

Quality of judicial dispensation in India: are we ready to meet international expectations

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Abstract

The said article deals with the need for quick judicial dispensation in our country in order to match the expectations at International levels. Despite the diminutive size of the infrastructure, including the number of judges involved in the process and good efficient dispensation done by the existing Indian Judges, the fact remains that there are several aspects in the entire Judicial System, which require improvement and achievement of excellence at all levels beginning from Law education till rendering of the judgments at various levels, in a complex social and business world.

This article throws light in brief on these relevant aspects by the Author, a Judge in High Court for the last 11 years.

Key Words: *Vacancy in positions of Judges, Efficiency of Judges, Deficiencies in Legal Education System, Lack of Practical Orientation of Law Students, Inefficiency & Adjournment culture, High International Expectations, Quick judicial dispensation for 'Ease of business in India' Standards*

Background

1. The largest and thriving democracy on this planet, INDIA, unfortunately cannot boast today, after 70 years of its independence from British rule and with avowedly the best written Constitution, of a top class efficient judicial dispensation.

- The sheer size of diminutive infrastructure compared with the Goaliathic volume of case load, makes it humanly impossible to render quick and timely delivery of justice.
- The judge-to-population ratio⁽¹⁾ of 18 to 1 million⁽²⁾ (21,598 sanctioned strength as on 31.12.2015 with a shortfall of

vacancies as follows: 2 in Supreme Court, 432 in High Courts and 4,432 in subordinate courts; besides currently, only 16,513 courtrooms are available with a shortfall of 3,989 court rooms. This is the situation even if the aforesaid sanctioned strength were to be completely filled up). This ratio is abysmally low as against the recommended strength of 50 per one million of population by Law Commission in 1987 and developed countries' standard of 100 per 1 million in USA. Forget ideal working conditions.

Table 1

	Sanctioned strength	Vacancies	Courtrooms
Supreme Court	31	2	If all vacancies are filled up, 20,502 Courtrooms required
24 High Courts	1,065	432	16,513 only are available
Subordinate Courts	20,502	4,432	3,989 No Court Rooms
Total	21,595	4,866	

Judge: Population ratio per one million of population – Some countries data--

- India 18
- Australia 41.6
- England 50.9
- Canada 75.2
- USA 107

- During my visit to the Switzerland Supreme Court in September 2015, in an audio visual interaction with the Registrar General there about the working of the court surprised me. Against a ratio of about 8,000 cases in the Supreme Court and 38 Judges in Switzerland, in India, we have less than 30 Judges to deal with 70,000 cases. Additionally, in India, as you go down the hierarchy of Judges, there is a higher case load and fewer judges; working conditions also worsen. Some of the District Courts in India don't have adequate and properly constructed courtrooms. With the kind of concentration and application of mind which one should expect in courts, it becomes a tall order in such working conditions.
- I hasten to state here that I do not have any doubts about the quality of Indian Judges; it is second to none, and the quality of the Indian Supreme Court judgements is appreciated and relied upon world over. But the number game has its own effect.

Quality of Law Education in India

2. But then Judges alone are not responsible for judicial dispensation in any sovereign, more so in case of the large Indian democracy. Another Wheel of Chariot – The Lawyer Community – shares a major part of the cake or burden of “Run of the Mill” judicial dispensation.

Let me reflect and introspect briefly to enumerate the woes and lackings in that partner.

- The falling standards of legal education in India may have been discussed in hundreds of conferences; there is just a small silver lining in the form of 5-year law courses run by a few law

schools and the endeavours of a few highly dedicated law professors. Other than this, there is nothing much to write home about.

- The guest faculty culture, near-empty classrooms with a high rate of student absenteeism and Gutka (short Q & A) book examination tool culture is all too well known. True learning in the form of project study, case study, practical training with practising lawyers, frequent moot courts, field visits in legal aid and court visits by the students are all forgotten.

Where are we going and where do we want to go? If you can't have good law students, you cannot have good lawyers and if you don't have good lawyers, don't even expect good judges, and there is nearly no scope for good and efficient judicial dispensation.

Striking Strikes

3. Unfortunately, the existing bank of lawyers are not working at their peak capacity what with the culture of frequent adjournments, lack of proper preparation of the cases and ever increasing instances of strikes by lawyers; take, for instance, the strike by judges in Telangana against posting of Judicial officers from parent State of Andhra Pradesh; this is enough to put us to shame.

Do such instances compel us to look back at our school education which was woefully lacking in morals and values? Or is there something seriously wrong with our citizen country bondage? Well, not to spill the beans let me revert back.

Criminal Justice Dispensation

4. Another important adjunct in criminal dispensation is the investigating agencies or the

police, and the execution or implementation agencies in civil dispensation. Both are on two different ends of the scale of judicial dispensation.

The experience in criminal dispensation has shown that except for the central investigation agency, the Central Bureau of Investigation (CBI), which has become all too burdened with political cases, the local police investigation has left much to be desired leading to a poor conviction rate in India. Please don't blame courts for more acquittals; the reason for this is the inability of investigation agencies to lead and establish sufficient evidence before the court beyond doubt, which is the tenet of criminal jurisprudence. Therefore, gearing up for the investigation is equally important if you expect good results in criminal dispensation. The Supreme Court and various High Courts of the country have time and again emphasised the need of reforms with respect to the police in our country⁽³⁾ which have remained unimplemented at the recommendations' stage since the last 2 decades.

Civil Justice Dispensation

5. Similarly the execution of civil decrees of Courts is infamously known in our country as just the second round of litigation. Order 21 containing as many as 106 Rules⁽⁴⁾ is known as Lawyers' Heaven and Litigants' nightmare. The courts have gone to the extent of recommending the dispensing with the order 21 CPC itself, directly empowering the court concerned to execute its orders.

In fact, in our country, the contempt jurisdiction has become an execution proceedings rather than a sparingly used tool to uphold the majesty of law and courts. Unless the civil bureaucracy sincerely and

meticulously cooperates, the ideal civil law dispensation will remain a farfetched reality.

What I intend to convey is that it is the overall joint raising of the platform in different component sectors which is required for a better and ideal judicial dispensation.

Suggestions

6. The following suggestions may be considered by the concerned.
 - The entry into law education or graduation must be filtered with an entry test on an all-India basis after 10+ 2.
 - Only a five-year law course should remain on uniform basis. Retired persons or government servants undertaking part time three-year study of law and joining the profession stream during their retirement should be discouraged.
 - The law course needs to be revamped and practical study components to be made larger and a compulsory part of graduation.
 - Fresh law graduates should be encouraged to do trial court at least for two years before they are allowed to appear in High Courts or the Supreme Court.
 - Renewal of practice certificate or Sanad after every five years should be undertaken to weed out non-serious players.
 - Personality development and language expression in law graduation courses should be an integral part of the course.
 - Values like honesty and integrity are equally necessary to be ingrained at the graduation level. The following short story will illustrate this: --

Shiv Khera⁽⁵⁾, a renowned author and management trainer writes about his experience in Singapore.

“Six years ago in Singapore, I gave a taxi driver a business card to take me

to a particular address. At the last point he circled round the building. His meter read 11\$, but he took only 10.

I said, 'Henry, your meter reads 11\$; how come you are taking only 10?' He said, “Sir, I am a taxi driver; I am supposed to be bringing you straight to the destination. Since I did not know the last spot, I had to circle around the building. Had I brought you straight here, the meter would have read 10\$.”

“Why should you be paying for my ignorance?”

He said, “Sir, legally, I can claim 11\$, but honestly and ethically I am entitled to only 10.”

He further added that Singapore is a tourist destination and many people come here for three or four days. After clearing the immigrations and customs, the first experience is always with the taxi driver and if that is not good, the balance three to four days are not pleasant either.

He said, “Sir I am not a taxi driver; I am the Ambassador of Singapore without a diplomatic passport.”

In my opinion, he probably did not go to school beyond the 8th grade, but to me he was a professional. To me, his behaviour reflected pride in performance and character.

That day I learnt that one needs more than professional qualification to be a professional.”

In one line, “Be a Professional with a human touch and values that make all the difference.”

“Knowledge, skill, money, education, all comes later. First comes Human Values, Honesty and Integrity, Professionalism.”

“It's NOT the job you DO, It's HOW

you DO the job.”

Suggestions for Lawyers' Performance

7. Strikes by lawyers should be totally prohibited. They are not workmen. They are spokespersons for others. For upholding the dignity of the profession, strikes by advocates can never be a valid tool.
 - The time limit for oral arguments should be fixed by the court. It may be related to court fees paid. Written arguments should be encouraged.
 - Adjournments should always be subject to costs by the advocate or party seeking the same, as fixed by rules, unless waived by the court recording reasons therefor.
 - Cause list or the number of cases to be dealt by the court on a daily basis should be practical or humanly possible; an acceptable number is 20 or 30 cases per day for effective arguments, not 100 or more as we find these days.
 - Continuing legal education for practising lawyers during the first ten years of practice, regular academic clubs, seminars, etc. should form an important part of the agenda for Bar Councils and Bar Associations.
 - Constant law research and updating the compilation of statutes and case laws by appearing advocates should be made an integral part of the pleadings before the courts at all levels.
 - Practice of special laws like taxation, IPR, Cyber laws, etc. should require a special certificate course to be undertaken by appearing counsels.
 - A regulated fee structure for lawyers, though difficult to be statutorily enforced, deserves to be debated and conceived to avoid malpractices.

For Courts and Judges

- Increase the number of Judges in courts to at least double the existing numbers immediately, with further doubling over the next five years. The GDP allocation for the Judiciary should increase from 0.6% at present to 1% as against 5 to 10% in developed countries.
- Case flow management and consolidation or bunching of cases which can be disposed of by common judgement is urgently required.
- Training Judges on use of latest technology, computers and softwares, and greater application of technology in this area.
- Attachment of at least one legal research assistant with all Judges from the Civil Judge level to Constitutional courts.
- Better working conditions for judges. This is even more important than just a good salary; this helps increase efficiency. Small inconveniences such as the lack of good stenographers can also adversely affect the efficiency of courts.
- Complete financial autonomy for the judiciary as an independent wing of the State should be seriously debated and implemented.
- Timely filling up of vacancies at various levels and timely promotions are also equally necessary.
- Appointment on merit alone should be made. No reservation on regional, religion or caste or economic basis should be introduced. Merit should include high integrity and character

observed in the past period prior to appointment.

- Judges have to introspect and achieve optimum efficiency levels. Continuing legal education for Judges⁽⁶⁾ is also equally important. An independent body may give a periodical report about quantity and quality of disposal of cases by the Judges at all levels.
- A system of graded court fees should be introduced. While poor people should have almost free of cost access to justice, the rich and corporates should pay proportionate court fee commensurate with the stakes or the hours of court time consumed.

International Expectations

- MNCs and international players who invest in our economy for which we are vigorously inviting them or those who have business contracts with Indian corporates having tax implications including international taxation based on tax treaties, first insist on a fair and quick Dispute Redressal System.
- Our judicial dispensation has to build an image of having a dedicated system with specialized people manning the system. India is yet to build this image.
- Steps like enacting GST⁽⁷⁾, Commercial Division courts⁽⁸⁾ and Updating Arbitration law, etc. are good steps in that direction, but much is yet to be done.
- Creation of specialized Tribunals will not help, but providing for separate benches in constitutional

courts with tiers of dispute resolution or adjudication machinery reduced to a bare minimum, say two levels, can and should help achieve this objective.

- Consistency and uniformity in judgments at different places within the country is of utmost importance. Therefore, a constant exchange of information will be the key.
- The system of circulating draft judgements in different parallel jurisdictions inviting suggestions and comments, and then circulating the judgement upon pronouncements, can be evolved to avoid multiplication of views, conflicting views and can maintain consistency and coherence.
- An impact assessment independent body should constantly undertake legislative amendments and judgements resolution, and publish reports on them for further guidance.

The international community expects high standards from jurisdictions in fast developing economies like India; various countries have already evolved such efficient systems.

8. We cannot afford to lag behind. An efficient, lively and responsive judicial dispensation is not a Utopian demand. We are capable of fulfilling such an expectation. The need and call is to tighten seat belts and get down to the job or as they say, hit the ground running. All components must rise together; after all, the plane does not fly up in pieces. It takes off as one unit.

References

- From the Speech of Chief Justice of India, Hon'ble Justice T S Thakur on 24th April, 2016
- www.bb.com
- See Supreme Court judgments in the case of Vineet Naran Vs Union of India (1998) 1SCC 226 and subsequent orders in (2011) 14 SCC 20 Prakash Singh Vs Union of India
- Civil Procedure Code, 1908 is British Rule Time law. This civil procedural Code is still prevalent in our country. Order 21 contains 106 Rules and provisions relating to the Execution of Decrees passed by Civil Courts.
- From his website www.shivkhera.com
- National Judicial Academy, Bhopal undertakes regular Legal Education Programmes throughout the year for Judges at all levels from Civil Judges to High Court and Supreme Court Judges on various topics of seminal importance.
- Goods and Service Tax law – Constitutional 124th amendment Act recently passed by both Houses of Parliament in August 2016 paving the path for enacting a separate law for 'one-tax' for all goods sold and services provided, substituting various indirect tax levies like Sales Tax, Excise Duty, Entry Tax, Octroi, etc.
- See 'Commercial Courts, Commercial Division & Commercial Appellate Division of High Courts Act 2015' (Act No.4 of 2016) which received the assent of President on 31.12.2015 creating separate Commercial Divisions at District Court and High Court levels for deciding commercial disputes including arbitration proceedings for commercial disputes.

Justice Dr Vineet Kothari practiced in Tax & other Commercial and Constitutional Laws, Arbitration & Company Law for 20 years in Rajasthan High Court & Supreme Court of India; He was elevated as Judge of Rajasthan High Court in June 2005 and has worked there for 11 years. Later, he was transferred to Karnataka High Court. Justice Kothari was awarded Ph.D in Tax Laws; B.Com.(Hons.), LL.B. and LL.M. He is a member of the Institute of Company Secretaries of India (ICSI) and Institute of Chartered Accountants of India (ICAI). He enrolled as Advocate on the Bar Council of Rajasthan. He was Chief Editor of National Level Journal 'Sales Tax Literature' during 1986-1990 and has had various articles published in Law Journals at regular intervals. He wrote an article on 'Child Education & Poverty' suggesting compulsory military training to India's youth; it was acknowledged and appreciated by the then President of India, Dr. A.P.J. Abdul Kalam. He contributed a paper on 'Constitutional Features & Indian Democracy' published by Korea Legal Research Institute (KLRI) in their Global issues. In an International Tax Conference organized by International Association of Tax Judges (IATJ), he contributed a paper on 'Transfer Pricing' at Amsterdam, Holland. He has participated as Panel Member in Judges' Seminar in 68th Congress of International Fiscal Association (IFA) on 'International Tax Treaties'. He has contributed a paper on "International Taxation: Indian Perspective on Dispute Resolution Mechanism" in World Congress on International Law at Delhi organized by the Indian Society of International Law (ISIL). He has chaired a technical session on "E-Commerce Transaction/Cloud Computing – Tax Controversies" in IFA (India) International Conference at Delhi. He has contributed a paper on 'Social Networking by Judges' in Luzern, Switzerland in IATJ and judged on Judges Panel in Basel, Switzerland, a Moot organized by IFA. He has contributed a paper on 'Case Load Control of Tax Cases in India in IATJ 7th Congress in Madrid, Spain. He was nominated as Director on Board of International Association of Tax Judges (IATJ) for 3 years by IATJ.