

JUSTICE DELAYED-SEARCH FOR SOLUTIONS

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The biggest challenge that the justice delivery system faces in India is the problem of huge backlog of pending cases before courts and tribunals constituted under various enactments. The bulging dockets are swelling day by day causing unconscionable delay in the hearing and decision of cases. This, in turn, has led to a sense of despair in people whose cases have remained undisposed of for years together and is leading to loss of faith in the system itself. Whatever may be the reasons for this sorry state of affairs and whosoever may be largely responsible for it, time has come when it has become imperative to think of some supplemental alternatives and provide it to the harassed populace. Else, the system will collapse notwithstanding optimistic observations made from time to time by people at the helm.

The 'legitimate' expectation of people rightly is that whenever they come up with a grievance before an adjudicatory forum they should have reasonable opportunity of having their say and after their adversary has had a similar opportunity, the adjudicator should decide the matter within a reasonable time. In actual practice, however, this expectation is generally belied. Complexity of procedure, numerical insufficiency of adjudicators, lack of proper and adequate infrastructure and the gambler's instinct in the litigant are amongst the major reasons for the delay in the final disposal of cases apart from faulty legislation, arbitrary administrative orders, frequent cessation of work by the lawyers or court staff and the like. Any search for solution for the problem of bulging dockets must take these into account.

The aim of the procedure to be followed in any adjudicatory proceeding should be to ensure compliance with the basic principles of natural justice and avoidance of formalism. The parties to a cause should have reasonable opportunity of stating their case, adducing evidence in support thereof in the presence of the other party subject to testing it and finally presenting their viewpoint before the adjudicating authority in the light of the material on record. The adjudicator should then be left free to decide the matter in accordance with law. The two major Codes, namely, the Code of Civil Procedure and the Code of Criminal Procedure should receive a fresh look and should be scanned carefully to confine the procedural requirements to the barest minimum ensuring the aforesaid and their provisions should be made applicable to all adjudicatory proceedings to ensure uniformity in procedure.

There should be a trial on facts and law and only ONE appeal on both. The decision should become final subject only to correction by the Supreme Court, where the appellate decision is by the High Court or a tribunal presided over by a serving or former Judge of a High Court and by the State High Court in other cases in the exercise of their extra-ordinary Jurisdiction. The concept of multiple appeals should be given up in all enactments.

Each Court or tribunal should be provided with an executing agency of its own to ensure compliance with its orders in all matters of a civil nature and those relating to recovery of fines. Disobedience of the orders made by tribunals should be made punishable as contempt of court and the provisions relating to grant of interim orders, dismissal of a cause for default and its restoration, review and restitution available to Courts should be made applicable to tribunals also specifically to make the exercise of jurisdiction by them effective.

PRE- TRIAL conciliation proceedings should be made compulsory in all disputes of a civil nature before they may be taken to a Court or Tribunal. Services of former judicial officers and other social service oriented persons of recognised integrity and competence may be sought by the State on reasonable terms for assistance in the matter. Some effort along these lines is being made in the proposed Arbitration and Conciliation Act now an ordinance. Conciliation effort. In pending cases, before their trial is taken up should be made compulsory and where parties express willingness for an agreed solution, the matter may be left to be finally decided at the next Lok Adalat unless the parties ask for a short adjournment undertaking to file a compromise on the next date.

More areas of disputes of a civil nature should be entrusted for determination to Tribunals set up for the purpose. For instance, Trade Disputes Tribunals should be set up for dealing with disputes of a commercial nature between private parties as also between statutory bodies inter-se and between them and private parties. There should be a District Tribunal at the District level and an appellate Tribunal at the State level to be presided over by former judicial officers of the level of a District Judge and High Court Judge respectively. Amongst the other members at least one should have been a judicial officer earlier for not less than seven years. Similarly, all family disputes including those relating to marriage and divorce, custody of children, maintenance, succession and partition should be entrusted for determination to Family Disputes Tribunals which should be set up for each District and at the State level in the like manner, to be manned likewise.

Certain areas of litigation have already been entrusted to Tribunals created for the purpose. For example, disputes relating to state government and central government employees have been entrusted to State and Central Administrative tribunals; those relating to direct taxes, central excise and customs duties, state sales (or trade) tax are dealt with by respective tribunals;

those relating to railway claims by the Railway Claims Tribunal and those relating to consumer disputes are being determined by Consumer Disputes District For a and the State and National Commissions. These have undoubtedly reduced the burden upon ordinary civil courts.

An independent body like, say, National Judicial Commission (or State Judicial Commission in a State) should undertake regular study of caseload factor per court and determine the number of Judges Courts needed to deal with it. The Government should be under statutory obligation to provide the requisite number of Judges/Courts, along with the requisite infrastructure, within a stipulated period.

Court/Tribunal management should be improved by recourse to modern technological methods like use of computers, photostating, fax machines etc. with the assistance of trained management personnel for expeditious functioning of the system.

Frivolous or vexatious litigation brought before a Court or tribunal should attract heavy costs for the litigant to act as a deterrent. Similarly, a party found to adopt dilatory tactics resulting in delayed disposal of a case should be made to pay exemplary costs to act as a warning to others. These will certainly bring down pendency of cases.

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