

INTRODUCTION

As the largest democracy in the world, India enjoys a very unique place. It is slowly but steadily emerging as the power to be reckoned with in the world. The country has successfully completed nearly 50 eventful years of its independence. The Constitution of India can be considered as the guiding factor as to how the country and various authorities within it will function.

The preamble of our Constitution manifests a solemn resolve to secure justice to all its citizens, social, economic and political. Preamble is a guiding light in interpretation of Constitutions and embodies hopes and aspirations of people.

The term "Justice" carries different meanings for the different groups which at times have conflicting interest. Hence the process involves adjudication of disputes by a body which is vested with the competency and powers to adjudicate. Judiciary thus comes as an independent and indispensable organ of the State for giving justice.

The legal and judicial system of any country at any point of time is not a creation of any individual but it is an ongoing process under constant evolution. It reflects the cumulative result of the endeavour, experience, thoughtful planning and patient labour of large number of people i.e. the lawmakers, judges, lawyers and litigants over generations. India has a civilised history of over 5000 years and all along distinctive legal system, formal or informal was prevailing. However, the present judicial system can be mainly related to the British period.

Any judicial system to be sound must have atleast two basic elements:-

- (i) There should be a well defined, well planned and well regulated system of Courts following simple and orderly procedure which facilitates justice and

commands faith and respect from the public, not by its mere power but for its fairness and objectivity.

- (ii) There should be definite, easily ascertainable and uniform body of law.

The judicial system as envisaged under our Constitution is a three-tier system with the Supreme Court at the Apex level, High Courts in various States at middle level and District/Subordinate Courts at lower level.

In its pursuit for justice, the State has created various laws aiming at social, political and economic justice. That apart, Constitution itself guarantees the fundamental rights and provides remedies in form of writs. The growing consciousness among the people about their rights has also contributed considerably to the litigation. Vices of delay and expenses have become innate features of the system. Some extreme thinkers like Justice V. R. Krishna Iyer has gone to the extent of saying:-

"The myth is that Courts of Law administer Justice the truth is that they are agents of injustice. Indian judicial system is Anglo-Saxon-Adversary system and its basic principle is that a party succeeds on the failure of its opponent. The judge in most of the cases plays the role of a mere umpire who declares the result without in most cases participating in the process of adjudication."

The judicial system can be mainly divided into Civil and Criminal. As per a newspaper report in Indian Express, the total number of criminal cases pending before various courts are nearly 2.10 crores. At times with its overburden, delays and technicalities it bestows on wrong doers dividends and advantages excessive in proportion. There are too many criminals who escape punishment.

The position under the civil matters is equally disappointing. The average life of litigation in the lower Court is 7 to 10 years and if the parties can afford or are determined they can stretch the litigation to the next generation by preferring

appeals/reviews/revisions to High Courts and Supreme Court. The total number of cases pending before the Civil Courts as per data is nearly 1.19 crores (Compilation from various statistics collected from different States).

Concern is expressed by various sections, the politicians, the judges, the bar councils and other eminent persons about increasing backlog of cases. Various Committees have been appointed by the Government and they have made extensive studies in their area of reference.

To cope up with the increased volume of work, the law makers have responded by various measures. The prominent among them is the "Tribunalisation of Justice", which means the matter will be decided by specially constituted tribunals and the ordinary courts will not have jurisdiction in such matters. Only a limited right of appeal to the Supreme Court/High Courts is available.

The problem of delays is not limited only to India. LORD DEVLIN once commented on British Judicial system in following words:-

"If our business methods are as antiquated as our legal methods, we should be a bankrupt country. There is hence need for a comprehensive inquiry into the roots of procedure".

Chief Justice WARREN BURGER of U. S. Supreme Court expressed dissatisfaction about the country's backwardness in Court management in these words –

"In the Super-market age we are trying to operate the Courts with corner grocer methods and there is need for fundamental changes".

The contributory factors for delays are summarised as under :

1. The Courts cause delays by failure to provide priority for old cases, failure to decide cases involving same points of law/facts together and also by becoming too technical about procedures at the cost of justice. The delays in service of summons, recording evidence, delivering judgements and execution of their own order involve this aspect.
2. The lawyers take inordinate time and resort to frequent adjournments, strikes etc. the lawyers forget that as per professional standards, they are the officers of the Court and hence have a pivotal role in speedy administration of justice. Inadequate distribution of work among the Bar is also an important factor.
3. The litigants, who set the whole process in motion also contribute to the delay. There is an increasing tendency to go to Court on slightest provocation and the persons with money power at their command take shelter of the Court to protect their own misdeeds.
4. The Government is also the largest litigant in the country. There are several lacs of cases where the Government is either the plaintiff or defendant. The Government can take initiative in these cases to sort out the matters.
5. The Government should also take the share of blame. Firstly the judicial appointments are delayed. The infrastructure and facilities are not available to adequate extent.
6. The legal system itself contributes to delays by its cumbersome and dilatory procedure. At times care is not taken to draft the laws in proper manner resulting in loopholes and subsequent litigation.
7. The society itself also deserves to be blamed for delays. Rather than rushing to the Courts on slightest excuse, the initiative can be taken by parties themselves to understand each other's view point and try for an amicable settlement. Arbitrations and prelitigation conciliation can be of great help.

In this thesis which comes after 7 years of extensive research work under able guidance and sustained inspiration from my guide Prof.(Dr.)J. C. Rathod,

Former Head, Department of Law and Former Dean, Faculty of Law, M. S. University, Baroda, I have tried to extensively examine the causes for delays and have also contacted various eminent persons in the field and have discussed with them in the matter. The available literature and reports on the subject have also been studied. The objective of this thesis is to analyse the root causes for delays and make suggestions for the reforms.

Since the causes for delays are diverse and multiple, after analysing in detail the general causes for delay as a part of case study I have concentrated on the cases of banks and financial institutions. In most of the cases the litigants are the Government organisations only, owned by the State. The documentary evidence is strong and palatable. Speedy justice to them is necessary even in public interest because the money involved is public money. The delay defeats the purpose of litigation. As per the statistics collected by me from the Reserve Bank of India as on 31st March 1993 there were 10,24,620 cases filed by banks involving 4171.60 crores rupees. On 31st March 1993, there were 5,41,813 decreed cases involving 984.93 crores. The money involved if recovered can substantially help the growth of economy.

The research methodology adopted by me for the purposes of this thesis involves:

- (i) Collection and analysis of data from various sources
- (ii) References to books/journals/articles connected with research topic
- (iii) Personal interviews/discussions with various judges, advocates, litigants, academicians etc.

The thesis will be submitted by March 1999 together with the conclusions/suggestions I propose to make.

The thesis is divided in 14 chapters. It deals with the origin and objectives of judicial system in India, comparison with other major systems, analysis of reports of various committees and Law Commission of India and study of provisions of