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CREDIBILITY IS THE PROBLEM

By

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Ours is a democracy. The constitution provides for many rights, fundamental and others, for all citizens. In a democracy every citizen should be capable of protecting his or her own interest through active assertion of legal rights. That is legal competence. The poor lack it. Does it not make them second class citizens, depending on others to protect their rights. The culture of dependency is by no means confined to the area of legal rights alone. It pervades the whole range of the life of the poor.

What is legal competence ? partly awareness; partly assertiveness. The awareness should cover not only the legal rights but also the remedies available for rectification of any infringement. A knowledge of the help-resources available is necessary before the poor can use them in times of need. They should know how to use them. The poor should have confidence in such resources if they are to use them for asserting their rights.

The poor are not mobile. The lack of resources confines them to a narrow field of experience. This generates suspicion of everything new. When a resource like legal aid is offered, they lack faith in its potency. They do not readily use it to assert their rights. For 2 reasons. - The concept is new and they have not tried it so far. They are not venturesome enough to try a new tool. Moreover their perception of the law is negative. Their encounter with the law has in the past been as an encroacher on porumboke land under threat of eviction; as a debtor being sued; or as a suspect in a criminal investigation. Their perceptivity is coloured by the sense of injustice felt by them in such contexts. They always see the legal system as enmeshing them. They also see the rich escaping the same system. As a result, they view the law as a tool of the rich to punish the poor. - an enemy.

Before legal aid is seen by them as a credible help-resource, their perception of law has to be changed. A more positive perception has to be engendered. Legal aid organisations should involve the poor with law under more helpful and beneficial circumstances. The values of fair play, justice and give & take should lace the day to day activities of the poor. Law should be linked to these values. To do this is to extend legal aid in a larger sense. This is attempted by the Mediation Centres run by The Tamil Nadu Legal Aid & Advice Board. From October 1983 to December 1987, 90 % and more of initiators have been from the weaker sections (SC & BC) of the community at the Tiruporur Mediation Centre. This is attributable to the fact that the mediation programme functions outside the system and the initiators come of their own choice to have their problem settled. They do not look upon this as part of the legal system.

As a society, we are trying to catch up with lost decades. Social values are changing. Some people step in unison with such changes. Some others are left behind. They feel lost and insecure. The pace of change is faster in urban areas than in the villages. This results in the rural people feeling left out. Whenever they come into contact with the urban people, the rural people feel angry and frustrated. Even in the villages the younger people react to change more positively. They blame the older people for not moving with the times. Clash ensues. One way of reacting to this is for the older people to withdraw into their shell. This hardly helps. Confrontation continues. Tension between groups, even inside a group, sometimes within a family is often seen as a consequence of emotions running high. Immediately understanding becomes difficult. That is where the conciliation programme helps. A youth from a village marries a city girl. She spurns the stagnant society in the husband's place and insists on his joining her in the city. The parents do not want to let go of their only son, a bread

winner. The young man himself is not sure he is equal to the stress and strain of starting life in a city. The familiar problem with all the pull and counter pull on the young spouses. It is not a legal problem as yet; but it has all the potentialities of becoming one soon. A matrimonial dispute, a separation and a legal action for divorce. Each is taking a rigid stand.

The young spouses can make an attempt at finding a solution if they meet and talk it over. The two families, finding themselves in a confrontational mood, would hardly facilitate such a meeting. The mediation centre furnishes a neutral space for them to operate, if they are inclined to solve their problem amicably. Conciliation by mediation is essentially based on a desire of the disputants to settle by consensus. The primary task of the mediator is to help people do it. He is only a facilitator and no more. On the surface the differences may appear to stem from some immediate episode. But that may only be a symptom. The disputants have to be assisted in sorting out their real from imaginary differences. For instance there was a conflict between neighbours. They were both recent purchasers of abutting homes. Each claimed the dividing wall as his, in ignorance of what was recited in the other's sale deed. The fact that they belong to different castes obviously added an edge to the conflict. They had to be educated to perceive that it was not the principal issue at stake. A meeting between them, an examination of the title deeds, a measurement of the properties, soon convinced them that it was a party wall, jointly owned by both. The caste factor no longer added fuel once it was shown to be irrelevant and the fire was quenched.

This approach should not yield any inflexible rule favouring the elimination of caste factor totally from the negotiations. Here is an instance where the perception of the issues involved in the dispute would have been inadequate if the caste factor had been ignored. A caste hindu vended groceries in a small shop in a harijan colony in a village, 10 km from Tiruporur. When he had a guest in his home, as a regular customer of the shop he sent his 7 year old child to buy cooking soda for 10 paise. The shopkeeper refused to serve, saying that nothing can be sold under 25 paise. The child persisted saying that, if need be, the balance would be paid later by her father. The shopkeeper shouted and slapped the child on the cheek. The child ran back weeping, to report to her father what had happened. He felt humiliated in the presence of the guest. A few of his neighbours came to the shop and beat the shopkeeper. They charged the shopkeeper with high handedness and accused him of so behaving because the child was a harijan. This soon developed into a confrontation between harijans and caste hindus in the village. He came to the mediation centre; but the shopkeeper would not. The mediation centre arranged for one of the mediators to go to the village. He met them, talked to the villagers as well as the shopkeeper and settled the dispute. The caste hindus had to be sought out and told about the Civil Rights Act and the legal consequences of any conduct violative of it apart from the social values emerging from the dispute.

Thus part of the educational process is to learn how to approach a conflict. People should be persuaded to approach a conflict positively, creatively and reflectively. Each disputant has to be made to think of the other person involved in the dispute in terms of rational reactions. This is not done in a day. If you expect a miracle, you are in for a disappointment. Criteria for "success" are more elusive. It is a moot point whether our handling of the above dispute would be regarded as a "success" by many. It is an open-ended effort in which there is no immediate tapering of the effort to a "success". A helping hand, not involved in the conflict may start and promote this process of conciliation.

A word of caution. Care should be taken to avoid reproducing the power structure of the wider society in the mediation programme. The police, court staff, caste hierarchy, politicians, local exploiters and others of the kind should be avoided. No doubt, we have to look for certain skills in a person who offers to act as a mediator. He has to inspire confidence that he is acting in the interests of the parties and not for some concealed benefit for himself. He has to articulate the values

underlying the mediation programme. He has to encourage others to share these values. he has to invest in others' skills by showing confidence in them. He should have a vision to inspire his fellow workers. he should be boldly innovative in shaping solutions. He has to show initiative as it is needed in conflict-handling. Sometimes, even the prospect of a settlement of the dispute has to be risked by making a daring approach at reconciliation. Such risks can be taken only when the parties have full faith in the mediator. A non-assertive attitude, active listening, sharing possible approaches to solutions, tenacity in the pursuit of consensus, faith in the people and unabashed happiness at the resulting conciliation are some of the skills called for in a mediator. May be, some have more of one or another of these. The other qualities have to be painstakingly developed to strike a happy balance. Only then, credibility will be no problem.

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OTHER PREFERENCES

By

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K was at Tiruporur Mediation Centre with his problem about the enjoyment of the produce of a tamarind tree. It was on government porumboke land. He held a 2-C patta. As per standing orders, he had no title to the tree or to the land on which the tree stood. He was only a licensee from the government to enjoy the yield from the tree. B's family was interfering with K's enjoyment. B had a hut in the shade of the tree. He had put it up thirty years ago on the suggestion of K's late father who had already occupied the area and was living in a hut in a part thereof. On talking it over, B readily conceded K's right to the produce from the tree. In the intake K had focused only on the right to enjoy the tree without obstruction from K. In fact K did not ask for B vacating the hut. Once, the agreement regarding K's right to gather the produce was recorded at the centre and both parties signed, the question of access to the tree came up for discussion. B had demarcated the area in his enjoyment with a live fence. It included the tamarind tree also. K asked for the fence to be shifted to exclude the tree. B would not discuss that question.

It transpired that after the intake at the centre, K had placed the same dispute before the jamat at the mosque. Both K and B are muslims. When asked about it, K explained how B was the Muthavalli at the mosque and so K preferred the mediation centre on the first sunday. But owing to pressure from some friends he placed it before the jamat also next day. They talked about it, but did not come to any conclusion. Hence both parties came to the centre next sunday. Again when the question of the fence came up, they said that they would discuss it at the jamat. Why ?

Muslims fight shy of taking their disputes to a secular forum. The dispute about a tree or a fence is not a religious matter. The effective social control by the religious leaders inhibits the free choice of mohammaden citizens even as regards non-religious matters, like dispute resolution. What is the social sanction for religious leader's decisions and discipline in matters secular ? In our society there is no compartmentalization between what is religious and what is secular. The religious leader can and often does guide the parties in non-religious matters also. The transition from religious norms to moral code is imperceptible. The mediator at Tiruporur was faced with a larger context than what the tamarind produce would suggest. Mohammaden initiators were rare at the centre.

On an earlier occasion, a young woman approached the mediation centre at Sriperumbudur. She was working as a teacher in a school where her husband was the correspondent. Both are muslims. It was a matrimonial dispute. The wife has some apprehension that her husband was a drug addict. When the husband responded, his preliminary objection was as to how a mohammaden woman could come to the mediation centre and that too with a grievance against her husband. An hour and more was spent in the attempt to satisfy him or even start the issue and get to the issue between them; all in vain. He kept reverting to the availability of the jamat for such disputes between spouses.

Were they asked to solve the problem regarding the tamarind tree also at the jamat ?

A couple of weeks later, a field worker was sent to contact both the parties to find out if they had found a solution at the jamat in the mosque. On ascertaining that the effort was not fruitful, he suggested to them that one more visit to the mediation centre might not be unhelpful. They came the next Sunday. They came the next Sunday.

The mediator explained to B how K had the right to the produce and therefore, a right to access to the tree to gather the produce. He was also under obligation, as per the terms of the tree patta to safeguard the government tree. Hence any fence around the tree impeding his access would be violative of his right and so was liable to be removed by the government authorities at the village level. This was seen by the mediator as a legal input to enable B to retrace his steps from the rigid stance he had taken as regards his fence. The probable result of any contest before the authorities or court was likely to be in favour of K. Knowledge of this may persuade B to take a more realistic stand. The preference for the contest is watered down. B was enabled to turn back from the confrontation. It was particularly difficult for K as he was a leader at the mosque. But he did it at the mediation centre. A retreat is less unpalatable when there is progress to be made in another direction. In a battle it is strategic withdrawal.

It would appear as though the legal input about their rights had a subordinate role as a strategy. But it had in fact, a supportive function. It furnished a motivation for B to resume the search for solution. If it had been given primacy, perhaps K would have become intractable finding that law was on his side. He may have asked for B vacating the land by dismantling the hut put up with K's father's permission. That would have landed both parties in endless bickering.