

**“DELAY IN JUDICIAL PROCEEDINGS
AND EXECUTION OF DECREES –
A CRITICAL STUDY OF EXISTING
PROVISIONS OF LAW WITH SPECIAL
REFERENCE TO RECOVERY SUITS BY
BANKS (FINANCIAL INSTITUTIONS)”.**



**SUMMARY OF
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SUMMARY

Judiciary is an indispensable organ of any developed civilised society. The role of judiciary is to provide justice, which is necessary for orderly governing of the society. Law is an instrument through which goal of justice is to be achieved. Right since primitive age of human race, system for adjudication of dispute in some form or other was prevalent. In Indian context the judicial system used to prevail before several thousand years and there is reference of the same in scriptures. The present system owes its origin to Moghul and British period.

The cardinal principle that justice should not only be done but should also appear to have been done, read together with the proverb "justice delayed is justice denied" clearly manifest that the matters should be decided within reasonable time by the courts. Almost all legal systems of the world, in particular the Indian system is suffering from problem of backlog of cases. There are 2.6 crore criminal cases, 1.7 crore civil cases and approx. 0.6 crore writ petitions pending in various courts. The matters remain pending for several years and most times for several decades. The picture of the Indian judicial system is so disappointing that Justice Bhagwati, former Chief Justice of India remarked that system is on verge of collapse and some drastic steps are required to bring the situation under control.

The legal systems can be broadly divided in two branches namely the Civil Law System and Criminal Law System. The Civil system aims at adjudication of rights, Criminal system aims at punishment of the wrongdoer for offences.

Several judicial committees have inquired into causes of delay. Volume of litigation has increased because of various new laws introduced and increase in general awareness about such laws. The other reasons of delay are multiple remedies and litigations initiated for the same causes. Procedural bottle-necks, inadequacy of staff, lack of modernisation, lukewarm attitude of the Government in early and reasonable settlement of its matters, tendency on part of the lawyers to prolong the matter to defer an unpleasant verdict against them, frequent adjournments and lack of initiative on part of the judges to enforce the in built provisions in law to reduce delays are some among the many reasons for the problem.

The problem of delays cannot be looked in isolation. The consequences are not only serious but also even disastrous. The growth of white-collar crime, organised crime and terrorist activities to an extent directly related to delay and multiple escape routes under laws. The conviction rate in India is only 5%, which is much less, compared to other countries.

The delay in Civil Law also defeats the very purpose of justice and the person whose rights are violated have to wait for several years. By the time the matters are decided the whole cause for litigation is frustrated.

In respect of cases filed by banks and financial institutions which function under the Government policy for economic growth of the country the inordinate delay in deciding the cases is a major hurdle in timely recovery and further lending of money involved. There are nearly 20 lakhs such cases by now. Traditionally bank advances are supported by some security in form of mortgage or hypothecation, which can be enforced in case of default. There are several laws governing the activities of banking and financial institutions, which provides special power and makes special provisions in favour of banks/financial institutions. Recently special recovery Tribunals have been constituted to decide matters involving amount of more than Rs.10 lacs due to banks and financial Institutions.

Detailed and systematic analysis for various aspects of the problem and statistical datas of backlog of cases clearly establishes that there is a need on part of all concerned to identify the causes of delay, initiate measures for reducing delays and whole-heartedly implement the same without any fear or favour. Hence it is the collective responsibility of judges, lawyers, Government, lawmakers, litigants and the society at large to contribute their best efforts in tackling the problem.

The first and foremost step in the right direction will be to simplify the laws and minimize the number of laws to the extent possible. There also is a need to improve the investigative wing namely the police for a speedy, impartial, unbiased, systematic and scientific investigation of the complaints. There is also a need for fixing some maximum time limit within which the cases have to be

disposed off. The concept of accountability also needs to be developed. Granting frequent adjournments and wasting time on trivial objections or mischievous applications should also be avoided. The provisions of natural justice should not be stretched beyond its rational limit and if a litigant is not co-operative in disposal of the litigation the same cannot be tolerated infinitely. Adequate judges and supporting staff along with suitable infrastructure like computers, modern communications etc should be made available. The Government should allocate more funds for updating and modernising the judicial system. The system should be made more professional and responsive and every litigant should be seen as consumer of the services of the system. Procedure is handmaid of justice and too strict and rigid interpretation of the procedural laws should be avoided because it defeats the cause of substantive justice. Lok adalats have been instrumental in speedy settlement of disputes without any sense of loss or rejection by either side. The Lok Adalats, Conciliation, Arbitration hence should be encouraged.

The advent of new millennium is not too far and India cannot afford to enter the 21st century with the antique methods of 18th century still dominating the court proceedings. Without replacing the present system in its entirety the thorough transformation, reformation and over-hauling of the system to make it more conducive, vibrant, needless and pro-active can prove to be of great help. While the changes cannot be brought overnight, a steady and sustained approach to implement the changes can make it possible so that the next generation benefits from the same.
