Speedy Justice - A Conciliatory Approach

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Introduction

The success of any judicial system is judged by its ability to dispense quick and effective justice. The justice-delayed-justice-denied reality of the Indian legal system has led to an alarming increase in the number of instances of non-legal and illegal alternatives being employed to solve even legitimate claims. Urgent remedial action is imperative as much to restore confidence in the rule of law as to prevent its total collapse.

The present adversorial system is based on natural justice and objectivity, and ensures equal opportunities to the contesting parties in the matter of pleadings, evidence and arguments, resulting in a reasoned judgment. Undoubtedly, this is about the best of systems, whereunder, not only is justice done but is also seen to be done.

By reason of the several steps and stages that this process encompasses, it is both painfully slow and is also capable of being abused and misused. Being built-in disadvantages, they are an inseparable part of the system. Administrative inefficiency and the lack of streamlined methods of functioning, on the other hand, are defects that are external to the system, as they relate to the people who operate the machinery of the law.

Going by the voluminous output of printed and verbal material on the subject of judicial reform, many ideas have been forthcoming to improve the external factors, which, whenever and wherever implemented, have produced good results. By contrast, the built-in factors do not appear to have received much attention, for which reason, an attempt should be made to fashion a modified legal mechanism that would generate its own thrust.

Proposed Model for Dispute Settlement

The new model is developed on the basis of the following propositions:

a) It is not necessary that every case be tried under the existing adversary system, that being reserved only for the seriously contested cases;

b) A simpler dispute resolution alternative to effectively, quickly and finally dispose of all the other cases, must be built into the present system; and

c) A self-regulated device that would be an incentive to early disposals, and a disincentive to prolonged litigation, must also be incorporated into the existing system.

The resultant modified judicial system, applicable to all civil litigation, would provide for:

a) Conciliation proceedings as a compulsory pretrial step, and

b) The payment of a realistic price for the judicial time utilised in contested proceedings.

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Every civil case, on completion of the filing of pleadings, framing of issues and the production of documents, would be referred to a conciliation commissioner. The parties would be given a month or two to negotiate a settlement with the assistance of their counsel and the commissioner, without anyone imposing any award or decision on them. A compromise, if arrived at, would put an end to the case, as even now obtaining. The same conciliation step would also be applicable to all appellate proceedings. Being a humane, practical and superior method of resolving disputes, conciliation, if made compulsory, would only improve the effectiveness of the judicial process.

Every court would maintain a list of practising advocates frequenting that court to act as conciliation commissioners. For Munsiff's Court matters, where 5 years standing in the profession is required to be appointed a Munsiff, the Commissioner should be an advocate with 10 years standing. Similarly, advocates with a minimum of 15 and 20 years standing would be on the panels of Civil and District Judge's Courts respectively. It would be the duty of every eligible advocate to compulsorily accept one or two conciliation assignments every month. The commissioners would be paid a proper fee for every case entrusted to them, the amount being payable by the state. Advocates who are becoming increasingly professional, meaning commercial, must be made to refocus their attention on the service aspect of their role in society, which is, to minimise litigation and not to benefit from it only.

Today, it costs a litigant nothing at all to take things easy in the matter of litigation, mainly because the inordinate cost of maintaining the entire legal machinery of the state is not passed on to litigants, who are the beneficiaries of this service. Being so cheap, it is taken for granted by everyone involved - litigants, lawyers and judges. Worse, it is used for making unfair and unlawful personal gains, wholly unrelated to seeking justice. While no price should be put on a citizens's right to secure justice, there must be a penalty for the abuse or misuse of this right. An easy method of doing this would be to work out, by a cost accounting exercise, the cost of say an hour of court time. Levying a court fee, which is a sizeable share of the amount for all contested litigation, collecting that amount either from the party suing, or better from all the contesting parties, on a pay-for-the-services-you-take-as-you-go-along basis, and without exception making an unsuccessful party lose this amount to the successful party, will make absolutely certain that all avoidable delays will be eliminated by all the parties to the litigation - lawyers and judges included. Unless such a course is adopted, litigation will never end.

Since it fully utilises the existing system, the implementation of this integrated scheme would only require:

a) The introduction of a few sections and an extra order or two by way of amendments to the Code of Civil Procedure, 1908;

b) The amendment of the Court Fee statute to incorporate a new time-rated schedule of fees, in addition to or in lieu of the present rates, made applicable only to contested cases, also prescribing the conciliation commissioner's scale of fees. A cost accounting assessment of the expenses incurred by the state in different classes of courts will have to precede the amendment; and

c) The amendment of the Advocates Act, 1961 to make it a duty for every advocate to act as a conciliation commissioner, at least once a month or, as and when required.

The aforesaid alternative scheme of dispensing justice would be applicable to all adversary type of civil litigation, in every court, tribunal or other legal forum, even where the

state is a party. A separate system will have to be devised for criminal cases, writ proceedings and other special statute matters.

Merits of the proposed system

The merits of the modified legal system now envisaged are manifold. To list but a few:

a) With compromises being increasingly recorded, and contested proceedings becoming reduced in number, much time will be saved in the trial courts. Since there will be fewer contested decisions to appeal against and also because the same conciliation procedure would be applied in the appellate courts as well, there will consequently be a saving of time in appellate courts upto the highest level.

b) Saving of court time would directly result in reducing State expenditure on maintaining the entire law and judicial departments, to say nothing of the several connected outgoings, *inter alia* on court buildings, judge's quarters, vehicles, lok-adalats. The fees payable to the conciliation commissioners would comparatively be a small price to pay for the financial and other benefits gained.

c) By cutting out delays, litigants with genuine grievances will be inclined to come to court assured of speedy disposals. This would prevent parties from adopting extra - judicial or illegal methods of solving their grievances. An added benefit of the availability of this conciliation process would enable Indian companies to avoid having to agree to foreign based arbitrations in their international contracts.

d) Defendants, respondents and opponents, who do not have good defences and who gain and advantage only by postponing the evil day of the judgment, would not be able to abuse and misuse the legal process for such purposes.

e) With a reduced number of contested cases at the base of the pyramid of the entire hierarchy of legal proceedings, its height and size would be dramatically reduced. There will no longer be any need to increase the number of courts, judges and staff. Existing judges will be able to use their time for a more qualitative handling of cases than is now possible. In fact, it is quite likely that some judicial personnel may become redundant. The existing budget sanctions coupled with the additional funds generated from the higher court fees levied, could then be used to improve the emoluments and perks of judges at all levels. That would be the most effective way of attracting a better class of persons to the judiciary - a greatly felt need, if every there was one.

Conclusion

The scheme now outlined, makes no claim to being the complete solution to the problem of providing speedy justice. Modifications and improvements will have to be made to make it work. Other available alternatives would also have to be considered.

Identifying and implementing methods to speed up the disposal of cases by improving administrative and judicial efficiency is an equally important exercise to be simultaneously undertaken to achieve the objective of dispensing justice quickly and effectively.

What, in the ultimate analysis is most vital and urgent, is that a step be taken in the right direction.