

SHOULD COURTS CLOSE FOR VACATION?

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The Supreme Court of India. | Photo Credit: REUTERS

The Supreme Court of India goes on vacation for a week during Holi, 45 days during summer and for around two weeks during Deepavali and winter. This practice came into the news recently when Chief Justice of India [D.Y. Chandrachud said that no vacation Benches](#) in the apex court would be available this winter break. He said this a day after Union Law Minister Kiren Rijiju spoke of “long vacations” of the court and the inconvenience it caused to litigants. In a conversation moderated by **Sonam Saigal, Justice (retired) Indu Malhotra** and **Devadatt Kamat** discuss whether courts should close for vacations amid the overall burden of cases on them. Edited excerpts:

Q / Why do courts go on vacation? Why can't they function like every other arm of our democracy and work all year round?

A / Indu Malhotra: India has the most overburdened judiciary. If we don't have vacations, judges will break down. Judges require vacations for rest. The time during vacations is also utilised for writing judgments because judges are left with little time to do this when the courts are working. On working days, from Monday to Friday, there is a huge workload. The Supreme Court has a minimum of 50-75 matters every day. Judges cannot discharge justice without having read the papers to pass appropriate orders. There are almost 25,000 matters which are filed each year. You cannot compare the court to other arms of democracy. Files have become more voluminous; issues are complex. To read, comprehend and make an assessment requires time and effort.

A / Devadatt Kamat: This debate is being played out by the government to pander to populism. Whether or not a judge or a lawyer should go on vacation cannot be dictated by people who have never practiced law. We must see whether this system of vacations promotes efficiency in the delivery of justice or whether it creates a backlog of cases. If you compare judicial systems around the world, our Supreme Court is probably the most overburdened court. Australia's Supreme Court, for instance, has only 97 working days when oral arguments are adduced. India has around 190-195 working days. If you compare holidays, Singapore's Supreme Court has 145 holidays, the U.K.'s Supreme Court has about 180 holidays, and Canada's has about 120. It is important to understand that it is not only about recreation and rejuvenation. There is a lot of judicial work which is undertaken during vacations, such as writing judgments and doing research. These cannot be done during court timings. Our Supreme Court

hears around 60-65 cases on miscellaneous days, which are Mondays and Fridays. Judges must dictate orders and write judgments which involve a certain degree of reflection. You can't make them work round the clock and expect them to deliver high-quality judgments. The Supreme Court website shows that the court gives a minimum of 10-15 judgments per day. On the other hand, the U.S. Supreme Court gives a maximum of 10-15 judgments a year. It is an accepted system the world over that if you want efficiency, you must give judges time. It's not like politicians cutting ribbons and giving speeches which have little or no consequence for the people.

Q / Could you elaborate on the work done by judges during vacations?

A / Indu Malhotra: A judge's work is not limited to the hours spent in the courtroom. To be ready to hear cases in the morning, a judge must read through the evening and very often late into the night or the early hours of the morning. There are conflicts of judgments between two High Courts or more — these require a lot of deliberation. We also draw upon jurisprudence from other countries, which entails a lot of research. Apart from that, each judge is given a chance to participate in national and international seminars and conferences. All these things must be factored in before a comment is made that we don't deserve these long vacations. Believe me, if we didn't have as many holidays in the Supreme Court as we do, it would be very difficult to function. We need that amount of rest, as it is cerebral work. We also need time to spend with our judicial law clerks and instruct them to get material which enriches the judgments. After dictating orders in the court, we must ensure corrections are carried out. And then our judgments also get circulated to our colleagues who go through them. They make their remarks; and then the fine-tuning takes place.

Q / What happens to pending cases during vacations?

A / Indu Malhotra: Urgent matters are taken up during vacations. Vacation Benches are assigned, and we take turns. The National Judicial Appointments Commission (NJAC) matter was heard for several weeks during the summer vacation. (In 2015, a five-judge Bench of the Supreme Court heard the matter challenging the constitutional amendment on the setting up of the NJAC.) If it becomes imperative, courts do sit during vacations and discharge matters which can be disposed of expeditiously.

A / Devadatt Kamat: Judges require rest and so do lawyers. Lawyers form an important part of this process. If the judge must deliver a quality judgment, it also depends to an extent on how much assistance we give them. In the vacation Benches, there is a list of criteria, such as bail, death penalty, evictions. If there is an important matter which requires urgent consideration, the judges don't say, 'we are on vacation.' During the vacation in May 2018, the Supreme Court heard a matter challenging the appointment of B.S. Yediyurappa as Chief Minister, on a Sunday night. It heard Devendra Fadnavis's swearing-in matter on a Saturday. The Goa government's formation matter was heard in 2017 during the Holi holidays.

Q / The Law Minister said, "There is a feeling among the people of India that the long vacation which the courts obtain is not very convenient for justice-seekers."

A / Indu Malhotra: I disagree. The vacation we get is just about sufficient to enable us to discharge our functions and maintain our efficiency. It is not possible to work at a greater speed because the work is voluminous. You cannot imagine it until you enter the judiciary. I know of judges who have had breakdowns, developed high blood pressure as well as a lot of physical problems because of the enormous pressure of work.

A / Devadatt Kamat: I disagree too. I don't think the Minister has ever practiced law. If he did, I

don't think he would have made such a comment. If an institution works for more days and puts in 18 hours of work, that does not necessarily result in efficiency. Here, every word a judge speaks affects the lives of people, and there are matters of life and death.

Q / In 1987, the Law Commission had suggested that there should be 50 judges for 10 lakh citizens instead of the 10 judges available then. This is yet to happen. Successive governments have failed to make a breakthrough. Is the burden of clearing the pendency only with the judges?

A / Indu Malhotra: The number of judges in the Supreme Court did increase. This helped a lot in clearing the pendency. But the volume of litigation has increased manifold. The judiciary caters to 1.4 billion people and the ratio is roughly 21 judges to a million.

A / Devadatt Kamat: In the Supreme Court, we have five-six vacancies. Despite recommendations, it takes months for the government to make appointments. We need to ensure that the recommendations made by the Supreme Court are processed by the government in time and appointments are made.

Q / The Indian judiciary's annual report states that during the pandemic, the Supreme Court decided 18,257 cases between April and September 2021. Do you think the judiciary is never applauded and only criticised by the current government?

A / Indu Malhotra: One democratic institution should not be making adverse remarks against the other, because everyone is trying their best. There are aberrations in every system and every wing which need not be highlighted because it does undermine public respect for the institution, which is not a healthy practice.

A / Devadatt Kamat: Criticism of any democratic institution, if made with good intentions, is welcome. The attempt sought to be made today, where the executive has an overwhelming majority, tends to impinge upon the independence of the judiciary — although our judiciary is resolute and can defend itself and its independence.

Indu Malhotra is a retired judge of the Supreme Court; Devadatt Kamat is a senior advocate of the Supreme Court

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