DELAYS, COSTS AND GLORIOUS UNCERTAINTY - HOW JUDICIAL PROCEDURE HURTS THE POOR

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Section 1

Delayed justice

In 1798, William Godwin declared that justice in England suffered from three defects – delay, cost and glorious uncertainty in the final outcome of any litigation. After more than 200 years, nothing has changed. And what is ironic is the fact that in all other avenues speed and efficiency has become the hallmark of modern civilisation. The need is urgent – to quicken the pace of justice and shorten the time period occupied by the trial of suits and criminal proceedings and by the appeals, revisions or reviews arising out of them. In *A relook at the Judicial system*, Justice E S Venkatramiah points out that reforms that had been undertaken to improve administration of justice have included reforms to increase efficiency of the bar. In addition they have aimed at reforming the organisation of the Courts, at unifying existing law, clarifying and simplifying common law and as in the United States, restatement of the law periodically as done by the American Law Institute.

An essential prerequisite for achieving the goals of reforms is an efficient and transparent legal system. The legal system that enables economic choice, promotes ethical and sound business practices, cuts transaction costs and enables healthy commercial dealings through fair contracts is as essential as good infrastructure and sound polity. The issue of equal access to information is an important one. Market economy depends on the availability of free and fast information. Quick settlement of disputes especially in economic and commercial transactions becomes a prerequisite for a free economy. Access to justice for all players big and small is essential in the schedule for marketisation as there is lesser state intervention and hence a greater scope for concentration of power if the legal system is incapable of coping with the rush in litigation.

The question of delay in the administration of justice has been addressed innumerable times in the past. With a view to solve this problem, a variety of suggestions have been made, including the appointment of more Judges, changes in the distribution of business, amendments in the rules of procedure, the elimination of delaying tactics and the like. Various Law Commissions and other bodies have studied this problem and it has become a thing of concern to even members of the legal profession but no solution seems

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2[^2] A legal system that has a network of 8000 courts and more tribunals within an independent judiciary should have been ideal. However the delays in the Indian judicial process are legendary and here we seek to address this issue.

3[^3] A sound legal system and effective machinery for administration of justice at an affordable cost are the foundation of any civilised society Dr Manmohan Singh - Convocation address National Law School of India University, 1994

4[^4] Article 39(c) of the Indian constitution ..... that the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment...

5[^5] There are three basic models for reducing court delay and expediting justice. First, making the use of existing court resources more efficient; second reducing the demand for court services and resources; and third, expanding court resources to meet the increasing demand for court services.
to be available as yet to tackle this. This paper has attempted to study the problem\textsuperscript{6}[6] from a more holistic perspective.

Delayed justice, if justice at all, is a basic premise of the Indian Judicial system. Nearly 20 million cases pending in various courts all over the country, even for a population of 800 million, is an exorbitantly large number. And this rate of pendency is likely to continue with a growing population, unless some thing is done about this soon.

The causes for delay are numerous - loopholes in the law itself, inefficient police investigation methods, redundant and voluminous paperwork, lack of infrastructure etc. The objective of this study was to study judicial procedure, identify bottlenecks that lead to delay and suggest measures to improve the efficiency of the judicial system. Procedure is governed by \textit{lex fori} and consists of defined norms like filing of petition by the complainant, issuing of summons by the court..... Ideally a thorough investigation into the judicial system should include a much-required review of the myriad of laws, their inherent contradictions, the legal structure and its efficacy etc. In this paper we will concentrate on the issue of judicial procedure and how it works!\textsuperscript{7}[7]

Popular dissatisfaction with the administration of justice has certainly not been less in the twentieth than in previous centuries. In a period of particularly accelerated tempo, it would seem easy to explain the prevailing dissatisfaction in terms of institutional transitions. If, however, the phenomenon is constant, it can hardly be explained entirely

\textsuperscript{6}[6] The hurdles in the access to justice can be high cost, geographical distance, adverse cost benefit ratio and the inordinate delay in search of illusory justice.

\textsuperscript{7}[7] A classic case of judicial delays and excesses has been The Terrorist and Disruptive Activities (Prevention) Amendment Act, 1987 which was passed by the Parliament for two years. Of the 52998 arrests under the Act in the period May 1991 to March 1993, only 434(0.2\%) convictions were effected. Home Ministry officials say that more than 30000 cases under TADA have been going on for more than five years.
as the result of changing conditions. An explanation solely in terms of sociological differentials can be adequate only if more fundamental factors are absent. It is for instance tempting to assign the prevalence of perjury, which so often in modern Courts undermined the administration of justice entirely because of the decline in influence of religious ideas. But perjury has always been a not infrequent crime. It should certainly be no less powerful a restraint to fear the punishments of this world than to fear the torments of the next. Authority has maintained itself somehow despite the decay of religious institutions.

To take another stock illustration, the improvement in means of communication has undoubtedly given the criminal means to attempt escape but the advantage is balanced by the ease with which public authorities may pursue him. There is again the pernicious influence of the modern city. To it is attributed the congestion of the Courts which is supposed to be the very basis of the modern maladministration of justice. As a matter of fact the city has been originator of most of the improvements of procedures in the history of legal systems. If there are more litigants in the city, it has the necessary wealth to secure additional judges and good lawyers.

There has been a general consensus that our judicial system today from the highest to the lowest is suffering from many ailments. Everyone speaking about judicial system starts with an apology and admission of the falling standards. Justice V D Tulzapurkar of the Supreme Courts has observed:

*If an independent judiciary is regarded as the heart of a republic, then the Indian republic is at present suffering from serious heart ailment. In fact, the superior judiciary of the country has of late been under constant onslaughts, external as well as internal*
which are bound to cripple the health, welfare and progress of our body politic, as an ailing hear cannot ensure vigorous blood supply for the sound health of its people.

Former Chief Justice P N Bhagwati in his Law Day speech in 1985 said:

_I am pained to observe that the judicial system in the country on the verge of collapse..... Our judicial system is crashing under the weight of arrears. It is trite saying that justice delayed in justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual and superficial level. Those who are seeking justice in our own Courts have to wait patiently for year and years to gets justice. They have to pass through the labyrinth of one Court to another until their patience gets exhausted and they give up hope in utter despair.... The only persons who benefit by the delay in our Courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against Government and public authorities and then continues to enjoy the benefits of such stay or injunction for years, often at the cost of public interest._

About the Supreme Court, the Chief Justice observes:

_The Supreme Court is on the brink of collapse with the enormous inflow of cases and heavy arrears. I, for me, do not think that a large increase in the number of Judges is desirable. If the number of judges is unduly increased, the Supreme Court will become like a glorified High Court with fragmented bench structures. The Supreme Court will lose its identity as a Summit Court and there will be no cohesiveness and uniformity._
Equally I am not in favour of curtailing in any manner whatsoever the extraordinary jurisdiction of the Supreme Court under Article 136.

He further says on High Courts, "So also the situation in High Courts is quite alarming.

Justice Bhagwati feels that the country's judiciary is on the verge of collapse due to the massive backlog of cases in Courts. "It is not just a crisis, the judiciary is on the verge of collapse on account of the massive number of arrears, especially as far as the high Courts on the lower Courts are concerned." He points out that there are over 20 million cases pending countrywide and says that most of the problems have resulted from the executive's indifference and insensitivity. Additionally if there were really good people to man the lower courts then so many appeals would not be filed in the higher Courts.

The law's delays is classic and universal. It has served to describe the almost immemorial condition of civil suits. The Dockets, or calendars of civil causes, are always overcrowded and it may take years to get a trial on merits. The expenses of commencing a civil action and the legal costs involved are too heavy and it become hardly worth-while to base an action on a small claim. The procedure is too elaborate and technicalities impede the litigant at every stage. Even after an initial judgement, number of appeals may be further cause of delay. Where the final judgement is secured, execution is more than likely to be returned unsatisfied. Under such circumstances the honest litigant is impeded in the assertion of his legal rights, while paradoxically enough the dishonest litigant is encouraged to assert unfounded or exaggerated claims.
The very expenses of engaging upon a protracted litigation should cause parties to settle for smaller sums or go without redress and justice.\footnote{Delay and technicality are operative not in civil action alone. The condition is not better in the administration of criminal justice. In the pre-democratic era the arbitrary character of criminal justice led to accusations of excessive harshness, while at present the outcry is against an excessive tenderness towards malefactors. Many criminals are never even apprehended. Those who are have more than an even chance to escape by taking advantage of the loopholes of the law. The inherent drama of a criminal trial in the very nature of things always favours the defence. Except in matrimonial action and libel cases a civil trial is usually free of such influence. On the other hand, corruption, favouritism and perjury are especially operative in criminal trials. Every period has its own cause célèbre. It is a hearsay that wealthy and powerful malefactors escape while the poor and friendless go to jail. Innocent men are sometimes framed by the police; and it is small comfort that the same technique is employed to the professional criminal behind the bars upon fabricated charges.}

Justice H R Khanna of the Supreme Court had observed:

Another thing which is shaking the confidence of the people in the judicial system is the high incidence of acquittals and the increasing failure of the system to bring major culprits to book. Judges, of course, have to give their verdict on the material on record and no one can and should expect the Courts to hold a person guilty unless there be credible evidence to substantiate the charge against him. One major reason for the high percentage of acquittals is the decline in the quality of police investigation and its consequent inability to procure and produce credible evidence as may establish the guilt of the accused. Such decline in its turn has been due to interference by the politicians in the investigation of cases. It is well-known that the greater a person is a goonda or an anti-social being the greater is his value and utility at the time of elections. When politicians seek and secure the assistance of anti-social being at the time of the election, the latter extend their assistance in the expectation that when those anti-social elements are in trouble at the hands of the law enforcement agencies, the politicians would come to their rescue and take them out of the difficulty. The help rendered by the politicians to anti social beings when in difficulty is the quit pro quo for the help given by the anti social beings at the time of elections. All the naturally makes the task of the police investigation of crimes extremely difficult. This apart, we find that a good bit of the time of police force is taken in the security and other arrangements for the VIPs.

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Demonstrations, bandhs, strikes, hartals and agitations have increasingly become a part of our public life and call for considerable attention of the police force. Investigation of crimes occupies a lower priority in the functioning of the police. The result is deterioration in the quality of investigation and the increasing inability of the police force to adduce credible evidence at the trial. Be that as it may, whatever may be the reason for the high incidence of acquittals, the inevitable effect of that would necessarily be the loss of confidence of the people in the Courts to bring the major culprits to book. We have to bear in mind that if the people lose their faith in the judicial system and carry the impression that the judiciary is not able to punish the culprits, the victims and the kinsmen of the victims would resort to extra-legal methods to settle scores with culprits whose identity is normally known to them. It is plain that such a state of affairs would lead to chaotic and anarchical condition.

Section 2

Attempts at studying judicial delay

One of the earliest committees to be set up to study the question of delay in the disposal of civil cases was the Rankin Committee in 1924. This was set up under the Chairmanship of Justice Rankin of the Calcutta High Court. This was set up to "Enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the Courts in India in the disposal of Civil suits, appeals, application for revision and other civil litigation...". The committee forwarded an exhaustive report in 1925.
In 1929, the Government of India set up a High Courts arrears committee under the Chairmanship of S.R. Das to look into the curtailment of the right to appeals and revisions, the extent and method of such curtailment and other measures that should be adopted to reduce the arrears in the various Courts. The Committee submitted various recommendations.

The Supreme Court has an extremely wide jurisdiction. It is said that it has the widest jurisdiction than any other Court of appeal in the world. The original idea was that the Supreme Court will have original jurisdiction as regards treaty rights and inter provincial disputes in addition to interpretation of the Constitution, 1925 GOI Bill. The Nehru Report advocated a wider jurisdiction. The infamous Simon Commission examined the pressures on the judiciary and noted that despite the imputation of corruption amongst the lower judiciary, there was tremendous confidence in the judiciary as an institution and especially of the High Courts. The commission made no mention of a central/Federal Court. Delinking of High Courts from provincial governments and placing them under the central government was envisaged.

It was in 1934 that the White Paper on Proposals for Indian Constitutional Reform envisaged a federal set up within which there was a need for a Federal Court. This Court would decide disputes between the centre and the states and in its appellate jurisdiction hear all matters concerned with the interpretation of the proposed Constitution. In the Constituent Assembly, one idea mooted was that the Court should be used to enforce fundamental rights. The argument given against this was that:

a. Legislature would not be in a position to know what view Courts would take of a particular enactment rendering the process of legislation difficult.
b. A flood of litigation on the validity of laws will be seen. Further, the same law would be held valid at one time and invalid at another. Thus law would become uncertain.

c. The Courts, manned by an irremovable judiciary which need not be as sensitive to public needs as the legislature, will veto legislation at the instance of any litigant.

In 1967, the Government of India after conducting a review of the functioning of each High Court, came to the conclusion that inadequacy of Judges was the main cause for the accumulation of cases. Subsequently it increased the Judge strength in each High Court but there was no marked change in the situation. While there are 107 judges to every million in the Us and 75 in Canada, in India the ratio is 10.5 per one million people\(^9\). There are nearly 200 vacancies for judges in the Supreme Court and the high Courts\(^10\).

By the end of 1969, a committee was appointed under the chairmanship of Justice Hidayatullah, who was the Chief Justice of India at that time. When Justice Hidayatullah retired in the middle, Justice Shah took over the Chairmanship. This committee stated as many as fourteen causes for delay and concluded saying,

"In the last analysis it is obvious that it will depend entirely on the calibre and willing effort of individual judges in the country not only to clear the backlog but keep down the file without affecting the quality of justice. It is our firm belief that if proper care is taken in manning the superior judiciary in the best possible way with men of ability and character, that will be the surest guarantee for achieving prompt and efficient administration of justice in our land."

\(^9\) (Source: Rajinder Sachar, former Chief justice of Delhi High Court)

\(^10\) (Source: V S Mishra, Chairman, Bar Council of India)
The first draft of the Constitution of October 1947 devoted nineteen articles to the federal Court. The jurisdiction was wide. Original jurisdiction was given to the Supreme Court between the federation and the units and in the matter of fundamental rights. Appellate jurisdiction was given from any judgement, decree or final order of the High Court where the High Court would certify that a substantial question of law was involved. Appeals could also be filed in a case stated on any substantial question of law or federal law or the Constitution. Appeals would lie in civil matters where the subject matter was over Rs 20000 and where special leave was granted. To match this wide jurisdiction, the Court was given power to regulate generally the practice and procedure of the Court.

The Law Commission of India through the 14th, 27th, 41st, 54th, 58th, 71st, 74th, 79th, and the 144th reports addressed the question of delay. As a result of the recommendations in the 54th report, the scope of the right of second appeal became circumscribed. The 41st report ensured that, the appeals to High Courts from presidency Magistrates, now called Metropolitan Magistrates, are abolished. These appeals now lie in the Sessions Courts. Apart from these, there were a number of State Committees to look into this problem. Examples of these could be the Committee set up under Trevor Harris in West Bengal in 1949 and the Committee under Justice K. N. Wanchoo in Uttar Pradesh in 1950.

Section 3

The Supreme Court

There has been, in recent years, a perceptible effort by the apex court of the country to address the issue of judicial delay. In 1992 there were approximately 2.5 million pending
cases at the High court level throughout the country. In the Supreme Court the total number of cases pending on 30 October 1995 were a mere 37,656. The Supreme Court of India is provided for under Article 124 of the Constitution. It is the highest Court of the land and its decision in a case is final and binding there being no appeal thereafter. The Supreme Court's original jurisdiction is limited by the conditions prescribed under Article 131 of the Constitution. In the event of a dispute between;

1. The Government of India and one or more States
2. The Government of India and any State or States on one side and one or more other States on the other; or
3. Between two or more States, the Supreme Court can exercise its original jurisdiction. However, the Supreme Court's jurisdiction is restricted if the dispute has arisen out of any Treaty, Covenant, engagement or other instrument, which was entered into or executed before the commencement of the Constitution.

Thus the Supreme Court has

a. An original jurisdiction in federal matters and in the protection of fundamental rights

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11[11] Allahabad lead the field with 0.8 million cases. Delhi had 150000, Madras 300000, Bombay 250000. If one were to account for all the various levels of the judiciary the total comes to 20 million cases.

12[12] Compared to a total of more than one lakh in 1990, this is a significant improvement.

13[13] Fundamental rights: Most of the backlog in the Supreme Court is due to the petitions filed on grounds that Fundamental rights have been violated (Articles 12 to 35). Legislations that provide for inequality before law have been continuously challenged. Article 14. As a corollary, it can be said that the more the state's intervention increases, more will be the cases on denial of fundamental rights. And the backlog in cases will grow.
b. An appellate jurisdiction in constitutional, civil and criminal matters

c. A transitional jurisdiction with respect to matters pending before its predecessor Court and

d. An appellate jurisdiction.

e. Under article 71 of the Constitution, the Court has a special description to ensure that the removal of a member of the Public Service Commission is made in the manner prescribed by the Government.

f. The directive principles of state policy too enjoin upon the state to provide free and equitable justice.\textsuperscript{14\textsuperscript{14}}

Article 32:

\textit{Right to Constitutional remedies}

\textbf{Remedies for enforcement of rights conferred by this part:}

1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

2) The Supreme Court shall have power to issue directions or orders or writs including writs in the nature of \textit{habeas corpus, mandamus, prohibition, quo warranto and certiorari}, whichever may be appropriate for the enforcement of any of the rights conferred by this part.

\textsuperscript{14\textsuperscript{14}} Article 39 A Equal justice and free legal aid.- The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

The Supreme Court of India is also provided with the appellate jurisdiction in appeals from the High Courts in certain cases. This appeal is to be entertained only if

1. The High Court feels that a substantial question of law is involved as to the interpretation of the Constitution.

2. They involve no Constitutional questions. Civil and criminal cases under Articles 133 and 134 of the Constitution

3. They are appeals by special leave under Article 136 of the Constitution. This is entirely left to the discretion of the Supreme Court.

The Supreme Court under Article 145 of the Constitution is empowered to make rules for regulating the practice and procedure of the Courts with the approval of the President and subject to the provisions of any law made by Parliament.

An analysis of the performance of the Supreme court during the one year period November 1994 - October 1995 is indicative of the improved performance of the court. In October 1994 the court had a total of 55000 pending matters. In the subsequent one year period, there were a further 58,749 registrations. Thus a total of 1,13,000 cases.
What is bewildering is the fact that in this period nearly 76000 cases were disposed off. In the same period in the previous one year period the court had disposed off 39000 cases. What is significant is the fact that during this period the court was functioning with 22 judges against a sanctioned strength of 25. These judges had 210 working days on hand.\textsuperscript{15}\textsuperscript{15} Therefore the average disposal per judge per day was 25 - 20 admission matters and 5 regular hearings.

The reasons for this impressive performance can be listed as follows:

1. The Court Registry had started throwing up and listing old pending matters.\textsuperscript{16}\textsuperscript{16}

2. The listing was computerised so that nearly 35\% of the matters listed before a judge were old pending matters. This listing was in chronological order leaving no room for arbitrariness and discretion.

3. Computerisation has further ensured that matters scheduled for a particular day are listed on that day.\textsuperscript{17}\textsuperscript{17}

4. Adjournments are treated as exceptions rather than rules.

5. In case any judge is absent, the cases listed in his court are immediately redistributed so that they come up for hearing before any of the other ten benches.

6. Computerisation plus bench stabilisation ensures that similar subjects go to the same benches as far as possible.\textsuperscript{18}\textsuperscript{18}

\textsuperscript{15}\textsuperscript{15} This is another reason for delay. It is imperative that there be more working days per year.

\textsuperscript{16}\textsuperscript{16} This without either party asking for it. The Court Registry would list matters even if no party would want the case to be listed.

\textsuperscript{17}\textsuperscript{17} In exceptional cases, where listing is required in less than 15 days time, an oral mention before the Chief Justice himself is required.
7. Administratively work has been streamlined so as to distribute the same over all the departments.19[19]

Section 4

The High Courts

The High Court in each State is established under Article 214 of the Constitution of India. All High Courts have the same status under the Constitution. According to Article 215 of the Constitution, every High Court is a court of record which means that it can determine questions about its own jurisdiction, and punish for contempt of itself. There could be a High Court for two or more States if the Parliament so decides. Every Judge of the High Court is appointed by the President by warrant under his hand and seal after consultation with the Chief Justice of India, and the Governor of the State; and if it is a case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court. To be a Judge of the High Court, a person has to be a citizen of India and should have held a judicial office for at least 10 years or should have been an advocate for at least 10 years in a High Court.

Articles 226-230 of the Indian Constitution say:

18[18] There are 56 computer classified subjects and as matters come up these get classified accordingly and ensure that disposal is expedited by going to benches that find matters familiar. Therefore the spate of environmental legislation in Justice Kuldip Singh's court!

19[19] It is a throwback on old times that there are 43 different departments in the court and surely there is great room for improvement here.
(1) Notwithstanding anything in article 32, every High Court shall have the power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, and Government, within those territories directions, orders or writs, including writs in the nature of habeas Corpus, mandamus, prohibition, quo warranto and certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises from the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without-

   a) furnishing to such party copies of such petition and all document in support of the plea for such interim order; and

   b) giving such party an opportunity of being heard, makes an application to the high Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High
Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.

(4) The power conferred on a High Court by this Article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

227. Power of superintendence over all Courts by the High Court -

(1) Every High Court shall have superintendence over all Courts and tribunals throughout the territories in relation to which it exercises jurisdiction.

(2) Without prejudice to the generality of the foregoing provision, the High Court may -

(a) call for returns from such Courts;

(b) make and issue general rules for regulating the practise and proceeding of such Courts; and

(c) prescribe forms in which books, entries and accounts shall be kept by the officers of any such Courts.
(3) The High Court may also settle tables of fees to be allowed to the sheriff and all the clerks and officers of such Courts and to attorneys, advocates and pleaders practising therein:

Provided that any rules made, forms prescribed or tales settled under clause (2) or clause (3) shall not be inconsistent with the provision of any law for the time being in force, and shall require the previous approval of the Governor.

(4) Nothing in this Article shall be deemed to confer on a High Court powers of superintendence over any Court or tribunal constituted by or under any law relating the Armed Forces.

(5) Deleted.

228. Transfer of certain cases to High Court: -

If the High Court is satisfied that a case is pending in a Court subordinate to it involves a substantial question of law as to the interpretation of the Constitution the determination of which is necessary for the disposal of the case, it shall withdraw the case and, may --

(a) either dispose of the case itself, or
(b) determine the said question of law and return the case to the Court from which the case has been so withdrawn together with a copy of its judgement of such question, and the said Court shall on receipt thereof, proceed to dispose of the case in conformity with such judgement.

229. **Officers and servants and the expenses of High Courts** --

(1) Appointments of officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judges or officer of the Court as he may direct;

Provided that the Governor of the State may be rule require that in such cases as may be specified int he rule no person not already attached to the Court shall be appointed to any office connected with the Court save after consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Court authorised by the Chief Justice to make rules for the purpose:

Provided that the rule made under this clause shall, so far as they relate to salaries, allowance, leave or pension, require the approval of the Governor of the State.
The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers of the Court, shall be charged upon the Consolidated Fund of the State, and any fees or other money taken by the Court shall form part of that Fund.

230 Extension of jurisdiction of High Courts to Union territories

(1) Parliament may be law extended the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

(2) Where the High Court of a State exercises jurisdiction in relation to a Union Territory -

(a) Nothing in this Constitution shall be construed as empowering the Legislature of the State to increase, restrict or abolish that jurisdiction; and

(b) the reference in Article 227 to the Governor shall, in relation to any rule, forms or tables for subordinate courts in that territory, be constituted as a reference to the President.
Many High Courts have an original side and an appellate side. For instance while the Bangalore High Court does not have an original side, the Delhi, and Madras High Courts have the original and appellate jurisdiction. The pecuniary jurisdiction of the High Court varies from State to State.

In the Delhi High Court, the Judicial cum administrative department consists of the Registrar, Joint Registrars, Deputy Registrars and Assistant Registrars who handle the branches like the listing branch, for both the original side and the appellate side, there is the certified copy branch, the translation branch and other branches headed by superintendents. Every Judge has his own section headed by dealing assistants. The cases are divided among these sections. The functions of a Joint Registrar include supervision of completion of pleadings, marking of exhibits and admission and denial of documents. The Assistant Registrar is generally overall in charge of the original side or appellate side registry. He is also the head of the superintendents and the Deputy registrars. The Deputy Registrar has purely administrative functions, like transportation of the Judges, allotment of stenographers to Court etc. The pecuniary jurisdiction of the Delhi High Court is five lakhs and above.

Here is how a case travels-

1. A suit is filed at the counter for filing

2. A person in the Registry goes through the papers to ensure proper Court fees is paid, that the pleadings are in accordance with the law, that the case is not barred by limitation, and that the papers are properly numbered.
3. The file goes to the Judge who is the Original side in-charge and he along with the Assistant Registrar of the original side marks the case to a particular Judge in the Original side.

4. The suit comes up before the Court and gets admitted. Summons is issued to the defendant in the suit and if there are any applications (stay etc.), notice is issued on them. If the Judge considers it fit, an interim ex-parte order is also given.

5. Another cause for delay is in serving summons to the opposite party. The defendant is served. He enters his appearance and seeks time to file his written statement to the plaint and replies to any applications if any. Time is granted. Time is also given to file a replication or a rejoinder by the plaintiff to the written statement or reply of the defendant. The matter is fixed for admission or denial of documents before the joint registrar on a particular date.

6. After admission denial is complete, the matter is placed before the Court by the Joint-Registrar for scrutiny. This stage ensures that the case is prepared for trial. The joint registrar sees if the list of witnesses have been filed etc.

7. Thereafter, the case comes up for trial and final arguments.

Section 5
Reasons for delays in civil cases -

In order to list the general reasons for delay in civil cases, it is imperative that we look at all the three wings of the Government, as the executive and the legislature being the law making and law implementing agencies definitely contribute in some manner to this problem.

THE JUDICIARY- This itself can be studied under three components- the Judges, the lawyers, and the judicial administration.

The Judges - As far as the Judges are concerned, they contribute to the delay due to reasons both within and beyond their control. First and foremost, a primary study of judge strength in the Courts reveal that there are numerous vacancies that are not filled in time. This means that there aren't even the designated numbers of Judges on the bench to tackle the overloaded case docket. It has often been suggested that the Judge strength should be increased every time there is a need to clear the overloaded case docket. But in a situation where even the existing capacity is not filled to the maximum, will increasing the Judge strength be a possible? It has earlier been suggested by various Judicial reform

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20[20] Section 151 of the Civil Procedure Code says: Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court. It is seen that once a suit has been filed by A against B and A has not been able to get an injunction or relief, he promptly files a suit against C and brings B as a second defendant. It is a simple matter and does not cost much, but throws the suit in a seemingly endless delay. The judge finds herself in helpless position as there is no specific law against this abuse. The inherent powers under Section 151 quoted above notwithstanding.

21[21] High Court Vacancies: The total sanctioned strength of high Court judges in the 18 high Courts is 522 and the latest figures say that there are 98 vacancies. State Governments determine the strength of the subordinate judiciary in consultation with the respective high Courts. But most of them cannot do so for they could not find the requisite resources. The maintenance of present strengths and Court facilities itself has become a burden for most of them. The Law Commission in its 120th report has recommended that the present strength of 10.5 judges per million population be increased to 50 per million population.
committees and retired Judges that a Casualty reserve of Judges should be set up, only for each High Court but every Court in the Country, from where the vacancies can be filled and inadequacies can be supplemented in time. Although this alone will not solve the problem, it will definitely help in clearing the cases faster.

There has often been criticism that the Judges are made to investigate issues in commissions and committees. They are more often than not drawn from the High Court benches. This is found to disrupt the working of the Courts and definitely contributes to the problem in hand. Therefore it has been suggested that they be drawn from the casualty reserve in each Court. For this reason too, the casualty reserve seems to be a viable option.

There has been an abundance of discussion in recent times about the emoluments and service conditions of Judges. Many people in the legal profession feel that the Judges emoluments must be made more attractive so as to encourage more competent people to join the judiciary. Another reason for the lack of glamour in this field is that there is no All India Judicial Service. This is seen as a drawback because the institution of such a kind would definitely not only glamorise but also bring about a sense of responsibility and kinship in the minds of the Judges. As such an organisational set up would require that there be a recruitment method as in the Administrative Services, this would also probably improve the quality of the Bench by ensuring that only persons suitable to hold such an office get in. Also a mandatory training period for Judges would go a long way in improving their efficiency. Once the Judges are recruited in the All India Judicial Service, they must start from the lowest rung as munsiffs, as this will give them enough experience and training before they occupy the Benches of the High Courts and the Supreme Courts. For this the subordinate Judiciary should be spruced up, and the service conditions must be improved. Unless the Bench is made a more attractive option, it is
doubtful whether the quality of the Judiciary would improve, because the other avenues as a practising advocate or even an employee of a firm are much more lucrative.

While these are the problems with the institution itself, there are other problems which hinder speedy, effective justice. There are often complaints that the Judges do not make enough preparations for the cases before them and this results in inordinate delay as the lawyer spends a lot of time explaining and making the Judge understand. If the Judges knew the file before dealing with it in Court, then he/she would be able to grasp the technicalities much faster and save a lot of court time. While this is partly due to the fact that some Judges do not do their homework, more often than not it is because the Judges are bogged down by many administrative matters that they have to handle like allotment of cases, and other day to day matters regarding the functioning of the Court.

There also have been many rumours about the Judges being part of the dilatory tactics of the lawyers. This is often caused by political affiliations or other biases in the mind of the Judges. This is reflected in liberal adjournments, certain unreasonable orders with an appalling lack of reason. It is also sometimes due to the internal politics that exist between Judges. Therefore the lawyers sometimes become better psychologists than lawyers. Far too much time is spent on Court etiquette, and formalities. All this certainly contributes to the wastage of time.

One major criticism against the Judiciary has been that the Judgements are too long, and lack precision and clarity. Thus to reduce wastage of paper, and time, it is important to ensure that the Judgements are crisp, concise and to the point. It has also been seen that Judgements are kept pending for months together by some Judges\textsuperscript{22}[22]. A lot of time is

\textsuperscript{22}[22] Most Acts do not prescribe any time limits within which judicial proceedings of various classes should be brought to conclusion.
taken for correcting and signing Judgements. To avoid this, a time limit must be brought in to ensure that Judgements don’t remain pending unnecessarily.

Various suggestions have been made with respect to the appeals and revisions pending before the Courts. There is a need to fix a time limit for the disposal of the appeal. It often takes the appellate Court 5-10 years to dispose of the appeal. Perhaps appeal to the higher Courts should be restricted to matters of law alone. Appeals must be brought to the High Courts only if two lower Courts have upheld the order. This way if questions of fact are restricted as far as possible to the lower Courts without affecting the interests of the litigant, a lot of the burden of the High Courts will be reduced. In order to do this, the lower Judiciary must be strengthened and expanded and its quality improved. Reforms should be undertaken on a large scale to modernise, and better the lower Courts providing it with the atmosphere that will increase the confidence of the litigant.

In order to do all this, the subordinate Judiciary should be upgraded so as to instill confidence in the litigant. Not much importance is paid to the lower Judiciary as all the limelight is on the High Courts and the Supreme Court. The lower Courts comprise of the Trial Courts, First Appellate Courts and District and Sessions Courts. Here, it is said that there is delay because often Judges shy away from difficult cases and grant liberal adjournments in such situations. Pannalal Dhar, in his book, "Indian Judiciary"(p-287), says that in the subordinate Courts, "The Chief Judge should keep a vigilant eye on the disposal of old cases, and it should be the duty of inspecting Judges to be strict and book the indulgent Judges to the notice of the High Court for any action considered necessary". He goes on to say that delay is intrinsic in suits relating to partition and accounts. Here he says that in these suits, "first a preliminary decree is passed after which only a plaintiff files an application for final decree when a lawyer is usually appointed Commissioner of partition and accounts, and such lawyer usually makes inordinate delay to submit the report and the Judge takes no interest to book the lawyer with the result that such lawyers
become commissioners of enquiry even after committing such delays. Even after submitting the report, the case is not disposed of because more often than not the aggrieved party files objection to the report." However if the service and working conditions of the Judges are improved, there is sure to be far greater efficiency than what exists today. The fault surely more than the individuals, lies in the system that urgently needs to be overhauled.

The Lawyers - One of the most important reasons for delay caused by the lawyers is lengthy oral arguments. The lawyer is given hours to argue before the Court in certain matters. The Lawyers contend that it is necessary in some cases because the issue demands it. It has often been suggested in the past that a written draft of oral arguments should be presented to the Court well before the date fixed for arguments. This does require extra home work on the part of the Judge who should read the arguments before hand and allow the lawyer to be as brief as possible, merely eliciting the points made in the written draft. This would definitely save a lot of Court time because, on the date of arguments, by the time one side finishes their arguments, there is no time to listen to the other side on the same day and so when the arguments of the other side is taken up on another date, the lawyer for the first side is forced to repeat his arguments for the benefit of the Judge has lost continuity. Therefore presenting the arguments in written form before hand definitely saves the time of the Judiciary.

Lawyers are known to take adjournments on frivolous grounds. The reasons could range from the death of a distant relative to a family celebration. More often than not, the lawyers are busy on their feet in another Court. This is because they have taken up more cases than they can handle. Because they have taken up so many cases, they are unable to prioritise their duties as each case becomes important. This makes the lawyer inefficient. Lord Denning observed in "Due Process of Law", (1980 edn. p.89), "The real reason for delay of lawyers is not slackness or dilatoriness, They are as a class most hard working of
all professional men. It often lies in their choice of priorities. Each case is important and
must be dealt with. Each letter must be answered the same day or at any rate the next. A
sudden call puts something else out of mind". However there are instances of negligence
and misconduct, where the lawyer takes adjournments on false statements, or after
mutually agreeing with the other advocate. This is in fact totally violative of the
Advocates Act, which lays down a rather stringent code of conduct for practising lawyers.
Apart from this, delay is also caused sometimes because the lawyer waits for suitable
Benches to be constituted before filing a case.

It is also often seen that lawyers don't prepare for their cases. Better preparation of briefs
is bound to increase the efficiency of the Courts. Sometimes, lawyers themselves are not
sure about the details of the case. This is again partly because they have taken up more
cases than they can handle. Some are negligent about their responsibilities, merely
extorting huge sums of money from harassed clients.

The need to curb oral arguments too is an important point. The tendency to take off into
lengthy verbal duels reminiscent of the good old days of flowery language and rabid
oratory contributes much to the delay and tedium in courts. It is becoming rare, but
one can still witness scenes in some courts wherein lawyers in flowing robes and
sparkling white hair(ruffled of course) quote Shakespeare and Ghalib while arguing out
tax related matters in detail.

However before putting the blame squarely on the lawyers it must be admitted that the
complexities and rigidity of our procedural laws is at times the biggest culprit. So much
of time is wasted on arguments of jurisdiction, cause of action, sufficiency of notice,

23[23] The Supreme Court had initiated steps toward curbing oral arguments but the lawyers went on strike promptly. The
Government withdrew the step in a hurry and today the client continues to pay for all the grand debate that goes on, endlessly.
amendment of plaints, and other procedural matters. The procedural laws need to be studied in length and simplified as far as possible so that the entire legal community can function without going through the rigmarole of time consuming exercises.

*Judicial Administration* - This is the technological era. Yet our Judiciary has shied away from the technical assistance that computers, faxes, Dictaphones, and other devices could provide. We still in almost all Courts in the Country have heaps of rotting files in the basements; noisy, slow typewriters, and a variety of other antique devices that do nothing to speed up the process of justice. Although some Courts have started computerising their records, the change is so gradual that it has no effect on the case dockets that get heavier by the day. Drastic steps must be taken to modernise the Judiciary so as to simplify the Judicial administration which otherwise requires so much man power.

Even for administrative duties the emoluments of the Registrars and their subordinates must be made more attractive so that there is more efficiency and interest created in the minds of the employees. In most Courts the administration side is overworked with piles of files to sort out, documents to be checked and a host of other jobs that are time consuming and tedious. The answer is not to increase but to make the existing man power more regular and efficient by improving their service conditions and giving them greater technological assistance. Even these people should be brought under the judicial service so that the quality of people being recruited can be improved.

*THE LEGISLATURE*- The contribution of the legislature to judicial delay can be best summarised by a quote from an article written by S. Parameshwaran, Advocate and Notary, Cochin, in his article "Dispensation of Justice- cost, quality, and delay" (AIR 1991 journal 85-89). He writes,
"India today has the proud privilege of being one of the largest producers of human babies and statutory enactments. The legislative output is phenomenal, the total number of existing Central Acts alone would come to nearly 800; the number of State Acts, Regulations and Ordinances for one of the simplest of agricultural societies like Orissa would be to the extent of one thousand and odd. The domain that is sought to be covered is from birth to death and the dimensions vary from 6 sections in the Contempt of Courts Act to 658 in the Companies Act; few like the Income Tax Act, baffle normal human intelligence. Further the field of operation of States is overlapping and conflicting. 'Good faith' means one thing for the Limitation Act and another for the Penal Code. 'Workmen' has as many definitions as there are States for them. 'Ryot' in the Land Reforms Act differs from 'Ryot' in the Tenancy Laws. Meaning of expressions and fictions is expanded and contracted by fictions. What one Statute accepts the other rejects, and often one does not know where he stands vis-a-vis his rights and obligations. Instead of making anything comprehensive, the tendency is to make pieces and rarely, if ever a pattern emerges, the topography looks like that of an incompetent impressionist painter."

This is perhaps one of the biggest reasons for delay in our courts. Our diverse cultures, religions, languages, customary practices, manifest in a variety of cases, present a daunting task before the Judiciary. Over and above this, the laws are so numerous, loosely, drafted, vague, and capable of a hundred interpretations. Thus when a matter

24 [24]

Section 114 of the Code of Civil procedure says: Subject as aforesaid, any person considering himself aggrieved-

(A) by a decree or order from which an appeal is allowed by this code, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed by this Code, or

(c) by a division on a reference from a Court of Small Causes,

may apply for a review of judgement to the Court which passed the decree or made the order, and the Court which passed the decree or made the order, and the Court may make such order thereon as it thinks fit. This section is asking for delays. It is virtually impossible to ensure that only a few exceptional cases will be reopened.
is before the Court, the matter is not straightforward and cannot be disposed off merely with the help of the law as it is. So many interpretations and views have to be addressed before the Judge is in a position to make a decision. Suggestions have also been made to have a Council of the Constitution, which will go through any bills that are to be passed by the Parliament and the State Legislatures. Dr. Pannalal Dhar, in his book "The Indian Judiciary", says that the Council should consist of eminent experts in Constitutional Law appointed by the President of India. Once vetted by the Council these should be accepted by the Courts as valid laws and the Supreme Court or the High Courts should not have the power to question them. It has also been suggested by the Dr. Dhar, that we should follow the American pattern of deciding cases whereby only the statutory provisions are addressed and the Constitutional provisions are avoided as far as possible. This he feels will ensure speedier disposal of cases. He writes,

"When Mohammed Ahmed Khan v. Shah Bano (AIR 1985 SC 935), could be decided by reference to S.125-127 of the Code of Criminal Procedure, it was unnecessary to refer to the provision of Uniform Civil Code in the Constitution......The vetting of Statutes by the August body will clothe the States with special sanctity and presumption of constitutionality making constitutional interpretations unnecessary, and the disputes will be decided more and more by the applications of the provisions of the Statutes. The outcoming results of the disputes will thus be more predictable and this will keep litigation to the minimum. Since Judgements will hardly change, the litigants will have more confidence in justicing, and the credibility of the judicial system will thereby rise because Judgements will no longer depend on the caprice of Judicial interpretation."

Over and above this, as mentioned earlier, the Judicial machinery is suffocated with the profuse complexities and demands of the procedural laws which are rigid and out dated. While one cannot do away with the procedure, the legislature should appoint a Committee to review and revise the procedural laws every five years so that time
consuming and unnecessary exercises could be done away with. The Courts should also ensure that emphasis is not laid on procedural aspects as far as possible.

THE EXECUTIVE - The executive is the law implementing agency. It has been seen that the cases involving the State has most often suffered the maximum delay. In fact, in many cases the Judges themselves have berated the Government about its indifference to judicial orders. In these cases, either the Government counsel is absent or the official summoned does not appear. Most often, Court orders are blatantly flouted or conveniently forgotten until the Court pulls up the concerned official. The most popular example that can be cited is the famous Vasudevan case, where the Court issued contempt proceedings against a senior IAS officer for not implementing the Court orders.

There is an urgent need to curb the initiation of civil suits by Government. Much has been said about unnecessary litigation on part of the Government and the resultant clogging out of genuine litigation. In any case the success rate of Government appeals is said to be as low as 5%. And cases that involve Governments on both sides of the table are by and large futile and time wasting exercises. The incentive to Government appointed lawyers to prolong cases and earn a bit more leads to further delay.

Section 6

25 In fact, the Government is a litigant in most of the cases. In a study carried out by the National Law School in 1993, it was found that the Government is the single largest litigant in Indian civil courts. The Government is plaintiff, defendant, appellant or respondent to appeals in 60% of the suits. Bulk of the civil litigation pertains to just five areas - taxation, credit, rent control, urban land ceiling and labour relations.

26 Government here includes central, state and Government owned institutions. That there is confusion on the definition of the State is another story for another study to tackle.
Alternate Dispute Resolution and the Lok Adalats

Article 39A of the Constitution of India, under the Directive Principles of State Policy, states that "the State shall secure that the operation of the legal system promotes justice on the basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities are not denied to any citizen by reason of economic or other disabilities."

This duty of the State was further reinforced by two landmark cases in the late 70’s. In Hussainara v. State of Bihar (AIR 1979 SC 1369 (Paras 6-7)), and Hoskot v. State of Maharashtra (AIR 1978 SC 1548 (Paras 11-13,24)), the Supreme Court emphasised the duty of the State to offer free legal aid to an accused who is unable to engage a lawyer owing to poverty or similar circumstances, by holding that the trial would be vitiated in such a case where the State did not fulfill its obligation.

Alternate Dispute Resolution Mechanisms are the need of the hour. They involve settlement of disputes through arbitration, conciliation and mediation. These are alternate methods where psychological skills are more in operation than legal expertise. One such institution that is unique to India is the Lok Adalat. This is a statutory body that came into operation under the Legal Services Authorities Act. Legal aid and Lok Adalat are the twin institutions that are intended to promote equal justice and free legal aid as envisaged under 39A of the Constitution.

The Lok Adalat is a dispute resolution mechanism where methods of conciliation and mediation are employed to settle cases before it goes to Court. The main attempt of this institution is to reduce the burden of the Courts by preventing petty, trivial, cases from
going to Court and adding to the already existing backlog. Apart from these petty cases, even major cases involving institutions and Corporations are taken up and through conciliation and mediation the issue is settled. This mechanism would go a long way in clearing the case docket and reducing the delay, if taken seriously and given more attention.

The Lok Adalat has the widest possible jurisdiction and it is empowered to deal with any matter from any Court or Tribunal of the land. The most important criterion here is the willingness of the parties. This is especially effective in civil matters as general criminal matters cannot be compromised and may not qualify for settlement by the Lok Adalat. The primary object of the Lok Adalat is to carry justice to the doorsteps of the people, and bring about settlement of their disputes. Although it is not a substitute to the present legal system, it definitely gives cheap and speedy justice to the people. If taken seriously, the mounting arrears in the Courts would be drastically reduced and fewer cases would be instituted.

A team consisting of retired Judges, spirited public men, voluntary organisations and elders of the locality assemble to resolve the disputes in a pre-determined area for a day or more at a time. The preparation to conduct the Lok Sabha takes a month or longer. Cases suitable for conciliation are chosen by the District Judges, the parties are persuaded to go in for the conciliation, and the settlement is made. After this, the case is heard by the panel on the appointed day and finally settled.

It is more than ten years since it came into operation. If it has not been effective it is because it has not been used adequately in deciding disputes. Every Court from the lowest to the Highest must have a facility for Lok Adalat, and every litigant must be made aware of this option available to him. Every case must be screened before it is filed.
If the case can be conciliated, then at that level itself attempts should be made to persuade the litigant to approach that forum. Then perhaps, justice will be a cheaper and faster proposition.

Section 7

Land Acquisition law and Labour law - two cases of how poor procedure affects the poor

The Land Acquisition Act, 1874,(the Act) is an enactment that facilitates the acquisition of privately owned land for a public purpose. A proceeding for land acquisition commences with the issuance of a notification under S.4(1) of the Act. Whenever, it appears to the appropriate Government, that land in any locality is needed or is likely to be needed for a public purpose, a notification under S.4(1) of the Act to that effect has to be published in the official gazette as also in two daily newspapers circulating in the said locality of which at least one shall be in the regional language. Further, the Collector is also required to give public notice of the substance of such notification at convenient places in the locality. The requirements of Section 4 are mandatory and are sine qua non for the validity of the acquisition proceeding.

The main objects of the notification are two fold.

i) It enables the Government to determine whether the land sought to be acquired is suitable for the purpose for it is sought to be acquired.

ii)To enable persons who are likely to be affected by such acquisition, to express their view points.
Within 30 days from the date of publication of the notification, any person interested in any land which has been notified under S.4 of the Act, may submit his objections to the same in writing to the Collector. The Collector shall thereafter hear the objections and submit a report to the appropriate Government containing his recommendations of the objections. The appropriate Government after considering the report of the Collector, may declare that the land is required for public purpose.

Reasons for Delay-

The primary reasons for delay in land acquisition cases are:-

1. On account of non-compliance of mandatory requirements stipulated under the Act as conditions precedent.

2. Non-compliance of mandatory provisions exposes the acquisition proceeding to challenge before Courts of law through either a reference by the Collector or Writ proceedings.

3. A number of disputes also centre around the quantum of compensation payable on account of the ambiguities in the Act.

4. No matter how fair the compensation offered, claimants are often motivated to try their luck for a larger sum by compelling a reference to the Court

Delay in Labour Cases-
Labour law in India is characterised by a multiplicity of laws and fora governing management labour relations. There are in all 30 major legislations in this area to name a few, Industrial Disputes Act, Minimum Wages Act, Payment of Wages Act, Payment of Bonus Act, Workmen’s Compensation Act, Trade Unions Act, etc, each providing its own forum and procedure. Since all these are related to the subject of labour relations there is often problems with interpretation and application. For instance, "workman" is defined differently under each statute. In addition to this, there are also other issues like bonded labour, child labour, and labour in the un-organised sector. This results in ambiguities in the law and thus stalls speedy efficient decision making.

Delay in labour cases, is occasioned primarily on account of multiplicity of enactments, and fora. The problem is further accentuated by the acute shortage of manpower in Labour Courts and Tribunals. Further, in order to have a system which dispenses justice speedily, it is imperative that the scope for disputes be reduced. However in view of the strong unions that exist in most industries and equally stubborn management, resort is often had to Courts of law rather than Alternate Dispute Resolution methods which are both faster as well as more informal in the dispensation of justice. The need of the hour is a unified law governing industrial relations. This will go a long way in ensuring that justice is not denied by delay especially considering the fact the rights involved have a bearing on the right to livelihood which is a fundamental right

The maladies coming in the way of an efficient judicial system is equally relevant and applicable in land and labour cases. The following case, recently did look into the problem of delays and is worth taking note of. A seven Judge Constitution Bench of the Supreme Court\textsuperscript{27}\textsuperscript{27} commenced the hearing of this writ petition that questioned the

\begin{footnotesize}
\textsuperscript{27}\textsuperscript{27} SCAORA v. U.O.I (1993 SC)
\end{footnotesize}
Constitutional validity of the circular letter dated March 18, 1981, which was issued by the Ministry for Law, Justice, and Company affairs, by which the consent of additional Judges serving in different High Courts and those whose names were already proposed or may in future be proposed for elevation to the High Court was sought. This circular was engulfed in serious controversy and passionate appeals to protect the independence of the Judiciary was made from different quarters as it was generally assumed to be an attempt on the part of the executive to trifle with judicial independence. Writ petitions were filed questioning the validity of the circular. While answering the petitions, Justice Ahmedi addressed the issue of fixation of Judge strength under Article 216 of the Constitution. While doing so he also made some valuable observations on the backlog of cases in our Courts and the role of the Judiciary in this regard.

He says "There is no doubt that every Court with the exception of one or two has swollen dockets. The backlog is essential in these High Courts. Justice social, economic, and political is our Constitutional goal. When members of a civilised society agree to have their disputes settled through an independent and impartial mechanism offered by the State, with a set of laws and rules governing the same, we think there is an implied promise that the mechanism so offered will deliver the goods within a reasonable time. Human race has always remained conscious of the sense of justice and therefore, justice has always been the virtue of any civilised society. There can therefore be no doubt that all those concerned with the Judicial system in this Country must be alive to the fact that because of diverse reasons, not entirely of the making of the Judiciary, judicial system has not been able to keep its implied promise to dispense justice within a reasonable time.............

Section 8
Conclusion - The king can do no wrong:

The Indian legal system is clearly pro-establishment and pro-manufacturer, and that is how Indian law and legal procedure hurts the poor. The legislature helps. For the basic precept it believes in is the enshrined belief that the king can do no wrong. In its very first report, the Law Commission in May 1956 studied the question of liability of the state in torts. In almost all democratic countries, the Government is liable for all the tortious acts of its servants, but in India the law is still the same as it was in 1858. A Bill on this subject was introduced in Parliament in 1965 and it lapsed, reintroduced in 1967 but lapsed again in 1971. One just has to take a look at how the government absolves itself of all liability in all government owned businesses – the railways, the post offices, airlines et al.

This pro-establishment status quoist tendency in law is a direct fallout of our colonial days. Take a look at the British influence on the law. There were over 400 British statutes since 1927. Rather than a repeal of these laws, we had Article 372 of the Constitution which continued them. 258 British statutes were repealed by the British Statutes Repeal Act, 1960. But nearly 150 British Statutes continued to be in operation. The 96th report of the Law Commission in 1984 titled *Repeal of Certain Obsolete Central Acts* makes a reference to these statutes for it is obvious that continuance of obsolete statutes clutter the statute book and create confusion. Statute law revision is a must – *The Statute Law Book*

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29[29] *The rules themselves, not just their wording need change. Official practice – the operation of the rule – may need to alter. The values which those rules enshrine may be untenable or no longer be the values of the society those rules serve. Law reform must then look beyond the letter of the law. It must find out how the law is understood by those applying it and those to whom it is applied. It must discover how the law really operates – what judges, lawyers, officials and ordinary citizens actually do. It must consider how the law is thought of and accepted by the society it serves. It must examine how far the law and social attitudes to it are justified.* Law Commission of Canada.
should be revised and expurgated – weeding away all those enactments that are no longer in force and arranging and classifying what is left under proper heads, bringing the dispersed statutes together, eliminating jarring and discordant provisions, and thus getting a harmonious whole instead of a chaos of inconsistent and contradictory enactments.\textsuperscript{30}[30]

The Commission has recommended repeal of several statutes upon three major considerations:

1. A statute that is no longer needed should be repealed

2. A statute, which has been practically superseded or covered by subsequent legislation, ought to be repealed

3. An Act, though not clearly conflicting with Fundamental rights, is opposed to the Directive Principles, should be continued if there are some weighty reasons for its continuance.\textsuperscript{31}[31]

The Stamp Duty act is a classic case of mindlessness. An act that clearly needs to be weeded out. Some poor litigant who needs to register a certificate approaches a local Sub Divisional Magistrate. After spending hours in long queues and waiting for days for an SDM who is busy in among others election duties, inquests and dying statements, and after bribing all the peons and the clerks, the poor citizen is made to pay all of 75 paise as


\textsuperscript{31}[31] This is the problem area. Many of the issues regarding welfare and upliftment are contained in the Directive Principles and the attitude expressed in this consideration makes renders all noble intention expressed in the Directive Principles ineffective.
the Stamp duty. For this he might need to file an often unnecessary affidavit, but that is another story.

The law today lies scattered. There are several statutes pertaining to the same subject matter, all scattered and interspersed. There is no reason why the number of statutes on marriage cannot be merged into one single marriage code. All statues relating to crime can be merged into one Criminal code. The goal enshrined in article 44 can be reached if law can be simplified through enacting simple consolidated laws on various aspects that specially affect the poor – the labour laws, the laws on property and the laws on commercial transactions.
## APPENDIX

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Source: Annual Report 1994-95, Ministry of Law, Justice and Company Affairs


