CASE MANAGEMENT AND COURT ADMINISTRATION

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The introduction of management practices in the judiciary has been a topic of discussion for quite some time now. During this period, many ideas have been mooted to tackle the enormous backlog of pending cases. While some of these ideas were implemented, others did not cross the stage of discussion and debate.

Consequently today, when we talk of the pendency of cases, we refer to figures running into several crores. So much so that it has been said that at the current rate of disposal, it would take more than 300 years to clear the backlog, provided no fresh cases are instituted during this period. While this assessment needs no comment, the fact remains that even on a conservative estimate, it may take decades to achieve a stage of zero pendency.

Past attempts

It is not as if there has been any lack of effort to speed up the justice delivery system. Unfortunately, the attempts that have been made have yielded limited results. For example, the Criminal Procedure Code has been overhauled and yet the pendency of criminal cases remains very high. Over the years, several Tribunals have been set up ostensibly to provide quick, informal and inexpensive remedies to the litigants apart from providing for a uniformity of approach, predictability of decisions and specialist justice.

However, in the Report of the Arrears Committee (1989-90) popularly called the Malimath Committee Report it was concluded that not all Tribunals functioning in the country have inspired confidence in the public mind. The reasons include lack of competence, objectivity and a judicial approach. The constitution, power and method of appointment of personnel thereto and the

actual composition of the Tribunals are also said to be contributory factors.

The Supreme Court has also not been particularly charitable in its assessment of the functioning of various Tribunals. In R.K. Jain vs. Union of India the Supreme Court observed:

"An intensive and extensive study needs to be undertaken by the Law Commission in regard to the constitution of tribunals under various statutes with a view to ensuring their independence so that the public confidence in such tribunals may increase and the quality of their performance may improve. We strongly recommend to the Law Commission of India to undertake such an exercise on priority basis."

More recently, in L. Chandra Kumar vs. Union of India and others the Supreme Court unequivocally said,

"That the various tribunals have not performed upto the expectations is a self-evident and widely acknowledged truth."

Present efforts

For the last about a decade or so, the emphasis seems to have shifted from tribunalizing justice to reducing the adversarial role that litigants play. It is for this reason that greater interest has been shown in alternative dispute resolution systems including the Lok Adalat, and now the Permanent Lok Adalat.

There is no doubt that these Lok Adalats have done a considerable amount of good work. But they also confirm that the earlier system of setting up Tribunals has not really solved the existing problems. In a recent International Conference on Lok Adalat as a Mechanism of ADR held in New Delhi in February 2003, the papers presented by some of the State Legal Services Authorities made a specific mention of the fact that a large number of motor accident claims cases had been resolved through the Lok Adalat system. In fact, conference papers from Orissa and Tamil Nadu also stated that some cases relating to the Debt Recovery Tribunal constituted under the Recovery of Debts due to Banks and Financial Institutions Act, 1993 had been referred to and resolved by the Lok Adalat. It must be remembered that the Debt Recovery Tribunal is of fairly recent vintage, and the conference

papers point to the existence of the virus afflicting other Tribunals having infected this Tribunal as well. Surely, this is a little disconcerting.

What is the answer to the growing malaise? The Supreme Court explains in
L. Chandra Kumar that,

"However, to draw an inference that their [the Tribunal's] unsatisfactory performance points to their being founded on a fundamentally unsound principle would not be correct."

Some basic assumptions

Given the optimism of the Supreme Court and an understanding of the milestones of the recent past, some basic assumptions can be made and kept in mind.

First and foremost, we need to get our facts and figures straight. Effective planning and management is not possible unless we know what we are up against. Experimentation is good upto a point, but when it does not yield any result, it becomes a drag. In any case, management of the judicial system is too serious a business to be experimented with.

Secondly, while there have been 'intensive and extensive' studies of some of the problems faced in the judicial system, no effective grassroots solution has come about. This is because attempts at managing the judicial system have tended to be isolated and sporadic, without looking at the overall picture. Consequently, legislative changes have only a cosmetic effect and do not become a part of the solution. What is required is a CAT-scan to find a unified and cohesive solution, which takes into account the hard realities of litigation at various levels, including mofussil and taluka level litigation.

Thirdly, changes that may have to be brought about should come from within the system and not be superimposed by some outside agency. For example, it has been repeatedly said that there is an acute shortage of judges. Evidence of this first surfaced in the 120th Report of the Law Commission on Manpower Planning in the Judiciary (1987). The 'manpower shortage' (a little anachronistic in a country of a billion people) has remained so for many years and will continue to so remain. Is increasing the number of judges the

only available solution?

Finally, changes have inevitably taken place with the passage of time. There is a need to identify these changes and capitalize on them to our advantage, to the extent permitted by our limited resources. For example, there has been a revolution in information technology. Surely, we can capitalize on this.

It is said that we learn from our mistakes. If so, it is necessary to identify and study the failures of the past and avoid the pitfalls. It is also necessary to identify the successes to enable the creation of a workable court management system.

A beginning has already been made in this direction. A few years ago, a loose study on court management was conducted in Andhra Pradesh. There does not seem to have been any tangible result of this study. But, what is of importance is that there is an acknowledgement of the fact that there are problems in the judicial management system and these problems need to be attended to and solutions found.

The stakeholders

For any management system to succeed, and this equally applies to Court management, it is essential to identify the stakeholders. This is not particularly difficult so far as the judicial system is concerned. There are only four players in any judicial system. They are (not necessarily in order of importance):

- The judges
- The lawyers
- The litigants
- The Court staff and the Registry

Each of these stakeholders has specific role to play for ensuring the success of case management and Court administration.

Judges as managers

A judge is the person in charge of a Court. Barring any unforeseen event, the litigation before a judge has to be controlled by him. What is important in this regard is time management. It is for the judge to decide, for

example, how many cases should be scheduled for hearing on any given day; how much time has to be granted for completing the procedural formalities such as completion of pleadings; how many adjournments if any, should be granted and how much time has to be allotted for the hearing of a case. Systematic and proper management of time in respect of each case will go a long way in reducing the laws delays.

A judge must also determine the general complexity of a case so that the progress of a case can be effectively managed. For example, Rule 1800 of the California Rules of Court defines a complex case. Subdivision (a) refers to an action as being complex if it:

"…requires exceptional judicial management to avoid placing unnecessary burdens on the court or the litigants and to expedite the case, keep costs reasonable, and promote effective decision making by the court, the parties and the counsel."

Subdivision (b) then lists out a set of factors which would require to be taken into account for determining if a case is complex or not. A list of cases provisionally designated as complex cases is the subject matter of subdivision (c). Cases such as environmental or toxic tort claims and those generally involving many parties are treated as complex unless the judge determines otherwise.

Depending upon the 'complexity' of a case, the judge can decide what tasks to delegate to a subordinate judicial officer, including exploring the possibility of alternative dispute resolution mechanisms.

Time and effort have to be invested in case management so that the progress of litigation is effectively monitored. Apart from anything else, the investment enables a judge (rather than the lawyer or litigant) to take control of the case. A judge can, thereby, optimally utilize his time for performing core judicial functions for effective dispute resolution, rather than spend it on peripheral issues, which can be dealt with by others.

In this context, it bears mention that as a management exercise, an experiment with a judge's clerk has been initiated in the Delhi High Court. A judge's clerk is expected to assist a judge in effectively managing his administrative and judicial duties. He is either a fresh law graduate (enthusiasm) or a freshly recruited judicial officer (experience). The role

of a judge's clerk in case management has been identified and it includes preparing a brief of the cases for the judge, highlighting the issues involved in a case and generally assisting a judge in his research for the purposes of writing a judgement.

Role of lawyers and litigants

If time is precious for a judge, it is equally precious for a lawyer or a litigant. None of these stakeholders would like to spend more time than is necessary on routine administrative matters, some of which are not within their control.

Apart from certainty in the decision-making process and quick disposal of cases, lawyers and litigants are concerned with two key areas of Court administration. These are:

1. Availability of information.
2. Preparation of documents.

Good Court management practice requires that information pertaining to a case must be readily available to a lawyer or litigant. For example, it is essential for them to know whether service has been affected on all concerned or whether any document filed by them suffers from some filing defect or is placed under some objection raised by the Registry. It does not help anybody's cause if the lawyer or litigant is told at the last minute that his case will, in all probability, be adjourned because of some technical snag, which could have been rectified at the appropriate time if the information was available earlier.

Litigants usually complain about the non-availability of documents. The most common grievance relates to a certified copy of an order or the decree sheet not being ready. A simple and routine task like this results in a colossal waste of time and effort for lawyers and litigants. With the use of computer systems and photocopying machines, it is possible to firstly, make ready any Court order almost immediately and to certify it with the use of digital signatures. Secondly, if for some reason, a copy of an order or decree is not available, information in that respect can be disseminated through the Internet or an Interactive Voice Response (IVR) mechanism. Unfortunately, the present system requires that for limitation purposes, a litigant or a lawyer should physically present himself for checking up whether a certified

copy is ready or not. Surely, any efficient management practice can remedy this situation.

Court Registry as a participant

Court management cannot succeed without the unstinted support of the Court
staff and its Registry. They are the backbone of the system and the administrative burden really falls on them. All papers pertaining to a case, from the stage of filing a case to the supply of a certified copy of the judgement passes through their hands. They are responsible not only for all the documentation but also giving effect to miscellaneous orders passed by the Court. The efficiency of a Court depends upon them, much more than anyone would care to admit.

While there may be complaints of ‘manpower shortage’ in so far as judges are concerned, no one has yet complained about a shortage of Court staff. Is it not possible to utilize their expertise, if not their sheer numbers, to improve the working of the Court administration?

Other procedural tasks, which are not strictly administrative, but are related to judicial functions, can be delegated to the Court staff by investing them with limited judicial functions. Subordinate judicial officers can perform miscellaneous tasks, including identification of issues, attempting to limit disputes arising out of the pleadings and actively participating in alternative dispute resolution systems. If nothing else, this makes them participative functionaries in the overall process of dispensing quick justice, and recognizes their status as one of the stakeholders in the judicial system.

Use of Technology

Recent technological developments need to be harnessed and full utilization should be made of modern gadgets, which are now easily accessible and at an affordable price.

A few experiments that have been conducted in the Delhi High Court have yielded mixed results, mixed partly due a lack of effective monitoring and supervision. Eventually, it is for each Court to plan out how best it can utilize the available gadgetry. A few areas where changes can be brought

about for the better are illustrated below.

· A filing pro forma, to be filled up when a case is filed. The form contains essential data ready for scanning. A case-by-case database is built up, which can be drawn upon for planning effective Court management procedures.
· Categorization of cases so that cases raising similar issues can be dealt with in one group. This is particularly helpful in mass litigation such as land acquisition cases or repetitive litigation such as income tax cases.
· Creation of a website, enabling those having access to Internet to obtain necessary information anytime.
· Online availability of essential judicial orders so that time is not spent in inspecting a file for obtaining a copy of an order. With the help of a digital signature, it is now possible to provide a certified copy of any judicial order.
· Daily generation of information through computers indicating report of service, documents under objections in the filing counter etc.
· Setting up a Facilitation Centre to function as a Reception and Information Counter. An IVR system can function from this centre.
· Video linkages, initially between the jail and the Court for routine matters. This is estimated to annually save crores of rupees in Delhi alone. This facility can be broad-based later on for recording testimony.

Proper use of technology cannot hurt anybody. On the contrary, it can only improve the efficiency of the system and bring about greater transparency in its functioning. Coupled with better Court management practices, the problems presently faced by all the stakeholders can be limited if not eliminated.
