CHAPTER - IX

CONSEQUENCES OF DELAY IN ADMINISTRATION OF JUSTICE

The backlog of pending cases in the courts is increasing day by day, year by year without showing any signs that it will become manageable or can be brought within control one day. In the previous chapters, detailed study of the systems has been made.

The statistics of delay in quantified terms, though a good indicator to appreciate the problem can not be the sole criteria for deciding the seriousness of problem. Administration of justice also should be looked as "service" rendered by the state to its citizens and the litigants should be seen as consumers of such service.

In this chapter an effort is made to discuss the cause-effect relationship between delays and various factors.

DELAY ITSELF AS CAUSE OF INJUSTICE

This aspect can better be illustrated by study of the following cases which reached their destination from trial court upto Supreme court in long time span. There may be many more such cases, some may be even more serious in nature and hence these cases are mere broad indicators.

A. ANSUYABEN BHATT V/s. RASHIKLAL SHAH (1997), 5 SCC 457.

FACTS : The landlord while in private employment had given his house on rent and after his retirement claimed back the possession of property as he wanted to commence his own business. For that purpose he filed

eviction suit in 1966 and after decisions by the trial court and High Court the matter went upto Supreme Court.

The Hon'ble Supreme Court observed...

This is one of the classic instances of the cases holding the law that delay defeats justice. The landlord filed a suit in 1966 for eviction of tenant for personal occupation and today after 31 years we are disposing of the matter at the level of this court.

In this case the need extinguished by lapse of time and the courts simply played the role of mute spectator. The landlord who was just about to retire from private service having four unmarried grown up daughters and one son aged 24 years had filed an application in 1966 for eviction of tenant as he wanted to set up a business .After 31 years , When the matter came up for hearing in the Supreme Court in 1997, the landlord was not in a position to start any business as he was 87 years old, the daughter had been married and son who was 24 years of age when the application was filed was to retire in another 4 ½ years.

The Supreme Court decided "Under this circumstances the need to set up the business can not be said to be subsisting."

B. HUSAINARA KHATOON V/s. STATE OF BIHAR

FACTS : There are several under trials in jails, the Amnesty International Report on naxalities in Indian Jails was referred. In case of Hussainarra the total period for which he was in jail as an under trial was more than the maximum imprisonment which can be awarded for the offence imputed.

DECISION: The Supreme Court expressed shock, anguish and dismay on the discovery that in jails in Bihar there were under trials for inordinate long periods from 3 to 10 years. The court condemned this practice and observed that it was primarily as a result of the manner in which the system of bail, heavily weighted against the poor was administered. Justice Bhagwati observed that the court is appalled and ashamed that such a thing should happen in democratic, socialist India,over a quarter century after inception of Constitution the court also emphasised that a reasonably speedy trial is an integral part of one's fundamental right. The case also establishes default of the state and judiciary because under Section 167(2) of the Criminal Procedure Code any detention beyond a period of 15 days is to be authorized by the magistrate. In terms of section 468 of the code many under trials can not be prosecuted at all.**1

C. STATE OF BIHAR V/s. UMASHANKAR KOTRIWAL AND OTHERS**2

FACTS : On 9/4/1960 a report was lodged with the police that the respondent had misappropriated large quantity of G. C. Sheets meant for distribution to quota and sub-quota holders.

The police report was submitted after investigation on 23/12/62. Bhagalpur Magistrate took congnizance of offence on 25/1/63. The charge against respondent was framed on 25/9/67. Thereafter there was no progress in the matter.

**1 AIR 1979 SC 1360

**2 AIR 1981 SC 641.

In 1979 the respondents moved applications before High Court for quashing of proceedings.The High Court quashed the proceedings. The State of Bihar was in appeal before the Supreme Court.

Decision : The Supreme Court held that we can not loose sight of the fact that the trial had not made much headway even though not less than 20 years have gone by. Such protraction itself means considerable harassment to accused not only monetarily but also for constant attention in the case. The Supreme Court hence did not interfere with the quashing of the appeals.

.**3

D. BIHAR LEGAL SUPPORT SOCIETY, NEW DELHI V/s. CHIEF JUSTICE OF INDIA**3

FACTS : Bihar Legal support society had filed a petition and stated that the bench of Supreme Court set late at night on 5/9/86 for considering the bail application of leading industrialist Lalit Mohan Thapar and Shyam Sunderlal and same anxiety was shown by Supreme Court in taking up bail application of this 2 gentlemen should permeate attitude and indignation of the Supreme Court in all matters. In other words bail application of small man must receive the same attention as that of the big industrialist.

DECISION: The answer to the anguished querry is that the judges of the apex court may not shut their eyes to injustice but they must not equally keep their eyes too wide open, otherwise the apex court would not be able to perform the high and noble role which it was intended to perform. Certain norms for this purpose should be laid down and it should be so articulated that people may know as to what is the judicial policy of the apex court.

**3 AIR 1987 SC 39

E. BALDEOGIR GOSAI V/s. SOMGIR GOSAI**4

FACTS : Shri Baldeogir Gosai priest of Rokadnath temple,Baroda was not having son of his own and hence kept with him the son of his brother-in-law named Somgir who lived with him for several years and was adopted by following proper rituals as per the community customs. At a subsequent stage Baldeogir decided to adopt cousin of Somgir which was disputed by Somgir in year 1978. Somgir filed suit in civil court, Baroda and the court decided that his adoption was valid. The decision came in his favour.An appeal was preferred against this order which was pending for hearing till date.

During the pendency of matter Baldeogir has expired, his widow Jadavben has expired, advocates initially representing the case have also expired.

The matter is still pending for decision and complicated questions of law and facts are bound to arise if adoption of any of the persons is held invalid.

There are several other cases where pensioners were before the court and by the time court could decide about their legitimate entitlement they had passed away and in some cases even their widows were not surviving to reap the benefit of the decision in their favour. There are hundreds of cases where the action of the Govt. is disputed by poor citizens and decades have passed without any decisions.

In all the aforesaid cases irrespective of the merits of the case or the justifications which judicial system may have for the delays involved, for such citizens and litigants, apart from the inherent injustice against which they were seeking redress, the delay has virtually added insult to the injury.

**4 APPEAL NO.205 AND 206 OF 1985 BEFORE DISTRICT COURT BARODA.

There is a purpose to be achieved for any human action including the litigation and if there is no certainty about the fate of the matter the whole purpose gets frustrated. As described by a jurist, "the law courts have become casino" where the chance factor as to when the matter will be,and what way it will be decided and who will decide it has all remained unpredictable. That encourages some unscrupulous persons to indulge in illegal acts and enjoy the fruits of the same. By the time the system comes out of its sleep and slumber and decides the matter it is virtually too late. The aforesaid cases are few among the many which were atleast fortunate enough to see light of the day, even belatedly, but there are thousands of other cases where the system has contributed precious little in terms of providing justice at the right time and in the right manner. The sum effect as criticisied by some extreme thinkers, law has become an instrument for oppression and injustice.

It is sarcastically remarked by one of the members of bar that, by our speed of disposal, application by a father or mother of a child for custody of child, if contested, could perhaps be disposed off when child becomes adult. **5 It is not surprising if by then he even has his own child.

II

DELAY AND LOSS OF FAITH IN THE SYSTEM

The origin and growth of legal system in its present day form can be attributed not only to the sanction of sovereign power of the State or laws. Much of the strength comes from the faith and respect, which it commands from the subjects.

Shri Nani Palkhiwala observes on Indians in general...

**5 FROM THE SEMINAR ON JUSTICE DELAYED IS JUSTICE DENIED

"Truly, we Indians are a "law arousal' people. We endure injustice and unfairness with feudalistic servility and fatalistic resignation. The poor of India endure foolish laws and maddening amendments, which benefit none except the legal and accountancy professions, and instinctively prefer to circumvent the law rather than to fight for its repeal."**6

This typical element of obedience to law because it is so, has to an extent been the survival plank of the system created by law. With more and more persons getting education there is growing awareness about the rights and remedies available to the subjects and hence to maintain the respect and faith in the system, sustained performance is needed by all concerned with administration of justice.

The pathology of litigation is summed up by J. S. Aurbach in following words:**7

"Litigation has become an inevitable stage in the life cycle-slightly beyond adolescence but before maturity. It is virtually impossible to survive litigation and remain solvent, but it is occasionally possible to endure it and remain sane.As a modern ordeal by torture, litigation excels, it is exorbitantly expensive, agonizingly slow, and exquisitely designed to avoid any resemblance to fairness or justice. Yet in strange and devious ways it settles disputes-to every one's dissatisfaction".

The fate of litigant is hence uncertain and miserable. His quest for justice remains endless. His patience for tolerance at times stretched beyond all perceivable standards of elasticity. The system hence is leading towards the stage of chaos and collapse unless something is done by all those who are collectively concerned for maintaining the respect and confidence of the people in the system.

**6 WE, THE NATION, NANI A. PALKHIWALA PAGE – 88.

**7 QUOTED BY DR.A. M. SINGHVI IN HIS ARTICLE "JUSTICE DELAYED IS JUSTICE DENIED, BLUE PRINT FOR REFORM."

As Shri N. A. Palkhiwala observes... "The law may or may not be an ass, but in India it is a snail, it moves at the pace which would be regarded as unduly slow in community of snails. A law suit, once started in India is the nearest thing to eternal life ever seen on this earth. Some of them have said that litigation in India is a fairly harmless entertainment. But, if so, it seems to be very expensive way of keeping the citizenry amused. If litigation were to be included in next Olympics India would be quite certain of winning at least one gold medal."

The huge back log of arrears have discouraged some judges even to chip off at the volume of such cases. The only silver line in the cloud appears to be the Herculean efforts by the Supreme Court of India to reduce the pendency. From Mid 1994 to November 1998 the number of pending cases in the Supreme Court has been reduced from over 1,20,000 to the current figure of 22,000. The subject of arrear reduction has not only become topical but is dealt with devoid of the earlier ambience of despair, futility and frustration.**8 Whether law sets the trends or follows the trends, whether people obey the law by virtue of sheer fear of its power or by its inherent virtues are some of the questions, answers to which needs to be sought in present day scenario. The controversy between those who believe that law should essentially follow, not lead, and that if should do so slowly, in responses to clearly formulated sentiment and those who believe that the law should be a determined agent in the creation of new norms is one of the reorient themes of history of legal thought.**9 In India, over the period of last several decades, law has been an instrument through which the action of the State in a particular direction is manifested and implemented. The law in that context is not justice in itself but only a ladder to achieve justice. The people follow law and law courts, reposing faith in the inbuilt ability of the judicial system to do justice in respect of their grievances. When the law enforcing system gets saddled with technicalities and delays, such situation if sustained for long time may hamper the very credibility of the system.

**8 DR.A. M. SINGHVI – JUSTICE DELAYED IS JUSTICE DENIED

**9 LAW IN A CHANGING SOCIETY, BY W. FRIEDMAN AT PAGE 19

The increase in volumes of crimes, police brutalities, inability to look into the matter and do justice on merits of the matter when it deserves, poses a very disappointing picture of the system and an activist approach has to be adopted by apex court and the other courts.**10

If one looks at the contemparory developments in South East Asia and neighbouring countries of India during recent past, one gets very disturbed picture of the sustained attacks on independence of judiciary:-

(i) Judges of Srilanka were sacked over night for alleged failure to take oath within the limits prescribed by rulers.**11

(ii) Apex Judges of Pakistan were commanded to take new oath for loyalty to dictator Zia and those who opted against it had to go.

(iii) In Bangladesh after brutal killing of Mujibur Rehman, the importance and independence of judiciary is considerably marginalised.

India, a country now with the population of nearly 1000million and largest functioning democracy of the world could sustain and strengthen the image of its judiciary because the faith and respect for its independence and commitment to the cause of justice, was and is beyond question. The increasing volume of delays however leads to frustration and makes them to search for some other shortcut and expeditious, sometimes extra legal solutions to their problems and such trend needs to be checked immediately otherwise the people's faith in the system which already has come down may virtually vanish.

**10 DR. UPENDRA BAXI V/s. STATE OF U P, 1981(3), SCC 1136.

**11 "LANKA JUDGES TO BE REPLACED", INDIAN EXPRESS 12/9/83.

The latest event which can be an eye opener on the subject is Anjana Mishra episode. Indian Express reports that Anjana Mishra, 29 has undergone a kind of trauma that would drive any ordinary person insane. She has not only been fighting an abusive husband but also the highest and mightiest in the State. She accused former Advocate General of the State of molesting her. It will be more appropriate to reproduce some excerpts from her interview published in Indian Express.**12

"Ques : You have been fighting for justice for several years now and you are yet to get it. Do you feel justice is eluding you?

Ans: Justice is being delayed and I have mentally accepted it. I have faith in judiciary and am hopeful of justice at the end. Even if it is delayed, I am sure that it will come my way.

Ques : Than why are you demanding a probe by the CBI in to the gang rape case while a judicial inquiry is already ordered?

Ans: Since all my cases are now being probed by CBI, I want this to be included. Besides, it would be quick too.

Ques: What was so urgent that you had to travel to Cuttak that late in the night to meet your lawyer?

Ans.: He had been avoiding me for the last 1 month. He was also putting pressure on me to have a reconciliation. He is also part of the conspiracy.

Ques: Why did you not change him then?

Ans: You need to give your lawyer some time and that is what I was doing."

**12 INDIAN EXPRESS – INTERVIEW OF THE WEEK-ANJANA MISHRA – 17/1/99.

The aforesaid statement by Anjana Mishra can be a guiding example for the judiciary, that they are seen as the ultimate hope and if they fail to deliver the results the whole system may lead to collapse and with such collapse the concept of rule of law will also suffer adversely.

III

DELAY AND ECONOMY

Law and economy are interconnected. India amongst the mixed economies is a pioneer in development planning. In the mixed economy the State plays multiple roles in growth and development of the economy. More and more laws are being enacted to control, regularise and channelise the economy as per the planning strategies of the State.

Without systematic study and application of principle of economics, the law will not be effective. A lawyer who has not studied economics and sociology is very apt to become a public enemy.**13

In the twentieth century the expansion of Welfare State is largely the product of legislation and today economic dimension and consequences have loomed increasing large in the study of legal norms. The art of justice and the nature of access to justice have become major issue. The high flown values, the legal principles expressed are examined by economists in the light of their efficiency and their social effect not just their self defined moral contempt.**

Whenever there are delays in timely decision of disputes involving economic or financial consequences, to that extent the amount gets blocked and circulation of money which is the life blood of any economy gets adversely affected. 14

**13 JUSTICE BRANDISE – ECONOMICS FOR LAW STUDENTS PUBLISHED BY NATIONAL LAW SCHOOL OF INDIA.

**14 PROF.MOORE CITED IN SOCIAL SCIENCE ENCYCLOPEDIA BY ADAM AND COOPER AT PAGE.447.

As a case study the classification of loan assets of public sector banks as on march 1995 can be examined. The table shows that approximately 37000 crores rupees of the banking system has blocked in what is known as Non-Performing Assets (NPA). Total NPAs are approx.19.5% of the amount financed. In chapter-XI of this thesis an attempt have been made to discuss various laws applicable to banks and in chapter X and XIV extensive study of suits filed by the bank and recovery tribunals have been made. Hence the delay in deciding the cases definitely has serious adverse effect on economy.

Another connected segment for study can be the growing volume of industrial sickness in the country which is increasing substantially for the purpose of speedy disposal of matter involving sick companies, Sick Industrial Companies Act was passed in 1985 and Board for Industrial and Financial Reconstruction (BIFR) was constituted. The details of cases with BIFR as on 31/12/96 are reproduced below :-

TABLE

PERFORMANCE OF BIFR

No. of references received	2693
No. of cases rejected on scrutiny	810
No. of references registered	1853
No. of cases dismissed and non maintainable	383
Revival scheme sanctioned or approved	406
No. of companies recommended for winding up	496
No. of companies revived	80
No. of companies declared no longer sick on completion of rehabilitation schemes	184

The aforesaid statistics shows that delay caused by legal machinery creates serious problems for the economy. The Reserve Bank of India has identified 9

nationalised banks as sick banks and recommended for immediate action for their revival. The banks are Bank of India, Punjab & Sindh Bank, New Bank of India, United Bank of India, Vijaya Bank, UCO Bank, Syndicate Bank, Allahabad Bank and Bank of Maharashtra. The RBI has further observed that even though most commercial banks have shown profits the picture in reality is quite different and the balance sheet conceals many important facts.**15

The delays involved sometimes defeats the very purpose of certain enactments. The Sick Industrial Companies Act was enacted with a view to secure the timely detection of sick and potentially sick companies owning industrial undertakings, the speedy, ameliorative, remedial and other measures which need to be taken with respect to such companies and the expeditious enforcement of the measures so determined and for matters connected therewith or incidental thereto. As can be seen from the performance of BIFR the object of the Act is not fully achieved because of delays involved.The legislation has public interest aspect also in terms of employment, production, contribution to State's exchequer, exports etc.Industrial sickness in developed as well as developing countries have co-existed with industrial development. All powers of civil court have been conferred on BIFR and recovery of public dues/revenues is also an important aspect.**16

As observed by the economists fraudulent and dishonest management suck certain units dry and make them sick expecting them to be taken over by the Government.**17Another important and related aspect is the growth of white collared crime where the main motive is economic prosperity. As Prof.Sutherland observes,

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**15 INDIAN BANKING NATURE AND PROBLEMS BY VASANT DESAI AT PAGE 490.

**16 PREFACE TO SICK INDUSTRIAL COMPANIES ACT BY S P KAICKER 1998 EDITION.

**17 INDIAN ECONOMY BY RUDRADUTT AND K P M SUNDARAM 39TH EDITION 1998 AT PAGE 649.

"The financial loss to the society from white collar crimes is probably greater that the financial loss from burglaries, robberies and larcenies committed by persons of the lower socio-economic class. The average loss per burglary in USA is less than 100 dollars. On the other hand there may be several million dollars embezzlement reported in one year."**18

As observed economic offences and white collared crime is causing significant damage to the general economy of the country and adversely affects the growth and development of the nation. The major impact caused by such economic offences are:

1. Increase in inflationary pressure
2. Uneven distribution of resources .
3. Marginalisation of the tax base.
4. Generation of abundant black money.
5. Creation of parallel economy.
6. Development works and efforts are under mined.
7. Country's economic equilibrium is at stake.
8. Breeding ground of corruption.
9. Illicit business and public office corruption.
10. Resources of financial institution and commercial institutions are distorted and diverted.
11. Weakens morals and commitment.
12. Poor and weakest continue to be poorer and are at risk.

Some of the frauds which have recently come to light can prove to be an eye opener as far as the public money involved is concerned.

**18 SUTHERLAND – CRIME AND BUSINESS AT PAGE 112.

TABLE

WHITE COLLAR CRIMES IN INDIA**19

	FRAUD	AMOUNT INVOLVED
1.	Security Scam	3700 Crores
2.	Fodder Scam	950 crores
3.	Bank Frauds	350 Crores
4.	State Bank Fraud(at Padra Branch)	4 Crores
5.	Bank deposit scam (at Surat)	20 Crores
6.	Urea Scam	900 Crores

All the aforesaid scams have resulted in siphoning of public funds and the legal system is found very inadequate and dormant to respond to the situation.

IV

DELAYS AND CIVIL RIGHTS

Civil rights are personal. Such rights are guaranteed and protected by Constitution, e.g. freedom of speech, freedom of expression, protection from discrimination etc. It is body of law dealing with natural liberties, prevention of excesses which invade equal right of other. Constitutionally they are restraints on Government.**20

**19 BLACK'S LAW DICTIONARY, 6TH EDITION, PAGE – 246.

**20 POUND, SELECTED ESSAYS PAGE 86.

The word 'civil' refers to these rights and remedies of a citizen which are distinguished from criminal, political etc. Those rights are conferred by civil law. It refers to a claim, want or desire of a human being or group of human beings which the human being or group of human beings seeks to satisfy and of which therefore the ordering of human relations in a civilised society must take account.

The domain of civil rights hence means and includes private rights such as:-

(i) Rights of Reputation.

(ii) Rights of bodily safety and freedom.

(iii) Right of property which includes those rights corporeal or incorporeal which are capable of transfer from one to another and those collateral rights of personal nature which enable a person to acquire, enjoy or preserve his private property.

Public right includes those rights which belong in common to the members of the State generally.

One of the main purpose of evolving system of administration of justice is to protect and enforce the rights and prevent, discourage and punish violation of such rights. Unless the court action to restore the balance in case of infringement of a right or for redressal of wrong is prompt and effective, the persons indulging in such infringement will enjoy the fruits of their wrongs at the cost and pain of the other. The recurrence of such events will generate a feeling that "might is right" and whosoever bands and distorts the law will have edge over one who obeys the law.

It seems strange that the law itself should thus ever be the actual means of hiding the truth and defeating justice, but unfortunately this has been the fact.**21

**21 THE PROBLEM OF PROOF-ABERT S. OSBORN, PREFACE PAGE XXI.

Our law places heavy reliance on evidence for proving of facts. In case of civil law the entire onus to collect evidence and submit it before the court including arranging for the witnesses lies solely on the litigant concerned. With the passage of time the proving of facts becomes more and more difficult, as the witnesses may not be available or documentary evidence is not traceable. Despite our historical explanations for the delays, in such cases the law and evidence operates indirectly in favour of the wrongdoer and against the victim who is seeking the redressal.

Since ancient times, to maintain supremacy of law, through administration of justice was declared as one of the five most important and obligatory functions of the State. The Atrismriti lays down it in following words :-

"To punish the wicked, to honour (protect) the good, to enrich the treasury (exchequer) by just methods, to be impartial towards litigants and to protect the Kingdom. These are the five Yajnas (selfless duties) to be performed by a King.**22

The inordinate, unexplainable and ever occurring delays in deciding the cases, runs totally contrary to the principles laid down in the scripture cited above.

Justice is not an abstract omnipotence in the sky but an operational causa causans in human affairs, and so, the judge, the human instrument, the court, the impersonal apparatus and the judiciary, the watchdog institution, must never fall below the standard of high credibility, corrective efficiency and inflexible integrity. To over do criticism is to undo a great institution to preserve which is necessary in the larger interest, but to blink at the bleak realities out of sanctimonious reverence to myths and illusions is to burke one's social obligation.**23

**22 QUOTED IN JURIS VICISSITUDE : LAW AND CHANGES TOWARDS 21ST CENTURY PAGE 64, EDITED BY SHRI K. C. BHATIA

**23 ACCESS TO JUSTICE – A CASE FOR BASIC CHANGE – JUSTICE KRISHNA IYER PAGE – 2.

The judiciary is independent to allot its own time schedule to decide a matter and no thumb rule can be laid down to dictate to the judiciary that they shall decide the matter within fixed time. Such development will amount to an encroachment on the independence of judiciary. At the same time independence of judiciary is not inconsistent with accountability for judicial conduct. Lawless judicial conduct – the administration, in disregard of the law, of a personal brand of justice in which the judge becomes a law unto himself – is as threatening to the concept of government under law as is the loss of judicial independence. We see no conflict between judicial independence and judicial accountability.**24

The inordinate delays in deciding cases amounts to virtual negation and indirect denial of the right to a party who approaches with grievance.

V

DELAYS AND UNDERTRIALS

The aspect of undertrials has direct connection with human rights. Human rights are the concern of world community as a whole since they are the rights which every human being has. They have been described as inalienable rights in the sense that without them life left is not fully human life. The present human rights are the culmination of several battles waged over centuries against tyranny and oppression.**25

**24 MAINE SUPREME COURT'S OBSERVATIONS EMORY LAW JOURNAL – VOL 37 – 1998 PAGES – 78.

**25 RANDOM REFLECTIONS ON LAW AND ALLIED MATTERS BY JUSTICE M. N. RAO (AP HIGH COURT) PAGE 186.

The Constitution of India under Article 21 and 22 provides for protection against arrest and ensures the following safeguards for a person who is arrested:-

(i) He is not to be detained in custody without being informed.

(ii) He shall not be denied the right to consult and to be defended by a legal practitioner of his choice.

(iii) A person arrested and detained in custody is to be produced before the nearest Magistrate within a period of 24 hours of his arrest.

(iv) No such person is to be detained in custody beyond this period without the authority of Magistrate.

The detention under the law can take place in any of the following modes:-

(a) Preventive Detention

(b) Detention during investigation and remands (Custodial)

(c) Detention by imposing punishment.

Preventive Detention means detention of a person without trial and conviction by a court, but merely on suspicion in the mind of an executive authority. It is fundamentally different from imprisonment after trial and conviction in a criminal court. In conviction, a person is punished for a past act. Offence has to be proved beyond reasonable doubt. In preventive detention a person is detained without trial on subjective satisfaction of executive.**26

Though certain laws like Terrorist and Anti Disruptive Practices Act (TADA), Conservation of Foreign Exchange and Prevention's of Smuggling Activities Act (COFEPOSA), Maintenance of Internal Security Act (MISA) Prevention of Anti Social Activities Act (PASA) and similar other laws, allows Preventive Detention but it does not mean that subjective satisfaction of detaining authority is totally irrevocable. The courts frequently invoke the principles of justice and set aside the detention orders on grounds like malafides, arbitrariness, non application of mind, colourable exercise of power and other grounds.**27

**26 INDIAN CONSTITUTIONAL LAW – BY M. P. JAIN 4TH EDITION 1998, PAGE 605.

**27 KHUDIRAM V/s. WEST BENGAL AIR 1975 SC 550.

The law provides for an inbuilt mechanism under which the hearing of the matter i.e. whether the grounds for detention are justifiable or not will take place. The courts have been conscious of the danger that the executive may tend to shy away from the court proceedings in the normal manner and instead adopt the easier strategy of issuing preventive detention orders based on their subjective satisfaction. Such a tendency if allowed may pose a danger to democratic way of life. Preventive detention power can not be quietly used to subvert, supplant or to substitute the punitive law of the Penal Code.**28

Thus in case of preventive detention, it becomes the duty of judiciary to ensure that the hearing for confirmation of the order takes place promptly and the detainee gets fair opportunity to establish his non involvement/innocence. The delay has the effect of denying to him the right of fair trial.

Preventive Detention is permissible only under the provisions of various Acts referred above. The approach of the legal system to the accused is that he is considered to be innocent unless he is proved guilty. Whenever possible during investigation or trial, the facility of release on bail and personal surety is provided to the accused. The release of accused on bail does not absolve the accused from attending court proceedings unless exempted. The Supreme Court has observed that the law relating to bail operates against the poor who can not arrange for bail due to poor economic position.**28A

The grant or refusal of bail, has a serious bearing on the personal liberty of the person. Hence the bail applications and orders on matters refusing the bail needs to be looked with top most priority. Sometimes laxity is shown by the police in submission of papers and it results in prolonging the detention.

**28 BHUT NATH V/s. STATE OF WEST BENGAL, AIR 1974 SC 806.

**28A HUSAINARA KHATOON V/s. STATE OF BIHAR AIR 1979 SC 1360

Another remaining class of the accused is the group, which did not get the bail. In India, in jails there are thousands of persons for whom the trial is yet to take place. As per a rough estimate, 60% of the total prisoners in India are under trials. The prosecution for several years could not commence trial, which may result in their acquittal because the overall conviction ratio in India is barely 6%. Due to poverty and lack of education most of the offences are involving petty crimes relating to theft of property etc.

Inordinate delay in framing charges, commencing trial and deciding on the aspect of conviction or acquittal acts to serious prejudice of undertrials. In hundreds of cases, the persons were in jail as undertrials for more years than the maximum punishment that can be awarded under the law.

The details of Criminal cases filed in various courts in India pending for prosecution are given in the tables given in chapter VI of this thesis.

VI

DELAYS AND PUBLIC CAUSES

The interest of community is paramount when compared with the interest of individuals. By 'public causes' what is meant is that an uncertain number of citizens or subjects are interested and are likely to benefit from the implementation or otherwise of the subject matter.The following gives an illustrative but not an exhaustive list of such matters ...

(i) Drive against illegal encroachment by Municipal/Govt. Authorities.
(ii) Eviction proceedings against illegal occupants of public premises.
(iii) Construction of dams, highways and other public amenities.
(iv) Location of head quarters of various Govt. sponsored bodies.
(v) Cases involving Promissory Estoppel against the State.

(vi) Cases involving principle of unjust enrichment under Excise and Fiscal Statutes.

(vii) Cases of corruption involving high profile politicians, bureaucrats and industrialists.

(viii) Huge investment projects awaiting Govt. clearance.

(ix) Cases of community interest like environment protection, preservation of wild life and forests etc.

There is substantial litigation pending in all such matters. It is also worthwhile to note that such mischievous and irresponsible litigation initiated by some litigants at times under guise of public interest litigation, in its ultimate effect costs and in some cases results in premature sabotage to the project itself.

The advantage which could be derived by allowing smooth implementation of Narmada Project could have been tremendous for the country. When the competition is global and the country has to march ahead in terms of self sufficiency, the selfish interests or sentimental values of some individuals, howsoever respectable they may be, should not come in way of implementation of project.

In all such cases the courts have been used as vehicle or tool purely for the purpose of delaying the matter and giving it label of "sub-judice". There are several cases where though the courts have not given any stay order, the implementation of the project is postponed on the plea that the matter has become subjudice.

In this context, the observations of late Sir Sayajirao Gaekwad, becomes immensely helpful...A just ruler is one who knows truth from untruth, and whose only thought is the welfare of his subjects, the brother of all good people and enemy of all evildoers, the protector of morals and religion, and acclaimed by his people as one and only king of his kind**29

**29 SAYAJIRAO OF BARODA, THE PRINCE AND THE MAN BY FATEHSINHRAO GAEKWAD AT PAGE 09.

The courts by their speedy action in such cases can even prevail upon the State to function on the above parameters laid down by late Sir Sayajirao Gaekwad, a visionary and model ruler.

To note that the litigation which is filed in such cases is not always bonafide. There are numerous examples where the litigation is deliberately filed to thwart the progress or implementation of a project at the behest of a person or group having vested interest.

Some of the examples of delay and its effect on public exchequer (wherever available) explains the position more clearly :-

TABLE

DELAY IN DECIDING MATTERS INVOLVING PUBLIC CAUSES

SR. NO.	MATTER	DELAY	IMPACT
1.	Narmada Project	40 years	Cost of the project increased manifold. Irrigation potential of river is under utilised and there is floodthreat.
2.	Express Highway project(Ahmedabad-Baroda)	15 years	Cost of the project has increased by 100 crores and work was delayed for several years.
3.	Anti encroachment drive by Baroda Municipal Corporation	25 years	The matter is pending due to multiple stay orders from various courts etc.
4.	Babri Masjid Demolition Case.	7 years	The matter is pending at initial stage.
5.	JMM Bribery Cases	6 years	The matter is pending at initial stage.

The latest trend of judgements of Supreme Court reveals that courts should not interfere unless substantial public interest is involved.**30

**30 RAUNAQ INT. LTD. V/s. IVR CONSTRUCTION LTD., 1999 AIR SCW 53,

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VII

DELAYS AND ADMINISTRATION

The word "administration" means management or conduct of an office or employment or the performance or executive duties of an institution. In context of public administration it means practical management and direction of executive management or of public machinery or functions.

The administration both run by private individuals and Government is very often subjected to litigation either in form of a writ before the High Court or before the Civil Courts.

The judiciary, exercises its power to apply checks and balances whenever the administrative action is not in conformity with the laid down canons of law.

As observed by Prof. H.W.R. Wade.

"It is a mistake to suppose that a developed system of administrative law is necessarily antagonistic to efficient Government. Intensive Government will be more tolerable to the citizen, and the Government's path will be smoother, where the law can enforce High standards of legality, reasonableness and fairness. Nor should it be supposed that the continuous intervention by the courts, which is now so conspicuous, means that the standard of administration is low. If the judges observe the proper boundaries of their office, administrative law and administrative power should be friends and not enemies. The contribution that the law can make is creative rather than destructive.**31

**31 ADMINISTRATIVE LAW. BY H.W.R. WADE, 7TH EDITION PAGE 23 AND C. F. FORSYTH'S

While there should be no undue and unwarranted interference by the courts to screen every action of the administration, which even otherwise will not be possible for judiciary, in respect of the matters referred to them, a prompt and clear verdict from the court can prove immensely helpful for strategic planning and functioning of the administrative agencies. In case any dichotomy or disharmony is created it leads to an undesirable situation which should be avoided in best interest of public Image of both judiciary and administration.

Two recent examples involving courts in Baroda can be of immense help to deal with the problem.

(a) In the year 1997, the then Chief Judicial Magistrate of Baroda directed the Police Commissioner to remain present in the court as the directives issued by the Court were not followed by lower level officials. The Police Commissioner did not attend. The Court initiated contempt proceedings. The Police Commissioner replied that he was busy in other public functions involving visit of Vice President of India. This created confrontation between judiciary and police. Ultimately with the intervention of High Court the matter was settled.

(b) In 1998, the Police Commissioner of Baroda issued notification to make a prominent road connecting eastern and western area of the city as one-way. This involved an additional distance round of about 3 kms. for the persons affected. The Civil Court was approached by some citizens. Court granted the stay order. The Police requested for time to file appeal to District Court. The District Court also confirmed the stay order and refused to interfere. The Police is now likely to approach the High Court in the matter and operation of stay order is kept in abeyance. There are agitations by citizens for implementation of court order.

These are few cases in which the administrative wing and the judiciary have different views. The need is to minimize the time involved on part of the judiciary in

deciding the matter and reciprocal duty on administration to implement such orders.

The courts also interfere in matters involving transfer, postings, promotions, termination and service conditions of employees. Any order by the court in form of an interim injunction or otherwise has far reaching consequences on the entire administration. In respect of transfer matters, the Supreme Court has held that as a matter of rule, transfer is an incidence of employment and employer has right to transfer to meet with the exigencies of service and courts should be reluctant to interfere.

In most of such cases, an exparte injunction is obtained and every possible attempt is made to extend the stay order as far as possible. When the stay order is vacated, extension of the same is sought for filing of appeal against such order. The delay in such cases causes lot of embarrassment for parties involved. Sometimes on technical grounds termination order is set aside after several years and the person involved reaps rich benifits in form of reinstatement with back wages. The delay involved thus hampers the administration of the organisations. The individual litigants also suffer because by the time the matter is taken up and decided much water has flown and they have either retired or are on verge of retirement, making the whole litigation futile.

VIII

DELAYS AND EDUCATIONAL INSTITUTIONS

Universities and Educational Institutions are autonomous bodies which has their own set of rules and regulations. There are several litigations involving educational institutions and may be broadly classified as under :-

1. Disputes relating to admissions.
2. Disputes relating to examination results.
3. Disputes on ground of discrimination.

4. Consumer disputes in respect of deficiency in services.
5. Other disputes like elections of student union, selection for various posts, disciplinary action etc.

Some of the recent cases involving the University/Educational Institutions are summarized below:-

(a) A law college student in Tamilnadu appeared in B L degree examination in April'89 after paying necessary examination fees. He was declared to have passed examination in November 89 and on strength of that was enrolled as an advocate in January 90. Subsequently the University asked him to send his mark sheet for verification and return the provisional certificate. The University than communicated he had failed in BL II examination. The candidate returned his enrolment and paid fees for revaluation in which he was declared to be pass and hence could resume his practice in July 1990. He therefore filed a complaint in District Consumer Forum for damages. The University took the position that the complainant was not the consumer and even otherwise the provisional certificate was a temporary document. The district forum decided the matter in favour of the complainant. The University preferred an appeal to the State Commission. The State Commission observed "Universities are the centres of education and they provide one of the most essential and important services to the citizens of the country namely education. They prescribe several courses of study, conduct examinations and award degrees. They collect fees for allowing the students to sit for examinations and for issuing certificates. A student who sits for University examination and pays the necessary fees, therefore certainly hires the services of University and is a consumer within the Act. The State Commission accordingly allowed compensation.**32

**32 APPEAL PETITION NO.92 OF 91 AND 122 OF 91 BEFORE STATE CONSUMER FORUM, TAMILNADU.

(b) The University of Calcutta was directed by Calcutta High Court to pay Rs.25,000/- as damages to a candidate who had appeared in final LL B examination and because of criminal negligence in not assessing some of his answers was declared failed.

The Calcutta High Court criticized the University authorities and passed the following strictures :-"The courts strongly deprecates the conduct of the authority of the University of Calcutta and the method they have adopted in not redressing the grievances of examinee. Once the Calcutta University was the premiere University in India but today one is sorry to say, it has lost that premiere status and come down considerably. This weakness in the administration of University lacks inherent control by the top officials of the University over their subordinates because of inadequate vigilance and rampant indiscipline.**33

(c) The policy of the SC in interfering with the affairs of educational institutions is otherwise of cautious approach. In one of the cases before the Supreme Court the dispute was regarding equivalence of University's degrees. The view was that court would hesitate to express definite opinion specially when selection board of experts considers a particular foreign University degree as equivalent.**34 The admissions, examinations and enrolments in educational institutions is an annual feature. An amendment by Punjab University for reducing percentage of grace marks for MBA exam was upheld declaring that it should not be made retrospective.**35

(d) After the HSC and SCC results are declared hundreds of petitions are filed in High Court against the Board. The High Court has directed the Board to produce answer books in Courts and if any irregularities are found the board had to correct the result. One of the candidates who was declared failed in 1997 examination ultimately was declared passed with distinction.**36

**33 TRIPURA SHANKAR CHELL V/S.UNIVERSITY OF CAL.C O NO. 6369/90.

**34 UNIVERSITY OF MYSORE V/s. GOVIND RAO AIR 1965 SC 491.

**35 PUNJAB UNIVERSITY V/s. SUBHASH CHANDRA AIR 1984 SC 1415.

**36 ABHIJEET WANI V/s. GUJARAT HSC BOARD SCA FILED IN GUJARAT HIGH COURT IN 1997.

In a very recent development the elections to students union of M S University were stayed by the Civil Court Baroda and the matter is now pending in the District Court.**37

The cases cited above reflects the whole spectrum of disputes in which the courts are required to adjudicate and give their verdict. Any delay on part of the courts may be of far reaching consequence not only for the petitioner concerned but even the other group which gets affected by the decision. By and large the courts are found reasonably prompt in attending the matters. The delays sometimes can be attributed to the time taken in submission of reply by the other side. The success ratio of thé petition is bound to be too less because casual interference with the functioning of educational institutions may bring down the credibility of the institutions.

IX

DELAYS ARE ADVANTAGEOUS TO THOSE WHO VIOLATE THE LAWS

The dominant object of law is the welfare of community and the reason why most people obey the law and avoid deviation from law is that they look forward to law as a path of virtues, values and welfare.

The system of administration of justice, implements the laws with multiprone approach as under :-

1. Protecting the rights and redressing the grievances when such rights are encroached upon.
2. Indentifying and punishing the wrongdoer for awarding compensation to the aggrieved party as may be warranted by circumstances of the case.

**37 NEWSPAPER REPORTS ABOUT THE UNIVERSITY CASE IN SANDESH.

3. When the position of law is unsettled the apex court or High court lays down the interpretation of provisions which is a binding precedent for all the subordinate courts.

Because of the inordinate delays involved in deciding the matters and various remedies in form of appeal available to the aggrieved party till such time final verdict is reached, the party who encroaches upon or deprives other of his right, is not visited with the requisite action with the promptness and punctuality it deserves. This encourages and motivates more and more people to take the system of administration of justice for granted and deliberately disregard the law for their personal gains.

The clever tactics applied by the persons who violates the laws and benefit from its abuse and distort process of the court to their own advantage either with sheer money power which enables them to hire some of the talented brains of the bar or by some other methods. Of late even the issue of corruption in judiciary has attracted wider public attention.

The tendency to corrupt goes parallel with the motive of cornering the benefits by violating the laws. In recent past, allegations of corruption, favoritism and nepotism prevailing in judiciary have been raised, involving all levels of judiciary. Some of the recent controversies are mentioned below :-

(a) A grave crisis arose in Supreme Court in the matter of Justice V. Ramaswamy, sitting judge of Supreme Court and former Chief Justice of Punjab and Haryana High Court. Three audit reports made grave allegation against him to the effect that he had used public funds for personal gains. The concerned judge maintains silence. The then Chief Justice Hon'ble Shri Sabhya Sachi Mukherjee made a public statement that he had no legal or constitutional authority to inquire into conduct of said judge. To maintain public confidence in court the judge was asked to go on leave and was not

assigned any judicial work. A defence was made that irregularities were in administrative capacity. The character of a judge is one seamless whole and the public can have no confidence in a judge who, in his administrative capacity makes personal gains by abusing his power and authority. The public would rightly conclude that such a judge will sell justice for personal gain.**38

(b) In 1990 the High Court of Bombay faced a severe judicial crisis. The bar association passed resolutions expressing their lack of confidence in 4 judges and the Chief Justice entrusted no judicial work to them. All the judges were under order of transfer to other High courts. This was an unprecedented move by Bar Association and much must have transpired before the move to pass such resolution. The incidence has adversely affected the dignity and credibility of the judge.

(c) In April 1997, the Bar Association of Baroda passed resolution expressing concern on the alleged demand by a senior division judge of rupees fifteen lacs in a matter from a Senior Advocate. The Judge was subsequently transferred.

Whether the above referred allegations were correct or not and can be proved or not, the credibility judiciary enjoyed has substantially tarnished. There are several other reports where the vigilance department of High Court investigated the complaints and concerned judges were suspended. The alleged nexus between those who violate the laws and try to get themselves protected by unfair means is something which causes grave concern. The cases coming to surface are very less as compared to the whispers in the bar about controversial conduct of some of the judicial officers.

**38 H M SEERVAI CONST. LAW OF INDIA PREFACE TO 4TH EDITION.

X

DELAYS DEFEAT THE VERY PURPOSE OF LITIGATION

Ever since the advent of judicial systems a litigant approaches the court for redressal of his grievances. For the smooth and orderly conduct of its business, the court has laid down its own procedures. The procedures are described to be the hand maid of justice and were intended to be a tool to achieve the goal of justice which vests in a individual under the substantive law. The real life scenario in courts is diagonally opposed to what was contemplated by the framers of the law.

The Indian legal system is deeply influenced by the British legal system. The frustration expressed by a jurist in England therefore can be relevant to establish the point. Sir John Foster, Chairman of British Branch of International Commission of Jurists remarks "I think the whole English Legal System is non-sense. I would go to the root of it-the civil case between two private parties is a mimic battle in which the champions are witnesses chosen by each side but who are not necessarily people who know the facts and the battle is conducted according to medieval rules of evidence."***39

The Indian version of the problem is far more discouraging. In India, it is common final decision, but bleeds both sides so as to leave victor and vanquished utterly defeated. We therefore must agree that there is a crisis in Indian Legal system and the winds of change must produce salutary simplification by a creative jurisprudence. Art.14 of the Constitution, which mandates equal protection of the law and article 39 A which directs the State to provide the legal system, so as to ensure that equal opportunities for securing justice are not denied.**40

**39 QUOTED BY JUSTICE KRISHNA IYER IN OUR COURTS ON TRIAL AT PG.108.

**40 DIALACTS OF POPULAR JUSTICE – SOME REFLECTIONS BY JUSTICE KRISHNA IYER.

There are numerous examples where the very purpose of litigant gets frustrated and defeated by lack of will or will to initiate action in time. It defeats very purpose of justice. Some are cited below :-

(a) Transfer of Property made by the defendants in anticipation of a litigation and interim orders, purely with the object of defeating the decree.

(b) Serious problems faced by the land lords in getting their premises vacated despite all legal rights in their favour and litigations lasting beyond their productive life or sometimes life itself.

(c) Miserable plight of widows of pensioners who have to spend years for their legitimate claims.

(d) Illegal dismissals, terminations and denial of other benefits of the employees where the justice in form of reinstatement or compensation looks illusory.

(e) Willful neglect on part of the husbands to maintain their wives and children despite having sufficient means.

(f) Service matters which lasts beyond the service period for decision.

(g) Litigations initiated with malafide intention of creating hurdles in projects which can benefit the community.

All the aforesaid can be taken as glaring examples of the grim reality that the very purpose of litigation is frustrated due to delays.

XI

DELAY AND INJUNCTIONS

Injunction is a remedy of equitable nature by which a person is ordered to restrain from doing or to do a particular act or thing. It is a prohibitive remedy for binding the defendant and at times his servants or agents to restrain from doing an act which forms subject matter of a dispute. In other words it is a formal command of the court to do or not to do a particular act.

The practical function of an injunction is to furnish preventive relief against an irremediable mischief. An injury is deemed to be irrepairable when having

regard to the nature of the act and from related circumstances the apprehended damage can not be adequately compensated by money.**41

The purpose of granting injunction is to restrain the undue exercise of rights, to prevent threatened wrongs, to restore violated possession and to secure the permanent enjoyment of rights to property.**42

The courts issue various types of injunctions as under :-

a) Prohibitory and mandatory injunctions
b) Perpetual or interlocutory injunctions.
c) Common and special injunctions.
d) Cross injunctions.
e) Quia timet injunctions**43

The co-relationship between delays and injunction can be discussed under following heads:-

1. The cases where an immediate and exparte injunction is warranted in the interest of justice and the court issues merely a show cause notice.
2. Where no injunction is warranted and yet exparte injunction orders are granted which takes its own time to get heard and vacated .
3. Grant of perpetual injunctions where same are not warranted.

The prevailing practice in the court is that alongwith the suits, parties move applications for ad-interim relief like attachment before judgement, injunctions, interlocutory injunctions, appointment of receiver etc. In Ahmedabad City Civil Court such matters are listed as "Notice of motion". In other Civil Courts it is known as "Exhibit 5".

**41 UNION OF INDIA V/s. AMRIT SINGH AIR 1963 PUJ. 104.

**42 STORY – EQUITY JURISPRUDENCE SEC.838.

**43 NELSON'S LAW OF INJUNCTION 3RD EDITION PAGE 11.

The final hearing of suit may take several years and hence this applications are taken up for urgent hearing.

The practice in Ahmedabad City Civil Court is that one judge is specially assigned this work and he takes up such matters for hearing in afternoon session. The practice in other courts is that, the judge to whom suit is assigned hears such application. The ad-interim orders may be for a limited duration say upto the hearing and disposal of the application. Sometimes the orders straight way grant injunction upto hearing of application. The study of backlog of cases reveals that after obtaining exparte injunctions for ad-interim relief the hearing are delayed for long period. Though there is stipulated time limit that the hearing should be completed within 30 days, it is hardly complied, as required under order 39 rule 3 A of Civil Procedure Code.

Whenever injunctions are not granted and only show cause notice is issued there is tendency on part on the defendant to delay to file written statement and reply. The position of law as to when some act is done and there is no injunction but only a show cause notice, whether plaintiff can apply for restoration, is not very clear. The defendants take advantage of this position and there are instances where the defendants complete such act and make the whole injunction case unfructuous. The courts ofcourse have the power to restore the balance but the same are sparingly exercised.

Injunctions are at times obtained without producing proper particulars of the title of the defendant or his connection with the property and the practice in Ahmedabad City Civil Court is to obtain undertaking from defendant to indemnify the loss incurred.

To avert the possibility of exparte injunction caveats are filed but in most of the cases the caveator are not ready with their case when matter is to be taken up

for hearing. The caveator seeks adjournments and delays granting of injunction even when case merits an exparte injunction.

Sometimes in absence of precise particulars the injunction becomes unfructuous. In the cases filed by the bank generally an application for injunction in respect of hypothecated assets is obtained. The defendants however shift or transfer the assets and unless very prompt action of inventory is simultaneously taken the very purpose of application gets frustrated.

The court is vested with the power to modify injunction in view of new facts coming to light upon filing of written statement. This is an opportunity to balance the situation when the earlier ex-parte order is very harsh. The tendency on the part of courts is however more in favour of hearing the application and not in either confirming or rejecting the order.

XII

DELAYS AND INTERLOCUTORY APPLICATIONS

The word "interlocutory" stands for provisional, interim, temporary, not final. It is something that intervenes between the commencement and the end of a suit which decides some point or matter but is not a final decision on the whole controversy. An interlocutory order or decree is one which does not finally determine a cause of action but only decides some intervening matter pertaining to the cause, and which requires further steps to be taken in order to enable the court to adjudicate the cause on merits. It is general experience that hearing of application for interim relief/interlocutory applications and confirmation or rejection of exparte interim relief granted is prolonged and there are cases where hearing takes as much as one or two days.**44

**44 S.M.N. RAINE.. "LAW, JUDGES AND JUSTICE," 1ST EDITION (1979), PAGE 159.

The Hon'ble Supreme Court has also expressed its displeasure on the way in which interlocutory applications are heard. The advocates for parties read the affidavits and cite numerous authorities laying down the principles on which interim relief should be granted or refused.

There are some adjournments due to creation of unwritten precedents like filing of rejoinder to the written statement, by which parties prolong the actual stage of hearing. As against the directive given in the Civil Procedure Code, the hearing of interlocutory applications is stretched for several months and years as is revealed from the following study.

TABLE

POSITION OF INTERLOCUTORY APPLICATIONS

(SAMPLE STUDY FROM CIVIL COURTS BARODA)

Total no. of applications studied	47
Orders granted Exparte	14
Caveator served before hearing	13
Adjourned beyond 30 days for filing reply	23
Stay granted/confirmed after hearing both parties	8
Rejected	25
Appeals filed against orders	10

In deciding matters of grant of temporary injunctions the court is not required to go into evidence with a critical attitude for its closer scrutiny. It is only required to see that all three necessary ingredients for grant of temporary injunction/relief exist in whose favour.

It is observed by one of the authors that the judge also very often encourages long arguments and at the end delivers the judgement running some times into 20 to 30 pages. It has been experienced that with the disposal of

application for interim relief parties do not take interest in early disposal of the original case.**45

Even when the order is passed it is not the end of the matter: The next round of litigation is commenced by filing appeal against such order. If the order is not appellable then revision application is filed. In case the lower court has vacated the stay order then extension of stay is also applied and granted as a matter of rule. Sometimes the time taken for filing appeal is much more than the time taken by the lower court is disposing the matter.

As far as the cases of banks and financial institutions are concerned the documentary evidence is almost indisputable and the same can be treated as proof of prima-facie case for grant of relief prayed in interlocutory applications. The substantial amount that is outstanding and to be recovered constitutes balance of convenience more in favour of such bank/institutions. Contention is usually raised that in money suits there is no question of an irreparable injury which can not be compensated in terms of money. The contention is not well-founded because not granting interim relief will in effect give free hand to do the acts/transfer the properties in respect of which the interim relief is sought and the decree which may be passed may become unfructuous.

In summary suits filed under order 37, the defendant is not entitled to defend the case as a matter of right and the court will have to be convinced that the defendant has triable issues. Any frivolous or evasive defence will be discouraged.

The study of summary suits and applications for leave to defend including their disposal is shown below :-

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**45 ARTICLE BY M.REHMAN CHAUDHARY "IS INJUNCTION HEARING RESPONSIBLE FOR INORDINATE DELAY IN DISPOSING THE MAIN SUIT" AIR 1992 JOUR.87.

TABLE

APPLICATIONS FOR LEAVE TO DEFEND

(ORDER 37, SUMMARY PROCEDURE)

-Total no. cases studied	:	98
-Summons served and defendant appeared	:	44
-Notice of Appearance not given as per procedure	:	17
-Summons not served	:	54
-Adjournments taken for leave to defend beyond 10 days	:	46
-Leave to Defend Application rejected	:	3
-Exparte decisions	:	10
-Leave to Defend granted with conditions	:	25
-Pending for hearing beyond 6 months	:	16

XIII

DELAYS PAVE ROOM FOR ILLEGAL PARALLEL SYSTEM

For administration of criminal Justice, systems followed in the world are of two types :-

(a) Accusatorial

(b) Inquisitorial

In accusatorial system, based mostly on Common Law principles the burden of proving that the accused person violated some law is on the prosecution. In inquisitorial system followed in European countries like France the responsibility

lies on the accused person to prove that he is not guilty of crime allegedly committed by him.

The Indian criminal jurisprudence is based on accusatorial system presuming innocence of accused unless his guilt is established. Some laws are an exception to this proposition. Thus, under laws like FERA, Prevention of Corruption Act etc. the onus shifts on the accused.

Since last about two decades the pattern of crimes in India is changing. With growing awareness about the limitations of Civil Law and Criminal Law systems in speedy disposal of the matters, there are some organised criminal groups who virtually run parallel system and people are tempted to seek their help for settlement of disputes.

Some of the examples may be :-

(a) Driven by the sense of revenge for atrocities committed on her Phoolandevi gunned down 21 persons in a village. Phoolandevi, now an M. P. claims that it was her way of doing justice in the matter.

(b) It appears that system of administration of justice acted at snail's pace in taking up cases involving gangster. On the other hand, at the behest of some interested persons, they develop system for settlement of disputes as per their own whims.

(c) There are number of allegations that, finance companies (and even banks) hire the services of antisocial elements for the recovery of their dues and repossession of vehicles/assets.

(d) The protection money recovered and extortion practiced in Bombay and other places by organised crime gangs are throwing serious challenge to the police. With the sophisticated equipments like pagers, cell phones, weapons etc. which even the police does not have, they are posing very serious challenge to the very existence of rule of law.

(e) The recent report alleging involvement of executives of reputed industrial groups in payment of money for insurgent activities in Assam can be taken as an eye opener for the nation.

(f) The recent arrest of Romesh Sharma and his alleged links with leading politicians and industrialists gives the impression that criminals have made inroads in the system to great extent.

(g) Civil Judge in Sidhdhpur suffered bullet injuries recently.

The "Parallel system" in which organised criminal gangs operates, some times with support of politicians, police and other connected groups with following modus operandie:-

(a) Assume the role of self claimed adjudicators of the disputes and prevent the matters from reaching the courts.

(b) Challenge the system of courts by preventing the execution of orders of the court by acts of vandalism, threats etc.

(c) Attack the litigants going to the courts or by filing false complaints against them.

(d) Create huge money power and allegedly corrupt the legal and police systems who lack initiative and intention to take action against them.

(e) Through well arranged team of Advocates avoid prosecutions, get bails or acquittals and continue their activities.

This should open eyes and provoke the thoughts of all citizens and in particular those concerned with the profession of law and administration of justice.

In all the aforesaid cases the delays involved in initiating timely prosecution and releasing on bail or not being subjected to preventive detention laws at right time has helped the criminals to a great extent in organising themselves, creating their strongholds and acquire financial and even political power which has created impression that they were at one stage mightier than mighty.

The growth of terrorism in some States also has some relevance with the delays in doing justice at the right time. Whenever the terrorists are to be tried the

system is found inadequate because no witnesses are available and there are apprehensions of attacks on judges trying the case and police carrying such terrorists.

The characteristics of organised crime are summarised below :-**46

(a) In organised crime there is a group of persons of considerable size which engaged itself in continuous crime over a long, usually indefinite period of time.
(b) It has a tendency to dominate, through political clout or corruption, the law enforcement agencies.
(c) The organization is generally highly centralized. The authority is vested in one or just a few members of the group.
(d) Functioning of such Mafia can be compared with the functioning of corporate houses. There is division of labour, delegation of duties and responsibility and specialisation of functions. Like any modern business, organised crimes also involve careful planning, risk insurance and have expansive and monopolistic tendencies.
(e) The criminal organisations adopt measures to protect the group and to guard against prevention of their activities. To this end, arrangements are made with doctors, lawyers, policemen, judges, politicians and Government officials.

To control the growth of organised crime and eliminate it, speedy disposal of the cases involving such criminals and not being too lenient to them in granting bail etc. is the need of the day.

**46 CRIMINOLOGY, PROBLEMS AND PERSPECTIVES, 4TH EDITION.. BY A. SIDDIQUE.

XIV

COURTS, WHETHER SHELTERS FOR BETRAYERS OF LAW?

The entire society at large has legitimate interest in detection of crimes and its punishment, and the punishment should come without inordinate delay.

The system of Criminal Law aimes at achieving the following objectives:-

(i)	Deterrent	:	To award severe punishment to criminals which will send a stern warning to potential perpetrators of crime and conveys that indulging in crime will be a bad bargain.
(ii)	Preventive	:	The purpose is to prevent repetition of offence by imposing penalties like imprisonment, death and exile to disable the criminals from further indulging in crime.
(iii)	Retributive	:	The theory aims to establish that the offender should be made to suffer in proportion to the injury caused to the victim of crime. It gratifies instinct of revenge.
(iv)	Denunciatory	:	The punishment inflicted should adequately reflect the revulsion by majority of citizens on criminals. It is to express collective condemnation by society.
(v)	Reformative	:	The punishment should not aim to seek vengeance but to reform the criminal.

Crime or violation of law is a social disease and the society has every right to expect that the collective will of the society, in defining crimes and making them punishable, not only remain on paper but gets reflected in action. It can become possible only when the investigative wing namely the police and the judicial wing namely courts act in perfect harmony to deliver speedy justice.

The law has inbuilt provisions to stipulate and empower punishments with the view of achieving the aforesaid objectives. The word "rule of law" remains a dead letter or holy citation unless,

(i) The system is proactive in the sense that as far as possible, the offences can be prevented before they occur by taking precautionary measures.
(ii) If the rule is violated, the reaction by the system in investigating the matter and apprehending the suspect is prompt.
(iii) The prosecution, trial and award of punishment is prompt so that justice is not only done but appears to have been done.

The courts by adjourning the matters and delaying the decisions, despite all their bonafides, provide indirect shelter and protection to the persons who betray the legal provision, while the facts and merits may differ from case to case, the betrayers of law try to create protection under technicalities of law and engage best legal brains to defend their case. No innocent person should be punished but at times, the criminal antecedents of the persons are also ignored. It is said that even in heinous crimes people succeed in getting bails and there are cases when people while on bail have indulged in further crimes which could be prevented by keeping the person in custody.**47

The Supreme Court has held that though a person accused of a bailable offence is entitled to be released on bail pending trial, if his conduct subsequent to his release is found to be prejudicial to a fair trial, he forfeits his right to be released on bail and such forfeiture can be made effective by invoking the law. If any person is found intimidating, bribing or tempering with the prosecution or attempts to abscond, he may be arrested by cancelling the bail.

Several commissions have in their reports, taken a view that a criminal trial if prolonged by more than one year, it constitutes serious delay and needs to be rectified.

**47 TALAQ HAJI HUSSAIN V/s. MADHUKAR, (1958) SCR 1226

The delays involved in criminal trials also causes embarrassment to the persons, who are charged of offences but ultimately are innocent. Vindictive and motivated prosecutions and arrests in India are not uncommon. Here the frequent attendance required in the court, loss of gainful employment/business, other expenses, amounts to an indirect punishment and there should be some logical end to it.

Persons who violate civil, contractual or legal rights of others which do not fall within domain of criminal law, also have the tendency to approach the courts with false and frivolous litigations and obtain exparte orders which perpetually operate to the disadvantage of person who is deprived of his rights. In several cases, the tenants are thrown out of the property forcibly and litigation or complaints are filed against such persons.

The law courts, despite sincere commitments to cause of justice, at times unintentionally help the persons who betrays the laws by providing protection in form of injunction, bail and other equitable remedies though the conduct of the person himself is not at all equitable.

XV

DELAYS AND SERVICE MATTERS

The delay involved in adjudication of labour disputes, operates to serious prejudice of the employees/workmen who have to depend for their livelihood on the salary income. With 53 major legislations enacted as central laws and large number of State enacted laws, the employees/workmen and at times even the employers have been vested with several rights.

The major disputes and litigation in service matters arises in following cases

(a) Appointment, promotion, transfer, posting, fitment in pay scales, termination retirement and termination of services including terms of employment and scales of pay.

(b) Compliance of provisions of Industrial Disputes Act, 1947 for retrenchment, closure etc.

(c) Compliance of provisions of welfare measures under Factories Act, 1948.

(d) Employees Provident Fund Act.

(e) Gratuity Act.

(f) Employees State Insurance Act.

(g) Industrial Employment (standing orders) Act

(h) Payment of Bonus Act.

(i) Minimum Wages Act, Payment of Wages Act.

(j) Trade Unions Act, 1926.

(k) Public Liability Insurance Act, 1991

(l) Workman's Compensation Act.

The purpose of enacting the aforesaid legislations is to secure economic and social justice by making special provisions. The object of the aforesaid laws gets frustrated when the machinery created under those laws fails to provide relief in respect of the grievances in service matters. There are huge numbers of cases pending in Tribunals and High Court where the matters remains undecided for several years. For the purpose of case study, the matter of Arvindlal Govindlal Shah pending since 1975 in various forums may be referred. Shri Shah was dismissed for alleged irregularities of Rs.600 in the year 1974. He was an employee with Co-Op. Bank. The criminal court acquitted him of all the charges in respect of complaint filed. The Labour court vide order dt.10/6/86 refused to grant reinstatement but directed payment of salary for certain period. He filed SCA No.274/87 and the Gujarat High Court (Justice G T Nanavati) directed that a departmental inquiry should be conducted and court will not interfere at that stage. Subsequently, the industrial court passed an order on 9/4/87 and Shri Shah filed another SCA No.6181/88 seeking his reinstatement. The matter is still pending. In the long span of 22 years, Shri Shah is likely to reach age of retirement. His son is also married. Shri Shah still awaits justice.

Delays in particular, in the Labour courts have adverse impact not only on the individual workman but the entire group of employees and even the community. The appointments and promotions, the recruitment and wage revisions and several important matters just gets delayed because grievances raised by some one is pending for adjudication.

In a recent case, an employee filed application against a Nationalised Bank for inclusion of his name in list of computer operators. For nearly 16 months the whole process was held up and it had adverse impact on public services as submitted by the Bank.**48

In another case a trade union not having a single member in the entire co-op. Bank was trying to create hindrance in implementation of a settlement giving substantial rise in a salary. The settlement could be implemented with the recording of the court almost after 8 months.**49

In another case two trade union leaders, who are protected workmen and whose services were terminated for leading an agitation in the year 1996 have approached the labour court. The application for their reinstatement is still pending despite the fact that the industrial tribunal had earlier granted injunction against termination.**50

Discipline in any organisation is a must for survival of organisation and its orderly functioning. There is tendency on part of certain workmen to take shelter of order of Labour Court/Industrial Court to prevent their employer from initiating action, which is warranted on the basis of gravity of misconduct.

Delays in service matters, more particularly when there are exclusive tribunals constituted for labour matters needs prompt measures for rectification.

**48 APPLICATION NO.4/97 BEFORE INDUSTRIAL TRIBUNAL BARODA.

**49 KARMACHARI UNION V/s. DABHOI SAHKARI NAGRIK BANK I C NO.17/97.

**50 CASE NO.1/97 AND 2/97 SARABHAI CHEMICALS V/s. SHRI MAHESH JOSHI AND OTHERS.

XVI

DELAYS AND CREDIBILITY OF THE SYSTEM

The strength of judicial system lies not only in the printed letter of the statute book but the credibility and respect it commands among the litigants. The delay and backlog prevailing in the system has serious adverse impact on credibility of the system. In the words of Shri Nani Palkhiwala.. "I was asked to mention the greatest drawback of the administration of justice in India today, I would say that... it is delay. There are inordinate delays in disposal of cases. We, as a nation, have some fine qualities but a sense of the value of time is not one of them. Perhaps there are historical reasons for relaxed attitude to time. Ancient India had evolved the concepts of eternity and infinity. So what do 30 years vested in a litigations matter against the backdrop of eternity? Further, we believe in reincarnation. What does it matter if you waste this life? You will have many more lives in which to make good. I am not aware of any country in the world where litigation goes on for a period as long as in India."**51

The aforesaid words from eminent jurist, Shri N. A. Palkhiwala throws enough light on the serious loss of credibility of the system. The delay sparks of the following conversations in the mind of the common man.

1. The system can never deliver justice in time.
2. The system is not meant for them.
3. By the time a matter is decided it will be too late and unfructuous.
4. The litigation overlives the life of litigant.
5. The system is an instrument to oppress and exploit the poor who never gets justice.

**51 WE, THE NATION THE LOST DECADES BY N. A. PALKHIWALA AT PAGE 216.

The word "Justice" in context of preamble of the Constitution means and includes political, economic and social justice. The urges and aspirations of poor and downtrodden from the system are quiet high and the system in present form lacks the will, infrastructure and initiative to reach even near to that goal. Out of millions of persons who approach one forum or the other under the fold of judicial system, very small percentage approaches the higher strata of judiciary namely the Supreme Court and High Courts. Most of the reported judgements came from those courts and they reveal only top of the iceberg. The real volume of litigation and pendency is lying in the dockets of lower courts, where an extensive and objective scrutiny is required to understand the actual implications of the problem. Some of the reports of Law Commission of India, in particular the Setalwad committee report prepared after 3 years of extensive study of the system both at apex level and grass root level reveals substantial drawbacks. Since last about 20 years no such study was undertaken for trial courts and there is sea change in the economic, social, political and legal environment of the country.

Any system, which operates in vaccum or isolation from such development are bound to suffer in terms of credibility and that has really happened in the Indian Judicial System.

XVII

WHO BENEFITS BY DELAYS?

A. LITIGANTS

B. LAWYERS

A. LITIGANTS : Irrespective of the impact of procedural delays attributable to the provisions of law, the delay can be substantially avoided unless one of the parties to the litigation is interested in the delays.

Prof. Upendra Baxi has attempted to analyse the psychology of litigants and arrived at following observations.. "Understanding why people litigate, and the way they do so is as important as understanding why people rebel. We have no theory or sustained approach for litigation in India. The colonial administrators of 19th century spread the word that Indians are highly litigious. Why they do so? Is it

because some Indians love litigations for its own sake? Is it that courts are resorted to not so much for enforcement of rights but rather with objective of harassing adversary? Is judicial process used as an instrument of attrition of on going social conflict? There is some evidence to show that the very failure of adjudicative system to provide expeditious justice has contributed to this."**52

The above observations give clear indication that in the adversary system one of the litigants definitely has vested interest in delaying the matters. The motives and reasons for one of the litigant having vested interest in delay can well be appreciated by study of the effects of some cases mentioned below:

(a) A, in illegal possession of property files a suit against the real and bonafide owner and obtains exparte injunction. Here A is interested in getting as many adjournments as he can.

(b) B, owes money to a bank or institution. If the matter is quickly decided B will be liable to pay the amount immediately. It will in this case be the endeavor of B to prolong the matter.

(c) A public institution is interested in removing encroachments for convenience of general public. The encroachers are interested in delaying the matter.

(d) An employee has been dismissed with malafide intentions and ulterior motives. His rein-statement may boost the moral of other employees. Here the employer is interested in delay.

(e) A suit is filed against husband for maintenance, the husband in most cases is interested in delay.

(f) A has committed bank fraud and made illegal gain of huge amount. Here A is interested in the delays.

The above examples gives enough explanation that one of the litigant is definitely interested in the delays and the delays can be substantially reduced if such litigant and his motive is understood.

**52 CRISIS OF INDIAN LEGAL SYSTEM – COURTS IN CRISIS AT PAGE 77 BY PROF. UPENDRA BAXI.

It is also equally true that when both the parties are interested not in delaying the matter the court can play the role of catalyst to sort out the matter. The success of Lok Adalats is a glaring example of this proposition.

B. Lawyers : As early as in 1925, the Rankin Committee noted that there is tendency in India to over prove essential allegations and a further tendency to prove and over prove unessential allegations. A cross examination extends for a period six times longer than what is necessary to produce useful reasons. Arguments often tend to be unduly prolix. Large number of authorities are cited and practice of reading lengthy excerpts is quiet common.

The Setalwad Committee also observed that the suits are heard after series of adjournments, contrary to the code. It found the subordinate judiciary as if they understood the code to provide to the contrary.

In the 77th report the Law Commission further observed that except Kerala no other State had strictly applied the provisions putting restrictions on adjournments.

The Shah Committee observed that disputes, which are in truth not civil disputes are sometimes sought to be brought before the High Courts under the guise of the claim for constitutional protection.

The lawyers and the profession they represent are essential and indispensable attributes of the legal system. In India we have the lawyer population next largest to USA. With about 8 lacs advocates practicing there is cut throat competition to corner the work at any cost. Some times ethics remains only on paper books. As a result, about 10% of the members of the Bar gets nearly 80% of the work.

Because of the lop sided profession referred above some of the lawyers are not in a position to cope up with the work and have either to take adjournments or sacrifice their quality of performance.

The problem of quality of legal services is not a problem but a symptom. It is time to be skeptical about the capacity of law and lawyers to bear all kinds of responsibility.**53

Sometimes lawyers act as the mouthpieces of the client and forget that they have some duty to the profession also. The lawyer should not look at the profession from the viewpoint of monetary gains only. A case study given in one of the books on disposal of court cases will be helpful to establish interest and involvement of lawyers and litigants in adjourning the matters.

TABLE54**

(PLEASE SEE PAGE 441-A)

**53 ARTICLE BY AYER JOHN D " DO LAWYERS DO MORE HARM THAN GOOD?" VOLUME 65 AMERICAN BAR ASSC. JOURNAL (JULY 1979) PAGE 1053.

**54 EARLY DISPOSAL OF COURT CASES BY V. K. MATHUR AT PAGE 53.

TABLE

Adjournments and their Reasons in the Trial of Civil Cases

441-A

No.	Reasons for Adjournment	Frequency			
		District Judge	CJ/ ACJ	MM	Total
1	2	3	4	5	6
1.	Summons not issued or not returned.	90	60	60	210
2.	Process fee and notices not filed.	30	20	22	72
3.	Copies of document filed by the plaintiff not ready/not supplied.	18	15	20	53
4.	Number of Frivolous applications filed/ hearing of applications.	80	110	152	342
5.	Revision filed against orders on application/ record called for.	120	130	180	430
6.	Witnesses not served/ summon not issued/or not returned.	80	90	150	320
7.	Transfer of cases file to another court.	10	30	50	90
8.	Advocate for the parties busy in another court.	25	60	80	165
9.	Presiding Officer on leave.	48	13	21	82
10.	No time left/court busy with other case.	26	8	15	49
11.	The day of hearing declared a holiday	14	8	12	34
12.	Strike of courts ministerial staff/ advocates on strike.	15	10	25	50
13.	Party's prayer for change of lawyer.	3	0	8	11
14.	Illness of Advocate	5	3	8	16
15.	Ministerial staff on leave.	3	2	1	6
16.	Judgment/Order not ready.	4	3	6	13
17.	Stage completed (hence adjourned for next stage).	249	69	40	358
18.	Listed for Misc. work therefore adjourned.	78	23	28	129
19.	Others	21	5	2	28
	Total	919	659	880	2458

XVIII

TECHNICALITIES AND DELAYS

Ignorance of law is not an excuse for anybody. Hence the law is equal for the best educated and the uneducated, the rich and the poor, the elite and the average.

Laws are made for man of ordinary understanding and therefore should be construed by ordinary rules of common sense. Their meaning is not to be sought for in metaphysical sublets which may make anything mean everything or nothing, at pleasure. It should be left to the sophisms of advocates whose trade it is to prove that a defendant is a plaintiff, though dragged into court or that the power had been given because it ought to have been given.**55

The law to be most popular and acceptable should have the least technicalities and it is the duty of the courts to provide conducive environment, which minimizes the technicalities and do justice keeping in view the substance, not the form. Equity looks at substance rather than form and one who seeks equity must do equity are the maxims applicable.

The overt technicalities with which our laws and procedures are loaded encourage a potential law breaker to indulge in such act and plan in advance for the price and consequences.

The violation of law is not in the moral and philosophic sense, a privilege that is offered for sell with a given price tag, like an object in a super market available to any one who has the price and is willing to pay for it. It is not like the privilege of breaking crockery in a tent at a country fair for a quarter a short. Respect for the law is not an obligation which is exhaled or obligated by willingness to accept the penalty for breaking it.**56

**55 THOMAS JEFFERSON IN HIS LETTER TO JUSTICE WILLIAM OF US SUPREME COURT.

**56 GEORGE KENON IN NEW YORK TIMES MAGAZINE JAN., 21 1968 AT PAGE 71.

The overtechnical language, the contradictions, the lack of consistency, the inadequate training in drafting and interpretation and above all the lack of vision to apply the laws in its proper context have created the impression that law is too technical and beyond the understanding of layman. The delays that are caused are because of the overtechnical nature of the law and there is hence urgent need for simplification of laws and removal of technicalities, as far as it is possible without deviating from the substance.

XIX

NO ADEQUATE COMPENSATION TO SUFFERERS BECAUSE OF DELAY

Though the role of State has undergone substantial change over years, the doctrine "King can do no wrong" still appears to be prevailing as far as the administration of justice is concerned. There is a need to have an innovative and positive approach to the litigants and the beginning point can be to look at him as consumer for services of the system. The concept can not be subjected to a tight jacketed formula, while dispensing the criminal justice the State is not charging any fee. The court fee is charged from the litigants who intend to file action before the civil court.**57

In the case of State of Gujarat V/s. Akhil Bhartiya Grahak Panchayat, it was alleged by the complainant that though the State is collecting full court fees, the State is neither providing adequate numbers of court and also State is not appointing judges already on posts created and on account of both this default the cases are not being taken up for number of years with the result litigants are not getting justice in time and are suffering. It was also contended by the complainant that court fees which have been paid by the civil litigants is nothing

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**57 CONSUMER PROTECTION LAW AND PRACTICE BY DR. V. K. AGARWAL 3RD EDITION AT PAGE 88.

but the amount paid for hiring of services i.e. dispensation of justice in rendering of justice which is paid in form of court fee. Any delay therefore, should constitute deficiency in service. The Baroda District Forum held that litigants were consumers and service rendered by the court is a service as contemplated under Consumer Protection Act. In appeal, the Gujarat State Commission observed that, State in exercising sovereign function of providing justice to society and there is no contract. Court fees levied by State is not a consideration as contemplated under Consumer Protection Act. A court fee is imposed under the taxing power of the State. The complainant can not have any contract or negotiation. If he wants to avail the privilege offered by the State he has to pay the court fees prescribed and if it is more he can challenge the levy but it will not amount to deficiency in service.**58

The above case though it stands sound on legal footing, also establishes the rigid and inflexible approach of State towards the functioning of judiciary. Recently the Chief Justice of India has also stressed financial autonomy of the judiciary.**59

This is not an attempt by the researcher to make a case for payment of compensation by a State. It will be for the present sufficient if the existing provisions for awarding compensation are applied more vigorously and those who resort to litigation only for the object of harassing the other side should be made to pay price for their Act. The existing provisions of Civil Procedure Code and Criminal Procedure Code on this aspect are as under:

**58 1993, 1 CONSUMER PROTECTION REPORT PAGE 327.

**59 THE TIMES OF INDIA 17TH JANUARY, 1999.

ACT	SECTION	PROVISION
Criminal Procedure Code.	357	whenever fine is imposed the court may award compensation for defraying the expenses incurred or compensation for any loss or injury suffered.
Criminal Procedure Code	358	If any person is groundlessly arrested the Magistrate may award compensation not exceeding Rs.100/-
Civil Procedure Code	35A	Compensatory costs may be awarded in respect of false or vexatious claims or defences raised. Person is not absolved from criminal liability by virtue of this section.
Civil Procedure Code.	35B	Costs for causing delay may be awarded at the discretion of court.
Consumer Protection Act.	26	Where a complaint instituted is found frivolous or vexatious, the forum may for reasons to be recorded in writing dismiss the complaint and shall pay to opposite party cost not exceeding Rs.10,000/-

All the aforesaid provisions are found grossly inadequate to compensate an aggrieved litigant for the loss/damage actually incurred or suffered by him.

XX

DELAYS AND CONSEQUENTIAL LOSSES

By consequential losses, what is meant is the overall financial, political, economic, social or other impact of the lack of promptness on part of the judicial system to react to certain developments. It will also include the losses, which may be incurred or suffered not only by immediate parties to the litigation but the third

parties or the public at large who suffer. Numerous examples can be cited for the losses suffered by the community because of the delays or irresponsible litigation.

In case of Public Interest Litigation (PIL), there is a tendency on part of some persons to file litigation and set the machinery of court in motion. Once some process is issued, several other groups also join the litigation and the matter becomes more and more complicated. Such litigation, which have been filed for maligning the political adversaries, causing harassment or embarrassment to the other side, to enforce rights which otherwise do not exist under the law. This has been seen as part of judicial activism. In such cases, delays are caused in the Court procedure or by one of the parties. Some of the recent examples can be cited are as under:-

(i) The Supreme Court asked the Speaker of Manipur Assembly to appear in person to face contempt proceedings. The Speaker claimed privilege and refused to comply with the order. There were several adjournments and ultimately the matter was saved by ensuring presence of the Speaker. The whole matter including the delays were avoidable.

(ii) Supreme Court in Vishakha V/s State **60 has given directions in respect of sexual harassment of working women's case. The court has given detailed guidelines which will continue to follow till Parliament enacts a suitable law. There may be delay in enacting such a law and till such time, the Supreme Court's directives will have to be enforced as if they are statutory guidelines.

(iii) In the bus tragedy case in Delhi, the Supreme Court issued suo moto instructions that the bus drivers for school children should have ten years experience. There were large-scale protests and it was reduced to five years.

**60 "JUDGEMENTS TODAY 1997, VOL.7, S.C.384.

In the environment protection cases, the courts at times issues ex-parte injunction order and whole production is stopped resulting in loss of production, unemployment and several other complications. The matter involves substantial time for hearing. Till such time, the whole activity is held up and the interim directives to get the amount deposited are beyond the financial competence of the party to comply.

Following are instances where consequential loss is suffered due to delay:-

1. The Chief Election Commissioner has recently pointed out that there are 528 election petitions pending in various High Courts and because of the delays involved, sometimes the matter remains undecided even upto the expiry of the term of concerned MLA or MP. Hence even if the candidate was involved in unfair practice, he enjoys his full term. This is the biggest consequential loss of the community because free and fair elections are basic requirements of democracy.
2. The ex-parte injunctions in attachments are in several cases used as pressure tactics to cough out more money or bring the adversary to settlement. The purpose here is not bonafide adjudication of rights, but clever bargaining under protection of the court order which may involve substantial time to get effected.
3. India is marching towards liberalisation of economic policies. There is a general impression among foreign countries that litigation and laws in India are too complex and time consuming. There is hence a need to reduce the delay because foreign collaborations, investments, technical know-how, corporate mergers and take over and investment plans may get held up. The recent controversy of Enron Project can be taken as a guiding example for the same.
4. The litigations in some cases are used as tools to settle political scores and tarnish the public image of the adversaries. During last seven years, the high profile petitioners including a former Prime Minister and Chief Minister have been brought to Court for involvement in scams. Here the truth should be brought out as fast as possible and delays will have to be minimised.

5. To compensate the parties who suffers in terms of loss of reputation, time, mental agony, finance or otherwise is absolutely inadequate. The damage caused to public because of the inordinate delay in deciding the Narmada Dam matter is a glaring example.

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