

06 June 2014

Hon'ble Mr. Justice R.M. Lodha
Chief Justice of India
Supreme Court
New Delhi

Respected Chief Justice,

1. After you took over as the Chief Justice of India, Your Lordship has not only taken keen interest in functioning of the administration of justice but also have been acting upon bringing some useful reforms. Your Lordship has also been taking along the Supreme Court Bar Association in this exercise.
2. I have read the news item in 'The Hindu' Newspaper of yesterday and the news item in 'Hindustan Times' of today.
3. As far as the suggestion of courts working 365 days is concerned, a detailed deliberation with all the stake holders including the members of the Bar and particularly Supreme Court Bar Association is very necessary. The object, purpose of Your Lordship to reduce the ever increasing arrears of matters in all courts, which no doubt is extremely necessary, is very valid and wholesome. This is a challenge to all of us.
4. The Executive Committee of Supreme Court Bar Association in its meeting held on Tuesday, 3rd June has resolved that it is necessary that Your Lordship have interaction with the Supreme Court Bar Association before taking any final decision.
5. The scheme as we can understand from the above news items seems to be that Hon'ble Judges can choose when they will work and when they will have holidays, but they would be permitted as many holidays and vacations as they are entitled to, but it should be whenever they choose rather than on fixed days and at fixed periods in the year. However, there is no reference to give similar option to members of the Bar. I don't know if the scheme is for the lawyers to work for 365 days, without any option of holidays.
6. Primarily the view of most of the members of the Supreme Court Bar Association whom I had the occasion of speaking to, about this issue, is that the members of the bar cannot possibly work for 365 days as no human being

can or should work 365 days. The members of the bar are already working very hard under the existing system. Except for their work obligations, they have their family as well as social obligations. They need holidays to prepare their cases and they also need some time to have vacation as all others have. That time is provided under the existing system. Each Judge has been a lawyer and would easily appreciate this.

7. Therefore, if any matters are to be listed on non-working days, by the present system, the consent of the advocates appearing in those matters should also be obtained. In one way the Hon'ble Supreme Court follows this while listing final disposal matters during summer vacation by giving choice to the members of the Bar before listing their matters during vacation.

8. It is believed worldwide that the holidays are very necessary for the efficient and effective functioning of any Institution. It will apply with greater force to members of the Bar looking at their working hours.

9. On the face of it, 365 days work scheme may not reduce the arrears because if working hours of the Hon'ble Judges remain the same the judicial output will remain constant. In fact the new scheme may perhaps result into increase in the arrears because on Saturdays, Sundays and other holidays, the stake holders in administration of justice may not take the judicial work as seriously as they do it on working days.

10. The members of the Supreme Court Bar Association, are well aware of the importance of finding the way out to solve the problem of increasing backlog and we suggest the following options rather than working for 365 days:

A. Filling up of all the posts of Judges in all courts on the day of vacancy:

- i. As on date the Hon'ble Supreme Court has 5 vacancies. For Hon'ble High Courts throughout the country, the approved strength of Judges is 875, as on 1st April, 2014 the working strength has been 623 and therefore the vacancies as on 1st April, 2014 are 252. Situation is no better in the District and Subordinate Judiciary which is also facing a huge shortage of Judges. Against the sanctioned strength of 17,715 Judges, more than 3,300 posts are vacant. Similar has been the position for the last few decades. This is the most important issue which needs to be tackled immediately in order to solve the problem of increasing arrears. The solution is exclusively in the hands of

Hon'ble Judges, because all judicial appointments are in the hands of Hon'ble Judges.

- ii. The vacancies are well known much in advance therefore why should a single judicial post remain vacant in the Hon'ble Supreme Court or in Hon'ble High Courts or in any Court or Tribunal. We suggest that two or three months before, the vacancy or vacancies arise, collegiums exercise should be completed and the names may be sent to the Government so that in case the Government has any suggestions about any of the candidates, they also get time to return the suggestions for reconsideration. Thereafter the necessary order etc. may be passed by Respected Rashtrapatijee. The date on which the vacancy arises should be the date on which the vacancy is filled by making sure that the Hon'ble Judges filling the vacancy takes oath on the date the vacancy arises.
- iii. As far as the appointments in Hon'ble High Courts are concerned, there has been a grievance that the Supreme Court collegiums at times take very long time running into couple of months, to consider the lists for appointment of Judges for High Courts and at times return the whole list for reconsideration after a long time. Some mechanism of coordination between the Hon'ble Supreme Court and Hon'ble High Courts should be evolved so that this deadlock can be avoided and the Judges take oath on the very day the vacancy arises in all courts.
- iv. As far as the appointments to the District Courts and Subordinate Courts are concerned they are under complete control of High Courts. Some directions may be issued to all High Courts to fill up these posts on the day, the vacancy arise.
- v. Appointing only competent and deserving Judges is also very important. Today conscious and hard working judges do bear greater burden.

B. Punctuality of the Judges to work in Court room full time is very essential:

- i. Punctuality of working in the Court rooms on time and for the full time must be strictly followed by all the Judges throughout the Country.
- ii. It is well known that some Judges come late, taking tea breaks, break for signing orders etc. etc. during working hours and there is no control on this. In many Courts the full court meetings take place during working hours, sub-committee meetings take place

during working hours, interview of the candidates for Judicial posts take place during working hours and after the full court reference of condolence, as a mark of respect the court work is not continued. Rules and strict guidelines must be made to ensure that entire judicial time is fully and properly used by each and every Judge in all courts.

C. Uniform Parameters:

- i. Certain uniform principles, in disposal of cases are required to be formulated by the Hon'ble Judges. It is true that a Judge has to discharge his judicial function according to his sense of justice but unless certain institutional policy decisions are taken and implemented, the arrears will go on mounting. It is not possible with any certainty for a counsel to advise about the result of a litigation or whether the matter should be filed or not. This leads to extensive filing of cases which in turn leads to backlog of cases. If general parameters are laid down and are broadly followed by Hon'ble Judges, people would stop filing certain cases.
- ii. Hon'ble Judges may spend some time and lay down the policies to be followed by the Judiciary. There is nothing un-judicial about laying down some policies for the better and efficient working of the judicial system. This should be made public. The meetings between Hon'ble the Chief Justice of India and the High Court Chief Justices should take place more often and there should be greater deliberation. In some of the sessions, members of the bar may also be invited because the Bar is partner of Judges in administration of justice and their suggestions may be of great use.

D. Strikes by lawyers:

The strike by lawyers is another reason for arrears. There can be no justification for going on strike by lawyers except in rarest of rare cases because it affects their own clients and it affects their image also. The Hon'ble Supreme Court has declared strikes by lawyers as illegal. In my experience as a member of the bar there is no problem which cannot be sorted out by interaction between the bar, the bench and the government. Rather than going on strikes, lawyers may wear a black ribbon to show their disagreement or dissatisfaction on any issue. In some cases, the lawyers may also take out protest march or rally, but that should also be after the working hours of the courts.

E. Adjournment by lawyers:

Likewise, unnecessary adjournments by lawyers also lead to delay. However, sometimes adjournments are required because of lack of proper coordination

between the Bar and the Bench and sudden listing of matters or collapse of a Board. This can be sorted out. The focus has to be on a litigant who has a right to have a lawyer of his choice and right to remain present in court on getting reasonable notice. Giving fixed dates keeping in view likelihood of getting those matters heard and disposed of on those dates will be ideal.

F. Governments as litigants:

The Governments central as well as state and statutory authorities etc in most of their litigations always go right up to the Hon'ble Supreme Court. This many times happens because the officers making these decisions have a fear that, if they do not go up to Supreme Court somebody may make allegations against them. This is required to be controlled by laying down certain guidelines by governments and creating a machinery which will scrutinise independently and impartially which matters should be filed and which matters should be appealed and till what stage.

- G. If necessary, working hours of all courts may be increased by one hour on all working days for sometime as an experiment in order to see if disposal of matters increases and if it does then this may done for year or so, till the arrears reduced. In Supreme Court the working hours were increased by half an hour for few years.

11. If the above suggestions are implemented and if right Judges are appointed in right time the problems of arrears can be sorted out.

12. Your Lordship may not understand this communication as if the Bar is not ready to join in any endeavour to reduce or wipe out arrears. We are open to deliberations and suggestions. The question is how to do it effectively.

13. The Executive Committee of the Supreme Court Bar Association would like to have a meeting with your Lordship to discuss the views of members of the bar on this very important issue and during such meeting we will submit supplementary suggestions after wider consultation, with the members of the Supreme Court Bar Association.

With Best Personal Regards on behalf of members of the Supreme Court Bar Association

Yours sincerely,

Pravin H. Parekh
President,
Supreme Court Bar Association