

**By Dr G Shree Kumar Menon, I.R.S. (Rtd)**



**ON** April 25th 2016, the nation witnessed an unusual sight of the Chief Justice of the Supreme Court of India breaking into tears during his speech at the Joint Conference of Chief Ministers and Chief Justices of High Courts, at New Delhi. The Chief Justice was bemoaning that the Judiciary was stuck at over 38 lakh cases and expressed his helplessness, when he remarked *"Speeches have been made in the past, people have spoken in conferences, and there's been debate in Parliament. But I think nothing really appears to be moving"*. He was pleading to increase the posts of Judges from the present 21,000 to 40,000 to handle the avalanche of litigations. He made a calculated and pertinent remark *"You cannot shift the entire burden on the Judiciary"*.

Are the outburst and remarks of the Chief Justice justified?

Was it really an avalanche or a gradual pile up that now threatens to cripple the Judiciary? We are gradually becoming a highly litigative society. This is a natural concomitant of rising education levels and awareness of rights. Right to Information has lifted the veil of secrecy behind which the politicians and bureaucrats were operating, giving a new spurt to litigations. Instead of developing a uniform strategy across the country to handle such exposures, the Courts allowed themselves to be caught on the back foot.

Is deficiency of staff a hindrance to delivery of timely justice? Every organ of the government is functioning with inadequate staff at all levels. However, we regularly read reports of how Banks, Tax Departments, and other offices, achieving their targets or exceeding their targets. The Education sector conducts all examinations with clockwork precision, despite innumerable odds. The UPSC conducts exams simultaneously across the country on time, and results are announced on time, despite insufficient staff. What is the secret of such perseverance and performance, year after year? The simple reason is that all these departments marshal all their resources, every staff member puts in their best, nobody gives the excuse of staff shortage for non-performance or under performance. Their top echelons constantly monitor, review and supplement strategies on a weekly basis. The CBEC itself is an apposite example for resourcefulness. Year after year there are record tax collections, despite acute staff shortage at all levels. It happens as a result of daily review of tax collections, disposal of cases, arrears recovery, and timely interventions by senior officers. Staff shortage, though a harsh reality, is never an obstacle or hindrance for efficient functioning. This is what Courts need to assimilate. Change the processes, priorities and preferences in the day to day judicial functioning.

From my experience of working in CESTAT, and having had the opportunity to view the functioning of High Courts in different metropolitan cities, my observations are that, the tardy pace of disposals, is because of a combination of factors and not just staff shortage. It is an everyday sight to see high fee demanding Senior Lawyers, breezing into the Court Halls, at the start of the day, "mentioning" their case and walking away with an Interim Stay or Injunction, thereby dislocating the entire Call List. When queried about this "walk through channel", a Judge replied "He is a Senior, and so has every right". But, I have yet to see the Courts recognizing the seniority in other professions, especially in Bureaucracy, and resolving the innumerable seniority disputes playing "snakes and ladders" in different Courts and Tribunals. Take the case of CBEC, where seniority disputes are an endemic problem, plaguing all cadres, for no worthwhile reason. Very soon, the cadre of Chief Commissioners will become extinct and

consequently none eligible to become Members, as the seniority issue is stuck in the judicial elevator, going up and down, for no rhyme and reason.

The most common offence in India is cheque bouncing cases. An estimated 18 lakh cases are pending in different courts across the country, and the list is increasing day by day, as we are becoming a nation of cheque bouncers! But, banks, financial institutions, hire-purchase firms, private money lenders all coerce their customers into giving post dated cheques, knowing full well that the borrower has zero funds in his account. If this offence is decriminalized, over 18 lakh cases will vanish! Let Banks close the accounts of defaulters, debar and black list them for a period of five years, and impose crippling mandatory fine equal to the amount defaulted. Many countries have dispensed with the obnoxious practice of extracting post dated cheques. This will also put to an end to the illegal and dangerous practice of deploying goondas to violently threaten borrowers. Lots of "legal fat" can be shed if sensible rules are put in place.

Judges, lawyers, and a cross section of litigants, make strenuous efforts to complicate simple legal disputes into complicated hydra headed monsters, which thereafter nobody knows how to resolve, except to keep it alive by way of interminable adjournments, interim orders and directions or simply by remanding. The repeated exposes in the media, suggesting that, all is not fair in certain judicial pronouncements, is quite upsetting, for the common man, whose sole refuge against politico-bureaucratic malpractice and misfeasance, is the judiciary. A concerted effort needs to be made to regain public confidence and esteem.

Many legal cases become inconclusive because of deliberate lax investigation, or are made superfluous by wanton inaction. A recent high profile case that grabbed newspaper headlines, was the role of the Director, Enforcement Directorate, who audaciously withheld several sensitive files, in order to protect his political patrons. Except for a transfer nothing else happened. What can the judiciary do with a half baked case? Courts need to recognize mischievous inactions as corrupt practices. Karnataka Chief Minister, Shri. Siddaramaiah made a trenchant remark "If taking money to clear files amounts to corruption, keeping them indefinitely without moving them forward also amounts to corruption." A strict judiciary can tone up investigations, thereby avoiding unnecessary nitpicking into procedural lapses, which will cut down delays in legal verdicts.

Another reason for the Courts getting inundated with cases is the reluctance of the Bureaucracy to accept the verdicts of Tribunals. Innumerable Tribunals have been created, just to ease the burden on the judiciary, however, the refusal of the Bureaucracy to accept tribunal verdicts, has led to a piquant situation, where the affronted Tribunals encourage filing of Contempt Petitions, which some of them cannot adjudge but have to pass it on to the High Court for accumulation. CESTAT is a typical example of a toothless Tribunal adding to the load burden of the High Courts. It is best to abolish all these Tribunals and strengthen the High Courts in order to cut delays in the justice delivery system.

James Baldwin, in *The Price of the Ticket* says "If one really wishes to know how justice is administered in a country, one does not question the policemen, the lawyers, the judges, or the protected middle class. One goes to the unprotected - those precisely who need the law's protection most and listen to their testimony."

Unfortunately,

*"The course of justice prevents it." – Edward Counsel – Maxims*

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## **Studies U.S.A.)**

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