

## **CHAPTER III**

### **PROBLEM OF DELAYS AND ARREARS**

### **BIRD'S EYEVUEW OF VARIOUS REPORTS**

A research work on any subject requires exhaustive study of the existing literature on the subject. The problem of delay in judicial proceeding is receiving attention of various High power committees for last more than 70 years. The reports submitted by the various committees deal with vast areas and also gives valuable suggestions, some of which have been already implemented while amending the laws subsequently. The reports are voluminous and an attempt has been made to cover important ingredients of such reports in this chapter.

#### **I**

### **RANKIN COMMITTEE REPORT (1926)**

This is the earliest effort at the initiative of Sir Tej Bahadur Sapru, the then law member of Viceroy's executive council. Justice Rankin was its Chairman. The scope of committee was as under:\*\*1

"To inquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, by the courts in India in disposal of civil suits, appeals, applications for revisions and other civil litigations including the execution of decrees and reporting whether any and what changes and improvements should be made so as to provide for more speedy, economical and satisfactory dispatch of business."

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**\*\*1 RANKIN COMMITTEE TERMS OF REFERENCE**

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The committee had made several important suggestions and observations, which are summarised below:-

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- a) The delay in proceeding of Civil Courts in India is to a considerable extent due to want of any proper system of training of judges.\*\*2
  - b) The procedure laid down for Small Cause Courts should be made applicable to other classes of suits. \*\*3
  - c) The letters patent appeals to High Court give right of fourth hearing and it is an absurdity. It is a waste of words to denounce it."
  - d) The High Court should obtain periodic statement of cases in which stay orders have been granted and ascertain their expeditious disposal.\*\*4
  - e) The exercise of revisional jurisdiction creates "much bad law" because of conflicting decisions and needs to be more disciplined.
  - f) In execution proceedings application is returned for correction of the amount due on the ground that it is inaccurate. It should be the duty of court to state the correct amount.\*\*5
  - g) The income and expenditure incurred for rendering Civil Justice and Criminal Justice should be more accurately ascertained.
  - h) The Codes we have should be revised carefully and at frequent intervals to overcome daily difficulties.\*\*6
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\*\*2 CIVIL JUSTICE COMMITTEE REPORT PAGE 181 PARA – 1.

\*\*3 IBID PAGE 98

\*\*4 IBID PAGE 281

\*\*5 IBID PAGE 384

\*\*6 IBID PAGE 536

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## II

### **14<sup>TH</sup> REPORT OF LAW COMMISSION OF INDIA (1955)**

This committee constituted by the Parliament in 1955 submitted its report in September 1958. Justice M. C. Setalwad was the Chairman of the committee. The terms of reference of the committee were...

"To recommend revision and modernization of Laws, Criminal, Civil and Revenue, substantive, procedural or otherwise and in particular the Civil and Criminal Procedure Code to realise that JUSTICE IS SIMPLE, SPEEDY, CHEAP, EFFECTIVE AND SUBSTANTIAL."

The committee has extensively studied the functioning and administration of judicial system by personal visits to courts and by sending questionnaires etc. and have contributed significantly in this sphere.

Some of the important suggestions in the report are narrated below: -

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- (a) While there are well-founded complaints against some aspects of present judicial system, the committee has emphatically stated that way to reform does not lie in abandonment of present system and replacing it by new one.
  - (b) The true remedy lies in removing the defects that exist in the present system and making it sub-serve in greater degree for requirements of present and future \*\*7
  - (c) Communal and regional considerations should not play any role in making Supreme Court appointments.\*\*8
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\*\*7 STATEMENT BY PANDIT JAWAHARLAL NEHRU IN LOKSABHA ON 3/12/54.

\*\*8 PAGE – 31 OF THE 14<sup>TH</sup> REPORT OF LAW COMMISSION.

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- d) Effort should be made to recruit distinguished members of bar directly to Supreme Court.
- e) The system of preliminary hearing in Art.32 petitions is further examined from desirability point.\*\*9
- f) While there is increase in arrears of High Courts due to increase in litigation, the strength of judges is not increased. The appointments to High Courts should be on merits and not on other considerations.\*\*10
- g) Efforts should be made to persuade suitable senior counsels to accept Judgeships for a short period as a public duty.
- h) All first appeals below certain value should be transferred to and disposed off by Dist. Courts.
- i) Judges should be assigned work in the branches of law for which more competent.
- j) High Courts should work for atleast 200 days in a year and regulate their vacations, as they think best.
- k) Judges should bear in mind that their office demands from them certain reserve and restraint in their social life.
- l) Setting up of banches of High Court at different places is undesirable.
- m) The judges should realise that task of supervision and control of subordinate courts is important.
- n) The strength of subordinate judiciary should be sufficient to enable it to dispose off suits, criminal trials and other proceedings within reasonable time.\*\*11
- o) Temporary additional courts should be established wherever necessary to dispose off accumulation of arrears.

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\*\*9 PAGE – 55, IBID

\*\*10 PAGE – 105 IBID

\*\*11 PAGE – 159 IBID

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- p) Wherever pendency of suits is very high the work should be redistributed to avoid over burdening.
- q) The recruitment to subordinate judiciary should be on the basis of competitive exam conducted by Public Service Commission.
- r) Necessary training should be given.
- s) All India Judicial Service should be constituted on line of IAS.
- t) Plan should be evolved to build courthouses and budget for law books should be increased.
- u) Staff of subordinate courts should be trained in law and required to pass departmental exams.
- v) Greater powers of punishment of subordinate staff should be delegated to Presiding Officers of the court.
- w) No penalty other than that of dismissal should be imposed on any judicial officer found guilty of corruption.
- x) Many delays now prevalent in the system are capable of being remedied by adequate and effective supervision and quantitative tests be laid down to ascertain work of Judicial Officer in disposal of old cases.
- y) All cases more than one year old should be regarded as old suits and subordinate courts should be asked to explain delay in their disposal.
- z) Subordinate courts should be asked to submit returns showing pendency. \*\*12
- aa) Judicial Officers should maintain a judicial diary showing work done by them every day.
- bb) Inspection of subordinate courts is made more active.
- cc) Pecuniary and other jurisdiction of Senior Civil Judges should be widened. Pecuniary jurisdiction should be made unlimited.

- dd) Summary Procedure powers should be delegated to civil courts in important commercial towns.
- ee) The jurisdiction of Small Causes Courts should be increased.
- ff) Verification of pleadings should be on oath
- gg) Courts should be strict in matter of granting adjournments for filing written statements.
- hh) Parties should file with pleadings the form of process leaving only relevant dates to be filled.\*\*13
- ii) Courts should exercise very strict supervision on process serving department to reduce delays in service of process.
- jj) Summons by post and summons in ordinary form should be issued simultaneously.
- kk) Judicial Officers must themselves frame the issues after studying pleadings.
- ll) Separate machinery for conciliation proceedings and initiative for bringing compromise is necessary.\*\*14
- mm) Uncontested and Exparte cases should be fixed for hearing early by putting them in separate exparte list.
- nn) Adjournments should not be granted merely to suit the convenience of parties or their advocates.
- oo) Courts should encourage the larger use of affidavit evidence for proof of simple and incontrovertible facts. Judges should be enabled to dictate it to typists rather than writing themselves.
- pp) Court Commissioner should finish his work within fixed time and in case of delay his fees should be reduced. The work should be entrusted to junior lawyers.

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**\*\*13** PAGE 357 OF THE REPORT

**\*\*14** PAGE 358 OF THE REPORT

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- qq) Subordinate courts should indicate in their returns the proceedings, which could not be continued due to stay by upper courts.
- rr) Appellate jurisdiction of District Judge should be increased. The number of such judges should be increased.
- ss) Second Appeals should be scrutinised with greater strictness,
- tt) Long judgements are out of place when appeal is dismissed summarily. In such case appellant should be entitled to refund of process fees.
- uu) Judges should read atleast Memo of Appeal and judgement of court below outside the court hours before hearing Appeal.\*\*15
- vv) When a case is remanded the Appellate Court in order of remand fix a date by which the lower court has to resubmit the case.
- ww) Right of revision against interlocutory orders is valuable one and should not be abolished. Rule Nisi arise should not be issued except upon strict scrutiny.\*\*16
- xx) High Court should obtain from subordinate courts periodic statement of matters held up due to revision.
- yy) Orders in execution directing payment of money should be made non-appellable.
- zz) Payment made through a bank or postal order evidencing the written proof should be recognised.
- aaa) Court's power to stay execution by issuing temporary injunction should be taken away.
- bbb) Volume of execution work done by judicial officer should be taken in account in judging his disposal. Judicial officers should take more lively interest in judicial proceedings.\*\*17

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\*\*15 PAGE 411 OF THE REPORT, IBID.

\*\*16 PAGE 429 OF THE REPORT.

\*\*17 PAGE 459 OF THE REPORT.

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- ccc) Wherever there are more courts than one of the same class, one court should be entrusted with entire execution work of all courts. It should be entrusted to officer with highest jurisdiction.
- ddd) American system of written briefs and restricted oral arguments is not suitable in India.\*\*18
- eee) The system of awarding costs to the successful party, subject to discretion of court should continue. It should be adequate to indemnify the successful party. Costs awarded in India do not afford such indemnity and need to be revised.\*\*19
- fff) It is one of the primary duties of the State to provide machinery for administration of justice and on principle it is not proper for the State to charge fees from suitors in courts. The revenue derived should not exceed cost of administration of justice. Making profit by State is not justified.\*\*20
- ggg) Several laws, which are in force in India on insolvency, should be consolidated into one enactment.
- hhh) Official receivers should be appointed ad-hoc from the members of the bar.
- iii) The Evidence Act be amended and rule against hearsay evidence be relaxed where required.\*\*21
- jjj) The legal education imparted in India so far has been extremely defective and not calculated to produce either jurists or competent legal practitioners. In recent years it has deteriorated. Law colleges should be manned by full time teachers. Lectures should be supplemented by seminars and group discussions. Existing standards of law examinations are on the whole deplorably low.\*\*22

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\*\*18 PAGE 474 OF REPORT.

\*\*19 PAGE 485 OF THE REPORT.

\*\*20 PAGE 509 OF THE REPORT.

\*\*21 PAGE 519 OF REPORT.

\*\*22 PAGE 549 OF REPORT.

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- kkk) Entry to law colleges should be restricted by system of strict tests. Law Colleges should be encouraged to undertake research in law. Financial assistance by Govt. to law colleges should increase. Attendance should be made compulsory.
- lll) In courts upto district level, the regional language should be the court language.
- mmm) Institution of honorary magistrates is very useful to relieve regular magistrates from large number of petty cases.
- nnn) Second class magistrates be empowered to summarily try cases.\*\*23
- ooo) State Government should undertake careful examination of adequacy of strength of Police. Police in particular the investigation force should be trained in modern methods of investigation and provided with modern equipments.\*\*24
- ppp) All prosecutors should be legally qualified and appointed from the bar.
- qqq) Judiciary should be separated from executive for speedy trial of criminal cases.
- rrr) Steps should be taken to ensure that cases under Special Acts initiated by departments other than Police are given necessary attention by prosecution.
- sss) In large cities mobile courts for vehicular offences be established.
- ttt) Criminal Appeals in High Courts should be disposed off within 6 months and in session's courts within 2 months. Powers of single Judge in all High Courts should be enlarged.\*\*25

**\*\*23** PAGE 731 OF REPORT.

**\*\*24** PAGE 762 OF THE REPORT.

**\*\*25** PAGE 818 OF THE REPORT.

- uuu) All criminal revisions, except death sentence matters should be disposed off by single judge of High Court.
  - vvv) If a witness has made two contradictory statements on oath, the court before, which he made subsequent statement, should have power to punish him summarily for perjury.
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The report also contains exhaustive statistics and analysis of various factors concerning the administration of justice. It has also referred to the suggestions of committees previously appointed.

### III

#### **22<sup>ND</sup> REPORT OF LAW COMMISSION OF INDIA (1957)**

After the codification of Hindu Law, the need was felt to have uniform law governing matrimonial causes including, alimony, maintenance, dissolution of marriage etc. This report is prepared after visiting certain parts of India and discussions with all affected interest groups.\*\*26 The report provides for elaborate procedure for divorce on various grounds, alimony, alimony pendente lite, maintenance orders, protection orders and confirmation of such orders. The Indian Divorce Act has been enacted on basis of the same.

### **IV AND V**

#### **LAW COMMISSION – 27<sup>TH</sup> REPORT**

#### **AND 54<sup>TH</sup> REPORT**

#### **(CODE OF CIVIL PORCEDURE)**

#### **(1964 AND 1973)**

The Commission has submitted this report on Code of Civil Procedure. 27<sup>th</sup> report was submitted on 13/12/64 and 54<sup>th</sup> report was submitted on 6/2/73.

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\*\*26 PROF. UPENDRA BAXI, (VIII) OF INDIAN LEGAL SYSTEM PAGE 260.

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The reports deal with history of Civil Procedure Code. It has suggested revision in Code of Civil Procedure. Some of the important changes suggested are summarised below:-

- A) Any system of procedure must sub-serve the ends of justice, Procedure is means and not an end. It is the duty of the State to see that its legal system does not have scope for processes which are likely to hinder or defeat justice.\*\*27
- B) Since procedure is the means and justice the end, the means must be effective for achieving the end. This requires that procedure must be simple, fair, speedy and in inexpensive.
- C) There is no need for total replacement of existing procedure.
- D) The procedure should not be such that impediments of justice get multiplied.
- E) Procedure exists for the sake of enforcing rights under substantive law.
- F) Doctrine of resjudicata is made more effective and made applicable to execution proceedings also.
- G) Changes, which are desirable to implement directive principles of State policy, should be introduced. \*\*28
- H) Power to transfer proceedings from one High Court to other that was vested with State Governments be given to Supreme Court. (Amended Section 24)
- I) Interest for post decree period in respect of liabilities arising out of commercial transactions to be increased.
- J) Section 80, which provides for compulsory notice before institution of suit against Government or Public Officer should be omitted because State should not have privilege in the matter of litigation against citizen and should not have higher status than appellant.

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\*\*27 SIR JOHN WORDROFFE AND AMEAR ALI, CIVIL PROCEDURE CODE  
3<sup>RD</sup> EDITION, VOL.I, PAGE – 5.

\*\*28 54<sup>TH</sup> REPORT OF LAW COMMISSION OF INDIA, PAGE 7.

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- K) Second Appeal to be allowed only on such questions as are certified by the High Court to be substantive question of law.
- L) Since cases of errors in exercise of jurisdiction or non-exercise of jurisdiction, material irregularity can be corrected in revision, section 115 of Civil Procedure Code (Revision) should be continued.
- M) Practice of passing preliminary and final decrees in mortgage suits and other suits should be abolished. In such cases there will be only one decree so that there may not be more than one appeal.
- N) Scope of summary trials (order 37) should be substantially evidenced.
- O) Provision for awarding compensatory costs against party delaying any stage of litigation should be resorted.

Most of the changes recommended by the Law Commission in this report have been implemented in amended Civil Procedure Code 1976. The change regarding one decree in mortgage suits is not implemented.

## **VI**

### **77<sup>TH</sup> REPORT OF LAW COMMISSION**

#### **DELAY AND ARREARS IN TRIAL COURTS (1978)**

The 77<sup>th</sup> report submitted by Justice H. R. Khanna extensively deals with the problem of delay and arrears. The commission has minutely and meticulously examined various stages of litigation and valuable suggestions have been made to solve vexed issue. The important conclusions and recommendations made in this report are summarised below:\*\*29

- (i) The problem of delay in law courts has of late assumed gigantic proportions and shaken confidence of public in courts to redress their grievances and timely relief.\*\*30
- (ii) A civil case should be treated as old if period of one-year elapses and criminal case should be disposed of within 6 months.

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\*\*29 LAW COMMISSION, 77<sup>TH</sup> REPORT, SUBMITTED ON 27/11/78.

\*\*30 PARA 1.1 OF THE REPORT.

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- (iii) The criticism that present judicial system is unsuited to Indian conditions and is an import from alien country is not correct. No judicial system in any country is wholly unaffected by outside influences.
- (iv) Ancient Indian judicial system and procedure both civil and criminal had definite and detailed rules, which can be applied. Present system is result of gradual evaluation. The real need is to further improve the existing system to meet modern requirements.
- (v) Long Delays take place in getting service of summons effected and hence summons be sent by post as also by process server.
- (vi) Representative suits under Order 1, rule 8 should be encouraged.\*\*31
- (vii) Judicial officers should normally insist upon the filing of written statement and defendant producing all documents should be enforced.
- (viii) In appropriate cases trial judge can act as conciliator and bar can also play significant role in bringing the compromise.
- (ix) Supervision of the court diary and fixing dates should be done by presiding officers and should not be left to Shirastedar. It is not desirable to give date on which matter is not likely to be taken up.
- (x) There must be some standards for number of cases pending in a court. Whenever there are indications that the number of cases has gone beyond that, additional courts should be created.
- (xi) Entire evidence should as far as possible be recorded at stretch and control be exercised by the courts to prevent unnecessary prolongation of deposition or asking uncalled for harassing or scandalous questions in cross examinations.
- (xii) Unnecessary adjournment of cases is disallowed by enforcing provisions of order 17, Civil Procedure Code.
- (xiii) While issuing commission directives for time bound completion be given.
- (xiv) Provisions for bringing legal representatives on record are followed to avoid delay (order 22).

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\*\*31 PAGE 50 OF THE REPORT.

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- (xv) Arguments should be heard soon after closure of evidence. Arguments so heard take less time. Unduly lengthy arguments should be avoided.
- (xvi) Tendency to cite needlessly large number of authorities and read lengthy passages from judgements may be avoided. Judgements of trial courts should deal with questions of fact by appraising the evidence, referring to relevant statutory provisions and citing authorities with direct bearing.\*\*32
- (xvii) The judgement should be given within time specified under order 20, rule 1.
- (xviii) Conciliation boards be set up on experimental basis in selected areas in disputes giving rise to claim of small amounts. If no settlement is arrived at within 3 months court shall presume that settlement is not possible.
- (xix) It is essential to attract young bright law graduates and lawyers of right caliber to the judiciary. Higher initial pay can be offered in deserving cases. There should be training course of 3 to 6 months and extensive training for various stages of suits, administrative matters, interlocutory matters etc. should be given.
- (xx) Practice of each High Court judge being in charge of a district should be continued. It should be ensured that arrears are cleared and brought within control.
- (xxi) To clear up the heavy backlog, the services of retired judicial officers known for their integrity, efficiency and quick disposal should be utilised.
- (xxii) Cases under special Act like matrimonial cases, eviction cases etc. should receive due attention.
- (xxiii) At most places District Judge is designated as tribunal for Motor Accidents but he hardly has time to deal with them. High Courts should hence appoint additional judicial officers for this purpose. Such claims should be disposed off within less than a year.
- (xxiv) There should be enough number of labour courts and industrial courts to speedily resolve disputes of workers.\*\*33

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\*\*32 PARA 7.4 OF 77<sup>TH</sup> REPORT BY LAW COMMISSION OF INDIA.

\*\*33 PARA 10.8 OF THE REPORT.

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- (xxv) There is need to pay sufficient attention to execution of decree. There is on part of judgement-debtor to file objections either himself or through some other person. Most of these objections, when scrutinised are found to be without merit.\*\*34
- (xxvi) In eviction cases relating to urban property delay is caused by successive attempts to obstruct delivery. Executing courts should exercise their powers to stop such obstructions.
- (xxvii) Satisfaction of decree depends upon Nazirs who are entrusted with carrying out steps in the course of execution. The work should be supervised by Judicial Officers.
- (xxviii) In Criminal Cases, it is particularly necessary that delay be eliminated, since the decision depends on oral rather than documentary evidence and with passage of time memory of witness fades.\*\*35
- (xxix) Sufficient police officials to affect service of summons should be spared.
- (xxx) Officials at the police station who are concerned with investigation should concentrate enough on investigation. They should be separated from the wing, which maintain law and order.
- (xxxi) Where the same judicial officer exercises both civil and criminal powers, normally they should not fix both types of cases on the same day. If such a course can not be avoided, he should set apart separate time for civil and criminal matters.\*\*36
- (xxxii) Disposal of cases involving large number of accused, gets delayed because one of the accused absents on date of hearing. In such contingencies court should consider representation of accused by his counsel.
- (xxxiii) The framing of charge should not be left to prosecution.

In matters in which an appeal or revision is filed against an interlocutory order, the appellate or revisional court should ensure that such an appeal or revision is dispose of within a reasonable length of time.

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**\*\*34** PARA 11.2 OF THE REPORT.

**\*\*35** PARA 12.1 OF THE REPORT.

**\*\*36** PARA 12.15 OF THE REPORT.

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- (xxxiv) Adequate courtrooms, equipped with proper facilities and sufficient accommodations should be provided.
- (xxxv) It should be ensured that record of trial court is sent back within 10 days of the judgement in appeal or revision against interlocutory orders.\*\*37
- (xxxvi) Long delays take place in grant of copies of judgements. These can be reduced if, instead of typing the whole thing, it is done by mechanical or electronic process.\*\*38
- (xxxvii) Judicial officials who are unpunctual should be punished.
- (xxxviii) Persons making false statements and averments on oath to misguide the court should be punished.

## **VII**

### **79<sup>TH</sup> REPORT OF LAW COMMISSION ON DELAY AND ARREARS IN HIGH COURTS AND OTHER APPELLATE COURT (1979)**

In this separate report, dated 10/5/79 Justice Khanna Chairman and Shri Shanker, Shri T. S. K. Iyer members and Shri P. M. Baxi member secretary have made crucial suggestions on pendency of matters in High Courts and other appellate courts.

The jurisdiction of High Courts in India is manifold i.e. appellate, original, special and in several other respects. As per the report various proceedings filed and pending in High Courts have in course of time, piled up to a disquieting figure and the present situation is so grave that it needs to be tackled without any more delay. The real cause for delay is substantial increase in fresh institutions is the main cause of delay followed by fall in disposal rates. The following important suggestions have been made in this report :-\*\*39

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\*\*37 PARA 13.7 OF THE REPORT.

\*\*38 PARA 13.10 OF THE REPOT.

\*\*39 PAGE 20 OF THE REPORT.

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- (i) The permanent strength of the High Court should be fixed keeping in view the average institution during last three years. As and when necessary the strength should be increased. Ad-hoc judges may be appointed to clear backlogs.
- (ii) Recommendations of Chief Justice for appointment of judges should not be kept pending for more than one month.
- (iii) The Chief Justice may play a pivotal role in securing optimum disposal by assigning work keeping in view the aptitude, grounding and familiarity with any branch of law.
- (iv) The administrative facilities in High Courts should be increased.
- (v) The report does not appreciate conferring right of appeals at various stages but right of appeal can not be dispensed with altogether. The present system of first appeal against questions of facts and law and second appeal on substantial point of law meets the requirements of the situation.
- (vi) The second Appeal should strictly confine to question of law only.
- (vii) The interpretation of law by the High Court is subject to law declared by Supreme Court binding on all subordinate Courts. It is therefore essential for uniformity that every error of law, raising a substantial question is promptly rectified by High Court by correct pronouncement of law.
- (viii) The registration, hearing and final disposal of appeals is delayed due to
 

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  - ⇒ Delay in making available certified copies of the judgements and decrees of subordinate courts.
  - ⇒ Delay in scrutiny and registration of appeal
  - ⇒ Delay by way of requirement of preliminary hearing
  - ⇒ Delay in preparation of notice and its service
  - ⇒ Delay in preparation of paper books
  - ⇒ Delay in final hearing.
  - ⇒ Delay in service of process.
  - ⇒ Delay in submitting translation of plaint etc.

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Power should be delegated to registrar to reduce the delay on each stage.

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- (ix) At the stage of admission concise note of arguments should be filed and it should be presented in advance before oral arguments.
- (x) A judgement is not a medium to display the learning of a judge, on points, which have only incidental bearing. The function of the judge while deciding a case is not the same as that of a research scholar writing a thesis on a particular branch of law. The art of writing not very long judgement while at the same time dealing with material points on controversy has to be developed gradually.\*\*40
- (xi) Grouping and classification of cases should be carefully made to secure speedy disposal and avoid conflicting decisions.
- (xii) There are certain cases, which by their very nature require speedy disposal. Such cases may include cases involving death sentence, habeas corpus petitions, appeals against orders of remand etc. and priority is given to them.
- (xiii) The benches created for hearing of matters should not be abruptly discontinued without making arrangements for disposal of existing pending cases with them. Benches should be allowed to function for a reasonable length of time.
- (xiv) In High Courts where appeal is heard by a single judge, a further appeal lies to the bench normally consisting of two judges under letters patent. This is unnecessary duplication of work and it is better if first appeals are heard by Division Bench.
- (xv) In city Civil Courts at Ahmedabad, Bombay and Calcutta the judges have concurrent original jurisdiction but no appellate jurisdiction and appeal goes to High Courts irrespective of the valuation. This position should be changed.
- (xvi) The dismissal of first appeals should not be in summary manner and should be by a brief reasoned judgement.

- (xvii) When a rule nisi is issued in revision applications further proceedings in subordinate courts come to a standstill. Greater care should therefore be taken and close scrutiny be made at the stage of admission of revisions.\*\*41
- (xviii) The certificate for appeal to Supreme Court is granted at time of passing or making the order and hence time is saved on that court.
- (xix) In Criminal cases whenever a first appeal against judgement of conviction is dismissed in limine, the court of Appeal, should record brief order giving reasons as to why it is dismissing appeal.
- (xx) While there are divergent views whether original civil jurisdiction of some high courts should be continued, it is recommended that it should be increased to some higher amounts.
- (xxi) The writ is basically an expeditious remedy and the decision of writ petition should normally be as quick as possible.
- (xxii) Separate tax Courts should be constituted on line of recommendations of Chokshi Committee on direct taxes.
- (xxiii) Pecuniary limits for appellate jurisdiction of the high Courts should be increased.
- (xxiv) The suggestions made in the report should be implemented in a speedy manner and report for delay should be distinguished from a report dealing with review of a Particular code. It is imperative that there is no undue delay in taking action on report which itself deals with question of eliminating delay.\*\*42

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**\*\*41 PAGE – 55 OF THE REPORT (PARA 12.2)**

**\*\*42 PAGE – 77 OF THE REPORT, CHAPTER 20**

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## VIII

### **80<sup>TH</sup> REPORT OF LAW COMMISSION**

#### **(APPOINTMENT OF JUDGES) (1979)**

Justice H. R. Khanna resigned and the report was later completed by JUSTICE S. N. Shanker. It deals with matter of appointment of judges. Some of the important observations/recommendation of the committee are as under:-

- (i) Appointment of judges should be only on merit. A person not appointed on merit but because of favoritism or other ulterior considerations could hardly command real and spontaneous respect of the bar. In any system of dispensation of justice, much depends upon personality of judges; the most well-drafted codes and laws would prove to be illusive if those concerned with construing and implementing those laws are lacking in right approach.\*\*43
- (ii) To attract persons with right caliber to the bench, service conditions of judges should be improved.
- (iii) Instead of one name a penal of names should be recommended by Chief Justice so that if one name is disagreed the other can be take-up.
- (iv) There should be a convention according to which atleast one third of judges of the High Court should be from other court.\*\*44
- (v) There is no need to constitute a judge's appointment commission and the proposal is also not favored by High Courts.
- (vi) Persons of highest caliber should be appointed as judges of Supreme Court and merit should be only consideration. Persons should enjoy highest reputation for independence, dispassionate approach and detachment.

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\*\*43 PAGE – 5 OF THE REPORT.

\*\*44 PAGE 25 OF THE REPORT.

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- (vii) Persons having political connections in past should not be appointed to Supreme Court unless they have for period of not less than 7 years snapped all relations with political parties and have distinguished themselves for independence, dispassionate approach and freedom from political prejudice.
- (viii) Principle of seniority should be observed in appointment to the office of Chief Justice. Departure from this principle in past has aroused controversy and has effected image of Chief Justice.\*\*45
- (ix) Regard being had to representation of different regions in the Supreme Court, the best persons from region should be appointed to court.
- (x) The Chief Justice of India while recommending the name of person for appointment as a judge of Supreme Court should consult his 3-seniormost colleagues for this purpose.

## **IX**

### **99<sup>TH</sup> REPORT OF LAW COMMISSION**

#### **(ORAL AND WRITTEN ARGUMENT**

#### **IN HIGHER COURTS) (1984)**

Under the Chairmanship of Justice K. K. Mathew, the following useful recommendations have been made :-

- (i) No rigid or mathematically precise time limits for oral arguments are recommended. It may be difficult to lay down any hard and fast rule for determining the minimum time for oral arguments. It will still be possible for the court to obtain, from counsel appearing on both sides estimate of the time that may be reasonably required and persuade him to adhere to it.
- (ii) The system of providing law clerks should be encouraged.

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\*\*45 PAGE – 36 OF THE LCI 80<sup>TH</sup> REPORT.

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- (iii) No recommendation is made to introduce a compulsory requirement of filing written arguments in all cases, at least for present. But the device of filing a "statement of case", if properly implemented should go a long way towards reducing oral arguments in point of time or atleast cannalising oral arguments into proper directions and focussing upon central issues of direct relevance, which itself will lead to a saving of time.\*\*46
- (iv) In constitutional cases practice of filing briefs containing written factual material should be encouraged, where factual material forms background of the case. In United States, practice on this line is found very helpful.
- (v) In constitutional cases, wherever possible an agreed statement of facts should be filed so as to reduce time taken for hearing.
- (vi) At the stage of admission of a case or Appeal, the court may dispense with oral hearing unless it considers such a hearing to be necessary in special cases.
- (vii) A day in month should be reserved for holding conferences between judges. This practice is found very helpful in U.S.A.
- (viii) As suggested by Shri Seervai in response to questionnaire sent by the Commission, in Criminal appeals leave be granted to appeal only against the sentence or if the question can be disposed of at the admission stage, to reduce the sentence after briefly hearing the parties. Supreme Court imposes upon itself needless burdens and inflicts serious injury upon itself for being unable to dispose off the matters with reasonable dispatch.\*\*47

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\*\*46 PAGE 16 OF THE REPORT.

\*\*47 SHRI H. M. SEERVAIS REPLY TO LAW COMMISSION'S QUESTIONNAIRE, PAGE 15 OF THE REPORT.

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## IX

### **115<sup>TH</sup> REPORT OF LAW COMMISSION**

#### **(TAX COURTS) (1986)**

The report submitted by Justice D. A. Desai suggests structural changes in the hierarchy of courts dealing with conflicts and disputes relating to direct taxes, indirect taxes and enforcement of legislation relating to imports and exports. The important observations/suggestions made in the report are as under:

- (i) Administration of justice primarily aims at providing mechanism for resolution of disputes arising in the society. Different forums have been set up to deal with different types of disputes e.g. Civil Courts, Criminal Court, Labour Courts, Tax Tribunals etc. specific forums specially devised to deal with specific disputes cater to the needs of persons who seek resolution of these specified types of disputes.\*\*48
- (ii) Need for diversification of justice in specialist fields is keenly felt. The High Courts despite all talent and sincerity of the judges have inherent limitations because of frequent changes of benches etc.
- (iii) A specialist body exclusively devoted to this work can help to avoid repeated enunciation of the same principle over and over again by different benches and citation of precedents, which is a time consuming exercise.
- (iv) Setting up a Central Tax Court will make a deep dent on arrears in the High Court and other pending proceedings will get accelerated treatment.\*\*49 It can also provide continuity, consistency and certainty in the matter of relevant principles.
- (v) There are no valid, convincing and cogent reasons for retention of reference procedure.

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\*\*48 AT PAGE 1 OF LCI, 115<sup>TH</sup> REPORT.

\*\*49 PAGE 13 OF THE REPORT.

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- (vi) Approach to taxation law has to undergo sea change. While evasion of tax was frowned upon, avoidance by legal devices was pampered. The large hidden loss to the community by some of the best brains in the country being involved in perpetual war waged between tax-avoided and his expert team of advisers, lawyers and accountants on one side and the tax-gatherer and his perhaps not so skilful advisors on the other side. \*\*50 A developing society must find resources for its development projects. Therefore Taxes must be recovered expeditiously. If court proceedings intervene to delay payment of taxes, the budgetary burden will pass on to innocent good citizens.\*\*51
- (vii) The customs, Excise and Gold (Control) Appeal Tribunal has been set up on October 16, 1982 and it has heavy backlog of cases. Roughly 25000 Appeals were pending on 31/3/86.\*\*52
- (viii) Substantial amount of Rs.381506.71 lacs was blocked in Custom and Excise cases before Supreme Court and High Court and drastic action was required.
- (ix) Jurisdiction of Central Tax Court must be widened to include appeals against the decision of Chief Controller of Exports, and Imports under the Imports and Exports (Control) Act 1947.

## X

### **117<sup>TH</sup> REPORT OF LAW COMMISSION ON TRAINING OF JUDICIAL OFFICERS (1986)**

Justice D. A. Desai, Chairman has submitted this report on Training of judicial officers. The important suggestions/observations made by the commission are as under:

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\*\*50 MC DOWELL AND CO. V/s. COM. TAX OFFICER, 1985(3) SCR 791 AT PAGE 809.

\*\*51 PAGE 10 OF THE REPORT.

\*\*52 PAGE 15 OF THE REPORT.

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- (i) Any organisation, service oriented in Character can be appraised in terms of effectiveness in the achievement of objective goal results and promotion of internal efficiency in order to achieve the results. Hence the goals and objectives for which legal system is devised needs to be looked into.
- (ii) Human resources constitute critical element of any organisation, the quality and quantity of human resources significantly influence the level of effectiveness as well as efficiency of organisation. The criticality of human resources is reflected in the off repeated adage that any organisation is only as good as the people who operate it.
- (iii) There is need for innovation, Lord Devlin said about British system that if our business methods are as antiquated as our legal system we would have become a bankrupt nation long back.
- (iv) It is hence undeniable that the judges have to be up to date and can afford to fall behind at their own perils the updating can hardly be left to the voluntary effort of the judge to read modern literature on the subject. Knowledge is power and it can be acquired by facilities of training. There is hence need for imparting training to judicial officers at all levels with a view to improve performance and efficiency.
- (v) The most glaring omission in the existing training schemes is that they do not provide for in-service training or refresher courses, save and except a few selected individuals being deputed to attend training courses on criminology.
- (vi) Another lacuna in present day schemes is the emphasis only on giving practical training by observation in courts on how to conduct cases. It has an in-built disadvantage of sustaining past practice.
- (vii) The blueprint prepared by Chief Justice of India in 1985 for establishment of an academy for training of Judicial Officers needs to be implemented.
- (viii) The training should be by way of pre service training and refresher courses.
- (ix) The Pre service training should include the following subjects : \*\*53

- Salient features of Constitution of India
  - Civil Law, Criminal Law and Labour Law
  - Local Laws
  - Law relating to Taxes, Excises and Customs and other economic offences.
  - Law relating to conditions of services of employment
  - Nyaya Panchayats
  - Relating with police and Civil Execution Officers.
  - Problems of Schedule Castes, Tribes, OBC, Weaker Sections, Family disputes etc.
  - Jail Administration.
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Aspects to be taken care of by presiding officers of the court with a view to minimising the delay in disposal of cases and reducing arrears in courts and of writing judgements.

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- Historical development of Legal and Judicial system in India
  - Cultural and social conditions and their impact on legal and judicial administration.
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(x) The refresher courses should be provided after putting in 8 to 10 years of service. The same should include

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- Amendment of the Constitution and the Civil, Criminal and other laws for last 10 to 15 years.
  - Case Law-Decisions of Supreme Court and High Courts
  - New developments in field of economic laws and constitutional laws.
  - Modern practice of office Management, including documents and storage of judicial records.
  - Modern jail administration.
  - Measures to reduce disposal of cases in courts and reduce arrears.
  - Problems of SC/ST.\*\*54
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**\*\*54** PROF.UPENDRA BAXI, IN NOTE SUBMITTED TO LCI.

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- (xi) It is a mistake, common enough in India that knowledge grows necessary in terms of and in proportion to Seniority, age and hierarchical position. Eminent persons from all related spheres should be involved in training.\*\*55 Law professors and academicians can make valuable contribution as per suggestions received by the Commission. Suggestions made by them should be also kept in mind while imparting training.\*\*56
- (xii) Rendering justice is an art in itself and acquiring rudiments of art needs training. The minimum equipment to render justice requires a keen intellect to shift grain from the waste, to perceive falsehood, to appraise relative claims, to evaluate evidence, a fair and balanced approach, needs of the society, constitutional goals and above all a keen desire to do justice, is vital and none of these is dealt with in syllabus prescribed by law colleges.\*\*57
- (xiii) The training institute should acquire professional legal status to offer continuing legal education in the following branches :-
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- (a) Courses in Judicial Duties.
  - (b) Refresher Courses
  - (c) Courses in new legal education
  - (d) Specialist Courses
  - (e) Inter disciplinary Courses
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- (xiv) The judges are not exposed to workshops, seminars and symposia, which is held in other disciplines at regular intervals. Ordinarily every member of the society directly and indirectly comes in contact with the society. Expectation by the society from the judiciary is very high. To train and produce good judges, the faculty should be drawn from outstanding legal academicians, justices of High Court and Supreme Court, Senior and outstanding members of the bar and even eminent citizens rendering social service.\*\*58
- (xv) Regional training centres should also be established.
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**\*\*55** PAGE 9 OF THE REPORT.

**\*\*56** PAGE 11 OF THE REPORT.

**\*\*57** APPROACH OF LAW COMMISSION, PAGE 12 OF THE REPORT.

**\*\*58** PAGE 21 OF THE REPORT.

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## XI

### **120<sup>TH</sup> REPORT OF LAW COMMISSION ON MANPOWER PLANNING IN JUDICIARY (1986)**

This report submitted by Law Commission of India under Chairmanship of Justice D. A. Desai deals with problem of judicial manpower planning. The important observations/recommendations of the committee are summarised below:-

- (i) Judicial services are a crucial aspect of the services that the modern Indian State should provide to its citizens. Article 39 of is a major provision, which stipulates that the state shall secure that the operation of legal system promotes justice on the basis of equal opportunity and shall also provide free legal aid by suitable legislation.\*\*59
- (ii) The problem can be approached are several perspectives and also by correlating the general increase in population rate with question of number of judges in all cases. India has only 10.5 judges per million populations and is far behind compared to Australia (41-6) Canada (75.2), England (50.9), and United States (51). The total judge strength in India is grossly inadequate.\*\*60
- (iii) The expenditure on judiciary constitutes an infinite small portion of tax receipts of each States and which includes receipts from court fees, which must at any rate, is exclusively spent on administration of justice. It is wrong to term such expenditure as non-plan expenditure. \*\*61 It costs the nation far more to maintain present ratio because the State also incurs several indirect expenses, which can be reduced by speedy disposal of cases.

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\*\*59 ARTICLE 39A, CONSTITUTION OF INDIA, BASU, P.303

\*\*60 PAGE – 3 OF THE REPORT.

\*\*61 PARA 12 OF THE REPORT.

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- (iv) If legislative representation can be worked out on basis of population and services of state can also be similarly planned there is no reason for non-extension of this Principle to judiciary.
- (v) While population may be a demographic unit it is also a democratic unit. In other words we are talking of citizens with democratic rights including the right to access to justice which it is the duty of state to provide.
- (vi) A criteria that can be used to quantify the much needed judge strength is either or both the litigation rate and the rate of pendency. It can safely be estimated on a conservative basis that minimum increase in judge strength should be increase to 40357 (from 7675) which will bring the population ratio to 50 judges per million in India.\*\*62

## **XII**

### **SUMMARY OF OTHER IMPORTANT REPORTS**

#### **OF LAW COMMISSION OF INDIA**

##### **REPORT NO.**

##### **SUGGESTIONS**

44<sup>TH</sup> REPORT (AUG.1971)

Suggestions have been made in respect of Appellate jurisdiction of Supreme Court in Civil matters and how delay and backlog can be reduced.

45<sup>TH</sup> REPORT (OCT.1971)

It deals with subject of civil appeals to the Supreme Court on certificate of Fitness and suggests how the inflow of matters to Supreme Court can be cannalised by exercising proper care and promptness in issuing certificate by High Courts.

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\*\*62 PARA – 16 OF THE REPORT

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**121<sup>ST</sup> REPORT (1987)**

It deals with a new forum for judicial appointments. Justice D. A. Desai was the Chairman. The commission has made suggestions to ensure that persons with merit are selected and separate forum is constituted for that purpose.

**123<sup>RD</sup> REPORT (1988)**

Decentralisation of Administration of justice in disputes involving 2 centres of Higher Education was examined and suggestions were made in the matter.

**124<sup>TH</sup> REPORT (1988)**

The report titled "High Court Arrears a Fresh Look", reviews the position of arrears in the High Court and makes additional suggestions to reduce such arrears.

**125<sup>TH</sup> REPORT (1988)**

The report titled "Supreme Court Arrears Fresh Look" reviews the position of pending cases in Supreme Court and makes useful suggestions in the matter.

**126<sup>TH</sup> REPORT (1988)**

The report titled "Government and public Sector litigation-policies and strategies" deals with the topic from the angle that Govt. and public Sector Undertakings forms largest segment of litigants in India and delays can be reduced by concentrating on litigation involving this segment.

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- 127<sup>TH</sup> REPORT (1988) It deals with Resources Allocation for infra-structural services in Judicial Administration and read with the earlier report on manpower planning in Judiciary suggests various measures to gradually increase the strength of Judiciary.
- 128<sup>TH</sup> REPORT (1988) The report deals with cost of litigation and other allied aspects.
- 129<sup>TH</sup> REPORT (1988) It deals with the subject of Urban litigation and suggests measures to adopt on trial basis mediation as Alternative to adjudication, to reverse the trend of pendency of arrears.
- 131<sup>ST</sup> REPORT (1988) This report deals with the role of legal profession in the administration of justice and the findings reveal that legal profession can play a very constructive and positive role in overall improvement of the system of administration of justice in several important and crucial areas.

### **XIII**

#### **DAS COMMITTEE (1949)**

In 1949, the High Court Arrears Committee was set up, by the Government of India under the Chairmanship of Mr. Justice S. R. Das for inquiring and reporting as to the advisability of curtailing the right of appeal and revision, the extent of such curtailment, the methods by which such curtailment should be effected and the measures which should be adopted to reduce the accumulation of arrears.

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The Committee made number of suggestions, but most of the suggestions remained unimplemented and subsequently new committee presided over by Justice Hidaytullah was formed to denovo look into the problem of pendency of cases in the High Courts.

## **XIV**

### **JUSTICE SHAH COMMITTEE REPORT (1972)**

Speedy Justice is of the essence of an organised society and it is in the interest of both the State and the citizens that disputes which go to the law Courts for adjudication are decided as early as possible. Justice delayed is justice denied in most cases.\*\*63

In the year 1969, the Govt. of India appointed committee presided over by Justice Hidayatullah. After his retirement justice Shah completed the report. The report known as Shah Commission Report has made several useful suggestions for delay and reduction of arrears in High Courts. Some of the important suggestions made by this High Courts Arrears Committee (1972) are as under :-

1. After identifying 14 main reasons for delays the Committee has concluded that in the ultimate analysis it is obvious that it will depend entirely on the caliber and willing effort of individual judges in the country not only to clear the backlog but keep down the file without unduly affecting the quality of justice.
2. It 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.\*64

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\*\*63 LAW COMMISSION, 79<sup>TH</sup> REPORT AT PAGE – 2.

\*\*64 PAGE 91 – 92, HIGH COURTS ARREARS COMMITTEE REPORT.

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3. It was difficult to adhere to any time schedule for the disposal of a given cause, because the time for each individual cause would be determined by many factors.\*\*65
4. It is uniformly complained that lengthy arguments are addressed in many cases on matters, which are only of incidental importance, and there is no attempt to concentrate upon the essentials of the dispute between the parties to the litigation. Hence it is recommended that unless otherwise ordered by the Court in every appeal the Advocates for parties should draw up a concise statement setting out the facts, briefly giving rise to the dispute, the points at issue, the proposition of law or fact to be canvassed and the authorities relied upon for each proposition and relief claimed.\*\*66 These statements should be exchanged between the advocates and filed in Court well in advance of the hearing and the judges should not ordinarily permit the advocates to travel beyond such a statement or cite authorities not included.
5. There is occasionally failure to make optimum utilisation of the judge strength. One factor, which undoubtedly affects the turnover in some High Courts, is the non-utilisation of judges having special aptitude and talent for particular type of cases. The Chief Justice can ascertain such talent and allocate the work to different benches accordingly to the judges familiar with work of such specialised branch.\*\*67
6. The differences, anomalies and inconsistencies in respect of forums of appeal available against decisions of City Civil Courts needs to be removed so that in every matter, the appeal does not straight go to High Courts.

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\*\*65 PAGE 33, PARA – 21 OF THE REPORT.

\*\*66 PARA – 97 OF THE HIGH COURT ARREARS COMMITTEE REPORT – 1972.

\*\*67 PAGE 83, PARA 135, HIGH COURT ARREARS COMMITTEE REPORT.

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7. Under the special Acts like Indian Divorce Act requirement about confirmation of decree by bench of High Court is a hangover of the time and should be done away with.\*\*68
8. The procedure of revisions and appeals under our system is entirely capable of being an instrument of great injustice and it would be wise to do away with all complicated provisions and appeal should state only question of law to be argued and absence of evidence to justify a finding or perverse finding which shall be deemed to be a question of law.\*\*69

The Shah Committee has thus comprehensively studied the various aspects contributing to the delay and has suggested procedural and administrative solution to such problem. Wherever required amendment to reduce technicalities /multiplicity of actions etc.

## **XV**

### **REPORT ON THE ADMINISTRATION OF CIVIL AND CRIMINAL JUSTICE FOR THE STATE OF GUJARAT (1982)**

The aforesaid report published in the year 1985 on basis of the particulars of 1982 staff strength of High Court, District Courts, City Civil Court, Criminal Courts and other Courts.

As per this report average duration in days of the suits decided in various courts in Gujarat State is as under :

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\*\*68 HIGH COURT ARREARS COMMITTEE (1972), CHAPTER 5, PAGE 68, PARA 76.

\*\*69 PAGE – 60, PARA 43 OF HIGH COURT ARREARS COMMITTEE REPORT.

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**AVERAGE DURATION OF SUITS DECIDED \*\*70**

<u>COURTS</u>	<u>WITHOUT</u> <u>TRIAL</u>	<u>EX</u> <u>PARTE</u>	<u>ON</u> <u>ADMIS-</u> <u>SION</u> <u>OF CLAIM</u>	<u>BY</u> <u>COMPR-</u> <u>OMISE</u>	<u>AFTER</u> <u>FULL</u> <u>TRIAL</u>	<u>ON</u> <u>REFEREN-</u> <u>CE TO</u> <u>ARBITRAN</u> <u>TION</u>	<u>BY</u> <u>TRANS-</u> <u>FER</u>
1.Village Courts	338.3	-	-	3	-	-	-
2.Courts of Civil Judges	376.4	243.7	218.5	361.0	948.4	268.7	116.4
3.Courts of Small Causes	320.0	311.6	79.0	296.4	518.6	-	584.0
4.District Courts	227.2	85.7	270.4	216.2	350.3	-	185.0

The Committee has also observed that some of the District Courts, (Baroda and Surendranagar) being prominent among them had carried out Inspection of substantial number of Courts below them.

In respect of criminal matters the Committee observed that in 1982 there were in all 15,17,222 offences reported during the year of which 96,765 were under IPC and 14,20,463 were under Special and Local Acts. The highest figure of offences was in city of Ahmedabad followed by Surat, Rajkot and Baroda.

The number of cases pending from previous year comes to rs.19,01,670/-.

The State had 720 cases of murder and upon further analysis, the causes/motive behind the murder was as under :-

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**\*\*70 PAGE 16 OF THE REPORT.**

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<b><u>DESCRIPTION</u></b>	<b><u>NO.OF CASES</u></b>
(i) Murder arising from motive Connected with women	140
(ii) Murder of children for sake of Ornaments	20
(iii) Other cases of Murder for sake Of gain.	122
(iv) Murder arising out of other Causes.	438
	720

The subsequent updated reports in the same form are not available. However on basis of various other datas, information has been updated in chapters pertaining to delays etc.

## **XVI**

### **SATISH CHANDRA COMMITTEE**

#### **REPORT (1986)**

The Committee under the Chairmanship of Justice Satishchandra has in the year 1986 submitted its report.

The important recommendations made by the committee are as follows :

1. The Satishchandra Committee has identified 22 different causes for the accumulation of arrears in High Courts, the same includes Litigation Explosion, Redical change in pattern of litigation, Increase in legislative activity, long arguments, lack of priority for disposal of old cases, granting of unnecessary adjournments etc.
2. Strength of judges in City Civil Courts should be suitably augmented simultaneously with the enhancement of their jurisdiction to enable them to

cope with the inflow of new work is emphatically reiterated. Additional requisite staff should be simultaneously sanctioned.

3. The committee has considered various aspects having bearing on letters patent and made suggestions on the filing of LPAs.
4. The legislation conferring enlarged first appellate jurisdiction on the district Courts should apply to the Regular First Appeals arising out of the decrees passed.
5. Abolition of right of second Appeal when the subject matter does not exceed Rs.10000/-
6. In matters of small and intermediate valuation there should be one trial and one appeal.
7. The court hours should not be spent for the purpose of doing administrative work, for purpose of preparing judgements or attending social functions. Where there is tremendous pressure of work in the courts utmost care should be taken to ensure that judicial time is used only for doing judicial work.
8. The contributory factors for increase in arrears includes inadequacy of staff strength, delay in filling up vacancies in the High Courts and unsatisfactory appointment of judges.
9. The deterioration in terms of quality of Judges on High Court was attributable to appointment of Judges who have not been truly recommended by the Chief Justice of the High Court. Selection of persons on consideration other than merit should be discouraged.\*\*71
10. The Sea change, which has gradually come into the political process, is directly responsible for the grave deterioration and fall in standards of appointments. It is unfortunate that the judgeship of high court is to be canvassed for.

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**\*\*71 FROM CHAPTER V OF SATISH CHANDRA COMMITTEE REPORT.**

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11. Appeals valued at rupees 50000 and above should be heard by District Judge personally.
12. The legislation conferring enlarged first appellate jurisdiction on the District Courts should apply to regular Appeals arising out of decrees passed in original suits, whether instituted before or after this legislation.
13. District Judges should be empowered to entertain First Appeals irrespective of value of original suit or where such value does not exceed Rs.5 lacs.
14. Uniform pattern of classification of cases should be instituted in the High Courts.
15. Criteria fixed in earlier conferences of Chief Justices that per judge disposal should be 650 in the High Court should be followed and the judge strength should be determined on the basis of the same.
16. The judge strength of High Court may be suitably increased to compensate for the time of Judges taken when they function as members of advisory boards.
17. There is a need to review the existing provisions relating to original jurisdiction of the High Courts.
18. The practice of deviating from recommendation of Chief Justice in appointment of High Court Judges may have deleterious effect on the homogeneity of courts and may confer on executive a power to appoint someone else in the place of person who is already appointed.
19. The political/executive interference in appointment of judges has effect not only in terms of quality but even the quantity of work.

## **XVII**

### **MALIMATH COMMITTEE REPORT (1990)**

The Government of India constituted another areas committee on the recommendation of Chief Justice's conference.

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Hon'ble Mr. Justice V. S. Malimath, Chief Justice, Kerala High Court was the Chairman and Justice P. D. Desai and Justice A. S. Anand, Chief Justice of Calcutta and Madras High Courts were its members. The committee has exhaustively reviewed the earlier reports on this subject including Das Committee Report, Satish Chandra Committee Report and Law Commission Reports. They have also compared the Indian system with systems prevailing in other countries on some aspects and made several useful suggestions. The important suggestions made by the Committee have been summarised below:-

- (i) The committee has listed as many as 33 different reasons which contribute to the delay caused in judicial proceedings and have suggested that appropriate remedial measures should be initiated immediately before the situation deteriorates beyond repairs and system collapses under its weight.\*\*72
- (ii) Ordinary original Jurisdiction of the High Courts of Calcutta, Bombay and Madras should be abolished and the City Civil Courts in Metro areas should be vested with unlimited pecuniary jurisdiction with prospective effect.
- (iii) Strength of City Civil Courts should be increased to cope up with inflow of new work.\*\*73
- (iv) Suitable amendments be carried out in respective City Civil Courts Act accordingly.
- (v) Appeals against the appellate decision of Single Judge of a High Court should be abolished, and to suitably amend section 100 A of Civil Procedure Code.
- (vi) There should be no first appeal against the decision or order of a Single Judge of the High Court rendered in exercise of the writ jurisdiction, complex cases be heard by Division Bench.\*\*74

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\*\*72 PAGE 118 OF MALIMATH COMMITTEE REPORT.

\*\*73 PAGE 119 OF MALIMATH COMMITTEE REPORT.

\*\*74 PAGE 120 OF MALIMATH COMMITTEE REPORT.

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- (vii) The Committee did not favour the recommendation of Satish Chandra Committee to confer jurisdiction on District Courts to hear appeal upto Rs.5 lacs.
- (viii) Regular first Appeals arising out of decrees passed in suits, where value of subject matter is below Rupees Three lacs, should be heard and disposed of by a single Judge and others by a Division Bench.
- (ix) Regular First Appeals should be listed for preliminary hearing and the question of fixing a day for the final hearing will arise only if the appeal is not summarily dismissed.
- (x) Appeals under special statutes should lie to the District Courts where the orders under appeal are not passed by District Courts or presided over by judicial officers.
- (xi) Pecuniary limit upto, which no second appeal shall lie, be enhanced.
- (xii) The committee has not favored conferment of revisional powers on the District Court.
- (xiii) Revisional jurisdiction in respect of interlocutory orders passed in appeal, trial or other proceeding should be curtailed. For that purpose existing section 115 Civil Procedure Code be amended to curtail power to vary or reverse any order except when such order if made in his favour would have finally disposed off the suit or other proceedings.
- (xiv) Calling for records in revisional cases should be restricted by adding the provision that such records need not be sent unless expressly so directed by High Court.\*\*75
- (xv) Criminal appeals involving sentence of death or imprisonment for life or appeals against acquittals should be heard by bench of two judges.
- (xvi) Court of Session should have exclusive power of revision against orders of Criminal Courts subordinate thereto. High Court should have power of revision only against orders of Sessions Court/Special Courts.

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**\*\*75 PAGE 123 OF MALIMATH COMMITTEE REPORT.**

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- (xvii) Power of granting anticipatory bail should be restricted to the Court of Session by effecting a suitable amendment.
- (xviii) State Government should appoint not less than 2 additional public prosecutors for each Criminal Court and adequate attention must be paid to appoint competent lawyers as Public Prosecutors.
- (xix) State Govt. should set up proper machinery to carefully and objectively scrutinise the proposals for preferring appeal against orders.
- (xx) No paper books should be prepared in Criminal Appeals required to be heard by Single Judge.
- (xxi) Adequate number of Police constables should be attached to each police station exclusively to attend to the work of each court.
- (xxii) Adequate Staff, funds and stationary be provided to all courts.
- (xxiii) The jurisdiction of the High Courts to try election petitions should not be taken away.
- (xxiv) Subject-wise broad classification of matters should be made. Writ proceedings may be classified depending upon the subjects such as labour, service, rent control etc. cases not coming under specific category should come under miscellaneous category.
- (xxv) Actual work of grouping of cases and classification should be assigned to competent and specified officials of the High Court.
- (xxvi) Matters which require prompt attention such as criminal cases in which accused are in jail, matrimonial cases, maintenance cases, cases relating to admission to educational institutions and cases against interlocutory orders should be listed for hearing on priority basis.
- (xxvii) Older cases should be given preference and they should be posted for hearing before judges who are not burdened with admission or other misc. work.\*\*76
- (xxviii) Hearing of matters in chambers should be avoided.

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**\*\*76 PAGE 124 OF MALIMATH COMMITTEE REPORT.**

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- (xxix) In writ petitions, First Appeal, Second Appeals Civil Revision Applications etc party should be required to file brief list of points formulated for arguments with list of authorities.
- (xxx) Convention should be established that no adjournment of listed cases would be allowed except in exceptional cases.
- (xxxi) Dictation of judgements in open court will certainly ensure quicker disposal of cases and this practice should be continued.
- (xxxii) Earnest efforts should be made by the judges to see that the court proceedings are not protracted.
- (xxxiii) Bench and Bar ought to recognise the urgent need to adhere to proper norms of conduct and attitude.
- (xxxiv) Reserved judgements should be ordinarily pronounced within 6 weeks of conclusion of arguments. Only operative part of it should be read.
- (xxxv) To avoid inordinate delay in furnishing certified copies of judgement and final orders etc. a copy of the judgement/order should be taken and authenticated immediately and preserved in copying section.\*\*77
- (xxxvi) Furnishing certified copies free of cost to all parties is recommended.
- (xxxvii) There is no justification for amending Art.139 A of Constitution (It deals with Transfer of Cases.)
- (xxxviii) High Courts should be closed only on death of President, Prime Minister, Governor, Chief Minister and Sitting Chief Justice and Judge of Supreme Court or of the High Court.
- (xxxix) Computers and Modern Equipment's should be used on both administrative and judicial sides.
- (xl) Micro filming equipments could be used for preservation of records and once this is done rules relating to records be amended.

- (xli) Task of legislative drafting should be entrusted to Highly specialised experts.\*\*78 Any proposed legislation unless of a routine nature should be proceeded by adequate investigative exercise.
- (xlii) If a bill introduced in legislature covers a field of considerable importance and affects a class or section of the public, bill should be referred to select committee for in depth examination.
- (xlili) Providing sufficient number of judges is primary requirement of speedy justice and it should receive attention.
- (xliv) No person should be appointed to any responsible position which clothes him of important statutory powers without imparting training in regard to exercise of those powers.
- (xlv) Disposal of 800 cases per judge per year should be taken as working norm of the High Court.\*\*79

## **XVIII**

### **REPORT ON REFORM IN LEGAL EDUCATION**

#### **AND ENTRY IN PROFESSION (BY**

#### **JUSTICE AHMEDI) YEAR 1995**

Justice Ahmedi, former Chief Justice of India was of the firm belief that unless the standard of legal education and pre entry training is improved, the system of administration of justice will continue to suffer. He has observed that much is required to be done for improving the standard of legal education and profession. The report suggests several changes in existing pattern of education in law colleges. The concept of full time legal course for 5 years to train the persons exclusively in discipline of law is recommended.

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\*\*78 PAGE 127 MALIMATH COMMITTEE REPORT.

\*\*79 PAGE 129 OF THE REPORT.

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Another important aspect is the Bar Council of India (Training) Rules under which a person after passing his 3 year law degree course (Special LL.B) is required to undergo extensive practical training under an Advocate with atleast 15 years standing in the profession.\*\*80 During such training the trainee is required to attend the chamber of advocates and also attend the courts. He is required to maintain regular diary of the cases attended by him.

The training rules came in force with effect from 2/4/96. By virtue of Bar Council of India training rules the effective period for law education has increased to 4 years after graduation. If the provisions relating to training are implemented and followed in right perspective the caliber of the legal profession can certainly improve. Such an improvement can definitely bring a slow but certain change in the overall quality of administration of justice. Justice Ahmedi has also made several important recommendations on the syllabus, faculty, subjects to be taught practical training, finance to Law College's etc.

## **XIX**

### **STUDY MADE BY INDIAN INSTITUTE OF**

### **MANAGEMENT (IIM) AHMEDABAD \*\*81**

The functioning of judicial system can not be looked in isolation and modern concepts of effective management need to be applied even to system of administration of justice. The Supreme Court therefore engaged IIM, a reputed professional institutions to carryout extensive study of functioning of systems prevailing in the Supreme Court and suggest corrective measures.

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\*\*80 BAR COUNCIL OF INDIA TRAINING RULES 1996.

\*\*81 COVERAGE BY TIMES OF INDIA ON IIM STUDY

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IIM in its report to the Supreme Court has pointed out several areas, which require improvement and made suggestions to increase the effectiveness. Large Scale Computerisation and modernisation of the existing system is required and several measures have been recommended to reduce the time period in the decisions.

## **XX**

### **TIWARI COMMITTEE REPORT (1981)**

The subsequent part of this research work deals with pending cases of banks and financial institutions, which constitutes the largest segment of commercial causes. It will hence be worthwhile to refer to some of the Committees constituted by Reserve Bank of India/Govt. of India for charge in existing laws, in context of bank cases. The Tiwari Committee in the year 1981 submitted its report, which is published by the Reserve Bank of India. The report analyses the problems faced by banks in recovery of their dues and various tactics adopted by the parties to delay and defeat the recovery action of the banks. The committee expressed concern on the status quo approach to this growing problem and had strongly recommended that cases of banks are given special priority and the cases should be assigned to special tribunals/courts. The Committee also has suggested that the procedural rules of such courts should be more conducive to speedy recovery and quick decisions.\*\*82

## **XXI**

### **NARSIMHAN COMMITTEE REPORT (1992)**

After 1991, India started making self-introspection in terms of new economic policy and liberalisation. High-powered Narsimhan Committee has made several recommendations of far reaching consequences in banking sector. Concept of

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\*\*82 TIWARI COMMITTEE REPORT PUBLISHED BY RESEARVE BANK OF INDIA.

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Non Performing Assets (NPA) was introduced. The Committee tried to investigate into the real financial health of banks. The Committee observed that banks and financial institutions at present face considerable difficulties in recovery of dues from the clients and realisation of security charged to them due to delays in legal process. A significant portion of lendable funds of the banks and financial institutions is thus blocked in unproductive assets the values of which keep deteriorating with the passage of time. Banks also incur substantial amount of expenditure by way of legal charges, which add to their overheads. Unless a proper judicial forum is established which could help banks and institutions in enforcing the claims against their clients speedily the function of financial system would continue to be full of problems. Hence setting up of special tribunals is of critical importance.\*\*83 The Government has constituted Debt Recovery Tribunals on basis of the same.

## **XXII**

### **GOSWAMI COMMITTEE REPORT**

Recently a committee on Industrial Sickness head by Dr.Omkar Goswami has reviewed the role of BIFR in context of economic realisation and has made followign recommendations/observation.

1. The period normally taken by BIFR in disposal in cases is 749 days and in some cases more than 3 years. BIFR is a quasi judicial body and their success rate in rehabilitation is far from satisfactory.
2. At present BIFR hearing are mainly aimed at seeking clarifications, explanations etc. BIFR should give an abridged version of its decision to reduce delays.
3. At the end of each hearing specific date for next hearing should be given.

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**\*\*83 REPORT ON BANKING SECTOR REFORMS BY NARSIMHAN COMMITTEE.**

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4. BIFR should empanel more experts in the field of finance, taxation, company law etc to get expert opinion on turn around and reorganisation of a sick.
5. Definition of Sick Company should be amended and negative net work criteria should be elimiall together. In its place default of 180 days or more to term lending institutions or irregularities in the bank for the same period should be treated as a ground for sickness.
6. If case of company is reffered to BIFR the board would instruct the management to prepare are organisation plan within 90 days.
7. If performance of BIFR is not likely to be improved BIFR may be would up.\*\*84

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\*\*84 VIEWS OF SHRI V. S. KAVERI – CHANGING ROLE OF BIFR IN PRAJNAN JANUARY – MARCH 1995 AT PAGE 518.

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