CHAPTER XV

CONCLUSIONS AND SUGGESTIONS

In this thesis the system of administration of justice from ancient time upto the present day courts have been examined. Comparative study of systems in other countries is also made. In respect of bank cases various laws applicable to the banks and financial institutions, the bankers securities and the special tribunals created for recovery of dues of banks and their powers have been discussed.

This chapter which forms conclusive part of the thesis is devoted for making suggestions wherever some shortcomings, lacunae or lack of initiative is noticed. It will not be correct to say that the existing provisions and several reports mentioned in this thesis can be ignored. The process of law making undergoes constant evolution and if the problem of delays in judicial proceedings can be sorted out by introducing radical reforms, the ultimate goal of providing justice can be achieved in more expedient and efficient manner. Inordinate delay by itself is an injustice, which suffocates our litigants. The tendency on part of bar, bench, litigants, scholars and Government to blame each other cannot solve the problem. The whole attitude and approach needs diagonal change so that the functions are not looked in isolation but as collective responsibility and duty of all interest groups by making meaningful and positive contribution leaving apart the individual interest.

Providing efficient, well integrated, less costly and effective legal system is a constitutional mandate if one looks at the preamble of constitution and article 39 of the constitutional which emphasises for social, political and economic justice and directs the state that it shall secure the operation of the legal system which promotes justice on the basis of equal opportunity.

The causes and contributory factors for delays are multiple, some of them are rooted not in the system but even in the political and social environment like

population explosion, increasing number of conflicts and organised interest groups, poverty, illiteracy etc. The plethora of legislation which comprises of thousands of laws and rules, notifications and circulars originating from such laws, constitutes in itself a factor contributing to delay.

Any research work will become a fault finding mission if it does not properly appreciat existing efforts made by several commissions and amendments already brought on basis of the same. The researcher has hence to take a balancing view between two opposite doctrines namely "Justice Delayed is Justice Denied" and "Justice Hurried is Justice burried". At the same time, concern has been expressed by Several Chief Justices of Supreme Court of India that the judicial system is on the verse of collapse unless some drastic reforms are not introduced to sort out the problem of backlog of cases.

The reformist judge, Justice Krishna Iyer has expressed effectively this problem in following words:
"Our systematic backwardness builds up forensic stresses needlessly and makes reform of the judicial process a battle of the tenses. The twenty first century will be frightened to witness out judicial dinosaur wallowing in the distant past. While the rich use monetary catalysts to manage things, the poor suffer the 'slow motion' skills of court justice. "Modernize or Perish" is the command of social justice. And how easy to banish this backwardness and how refreshing the change, if science and technology, social science and business management arts benignly invade Indian forensics. Alas we preserve Victorian vintage rodents in the rat temple"**1

As many as 20 reports by law commission of India and high-powered committees have looked into this problem and made various suggestions. At times the committees have differed among themselves on various critical aspects.

**1 OUR COURTS ON TRIAL BY JUSTICE KRISHNA IYER PAGE 7

Reforms have been introduced on basis of such reports. As informed by the then Union Law Minister to Lok Sabha on 2/1/1985, in order to control a large number of pending cases, the Government has taken the following steps.

A. In 1976 several amendments were made in Civil Procedure Code. The right of letters patent appeal against the single bench decision was abolished.
B. IN 1973 the Code of Criminal Procedure was thoroughly revised in accordance with recommendation of law commission.
C. The number of judges in the Supreme Court was increased by amending the Supreme Court (number of Judges) Act, 1977. The number of judges in High Court was also substantially increased.
D. Amendments were made in Supreme Court Rules under which registrar and judges in chambers were given more powers so as to dispose off small miscellaneous matters.
E. The Chief Ministers and Chief Justices of High Court were requested to consider appointment of retired High Court Judges under Article 224 of constitution whenever Civil Cases of more than five years old are pending.
F. Steps have been taken by the Supreme Court to hear collectively all such writ petitions wherein similar questions were raised. Each such cognate group of writ petitions may include 50 to 100 cases collectively. Action to implement suggestions regarding further increase in number of judges of High Court/Supreme Court and submission of written arguments is under active consideration.

In this thesis after extensively examining various causes of delays in general, special reference has been made to the cases of banks and financial institutions. After nationlisation of the banks in 1969 the doors of the banks were opened for masses rather than classes and small entrepreneurs, agriculturists, artisans, small-scale industries and self employed persons benefited tremendously under priority sector lending. Alongwith that the problem of mounting over dues also became acute. The Reserve Bank of India set up a committee known as

Talwar Committee for establishing separate machinery for recovery of agriculture dues and several States Governments have enacted special laws for this purpose. The Reserve Bank of India also constituted another committee popularly known as Tiwari Committee to examine legal and other difficulties faced by banks and financial institutions and suggest remedial measures including changes of law.

The other high power committee, named Narsimhan Committee also made important suggestions and accordingly Debt Recovery Tribunal was constituted.

In this research work, my endeavor was to examine the existing legal framework under which the courts both Civil and Criminal and Tribunals function. The Supreme Court and the High Courts, who are like trustees of people's rights, derive their power from Constitution of India and the same also has been thoroughly examined. The significant change in Indian Judicial System during recent years is the advent of tribunals and this is also examined.

In the first chapter concept of Justice and its various facets have been examined at length. It is the fundamental duty of the State to provide and efficiently run the system of justice administration. The subsequent chapters discuss in detail various aspects such as civil law system, criminal law system, causes of delay, consequences of delay and various attempts so far made in this direction. The subsequent chapters deal with the pending recovery cases of banks involving several thousand crore rupees which if recovered can provide great strength to the banking system and the economy.

After examining the various aspects of the problem, I would like to make following suggestions :-

PART – I

SUGGESTIONS FOR RECOVERY CASES OF BANKS AND FINANCIAL INSTITUTIONS.

(SPECIAL STUDY AREA)

1. Mere creation of Debt Recovery Tribunals without presiding officers does not solve but rather aggravate the problems of recovery for banks. There should be a panel from which presiding officer should be immediately appointed.
2. The infrastructure available for recovery with the recovery officer of Debt Recovery Tribunal is absolutely inadequate. While the orders can be passed, the actual implementation and recovery remains a pipe dream unless the orders can be strictly enforced.
3. An independent committee should be constituted to review the performance of Debt Recovery Tribunal for last 5 years and compare it with Civil Courts. Whether vesting of powers of DRT with a designated judge of District Court on line of motor accident claims tribunal will prove more effective, needs to be examined.
4. The banks may periodically update their record of addresses and assets of the borrowers/guarantors at the time of execution of letter of acknowledgement. This may help in service of summons and interim orders.
5. Evasive and irresponsible denials or frivolous counter claims to delay the proceedings should be discouraged. Banks and Institutions should not be treated at par with private moneylenders in settlement of their dues and the public interest factor should be given due weightage.
6. By suitable amendment in registration Act 1908 the charge by way of equitable mortgage should be registered even if the mortgagor does not sign the documents-. Similar amendments should be made for noting of charge in city survey and revenue records.

7. The concept of hypothecation should be presently defined and misappropriation of sale proceeds of assets hypothecated to banks should be made criminal offence by suitably amending section 406, 420 or 429 of Indian Penal Code.
8. By suitable amendment in Section 125 of the Companies Act, any amount of decree against the company should be registered as a charge on all its existing and future assets.
9. By statutory amendments in the Companies Act any defaulter company or promoters should not be allowed to raise further equity, loans or expansions.
10. Settlement advisory committees should be constituted in banks to examine compromise proposals. (This is provided for in recent union budget.)
11. The Sick Industrial Companies Act (SICA) should be suitably amended so that mere reference to BIFR does not in itself become a ground for stay of proceedings,
12. The coordination and cooperation between State Financial Institutions/Lending Institution should be increased for providing reciprocal second charge on assets. The stamp duty on such second charge should be marginal, say 10% of the normal duty on instruments.
13. The balance sheets of all the banks should give an annexure of list of all defaulters above Rs.1 crore and name of their promoters. Initially this will be resisted but multiple financing and frauds can substantially reduce.
14. Whenever the bank wants to take possession of security, police protection for bank staff should be made available on simple letter. It is generally avoided by police asking several questions to bankers.
15. The interest to be paid to the banks should be made deductible under Income Tax Act only when it is actually paid to the bank and certificate to that effect is produced.
16. When there are several claim outs like Income Tax, Banks, Labour dues etc., the entrepreneurs are at benefit by creating conflict and disputes between them, which remains pending for adjudication for several years.

This should be avoided by working out systematic strategy and coordinated approach.

17. Obtaining photographs of borrowers be made a must. The photographs of defaulter and their names can also be exhibited on notice board of branch.
18. While the dishonest defaulters get all reliefs and concessions an honest payer suffers. Such honest payers be given suitable incentive and respect. The next loan to them can be at lesser rate.
19. The recovery of dues aspect should be give equal weightage as compared to sophisticated functions like credit, Foreign exchange etc. for promotion, posting and rewards to bank staffs.
20. In case of vehicles with hypothecation/HP charge, upon intimation of default by the bank, RTO and police should cooperate by stopping further plying of vehicle and placing it in bank's custody.
21. In the cases filed by banks and financial institutions applications for attachment before judgement injunction should generally be granted except when the court for reasons to be recorded in writing deems it proper not to grant it. The proposition interest involved and amount to be recovered is public money.
22. The companies Act 1956 should be suitably amended and the company should be required to provide particulars of litigation by and against the company and the views of the management on the same. In case of Banks and Financial Institutions, when they file the suit, the dividend should not be declared or diversification or investment should not be made without permission of the court and providing sufficient security for the money with interest and cost. This will prevent siphoning of funds by the promoters.
23. Notwithstanding the concept of separate legal entity of the company when the promoters of the company have committed default in paying the dues of banks and financial institutions, such group company or concerns should not be allowed to borrow funds from Banks/Financial Institutions or through public issues. Any decrees passed in favour of such defaulter companies

should automatically stand assigned in favour of the lending bank/institution by operation of law.

24. The provisions relating to awarding interest in commercial transactions should be more effectively streamlined to ensure that atleast in case of nationalised banks and financial institutions awarding contractual rate of interest becomes a rule in view of amendments in section 21 A of Banking Regulation Act. Section 34 of the Civil Procedure code should be amended accordingly.

PART – II

GENERAL CONCLUSIONS/SUGGESTIONS

LEGAL SYSTEM

1. The existing legal system has by and large stood the test of time and there is no scope of need for replacing the present system by alltogether different system. It is not feasible also.
2. At the same time there is no room for self-complacency because law itself has to change with time and hence the system cannot afford to be static or rigid.
3. The present system is based on adversary concept under which when one party wins the other party necessarily looses. The concept and perception needs to be replaced by an accepted norm that whosoever wins or looses, the cause of justice must always triumph.
4. Allowing an unsuccessful litigant to try a fishing expedition in form of other remedy should not be encouraged. Thus a person who looses an injunction suit, files writ petition for the same reason is a luxury which should be discouraged.

AWARENESS ABOUT LAWS

1. People's awareness of the laws, legal rights and procedural formalities to enforce such rights has vital impact on volume of litigation. At present more emphasis is given on the rights but the aspect of corresponding obligations is underplayed. The legal education programs should hence cover all effected interest groups.
2. Some bare minimum knowledge and information about basic laws like Indian Penal Code, Personal Laws etc. should be made part of the curriculum at the school level because only rare few of the school going children can afford to opt for law college education.
3. No law can be successful without ensuring peoples participation in the process of implementation. Procedure needs to be simple understandable for a common man and forums should be easily approachable. Peoples impression that the law courts function in a different environment which is too complex and complicated needs to be eradicated.
4. Right to speedy justice i.e. disposal of case within reasonable time should be treated as an integral part of the right to judicial remedies and there is an urgent need to provide by legislation some reasonable period within which a matter will be disposed off.
5. The existing volume of law can be divided in 3 broad categories;-
   - Laws the basic provisions of which should be generally known to all citizens say Indian Penal Code etc.
   - Laws affecting specific groups say Labour laws etc.
   - High Tech laws like patents Act, FERA etc.

   The first and second set of laws should be part of curriculum at appropriate level.

STATE'S APPROACH TO LEGAL SYSTEM

1. The financial allocation for funds to run the judicial system is very negligible in India (below 1% of total allocable funds). If there can be separate budget for railways why can't there by an annual review of the judicial system and its funds requirement in similar manner?
2. Dependence of judiciary on executive for allocation of funds should be minimizes to ensure their independence. Maintaining the status and dignity of judiciary should be the constitutional duty of the state rather than an act of grace. Judiciary also should establish its own standards and remain a loop from the temptation to be in good books of politicians at the cost of their dignity.

LAW MAKING AND LEGISLATIVE ACTIVITY

1. Multiplicity of laws operating in same sphere, for example when there is already an Explosive Act, the need for having other law called Explosive Substances Act is not much convincing.
2. Rather than having multiple laws, embodying the provisions in one main Act can prove helpful. Thus rather than laving a law on prevention of damage to public property enacted in 1984 which even otherwise is substantially connected with Indian Penal Code, the related section of Indian Penal Code itself can be amended.
3. In the sphere of commercial and corporate laws in particular and all other laws in general, high powered body should be constituted to study the prevailing systems and procedures in other advanced countries. The jurists and judges from other countries can also be involved in the process.
4. There are as many as 135 laws which come within domain of personal laws. These should be replaced by a Uniform Civil Code for which there already is a provision in the constitution.
5. Authenticate translation of laws and legal literature in regional languages should be encouraged.

INFRASTRUCTURE OF COURTS

1. To make the writ remedies really effective, the High Courts should have their branches within radius of say 200 kms., rather than expecting a person to go to State capital which is far away.
2. The courts should be fully computerised and issue of process, summons etc. should be made speedy.
3. For atleast commercial causes, the structure of court fees throughout the country should be uniform and advalorum. Additional revenue derived should be utilised for improving infrastructure of judicial system. This will discourage putting of exorbitant claims by paying minimum court fees.
4. Law graduates may be given preference in selection of administrative posts in the courts.
5. Adequate stationary, stenographers and supporting staff should be made available to the courts to enable it to function effectively.
6. The communication between various courts should be made faster by installing fax machines and other latest communication equipments. The charges for the same maybe recovered from the parties.

COURT PROCEDURES

1. The present system of recording of evidence by the judges in their own handwriting or by dictation seems outdated. It also creates problems of inaccuracy. It can be replaced by recording the statements on tape recorder etc. This suggestion given by Justice D. A. Desai in his interview for this research work should be implemented.
2. Copy of judgement and orders should be made available to the parties on the same day rather than expecting them to apply for it, and waiting till it gets typed etc.

3. The quality of pleading and drafting needs substantial improvement because casual approach in the same can give rise to erroneous conclusions.
4. The parties submitting zerox copies of the documentary evidence must produce certified copies verified from the original to save the time of the court.
5. The court registrar should be given wider powers in administrating matters so that routine matters do not go to the judge.
6. In exercising writ jurisdiction or granting exparte orders adequate security for compensating the other side in case of rejection of matter on ground of suppression misrepresentation of facts, should be insisted in appropriate cases.

DELAY IN SERVICE OF SUMMONS

1. To avoid delay in service of summons, simultaneous service by Regd. A. D. and court process should be freely allowed. The postal department should, in case of court process make specific remarks of non-service while returning the process.
2. People who deliberately avoid court process deserve to be taken with stern hand. There are several cases where as defendant/accused person does not receive the court process but as plaintiffs they attend the courts for propounding causes in their favour.
3. Whenever summons is not served in ordinary process, it is required to be published, the cost of publishing individual summons is very high. Most of the contents are common, hence the courts may issue general summons and cost of the same will substantially reduce for individual litigants.
4. The service of summons gets delayed for non-payment of process fees and supply of copies of plaint. In almost all the cases the courts direct issue of summons. Hence this formality can be safely completed at the stage of

filing the suit with the registerar and in some rare cases process fee may be refunded.

JUDGE STRENGTH

1. The number of judges of criminal courts be fixed on basis of population and of civil courts on basis of actual litigation. The vacancies should be promptly filled up. The suggestion given by Justice Diwan in his interview for this research work be implemented.
2. The recruitment to judiciary, police and all public services should be purely on merits and suitability of the candidate. Even when reservation criteria is applied most meritorious candidate from the lot should be selected.
3. Adequate judge strength should be provided without waiting for any further reports and approvals.
4. For recruitment to district level judges and higher posts Indian Judicial Service (IJS) should be constituted. Adequate training should be periodically made available.

CIVIL PROCEDURE CODE

1. The civil courts sometimes try the cases, which are otherwise barred because of special statutes. This happens because of lack of knowledge of the provision or the correct interpretation. Hence cautious approach should be adopted in dealing with such cases. An exhaustive list of all the statutes under which such jurisdiction is barred should be provided to all bar libraries, court library etc because several new laws are enacted
2. The existing provision of section 10 of Civil Procedure Code deals with mere stay of suit if the matter in issue in previously instituted suit is same. In appropriate cases this power should extended to hear both the suits simultaneously by framing common issues from both the cases.

3. Section 11 of Civil Procedure Code provides for bar of resjudicata and this fact comes to knowledge of court, only when other side takes defence to that effect. It should hence be mandatory for every plaintiff to mention in his pleading that he has not earlier instituted any similar suit for same subject matter on the same cause of action.
4. In view of the recent policy of globalization of economy, more elaborate and exhaustive procedure for accepting foreign judgements as conclusive should be worked out and section 13 and 16 of the Civil Procedure Code should be amended.
5. The territorial jurisdiction is decided on basis of cause of action. There are conflicting judgements, on jurisdiction relating to Bill of Exchange, bouncing of cheques, etc. The uncertainty on this point can be removed by making specific provision in respect of transactions where there are several conflicting judgements. Section 15 to 20 of Civil Procedure Code be amended on the basis of it.
6. There is an increasing tendency by foreign parties to insert a clause in an agreement which takes away the jurisdiction of courts in India though agreement is entered in India and hence to be enforced in India. Such agreements should be declared expressly void by statutory provision if it violates provision of any Indian law.
7. Under section 21 of Civil Procedure Code objection as to jurisdiction has to be taken at earliest possible opportunity before court of first instance. Such application remain undecided for several months without any substantial progress in the suit. By a statutory amendment it should be provided that such application should be decided within one month.
8. The power of transfer and withdrawal of suit under section 24 of Civil Procedure Code is at times misused to avoid an unfavorable judgement from one court or to get the matter decided through other court on basis of vague allegations and apprehensions about the present court. The power should hence be exercised, judiciously and the High Court should keep a

track of how often, for which courts and on what grounds such powers are exercised.

9. The provisions for awarding cost should be made more rational keeping in view the current economic conditions. The provisions for awarding compensatory cost in respect of false or vexation claims or defences (Section 35A) and cost for causing delay (Section 35B) should be strictly enforced.

10. Execution of decree does not receive due attention because of the limited time slot allotted for this work. Some courts should exclusively deal with execution work only to reduce the backlog.

11. Section 80 of Civil Procedure Code, which provides for statutory notice is not used for the purpose for which it is intended. While an obligation is cast on a prospective litigant to send notice and wait for 2 months there is no reciprocal obligation for the state to make reasonable efforts to sort out the issue and convey its decision. The provision is absolutely one sided. Even if it is repealed there is no harm likely to be caused to the State. Alternatively the State must appoint within its department a responsible officer who will look into such notices, initiate efforts for settlement where feasible or convey its decision.

12. Section 91 of the Civil Procedure Code provides that in case of public nuisance or other wrongful act suit for declaration and injunction may be instituted by Advocate General. Advocate General sits at state head quarter and to make the provision meaningfull power be given to Public Prosecutor/Government pleader at district head quarters.

13. Section 94(e) of Civil Procedure Code empowers the court to make such other interlocutory orders as may appear to the court to be just and convenient. This provision is misapplied to override other specific provision and hence may be deleted when there is even otherwise a specific provision under section 151 of Civil Procedure Code vesting inherent power to make such orders as maybe necessary for ends of justice.

14. In case of appeals in decrees, particularly in favour of nationalised banks and financial institutions suitable conditions be imposed regarding deposit of amount and providing security before granting stay on execution proceedings. The second appeal under section 100 of Civil Procedure Code should be strictly confined to the point of law. The Supreme Court judgement in Karbalai Begum V/s. Mohd. Sayeed AIR 1981 SC 77, to the effect that even if finding of fact is wrong, it is not open to the High Court to interfere in second appeal and it is binding should be strictly followed. The qualifications suggested by joint committee of Parliament while introducing the section should also be kept in view.

15. Section 104 and order 43 of Civil Procedure Code provides for appealable orders. The provisions enabling a litigant to contest the same issue twice, once in appeal from order and again in appeal from decree, particularly when the order is passed at the stage or immediately before decree can be deleted from the list because appeal even otherwise lies against the decree and such orders are passed only at the stage of judgement.

16. The power of review under section 144 is to be applied only when there is material error, manifest on the face of the order, which undermines its soundness or results in miscarriage of justice. This ratio of judgement in case of Col.Avtarsingh V/s. Union of India AIR 1980 SC 2041 should be embodied in Section 114 of Civil Procedure Code.

17. The powers of revision under section 115 are still mis-utilised by many parties. The Law Commission of India in its report had suggested for deletion of this provision because experience showed that entertaining revision petitions against interlocutory orders was a major cause of delay. The jurisdiction should be sparingly excised to avoid its misuse. The proper remedy should be an appeal against the whole order rather than such interlocutory revisions, which embarrass the proceedings in lower court.

18. Section 151 of Civil Procedure Code provides that nothing in this code shall be deemed to limit or otherwise effect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent

abuse of process of court. The Supreme Court has in case of Cotton Corporation of India Ltd. V/s. United Industrial Bank Ltd. AIR 1983 SC 1272 held that while exercising this inherent power, the court should not over look the statutory provision and inherent power of the court can not be invoked to nullify or stultify a statutory provision. This qualification needs to be inserted in section 151 because the existing powers are too vide, vague and undefined and have the potential of being misused.

19. The practice of submitting written arguments alongwith judgements should be encouraged. Oral arguments should be restricted only to elaborate or explain the written arguments and optimum time should be allotted.

20. In case of institutions whose employees are subject to periodic transfers, the presence of concerned person should be dispensed with and the affidavit supported by documentary evidence should suffice. If the other side wants to contest some specific points court may direct filing of further affidavit. Calling such officers every now and then and subsequently adjourning the matter has serious adverse impact on functioning of such institutions.

21. In case of corporates, communication sent by regd. Post A. D. should be deemed to have been received because refusal of correspondence sent may be malafide.

22. The system of submitting interrogatories under order 11 CPC should be encouraged.

23. Order 34 and relevant provisions of Transfer of Property Act should be amended to dispense with the requirement of two decrees namely preliminary decree and final decree in mortgage suits. Adequate time for redemption can be given before passing the decree. No installment should be granted in mortgage suits.

24. Order 30 (Rule 2) provides that in case of suits filed by the firm, the names and addresses of the partners have to be disclosed only when so applied by the defendant. This should be done at the stage of filing of the suit itself

alongwith proof of registration of firm under section 69 of Indian Partnership Act, without waiting for the defendant to demand it.

25. The scope of summary procedure should be widened by conferring jurisdiction on more courts. The time limit prescribed under this order should be strictly adhered. The principle laid down by the Supreme Court in Mechalec Engineer V/s. Basic Equipment Corporation, AIR 1977 SC 577 be strictly followed. Moonshine defence should be rejected.

26. When any exparte orders or injunctions are passed the courts upon being satisfied about merits of defence of other side should promptly exercise the power to discharge vary or set aside the order under order 39, rule 4 of Civil Procedure Code.

27. The general impression that speaking any lie or falsehood on oath before the court does not invite serious consequences needs to be removed by punishing those who indulge in perjury. The names of such persons and their lawyers should be displayed on notice Board of the court. In case of corporate they should be directed to publish copy of court order at their cost.

ADJOURNMENTS

1. An adjournment sought on slightest excuse is major contributory factor for delays. After the amendments made in 1977 in Civil Procedure Code strict provisions have been made but the same are not enforced. The power to grant adjournments needs to be streamlined and there should be gradually increasing slabs for payment of cost for adjournments. The same are proposed as under :-

NO. OF ADJOURNMENTS	AMOUNT RS.
First	30/-
Second	100/-
Third	150/-
Fourth	250/-

These amounts should be paid by affixing court fee stamp of that amount. After fourth adjournment the matter should go to the District Court for specific permission to grant further adjournments. The amount collected should be utilised for improving the system.

2. No unnecessary latitude or liberty be given to the defendant for adjournments when the fact of advancing of loan is established by cheque or other documentary evidence.

EXECUTION OF DECREE

1. Whenever the suit is decreed it should be made obligatory on part of the defendant to :-
   - File declaration of his properties as on the date of decree and the properties transferred by him during last 3 years.
   - Particulars of his bank accounts.
   - Name and addresses of his legal representatives.

3. The aforesaid provision should atleast be made compulsory for cases file by banks and financial institutions.
4. Section 60 of Civil Procedure Code exempts house belonging to agriculturist and occupied by him as property exempt from attachment and sale in execution of decree. This discriminatory protection should be removed atleast for bank loans or some ceiling be placed on square foot area of such house.
5. In respect of multiple claims/decrees seeking execution on the same property the situation is governed by provisions relating to ratable distribution under Section 73 of Civil Procedure Code. Sub Section 3 provides that nothing in this section shall effect right of Govt. There are several cases where the statutory dues like sales tax, income tax etc age been claimed for past several years under the principle of "Protection of statutory dues" this operates to the disadvantage of decree holder and hence some rational criteria that not all

statutory dues but only those for last 3 years should be eligible for ratable distribution. The State also should be vigilant in enforcing its dues.

ARBITRATION/CONCILIATION

1. Pre-litigation conciliation should be made compulsory it should be conducted by independent bodies involving professionals. A summary of the report of conciliator should be annexed with the plaint and it should state in brief the main grounds on which the parties differ.
2. Settlement of disputes through arbitration be encouraged. The awards of arbitrators should be expeditiously enforced.

CRIMINAL MATTERS

1. No latitude be shown in dealing with white-collar crime. The investigating staff should be adequately trained and provided with professional manpower like Chartered Accountants, Cost Accountants, Lawyers etc. to investigate.
2. In criminal matters investigation of offence gets unreasonably delayed because adequate manpower is not provided to police. This also places the parties involved at mercy of the police. The allegations of large-scale corruption have been made. To check this phenomenon adequate police force should be created and completion of investigation/filing of charge sheet should be made within reasonable time.
3. Criminalisation of polities is a dangerous phenomenon and needs to be completely eradicated by punishing the wrongdoers and their allies, without fear or favour.
4. The concept of lok adalats needs to be encouraged. The Govt. should take initiative in settling its cases particularly small cases for prohibition, gambling, Labour law violations etc. On trial basis some lok adalats for criminal matters can be arranged in police station itself. It will portray a different and people friendly image of the police.

5. Organised crime is one of the most serious threats to civilized society. To successfully control this factor investigative wing of the police should be made more active because prevention is better than cure.
6. The interaction between educational institutions, social service organisations, police, judiciary and other administrative organs should be increased so that eradication of crime becomes common priority agenda for all involved.
7. For criminal matters maximum period for completion of trial should be fixed. Under Trials should be released on bail if substantial time is taken for trial.
8. Adequate educational opportunities, including for legal education should be made available to under trials and pirsoners to improve their concepts and attitude towards society.

CORRUPTION

1. All the complaints of corruption against judiciary or police are not true. Such complaints however needs to be investigated and if found malicious appropriate proceedings be initiated. If there is substance in a complaint removal of such blackships should be immediately effected to maintain credibility of the system and hundreds of dedicated and honest officers working in it.

TIME BOUND STRETEGY FOR DISPOSAL OF PENDING CASES

1. There should be a national five-year plan for disposal of backlog of cases pending in courts and improvisation of judicial system. All concerned should wholeheartedly participate for this cause. Reputed institutions like Indian Law institute should be assigned time bound research work to make comparative study of judicial systems in other countries and apply the good developments to improve the Indian system.

LEGAL EDUCATION

1. Quality of legal education, law colleges and availability of funds for running such institutions should be increased. The judges and lawyers who were one-time students of such institutions should contribute their experience for preparing next generation.
2. Law Research in India is an ignored subject partly because of the approach of some professionals to brand such researchers as "academicians" who contribute little in practice. A synthesis between bar, bench and academicians can prove of great help.

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INTERVIEW WITH HON'BLE JUSTICE (RETIRED), SHRI D. A. DESAI FORMER JUDGE – SUPREME COURT OF INDIA DATE 8/2/99

I retired from Supreme Court in May 1989. By that time I had made up my mind not to indulge in any full time work. I wanted to write some books etc.

The then Prime Minister of India, Shri Rajiv Gandhi, a man with dynamic ideas inquired whether I will take Law Commission of India assignment.

I believe law is an instrument of a social change. I went to judiciary by choice giving up lucrative practice. In Law Commission, compared to judiciary there was greater freedom and less interference. My contribution to Law Comission of India was substantial. I have given 18 reports during my tenure of 3 years The shocking part was that hardly a single report was implemented to earlier. Rajiv Gandhi was advised that most of black money in India is generated in form of benami transaction. Within 21 days at his instance we prepared a report We interviewed Shri Bhagwati, Justice Thakkar, Prof. Upendra Baxi and Shri Mohmad Gouse. The view was that overnight change is not possible. Property in my opinion is not something fundamental in right but derivative of it. There is always an escape route to show that we are doing something without doing nothing. Gujarat High Court started with 5 and now have 29 judges, the required judge strength is 43.

Predominance of lawyers in the system is one of the problems. I considered legal profession as corrupt profession. I was influenced by communist theory. I believe one should be transparent and honest. Once the work comes the money comes. There is something like hidden destiny also.

I developed test and choice for criminal law. Even when there was virtually no defence. I accepted it as challenge and there was acquittal. Then I thought one day what is my contribution to the society. I was just minting money from the

practice. One day I visited the prisoners in jails after I became judge One prisoner appraised my professional skills in criminal law but I started thinking what was my contribution to society. I also contested election and lost.

In 1954, when I was 34, District Judge recommended my name but at that time the general minimum age requirement was 40 years.

I have been a judge for 25 years. I have worked in Dist. Courts, High Courts and Supreme Court. I have been a courier between law makers and law interpreters. "Do you believe that in a organised society is he necessary.. if answer is yes, then what is his role. I believe he is a man who looks beyond his limited role and looks at the need of society for justice. Even a condemned person has a right to be defended.

Total failure of Law Commission and Planning Commission, reason was there was no synthesis between economic problems and legal problems.

When I was elevated as High Court Judge, the Chief Justice assigned to me the challenging work of winding up petitions agaisnt mill companies. About 56000 persons were unemployed. I was new to field of company law. From first day, I listed 40 matters. I studied all 40 briefs and made my own analysis. On first date I gave adjournments as requested. Next date, I took up the matters, adjournments requested were not granted. Defence of bonafide dispute was raised but there were admissions in the balance sheet also. I said that if matters are not argued the judgements will be dictated. The advocates submitted that they were preoccupied with other important matters to which my stand was that if it is so, you should have returned the briefs. I started hearings and dictated orders. My approach in winding up cases was I believe in life and not death (winding up) of company. Out of 18 companies 11 were revived. We could recomply many persons. Revival of Economic Activity was the prime aim of the schemes sanctioned. The court can approve scheme for running business activity under

Section 457 of Companies Act. Similarly in matter of Panchmahal Steel, the mini steel plant was likely to be closed. They had carried forward loss of Rs.73 crores. We called an expert and he opined that plant can run. We invited offers for the same. Even when secured creditors opposed, I remained firm. Bids were recevied and best efforts were made for getting higher bids. I used the powers in winding up to defeat the petition for winding up. Ultimately Scheme was sanctioned and the company was revived. Through courts companies can be revived. Similarly we succeeded in reviving Vegetable Oil Plant despite several odds.

Ancient Justice is not comparable with present system because society has undergone change. Life has become much more complex. Procedural laws were very inadequate. The system started taking form and shape when Moguls came and Britishers made it perfect. They brought English Law and Judicial system. It was a good system. Arbitrary decisions were made challengeble. They brought a system more or less just and fair. What is wrong is that the system good for 99% literate population of England was imposed on India where most people were illetrerate. That has created disparities. The doctrine of ignorance of law is no excuse at times causes embrassements. How do you expect villagers to know, understand and obey the laws . The illeterates do not know the system of court which is not very formal but very costly and dilatory. The law and system should be made simple. The judges should be easily approachable and less formal. Make it within easy reach of common man. Justice has to be taken to doorsteps of people. Civil Procedure Code must be burnt. Mulla's Civil Procedure Code has done highest injustice what is reasonable cause for condonation of delay, there are cases and cases.

I have a report on Gram Nyayalaya where the judges will go to the villages and matters will be decided there and there itself. That will prevent wrong practices. Our courts are places where manifest falsehoods originate.

Our system is basically a good system. Only some drawbacks have to be removed.

Hungary is a country with half the population of Gujarat but has Supreme Court with 55 judges whereas we in India have 25.

In Germany there is system of Social Courts. System in India is not basically bad. It is made bad by lawyers by making it too formal.

In Civil Laws delays are due to procedures. Civil Procedure Code, is handmaid of justice but there are thousands of cases where we have defeated justice. Man must have simple system for redressal of grievancies. India even after 50 years is a country of illetrates and system has to take care of them. It can not exist only for Tatas and Birlas but even for those who do not get their two times meals.

What is justice? Make the system flexible. Reduce repetitions and bottlenecks, Gram Nyayalayas can function on specified areas and appeal can be allowed only once.

In Criminal Justice, I would refer to Japanese Commission's Report of 1972. In Japan conviction ratio came from 96.8% to 96.2% and there was serious concern. In India it is less than 10%. In India we have failed to classify treatment of petty offences (like prohibition) and serious offences.

I was invited by Madras University to deliver lecture for an unusual lecture. My subject was "three holy cows of british justice" i.e.

Presumption of Innocence
Due Procedure
Benefit of Doubt

The Britishers presumed every accused to be innocent. To save one innocent sometimes we acquit thousands who are guilty. You have to create strict liability. Defence should be restricted. In our system guilty looks like gentlemen and innocent likes guilty.

Criminal Law must undergo a radical change. Unless you restructure the criminal law and enough time is given it will not change.

Expenses on judicial system should be increased. Court fees should be correlated with capacity of person to pay. In writ petitions, there is no classification on basic of stake involved. Court fees should be charged on basis of amount involved. You cannot have the same stick. I don't mind if a man who engages Palkhiwala should pay Rs.50 lacs as court fees.

Tribunals were created as High Courts could not bear the burden. Tribunals are humanised system. The appointment should be on merits.

Government-made delays are substantial. Court where both parties are Government or PSU then it is presumed that there is arbitration agreement Government preferred appeal in Supreme Court for payment of Rs.60/- to ESI, is a classic example of Government adamence.

Retired Supreme Court Judges should not accept arbitration and other assignments.

Section 80 of Civil Proceudre Code be deleted. Lok Adalats is failure of present system. Poor persons are tempted to settle through arbitration. I remember a case where a vakil and Driver died in acident. The driver's widow settled for small amount vakil's wife got higher amount. Lok Adalat is a stigma on present system.

The system can be improved by sincierity of judges with some philosophy and dedication. Selection of judges should not be an outward appearance but on his sense of justice.

Revision Applications should be discontinued. There are lawyers who will not complete a case unless he has filed 7 to 8 revisional applications. This is sheer abuse. It should also not result in stay of proceedings.

Adjournments are major grounds for delay. It should be discouraged. Lawyers busy in other court is also one of the problem and such adjournments should not be allowed.

High Courts when they decide a point of law and then multiple conficting decisions should be avioded.

There should be control on waywardness of judges. Judicial Accountability means the order has to be a speaking order.

We are doing lot of injustice to undertrials. Their cases should be heard in jails itself. Speedy justice should be done. The other problem is if bail is given than the fair trial cannot be conducted.

Judicial Activism is a concept I have stood for. The doctrine of locus standie should be given a gobye in appropriate cases. Wherever man is shown to be interested, who brings the case is immaterial. Judicial Activism became necessary because of backwardness and lack of awareness. Judicial system is a must. You must however know the "Lakshman Rekha" and every action should not be interferred. In this country Judicial Activism must be encouraged.

Supreme Court does not have supervisory jurisdiction on High Courts. The High Courts have such jurisdictions. The High Court should keep constant rapport between High Court and District courts. Adequate staff should be provided.

Expenditure on judiciary should be treated as planned expenditure and not non planned expenditure.

High Courts and Supreme Court should sit in different places and have different benches and they should be interconnected.

In appointment of judges, executive has a limited role. Power in only one person is starting point of autocracy. Hence involve more people including Chief Justice, even Bar Associations etc.

The legal education standards needs to be improved. It is said in law colleges most students learn every thing except the law. Law college education must be totally revised.

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INTERVIEW WITH HON'BLE JUSTICE B. J. DIWAN
(RETIRED CHIEF JUSTICE GUJARAT HIGH COURT DATE 22/1/99)

My personal belief is that the lawyers and litigating public is jointly responsible for delays. Particularly in those cases where the plaintiff has obtained exparte stay order he is most reluctant to go for final hearing. Secondly the judges come from the bar and therefore are most willing to grant adjournments on several grounds. Hence the matter goes on for long time.

When I was City Civil and Session judge in Bombay the rule was that the trial once begins continues without intruptions and we used to finish two sessions trial in a day. Now a days the investigating officers are not adequate in number and hence the trial continues for long time.

In Gujarat High Court between 1979 and 1981 we brought a situation where no criminal matter was pending for more than six months. This was an ideal situation.

The problems are that the judge comes late on dias. The Advocates are occupied with many matters and have to accommodate their diary. If one perticular advocate has several matters in one court he can be asked to continue one case after the other and there is no need for granting adjournment.

Advocate should be told that he or his junior should continue with the matter. The junior assisting the advocate should take care of the routine matters and the court work should not be held up because the senior is preoccupied. In USA the practice is quite different and even cross examinations are conducted by the juniors.

We have to change our system. There has to be man power planning. All over Gujarat we do not need more than 500 advocates entering the profession every

year and the standards should be fixed accordingly. If you restrict the entry to the profession on merit basis the standard will improve.

Third LL.B must be restricted only for those who are dedicated to the profession. You do not get good member of bar because people do not come by choice. If the bar is good the judges will be good and matters will be quickly disposed off.

The apeallate courts should exersice restraint and displine in interfering with the orders of lower courts. Generally one third of cases are interefered by the appeallate court. Appeallate court in perticular in interim orders where appeal is allowed should not take the matter from the angle whether any different view is possible but should look at it from the angle whether the view taken by the lower court is the correct view.

There should not be second appeal has matter of right. Only on fixed point of law, in very rare cases a second appeal be allowed.

In LPAs the limits of jurisdiction though well known, there is human tendancy to interfere and such interference just for the sake of it should be avoided.

I found in Andhra Pradesh a very good system. The advocates separately narrate questions of law, questions of fact and mixed questions of law and facts separately. This simplifies the role of the judge also and cases can be speedily dispossed off. If the formate is fixed there will be no confusion and matter will be speedily dispossed off. During the time of justice Gajendra Gadkar in Supreme Court special leave was not given by the Supreme Court in all most 98% of cases for special leave to appeal and the result was that unless there was convincing resons to interefere the court was reluctant. The Supreme Court should trust the High Court judges and the Sessions judges and the interference in their judgements should be well reasoned and restricted. An appeal should be allowed not merely on the basis of amount involved but on the point of law involved.

Ultimatly if you want a point of law to be settled, by the Supreme Court, first of all frame a question which is worth getting settled and only than grant special leave for appeal.

There is a need for self introspection by the judges. Thus say on aspects of fundamental rights, in particular the right to settle any where in India, one needs to be realistic because of growing urabanisation, Civic amenities become limited and because of inflow the burden and pressure increases for spending more money on basic amenities in urban areas. If the same money is spent in villages, the rush to the urban area can reduce. If the proper planning is done you will not find metropolitan monsters which creates many social evils like crimes etc. Baroda was a beautiful City with clean roads and growing industrialisation and urbanisation has caused serious damage to its environmental and natural beauty. Attitude and approach toward the development of rural and semi urban areas should be changed. There is a Supreme Court judgement that if a person, reportedly poor, encroaches upon the public property, he should be provided with alternative space. This is wrong. There is no such fundamental right. The State should provide employment near to the place of residence so that people from rural areas do not migrate to city causing pressures and problems. The rights of citizens needs to be reinterpreted in light of our experience of last 50 years of independence.

I have been studing the trends of increase in population and litigation and their corelationship. I have observed that with the increase in population of 15 lacs, the sessions cases increase by 100. Hence the court infrastructure and judge strength should be planned accordingly. Right to speedy justice should be made reality by providing adequate infrastructure to decide the cases. If sufficient number of magistrates and judges are not available, the backlog will increase.

The time for arguments should be restricted. In Supreme court of America the court is very strict about allocation and once the time is over there will a red light and he has to stop. The written arguments have to be submitted. Systematic

submission with adequate elaboration can prove of great help to decide the matters effectively in less time.

The appointment to judiciary should be purely on merits. Chief Justice Anand has rightly said that out of the available candidates the best eligible should be selected.

Mere high salaries to the judges can not prevent element of corruption in judiciary. The city of Ahmedabad had an illustratious judge in Sir Chimanlal Setlwad who refused to be influanced by powerful persons and financial temptations. Corruption increases because of poor quality of judiciary. Man need not be very inteligent but his integrity should be beyond doubt. Blackships in judiciary should be identified and eliminated. If corruption cases are properly inquired and departmental proceedings are completed within 3 months the situation will improve.

If the High Court in departmental side has looked into allegation of corruption against the judge there need not be any repeatation of whole exercise when the matter is challenged in writ jurisdication by concerned judicial officer. This will reduce corruption in judiciary. If a person promoted can not cope up with the work he should be quickly reverted.

A Senior Division Judge needs atleast three hours of home work. The High Court judge requires five hours work and a Supreme Court judge requires seven hours work. the work includes reading all papers and related cases.

The common man's perception about our judicial system is not very possitive mainly because of the delays. Adequate infrastructure should be provided to facilitate the system to work properly. The judges were comanding I respect and public esteem and it has come down substantially which is not a very healthy sign.

Revision is a remedy which should be sparingly allowed only when there is manifest error in exercise of jurisdiction which has resulted in miscarriage of

justice. Supreme court has laid down guide lines for the same which should be strictly observed.

In USA it is the previlege of the President to appoint a judge of Supreme Court but but he has to go to senate.

I am against the proposal to set up all India judicial service. Some need based changes in present system of appointment and transfers can prove more beneficial because of peculiar problem of understanding the language of the local area.

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INTERVIEW WITH SENIOR ADVOCATE SHRI J. C. PATEL ON 21/12/98

Q. Your brief resume

A. I graduated Law from Pune Law College and went to Tanzania (Arusha) Court for practice. In 1956 I switched over the Zanzipar where I practised upto 1964. From 1971 onwards I am in india.

Q. Which banks you represent in courts and how many case you have?

A. I mainly represent Bank of Baroda, CBI, Dena, Indian Bank, Indian Overseas Bank etc. I have 500 cases.

Q. Which is the oldest pending case with you?

A. I have one case of 1976 which is still not decided.

Q. What reasons you attribute in delay in disposal of bank cases in particular and all cases in general?

A. The reasons for delay are mainly as under :-

1. Delay in service of summons because of in adequate of address or Non-availability of proper address.
2. Several adjournments taken by defendant for filing reply.
3. Application for further and better particulars filed under relevant rule 12
4. Time involved in disposal of exhibit 5.
5. Applications for production of RBI directives moved by some applicants without justification.
6. Non compliance of notice to admit documents.
7. Application for production of cheques, vouchers etc.
8. Adjournments taken on various grounds.
9. Frequent strikes and in terruption of work in the court.
10. Delay involved in substitution of parties.

Q. In what way according to you summary Procedure has applied?

A. Summary procedure if applied in proper context can save considerable time involved in deciding evasive denials and defences. I file 80% of cases under summary procedure.

Q. What about limitations under the summary procedure restricting the type of cases covered?

A. Yes, there are limitations but securities can be enforced after obtaining decree.

Q. What type of evasive defences are taken?

A. Most of them are mechanically used like denial of all the facts, signing up documents, non-joinder of parties etc.

Q. What suggestions you have for speedy disposal of cases?

A. 1. There should be separate courts for only summary suits.
2. One Civil Court should be assigned the work of only bank cases.
3. Executing court should be separate.

Q. What is your experience with DRT?

A. While the provisions of Act are step in right direction in Gujarat since last almost one year there is no presiding officer which is the factor causing substantial delay.

Q. With your experience of almost 50 years in the profession what are your observations on the judicial system?

A. I believe the system needs to be strengthen and the competence and capacity should be increased by imparting proper training. The promotions in judiciary should be based on merits and performance and not merely on seniority.

Q. After loosing first round of litigation parties approach revision or appeal. What is your experience.

A. In almost all the cases which I had the High Court either refuse to interfere or impose reasonable conditions.

Q. Which case you completed within the shortest time?

A. I completed few cases under summary Procedure of course they all are decided ex-parte.

Q. What support you expect from the banks for speedy disposal of their cases?

A. There is growing concern among the banks for their recover. I believe rather than sending mechanical letters for position, they can be of help in speedy service of summons and executing the summons by assisting the beiliff. They can also promptly come for proving of documents and examination in chief. The real problem is about identifing the assets of the borrower against which decree should be executed and they can promptly give such information.

Q. What are your views or security taken by the bank?

A. Mortgage proves really helpful but hypothecation in most of the cases does not help.

Q. Will you say hypothecation is a illusory security?

A. To an extent yes.

Q. How you compare your practice in foreign courts with that in India?

A. In Foreign Courts adjournments are exceptions and the party taking adjournment is subjected to disadvantage. If adjournment is for more than one month party is required to file detailed affidavit explaining his genuine difficulty for seeking such adjournment.

Q. What changes you suggest in India Law for speedy disposal?

A. Adjournment should be restricted and evarive denials and defences should be discouraged. Action be initiated for misguiding the court against those who made such denials on oath.

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