

CASE MANAGEMENT & COURT MANAGEMENT

- Roshan Dalvi

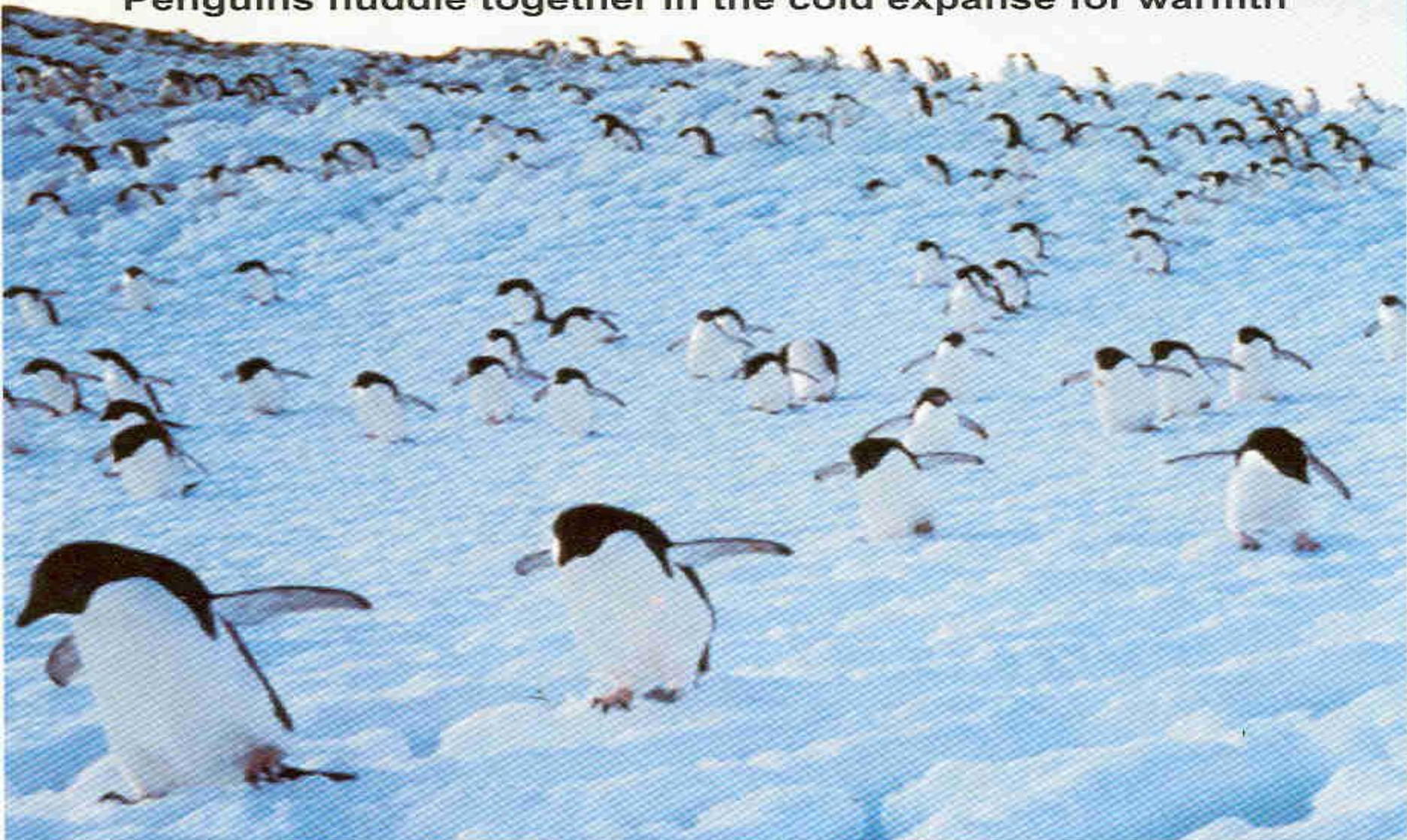
**Geese fly long distances in V formation,
taking turns to lead**



**LEADERSHIP
A PROCESS WHICH CAN BE SHARED**



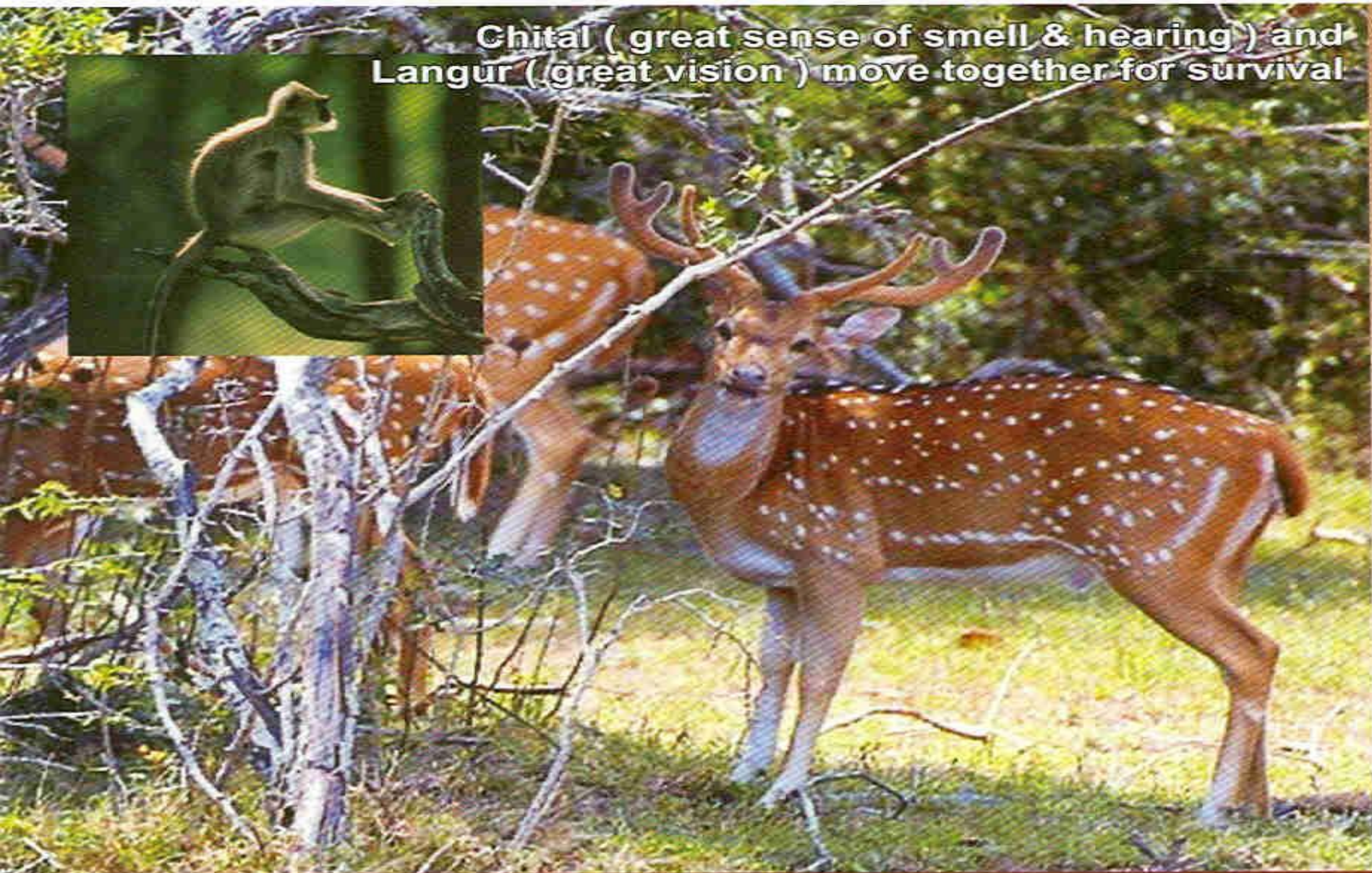
Penguins huddle together in the cold expanse for warmth



**BEYOND PURPOSE
TEAMS OFFER
A SENSE OF WELL-BEING**



Chital (great sense of smell & hearing) and
Langur (great vision) move together for survival



COMPLEMENTING IS TEAMWORK



Bees, defined roles and structured life style.



**STRUCTURES AND SYSTEMS
A GREAT FOUNDATION**



Eagles hunt in pairs,
hence seldom loose their prey.



T. E. A. M.
TOGETHER EACH ACHIEVES MORE





**Though each ant is tiny
they can perform huge tasks as a community.**

**ROLE CLARITY
AND EFFECTIVE DELEGATION**





Mother Cheetah trains her cubs on live hunts.

MENTORING
AND EXPERIENTIAL LEARNING





**Whales travel huge distances
using their
incredible ability of communication.**

TUNING-IN BRIDGES DISTANCES



For a playful community of monkeys, work is exciting



FUN AT WORK



Wild dogs, their planned way of attacking makes them a very powerful pack.



**PLANNING, STRATEGY
AND EXECUTION**



TEAMWORK



THE FOUNDATION OF OUR SUCCESS!

MANAGEMENT

- Elements of management
 - Planning
 - Organising
 - Directing
 - Co-ordinating
 - Controlling

As propounded by the Management Guru, Peter Drucker

The best way to predict the future
is to create it

- Peter Drucker

SYSTEMIC PROBLEM SOLVING

5 stage scientific Thinking Mechanism –

- Identify problems – Think (fish at IBM)
- Make plans for improvement - discussions, suggestions, broad themes
- Apply improvement techniques – Eliminate / find waste
- Put plans into practice – the Japanese way



Failing to plan
Is planning to fail.

MANAGEMENT IN THE JUDICIARY – MODEL COURT (Grassroots MBA)

- Non-value added items – big rocks
- Core competence – specialist Judges & Lawyers/court managers
- Time Management – 80/20 rule/ time frame
- Procedural simplification – codes / rules /moon story / Edison
- Paradigm shift – CBI / Swiss / blind man / 2 pots / sitarist / vase
- De-centralization – Service / Law clerks
- Latest first – Frivolous suits / false defenses / snake story
- Package Deal – making money by doing good

Management is doing things right;
Leadership is doing the right things.
- Peter Drucker

MANAGEMENT IN THE JUDICIARY – MODEL COURT (Contd...)

- Sharing best practices – emulating the habits of the most successful / Avoid waste; find waste
- Blamestorming – To identify problem areas
- Systemic challenges - Circle of control, influence & concern
- Single (what) / double (why) loop thinking – Goal vs.Task/change task to reach goal/OODA loop, painter, singer story
- Performance related promotions/payments - PRP
- Judicial Social Service – CSR / Legal aid & Legal services
- Continuous education – National Centre for State Courts, US
- TEAM – Lawyers and Judges / Leadership training

If you change the way you look at things,
the things you look at change. – Wayne Dyer

WHAT IS CASE MANAGEMENT?

Practitioners and Judges becoming better at what they do – i. e.,

Achieving the same end with less resources and in less time.

How to do
MORE with less

- Lord Justice Woolf,
Master of the Rolls, UK

To be a success in any thing –

Be Daring Be First Be Different

CASE MANAGEMENT - for what?

- Improving efficiency
- Reducing delays
- Cutting costs

Judges who think they are too busy to manage cases are really too busy not to. Indeed, the busiest Judges with the heaviest dockets are the ones most in need of sound case management practices.

- William Schwarzer

CASE MANAGEMENT IN U.K.

Aspects under the Lord Woolf Report:

(incorporated in the Civil Procedure Act, 1997)

- Length of time for litigation
- Fast-Track and Multi-Track
- Fixed time-table
- Controlling Inspection
- Exchanging witness statements
- Video recording of evidence
- Summary procedure for all suits below 10K

**All great detectives spot the trail
using an entirely different point of view**

CASE MANAGEMENT IN U.K. (Contd...)

Aspects under the Lord Woolf Report:

- Defining important issues
- Time-table deadline
- ADR
- Judicial Team – Training Judges & Lawyers
- Interest & Costs
- IT kiosks in courts
- Permanent advise centre in larger courts
- Evening & Weekend courts

Most geniuses prosper not by de-constructing intricate complexities,
But by exploiting unrecognized simplicities

AREAS OF CASE MANAGEMENT

- Length of time for each step
- Key issues
- Listing cases
- Pre-trial Conference (CM Conference)
- Setting a time-table deadline - preparatory hearing

No case is inherently complex or protracted.

Cases are made complex or protracted by inefficient practices

- Chief Judge, Alfred Marrah, Federal Court, USA

Lord Woolf Report

Basic Features

- Procedural simplicity for expedition
- Control by Judges as soon as defence filed

Peculiar to England

- Costs
- Expert witnesses
- Unlimited Legal Aid

It is not the strongest species that survives, nor the most intelligent, but the one most responsive to change.

-Charles Darwin

Lord Woolf Report - Applicability

England

- Simple Rules
- Defence
- Exchanging Witness statements
- Small claims / Fast Track / Multi Track
- Specialist Judges
- Fixed Fees either for one stage or as a whole
- ADR – A M C
- Capping of costs

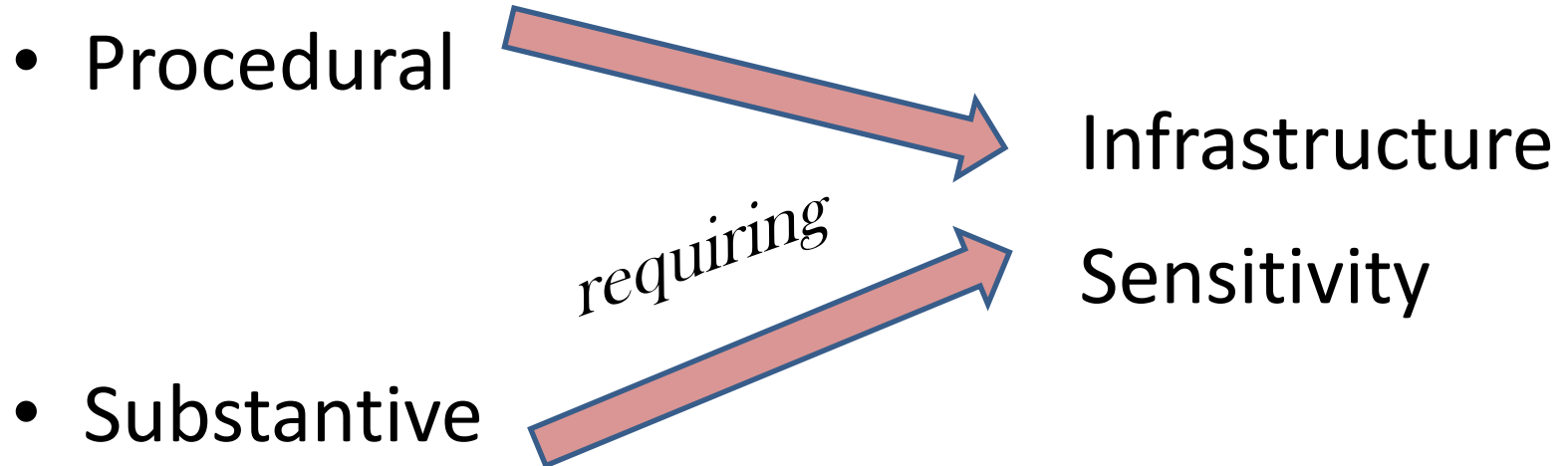
India

- Amendment to CPC / HC Rules
- WS / Affidavit-in-Reply
- Affidavit of examination-in-Chief
- Summary suits / Fast Track / Commercial Causes
- Civil / Criminal Judges
- Original / Appellate Sides
- Package Deal
- ADR – A M C & Lok Adalat
- Imposing realistic costs

The secret of success is being a good thief;

Emulating the habits of the most successful practitioners

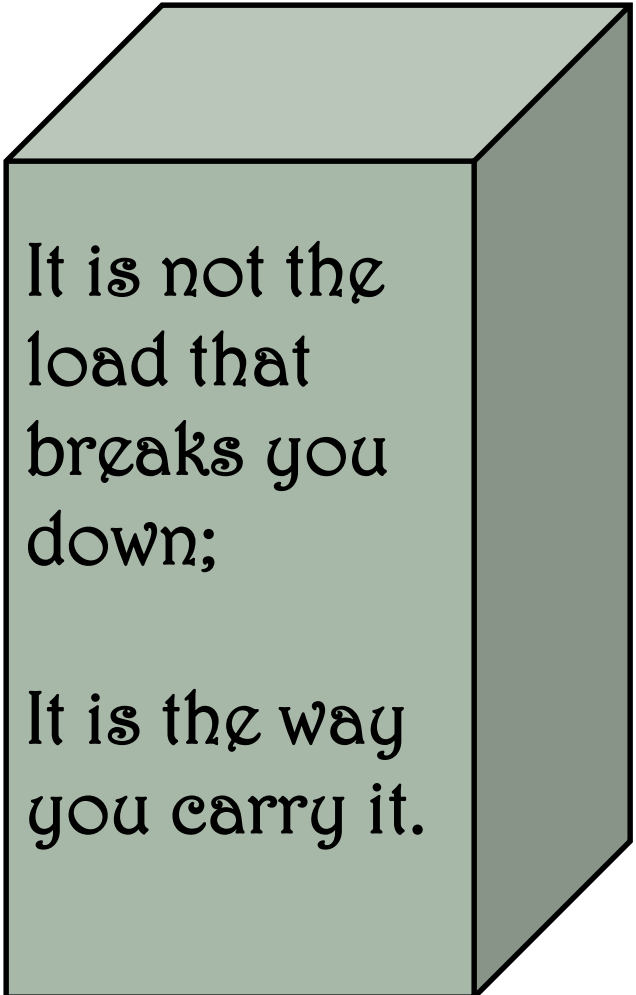
Ambit of Case Management



Human mind is like a parachute;
It works only when it is open

STAGES OF CASE MANAGEMENT

- **Plaint**
- **Service**
- **Interim Applications**
- **Ad-Interim relief**
- **One defence**
- **Rejection of Plaint**
- **Court Commissioners**
- **Oral applications**



It is not the
load that
breaks you
down;

It is the way
you carry it.

STAGES OF CASE MANAGEMENT (Contd...)

- Original documents
- Preliminary Decree
- Issues
- Admissions
- Evidence
- Compilation

*When it is obvious that goals cannot be reached,
Don't adjust the goals,
Adjust the action steps.*

-Confucius

STAGES OF CASE MANAGEMENT (Contd...)

- Arguments
- Judgment (oral & reserved)
- Summary Judgments (on Arguments)
- Costs
- ADR
- Summary Suits

Successful people do not do different things,

They do things differently.

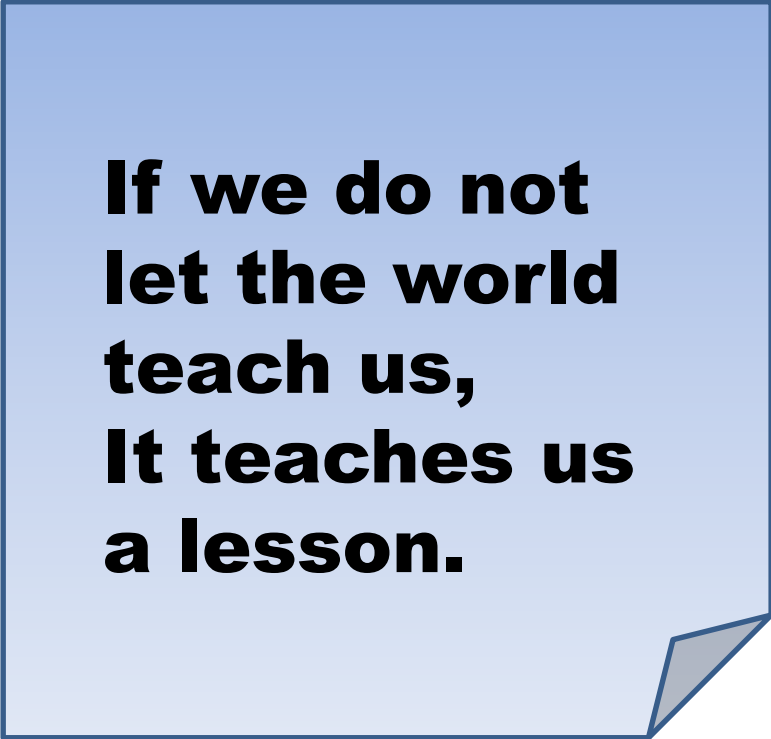
CM STRATEGY

- Endeavour to dispose off / complete all proceedings filed at one time when all parties are represented and heard on merits
- Endeavour to dispose off / complete the main proceeding at the first available opportunity when all parties are represented and heard on merits

*Instead of constantly adapting to change;
Why not change to be adaptive?*

ASPECTS OF COURT MANAGEMENT

- ❖ Scrutiny
- ❖ Technicalities
- ❖ Directions
- ❖ Certified Copies
- ❖ Group matters
- ❖ New Suits
- ❖ Case tracking
- ❖ Expedition Orders
- ❖ Bench book/handbook / propositions of Law
- ❖ Teaching basic law in schools & colleges



**If we do not
let the world
teach us,
It teaches us
a lesson.**

ASPECTS OF COURT MANAGEMENT (Contd...)

- ❖ Discharge of Suits on Board / website
- ❖ Assignment period / part heard matters
- ❖ Classification of Suits
- ❖ Registrar's Powers
- ❖ Facilitation Counter
- ❖ Flexi vacations

The golden rule is :-

Jam Yesterday Jam Tomorrow,
but NEVER jam today.

UNIQUE TRIAL PRACTICE

Sir Norman Macleod CJ, Bombay High Court 1919-1926

As a trial Judge, he would ask the Plaintiff if what is stated in the plaint is correct. When he would answer “Yes”, the Judge would call upon the Defendant’s counsel to cross examine the Plaintiff.

In some cases, he dispensed with addresses & delivered his judgement.

P.B. Vatcha in his book recounted the practice and wrote that on most occasions Sir Norman was correct in his judgements !

The best way is always through.
Robert Frost

U.S. PRECEDENT PRACTICE

- Restatement of the Law
 - Every 10-15 years
 - On every topic
 - No case of the period prior to the restatement can be cited
(Comment of Jurist Fali Nariman – SC, a Judgment factory)

The formulation of a problem is far more essential than its solution. – Albert Einstein

- Rocket Docket
 - Fast track
 - To ram frivolous cases through discovery and get them to trial (Rule 83.19 – John Grisham in The Litigators)

INDIAN PRECEDENT PRACTICE

- The scope of interim application cannot be greater than the scope of the main proceeding. (Meena Choudhary vs. Commissioner of Delhi Police 2015 2 SCC 156)
 - But interim application can dispose off the suit / appeal / petition on the question of law or admitted facts (akin to a summary trial)
- SC's discretion to admit SLP-judicious, not lenient (Mathai vs. George 2010 4 SCC 358)
 - But ex-parte interim order interfered with (State Bank of Patiala vs. Vinesh Kumar Bhasin 2010 4 SCC 368)

Courts sitting with one eye open on law and one eye closed on society – Justice Krishna Iyer

ICT – Best Court Systems

- Red Crest Electronic Case Management System
 - The timeliness Project in Australia – one e-file for all operable by username & password
- Sentencing Information System in Australia
 - To see decided cases (not to interfere with judicial discretion)

If you win, you can lead.

If you lose, you can guide.

- The Integrated Electronic Litigation System (IELS or E-lit)
 - Replaced the e-filing system in Singapore

5 ISSUES OF CASE MANAGEMENT

R K M M O for DAR raised by NJA, India

- Role & Responsibility of Judges
- Knowledge of Law
- Judicial Method
- Management
- Organisational Efficacy

APPEM APPROACH TO TIME MANAGEMENT

A P P E M for DAR raised by NJA, India

- AIM – Secure justice, do justice
- PRIORITISE – e.g. Liberty of persons in the UK
- PLAN – absent in the 5 year plans
- EXECUTE – Put plans into practise / time & motion study
- MONITOR – Research / impact assessment

JUDICIAL REFORMS - Infrastructure

- Create a National Arrears grid to assess pendency
- Formulate a National Litigation Policy to curb litigation
- Increase strength of Judges
- Appoint Ad-hoc Judges on contractual basis
- Create a National pool from retired Judges
- Speed up appointment of Judges
- Raise retirement age of Judges
- Increase number of working days
- Allow flexi-vacations



LEGAL & JUDICIAL REFORMS

- Define goals & re-examine outcome periodically
 - e.g. Israeli experience of Case Management & ADR program
- Fast track cases – all but the most complex
 - e.g. Rule 1800 of California Rules of Court
- Make changes in Procedural Laws
- Improve case management
- Use ADR in civil & Plea bargaining in criminal cases
- Judicial Bench Books – for best practices & precedents
- Use ICT, Video-conferencing & E-Courts
- Implement National Minimum Court Performance Standard
- SPV to implement the action plan - Judicial impact assessment

Take time to be sure,
but be sure not to take too much time.



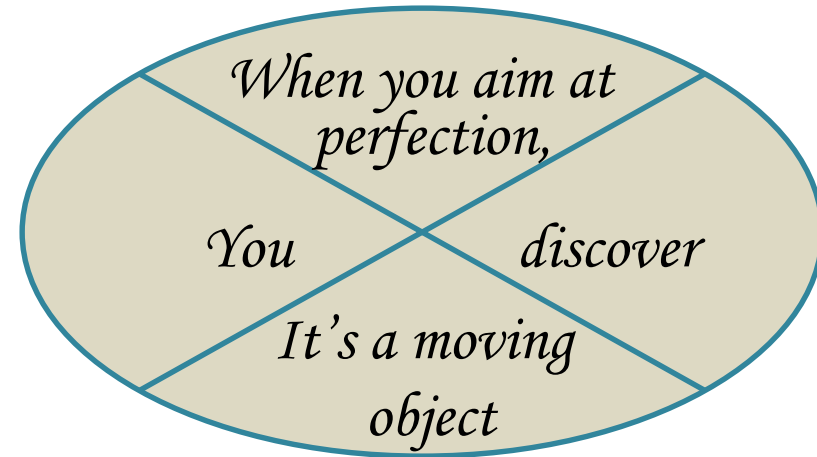
REMOVAL OF ROAD BLOCKS

- Pleadings as evidence
- Evidence of all witnesses together
- Simplification of proof of documents
 - Old seemingly genuine documents
 - Documents in a group
- Amendment of Statutes regarding notice
 - (Secs. 80, 164, 527, 50)
- Updation of Court Fees

**None stands taller
than those willing
to stand corrected**

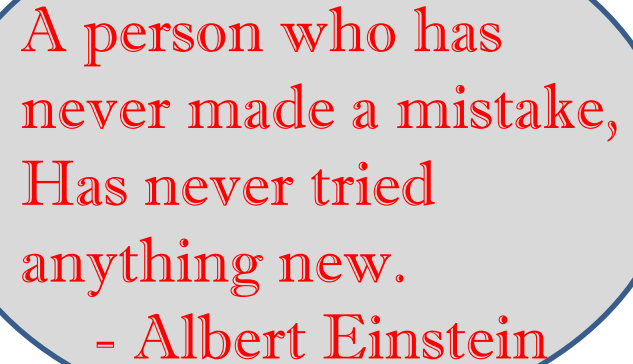
CPC Amendments- 2016

- S. 35 - Actual Costs
- O5 R1 - WS in 120 days
- O7 R2A – Interest details
- O8 R1 – WS in 120 days
- O8 R3A – Denials with reasons
- O11 R1 (4) – Disclosure with pleading+30 days
- O11 R2 - Interrogatories
- O11 R3 – Inspection within 30 + 30 days
- O11 R4 - Admissions & Denials within 15 days with reasons for denials on affidavit
- Costs for undue denials
- Order on admitted documents, including waiver of proof & rejection of documents
- O11 R5 – Production of documents within 7 / 15 days
- O11 R6 – Electronic records proved by printout



CPC Amendments 2016 (contd...)

- O13A – Summary Judgment
- O15 – Omitted
- O15A – Case Management hearing
- Time limits
- Powers of court
- Consequences of non-compliance
- O18 R2 – Written arguments
- O18 R4 – Affidavit of evidence of all witnesses together;
any affidavit may be withdrawn
- O19 R4 – Court to control evidence & exclude evidence
- O19 R5 – Court may redact or reject evidence if inadmissible
- O19 R6 – Affidavit of evidence in prescribed format
- O20 R1 – Judgment within 90 days



*A person who has
never made a mistake,
Has never tried
anything new.
- Albert Einstein*

REQUIREMENTS FOR EFFECTIVE MANAGEMENT

- ⇒ Amendment to Orders in the CPC by the High Courts (CPC)
- ⇒ High Court Practice Directions (HCPD)
- ⇒ Legal & Judicial Education & Training
- ⇒ Precedents
- ⇒ Court Administration (CA)

You cannot do today's job

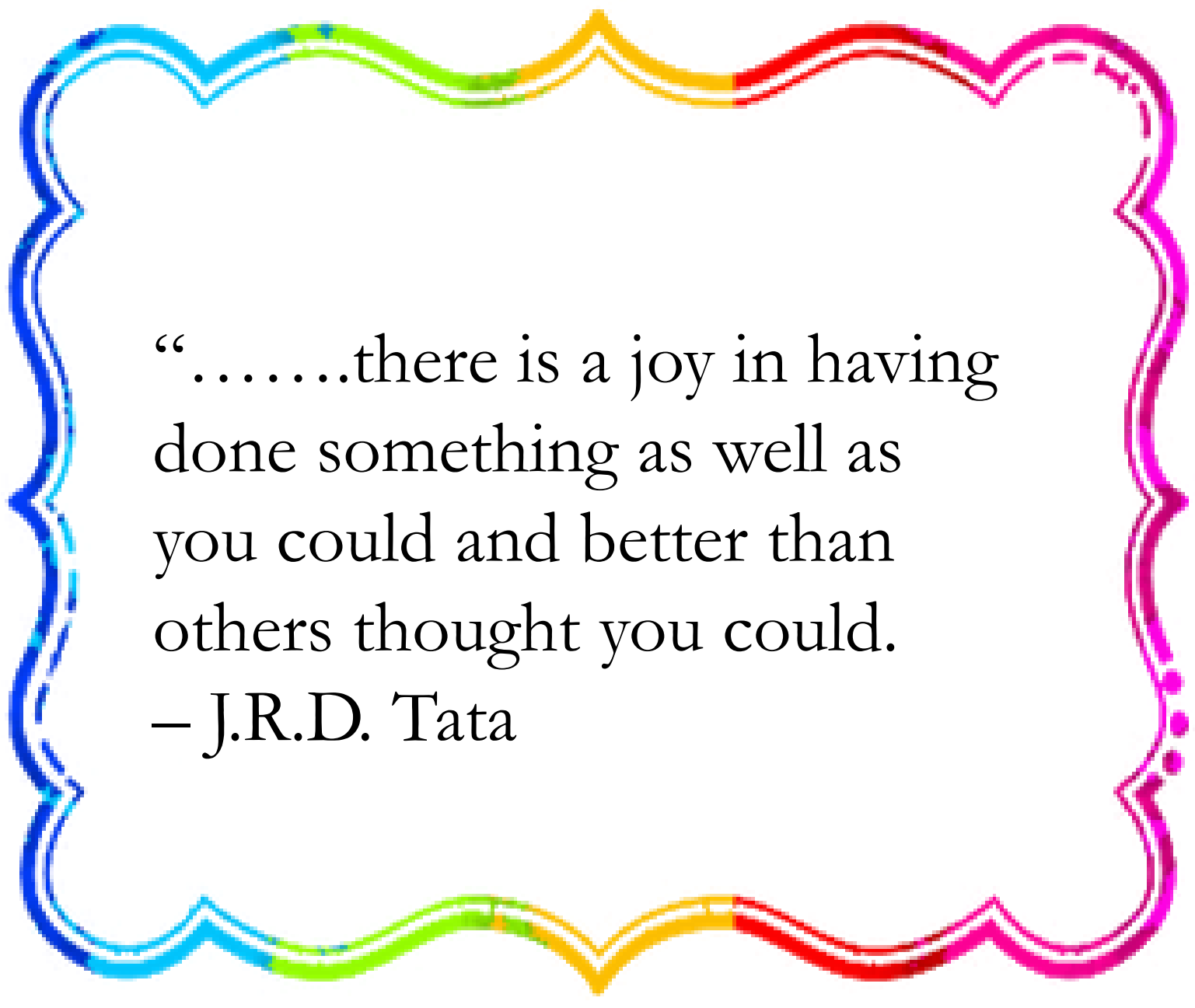
With yesterday's methods

And be in business tomorrow

The best 10 two-letter words –

If it is to be,

It is up to me.



“.....there is a joy in having
done something as well as
you could and better than
others thought you could.
– J.R.D. Tata