Judicial Impact Assessment as a Tool to Strengthen Access to Justice and Democracy in India: Lessons to Learn from the Experience of USA

Dr. TSN Satry*

Abstract

Access to Justice constitutes as one of the chief attributes of democracy. However, mere constitutional recognition of the concept without proper judicial institutional support cannot augment the rights of people to exercise freely their guaranteed fundamental rights. A good judicial legal system with financial autonomy, certainly, augments to check the abuse of executive and legislative enforcement of human or fundamental rights, and provides quick legal remedies to the litigant parties. A balanced, shift, accessible and fair justice delivery system helps not only promoting law and order, but also strengthens the tenets of democracy, good governance . Such a system helps to develop tools to strengthen the markets, which includes attracting direct investment both from domestic and from that of foreign.

Key Words: Judicial Impact Assessment, Salem bar Association, Access to Justice, Congressional Budget Act, Nidhi ayaog

---

*** Professor of Law and Coordinator, University Human Rights Education Programme, Department of Law, Savitribai Phule Pune University, pune411007, tsnsastry61@gmail.com. Dr sastry was formely Academic Fellow of the European Commission under the Erasmus Mundus Scheme and cultural exchange fellow of the Government of France.**

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

Introduction:

Congestion of courts, legal costs, and delays in adjudication are the common problems of many countries. Inadequate institutional prop up to judiciary considered as one of the chief attributes of good governance, to which India is not an exception. [1]

In India, the constitution has guaranteed independence to judiciary. However, lack of financial autonomy constitutes as one of the chief attributes besides court delays, overcrowding of cases and denies millions of litigants' easy accessibility to justice.[2] The delayed justice system often cited as one of the important reasons for investment in India especially, by foreign investors. In India, lack of sufficient number of judges and financial autonomy to judiciary many a times upsets the apple cart of equality before law, quick justice, and brings to fore a number of issues relating to human development index such as gender inequality, social tensions, health care, malnutrition, unemployment, so forth and so on.

According to a World Bank Report on Justice Sector At a glance of 2007, the data on 30 selected countries indicate that 2,000 the average number of judges for 100, 000 inhabitants was 6.38.[3] Where in the figures stand in India is for 2.7 judges.[4] The Parliamentary Committee on Empowerment of Women in its report in 2013 on Victims of Sexual abuse and Trafficking and their Rehabilitation had opined that with the present strength of 18,000 Judges (this includes the judges of entire legal system of the country i.e., Supreme Court, High Courts and Lower judiciary), it will take at least more than 200 years to clear the 32 million cases pending in various courts. If the vacant position of judges taken into consideration, it will depict

---

[1] Buscaglia, E. and M. Dakolias : Judicial Reform in Latin American Courts: The Experience in Argentina and Ecuador, *World Bank Technical Paper,* Washington DC: World Bank, 350, 1996

[2] TSN Sastry Excellence in Public Service: The Need for Financial Autonomy to the Judiciary, the Indian Journal of Public Administration, Vol. LII, 478-83, 2006

[3] India Development Foundation, Judicial Impact Assessment: An approach Paper, 1, 2008 available http://lawmin.nic.in/doj/justice/judicialimpactassessmentreportvol2.pdf, updated on 15.4.2015

[4] Hara, Arnab. K. and Maja. B. Micevska, The problem of Court Congestion: Evidence from Indian Lower Courts , Proceedings of CEA 38th Annual Meetings (6 June 2004) Ryerson University, Toronto

more horrendous picture than as stated in the report.[5] For instance as per a report of the Ministry of Law and Justice of Government of India as on 2015.07.01 the Supreme Court has three

vacancies of its total strength of 31, and the corresponding figure in the High Courts of various states is 377 out of 719 sanctioned judges.[6] This being the situation of higher judiciary, the situation of lower judiciary is beyond imaginable. Apart from above, inadequate funds allocated to judiciary by legislature, and the legislature continuously passes legislations, without any cognizance of workload that adds fire to the fore on judiciary in administering justice. All this resulted in denial of easy access to justice to public at large, especially the poor and under privileged to seek quick justice, and a number of problems arise continuously, which in a way prevents the democratic growth of India.

In order to overcome such problems, the Judiciary needs financial empowerment, to increase the number of judges, sufficient work force to assist courts and litigants, (especially at the lower rung) and the assessment of workload of courts to overcome present day problems. To gauge the workload of judiciary to allocate the required finances, Judicial Impact Assessment regarded as one of the best tool, implemented successfully in many countries. In the light of above, this paper examines the conceptual perspectives of Access to Justice, Judicial Impact Assessment and draws an analogy from the experiences of USA,[7] as it is the preferred system accepted even by the Supreme Court, and its possible affects on the Indian context to empower the right to access to justice.

Access to Justice: Historical and conceptual perspectives

Whenever we speak of 'access to justice', we mean a particular perspective in mind, and, mostly talk of access to justice as one of the key concepts of law and justice system with a number of dimensions such as Legal protection, Legal Awareness, Legal aid and Counsel,

[5] Committee on empowerment of Women , 19th Report para 2.8. Lok Sabha Secretariat, New Delhi, 2013
[6] Government of India, Ministry of Law and Justice. doj.gov.in
[7] As the Committee appointed by the Government of India to submit proposals to work on Judicial Impact Assessment in India and as the committee preferred the experiences of USA , the US Experience has been taken into consideration.

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

Adjudication, Enforcement, and, Civil society and Parliamentary oversight.[8] In general, access to justice many a times viewed by people those who work in the area to improve justice system discusses of a particular problem or particular group. In the contemporary era, it means settlement of disputes and alternatives for redresses of disputes in a quick span. However, access to justice its historical roots across the world attribute a number factors to it. In societies that of India it was governed mostly by moral, ethical and legal principles and mostly based on the principles of ***dharama*** before its modern tenets of legislative history invented by the British legal system. [9]

In the West, the concept of access to justice, generally, ascribed to the traditions of Common Law developed under the British during the twelfth century under Henry II, followed by the singing of King John's Magna Carta in 1215. The commentaries of Blackstone, the judicial decisions of the courts of UK and USA strengthened the concept expanding its realm from civil law to constitutional province.[10] In later periods, it evolved as a human right and developed as an important tool to address the concerns of poor and vulnerable across the frontiers through the concept of 'Public Interest' or 'Social Action Litigation'.[11] The definition of access to justice seen in the context of socio-legal research or in the backdrop of legal need

[8] UNDP: Access to justice : practice Note, 8, 9/3/2004

[9] for a discussion on the ancient legal system and duties of King in the administration of justice and access to justice Rama Jois: Legal and constitutional history of India, Universal Publications, Delhi, 1984, also see L.N. Ranga Rajan (9Ed) The Kautilya Arthashastra, penguin, New Delhi, 348-461, 1987

[10] Leonard W. Schroeter, The Jurisprudence of Access to Justice: From *Magna Carta* to *Romer v. Evans*via *Marbury v Madison available at* http://www.seanet.com/~rod/marbury.html updated on 20.5.2015; Justice M. Jagannadha Rao, Access to Justice, speech at Delhi High Court available at http://www.delhihighcourt.nic.in/library/articles/Access%20to%20justice.pdf, last updated on 20.09.15

[11] Baxi Upendra, "Taking Suffering Seriously: Social Action Litigation in the Supreme Court of India," Third World Legal Studies: Vol. 4,1985. Available at: http://scholar.valpo.edu/twls/vol4/iss1/6; K.G. Balakrishnan, Growth of Public Interest litigation in India, Address at the Singapore academy of Law, oct 8, 2008 available at http://supremecourtofindia.nic.in/speeches/speeches_2008/8%5B1%5D.10.08_singapore_-_growth_of_public_interest_litigation.pdf, last updated 25.11.2015; Justice F.M. Ibrahim Kalifulla, Rule of Law and Access to Justice, Tamil Nadu Judicial Academy Proceedings on South zone Regional conference on role of Courts

defies an accurate definition and restricts its purview to seek a set of legal actions to secure certain legal rights guaranteed under a legal system, especially, from the purview of public and private law.[12]

Access to justice, on the other hand, analysed as a substantial aspect in a holistic perspective or looked at the other side it is a procedural or institutional aspect. This means it brings forth the economic parameters, where in justice be rendered as a cost effective factor. Accordingly, justice needs to be pervasive and to provide quick recourse to litigants from the traditional formal institution of judiciary without recourse to pendency, and cost effective. In the light of above, the reforms suggested by Law Commission of India[13] and Report of the JIA committee appointed by the Supreme Court of India to examine the impact of legislations enacted by Parliament of India on judiciary, needs an critical examination a recourse of recount the significance of JIA as a tool to access to justice.[14] In this regard, National Committee to Review the Work of the Constitution already highlighted on the significance of empowerment of judiciary both in financial and structural management[15] already highlighted the significance of empowering financial autonomy to judiciary as a vital element to achieve the concept of access to justice. To fulfill the dreams of the constitutional makers and to ensure fundamental human rights of citizens, it is imperative to implement the suggestions of the above commissions, which in turn help to strengthen tenets of access to justice in the post constitutional era, to tinsel as an emerging economic player.

What is Judicial Impact Assessment

Apart from regular litigation, legislative proposals certainly increase the workload of judiciary both operationally and substantially. The enactment of any new law increases

---

in Upholding Rule of Law, 2014 http://www.tnsja.tn.nic.in/Scheule%202014/Jan%2031-Feb%202-NJA-Sch.pdf last updated 20.6.2015

[12] Louis Schetzer, Joanna Mullins, Roberto Buonamano, Access to Justice and Legal Needs, Law and Justice Foundation, New South Wales, 5-7, 2012

[13] See the 230th Report of the Law Commission of India, 2009, available at http://lawcommissionofindia.nic.in/reports/report230.pdf last updated 15.8.2015

[14] Report of the Committee on JIA in India, 15.6.2008 available at http://lawmin.nic.in/doj/justice/judicialimpactassessmentreportvol1.pdf, last updated 23.5.2015

[15] NCRWC, Financial Autonomy of Indian Judiciary, Vol.II (Book-2), 773-825, 2002.

workload of a judiciary on two major fronts. In the operational front, it increases the operational costs affecting the procedures of court, such as trial, sentencing, appeal to higher courts. Secondly, it impinges on court administration, especially on the human resources of judiciary. Thirdly, it has a direct bearing on the finances of judiciary, which has a great effect on infrastructural facilities and on its finances. On the substantial side, firstly, interpretation of a legislation by judiciary either to fill the gaps in it or to define the exact objects of such legislation, certainly increase fresh litigation, which affects the affective functioning of judiciary and lead to overcrowding of courts. Finally, all this will have an ultimate bearing on people to have an easy Access to Justice.[16]

Judicial impact assessment is calculating the workload of judiciary that increases due to enactment of substantial and procedural law by legislature at regular intervals. Parliamentary legislation enacted every time, adds burden on judiciary, especially on the courts of State governments, which function without any support system of financial or operational costs either by Union or State Governments. In fact, they are under more pressure, due to judicial interpretations of higher judiciary, apart from the burden of new legislations of both Union and States. Ultimately, it all affects administration of justice besides law and order situation in the country.[17] In brief, an operational cost that increases the burden of judiciary in several ways and means has a direct impact on its effective functioning. Theoretically, the assessment of burden on judiciary that increases due to enactment of new legislations by legislature regarded as judicial impact assessment, apart from the litigation that arose out of judicial interpretations.

Judicial Impact Assessment in US

California though became the first State in USA to initiate the process of Judicial Impact Assessment in 1970 the Judicial Impact assessment's evolution is normally credit to Warner Burger, former Chief Justice of US Supreme Court. The call given by Warren Burger, in 1972 in his lecture on the "State of Judiciary," JIA came to the forefront in the history of US as a tool to empower people to have more easy access to justice. Warren Burger in his address highlighted

[16] supra n3,

[17] Report of the Task Force on Judicial Impact Assessment, Vol 1, 91-93, 2008, available at http://lawmin.nic.in/doj/justice/judicialimpactassessmentreportvol1.pdf, last updated 4.5.2015

the significance of Judicial Impact Assessment and its implications in assisting the Federal and State Judiciary in "rational Planning for the future with regard to the burden of courts."

The clarion call of Justice Berger led the congress to enact a Congressional Budget Act 1974, which established the Congressional Budget Office to access the budgetary impact of legislative proposals to access the workload that creates on the Federal Courts and State Courts. Apart from this, the National Science Academy established the National Research Council to study the legislative impact of the functioning judiciary and the monetary implications. [18] In the beginning, JIA remained as a scholarly debate and was active at the level of state judiciary. However, in early eighties a wave of interest had created due to the planning of legislative-judicial relations in the federal and state judiciaries, it became a most important topic at all levels of government and assumed national significance.

The Office of Judicial Impact Assessment was created in the judicial branch basing on the recommendations of the Federal Courts Study Committee created by Federal Courts Study Act, 1988. The Federal Judicial Centre conducted a conference in 1995 to work out the details and means of accessing the workload to evolve a methodology to collect data that typically creates workload especially that of the Federal legislations on the state judiciary. The American Bar Association in 1991 through a resolution, appealed to both Federal and State Legislatures to to access the costs factor of each legislation that it supposes to create workload on the judiciary, which needs to contain with respect to dockets, workload, efficiency, staff and personal requirements, operating costs, existing material recourses, appellate, trial and administrative law courts.[19] These systematic efforts thus had helped the judiciary to be more transparent and able to provide easy, quick, and increased judicial efficiency that helped to strengthen the democratic tenants of USA, which in turn planted belief in the market forces as one of the best destinations to make investments. At times, some of the lower court judges even sued the state and

[18] A. Fletcher magnum (Ed.), Conference on Assess the Effects of Legislation On the Workload of the Courts: Papers and Proceedings, 12-15, 1995, full text available at https://bulk.resource.org/courts.gov/fjc/efflegis.pdf

[19] ABA's Report of 117 A, http://www.americanbar.org/content/dam/aba/migrated/jd/tribalcourts/pdf/OneHundredSeventeenA.authcheckdam.pdf last updated 10.10.2015

municipalities to seek higher allocation of funds shows clearly, that the judges too are more accountable to dispose of justice at the earliest to injured parties.

The Indian Scenario

The judiciary in India functions at various levels. The Supreme Court of India is the highest judicature of the country, which, is the final court of the country and disposes all types of cases as stipulated by the constitution. The High Courts in all most in every State acts as the highest courts of each state and looks after the administration of the lower courts within the state, District courts, Munsif-Magistrates of First class and Second class deals with civil and criminal cases and functions as junior division courts at the lower level. Apart from the regular structure, over the years a number of special courts, fast track courts and other types of magistrate and civil judge's courts functions to dispense justice.

The judiciary in India administers mostly common law system. However, the judiciary as an independent organ is free to draw analogy from any legal system in exercise of its inherent powers. Accordingly, the judiciary in India, especially, the Supreme Court and High Courts on several occasions looks at many of their counter parts, especially, the Judicial pronouncements of the Supreme Court of USA, and injected a number of principles into Indian law. The autonomous character of judiciary and the historical verdicts propounded by the Supreme Court by drawing analogy from the judicial interpretations of the U.S. Supreme Court, largely injected confidence amongst the people India, and helped to strengthen democratic ideals of the polity, whenever the legislative and Executive organs exceed their limits of power. Due to this judicial activism, compare to yester years, the workload of the courts has drastically increased. However, the financial independence is limited to judiciary in India in comparison with its counter parts of various countries, and many a times they have to depend on the Legislature for financial allocation including their salaries and other perquisites.

According to Constitutional arrangement, establishment and maintenance of lower judiciary except Supreme Court and High Courts fall within the ambit of State Governments as per clause (3) entry 11 A of the concurrent list of the constitution. According to clause (3) Article 117 of the Constitution, a Bill, which if enacted and brought into operation, would

involve expenditure from the Consolidate Fund of India shall not be passed by either House of Parliament, unless the President has recommended to that House the consideration of such Bill. According to this article, the President of India must be aware of the additional financial expenditure, which imposes burden on the exchequer by virtue of any proposed amendment to the fund. In addition to this constitutional safeguard, under the respective provisions of the Rules of Procedure and Practice of Business of each house of Parliament, every Bill requires to accompany by a Financial Memorandum, stating the recurring and non-recurring expenditure likely to spend from the Consolidated Fund of India, if a Bill takes the shape of law. If no expenditure is involved from the Consolidated Fund of India, there is no need for a Financial Memorandum to accompany a Bill. A number of legislations passed by Union of India without any specific memorandum of expenditure that needs to contribute to Consolidated Fund of India to meet increasing expenditure of Judiciary. In view of this provision, the State Governments and the Lower judiciary has to bear the burden many a times, due to enactment of new legislation by Parliament, including creation of special and fast track courts. In a similar vein under clause (3) of Article 207, provisions are there for state Legislatures with respect to Bills introduced in the respective state Legislatures. The lawmakers hardly paid any attention on the burden that would cause by such new laws and the litigation that brings in burden on the substantive and procedural issues and the functioning of judiciary. The state governments too never made demands for extra expenditure that causes a brunt on the adoption of new laws by Union of India. This affects the functioning of judiciary, as an efficient tool in dispensing justice, especially lower judiciary without any assistance has to shoulder the burden along with their regular work. This is one of the important causative factors for the delay in disposal of disputes between litigant parties, which increases the pendency of litigation,[20] besides protection of the most important human right of Access to Justice.

In the above scenario, the former Law Secretary to Government of India, Mr. T. Viswanathan in article in Hindu initiated the significance of JIA basing on the American

[20] Supra n 14, 10-13

experiences, later received judicial recognition.[21] The Supreme Court in **Salem Advocate Bar Association's case** rejecting the challenge of constitutional validity of certain amendments made to the Civil Procedure Code 1908, (especially on the employment of alternative dispute resolution under the jurisdiction of courts), for the first time recognised the need for Judicial Impact Assessment of the legislations enacted every time by Legislature.[22]

The court in agreement with the views of the former Union Law Secretary recognised the significance of JIA and directed the Union Government to appoint a Committee to work out a detailed plan for its implementation. The government of India in accordance with the directions of the court, appointed a Task force under the Chairmanship of Justice Jagannadha Rao in 2007 along with leading members of the Bar of the court, (such as Sri Arun Jaitely, Sri Kapil Sibal, C.S. Vaidhyanathan and Sri D.V. Subbara Rao).

The Committee after a detailed study, mostly drawing analogy from the US practice suggested to constitute a 'Judicial Impact Office' both at the Union and State Levels on the models of US to assess the impact of extra workload and expenditure including the personnel required to dispose of cases. The committee too opined that since the country has no experience in assessing the work load of judiciary that arises out of the enactment of new legislation each time, especially in accessing impact of Union Legislations on the lowers country of the country much has to learn from the experiences of U.S. It also recommended that the methods evolved in assessing the impact of Federal Legislation on State Judiciary in US needs a through observation to evolve models that suit the country.

The Committee during the course of its study, basing on the experiences of US and the International Committees and conferences, gave a clarion call for Planning and Budgeting for Courts in India. The committee after an extensive study of vast American literature and

[21] T.K. Viswanathan: Judicial Arrears, The Hindu, Nov 20, 2002, http://www.thehindu.com/thehindu/2002/11/20/stories/2002112001051000.htm last updated 4.4.2015

[22] Salem Bar Association (II), Tamil Nadu V Union of India, 2005, 6 SCC 344, AIR 200 5 SC 3353

significantly on the study of inherent powers of judiciary to seek financial resources to meet their requirements from the American experience, and suggested a scheme for planning and budgeting for courts in India.

While recommending the committee was of the view that the Executive need to take into consideration of the pendency of cases that are in the country from lower to higher courts and accordingly, take specific steps for the planning and allotment of budget to courts, which needs to include building, staff, number of judges, and other parameters. Further, the committee opined that the experiences of US and the execution needs to be closely examined, studied and research need to be encouraged in the area for the further augmentation of the concept of access to justice.

The Committee distinguishing the differences between financial provisions by such sponsoring Ministries and Financial memorandum opined that basing on the constitutional provisions of clause (3) of 117 and 207 both the Union and States need to prepare exclusive budgetary statements for legislations introduced, and forward to the President for recommendation to include such expenditure in the Consolidated Fund of India. In this regard, it opined that the High Courts' need to prepare their budgets and the lower courts budgets in the state and accordingly the Union and State governments need to allocate required funds for each legislation that the concerned legislature passes a legislation.

The Committee further endorsing the views of the National Commission to Review the Working of the Constitution that the judiciary must have financial independence to enhance the functioning as a fully independent organ than on the mercy of Executive, besides Judicial Impact Assessment. Accordingly, it recommended that as per the provisions of Constitution each ministry with the help of the proposed Judicial Impact Office has to attach such budget with every bill and need to obtain the permission of the President of India for such allocation to the Consolidated Fund of India to meet the expenditure of the High Courts and Supreme Court. In a similar manner, provisions has be made to meet the expenditure of lower judiciary basing on the

calculations of proposed Judicial Impact Assessment Offices in each state and allocate such funds to State Governments to meet the burden of litigation that every legislation enacted each time by the Union.

The Committee further expressed after an exhaustive study of various provisions of the constitution and List I and List III (respectively Union List and Concurrent List) and suggested that under these lists where in the Union of India passes legislations under its powers, the burden is increased on the lower courts. Accordingly, the Union needs to take into consideration the amount of workload that creates by each legislation and consequently make recommendations of financial expenditure with a statement of expenditure to be incorporated in the bill for approval of President of India to make specific grants to the consolidated Fund of India.

The Task force submitted its report in 2008 to the Union of India in turn for the approval of the Supreme Court of India. The Court accepted the recommendations made by the Committee and directed the Government to take action on the report for its implementation. In spite of senior then Ministers of Law and Justice were members of the Committee, the report is under consideration of the Government and yet to see the light of the day.

Conclusion

It is a welcoming fact that establishment and assessment of JIA is a significant factor to meet the realm of access to justice in a quick span of time to the litigant parties. The experiences of USA are highly useful in establishing assessing workload on the judiciary to make it financially independent. However, in the Indian context compare to US, a number of other steps are also required before establishing the mechanism of JIA. To pave the way for JIA, and to make it a finically viable institution to address the situation the following aspects needs meritorious consideration.

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

- The Indian Judiciary is a unitary form of judicial structure. It is not easy to adopt completely the American method. America being a perfect form of Federal government, calculating impact factor of such legislations of Federal government on the state courts is relatively easy than India. In the Indian context, as the Union has a number of powers compared to US and being a cooperative federation, all Legislations of Union have a bearing on the judiciary either directly or indirectly. The Union needs to agree to either share huge quantum of money or delegate most of its powers to the States and reduce its role to important legislations. For this, a wide-ranging political debate is necessary. Accordingly, all political parties must come forward without ego clashes in the welfare of the people, development of the country, to provide Socio-economic justice to all and to establish an egalitarian fraternity in its true spirit as advocated by Dr B.R. Ambedkar.

- While calculating the workload of the courts in all cases, as the Task force of the Committee suggested, the workload needs a careful consideration from different angles from the date of filing of case until the disposal of each case. In this regard, the 73rd and 74th amendments need strict enforcement without any inclination of one-up-man ship. The village level institutions are required to empower to deal with petty offences or implementation of ADR to address a number of disputes to lessen the burden of judiciary. In this regard, since the backlog is very heavy, to dispose of small and petty cases, Lawyers and Professors of Law need to be part of local village level institutions including, Lok Adalats etc., to clear the back log largely. This will certainly reduce the pendency to a maximum extent in the lower judiciary, besides the professors get a professional touch to impart legal knowledge to their future students with practical orientation.

- The Judicial Impact Offices at both the Union and State Levels should be independent bodies like the Controller and Auditor General of India instead of the present Department

of Justice, which is functioning from 1971 under the Ministry of Law & Justice and controlled by the Home Ministry.

- The offices of JIA be independent authority be monitored by the Supreme Court and High Courts than the Executive control. The JIA office be composed with academic and research wings to involve academic experts from science and technology, Law, Social sciences, commerce and management.
- All the Judicial Academics of State and National Judicial Academy at Bhopal has to associate as coordinating agencies of the JIA Offices of the Union and States.
- The JIA offices be equipped with adequate resources and the budgets prepared by them basing on the workload of existing legislations, and future legislations needs serious consideration and implementation. The Union and State budgets must include compulsorily independent budgetary heads to these offices with sufficient funds at their disposal to carry out their task. The recommendations of theirs has to have priority without which, creating these offices are of no use.
- The Bar Council of India and State Bar Councils functioning and structure needs a complete reorientation on the lines of Bar Councils abroad, especially like USA to engage research and as a cooperative agency to work in tandem with the Offices of JIA, academic institutions. It needs a through overhaul to include academicians from different academic disciplines in its committees. Otherwise, it remains only as a supervising agency of admitting advocates and overseeing the legal education as a cognomen body.
- Allocation of huge grants for teaching and research to traditional University Departments of Law and National Universities to conduct exclusive research on Judicial Impact Assessment will help to evolve a prudent system.
- The Curriculum of Legal Education especially the five-year and three years courses needs a through overhaul. Like the American Legal education, the students should possess extensive technical and practical knowledge than the theoretical perceptions, which they learn at present. The non-law subjects' components in the five year law be drastically reduced and even the few needs to be intertwined with a legal orientation than their own

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

subject perspective. Increase in research methodology and techniques of legal writing skills will definitely help the students to shape their legal careers as professionals than becoming as corporate lawyers.

- On the lines of USA, the Legal education needs orientation with applications that are more practical and the course content be restricted to four years. In the fifth year, the students need training as interns to work in the offices of JIA and in the lower courts to learn the techniques of profession.
- The Continues Legal Education imparted by the Bar Council's abroad to their young lawyers, the Indian Lawyers too need to undertake two to three weeks courses on various new areas and alternative disputes methodology every year to continue their licenses to practice from the respective departments of law in the country. The Bar Councils should not give a lifetime enrollment certificate at it is in practice at present. It needs a renewal for every five years basing on the performance appraisal and the training programmes that they attend. After a period of twenty years of Practice, they may be considered for permanent recognition.
- To make JIA work properly there needs an increase in the number of courts. At the same time, precautionary steps are required to fill the vacancies at quick span of time without filling them for years together as prevalent at present.
- India as a huge country, it is difficult for the Supreme Court of India with few judges to deal with all cases without arrears and to administer the offices of JIA. A number of suggestions have already been rendered to have benches of it's in the four metropolitan cities as proposed by various quarters. However, I have a different idea, which is workable and even may be acceptable to the Judiciary.
- The Supreme Court of India is facing a number of issues including volume of pendency of cases. Further, on one or other pretext at regular intervals often called to address some urgent matters, which may have political or national interests, which also disrupt its functioning including clearing of backlog. India being a cooperative federation, and the Supreme Court has a number of jurisdictions to address the disputes of wide variety, it is

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

becoming difficult to render justice to parties at the earliest. In this scenario, without affecting its powers, the main seat of it at Delhi be left to deal with important constitutional and legal matters, which have wide ramifications. In such case, the country needs to establish at least two divisons of the Supreme Court amending the constitution. One branch be left to deal with Civil Cases and one be made in charge of exclusively of criminal cases and may be named as Supreme Court of Civil Judicature and Supreme Court of Criminal Judicature. These courts will deal with the appeal cases that come from various High Courts in the country. These courts will be only courts of disposing cases without seizing the administrative powers of the Supreme Court's main seat at Delhi. The writ jurisdiction that may be necessary to deal with the civil and criminal cases may be delegated to these courts. The decisions made by them should be ordinarily binding on the lines of the present Supreme Court decisions. The Supreme Court at Delhi be designated as Supreme court of India and empowered to deal with original and advisory jurisdiction and constitutionally important cases including the administrative functions and monitoring the functioning of the offices of JIA. The above supreme courts need to function from other parts of the country than in Delhi itself.

- The above proposal needs a meritorious consideration taking into consideration of litigation, disposal and future of the country. All the three wings of the state Executive, Legislature, and Judiciary needs to come forward to support any radical suggestion. The judiciary especially take the lead that is going to strengthen its hands both economically and legally. By this division, the Supreme Court of India, especially the Chief Justice of India will have sufficient time to monitor the proper assessment and budgetary allocations of JIA in the country. It will further strengthen the collegium system, as the judges of the Supreme Court of the Country will have sufficient time to spend in the assessment of a candidature of a judge for the supreme court of the country besides the judges of the proposed supreme courts.
- The above suggestion may reduce the criticism of quality of judges. The Judges of the two Supreme Courts alone needs meritorious consideration for appointment as Judges of

➢ **Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144**

Supreme Court of India. The judges before occupying the highest seat of authority of justice and administration will have an ample experience in these courts. Further, it will enhance the opportunity of the judges of the High Courts to receive quick promotions than stagnation and frustration that they have at present in securing the post of a judge of Supreme Court. The age of retirement of judges of proposed Supreme Courts of Civil and Criminal Judicature be fixed as that of the present age of 65 years of Supreme Court and while the judges of the Supreme Court of India may be enhanced to 68 years and Chief Justice of India be made at 70.

- Since the Supreme Court of India will deal with less number of cases, which are constitutionally and legally important, the number of judges' strength needs a considerable reduction from the present strength and it may fix it as ten. These proposed two supreme courts may have judges of 15 to 20 each, among which the senior most judge be designated as Chief Justice of that Supreme Court. The Chief Justice in the Supreme Court at Delhi be re- designationed as Chief Justice of India. This will solve the question that raised during the arguments of the NJAC Act, whether the present Chief Justice is Chief Justice of Supreme Court or Chief justice of India. The CJI will have supervisory powers on all courts including the proposed Supreme courts.
- The JIA offices structure needs to be broad based. It should have the CJI as the chief at the National Level, the CJI of High Court at the State Level. At the national level, the two proposed Chief Justice of supreme courts, Secretary of the Ministry of Finance, Secretary of the Ministry of Law, Five eminent professors from the fields of Science, Technology, Law, Commerce and Management, Economics, a philanthropist and two members from Industry be members of such proposed commission.
- At the State Level, the CJI of the High Court, two senior most District judges, one Senior most Sub judge in the State, and two senior most Munsif- Magistrates of First class courts of the state, besides rest of the members on the lines of the National Level JIA composition be considered from the state.
-

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144

- The JIA of the National Level will access the workload of the Supreme Court of India and the proposed two supreme courts, apart from the scrutiny of both the Legislative proposals of each Ministry and the State proposals that affect the workload of Union Legislation submitted by each High Court. Accordingly, it will pass to the Nidhi Ayoag for budget allocations to the Judiciary, which in turn recommend to each Ministry to take care of the expenditure that may increase in, bring in the bills in the Legislature. The Ministry concerned will forward the same with budget allocation required for the implementation of such legislation to the President of India for acceptance of such expenditure for the inclusion in the Consolidated Fund of India and approval by the Legislature.
  - In the Nidhi Ayoag, the Chief Justice of India needs to represent as an ex officio member to monitor the allocation of budgetary proposals to judiciary and the interests of judiciary. The allocated amount be kept at the hands of the CJI's disposal to meet the judicial expenditure, than at present running pillar to post to several ministries to get sanctions to spend the money. The same may be followed in the State JAC's making the Chief Justice of High Court as an ex officio member of the state planning commission and head in charge of the finances allocated to state judiciary and amount received from the Union for each state by the Union to the consolidated fund of India.
  - The JIA at the State Level access the impact of Union Legislation on state judiciary accordingly forward a report to the National JAC for consideration. Apart from above, it will regularly monitor the impact of workload of state legislations and judicial interpretations of the Supreme Courts on lower courts. For the financial expenditure of the state part, it will submit its report to the state as in the manner of the National JAC for allocation funds by the State.

- If the respective governments of Union and State fail to accord such expenditure proposed by the Nation and State Level JAC's , the judiciary may take ***suo motto*** action to compel them to release such funds as is necessary for the workload management of

judiciary. The ***suo motto*** power be entrusted at the national level to the Supreme court of India and to High Courts at the State level.

The above proposals may seem odd to many. However, without affective changes as suggested, it is not an easy task to clear the pendency of litigation accumulated in the country. Without drastic proposals and changes, establishing the offices of JIA on the lines of the US as suggested by the Committee may not yield results. With more than a billion population, and with huge amount of litigation pending from lower court to Supreme Court of India, we need to undertake changes including the amendment of constitution to meet the expectations of the concept of good governance. If we want to achieve the ideal of social justice and to promote human rights of citizens to the maximum extent as guaranteed by constitution, it is the minimum responsibility of the state and other stakeholders to come forward to undertake reforms to strengthen the concept of access to justice.

The present government of India voted to office on development agenda, especially the augmentation of the concept of good governance that there is every possibility the government at any time may implement the proposals of the committee to strengthen tenets of democracy especially, to provide speedy justice. Further, Mr. Arun Jaitely, Finance Minister of the country and as a senior Counsel of the Supreme Court of India as one of the members of the Committee need to initiate steps for the implementation of JIA and the constitution of the JIA Offices. Well any delay may at any movement if an activist of democracy and justice or any non-governmental organisation files a public interest petition in the apex court, the Supreme Court may pass a verdict with directions for the implementation of the recommendations to introduce the concept of judicial impact assessment. Before such compulsions to meet the dead lines of judiciary in a hurried fashion, it is better the Executive, Legislature and Judiciary with an understanding need to initiate the steps suggested above promoting the constitutional mandate of easy and quick access to justice. Furthermore, as a fastest growing economy, it is nothing but inevitable for the state to implement the proposals to enhance capacity of judiciary as an easily accessible machinery to the people of the country and as well to create a conducive environment to attract more foreign investment into the country to develop a growth oriented competitive market environment.

Published in KIIT Journal of Law and Society, 2016 Vo.6 No.1, 34-50; ISSN 2231-5144