

# TOWARDS A JUDICIAL PERFORMANCE INDEX IN INDIA

**SIDHARTHA SEKHAR DASH\***

\* Assistant Professor-II, School of Law, KIIT Deemed to be university, BBSR, Odisha, India.

## ABSTRACT

*In the increasing reach of judiciary as well as broaden expectations of teeming millions of India, judicial performance shall be the yardstick for the justice. However, understanding the measurable variables to capture the judicial performance requires greater circumspection, dedicated empirical research in Indian practice environment steeped in sophisticated street lawyers. The paper voyages various variables with a hope for the need of indigenous explorations.*

## INTRODUCTION

The reach of Judiciary is fast expanding. After successfully bringing socio-economic changes through Judicial Activism in the last decades, Indian Judiciary is now poised to expand further its ambit to make constitutional values realized to the common citizens. Judiciary is constantly trying to make "judiciary at the doorstep" a statement that has many layers of meaning. It means, justice should be fair, affordable, and time-saving and host of other values. Judicial Reform is necessary to make justice at the doorsteps. John Rawls in his theory of Justice contemplates the idea of Justice to take care of, through greatest benefit to the "least-advantaged person in society". This is, reaching to the last man of society. The present government also echoes that the governance should reach *samaj ki antim chor ki bwaykti tak (last man of the society)*. While various entitlements are thought to be delivered by the state in idea of justice by Rawls, the question on the justice offers a more complex

dimension when delivering *justice itself* which is availed from the judiciary and *the raison d'être* of the judiciary itself.

## THE CHALLENGES FOR INDIAN JUDICIAL INSTITUTIONS

Over twenty million cases are congested before the lower judiciaries in India these days. Six millions of those have lasted longer than five years. “Another 4.5 are waiting to be heard in the High Courts and more than 60,000 in the Supreme Court”<sup>1</sup>. “There is a systematic problem with India's Court. And because of it our family has suffered so much” Ashis Kumar commented on a case which he is following for more than 24 years<sup>2</sup>. “The number of cases is only a part of the problem. Take(ing) a walk through any court building in India; one can see long queues of people waiting outside courtrooms without guarantee of getting a complete hearing<sup>3</sup>”.

The access to justice survey in 2017 states, more than 44% of population those have at least one case in 5 years are using a court-room mechanism to resolve a dispute. And, 40.6 % of the populations are between the age group of 31 to 45. And to understand a case, 7.6% of the populations go to Legal Service Authority to seek information to understand the nature of dispute<sup>4</sup>.

This means that common men still feel the justice is not fair, affordable and least to be talked about the time of a case progression in the court of law. To answer these questions we have to reorient our Judicial Reform project in terms of performance evaluation with appropriate indicators. Judicial reform should not be confined to reform through judicial activism of Public Interest Litigation. The judicial reform should touch every aspect of justice where a common man should *feel the ease of ligation*, much similar to the *ease of doing business* in a globalised world. Without relegating the sense of justice to a market-value in a global economy, and retaining its ethical virtue, inherent difficulty lies in tapping the

performance of the judiciary for the realization of the justice. A *happiness index for justice* of the judiciary can also be thought of, even though we are mindful that happiness index itself stemmed out from Bentham-ian Justice. Without delving more in to the question of jurisprudence, the workable question in the context of judiciary for us can be "How does a Court Perform?" for the realization of the aspiration and expectations of common men. To know the performance of a court, the time has come to stress more on those indicators which shall help in tapping it. There are several indicators. A few of those are discussed in this paper, leaving more to explore upon.

### **THE JUDICIAL REFORM INDEX FACTORS**

The Judicial Reform Index (JRI) is a tool developed by the American Bar Association Rule of Law taken steps to evaluate the reform and judicial independence in budding democracies and transitioning states. There are some principles developed by United Nation which are fundamental for the judicial independence. Also International Bar Association Minimum Standard for Judicial Independence outlines certain standards. The formation of the JRI has taken note of these values. The JRI has also incorporated the principles of the Council of Europe Recommendation on Independence of Judges and the European Charter on the Statute for Judges. JRI strives to make judiciary more accountable as well as qualitatively effective and autonomous. JRI consists of broad indicators such as Quality, Education and Diversity; Judicial Powers; Financial Resources; Structural Safeguards; Accountability and Transparency; and Efficiency. Each of these indicators has sub-indicator and there are as many as 30 indicators to assess Judicial Reform. All these are signpost for a nation to gauge and oversee systematically the reforms in judiciary as well as tabulating challenges or problem and their solutions and can also be resourceful to monitor how successful a Judicial Reform would be for a country in the globalised world.

However, there are differences between, Judicial Reform, Justice Administration and Judicial Evaluation. While Judicial Reform can be a set, administration of justice and performance evaluation of judges can be sub-sets. For each of these, different indicators should be in practice and those shall complement each other in various ways to make justice meaningful.

## **EVALUATION OF JUDGES**

When we say the evaluation of the performance of the court, the inevitable question comes “*what to measure*”. Is it to measure the performance of the Judges or there are more to it. One of the aspects to complete the project of juridical reform is to measure the performance of the judges. This is known as Judicial Performance Evaluation (JPE). This index is used for the evaluation of the judges and it helps the judges in the promotion and in the USA, also their retention.

When the performance measurement started in the lowest court or trial court around 1987 in the United States, during these period it developed one national trial court performance standards. These standards were formulated to cross the barriers of language and thus developed a common language to guide the evaluation of court performance including enabling the constitution of a conceptual framework that courts could use themselves to structure performance improvements.

The United States Bureau of Justice Administration in collaboration with National Centre for State Courts had undertaken a Trial Court Performance Standards Project which concentrated on the indicators to essay the trial courts "output" in five areas, such as, access to justice, timeliness, fairness, independence and accountability, and public confidence. In the UK, reforms in the Legal Aid Bureau had been accompanied by the development of indicators used to measure the "quality" of the services provided by Legal Aid Lawyers. In

Case of Australia, extensive study is made on the various aspects of court administration, including the number of cases, time and money expenditure per case, and accessibility of the courts.

A glimpse of this can be seen in India, where “the Central Government has submitted a proposal to the 15 finance commission for an award of Rs 436 crore for the installation of Justice Clock in 3,350 courts premises during 2020-25”<sup>5</sup>. “Justice Clock is an electronic LED Display message board to show the Ranking of all the HCs and the Districts and Subordinate Courts”<sup>6</sup>. The idea is to show the disposal rate of each court, accordingly, the performance and ranking of the Court shall be done. Earlier, the acting Hon'ble Chief Justice of High Court of Chhattisgarh inaugurated "Justice Clock"<sup>7</sup>. Here, the ranking of a Court or High Court is measured through the rate of disposal of cases.

It is to note that Judicial Performance should not be confined to the performance of the judges only, measured through Judicial Performance Evaluation. Commissioned by the Department of Justice, Ministry of Law and Justice, Government of India, the Vidhi Centre for Legal Policy has conducted cross-jurisdictional doctrinal research titled under "Development and Enforcement of Performance Standard to enhance Accountability in the Higher Judiciary in India."<sup>8</sup> While measuring the Court performance only two indicators, i.e Ease of filing cases in the court (case filing fees, litigant demographics) and Efficiency of the registry: case management, digital enablement, have been taken into account the research is largely focusing on the Judicial Performance Evaluation of Judges. While considering the performance of the Judges are necessary for measuring Judicial efficiency, Performance of the Judicial Administration as a whole in a Judgeship/ Judicature should be in the real cursor for the Judicial Performance and hence judicial reform.

Maria Dacolia in her scholarly article while aimed to show areas, in which international comparison of judicial performance could be fruitful, and suggested indicator that might be used. She wrote "the measurement of efficient and quality justice requires attention to three elements: the legal norms that government is expected to enforce; the manner in which courts find facts and apply substantive law to those facts; and judicial administration, the process and procedures by which courts take cognizance of disputes and present them to judicial decision-makers for disposition. While these three areas are interrelated and should be considered as a whole during reforms, *the central focus (of this study) is judicial administration*. Judicial administration is measured by concepts of efficiency, *access*, fairness, *public trust*, and judicial independence. These categories are closely interdependent-*a lack of efficiency reduces access* as well as fairness and *public trust*. It is to be stressed (that this study focuses) on one dimension of performance"<sup>9</sup>.

To address this concern, we can refer to the statement of Dr Yogesh Suri, Advisor, NITI Aayog, India stressing for a new benchmark, Judicial Performance Index, to incorporate the best practices followed around the world.<sup>10</sup> Also, the "Global Measure of Court Performance" set various "operational terms" to realize "transparency and accountability" of the administration of Justice.<sup>11</sup>

## THE JUDICIAL PERFORMANCE INDEX

The Judicial Performance Index is reflected by Dan H. Hall and Ingo Ketiliz in the Discussion Draft Version 3 under the International Framework For Court Excellence for a quality management system designed by the Global Measure of Court Performance for the policymakers to borrow and infuse in good governance. This describes 11 dedicated, neat and actionable Court Performance Measures aligned with the values and areas of Court Excellence. It has identifies 10 core court-values and 11 measurable tools. The core court-

values are Equality, Fairness, Impartiality, Independence, Competence, Transparency, *Accessibility*, Timelines and *Certainty*. And the measurable tools are “*Court user Satisfaction*, *Access Fees*, Case Clearance Rate, On-Time Case Processing, Pre-Trial Case Processing, Court File Integrity, Backlog, Trial Date Certainty, Employee Engagement, Collection of Fines and Fees, and finally Cost Per Case”.<sup>12</sup> However, whether these indexes are representatives of the problems, challenges and address the peculiarities of the Indian practices environments of various lower courts and High Courts across India needs to be empirically researched.

There are some inherent difficulties of finding the representative indexes on the issue of Judicial Reform, which has conceptual challenges of choosing what to measure. Like in case of a private company, the *profitability* is the end where efforts are directed, in case of Administration of Justice, the direction of efforts is met with the inherent difficulty of quantification of justice. Utilitarian way of quantification can be a good start, to begin with where "satisfaction" of the common man, loosely translatable to "confidence" of the common man, will be a precursor. Also the emerging ideas in line with “happiness index” from the same Bentham-ite thoughts to measure the performance of a government can also be full in case of judiciary among other indicator. However, there too, challenges are to address the ethical way of looking at the Justice. In short, indexes will have both objective quantitative aspects as well as the subjective qualitative aspect.

The Law and Justice Institutions Thematic Group writes "Quantitative indicators are appealing because they are relatively concrete and often more objective - that is, the value of the indicator is less sensitive to the identity of the observer doing the measurement. Quantitative measures may also make cross-country or inter-temporal comparison more feasible. However, the scarcity of good data and the inherent subjectivity of many aspects of legal system performance limit the areas where quantitative data are available or relevant. It

may be possible to measure objectively case processing times or legal expenditures per case. It may even be possible to construct quantitative measures that capture things like commercial confidence in the legal system and expropriation risk - ..... for example, analyze black-market currency premiums and proportion of "contract-intensive" money to get at these variables. It is much harder to measure objectively how "just" or "fair" the legal system is, or whether it is "legitimate" in the eyes of the general population. Similarly, there is no ready means of quantifying overall respect for the "rule of law"....The problems with both quantitative and qualitative indicators probably cannot be overcome. Probably the best approach is to use a mix of indicators - the appropriate mix will depend on the specific project or research question - and to keep the limitations and pitfalls firmly in mind.<sup>13</sup>

After considering the above, the pertinent question that arises how far these operational values are helpful in Indian judicial practise environments. Instances are abundant when a concept is transported into Indian environment without much study on it by flowing with the sway of opinions in favour of an idea. And for the appropriate judicial performance index, greater circumspection and through research are necessary

## CONCLUSION

Steps for Judicial Reform should earnestly be pursued in the right direction. For that, appropriate performance indicators are needed to deal with this extremely complicated project. If the performance indicators are not designed studiedly, it shall result in more disservice to the project of judicial reform towards the ends of justice. Therefore, careful considerations are necessary to find an appropriate mix of both qualitative and quantitative indicators capturing the dynamics and complexity of the Indian judicial practise-environments which can be reliable and gatherable in a cost-effective manner. Empirical



Study on the indicators is necessary for the Justice Administration to make it transparent, fair, accountable and performing, and in short *delivering justice* to the last man of the society.

## ACKNOWLEDGEMENT

None

## CONFLICT OF INTEREST

There is no conflict of interest in this work.

## REFERENCES

<sup>1</sup>Doshi , Vidhi. "India's long wait for justice: 27m court cases trapped in legal logjam". *THE GUARDIAN*, (May, 5, 2016, 01.47 BST). <https://www.theguardian.com/world/2016/may/05/indias-long-wait-for-justice-27-million-court-cases-trapped-in-a-legal-logjam>.

<sup>2</sup> *Id.*

<sup>3</sup> *Id.*

<sup>4</sup> An interactive webpage giving results of the Access to Justice Survey 2017. <http://dakshindia.org/access-to-justice-2017/index.html>.

<sup>5</sup> "Justice Clocks to be installed in 3350 Courts, to cost rs 436 cr". *THE TIMES OF INDIA*, (Jul., 10, 2019). <https://timesofindia.indiatimes.com/india/justice-clocks-to-be-installed-in-3350-courts-to-cost-rs-436-cr/articleshow/70151093.cms>.

<sup>6</sup> *Id.*

<sup>7</sup> Naaz , Nisreen. "Justice Court starts ticking in Chhattisgarh. HC Premise". *THE TIMES OF INDIA* (Apr., 01, ,2019). <https://timesofindia.indiatimes.com/city/raipur/justice-clock-starts-ticking-in-chhattisgarh-hc-premises/articleshow/68671492.cms>.

<sup>8</sup> Chandrashekar , Sumathi. "Development and Enforcement Standard To Enhance Accountability of Higher Judiciary in India". *VIDHI CENT. FOR LEG. POL.*, Aug., 18, (2017). <https://doj.gov.in/sites/default/files/document%282%29.pdf>.

<sup>9</sup> Dacolia, Maria. "Court Performance around the world: A Comparative Study". 2, *YALE HUM. RTG. & DEV. J.* (2014).

<sup>10</sup> Suri., Dr. Yogesh and Desh Gaurav Sekhri. "India's Economic Reforms have Expanded, But What about its Legal System?", *GOV. & RES. NITI AYOJ*. <http://niti.gov.in/content/indias-economic-reforms-have-expanded-what-about-its-legal-system>.

<sup>11</sup> Hall, Dan H. and Ingo Keilitz. "Global Measures of Court Performance, Discussion Draft Version 3". *INTERNATIONAL FRAMEWORK FOR COURT EXCELLANCE*. Nov. 09. (2012).

[http://www.courtexcellence.com/~ /media/microsites/files/icce/global%20measures\\_v3\\_11\\_2012.ashx](http://www.courtexcellence.com/~ /media/microsites/files/icce/global%20measures_v3_11_2012.ashx).

<sup>12</sup> *Id.*

<sup>13</sup> "Performance Measure". *THE LAW & JUS. INST. THEMATIC GRP.* Mar., 19 .(2012). <https://www.dmeformeace.org/resource/performance-measures-topic-brief/>.