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A TIME FOR REFORM IN COURTS

Relevant for: Indian Polity | Topic: Judiciary in India: its Structure, Organization & Functioning, Judges of SC & High Courts, Judgments and related Issues

The pandemic has turned the world on its head. No aspect of life has escaped unscathed. This includes the functioning of courts and tribunals. The judiciary has limited its work to hearing urgent matters via video conferencing. A lot has been written about how this is an opportunity to improve IT infrastructure of courts so that they can move to video conference hearings as the norm. However, any such move without first revamping procedural law would be futile.

In subordinate civil courts and High Courts, a significant time of daily proceedings is taken up by cases where only adjournments are sought for procedural matters like filing of replies. Both as a response to this crisis, as well as in the medium term, this system can be done away with. A system needs to be devised where cases are not listed before the court unless all the documents are filed within strict timelines and every procedural requirement complied with. The existing infrastructure is enough to enable this. Listing can be done before the court only in cases requiring urgent interim intervention from the court, while the matter is pending procedural completion, after verification of urgency by a judicial officer or a judge upon oral or written application.

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When courts reopen, apart from fresh cases, only a limited number of cases (say, 20-30 a day) which are ripe for arguments can be posted. This can be done with sufficient notice to the Bar Associations that requests for adjournments will be looked at askance. This will ensure that court rooms are not crowded. Circulation of the cases to be listed in advance (say, two weeks before listing) will give advocates enough time to take instructions from clients and prepare for arguments.

The Supreme Court Rules, 2013 should amend provisions pertaining to Special Leave Petitions (SLPs). Article 136 of the Constitution enables people to file a petition seeking leave to appeal a decision of any judicial or quasi-judicial authority. The Supreme Court grants leave to appeal if the petition raises a question of law of general public importance, or if the judgment appealed against is especially perverse, which would require interference from the Court. The provision has been abused over the years to only clog the docket of the Supreme Court. The Supreme Court was never intended to be a court of appeal, barring such appeals which specific statutes provide for. The High Courts are usually meant to be the final courts of appeal. Instead, SLPs are now being treated as the last round of appeal.

Reports show that SLPs comprise about 60-70% of the Supreme Court’s docket. Out of this, 80-90% of SLPs are dismissed, which means only 10-20% of such cases raise important questions of law. This takes up a lot of time of the Court. A simple solution would be to do away with immediate oral hearing of SLPs. The Supreme Court Rules could be amended to provide for a structure of pre-hearing of SLPs. Every SLP must be accompanied by an application for oral hearing which must be decided first by the Court, and that too in chambers. To assist the Court for that, a cadre of judicial research assistants made up of qualified lawyers should be created. The research assistants can go through each SLP and cull out the important questions of law as envisioned in Article 136. Thereafter, the Court may or may not allow applications for oral hearings based on whether such questions of law merit its attention. Only such SLPs in which oral hearing is permitted should be listed for hearing. SLPs in which no questions of law are raised, or frivolous ones are raised, should be dismissed without oral hearing and upon

imposition of costs. This will ensure that only meritorious SLPs get judicial attention and will deter people from filing frivolous SLPs. It will also reduce pendency exponentially as the system will free up the Court's time to hear statutory appeals and matters pertaining to interpretation of the Constitution or constitutional validity of laws or executive actions.

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Even in cases of statutory appeals, and appeals where leave is granted in SLPs, the Court should do away with the system of filing reply to the appeals and rejoinders to such replies. Every case can be decided based on records of the subordinate courts. As no new arguments on facts can be raised before the Court in appeals, the system of filing additional pleadings should be rendered redundant as the pleadings are simple regurgitation of the records of the subordinate courts. Most such appeals can be dwelled upon by judges and their research assistants in chamber, and only such appeals should be granted detailed hearings where the judges require clarifications. The above mechanisms will ensure that the Supreme Court moves away from an oral hearing-based system to a written submission-based one.

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