

DISPENSATION OF JUSTICE – REGULAR COURTS AND OTHER QUASI JUDICIAL FORUMS

Sixty seven years earlier, in the month of August, two new nations emerged on world map. One was India and other is our neighbour Pakistan. Pakistan was having fertile land of Punjab, huge storage of natural gas in Baluchistan, a commercially viable sea-line including the ports like Karachi and Gawadar - quite close to Gulf, the most fertile part of East Bengal with a rich cultural background. The world was hoping for a very prosperous socio economic power in the name of Pakistan.

The India, on the other hand, was having an enormous burden of huge population, a big burden of defence expenses being having a very long international boundary and rough sea-line, a big part of sand as well as snow desert etc. The statesman and economists of the world were having serious doubts about success of India as a nation.

India, however, was fortunate enough to have very mature national leadership in every field including the politics, judiciary and industry. The reflection of mature leadership was available in our constituent assembly. The constituent assembly

of India was having a resolution in its hand to prepare a socio political document in the name of the Constitution of India. The constituent assembly, thus, successfully enacted the Constitution of India on 26th November, 1949.

Pakistan too was having a constituent assembly mainly dominated by the landlords bureaucrats, defence personnels with a little presence of the political leaders, lawyers and teachers. The constituent assembly of Pakistan failed to provide a constitution to its people for several years and that ultimately resulted into its dissolution. The dissolution of the constituent assembly was challenged by way of filing a petition for writ before Hon'ble the Sindh High Court. The High Court accepted the writ petition and declared dissolution of the assembly illegal, but unfortunately by adopting the doctrine of necessity, the Apex Court of the Pakistan reversed the judgment of the High Court and upheld the dissolution and that prevented the people of Pakistan from having a constitution, or in other words to have the rule of law. The non-availability of the constitution resulted into the rule by marshal law instead of rule of law. The rule by marshal law brought the State of Pakistan at the verge of failure and that resulted into its division. Pakistan is yet struggling for democracy.

We were fortunate enough to have the rule of law through the Constitution of India. On basis of the objective resolution, we had a constitution to meet the aspirations of the people and to strengthen the values of sovereignty, socialism and secularism. We had values to have a democratic republic. We ensured social economic and political justice. We extended liberty of thought, expression, belief, faith and worship. We also ensured equality of status and of opportunity to all the citizens. Through constitution - we also assured the dignity of individual and also the unity and integrity of the nation. Part-III of the Constitution of India guarantees the fundamental rights. Article 13(1) of the Constitution makes it clear that all laws in force in the territory of India immediately before commencement of the Constitution, in so far as they are inconsistent with the provision of Part-III, dealing with the fundamental rights, shall, to the extent of such inconsistency, be void. Article 13(2) provides that the State shall not make any law that takes away or abridges the fundamental rights. The constitution guarantees equality before law and equal protection of law. It guarantees right of life and personal liberty. It provides that no person shall be deprived of his life or personal liberty except according to the procedure established by law.

We are having supremacy of law, equality before law and pre-dominance of legal spirit. The three wings of our governance have also strengthened all these constitutional values.

Broadly, no wing of governance tried to interfere in the domain of other.

Hon'ble Supreme Court by several judgments ensured the constitutional values. In the case of Keshvanand Bharti, the Supreme Court enunciated the rule of law as one of the most important aspect of the doctrine of basic structure. In the case of Menaka Gandhi, the Apex Court held that even in administrative action the essence of arbitrariness is not permissible in view of the provisions of Article 14. It can very well be said that we are having rule of law that is uniformly applicable for each and every citizen of the country. In no case we can suspend the rule of law.

The Constitution of India provides a complete mechanism for access of justice but as and when our legislature find need of more effective measures to impart justice, it makes necessary constitutional amendments too. This flexibility has strengthened the Rule of Law.

By the 42nd Constitution Amendment Act, 1976 Articles 323-A and 323-B were introduced to the constitution. Article 323-A intends to provide easy and effective access for justice to the persons appointed to public service. Article 323-B on the other hand takes necessary care constituting Tribunals in various sectors including the Taxation, Foreign Exchange, Labour Dispute, Land Reforms, Elections, Essential Goods, Offences and incidental matters relating to such matters.

Today, the judiciary is required to resolve disputes, those need experts, not only with law but with the merits of the subject concerned too, thus, it became necessary to have special courts and tribunals. We have a number of such special courts and tribunals functioning in the country dealing with questions relating to family disputes, service and labour disputes, taxation, accident claims, consumer protection, monopolies and restrictive trade practices, banking, corporate and securities etc. In the new fields of the action and adjudication, updation of special knowledge of the subject is necessary. The regular courts, though are having services of quite efficient judicial officers, may not do complete justice because of considerable increase in litigation and also being lacking updating of the day to day developments in specific

fields. On account of increasing awareness, there is considerable increase in litigation and that is also resulting in delay in dispensation of justice.

The framers of the Constitution could not have anticipated the increased State activities and the enormous commercial activities existing today, therefore, they limited themselves only to certain judicial fora to give relief to the citizens of the country. Perhaps, at the time they felt that existing courts of law were sufficient to meet judicial aspiration of the people and to deal with all types of disputes, however, subsequently it was realised that ordinary courts of law with their traditional and procedural limitations were not adequate to meet the changed situation and to solve the various problems that arose in new socio economic context.

Certainly, we have a great judicial system but, like any other apparatus, it also need overhauling to cope up with the changing pattern of the society. The need of time, therefore, is to have tribunals with experts with the subject concerned and the competent judicial officers.

The various tribunals constituted under various statutes are effectively working and dispensing with justice in

the respective fields, however, their efficacy is not only to be maintained but is required to be enhanced. We must understand that the tribunals are created looking to inadequacy of the traditional judicial system in deciding the disputes. All efforts, therefore, should be made not to get working of tribunals slow, expensive, inexpert complex and formalistic. The tribunals established should be functional rather than a theoretical and legalistic bodies. The tribunals must be saved from procedural technicalities and strict rules of evidence and procedure. The tribunals must take practical view of the matter to decide specialised and complex problems with expert knowledge. The tribunals are manned by experts, who can deal with and solve disputed and complex questions of technical nature more expeditiously than the regular civil courts.

The arbitration and mediation are other effective modes for easy access to justice. These alternative dispute resolution modes are playing a significant role in resolving commercial disputes. The system of our governance is trying its level best to avail this mode of dispensation of justice in other sectors also. In the field of matrimonial disputes and torts mediation is a very effective weapon. We must make all necessary efforts to provide an additional edge to this weapon of justice.

Friends, while adopting new forums for easy access of justice, we must take necessary care to keep these new apparatus live and efficacious.

We have seen, specially in the family courts, rent tribunals and industrial tribunals that they are adopting working style of traditional civil courts. The lawyers appearing before the courts and also the Presiding Officers of the tribunals, who are coming from regular judiciary are not prepared to accept the radical procedural changes. The Presiding Officer of the tribunal must understand that the tribunals or special courts are meant for a special purpose. These Tribunals have to keep their procedure easy, effective and expeditious for fair dispensation of justice.

Late Mr. M.C.Setalvad, the first Attorney General of India, said :

“We are now a democratic country and we are a much more populous country. In these days, therefore, what is required is a radical change in the method of administration of justice. We want courts to which people can go with ease and with as little cost as possible. It is not merely the quickness of

justice but it is the easy approach and quick disposal both which are needed and that only can be achieved if the system is completely overhauled.”

The establishment of the tribunals, special courts and other forums of alternative disputes resolution is nothing but overhauling of the system. Being aware citizen of the country, we must accept all radical changes those are necessary to cope up with changing socio economic pattern of the society and to have an effective system for easy access of justice.

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