

Chapter 1

Power of observation

“In the field of observation, Chance favours only the prepared mind”

—Louis Pasteur

As per Oxford Dictionary, observation means ‘the action or process of closely observing or monitoring something or someone’. From the definition it is clear that observation is a process of monitoring a particular activity or even a particular person. Observation is also one of the important skills which is needed in the field of legal profession. There are multiple players in the process of litigation and hence a Lawyer should be aware and alert as regards to the ways and manner of functioning of those players. This can be achieved only when all the litigation players are properly monitored and observed. For the purpose of clarification, following are the players of litigation:

- (a) Our Client
- (b) Our Opponent
- (c) Court Procedure
- (d) Court Proceedings
- (e) Court Trends
- (f) Court Department
- (g) Court Clerks
- (h) Case Laws
- (i) Senior Counsels
- (j) Our Lawyer

- (k) Opponent's Lawyer
- (l) Opponent's Counsels

Even though it sounds very simple, still the process of observation is not an easy one. It requires continuous efforts and dedication when you are observing or monitoring a particular process or a particular person. Before proceeding to discuss the benefit and necessity of observation during the entire course of conducting litigation, let us first try to understand why observation should be done.

Necessity of Observation

(1) Increase in Knowledge :

One of the major benefit which can be derived from the process of observation is the increase and enhancement of knowledge. In the process of observation we come across several acts or activities which were not known to us or sometimes known to us but we did not have a clarity of the same. At times doubts are resolved and sometimes mis-concepts about a person or process are cleared. So, in any event there is no loss caused to us because of observation and on the contrary our knowledge is enhanced.

(2) Increase in Analytical Power:

During the course of observation we come across multiple situations and every situation gives us a new dimension of thinking. Since, we have diverse situation and contents in our mind the obvious result is on our thinking and analytical power. It is seen that more the data and more the concepts anybody would start thinking in different manner and as a consequence of these observations the analytical

power increases automatically as a person has to see multiple situations with different dimension.

(3) Influences Thought Process:

One of the most important benefit of observation is that over a period the thought process of the observer changes. This is very obvious as and when we monitor or observe several situations or process the same influence our thinking pattern without our making any purposeful efforts. As a consequence of same if initially we had negative opinion about some process or a person, but due to observation we also get a chance to consider the other side and because of this it is possible that our initial opinion may get diluted or it may change completely.

(4) Change in Thinking Pattern:

As we have seen that because of observation there is a change in our thought process and as a consequence of same, change also takes place in our thinking pattern. 'Thought process' is a wider term than 'thinking pattern' as thinking pattern is restricted to a particular activity or towards a particular person. At times it so happens that a person is carrying a negative view about a particular process, but due to observation and consequent change in thought process he understands certain finer aspects in a process and hence, his thinking pattern changes. This kind of change happens mostly with individuals as people carry certain perception about somebody only on hearsay but when they observe that particular individual their perception changes.

(5) Wider Vision:

This is an combined effect of all the abovementioned acts, i.e., increase in knowledge, increase in analytical power, influence on thought process and change in thinking pattern. This is the most important ingredient of observation and it makes the vision of a person more wider as due to observation he has seen so many permutation and combination in respect of process as well as in respect of individual person that his overall thinking pattern and thought process gets changed and hence his vision becomes broader and wider.

From the above it can be clearly seen that why observation is a very important and necessary skill which has to be inculcated by any professional and more so, by a practicing Lawyer as there are multiple factors and situations involved in any litigation which have to be tackled in proper manner. Before proceeding to discuss the utility of observation in the field of litigation, let us also know the benefits derived from the power of observation.

Benefits of Observations

(1) Correct Path:

A Lawyer who does a proper observation comes to know the exact and proper path which should be adopted so that the desired goals in litigation are achieved. This is absolutely important as the Lawyer needs to be on a right track to achieve the success. If the path is wrong, however, the efforts may be done the desired goal in litigation can never be achieved.

(2) *Correct Decision:*

When a Lawyer has a perception of litigation based on observation it is very obvious that the same would influence his decision making process. From observation a Lawyer learns a lot and hence while taking decision he is aware as to what should be considered and what should be eliminated. As a consequence of same the decision taken is not only correct and proper but also helps in achieving the desired goals.

(3) *Errors Reduced:*

This benefit is certain from proper observation as the Lawyer knows exactly what not to do and because of this the process or the procedure which would be adopted has less errors. Obviously, there is nothing called full-proof but when sound decisions are taken based on observation then chances of mistake and error are reduced.

(4) *Different from others:*

This again is a confirmed benefit which would be received by the Lawyer doing good observation. Because of observation a Lawyer has a big canvas before him which is absent before a non-observer and hence, as a consequence of same the decision taken by a good observer would be different from the decision taken by non-observer in identical situations. This change in uniqueness would help in achieving the desired goals.

Till now we have discussed the concept of observation, why observation is necessary and what are the benefits of observation. We will now proceed

to see how the power of observation can be used in process of litigation so that maximum benefit can be obtained to achieve desired goals in litigation. In this process, we will see how skill of observation is necessary and require to understand the players of litigation.

We will first list down the players of litigations and then discuss them in detail as to how observation skill would benefit us when we apply the same:

- (a) Court Procedure
- (b) Court Proceedings
- (c) Court Departments
- (d) Designated Senior Counsels
- (e) Case Laws
- (f) Opponent
- (g) Court clerks
- (h) Court Trends

Let us now proceed to discuss the above players of litigation one by one.

(a) Court Procedure:

Court Procedure means the rules and regulations which are required to be followed during the course of conducting litigation. The same are applicable from the commencement of litigation till the final disposal of litigation. It is absolutely important that these court procedures should be observed very carefully as they have direct impact on litigation. There are some courts which have their own sets of rules like Bombay High Court Original Side Rules, Delhi High Court Original Side Rules, etc. and these rules are required

to be followed in litigation. Even Supreme Court of India has Hand Book on Practice and Procedure and Office Procedure.

Every Court has its own way of functioning for example some courts insist that the name of Advocate appearing should be there on Vakaltnama or else they don't allow to appear. In some courts the pleadings are done in local language. This can be considered as working pattern of court and hence the same needs to be properly observed for effective conducting of litigation.

In some courts, there is a system of registered Advocate on Record, this system prevails in Supreme Court of India. Further, Bombay High Court has rule that to file a Vakaltnama on Original Side the Advocate should have Original Side Registration Number.

It is important to note that the quantum of Court fees required to be paid at the time of litigation is not uniform in India, hence every High Court has its own structure of levying the court fees. In some courts adjournments can be prayed orally while in certain courts written adjournment Application has to be made. At times it so happens that district court in the same State may have different rules. The procedure for filing the litigation also differs like in some courts list of Documents relied in litigation are required to be filed separately while in some courts list of Documents forms part and parcel of the main pleading of the litigation.

From the above it clearly goes to show that Advocate should have a keen observation of all this as same would help him to handle the litigation effectively. On

face it may feel that why these things are required to be observed but once you start litigation such rules and regulations may become major hurdles if Advocate is not aware about them and as a consequence of same the litigation would suffer

Following are the benefits from observing the court Procedure:

i. To remain update

This is one of the major benefit as and when Lawyer is acquainted with updated rules and regulations of the court in which he is filing litigations, it is very obvious that handling of litigation becomes easy and hazel free. This helps in moving litigation faster and in effective manner.

ii. Planning becomes easy

Once a Lawyer gets acquaintance regarding the rules and regulations, in such event planning of entire process of litigation becomes easy. The Lawyer knows exactly the time frame during which the litigation should be filed and when the same would come up for hearing. All the activities in the litigation can be planned beforehand so that litigation travels in smooth manner.

iii. Easy Department Clearance

When litigation is filed at first the same goes to the court Department which checks whether the litigation filed is complying the rules and regulations. If the lawyer is acquainted with updated regarding the rules and regulations chances of getting

objections from Court Department in litigation are minimal and as a consequence of the same the litigation gets clearance from court department without any delay.

iv. Deciding Strategy

If the Lawyer is updated it becomes easy to decide the Strategy of litigation. Supposing there is a litigation which can be filed in two different Jurisdiction in such cases the Lawyer can frame his strategy based on a comparative study of rules and regulations, amount of court fees, time for disposal, etc. Based on this Comparative Study a Lawyer can decide in which Jurisdiction the Litigation should be filed so that the client gets maximum benefit.

v. Benefit to Client

This is one of the major benefit which accrues to the client as the Lawyer is aware about the entire procedure to be followed in the particular case, the travelling of case from department to court becomes smooth and as a consequence of same the chances of getting the desired output from litigation are enhanced and litigation does not stick in procedural aspects of court department.

(b) Court Proceedings

Court proceedings means the manner in which the court functions in the process of litigation. It is important to note that every court has a distinct and unique way of functioning and hence there is a necessity to observe this functioning pattern so that based on the same the Lawyer can decide as to how

litigation should be conducted before a particular court. Lawyer should have a proper hang of court functioning so that he can sail through his litigation in effective manner. The functioning of court even varies within the district courts located in the same State. Further, the High Courts of States again have their own way of conducting litigation.

Let us take an example of 'mentioning the matter which is on the cause list of that day'. Some courts may allow mentioning at 11 am itself, i.e., when the court sits, some courts may allow the same before rising for the lunch break, some courts may allow at 2.45 pm, i.e., when court sits after the lunch break and some courts may allow before rising for the day. Hence a Lawyer should know the exact pattern of the court before which his matter is listed so that he can plan his day's schedule accordingly.

Let us take another example of 'taking the matter on the board'. In this case the matter is not on the cause list and the lawyer has to request the court to take it on that day's cause list and consequently hear the Application of the Lawyer. Here again the functioning of courts differs. Some courts are lenient and they allow the Application, while some courts are strict and ask the Lawyer to prove the urgency for which matter should be taken on board. Hence, the Lawyer should be aware as regards the functioning of court so that he can prepare himself properly if the court asks for justification. If the Lawyer is not aware about these functioning pattern there are chances that Application would be rejected and as a consequence of same client would suffer.

One of the most important observations which need to be done by Lawyer is the thought process of the court towards granting adjournment. This is a very crucial and necessary observation. The Lawyer has to know the thought process as to how the court before which he is going to appear will react for the request made for adjournment. If the court is lenient it may grant adjournment but if the court is strict adjournment may be refused. In such situation Lawyer should be prepared for the matter or else refusal of adjournment would cause tremendous hardship to client.

Above are some of the examples we have discussed but other than this there are several matters like whether court allows filing of rejoinders, whether court imposes cost on adjournments, whether court allows the junior to keep back the matter, etc. and all these things should be properly observed by the Lawyer so that there is no adverse impact on litigation.

One more area of crucial observation is how the court functions when trial is conducted before the court. How much does the court allow to cross-examine, how many questions in cross-examination are rejected, does the court give adjournment for cross-examination when the witness is in court, etc. These are the aspects which need to be observed properly so that Lawyer can conduct a trial before the court without having any damage to the case of his client.

Another area of keen observation is how does the court function in case of urgent reliefs sought in the litigation filed before the court. More so in case of *ad-interim* relief prayed on filing of the litigation.

Does court insist on service to other side or does the court allow the *ex-parte* hearing if satisfied about the urgency or does the court insist on completing the departmental formalities and then only gives a hearing for *ad-interim*, etc. These are some of the crucial and necessary observations which have to be done by Lawyer so that based on such observations the Lawyer can plan his whole litigation in such a manner so that client does not suffer because of the procedural aspects of litigation.

From the above discussion it is crystal clear that a Lawyer has to keep a tap of court functioning so that the Litigation which is filed by him does not face hurdles and impediments and as a consequence the client is able to achieve the desired goals for which litigation is filed.

Following are the benefits of observing court Proceedings:

(i) Time Planning

The advocate can do this time planning for a day only when he is aware about the manner in which the court functions. He can decide priorities about which court he should be at what time, so that even if there are number of cases on same day there is no problem caused. Since he knows the court pattern he can be before the concerned court exactly when the matter is being called out.

(ii) Deciding of Appearance

This is one more important factor which plays a major role in litigation process. The advocate should know where he has to

be personally present in court and where he can send his junior so that there is no adverse order passed in the matter. Any miscalculation in this regard would lead to a major loss to the client.

(iii) Requirement of Counsel

Based on the observation as regards the court pattern the advocate can decide as to whether the matter can be argued by him or there is a necessity to engage a counsel. At some time even though the matter may be only to seek adjournment but still there is a requirement of a Counsel to show that there are genuine circumstances because of which adjournment is sought and not with the intention to delay the hearing.

(iv) Presence of Client

Generally in Civil cases the presence of client on every date is not required. But in a Criminal case there is different scenario. The Complainant has some leverages but the Accused has to be present before the court. Hence, when an Advocate is present for the Accused he can see the situation and accordingly advice his clients to remain present or not. In certain Civil cases also the court insists that client should be present and hence accordingly the advocate can inform the client regarding his presence in court.

(v) How to conduct Trial

When the advocate is aware about the pattern of functioning of a court, then in

such circumstances he knows exactly how the trial should be conducted before the court so that chances of getting an adverse order against the client are minimized. Since advocate is aware about the pattern of court he can accordingly frame a proper strategy for conducting the trial.

(vi) How to Argue

This is one of the important benefit, an advocate will have because of the observation. The advocate would be aware as to how arguments should be done in that particular court. Some courts require short, crisp and to the point argument, while some courts allow advocate to argue at length. This aspect gets clear only from observation and based on the same advocate can design his arguments before the court.

(vii) How is the Atmosphere

This again is a very crucial aspect which needs to be observed by an advocate. There are some courts in which the atmosphere is very serious, while there are some courts in which the atmosphere is light. Hence, advocate should know this aspect so that he can plan his strategy accordingly.

(viii) How is Court

This is an aspect in which it needs to be observed keenly as to how court is functioning while conducting proceeding. In certain courts there is an interaction during the arguments, i.e., several questions

are asked by court to which the advocate has to reply, but in certain courts there are no questions asked and the advocate has to simply start his arguments and close it. In both these circumstances the advocate has to be ready with his plan of action.

(ix) Working Hours of Courts

As said earlier the courts have different patterns of functioning and hence advocate needs to know the time schedule of court like some courts may give judgment in morning and then take the cause list or some courts may be sitting late to complete the cause list. Hence knowing the working pattern of courts an advocate can have a proper time planning to avoid any mishap.

(C) Court Departments

Court department plays an important and crucial role in the entire court proceedings and hence it is absolutely necessary that any advocate may by himself or through his court clerk should have proper observation of their functioning and problems. Court department is involved in all the three broad phases of litigation, i.e., Phase 1 from filing of litigation to its first hearing in court, Phase 2 during the pendency of litigation and Phase 3 on final disposal of litigation. At multiple stages in all these phases court department is constantly involved and hence an advocate has to keep a close watch on the procedures which are followed in court department. Now let us consider each phase and its importance in litigation.

Phase 1–From filing to first hearing of litigation

Any litigation when it is filed before the court has to comply with the procedures and requirements of filing and accordingly at a very raw stage the litigation comes before the concerned court department which handles the entire filing process. Because of this proper knowledge is required so that the litigation does not get stuck up in court department and the journey of moving the litigation from court department towards first hearing becomes easy. Once this journey is done smoothly phase 1 is concluded and litigation moves forward. If any problem arises that should be resolved at the earliest so that the litigation does not get jammed and locked in court department procedures.

Phase 2–During the pendency of Litigation

In the course of conducting litigation there are number of documents which are required to be filed with court department like precipe, rejoinder, application for certified copies, preparation of paper book, etc. all this kind of documents need to be moved swiftly and in some cases even a caution is required to be kept so that all pleadings in respect of litigation are available and are safe in court departments.

Phase 3–On final disposal of Litigation

The importance of court departments does not go away on the final disposal of litigation, but on the contrary the importance increases. When matter is disposed off in favour of a party it is necessary that the decree in respect of the same should be obtained as early as possible as once decree is obtained the execution proceedings can be expedited. Even if the litigation is dismissed still the same has to be obtained

for appeal purposes. Hence, from whichever angle you look at in both cases, i.e., positive or negative outcome the order copy is needed. Hence a advocate has to keep good knowledge and should observe procedure so that delay in getting copies is minimized.

Even though it seems easy to talk in factual situation this is not an easy task as various problems are encountered when you visit court department for your litigation papers. Some of the common problems are shortage of staffs because of which there is delay in work as the same is beyond the capacity of the existing staff, in some cases there is excess pressure on court department and hence this also leads to some delay which cannot be attributed to them. In some cases it can be seen that there are locational issues like the entire department is not seating in one place because of non-availability of space and this creates problems as all the concerned staff is not together moving of files from one office to another becomes a major issue. In some courts it is seen that department does not have proper space and because of this it becomes difficult to store the records and proceedings of litigation in proper manner.

From above it can be seen that there are problems but what is more important is that when a advocate is aware about the problem he can take them into consideration and accordingly plan a proper strategy so that this departmental hurdles do not come in the effective handling of litigation. At times knowing problem is also good so that we become cautious an already take necessary corrective measures so that litigation does not suffer.

Following are the benefits of observing functioning of court departments:—

I. Smooth moving of case

This is one of the major benefit from observation so that various procedural compliances can be taken care of at the filing of litigation and once the same are done, the litigation gets cleared from department and move ahead towards hearing. Even knowing of problem is beneficial as advocate will know how to overcome the said problem.

II. Less objections

Once advocate knows the requirements of departments in such case precaution would be taken in preparing the litigation and maximum care would be taken so that all the rules, procedures and compliances are followed during the filing of litigation, so that less objections are taken out by department and litigation moves faster.

III. Follow up mechanism

When an advocate is aware that there are certain problems in department which are beyond the control of department then in such situation a proper follow up mechanism can be developed so that time wasted in department is minimized. Follow up process should be such so that it does not irritate department but at the same time work has to be done.

IV. Easy in certain litigations

There are certain categories of litigation in which the major part of litigation is compliance based and hence for major progress the litigation is in department. In such cases a deep and perfect knowledge of department is required so that once all the necessary procedural compliances are done the litigation comes to a conclusion.

V. Adjournments avoided

When proper follow up is done in departments it also ensures that the record and proceedings of litigation are before court and hence the hearing are not affected due to departmental issues or departmental delays. It needs to be ensured that on every hearing of litigation the entire file is before courts.

VI. Service of Litigation

In certain litigation and pleadings it is absolutely obligatory that the service to other side has to be made through the bailiff of department only and not in private manner. In such cases having a proper and correct knowledge of the functioning of bailiff department will help in serving the other side effectively without any wastage of time.

(d) Designated senior counsel

Designated senior counsel is a separate and distinguished recognition given to an advocate after certain years of practice and also looking to the

excellent and exceptional contribution made towards the progress of law. This is one of the most prestigious and honoured moment for any advocate. When this recognition is given it certifies the contribution made by that advocate to the legal field and hence it is the aim of most of the advocates. It is necessary to see and observe these senior counsels very minutely as they have their own unique and separate style of arguments. It is important to note that the provisions of sections are same, the available case laws are same, but the manner in which they are presented by senior counsels needs to be observed properly. While observing the senior counsel we need to understand the art of argument which is developed by him and the way he travels through the pleadings and the manner in which connectivity is shown are most important things to be observed.

Every senior counsel has his own style of arguments. You will see that some senior counsels will make their submission in a calm manner while some have a very aggressive style of arguments. There are some senior counsels who prepare their own notes based on briefings done to them and they argue based on their own notes only. You will rarely see that any senior counsel being annoyed before court and behaving improperly, as they have so much grip on law and the brief given to them and hence they sail peacefully even in turbulence. All these need to be keenly observed.

Another aspect of senior counsel is the area of specialization and the amount of knowledge they possess on that particular law. There are some counsels who are specialized in Taxation laws, Arbitration laws, Constitution of India, etc. what is important to