CHAPTER IV

CAUSES FOR DELAY

Delays in administration of Justice have been the most difficult and burning problem in the administration of Justice. Almost all the courts are over flooded with the work and despite setting up of more and more courts, the problem of delays and arrears has not shown any sign of reduction. There is urgent need to control this problem, which by all standards has become catastrophic. The delay in courts have been sarcastically described in a famous work as under :-

"In pleading they (lawyers) studiously avoid entering into the merits of the causes, but rare loud, violent and tedious in dwelling upon all circumstances which are not to the purpose, they never desire to know what claim or title my adversary had to my cow, but whether

The said cow red or black
Her horns are long or short
Whether the field I grave her be round or square
Whether she were milked at home or abroad.
What diseases she is subject to and the like after
Which they consult the precedents, adjourn the cause
From time to time in 10, 20 or 30 years.
Come to an issue.

It is likewise to be absolved that this society has a peculiar jargon of their own, that no other mortal can understand, and wherein all their laws unwritten, which they take special care to multiply, whereby they have wholly compounded the very essence of truth and fleshed, of right of wrong, so that it will take 30 years. To decide whether the field left by my ancestors for 6 generations belongs to me or to a stranger 300 miles off'.**1

**1 JONATHAN SWIFT IN GULLIVER'S TRAVELS.

Almost all organised system of administration of justice has been facing the problem of litigation explosion since last several decades. In USA the problem of litigation explosion is receiving attention and Evershed committee has made several recommendations. In India Rankin Committee had made several recommendations and thereafter there were not less than 15 committees at the central level and several committees at the State level. The reports and recommendations of such committees have been referred in detail in chapter 3 of this thesis.

The problem of huge backlog and pendency of cases in various courts has been the major thrust area for the research work. The tables given in this chapter provides enough indication about the gravity of the problem.

I

INCREASE IN LEGAL REMEDIES AND LEGISLATION

Prior to independence the role of judiciary was to interpret and apply the laws as enacted by Britishers who had perpetual interest in oppression of the locals. After independence the Constitution has guaranteed fundamental rights to the citizens which are made enforcable against the State. The Constitution pledges the State's commitment for economic, social and political justice. The legislative activity both at the Parliament and State Legislature has substantially intensified and every perceivable area of human activity is directly or indirectly covered by some legislation or other. The resultant effect is that there are more and more avenues available to contest or dispute any action which once upon a time did not exist. Some of the examples can be the statutory right to bonus recognised under Payment of Bonus Act, 1965, the remedies under Atrocities Act, the Minimum Wages Act, the Contract Labour (Abolition) Act, the Dowry Prohibition Act and recent amendments to the Negotiable Instruments Act. With the ever increasing volume of legislation the list never becomes exhaustive and no lawyer can even boast of having full and up-to date knowledge on all the laws on the statute books.

The ignorance of law, however, is not an excuse and hence there is tendency on part of the litigants to enforce their rights under various legislations.

A committee recently appointed by the Central Govt. has concluded that there are 2500 Central Laws of which atleast, 1,500 are redundant and have become totally obsolete. Such laws are not repealed as yet by the Government. Some of the laws enacted by Britishers also have lost their relevance but because of lack of initiative and will on part of all concerned, such laws still continue.

In their enthusiasm to provide remedies for the causes propounded by the champions of social and economic justice, further contradictions have been created and the courts are required to do the balancing act between two warring fractions of the society on the same issue. The recent controversy over Mandal Commission report in which the Supreme Court of India gave very extensive and exhaustive guidelines on the sensitive issue of reservation is a classic example of this aspect.

The word legislation here should not be confined only to the legislation enacted by legislative bodies, delegated legislation has been one of the very prominent area giving rise to disputes between citizens and the State. Any law, which violates the provisions of Constitution, is void and sizeable litigation in form of writs comes from this segment where the legality, propriety or constitutionality of particular legislation is disputed. There were occasions when the judiciary created news by declaring that particular laws enacted by the Parliament were unconstitutional. The classic example for the same can be Bank Nationalisation case where the Supreme Court interfered.**2

At the level of the apex court the problems assumes different importance because Supreme Court adjudicates upon the constitutionality and validity of the action of the executive. This branch of law is connected with the concept of judicial activism, which is a hotly debated point on the role of judiciary.

**2 R C COOPER V/S. UOI AIR 1970 SC

II

GENERAL AWARENESS ABOUT LEGAL RIGHTS

While literacy cannot be absolute criteria to decide a person's tendency tc resort to litigation, general awareness among the public about their legal rights can come only by interaction and information regarding the events, which take place in the country and abroad. The exposure to media including press or electronic media also warrants some basic knowledge of the fundamental things like language of communication etc.

In India the position of literacy has improved substantially during last 5 decades. As per the criteria adopted in census a person is deemed as literate if he or she can read and write any language with understanding.

The position of literacy in India as per the census of India is as given below:-

TABLE
GROWTH OF LITERACY IN INDIA

YEAR	PERSONS	MALES	FEMALES
1951	18.33	27.16	8.86
1961	28.31	40.40	15.34
1971	34.45	45.95	21.97
1981	43.56	56.37	29.75
1991	52.21	64.13	39.29

Because of the growth in literacy rates, the number of persons who can read and write has increased. Persons hence can read the newspapers and periodicals. The State Governments try to translate and make available texts of most of the laws in local language.

The National Literacy Mission (NLM) was launched in 1988 with the objective of imparting functioning literacy to 80 Million adult illiterates in the age-group of 15/35 by 1995. Literacy campaign have been launched in 189 districts of the Country covering 4.3 crore illiterate persons.**3

The contribution of electronic media in the area of education is quite significant. The Central Institute of Educational Technology (CIET) has from 20/5/1991 commenced syllabus-based programmes to be telecast to students of Indira Gandhi National Open University (IGNOU).

As per data of 1991, there are 30214 newspapers and periodicals published in India of which 3229 are daily newspapers. The total circulation of newspapers as of 31/12/91 was 5,38,85,000 copies.**4

There is still more wide impact of the electronic media in mass education. Private T. V. Channels have made substantial inroads and Television is not only a media for entertainment but it also provides considerable information and education.

Apart from the aforesaid data, which speaks in terms of absolute literacy, the legal literacy and education programs under the concept of "Legal Aid", has significantly contributed in terms of general awareness among the public about their legal rights and education. Such programs had tremendous success in Gujarat. The Government distributes the literature in such camps/ programmes free of cost. In Gujarat during 1998 19,04,750 persons were provided legal education in 7619 camps.**5

There are several popular TV serials connected with the general awareness about legal rights on various channels. Some of them are listed below :-

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**3 NATIONAL LITERACY MISSION SCHEME INTRODUCED BY CENTRAL GOVT.

**4 DATA PUBLISHED BY REGISTRAR OF NEWSPAPERS.

**5 SANDESH, DATED 10/1/99, PAGE – 11.

T V CHENNEL	SERIAL	SUBJECT
D D – 2	Aaj Ki Nari	Problems relating to women.
D D – 2	Aaj Tak	Coverage of various events.
Zee TV	MohanDas BA LLB	Aspects relating to Law.
Star Plus	Janta Ki Adalat	Current topics on all subjects.
BBC	Asia Today	Latest developments.
TV1	Crime Time	Crimes committed by various persons.
DD1	Kanooni Salah	Reply by experts on legal problems.
Zee India TV	Ghoomta Aaina	Coverage of current topics.
DD2	Kanooni Baatein	Legal Aspects of various matters.
Zee India TV	Aap ki Adalat	Questions to various leading Personalities on different topics.
Sony TV	C.I.D	Detective Serial
Zee TV	India's Most wanted	Criminals who are not arrested.
Star Plus	L A Law	Law related topics
Zee TV	Adhikar	Rights of Women
Zee India TV	Purukshetra	Gender discrimination
Star Plus	Apradhi	Crimes.
DD1	TV insertions on the rights of person arrested in investigation	The rights of such persons explained.

The media also gives wider coverage then before of the court proceeings, verdicts etc and this definitely have contributed very significantly in educating the people. The Doordarshan in their news recently highlighted the achievement of Gujarat in setting disputes through Lok Adalats.**6 - Various eminent personalities like Justice Bhagwati, Shri Rajiv Dhavan, Shri Soli Sorabjee, Shri Fali Nariman and various other academicians/legal experts have been interviewed or have expressed their views on different topics.

**6 DOORDARSHAN NEWS, 7/1/1999.

General Awareness of legal rights has thus contributed, though in a positive way, to the increase in litigation.

III

LITIGATION EXPLOSION

Over last several years there is considerable increase in volume of litigation due to several factors. There is a need to stress the self-evident fact that courts are at the center of litigation explosion even though they may not be at the center at the dispute resolution. There is litigation explosion in large number of countries.**7 England can be taken as a case study on this aspect and if their data for 1968 to 1978 is studied it establishes the increasing trend in litigation :-

TABLE

SHOWING VOLUME OF CIVIL PROCEEDINGS IN ENGLAND**8

YEAR	TOTAL NUMBER OF PROCEEDINGS COMMENCED	NUMBER OF PROCEEDINGS COMMENCED PER 100,000 OF POPULATION				
		CHANCERY	QUEEN'S	DIVORCE	COUNTY	TOTAL
1968	1,790,149	69	537	178	4,876	5,758
1969	1,969,678	80	671	198	5,284	6,330
1970	2,132,442	93	644	232	5,795	6,866
1971	1,873,879	46	577	361	4,996	6,084
1972	1,985,706	44	583	360	5,440	6,433
1973	1,872,402	47	589	376	5,026	6,076
1974	2,245,348	56	758	427	5,774	7,027
1975	2,524,665	51	783	453	5,961	8,174
1976	2,324,906	50	683	471	5,426	7,488
1977	2,040,287	47	545	549	5,426	6,581
1978	1,854,359	39	405	468	4,306	5,949

SOURCE : CIVIL JUDICIAL STATISTICS 1979.

**7 RAJEEV DHAVAN-LITIGATION EXPLOSION IN INDIA AT PG.7.

**8 CIVIL JUDICIAL STATISTICS 1979.

In India, the compilation of data and its publishing is itself very slow. Hence availability of authentic data on the subject itself has been a big problem. The Supreme Court in India in the year 1994 could collect and combine the data of 1988 which reached them by the year 1992. This data also does not include the data of State of Madhya Pradesh at that stage.**9

TABLE

CASES PENDING IN HIGH COURTS

AS ON 31ST DECEMBER 1996.

Name of the High Court	Number of cases		
	instituted	*disposed*	*pending*
Allahabad	163920	116977	865455
Andhra Pradesh	120997	134024	135621
Bombay	91621	74674	234058
Calcutta	68424	58481	264312
Delhi	57812	52487	153537
Gauhati	20958	19311	33018
Gujarat	N.A.	N.A.	139821
Himachal Pradesh	14599	16505	17166
J & K	21567	18853	96414
Karnataka	70739	81267	150965
Kerala	101492	80692	217823
Madhya Pradesh	N.A.	N.A.	75616
Madras	105442	97163	310640
Orissa	47666	32788	66820
Patna	76743	78878	93310
Punjab & Haryana	117304	105807	161562
Rajasthan*	40123	39975	95496
Sikkim	216	209	88

*As on 30.09.1996 Source: Ministry of Law and Justice.

**9 PENDENCY DATA AVAILABLE WITH THE SUPREME COURT.

DISPOSAL OF CASES IN CRIMINAL COURTS

There are several reasons for increase in criminal cases, the prominent among them being the increase in population, increase in poverty, urbanisation, inadequate Police force etc.**10

Temper has no place in the scheme of justice and we can not refuse to do justice to the parties by applying mechanically the frustrating adage that 'Justice delayed is justice denied'. Experience has it that it is atleast marginally more satisfactory to do justice even after a prolonged delay than to perpetrate injustice in quest of speed.**11

Hence any halfhearted or shortsighted solutions to the problem of delays can invite more troubles. As is said, "Justice hurried is justice buried," and reconciliation between the two approaches while dealing with problem of litigation explosion can prove extremely helpful.

The table of Statewise distribution of IPC crimes for the year 1996 on page number 151-A and 151-B shows that the crime rate always does not grow in proportion with the population.**11A

**10 LAW AND URBANISATION IN INDIA – ILI PUBLICATION.

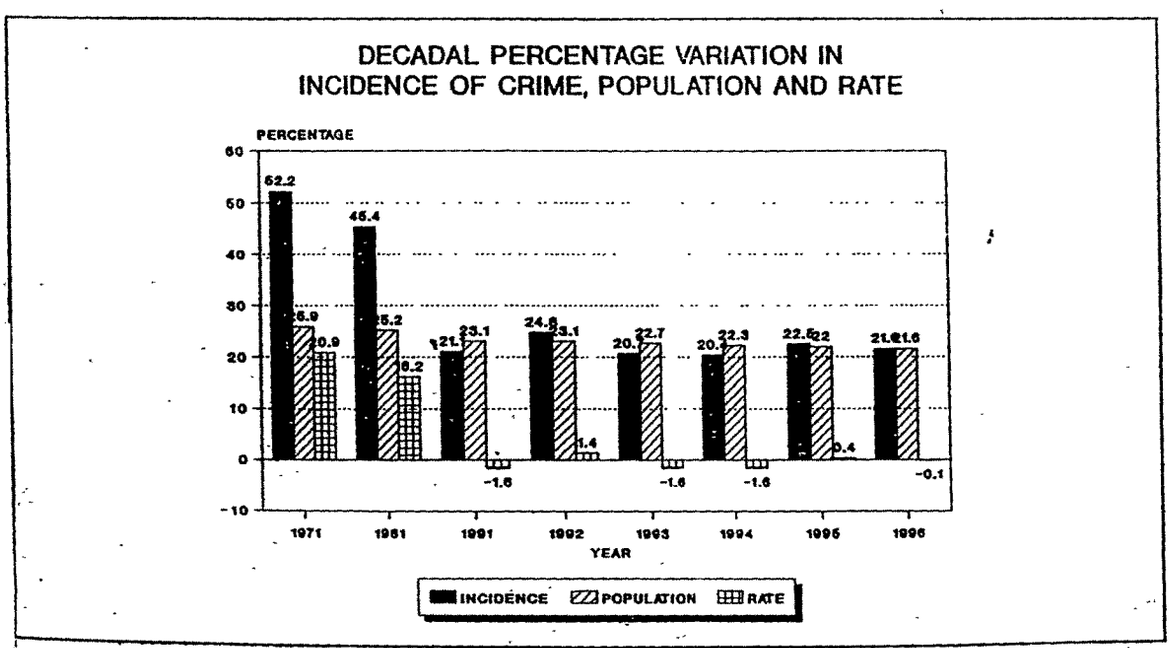
**11 ROSES IN DECEMBER BY JUSTICE M. C. CHAGLA AT PG.70-71, 126-27.

**11A SOURCE CRIME IN INDIA, GRAPHICS.

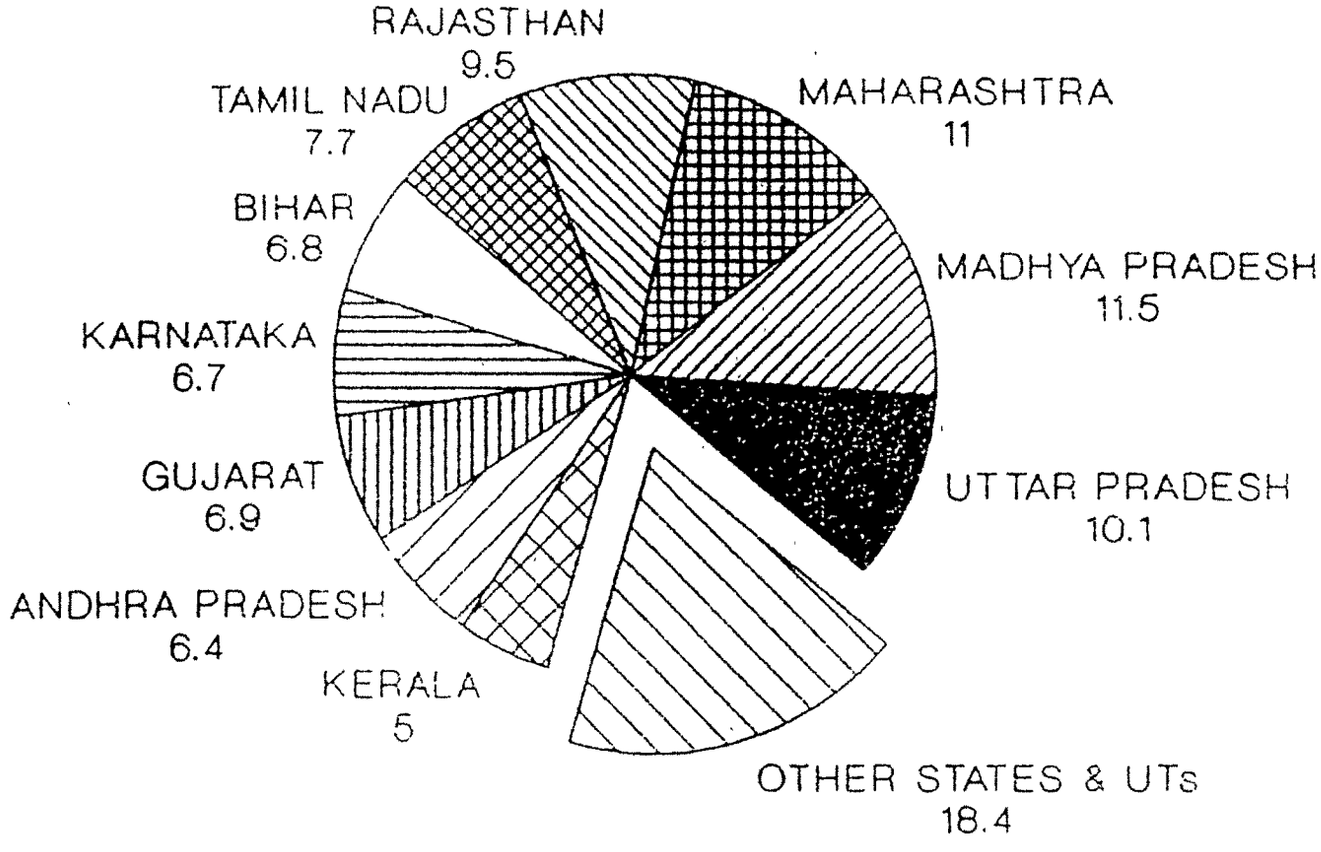
Crimes Under Indian Penal Code
(1951 - 1991, 1992 to 1996)

Year	Population, IPC Crimes, Crime Rate And Police Strength					
	Estimated Mid-year Population		Incidence		Rate (Per Lakh of Population)	Police Strength (in '000)
	In Million	Index	Cases (in 000')	Index		
(1)	(2)	(3)	(4)	(5)	(6)	(7)
1951	361.1	100.0	650	100.0	179.9	NA
1961	437.7	121.2	626	96.3	142.9	NA
1971	551.2	152.6	953	146.6	172 8	707
1981	690.1	191.1	1386	213.2	200.8	898
1986	766.1	212.2	1406	216.3	183.5	1032
1987	781.4	216.4	1407	216.5	180.1	1062
1988	796.6	220.6	1440	221.5	180.8	1066
1989	811.8	224.8	1530	235.4	188.5	1126
1990	827.0	229.0	1604	246.8	194.0	1127
1991	849.6	235.3	1678	258.2	197.5	1153
1992	867.7	240.3	1689	259.8	194.7	1182
1993	883.8	244.8	1630	250.8	184.4	1198
1994	899.7	249.2	1635	251.5	181.7	1230
1995	916.0	253.7	1696	260.9	185.1	1251
1996	931 9	258.1	1710	263.1	183.4	1250
Percentage Change in 1991 Over 1951	135 3		158 2		9.8	--
Percentage Change in 1991 Over 1981	23.1		21.1		-1.6	28.4
Percentage Change in 1996 Over 1995	1.7		0.8		-0.9	-0.1

Note: NA Stands for Not Available.



STATE-WISE PERCENTAGE CONTRIBUTION TO TOTAL IPC CRIMES DURING 1996



IV

RADICAL CHANGE IN LITIGATION PATTERN

After freedom, enactment of new laws, increase in legal awareness and growth of economy, the citizen's concepts and approach for justice have undergone radical change. We have thrown open the doors of the courts to every man to enter and seek justice, several things, which remained unchallenged, are now challenged. Multifarious laws touching every aspect of individual and corporate sector have been enacted, creating in turn, numerous rights and obligations which often clash with each other and generate new disputes between citizens interse or citizens and State.**12 With more and more avenues opening for education, growth of competition in every sphere, rapid urbanisation and increasing economic disparities between various classes, the pattern of litigation is undergoing constant evolution.

Some of the new aspects under which considerable court cases can be clubbed are narrated below :-

TYPE OF LITIGATION/ FACTORS	PARTICULARS
(i) Suo Moto Exercise of jurisdiction	The courts have realised that even if the victim can not approach the court, to meet ends of justice, can under exceptional circumstances exercise its inherent power to prevent injustice.

**12 MALIMATH COMMITTEE REPORT, AT PAGE - 2

(ii) Public Interest Litigation	The concept of PIL, to an extent negates the doctrine of locus standie and any person bonafidely interested in the matter can expound the cause of other person through PIL.
(iii) Growth of Economic offences	The economic offences also known as white collar crimes, includes corporate frauds, deliberate loan failures involving public funds etc. have contributed to litigation increase.
(iv) Growth of Trade Unions/ Representative organisations.	The individual member who is himself financially not in a position to approach the court can approach through his trade union or other associations etc.
(v) Corporate Sector/Securities etc.	Last 2 decades have seen considerable growth of corporate Sector. As on 31/3/1992 there were total 2,50,361 companies with paid up capital of Rs.78,896.7 Crores.**13 With such growth, disputes like winding up, Amalgamation and other corporate matters/financial matters have increased.
(vi) Under trials and courts	over last few years with growth of human rights protection concept, the tortures and problems of under trials have come to limelight.

**13 INDIA 1993, PUBLISHED BY INISTRY OF INFORMATION AND BOARD CASTING PAGE 343

(vii) Proximity and network of courts	Considerable decentralisation of court network and jurisdiction has taken place to make available the forums at doorsteps of the litigation. With growth of infrastructure and communications the approachability of the courts have increased.
(viii) Legal Aid Programs	Providing legal assistance for defending court case.

Due to aforesaid developments the litigation now is not confined to urban Areas or restricted for few elite and educated people of the society. Even questions of academic importance are now dragged to court. Supreme Court has discouraged this trend in following words :-

"The position is firmly established in the field of constitutional adjudication that the court will decide no more than what needs to be decided in a particular case. Abstract questions present interesting challenges, but it is for scholars and textbook writers to unravel their mystique. It is not for courts to decide questions which are but of academic importance.**14

Whenever the courts have found that executive action was in flagrant disregard of constitutional mandate, the courts have shown the determination to handle such issues with firm conviction that they are the ultimate protectors of fundamental rights in following words :-**15

**14 CHANDRACHUD C. J. CITED IN CONSTITUTIONAL LAW OF INDIA BY H. M. SEERVAI, 4TH EDITION, VOLUME II PAGE 1116.

**15 CHARLES SHOBHRAJ V/s. TIHAR JAIL, AIR SC 597 (1978) SUNIL BATRA V/s. UNION OF INDIA, AIR 1980 SC 1579.

The courts have also held that right of reasonably speedy trial is part of fundamental rights guaranteed under Article 21. According to Justice Bhagwati, Detention of persons in jail without a trial for periods longer than the periods for which they could have been sentenced if convicted their detention in jail was unjustified. Procedure for depriving a person of his life or liberty has to be "reasonable, fair and just" and it was the duty of the state to provide legal assistance when accused himself can not arrange for it.**16

The need of the time is to change the common man's perception of law. Robert Kennedy observed that...

"For the poor man "Legal" has become a synonym simply for technicalities and obstructions, not for that which is to be respected. The poor man looks upon law as an enemy not a friend, for him law is always taking something away".**17

The hitherto ignored areas like treatment of criminals in jails have been now getting attention of the courts. The Supreme Court has observed that criminality is curable deviance. It is thus plain that crime is pathological aberration, that the criminal can ordinarily be redeemed, that the state has to rehabilitate rather than avenge.**18 The negative aspect of changes in litigation pattern is the increasing number of false and frivolous cases which are filed only to harass or trouble the other party from malafide litigations needs not only to be discarded but those who initiate such action needs to be subjected to punishment according to law. The courts have in some cases adopted bold approach and have not only dismissed the suits but awarded compensation to the other side.

**16 HUSSAINARA KHATOON V/s. STATE OF BIHAR, AIR 1978 SC PG.1369.

**17 ROBERT KENNEDY CITED IN LAW, LAWYERS AND JUSTICE BY JUSTICE KRISHNA IYER, PAGE 126.

**18 GIASSUDIN A/s. STATE OF A. P. AIR 1977 SC 1926.

V

INCREASE IN LEGISLATIVE ACTIVITY

The legislative powers of Parliament and State legislatures are derived from the Constitution of India. Seventh Schedule to the Constitution of India lays down the broad ambit and scope of the legislative competence, means the subjects on which such bodies can legislate.

Any State whether communist or democratic, is committed to govern for the welfare of the people. The distinction between totalitarian State and democratic State is that free democratic State respects certain rights and values.

Every law needs a sanction. There is no law without a sanction. A rule of law must at least be a rule conceived as binding, and a rule is not binding when anyone to whom it applies is free to observe it or not as he thinks fit. To conceive any part of human conduct as subject to law is to conceive that the actor's freedom has bounds which he oversteps at his peril.**19 In enacting any legislation, the legislative body has to keep in mind that constitution is Supreme Law of the country and if any law violates its provisions it is pro tanto void.**20

In the pursuit by the state of its multiple objectives in creating a welfare state, several legislations have been enacted from year to year. For the purpose of case study, the laws enacted by parliament during the year 1992 have been taken as a basis for this research. During 1992, 44 bills (including 3 constitution amendments) were enacted as laws. Scope and object of some of the prominent bills is summarised below:

**19 SIR FREDRICK POLLOCK, JURISPRUDENCE, AND ESSEYS SELECTED BY A. C. GOODHEART (1961)

**20 H. M. SEERVAI, CONSTITUTIONAL LAW OF INDIA, 4TH EDITION PG.1923, VOLUME 2.

NAME OF ACT	OBJECT
1. Govt. of National Capital Territory of Delhi Act, 1991	For making provisions to setup an Assembly and Council of Ministers, short of granting fullfledged Statehood to Delhi.
2. Representation of People (Amendment) Act.	To prevent danger of disruption of election process due to death of candidate in particular independent candidates.
3.Public liability Insurance (Amendment) Act, 1992	To collect additional money from owners of establishments and provide immediate relief to victims of industrial accidents.
4.Destructive Insects and Pests Act, 1992	To prevent import and transport of any insect, fungus or other pests, which may be destructive to crops.
5.Securities and Exchange Board of India Act, 1992	To vest in SEBI statutory powers to protect the interest of investors in securities and to promote development of securities market.
6.Cess and other Taxes on Minerals (validation) Act, 1992	It validates collection of levies on minerals by State Government which was struck down by Supreme Court and various courts.
7.National Commission for Minorities Act.	For giving statutory status to Minorities Commission.
8.Foreign Trade(Dev. And Regulations) Act, 1992	It provides for development and regulation of foreign trade by facilitating imports.

9.Indian Ports (Amendment) Act, 1992	To change the definition of ton in context of tonnage of ship.
10.National Waterway Act,1992	Provides for declaration of certain stretch on western coast as National Waterway.
11.The Capital Issues (Control) Repeal Act, 1992	The Act was required to be repealed in context of emerging industrial and financial scenario.
12.The Special Courts (Trial of offences relating to transactions in securities) Act.	To establish a special court with sitting judge of High Court for speedy trial of security scam offences.
13.Foreign Exchange Conserv-ation (Travel) Tax Abolition Act, 1992	To abolish levy of tax on foreign travel, because of devaluation of Rupee and partial Convertibility.
14.Rehabilitation Council of India Act, 1992	To constitute a council with powers to regulate rehabilitation of professionals.
15.Banking Companies Amendment Act, 1992	To provide for enhancement of ceiling on paid up capital of banks to 1500 crores.

The aforesaid legislations enacted in one year only (1992) shows that, the Parliament and State legislature has been quite active in enacting more and more laws. The enactment of new laws has manifold effect on the increase in litigation in following ways :-

(i) Such laws usually create new rights, obligations, privileges and protections and the machinery/remedies to enforce it. This contributes to the increase in litigation.

(ii) The laws may be in conflict with some other existing laws or provisions giving rise to litigation.

(iii) The constitutional validity and legality of the law may be challenged under the writ jurisdiction of High Courts or special jurisdiction of Supreme Court.

(iv) The laws enacted provoke reaction from the groups, which are adversely affected giving rise to further litigation.

It is also worthwhile to note that after 1992 India has undergone sea-change in terms of its new economic policy. The laws in India to some extent are required to be in conformity with the norms accepted at international level and agreements like General Agreements on Tariff And Trade (GATT). The laws in India are being moulded and modified accordingly. Some of the recent examples are :-

(i) Arbitration and Conciliation Act, 1996

(ii) Insurance Regulatory Authority Bill, 1998

(iii) Patents Amendment Bill, 1998.

Major changes are proposed in thec ompanies Act, to create room for new concepts like buyback of shares, non-participating equity shares etc.

There is major controversy on bill providing 33% reservation for women in Parliament, State Legislature and other bodies, which sparked off hot debate in Parliament.

The sum effect of increasing volume of legislation affecting large areas of economy, finance, corporate, society etc. plays dominant role in increase of litigation. The endeavor is to provide simpler and cheaper remedy to the prospective litigants and to remove the procedural and legal hurdles so far preventing him from approaching for redress of his/her grievances. For the purpose of case study, example can be taken of the Consumer Protection Act

that has provided that, there will be no court fees for consumer dispute matters and application can be filed at the place where the consumer resides. Research study made in Bangalore City reveals that this development has motivated more and more consumers to voice their grievances.

Malimath Committee has observed that hasty and important legislation without adequate investigative exercise on part of executive, regarding real need for enactment of such law or proper public debate and institutional consultation with expert bodies, results in more institution of cases in High Court. The quality of legislative drafting has also deteriorated.**21

VI

ADDITIONAL LITIGATION LIKE ELECTION PETITIONS

Democracy means ruling of country by the people, for the people (by representatives) and of the people. Autonomy in true sense was given to Indians when India became Sovereign Democratic Republic with the Parliament and President elected as per the Constitution. Over a period of time, institutions of local self-government also have got statutory recognition and they conduct their activities through elected representatives.

The disputes relating to elections hence come to courts from several segments listed below –

(i) Elections to Parliament.
(ii) Elections to State legislatures
(iii) Election of President, Speakers etc.

**21 MALIMATH COMMITTEE REPORT, PAGE – 2.

(iv) Elections to Panchayats

(v) Elections to Co-operative Societies.

(vi) Election to Municipal Bodies

(vii) Election of Board of Directors of Companies, other Corporate Bodies

(viii) Other election related disputes.

Issue whether a right to elect is a fundamental right or not was approached by the Supreme Court in following words - **22

"A right to elect, fundamental though it is to democracy, is anomalous enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected and right to dispute an election. Outside statute there is no such right, no right to be elected or dispute. A special jurisdiction has to be exercised in accordance with the statute creating it. A court has no right to resort to them on considerations of alleged policy because policy in such matters, as those relating to trial of election disputes is what the statute lays down."**23

Section 100 of Representation of People Act, 1951 provides for grounds on which election may be called in question. It can be called in question by filing an election petition. The law is also settled on the point that an election process can not be called in question at an intermediate stage.**24 The petition can be presented by candidate or his elector.

**22 JYOTI BASU V/s. DEBI GHOSAL (1982) 3 SCR 318

**23 JYOTI BASU CASE CONFIRMED IN RAMAKANT PANDEY V/s. UNION OF INDIA JUDGEMENTS TODAY, 1993(1) SC 440.

**24 C. ZACHARIAH V/S. CHIEF ELECTION COMMISSIONER(AIR 1990 KERALA 156).

An election petition calling in question any election may be presented on one or more grounds specified in section 100 and 101 to the High Court within 45 days from, but not earlier than the date of election of the returned candidate. Elector means a person who is entitled to vote, whether he has voted at election or not. Every election petition has to be accompanied by as many copies thereof as number of respondents and has to be attested by petitioner under his signature to be a true copy.**25 This is mandatory. In an election petition, the vires of an amendment allowing opening of ballot box simultaneously was challenged with serious allegation that chemically treated ballot papers were introduced wherein marks put by voters disappeared and invisibly printed marks on symbol of certain political party appeared after 5 days. The High Court refused to interfere in this case.**26 The courts have adopted cautious and careful approach. The maintenance of purity of elections is indeed essential but the court must be clear in its approach and appreciate that the proof of commission of corrupt practices must be clear, cogent, specific and reliable, as the charge of corrupt practice is almost like a criminal charge and the one who brings forth that charge has the obligation to discharge the onus of proof of leading reliable trustworthy and satisfactory evidence. Elections can not be set aside on mere probabilities but only if the allegations of corrupt practice, as alleged in the petition, are satisfactorily proved.**27 The proof of charge has double consequence, the election of returned candidate is set aside and he incurs disqualification as well.

There are several other laws governing elections, the same are summarised below and provisions of those Acts have to be applied in deciding specific election disputes.

**25 BOOTA SINGH V/s. SHER SINGH AIR 1974 SC 1185.

**26 PROF.BALRAJ MADHOK V/s. SHASHI BHUSAN IN ELECTION PETITION NO.1/1971.

**27 CHAWLA'S ELECTION LAW AND PRACTICE, 6TH EDITION PAGE 1-324.

(i) Presidential and Vice Presidential Elections Act, 1952.

(ii) The Presidential and Vice Presidential Election Rules, 1974.

(iii) The Members of Lok Sabha (Disqualification on Ground of Defection) Rules, 1985.

(iv) The Constitution (Scheduled castes) Order, 1950.

(v) Anti Defection laws applied in States.

(vi) Conduct of Elections Rules, 1961.

(vii) Election Symbols (Reservation and Allotment) Order, 1968.

Law making powers relating to local bodies and panchayats vests with the State Legislatures by virtue of Article 246 read with entry at item 5 in list II of Seventh Schedule. The Constitution enshrines in one of the Directive Principles of State policy, that the State shall take steps to organise Village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of Self-Government.**28 The elections to Municipal Corporations are governed by Bombay Provincial Municipal Corporation Act. Under Section 10 of the said Act disqualification have been laid down for contesting elections. For the purpose of disputes arising under the municipal elections, Election Tribunal is constituted and it can grant appropriate relief including interim relief.**29

In addition to the inflow of direct election petitions, the High Courts also are approached with petitions under Article 226 and 227 of Constitution of India in respect of disputes like discrepancies in electoral roll, non compliance of procedures, problems involving dissolution of local bodies, disqualification etc. Thus the inflow of election disputes and petitions including matters connected with elections have played significant role in increasing backlog of cases.

Under the law governing Panchayats, no Civil Court shall have jurisdiction:-

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**28 ARTICLE 40 OF CONSTITUTION OF INDIA.

**29 BOMBAY PROVINCIAL MUNICIPAL CORPORATION ACT (IN GUJARATI) BY SHRI P. N. BAROT AND L. A. JAIN PAGE 165.

(a) To entertain or adjudicate upon any question whether any person is or is not entitled to have his name included in list of voters, or

(b) To question the legality of any action taken or decision given by or under the authority of State Election Commission.

After the election is conducted, the validity of election can be challenged within 15 days from the date of declaration of results of election before Civil Judge (Junior Division) having ordinary jurisdiction in the matter. If the Judge finds that candidate has committed corrupt practice such candidate will be disqualified and election of such candidate will be cancelled.**30 This constitutes additional work for the Civil Courts. If the elected candidate is not joined as party to the petition in High Court, petition is liable to be summarily dismissed.**31

VII

ACCUMULATION OF FIRST APPEALS

Out of total pending litigation in High Courts sizable portion is in the segment of First Appeals. The term appeal is defined as the transference of a case from an inferior to a higher court or tribunal in the hope of reversing or modifying the decision of the former. Appeal is not a fresh suit but continuation of a suit.**32 The First Appeals are filed in High Courts mainly from Civil Suits before the Senior Division Courts. The right of appeal in Civil Proceedings is primarily conditioned by the value set upon the subject matter in dispute in the suit for purpose of jurisdiction. Almost the entire volume of civil litigations is disposed off by civil courts. From the decrees passed in these suits law provides first appeal to District Court or High Court (depending on valuation) on questions of facts as well as law. There is a further right of appeal under Article 133 of Constitution and section 109 (Now order 42) of Civil Procedure Code.**33

**30 THE GUJARAT PANCHAYAT MANUAL BY ANIL SACHDEVA PAGE 14.

**31 NAGJIBHAI KAKADIA V/s. M. D. MANKAD, 1998 GLR(3), PAGE 2342.

**32 LAW LEXICON BY VENKETARAMAIYA, VOL.I PAGE – 178.

**33 SETALWAD COMMITTEE REPORT, PAGE – 362.

Under various other laws enacted recently the scope of first appeal has widened further as under :-

	LAW	SECTION	APPEAL AGAINST
(i)	Civil Procedure Code	96	Decree by court of Sr. Division
(ii)	Civil Procedure Code	Order 43	Order by court of Sr. Division.
(iii)	Guardian and Wards Act.	Section 47	Against orders passed under such Act.
(iv)	Land Acquisition Act.	Section 54	Against orders passed under such Act.
(v)	Trade and Merchandise Marks Act.	Section 109 (2)	Against orders passed under such Act.
(vi)	Workmen's Compensation Act.	Section 30	Against orders passed under Such acts.
(vii)	Motor Vehicles Act.	Section 110 - D	Against orders passed under such acts.

The inflow of first appeals has, barring few exceptions, outnumbered the disposals and thereby contributed sizably in cumulative backlogs. In almost all High Courts, the first appeals are pending for final hearings since more than 5 to 6 years. At the time of filing the appeal, hearing for admission is taken up and once the appeal is admitted it is listed for final hearing after several years. Any interim relief granted at the stage of hearing continues virtually in a perpetual manner unless set aside by the Appellate court at a later stage.

In past, several high powered committees of jurists and judges have examined in detail this aspect of litigation. Their suggestions are summarised below :

COMMITTEE	GIST OF RECOMMENDATIONS
Das Committee (1949)	Keeping in view the depreciation in value of money and consequent rise in value of property generally the District Courts should be vested with jurisdiction to deal with and decide first appeals upto certain amount.
Law Commission of India (14th report)	Similar recommendation was made.
High Court Arrears Committee(1972)	Jurisdiction of District Judges to hear First Appeals should be fixed at Rs.20,000 and such limits should be uniformly prescribed for the entire country.
Law Commission of India (79th reports)(1979)	Pecuniary Jurisdiction of District Courts was fixed long ago in most of the States and having regard to depreciation in value of rupee should be increased to higher amount. Looking at impact of depreciation in various parts of country there is no need to make it uniform.
Satish Chandra Committee Report.	It expressed firm view that having regard to the depreciation in value of money there is urgent need to enhance the first appellate jurisdiction of District Courts. It recommended a retrospective legislation and transfer of pending first appeals from High Courts to District Courts.
Malimath Committee Report (1990)	There is a need to enhance the powers of District Courts in First Appeals but making them unlimited is not desirable.

The Appellate jurisdiction of District Courts can be uniformly fixed by Central legislation so as not to exceed Rs.2 lacs.

The suggestions that an appeal above Rs.50,000/- is heard personally by District Judge, as made by Satishchandra committee is not favoured by Malimath Committee.

The date of hearing of transferred cases is fixed by a judicial order and no fresh notice is issued in individual cases to avoid delay.

Date of presentation of Appeal in High Court should be recognised to decide age of appeal and priority of hearing. Appeals upto 3 lacs can be heard by single judge in High Court and not by Division Bench.

Appeals not to be dismissed in laminae.

Hence during last 40 years, various committees listed above have contributed considerable thinking and suggestions. Partially such suggestions have been accepted and the powers of District Courts have been enhanced.

The major problem which is consistently discussed by all committees is the fall in value of Rupee and consequential increase in volume of litigation which in olden days constituted high value suits. There is a need for periodic review of such limits keeping in view the overall economic position, pendency of cases etc.

One more advantage of widening the powers of District Courts is that the litigants can save considerable time and expenses involved in filling the first appeals in High Courts.

VIII

ORIGINAL JURISDICTION OF SOME HIGH COURTS

By the words "Ordinary Original Civil Jurisdiction" what is meant is the power of concerned High Court to entertain original suits above a certain amount.

At present there are Six High Courts in India which exercises original jurisdiction to entertain and try suits and proceedings of Civil Nature. The Chartered High Courts (Calcutta, Bombay, Madras) derived their original jurisdiction from Indian High Courts Act, 1861. The three Chartered High Courts also have ordinary original Civil Jurisdiction under their respective letters patent with original jurisdiction in respect of infants, lunatics, Insolvent Debtors, Admirality, Testamentary, Intestate and Matrimonial jurisdictions.

The present position with respect to exercise of Ordinary Original Civil Jurisdiction by the Six different High Courts is as follows :-**34

NAME OF HIGH COURT	PECUNIARY JURISDICTION	TERRITORIAL JURISDICTION
1.High Court at Calcutta	Suits and proceedings of civil nature where value exceeds Rs.1,00,000/-	Calcutta city area surrounded by circular road.
2.High Court of Bombay	Suits and proceedings of civil nature where the value exceeds Rs.50,000/-	Greater Bombay

**34 Source – Malimath Committee Report.

3.High Court of Madras	Suits and Proceedings of civil nature where value exceeds Rs.1 lacs (other than triable by Family Court)	City of Madras
4.High Court of Delhi	Suits of all description where value exceeds Rs.1 lacs	State of Delhi
5.High Court of Jammu	Suits above Rs.2.5 lacs (Earlier Rs.20,000)	State of Jammu and Kashmir
6.High Court of Himachal Pradesh	Suits of all description where value exceeds Rs.2 lacs	State of Himachal Pradesh

The original jurisdiction is also conferred under several other Acts like Companies Act, Representation of People Act, Banking Companies Act, 1949, Indian Divorce Act etc. Substantial amendments have been made in Companies Act, 1956. Jurisdiction of High Courts in several matters has been transferred to Company Law Board. The orders and decisions of Company Law Board however are appellable to High Court.**35

The Malimath Committee Report has summarised that :-

(a) Amendments have been made in the laws in force and new legislation has been enacted so as to curtail original jurisdiction to some extent.

(b) The legislative exercise in that direction is halting and half-hearted, in some respects it has proved only partially effective, as a result of judicial interpretation placed on the relevant statutory provision.

**35 SECTION 10F OF THE COMPANIES ACT, 1956.

(c) The recommendations made by commissions and committees have not been fully implemented or acted upon including those of the Satish Chandra Committee which have since been accepted by Government of India.**36

There is a need to have fresh look at the entire provisions because in some cases the powers of ordinary Civil Courts (Sr. Division) are unlimited. In case of Delhi High Court, the provisions of Debt Recovery Tribunals were challenged on the ground that, DRT with presiding officer of rank of District Judge was vested with higher pecuniary jurisdiction than even High Courts. The matter is now pending before the Supreme Court.

IX

INADEQUATE NUMBER OF JUDGES

Almost all the committees that have looked into the problem of delay and arrears have made consistent suggestions that the number of judges should be increased in proportion to the inflow of litigation and additional judges including retired judges may be engaged for disposal of backlog of cases. The merits of the matter and intricacies involved may differ from case to case and hence laying down tight jacketed formula about disposal will prove to be counter productive and unrealistic. At the same time some quantitative yardsticks to assess the output of the judiciary also is required. The table showing average per judge disposal in various High Courts, during the year 1987, 1988 and 1989 can be an indicator as to the variations in disposal rates. The highest per judge disposal (2183) was in Andhra Pradesh during 1987.

**36 MALIMATH COMMITTEE REPORT PAGE – 12.

TABLE

AVERAGE RATE OF DISPOSAL IN THE HIGH COURTS DURING THE YEAR 1986 & 1987 ON THE BASIS OF DISPOSAL OF MAIN CASES ONLY

NAME OF THE HIGH COURT	1986	1987
Allahabad	465.3	665.2
Andhra Pradesh	1607.2	1959.2
Bombay	711.5	761.2
Calcutta	586.7	826.7
Delhi	487.8	548.0
Guwahati	344.1	205.9*
Gujarat	984.8	957.5
Himachal Pradesh	772.4	1039.4
Jammu & Kashmir	827.7	1087.3
Karnataka	3379.3	1541.0
Kerala	1343.8	1545.6
Madhya Pradesh	968.6	327.9*
Madras	975.7	1179.0
Orissa	601.0	832.2
Patna	1049.8	745.7
Punjab and Haryana	1345.7	1424.8
Rajasthan	993.5	860.4
Sikkim	43.0	32.5
Average for all the High Courts:	972.7	998.0+

* FOR THE HALF YEAR ENDING 30/6/87

\+ Average does not include the figures of Guwahati and Madhya Pradesh High Courts.

TABLE

AVERAGE PER JUDGE DISPOSAL **37

NAME OF THE HIGH COURT (1)	1987 (2)	1988 (3)	1989 (4)
Allahabad	628	727	676
Andhra Pradesh	2183	2128	2177
Bombay	720	925	799
Calcutta	544	440	1101
Delhi	573	443	656
Guwahati	394	399	595
Gujarat	958	1346	1399
Himachal Pradesh	910	667	1277
Jammu & Kashmir	1087	1102	1434
Karnataka	1407	1959	1682
Kerala	1584	1383	2193
Madhya Pradesh	831	824	974
Madras	1212	879	1674
Orissa	832	765	636
Patna	758	947	944
Punjab and Haryana	1464	1236	1689
Rajasthan	804	815	901
Sikkim	33	21	41

**37 SOURCE : MALIMATH COMMITTEE REPORT – PAGE 64

The disposal rate for Andhra Pradesh has been consistently above 2100. The all India average rate of disposal cases was 650 per judge per year.**37 The lowest rate, in numerical terms was Sikkim, (21 to 41) but since the inflow is less it is not of much significance. Calcutta and Delhi High Courts were also behind in terms of disposal. The reasons for and factors contributing to the aforesaid backlog or comparatively less disposals, are multiple. In the chapter relating to Indian Judicial System, various jurisdictions of the High Court have been explained at length.

On the basis of the recommended average and the inflow of cases Malimath Committee has worked out, how many additional cases could be disposed off if the required Judge strength was available. As far as the Gujarat High Court is concerned, the vacancies which remained unfilled and its contribution to increase in backlog has been given in the table below :-

TABLE

YEAR	PENDENCY AS ON 1ST January	UNFILLED VACANCIES	AVERAGE DISPOSAL PER JUDGE	LOSS IN TERMS OF DISPOSAL
1986	38,436	13	973	12,649
1987	48,328	14	998	13,972
1988	59,067	13	1,346	17,498
1989	66,737	16	1,399	222,384
1990	73,465	17	...	....

SOURCE : MALIMATH COMMITTEE REPORT PAGE 153

As per the revised policy at least 1/3rd of judges in High Court are appointed from outside the concern states. It positively contributes to the National Integration and broad basing of the judiciary. Some of the learned judges are however not conversant with the local language of states which requires translation of voluminous records in English language. This contributes substantially to the delay involved that the filling stage because most of the proceedings in the courts below are in vernacular language making available the services of the translation department in the High Court itself at the concessional rates can prove to be of substantial help to the litigants.

Another important aspect of the litigation pattern is the growth of money, finance and economy related transactions. The growth of corporate and also has brought in new type of cases involving such corporates. The judges who have good flair and grip on certain major branches of litigation such as bank recovery suits, litigation by or against corporate, property disputes etc. can effect speedy disposal of such cases. Too frequent a change in benches of High Court also can cause difficulties for judiciary, lawyers and litigants and hence an optimum time limit can be uniformly worked out to enable the judge to concentrate in a particular matter or group of matters.

X

OVERALL REDUCTION IN NUMBER OF BRILLIANT STUDENTS OPTING FOR LEGAL PROFESSION AND JUDICIARY.

Legal education has not occupied place of importance which it should be entitled and there is need for substantial improvement. There is a need for scientific approach to legal education. Legal education is and should be on elevated status and law teachers and scholars should enjoy high respect. Our country has the privilege of contributing eminent practitioners and competent judges even for the world scenario. Dr. Nagendra Singh was a distinguished Jurist who reached the elevation of Judge of International Court. Advocates from India

have been great leaders and have also contributed to public service. Mahatma Gandhi himself is a classic example.

At present there are two types of law courses namely five-year Degree course and three-year Degree course. Research study made on this aspect shows that the dropout rate in law course is substantial. **38

The study analysis of the students taking admission in Faculty of Law, M S University, Baroda and completing their final (Special LLB) examination reveals that almost 90% of the students dropped out before completing Special LLB and acquiring qualification to be an advocate.

Year	No. of students appearing in			% of 3rd LLB students
	First LLB	Second LLB	Third LLB	to Students admitted.
1988	764	326	66	8.7
1989	651	223	56	8.6
1990	505	183	27	5.4
1991	463	149	24	5.2
1992	346	126	34	9.8
1993	414	154	34	8.2
1994	330	119	22	6.7
1995	423	119	32	7.6
1996	369	92	28	7.6
1997	282	99	-	-
1998	288	-	-	-

**38 ADVOCATES PRACTICE BY P. RAMAREDDY LEGAL EDUCATION AND OVERVIEW AT PAGE 37.

XI & XII

DELAYS IN FILLING VACANCIES IN HIGH COURTS AND LOWER COURTS AND UNSATISFACTORY APPOINTMENT OF JUDGES

To cope up with the ever increasing volume of work there is a need to maintain the existing strength of judges and augment the same wherever required keeping in view the volume of work.

Professor Upendra Baxi has observed that the State contributes to the crisis of Indian legal system by its own lack of priority for matters relating to administration of justice. The judicial appointments are held up for no valid and publicly debatable reasons. As many as 799 days were lost in Punjab and Haryana by slow action on judicial appointments. For Patna High Court the corresponding figure is 694 days. For Bombay 455 days, for Delhi 450 days. The underlying reasons for delay causes more concern. Is the delay because of disagreement by the State or the Central Government with the recommendation of Chief Justice? If so, it raises rather serious question concerning the independence of judiciary. Or, is the delay because of Chief Justices being leisurely in making recommendations? Is it because of leisurely manner in which the law secretaries and ministers pursue the matter?

The lack of organized concern by the Bar on delays in judicial appointments gives rise to the rather uncharitable impression that the Bar has degree of vested interest in delayed judicial appointments.**39

**39 THE CRISIS OF INDIAN LEGAL SYSTEM BY PROF.UPENDRA BAXI AT PAGE 65.

The position of appointments in judiciary in lower courts and tribunals is still pathetic. The Debt Recovery Tribunal of Gujarat is not having any Presiding Officer since long. So was the position of State Consumer Forum at Ahmedabad and the District Forum at Baroda for considerable time. The appointments and promotions of Civil Judges remain pending for long. The Judiciary operates as an institution to serve the people and earn their confidence. If people start to withdraw their faith, then it is not because judiciary operates otherwise. Debate might be of a degree. Moreover, Judiciary substantially operates on the call of the people. Message hardly gives any guide for either renovation or reformation of judicial system.**40

It hardly matters what are the reasons behind delay involved in judicial appointments, what is really important is the adverse impact it has on very credibility of the system. If the say of the executive or political magnets was to prevail over the opinion of the Chief Justice in recommending names of judges, the independence of judiciary may certainly be effected.

The survey conducted by India Today on "how independent is the judiciary" given on page 178 A can be taken as indicator of people's perceptions on the matter. The appointments and elevations of judges have not been free from controversy and in last about 20 years it has become a debated matter among bar, media and public.

As observed by Dr.Justice K. Ramaswamy, former Judge, Supreme Court of India and Member, National Human Rights Commission.

"My respectful submission is that persons from poor segments do not have Godfathers in the judiciary. I know instances where most deserving from these segments were overlooked. The best among them should be given placement by appointment."41

**40 JUSTICE V/s. JUSTICES, BY JUSTICE ASHOK DESAI AT PAGE 69.

**41 ARTICLE - PROS AND CONS OF INTERPRETATION IN SECOND JUDGES CASE BY DR.JUSTICE K. RAMASWAMY, FORMER JUDGE, SUPREME COURT.

TABLE

JUDICIARY INDEPENDENCE

	UNDECIDED	UNTHREATENED	THREATENED
BOMBAY	15	34	50
AHMEDABAD	37	17	46
BHOPAL	35	31	34
CALCUTTA	28	33	39
PATNA	28	24	47
BHUBANESWAR	35	17	47
DELHI	32	30	39
LUCKNOW	38	26	36
CHANDIGARH	34	25	41
SRINAGAR	14	30	56
JAIPUR	30	27	43
MADRAS	44	19	37
HYDERABAD	31	16	52
TRIVANDRUM	59	20	20
BANGALORE	42	14	44

INDIA TODAY, PAGE 21, 30TH APRIL, 1982.

The above statement of none else than a former Hon'ble Judge of the Supreme Court, need to be examined from various angles. First what should be the criteria to decide, which candidate for the judge, comes from "poorer segment"? Second and still worse is, if the appointments to the post depends on having "God fathers" as referred by the learned judge, it is a matter on which the nation can have concern and needs to be further investigated thoroughly.

The same Hon'ble Judge has observed that transfer of judges is the major impediment and many competent lawyers are not willing to consent for appointment of a judge since he does not want to be displaced from his home town to an alien place leaving all his establishment, kith and kin. Even transfer on any ground is working counter productive. Due to apathy on part of transferee judges they do not devote the time and attention on judicial work and majority of them always remain on leave or absent from the court or leave very early without observing the decorum and court discipline and timings of the court. There are no set modalities for transfer of judges and a full proof procedure should be worked out so that many competent Advocates will accept the appointment.**42

It was decided that the quota of 1/3rd judges from outside the State will be fulfilled by appointing 1/6th from fresh recruitment and other 1/6th from transfer. In 1994, 60 judges were transferred in various other High Courts. Even with this, the criteria is not reached in many High Courts. In Rajasthan, Punjab and Haryana and Delhi it is more than 1/3rd while in most other States it is less.

One of the sitting judge of Rajasthan High Court has observed that in respect of appointment of Chief Justice also, the transfer policy is redundant and causes several disadvantages. Citing example of High Court judges who have practiced in one particular State for 20 years and then in the same State were sitting High Court judges. Such judges have experience not only in the matter of deciding cases but also in the matter of administration of justice. He knows the

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**42 DR.JUSTICE K. RAMASWAMY IN ALL INDIA SEMINAR ON JUDICIAL REFORMS – DECEMBER 1998.

local language, local bar, subordinate judiciary and how it functions. All this experience is lost when he is transferred to other High Court as Chief Justice. There he does not know the local language, has no experience of subordinate judiciary and manner it functions. He has no experience of the bar (of that State) and is seriously handicapped in recommending deserving members of that bar and has to depend on other judges. Several problems of seniority are also created. Some States have no Chief Justice belonging to that State in any other State in any other State while other have 3 of its judges elevated as Chief Justices.**43

The view of some of the Advocates is that the method of (a) Open Application (b) Standardization (c) Proper Evaluation and direct recruitment from all connected spheres like professors in the University, practicing Advocates etc.**44

The Supreme Court in its 1993 judgement has held that in the matter of appointment and transfer of judges greater weightage should be attached to the views of Chief Justice of India which should reduce the political influence etc. Independence and Impartially of the judges and their discharge of duties without fear or favour is the basic backbone for survival of democracy. The political and executive interference in appointment of judges needs to be reduced. The appointment to lower court judges is made by the process of inviting applications and selection is made on the basis of written test and Interview. The promotions are based on merits cum seniority. There is a system of performance evaluation at periodic intervals. The average period involved in promotion of a judge from Junior Division to Senior Division involves 7 years and from Senior Division to Assistance Dist. Judge is about 7 years.

**43 JUSTICE V. G. PALSHIKAR, JUDGE, RAJASTHAN HIGH COURT IN HIS ARTICLE ON TRANSFER OF JUDGES.

**44 T. C. MOHANTY, ADVOCATE, ORISSA HIGH COURT IN HIS ARTICLE APPOINTMENT AND TRANSFER OF JUDGES.

Direct Selection to Assistant District judge cadre is made from Advocates who have put in 7 years practice and apply for the post. The minimum eligibility criteria for selection as High Court Judge is fixed under Constitution of India and it is 10 years practice or equivalent experience. There are substantial number of High Court Judges who had the privilege of being selected as High Court Judges when they were in the age group of 35 to 45 and such judges have long promising career in judiciary.

XIII

INADEQUACY OF STAFF ATTACHED TO COURTS

The appointment, transfer and promotion of judges is a widely debated point but the role of assisting staff who have to carry out clerical and administrative work is also in no way less significant and this aspect is not given adequate importance it merits.

The District Court and courts below is having the staff in following hierarchy:

(i) Registrar, District Court.
(ii) Deputy Registrar (Judicial).
(iii) Registrar, Senior Division Court.
(iv) Registrar, Chief Judicial Magistrate Court.
(v) Registrar-Cum-Nazar (Junior Division Court)
(vi) Shirastedar.
(vii) Superintendent
(viii) Assistant.**45

Additional supporting staff includes stenographers, Court peons etc.

The designations of the staff have been recently changed and made more dignified, say by renaming "clerk of court" as "Registrar of Court" etc.

**45 PRACTICE AND PROCEDURE IN CIVIL AND CRIMINAL COURTS BY SHRI THAKORLAL DAVE. PAGE 17.

The all India position of the working strength of courts, as per the data compiled by the Hon'ble Supreme Court is given in the table. The figures for State of Madhyapradesh are not received by the Supreme Court. The data was complied in the year 1992.

TABLE

SHOWING SANCTIONED STRENGTH AND WORKING STRENGTH OF VARIOUS COURTS IN INDIA

COURTS	SANCTIONED STRENGTH	WORKING STRENGTH	VACANCIES
District and Sessions Judges	645	590	55
Asst. Dist.and Session Judges	985	892	93
Civil Judge/Asst.Dist. Judge	1287	1148	139
Munsiff Courts	1566	1492	74
Small Cause Courts	109	99	10
Chief Judicial Magistrates	496	445	51
Judicial Magistrate(First Class)	2279	2005	274
Judicial Magistrate(Second Class)	724	601	123
Special Judicial Magistrate	318	53	265
Executive Magistrates	215	200	15
Other Judicial Officers	435	360	75

SOURCE : DATA COMPILIED BY THE HON'BLE SUPREME COURT.

ADMINISTRATIVE STAFF, STENOGRAPHERS ETC.

For Senior Division Courts and below, availability of stenographers for taking dictation etc. needs improvement, By providing more stenographer the disposal of the cases which have been heard and pending for dictation of orders can be reduced. For routine type of orders like issue of summons/process/ notice/extension of stay etc. the same is done by using rubber stamps in which relevant particulars are filled in.

For the administrative staff there are two graded examinations :-

LOWER STANDARD EXAMINATIONS

Medium	:	English or Gujarati
Subjects	:	Typing 50 marks
		Paper I, pertion of Civil Pro. Code. Coming within his duty.
		Paper II, Relevant pertion of criminal procedure Code and Limitation Act.
		Paper III, Civil manual, Criminal Manual stamp Act etc.**46

HIGHER STANDARD EXAMINATIONS

All the aforesaid subjects with advanced knowledge plus questions relating to accounts, maintenance of records, its destruction and other rules and regulations, Forms, English composition etc.

By providing proper training to the staff in developing areas like computers etc. the administrative efficiency of the system can certainly be increased.

**46 GUJARAT HIGH COURT NOTIFICATION NO.CH/HC-C-123-1504/62 DATED 27/3/94.

If any person from the staff is on leave, adequate surplus or alternative staff who can take up the work, in addition to his routine work or otherwise, has to be made available from the existing staff. After recent 5th pay commission substantial increase in salaries (20%) staff is granted to the staff on basis of the Government guidelines.

XIV

TRADITIONAL METHODS OF RECORD KEEPING

ISSUE OF PROCESS/COMPUTERISATION ETC.

In all the High Courts, computerisation has taken place to substantial extent. Entire filing process for all the segments have been computerised and there are separate windows for filing of cases, and the number of matters is given immediately by the computers.

The main filing in High Court under various heads is as under :-

	TYPE OF LITIGATION	COMPUTER CODE
(i)	Special Civil Applications	SCA
(ii)	Letters patent Appeal	LPA
(iii)	Company petitions (OJ)	Com. Petition.
(iv)	Company Application/ Other Application.	CA
(v)	Civil Revision Application	CRA
(vi)	Criminal Misc. Application	CRMA
(vii)	First Appeal	FA
(viii)	Second Appeal	SA
(ix)	Criminal Appeal	Cr. Appeal
(x)	Misc. Civil Application	MCA
(xi)	Caveats under various jurisdiction	

All the Advocates practicing in the High Court are given Computer Codes. The High Court has also made arrangement that Advocate if he so desires can deposit some amount and print out for his matters appearing next day before various courts is available in advance. The status of matter can be inquired from inquiry counter which given computer status of matter against payment of Rs.5/-. The uncertified copies of judgements and orders are made available at Rs.3/- per page. The well planned and systematic computerisation in the High Court has proved extremely beneficial for the lawyers and litigants in ascertaining status and latest position of various matters.

The Second phase of computerisation in the courts is under implementation. Under this phase in District Courts the boards and orders are prepared with help of computers.

There is an ambitious plan to computerise the courts below the level of District Court which is under implementation. It also involves providing training to the court staff including the Judges.

Compared to other advanced countries the progress of computerisation in India is quite slow. In Australia, Committee for computerisation was appointed as back as in 1974 and Miss Jean Mullin Chair person made several suggestions which were implemented.**47

The present position of maintaining filing registers etc. is still manual. In the civil court various registers manually maintained are as under :-

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**47 SPEECH BY SIR GARFIELD BARWICK CHIEF JUSTICE OF AUSTRALIA CITED IN LAW, LAWYERS AND JUSTICE AT PAGE 131.

(i) Filing Register.
(ii) Caveat Register.
(iii) Register of Special Suits.
(iv) Register of Regular Suits.
(v) Register of Hindu Marriage Petition (HMP)
(vi) Register of Deficit Court fees.
(vii) Register of Criminal Cases.
(viii) Register of cases sent for police investigation.

The summons are issued by the board clerks after payment of process fees. By introducing computers in the stage of issuing summons etc. the court can issue summons on the same day. If the summons is to be issued and served through an outstation court then in this era of speedy communications are the courts can be connected through Fax/internet/satellite communications and other modern methods.

There is a Post Office in the High Court complex and on similar lines atleast in every District Court complex, Post office counters can be opened so that postal services are easily available. Under certain provisions, for example caveats, a copy of the application has to be sent to the other side within 3 days and the availability of post office in the court complex itself can be extremely helpful.

Under Several Acts, several forms prescribed and in some cases, adequate stationary (printed forms) are not available and the party is required to either get it typed or arrange it otherwise. Such problem is usually found in cases of summary procedure. The forms for summons for appearance and summons for judgement as prescribed under the Civil Procedure Code are not available in most of the cases.

Another problem faced is about sending communications and summons to courts in other states. The forms in English/Hindi language for all type of

processes/Summons are not available. By computerisation such forms with all requisite particulars can be generated on computers and the delay involved in sending the process can be curtailed/reduced.

The records of service of process and summons also needs to be updated and proper entries for postal Acknowledgement/served summons received also can be made quicker to ascertain exact position.

XV

INADEQATE ALLOCATION OF FUNDS FOR COURTS

Dispensation of Justice can not be effective without creation of proper and adequate infrastructure.

The major expenses involved in the entire process are as given below :-

(i) Construction and Maintenance of Court buildings, furniture, computers, telephones etc.

(ii) Salaries of Judges, court staff etc.

(iii) Stationary, Records, Registers, Communications and other miscellaneous expenses.

(iv) Expenses for Lok Adalats etc.

As against this the judicial wing of the state generates income in the following ways :-

(i) Amount of Court fees.

(ii) Process fees.

(iii) Sale of court fee stamp.

(iv) Levy of penalty/fine in criminal cases.

The budgetary allocation, for this segment of state's activity seems to be significantly less. In most of the places the courts run in the buildings which are not properly maintained and in some cases such buildings e.g. Nyaymandir in Baroda, are more than 100 years old.**48 The conditions of court buildings are not only unsafe but even unhygienic. Proper place is not available for keeping the records and in some cases papers and records have to be piled up on the racks. At the same time, the state and Central Government has after 7 years of Marathon attempts constructed an excellent building for the High Court of Gujarat and total expenses incurred on the building is Rs.85 Crones and it will be one of the best High Court buildings in the entire country.**49

The total expenses from the budget, spent an administration of justice are less than 1% of the total budgetary allotments and needs to be increased.

Each court should be allowed to spend certain percentage of increase from court fees etc, straightway for the purpose of maintenance and up-keeping.

Wherever the court buildings are located far away from the cities/some parts of the city adequate transportation services at concessional rates may be provided. The Rickshaw fare from Ahmedabad city to New High Court building will be not less than Rs.60/- and the litigants who have to come frequently will indeed suffer financially if adequate bus routes are not made available. The Government may also encourage financing of certain segments of expenditures like garden, maintenance etc. by encouraging Senior lawyers, unbiased litigants and corporates by way of donations and adequate tax incentives for the same may be provided to encourage the donors.

**48 NAYAYMANDIR BUILDING, VADODARA AND CITY CIVIL COURT, BHADRA, AHMEDABAD.

**49 FROM INAUGURATION FUNCTION OF GUJARAT HIGH COURT BUILDING 16/1/99.

There is a need for judicious and objective review of structure of court fees. At present substantial portion of litigation is filed in form of declaratory suit where the suit is valued at Rs.300/- and the court fee paid is only Rs.30/-. The court fee should depend on valuation of subject matter. Here the very stake of parties involved in the transaction, makes it affordable for them to pay the court fees which can compensate the judicial system for the time and consequent direct and indirect expenses involved in hearing and deciding the matter.

For payment of larger Court fees, the parties are required to buy court fee stamp papers which are available only on Tuesday (once in a week). The courts may be provided with in house system of franking machines where the amount can be deposited in cash and stamping can be made on the spot.

The major delay is at initial stage is for non-payment of process fees and issue of summons. On the basis of average of several cases the process fee payable can be worked out and be recovered in advance i.e. at the stage of filing suit, rather than its recovery separately.

At the National and state level a five years plan can be worked out for time bound creation/improvisation from budget. Recommendations should be invited on this aspect from judiciary, lawyers, litigants and court staff.

XVI

INADEQUACY OF ACCOMODATION

With the passage of time the volume of work of the court keeps on increasing from time to time. That requires additional judicial officers and administrative staff. Hence the court rooms and infrastructure also needs to be increased.

The Gujarat High Court was established in 1960 with strength of 6 judges and the judge strength increased almost five fold (28) during last 38 years. The court rooms and chambers were quite inadequate and hence in 1990 it was decided to shift the High Court.**50

In most of the District places the courts are located in prominent and centrally located business areas of the city. Visit to court complexes at Vadodara, Bharuch, Bhavnagar, Ahmedabad reveals that even if the state desires to make additional construction and funds are made available it will be a Herculean task to make additional construction. In Surat, the court is recently shifted from interior city area to new multi storied building.

Due to inadequate accommodation, the work can not be carried out with the required smoothness and speed. There are courts which have atleast 50 matters listed on the board but hardly 15 persons (including lawyers) can seat in such court. Even the sitting arrangements for the Hon'ble Judges also in some cases is not in conformity with their dignity and status.

In cities like Vadodara, Bharuch, Bhavnagar and Ahmedabad the court complex constructed during Britishers/Baroda state time are still in use and the buildings have outlived their normal life span. There is hence an urgent need to work out a plan for construction of new court complexes in large cities with adequate parking and other accommodation's like bar room, court room, canteen etc. In consultation with good architects an uniform design for court complexes can be worked out so that the court complex can be distantly identifiable and pattern of boards etc. should also be made uniform. Adequate toilet blocks, drinking water facilities etc. has also to be planned in court complexes. The arrangements for keeping the under-trials in court custody needs improvement. The space available is substantially less, compared to the increase in court cases. Police staff comes to the court generally for the cases pertaining to their area of duty. To maintain proper order and decorum, in house police staff should also be provided at least in District Courts.

**50 SANDESH, VADODARA EDITION DT.14/1/99

During the peak hours there is huge crowd in some court rooms and in most of the cases the dates have to be given due to adjournment. If such matters are adjourned by one week/two weeks etc. or so on the same day of week and intimation thereof can be made available at entry point of the court room that can save the time of court staff and also the litigants and advocates.

The sitting arrangements for Advocates also need more close look. At present, the Advocates in most District Courts place their tables at their cost. Most of the place is occupied and the new entrants hardly find place even to keep their table. On the other hand some advocates keep their tables at 2-3 different places in the court. In new courts chambers sitting arrangement should be made available to the Advocates atleast on sharing basis and uniform table space should be provided. Adequate car and two wheeler parking area should be exclusively reserved for court staff, Advocate and litigants during court hours. It is pertinent to note that during 1998 the Baroda Bar Association had to resort to strike for solving the problem of parking place and the problem is till not adequately solved.

In the congested complex of City Civil Court, Bhadra, Ahmedabad, on 26/11/98 there was rumor of bomb hoax and the entire building was to be vacated within few minutes by all judges and staff. For the entire day the court work could not take place and after extensive search it was found to be only a rumor. If there is sufficient space and security arrangements recurrence of such events can be definitely reduced.

As far as possible all type of courts, atleast Civil and Criminal Courts should be accommodated in the same building to avoid inconvenience to Advocates and clients and save their time in moving between different courts. In Ahmedabad the civil Courts are at Bhadra, the Criminal Courts at Gheekanta and some Criminal Courts are at Mirzapur. With the shifting of High Courts, the present High Court complex can be used to accommodate such courts.**51

**51 PERSONAL VISIT TO AHMEDABAD COURTS ON 13/1/99 AND DISCUSSION WITH ADVOCATES.

XVII

FAILURE TO PROVIDE ADEQUATE APPELLATE FORUMS AGAINT QUASI. JUDICIAL FORUMS

"Quasi Judicial" is a term applied to the action, discretion etc. of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, weigh evidence, and draw conclusions from them, as a basis of their official action, and to exercise discretion of judicial nature.**52

A quasi-judicial function is an administrative function which the law requires to be exercised in some respects as if it were judicial. A standard example is a minister deciding whether or not to confirm a compulsory purchase order or to allow a planning appeal after a public inquiry. The decision itself is administrative dictated by policy and expediency. But the procedure is subject to the principles of natural justice, which require the minister to act fairly towards the objectors and not to take fresh evidence without disclosing it to them. A quasi judicial decision is therefore an administrative decision which is subject to some measure of judicial procedure, such as principles of Natural Justice. **53 The term accordingly came as an epithet for powers which, though administrative were required to be used as if they were judicial.

With the increase in number and function of Tribunals, the real nature of their functioning needs closer scrutiny. Decisions given by most of such tribunals are actually judicial decisions rather than administrative decisions in the sense that the tribunal has to find facts and then apply legal rules to them impartially and without being influenced by policy of the department of which such tribunals are part. The function of tribunals hence in substance is almost synonymous with

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**52 BLACK'S LAW DICTIONARY, 6TH EDITION PAGE 1245.

**53 ADMINISTRATIVE LAW, H.W.R.WADE AND C.F.FORSGTH, 7TH EDITION PAGE 48.

courts of law. Some of such tribunals have been established specifically for the purpose of reducing the workload of existing courts. The tribunal finds and analyses the facts and give their verdict by applying legal rules laid down by statute, regulation, or enabling provisions. In respect of decisions taken by tribunals, it is quite likely that one of the litigating party may not be satisfied and would hence seek reversal of the order by the Tribunal. Hence arises the need for Appeal against decision of Tribunal. Appeal can not be as a matter of right and such right has to be created by a statute.

According to Prof. Wade, the appellate procedures are not consistent and appeal may be in following forms :-

(i) Appeal may lie from one Tribunal to another.

(ii) From a Tribunal to a Ministry or Secretary.

(iii) From a tribunal to a Court of Law.

(iv) From a Ministry to a Court of Law.

(v) From a Ministry to a Tribunal.

(vi) No Appeal may lie at all.**54

The problems with most of the tribunals functioning in India, mainly within the Department's fold like say Income Tax Appellate Tribunals is that there is no adequate and speedy machinery for appeals and matters connected therewith. The heavy inflow of writ petitions against the Excise Department during February – March 1998 can be taken as case study. During that period the Excise Department was given some target for recovery of Excise Duty. The department hence resorted to coercive recovery methods like Attachment, Seizure etc. If any matter is taken up by department with vigilance proceedings than the Appeal lies only to CEGAT. Several Companies were hence served with notices for huge amount. The appeal was preferred to CEGAT and stay applications were filed alongwith such appeals. The time involved for the same was several weeks. In

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**54 PROF.H. R. WADE.. ADMINISTRATIVE LAW AT PAGE 915.

such cases the litigants had to approach the High Court for interim stay and the same was granted by Hon'ble High Court of Gujarat.**55There are some unusual cases when despite the orders passed in favour of the petitioner by the Tribunal the same is not implemented by department itself. The Calcutta High Court has held that in such case the proper course is not to approach the High Court under Art.226 of Constitution of India but to first approach the Tribunal which should hear both parties and pass appropriate orders in accordance with law.**56 Hence either because of inadequacy or lack of effectiveness of the tribunals, the litigation to the courts mounts up.

In service matters and disciplinary proceedings also, an appeal can be preferred within the prescribed imitation period to the Appellate Authority. The Appellate Authority can confirm, enhance, reduce or cancel the punishment. In most of the cases the petitions come to the High Court, seeking certain directives against the Appellate Authority before the Appeal is decided or subsequent to the appeal, disputing the very legality and propriety of decision of Appellate Authority.

The need here is not only to create additional/adequate Appellate Forums merely in terms of number, but also to increase their effectiveness, efficiency, competency and credibility so that they really play the role of impartial judges to decide the matters and there are no occasions for the litigants to rush to the courts with petitions etc. The Disciplinary Authority or the Appellate Authority has to be mentally separated from the department while he hears such matters where the powers vested in him are quasi judicial in nature.

**55 STEELCO GUJARAT LTS. V/s. UNION OF INDIA, SCA NO.304/1998 WITH GUJARAT HIGH COURT (APPEARANCE : MAHESH THAKAR FOR PETITIONER)

**56 ROB MATHYS INDIA PVT. LTD. V/s. COMMISSIONER OF CUSTOMS 1998 (104), EXCISE LAW TIMES 328 (CAL.)

It is also observed by Malimath Committee that failure to provide adequate appellate forums against quasi-judicial forums is one of the dominant causes of delay.**57

XVIII

INORDINATE CONCENTRATION OF WORK IN HANDS OF SOME MEMBERS OF BAR

Lawyers individually and bar collectively plays crucial role in administration of justice. As observed by Chief Justice Burger of U.S.A. who was a crusader for reform in U. S. legal system. "Our system of delivery of Justice, to borrow a term from experts in medical care, is faltering and inadequate. The means of delivery of justice are, first, an effective legal profession and second, procedures and methods in the courts that will accomplish the desired results. Surely an effective system of justice is as important to the social, economic and political health of the country as an adequate system of medical care is to our physical health."**58 Role of legal profession has to undergo substantial change to meet with the new challenges. As remarked by another scholar:

"Perhaps what we need are some imaginative Wright Brothers of the law to invent and Henry Fords of the law to perfect new machinery"**59

The ground realities and actual scenario in Indian context appears diagonically opposed to the dictums of ideal.

**57 MALIMATH COMMITTEE REPORT PAGE 118.

**58 ADDRESS TO AMERICAN LAW INSTITUTE (1972), 55 FEDERAL RULES DECISIONS (PAGE 123)

**59 ARTICLE IN NEW YORK STATE BAR JOURNAL JAN.1997, PAGE 8 BY WARRUM BURGER.

The distribution of work among the Advocates is in no way proportionate to their seniority, standing or sometimes even merits. No uniform yardstick can be applied to judge the efficiency of an Advocate but it is also true that there is heavy concentration of court work in hands of few Advocates. To some extent, it is exclusively a matter between client and the concerned Advocate and it is the client's faith in the Advocate, which matters. The system however is definitely concerned with the situation when an Advocate, howsoever Senior or talented he may be, takes up the work which he can not physically cop up and which results in absenteeism and delay.

As a case study, random sample of various cases filed before the Debt Recovery Tribunal and Civil Court – Baroda by banks was taken. Most of such cases are handled by 20 prominent advocates who amongst them, have more than 60% of the cases.

The scrutiny of Daily listing boards of High Court also reveals similar pattern. The strategy adopted by the busy Advocates is to operate as firm and the junior Advocates at times attend the hearings and mention that Senior will attend for arguments. It is appreciable that some of the Hon'ble Judges of High Courts have discouraged this practice and have even gone to the extent of dismissing the matters when the concerned advocates were not present.**60 The matter requires self-introspection by the bar and the concerned Advocates. While no thumb rule can be imposed that an Advocate will have ceiling on briefs he can take and even if such ceiling is arbitrarily imposed, ways and means to circumvent the same can be found. The concerned Advocates can themselves set an example by arranging their overall work and distribution of the work in such a way that, their having disproportionately high number of cases does not become an obstacle in smooth functioning and speedy disposal of the matters.

The present trend is also developing the practice in one or two specific branches like Corporate, Banking, Labour, Criminal, Matrimonial, MACT etc. when such Advocates take matters in other courts the time management on their part is all the more difficult.

**60 CASE REPORTED IN GUJARAT LAW REPORTER.

XIX

LACK OF PUNCTUALITY AMONG JUDGES

Lack of punctuality among the judges has been identified as one of the main cause by Satishchandra Committee and also by Malimath Committee. The word 'punctuality' should be looked in a wider context and should bring something more than physical presence in the court but should be understood in wider context and includes punctuality in following aspects:

1. Taking up matters listed on the board.
2. Minimizing the eventuality of adjournment unless bonafidely warranted.
3. Enforcing time bound disposal of work in staff working under the concerned judge.
4. Giving optimum time for each matter so that all the matters receive the attention, which they deserve.
5. Conveying a message through administration of work in lawyers and litigants that the court schedule should be strictly adhered.
6. Ensuring some minimum disposal in quantified terms.

It should be mentioned here that all the judges as a class should not be blamed for this factor. There are many judges who themselves are very punctual and over a period of time the message spreads that this court is not going to tolerate certain kind of practices. There are certain unwritten conventions in respect of adjournments in some of the courts which gives an impression that adjournments are by way of matter of right. This trend needs to be reversed and while extreme reaction like exercising the power to dismiss the matter may spark sharp reaction from the bar, the degree of severity and weightage of consecutive adjournment without progress should increase once in a particular case, there is no progress at all.

Some of the courts have additional burden of administrative work and maintaining the balance between administrative and judicial work at times becomes difficult and it adversely effects disposal of cases. Some of the courts have been vested with concurrent civil and criminal jurisdiction. This is most common in the courts at Taluka places where a junior division judge also simultaneously functions as magistrate for criminal cases. In such situations allocating separate time for each segment of work can prove helpful.

At High Court level, except 6 High Courts having original jurisdiction, most of the work comes in form of writs and appeals. The matters are taken up for initial hearing for the limited issue whether it should be admitted or not. The other side is directed to file reply. The High court daily boards shows number of times the matters are adjourned and the compliance required. If a matter is adjourned beyond certain number of times, it gets cut off and is not listed on regular board.

The punctuality to begin with can be enforced in injunction and interlocutory matters. The mandate of law is that when on exparte order is passed or an injunction is granted, the court shall endeavor to dispose of the matters finally within 30 days. Recently in an judgement Hon'ble Justice M. S. Shah of Gujarat High Court has emphasized that the schedule should be strictly followed and the court while issuing the show cause notice can itself lay down the limits within which the reply, rejoinder and hearing of the matter will take place. **61 A deadline can be worked down on monthly basis so that the room for delaying the matter further either at the behest of one party or because of environmental factors gets reduced.

The punctuality in terms of administrative work involving all concerned, in periodically reviewing the position of service of summons, payment of court fees, process fees, issuing notices to erring party and incase of non-compliance within the time given dismissal.

**61 GUJARAT LAW REPORTER 1998 VOLUME 2.

XX

INDISCRIMATE EXERCISE OF JURISDICTION

The court may not have jurisdiction to decide the matter because of the following factors:

1. It exceeds the limits of pecuniary jurisdiction.
2. The subject matter falls beyond territorial jurisdiction.
3. The jurisdiction of civil court is taken away by statutes.
4. There is an arbitration agreement between parties under which dispute has to be resolved through arbitration.

The practice at present prevailing in most of the civil courts is that, even a preliminary scrutiny of whether the court is at all having the jurisdiction to entertain the matter is not made. In some extreme cases even exparte injunctions are granted. Such development creates precarious situation and leads to conflicting decisions between various forums constituted under the law.

Some of the cases where the courts can not resist the temptation of assuming jurisdiction are

1. Service matters and transfer matters, where, in most of the cases the transfer is ultimately found to be of incidence of employment and no interference of civil court were warranted.
2. In disciplinary proceedings at premature stage litigants approach the court seeking stay against suspension.
3. In matters involving recoveries under the Gujarat Public Moneys Recovery Act where Section 3 bars jurisdiction of Civil Courts, the matters are entertained.**62

**62 MAHENDRA JETHABHAI PATEL V/s. BOB SCA 173/98

4. Under the payment of Gratuity Act the court can not take cognizance of a complaint unless permission for filing the same has been given to the officer. It is found that the courts issue the process without verifying this vital aspect.**63
5. Criminal Complaints, which are per se time-barred under section 468 of Criminal Procedure Code, have been entertained without preliminary scrutiny.

The examples cited above are few among the many cases where the courts are found exercising the jurisdiction, which is not intended to be vested in them. The courts derive their powers from law and hence can not deviate from the dictates of law. All matters can not be decided at the initial stage but entertaining such matters in mechanical manner also promotes injustice because it frustrates the very purpose for which the provision was made.

To a considerable extent, slight modification in the procedure can avoid the problems involved. Alongwith the plaint the advocate should be required to file concise statement of the material facts and laws involved and also specify whether under such laws there is any other remedy and if so why it is not exhausted. This can to a great extent reduce the casual approach and errors consequently committed by the courts in assuming jurisdiction.

In exercise of writ jurisdictions the courts are found to be more liberal .Even than the rule is that the writ jurisdiction is to be resorted only when there is no equally effective remedy or such remedy is already exhausted.

The latest developments in this field are public interest litigation which have attracts major public attention.

**63 SECTION 11 OF PAYMENT OF GRATUITY ACT 1972.

In India Legal system is not equally accessible to all. Its complex procedure and adversary character, the high priced lawyers, fleecing stamp fee, passive judiciary, traditional rules of locus standie, uncertainty generated because of the contradictory opinions of different High Courts and frequent reversal of prior holdings, the terrible delays in hearing of the cases, frighten away the poor man who is incapable of protecting his rights. Public interest litigation, is a litigation in which a person even though not aggrieved personally brings an action on behalf of masses for redressing public injury.**64

For last about 7-8 years there is tremendous growth of the concept of public interest litigation, the courts have now realised that there is a need to have more disciplined approach on this aspect. Court should not be indirectly used as an instrument by any one to attain or obtain any beneficial achievement which one can not get through normal legal process.**65

The courts also verify that only persons acting bonafide and having sufficient interest are entertained under PIL and vexatious petitions for vindicating personal grievances deserves rejection.**66

Another tendency, which is developing among the litigants is to adopt short cut remedies. For the purpose of case study the provisions of winding up under the Companies Act may be examined. A Company can be wound up for several reasons including its inability to pay the money. The creditors with a view to corner the company and cuff out the money very frequently resort to winding up petitions.

**64 PUBLIC INTEREST LITIGATION IN QUEST OF JUSTICE BY DR.SONIA HURRA.

**65 SAMPAT SING V/s. STATE OF HARYANA 1993 SCC 653.

**66 JANTADAL V/s. H. S. CHAUDHARY 1992 4 SCC 305.

The Allahabad High Court has recently held that mere mismanagement, misappropriation or lack of probity, misconduct of serious nature by the managing director would be curable under several alternatives provided by the Companies Act and therefore company need not be pushed into winding up. **67 Similarly if the company puts forward a substantial evidence of the fact that the debt is time barred winding up petition is not maintainable.**68

The courts have in winding up proceedings appreciated the documentary evidence and held that mentioning of debt in Balance sheet amounts to acknowledgement, extending a period of limitation. **69

There is scope for considerable improvement and need for precision in entertaining matters where the jurisdiction of the court looks doubtful on the face of the record.

XXI

SECOND APPEALS IGNORING THE LIMITATION

The second appeal lies on the point of law from the orders and decree of the appellate court. Hence if the first appeal is decided by district court the second appeal lies to the High court. And in case if first appeal lies to High Court, second appeal lies to Supreme Court. For the purpose of appeal to Supreme Court, High Court is required to give certificate of fitness to appeal to Supreme court and the same has to be applied within 60 days from date of decree, order or sentence.**70

**67 KIRAN SANDHU V/s. SARAYA SUGAR MILLS LTD. (1998) 91 COM.CASES 146 ALL.

**68 JAY BHARAT CREDIT LTD. V/S. JALGAON REROLLING IND. LTD. (1998) CLJ 120 BOM.

**69 STATE BANK OF INDIA V/s. HEGDE & ROULE LTD. 1987 62 COM.CASES 239 KAR.

**70 B. B. MITRA LIMITATION ACT. PAGE 1131.

Some of the High Courts have system of Letters Patent Appeal under clauses 15 of letter patents of Calcutta, Madras High Courts. Such appeals can lie to a division bench against the order of a single judge in following cases...

(a) In exercise of original jurisdiction.

(b) In exercise of appellate jurisdiction in first appeal.

(c) In exercise of its appellate jurisdiction in second appeal.

Thus an additional forum is available in the High Court itself if the matter is brought within the purview of letter patents appeal.

Several committees have recommended for a stricter and better approach to second appeals rather than resorting to drastic alternatives like total abolition of second appeals. The finality to the litigation at some stage is required and the failure ratio of second appeals also is considerably high. **71

After an amendment in year 1997 it was prescribed that second appeals would be permitted not merely on questions of law but only on substantial questions of law.**72

Even after the amendment the position has not changed much and it has shown little practical impact. Second Appeal protracts litigation, but the right can not be taken away all together since a situation may arise where, on identical questions of law, different courts in the state might take different and sometimes totally opposite views which can not be allowed to prevail. Hence whether and how such right of appeal can be curtailed and regulated with a view to achieve the goal of expeditious and inexpensive justice needs to be examined.**73

The courts have been liberal in condoning delay in filing second appeals and under Section 5 of the limitation Act while the courts have such inherent power. The fact that courts are very lenient encourages the litigants to file second appeal at any stage alongwith an application for condoning delay.

**71 SETALWAD COMMITTEE REPORT AT PAGE 375.

**72 SECTION 100 OF CPC AS AMENDED.

**73 SATISHCHANDRA COMMITTEE-VIEW ON SECOND APPEAL.

XXII

LONG ARGUMENTS PROLIX JUDGEMENTS

A judgement, apart from the formal details like case number, name of courts etc should contain the decision of the court on the matter and the following are important ingredients of a judgement...

a) Facts in brief containing contentions raised by the parties and background thereof giving rise to dispute before the court.

b) Facts in issue, i.e. points in disagreement between the parties and points to be determined by the court.

c) Evaluation of issues of facts discussed in the evidence produced before the court by the parties and in context of the contentions and examination of witnesses conducted by advocates.

d) Issues on law points mentioning recitation of relevant law or rule interpretation applied, reference of case laws and ratio decided.

e) Operative order.**74

A random study of judgements passed by various courts gives an impression that there is no uniformity in respect of even the broad aspects to be covered. In some of the judgements the plaint and written statements are verbatim reproduced. The judgements can be made more concise and cover all relevant aspects involved without sacrificing the simplicity. The judgements are given an all the issues involved in civil matters and all the charges involved in Criminal matters. As far as the judgements of High Courts and Supreme Court are concerned, there is reporting in various law journals and one can get an idea of the complete matter from law journals since law declared by the Supreme Court is the ultimate law for the whole Country and law declared by the High Court is so for the State. It is

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**74 ART OF WRITING JUDGEMENTS BY R.G. S. KARKARA 1993 EDITION PAGE 44.

necessary that the judgements are precise and the ratio of the judgement should be explicitly clear. While there is nothing wrong in such judgements being overruled by a subsequent judgement, too frequent a change in the position creates confusing situation for the lower courts, litigants and lawyers. Some of the recent examples are conflicting judgements of the Hon'ble Supreme Court on the aspect of bounced cheques. In the year 1996 the Hon'ble Supreme Court came out with the view that if stop payment instructions are given and payee is advised not to deposit the cheques, the offence is not committed. **75 This has resulted in dismissal of several complaints. In the year 1998 the Supreme Court came out with totally different interpretation and held that the offence is committed even if stop payment instructions are given. **76 There is a need to re-look at such cases, at least when the matters have far reaching consequences in business circles or other spheres of legal world. Sometimes the judgements rather than conveying the legal position in a layman's language become portraits of scholastic achievement of judges and are found to be voluminous. Simplification of language and pattern of judgements can prove to be of great help in reducing delays.

XXIII

LACK OF PRIORITY FOR DISPOSAL OF OLD CASES

The inflow of new matters in the courts is increasing day by day. When new matters are filed some hearing takes place at the admission stage at the High Courts for granting interlocutory reliefs in the lower courts. Sometimes new matters of exceptional importance come to Supreme Court where considerable time is required to be given. Because of all such things proper attention is not bestowed on the old pending cases. Hon'ble Chief Justice A. S. Anand of

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**75 AIR 1996 SC 2339.

**76 (3) SCC 249.

Supreme Court has recently emphasized for deciding long pending cases in trial courts and High Courts so that people's faith in system of administration of Justice is restored. He has also suggested that all the cases pending for over 7 years, be decided by end of 1999. The Hon'ble Chief Justice has also urged Chief Justices of High Courts to have vacant post of judges in trial courts filled so that the system gets additional hands to meet the challenge of backlog and delay in disposal of cases which are at least 3.5 crores in numbers. As an incentive, judicial officers may be given extra disposal units as yardstick to determine merit of subordinate courts. After all the cases older than 7 years are disposed off the cases with 5 years pendency can be taken up for quick adjudication. The Hon'ble Chief Justice has also urged the entire judiciary to co-memorate 1999 as the year of action. **77

The priority for deciding old cases hence has been elaborately explained in the above referred message of the Hon'ble Chief Justice. To dispose off such old cases a multi-prone approach can be taken and the following steps can prove extremely helpful:

(i) Out of the existing courts some of the courts can be assigned the work of dealing exclusively with backlog cases only and no new cases should be assigned to them.

(ii) The views expressed by Hon'ble Chief Justice should percolate further to bar and litigants. Fresh notices shall be issued to the litigants that the matter will be taken up for hearing from a given date.

(iii) As far as possible such matters be taken up without any interruption and any deliberate attempt to delay such matters by any side should be discouraged.

(iv) In the suits which are declaratory in nature and injunction is sought, after decision in injunction application the parties themselves are not very keen for further proceedings. In such cases the court can persuade the party whether the main suit should be heard expeditious or withdrawn.

**77 THE TIMES OF INDIA 13/1/99 AHMEDABAD EDITION.

(v) Cases like complaints under Section 138 of Negotiable Instrument Act are based mainly on documentary evidence and stage of filing on affidavit may be introduced in which the accused should come out with his specific defence to contradict documentary evidence rather than simply recording the plea as per the prevailing position.

(vi) Efforts to settle such cases through Lok Adalats have been yielding encouraging results and the present enthusiasm for settlement through Lok Adalat should not only be continued but also strengthened further.

(vii) A periodic review of the implementation of suggestions given by Hon'ble Chief Justice may be taken by courts on bimonthly or quarterly basis so that necessary corrections can be made in the strategy at periodic intervals.

(viii) Government itself is the largest single litigants in the courts and without their involvement backlog cannot be cleared. In hundreds of cases involving petty offences such as prohibition cases, small violations of Labour Laws etc, authority can be delegated to responsible officers who can consent for the settlement.

XXIV

FAILURE TO UTILISE GROUPING OF CASES COVERED BY RULING

In substantial number of matters pending before several High Courts the position of law remains uncertain because of conflicting judgements or lack of clarity. Whenever on such point the clear judgement from Supreme Court or concerned High Court comes, the ratio and the law decided can be very conveniently applied to all such cases provided proper grouping of the matters is done. At present because of lack of grouping the judgements are applied only when the same is referred by advocates of either side or the Judge notices it and applies it.

Some of the areas where, grouping of the matters can prove extremely useful can be summarised below:

1) Excise petitions.
2) Service matters.
3) Land acquisition matters.
4) Matters arising from quasi-judicial proceedings.
5) Tax & Revenue matters.
6) Matters involving public undertakings having their branch network or area of operations throughout the country.
7) Matters involving legality or constitutionality of the enactments for the particular section thereof.
8) Matters relating to interim applications like injunctions under the Civil Law and bails under the criminal law.

The grouping of matters and cases can also prove extremely helpful in adopting uniform approach for identical matters. The practice followed in the High Courts is that if in a cognate matter some order is passed, it is applied to all such matters. In cases where the identical matter is pending before any other judge, the ruling is cited and copy of the order is produced and unless the other judge finds reason to differ it is followed. If there are two conflicting judgements, the single judge may refuse to follow and prefer to refer the matter to Division Bench at his discretion.

In all the aforesaid cases, careful grouping of the maters can prove helpful to reduce the delay involved.

XXV

GRANTING OF UN-NECESSARY ADJOURNMENTS

The normal rule at least as per the statute is that once the court starts hearing, it will be continued till the matter is finally disposed off. The adjournments

have to be allowed only in unavoidable circumstances and at the discretion of the Court. No strict rules can be laid down and the Supreme Court rulings in the matter suggest that the power should be exercised judicially and reasonably. **78

Frequent adjournments applied for by the litigants and granted by the courts have been, one of the dominant reasons for the delays. The Civil Courts and Criminal Courts maintain two types of daily boards. The first board is of hearing and that is with the judge himself, the second board is called Vyavastha Board. The adjournments usually have been sought by the parties under following circumstances.

1) Defendants who have no substantial defence and wants to throw the proceedings,
2) Plaintiffs who have obtained exparte orders at initial stage and want to prolong the matter.
3) Parties who are not in a position to produce requisite documents or information.
4) Party against whom order of interim nature or complying certain terms have been passed and who are not able to comply.
5) Other reasons.

Sometimes on the same ground more than one adjournments are sought. The Allahabad High Court has taken a view that simply because in past an application was granted for adjournments, the subsequent application cannot be rejected if there was sufficient cause preventing the party. **79 Some of the most common grounds on which the adjournments are sought have been summarised below :-

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**78 CIT V/s. EXPRESS NEWSPAPERS LTD. AIR 1994 SC 1389.

**79 MAHARAJA V/s. HARIHAR AIR 1990 ALL.49

1) Sickness of parties or his pleaders or witness.
2) Summons not served.
3) Granting reasonable time for preparation of case.
4) Withdrawal of appearance by Counsel at last moment.
5) Inability of counsel to conduct the case and of the party to engage another advocate.
6) Party going out of station.
7) Death of close relatives.
8) Other social functions.

When adjournments are frequently taken without any reasonable cause, this is, an evidence of dilatory conduct of the party and amounts to abuse of process of court. Such adjournment application deserves to be refused. The Hon'ble Supreme Court has pointed out that the discretion vested in the Court to refuse adjournments should not remain a dead letter and if the party fails to comply with the obligations despite adjournments, the matter should be proceeded. **80

To an extent, frequent adjournments become possible because the profession as such has vested interest in such adjournments. When the advocates for both the sides because of some reasons or other are not in a position to conduct a matter on a given date because of their pre-occupations, courts express least resistance in adjourning the matter. Speedy disposal of the matter is the foremost concern of the court also and therefore, the court can in appropriate cases interfere and prevent further adjournments even if advocates from both the sides do not object.

**80 PRAKASH V/s. JANAKI AIR 1987 SC. 42.

XXVI

INTERIM APPLICATIONS FOR PRODUCTION OF DOCUMENTS ETC.

Application for production of documents, even if there is no justification or relevance of the documents or there are enough of admissions to establish the fact, is one of the common methods adopted by the parties to delay the matter.

Under the Civil Procedure Code, any party may without filing any affidavit apply to the court for an order directing any other party to any suit to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question. On the hearing of such application, the court may either refuse or adjourn the same if satisfied that such discovery is not necessary, or not necessary at that stage of suit or make such orders generally or limited to certain classes of documents. **81

If the application for production of document is filed with the sole object of delaying the proceedings, it is expected of the court that the application should be rejected at a very initial stage. The Gujarat High Court has held that in order to exercise discretionary power under this rule and before passing any other, it is incumbent upon the court to consider the relevancy of the documents in the light of the dispute or controversy between the parties. Not only that the courts should also seriously apply its mind at that stage, and satisfy as to whether the documents sought for or ordered are required for the purpose of discovery for the effective disposal of the issues. Relevancy of the documents with regard to the controversy between the parties must be borne in mind before passing an order for production or discovery, particularly when specific documents are sought to be recovered.**82

**81 ORDER 11 RULE 12 OF CPC.

**82 UNION BANK OF INDIA V/s. HEMANTLAL R. VAGAD AIR 1991 GUJ.113.

There are other interim applications also which are filed deliberately for delay in such matters. Prominent among them are the applications for amendment of pleading, for deciding preliminary issues etc and it is necessary that before the other side is called upon to reply such applications some preliminary scrutiny and questioning is made by the court itself to ascertain whether the application is at all bonafide.

XXVII

DELAY IN SERVICE OF SUMMONS

Summons is the starting point of action in all civil cases and most of the criminal cases. The delay involved in service of summons can be drastically curtailed if the parties who were evading service of summons, were at times doing so with the active or passive support of the very persons, whose duty it is to see that the summons is served, It has to be discouraged.

Delay involved in service of summons can be broadly classified as under:

1. Delay due to non-availability of address with the plaintiff here the plaintiff can be directed to forthwith inquire about the correct address and make it available to the court so that fresh summons can be issued.
2. If the summons is not getting served because of deliberate attempt of the party who is interested in delaying the matter the courts should exercise their inherent powers to enforce the process. Under the Indian Penal Code, deliberately avoiding summons constitutes an offence against administration of justice but there are very few cases when the provision has been actually applied.
3. When summons is not served by usual procedure provisions for substituted service, simultaneous service etc. should be resorted. In such cases directives can be issued for prompt compliance of the provisions so that the summons get served or should be deemed to have been served as per the law.

Under the Criminal Procedure Code if the court is of the opinion that the party is deliberately avoiding the process, a warrant can be issued. The provisions of proclamation and attachment of property of a person who is deliberately avoiding arrest can also be applied in appropriate cases.

The view of the Supreme Court is that the warrant can be issued even for production of accused for aid of investigation before the police and the judicial discretion in this regard can be exercised by the court. **83

Hence warrant of arrest can be issued at the stage of investigation.

The service of summons through registered post can be effective and simultaneous service should be encouraged. If any party is generally residing at a given address but deliberately refused is to accept the summons, the postmaster of the concerned area may report such matters to the court and this conduct of the party may be kept in view.

XXVIII

RELUCTANCE TO USE INBUILT PROVISIONS TO REDUCE DELAY

On basis of recommendations made by several committees reforms have taken place in procedural and substantive laws to minimise the delays involved. Such provisions vest enough discretion and powers with the court to deal with the situation which will result in delay. Such powers can be exercised by the courts in proper perspective, more particularly when not exercising the same will constitute abuse of process of court by the party concerned. Some of such provisions are listed below:

**83 STATE THROUGH CBI V/s. DAWOOD IBRAHIM AIR 1997 SC 2494.

1. Stay of a suit when matter is pending before other competent Court (Section 10 of CPC).
2. Dismissing the suit on point of res judicata (Section 11 of CPC)
3. Refusing to accept the matters beyond the jurisdiction of the court or without proper valuation.
4. Avoiding compensatory cost for false and vexatious claims.
5. Disallowing unreasonable objections in execution proceedings.
6. Exercising powers for joinder of parties etc. at the earliest opportunity.
7. Dismissing the suit when proper court fees or process fees are not paid.
8. Ensuring speedy service of summons by substituted service/simultaneous services/publishing in newspaper etc.
9. Disallowing applications for production of documents which are not relevant.
10. Allowing ex-parte judgements when the defendant does not appear or file reply and imposing conditions while setting aside exparte decrees.
11. Adhering to the time schedule of 30 days in deciding injunction matters.
12. Proceed with the execution unless decree is stayed by appellate court.
13. Exercise revisional powers if the lower court has not exercised the jurisdiction properly.
14. Issuing warrant and attaching property of accused in criminal case if they are avoiding the service.

If the relevant sections and provisions are read and correctly applied there are enough powers and discretion with the court, even now to reduce the delays and discourage the tactics to prolong the matters.

XXIX

GOVERNMENT LITIGATION

If the Government can take proper initiative it can itself be a guiding example to other litigants in reducing the delays. There are substantial numbers of pending cases of Government at all levels right from the lower courts to the Supreme Court.

The views expressed by Shri S. S. Ray, a leading lawyer and former Law Minister at one stage can be helpful in this context. "I have a suggestion to make. I think the time has come when our State should reconsider the various pending cases in the various High Courts. I think there are numerous cases where the Government has taken up a frivolous defence. I think we should set up a committee consisting of Advocate Generals of various States to go into all the pending cases and decide which pending cases should be abandoned.

If you take a decision with regard to this pending cases, if all of us go into this cases and dispose off those which are not worthwhile defending and settle them with defendants than we might be able to reduce litigation considerably."**84

Another Union Law Minister Shri A. K. Sen has also shared the same point and said that in a labour appeal case the hearing went on for 10 days than it should not have taken more than half an hour. The Government in a democracy is constituted out of creative will of the people and being a major player in administration of justice, not only as State but as litigant, proper initiative and flexible approach on part of the Government can help substantially in reducing the delays.

The framers of the law had a scheme in mind under which the disputes between Government and others should go to courts only as measure of last resort. The ideal behind is to look into such disputes in advance and find out the solutions and sort out the disputes as far as possible.

Provisions of Section 80 of Civil Procedure Code have been inserted with a specific object in view. It provides that no suit shall be instituted against the Government or against the public officer in respect of any act purporting to be done by such public officer until the expiration of two months next after notice in writing has been delivered to the Government. **85

**84 SHRI SIDDHARTH SHANKER RAY CITED IN ACCESS TO JUSTICE – A CASE FOR BASIC CHANGE AT PAGE 120.

**85 SECTION 80 CIVIL PROCEDURE CODE.

The Supreme Court has explained the purpose of this provision. In its view a statutory notice of proposed action under Section 80 is intended to alert the State to negotiate a just settlement or at least have the courtesy to tell the potential outsider why the claim is being resisted. A litigative policy for the State involves settlement of Governmental disputes with citizens in a sense of conciliation rather than in a fighting mood. Indeed, it should be a directive on the part of the State to empower its law officer to take steps to compromise disputes rather than continue them in court. **86 In practice, no keenness or sincerity is shown on part of the Government to even take initiative for settlement of disputes through this method. Similar provisions of statutory notice are there in respect of suits against Municipal Corporations.**87

Setalwad Committee also was disappointed with the approach of the Government in cases where statutory notice is served on them. The committee has observed:

"The evidence disclosed that in a large majority of cases the Government or public officer made no use of the opportunity afforded by the Section. In most cases the notice given under Section 80 remained unanswered till the expiry of two months provided by the Section. It was also clear that in a large number of cases, Government and Public Officers utilised the section merely, to raise technical defences contending either that no notice had been given or that the notice actually given did not comply with the requirements of section. These technical defences appeared to have succeeded in a number of cases defeating the just claims of the citizens." **88

**86 STATE OF PUNJAB V/s. GEETA IRON AND BRASS WORKS LTD, AIR 1978 SC 1608.

**87 SECTION 487, BOMBAY PROVINCIAL MUNI. CORN. ACT.

**88 LAW COMMISSION OF INDIA, 14TH REPORT.

The Law Commission therefore recommended deletion of this provision.

Advocates also find that the provisions of statutory notice have remained merely an empty formality and obsolete provision. **89

The Government can also develop in house mechanism to look into such notices in an objective manner and search for solutions without litigation. That can be possible only when office of ombudsman or other impartial persons can be created in the Government department itself. The functioning of this scheme can be supervised by a Committee consisting of a retired Judge of High Court, retired Secretary of the State and eminent public persons to be nominated by the Government. In absence of proper initiative, provision of Section 80 by itself creates statutory delay of two months from litigants viewpoint.

XXX

LAWYERS NOT APPEARING IN COURTS DUE TO STRIKE

The frequent strikes resorted by Bar Associations at various places also constitutes a cause for delay.

During the year 1998, the Baroda Bar Association gave strike call/passed references on death of Advocates and the Advocates did not participate except for urgent matters. The other issues for which strike was resorted included parking problems, misbehavior with Advocates.

**89 AT CONFERENCE ON "DELAYS AND THEIR SOLUTIONS" ARRANGED BY GUJARAT LAW SOCIETY, ARTICLE BY ADVOCATE SHRI TUSHAR MEHTA DATE 18/12/98.

With the increase in number of Advocates over a period of time, the incidence of death also increases. In cities like Ahmedabad where the bar strength is substantial, closing one day's work due to demise of advocate, however justifiable causes delay.

The practice in High Court of Gujarat is that whenever there is reference due to death the work is not taken up in post recess session. It was proposed that the work should not continue after 4.00 p.m. and the proposal was put to vote in High Court Bar Association. The Bar Association, however, by overwhelming majority has voted in favour of the present practice.

The other problems, for which bar associations are required to give strike calls can be sorted out by mutual negotiations. For recent strike on parking area problem, Hon'ble District Judge took the initiative and negotiations for solving the problem had taken place.

The various reasons for which Baroda Bar Association was on strike on various dates have been given in the table.

With the increase in number of Advocates bar will definitely have to review the prevailing practices on reference in the overall interest of the profession.

On certain issues, bar is also divided and the warring fractions make allegations against each other. Recently such controversy had taken place in Supreme Court. The statements made by members of bar against each other and sometimes even against judiciary, bring down the overall image of profession in the eyes of general public.

Justice Krishna Iyer has criticised the approach of lawyer's association, which is inconsistent and contradictory. Giving example of Abhinav case, where the accused was a lawyer, charged for murder of his own wife and comparing it with other cases involving criminals, Justice Iyer has asked, when did a lawyer's association strike or at least protest when a Policeman hand-cuffed or roughed up in public a common man? Did they ever struggle for freedom of information or custodial justice. Have you any steam left for people's justice? When did lawyers

lash out collectively against grave misconduct or battle against the years and delay in appointment of judges, at any level denying right of justice? **90

The bar can therefore take up public causes also demanding public attention.

XXXI

DETERIORTION IN STANDARDS OF LEGAL EDUCATION

At present in India there are about 500 law colleges of which 400 colleges are in the Private Management and about 100 or so are under the Universities.

Most of the private colleges are run by the trusts and they are affiliated to the Universities. The law colleges run by Universities receive substantial grant from U.G.C. and concerned State Governments.

Law Research and Post graduate studies in law receive very less attention because most of the funds allotted are spent on running colleges upto LL.B. level. In 1994, 255,000 students had taken admission in LL.B. course in 400 colleges. **91

With widespread industrialisation and increased business relations between various countries. The syllabus of law colleges needs to be changed from time to time. In USA, one can take up specialised Post Graduate studies on developing branches like Real Estate Laws, Business Laws, Export and Import Laws, Environmental Laws, International Laws, Human Rights' Law etc. In India also there is substantial scope for developing new areas and centralized body like Indian Law Institute can work as nodal agency for this purpose. Earlier, the Bar Council was maintaining its own standards for qualification as advocate and the result used to be very strict. Relaxing standards simply because of student agitation, or allowing ATKT relaxation etc. in passing, ultimately harms the long term interest and career of concerned student only when he is required to compete with the outside world.

**90 JUSTICE AT CROSS ROADS.. BY JUSTICE KRISHNA IYER.

**91 DATA GIVEN BY UNIVERSITY GRANTS COMMISSION.

In December 1993, Hon'ble Chief Justice of India constituted a Committee consisting of Hon'ble Mr. Justice A M Ahmedi as Chairman and Justice B. N. Kripal and Justice Rao as its members.

Some of the important suggestions made by the Committee are:

(i) There should be an entrance examination and only students with high percentage of marks should be selected for admission to law colleges.

(ii) There should be 80% attendance in classes and no relaxation or laxity should be shown to any student on any ground. The students should compulsorily visit courts in final year.

(iii) Every law graduate should be required to undergo apprenticeship for a period of one year with a senior lawyer recognised for such purpose.

(iv) Persons who secured degrees as private candidates (such as Open Universities) should not be eligible to join legal profession.

(v) State bar Council should arrange lectures on legal topics selected at the national level for the new entrants into the legal profession.

(vi) The method of teaching should not only be restricted to the class room lectures method, but the case study method, problem method etc. should be used to supplement the lecture method.

(vii) Practical training in drafting, pleadings, contracts etc. should be provided. **92

(viii) The apprentice-training period of one year or 18 months should involve attending civil courts, criminal courts and district courts and maintaining dairy for this purpose.

(ix) One High Court Judge should be in charge of legal education for entire State.

(x) A High level committee should be appointed to review the affiliations already granted.

**92 RECOMMENDATIONS MADE BY STUDY COMMITTEE UNDER CHAIRMANSHIP OF JUSTICE AHMEDI.

(xi) Participation in moot courts, mock trials and debates must be made compulsory and marks awarded for the same.

(xii) To avoid leakage of question papers or even copying, instant questions can be generated with the help of computers and question papers should be presented through the National Informatics Center at various places as is done in UPSC examinations conducted countrywide.

(xiii) National Law School type colleges should be established in each State.

Based on the aforesaid recommendations, Bar Council of India training rules have been framed and implemented with effect from 2/4/1996. On training after acquiring 3 year degree in law have been made compulsory. Bar Councils have prepared detailed study material giving information regarding Courts, pleadings and other related subjects which can be useful for the trainee advocates. Five years degree courses in law also have been introduced in various colleges.

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