ALTERNATIVES TO THE PRESENT SYSTEM OF SETTLING VILLAGE DISPUTES OF CIVIL NATURE

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IT HAS taken almost seven decades to realise that we had walked through the procedural wall that was blocking out speedy judicial adjudication. Our judicial administration today is still more or less shaped, defined and perhaps even justified by procedural jurisprudence and it seems to have satisfaction of unravelling the complex skeins of procedures. But procedural niceties without quick results are of no use. Who would dispute that if you want to know the health of a nation go to its hospitals, and if you want to ascertain its moral character better have a peep in its law courts?

The system of dispensation of justice which is more than a century old is out-worn and some patch work here or there might give it a face-lift but not the vitality for its sustenance. The procedural labyrinth is too zig-zag making the journey to justice long-winded and arduous and the destination too far. It makes the simple law appear a mystery to be unravelled by the advocates and the judges. Its antiquity, no doubt, gives it a respectability but it is neither energetic nor responsive. Its face has wrinkles, its eyes are sunken. It walks slowly and stumblingly. It has no capacity to run with the time. It has the peace of the dead. It is sustained on its hoary past. Let us plan to rebuild the mansion before it crumbles down by its own weight. Let it not die heirless. Lend your ears to its feeble voice. It is dictating its will.

There is an imperative need to eliminate the defects and supply the deficiencies to win public respect and cooperation. Adoption of ritualistically technical and artificial procedures and rigid and mechanical rules of evidence unduly and unnecessarily prolong the trial and make the end product mysterious and illusory and rarely significant and substantial. A successful trial is made to run the gauntlet of extreme formalism before the ultimate decision is rendered by the final court. Needless to say that extreme technicality has developed to the point of public scandal. The legal system pursued during British regime and adhered to religiously after independence has reached a phase of chronic crisis and the only way out is a complete re-orientation of policies, procedure and outlook with a dynamic direction towards social justice and a welfare state, adhering to secularism, socialism, democracy and the rule of law. One of the ways would be to decentralise—to chop off to a certain degree the existing jurisdiction of civil courts and pass on some of their work to others. In some

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quarters this has already been done. Matters pertaining to taxes, industrial disputes, rent and eviction matters in urban areas and agricultural tenancy matters are already being decided by separate distinct tribunals. Further diversification is still needed. Rural litigation must be separated in toto.

The litigation of rural people is of simple and limited character, hence the procedure for resolving the disputes should also be simple and rural-oriented. It is indeed unfortunate that so far rural disputes have been sought to be decided in urban atmosphere. And this has made the rural litigation more costly and dilatory than the litigation of urban people. The litigants of the rural area as also that of the urban have no doubt to pay the same amount of court fees and process fee but the incidental expenses of the man travelling from his village to courts situated in the city is indeed far greater. The man in the city has his court in his own city but that is not so with the village man. The travelling expenses of the city litigant in visiting the court and his lawyer's chamber and in carrying his witnesses to court is undoubtedly far less than the litigant from a remote village. One adjournment of the case in the trial court entails lot of inconvenience and expenditure to the litigant. That apart, a rural problem can be best understood and settled in its rural setting. It is not uncommon that under the present system rural problems are at times pleaded and canvassed as also adjudicated upon by those who have no experience of village life. The irony is that the cause is pleaded and decided in an unreal environment. This is so because the seat of civil justice is situated in the cities, governed by one code of procedure. This suited the foreign ruler but not his subject. The process was, however, allowed to continue even after the departure of the Britishers and it has been tried for more than three decades even after independence with slight modification here and there but the ills have not abated. Rather, the adjudicatory process has become more dilatory and cumbersome and its efficacy has become doubtful. The amendments so far made in the Code of Civil Procedure have not been able to reduce the period spent in getting the final decree from the final court. So, decentralise the whole thing. Instead of asking the village litigant to come to a city civil court, let the adjudicator go to the village to decide the dispute in the rural environment. Most of the villagers live in extreme penury. Their civil problems are not too many. They can be decided in a better manner and more effectively if handled at the spot.

Though we hear at times some people voicing their strong feelings in no unmistakable terms for reformation in the ways and means of dispensation of justice in the country, an intellectual heritage has probably played an important role in maintaining the *status quo*. The rules of procedure, intricately inter-woven and designedly dilatory in character, meant to keep the litigant fighting for a cause in the courts for decades, were prescribed by the Britishers to perpetuate their supremacy and rule. Their policy was to sap the energy of the dissatisfied in the

courts lest he revolted against the British *raj*. But, what is the justification in sticking to the old now, when it gives no quick and effective remedy to the malady? Can any miracle be expected from foreign-based legal procedural technology which has proved to be completely unsuited atleast to the rural environment? To redeem administration of justice from unwholesome, out-dated procedure and to make justice available as near the door as possible and as quick and cheap as it can be is, therefore, the call of the hour. The time has gone to bemoan. The time has come to offer a solution The solution has to be found out in the context of the past—one familiarity with a century-old judicial procedure and judicial structure and the needs of the present and the future. The need is quick justice with ease.

The delay in the disposal of cases pertaining to 'little men' of rural areas is caused by various procedural factors, some of them are these. Under the existing system when a suit is instituted, the presiding officer of the court concerned orders for the issuance of summons to the defendant. And now starts the process of causing delay. The court process server who lives in the city is called upon to go to the residence of the defendant several miles away in the remote village to serve the summons on him. The process server should go and do his job but what is the reality. It has transpired on a broad survey being made, that in more than fifty per cent of cases, the summons are not duly served on the defendant on their first issuance and are returned back with fictitious reports and the summons are again ordered to be issued. The summons are again returned without being served and the process is repeated. This goes on and on and almost a year is wasted in merely informing the defendant of the institution of the suit. The provision for simultaneously sending the summons by registered post has also not been effective in avoiding wastage of time. It has been found in about seventy per cent of cases that the registered envelope sent to a defendant was returned with an endorsement that the addressee was 'out of station' or could 'not be met' or 'not traceable', *etc.* At last when the defendant is served with the summons he appears and seeks adjournment to file his written statement. Normally he secures three or four adjournments to file his written statement which is allowed to him subject to the payment of nominal costs. In this way another six to eight months are wasted. Now another dilatory process starts. In the cases relating to *sehan* (land appurtenant to building) or drains or title to an immoveable property or pathways or drains and *nalas*, *etc.*, or any other easementary right or any miscellaneous user of any piece of land for storing cow-dung cakes, logs and tethering cattle, *etc.*, the plaintiff applies for appointment of a commission to visit the spot, prepare a site-plan and submit a report to the court. In ninety per cent of cases the court has been found to have appointed a lawyer commission who normally takes two to three months to submit a report and a site-plan. That report hardly remains unchallenged by the defendant, who being interested in delaying the disposal of the case sets up all sorts of objections. The case thus

lingers on without much progress for another six months, if not more, because in the meantime the defendant or even the plaintiff might seek adjournment or the court being busy with another case might not have reached that case. Ultimately the defendant applies for issue of another commission and the case is thereby prolonged for another nine months or so. Adjournments are normal features in the civil courts. The case is called out and is adjourned. The village parties go back, the plaintiff cursing his fate and the defendant feeling happy in delaying the final disposal of the case. The process goes on and three to four years easily roll by. In the meanwhile if some one in the array of parties unfortunately dies the case is prolonged for another two years or so. An application for substitution of legal representative is filed which is opposed in ninety-nine per cent of cases. The matter does not rest there. The order is challenged in the superior court and the hearing of the original suit is stayed. Perchance if there be a minor as a party to the litigation, a few months' time is bound to be consumed in the appointment of his *guardian-ad-litem* and in effecting service of summons. A 'pauper-suit' filed by a plaintiff claiming to be an indigent person is always found to have a bad start. It takes about eighteen months if not more to decide the application for leave to sue in *forma pauperis*. Experience has revealed that the procedure prescribed in the Code of Civil Procedure though ideal in its objective, is cumbersome and when misused becomes dilatory and highly expensive. At any rate, it is not suited to village litigation. The alternatives suggested herein below will, it is hoped, supply the defects and reduce the time to the minimum.

The purpose of this article is not merely to highlight the problem but to suggest an adjudicatory machinery and broad outlines of rules of procedure for deciding civil cases which arise in villages.

In ancient past, in country-side the villager relied on *panchayats* for the resolution of his disputes. The adjudicators were adored as *Panch Parmeshwar* and their verdict was final and honoured. He believed in arbitration and conciliation. That tradition, that background is not yet forgotten. It can be given a shape to suit the modern times. His dispute may, therefore, first be tried to be resolved in his own village by a process of conciliation and mediation and if the conciliation fails then it should be decided by normal system of adjudication adopting simple and not complex procedure by the adjudicator stationed in the village at the block headquarters.

Rural area is at present divided thus. A district consists of several *tehsils*. These *tehsils* are sub-divided into blocks. Each block is comprised of several *panchayats* and each *panchayat* is comprised of one, two or three villages. At present the district headquarter is located in a city whereas the *tehsildars* and the block development officers have their offices in rural areas.

For resolving civil disputes arising in rural areas I would suggest that there should be a court of Civil Adjudicator (hereinafter referred to as

C.A.) situated in each block at the place where the offices of the block development officers are located. There should be two Assistant Civil Adjudicators (A.C.As.) attached to each court of C.A. The A.C.A. shall also have his office at the same place where the court of C.A. would be located. Thus, there shall be one C.A. and two A.C.As. for each block area and they shall exercise their jurisdiction within the whole of the block area.

Recruitment of C.A. and A.C.A.

The C.A. and A.C.A. shall be law-graduates and shall be members of the judicial service of the state. Their appointments shall be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the state Public Service Commission and the High Court exercising jurisdiction in relation to such state. The control over C.A. and A.C.A. including the posting and promotion of and the grant of leave to them shall be vested in the High Court.

Jurisdiction of C.A.

Any civil suit, the valuation of which is rupees ten thousand or less and whose cause of action arises either wholly or in part in the block area shall be filed in the court of C.A. having jurisdiction in the area. Suits of the value of more than rupees ten thousand shall be filed in the court of district judge who may try it himself or transfer it to the court of additional district judge or subordinate civil judge working under him in the district. The C.A. and A.C.A. shall be subordinate to the district judge who shall supervise their work.

Pleadings

Every suit shall be instituted by presenting to the C.A. or such officers as he appoints in this behalf a plaint together with as many copies thereof as there be defendants in the case for service with summons upon each defendant unless the court for good cause shown allows time for filing such copies. As the trial under this scheme is to be conducted in a manner intended to achieve substantial justice between the parties the technical rules of pleading and evidence shall be relaxed. Special simplified form in regional language shall be provided by the office of the C.A. for being used as plaint. The government may appoint a staff of paralegals to assist the parties in the preparation of legal documents necessary to the prosecution and defence of suits.

When a suit has been duly instituted a summons shall be issued to the defendant to appear and answer the claim on a day to be specified therein provided that no such summons shall be issued when defendant has appeared personally or through counsel and accepted the summons. The summon shall be served through process server and by beat of drum and, if necessary, by post as well.

If the defendant appears and does not admit the claim but contests it and files his written statement the C.A. shall send the plaint and the written statement, if any, to the A.C.A. serving under him and direct the parties to appear on a specified date and at a specified time before the A.C.A. at the spot in the village where the dispute had arisen. The A.C.A. shall then visit the spot on the specified date and time. He shall carry with him the plaint and the written statement filed by the parties.

The A.C.A. shall ask the plaintiff and the defendant to nominate one person each to constitute a reconciliation committee and each party shall then nominate one person of the village accordingly. Each party shall nominate only such person who would be present in the village at the time of the visit of the A.C.A. and who is ready and willing to act as a member of the reconciliation committee for that case. The A.C.A in the presence of the members of the reconciliation committee shall then proceed with the reconciliation. However, even if any party fails to nominate a person to constitute a reconciliation committee or expresses his inability to procure his attendance before the A.C.A. the latter shall proceed in the matter of reconciliation.

The A.C.A shall ask the parties to file documentary evidence, if any, and shall also call upon the parties to adduce oral evidence, if any, in the presence of the reconciliation committee. The parties shall have an opportunity to cross-examine the witnesses. The A.C.A. shall also, if the facts and circumstances of the case so require, make inspection of the property in dispute and prepare a site-plan in the presence of the parties and the members of the reconciliation committee. He shall record his inspection note which shall be counter-signed by the members of the reconciliation committee and the contesting parties.

The A.C.A. with the aid of the members of the reconciliation committee shall try his best to settle the dispute by conciliation between the parties appearing before him and pass orders on the basis of such conciliation. A decree shall be made in accordance with that order.

If the A.C.A. and the reconciliation committee come to the conclusion that the dispute cannot be resolved by conciliation, the A.C.A. shall forward the case file along with his report stating as to why the dispute could not be resolved by conciliation. The A.C.A. shall in that event direct the parties to appear before the C.A. on a date specified by him. The parties shall then appear before the C.A. who shall, after hearing the parties, decide the dispute on the basis of the evidence already on record including the inspection note and site-plan prepared by the A.C.A. as also the evidence which the parties might further adduce before him. If found necessary, the C.A. may also inspect the place of dispute before passing the final order. However, before passing the final order the C.A. shall also try to have the dispute settled by conciliation.

The C.A. shall for the purpose of deciding any suit have the same powers as are vested in the civil courts under the Code of Civil Procedure, 1908, when trying a suit in respect of following matters, namely :

1. (*a*) The power to dismiss a suit or an application for default and to restore it for sufficient cause;
   (*b*) the power to proceed *ex parte* and to set aside for sufficient cause an order passed *ex parte*;
   (*c*) the power to award costs or special costs to a successful party against the unsuccessful party;
   (*d*) the power to allow amendment of an application, plaint or written statement;
   (*e*) the power referred to in sections 151 and 152, of the Code of Civil Procedure to make any order in the ends of justice or to prevent abuse of process of the court;
   (*f*) the power to grant injunction, to make attachment before judgment, and to appoint receiver;
   (*g*) the power to order for preservation, interim custody or sale of any goods which are the subject-matter of the suit;
   (*h*) the power to appoint a guardian of the minor or person of unsound mind for the purposes of the suit;
   (*i*) the power to execute the decree passed in the suit.
2. The provisions of the Code of Civil Procedure shall apply to all the aforesaid matters except that no appeal or revision shall lie to any court against any interlocutory or interim order passed by the C.A.

Any person aggrieved by the final judgment and decree passed by the C.A. in the suit may within thirty days of the judgment file an appeal in the court of the district judge.

A second appeal shall lie to High Court from every decree passed in appeal by the first appellate court if the High Court is satisfied that the case involves a substantial question of law. An appeal may also lie from an appellate decree passed *ex parte*. The rules of order 41, Code of Civil Procedure shall apply so far as may be to appeals from trial court's decrees and the appellate court's decrees.

There should not be any insurmountable difficulty in implementing this scheme. A small building with one court room and four office rooms would suffice. Such a building can easily be got constructed by the state government at every block station. Adding a court building to the existing building complex would enhance the importance of the place and would give an invigorating input to an all-round development of the neighbouring areas. Nor shall there be any difficulty in recruiting proper personnel to man the court. If a medical doctor, a block development officer, a *tehsildar* and other government officers, engaged in rural development work, can reside at block headquarters to do field work there should not be any serious objection in asking a civil adjudicator also to live there. It would also not be difficult for the rural litigants to get the requisite legal aid. Experience has shown that services of lawyers have always been available to our village folk. Lawyers have appeared before

the consolidation officers in connection with the consolidation cases and before the prescribed authority (ceiling) in connection with the agricultural land ceiling cases. These officers had generally held their courts in villages and lawyers despite personal inconvenience to them had appeared and do still appear before them to plead the cause of their clients. There has never been any dearth of dedicated lawyers in our country. And, then, Bar always grows where a court is situate. Further, the civil adjudicator will have sufficient work to keep him busy. The arrears will not mount, rather the backlog of cases will in due course disappear. And, if ever they would be short of work they could be conferred with necessary powers to do criminal cases of petty offences.

The alternative system of administration of justice for the vast masses of the rural areas shall, it is hoped, respond rapidly and accurately to inquiries and ensure speedier justice at lowest cost. It would eliminate undue delay in the service of summons and prescribe resolution of disputes at the preliminary stage by the A.C.A. with the active assistance of the conciliators. Under this system, the A.C.A. himself has to visit the spot, prepare a site-plan and a factual report to be used in the case at the appropriate stage. The pre-trial proceeding before the A.C.A. represents an effort towards the early disposition through a narrowing of issues and helping the parties to amicably settle their disputes by conciliation and mediation. The case is thus either settled between the parties or it is placed on the trial call to be heard by the C.A. on its merits in the manner set forth above.

No doubt, any scheme to effect a change, to reform or to explore new grounds may make any one sceptical and hesitant. But dynamism is life and stagnation is death. I would plead for life, and for social justice.

Restructuring of judicial administration is an imperative necessity and the first step in that behalf would be to separate the rural litigation from the urban litigation. The problems of the rural people are basically different from those who live in cities and big towns. The mud walls and *sehan* land of villages where cattle and men often share a common residence, half-naked ambitionless men, women and children, all have a unique history of their own which is centuries old. Their saga of life is now without a suspense. Deep-rooted customs and traditions have moulded their life. Day in and day out one current of life flows there unhampered and uneventful. Let justice meet them at their door.