



LEGAL EMPOWERMENT OF THE POOR

ACCESS TO JUSTICE AND THE RULE OF LAW

[UNOFFICIAL TRANSLATION]

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Prelude:

Throughout the prolonged history of the Egyptian state for thousands of years, founding justice by ensuring the citizen's right to litigate, was the most important pillar in the concept of the State as comprehended by the Egyptian people for more than four thousand years, and as comprehended by people of the civilized world today as a feature of the State of law. Egypt has safeguarded throughout its long history, and along the hieroglyphic, Greek, Roman and Islamic civilizations, the right to litigate as the most sacred obligations of the State towards its citizens, and the most cherished clauses of the social contract tying the citizen to his/her country. It is undeniably important to feel confident that if one's rights are encroached or one's sanctities violated, one will find a way to a fair and expeditious justice, which is a way of realizing one's rights, and preserving the freedom through the shortest road, with the least cost.

The only way to protect rights and freedoms, is to ensure the existence and effectiveness of a judicial authority protecting it and integrate with the legislative authority; as it is not sufficient for the latter to issue protective laws, but there must be a judge available to ensure the application of those laws, and thereby the effectiveness of that protection. Law texts remain silent and static until the judge decides to intervene in order to state the correct meanings meant to be expressed by the law. Judgments made by the judiciary and possess the power of *res judicata*, acquire the power of a legal fact, benefiting from the presumption of conformity with the word of law, and therefore it is true that the judiciary is a corner of the legal political system, and that the law does not exist without the right to resort to the judiciary; as the right to litigate is the only way through which the judge can exercise his sacred functions as a natural guardian of rights and freedoms, which is the aim of the legal system.

Ensuring the right to litigate requires three assumptions: the first deals with providing ways of access to courts, without having any legal or materialistic impediments that could hinder that access. The second focuses on ensuring a fair trial that enables all parties at the end to reach a fair solution, which, although did not achieve justice, it represents at least the reconciliation accepted by litigants as a judicial compensation for what their rights or freedoms have been subjected to. The third is concerned with

the right to execute the provisions of the judiciary, and even though it might appear at first glance outside the scope of the right to litigate, but as emphasised by the Supreme Constitutional Court is supposedly an important assumption to ensure the right to litigation so that "every impediment that hinders obligating the res judicata, is considered a breach of the right to litigate, and in turn a breach of the judicial assurance."

Faced by those theoretical assumptions, the meditation of contemporary practical reality concerning the Egyptian citizen's right to resort to the judiciary discloses a painful fact, being that this right is in a real crisis that extends longitudinal to include all divisions of the judicial system, whether it be civilian or criminal or administrative, and extends in depth to affect all litigants categories; rich and poor, weak and strong, men and women that paints an extremely grim picture of what can be called the "Justice Crisis in Egypt."

Faced by a real crisis, as evidenced by the number of cases in courts, and the lead-time to reach a final verdict, endorsed by the announced percentages of enforcement of the judgments of res judicata, it seems impossible to imagine preparing a discussion paper that monitors all causes, and proposes solutions to the crisis of exercising the right to litigation with its three assumptions. Therefore, we shall focus only on the intricacies of the first and second assumptions, leaving the intricacies of fair trial procedures to be handled by another work while recognising the fact that addressing those problems, initially assumes reaching real solutions to what might the citizen face till he/she reaches the courts, in addition to what could hamper the realisation of his/her right after attaining the final verdict which was his/her aim when choosing to resort to courts.

For that, this discussion paper is divided into three sections; in the first we are concerned with the meaning of the right to litigation, within the scope that we are committed to, while the second is concerned with illustrating the major impediments which impede citizens in general from exercising that right with a focus on the impediments facing the poor, the illiterate and women. Finally, we discuss in the third section some of the proposed recommendations to overcome those impediments.

Section One

The meaning of the right to litigation

"The Just" is one of the names of Allah, and one of the characteristics of Almighty, including "justice" as a virtue legislated by God for His worshipers and instructed them to follow without distinction between black and white, man and woman, a Muslim and non-Muslim. Justice is the motto of all religions and a Shari'a of all prophets. God Almighty says in Surat Al-Hadid (Iron):

{ "We sent a foretime our messengers with clear signs And sent down with them the book and the balance (Of Right and Wrong), that men may stand forth in justice; and we sent down Iron, in which is (material for) mighty war, as well as many benefits for mankind, that God may test who it is that will help, unseen Him AND His messengers: For God is Full of Strength, Exalted in Might (And able to enforce His Will)" }

The foundation of justice and achieving equality is the most important pillar of any social organization. Hence the citizen's right on the State to facilitate the establishment of justice between people. Justice is the base of its inception and its survival, and hereby was the State's duty to ensure the right to litigation.

The humankind has been hesitating since creation between establishing justice and judging by inclination. The hesitation between those two logics that have no third, has been going on till this day . We can either control people's behaviour judicially, or suppress them with power- In lieu of the choice between both logics contained in the explanatory memorandum for the independence of the judiciary " Is it not the right of people to rest assured that everything that is dear to them can find in the assurance of judiciary an unassailable protection and the dearest refuge? Is it not the right of the weak if faced by injustice or wrong doings to be rest assured that before the judiciary, he has the strength of righteousness, full of pride with himself, no matter how strong his opponent is with his money or influence or authority?

The international conventions and constitutions of various countries around the world, including Egypt, were keen to acknowledge the right to litigation as one of the most

important rights of all citizens. We shall discuss in the following the acknowledgment of that right in the international conventions first, then in the Egyptian constitution and verdicts of our Supreme Constitutional Court in second item. In each case, we are attempting to find the common concept of the right to litigation and its requirements.

First: the right to litigation in international conventions:

The keenness of the Universal Declaration of Human Rights adopted by the General Assembly of the United Nations in 1948 on the acknowledgment of the right to resort to an independent and impartial judiciary, is stipulated in Article X in that, " Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him, and after noting it in Article VIII stipulates that "Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law."

Also stated in Article XIV of the International Covenant on Civil and Political Rights in the year 1966 that: "All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."

The same approach was taken in drafting the Universal Declaration of the Independence of the Judiciary issued in Canada in 1983, which stressed the right of everyone to be prosecuted without delay before ordinary courts, and the inadmissibility of any act or disrupt any action leading to the exclusion of judicial solution to one of the commitments or disrupt the proper enforcement of a court verdict.

It was also emphasised by the regional conventions, such as the American Convention on Human Rights of 1978, which stipulates that "everyone has the right to a hearing with sufficient guarantees and within a reasonable time by a competent, independent court" The same noted in the statement of Human Rights in Islam, issued in Cairo in 1990 where in Article XIX came the mention of " The right to resort to justice is guaranteed to everyone." as the text of the African Charter of Human Rights in 1981 in Article 7 that " Every individual shall have the right to have his cause heard. This

comprises: (a) the right to an appeal to competent national organs..... (c) the right to trial within a reasonable time, by a competent tribunal ", and finally the text of Article IX of the Arab Charter on Human Rights, which declared that " All persons are equal before the law and everyone within the territory of the State has a guaranteed right to legal remedy."

A careful reading of those texts leads to consensus on the following:

A. Considering the right to litigation, one of the most important human rights that ensures the respect for other rights.

B. Emphasis on equality among all located within the territory of the state, citizens or foreigners in the right to litigation.

C. Considering the right to litigation one that includes a number of subsidiary rights foremost the right of access to easy, quick and low-cost justice procedures, the right to special juridical specifications to particularly with regard to independence, impartiality and competence, openness and fairness, and finally the right to execute judicial verdicts.

D. Stating that the right to litigation is not limited to criminal proceedings, but extends to all forms of civil and administrative cases, as long as the subject of lawsuits right stated by law.

Second: the right to litigation in the Egyptian Constitution and the constitutional jurisdiction:

The clauses (40), (64), (65), (68), (165), and (166) from the permanent Egyptian constitution for the year 1971, have one aim, which is to affirm the sanctity of the right to litigation, its assurances, and the importance of respecting the rule of law and independence of the judiciary committing to the wisely elderly as saying that: "Justice is the basis of ruling" as considering the rule of law and ensure the right to litigation to be two faces of one coin.

Perhaps the text of the article (68) is a cornerstone in this regard, stating that "The right to litigation is inalienable for all, and every citizen has the right to refer to his competent judge."

Our Supreme Constitutional Court has contributed to dozens of provisions beneficent to the interpretation of the right to litigation in accordance with the contents of the constitution, and represented in the judgment on the 3rd of April, 1993, clearly explaining the concept of the court to the constitutional right to litigation, which had ruled that the litigation consists of three aspects:

First: Enabling every litigant of easy access to courts, being unencumbered by financial burdens.

Second: Impartiality of the Court; its independence and immunity.

Third: The state must provide an equitable solution that represented in the dispute settlement to obtain satisfaction, as sought by the judicial.

In all cases, the right to judicial satisfaction shall not be denied either by preventing it primarily or by placing impediments in the face of achieving it or presenting it in a decelerating unduly lax manner or surrounding it by procedural rules that are flawed themselves. Judicial appeal to normalcy should not be abstaining or unproductive (Case No. 2, R14J).

Our Supreme Court has dwelled on explaining the content, meaning and understanding of the effects of the constitutional assurance that protects each of those three aspects. The following states the most important principles ruled in relation to those aspects.

The first: The right to equal access to litigation:

The court had decided in this respect several principles. The principle that comes in the forefront is recognizing that "there is no distinction between people in the right to refer to their competent judge, governed by specific rules in the area of litigation, defence, settlements, or appeals of sentences against them." (September 9, 2000, L 224 year 19 J), its decision to "ban drawing up laws that fortifies any action or

decision from judicial censorship" (November 28, 1990, L 38 for 11 J), and considering "confiscating the right to litigation as a disavowal of the State of its own particular merits and a regress from the subjugation of the State to Law" (April 4, 1998, L 81 year 18 J), and emphasising on the fact that the legislators overburdening of the litigants with restrictions that falters obtaining it or hindering it, is considered a violation of the right that is constitutionally guaranteed, and the denial of Justice facts at its core features "(June 6, 1998, L 145 year 19 J).

The second: The independence and impartiality of the judiciary as a guarantee of the right to litigation:

Realising that we have alienated the requirements of judicial organization necessary to ensure a fair trial from the scope of research in this paper, we shall not deal here with the dwellings of our Constitutional Court in this regard, we shall only consider mentioning one of the provisions explaining the reasons of considering the independence and impartiality of the judiciary a middle ring in the right to litigation, and in the outset of clarifying that, the court stated that:

"As the obligation of the State, according to the article 68 of the Constitution impose the enablement of each litigant to easy access to the judiciary unencumbered by financial burdens, nor impeded by procedural impediments. This access - including the right of every individual to resort to the judiciary, with various open doors to those who approach it, and with the road smoothed legally - is merely a ring in the right to litigation complemented by two other rings, without which this right is flawed and incomplete in the absence of one of them. For the right of access to the judiciary is not an evidence in itself that the need to adjudicate the rights is necessarily assigned to entrusted available hands - and in accordance with the systems at hand - Every guarantee required for the effective administration of Justice, in sense that the middle ring in the right of litigation is that which reflects the independence and impartiality of the court, the immunity of its members, and the merits of its practical guarantees, thereby ensuring through its integrity the contemporary standards, which provides each person a complete and equal right with others in a fair and public trial by an independent tribunal established by the law. It adjudicates - within a reasonable time - in one's rights and obligations and in the civil or criminal charges against the person,

and before which one can submit one's case, achieve one's defence and face the opponent's evidence within the context of equal opportunities. Taking into account that the formation of the Court, and the foundations of its organization, the nature of the substantive and procedural rules applicable in scope, and how it is implemented practically determine the key features of that middle ring. "(May 15, 1993, L 15 of 14 J).

The third: Bringing litigation bodies closer together, and the inadmissibility of financial or procedural impediments and ensuring the enforcement of judicial judgements.

Naturally, numerous provisions take place here also, where article (68) represents one of most cited texts maintained by the Supreme Constitutional Court to ensure its constitutional control. We shall limit ourselves to mentioning the most important principles issued by the Court in this regard:

Bringing judicial bodies closer to the litigants seeks to ensure more effective protection of the right to litigation. The Court has given reasons for those decrees that "Bringing judicial bodies closer to the litigants seeks to ensure more effective protection of the right to litigation; realising that oppressing this right is not limited to the restrictions imposed by the legislature, but extends to accommodate practical situations process, beneath which falls placing judicial bodies far from those who seek them, hence disembarking upon the right to litigation diminishes because of the hardships or opportunities lost to benefit from the advantages offered. " (June 6, 1998, L 145 year 19 J).

B- In the area of eliminating procedural impediments, the Court has concluded that the concept of the right of litigation stipulated in article 68 of the Constitution - and on what this Court has decided - that the mere access to the judiciary is not enough to safeguard the rights derived from the legal texts, but should always be combined with the elimination of the impediments that prevent the settlement of situations arising from aggression, and in particular ones that portrays procedural forms, so that the state can provide at the end an equitable solution based on impartiality and

independence of the court. Its contents reflect the settlement sought by the opponent to obtain the judiciary satisfaction required. (June 15, 1996, L 34 for 16 J).

C- Regarding the area concerned with the financial burdens that need not lead to the disruption of fundamental rights, the Court emphasized the unacceptability of having the access to Justice loaded with financial or procedural burdens that restrict or obstruct its fundamental right, and unorganised with legal texts which weighs down the road to achieving it, as well as making litigation a risk with unsafe consequences, which includes cost that lacks cause, and remote to what is considered equitable in the delivery of rights, or lacking logical regulations that surrounds keeping those rights. (January 3, 1998, L 129 year 18 J)

D- Finally comes the need to associate judicial settlements with their means of enforcement by coercion as one of the most important components of the comprehensive system for the right to litigation. The Court ruled in this respect that: "The judicial settlement that is disassociated with its means of enforcement to make the obliged abide by it, have turned into an illusion and a mirage, and have practically lost its value, which leads to stripping it off from its power of enforcement, as well as the forfeiture of rights guaranteed by it, and the disruption of the role of the judiciary in securing it, in addition to emptying the right to resort to it from its content, and interferes with its affairs, and considered an aggression on its mandate." (December 2, 1995, L 15 of 17 J)

Section Two

Impediments of exercising the right to litigation

Despite all Constitutional decrees that guarantees the right to litigation, and despite of all the articles that seek to emphasize the value of constitutional principles branching from that right, most people still refrain from resorting to the judiciary, and consider that the alternative means such as conciliation and arbitration as more successful means for acquiring their rights, and resolving their conflicts. This conviction is reflected in the saying: "The conciliation on one quarter of the right is better than the litigation for it all", which expresses the hardship and suffering surrounding litigation and its procedures, as well as the complaint of slow litigation on one hand, and high cost on the other hand. Usually the prevalence is to the procrastinator which has no right. And if this feeling prevailed among people, it is enough to threaten one of the most sacred rights of human beings, for people's refraining from exercising their rights does not differ much from the depriving them from that exercise. We will discuss in the following the main impediments to the right to litigation; differentiating between impediments to access to justice, and impediments to the enforcement of judicial judgements.

First: Impediments facing access to litigation:

Those impediments can be divided into several categories; the first deals with impediments related to weak legal awareness either of the content of the right or of the exercise of rights protection mechanisms. The second relates to the complexity and intertwinement of procedural steps to be followed to have access to justice in light of multiple litigation bodies, and the third pertains to the impediment of dealing with authorised representatives of the judiciary, particularly the clerk department and bailiffs. Finally, the impediments related to the financial cost that is associated with the resort to the judiciary, whether in the form of fees and charges or in the form of attorney's fees.

A- Impediments associated with weak legal awareness:

Litigation particularities several decades ago were easy and simple. Summoning litigants was without formalities, and people's words were proof and evidence. The judge had the supreme power over the lawsuit and had an active role in steering it without negative restrictions or formalities to tie his hand. But now it has become complicated, not only because of the complexity and ramification of procedures and the resort of litigants and their authorised representatives to legal gimmicks or tricks, which we shall delve into in the following item, but because the legal awareness of litigants has become weak or almost non-existent, and the qualification of legal professionals has become another focus of attention and needs a definite stance. The following are the most important reasons for that linger:

1- The overwhelming stream of successive legislations, which the best and versatile sprinters fail to follow, and which often represent reactions that do not seek to remedy a specific problem or phenomenon, but merely aim at dealing with pain, and with the negative phenomena that fills one of gaps that grasps attention. These legislations often lose the overall vision, and then lose coherence and homogeneity, and sometimes reach the extent of inconsistency and lack of harmony. An overwhelming stream caused by the partial amendments or additions that have not been limited to procedural laws, but also included substantive laws also – a stream which specialist jurists (judges and lawyers and jurists) haven't the capability to follow even within the scope of specialization, let alone non-specialist litigants.

2- The predominance of the idea of special legislations and amendments on the legislation methodology, which had the greatest impact on stripping the general legislations off their identity and the philosophy that regulates their items, leaving the legal maxims dispersed without a common logic. The human mind is unable to apprehend even if they knew the exact concept of those maxims.

3- Absence of proper legal qualification for law specialists, which is due to low academic levels of law students, but most importantly due to the lack of law syllabi development in order to accommodate the progress of society, whether with regard to the means and tools of education or in the curriculum and teaching method, along with acquiring law knowledge and skills, or regarding the need to link the goals of the

educational process and the requirements of judicial work. The curricula are often purely theoretical, and have nothing to do with the practical reality.

4- The lack of legal awareness among both the educated and uneducated alike, with a curriculum that is bare of any introduction or information regarding the main principles of law, at all academic levels, so that even individuals with university qualifications often are unaware of any legal maxim. Furthermore, it could reach the state of lacking knowledge of the meaning of law or the Constitution or regulation. No doubt that it is getting worse if we moved towards the uneducated or half-educated or if we left the urban areas and moved towards rural ones due to the absence of media role, education and sometimes its negative role in transmitting incorrect or inaccurate information.

The seriousness of the weak legal awareness lies in the scope of our paper such that the legal system is based on the assumption of the awareness of the law, a presumption that could not be proved contrary. One should not apologise for ones ignorance of the law. As the main source of information is the Official Gazette, which is a newspaper that is difficult to have access to and it is difficult to find old issues. This suggests that it is hard for the persevering citizen - even at the assumption of having collected the Gazette issues - to be familiar with thousands of legislations or to see to it that a legislation is still active or has been revoked or modified.

The fact that the supposed ignorance of the law, rather than being aware of it as assumed by the legal system, represent a major impediment in the way of access to justice, where the citizen does not know his/her right, and if they knew, they do not know the means of protecting it, and if they knew the means of protection, they are unaware of the procedures for the use of those means. This ignorance hinders their access to courts, which is controlled by experts in exploiting this ignorance.

B – Impediments associated with the complexity and intertwinement of access procedures to litigation:

The access procedures to courts has become numerous, diversified, and intertwined with the diversity of litigation bodies and multiple types of cases and the varying

degrees of courts, until both judges and litigants have become apt to error. Legal gimmicks and tricks have become the most important aspect of the skilfulness of the litigants and their authorised representatives, as well as being the decisive criterion in ensuring the result of litigation before the lawsuit arrives to justice, and before the judge has any contact with the lawsuit, making the one with the right often hesitate before resorting to judiciary to seek protection, no matter how his/her right is clear and his/her argument is compelling. The most important reasons driving this multiplicity and intertwinement are cited in the following:

1- Advocating procedures and special dates for each type of litigation bodies, civilly, criminally and administratively, along with multiple types within each body, as commercial courts, labour, family and others, organized by general laws such as the Criminal Procedures Law and the Civil and Commercial Procedures Law and special laws which might include some regulations of the procedural aspects related to litigation over the rights and lawsuits that are being organised. Therefore, it is impossible for specialist and the ordinary citizen to be aware of.

2- The growing phenomenon of specialised justice, which, although originally distinguished by the scope of focus on topics considered and the specialisation of the judge resolving those subjects, and sometimes by the procedures for adjudicating the dispute or antagonism, but it extends to the many procedures that allow access to litigants, attested to by the family courts, and the specialised economic courts' draft.

3- The predominance of conservatism on those entrusted with drafting or amending procedural laws, for the loss of confidence in many cases in the persons responsible for those procedures, and the fears of excessive manipulation of litigants, as well as the desire to control the judge - not only on the path of dispute at hand - but the procedures that streamlined this litigation to him, drove them out of keenness to proliferate the number of procedures and put greater focus on formal details, and granting extended deadlines which may often seem relatively long, in addition to opening the door to a large number of lawsuits, objections and appeals, which find in the court connection to lawsuits, one of the most important inexhaustible resources, thus drowning the courts in defences of invalidity and lack of jurisdiction, the inadmissibility of the hearing, non-acceptance, and many others.

4 – The shortcomings of the procedural system in following societal change:

Despite the many amendments that followed the existing procedural laws for nearly half a century, and which tried to address the deficiencies, but distorted the philosophy that governed such laws upon issuance. However, it failed to adapt to the evolution of life, its complexity and the changing patterns of people's lives, and their relationships, evidenced by the dates of declaration, which is still regulated by the Civil Procedure Law. The Article VII of the Civil and Commercial Law has continued to state that: The notification is to be between seven and five p.m., and no notifications are to be made on public holidays, until that was amended by Law No. 18 of 1999, which extended the duration until eight p.m. The notification was allowed other than that in case of need and with written permission of the Ephemeral judge.

Until this text was amended, it continued to be the best example of not keeping in pace with the social evolution, which added that originally the place of notification is vacant from any inhabitants at that period, where the man and his wife are out at work, and the children are at their places of education, and domestic servants no longer have a role. The only days that the notified are likely to be in their place of residence are the official holidays; the same days that notification is disallowed except if it is absolutely necessary.

5 – Unutilised modern technological techniques:

In the age of information revolution, and the world is turning into a small global village thanks to the evolution of means of communication that does not acknowledge the term limits anymore, and after the tremendous evolution of the use of the Internet, and a growing conviction of dealing through it and the global tendency towards the need to develop the so-called electronic government, access procedures to courts are still handwritten on papers by the clerk departments and bailiffs, and we still witness the scene of the public clerk who handwrites the paperwork necessary to access courts. This scene attests to our procedural system's standstill at the boundaries of two decades ago.

6 – The absence of a uniform law of motion:

Albeit the growing trend to standardise laws under names such as common corporate law and common constructive law as a reaction to the size of fractionation in legislations, in the last decades; however, the formulation of a unified procedural law is still a distant dream as long as the science of procedural law is still absent, and as long as we distinguish between specialists in the field of civil proceedings or criminal or administrative procedures

C- Impediments of dealing with court officers:

Court officers represented in clerks, bailiffs and experts, are the most important pillar in any judicial reform desired, as we could not imagine any progress in the exercise of the right to litigation, without upgrading those calibres financially, scientifically, culturally and professionally, where they represent the ship's crew, and whom if spoilt or dispersed, or their performance regressed, the captain (Judge) will have no choice except to leave the ship adrift. However skilled he is, he will never be able to sail the ship to shore; a shore which is not necessarily the one that he meant to reach when he first launched the ship.

The impediments that face litigants and their authorised representatives with clerks and bailiffs are well-known. These impediments are familiar to everybody, and recognised as a threat to the access to litigation. In spite of that, solutions and recommendations that found their way to application are quiet sparse. Rather than exerting effort in counting those impediments that are familiar to anyone, we will confine ourselves to the most important reasons driving them as a means of avoiding those impediments:

- 1- Absence of selection regulations, and the absence of attaining an adequate degree of scientific or legal qualification as a prerequisite that commensurate with the significance of the work assigned to each of them, as the bailiff's role does not stop at merely being a postman who receives the notification and delivers it to notified, but rather extends longitudinally from the beginning of court access procedures to the full enforcement of the judicial ruling, and

widely from simple annotation to carrying out the secretariat of investigations and hearings' task.

- 2- The lack of continuous training, where the only available training is senior dictation, who are not necessarily aware of correct laws or amendments, which eventually leads to the ignorance and corruption of several people instead of one.
- 3- Non-use of management science, for the clerks and bailiffs' administration is far from the bases of modern management. Plans and goals are non-existent, as well as the accurate statistical data that allow the formation of these goals or plans.
- 4- Absence of profiling and modelling, which must be guaranteed to citizens, and the consequences of wasting time and opening the door to error or manipulation.
- 5- Not keeping pace with modern times in the use of modern methods of writing, documentation, copying, and conservation, which facilitates the work of clerks and bailiffs.
- 6- Poor financial, functional, physical and moral conditions of employees in this field, leading to their unwillingness to work or embellish their work, and sometimes refraining from doing their work in the first place, either due to their corruption or out of fear of error and accountability.

D - Financial impediments:

In a society where the poor represent the majority of the population, the economic factor is the most important factor in directing the individual's behaviour; financial impediments represent one of the most significant impediments to justice and therefore one of the main causes preventing the exercise of the right to litigation. As the most important financial burden that might face the litigants is represented in the charges and fees on one hand and the attorney's fees on the other, along with other financial burdens such as transport expenses to the courts or the cost of preparing documents or fees of experts, thus, we divide those impediments into three sections:

1- Impediments associated with charges and fees:

Between the trend supporting the need to increase the value of the expenses and fees incurred by litigants when resorting to courts or at least borne by the party that lost the case and the opposing trend advocating the reduction of these fees and charges to their lowest level possible, along with offering the opportunity for the State to provide financial assistance to those who need it. Each of those trends has a justified position.

Supporters of the raising expenses and fees see it as an important means to reduce the flood of lawsuits and disputes reaching courts, which a large part of it shouldn't have reached the court in the first place. They see it as a source of income necessary to upgrade the judiciary buildings, equipments, training and modernisation; an essential upgrade that proved to be costly, even for the rich nations.

As for the advocates of reducing costs to the lowest possible level, have placed in mind the needs of the poor and the importance to ensure that people who were robbed off their rights have the means of resorting to the judiciary, for the state is committed to pave the way to justice for all without discrimination on any ground. The poor who were robbed off their rights may be unable to recover their rights due to the costly fees and charges, because robbing him of his right is the reason that economically disabled him from affording these charges, and as if we are moving in a vicious circle.

Between both trends, there are who are calling for finding a means of differentiation in the amount of these expenses and fees depending on the type of case and economic status of the litigants and the value of requests, or by distinguishing the economically weak litigants by a mechanism whereby the state replaces the litigant in the payment of such fees.

Away from those theoretical trends, and despite the relative decline in the value of expenses and legal fees in Egypt, compared with the corresponding nations, and despite the existence of systems of judicial assistance and the exemption legal fees and expenses, except that the low economic level for a large segment of citizens and being the most needy sector for the protection of their rights, makes the financial impediment one of the most important impediments in the way of litigation access, in addition to the ignorance of many people, especially the poor with such systems, and the need to develop each of them in order to activate their role.

2- Impediments associated with attorney fees:

In the light of judicial and legal system based originally on the fact that lawyers has the greater role in launching litigation, and represent clients in taking actions to access justice. In light of the proliferation of illiteracy at large in general and legal illiteracy in particular, as already mentioned above, and in light of the complexity and intertwinement of the procedures, which makes it difficult for difficult for the specialist to deal with, makes the imperativeness of resorting to an attorney indispensable. Faced with this fact and the sustained rise in the fees of lawyers despite the increased supply of their services compared to the required ones, and the continued decline in the value of money, and the relative stability in the income level, made attorney fees, one of the most important financial impediments, which could push the litigants, especially the poor to accept the renunciation of their right because the cost of acquiring it is more than its worth, hence the saying that quarter of the right is better than litigation for the entire right, as long as the litigation procedures will eat up the other three quarters.

The increased burden of seeking lawyer's assistant is due to several reasons, foremost of which are:

- Estimating the value of attorney's fees depending on the value of the case and the level of richness of the litigants and not on the value of work and effort exerted from the attorney.
- The absence of any role of lawyers' syndicate in issuing guiding lists of the average prevailing financial for the most common cases taking into account the experience and the lawyer's level.
- The attorney's failure in collecting a significant portion of his/her fees at the end of the dispute and after the ruling in favour of his/her client, which drives them to demand their fees upfront before embarking on the procedures, which overloads the litigants.
- Attorney-fear of error in estimating the fees in advance due to the complexity and intertwinement of procedures and lack of confidence in the time taken to reach a

verdict, and the possibility of executing the verdict right away, leads them to resort securing themselves by over-billing clients.

- Occasionally lawyers exploit poor and ignorant litigants, especially in cases that result in entitlement to definite payments, such as compensation cases in crimes of manslaughter, whereby lawyers coerce their clients to give them a power of attorney to collect those payments on their behalf.

3- Impediments associated with transport expenses and experts' fees:

Experts are the first and biggest assistance to the judiciary. Their opinion often resolves many conflicts in light of contemporary scientific progress – originally, these experts to be hired by the court without any expenses paid by litigants, except from the so-expert fees - but sometimes the litigants may resort to an outside expert before turning to the court, in order to enhance the litigant's position in the dispute. This report is often a necessary for the access to courts, which in any case represents another additional burden, afforded only by the rich.

Finally, transport burdens in the absence of close litigation bodies, and in light of the geographical spread of relationships that can bring people together, which could be the subject of litigation, as well as a significant burden, together with other financial burdens, makes the citizen enable to exercise his/her right to litigation.

Second: Impediments to the enforcements of judicial judgements:

The importance of the enforcement of judicial judgements phase as the last ring in ensuring the right to litigation has already been mentioned before, meaning that the goal of litigation is not just to obtain judgements, but the enforcement of those judgements, which requires that such enforcement should be more facilitated, and in a short period, and with low-cost and undoubted procedures. Unfortunately, the reality of judicial judgements' enforcement in Egypt is very different. The following are the main impediments to the enforcement of judgements; divided into qualitative categories as done with the impediments to access to litigation:

A- Impediments associated with a full-time enforcement judge specialist:

Egyptian legal system accommodates the idea of allocating a judge for implementation since 1968 to address the problems that existed before, and assigned to that judge in each partial court the consideration of implementing temporal and substantive disputes implementation whatever their worth,

B- Impediments associated with enforcement bailiffs:

Where those suffer from the same flaws that we have already mentioned when talking about the clerks and bailiffs, in the absence of regulations of selection, for there is no pre-qualification or continuous training, no incentives, and no decent financial or professional conditions. All the previous makes dealing with the enforcement of judgements perilous, to the extent that makes lawyers often emphasise to the litigants that their role is acquiring the judicial ruling, and does not extend to its enforcement.

C- Impediments associated with the enforcement police:

Between the functions of administrative enforcement and the requirements of judicial enforcement, the police affiliated to the Ministry of Interior do not have enough time to follow up the enforcement of judicial judgements, whenever this enforcement requires the intervention of the police force. There is no doubt that the absence of a specialised body affiliated directly to courts, assigned to execute those judgements; one that is aware of its foundations and procedures, represents one of the main impediments towards the enforcements of judicial judgements.

D- Impediments associated with enforcement procedures:

The fact remains that the formality of enforcement procedures and the existence of many legal tricks that prevent the enforcement of those judgements under the so-called the enforcement dispute, one of the important impediments to the right to litigation.

Section III

Supporting the right to litigation

Between the Constitutional value of the right to litigation, which elevates it to first place in the class of natural rights as inherent to human rights, and such a large volume of impediments that impede its implementation, it seems an apparent contradiction, as well as the urgent need to address those impediments, which in order to overcome them need considerable effort and money and significant time. Facing the deepening crisis of justice witnessed by many of the world's legal systems, we believe, and before we review how to face those impediments, we like to mention two important aspects of this crisis. The first deals with attempt to limit the causes of resorting to courts, and the second is concerned with the development and of the means to alter the procedures away from the judicial system, or what is called the consensus or restorative justice, and the following assumptions achieve those aspects:

First: Reducing the causes of resorting to judiciary:

The divisions of criminal, civil and administrative courts, in addition to the family courts, are the most affected divisions in the justice crisis, as those divisions witness a rapid increase in the number of litigation cases and disputes and in the period required to reach a verdict. This requires taking certain actions that aims at reducing the chances or reasons for citizens to resort to each.

A. In the area of criminal judiciary:

The reduction of criminality and impunity policy represent one of the most important ways to tackle the crisis of Criminal Justice, where it is necessary to lift incriminating descriptions of many types and patterns of illegal conduct, which does not amount to a level of dang danger that does not deserves judicial protection, or entering the legal circle. They are no longer censured or disapproved by society or the public opinion, or applying non-criminal punishments on them. Criminal disputes in the economic area is considered a fertile ground for the application of that policy, for example, crimes of issuing dud cheques which permeated the law courts, are no longer considered crimes

in most countries of the world, and the criminal punishments are replaced by civil and administrative ones.

B. In the area of administrative judiciary:

It is imperative for the State and its various administrative bodies to take real and serious steps to prevent this enormous number of jurisdictional disputes that exist between them and people dealing with them or their employees. This requires action and appropriate decisions to bind various administrative bodies to execute the judiciary judgements without procrastination, and the application of the principles established by those judgements on corresponding cases, without the need to have separate cases, and no better example of the importance of these procedures than the model of allowance payment cases which filled the courts of the State Council, which prompted the Council to form a special constituency for the res judicata only in those types of conflicts. Rather, the State should have avoided such disputes by the proper application of the rule of law and the verdicts of courts in similar cases.

It is imperative for the State to reconsider its administrative systems, in a way that allows reducing the chances of conflict over the proper application of the rule of law, especially in relation to its employees.

C. In the area of civil judiciary:

Systems of civil prosecution and the preparation judge represent a special importance in the area of civil justice, allowing the avoidance of a large number of litigations, where courts are filled with a huge number of cases. Litigants in those cases have resorted to courts merely due to their ignorance of their rights or obstinacy. Here comes the importance of civil prosecution or preparation judge, which will allow opponents in an early stage prior to the dispute to know their rights and to be aware of the losses that may be incurred in case of obstinacy.

Second: The development of settlement or magistrate court:

This is what is sometimes called alternatives to lawsuits or modern methods of case management or a shift from conventional procedures. They are all terminologies of one policy intrinsic to the desire to topple litigation procedures in whole or in part, and replacing them with other less complex procedures that may accompany reform programs. The following are the most important methods in the different divisions of judiciary, and which must be reinforced.

A) In the criminal field:

Criminal conciliation, criminal order, criminal mediation and criminal settlement are the most important aspects of restorative justice in the criminal field. They are all based on contractual basis, and based on the idea that in a large number of crimes, few important, and the interests of the victim or the harmed party necessitates care more than the community's punishment, and that the reparation and compensation is a reform punishment with a stronger impact in deterring the accused, and to satisfy the victim with a punishment with restricted freedom of short duration. All of the earlier are means that need the support and development of the Egyptian legal system, which has known customary and conciliation councils for a long period of time.

B) In the administrative field:

The development of administrative remedies and developing the systems of dispute commissions represent special importance in the area of administrative disputes. The success and effectiveness of those systems ensure the achievement of fast and inexpensive justice. This requires to a closer look at the disadvantages of those systems, as well as taking measures to push administrative authorities to apply the recommendations of those commissions.

C) In family judiciary field:

Family conciliation and reconciliation councils play an important role in resolving many disputes. Family disputes' field is perhaps the most field in need to develop methods of magistrate justice, where the mere resort to litigation has a serious

negative consequences that is impossible to reverse in the future of the family and children.

Within all of these images comes the role of civil society and various organisations, as the most important role as the only capable body of preparing intermediary calibres in various conflict areas.

Third: Methods of facing the impediments:

1. Legal awareness through:

A) Including the courses in different educational phases and different types and levels of education, graduated doses of legal information on the judicial system in general, its structure and means of resorting to it.

B) Preparing special legal awareness programs addressed to the various categories of citizens, which are professionally prepared to suit all levels of intellectual, as well as their development through direct channels of communication with the public through political parties, civil society groups, houses of worship, cultural centres, and women and children welfare associations.

C) Driving the media of different kinds, to prepare information materials of a different nature, directly and indirectly that conveys to the ordinary citizen his/her right to litigation and the easiest ways to require this right, as well as the avoidance of oversimplifying legal information or contribute to the dissemination of common legal errors.

2. Agreement on a general policy governing the legislative process that ensures:

A) Misusing the legislation that should be regulating relationships within the community and not solving public problems.

B) Reducing partial amendments, and if necessary, it should infract the legislation general philosophy.

C) Enumerate all active legislations, and classifying them provide the opportunity to access them through modern technological means, and free of

charge so as to facilitate to citizens the knowledge of the legal foundations,
hence prohibit using the ignorance of the law as an excuse a factual reality.

3. Upgrading the legal education level for both the judges and lawyers, or for court officers, this requires:

- A) Developing curricula and teaching tools and linking them with work requirements.
- B) Innovating new educational programs that grant legal certificates to court officers.
- C) Guaranteeing continuous training programs allowing specialists to follow up legal developments.

4. Unifying litigation bodies, or at least unifying procedural regulations through:

- A) Permanently abandoning the idea of creating a new judicial systems characterised by special procedural regulations.
- B) Attempting to unify as many procedures possible, so as to be governed by one procedural law applied in all courts.

5. A procedural revolution:

That puts litigants outside the scope of conservative solutions and ensures the suitability of procedures with the evolution of society, and with the final scientific innovations in this area, especially in the area of notification regulations.

6. Upgrading of court officers through:

- A) Good selection through clear and objective regulations, among which should be acquiring appropriate legal qualification.
- B) Improving their financial and professional conditions, and ensuring continuous training.
- C) Strict control over their actions and the application of the principle of reward and punishment.

D) Patterning their work and ensure the greatest possible regulations that govern their work.

E) Establishing follow up offices in courts administrated by civil society associations that represent a link between litigants and court officers.

7. Enabling the poor to pay legal fees and expenses through:

A) Relating fees to lawsuit values in a categorical system and guarantee subjective basis for evaluating lawsuit values.

B) Acknowledging the court's right to exemption from the payment of fees and expenses in advance in case of perceived preponderance of the poor defendant's right.

C) The State's intervention through direct support for the payment of fees and expenses o behalf of the needy in certain types of cases through a fund to be created specifically for this purpose to be financed by fortified bails.

D) Estimating simple fixed fee for certain types of cases without regardless of their value.

8. Regulating the bases of estimating attorney fees through:

A) Issuance of the syndicated of a handbook for estimating attorney's fees regulations, specifying the grounds that the attorney to be committed to when estimating his/her fees.

B) Issuing guiding lists of attorney's fees averages in various cases.

C) Adoption of the principle of obliging the attorney to provide his/her client with a list of his/her fees estimate statement beforehand.

D) Forming a commission within the syndicate to adjudicate complaints from litigants against the lawyers regarding attorney fees.

E) Establishing a fund in the syndicate, to be financed by a small percentage of attorney's fees, allocated to finance lawyers to defend the rights of the poor.

F) Encourage the establishment of national civil societies comprising volunteer lawyers to defend certain types of cases, and provide technical and moral support to them.

9. Bringing litigation bodies closer and recognising the district judge system.

10. The expansion of alternative systems to judicial ones in disputes and specially mediation, reconciliation and customary councils and formalising them.

11. Developing enforcement judge system and ensuring his specialisation and through:

A) Establishing enforcement divisions in whole and partial courts in chaired by a judge to oversee the enforcement procedures and adjudicating various disputes. To entrust the presidency of these divisions to senior judges District Courts and in partial courts to judges that are not on a par with the President of the Court due to the accuracy and difficulty of enforcement issues. It is possible to have several judges in some divisions as needed.

B) Introduction of judiciary assistance system, to replace the existing system of enforcement bailiffs, to be appointed from among those who obtained the Bachelor of Law having successfully passed a special training course that qualifies them to conduct their work.

12. The allocation of judicial police affiliated to courts in charge of enforcement of judicial judgements.