

Only the Beginning

Dr Jose` Herrera`s crusade against the introduction of mediation in separation suits and other proposed reforms in the field of justice is indeed astounding and difficult to comprehend. He views the recently introduced reforms as an attack on the bastions of judicial and legal conservatism, a change in our judicial system which has worked well ``since the time of the Order``. Never has conservatism for its own sake found such a fervent adherent.

The introduction of a mediation procedure in separation litigation is no novelty. Any application for separation needed to go through the Second Hall procedure in order for the presiding judge to try and sort things out for the parties. The increase in the number of litigation in matrimonial matters necessitated the appointment of mediators who, under the supervision of the family court judge, would report to the judge on the prospect of reconciliation and if that is not feasible the possibility of reaching an out of court settlement.

Some members of the Opposition, including Dr Herrera, view this as an attempt at substituting lay mediators to legally trained persons. Apart from the fact that some of the mediators are well versed in law, claiming that mediation should be the exclusive responsibility of legal counsel is an absurdity. A lawyer remains always a legal officer engaged by one of the parties. Much has also been said about the feasibility or otherwise of ``forced`` mediation since the new legal provisions setting up the Family Court impose the mediation procedure. This criticism is grossly unfair and, to say the least, hypocritical.

For years on end we have heard real and pseudo family experts clamouring for the establishment of a Family Court whose hallmark would be mediation. Limiting mediation to a voluntary matter does not need a law to set it up; we could have retained the status quo; the thrust in public opinion for the establishment a new court to be styled the Family Court lied in the direction of specialised assistance in times of matrimonial crisis. This is clearly spelt out in the 1997 White Paper issued under a Labour Government. What was good and beneficial under Labour has suddenly become bad and pernicious under this Government!

In 2002 Parliament approved a bill amending our Civil Procedure Code allowing the setting up of different sections of the Civil Court through regulations. The aim of this bill was to follow the British model of

leaving administrative details of the reform to the flexibility of subsidiary legislation. The Opposition voted in **FAVOUR** of this amendment. Now that the legal notice has been issued, guaranteeing such legal flexibility in such sensitive areas of the law, the Opposition is moaning that Parliament has been by-passed.

Dr. Herrera's second crusade is against the devolution of further litigation away from the Courts. Again this is conservatism at its very worst. Had it not been for the Small Claims Tribunal procedure and its extension of jurisdiction and competence introduced by my predecessor, the backlog of court cases would have reached gigantic proportions. Even though the backlog has been reduced by 18% from the last year Labour were in government, it needs to be reduced further. Too many complaints are received by any justice minister about unreasonable delays in the determination of even minor court cases. In some aspects a justice minister has no control over such matters as whether a judge should decide 80 or 300 cases per year; but in those areas where reform depends on the political class, this government intends to proceed with radical changes.

The introduction of a specialised speedy procedure in uncontested claims and the transfer of cases to tribunals and alternative dispute organs is only the beginning; further devolution in the process of justice is a must. The adulation of form over substance and deference to nostalgia may be Herrera's forte, it is not mine; and the substance of it all is that the delays in our judicial system are denying justice to our citizens; whether this Ministry achieves this end, I cannot predict, but we shall certainly try .

One final remark. As to who has rendered himself ``the butt of jokes`` in legal circles. I can assure him that the worst and most pathetic joke was voting in favour of retaining in office a judge who had abstained from work without any just cause, while receiving his full salary, for seven years. Dr. Herrera was one of those who voted in favour of such abuse. I was not.

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