



Riding **shotgun**

Travelers on India's long litigation trail need a well-armed communications escort, say Brunswick's PRAGNI KAPADIA and AZHAR KHAN

LAW COURTS ARE FAMOUS FOR ELICITING raw emotions – but rarely from the top judge. Recently, however, India's Chief Justice was in tears as he begged the country's prime minister, on national television, to add more judges to a judiciary so burdened that cases routinely take a decade or more to settle.

The problems of India's judicial process remain a barrier to the nation's meaningful progression to become an economic power. Even powerful businesses get lost in its bewildering maze of delays and arcane practices. As cases drag on, they suck up company resources and precious management time that should be spent elsewhere.

In this legal headwind, the threat of litigation is a real scare for business, inflating risks and diminishing opportunity. The casualty is global capital's appetite for India.

As a counter-measure, frustrated litigants in India are developing their own brand of litigation

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RITESH BAWRI,
Former Managing Director,
Calcom Cement
India

communications, stepping up to defend their reputations more aggressively outside of court.

In some ways this resembles standard public affairs work: combatants team up with influencers from government, business, trade advocacy, regulatory media, labor groups and citizenry, with the aim of putting their argument before the court of public opinion. The primary goal is to ensure the facts of litigants' cases are correctly represented and their reputations remain untarnished. In some instances, however, there is clearly a secondary goal: to attract the interest of authorities burdened by the same inefficient system.

“In today's India, regulators are often cognizant of what lies in the public domain,” says Zia Mody, Founder and Managing Partner of AZB & Partners, one of India's top corporate law firms. “It is critical that the correct side of the story is told, so that the minds of the public and the regulators – who are only human – are not skewed.”

Companies and legal teams in the West have for years implemented communications plans that sit alongside, even within, legal strategy. While this has been slower to come to India, investors, lawyers and corporations active in the country are adopting the same practice, and even going a step further.

Any such litigation communications strategy requires a campaign mentality. In India, legal counsel are recognizing the benefits of working hand-in-hand with communications specialists – typically former lawyers – to plot scenarios, plan major moments and transform complex legal jargon into crisp, effective soundbites tailored for specific audiences. That requires a deep understanding of the local media and the regulatory and political climate.

Some British companies have recently mounted complex, discreet and enduring campaigns in ongoing disputes with Indian authorities over billion-dollar tax claims. Telecommunications company Vodafone is fighting a \$2 billion tax bill related to its 2007 purchase of mobile operator Hutchison Essar.

Vodafone used communications to counter negative impressions of the company brought on by the proceedings. This has involved consistently pledging its long-term commitment to India, most recently declaring its intention to press ahead with a public listing of its Indian business, while informing stakeholders of its intention to remain steadfast in its defense against Indian tax claims.

In such cases, the steps companies take to present their case directly to those who matter, frequently behind the scenes, is critical and often supported by bilateral trade diplomacy at the highest levels of government.

In another case, Ritesh Bawri, former Managing Director of the family-founded manufacturer Calcom Cement India, saw his company’s partnership with one of the country’s largest listed cement companies turn sour soon after the parties signed a 2012 agreement.

Although Bawri won multiple court decisions, a string of appeals and counterclaims by his opponent successfully delayed a final legal resolution, and obscured the central arguments in the case. With no satisfaction in sight, Bawri decided to publicize his story, believing that private equity investors, banks, shareholders and

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even regulators were truly in the dark about the underlying facts.

After assembling his legal and corporate counsel, Bawri engaged litigation communications specialists to mount a media campaign. The goal was to make the matter part of the public record and target readers among India’s regulatory and markets authorities. It was a huge gamble in a country where the strength of relationships between business owners and media barons is often enough to keep uncomfortable stories off the pages.

Bawri encountered such resistance firsthand, but business journals eventually found his story compelling enough on its own merits to publish it. The articles made an impact and triggered inquiries by a national stock exchange and a regulator. “This was exactly the sort of coverage we needed to get the attention of key stakeholders,” says Bawri.

Lawyers and litigants in India typically view media cooperation with suspicion and have traditionally shied away from publicity, particularly given the emergence in recent years of an opinionated and noisy Indian media. According to barrister Janak Dwarkadas, a Senior Counsel at the High Court of Bombay, taking a case into the public eye is most often viewed as counter-productive. “It’s a trial by media on issues that are yet to be adjudicated – and that hinders the judicial process,” he says.

But as Bawri’s case shows, a more aggressive approach to media engagement is increasingly a tool businesses reach for as they wade through India’s swamped court system. Frustration among those facing protracted and unpredictable legal action is creating new rules of engagement. If they sense the system has failed them, some businesses will turn to the media to help ensure that the facts are made public.

At the very least, any corporation doing business in India needs to be aware of these growing pressures. Regardless of whether their opponents are business partners or lawmakers, preparing for the possibility of public disputes will be increasingly essential for companies operating in India.

PRAGNI KAPADIA is a former lawyer with a decade of advising companies in India. She is an Associate in Brunswick’s Mumbai office specializing in cross-border issues. **AZHAR KHAN** is a Director in Mumbai advising companies on critical issues involving litigation, restructuring and M&A.