

COURT & CASE MANAGEMENT

BY

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BACKGROUND

- In our country, we have not had any specific rules of case management where Judges monitor the movement of cases throughout its life in the Court or any system of different tracks.
- We have ad hoc systems improvised by each High Court but not a uniform system.
- ‘Case management’ is defined as referring to process involving the control of movement of cases through a court or tribunal or the control of the total workload of a court or tribunal.
- Case management in courts is often, but not always, performed by Judges. When it is performed by Judges, it is referred to as ‘judicial case management’.

AUSTRALIAN EXPERIENCE

In Australia, Prof. Sallman of the Australian Institute of Judicial Administration stated as follows:

- The Revolution (Case Management) has involved a dramatic shift from a laissez faire approach in conducting court-business to an acceptance by courts of the philosophical principle that it is their responsibility to take interest in cases from a much earlier stage in the process and manage them through a series of milestones to check-posts.
- Most courts have now acted upon this philosophy and introduced a variety of schemes, the common denominator of which is substantially increased court supervision and, in some instances, control ...
- The essence of it is the adoption by courts of a systematic, managerial approach to dealing with case loads.

UNITED KINGDOM'S EXPERIMENT

Lord Woolf's 'case management' recommendations, to the extent relevant for us, are as follows:

- (1) There should be a fundamental transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the courts;
- (2) The management should be provided by a three tier system:
 - (i) an increase in small claim jurisdiction;
 - (ii) a new fast track for cases in the lower end of the scale; and
 - (iii) a new multi-track for the remaining cases.

UK EXPERIMENT (Continued)

(3) The court shall have an enlarged jurisdiction to give summary judgment on the application of the claimant or defendant or on courts' own initiation, on the ground that a case (or part of a case) has no realistic prospect of success.

(4) All cases where a defence is received will be examined by a 'procedural judge' who will allocate the case to the appropriate track.

(5) In the large court centers, Judges engaged on the management and trial of civil proceedings, should work in turns and normally a case should be handled only by members of the same team.

UK EXPERIMENT (Continued)

(6) The fast-track, which is primarily for cases where the value does not exceed 10,000 pounds, will have a set time-table of 20-30 weeks, limited discovery, a trial confined to not more than 3 hours and no oral evidence from experts; and would also have fixed costs.

(7) On the multi-track, case-management will usually be provided by at least two interlocutory management hearings; the first will usually be a 'case-management conference' shortly after the defence is received (usually conducted by the procedural Judge) and the second will be a pre-trial review (monthly conducted by the trial Judge).

(8) The multi-track cases will proceed according to the fixed timetable and initially to an approximate date of trial and subsequently to a fixed date of trial.

MEANING & OBJECTIVES

- ‘Case management’ means that the ‘progress of cases’ before the courts must be ‘managed, in one sense, its direction from traditional adversarial case management which had left the pace of litigation primarily in the hands of the legal practitioners. The courts’ role was simply to respond to processes initiated by practitioners.
- But, the objectives of new ‘case management’ include:
 - (a) early resolution of disputes;
 - (b) reduction of trial time;
 - (c) more effective use of judicial resources;
 - (d) the establishment of trial standards;

OBJECTIVES (Continued)

- (e) monitoring of case loads;
- (f) development of information technology support;
- (g) increasing accessibility to the courts;
- (h) facilitating planning for the future;
- (i) enhanced public accountability;
- (j) the reduction of criticism of the justice system by reason of perceived inefficiency.

ASPECTS OF COURT & CASE MANAGEMENT

M. Soloman & D. Somesflot in their 'Case Flow Management to the Trial Court' have identified the following aspects of Court & Case Management:

- (a) judicial commitment and leadership;
- (b) court consultation with the legal profession;
- (c) court supervision of case progress;
- (d) the case of standards and goals;
- (e) a monitoring information system;
- (f) listing for credible dates;
- (g) strict control of adjournments.

IDENTIFYING THE ROAD BLOCKS

- One of the main items which involve considerable waste of the judicial time of every trial Judge is the system of calling out all the listed cases – which are not yet ripe for final disposal – to find out whether:
 - (a) notices are served,
 - (b) whether defects are cured,
 - (c) whether affidavits, reply or rejoinder affidavits are filed,
 - (d) whether notices in applications for bringing legal representatives or record are served,
 - (e) whether parties have taken various steps necessary to be taken at various stages of the case.

WORKING OUT THE SOLUTION

- This part of the work, in several trial Courts, takes more than an hour of the Judge's time.
- By the time regular work is taken up, the Judge loses the freshness of the morning and is already tired.
- We must dispense with this system and innovate a system in lieu thereof.
- One alternative can be that one or more judicial officers may do this work on behalf of all other judicial officers in regard to the lists of misc. cases before them.

WORKING OUT THE SOLUTION (Continued)

- Next, let us examine the manner in which Judges in our Courts deal with the cases every day in the trial Courts.
- They first take up urgent interlocutory matters on the civil side and then take up the regular matters which are ready for final disposal.
- There is normally no distinction made in our Courts between simple cases, and medium or more complex cases.
- All of them are put in one basket and taken up according to their year and number.
- In this process, simpler cases which would not have taken much time get mixed up with every other type of case and linger on in the Courts for number of years.

SOLUTIONS: BRIEF WRITTEN SUBMISSIONS

- It is time counsel are required to file written submissions before making their oral submissions.
- If both sides are required to file their brief written submissions in advance, it will first compel the counsel to read the facts and case law thoroughly at home before the oral submissions are made, and it will enable them to focus on the real issues arising.
- The Judges can read these submissions before the oral arguments are heard and this helps in shortening the time for oral arguments.
- The argument that with written submissions being filed, advocacy as an art will die is not acceptable.

SOLUTION: IMPOSING HEAVY COSTS

- Another important aspect is the one relating to ‘costs’.
- In India, Courts do not award costs to the successful party in most cases.
- Every Judge says that “in the circumstances of the cases, the parties shall bear their own costs”. In fact, no circumstances are ever mentioned.
- Time has come when the Court must make a positive order on the principle that costs follow the event and where costs are not awarded, the Court must assign valid reasons.
- The tendency of the Courts not to award costs has encouraged several litigants to abuse the legal process and delay the disposal of cases.
- In fact, whenever a party is found to have deliberately delayed the legal process he must be asked to pay compensatory costs or exemplary costs.
- In several countries, heavy costs are awarded against the unsuccessful party and such a procedure has been a serious deterrent against the institution of unreasonable and frivolous cases or raising such defences.
- It is time, the Courts start imposing heavy costs in deserving cases.

CONCLUSION

- Court management has various aspects some with which we are familiar and are implementing, some with which we are familiar but not implementing and some with which we are not familiar.
- Case management and allocating cases to different tracks and deciding simpler cases early is one which we have not yet started practising.
- If Case Management is introduced by appropriate rules, it can surely become a very efficient tool for the proper and timely disposal of simpler cases and also for the purpose of allocating more time to complex cases.

THANKS

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