,002	4,32,147	5,97,141	3,07,759	50,659	15,283
2019	14,00,661	4,52,804	6,21,453	3,54,430	56,284	24,936
2020	14,97,159	5,30,127	5,97,172	3,51,993	56,771	26,361
2021	15,85,663	6,95,946	5,91,473	3,27,307	66,440	30,074
2022	16,19, 000 (29,51,000*)	7,98,000 (28,04,000*)	5,89,155	3,25,445	82,805[P]	34,153[P]

Source: World Intellectual Property organization (WIPO)
Note: ***a****. Numbers for India are from CGPDTM; Numbers for India are fiscal year wise.*
b. *For 2022 for numbers for China and USA, annual reports of respective offices;*
c. **Utility models (petty patents) filed and granted by china in addition to patents.*
d. *P = provisional data*

Even as the scale of patenting activity small in India, the time taken for processing a patent application in India is much higher as compared to its global peers. Sanyal and Arora (2022) in their paper mention that 'The Global best practice is disposal within 2 to 3 years, whereas in India, average time taken is just under 5 years and is up to 9 years in some categories like for biotech and will cross 10 years soon if the shortage of manpower issue is not addressed.' They elaborate that the major cause of this delay in processing the patent applications is the shortage of manpower in patent office in India. Manpower employed in Indian patent office is only around 900, as compared to 13704 of China and 8132 of US.

A few years ago, some manpower was added, mostly at examiner level. This shifted most of the pendency from first examination at examiner level to the disposal level. As on 31st March 2023, there were 1.67 lakh pending applications at the controller level[13]. This was also noted by the Parliamentary Standing Committee on Commerce's Review of Intellectual Property Rights Regime in India (2021).

As pointed out by Sanyal and Arora (2022), it is evident that there is a need to increase capacity in the patent office, especially at senior levels. No other reform will have that effect that this will. Recognising the need for this, the process of increasing the manpower in the Office of Controller General of patents and trademarks has started. This is a case where the processes can be improved by simply adding some capacity in a specific point where a bottle-neck has emerged.

[13] Sanyal and Arora (2022) in their paper "Why India Needs to Urgently Invest in its Patent Ecosystem"

Type 5: Remove State Mandated Requirement(s): Illustrated by the case of mandatory mediation

Issues in different sectors have to be addressed in different ways. As seen in the discussion above, in some cases it requires addition of capacity, but elsewhere it may require simple removal of one or more requirements, as we illustrate in the case of mandatory mediation before litigation.

There are a large number of pending cases in courts in India currently. Policy-makers have two approaches to reduce caseload in India's courts. On one hand, the cases which are in the judicial system are sought to be disposed of quickly by expanding the judicial infrastructure and speeding up the procedural elements of a case. On the other hand, multiple efforts are made to ensure that the flow of new cases which enter the judicial system is also minimized. One way to do this to encourage alternative methods of dispute resolution like arbitration, mediation and conciliation for which providing legal and institutional support to mediation is crucial.

In order to giving impetus to the mediation process in the country, Mediation bill 2021 was introduced in December 2021 in Raya Sabha. When the original bill was introduced, Section 6 had a statutory mandate to compulsorily use mediation for dispute resolution before going to court. Notably, the provision applied even in cases where the parties chose not to have a mediation clause in their agreement. Further, Clause 20 of the Mediation Bill 2021 mandated that parties be forced to sit through at least two sessions of mediation before initiating the litigation process and empowered the court to impose penalty on a litigant who failed to do so without reasonable cause.

However, the Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice in its report submitted July 2022, noted that making pre-litigation mediation mandatory may actually result in delaying of cases and recommended that the pre-litigation mediation should not be made compulsory. Taking the feedback of the committee and other stakeholders into account, the revised Mediation Bill passed in August 2023 and formalized as Mediation Act 2023 changed the corresponding provision to make pre-litigation mediation voluntary.

However, as per the current status, pre-litigation mediation in India for commercial disputes (as mandated under Section 12A of the Commercial Courts Act 2015) is still compulsory. There is enough evidence to show that mandating mediation has not helped in early resolution of disputes.

Manivannan (2023) in his paper by titled 'Why Mandating Mediation Will Not Be Effective for Litigants In Commercial Disputes'[14] makes the case that mediation has been unsuccessful in resolving commercial disputes.

The paper presents evidence from the two district level commercial courts in Mumbai suggests that for the years 2020-2023, between 97-99 percent of the applications for pre-litigation mediation were non-starter because the parties did not choose to participate in the proceedings. Even in the cases where mediation was tried, it failed in more than half of the cases. Sanyal and Mishra (2023a) in their forthcoming paper also find similar results for the year 2023 (till September). This data confirms shows that mandating pre-litigation mediation for commercial cases is not working for around 99% of cases.

Table 3: Categories of Disposed Cases in Commercial Courts of Mumbai (2020-2023)

Year	Disposed Cases	Settled Cases	Failed Cases	Non-Starter Cases	% of Non-starter and Failed Cases
2020	304	3	0	301	99
2021	3555	22	28	3505	99
2022	7717	139	139	7431	98
2023*	3404	114	120	3170	97

Source: Sanyal and Mishra (2023a), forthcoming EAC-PM working paper
Data for 2023 is till September

The evidence clearly shows that mediation has not worked for 99% of cases but adds time and cost for everyone. Hence, there is a need to make mediation voluntary under Section 12A of the Commercial Courts Act 2015 as well, as has been done in civil cases to simplify the process of grievance redressal in the country. We have specifically presented it here an example of how process reforms may sometimes lead to unintended consequences and need to be rectified using feedback. Indeed, this should be done as a matter of routine so that processes can be continuously upgraded.

III. CONCLUSIONS

As one can see from the discussion in this paper, process reforms are an important part of the policy and governance tool-kit. Unfortunately, economic literature has long ignored this type of reform. There is some scattered literature about individual changes but virtually no literature on 'process reforms' as a class. In this paper we argue that there is a need to systematically analyse these reforms as a distinct class, thereby making them a routine subject of both public and academic discourse.

As discussed, there are at least five ways of doing process reforms. However, it is important to note that they are not always in neat boxes. In some cases, ironing out the issues may

[14] https://www.bqprime.com/opinion/why-mandating-mediation-will-not-be-effective-for-litigants-in-commercial-disputes

require process reforms of various categories as illustrated in case of voluntary liquidation. Most of the efficiency in processes were brought out by Type 1 reforms, i.e. by carrying out simple administrative changes, whereas for a particular thing, Type 2 reforms were also done (amendment in Voluntary Liquidation Regulations).

Moreover, in some case, one issue could be resolved by different type of process reforms. For instance, in the case of voluntary liquidation of companies, since there was delays by RoCs to publish the final notice of strike off in newspapers, Type 1 reform was used, i.e. effort was made to fast-track publication administratively. This could have been also done by removing the requirement altogether of publishing it in newspapers and instead publish it only on a designated website, that would have meant using Type 5 of the reforms. It may have been found that making simple administrative changes to fastrack this step was simpler at this stage, whereas in fact with growth of digitization in future, publishing the notice only on a website may suffice.

In the end, what matters is taking into account feedback and constantly making iterations as the situation evolves. We hope that greater attention on process reforms will lead to the constant use of small, targeted iterative changes that improve economic efficiency without always needing to rely on large-scale structural changes.

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