BOOK REVIEWS

REJUVINATING JUDICIAL SYSTEM THROUGH GOVERNANCE & ATTITUDINAL CHANGE. By Dr. Justice G.C. Bharuka (2003). Wadhwa & Company, Nagpur. Pp.xxxi+291. Price Rs. 495/-.

THE BOOK under review has many firsts – the first treatise on e-governance concerning judicial administration; first book to be dedicated to the seekers of justice in India; the first "state-of-the-art" blue print for "re-engineering" the operational aspects of justicing process through the information technology and, last but not the least, first research publication of Justice Bharuka which earned him a prestigious Ph.D from the National Law School of India University, Banagalore.

Ninety percent of the seekers of justice have to approach the trial courts for judicial determination of their disputes. Only a small fraction of the population could afford to reach the high courts and the Supreme Court. The following statistics regarding disposal and pendency of cases in the lower judiciary amply demonstrates that law's delays defeat justice.

TOTAL

Year	Opening	Instituted	Disposed	Pendency
1956	635,936	2,274,518	2,281,948	628,506
1977	6,500,753	9,673,946	9,667,020	6,507,679
1996	19,450,155	12,357,227	14,469,023	17,338,359

It, therefore, requires no great efforts to appreciate that the success of the judicial system depends entirely upon the transparent and effective administration of the subordinate courts.

In his illuminating foreword, Justice M.N. Venkatachalliah, former Chief Justice of India, has brought to focus how the judicial systems in the different parts of the world have evoked varied public responses, from time to time. The swing in the public opinion had rather been drastic from eulogizing the judges to their condemnation. The learned Chief Justice emphasizing the paradoxes of the modern societies, has observed, "it is admitted on all sides that the proverbial law's delays and the glorious uncertainties of the law have reached exasperating levels beyond all reasonable limits".

Since delay defeats justice, in the very first chapter the author has suggested the context in which the concept of such delay would have to be understood. Emphasizing that no comprehensive, scientific, unified plan or national policy was ever evolved or any scientific study done to arrest and cure the aggravating ailments in the justice delivery system, the author has under-scored the significance and objectives of his study. The criticisms against the judiciary for its non-performance should not be labeled as antagonistic; rather they have to be understood in their true spirit and context. It is indeed a matter of great concern that even a high authority like Chief Justice Venkatachalliah feels that "people's anger against the judicial system is really an expression of the sadness at one of its proud positions having let it down".

In para 1.6 of chapter 1, the author delineates the research design and the two stages in which the study attempts to assess the reasons of the delays and arrears in disposition of the cases by the subordinate courts and suggests certain clinically tested solutions to the problems.

In chapter 2, the author deals with accountability of the judiciary in the accomplishment of its duties. He emphasises that the justice seekers are baffled to see how one organ of the state passes the buck on to the other for the delay in the adjudication of cases, truly reflecting the thinking of the people in power that be. No-matter what other consequences such attitude are likely to bring about, it is certain that the seekers of justice are bound to be deprived of their right to legal remedies. The author has, therefore, rightly posed the question that "even if it is found that the other two organs have failed to respond to the need of the justice system, is the judiciary helpless in motivating and compelling them to discharge their constitutional obligations"? In the ultimate analysis, the burden undoubtedly falls on the judicial wing of the state both for ensuring proper discharge of its own functions as well as by the other two pillars.

Chapter 3 catalogues the studies that have been conducted ever since 1924 by various official bodies and committees on the delay in the disposal of cases by the courts and chapter 4 deals with the unofficial studies "of delays" by judges, academicians and the members of the bar. Chapter 5 tracks down the studies conducted by expert bodies like the Law Commission of India, Indian Institute of Management, Bangalore, and Association for Asian Studies, 1997 and pithily summarizes the findings recorded in those studies. Chapter 6 reiterates the chronic and recurrent theme of the near collapse of the judicial trial-system, its delays and the mounting costs, and referring to the views expressed by the Law Commission of India way back in 1958 that "delays in the disposal of cases and accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of the Procedural Codes."

The author has observed that for unspelt reasons, the judicial officers could not be persuaded by those suggestions. The author feels that in order to ascertain the true reasons, latent or patent, it is necessary to first understand the organizational structure of the Indian judicial system and its ways of working and that only thereafter one can evolve remedial measures "by adopting a clinical process in a real-time environment". It is this clinical process that the author has set out in the subsequent chapters.

Chapter 7 deals with the organizational set up of the Indian judicial system, their constitutional background, administrative hierarchy, judicial service and constitutional status of judges, independence of judiciary, and an interesting sub-chapter dealing with exploding certain myths associated with the reasons for law's delays in India such as largest litigious population, litigation explosion, faulty procedural laws, etc. It is a reality that in spite of world's one-sixth population, India remains at the bottom in the list of annual rate of filing in courts. The author demonstrates that during the decade 1987-1996, while the annual filing rate of cases was highest in Germany being 123.0, the state of filing in India was only 12.9. The usual criticism of our outmoded procedural law resulting in such delays fail to take into account a host of other principles associated with litigation in courts and that the existing procedural laws being only one of such principles.

Chapter 8 is the core of the study. The author has undertaken an in-depth study of the existing legal regime, the conditions of the courts and their functioning. It has been rightly emphasized that neither the court strength assessment nor the judicial man power planning attracted the attention of anyone concerned though it was realized by all that lack of such planning had been the major cause for law's delays and accumulation of arrears. Likewise, physical infrastructure of the courts has also been a neglected area effectively contributing to the law's delays. The author, therefore, has taken pains to suggest that even within the existing constitutional and statutory framework, by proper judicial manpower planning, the maladies of law's delays could considerably be alleviated. Equally important is the in-service training of judges Constitution of a judicial academy is a positive step in that direction The author has rightly highlighted that it is the determination of the judiciary to put the system back on rails that would ensure optimum use of the scarce resources made available to them and not by merely conceding to it more financial autonomy by the policy makers In the subsequent portions of this chapter, the author has demonstrated that, by infusion of information technology, not only the civil and criminal processes of the courts could be re-engineered, adding to their optimum efficiency and in reducing the delays considerably, but also enhance the court management procedure and the judicial administration itself Last

but not the least, the author has arguably laid emphasis on building up a strong adjudicatory system through courts for the real success of the alternative dispute resolution system (ADR) and only then that resort to ADRs would be one of the surest ways of controlling the dockets of the courts. According to the author, "parties to a dispute have incentives to settle when they know what court judgment they will get". Emphasis on the role of the legal profession and the legal education in the task of accomplishment of a synergistic change in the judicial administration is more than apt.

In chapter 9, the real expertise of the author has come to the fore. It is in this chapter that the author has emphasized how information technology could be effectively adopted in the judicial administration in order to make a breakthrough from the past and bring about a total transformation in the administration of justice through the courts and more particularly the subordinate courts. The author has rightly emphasized that before one could think of introducing information technology in any system, it is of foremost importance, to understand the existing judicial process and decision-making. The vast expertise that the author has at his command has been utilized in the innovation of bringing about a merger between information technology and justice delivery system. The author has demonstrated how, by adoption of the techniques suggested by him, the following objectives could be achieved:

(i) Establishment of a meaningful case tracking system;

(ii) Differentiated case management;

(iii) Case flow management system;

(iv) Online information of case laws and statute laws;

(v) Model issues and related laws;

(vi) Automated generation of formal part of judgements and decrees like,

  (a) Cause title generation through stored data,

  (b) Relief claimed,

  (c) Issues framed,

  (d) Arithmetical calculations

  (e) List of witnesses examined and documents exhibited

  (f) Automatic generation of decrees and the like;

(vii) Summon and notice tracking system;

(viii) Facilitating the functions of the court staff;

(ix) Minimization of discretion at ministerial levels;

(x) Effective implementation of delay reduction programmes;

(xi) Evolving scientific methods for managing speed, accuracy and economics of litigations from inception to end, etc.

In chapter 10 the author has unveiled how the techniques of e-governance have been successfully implemented in the State of Karnataka with the help of attitudinal change of those concerned with the system. In chapter 11, the author has suggested the road map for the future, which, according to him, would help the judiciary to measure upto its own expectations and the seekers of justice, with an attitudinal change in all concerned.

This book is not only an important milestone in clinical legal research, but it also provides the base for bringing in an overall reform in judicial administration through e-governance.

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