Chapter VI

INTROSPECTION
Chapter 6

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In the last chapter we have seen that there are four organs of judiciary. Out of these the brain and heart of judiciary consists of the advocates and the judges. Positive change in the functioning of these vital organs can really make a positive change for the ailing judiciary. A change in any entity however is not possible unless he introspects himself. Judiciary is not an exception to this rule. The person who does not introspect does not learn from his past mistakes. If he does not realize his mistakes he will not be ready to face challenges of the future. It is therefore necessary to introspect. It is necessary aspect for human being or an institution to transform him for present and future's challenges.

The introspection requires looking in the one's own heart, going down the memory lane and carefully observe one's own reflection into a mirror which has a capacity to reflect the truth without any veil. After viewing this true reflection, one should sit quietly and think of his distorted image of which he was not aware till he has seen it in the mirror and then think of changing his appearance to a fanciful personality. For the judiciary the best mirror to find its true reflection is the heart of judges and advocates. Let us find out what the hearts of judges and
advocates of the present day will reflect when they pip into the mirror of their heart.

Today every citizen of India looks to the judiciary as the protector of human rights. Every citizens of India wants that the judiciary should protect the cultural heritage of the country, its wide life, its forest, its monuments and even the modesty of their women. No citizen is quite sure that any other institutions except the judiciary have the power, potential and firmness to provide them justice. Unfortunately it has been also seen that many problems exist in the society because of indecisiveness or because of protracted trials by the judiciary. Let us take an example of Ayodhya land dispute protraction. Another such protracted trial is Bofors affairs. The investigation in this case continued for several years. The case filed by CBI (Central Bureau of investigation, the highest investigating agency of the country) against Win Chaddha could not proceed further as he continued to protract trial by taking advantage of available opportunities to challenge every order passed by the trial judge before High Court and Supreme Court till he was alive.

Yet another such case is of A.R.Antuley. This case invoked an interesting question of corruption in public life. The trial continued for almost two decades. Till then corruption become way of public life. Consequently allegations of corruption against A.R.Antulay started to appear negligible.
Many other such disputes remain lingering in the courts, which result in social unrest in the society.

During the last decades of last century the judicial activism has grown to such an extent that most scholars have spoken about interference of judiciary in the functions of other wings of constitutional institutions. First aspect of introspection is about the crossing limits of jurisdiction. An American author Henry Abraham in his judicial process provided sixteen great maxims of judicial self-restraint,

"1. Before the court looks at a case officially, a definite case in law must exist under the Constitution. The court refuses to pronounce on abstract and contingent issues.
2. The parties must have standing; only a person who has been injured by the issue can bring a case.
3 The court doesn't render advisory opinions unless a definite case exists or if the President requests it to do so under Article 143. However there have been cases of ministers unofficially seeking the advice of judges on policy matters and this is not in accordance with the Constitution.
4. The Petitioner must cite the specific Constitutional provision involved and not refer to the Constitution generally. This prevents cases from being based upon the "spirit of the Constitution".
5. The court will not allow a person who has availed of the benefits of a law to challenge its legality.

6. The remedies available in the lower courts must have been exhausted. This facilitates respect for the jurisdiction of the lower courts as well.

7. While other issues may be involved, the central issue must be a Constitutional one.

8. The Apex Court reviews only questions of law and hardly ever looks at questions of fact, as they are best left to the lower courts.

9. The Court generally adheres to the doctrine of Stare Decisis to avoid instability in the law.

10. The court may defer to legislative or executive actions by classifying them as political questions and refusing to decide them.

11. There is a presumption in favour of the Constitutionality of the impugned Act.

12. If the Court can decide an issue on grounds that aren't Constitutional it will do so.

13. The court will not attribute bad motives to the Legislature, as they are after all the elected representatives of the people.

14. If a part of the statute is unconstitutional, the court will try to apply the doctrine of severability so as to avoid striking down the entire now.

15. Laws are tested against the Constitution and not
against reason and logic. This reduces to a large extent, the personal biases of the judges coming into play.

16. The court doesn't act as a check against bad representation; only the process of voting can act as such a check.¹

The above maxims reflect the conscious attempt on the part of the judges to restrain their own powers. However, most of these maxims are devoid of reality. They are not suitable to ground realities. As there are a host of other factors which may pressurize a judge to act contrary to the norms of behavior. The above maxims merely represent the expectations from the judges, it is however not possible to adhere to these maxims unless the judges are suitably placed financially, laced with appropriate powers and provided with enough protection.

On going through these maxims when we look to the decisions given by the courts it would be very clear that there is much more in these maxims which we will have to learn. Several great problems came before the judiciary in past many years. While dealing with these problems divergent opinions continued to pour in, before the problem is settled by Apex court. In case of some of the problem the judiciary also remained indecisive. With the passage of time between one view of the Court, which later on found to be an incorrect view

arises, why husband and wife, if they compound or compromise, setting their differences, is not allowed compounding offences? However, it being the domain of the Legislature, whether to include or not in the provisions of section 320, Criminal Procedure Code? It is our common experience that the minor frictions, which get distorted into disruption, are really the wear and tear of the wedded life. Stability of marriage, being in the interest of individuals, family and society, the spouses be allowed to forgive and forget their differences and to lead the marital bliss.¹

Justifying his conclusions to allow composition of non-compoundable offences, His Lordship held,

"In the case of Ram Shankar and others vs. State of Uttar Pradesh, 1982 (3) SCC 388 (i). Their Lordships converted the conviction of appellant Ram Shanker from one under section 307, Indian Penal Code to that under sections 325/34 Indian Penal Code and sanctioned compounding of the offence as the parties had settled their differences and acquitted Ram Shanker of the charges framed against him. In another case of Mainuddin vs. State of Uttar Pradesh and another, 1982 (3) SCC 367 (ii), Their Lordships granted permission to the parties before them to compound the offences punishable under

¹ Suresh v. State of Maharashtra"(1991 MhLJ 1106)
sections 324 and 325, Indian Penal Code. Consequently the appellant was acquitted of the charges. Similarly, in a case of *Hindu Singh and others vs. State of Uttar Pradesh, 1982 (3) SCC 368 (ii)*, in the appeal before Their Lordships, the parties being closely related, they were permitted to compound the offence under sections 324 and 325 of Indian Penal Code and the order of conviction and sentence was set aside and the accused were acquitted.

In the case of *Ramesh Lal vs. State of Haryana, 1983 (1) SCC 368*, Their Lordships of the Supreme Court allowed the parties to enter into a composition to restore friendly and good neighbourly relations as well as to restore harmony in society, the offence under sections 323, 324 and 325 read with 34 of Indian Penal Code.

Though not the identical case, but in a case under section 307, Indian Penal Code was before Their Lordships of the Supreme Court for consideration. In the case of *Mahesh Chand and another vs. State of Rajasthan, AIR 1988 SC 2111*, considering the special circumstances, even if the accused were convicted for the offence under section 307, Indian Penal Code, Their Lordships directed the trial Judge to accord permission to compound the offence after giving opportunity to the parties and after being
satisfied with the compromise between the parties. One of the accused was a lawyer practicing in lower Court. Counter cases arising out of the same transaction were already compromised.\(^1\)

It is pertinent to note that in the case of Suresh (cited supra) the case was sent for recording composition by the trial Magistrate. This precedent was there fore assimilated by the judiciary as making section 498-A compoundable is the law laid down by High Court. So this offence which as per the Code of Criminal Procedure is non compoundable were considered as compoundable for 6 years till this view was unsettled in the year 1997.

In the year 1997 in the case of *Neeta V. Vimal* (1997(3) *MhLJ* 884) His Lordship held that leave apart Magistrate even the High court has no power to direct composition of the offence under section 498-A of the Indian Penal Code. For justifying his view His lordship observed,

"On the other hand, the Supreme Court has expressed and taken a consistent view that the offences which are not compoundable cannot be allowed to be compounded as can be seen from the case of Biswabahan Das vs. Gopen Chandra Hazaria reported in *AIR* 1967 SC 895, and the case of Ramesh Chandra Thakur vs. A.P. Jhaveri reported in *AIR* 1973

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In the case of *Biswabahan Das (supra)*, the Supreme Court has observed as under:

"We are unable to accept the above reasoning. If a person is charged with an offence, then unless there is some provision for composition of it the law must take its course and the charge enquired into resulting either in conviction or acquittal. If composition of an offence were permissible under the law, the effect of such composition would depend on what the law provided for. If the effect of composition is to amount to an acquittal then it may be said that no stigma should attach to the character of the person, but unless that is expressly provided for, the mere rendering of compensation would not amount to the vindication of the character of the person charged with the offence."

Similarly in the case of *Ramesh Chandra Thakur (supra)* the Supreme Court has observed:

"In the case of *K. Chinnaswamy Reddy vs. State of Andhra Pradesh*, (1963) 3 SCR 412 AIR 1962 SC 1788) this Court mentioned the circumstances under which an order of acquittal can be set aside in revision by the High Court and observed in this context:

"We may however indicate some cases of this kind, which would in our opinion justify the High Court in interfering with a finding of acquittal in revision. These cases may be; where the trial Court has no jurisdiction
to try the case but has still acquitted the accused, or where the trial Court has wrongly shut out evidence which the prosecution wished to produce, or where the appeal court has wrongly held evidence which was admitted by the trial court to be inadmissible, or where material evidence has been overlooked either by the trial court or by the appeal court, or where the acquittal is based on a compounding of the offence, which is invalid under the law. These and other cases of similar nature can properly be held to be cases of exceptional nature, where the High Court can justifiably interfere with an order of acquittal, and in such a case it is obvious that it cannot be said that High Court was doing indirectly what it could not do directly in view of the provisions of section 439(4)."

"It would follow from the above that where an acquittal is based on the compounding of an offence and the compounding is invalid under the law, the acquittal would be liable to be set aside by the High Court in exercise of its revisional powers. As the acquittal of the appellant by the trial Court in the present case was based upon the compounding of an offence which was not compoundable, the High Court, in our view rightly set aside the acquittal of the appellant."1

After considering the above views and the views of Their

1. Neeta V. Vimal 1997(3) MhLJ 884
Lordships in the case of *Sholapur Municipal Corporation V. Ramkrishna* (AIR 1970 Bom. 333) and *Annama devula v. State of Andhra Pradesh* (1995 Cri LJ 3964 AP) His Lordship unsettling the earlier view and confusion created by it held,

"After taking into consideration various authorities of the Supreme Court, and High Courts in the country, the learned Judge held that the High Court, has no power and jurisdiction to direct subordinate criminal court to permit the parties to compound offences which are otherwise non-compoundable. I fully agree with the view taken by the learned Judge of the Andhra Pradesh High Court in the matter."

From the above discussion and the decisions of High Courts and Apex court it is very clear that if the judges observe the above said maxims many such unwarranted situations can be avoided.

Another example is of extent of judicial review. Earlier it was the view of Supreme Court about its own powers of judicial review that only statutory law is included in the definition of law under article 13 of the constitution.

The question whether the word 'law' in clause (2) of Article 13 also includes a 'constitutional amendment' was for the first time considered by the supreme Court in *Shankari Prasad v. Union of India*. *AIR 1951 SC 458* The court held that the word

1. Neeta V. Vimal 1997(3) Mh LJ 884
'law' in clause (2) did not include law made by Parliament under Article 368. The word 'law' in Article 13 must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constitutional power and therefore Article 13 (2) did not affect amendments made under Article 368. The majority in Sajjan Singh v. State of Rajasthan (AIR 1965 SC 845) followed this interpretation of Shankari Prasad's case. But in Golak Nath v. State of Punjab (AIR 1967 SC 1643) the supreme Court overruled its decision in the aforesaid case and held that the word 'law' in Article 13 (2) included every branch of law, statutory or constitutional and hence, if an amendment to the Constitution took away or abridged fundamental right of citizens, the amendment would be declared void. While deciding the case of Kesavananda Bharati v. State of Kerala (AIR 1973 SC 1461) the Apex court overruled the Golak Nath's case and upheld the validity of the 24th amendment which defined law under clause 4 of Article 13 not to include constitutional amendments.

In spite of above decisions the question of availability of constitutional amendment for judicial review is such a question, which was now and again raised before Supreme Court since 1951 (Shankari Prasad's case) till the year 1982 (Vamanrao's case).
Divergent views were given by the different High Courts about inclusion of right to death under article 19 and 21 of the constitution.

The question of limitation for the Criminal trial was subject of divergent views of Supreme Court for last ten years. While deciding the case of *Common cause vs. Union of India* (AIR 1996 SC 1619) and *Common cause vs. Union of India* (AIR 1997 SC 1539) the appellate Courts fixed particular time limit for particular category of cases. It was directed by the Supreme Court that if the trial of a criminal case is not completed within the given frame of time limit, the case should be disposed of. In the case of *Rajdeo Sharma vs. State of Bihar* (1999 criminal LJ 4541) Apex court aided some more category of cases to this list. Recently the question of imposing limitation for disposal of criminal cases was re-agitated before Honourable Apex court in the case of *P.R. Rao v. State of Karnataka* 2002 (3) MhLJ 145 SC). Their Lordship set aside all the above decisions. Many accused were fortunate enough to get the benefit of the observations in the case of common cause (cited supra) and Rajdeo Sharma (cited supra). Thousands of cases were disposed of by taking recourse of the observations in the case of common cause and Rajdeo Sharma, which were ultimately found not to be a good law. This eventuality speaks volumes about attitude of judiciary to the serious problems. Such serious problems considering their gravity would have been
referred to the constitutional bench. If this recourse would have taken the malady of ripping benefit from the observations in a particular case, which was ultimately found not to be a good law, would not have arisen.

Expectations from the judges in judicial reforms are narrated by justice saldhana in following words.

"Judges are not birds of passage. It is true that they occupy a position in the judiciary for a prescribed period of time but that post being one of crucial and vital significance, it is expected of them that they fulfill their constitutional function of not only upholding the law, enforcing it, but also contributing to it. It has often been said that the law in the hands of a good Judge is similar to a piece of clay in the hands of a dexterous potter, who with a degree of creativity and originality, can shape it into a piece of art; something to be admired and remembered. It is his talent, drive and innovation that can distinguish the outcome from an ordinary, unimaginative mud pot to an exquisite work of beauty"1

The societies are fast changing so is the legislation. The judges also have to change their views. It is however noticed that the judges take long time to shed their view of thinking. The judges not only interprete the law, declare the law but their

1. Judges Role in Judicial reforms article in Legal news and views July 02 P.40
living oracles of law. Judges in fact lay down the law. This aspect of jurisprudence however over bears the judges. Recently while correcting its earlier view by overruling two prominent decisions Honourable Judges of Apex Courts in P.Ramchandraraao vs. State of Karnataka (2002(3) MhLJ 159) highlighted distinction between law made by legislature and law laid down by judges by quoting few lines from salmond's principle of jurisprudence (11 Edition page 115) which are as under,

"We must distinguish law-making by legislators from law-making by the Courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the Courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator."1

Honourable Supreme Court also quoted a portion of research work by S.P.Sathe by name 'Judicial activism in India transgressing border and enforcing limits'. The said passage is as under,

"Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The Court has taken over

1. P. Ramchandra Raov state of Karnataka 2002 (3) MhLJ 159 at p.22)
the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional Court."\(^1\)

The Apex Court further observed,
"In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ. While law-making through interpretation and expansion of the meanings of the open-textured expressions such as 'due process of law' 'equal protection of law', or 'freedom of speech and expression' is a legitimate judicial function, the making of an entirely new law........through directions...is not a legitimate judicial function."\(^2\)

In my opinion the Act of Apex Court to overrule Common cause case and Rajdeo Sharma case (cited supra) by the

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1. P. Ramchandra Roo Vs.state on Karnataka(2003(B) ) Mhla 159at p.242
2. P. Ramchandra Roo Vs.state on Karnataka(2003(B) ) Mhla 159at p.250
judgment P.R.Rao Vs. Karnataka is a true example of introspection by judiciary. By the observations in the case of P.R.Rao Honourable Apex Court provided several points to ponder and correct the past mistakes.

The judges hold their own views about particular problems of society there is no harm in holding such views, however if such views convert into prejudices then such views are detrimental to the judicial functioning. The things become more badly when this prejudice transgresses into the decision of judges. It is expected that no judge shall be victim of such prejudices lord Dennigs, citing Lord Salmon made following observations about such mentality of a judge,

"I am and have always been satisfied that no judge would be influenced in his judgment by what may be said by the media. If he were, he would not be fit to be a judge." (Lord Salmond in exclusive Brethren case 1980 (3) WLR 109.)

It is however noticed that some how even the imminent personalities also fall prey to the prejudices. They think that their viewpoint reflected in their judgments is the only rational conclusion, however it is nothing but their prejudices, which cries loud from their judgment. I cite few specific cases about this aspect supported by the reflection of prejudices in the judgments.

1. What next in the Law 1st Edi. P:257
Prejudices play a major role in exercising discretion. There are several sectors of judicial findings, which are not and cannot be kept within the four corners of codification. Few such areas are giving benefit of doubt to the accused, sentencing the accused and granting interim relief. The principle of giving benefit of doubt to the accused is limited to the eventuality of existence of reasonable doubt about the occurrence of incident. The 'reasonable doubt' is one, which occurs to a prudent and reasonable man.

Section 3 of the Evidence Act while explaining the meaning of the words "proved", "disproved" and "not proved" lays down the standard of proof, namely, about the existence or non-existence of the circumstances from the point of view of a prudent man. The section is so worded as to provide for two conditions of mind, first, that in which a man feels absolutely certain of a fact, in other words, "believe it to exist" and secondly in which though he may not feel absolutely certain of a fact, he thinks it so extremely probable that a prudent man would under the circumstances act on the assumption of its existence. The Act while adopting the requirement of the prudent man as an appropriate concrete standards by which to measure proof at the same time contemplates circumstances or condition of probability or improbability.
It is this degree of certainty to be arrived where the circumstances before a fact is said to be proved. A fact is said to be disproved when the Court believes that it does not exist or considered its non-existence so probable in the view of a prudent man and now we come to the third stage where in the view of a prudent man the fact is not proved i.e. neither proved nor disproved. It is this doubt, which occurs to a reasonable man, has legal recognition in the field of criminal disputes and it is known as reasonable doubt. It is something different from moral conviction and it is also different from a suspicion. It is the result of a process of keen examination of the entire material on record by `a prudent man'. The trial courts however started to use the principle even by creating fanciful reasons for its use.

It is not that any judge is blamed of deliberately giving any particular accused benefit of doubt. The concerning factors are the prejudices and behavioural norms responsible for development of such tendency. Sometimes the prejudices play a vital role in diverting the mind of the Judge forcing him to take injudicious view. Flattering reasons are then given to justify such views. I will cite one example in this regard. It is concerning prejudices playing role in decision making process. The accused in this case was a "disparate character" that had undergone sentence for imprisonment for life and was released on Gandhi Jayanti day of 1972 a few days prior to the day of occurrence.
On 25th October 1972 the accused attacked one Rambharose and dealt several blows on vital parts of his body with knife. Rambharose released himself from the grip of the accused and ran inside his house and bolted the door. The accused chased him all the way with the bloodstained knife and knocked at the door asking him to open it. Meanwhile Mansukh came and tried to entreat the accused not to assault Rambharose. Thereupon, the accused struck deceased Mansukh. Mansukh tried to escape but the accused chased him over the distance of 200 to 250 feet and inflicted repeated knife blows on him, which resulted in his death. Thus the deceased was done to death by the accused because the former tried to prevent him from assaulting Rambharose.

This was the second Murder by the accused who was released from the jail by shortening his term of imprisonment on the occasion Birth-centenary celebrations of father of the nation. The act to murder a person trying to prevent him from committing the offence in a gruesome way described above was certainly a heinous crime committed by the accused. Accused was sentenced to death by trial court. The Hon'ble High Court confirmed sentence. Matter came up before 3 Judge's bench of Hon'ble Supreme Court.

I will quote contrary views in original to bring home the point agitated by me. Majority view from the mouth of ardent
opponent of death sentence attributed failure of penal institutions to cure criminality within the criminal as a sole cause of this cruel murder. Expressing his compassion for the condemned accused His Lordship also observed,

"This convict has had the agony hanging over his head since 1973 with near solitary confinement to boot. He must by now be more a "vegetable" than a person and hanging a vegetable is not death penalty."¹

Reacting sharply, dissenting view was expressed in following words,

"The case of this accused is destructive of the theory of reformation. The "therapeutic touch" which is said to be the best preventive to repetition of offence has been of no avail. Punishment must be designed so as to deter, as far as possible, from commission of similar offences. It should also serve as a warning to other members of society. In both aspects, the experiment of reformation has miserably failed. I am quite sure that with commutation of his death sentence, the accused will commit a few more murders and he would again become menace to the society."²

Hon'ble Lordship in his descending view further observed,

"...The humanistic approach should not obscure our sense of realities. When a man commits a crime against

¹ J. Krishna Ayer Rajendraprasad v. State of UP AIR 1979 SC 916
² J. A.P.Sen in Rajendraprasad v. State of UP AIR 1979 SC 916
society by committing a diabolical, cold-blooded, pre-planned murder of one innocent person the brutality of which shocks the conscience of the court, he must face the consequences of his act. Such a person forfeits his right to life."¹

A year later the majority view was overruled and a five judges bench of Hon’ble Supreme Court applauded the minority view in Bachansingh v. State of Punjab (AIR 1980 SC 898). This example is self-speaking as to how the prejudices colour the views of a person otherwise famous for his good qualities.

The much needed prudent man is there within every Judge, every person. Some times it hides behind the veil of prejudices and sometimes it is crumbled with the burden of escalating ego. The mantra to be always prudent is given by Their Lordships in Vijayee Singh v. State of UP by saying,

"Keep your mind reasonable, astute and alert. Keep your senses alert too so that the sentiments and pain of others should touch your heart and shake your mind." ²

It is further mentioned in the above citation that the view of judges should not be weak or vacillating, capricious, indolent, drowsy or confused. Vacillate means fluctuate in opinion, capricious means unpredictable, indolent means wishing to

avoid activity or exertion, drowsy and confused we all know. Again these are not the outer forces attacking the human mind. These bad qualities also develop from within. It is for the individual to decide whether he want to be prudent or otherwise. In order to shed this bad quality introspection is must.

Two main organs of judiciary, which can carry out judicial reforms, are the judges and advocates. I have pondered on several points on which the judges have to introspect. The advocates have to introspect on several points. The introspection is more necessary for advocates, because they are the connecting link between the active organs of judiciary and society. The image of the judiciary is projected through the conduct, behaviour, appearance and status of an advocate. Advocacy is said to be one of the Honourable profession. Unfortunately it is practically regarded to be a sinful profession. In satirical stories the advocates lie in hell. The advocates are regarded as bad elements in the society. They are thought of as the accomplice of a criminal having immunity against arrest, trial and punishment. Because of such a status of the advocate brilliant students are not ready to opt for profession of a lawyer. The advocates have to introspect about their present status by comparing it with their glorious past. They will certainly realize what they have to do to achieve the past glory.

We cannot forget the history that father of the nation relied
on the lawyers to carry forward struggle for independence. He gave a call to the lawyers to boycott the courts but at the same time he suggested them to develop a mechanism to provide an alternative forum for dispute resolution to the Indians so that they should not have to suffer because of the call for strike by the lawyers. He said,

"The lawyers are not to suspend practice and enjoy rest. They will be expected to induce their clients to boycott courts. They will improvise arbitration boards in order to settle disputes. A nation that is bent upon forcing justice from an unwilling government has little time in engaging mutual quarrels. This truth the lawyers will be expected to bring home to their clients."

Lord Dennings also has a faith in the lawyers. As per him it is just a question of bringing little professionalism in their acts and the advocates will be able to tackle any challenge before them. He says,

"The real reason for the delays is not slackness or dilatoriness of lawyers. They are as a class the most hardworking of all professional men. It often lies in their choice of priorities."

It is only by introspection that the lawyers will succeed to remove all blemishes stuck to the noble profession of advocacy.

1. Gandhiji on Lawyers Satyagraha Young India 11-8-1920
2. The due process of law Ed. 1st P.89
Today in almost all the bars throughout India we find very few advocates having accumulation of abundant litigations. Some more of them get enough to survive. Numbers of rest of advocates are not getting enough to keep their body and sole together. In this way the revenue attracted by the profession is not devoted equally amongst the fraternity of professionals, on the contrary there is a dismal picture. Most of the revenue generated in the profession go into the hands of few and keep the rest struggling to get hold of some of it for survival or enough to earn bread for their family. The new entrant in this profession almost did not get anything for quite a few years. The advocates have to think of proper distribution of wealth generated by profession. The advocates who do not get enough money engage themselves in unwholesome practice bringing infamy to the profession.

The advocates who had accumulation of work with them are not ready to justify with the work. They go on delaying the litigation in their hands. They're definitely enough busy not to give time for all the cases in their hands. This is one of the major causes of delay. The senior advocates under whom half a dozen junior advocates are working do not allow the juniors to proceed with the trial of litigation; on the contrary he keeps the junior advocates busy in taking dates. The advocates, more particularly the senior ones with whom the litigations are accumulated has to introspect for the reasons of their attitude
towards the juniors. It is possible that they can find out some solution to the problem of accumulation of work with few and rational way to distribute the same to the promising juniors. In this way the obstacle in the pace of trial will be removed and the juniors will continue to get practical knowledge.

It has been noticed that a brilliant chaps who get excellent marks in his academic qualification may not be so successful in the practice. Take an example of the lady advocates. It has been observed that the girls appearing in examinations of law score better marks than boys. They also excel in other activities like debate competitions, eloquence and other practical activities. However when they go to the bar most of them remain brief less for quite a few years. Out of frustration many of them choose to abandon the profession. The advocates have to introspect what are the reasons for such phenomenon. Whether some other qualities than the bookish and professional teachings in the law colleges are necessary to succeed as a lawyer. If yes what are they? If such qualities are distinguished, why they should not be allowed to be adopted by all to flourish in the profession. What is the profession secret of a successful advocate? Whether it has to do something with his talent or character or whether he is successful because of some other things which he do not want to share with his colleagues. The tactics adopted by individual survivor advocates ruin the future of lot other advocates. These are some
of the eye opening questions, which can only be answered by the profession whole after introspection.

If the busy advocates start sharing the work accumulated with them which they will not be able to complete for considerable years could provide work to many of the advocates who do not get work and thus money for survival. It will help the judiciary to reduce pendency to the considerable extent.

The delaying tactics of the advocates resulted in projecting a picture before legislature that the advocate is the only organ of judiciary responsible for delaying justice delivery. Because of this while enacting social legislation like the Ceiling Act and other similar legislations the government created a bar for appearance of advocates in the litigation arising out of these legislations. Ambassadors of such thought sound following benefit of removing the lawyer from the helm of litigation. Ashwini Ray a noted academician of JNU writes,

"The possibilities of more direct communication between the litigants and Judges, without the intervention of lawyers, needs passive encouragement from within the system: systemic reforms to facilitate the process by simplifying the procedures of litigation could be explored." 1

Not only the state, but also even the society is also

1. The judicial system in post-colonial democracy: the Indian experience -Judging the Judges P.149
coming to the conclusion that it is the fraternity of advocates who is not allowing their litigations to be disposed off. The society is therefore developing a mechanism to resolve their disputes internally to avoid recourse to the justice delivery system. Now a day businessmen or financial institutions do not want to file suits for few thousands of rupees. The transactions of even few lacs of rupees are settled out of the court. The person who has to get is ready to sustain considerable loss just to avoid appearance before the court because of thought of assured delay. In this way the judicial delays keep the citizens away from fair and judicious deal. At the same time the scrupulous elements in the society rip unfair advantage of this situation.

The person coming in the court for recovery of few thousands of rupees could not think of getting money before the lapse of few years. The landlord who wants possession of his house from the tenant for his bonafide need just cannot think of getting possession during the existence of such need. These and several other classes of litigants are sure of judicial delays. In search of quick justice such persons approach a muscle man than to come down to the court. The persons approaching to such elements are aware that the justice dispensed by such unscrupulous element will be quick and final. It will be delivered with assured execution.

This attitude of the society is not limited to simple disputes.
Gangsters or politicians are resolving the disputes regarding purchases of property in the mega cities with the assistance of unscrupulous elements. Noted academician Ashwini Ray writes about the attitude of the society in following words,

"In fact it is the parallel system along with the parallel economy, which is increasingly becoming the dominant component of the citizens conflict resolution and grievance redressal mechanism. In this sense by default, the judicial system has become dialectically linked with the criminalized system of governance in modern India's anomic politics, reinforcing it and affected by it, in a process of retrogressive symbiosis."  

In the recent past a film producer and a film actress rushed to a politician to support their cause in a dispute about a film when their dispute was still pending with the High Court. The politician siding the actress succeeded in imposing ban on exhibition of the film in which some objectionable scenes were included in the film without the consent of the actress. It is an irony that at that particular time the dispute for imposition of ban on exhibition of the film was sub-judice before Bombay High Court. If the advocate community gives a deep thinking to this attitude of the society they will soon realize that this attitude of the society will take away lot of litigation from the reach of justice delivery system. The ultimate losers will be the advocates, whose survival depends upon survival of Criminal justice system.

1. The judicial system in post-colonial democracy: the Indian experience -Judging the Judges P.145
Quality of judicial decision depends upon the quality of the advocates. The advocates are like the sensory organs for the judges. It is the quality of the material in the form of commentaries, precedents and applicability of law, which will reflect, in the finished product that is order or the judgment of the court. The advocates have to introspect about dwindling quality of their work. Most of the advocates have no command either over English language or vernacular. Command of an advocate every language is the important tool Lord Dennigs explain this in following words.

"The reason why the words are so important is because words are vehicle of thought." "To succeed in the profession of law, you must seek to cultivate command over language. Words are the lawyer's tools of trade."

Some who are better in the field of language have no respect for learning. Soon their knowledge becomes outdated. Lord Dennings while narrating importance of learning quoted Sir Edward Coke who says like this,

"There is no jewel in the world comparable to learning; no learning so excellent both for prince & subject, as knowledge of laws; and no knowledge of any laws so necessary for all estates and for all causes, concerning goods, lands or life, as the common laws of England."

1. The Discipline of Law Edi.1 P.5
2. Sir Edward Coke from cox's reports what next in the Law Edi. 1 P. 11
It is expected that the lawyer should have knowledge of every aspect of human life. He should know about the practice, mal practice, ethics and systems in which almost all the profession from Honourable profession of medicine to the profession of prostitution is carried. He must have knowledge how the share market works he as well should be conversant with how the stakes are made by the gambler in three cards. He should be well versed with the life style of millionaire and he should be equally aware of the life style of a tribal.

A man coming to lawyer had a problem before him. Many possible solutions to this problem are floating before his eyes. He comes to a lawyer to choose a solution from several possible solutions. Delmar Karlen an American jurist thinks about this aspect as under,

"Those who stay with the law find not just one or two paths open to them, but many paths criss crossing and intersecting. We regard the interchangeability of lawyer as a good factor of our system. It brings constantly fresh points of view into our court houses, law offices and law-schools and develop broad statesman like competency in those who are capable and fortunate enough."1

It is very unfortunate that the lawyers are not forthcoming to give a new face to the justice delivery system. They

1. Judicial Administration: An American Experience Edi. 1 P.45-46
apprehend that reduction of law cases by holding Lok-Adalat and conciliation courts will take away briefs from their hands. The advocates not only try to sabotage the movement of Lok-Adalat, they agitate for their other demands by suspending work before courts. This practice of advocates lower down their image before clients. Chief Justice Anand in his address in the all India seminar on judicial reforms by Supreme Court advocates on record expressed his following views on the strike of advocates,

"The grant of unnecessary adjournments on mere asking or on account of strike call adds to the problem. The Bar & Bench have together to resolve, to remedy their ills. Immediate attention is required to be given to these aspects if we wish to preserve people's faith in the rule of law and the effectiveness of the justice delivery system."¹

In an unhappy event of increasing court hours the judges and the lawyer have cross swords. Recently Supreme Court declared abandonment of court work by advocates illegal. The advocates however proceeded on boycott on the next day of this verdict making it impossible for Supreme Court to take any action against them. The advocates have to introspect in this regard and think over whether proceeding on strike will resolve their problems.


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Introspection by the two vital organs of judiciary will certainly bring them to a glorious path, which will lead, the Indian Justice delivery System to a glorious height.

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