

COURT MANAGEMENT

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A few days back I read a news item in Daily "Statesman" that a seminar was organised in New Delhi, the subject was "Judiciary at the verge of collapse". The speakers were eminent legal luminaries of the country, to name some of them, Sarvashri Rang Nath Mishra, the former Chief Justice of India, Nani Palkhiwala, Ram Jethamalani and many others. All speakers were of the view that 'the system is collapsing' though they differed on the causes of collapse.

The fact of the matter is that today there is a big question mark on the entire administrative system of the country. It is difficult to conceive that judiciary as such will be the sole exception to the general deterioration, which the society and the country is facing. However that is no answer to shirk the responsibility which has been conferred on the judicial system of the country.

Francis Bacon in his Essay on Judicature wrote, "Soloman's throne was supported by lions on both sides: Let them be lions, but lions under the throne, being circumspect, they do not oppose any points of sovereignty".

Justice Pandian interpreting the aforesaid quote wrote in his judgment:

"Soloman's throne" -symbolizing the majesty of justice – "fully supported by lions" symbolizing the legislature and the executive.

The great people of this country while dedicating the Constitution unto themselves have entrusted the responsibility of protecting the democracy, citizen's right of freedom and equality and maintaining the rule of law on the judiciary of this country. We have to live upto their expectation and take up the challenging task entrusted on us.

We have to consider how to save the judicial system from collapse? How to restore the losing faith of the people in the judicial system?

The conditions as they stand today, compel us to introspect in our shortcoming and to consider as to how to remove them.

With the aforesaid background I propose to dilate on the subject 'Court Management'. Before discussing the subject. I want to clarify that the subject matter is not the problem with which the judicial system of the country is confronted with, nor I am discussing all the factors responsible for deteriorating faith of the people in the Judicial system of the country. The discussion is confined to the problems of judicial system to the extent the courts can resolve it. In the context, I will also not be discussing problem of pendency of the litigation with High Courts as it may not be relevant for the present discussion. With the aforesaid clarification I propose to analyse the subject.

Delay In disposal of cases

Nani Palkhiwala in his Article 'Delays in Administration of Justice' wrote, "The greatest drawback of the administration of justice in India today is delay... I am not aware of any country in the world where litigation goes on for as long a period as India.... The law

mayor may not be an ass but in India it is certainly a snail... The fault is mainly of the legal profession. We ask for adjournments on most flimsy grounds.....". There are good number of cases which remain pending for 30 years or more in different hierarchy of courts and even after the decision of dispute upto Supreme Court the matters remain pending for good number of years on execution side.

As has already been stated, courts alone cannot be blamed for this inordinate delay in disposal of cases, there are many factors responsible for it, which are beyond control of the courts-one of them, as indicated by Mr. Palkhiwala- "greatest contribution for causing the delay in disposal of case is that of lawyers". The courts have no control over the lawyers, their disciplinary control is with Bar Councils. With all these limitations I have to suggest ways and means for expeditious disposal of cases, by adopting modern management techniques.

Before subclassifying the reasons for inordinate delay in disposal of cases-methods to sort out the problem, I propose to say it at the outset that the problems of long pendency and filing of large number of cases in disproportion to the strength of judges with which the courts are faced today cannot be sorted out with the procedure and techniques which were conceived of either at the end of nineteenth century or in the beginning of this century. The problems which judicial system is confronted with at the end of 20th century have to be resolved by adopting unorthodox approach, with the help of science and techniques available today.

Subclassifications of the problem of delay in disposal of cases

i. Adjournments

The problem of a litigant in getting delayed justice begins right from the level of District Court. The procedure of the District Courts is so slow going and expensive, that every sensible man tries his best to avoid knocking the door of the Court. There are various reasons for delay in disposal of cases in the District Courts but the foremost amongst them is repeated adjournments of cases. One party is always interested in delaying the disposal of cases, such party adopts all possible methods for getting the case adjourned. The High Court should issue some specific instructions laying down the time limit and norms for granting adjournments. According to me, no suit should be adjourned more than twice on the third occasion the court should fix the hearing of the case peremptorily. A peremptorily fixed case should not be adjourned except In exceptional circumstances, the judge adjourning a peremptorily tried case should record reasons for adjourning the case and should also ensure that the case is disposed of within a month from the date it was fixed for peremptory hearing.

The courts will require managerial technique in adopting this procedure and have to act with great care and caution. It will be the responsibility of the Court to ensure that a peremptorily fixed case is not adjourned by the court for its own inability to hear the case except in exceptional circumstances. Since while laying down a rule, all exceptions to the rules cannot be conceived of, and at all costs the discretion of the court should be kept Intact In dealing with the matters before him, for the reasons I have permitted exception to the general in exceptional circumstances but the exceptional circumstances for adjourning the case should be apparent on the face of the record.

For disposing of peremptorily fixed cases the daily cause list of the court will have to be planned in a manner that a peremptorily fixed case is not adjourned on the ground that

the court is left with no time to hear the case. In this connection a detailed training will be required for maintaining the daily cause list of the court. Experienced officers, who have special knowledge of court's management should frame guidelines for preparation of dally cause list. The subject will be dealt within a different sub-head.

Many times, cases have to be adjourned on the ground that lawyers have decided to cease work or they are on strike or adjournment is sought on some personal ground of lawyer. In the present system it is difficult to decide cases on merits in the absence of lawyers, litigant at the District levels not in a position to plead his own cause In the absence of his lawyer. The courts have no control over Advocates, Advocates are under the disciplinary control Of Bar Council. On occasions, Bar Council itself gives a call of strike. In the present system and In view of the fact that lawyers of District courts are frequently on strike, the courts are compelled to decide cases after considerable delay. No lawyer can be imposed on a litigant.

The High Court should come forward to solve the problem by Issuing specific direction in this regard laying down that cases will not be adjourned more than twice even on personal ground of lawyer or lawyer's strike. Unless some such drastic measures are adopted, the problem of delay in disposal of cases cannot be sorted out.

ii. Injunction orders

Due to long pendency of suits, the interim injunction orders are very vital and important. Exparte Injunction orders remain pending for years even after the defendant's putting in appearance and filing objections to the exparte injunctions. The judicial officers most of the time carry this Impression that It is the discretion of the Court to pass exparte Injunction for safeguarding the Interest of the plaintiff .

The Director of the Institute Shri Singhal has written a very elaborate and educative Article on "Exparte Injunction" In the Journal of the Institute in Its first issue. The Article gives clear guidelines for issuing exparte Injunctions. It is an useful reading. While passing order exercising discretionary jurisdiction, it is the obligation of the judicial officer that order should be informed with reasons and it should be transparent in the sense that it should contain a precise statement of latest legal position in matters of passing exparte Injunction with reference to the decision on which the principles of law are stated in the order and then applying it to the facts of the case. Most often times ex parte injunctions lack clarity and the reasons which they should contain as per guideline laid down in the article referred earlier.

Irresponsible passing of exparte injunction order leads to, many misgiving which also some times creates doubts on the integrity of judicial officer passing such order without proper reasons. Whenever the integrity of a judicial officer is doubted, it erodes the confidence in the system. For maintaining this confidence in the system it is necessary that all orders which are passed by judicial officers in their discretionary jurisdiction should be informed with reasons and be transparent, may it be an order of Injunction pending a civil case or an order granting bail to an accused pending trial.

I have come across several orders in my capacity as Administrative Judge and Inspecting Judge wherein accused involved in serious non-bailable offence like, S 498A of I.P.C. read with Section 314 of Prohibition of Dowry Act, have been granted bail by one word order without adverting to any reasons whatsoever. Similarly, many exparte injunction orders have come to my notice where orders have been passed without properly referring to the established principles on the basis of which exparte injunction can be passed.

There is no justification for not disposing of the objection filed to *ex parte* injunctions expeditiously, there is also no justification for adjourning the hearing of such objections. Injunction applications are to be decided on documentary evidence and affidavits. The parameters under which the temporary injunction can be granted have been well settled in various decisions. A ready made chart or note should be available with the concerned officer wherein parameters of passing interim injunctions have been laid down, the facts of the case with reference to documentary evidence and affidavits can be applied to the fixed norms for granting interim injunction and result can be drawn without delay. The objection to *ex parte* injunction should be decided within a month of filing objection.

In the daily cause list of the Court a separate time should be allotted for disposal of such cases.

iii. Miscellaneous cases

A subjectwise classification will call for consideration of disposal of miscellaneous applications in the suit, they are numbered as miscellaneous cases. These miscellaneous cases arise of applications moved by the parties for restoration of cases dismissed in default for substituting the heirs of deceased party, applications for setting aside the *ex parte* decree, applications for amendment of pleadings and so on. All these applications are disposed of on the basis of affidavits. Long pendency of these miscellaneous applications also results in delay in disposal of suits. For all these class of applications, a separate concised statement of principles of law, should be available as a ready reckoner with every judicial officer laying down the guidelines for disposal of such cases. These guidelines should be drawn out on the basis of upto date case law decided in this regard. Once the guidelines for disposal of a set of applications is ready with the officer there should be no difficulty in fixing the facts of the case based on affidavit or documentary evidence and decide the applications. The outer limit for deciding these applications should be fixed as two months. Some separate time is to be carved out in the daily cause list for disposal of such cases. In this regard, I will like to refer to a decision of Supreme Court in the case of Collector Land Acquisition Anant Nag v. Smt; Katlji (AIR 1987 SC p.1353) wherein the court while dealing with delay condonation application laid down: "It must be grasped that judiciary is respected not on account of its power to legalise injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

A positive approach should be adopted in disposing of these applications, unless on particular facts of the case the court is satisfied that such application is *mala fide* or the order allowing such application is to result in injustice to the other party. The applications should be allowed and the parties be permitted to contest the case on merits. According to me the courts should have an attitude of doing substantial justice and not insist on procedural technicalities.

However, the order on these applications should always be informed with reasons and transparent. It should be self-contained order not requiring the higher court to see any thing outside the order, for justifying the correctness of the order.

iv. Disposal of old cases on priority basis

It has been brought to my notice that many times the Courts instead of giving preference to decide old cases, choose to decide cases with an eye on completing their quota as per norms fixed by the High Court for disposal of cases. Mostly the judicial officers

complete their quota of disposal of cases by deciding suits exparte, Sessions trial and criminal cases where prosecution witnesses have turned hostile or complainant has compromised or civil suits where the parties have compromised or there is only formal contest. It is the obligation of the Court to dispose of old cases on priority basis. There are clear directions to that effect. The High Court should issue positive instructions that decision of cases of the category referred to above will be treated as 1/4th of the case decided. This may encourage decision of old contested cases.

v. Execution cases

It is a sad story that even at the execution stage the case remains pending for years. There should be positive direction that execution cases will not be adjourned more than once on any ground whatsoever. Execution cases should also be separately classified in the cause list, and time be allotted for doing such cases.

vi. Modernising Copying department in Courts

Now a photostat machine is available in every court which can prepare the copy of any document within seconds, there is no justifying reason for preparing the copies from old system i.e. one person copying the document normally by hand and the other comparing, this is not only obsolete but is waste of human energy. In my last inspection to my district I was shocked to listen the complaint from a person that his application for copy of document is pending for last 1-1/4 year. The explanation for the delay as given out was that since the document is in Urdu and no Urdu knowing clerk is available in copying section, the copy could not be prepared. No such explanation is available after invention of photostat machines. Continuing with the age old procedure does create a wrong impression in a litigant that no work can be done easily in courts, may it be obtaining copy of a document. Imagine the plight of a person who has to wait for more than a year in getting copy of the document. With the installation of photostat machines, no application for copy should be allowed to remain pending for more than three days.

vii. System of Process-serving unsatisfactory

On frequent occasions, we come across complaints that process-server has submitted a false report, sometimes the complaint is that summons have been served on fake person-impersonating the real defendant. There is no counter check for ascertaining the correctness of the allegations. Normally, it is against human conduct that a person even after knowing that he has been summoned in a Court, where he has been sued, will refuse to accept notice and will take a risk of being proceeded exparte, but then there can be exception to this rule, there may be clever persons who may willfully absent themselves with a hope that exparte decree will be set aside.

In the changed circumstances some system of counter checking the process serving system should be introduced, like publication of weekly court news at district level wherein the list of cases wherein notices have been issued to defendants should be published in state language. It should be ensured that at least one month's notice is given to concerned party. The copies of weekly court news should be pasted compulsorily on the notice boards of all the courts, at Zila Panchayat, Nagar Panchayat, Block headquarters, Tashil headquarters and Gram Panchayat offices. Some judicial officer should check occasionally as to whether the court news is being demonstrated on various notice boards. The costs of

the publication should be borne by plaintiff unless the court exempts. In due course this system will have counter check on false service of summons.

viii. Bail applications and Remand order

The Magistrates and the Judges disposes of bail applications of serious non-bailable offences, after the accused and his advocate make a grievance that they have not been properly informed that in what connection they have been arrested, they are not furnished the copy of F.I.R., nor they are permitted to inspect the case diary maintained by Investigation Officer for contesting their remand order and also for making submission on their bail application.

'In *Joginder Kumar v. State of U.P.*, AIR 1994 SC 1349, the Supreme Court held:-

- “1. An arrested person being held in custody is entitled, if he so requests to have one friend relative or other person who is known to him or likely to take an interest in his welfare, told as far as is practicable that he has been arrested and where is being detained.
2. The police officer shall inform the arrested person when he is brought to the *police station of this right.*
3. An entry shall be required to be made in the Diary as to who was - informed of the arrest. These protections from power must be held to flow from Articles 21 and 22(1) and enforced strictly.”

It shall be the duty of the Magistrate, before whom the arrested person is produced, to satisfy himself that these requirements have been complied with," In many remand orders the directions of the Supreme Court are not complied with and necessary endorsement to the said effect is missing in remand order.

Under Section 167 Cr.P.C. the Magistrate remanding the accused to judicial or police custody is under an obligation to satisfy himself by examining the case diary that there is material on the basis of which accused has been apprehended in the alleged offence. I am of the opinion that a material which the Magistrate examines before passing the remand order, the accused is also entitled to know the material of the case diary to contend that no case for remand is made out. It is the right of the accused to inspect the police case diary at the stage of his remand and such a right is also inherent in Art. 21 of the Constitution of India. Since the accused and his lawyer are not permitted to inspect the case diary officially at the stage of arguing bail application -contesting remand, they adopt illegal means for such inspection, all this reflects on the judicial system. We must endeavour to rule out such systems which compel a litigant to adopt wrong methods for achieving the just cause.

ix. Daily Cause list: Classification of cases

Whatever I have suggested will remain an illusion or will be rejected as impracticable unless the court's daily cause list is drawn on scientific basis, with the help of computer. Till the facility of the computer is not available the task will require a specialised training and scientific planning for fixing cases. An improper handling of preparation of cause list will frustrate all suggestions.

All cases of the Courts should be classified in different heads, like

- i. Peremptorily fixed cases
- ii. Cases where arguments have been heard in part

- iii. Old cases
- iv. Cases where parties have arrived at compromise or there is a formal contest
- v. Miscellaneous cases
- vi. Sessions trial
- vii. Bail applications etc.

For hearing each class of case a reasonable time schedule should be drawn up, the Court should try to maintain the time schedule, in case the case is not taken up in the fixed time schedule, it should be a rule that It will be taken up next day in the same time schedule. This system will ensure disposal of cases as suggested earlier. The litigant and lawyer will know as to at what time his case is to be taken up which will avoid unnecessary waiting for whole day by a litigant -he may attend the court only for the fixed time schedule. This system will facilitate disposing of peremptorily fixed cases, miscellaneous cases, execution cases and old cases on priority basis as suggested earlier.

While preparing a cause list, same type of cases, where a common question of law is involved or facts are similar, can be grouped together and can be listed for disposal in a group. The suggestion will sound peculiar as in the District court every case is filed on its own facts, the facts of two cases never tally unless the cases have been consolidated for disposal of common Issue. However as I have said earlier that in the changed circumstances some new methods and technology are to be adopted. To illustrate there can be cases where the suits are filed between two Mohammdans transferring the property by oral gift. The donor and donee both agree. All such suits can be grouped together, though they may not be consolidated can be disposed of by common order except cases where court is satisfied that oral gift is only a device for avoiding the stamp duty.

There can be many other examples, all need not be mentioned. The facts involving common question of law may be grouped together and after stating the principle of law many miscellaneous matters may be decided together on the basis of documentary evidence and affidavits.

The suggestions require attention of those who are entrusted with the task of scientific planning of daily cause list and imparting training to judicial officer.

Solution: Computerisation

Prof. Anshuman Kumar -Dean of Management of Studies University of Baltimore U.S.A. speaking on 'Management of Computer Science' said "with computers fast replacing the human race in office automation it is becoming imperative to all the people to be sufficiently educated in Computer Literacy".

However the statement is contradicted by Roger Penrose Rouse Bell - Professor of Mathematics at Oxford in 'The Emperors of New Mind' where in he proved that "Computers cannot replace human beings".

They cannot take the place of Judges. But they can do well to analyse/sift/ huge data, monitor the progress and improve time management. They can do wonders in solving the problem of arrears.

The entire files pending In Supreme Court have been computerised, simply by a press of button in any part of the country where the Supreme Court computer system is connected with satellite, one can know that when a particular case pending in the Supreme

Court will be heard. Likewise all decisions of Supreme Court have been computerised and you can get the information about anyone of them again by pushing a button where Supreme Court computer system is connected with a satellite. All these are wonders of computer's application in judicial system. Many software floppies are available in market where case law have been digested subject wise.

Some very useful suggestions on the use of computers In courts with regard to management Information system have been given by Justice J.K. Mathur In his Article : "Court Management- A prospect" published In Post Centenary Silver Jubilee Volume of Allahabad High Court, of course his suggestions are primarily for dealing with the arrears of High Court but the use of computers at present is imperative at the District level.

The entire information, about laws, precedents and writing should be fed in the computers, the software floppies should be classified on the basis of classification of cases done for their disposal. The print out of the computer with legislative provisions and latest decision should be made available to Judge like ready reckoner for knowing as to what tax you are required to pay on a particular income. All this require pooling of heads and research on subject. Eminent law Professors of Universities, Computer technocrats, Judicial officers should confer to find out solutions of pendency of old cases in District courts by use of computer technology. This is subject matter of research. The present Institute is most appropriate body for performing this huge and stupendous task.

All this require investment of huge money. State should come forward with necessary funds to sort the problem of arrears as it win restore the faith of people In judicial system, which will ensure a rule of law and Illegal tendencies to take law into their own hand. In case State falls to discharge its obligation, the Apex Court should come out to help out the situation from the impass as it did In All India Judges Association Case. I suggest that right now the Institute should begin a course of Court Management through computers and Judicial officers should be trained in the subject. The humble beginning can be by providing one computer to each district and linking it with Supreme Court Computer section by satellite

I have full faith and trust in the capacity ability, tact and learning of the present Director of the Institute that he will complete stupendous and huge task. Whatever I have said above is only a small fragment of huge problem. My suggestions are aimed to invite attention of the concerned people to think over the subject on the lines suggested above along with other ideas.

I confess that I have no specialization or expertise on the subject, these are the ideas on the basis of which experts may pool their heads together to find out the solution of the problem with which the country is faced – i.e. the Judiciary is at the verge of collapse. Let us do our best to save it.

[J.T.R.I. JOURNAL – First Year, Issue – 3 - Year – July – September, 1995]