The Role of District Judges in Ensuring Fair Trial in the Courts at Its Threshold; A Research Paper.

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Fair Trial is the fundamental right of every person enshrined under several Articles of Part Third and Fourth of the Constitution of India. In the common parlance the term fair trial means inexpensive and speedy trial by an independent, reliable and unbiased arbitrator. If the judicial conscience of the adjudicator is influenced by any intrinsic or extrinsic consideration, fair trial is impossible. Likewise, if the trial is not in accordance with the legislative principles and judicial pronouncements, it will not be fair trial being in violation of rule of law. Before discussing the modalities to ensure fair trial in the trial courts and the role of District Judges in ensuring fair trial, judicial conscience of the researcher prefers to mention some judicial responses on the present affairs of justice delivery methods by the trial courts at its threshold.

Recently in ***Vinod Kumar vs. State of Punjab,***[2] Hon'ble the Apex Court expressed its concern about the issue in question as follows-

> "The instant case frescoes and depicts a scenario that exemplifies how due to passivity of the learned trial Judge, a witness, despite having stood embedded absolutely firmly in his examination-in chief, has audaciously and, in a way, obnoxiously, thrown all the values to the wind, and paved the path of tergiversation. It would not be a hyperbole to say that it is a maladroit and ingeniously designed attempt to strangulate and crucify the fundamental purpose of trial, that is, to arrive at the truth on the basis of evidence on record. The redeeming feature is, despite the malevolent and injurious assault, the cause of justice has survived, for there is, in the ultimate eventuate, a conviction which is under assail in this appeal, by special leave."

Hon'ble Apex Court in this case has also mentioned that the narration of the chronology mentioned in the judgment shocks the judicial conscience and gravitates the mind to pose a question, is it justified for any

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1 District and Sessions Judge Amora, Post Doctoral Research Scholar, Rajeev Gandhi National Law University, Patiala, Punjab India on the research Topic, "Protection of Rights and Rehabilitation of Transsexual persons in India and the World Community."

2 Criminal Appeal No. 554/2012, decided by Hon'ble the Apex Court of India on 21-01-2015.

conscientious trial Judge to ignore the statutory command, not recognize "the felt necessities of time and remain impervious to the cry of collective asking for justice or give an indecent and uncalled for burial to the conception of trial, totally ostracizing the concept that a civilized and orderly society thrives on rule of law which includes fair trial for the accused as well as the prosecution. In this very judgment, Hon'ble the Apex Court has recapitulate a passage from ***Gurnaib Singh vs. State of Punjab***[3] as under-

> "...We are compelled to proceed to reiterate the law and express our anguish pertaining to the manner in which the trial was conducted as it depicts a very disturbing scenario. As is demonstrable from the record, the trial was conducted in an extremely haphazard and piecemeal manner. Adjournments were granted on a mere asking. The cross-examination of the witnesses was deferred without recording any special reason and dates were given after a long gap. The mandate of the law and the views expressed by this Court from time to time appears to have been totally kept at bay. The learned trial Judge, as is perceptible, seems to have ostracized from his memory that a criminal trial has its own gravity and sanctity. In this regard, we may refer with profit to the pronouncement in ***Talab Haji Hussain vs. Madhukar Purshottam Mondkar***[4] wherein it has been stated that an accused person by his conduct cannot put a fair trial into jeopardy, for it is the primary and paramount duty of the criminal courts to ensure that the risk to fair trial is removed and trials are allowed to proceed smoothly without any interruption or obstruction."

Hon'ble the Apex Court has also mentioned a Para from ***Swarn Singh vs. State of Punjab***[5] which find place in the judgment of ***Gurnaib Singh's***[6] case.

> "It has become more or less a fashion to have a criminal case adjourned again and again till the witness tires and gives up. It is the game of unscrupulous lawyers to get adjournments for one excuse or the other till a witness is won over or is tired. Not only is a witness threatened, he is abducted, he is maimed, he is done away with, or even

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3 (2013) 7 SCC 108.

4 AIR 1958SC376.

5 (2005) 5 SCC 668

6 *Supra note 3.*

bribed. There is no protection for him. In adjourning the matter without any valid cause a court unwittingly becomes party to miscarriage of justice."

The Supreme Court in this case also preferred to refer ***State of U.P. vs. Shambu Nath Singh,***[7]wherein the Supreme Court deprecated the practice of a Sessions Court adjourning a case in spite of the presence of witnesses willing to be examined fully. The Court held:-

"We make it abundantly clear that if a witness is present in court he must be examined on that day. The Court must know that most of the witnesses could attend the court only at heavy cost to them, after keeping aside their own avocation. Certainly they incur suffering and loss of income. The meager amount of bhatta (allowance) which a witness may be paid by the court is generally a poor solace for the financial loss incurred by him. It is a sad plight in the trial courts that witnesses who are called through summons or other processes stand at the doorstep from morning till evening only to be told at the end of the day that the case is adjourned to another day. This primitive practice must be reformed by the presiding officers of the trial courts and it can be reformed by everyone provided the presiding officer concerned has a commitment towards duty."

Like wise in ***Mohd. Khalid vs. State of West Bengal***[8] the Supreme Court has held that unnecessary adjournment give a scope for a grievance that the accused persons get a time to get over the witnesses. Whatever be the truth in the allegation the fact remains that such adjournment lack the spirit of Section 309 of the Code of Criminal Procedure. When a witness is available and his examination in chief is over, unless compelling reasons are there, the trial court should not adjourn the matter on the mere asking.

On the role of advocates asking frequent adjournment Hon'ble Supreme Court in ***N. G., Dastane vs. Shrikand S. Shivde***[9] has held as under-

"An advocate abusing the process of court is guilty of misconduct. When witnesses are present in the court for examination the advocate

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7 (2001) SCC 667.

8 (2002) 7 SCC 334 at 366.

9 (2001) 6 SCC 135.

> concerned has a duty to see that their examination is conducted. We remind that witnesses who come to the court, on being called by the court, do so as they have no other option, and such witnesses are also responsible citizens who have other work to attend to for eking out a livelihood. They cannot be treated as less respectable to be hold to come again and again just to suit the convenience of the advocate concerned. If the advocate has any unavoidable inconvenience it is his duty to make other arrangements for examining the witnesses who are present in the court. Seeking adjournment for postponing the examination of witnesses who are present in court even without making other arrangements for examining such witnesses is a dereliction of an advocate's duty to the court as that would cause much harassment and hardship to the witnesses. Such dereliction if repeated would amount to misconduct of the advocate concerned. Legal profession must be purified from such abuses of the court procedures. Tactics of filibuster, if adopted by an advocate, is also a professional misconduct."

The above mentioned judicial responses raise a question mark on the nature of trial by the trial judges, whether it a fair trial? Frequent adjournments are still a common feature in the courts at its threshold. It will be denial of justice as well as violative of legislative principles. In other words, it can be said that if frequent adjournments against judicial responses and legislative principles are granted, it will be violation of rule of law in the courts.

Longevity of a trial, civil or criminal, has close proximity with the expenses on trial. So long the trial, so expensive it will be. If frequent adjournments are given, it cannot ensure the fair trial. Now the question is what is the role of District Judges in ensuring fair trial in the courts at its threshold? The District Judge in the District has not only to ensure fair trial in his court but in all the courts under his administrative control. Failure of fair trial in any of the courts in his judgeship is the failure of District Judge in ensuring fair trial. The question is what should be the modalities to be adopted by District Judges to ensure fair trial? In this research paper it is mentioned in following paragraphs-

1- Transformation of work culture by conduct:-

It can be said to be a socio- ethical and legal norm adopted by the District Judges. If the District Judge wants to ensure fair trial in his judgeship he has to first ensure the fair trial and rule of law in his court. It is not possible to ask the fair trial by the judges under his administrative control without ensuring fair trial in his court. It is a prevalent say that fragrance of work spread without any vocal attempt. A District Judge, who is punctual, dedicated to the work and ensures fair trial in his court shall transform the work culture to other courts by his conduct. The District Judge must stop granting unnecessary adjournments under a consensual peaceful mechanism. Thereafter, he must pursue and motivate other courts for adopting this practice. The work culture can wisely be transformed by conduct and behavior rather than words.

The District Judge must also ensure to transform by fair conduct that he is equally concern with the so called critically old and technical cases in his judgeship. He must make the sincere endeavour for adjudication of such cases and must not escape from legal duty to adjudicate by transferring such cases to other judges having concurrent jurisdiction.

2- Creating confidence in judges, advocates, court staff and the litigants:-

District Judge is head of the District Judiciary. The responsibility to create healthy judicial atmosphere in the courts lies on him. He must be available for grievances of the judges, advocates and court staff. He must take it in the mind that he alone by his conduct as District Judge can create the confidence in advocates, judges and court staff. Thus, the behavior and attitude of the District Judge should be exemplary in nature. Ethically speaking, any ego generated by virtue of his post can decay the judicial conscience and freedom. Hence, he should be polite, a good listener but firm decision maker. It should be conveyed by very nature of the District Judge that he will listen everybody, shall try to solve the grievances and problems of all but will not at all compromise with the dignity of the forum and judicial discipline.

3-Ensure judicial independent and freedom:-

Before even start writing on the topic of judicial independence and freedom for all the stake holders of the judicial system, the researcher found it proper, being a judge, to answer few questions raised by inner-self. The queries which disturbed the judicial conscience of the researcher are as

follows:-

1. Can we imagine a district judiciary where the litigants can freely ask the judges about the tentative judicial life of the case i.e. in how many months/years his grievances shall be redressed?
2. Can we imagine a judiciary where the litigants approach the court with the positive and assertive mindset for redressal of his grievances rather than return from the court with mere adjournment? Can we believe having a judicial system where people having interest in the proceedings have a right to know by the Judge why their grievances have not been redressed within the time stipulated by law or within a reasonable time?
3. Can we imagine a district judiciary where a judge hears the public litigants in person to reach to the truth? It is the fundamental right of every litigant of being heard along with his duly appointed Council.
4. Can we have a district judiciary where public litigants are heard in very cordial and harmonious atmosphere, where they can freely and audaciously assert their views to the obnoxious and tergiversate adjudicator?
5. Can we have a judicial system where the litigants can audaciously make the fair comments on the justice delivery mechanism adopted by the judges? The judges should be so tolerant to respect the fair comments on judicial methodology. The fair comments and fair criticism is the best mode of improvement. The real test of a judge is his image in the public. This right of fair comments should have the nexus with the functioning and the working of the judges without any compromise with the dignity of the Forum. The subject of fair comments should be the working style of the judges and not their character and individuality.
6. Can we think that court is the place where people feel that they are not visiting an institution like Police Station, Electricity Office or any other Government office rather a pious place having the powers and sanctity of institution like Temple, Gurudwara, Church or Mosque, but authority of law? Can we have a judge who is not fair and transparent in judicial adjudication but also in administrative functioning as well?

The meaning of judicial independence and freedom lies in

positive assertion of above quarries. It is the duty of every Judge to redress, independently and detachedly, the grievances of every person whose interest is in question before the court. Likewise, it is the corresponding right of the citizens to get their grievances redressed by an independent and detached Judge. If a person, whose grievances are to be redressed by a judicial forum, approaches the court with a positive image of court to get justice from an independent and detached Judge, we can say that the court has ensures the right of judicial independence and freedom.

If the grievances of a person who has approached for assistant of the judiciary in any matter are not redressed by the court within the time fixed by law or within the reasonable time, it will result in frustrated justice. In other words, it can be said that under such circumstances the litigants are not enjoying judicial liberty and freedom. Under phrase judicial independent and freedom, some basic rights of litigants must be protected by courts during judicial adjudication. These rights can be expressed as 'minimum expectations' of the people from judiciary. One of the reasonable expectations is that the grievances of litigants must be redressed by a fair independent and unbiased adjudicator within the time stipulated by law or within a reasonable time. An adjudicator with preconceived notion cannot be an unbiased adjudicator. It is intended to write about preconceived notion that any feeling which affects the adjudicatory conscience of a Judge will violate his judicial independent and freedom, and accordingly, it will result in frustrated justice to the parties. Any preconceived feeling regarding the consequences of the judgment is also the violation of judicial freedom and independent of Judges and litigants both. It is the duty of District Judge in the District to create such an atmosphere that every Judge adjudicates every matter independently, without any bias and without any preconceived notion, behavior or sentiments. Writing ingeniously, the fear of adjudication is violative of judicial independent and freedom. This fear of adjudication may depend on so many factors and causes. But it is, undoubtedly, against the judicial independent and freedom. Two simple examples can be mentioned as illustration. If the judicial conscience of the adjudicator is influenced with the fact what will happen in future, if the order/judgment like this is passed; or what people will think of me if this order/judgment is passed? The other is if the judicial conscience of the adjudicator is influenced with some future fruits/results. Geeta, the guide liner

for human being about the way of life, prohibits for doing any act with the desired fruits. Being head of the District in the District judicial hierarchy, it is the duty of District Judge to ensure judicial independent and freedom which will result in prevention of judicial inaction and laxity. This judicial independence and freedom can be ensured keeping in mind the fact that the work pressure or pressure of any other nature is not the factor which can preclude an adjudicator for reasonable judicial productivity. It is his working with free conscience without pressure with certain self created targets for judicial service to the mankind which can ensure the maximum judicial productivity. It is the duty of District Judges to motivate all the judges under his administrative control for such practices.

4-Ensure cordial atmosphere in the courts:-

It is the duty of every Presiding Officer to maintain very cordial and harmonious atmosphere in the court. Law requires direct interaction of the Judges with the litigants at dais. It helps the Presiding Officers to do justice while adjudicating the cases. Learned Counsel should be heard on law points. But on facts, the parties should be heard in person. In many cases, the case is decided by Judges of the trial courts without any interaction and hearing to the parties in person. Personal involvement of the Judges at every stage of the case can curtail up to 60 per cent time of the case. There is no harm in hearing the parties on dais. It is further expedited, if the Presiding Officer recorded the evidence in his own handwriting or on his Laptop provided by Hon'ble Apex Court to every judicial officer. There is no place for recording evidence of parties in an atmosphere, where Presiding Officer with half conscience of mind is sitting on dais and reader is recording the evidence on dictation of Advocates. Recording of evidence sometimes becomes the exclusive job of the Advocates without intervention of Presiding Officer. It should be controlled by the Presiding Officer by showing his commitment at every stage of the proceedings of the case. It is the fact that decision making process starts from the time of filing the suit and it continues till the Presiding Officer signed the judgment. Decision making for District Judiciary is a continuous process and cannot be confined to a particular stage i.e. the stage of arguments etc. It may be possible for Hon'ble High Courts and Hon'ble the Apex Court, having different constitutional responsibilities. But for the judges of the trial courts, commitment to judicial work has to be shown by the Presiding Officer at

every stage even at very initial stage of the case. It is also a pious duty of District Judge to help all the Presiding Judges for maintaining cordial atmosphere in the courts so that every Presiding Judge may ensure the rule of law in the courts even for dealing with the strike of advocates.

5. Role of District Judges in strike by advocates:-

Strike by Bar and infrastructure are two concepts elaborately raised by every Presiding Judge on their inaction and laxity for ensuring fair trial and implementing rule of law in the courts. Before suggesting the mechanism to control the illegal activity of strike by the members of Bar, it will be proper to mention the judicial responses on this issue. Hon'ble the Supreme Court in ***Ramon Services Pvt. Ltd. vs. Subhash Kapoor & Another***[10] has held as under-

> "We have no doubt that the legal position adumbrated by the Additional District Judge as well as the High Court cannot be taken exception to. When the advocate who was engaged by a party was in strike there is no obligation on the part of the court either to wait or to adjourn the case on that account. Time and again this Court has said that an advocate has no right to stall the court proceedings on the ground that advocates have decided to strike or to boycott the courts or even boycott a particular court."

In this very judgment Hon'ble the Supreme Court mentioned some judgments on the duty of advocates toward their judicial conduct. In ***Ramon Services case***[11] Hon'ble the Apex Court summarized as under -

> "In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party, and if the circumstances warrant, to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting counsel for the costs paid. In appropriate cases the court itself can pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system."

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10 (2001) 1 S.C.C. 118 at 123, Para no. 5.

11 *Ibid* at concluding Paragraph.

In Ex- Capt.Harish Uppal vs. Union of India & Others,[12] Honb'le Court, on the bases of the affidavit filed by the Bar Council, mentioned some reasons of strikes by Bar Association/Advocates. The reasons which were mentioned before the Supreme Court are-

(a) Confrontation with the police and the legal administration;

(b) Grievances against the Presiding Officers;

(c) Grievances against judgments of courts;

(d) Clash of interest between groups of Lawyers; and

(e) Grievances against the legislature or a legislation.

In this judgment Hon'ble the Apex Court referred Para no. 11 of ***U.P Sales Tax Services Assn. v. Taxation Bar Assn.***[13] which reads as under-

> "It is fundamental that if rule of law is to have any meaning and content, the authority of the court or a statutory authority and the confidence of the public in them should not be allowed to be shaken, diluted or undermined. The courts of justice and all tribunals exercising judicial functions from the highest to the lowest are by their constitution entrusted with functions directly connected with the administration of justice. It is that expectation and confidence of all those, who have or are likely to have business in that court or tribunal, which should be maintained so that the court/tribunal perform all their functions on a higher level of rectitude without fear or favour, affection or ill-will. Casting defamatory aspersions upon the character, ability or integrity of the judge/judicial officer/authority undermines the dignity of the court/authority and tends to create distrust in the popular mind and impedes the confidence of the people in the courts/tribunals which is of prime importance to the litigants in the protection of their rights and liberties. The protection to the judges/judicial officer/authority is not personal but accorded to protect the institution of the judiciary from undermining the public confidence in the efficacy of judicial process. The protection, therefore, is for fearless curial process. Any scurrilous, offensive, intimidatory or malicious attack on the judicial officer/authority beyond condonable limits, amounts to scandalising the court/tribunal amenable to not only

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12 (2003) 2 SCC 45.

13 (1995) 5 SCC 716.

conviction for its contempt but also liable to libel or defamation and damages personally or group libel. Maintenance of dignity of the court/judicial officer or quasi- judicial authority is, therefore, one of the cardinal principles of rule of law embedded in judicial review. Any uncalled for statement or allegation against the judicial officer/statutory authorities, casting aspersions of court's integrity or corruption would justify initiation of appropriate action for scandalizing the court or tribunal or vindication of authority or majesty of the court/tribunal. The accusation of the judicial officer or authority or arbitrary and corrupt conduct undermines their authority and rudely shakes them and the public confidence in proper dispensation of justice. It is of necessity to protect dignity or authority of the judicial officer to maintain the stream of justice pure and unobstructed. The judicial officer/authority needs protection personally. Therefore, making wild allegations of corruption against the presiding officer amounts to scandalizing the court/statutory authority. Imputation of motives of corruption to the judicial officer/authority by any person or group of persons is a serious inroad into the efficacy of judicial process and threat to judicial independence and needs to be dealt with the strong arm of law."

In the ***Ex. Capt. Harish Uppal's***[14] case the Bar Counsil of India provided the Hon'ble the Apex Court a resolution in form of an affidavit with the assurance that Bar Association and the individual members of Bar Association should take all steps to comply with the same and avoid occasion of the work abstention except in the manner and to the extent indicated in the resolution. It was resolved that in the past abstention of work by Advocates for more than a day was due to inaction of the authorities to solve the problems that the advocates placed.

It was further resolved that-

a. In all cases of legislation affecting the legal profession which includes enactment of new laws or amendments of existing laws, matters relating to jurisdiction and creation of Tribunal the Government both Central and State should initiate the consultative process with the representatives of the profession and

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14 *Supra* note 12.

take into consideration the views of the Bar and give utmost weight to the same and the State Government should instruct their officers to react positively to the issues involving the profession when they are raised and take all steps to avoid confrontation and inaction and in such an event of indifference, confrontation etc. to initiate appropriate disciplinary action against the erring officials and including but not limited to transfer.

b. The Councils are of the view that abstentions of work in courts should not be resorted to except in exceptional circumstances. Even in exceptional circumstances, the abstention should not be resorted to normally for more than one day in the first instance. The decision for going on abstention will be taken by the General Body of the Bar Association by a majority of two-third members present.

c. It is further resolved that in all issues as far as possible legal and constitutional methods should be pursued such as representation to authorities, holding demonstrations and mobilizing public opinion etc.

d. It is resolved further that in case the Bar Associations deviate from the above resolutions and proceed on cessation of work in spite or without the decision of the concerned Grievances Redressal Committee[15] except in the case of emergency the Bar Council of the State will take such action as it may deem fit and proper the discretion

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15 The Grievances Redrassal Committees are-

(a) A committee consisting of the Hon'ble Chief Justice of India or his nominee, Chairman, Bar Council of India, President, Supreme Court Bar Association, Attorney General of India.

(b) At the High Court level a Committee consisting of the Hon'ble Chief Justice of the State High Court or His nominee, Chairman, Bar Council of the State, President or Presidents High Court Bar Association, Advocate General, Member, Bar Council of India from the State.

(c) At the District level, District Judge, President or Presidents of the District Bar Association, District Government Pleader, Member of the Bar Council from the District, if any, and if there are more than one, then senior out of the two.

(d) At taluka / Tehsil/ Sub Divn, Senior most Judge, President or Presidents of the Bar Association, Government Pleader, representative of the State Bar Council, if any.

being left to the Bar Council of the State concerned as to enforcement of such decisions and in the case of an emergency the Bar Association concerned will inform the State Bar Council.

In the ***Ex. Capt. Harish Uppal's***[16] case the Supreme Court concluded-

"In conclusion, it is held that lawyers have no right to go on strike or give a call for boycott, not even on a token strike. The protest, if any is required, can only be by giving press statements, TV interviews, carrying out of court premises banners and/or placards, wearing black or white or any colour arm bands, peaceful protest marches outside and away from Court premises, going on dharnas or relay fasts etc. It is held that lawyers holding Vakalats on behalf of their clients cannot not attend Courts in pursuance to a call for strike or boycott. All lawyers must boldly refuse to abide by any call for strike or boycott. No lawyer can be visited with any adverse consequences by the Association or the Council and no threat or coercion of any nature including that of expulsion can be held out. It is held that no Bar Council or Bar Association can permit calling of a meeting for purposes of considering a call for strike or boycott and requisition, if any, for such meeting must be ignored. It is held that only in the rarest of rare cases where the dignity, integrity and independence of the Bar and/or the Bench are at stake, Courts may ignore (turn a blind eye) to a protest abstention from work for not more than one day. It is being clarified that it will be for the Court to decide whether or not the issue involves dignity or integrity or independence of the Bar and/or the Bench. Therefore in such cases the President of the Bar must first consult the Chief Justice or the District Judge before Advocate decide to absent themselves from Court. The decision of the Chief Justice or the District Judge would be final and have to be abided by the Bar. It is held that Courts are under no obligation to adjourn matters because lawyers are on strike. On the contrary, it is the duty of all Courts to go on with matters

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16 *Supra* note 12.

> on their boards even in the absence of lawyers. In other words, Courts must not be privy to strikes or calls for boycotts. It is held that if a lawyer, holding a Vakalat of a client, abstains from attending Court due to a strike call, he shall be personally liable to pay costs which shall be addition to damages which he might have to pay his client for loss suffered by him."

The judicial responses on the issue of strike by advocates show that advocates have no right to restrained from the judicial work. The strike is illegal. The issue before the trial court is the implementation of the judicial responses. Ultimately someone has to break the ice. The District Judge is in position and by virtue of his official authority can easily attempt to break the ice. At least sincere endeavor should be made to stop this menace of illegal activity which prevents the implementation of rule of law in the courts. It depends on the District Judge what steps according to the circumstances of the District he must take. But the step should be peaceful so that the path of chariot of justice is not diverted and derailed. It may be a collective efforts of District Judge, Judicial Officers, Office Bearers of Bar Association and individual senior members of Bar.

5(a). Regular meetings with the members of Bar:-

For having effective administrative control, the District Judge holds meetings on monthly basis with all the Judicial officers. The purpose of meeting is to ensure judicial independence and freedom of individual court with highest standard of decorum and discipline. Through this monthly interactive mechanism the problems faced by the individual judge to ensure the implementation of rule of law in his court are discussed and methods adopted for the redressal of the same. The Judges themselves discussed the methodology for enhancing timely and inexpensive justice. Through the meetings the District Judges also ensure the implementation of instructions from the parent department i.e. Hon'ble the High Court.

But unfortunately, there is no such interactive mechanism to interact with the advocates and to let them know about the consequences of their acts done in courts and the judicial responses thereon. ***In this research paper, it is suggested that District Judge should conduct monthly meetings on regular basis with all the advocates in the presence of all the judicial***

officers. Let grievances be discussed in cordial and sound atmosphere in presence of all the Judges and officers of the court (advocates) along with a cup of tea. By doing so, the District Judge can motivate the office bearers of Bar Association and the senior members of the Bar to encourage speedy and inexpensive justice in the Courts. If it is honestly done, it can be said confidently that the Bar will make the mechanism to ensure speedy and inexpensive justice, the end is fair trial.

5(b). Innovative beginning:-

When we initiate something new, there are possibilities for success and failure. We know it that changes is not easy as not liked by majority of persons for the reason they don't want to come out from the comfort zone. It means that it is not easy to initiate some new things in the system because primarily it will be objected by us. But what is the harm initiating and implementing an idea having possibilities of converting to noble idea? Thus, it is requested to all the District Judges to hold regular meetings with office bearers and the members of Bar Association in presence of all the Judicial Officers to cordially discuss the issues relating to the fair trial and rule of law.

6-Developing mechanism for ensuring the rule of law and fair trial in Courts-

It is out rightly mentioned that it is not the original idea mentioned in this research paper. It is based on the judicial responses. In ***State of U.P. vs. Sambhu Nath Singh & Others*** [17] his Lordship Hon'ble Justice Thomas (as His Lordship then was) in Para no. 18 and 19 of the judgment mentioned as follows-

> "It is no justification to glide on any alibi by blaming the infrastructure for skirting the legislative mandates embalmed in Section 309 of the Code. A judicious judicial officer who is committed to his work could manage with the existing infrastructure for complying with such legislative mandates. The precept in the old homily that a lazy workman always blames his tools is the only answer to those indolent judicial officers who find fault with the

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17 *Supra* note 7.

defects in the system and the imperfections of the existing infrastructure for his tardiness in coping up with such directions."

"In some States a system is evolved for framing a schedule of consecutive working days for examination of witnesses in each session's trial to be followed. Such schedule is fixed by the Court well in advance after ascertaining the convenience of the counsel on both sides. Summons or process would then be handed over to the public Prosecutor in charge of the case to cause them to be served on the witnesses. Once the schedule is so fixed and witnesses are summoned the trial invariably proceeds from day today. This is one method of complying with the mandates of the law. It is for the presiding officer of each court to chalk out any other methods, if any found better, for complying with the legal provisions contained in Section 309 of the Code. Of course, the High Court can monitor, supervise and give directions, on the administration side, regarding measures to conform to the legislative insistence contained in the above section. "

Recently, in ***Rameshwari Devi and Others vs. Nirmala Devi and Others***[18], Hon'ble the Supreme Court has laid down certain steps for trial courts for improving the existing system. In Para no. 52 of this judgment, Hon'ble Supreme Court dealt with a question whether the prevailing delay in civil litigation can be curved? It was held by the Supreme Court that delay in civil litigation can be curved if following mechanism is adopted-

A. Pleadings are foundation of the claims of parties. Civil litigation is largely based on documents. It is the bounden duty and obligation of the trial judge to carefully scrutinize, check and verify the pleadings and the documents filed by the parties. This must be done immediately after civil suits are filed.

B. The Court should resort to discovery and production of documents and interrogatories at the earliest according to the object of the Code. If this exercise is carefully carried out, it would focus the controversies involved in the case

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18 (2011) 8 SCC 249.

and help the court in arriving at truth of the matter and doing substantial justice.

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

D. The Court must adopt realistic and pragmatic approach in granting mesne profits. The Court must carefully keep in view the ground realities while granting mesne profits.

E. The courts should be extremely careful and cautious in granting ex-parte ad interim injunctions or stay orders. Ordinarily short notice should be issued to the defendants or respondents and only after hearing concerned parties appropriate orders should be passed.

F. Litigants who obtained ex-parte ad interim injunction on the strength of false pleadings and forged documents should be adequately punished. No one should be allowed to abuse the process of the court.

G. The principle of restitution be fully applied in a pragmatic manner in order to do real and substantial justice.

H. Every case emanates from a human or a commercial problem and the Court must make serious endeavour to resolve the problem within the framework of law and in accordance with the well settled principles of law and justice.

I. If in a given case, ex parte injunction is granted, then the said application for grant of injunction should be disposed of on merits, after hearing both sides as expeditiously as may be possible on a priority basis and undue adjournments should be avoided.

J. At the time of filing of the plaint, the trial court should prepare complete schedule and fix dates for all the stages of the suit, right from filing of the written statement till pronouncement of judgment and the courts should strictly adhere to the said dates and the said time table as far as possible. If any interlocutory application is filed then the same be disposed of in between the said dates of hearings fixed in the said suit itself so that the date fixed for the main suit may not be disturbed.

The judicial responses of Supreme Court in above two cases (one for criminal trial and another for civil trial) shows that every court should adopt a mechanism within the parameters of law for ensuring fair trial. This mechanism depends on circumstances prevailing in the court, pendency of cases in the court and other similar circumstances. As it is the matter of case and court management, it is suggested that the District Judge should also hold a meeting with the ministerial staff of entire judgeship in presence of all the judicial officers to discuss the modalities of developing mechanism. It will motivate the staff. It will create the confidence in the staff that their say has some meaning in justice delivery mechanism. There may be a uniform mechanism for all the cases and individual mechanism for individual case. It will also pass on a message to the other stake holders of the judicial system about the judicial commitment of District Judge and his other brother Judges. Every mechanism adopted by the judges must contain a time schedule for every case, civil or criminal, for its trial accordingly to law. The mechanisms so adopted may be conveyed to the District Judge/High Court as the case may be.

7. Role of District Judges in implementation of ADR mechanisms and to motivate the officers for discharging the functions of District Legal Service Authorities.

ADR processes are still neglected by the Civil Courts. Judicial inaction and laxity in adopting ADR mechanism/process in a scientific manner under the lawful procedure is still a common feature in the civil courts at its threshold. Referral to the ADR processes is negligible that too casually and without adopting any scientific manner. The referral is not as scientific as mentioned in Section 89 of CPC and explained by Hon'ble the Apex Court in

several judicial pronouncements. There is a judicial confusion in referral, whereas, the position is very clear. The referral is also occasional and that too exceptional under the prevailing circumstances in the civil courts.

Different civil courts have different practices for adopting ADR processes, whereas, it is the mandatory legislative intent. The issue is whether every case after completion of pleading and before framing of issues should be referred to the ADR processes? Another issue is whether Court has some discretion to decide that particular case should not be referred to ADR processes and lastly the role of the Presiding Judge to act in a scientific manner for adopting ADR processes. All these queries have been answered by Hon'ble the Apex Court in ***Afcons Infrastructure Limited and Another v. Cherian Varkey Construction Company Private Limited and Others.***[19] In the very judicial pronouncement, Hon'ble Apex Court has also relied upon the law laid down in ***Jagdish Chander v. Ramesh Chander***.[20] The Hon'ble Court in ***Jagdish Chander's case*** has held that it should not also be overlooked that even though Section 89 mandates courts to refer pending suits to any of the several alternative dispute resolution processes mentioned therein, there cannot be a reference to arbitration even under Section 89 CPC, unless there is a mutual consent of all parties, for such reference. Extending this provision, Hon'ble the Apex Court in ***Afcon's case*** has laid down that even for conciliation; the case cannot be referred by any Civil Court without the consent of parties. Clarifying the entire situation, the Hon'ble Apex Court has mentioned the procedure to be adopted for referred of any case for any of the ADR processes. The procedure is as follows:-

(a) When the pleadings are complete, before framing issues, the court shall fix a preliminary hearing for appearance of parties. The court should acquaint itself with the facts of the case and the nature of the dispute between the parties.

(b) The court should first consider whether the case fall under any of the categories of the cases which are required to be tried by courts and not fit to be referred to any ADR processes. If it finds the case falls under any excluded category, it should record a brief order referring to the

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19 (2010) 8 SCC 24.

20 (2007) 5 SSC 719.

nature of the case and why it is not fit for reference to ADR processes. It will then proceed with the framing of issues and trial.

(c) In other cases (that is, in cases which can be referred to ADR processes) the court should explain the choice of five ADR processes to the parties to enable them to exercise their option.

(d) The court should first ascertain whether the parties are willing for arbitration. The court should inform the parties that arbitration is an adjudicatory process by a chosen private forum and reference to arbitration will permanently take the suit outside the ambit of the court. The parties should also be informed that the cost of arbitration will have to be borne by them. Only if both parties agree for arbitration, and also agree upon the arbitrator, the matter should be referred to arbitration.

(e) If the parties are not agreeable for arbitration, the court should ascertain whether the parties are agreeable for reference to conciliation which will be governed by the provisions of the AC Act.[21] If all the parties agree for reference to conciliation and agree upon the conciliator/s, the court can refer the matter to conciliation in accordance with Section 64 of the AC Act.

(f) If parties are not agreeable for arbitration and conciliation, which is likely to happen in most of the cases for want of consensus, the court should, keeping in view the preferences/options of parties, refer the matter to any one of the other three other ADR processes: (a) Lok Adalat; (b) Mediation by a neutral third party facilitator or mediator; and (c) A judicial settlement, where a Judge assists the parties to arrive at a settlement.

(g) If the case is simple which may be completed in a single setting, or cases relating to a matter where the legal principles are clearly settled and there is no personal

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21 The Arbitration and Conciliation Act, 1996.

animosity between the parties (as in the case of motor accident claims), the court may refer the matter to Lok Adalat. In case where the questions are complicated or cases which may require several rounds of negotiations, the court may refer the matter to mediation. Where the facility of mediation is not available or where the parties opt for the guidance of a Judge to arrive at a settlement, the court may refer the matter to another Judge for attempting settlement.

(h) If the reference to the ADR process fails, on receipt of the report of the ADR Forum, the court shall proceed with hearing of the suit. If there is a settlement, the court shall examine the settlement and make a decree in terms of it, keeping the principles of Order 23 Rule 3 of the Code in mind.

(i) If the settlement includes disputes which are not the subject matter of the suit, the court may direct that the same will be governed by Section 74 of the AC Act (if it is a conciliation Settlement) or Section 21 of the LSA Act.[22] (if it is a settlement by a Lok Adalat of by mediation which is a deemed Lok Adalat). This will be necessary as many settlement agreements deal with not only the disputes which are the subject matter of the suit or proceeding in which the reference is made, but also other disputes which are not the subject matter of the suit.

(j) If any term of the settlement is ex facie illegal or unenforceable, the court should draw the attention of parties thereto to avoid further litigations and disputes about executability.

The Court has further laid down certain guidelines regarding consequential aspects while giving effect to Section 89 of the Code. The consequential aspects are as follows:-

(i) If the reference is to arbitration or conciliation, the court has to record that the reference is by mutual consent. Nothing further need be stated in the order sheet.

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22 The Legal Services Authorities Act, 1987.

(ii) If the reference is to any other ADR processes, the court should briefly record that having regard to the nature of dispute, the case deserves to be referred to Lok Adalat, or mediation or judicial settlement, as the case may be. There is no need for an elaborate order for making the reference.

(iii) The requirement in Section 89 (1) that the court should formulate or reformulate the terms of settlement would only mean that court has to briefly refer to the nature of dispute and decide upon the appropriate ADR process.

(iv) If the Judge in charge of the case assists the parties and if settlement negotiations fail, he should not deal with the adjudication of the matter, to avoid apprehensions of bias and prejudice. It is therefore advisable to refer cases proposed for Judicial Settlement to another Judge.

(v) If the court refers the matter to an ADR process (other than arbitration), it should keep track of the matter by fixing a hearing date for the ADR Report. The period allotted for the ADR process can normally vary from a week to two months (which may be extended in exceptional cases, depending upon the availability of the alternative forum, the nature of case etc.) Under no circumstances the court should allow the ADR process to become a tool in the hands of an unscrupulous litigant intent upon dragging on the proceedings.

The Hon'ble Apex Court has further held that the procedure and the consequential aspects are intended to be subject to such changes as the court concerned may deemed fit that reference to the special circumstances of a case. In fact every Court should resort to the provisions to Section 89 CPC as per the scientific uniform procedure mentioned by Hon'ble the Apex Court. The practice of pick and choose of cases for referral should be avoided.

It is the duty of District Judge to ensure the implementation of provisions of 89 of the Code in his court in a very scientific manner as mentioned by Hon'ble the Apex Court in ***Afcon's case***. It is also the duty of District Judge to motivate all the Judges under his Administrative control for adoption of any of the ADR processes. Let a noble beginning be made from

the Head of District judiciary and follow by all the judges subordinate to the District Judge.

The work of District Legal Service Authority should be considered a soul of judicial and administrative functioning. As the Chairman of District Legal Service Authority, the District Judge by motivating all the members of the Authority can ensure the implementation of the constitutional guarantees. The District Judge should ensure that functions of District Legal Service Authority are not discharged in a very casual manner but with the spirit as enshrined in the Act.[23]

8. Conclusion with request of change of mind set-

In the last, an important aspect is discussed with concluding remarks. That is the change of mindset of judges and other stake holders of the judicial system. The change of mindset is a phrase frequently discussed in the judicial conferences, seminars and training programmes. One of the parameters for change of mindset may be whether the judicial conscience of a judge is ready to accept the new innovations within the parameters of law.

Any new beginning or adopting new horizons cannot be successful without change of mindset of existing judicial officers. The question arises what is change of mindset? The answer to this query lies in another query why does a man work? Whether he works for the benefits and interests of another as a socio-legal- services provider? Or he works for his own satisfaction. As per the philosophy of Geeta, everybody works for the satisfaction of his soul. When a soldier fights a war to defend the nation, it is not his national interest but the lust of his soul to defend the country. His soul enjoys defending the country. Likewise, when a saint delivers the spiritual virtues to the disciples, it is not because he desires to eradicate the evils in the society, but his soul enjoys eradicating ills from the society by virtue of rendering the spiritual knowledge. Likewise, when a Judge works hard with full dedication, he does not work for the interest of the judicial institution or for the benefit of litigants, but his soul enjoys while working hard for enhancing timely justice and ensuring rule of law in the courts. This theory is applicable to all the hard worker and dedicated judicial officers. Dedication to work is an art and is not possible to learn without change of mindset. It is

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[23] *Ibid.*

required to keep the Judicial Officer away from traditional pigeon hole to adopt the new horizons to the extent that his soul should enjoy working.

Thus, the test of change of mindset is that one should enjoy work rather than do work. When a judge does work without enjoying, it will amount to the formal adjudication of cases without change of mind set in a traditional manner. But when the soul of a Judicial Officer starts enjoy working, he will be a detached dedicated Judge with change of mind set. It is only possible when the existing judiciary is trained not only in legal spheres but with ethical norms as well. From the above discussion, I can define the change of mind set as development of faculty of brain for enjoying work. It is only possible with socio-legal- ethical training and regular practice of doing detached hard work. By practicing hard work with enjoyment, it will develop in habit for enjoying work which is requirement of time.

The research paper is concluded with this observation that if District Judges adopt the methods and mechanism mentioned in this research paper, hopefully we will experience change in scenario for maintaining rule of law in courts at its threshold.

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