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DEMOCRATIC PARTICIPATION AND ADMINISTRATION OF JUSTICE - TIRUPORUR EXPERIENCE

By

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Judicial system is the specialised collective apparatus for social control. It is an official agency organised by the government. It is the symbol of the coercive power of the state. It is totally bureaucratized. The Indian court system has all the evils of bureaucracy. Courts are dominating institutions. The management of dominating institutions not only manages its personnel, but also its clientele. The judges and the lawyers are the management in the administration of the justice. Is the management at the command and service of the clientele ? No. A dominating institution can never be responsive to democratic participation which requires popular involvement at grass root level.

The judicial officers in India are not elected. They are appointed by the government. They are not accountable to the people. Thus there is not even a constructive democratic participation in the administration of justice through the judges. Indeed their ethics as of now require them to keep away from the people and their representatives ! The staff are government servants who too have nothing to do with the people directly as such. The lawyers are not in any way disabled from contact with people. They can serve as a conduit for democratic participation in the administration of justice. They are the only link; but do they function as such ? Does the lawyer exploit the system or enrich it ?

What is the lawyer's attitude towards the people vis-vis the administration of justice ? Social identity is a normative expectation. Illiteracy is the stigma that denies social identity to the poor, particularly the rural poor. The Indian lawyer is mostly drawn from the middle class. Hence the lawyer of today looks upon the poor as different from others. The illiterate is a discounted person. The rural illiterate is doubly discounted. India is rural. Thus the discrediting effect is extensive and covers most of India. Stigmas of inferiority have to be perceived as denial of basic humanity. It violates rights. Annulment of that discrimination may prejudice interests only. The illiterate has his own value system; So too the poor. The lawyer in his inter relation with them has no accommodative adjustment. Even when the public was associated with the administration of justice as jurors and assessors, it was hedged in with a lot of reservations. Even that token association has been abolished. The legal system has not accepted the people as part of the structure. There can be no democratic participation without that acceptance. To achieve such acceptance, the lawyer's value system has to be reoriented and enriched. Today, the lawyer in India interacts only with the litigant. He must be exposed to the people.

Administration of justice in India is adjudicatory. This calls for a type of structural organisation which leaves no scope for involvement of people in the process of administration of justice. The state wields the power. It leaves the poor powerless. The poor have the power, the social power; it is potential. It has to be activated. Lawyers are the power activators. They should deliver the power by injecting it in to the social relations. To achieve this, communication should be established. It is best done in the context of their own conflicts. Conflict is a social process. It releases power as a component of social relationship. When a lawyer gets involved in the conflicts of the poor, he should evaluate relevant situations in terms of their own norms and values. Any attempt to graft the poor and illiterate on to the adjudicatory judicial system will be a tragic failure. If the lawyer enters the world of the poor without any sense of condescension but as an attempt at peer participation, he would have at least learnt the commonality of behaviour with them. That is a threshold task for the lawyer before he can hope to succeed in achieving a democratic participation in the administration of justice. Participative justice.

Administration of justice is an instance of conflict management. India has not dismantled the adversarial method introduced by the British. Social justice was obtaining in India before the advent of the British. Conflicts were resolved by the people themselves at the village level by panchayats. Solutions were moulded for each case. After an initial policy of non interference with such grass root institutions, the British soon looked upon them as rival sources of power and proceeded to dismantle them. Downgraded as only a forum for caste disputes of custom and etiquette, the village panchayats became caste panchayats and have all but disappeared today.

Tiruporur is a bold experiment in adapting the panchayat to present day needs of the rural public. The lawyer represents the secular force of law and cuts across religions and castes. Informal and flexible methods of mediation are adopted to settle the disputes of the rural poor who bring the disputes of their own accord. The give and take of the negotiations involves them in resolution of disputes. The implementation of solution by consensus is by parties themselves. The lawyer-mediator helps. This is no substitute for courts. It should not be seen in the context of docket explosion. It is an exposure of the people to citizenship values.

Tiruporur is a village in Chengalpattu district, about 50 Km from Madras. The Tamil Nadu State Legal Aid & Advice Board runs one of its 50 mediation centres there. Started in October 1983, it has processed 500 disputes in five years, mostly interpersonal. More than 90% of the initiators are drawn from Scheduled class and Backward class, the poorest of the poor. The thrust of the programme is to dispel the restraints of helplessness, fatalism and lethargy often displayed by the rural poor while interacting in a conflict context. That only two thirds of the intake reached the negotiating table shows how false prestige, pessimism and ignorance stood in the way of many a disputant responding to the call from the centre. Ofcourse, that on an average 2 disputants came to the centre per session (weekly) of their own accord without any formal source of referral speaks for the credibility of the programme.

The Tamil Nadu State Legal Aid & Advice Board is a non political organisation. Its programme organizes mediation only in non-realistic conflicts. Interpersonal, it is tension-releasing interaction between close relations, friends or neighbours in the context of privations of poverty. That only one third of the total intake saw mediated settlement shows the extent to which fear, anger and bitterness cloud the perceptions of the poor in respect of the social functions of the conflict. The objective is to dispel these frustrations and to evolve a responsive social orientation.

Conflict is a social process. Social conflict is purposeful behaviour. People have to realize that conflict can be managed, regulated and resolved, before they can acquire skills to use conflicts as a social tool. Such a realization can emerge only from the personal experience of the people. Their exposure to and involvement in the process of the conflict resolution at the mediation centres is an attempt in that direction. This experience in such non realistic conflicts has to be enlarged and adapted for use of conflict as a social tool at a collective level in external goal seeking struggles. It would be easier for the rural poor to perceive that social power can be used in a realistic conflict to achieve a change which will bring the desired value within reach. Prediction and prevention of conflicts, as further refinement of these skills will not be beyond their reach. Familiarity with conflict values will enable the poor to employ anticipatory management tactics for regulation of non-legitimate conflict in to legitimate struggle, productive of social benefit to the poor. The experience revealed in the following charts is a strategy for such value orientation to transform their perception of conflict at grass root level.

Such a perception is a necessary prelude to any meaningful democratic participation in the field of justice. It is the key path to the goal of democratic participation, a perception by people of conflict as a social tool. The final structure of such participation can be built only on that foundation. Without it, it will be only a cosmetic change. It will add to the alienation of the people from the administration of justice. A social vision should inspire the legal profession. That vision must set an agenda for action. Today the lawyer in India is a prisoner of the system. He identifies law with the system. His values must change. By insulating himself from the people, the lawyer misses contemporary experience which updates and corrects the wisdom of the past as reflected by the system. Unarticulated social experience can be tapped for social benefit only by reaching out to the people. Lawyers should breakout of the system, legal system, bureaucratic system of all sorts. They should go to the people as agents of change, a change for the better. Better life for the poor; better quality of life. This small experiment in democratic and hence fruitful participation in the area of justice deserves to be replicated all over India. It is for the lawyers to take the challenge.

Ref:

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