

## **Editorial**

**By Justice U.C. Dhyani, Judge,  
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**In the administration of justice, Judges, lawyers, prosecutors, police, litigant public, Court staff are the main stakeholders. Napoleon Hill, author of “Think and Grow Rich” has said “every problem comes with an equal or greater opportunity”. Like any other essentials, such as unpolluted air, unpolluted water, justice is also essential to life. The preamble of the Constitution of India, the vision document of this country, intends to secure to all its citizens justice, among other things. Providing justice to all the citizens is the duty of the State. Planning for the quality benchmarks for adjudication is the need of the hour. Like other Public Institutions, Courts are also expected to deliver even more and better service than before.**

One of the first efforts to study the efficient functioning of judicial system was undertaken by the Civil Justice Committee in 1924, which is called as “Rankin Committee Report”. Rankin Committee gave report on causes of delay in Civil Courts. In the said report, it was opined that insufficient Judge Strength is the main cause for the delay. High Court Arrears Committee set up in 1949 under the Chairmanship of Justice S.R. Das recommended that inordinate delay in filling up vacancies in the High Court should be avoided as far as possible. The Law Commission of India constituted in 1955 to review the system of Judicial Administration in all its aspects also held the same view. High Court arrears Committee Appointed in 1972 under the Chairmanship of Justice J.C. Shah recommended increasing number of permanent Judges and appointment of Additional and Adhoc Judges for clearing the arrears. 78<sup>th</sup> report of Law Commission of India in 1979 reiterated that the arrears clearing should be done by appointing Judges, Additional Judges and Adhoc Judges. In 1987, 121<sup>st</sup> report and in 1988, 124<sup>th</sup> Report of The Law Commission of India reiterated the earlier views on filling up of vacancies expeditiously augmenting the

Judges' strength and appointing Adhoc Judges to tackle the problem of arrears. The report of Arrears Committee in 1990 which is known as Justice Malimath Committee Report also endorsed the view of the Law Commission of India. It also suggested solutions to the pendency of cases. Committees have suggested a number of practical and executable suggestions to redress the grievances. In spite of that, because of population growth, development in science and technology, rapid growth in world economy, globalization, have caused increase in number of cases before the Courts. Normally, a litigant should come to the Court for redressal of his grievance. But now a days, to give social justice, it is the duty of the Courts to see that the grievances relating thereto are attended either through Public Interest Litigation or through Legal Services Authority or through any other Non-Governmental organizations. People repose confidence in the Constitution and in the judiciary. This is possible if legislative mandates and various decisions of the Hon'ble Supreme Court are implemented.

If the cases are not decided expeditiously, there is every chance of public losing confidence in the esteemed institution. Several steps have been taken to reduce the burden on the judiciary by virtue of alternative dispute resolution mechanism, like Arbitration, Conciliation, Mediation, and Lok Adalat. Resolution of disputes by these methods is most expeditious, being free from procedural wrangles besides not taxing the parties with heavy expenditure. Even in spite of these methods, the disposal and pendency remains as it is. To meet this challenge, proper planning and management is necessary. We have to give a balance-sheet to the consumer of justice for public audit. Only when clearance rate is higher than the percentage of cases filed, Courts will be able to reduce the backlog. "Winners don't do different things, they do things differently". "No body plans to fail or lose, but many fail or lose because they fail to plan". All the judges work hard to dispose of the cases but their approaches are bound to be different. To meet that challenge, one must have a vision with a strong determination. Missionary zeal is required. One can easily visualise following bottleness in the system:

- (i) Inadequate Judges strength and delay in filling the vacancies.
- (ii) Inadequate Court infrastructure.
- (iii) Inadequate capacity and ineffective performance of ministerial staff of Courts.

- (iv) Poor quality, weak support from the Stakeholders and pressure tactics used by the Stakeholders, such as filing of anonymous and baseless complaints against the Judges.
- (v) Deliberate delaying tactics on the part of the Stakeholders and litigants.
- (vi) Poor quality prosecution of criminal cases and inadequate number of prosecutors.
- (vii) Poor quality investigation of criminal cases.
- (viii) No timely service of process.
- (ix) Number of requests for adjournments.
- (x) Interruptions in Court proceedings arising from stay orders /revisions/ reviews / appeals etc.
- (xi) Failure to produce accused / witnesses on time.
- (xii) Incentive structure and professional concern of district judiciary such as –
  - (a) Weakness in the performance assessment system (unit system) that does not adequately reward, viz., reward for clearance of complicated and contested cases.
  - (b) Reasons associated with pro-active action for resolution of case, which may be misunderstood and may result in complaints which results in a 'play-safe mentality'.

It is, therefore, necessary to address the above issues. Some of the solutions may be as follows:

Intellectual education influences the head and value-based education influences the heart. The education, which does not train the heart, is dangerous. Minimum level of moral and ethical literacy is necessary. Education plays a very important role in the career of a Judge. Education refers to both formal and informal education. Knowledge translates into wisdom, which, in turn, translates into success. Even the role of an educator is also vital and important. A person requires to have a positive attitude towards problems which he is facing. A person with a positive attitude is like a fruit for all seasons. The challenge before the judiciary about delay and arrears can be reduced only by strengthening judicial education. Giving judicial education to judicial officers and Judges about correct propositions of law by bringing them under a common workshop or a

conference is the need of the hour. If a particular point of law is applied universally by all the Judges, there will not be conflict of views and it will become a settled principle of law. If any appeal comes before the Appellate Court, it will be covered under a decision and it becomes very easy for any Court to apply the law and even at the stage of admission, it can be disposed of.

If any training is given to a Judicial Officer, the Academy must get feed back about the performance of that Judicial Officer. In this behalf, Judicial Academy must get the information whether there is any change or increase in the number of disposals, recording of evidence, applying the law to a particular case, art of writing the Judgment, reasons which have been given and improvement in the language, etc. If there is some improvement in it, then only the Academy can say that the training which has been given is successful. If there is no improvement, or, to the contrary, if there is lesser improvement, he can be questioned as to what is the reason for lesser disposal or poor quality judgments after the training and what is his problem? Again, he can be recalled to the Academy for giving him a better training. In this behalf, a scientific study by a particular person with a research bent of mind is essential.

Even while selecting the participants to the Judicial Academy for training, the Academy has to collect the facts and figures in which field a particular Judge is deficient and common category of Judicial Officers may be called at one time for training. The Judicial Academy must also assess as to who requires the training and on which subject. The method of calling all the Judicial Officers to the training will not be fruitful and effective.

It is no justification to glide on alibis by blaming the infrastructure for skirting the legislative mandates contained in various provisions of the Code of Civil Procedure and Criminal Procedure Code. A judicious officer who is committed to his work can manage with the existing infrastructure. A lazy workman always blames his tools, is the only answer to those indolent officers who find fault with defects in the system and the imperfection of the existing infrastructure for their tardiness. Even hearing a particular type of case on a particular day will also help the court while applying its mind and law.

A person can, and will be, successful with or without formal education if he has (a) Character (b) Commitment (c) Conviction (d) Courtesy and (e) Courage. A Judge must have skill which will be his ability. Ability with

willingness and desire makes him to reach the goal. Some people keep waiting for all the lights to turn green before commencing. They fail before they start. Every man is born with five senses, viz., touch, taste, sight, smell and hearing. It is the skill, combined with little adjustment and technology which takes us forward.

Human being will have a sixth sense i.e., common sense. Common sense is nothing but ability to see things as they are. If a Judicial Officer is having that particular ability, it will be more meaningful and useful. These qualities help him in taking an early decision.

For the last 30 years, the number of cases in Indian Courts has grown manifold. It is very difficult for a Judge, without there being any scientific management and effective control over the cases, to meet the ends. This requires not only substantial increase in number of Judges, but also a substantial increase in potentiality, productivity, up-gradation in knowledge, skills and efficiency. In all, a comprehensive modernization of judicial system is required. Now the judicial system has become too complex to be managed by using the old system and the infrastructure. In this behalf, specialized management skills have to be adopted.

### **Scientific Management:**

The Scientific management covers, use of modern techniques like E-Governance, Computerization, laptops, etc. A Judge has to keep track of the records of the cases by making an entry in the computers, in the following ways:

- Nature of the suit
- In a particular case how many applications are pending
- Age of the case
- Witnesses examined/to be examined
- Documents exhibited
- Interim relief granted or rejected
- Updating the data regarding the progress of each case
- Specialization with regard to the steps and categorization of the cases
- Clubbing of the cases etc.
- When it will be ripe for decision.

If we keep track of a case from its filing then the Judge will have a grip over the case to mould it according to his convenience.

## **Cause list management:**

While posting the cases, a Judge has to monitor that limited cases should be posted on the daily list, by covering all varieties of cases which are before him, preferably giving priority to the old cases. While making the cause list, he must also include minimum 40% of old cases. Apart from this, the cause list must be on the basis of the age of the case. While hearing the case, oldest case must be listed at the top of the list. There should be proper management for the purpose of adjustment of the cases. Adjustment in the sense that if any new case or emergency case is to be heard on priority, there should be scope to include those cases in the cause list. Instead of following this method, if large number of cases are posted and the calling work is done for fairly long time, it will amount to waste of precious court time.

## **Time Management:**

If any witness, like the doctor, investigating officer and any expert comes to the court to give his evidence, he should be given preference. There will be no overcrowding in the court, and the witness will also be comfortable and he can also attend to his day-to-day work as per his convenience. Even the witness will also not lose any wage or income by attending the court.

## **Case Management:**

A court has to apply its mind when a case comes before it. In the first instance, whenever the case comes, it has to make preliminary inquiries, as to whether the said court is having jurisdiction or not and whether the suit is maintainable or not, whether proper Court fee is paid or not, etc. Thereafter on the first appearance, it has to strictly follow the following schedule as per the Code of Civil Procedure, as amended up to 2002.

### **Plaint:**

Plaint on affidavit to be filed with copies of documents

### **Summons:**

Summons to be issued within 30 days of institution of suit (Sec. 27)

### **Written Statement:**

The defendant to file written statement on affidavit with copies of documents, within maximum 90 days from the date of service of summons (O.VII R.1, O.V. R.1 (1))

## **First Hearing:**

At the first hearing the Court shall ascertain whether allegations in pleading are admitted or denied (O.X R.1)

## **Conciliation:**

After recording the admissions and denials, the Court shall direct the parties to the suit to opt either mode of settlement outside the Court under Section 89 (1) (read with O.X, Rules 1 A, 1B and 1 C)

Date of appearance before the settlement forum to be fixed by the Court as may be opted by the parties. The parties shall appear before the forum. If the settlement does not take place, the forum to fix the date of appearance before the Court.

## **Oral Examination under O.X R.2:**

At the first hearing of the suit, the Court shall orally examine the parties or companions of parties with a view to elucidating matters in controversy in the suit (O.X, R.2)

Substance of the examination to be reduced into writing and to form part of the record (R.3)

The Court may postpone such oral examination for a maximum period of 7 days from the date of hearing to enable a party to appear in person to answer questions put by the Court. Failure to appear, without lawful excuses on the date so appointed, may entail adverse judgment (R.4)

Settlement of:

- (i) At the first hearing, the Court shall frame issues after examination under Order X, Rule (2) and after hearing the parties or their pleaders (O.XIV, R.1 (5))
- (ii) Notice for production of documents referred to in the pleadings of the either side shall be given at or before the settlement of issues (O.XIII, R.1 (2))
- (iii) All the documentary evidence in original copies whereof produced with pleadings, to be produced on or before settlement of issues. (O. XIII, R.1 (2))

## **Summoning Witnesses :**

- (i) Within 15 days from the date on which issues are settled, the

parties to present their respective lists of witnesses. (O.XVI, R.1 (1))

- (ii) Within 5 days of presenting the list of witnesses, the party shall make an application to obtain witness summons. (O.XVI, R.1 (4))
- (iii) The parties shall pay process fees for service of summons on the witnesses and witness allowance within maximum 7 days from the date of making application for witness summons (O.XVI, R. 2(2))
- (iv) The provision of sub-rule 2(4) empowering the court to direct or permit any party to re-examine any witness at any stage is deleted.

### **Recording Evidence:**

Evidence ordinarily to be recorded through Court Commission within 60 days of appointment of Court Commissioner (O.XVIII R.4)

Arguments :

The Court may set time for completing arguments and may require written submissions (O.XVIII, R.3A)

Judgment:

To be pronounced immediately after the arguments or within 30 days from the date of completion of hearing, in any case latest within 60 days from the date of conclusion of hearing- Date of pronouncement of judgment to be notified (O.XX. R.1)

Judge to give information about forum of appeal and limitation (O.XX.R5A)

Copies of judgment to be made available immediately. (O.XX.R6B)

Preparation of Decree within 15 days. (O.XX.R6A)

Depending upon the nature of the case, a District Judge must keep the target. While achieving the target, he must also maintain the quality. The said target should be mixed with some hard cases, some simple cases, some easier cases by devoting equal proportion of time to all types of cases. He has to plan it in such a way that he should get time to dispose of the contested and difficult cases and at the same time, dispose of the cases for the purpose



of complying his unit. No doubt, the unit system is not the only criteria to a Judge for his performance assessment, but it is necessary because of the reason that it will help monitoring the Judge his work.

### **Effective Management :**

A Judge should be given a chance to develop ability to direct, supervise, encourage, inspire and co-ordinate with his surrounding. He must also have skills of planning and managing the situation by maintaining quality, integrity, honesty, courage, commitment, sincerity, determination, compassion and sensitivity. If he cultivates these qualities, it will help to meet the challenges effectively. First he must identify the cause of the problem, then he should search for the options and choosing the best course of action he can implement effectively and efficiently by taking a decision. He should also plan by effective study of the problem whether a long term or a short term plan has to be adopted to attain his goal. If a Principal District Judge works hard, automatically the teammates will also work hard. He must also hold discussions and debates in his unit either once or twice in a month.

Murphy's Law says that if anything can go wrong, it will. There does not seem to be anyone who has not experienced problems in life. Every time we solve one problem, a new one springs up. After a while we begin to wonder if there will be a time in life when we can be free of problems.

The pressures of life are so great that they affect us physically and mentally. We find that people undergo anxiety, fear, depression and phobias. Offices of psychiatrists, psychologists and therapists are filled with normal, everyday people who cannot cope with life's struggles.

If our mind is positive and happy, we may feel physically better than when our mind is troubled and anxious. Our mental state can cause stress-related illnesses.

Studies have shown that when we are angry or emotionally upset, chemicals released in our body prepare us for “fight or flight”.

We need to find some acceptable way to prevent the mental, emotional and physical effects of stress which are making us ill.