

Is Our Judicial System Degenerating?

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A shoe was flung on Justice Arvind Savant, at Bombay High Court on 30th Mar.1999 by Ms. A.U. Heble, just 4-6 weeks after a similar incident which took place, at the Supreme Court of India. **THIS SHOE IS ACTUALLY FLUNG ON THE DEGENERATING JUDICIAL SYSTEM.** It is not on any judge or an individual. It perhaps signifies an alarm to the administration of JUSTICE.

If such, are the frustrations faced by learned litigants of this country (in above incidents, both the accused are learned) where do the illiterate and oppressed class and those financially backward go, to express their grievance? There are several such questions, which today's judicial system may find it incompetent to answer. Perhaps this is one of the reasons, for the increased crime rate and killings on the streets of this country? **"FOOLS GO TO THE COURTS WISE MAN TAKES THEIR OWN DECISIONS!"** noted lawyer stated while replying on the state of affairs in judiciary,

Various factors have contributed for, the masses at large losing their faith, in the process of justice. Main factor being, delays in courts, and incompetent lawyers. Corruption or nexus amongst lawyers, and often, between lawyers and judges, towards hasty disposal of complex cases is evident in plenty.

DELAYS IN THE COURTS:

(a) Exhaustive Daily Court Boards:

At the district courts, small causes, city civil, High Court & the Supreme Court, it is found that nearly 200 matters are put up on the daily board. It is humanly impossible, for any efficient judge, to effectively conduct so many matters, in one single day! Perhaps the administrative offices of these courts, do not understand the fact that, in each court case there is minimum 4 persons involved. Plaintiff and Defendant along with their respective lawyers, who after an exhaustive wait until the fag end of the day, only learn that, there matter is postponed. They end up going back, only with another date, whence they may face the same ordeal. Thus, several human hours are wasted on one hand & we are faced with unnecessary crowding of the courts, on the other.

(b) Public Interest Litigation's:

Certain lawyers, individual's, or organizations only for the sake of publicity, file frivolous Public Interest Litigation's (or Publicity Interest Litigation) Such PIL's filed in various courts, are never further, pursued beyond the filing stage, once the publicity aspect of the applicant is fulfilled. Hence, the caution expressed by Chief Justice of India A. S. Anand, while delivering the D. M. Singhvi Memorial lecture New Delhi, against '**judicial adventurism**'. Such gross

misuse of PIL's waste precious time of various courts and hence, such PIL's should be disallowed at the admission stage.

(c) JUSTICE DELAYED IS JUSTICE DENIED was an observation made by former Chief Justice of India P. N. Bhagwati. There are some eminent lawyers, who end up taking several cases many times more, than they can physically manage. Hence, they are most of the time busy in some court and not available for all their matters. The judges surprisingly grant easy adjournments, to matters involving well-known lawyers?

(d) CEILING ON LAWYERS PRACTICE:

When so called most disorganised industry in India, the FILM INDUSTRY has imposed a ceiling on the number of films a hero or heroine can sign. **Why there cannot be a ceiling on the number of cases an advocate can take up**, in a particular court? Such a rule must be imposed for speedy and effective functioning of the courts. The Bar Councils themselves will never impose such a ceiling, which can be deterrent to, the business of its own members. There are no set norms, for the fees, which a lawyer can normally charge, for a particular case. Judicial practice, does not know, the term normal! Hence, lawyers are often found to be **fleeing the inexperienced litigants or clients** by charging very exorbitant fees! Thus, legal remedy does not seem, accessible to common man.

(e) SEVERAL VACATIONS IN COURTS:

In spite of the fact that, lakhs of cases are pending before various courts in India, our courts enjoy vacations as before, during British time ie. Diwali, Christmas and summer holidays, over and above the regular holidays second and fourth Saturday are holidays, for most of the courts. Apart from which the judges, do also enjoy casual leave, privilege leave, sick leave etc. as per set norms. All summed up together, than when do the courts work? Under such circumstances, how can we expect quick results?

Instead of working out remedial measures lawyers, and the judicial fraternity has always given excuses for the delays, to insufficient number of courts. Totally avoiding, implementation of any corrective measures, under the assumption of, being the **fountainhead of wisdom!**

INCOMPETENT LAWYERS

It is often found at many of these courts, eminent lawyers of the respective court are themselves unaware of the legal formalities involved, in a particular case. Hence, they learn at the cost of their clients, which is on many occasions deterrent on the case itself. The Bar councils, sit quiet and watch, they have never found it essential to print any booklets or literature which can be helpful guide or indicative of the definite procedures, to be followed in different courts under different conditions.

INEFFECTIVE BAR COUNCIL'S:

Lawyers are interested to become committee members, of their respective Bar Councils, only because it provides them an avenue, to establish relations

with the judges. They are aware that, judges have a soft corner for the committee members, of Bar Council. It becomes much easier for them, to get any adjournments, or reliefs, within that court; be it the Magistrate's court, Small Causes, City Civil or Sessions, High Court or The Supreme Court.

CORRUPTION IN COURTS

The solicitors seldom go to the courts themselves, but they keep a track **on acquaintance between a particular judge with a specific lawyer**. They exploit this acquaintance, remotely from their offices. The glimpse of such nexus can be witnessed in abundance in all courts.

Favoritism by the judge, towards a particular lawyer, is an age-old fact. Perhaps, the judges or the presiding officer's, do not want the Bar Council to file any complaint against them, to the principal judge, hence they are soft with the committee members of Bar Council. In such manner, the Bar Councils are found to be effective only, for the benefit of their members, with least interest in the harassed litigants. After 65 years of our Independence, there is no body or organization locally, or nationally, to represent the litigants?

It is well observed fact by all lawyers and litigants, about the amounts demanded by the court clerks for adjournments, or even for copy of the order passed. Though the official fee is very nominal, monies demanded are in hundreds, depending on the importance of the case and number of pages of the order. All this goes, on in the courtrooms, right under the nose of the sitting judge. No bar councils or lawyers, have seriously complained about this anywhere and hence this has become an admitted system!

NEXUS AMONG LAWYERS & WITH JUDGES:

It is a fact that, two opposing lawyers, conspire across the table about the details of the case in the bar room, with the poor litigant, completely unaware. If a lawyer is paid his fees annually, or as per his number of appearances; in an attempt, to linger or drag the proceedings, two opponent lawyers, mutually decide the number of adjournments. There have been even instances when, matters are settled between the advocates for some consideration in advance, with total ignorance of their respective clients!

The litigant is informed that he has lost his case, as it was weak. Poor litigants, unaware of the legal formalities, unknowingly accept the situation. There have been instances when, lawyers have demanded **monies to be paid to the judge**, to get a favorable order. When the order is not found to be favorable, he/she is informed that, **the opponents paid a better sum**. Thus, the advocates further get richer, at the cost of the poor litigant.

It is an unfortunate fact that, magistrate courts of some remote towns or villages in India, issue warrants against well-known personalities, for a particular price! The basic idea is to black-mail, or harass, those people, for which, judicial connivance is achieved, very easily & the High Court or other

superior authorities, have not taken any severe step, to curb or curtail, this menace.

It is sometimes found that lawyers, who do not have good practice, opt to become a Magistrate or Judge. Even after having made such a mistake, on realising the poor monthly off takings, they are found to resign and revert back to their own practice. **Lentin days are gone...**

UNDESERVED HURRY SHOWN FOR DISPOSAL BY CERTAIN JUDGES

Under the guise of early disposal and with the aim of reducing the burden, or load on the courts. Bombay High Court circular bearing no: A(SPL),3212/97/6484/97 Dt: 9th Dec.1997 with effective schedules 'A' & 'B' Dt: 1st Jan.1998, which was signed by the Registrar, had set certain norms to evaluate the performance of the judges, purely **DEPENDING ON NUMBER OF DISPOSALS** made by them, in a particular time frame.

IS JUSTICE IS BEING QUANTIFIED?

Throughout this circular, there is not even a vague reference given to the **merits of the case!** Does this mean that High Court is not at all bothered about the Quality of Justice, they only wish to offer, SPEEDY (IN) JUSTICE?

A similar notification, sometime ago by The Supreme Court; for the Magistrate Courts, to dispose off matters, beyond 5 years old, under "COMMON CAUSE" with the prime intention of reducing the load on courts. While releasing some hardened criminals, or even not disposing off certain matters, falling within their jurisdiction, to benefit certain interested parties. All this was done, at the sole discretion of the presiding Magistrates. If the idea is only to release criminals, in such large lots than, why are they arrested in first place, with insufficient evidence? Is this all done for some consideration!

Due to such notifications, and circulars passed, by the High Court and the Supreme Court. Often judges and magistrates are found to be in a hurry to dispose off the matters (more particularly in the last week of each month), without considering the merits of the matter, or a definite legal point of view! This causes multiplicity of litigation's, when the matters are further taken into appeal or revision, which ultimately increase the burden on the High Courts or Supreme Court. Thus, it is unable to help achieve, the desired result of SPEEDY JUSTICE.

While equating the performance of the Magistrates or Judges, they are being given specific marks, based on time taken by them, for disposal. **Why those marks are not deducted, when the judgments are reversed, in appeal,** when the higher court, sets the findings of the lower court aside? If such considerations are made, the Magistrates or Judges will be careful and not hasty in their judgments!

NO FACILITIES AT THE COURTS FOR LITIGANT'S:

When expenses, in the form of court fees, are borne by the litigants and the various courts are functioning on the amounts, thus realized. There are hardly any facilities available for litigants, in any of the courts. At various court arena's in the country, at least in towns & metropolis, why not have large waiting halls with digital display boards of each of the courtrooms with cafeteria, providing refreshments etc. and reduce the size of individual court rooms, to accommodate couple of litigants with their advocates, along with court clerks, stenos etc. These waiting areas can have proper benches and table chairs and lighting with proper toilet & drinking water facilities, vehicle parking for litigants, sufficient lifts, made available to litigants in the courts. This if done, will definitely improve the efficiency of the courts, since there will be better decorum and reduction in noise level, **not a mela always!** Advocates are enjoying full facilities, at the cost of litigants!

QUALITY, DIGNITY & STANDARD OF JUDGES:

It is an admitted fact that there are dark horses, in every profession and judiciary is not above it. Under our research program, during the year 1992-3 we had placed 10 officials in the corridors of High Court & adjoining City Civil & Sessions Court, at Mumbai to find out from the practicing advocates, if they were aware of SID [Special Investigation Dept.] set-up by High Court for, complaints against any of the subordinate judges. During the study, it was found, more than 88% advocates questioned, did not know, what was SID, its role, nor its existence! SID-Mumbai than, had a staff of 18, using premises of over 2,700 sq. ft. at prime location in Flora Fountain, Mumbai; when not many new about, its existence? What an irony? What purpose such departments serve in the courts, which are not even known to the advocates! Can it help the common man -litigants? When will all this improve?

**Higher moral and ethical standard needs to be attained, maintained, and retained, on the path of administration of fair JUSTICE. Unfortunately, morality and ethics cannot be taught, but they can be groomed. Under such circumstances, one wonders:
WHERE IS OUR TEMPLE OF JUSTICE?**

Several cracks seem to have developed in it. Has our JUDICIAL SYSTEM TOTALLY DEGENERATED or is there still, ANY HOPE OF ITS SURVIVAL?

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