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Causes of Delay in Justice Delivery System and Correctional Remedies

The easiest thing in the life is to give advice, suggest solutions and propose remedies. It often becomes easier when you are not the part of the situation where in the remedy is to be applied. Such solutions are not based on ground realities and thus are not practically applicable. I am part of justice delivery system and I will remain so always. If I am not performing my duty as a judge I will then be acting as an advocate, jurist or a lecturer in the faculty of law. My words are thus based on true to life experiences. I mean to implement the remedies for judicial reform, as I want to make the judiciary a promising institution responding quickly to the problems of people. It is my desire that the judiciary should provide solutions to the problems of people and make more and more time available with the individuals to develop their personalities and create new properties and thus make the country an economical mega power in the world.

We have detected causes of delay. Now we have to earmark the available remedies and find out result of its application. The first and foremost problem is of judicial vacancies.

The First National Judicial Pay Commission (FNJPC) after collecting evidence came to conclusion that present ratio of 13 judges for population of one million is grossly inadequate. Commission suggested increasing this number to 50 judges per million. Recently Supreme Court while recommending the report of FNJPC directed that the government should increase the number of judges in the ratio of 50 judges per million of population.

Increasing the number of judges involve several intricate problems. While appointing a judge one court is required to be established for his working. For the functioning of the court appropriate premises is required. Such premises is required to be furnished with minimum furniture like elevated platform, witness box, tables, chairs, typewriter and employees supporting the court work. Along with it a house to accommodate the judge and houses to accommodate employers are also required. So the infrastructure development for the appointment of even one additional judge requires lot of money. The judiciary is placed under non-planned sector. It is general thinking of the legislators that judiciary is established for the welfare of the people but it is not helpful to the government to generate revenue. This proposition is however not based on reality. If we consider the revenue collected by the courts by way of imposition of fine and by collection of the court fee it will appear that the collection of revenue by the courts is much more than the expenses on the establishment of courts. In spite of this fact the government is not ready to invest money in uplifting service conditions of the officers and employees in judiciary. It is therefore necessary that the government should place judiciary in planed sector. The government should adopt a systematic and phase wise approach to increase the number of judges, develop infrastructure for their functioning and make available all the requisite facilities to them.

Considering the financial requirements increasing the number of judges from 30 per million to 50 per million will take a long time. Phase wise increase in number of judges will provide the Government birthing time to bear financial burden. It will also provide time to the Government to develop resources for opening the new courts.

One of the causes highly projected for the delay in justice delivery is adversarial system of justice delivery. Detail research in chapter III

goes to shows that adversarial system of justice delivery had done more good of the Indian justice delivery system. The study also shows that causes other than adversarial system are more responsible for delay. As I discussed earlier India is now not in a position to run its judicial system by adopting any other legal system than adversarial system. As I mentioned earlier no suitable justice delivery system existed in ancient India, which would be suitable to the contemporary period. The diversity of Indian social panorama also creates hurdle in implementing any ancient juristic system in India. Remedy to this problem lies in amalgamating all good principles of quinsitorial system and ancient systems with the existing adversarial system. Real success in this regard will be achieved if we implement all good aspects of the justice delivery system

In addition to criticism of adversarial system adoption of British laws is also said to be one of the cause for delay in justice delivery. Some of the prominent jurists think that the British laws are alien to the Indian society and are not suitable for Indian society. This criticism cannot be held good. Exercise to find out which of the pre-constitutional laws are suitable for Indian society and which are not is already been carried out by the legislation way back in year 1960. The laws, which were suitable to Indian society to the wisdom of our legislators, were adopted and rest of the enactments were repealed.

Backbone of Indian justice system is the statutes like the Penal Code, the Procedure Codes and the Evidence Act. Out of these laws procedure laws are amended so many times that no provision of the Procedural law remained unamended. Both the Procedure Codes were basically enacted during the British regime after the study of Indian conditions. Inspite of numerous changes made in the procedure codes they are not yielding the expected results to enhance the pace of justice

delivery. So it can be said that both the Procedure Codes should be discarded and new Civil and Criminal Procedure Codes with the features elaborated in Chapter V should be brought in existence. It is necessary to mention here that now standards of lawmaking are already globalize. Considering the treaties of United Nations Organization every country in the world has to make the laws with basic aspects according to the charters adopted by the United Nations Organization. The recent example is legislation on juvenile justice. (Care and protection) Act 2000. This act was promelgumated because of charter of United Nations ------ So even if we think of adopting new Procedure Codes we have to accept recommendations of UNO adopted by international community and provide the same remedies and procedure as the international community has adopted in their countries.

The present procedure codes recommend all such remedies and protect all such rights recommended by UNO. These Codes also provide fairest possible procedure for determination and enforcement of rights. It is therefore inappropriate to think of discarding the present procedure codes. What is required is goal-oriented investigation to identify the delay causing provisions of the code. Ones such provisions are identified a better mechanism in place of such provision should be thought for and adopted by removing the said provision by statutes books.

Indian Penal Code and the Indian Evidence Act are the statutes, which are list touched by the legislatures in spite of their existence from last almost 143 years. The Basic reasons for not amending the Indian Penal Code appear to be framing of various penal legislations to deal with the delinquent human conduct in difference fields of life instead of adding new offences to the Indian Penal Code. This situation has created lot of confusion. Now the situation is that the law implementing machinery and courts are not aware about the existence of a statute to

deal with particular delinquent human conduct. It happens that in case a particular delinquent behavior several statutes defining offences and prescribing punishment are available. Such situation makes it difficult to charge the delinquent and deal with him effectively. Still there are the gray areas of delinquent human conduct requiring creation of new offences. Because of the absence of offences to deal with the human delinquency in changed social and economical scenario delinquency in many fields goes unchecked corrupting the society. It is therefore necessary to create new offences and prescribe punishment for the same within the Indian Penal Code.

Though the concept of Indian Evidence Act is based on sound analysis of human behavior and human conduct, the Evidence Act does not recommend or prescribe to the modern method of communication. The stringent requirements of admissible evidence allow the lawbreakers to take benefit of the situation and escape either from punishment or skip statutory liabilities. The word has a see change in the arena of communication. In addition to verbal and paper communications now the communication is done without paper or dialogue for eg. By E-mail, Cyber-Chat, and net mail. It is necessary to recommend these modes of communication by making appropriate changes in the Evidence Act.

Some of the provisions of the Indian Evidence Act are vague. It is necessary to make appropriate changes in these provisions and streamline them according to present needs. It is necessary to remove inequality of requirement of proof for the evidence by the prosecution and the defence in Criminal cases or the claimant and defendant in the civil suits.

Alternative dispute resolution is now a days a hot topic for discussion in judicial circle.

Now let us consider use of each of the mode of ADR, its present mood of implementation and its merits and demerits.

No doubt Lok-Adalat had provided an effective way for resolving the disputes and reduce the pendency, the close scrutiny of the holding of Lok-Adalat create a question whether settlement of matters in Lok-Adalat really amount to be a fair Justice. The basic purpose of judiciary is to impart a fair and unprejudiced Justice to the litigants coming before the court. It is expected that the alternative dispute resolution mechanism while dispensing justice should not depart from this basic goal of judiciary. Stretching this principle in the case reported in AIR 1964 Bombay 180 Honorable Bombay High Court advised that the court should not disregard peremptory provisions of law in Zeal to dispose of cases expeditiously. These observation are expected to be fulfilled by the while implementing ADRS. It has been however observed that in case of dispute resolution of motor accidents claim the claimant does not get fair deal. Though nothing is brought to the light of day the undercurrent whisper always goes on that there is pre-lok Adalat settlement in the cases, which are disposed of in lok- Adalat.

The Legal Services Authorities Act tried to regulate holding of Lok-Adalat. The Act provided recognition to the orders passed by Lok-Adalat. The awards passed in Lok-Adalat are given now the force of executable decree. This is a welcome provision however while making this provision no thought appear to have been given to maintain the quality of the awards or to seal the loopholes from where mal practice enters in the process of settlement of dispute in Lok-Adalat.

Initially the Lok Adalats were used to be inaugurated with much fanfare. High Court judges were called along with representative of State Government for the inaugural function of Lok-Adalat. Obviously such functions required lot of funds. The funds were raised by contribution.

Soon it was noticed that voluntary contributions couldn't be obtained regularly. It was also noticed that in some cases crooked ways were adopted to raise contribution. Ultimately Bombay High Court was required to make the Rules for conduction of Lok-Adalat. The circular of Bombay High Court prohibited inaugural functions.

It was also noticed that because of absence of any regulation criminal cases, which declared non-compoundable like the offence under section 498A, 467, 471 were settled in Lok-Adalat. This practice was deprecated by the orders of Bombay High Court in the Courts working under Bombay High Court. In this way some steps are taken for maintaining the quality of justice dispensed by Lok-Adalat. More such steps are necessary to remove the demerits of the Lok-Adalat.

The glaring demerit of Lok-Adalat is involvement of judicial officer in procuring assistance of NGOs, advocates and litigants for the success of Lok-Adalat. In order to maintain independence of a Judge and sovereignty of the Courts the presiding judge imparting justice at particular station should never have a burden of obligation of anybody. When he is said to hold Lok-Adalat he has two options either he has to take the obligation of NGOs, advocates or litigants or to formally hold Lok-Adalat without bothering for the outcome. In the first case the judge with the burden of obligation will find it difficult to impart justice freely and fairly. In the later case the out come will not be handsome and the purpose of holding lok adalat will be frustrated.

It is necessary to post few judicial officers for the task of arranging Lok-adalat. These judicial officers will not be imparting justice at least in the district where in they are arranging lok-adalat. They will there fore have no hitch in seeking help from NGOs, advocates and all other factors of the society. These judicial officers will better pursue the litigants to settle their disputes in lok-adalat. This will not add much financial

burden on the State, because this scheme will hardly require two judicial officers for a division of few districts.

Apart from settlement by Lok-Adalat conciliation is also one of the better mode to reduce pendency. Statutory recognition is given to conciliation by the Arbitration and Conciliation Act 1996. Section 30 of the Act speaks of powers and duties to encourage settlement of disputes by conciliation, mediation by agreement of parties in dispute. Conciliation proceedings may be resorted to even in absence of arbitration agreement between the parties. With this recognition the parties to the dispute may now go to the neutral person for conciliation. The neutral conciliator may propose solution for disputes resolution considering the views of both the parties and the law existing in respect of the problems. While giving his opinion conciliator will take into consideration flexibility of both the parties to accommodate each other by give and take formula.

The network judicial officers proposed above may also be used for making them available for appointment as conciliators. To hold conciliation it will certainly be necessary for the judges not only to have responsive but also to have coordinative approach. This is only possible when the judges come out of their shell and interact with the parties. This is not expected from the regular judges imparting justice in regular courts. This function of conciliation may also be appropriately performed with the help of network of judges assigned with the job of holding Lok-Adalat.

Mediation and negotiations are said to be some other modes of alternative dispute resolution. Negotiation means setting out differences. Mediation means making the parties seat together and the remove their differences. These two modes of dispute resolution are the types of conciliation. The network of judicial officers also can implement these

moods by playing active role in making the parties to the disputes seat together and resolve the dispute. In this way the network of judges will effectively work for implementing all the provisions of the Legal Services Authorities Act and many of the provisions of the Arbitration Act 1996.

Revival of Nyaya Panchayats may also provide alternative mechanism to resolve the dispute and reduce the entry of disputes in the courts. When we referred to the word Panchayat it comes to our mind that 5 persons are seating on the platform bellow the shade of a tree and trying to solve dispute between the parties. Here I do not mean such type of Nyaya Panchayat. Nyaya Panchayat here is the mode of resolution of dispute by body of persons may be from a villagers or urbanites. May it be a body regulating the affairs of particular community or particular class.