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JUDICIAL INITIATIVES FOR LITIGANT FRIENDLY ENVIRONMENT IN THE COURTS

INTRODUCTION

Access to justice is a basic right of every citizen, the edifice of which as on today, is based on Judges, Lawyers, Courts Staffs and other functionaries. The entire Institution is meant for delivering justice to the common people. To say the truth, the ordinary common men are generally afraid of Police and Courts. People do approach the Courts as a matter of their last resort. So the survival of the judicial institution will depend on how it can deliver justice fairly and freely to the common men. An independent, accessible and efficient Justice Delivery System is a prerequisite for maintaining healthy democratic traditions and pursuing equitable development policies. In our democratic set up, judiciary plays a very important role. Judiciary is said to be the guardian of the Constitution. The Indian Courts have played a leading role in protecting constitutional values and upholding the Rule of Law in our country.

The very first goal of the Constitution, is to secure justice to all—social, economic and political. The vital social rôle of the Courts has been strengthened by the creative reading of ideas, such as, “Equal Protection of Law” and “Personal Liberty”.

Since the institution is for delivery of justice to the common men, the primary duty casts on the judiciary to devolve a litigant friendly environment in the Courts so that the people feel free to come and approach the Courts.

So far the data available, as on 31.03.2014, in the Districts and Sub-ordinate Courts in India, a total number of 27360814 cases

(civil and criminal) are pending in different Courts throughout the country. In every case, obviously, there are two or more litigants, who are fighting the cases. So the magnitude of people attending the Courts everyday can be imagined from this figure of cases pending throughout the country. The judicial officers are the main functionaries in the Courts and the initiative has to be taken by the judicial officers to make the Courts friendly and viable for the litigants.

I may quote here a few lines from a speech of Justice Warren Burger, former Chief Justice of the U.S. Supreme Court. Justice Burger while addressing a gathering of lawyers in America said—"the entire legal profession, the lawyers, judges, law teachers-has become so mesmerized with the stimulation of the court room contest that we tend to forget that we ought to be healers of conflicts. Doctors, inspite of astronomical medical costs, still retain a high degree of public confidence because they are perceived as healers. Should lawyers not be healers? Healers not warriors?.....". Justice Burger's comments in American situation is equally true in Indian situation. We the judges and lawyers must as the healers of conflicts for which we need to make an ideal atmosphere in the court premises.

Ideal atmosphere means an atmosphere in the court premises which is friendly to all those who come to court.

1. CHARACTER AND ATTRIBUTES OF JUDICIAL OFFICERS

Since judicial officers are the most important functionaries of the present Justice Delivery System, the duties, responsibilities and character of every judicial officer count most important. A judicial officer plays multifaceted roles on the judicial side. He has to interpret the law, assess the evidence, control the hearings and trials and has to see the overall atmosphere prevailing in the Courts.

The Supreme Court, in **All India Judges' Association v. Union of India**(AIR 1992 SC 165) has held—

"57. It is time we mention about society's expectation from the Judicial Officers. A Judge ought to be wise enough to know that he is fallible and, therefore, ever ready to learn and be courageous enough to acknowledge his errors.

58. The conduct of every judicial officer should be above reproach. He should be conscientious, studious, thorough, courteous, patient, punctual, just, impartial, fearless of public clamor, regardless of public praise, and indifferent to private, political or partisan influences; he should administer justice according to law, and deal with his appointment as a public trust; he should not allow other affairs or his private interests to interfere with the prompt and proper performance of his judicial duties, nor should he administer the office for the purpose of advancing his personal ambitions or increasing his popularity.

59. We would like to part with the matter by recalling a statement of Edmund Burke:

"All persons possessing a portion of power ought to be strongly and awfully impressed with an idea that they act in trust, and that they are to account for their conduct in that trust to the one great Master, Author and Founder of Society".

Judicial independence is a prerequisite to the Rule of Law and a Fundamental Guarantee of a fair trial. A Judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

It should be kept in mind that the ultimate object of the judiciary is that the litigant must be in a position to know as to what is happening to his case and also he must have the satisfaction that he has been given full opportunity to put-forth his case.

A Judge shall exercise the judicial functions independently on the basis of the Judge's assessment of the facts and in accordance with a conscious understanding of law, free from any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

A Judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the Judge has to adjudicate.

A Judge shall not only be free from inappropriate connections with, and influence by, the Executive and Legislative Branches of the Government, but must also appear to be reasonable observer to be free therefrom.

In performing judicial duties, a Judge shall be independent of judicial colleagues in respect of decisions which the Judge is obliged to make independently.

A Judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

A Judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

The behaviour and conduct of a Judge must be affirmed to the peoples' faith in the integrity of the judiciary. Justice must not merely be done but must also be shown to be done.

A Judge shall ensure that his/her conduct is above reproach in the view of reasonable observer.

The above character of the Judge is necessary to create a friendly environment in the Courts to attract the litigants that justice is rendered freely, fairly and independently.

2. ROLE OF LAWYERS

In the adversarial system of justice, Lawyers equally play a very important role in the justice delivery. In the existing system litigants participate through their Lawyer of choice and so honest approach by the Lawyers to the litigants plays an important role to create a friendly environment in the Courts. Honest advice to the litigants creates confidence to the Justice Delivery System. Speedy disposal of case creates confidence in the mind of the litigants since delay defeats justice. Often it is observed that if a party apprehends an adverse result there is a tendency on the part of the litigants or legal practitioners to place obstacles in the proceedings. The logical response to this endemic problem is that Judges need to be more proactive in managing the flow of proceedings before them. Attempts to delay the proceedings should be treated firmly but it must also be kept in mind that the desire to improve procedural efficiency should not compromise the quality of justice being delivered. As inheritors of common law traditions, we are bound to follow the principles of natural justice, namely, that *"no man shall be a judge of his own cause"*, that *"no person shall be condemned un-heard"* and that *"every order will be a reasoned order"*. Reason is the soul of every judgment/order passed by the Courts. The noted Jurist Mr. N.A. Palkhivala attributing this cause to legal profession, *inter alia*, observed—*"This fault is mainly of legal profession. We ask for adjournments on the most flimsy grounds. If the Judge does not readily grant adjournments, he is deemed highly unpopular. I think it is the duty of the legal profession to make sure that it cooperates with the judiciary in ensuring that justice is*

administered speedily and expeditiously, it is the duty of which we are totally oblivious”.

To make the environment of the Courts litigants friendly, the Bar plays a very important role and therefore to built character and attributes of the legal practitioners/counsels proper training is necessary before and after enrollment as a lawyer.

3. CHARACTER AND ATTRIBUTES OF COURTS STAFF AND OTHER FUNCTIONARIES OF THE COURTS

The Courts staff and other functionaries of the Courts should behave with the litigants politely, pleasantly and with courtesy. All queries of a litigant in respect of his case should be made available by the Courts staff unless otherwise restricted so that a litigant feels free about his case. The character of the Courts staff should be built in such manner to make the Court’s environment pleasant and free from controversy.

It should be understood and kept in mind that Court is an Institution for litigant people and the entire approach of the Judges, Lawyers and Courts staff should be for the welfare and benefit of the litigants.

4. ACCOMMODATION FOR THE LITIGANTS IN THE COURT PREMISES

Everyday hundreds of litigants plunge to the Court premises seeking justice. There is no sitting arrangement or for refreshing themselves in the Court premises. A Waiting Room for the litigants and witnesses with toilet facilities requires to be arranged in the Court premises so that the litigants do not require to go away from the Courts to answer a natural call, or at least they can easily take their breath. In criminal cases, witnesses are summoned by the Courts but, often, there is no accommodation for the witnesses to wait and take rest.

Arrangements must be there for the witnesses also in the similar manner.

5. SANITATION AND DRINKING WATER

Sanitation, drinking water-these are a must for every Court house. Any civilized society should provide these basic needs. Safe drinking water must be made available in the Court premises free of cost so that a litigant may not go out of the Court compound for having a glass of water during the course of the day of his proceedings.

6. LEGAL AID CENTRE

Free legal aid is a right of poor and other deserving litigants. In every Court premises there must be a Legal Aid Centre where the poor and other deserving litigants may make their approach for free legal aid. Once such an approach is made, free and competent legal aid should be provided to the litigants without delay and it should be ensured by the Legal Services Authorities and Committees. The Supreme Court in ***Suk Das & Anr v. Union Territory of Arunachal, AIR 1986 SC 991*** has held free legal aid at State cost is a fundamental right of a person which may involve jeopardy to his life or personal liberty.

7. DELAY IN DISPOSAL OF CASES

The judicial officers of today have to realize that they are inheriting a legacy of huge arrears. Therefore, the judicial officers have to look at the problem of case disposal differently and to adopt different alternative methods of dispute resolution in addition to the disposal of cases in the formal course. We must ensure justice free and fair, competent and efficient, speedily and quickly. We all know that people indisputably have been trying to avoid law course because of delay. We cannot expect a society free from any dispute or litigation while dispute and litigation is a part of our social life. We must keep the mechanism

alive and creditworthy to resolve the dispute in an effective manner, as otherwise, the litigants will go to extra constitutional authorities for redressal of their grievance, and in that case the social order will be in disarray and we will not be able to claim that we are living in a civilized society governed by the Rule of Law.

8. DEALING WITH THE WITNESSES FAIRLY AND EFFECTIVELY

Witnesses in a large number, on receipt of summons from the courts or otherwise attend courts every day. Often it happens that the witnesses wait for the whole day in the Courts to be examined and at the fag-end of the day they are informed that they will not be examined on that day. It sends a wrong message to the society as a whole. Once a witness attends Court in connection with a judicial proceeding he must be examined and he should not be returned without examination.

The Supreme Court in the case of ***State of U.P. v. Shambhu Nath Singh, AIR 2001 SC 1403*** has held that *if witness is present in the court he must be examined on that day. Inconvenience of advocate is not special reason to adjourn the case without examination of witnesses who are present in court.* This principle has been reiterated in the case of ***Akil alias Javed v. State of NCT of Delhi, 2013 CRI LJ 571.***

While a witness is under examination he should be protected by the Court from any scandalous or humiliating questions. A witness may be fairly examined of a fact but he cannot be insulted or humiliated in the witness box. The Court should protect him from being harassed or being insulted by the unscrupulous cross-examination. In rape cases, humiliated questions cannot be put to a rape victim. In the case of ***State of Punjab v. Gurmit Singh, (1996) 2 SCC 384*** the Supreme Court in para 22 of the judgment has held:

"22. There has been lately, lot of criticism of the treatment of the victims of sexual assault in the court during their cross-examination. The provisions of Evidence Act regarding relevancy of facts notwithstanding, some defence counsel adopt the strategy of continual questioning of the prosecutrix as to the details of the rape. The victim is required to repeat again and again the details of the rape incident not so much as to bring out the facts on record or to test her credibility but to test her story for inconsistencies with a view to attempt to twist the interpretation of events given by her so as to make them appear inconsistent with her allegations. The court, therefore, should not sit as a silent spectator while the victim of crime is being cross-examined by the defence. It must effectively control the recording of evidence in the court. While every latitude should be given to the accused to test the veracity of the prosecutrix and the credibility of her version through cross-examination, the court must also ensure that cross-examination is not made a means of harassment or causing humiliation to the victim of crime. A victim of rape, it must be remembered, has already undergone a traumatic experience and if she is made to repeat again and again, in unfamiliar surroundings what she had been subjected to, she may be too ashamed and even nervous or confused to speak and her silence or a confused stray sentence may be wrongly interpreted as "discrepancies and contradictions" in her evidence."

9. EFFICIENT CASE MANAGEMENT

Efficient management of cases with all modern techniques also makes the litigants to feel free in the Courts. Today, Court Management has gained considerable importance because it has been tried and tested in other parts of the world and has been found to be a successful method of controlling the huge backlog of cases. Court Management was first introduced in America in 1972 and over the years it has gained so much importance that it has become imperative for all Courts to use Court Management techniques to reduce the case load. This has now become a science involving not only Court Management but

also Case Flow Management, which is the study of the time taken in various stages of litigation. It is not difficult in India to adopt a strategy of Court Management because the giving of adjournments and dates is in the hands of the Judge and he can control the time spent at each stage of a case. By practicing this method, it is possible to have a case ready for disposal within a specified period of time. Judicial officers will realize the benefits of this if they diligently and vigorously adopt this strategy from the date they start doing judicial work.

10. STRENGTHENING ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM

The redressal of dispute through Lok Adalat, Mediation, Conciliation, Arbitration, etc., which are different forms of Alternative Dispute Resolutions(ADR), no doubt encourage the litigants to feel at home while resolving their disputes. A.D.R. is an informal and flexible form of dispute resolution. The concept of Conflict Management through ADR has introduced a new mechanism of dispute resolution, i.e. “*non-adversarial*”. Through the system of ADR Justice Dispensation System in India has found really an alternative to adversarial litigation. The Supreme Court in the case of ***Guru Nanak Foundation v. Rattan Singh & Sons, AIR 1981 SC 2075*** observed—*Interminable, time consuming, complex and expensive court procedures impelled jurists to search for an alternative forum, less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap and this led them to Arbitration Act, 1940.*

11. SELF-HELP CENTRES

Information of cases, at the end of the day should be made available to the litigants for which information Kiosk, Help Desk, Utility Centre, etc., may be set up to make the information available to the litigants free of cost. Every Court maintains Cause List and that should

be made available openly to the litigants for their inspection to know the fate of the case at the end of the day.

12. RAMP IN EVERY COURT FOR DISABLE PEOPLE

Every Court should ensure ramp in Courts and in the witness dock, etc. to facilitate access of disable persons.

13. VICTIM COMPENSATION

Victims of criminal cases in given case should be compensated as per the procedure prescribed in Sections 357 and 357A of CrPC. It will strengthen the confidence of the victims of criminal cases in the context of effectiveness of the Court.

14. SPECIAL LITIGANT FRIENDLY ARRANGEMENT UNDER CERTAIN ENACTMENTS

The Protection of Children from Sexual Offences Act, 2012 has made some provisions with intent to make litigant friendly atmosphere in the Court room during trial. It provides for creation of special Courts equipped with the amenities for creation of such child friendly atmosphere. Sub-section(2) of Section 33 of the Act provides that the Public Prosecutor as well as the Defence Counsel shall communicate the questions to be put to the child, to the Special Court and the Court, in turn, shall put those questions to the child. Under Sub-section(3), frequent breaks to the child witness during testimony is permissible and Sub-section(4) of Section 33 calls upon the Court to create a child friendly atmosphere by allowing a family member, a guardian, a friend or a relative, in whom the child has trust and confidence, to be present in the Court. Besides the child witness cannot be called repeatedly, no aggressive question can be asked to the child, identity of the child victim cannot be disclosed and the accused shall not be permitted to see the child in the court room during testimony so as to prevent him from

terrorizing the child by looks or gestures and the trial shall be conducted in camera. All these are legislative arrangements to make a child-friendly atmosphere in the trial of the cases under POCSO to ensure fair dispensation of justice.

Please follow the provisions in letter and spirit.

There are similar legislative arrangements for trial of cases under the Family Courts Act, 1984. The Family Court under Sub-Section(3) of Section 9 is given the power for laying down its own procedure with a view to arrive at a settlement in proceedings under this Act. The proceedings shall be held in camera where the party so desires or the court feels it necessary. The rigours of the Evidence Act regarding admissibility and rejection of evidence do not apply to the proceedings under the Family Courts Act. All these are legislative steps to ensure a litigant friendly atmosphere in court.

Please take initiative to ensure that the provisions are meticulously followed in your court.

15. CONCLUSION

Unless the litigants and witnesses are treated courteously, their needs are taken care of by the presiding judge and the staff members working in the court, I am sure that there cannot be fair dispensation of justice even if we have good court buildings and adequate number of judges and lawyers. I cannot resist the temptation of quoting from a speech of Nani Palkhivala at this place. Sri Palkhivala said, "..... *The notion that ordinary people want black robed judges, well dressed lawyers and fine Panelled court rooms as the setting to resolve their disputes—is not correct. People with legal problems, like people with pain, want relief and they want it as quickly and inexpensively as possible.*"