

## SHARPENING THE AXE

(Paper with some suggestions circulated by Justice Yatindra Singh, Judge Allahabad High Court for reducing pendency at the High court level in the 'National Consultation for Strengthening the Judiciary Towards Reducing Pendency', organised by Department of Justice, Government of India and the Indian Law Institute on 24, 25th October 2009, at New Delhi)

1. Abraham Lincoln once said,

'If you have eight hours to chop down a tree then spend six hours sharpening the axe.'

It is good that we are sharpening our axe today. Arrears cannot be reduced unless we set a goal, have a plan, and work according to that plan. Here are some suggestions.

### INFRASTRUCTURE, VACANCIES, WORKING DAYS

#### Improve Infrastructure, Fill up the Vacancies

2. A chart of institution and disposal of cases of last five years at the Allahabad High Court is as follows. Average number of Judges has been calculated, averaging the number of judges at the beginning and at end of the year after rounding off to next higher number. Disposal per Judge per year is calculated by dividing the number of cases decided, by the average number of judges for the year and rounding it off to the nearest number.

Year	Institution of cases	Disposal of Cases	Average number of Judges during the year	Average disposal per Judge
2004	172152	165650	74	2239
2005	204072	160298	77	2082
2006	215194	164446	83	1981
2007	247832	243318	79	3080
2008	251913	159739	73	2188
Average disposal of five years ( 2239+2082+1981+3080+2188)/5				2314

3. Total pendency of cases at Allahabad High Court and Lucknow Bench before Diwali vacation was  $70284 + 252610 = 955457$ . A chart below explains the reason

for this figure.

Year	Sanctioned strength	Average working strength	Average vacancies
2000	95	57	28
2001	95	48	47
2002	95	59	36
2003	95	73	22
2004	95	74	21
2005	95	77	18
2006	95	83	12
2007	160 (wef 1.4.07)	79	81
2008	160	73	87
2009	160	82 (at present)	77

4. Total number of Judges at present is 82. Taking the average disposal of five years as standard, they should decide,  $82 \times 2314 = 1,89,748$  (or rounding off to 190,000) cases. The filing of cases is increasing every year. Taking the figure of 2008 and rounding it off to 252,000, shows that with 83 Judges there will be deficit of about  $252,000 - 190,000 = 62,000$  cases every year. Arrears can never be reduced.

5. The existing Allahabad High Court building (at Allahabad and Lucknow) can accommodate about 110 Judges. Even if, 110 judges are appointed they will decide about  $110 \times 2314 = 254,540$  cases in a year. Apart from deciding the cases filed that year, the arrears will be reduced by  $2,54,540 - 252,000 = 2540$  cases. It will take about  $9,55,347 - 2540 = 376.11$  or 376 years to clear off the arrears.

6. Our sanctioned strength is 160. If you make calculations accordingly then they should decide  $160 \times 2314 = 370,240$  cases in a year. Apart from deciding the cases filed that year, the arrears will be reduced by  $3,70,240 - 252,000 = 1,18,240$  cases. It will take  $9,55,347 - 1,18,240 = 8.08$  or 8 years to clear the arrears.

7. Vacancies of judges at the Allahabad High Court are often more than the

number of the judges in the court; they are also more than the total strength of other High Courts. We must function to our available strength. However there is no infrastructure: this has to be made available before making the appointments. This is true not only for our courts but also for the other courts too. The first and the most important step is: Improve infrastructure, fill up the vacancies, and make the appointments.

#### **Increase number of working days**

8. It is not good to increase the number of days merely because there are arrears. The arrears are not there because Judges work less but are there as the Courts are not functioning to their available strength. However a comparison with the Central Government Offices and State Government employees would be apt.

9. Central Government offices are closed on Saturdays and Sundays and apart from this, there are 14 holidays; they are open for 247 days. Uttar Pradesh Government Offices are open on Saturdays (except second Saturday) but the Secretariat is closed on Saturdays and Sundays and there are 23 holidays. It is open for 238 days. In comparison, the Judges of the High Court sit in court for 210 days. It is 37 and 28 days less than the Central Government and State Government secretariat.

10. The resolution no. 21(b) of the Chief Justices' Conference-2009 is to explore the possibility of increasing working time by 10 days or 30 minutes per day. There is an optimum limit that a person can concentrate on work: increasing working time by 30 minutes a day is perhaps not a good solution. It may not add much but the better solution is to increase the number of working days perhaps not by 10 but by more days than mentioned in the resolution.

## **COMPUTERS UTILISATION**

#### **Bunch and Referred Cases**

11. One way of reducing the arrears is to bunch similar cases. This was tried at Allahabad with the help of Judges of the subordinate judiciary. It was successful so far as broad categorisation of cases were concerned but was not successful for bunching cases involving similar law points. A Judge dealing the cases of a jurisdiction is a better person to do it. It can thereafter be easily managed with the help of Computers. This is done at Allahabad. This information is available in the website in the form of bunch and referred cases. It is helpful but requires some

training of staff and Judges to streamline it.

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12. In bunch cases, every case should be connected with one case only and that case is to be treated as the leading case. Leading case is the first case listed in the bunch. Connecting all cases with the leading case or the first case is necessary. It is only then that all cases will be listed together.

#### ***Leading/Bunch Cases***

Sl. No.	Case Details	Stay Order	Points Involved
1.	FIRST APPEAL FROM ORDER No. 34 of 2005 at ALLAHABAD The New India Assurance Company Ltd. Vs. Smt. Veena And Others		Whether the insurance company is liable to pay interest for non-payment of amount under Workman Compensation Act
2.	PUBLIC INTEREST LITIGATION (PIL) No. 76922 of 2005 at ALLAHABAD Dr. B.R. Ambedkar Granthalaya Evarn Jan Kalyan Samiti Vs. State of U.P. Thru' Principal Secy. U.P. Kamik Anubhag and another	<a href="#">20/12/2005</a>	Whether G.O. dated 10.10.2005 issued by the U.P. Government amending the schedule indicating Scheduled Caste and Scheduled Tribe is valid or not.
3.	WRIT - A No. 49431 of 2005 at ALLAHABAD Ram Pal Singh III Vs. State of U.P. Thru' Prin. Secy. Panchayati Raj and Others		Allocation of Employees between Uttarakhand and U.P.
4.	WRIT - A No. 40393 of 2006 at ALLAHABAD Lieutenant Colonel (Lt. Col., Retired) Ved Mani Tiwari Vs. Union of India and Others		Whether the rank pay is to be added in the basic pay or not.
5.	WRIT - C No. 5231 of 2000 at ALLAHABAD Raj Kumar Vs. The District Supply Officer, Hathras and Another	<a href="#">3/2/2000</a>	Whether the petty oil dealer is entitled to use nozzle and dispensing machine while conducting his business.
6.	WRIT - C No. 33710 of 2001 at ALLAHABAD Smt. Makhmali Vs. State of U.P. and Another	<a href="#">31/10/2001</a>	Whether the award by the reference court under the Land Acquisition Act can be recovered as arrears of land revenue.
	WRIT - C No. 28000 of 2003 at ALLAHABAD	<a href="#">8/7/2003</a>	Whether the caste certificate can be cancelled by a Committee only in view of

13. Similar procedure is to be adopted when a law point is referred to the larger bench. In this event, the referred case is to be treated as leading case. The referring order explains the points involved.

#### **Larger Bench Referred Cases**

Sl. No.	Case Details	Referring Order
1.	FIRST APPEAL FROM ORDER No. 1636 of 2000 at ALLAHABAD Chief Engineer (Madhya Ganga) & Others Vs. M/S.Jain Construction Co. Engineers	<a href="#">10/4/2001</a>
2.	HABEAS CORPUS WRIT PETITION No. 35555 of 2002 at ALLAHABAD Km. Indu Mishra Vs. Union of India & Others	<a href="#">22/4/2003</a>
3.	PUBLIC INTEREST LITIGATION (PIL) No. 54860 of 2004 at ALLAHABAD In Re:Regularization of Class IV Employees of High Court	<a href="#">18/12/2004</a>
4.	PUBLIC INTEREST LITIGATION (PIL) No. 63883 of 2005 at ALLAHABAD In Re : Vs. State Of U.P. & Others	<a href="#">26/9/2005</a>
5.	WRIT - A No. 15505 of 2005 at ALLAHABAD Pavan Kumar Yadav Vs. State of U.P. And Others	<a href="#">9/3/2005</a>
6.	WRIT - C No. 28424 of 1997 at ALLAHABAD Pushkar Mehrotra Vs. Hon'ble The Chief Justice High Court of Judicature & Others	<a href="#">2/9/1997</a>
	WRIT - C No. 2436 of 1998 at ALLAHABAD	<a href="#">23/1/1998</a>

#### **Further proceeding stayed**

14. Computers can keep track of the cases where further proceedings are stayed so that these cases are taken on priority. This is also done at Allahabad High Court but the programme requires training for the Judges and the Staff members.

## **GOOD ADMINISTRATION**

#### **Unnecessary Litigation**

15. Generally it is for the legislature to enact, the executive to act, and the judiciary to decide the validity of the enactment or action. Normally the executive is required to act, redress the grievances, and inform about the action taken. This has to be done if there is statutory duty to do so. Nevertheless the executive is here to listen to public grievances and redress them. If the grievances are raised then—even if it is not statutory—the executive is under public duty to take action if it is so required. Even if no action is to be taken, the complainant has to be informed: sending this information is sufficient action. At least the person comes to know the stand of the executive. However, generally the complaints to the executive—statutory or non-statutory—go unheeded.

16. There is some litigation at the Allahabad High court, directing the Executive to look into the grievances raised. Only a survey can tell whether it is an understatement. Often, the Judges also relegate the parties, to the level, where the complaints are to be addressed at the first place.

17. There is a view that the writ will lie only if the representation is a statutory one: the mandamus is only for the performance of statutory duty. There is another view that if a grievance is raised then it is public duty to reply and the mandamus lies. In any case writ jurisdiction should not be confined to the technical limitations. In a

lighter vein, this is often referred to as 'Representation Litigation'. This kind of litigation has another offshoot—contempt applications to decide the representations.

18. The above mentioned litigation is unnecessary. It can be easily avoided with some modification in practice and in attitude: sending replies to the grievances will reduce it. The expenses can be easily avoided by requiring the complainant to submit duly stamped self addressed envelope along with the complaint for sending the reply.

#### **Formalities to be Observed before taking a Decision.**

19. Many writ petitions are entertained because of mal-administration; and many others can be easily avoided with some effort. There are few fundamentals of good administration.

- (i) Decision may be taken only after affording opportunity to the concerned parties.
- (ii) If controversy is similar or affects many persons then all claims may be considered together rather than separately.
- (iii) The officer passing the order should have authority to pass the order.
- (iv) There should be reasons for taking the decision: it restricts arbitrariness.
- (v) Decision should be taken within reasonable time and communicated to the party concerned.

20. It is not only important that previously mentioned points are practised but they should appear in the reply. Many times, these points are followed—yet, the order does not indicate it. The writ petitions are entertained as ex parte motions and the court only has the order that does not indicate it. Often the State machinery is too slow in getting instructions. The result is that a writ petition is entertained when it should be dismissed.

21. Good administration requires that every order should indicate at least the following points:

- (i) How affected parties were afforded opportunity?
- (ii) The source of power (details of Sections or rules or regulations if it is taken under any such provision).
- (iii) Brief reasons for taking the decision. In case only brief reasons are given

and there are detailed reasons elsewhere then it may also be indicated in the order that detailed reason can be provided on request or on payment of a reasonable fee.

(iv) The details of statutory remedy, if any, available against the decision.

#### **LEGISLATIVE INTERVENTION - ANTICIPATORY BAIL**

22. Criminal proceeding/ FIR may be quashed if the allegations in the FIR do not constitute an offence or make out a case against the accused or if it is abuse of process of law. In case it cannot be so done then the arrest may be avoided if anticipatory bail is granted. However, the last part may not possible in our State (Uttar Pradesh) as provision of anticipatory bail has been deleted.

22. Section 438 of CrPC provides for anticipatory bail. This provision was deleted in the State of Uttar Pradesh during emergency. It has not been restored despite recommendations made by all Advocate Generals since then and by the Court in Som Mittal Vs. Govt. Karnataka (2008) 3 SCC 753, Vijay Kumar Verma vs State of UP 2007 CrLJ 170 (paragraph 125 to 127), Ajeet Singh Vs. State of UP 2002 CrLJ 4561, and order dt. 9.5.2006 in Criminal WP 5774 of 2006 Smt Sudama and others Vs State of UP

23. Deletion of provision regarding anticipatory bail has led to filing of numerous writ petitions, applications under section 482 CrPC against the FIRs. It has another effect: the judges at the Allahabad High Court may be more inclined to entertain such cases. Its volume is so much that many benches at the Allahabad High Court are doing this work instead of normal work of criminal appeals.

24. The law and order problem is in the States that have the provision of anticipatory bail but it is not there because of this provision. There is no reason that its restoration will worsen the law and order problem. It should be restored in Uttar Pradesh. In case this is done then majority of this kind of litigation at the High Court will end.