SUBSTANTIVE AND PROCEDURAL REFORMS IN SUPREME COURT*

PRELIMINARY

A cynic once defined the lawyer as a person who makes his fortune by earning on the misfortune of others and takes pleasure in creating complexities in the administration of justice, by devising the best of procedural miserables and thereby distancing the seeker of justice from his goal. Today's seminar on "Substantive and Procedural Reforms in Supreme Court" must be taken as a just retort to the misguided observation of the cynic. For me, nothing could have been more pleasant, this evening, than being a party to a very useful and constructive discussion on "Substantive and Procedural Reforms in Supreme Court" organised under the aegis of the Supreme Court Bar Association, an apex body of apex lawyers.

The Supreme Court Bar Association deserves a hearty applause for having initiated the lecture series, spread over the year, in which the judges of the Supreme Court and the members of the Bar would be sitting together, busy discussing burning topics of the times. I also appreciate the endeavour of the association in not only initiating the lecture series but also bringing out the calendar of events spread over the year. It speaks aloud of the planning and determination of the Supreme Court Bar Association that it means business. The judges and the lawyers are often termed as two wheels of the chariot of justice. This lecture series is illustrative of the two wheels moving together for a common purpose. The series is sure to provide occasions and moments for mutual learning and further strengthening, our understanding of each other as also our individual knowledge and wits. Emerson said – "every man I meet is superior to me in some way and in that I shall learn from him".

I hope this lecture series would not only multiply our knowledge and understanding of the laws – Substantive and Procedural, but also of each other and thereby facilitate better achieving of the goal of justice – with lesser hassles – and rendering quality service to the litigants whom we are all meant to serve.

Substantive and Procedural reforms

It is no as easy task to state with precision, the distinction between what is substantive and what is procedural. Generally speaking – "Substantive law is concerned with the ends which the administration of justice seeks; procedural law deals with the means and instruments by which those ends are to be attained. The latter regulates the conduct and relations of courts and litigants in respect of the litigation itself; the former determines their conduct and relations in respect of the matters litigated."[1] In plain, simple language it may be said that the substantive law determines the goals and the procedural law lays the path by which the goal is to be achieved. Procedure covers not only the path but also the rules of traffic, mannerism and etiquette to co-peddlers. The procedure seems to be of paramount (if not of greater) significance with the substantive law. The Supreme Court Bar Association,

ever since I have come to know about it and have had the opportunity of closely watching its activities, has earned more and more esteem in my eyes. "No group has a greater responsibility today, in helping maintain our free institution of society than the lawyers. In fact, being a man of law, he is uniquely equipped through training, outlook and experience to be a leader of his fellow citizens"[2] and a person very appropriately suited to render, in times of need, his counsel both as a professional and as a friend.

According to Justice Frankfurter, the history of liberty has largely been the history of observance of procedural safeguards[3]. It is said – "unless people have an instinct for procedure, their conception of basic human rights is a waste of effort, and wherever we see a negation of those rights, it can be traced to a lack, an inadequacy or a violation of procedure. Hence procedure effectively comes first; the mechanism of argument and discovery are often set up before the rights they serve, take full form in practice"[4].

Man is not perfect though he is said to be the creation of God. How can the laws or practise, whether substantive or procedural, can be perfect when they are creations of man. There is always scope for improvement. The experiences, earned day in and day out, provide us with the requisite vision for seeing into future and overcoming the lapses, made in the past. What is needed is a continuing process of thinking and that is what the present day lectures propose to do.

The need for thinking on reforms is best highlighted in inimitable words of Late Justice D.A. Desai, who speaking on complexity and delays in litigation called the system as "interminable, time consuming, complex and expensive", emphasising the need for making the system less formal, more effective and speedy, shorn off procedural claptrap; else 'the lawyers laugh and legal philosophers weep'[5]. P.M. Bakshi, in his preface to the Fifteenth Edition of Mulla's Code of Civil Procedure, which he calls the Great White Book on Civil Procedure, has stated – "Procedure is sometimes described as the handmaiden of justice, but, in reality, this can be described as a half truth. There are occasions when procedural law may become much more important than the substantive law which defines rights and duties. The statement that 'substantive law resides in the interstices of procedure' reflects this reality. The litigant in court, and the sufferer who may be a prospective litigant, often find that with the strongest of cases and with a good deal of substantive law on their side, they must still be prepared to face possible challenges of a procedural nature, if they desire success in litigation."[6]

As the head of this institution, I am open to suggestions. Any positive suggestions, made with the objective of improving the functioning of the institution, are welcome. My very esteemed brother and sister judges would also be too willing to accept any suggestion which would improve the functioning of this Court and its working efficiency. Collectively, we all have to serve the nation and help the people of this country to secure justice – social, economic and political.

While discussing the reforms we should divide them into three parts. Firstly, reforms as a part of long-term planning which would need deeper discussions and changes of far-reaching implications. A process can be initiated but we will need patience for introducing reforms and watching their results. Secondly, short-term reforms which can be introduced post-haste and do not need much of ritualistic exercises to be performed. There is yet another, a third category, which does not need any exercise to be done, excepting a little bit

of introspection and a determination on individual or one to one basis. It is in this last category, wherein taking advantage of this occasion, I wish to invite your attention to a few points;

(1) *Defective Filing*: Although the filing in the Supreme Court is through Advocates-on-record, who enjoy the exclusive privilege of doing so and inasmuch as they have passed an examination, successfully and then designated as Advocates-on-record, it is disappointing to learn that 70 to 80% of the matters filed everyday in the Supreme Court are defective. There are cases on record where the matters have been returned for curing the defects. Repeated notices have also had to be issued for curing defects. Many a times, months and even years have been consumed for curing the defects before the matters are re-filed in the Supreme Court.

(2) *Service of notices*: The defect or default notices, issued by the Registry take a lot of time in securing service. The process serving agency has pointed out two difficulties: (i) at times, there is no one available at the office of the Advocates-on-Record to accept the delivery of notice; (ii) many Advocates-on-Record or their clerks have been reported as telling the process server that they were engaged only for the purpose of filing the matter in the Court, and thereafter the client has not retained any live contact with him and so he cannot accept the service of notice.

Following heads have been identified, matters relating to which need not be listed before the Court and can very well be dealt by a learned single Judge, sitting in chambers:—

(1) Applications for substitution other than those falling under Rule 1(15) of Order VI.

(2) Summons for non-prosecution.

(3) Applications for exemption from paying Court-fees.

(4) Applications for extension of time for paying Court-fees or for furnishing undertaking, bank guarantee or security.

(5) Applications for disposal of an appeal in terms of compromise petition.

(6) Applications for withdrawal of special leave petitions, appeal or writ petitions.

Ladies and Gentlemen. I am, if not overjoyed, certainly more than happy to be a party to the commencement of this lecture series. It has been a treat to listen to the presentations made and speeches delivered by the stalwarts of the legal profession, in particular, the key note address delivered by Mr. Fali S. Nariman, Senior Advocate and President, Bar Association of India as also the learned Attorney-General, Mr. Milon Banerjee, both of whom with their rich experience, far-sightedness and intuition are capable of contributing a lot to the cause of justice. Each one of them is an institution by himself. Mr. Pravin Parekh, the President of Supreme Court Bar Association, knows the grass-root problems from within and has a knack for finding easy and practical solutions to ticklish problems.

I call this day a divine day. "When a person puts in his highest and best efforts in any endeavour, he comes nearest to divinity. The full moon is only in the sky. On the earth, there can only be a broken fragment. But the striving for perfection brings one as near to the heaven as is possible in mundane existence."[7]

While inaugurating this lecture series and concluding the proceedings of the day, I wish this lecture series a grand success. I have a message to give for everyone including myself – the message which I have borrowed from a Diwali greeting card, sent to me by a well-wisher

of mine, who has unfortunately and unwittingly not quoted the name of the author of the message to whom I could have acknowledged my gratitude. The message reads:—

I am only one;

But still I am one;

I cannot do everything;

But still I can do something;

And because I cannot do everything;

I will not refuse to do something I can.

Fortunately, none of us is 'one'. This gathering is an assurance that we are all together and by our joint effort, we can do not only something but everything.

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* Inaugural speech at a Lecture Series organised by Supreme Court Bar Association on July 20, 2004, at ISIL Auditorium.

1. John Salmond, Jurisprudence, 12th Edn. by PJ Fitzgerald, [1966] Sweet & Maxwell, London at pp. 461-62.
2. HOOVER, J. Edgar, "The Lawyer's Place in the Role of Leadership," Texas Bar Journal, Vol. 27 (No. 2, Feb. 22, 1964), p. 72.
3. FRANKFURTER, Felix, in *McNabb* v. *United States*, 318 US 332 (347) (1943).
4. BOK, Curtis, Address, National Book Awards, New York, Jan. 26, 1954.
5. *Guru Nanak Foundation* v. *Rattan Singh & Sons.*, AIR 1981 SC 2075.
6. P.M. Bakshi, Preface to the Fifteenth Edition, Mulla's Code of Civil Procedure.
7. P.M. Bakshi, Preface to the Fifteenth Edition, Mulla's Code of Civil Procedure.