

# **Judicial and Administrative Reforms.**

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## **1 .Administrative and Judicial Reforms .**

The differences of opinion and disputes are age old barriers creating obstacles in the development of a Nation. A dispute free atmosphere is an indispensable requirement to attain overall development of human beings and universal peace.

2. The independence and impartiality of the Judiciary is one of the hall-marks of the democratic set up. Though much acclaimed and accepted the importance of the Justice Delivery System, it is the Judiciary, which is being sidelined in the matter of technological advancement and modern amenities. We are still following the age-old and time worn *run of the mill* procedure and practices. It is high time that we should have introspection to the working environment of the subordinate judiciary in India.

3. In this background the efforts of our ALL INDIA JUDGES ASSOCIATION to discuss the issue for better judicial system is a positive step requires special appreciation.

i) General issues.

a) Many of the Courts are functioning with inadequate and rickety furniture despite the increase in the number of dockets and also the overcrowding of lawyers. Court Halls, especially in Taluk Centers depict the pathetic condition.

b) Activities of the Legal Services Authorities assume volume day by day. There is enormous increase in the quantity of work of the judicial officers, implementation of various schemes under the Legal Services Authorities Act, etc.

c) Heavy work pressure owing to quantity oriented disposal.

d) There is no Mechanism for the redressal of problems of judicial officers.

e) The lack of timely promotion to the eligible judicial officers.

f) Insufficient plinth area of residential accommodation to the judicial officers.

ii) Court Management

a) Justice delayed is justice denied and at the same time justice hurried will bury the justice. There are many unimportant and simple disputes, which indirectly consume precious time of the courts to decide the complicated disputes, requiring interpretation of statutes. Most of our Courts are flooded with dockets, but there is no improvement in the staff pattern and infrastructural facilities.

b) Major part of the working hours of the Judicial Officers is being spent for writing deposition of witnesses; owing to this the officers get themselves exhausted by the end of the day and it considerably affects the decision making process. Depositions recorded in manuscripts, require preparation of readable copies, resulting delay in complying copy applications and submitting records to the Appellate Courts.

c) Lack of uniform procedure and practice.

d) Lack of additional court commensurate with the huge backlog

e) Insufficient judges population ratio.

f) Additional work load in connection with legal services and mediation works

g) Insufficient training Programmes.

h) Lack of pre-action protocols to check pendency

**2. Practical solutions to the Problems.**

i). General

a) Lack of district-wise budgetary allocation is one of the impediments in the development of infrastructural facilities.

b) It is desirable to evolve uniform procedure in administrative matters, by convening Periodical conferences of the Principal District Judges and Chief Judicial Magistrates. In such conference the assessment of pendency in each court can be easily done and suitable decision to delimit police stations and villages can be taken and the same has to be implemented by Hon'ble High courts ignoring the objections from the lawyer community, as such objections are of no significance when we aim to achieve the elimination of back log. Objective assessments of the pendency reveals that some courts are overburdened and on the other hand some courts are very light. Therefore rearrangement of jurisdiction and redeployment of the judicial officers and staff shall be made wherever necessary.

c) In many States the nomenclature of judicial officers not so far changed in accordance with per Para 5.89 of the recommendation of the FNJPC report, which is accepted by the Apex court in its judgment dated 21.3.2002. So the nomenclature is to be changed in every state on National basis in tune with the said recommendation

d) AIJA can publish a National directory of officers in the country for a better exchange idea and ensure proper co-ordination of justice delivery system

e) Plinth area of the official residence of the judicial officers is to be re-fixed considering the necessities and category on national basis.

f) **Steps shall be taken to constitute A Grievance Cell at the state and central levels so as to enable the officers to submit their grievances for redressal.**

g) Integration of the civil and criminal staff of subordinate courts may be done without delay in order to strengthen the efficiency.

h) It is suggested that our Association may take steps to ensure the participation of Civil Judge (Jr.Division)/Munsiff-Magistrates who have completed 35years of age and 7 years of service, may also be permitted to participate in the selection test of **All India judicial Service**.

i) It is requested that the our Association shall take necessary steps to ensure the ratio of 50:50 , in accordance to the article 217(2) of the Constitution of India , in the matter of appointment of Judges to the High Courts from the Subordinate judiciary instead of the present one-third of the total vacancy .

j) There is a practice of avoiding senior district judges who have crossed the age of 58 years from considering for elevation as judge of the High Court. This has resulted in blocking eligible promotion avenues. The Association should take steps to see that the senior District Judges, if otherwise eligible, be considered for elevation to the High Court, irrespective of their age.

## **ii) Court Management, Control of pendency and files**

a) The present practice of writing depositions in the handwriting of the Judicial Officers which is still prevalent in some states shall be discontinued. If possible the Court proceedings and deposition of witnesses may be video graphed.

b) Steps may be taken to review the Circulars and Official Memorandums. It is further requested that an opportunity may be given to officers to place our views in this regard.

c) Computerization of the Subordinate Courts may be expedited. Necessary software to facilitate legal research may also be provided.

d) Sufficient number of additional Courts, whenever filing of cases exceeds a particular limit, is to be established. To ensure speedy delivery of the justice, it is high time that we must give top priority to litigants than the advocates. There exist many civil courts with below minimum no. of cases, such courts can be converted as civil and criminal courts and one or two police stations can be attached to such court, so that the equilibria in the work can be achieved. In order to curb docket explosion, the suggestion contained in resolution No. 7(b) and (c), of the CHIEF JUSTICES' CONFERENCE – 2007 may be given effect to at the earliest. The relevant resolution is extracted for easy reference:

*“7 (b) If there are more than 2000 cases in a subordinate court, additional court(s) be set-up to deal with the excess cases.*

*7(c) Courts of Civil Judges (Junior Division) and Judicial Magistrate be set-up at Taluka level as also for a block of 3-4 villages, provided that enough litigation is generated at that level.”*

e) Steps may be taken to appoint Subordinate Judges as full time Secretary of the District Legal Service Authorities, on deputation basis as provided u/s.9 (3) of the Legal Services Authorities Act, 1987. If otherwise feasible, engagement of serving Judicial Officers as mediators or conciliators, be avoided as resolved in the CHIEF JUSTICES' CONFERENCE – 2007 held on 6<sup>th</sup> and 7<sup>th</sup> of APRIL, 2007]

f) It is suggested that necessary provision for imposing Cost penalties as prevalent in U.K., is to be brought in so as to persuade the parties to ADR mechanism. As per the said procedure, the power to impose cost penalties on parties can be for a number of reasons, including failure to follow the pre-action protocols, and failure to consider or try ADR. The winning parties may not be

permitted to claim legal costs from the losing side because, although they won the legal battle, they refused to agree to mediation proposed by the other side.

The relevant provision regarding Cost Penalties in the Procedure Rules prevailing in U.K is as follows:

Section 44.5 (3(a) (ii)) states that - factors to be taken into account when deciding costs include “. . . *the efforts made, if any, before and during the proceedings in order to try to resolve the dispute.*”

It is high time to incorporate such procedures in our laws to ensure proper working of ADR.

g) It is not possible to evolve tailor-made technique to ensure proper court management. It is for the officers to evolve one or more methods suitable to such court considering the nature of cases pending . The Inter National(such as Visiting Foreign Judicial Fellows Program),National, Regional Judicial academies may give training to the judicial officers to evolve suitable court management, planning , development of Programmes aimed at the improvement of English Language usage skills, Brief and exhaustive Judgment writing skills, Programmes for developing positive thinking, easy comprehension, reasoning ability and quick decision making, Information Technology and computer education to handle e-courts, Sentencing Policy to achieve equal treatment of similar offenders, Intellectual Property Rights and Practical aspects of Plea Bargaining than giving generalised training.

h) *After framing issues in the newly filed light civil cases, if commissioner is appointed to take evidence, the matter can be heard and disposed of along with the old and targeted cases.*

i) The cases arising out of NI Act, being quasi-civil in nature, the trial can be conducted with the help of advocate commissioner as in the civil cases. This can be worked out by making suitable amendments to the Cr.P.C. and NI Act. Then the Magistrates can devote more time to the other criminal cases.

j) It is high time to make suitable amendment in the Indian Evidence Act to legalise the examination of the witnesses/accused through video –conferencing.

k) Strict adherence to the sub rule 3A to 3D, to rule 2 of order 18 C P C., helps to regulate unnecessary and lengthy arguments

l) The magistrates may be permitted to fix two days in a week for considering the advance applications. The present practice of accepting advance applications on all working days, by magistrate courts is to be discontinued, except in following cases, so that the judicial time can be utilized to take up regular cases.

1. If the pendency is well within control, say  
for E.g.: less than 2000 cases.
2. If the accused brings bail order from  
higher courts.
3. If there is compelling or  
extraordinary circumstances exist.

m) The restoration applications can be disposed on terms, with out taking oral evidence, and by adopting the said procedure, I could find out more time to consider other important old cases.

n) The Presiding Officer shall give his personal attention to the fixing of his daily cause list.

**o) The Association should take steps to make drastic amendments to O XX1 C.P.C. (The largest order in the C.P.C.), as most of the rules make the enjoyment of fruits of the decree a herculean task. The Association shall take necessary steps to persuade the Law Commission and Parliament to implement the direction contained in the decision reported in (2009) 9 SCC 689, wherein the Hon'ble Apex Court disapproved the artificial division of suits into**



**preliminary decree proceedings , final decree proceedings and execution proceedings. As held by the Hon'ble Apex Court steps have to taken to bring amendments, so as to make suit a continuous process from the stage of its initiation to the stage securing of actual relief.**

iii) Service of summons and notices, etc.

a) Suitable amendments are to be made in respective Civil Rules of Practice and Criminal Rules of Practice to ensure speedy service of summons notices as provided in the FNJPC REPORT.

b) Each and every court may be provided with sufficient police personnel at the disposal of the court(they must not given law and order duty .In this regard, we suggest that the resolution No.3(g), as resolved in CHIEF JUSTICES' CONFERENCE – 2007 held on APRIL 06-07, 2007], may be given effect at the earliest. The relevant resolution is extracted for easy reference:

“3 (g): the matter of placing police personnel at the disposal of courts, for service of summons and execution of warrants, be taken up at the joint conference of Chief Ministers of States and Chief Justices of the High Courts. However, the Chief Justices were of the view that with every Court special police officials be attached for ensuring speedy and effective service of summons.”

c) The prayer for adjournments be considered judiciously, taking into account of the nature and circumstances of each case. While granting adjournments beyond the maximum of two opportunities the prosecution or the defence, as the case may be, given only maximum period of thirty days for production of such witness and on further failure of such party the court may proceed to the next stage in appropriate cases without waiting for the said witness. Suitable Rules are to be framed in this regard.

d) Ensure proper retiring rooms with toilet facilities for litigants and witnesses in the court premises. The protection of the witnesses may be ensured by taking adequate measures.

e) The calling work is to be regulated by innovative court management, since calling work involves application of judicial mind.

f) The working days of subordinate courts may also be fixed as 5 days a week and this can be adjusted by increasing the court timings. It is also suggested that the vacation may be extended to criminal courts also, by making suitable charge arrangements.

g) The whole hearted co-operation of the Bar may be ensured .

### 3. Conclusion

In a welfare state, the people should get speedy and quicker justice. I hope a better, systematic and result oriented functioning of ADR will be to check the docket explosion in India.

The attitude of majority of litigants and advocates are not helpful for an effective functioning of ADR system. A new culture is to be developed inculcating the importance of ADR systems. Once we succeed in educating the common man regarding the advantage of ADR, I am sure the people will try to settle their disputes through the less expensive technology.

A concerted effort from the judiciary, lawyers, Govt and other NGO's are needed in this field. The efforts taken in launching National Legal Literacy Mission 2005-2010 on 6-3-2000, at New Delhi, has helped a lot in spreading the importance of ADR in India.

The Central and State Governments must ensure that the doctrine "Judicial Impact Assessment" is applied by the Parliament and State Legislative assembly, while enacting laws. If this is implemented, then a budget memo has to be appended with the Bill and it must contain the details of civil and criminal cases that are likely to arise under the new enactment,

how many courts, Judges, Staff etc. Apex court in Salem Advocate Bar Association, T.N.v.Union of India: AIR 2005 SC 3353 has directed the central Govt. to examine and to submit a report on this aspect within four months. I feel that if “*Judicial Impact Assessment*” is adopted, there won’t any room for the criticism now faced by the Indian Judiciary.

Above all, the last but not the least, i.e. the co-operation of the lawyer community, which is so crucial in the arrest of backlog, is to be ensured at all levels. This can be achieved if a committee consisting of Principal Officers, representatives of Bar in a district/centers is formed to chalk out suitable methods for the elimination of backlog and to evolve an effective Justice Delivery System.

I hope that the above suggestions will be helpful, while forming a National Plan of Action aimed at the elimination of backlog and improving efficiency of Judicial System.

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