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INDIAN JUDICIARY – POINTS TO PONDER

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In any democratic set-up like ours, governed by the rule of law, judiciary has a special place. It is like the conscience in a man. Unseen, yet, its presence is felt. Its role is that of an impartial arbiter of disputes between man and man, and man and the State. Indian Judiciary has largely lived upto this role. Nevertheless there is increasing criticism of our judicial set up in the country itself. Why? The question does not admit of a simple answer. Nor, of a single reason by way of explanation for the criticism let us explore.

Justice delayed is justice denied. In that sense justice is denied to most of those who go to court for redress. It is common knowledge that dockets of courts, at every level, are over-full. It takes years, sometimes decades, for causes to be decided in courts at various levels. That leads to frustration amongst litigants and corrodes their faith in the judicial system.

Upward quantum jump in the number of cases going to courts is a major factor leading to huge backlog in pendency of cases. Awareness amongst people about their enforceable rights, abnormal increase in arbitrary administrative orders, ill conceived legislative measures, multiplicity of appeals, frequent strikes by members of the Bar and the like are the major reasons for the delay in decision of cases and the overloading of Court dockets.

A reasonable litigant normally expects decision in his cause within a reasonable time-frame. If he fails to get it, his faith in the justice delivery system gets eroded. Unfortunately cases get decided, not only in regualr courts but also in various tribunals, with unconscionable delay in this country. And this happens inspite of pious protestations about it? Shall we be helpless spectators of the ordeal? Or, thing of some viable alternatives albeit by resort to drastic correctives. The option seems clearly to follow the latter course.

One, suitable amendment be brought in the various enactments to reduce the number of appeals. There should be a trial on facts and law and only one appeal, both on facts and law, against the decision recorded in the first instance. This should be the pattern in all causes arising even under special and local Acts. The appellate forum should consist of senior judicial and other officers having special knowledge of the subject matter. If Division Benches are constituted at the district or regional level for hearing such appeals then the litigants may be expected to feel more satisfied, as chances of arbitrariness or incompetence at that level will be lessened. The appellate fora should also be vested with necessary incidental powers to enable them to adjust equities between the parties and do complete justice between them.

The High Courts and the Supreme Court may be left to deal with only those cases which involve constitutional issues besides correcting (under Article 226, 227 and 136) grave errors of justice that may have crept in the decisions of the inferior courts and tribunals.

For reducing the burden on existing courts two shift system be introduced. In the second shift only retired judges need sit for disposing of final hearing appellate and writ cases (not original suits and trials). They may be paid honorarium per case decided.

Two, the entire expenditure on the judicial set up should be part of 'Plan' expenditure and the money should be available with the judiciary itself to enable it to meet its requirements without delay. It would then be able to make arrangements for adequate infrastructure for its proper functioning.

This step will render the judiciary accountable to people in greater measure because it will then not be possible for the judiciary to take refuge behind the absence of proper infrastructure for its delay, as it is able to do today. In fact, lack of proper and adequate infrastructure is a major cause for the delay in disposal of cases pending before Courts of law and Tribunals in the country. At the same time it is necessary to put personnel trained n management techniques incharge of administrative functions of courts. Not all judicial officers are good administrators. Officers who man the registry of High Courts should be management expert who may or may not be form the judiciary. Similarly in district courts a register, also a management expert, should be incharge of administrative work. This will (a) ensure proper utilisation of funds placed with the judiciary and (b) relieve the Chief Justice and the District Judge of considerable burden and leave them with more time for judicial work and supervision of judicial work of their subordinates. The administrators should also be assisted by latest information technology experts. (In USA arrangements have been made for training and recruitment of court administrators).

Execution of orders and decrees should also be the responsibility of these administrators and not of judges.

Three, Judicial officers should develop a better work culture. There is a general feeling that the judicial officers are not putting their best towards their work. Hearings are either prolix or abrupt-both being highly detrimental to a smooth course of judicial decision making. hearing process should generally be brief, confined to relevant discussion alone during the proceedings and be backed by proper study at home. Apart from expediting the process of hearing, a work culture of this nature is bound to add to the confidence of people at large in the judicial set up. Remarks-intemperate, made in the lighter vein or those smacking of a sense of bravado or assumed superiority, by the presiding officer vitiate the solemn atmosphere which one expects in these proceedings and lessen the respect and eventually the faith of people in the judicial set up. Unfortunately, of late there is marked decline in the standard of sobriety in judicial fora. Marked also is the decline in the faith of common man in the impartiality and probity of the decision maker. Gone are days when the motive of the decision maker was never suspected. Dignity and self-restraint, as part of the work culture, should be cultivated by the decision maker to restore the confidence of the common man in the set up. Emphasis deserves to be laid on this aspect during the formative years of a new entrant to the judicial hierarchy and should be maintained upon it throughout the entire tenure of the officer in the set-up lest a distortion, as seen today, in the image of the decision maker as an honest and impartial one takes place. Judicial officers, tribunals and High Courts should strictly scrutinize the cases on institution, even before issue of summons or notice to the opposite party. Again, after appearance of the defendant, on the date of framing issues, both parties should be closely questioned by the judge with a view both to narrowing the field of controversy and also exploring avenues of a compromise. At present cases decided otherwise than on full trial after contest are not given credit for in the evaluation of the work done by the judicial officer. Instead, the High Court should treat a case decided at the pre-trial scrutiny stage or on the basis of compromise (though not cases decided exparte or in default) as equal to a contested case.

When a higher court dismisses an appeal or petition (whether under Article 226, 227 and 136), upholding the decision of a lower court or tribunal, elaborate reasons for affirmance

need not be given, Only a short order need be passed in such cases. Fuller reasons are necessary only when an appeal or petition is to be allowed. In cases of appreciation of evidence the Supreme Court need not discuss the evidence in its written judgment. Only its conclusions need be stated, because there is no higher court to review the reasons given by it. So far as parties are concerned they will get sufficient hint about the reasons from the oral observations of judges during the hearing.

Four, Lawyers, who are essential associates for successful functioning of any justice delivery system, must partake the character of partners in making the system effective, efficient and speedy. They should help in its smooth running by being well prepared with their brief, avoid taking unnecessary adjournments, be precise and brief in their oral submissions and assist the decision maker in doing substantial justice in the case. Lately, for reasons for which lawyers alone are not "always to be blamed", the functioning of Courts and Tribunals gets disrupted due to frequent abstention from work by lawyers. As leaders of society, lawyers would have to take a hard look at the consequence of such a course and ensure, for survival of the system of justice, of which they are an integral and important part, that the working period of Courts, Tribunals and similar bodies does not get reduced on their account. They must conform to some self imposed discipline in this regard.

The presiding judge and the lawyer are both under public gaze and have to measure up to the expectation of the common man. The former is to see that the established reputation of being an impartial and upright arbiter, wedded to his noble task uninfluenced by any extraneous consideration, is not impaired or is subjected to any doubt. On their part the lawyers must ensure that none of them is considered as a self seeking individual who has a tendency to adopt un-common means to achieve his object of securing an order favourable to his client as a class. They are to uphold strongly the sense of sobriety and balanced behaviour which they are said to be losing.

These images of the decision maker and the lawyer must not be allowed to creep in or stay and they should both maintain and acquire in the same stature as they had prior to independence and for some years thereafter. The unhealthy trend, so noticeable of late, of self praise on the part of these two prominent segments of the judicial set up in our country must give way to greater introspection and if required for self correction for their continued acceptance by the society as a useful and effective mechanism for securing justice in a cause.

Five, questions of a political nature, which should be dealt with by people in a democratic polity by recourse to political mechanism and by the politician through appeal to the elector, should not be foisted upon judiciary for determination. The higher judiciary to which such questions are now being referred by the politician for determination as an escape route, should stoutly refuse to entertain and adjudicate upon them. Such an attitude will not only save it from attribution of motives for the decision taken by it but will also leave it with more time for disposal of matters which really belong to its domain for determination. Whatever be the political party or combination in power, it would not be able to resist the temptation of entrusting inconvenient political questions for determination to the judiciary as a safety valve for itself. It is only the judiciary that has to stand up to it and refuse to succumb to the temptation or compulsion to spend time on determination of such questions.

Six, object of laws and of judicial determination should be ensure substantial justice in any cause. This will curb the gambler's instinct in a litigant which prompts him to move from court to court, Tribunal to Tribunal in the hope that he may get some better decision from the higher forum. Where the parties feel that substantial relief has been obtained by them, the attitude to get reconciled to the decision is generally more pronounced. It is this

result which should be attempted to be attained and the system of dispensation of justice, which aims at this result, should be adopted and promoted.

Since ancient days, Indian system of justice, be it through the modality of village pachayats or by reference to the kazi, gave importance to attempting reconciliation between the parties. The decision so arrived at was more satisfying and lasting. We must try to assimilate it in our modern judicial set up. The decision maker should be trained to have an arbitral approach while deciding disputes between two parties with a view to achieving reconciliation between them and securing substantial justice in the cause. Apart from regular Courts and Tribunals, people should be encouraged to get their disputes settled through mediation and conciliation. Former judges and senior lawyers, in particular, should come forward and volunteer to assist people in this respect. They owe it to the society, which gave them the honourable place in it of performing the pious function of getting disputes settled through their help, to take the lead in the matter so that bulging dockets of courts and Tribunals shrink to a reasonable size. Pre-trial conciliation effort should be made mandatory litigation relating to every family dispute (including disputes regarding property), commercial dispute, compensation claim and the like. A panel of conciliators, drawn from former judicial officers, should be prepared for the work and the parties and their counsel should take assistance from them in the pre-trial conciliation effort. In trial conciliation should also be encouraged at every stage of the case.

Induction of persons as judge's of High Court and Supreme Court primarily is said to be on consideration of their merit and calibre excluding regional and sectional representation and the like which is of little or no importance. For the past many years various groups in the country have been raising an out-cry for these factors being given importance in making appointments to the Higher Judiciary. These outcries, which may give rise to unhealthy trends, must be nipped in the bud. The setting up of National Commission for selecting judges of superior courts is a matter which required serious consideration. Complaints having prima facie substance against integrity of judges', which may require consideration about there being prima facie case, should also be gone into by such a Commission if it comes to a conclusion about its existence, the President should have power, on its unanimous recommendation, to remove a judge, if option of resignation is not exercised by the judge. The impeachment provisions, which are not suitable for Indian conditions, should be excluded from the Constitution and other statutes.

Eight, Judicial officers and those practising before them have, of late, becomes less self possessed than what is expected of them in the context of the solemn work that they are performing. Getting excited over trifles like display of name plates and "V.I.P." lights on their vehicles or option of use or otherwise of official vehicles provided to them does not behove the dignity of a presiding officer. The lawyer cannot justifiably lose his cool if an order, not to his liking or expectation, is passed in his case. Likewise he is not entitled to meddle in matters which do not reasonably fall in his domain. It may be matters relating to the court staff or of the nature of administrative set up of the court management or entrustment of work to judges by the Chief Justice of District Judge and the like. Public ventilation of grievances by them both robs the judicial set-up of the dignified picture which the entire set up must have in the eyes of people generally to maintain their faith in judiciary. Greater self restraint in matters of this nature on the judicial set up will only enhance their prestige and acceptability in the eyes of the common people.

Nine, another distressing feature, prominently noticeable now, is the feeling of common litigant, appearing before Courts and Tribunals, that hsi self respect is at a discount. This is more true of courts which try causes in the first instance. The general feeling that the

litigant comes to have is as if he is being distributed some largess, by way of courtesy, by the presiding officer and the court staff when he goes to courts for his case. This breed in him contempt and a sense of disgust in the system itself. Particular care should be taken to avoid this infirmity which has creeped in the system of dispensation of justice.

Ten, court fees on suits and civil appeals are at present too high. They should be drastically reduced, say, to 1% of the value of the claim. In matters in which there is at present virtually no court fee, e.g., motor vehicle accident claims, consumer protection claims, etc, court fees at the lowest rates should be introduced so that frivolous or wildly exaggerated claims may be discouraged. If a case is dismissed or the claim is reduced at the prenotice scrutiny stage they it may be wholly or proportionately (as the case may be) refunded. In cases of compromise also, if effected at a pretrial stage, court fees should be refundable.

Eleven, a Statute Revision Commission headed by a retired High Court judge and comprising two or three others from say, advocates, District Judges, administrators, be constituted in every State for reviewing all existing laws. Repealing and Amending Acts should then be passed on its recommendations. This will ensure that laws which have outlived their usefulness or are producting of harassment to the law-abiding citizen are struck off and others improved and simplified.

Twelve, police reforms/criminal justice reform are also sorely needed in order to rescue society from the clutches of criminals and to re-establish law and order which is a pre-requisite to enjoyment of freedom, security and all human rights. A functional distinction between "administrative police", charged with public order and security duties, and "judicial" "criminal" police, charged with investigation of crime, is required. Only the former need be under the control of the executive, while the latter should be under the supervision of the judicial magistracy. As in France and other continental countries the magistrate should be involved from the investigation stage and be responsible for deciding whom to prosecute and whom not to prosecute. Instead of adversarial system, inquisitorial procedure should be tried. If the accused fails to enter the witness box an adverse inference against him should be permissible as in Britain and several States of U.S.A. By undue tilt in our laws in favour of accused persons we have encouraged crime and the growth of mafia cult, and also given an excuse to police to resort to false encounters and custodial deaths and disappearance.

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