INDIAN DEMOCRACY AT WORK

FDR FOUNDATION FOR DEMOCRATIC REFORMS

SESSION 5: SPEEDY JUSTICE IN TRIAL COURTS

27 FEBRUARY 2021 | 5:00 P.M – 7:00 P.M

PANELISTS:

1. Dr. Jayaprakash Narayan, General Secretary, Foundation for Democratic Reforms
2. Shri Justice R.C. Chavan, Vice-Chairman, E-Committee of Supreme Court
3. Shri Atul Kaushik, Chief of Party, Asia Foundation

CHAIR: Justice G. Raghuram, Director, National Judicial Academy

ABSTRACT

The fifth session of the second edition of the Indian Democracy At Work Conference on Rule of Law, marking the beginning of the discussion on judicial reforms, revolved around ensuring speedy and efficient justice at the trial court level. The panelists highlighted the necessity of making the courts accessible to ordinary citizens and identified the various hurdles in the pursuit of that goal, such as deficient personnel and infrastructure, overburdened court dockets and certain practices of the Bar as well as the Bench. Further, several plausible reform measures were debated upon including the idea of Local Courts, adoption of technology, procedural changes, and judicial recruitment.

PRESENTATIONS BY THE PANELISTS

Dr. Jayaprakash Narayan, General Secretary, Foundation For Democratic Reforms

Referring to the remarks of Mr. Hiram E Chodosh during the session on Civil procedural Reform, Dr. Jayaprakash Narayan began his speech stating the need to look at judicial reform through the lens of institutionalizing a justice system in the country ab initio. In this context, Dr. Narayan focused his speech solely on the issue of justice delivery to ordinary citizens for simple, uncomplicated matters. The speaker listed out the problems plaguing the justice system, such as the huge pendency of cases across courts in India, a dilatory system with interminably long trials. Access to justice for the ordinary citizens is extremely limited due to remoteness in terms of distance, language barrier, cost of litigation, complex procedures, and perjury. The speaker stated that in this context local courts are an important part of the puzzle.

Dr. Narayan presented some statistics, such as the 34-36 million cases pending in courts, a desperately low judge to population ratio at 18 judges per million population. Dr. Narayan was amazed by the disposal rate per judge per year in India. The annual disposal of cases is as high as 824 cases per judge per year at the trial court level, and around 3500 cases per High Court judge per year. The speaker questioned the quality of justice with such a tremendous workload on the judges. Further, he highlighted that the expenditure on courts is too low. Although rule of law and justice are the most important functions of the government, as social controls take care of most of the issues and people are resigned to injustice, short term freebies have dominated the political contention. Therefore, justice administration has become a low priority for the governments.

The speaker reiterated the factors such as too few judges, remote location of courts, cost of litigation, perjury in courts, rigid and formal procedures etc. and the general perception that courts are biased towards those with means, due to which either people suffer or adopt extra-judicial methods to resolve their disputes.

Dr. Narayan spoke about local courts as an integral part of the justice system similar to the honorary Second Class Magistrate system that once existed in India. The speaker envisioned such local courts with simple and uncomplicated summary procedures, local cost of functioning for the State, low cost to the people and close proximity to them. His proposal was based on the US small claims courts with limited jurisdiction for small civil suits and minor violations of law and the UK Justices of Peace (JP). The speaker stated that there are about 1 JP per 4600 population who handle about 80-90% of criminal cases so that the formal trial courts are not burdened with excessive caseload, with a near perfect clearance rate. On the civil side, the system allots cases under £10,000 to a small claims track where the trial is completed in an hour. 60% of the cases go through this route, 33% to the fast track courts which take one day per case and the rest to the multi track system, for cases above £25000.

The speaker referred to the Gram Nyayalayas Act, 2008, stating that such a law is necessary for the entire country, even more so in urban areas where social controls are weakening and crime is on the rise. The speaker emphasized that the law is well-drafted and places these courts within the independent justice system with the administration including appointments, transfers, and removals of judges entirely under the High Courts. However, although it was proposed in the Act that there must be one court for every block in the country, which calls for around 6000 local courts, the government has only sanctioned 395 Gram Nyayalayas so far and only 221 are functional. Dr. Narayan advocated for extending these courts to urban areas.

He emphasized that these courts can be particularly effective for offences against women. It is important to create a culture of safety and security for women, which entails zero tolerance for minor offences against the women including day to day discrimination and abuse of women. The speaker opined that when a permissive climate of harassment of women with impunity goes unchecked, it paves way for more serious crimes against women over time. A summary trial and quick disposal of cases with other forms of punishment such as fines, probation, and permanent record of repeat offenders can be served by the local courts, particularly in urban areas where women's safety is a key political issue.

Further, Dr. Narayan presented some numbers on the clearance rate of trial courts, to state that assuming there is no inflow of new cases in the country, the current caseload including the backlog can be cleared in 2-3 years. Clearance rate of civil cases is about 90% considering the cases filed and disposed of in a given year, and 88% in the case of criminal cases. The speaker therefore stated that a few simple and practical steps can help tackle this seemingly complex problem causing extraordinary pain and suffering to ordinary people. Dr. Narayan proposed that of all the cases pending over a year, the bulk of it (about 80%) must be transferred to the local courts. He suggested that cases involving suits upto Rs. 500,000 and criminal cases punishable by a maximum of 3 years of imprisonment can be handled by these courts. However, the power to award punishment must be limited to 1 year imprisonment and the case may be transferred to a higher court if the judicial magistrate so warrants. While about 15,000-20,000 such courts tackle this caseload, the speaker proposed that fast track courts may be set up for a period of 2-3 years to clear the remaining backlog. The speaker believes this to be a measured approach that can dramatically improve justice delivery at low cost.

Dr. Narayan moved on to state that the trial courts are incredibly weakened in India. The trial court cannot ensure discipline on the spot in a summary manner to ensure justice is speedy and respected for any misconduct on part of the lawyers or witness in the presence of the judge. The speaker stated that contempt of court must be punishable instantly by the trial court judge in a speedy manner. Finally, the speaker also advocated for at least one highly competent judicial clerk to assist the District court so that the quality of justice can be improved. He stated that this is necessary especially given the enormous caseload of the judges, and as a means to train young lawyers.

Shri Justice R.C. Chavan, Vice-Chairman, E-Committee Of Supreme Court

Shri Justice Chavan opened his address by reiterating former CJI Ranjan Gogoi's remarks on the ramshackled state of Indian judiciary. He also agreed with Dr. Jayaprakash Narayan's suggestion on strengthening the judiciary. The speaker questioned if anybody has ever wondered upon the

quality of the adjudication that takes place in courts. In High Courts, most of the writ petitions, which contribute to the large caseload, are for directions to the executive to decide a matter which is before them. The speaker pointed out there is no audit mechanism in the judiciary, wherein the how, why and what of type of pendency is studied.

The speaker argued that the procedure codes, which are often blamed for the delays in the trial, in fact, provide for a speedy trial. The problem lies in the lack of implementation of the codes. If we decide to be more disciplined in obeying the law, no trial would extend beyond a year.

Shri Justice Chavan stated that in the trial courts, examination of plaintiffs and pleadings before ordering the issue of process is done, not by the judge, but by a court officer. The problem is that nobody looks at the pleadings, as a result of which they are quite verbose and cause several challenges at the trial stage. The speaker also pointed out that time limits for written statements have been imposed in law because adjournments are taken for granted, but the law is not followed and parties approach a higher court for an extension. Similarly, there is a provision for admissions and denials but the civil court does not insist on them to reduce the contest due to shortage of time. There is a mandatory provision for examination of parties by court, but in his experience, no judicial officer has ever claimed that they examined the parties. Day to day trials have become a thing of the past.

Shri Justice Chavan noted that the problem with criminal courts is even more grave. Due to political pressure, police file half-baked chargesheets and judicial magistrates mechanically pass an order of issuance of process. Shri Justice Chavan recounted the facts of the famous case of Ankush Shinde and others. In 2003, in Nasik district of Maharashtra, 6 men were arrested, convicted for the charges of rape and murder of a family in the Sessions Court and sentenced to death. When the case was examined by the High Court for confirmation of death penalty, a division bench confirmed death penatly for three of the convicts and converted the other three into life imprisonment. When appealed to the Supreme Court, upheld the verdict of the trial court and ordered all six to be hanged in 2009. In 2019, post a review petition, the Supreme Court found that none of the men were guilty. The speaker opined that this is due to the low standards

for chargesheeting, and mechanical processes without application of mind. The standard for framing of charges ideally is that there must be enough material to lead to the presumption that the person may be convicted. This has been diluted by some Supreme Court judgments such as the Satish Sharma case which stated that 'if there is a certainty of acquittal, the accused must be discharged'. What happened in the Ashok Shinde case is not only unfortunate for the accused who lived in the shadow of a death sentence for 13 years, but also the victims for whom justice had not been served. The speaker reiterated that the poor state of affair is not due to faulty procedural laws, but the sheer neglect in implementing them from the magistrate to the Supreme Court level.

The speakers appealed to the audience to look into the kind of work the courts are actually dealing with. Even in the High Courts, because of the reluctance to say no and sometimes, writing an order rejecting a petition takes more time, the courts prefer to admit a petition and keep it pending. The courts allow the huge burden to be heaped upon them, which they lament about.

Shri Justice Chavan concurred with Dr. Narayan that many people don't choose to resolve their misery in court. Police are being increasingly involved in settling property disputes and the judiciary has become irrelevant. The courts currently only cater to wrongdoers who hijack the judicial process to perpetuate an unjust status quo or those innocent people who believe in rule of law, only to ultimately lose faith in the system. He agreed with Shri Justice Raghuram that interminable appeals and revisions is an issue, but the quality of justice at the trial court is a problem that must be addressed first. Therefore, it is necessary for everyone who is a part of the system to ensure that the system works, and this can only be done by following the procedure which has always been laid down consciously.

Shri Atul Kaushik, Chief Of Party, Asia Foundation

Shri Atul Kaushik started his address by congratulating Dr. Jayaprakash Narayan for conducting the conference and expressed hope for some of the recommendations made to be implemented by various state governments and the union government. Before delving into the issue at hand, he thanked Justice R.C. Chavan and Justice Madan B. Lokur for their involvement in the E-courts Committee in 2012, without which the E-Courts Mission Project would not have been successful.

He started by stating that the major problem that the judicial system is facing is too little investment as a percentage of GDP, which is currently only 0.09%. He stated that the government believes that areas such as education, roads, infrastructure, health etc. are more important to focus on, getting them votes and outcomes within 5 years. Strengthening rule of law and reforming the justice system is a much longer process, without immediate results. He opined that it is not the amount of money that is the problem, but rather the utilization of the money. The second problem he stated is that we focus more on innovative solutions for justice delivery. The speaker highlighted the fact that our judiciary is based on the principles of natural justice and therefore, cannot circumvent any of the rights or procedures that are necessary to ensure that these principles are adhered to. He pointed out that we have set up special criminal courts, fast track courts for women & children, POCSO courts, MP/MLA offences courts, commercial courts, local courts, lok adalats etc. but none of them work. These courts are suffering from the same problems i.e. lack of incentive, capacity and technology. He suggested that innovative solutions should be replaced with a more holistic approach to reform, involving all stakeholders such as litigants, lawyers, judges, the government.

The speaker acknowledged Mr. Chodosh's suggestions in adopting a 'theory of change' approach, identifying long term goals to address a particular problem. He reiterated that we have to clearly identify what we want to resolve, set long term goals and work backwards, identifying all the conditions or outcomes that must be in place in order to achieve the long term goals. Once

a clear vision is laid down, only then can resources, investment, manpower, case management, technology etc. be enhanced to solve the problem.

Shri Atul Kaushik advocated for five interventions that must be carried out to resolve the problems in the judicial system, the first being technology. He mentioned that with the help of vital information provided by technology, judicial officers can make better and quicker decisions and can track case outcomes, ensuring mistakes are not repeated. Technology also helps move from 'file system' to 'content management'. It also helps initiate 'customer relation management', which leads to a transparent, efficient and trustworthy justice system. He also mentioned the new 'JustIS App' of the E-courts Management Committee, which provides judges with all the necessary information required to dispense justice. The judicial officers can create a measurement tool for themselves on the application, not only to assess their own performance, but to also assess the feedback they get on their performance.

The second intervention he highlighted is 'process re-engineering', which the E-courts Management Committee has been working on. Process re-engineering has to take into consideration two components: case management and abandonment of legacy procedures. The speaker emphasised that these redundant procedures must be abolished.

The third intervention suggested by the speaker is adoption of Alternative Dispute Resolution, especially mediation. According to him, mediation can be a major tool to resolve matrimonial and family issues. It provides better and speedier justice by enabling parties to agree on issues together, saving the court's time.

The fourth and penultimate intervention suggested by the speaker is the adoption of a judicial performance evaluation system, where judges can evaluate each other on the basis of the quality of judgement rather than on the rate of disposal. He opined that out of the 824 cases that are disposed of by a single judge every year, hardly 24 cases are of quality, where complete justice is delivered.

In conclusion, the final intervention proposed by the speaker is to increase judicial capacity in terms of court managers and court clerks. Court managers have to ensure that case management guidelines are implemented and cases are disposed of in a timely manner. The court clerk should be an adjutant to the judge who decides process, service and adjournment issues so that the judge can work freely and devote time to delivery of judgement.

Address by the Chair, Justice G. Raghuram, Director, National Judicial Academy

Justice Raghuram briefly put forth certain observations based on his long acquaintance with the justice delivery system. He first highlighted the significance of the judiciary especially in a democracy where it plays the critical role of delivering justice to the ordinary citizen when all else fails. In the absence of an effective and timely discharge of this duty, citizens lose faith in democratic systems. Secondly, he observed that there are generally two types of litigants - those that come to the court and those that are brought before the courts. The former generally comprise the predators who intend to exploit the system to delay or manipulate outcomes, while the latter are the victims in the system. The third observation of the speaker was that there is a near total loss of public faith in the primary adjudicatory processes or courts of first instance.

He was of the view that it is time for radical suggestions of reform as nuancing of the current system will be a futile exercise. He opined that the extant issues find their origin in the education system. The problems are exacerbated owing to the obsolescent methods of recruitment at all levels. Various factors act as disincentives for the best minds to opt for judicial careers including delays and uncertainty surrounding selection and appointments.

Justice G. Raghuram expressed his substantial concurrence with Shri Atul Kaushik on almost all issues. Drawing from his vast experience, Justice Raghuram made two comments on the discourse on judicial reforms. First, he stated that the approach of exterminating all existing

litigation as a means of tackling delays is incorrect as it would be at the cost of justice delivery. The standards of efficiency of justice delivery particularly in a democracy must be based on social expectation and demands of social equilibrium rather than pragmatic considerations like current docket load, fiscal constraints, infrastructural deficit, judicial vacancies, delay in recruitment and the like which are susceptible to political explanations. Delays in justice delivery adversely affect law and order, control of crime, global perception about business prospects, cross-border commerce, economic growth, public faith in rule of law and in branches of the government, and human rights, among others. Second, he cautioned that although market economies prioritise competence over character, the same cannot be extended to the justice delivery system. There is a need to address the declining standards of character in society in general which will inevitably affect the judiciary as well.

Justice Raghuram then went on to list several of the contributing factors for delays in justice delivery.

1. Skewed judge-population or judge-litigation ratio accompanied with a very high average vacancy in sanctioned strength.
2. Delay in filling up vacancies even in the sanctioned strength in recruitments and promotions.
3. Weak and obsolescent recruitment protocols and deficits in focused training, duration, periodicity, curricula and assessment.
4. Absence of litigation impact analyses and insufficient budgetary and infrastructure provisions while enacting new legislation, with the amendment to the Negotiable Instruments Act being a well-known example.

   Justice Raghuram stated that one tool that the courts can employ in such a situation is to strike down the Act as being manifestly arbitrary in the absence of a Grant to account for potential litigation.
5. Mechanical transfers and postings with no consideration of specialisation and expertise.

6. Lack of clinical assessment of officers during training that has a bearing on seniority or career prospects.
7. Poor quality of legal education.
8. Judicial training institutes in need of overhaul in terms of quality, faculty, infrastructure, and intensity of training.
9. Need for performance evaluation of judicial officers, to be linked with promotional prospects.
10. A rigorous selection and training process for faculty of judicial academies.
11. Interminable appellate and revision avenues. Enhancement of quality of justice delivery at the trial court level followed by legislative measures to reduce appeals and revisions is the solution for this issue.
12. Gram Nyayalayas have been unsuccessful. Such courts call for large funding, non-standard outcomes, and add to the appellate and revisional caseload. A preferable alternative would lie in adequately strengthening the existing system of courts as discussed.
13. Large proportion of government litigation, which amounted to about 46% as of June 2017.
14. Need to recognise justice delivery as a State obligated and provisioned service. A periodical and neutral audit of judicial output, both quantitative and qualitative, must be introduced.
15. Multitude of functions performed by judges. Non-judicial and administrative functions can be entrusted to specialized units of the judiciary to foster administrative professionalism and optimal utilisation of judicial time.
16. Lack of recognition of justice delivery as a service coupled with inefficient lawyers, indolent judges, unaudited and unreformed systems means that judicial adjudication, substantially funded by the State, is a generic load on State revenue.
17. No operative consequences for making a false statement in a court.
18. No costs associated with frivolous adjournments and pleas.
19. No consequences for shoddy or motivated investigation or failed prosecution. No mechanism in place for audit of the investigation report to be certified as triable.
20. Lack of separation of law and order and crime investigation branches of the police department.

21. Absence of professionalism, neutrality, general and trained manpower deficits, sparse forensic support and casual approaches to criminal investigation contribute to inefficient criminal administration.
22. Toxic and unprofessional media trials add to the problem of public faith deficit in the vitality of the criminal justice delivery system.
23. Delays are broadly attributable to court-side inefficiencies and counsel-side inefficiencies.
    The former include excessive listing of cases per day, absence of judge, lack of infrastructural support, and preoccupation of the judge with non-judicial functions.
    The latter include unjustified adjournments, failure to adhere to timelines, lack of domain knowledge, and exorbitant legal fees.

A concerted and synergetic effort to address the various causes of delays is essential. Both the Union and the state governments must recognise the centrality of speedy, efficient, and quality driven justice delivery to a robust democracy and implement suitable solutions for each cause of delay.

He opined that while a radical transformation is required, integration of technology including artificial intelligence will address the issue to a certain extent.

QUESTIONS AND COMMENTS

The first question was addressed to Justice G. Raghuram about clearing the current backlog of cases and preventing a similar situation from arising in the future. Justice Raghuram responded to the same by saying it is not a stagnant goal, rather a work in progress. He stated that a number of reforms are required to clear the backlog. It will be difficult to do so with the existing resources and unless the reason for burgeoning state litigation is addressed. The speaker stated that when he was working in the Tax Tribunals, 92% of state appeals failed and this has been consistent over 3 decades. He opined that judges must not be made to perform extraneous

departmental duties for the government. He concluded by saying that a comprehensive solution is required to tackle this problem, not a prophylactic solution.

The second question, addressed to Dr. Jayaprakash Narayan, was about ensuring new courts function efficiently, given that even existing courts are not able to deliver justice. To this, he responded by stating that we should aim for more accessible courts, simpler procedures, speedy disposal and in particular for criminal cases, better coordination between police, prosecution and courts on a sustained basis. Moreover, there must be a greater bond with the community so that the rate of perjury decreases.

The third question, directed to Justice R.C. Chavan, was about lack of trust in the subordinate judiciary due to multiple avenues to revisit decisions of the lower courts. The speaker gave a two pronged argument. First, he stated that there is a lack of trust due to such courts being under-equipped and the judicial officers being under-trained. Second, he stated that this applies also to higher judiciary. The speaker mentioned that the inefficiency is brought to light by the Supreme Court reversing High Court judgments. Therefore, the process of appeals cannot be done away with without a serious reform in the system. Dr. Jayaprakash Narayan added that in both criminal and civil cases, the rich and the powerful take advantage of the system. The perception is impunity can be bought and procedural law can skew to the advantage of the powerful. Justice G. Raghuram concurred, stating that the definition of a very important person in India is the number of laws he can defy with impunity.

The fourth question addressed to Shri Atul Kaushik was about the adoption of technology in courts on a sustained basis, not just during the pandemic. The speaker responded by stating that e-courts were deployed before pandemic, however, aspects such as video conferencing and evidence recording were deployed more successfully during the pandemic. He stated that the only time video conferencing becomes relevant is when the witness or whoever has to record evidence is not physically available due to not being in the country or due to a physical disability.

The fifth question, addressed to Justice G. Raghuram, was about revamping judicial training to improve the quality of judges. The speaker started by emphasising the need to revamp the protocols for recruitment of judges. He stated that we should have unadulterated and rigorous standards of high metrics when recruiting judges. He also mentioned that recruitment is a professional domain by itself and the judges alone should not be responsible for this. A question bank can also be created for the district judiciary and below and during the recruitment process, questions from this repository can be picked. Additionally, he stated that a standardised, national judicial service can be introduced, provided the concerns of independence, dilution of federal structure and language are solved. Shri Atul Kaushik added that the All-India Judicial Service (AIJS) is a good idea that must be looked at more deeply. On evaluation of judges, he stated that the International Framework of Court Excellence, started by the judiciaries of Singapore and Australia and which is now emulated by 38 countries, developed key parameters such as court leadership, strategic work management, court workforce, court user engagement etc., to assess court performance.

Dr. Jayaprakash Narayan added to the discussion by noting the recommendations of Justice M.N. Venkatachaliah, Justice J.S. Verma and Justice V.R. Krishna Iyer in creating a National Judicial Appointments Commission. He stated that the 99th Amendment to the Constitution, which was struck down by the Supreme Court, is broadly based on their recommendations. On the point of AIJS, the speaker stated that there is glamour and intense competition attached to the All India Services. He also opined that the UPSC is a credible, non-partisan institution doing a remarkable job in recruitment. Therefore, if a body similar to the UPSC conducts recruitment, in consultation with the Supreme Court, it will ensure fairness. He also stated that a judge should be allowed to serve in his/her community or the same area for a long-period of time. Moreover, due to the constitutional limitations, the officers may be required to serve on a 5-year probation in courts below the district level and on confirmation, may serve at the district level as per the constitutional requirements and move further up the ranks. Justice G. Raghuram shared that the time has come to conceptually recognise the judiciary as a super speciality branch of democratic governance and treat it as such, not only judges at the highest level but also lower court judges.

The sixth and penultimate question was on court administration and the requirement of court administrators in India. Justice G. Raghuram shared that in the US, even the roster is prepared by court managers keeping in mind the specialisation of judges. In India, the system is very classist, and irrespective of the level of knowledge, the senior judges are given more prestigious cases.

The final question was about government funding for improving judicial infrastructure. A Vidhi report stated that in addition to the states' contribution, around 8000 crore rupees was granted by the union government since 1993 to build courtrooms and residential complexes. Despite a significant budgetary allocation, India is devoid of courtrooms and other critical judicial infrastructure. To this, Shri Atul Kaushik responded by stating that the money being spent is not enough for two reasons. First, the decision to give money for infrastructure in courts is not made on the basis of indices like judge population ratio or requirement of courts. A decision is taken collectively in consultation with concerned high courts and the state governments on how many judges can be sanctioned for each district. Based on that matrix, the number of courts and complexes are decided. Some of the courts complexes need renovation and some require new complexes. Therefore, each year, high courts and state governments send their requests and money is released accordingly. The speaker opined that since the priority of the political leadership is usually education, healthcare etc., every penny invested for the judiciary is not being delivered. He concluded by stating that state governments do not refuse when high courts ask for money and the reason for delay may be the procedures put in place for verification. Justice G. Raghuram stated that the judiciary is not adequately trained in financial management and administrative protocols and insisted that this must change by recruiting financial experts.

Dr. Jayaprakash Narayan added to the discussion stating that among 49 large economies in the world whose GDP is greater than $200 billion, a study conducted by FDR India shows that on every indicator (immunisation, nutrition, average lifespan, sanitation, roads newly constructed etc.), India stands in the bottom five. Using this, the speaker drove home the point that there are no outcomes visible even in areas that are given priority by the government. Dr. Jayaprakash

Narayan also discussed the theory of state. He stated that the state's primary tasks are the following:

1. Public order, justice and rule of law
2. Basic infrastructure and public amenities
3. Quality Education
4. Quality Healthcare

He emphasised that if these four baskets are not taken care of, the State does not have moral legitimacy.

CONCLUSION:

To conclude, Justice G. Raghuram and Dr. Jayaprakash Narayan discussed how to engineer change. Dr. Jayaprakash Narayan stated that the first step is for the society to be ready to absorb the reforms. The second step is to recognise the need to coincide politicians' ambitions and the country's needs. The third and most important step is to ascertain the best force of circumstance that will usher in positive changes. He concluded by stating that we, collectively, have to seize the context and it is this context that will determine progress.