

## CHAPTER 5

### TRACKING THE 'DELAYS'

#### METHODOLOGIES ADOPTED BY THE EXPERT BODIES

The official research studies towards legal reforms undertaken by the Law Commission and special *ad hoc* committees generally follow certain customary methods for delving into the issue. Such methods include, among others, interviewing prominent participants of the legal system, extracting views through questionnaires, harnessing personal experiences and personal perceptions of the problem. However, clinical research has been rare to find the real reasons for delay and arrears in the Indian legal system. This, in itself, might be one of the essential factors for the ineffectiveness of the solutions so far suggested. A quick glance at the methodologies adopted by the various Law Commissions, Expert Committees, Research Groups and Research Scholars would illustrate this proposition.

##### *5.1 Law Commission of India*

As noted earlier, four Reports of the Law Commission of India have primarily dealt with delay and arrears in traditional litigation and suggested amendments to the Codes of Civil and Criminal Procedure. A glance at the methodology adopted for preparation of these Reports and recommendations made therein suggests that the questionnaire approach had been the most popularly adopted methodology. In-depth study of conflicting judicial opinions, amendments to the Code of Civil Procedure by the High Courts, personal experience of the Members of the Law Commission and their personal assessment of the

vice at hand considerably contributed to the final recommendations proposed for reducing delay and arrears in litigation.

#### *5.1.1 Fourteenth Law Commission Report*

The 14<sup>th</sup> Law Commission on the Reforms of Judicial Administration initiated its process of suggesting legal reforms through the popular questionnaire method. In order to arrive at its conclusion and build suggestions, the Commission framed a comprehensive questionnaire containing 193 questions embracing almost all aspects of the judicial administration in India. More than 6000 copies of the questionnaire were distributed among the individuals and associations including the High Courts and State Governments, Bar Association and other organisations such as Chamber of Commerce, individual lawyers and judicial officers. However, the Commission was soon staring at an inadequate number of answer sheets with no response from various expected sectors. According to the Commission, though fairly a large number of replies were received, the response was not as encouraging as was expected. The questionnaire was abandoned and a personal tour around the country was found necessary. The Commission decided to visit the States and hold sittings at the principal seat of the High Court in each State and to examine witnesses at these places.

The Commission met on 18<sup>th</sup>, 19<sup>th</sup> and 20<sup>th</sup> of October, 1956 to further discuss the matters raised in the questionnaire in the light of the replies and information received and formulated certain tentative ideas with a view to elicit opinion on those at the sittings of the Commission. Before commencing the tour of the States, the Commission requested all the High Courts and the State Governments to suggest the names of witnesses of

several categories, such as (i) judicial officers (ii) representatives of Bar Associations; (iii) representatives of the State Governments; (iv) Heads of police departments; (v) Chairman of the Public Service Commissions; (vi) University teachers of law; (vii) Persons experienced in the working of Village Panchayat Courts; (viii) representatives of Legal Aid organisations and (ix) individual lawyers. Selection of witnesses to be examined in each State was made from the lists supplied to the Commission by the High Courts and the State Governments.

In addition to securing the lists, publicity in the press was given to the visits of the Commission to the headquarters of High Courts in order to solicit the assistance of witnesses who volunteered to place before the Commission their view on their problem in which they were particularly interested. The Commission in all examined 473 witnesses whose names have been placed in Appendix-II to the report. The Commission held its sittings from December 1956 to November 1957. On the basis of the replies received to the questionnaire and information gathered through the witnesses, the Commission finally formulated its recommendations on 26.9.1958.

The Final Report of the 14<sup>th</sup> Law Commission of India was an outcome essentially based on the replies made to questionnaires and personal interviews by the Commission across the length and breadth of the country.

#### *5.1.2 Twenty-Seventh Law Commission Report<sup>1</sup>*

The Law Commission was assigned the task of revision of the Code of Civil Procedure. After the constitution of the Commission, the subject was studied in detail taking into

consideration, as set out in the 14<sup>th</sup> Report of the Law Commission (Reform of Judicial Administration), the previous amendments in the C.P.C., several amendments made by the various High Courts in India, the decisions of the Supreme Court, the varying judicial opinions in the High Courts on the CPC and the criticisms and suggestions on a previously circulated draft Report received by the Commission. Various meetings were held and issues were considered in detail. A revised draft Report, draft of the Bill and notes on clauses were prepared after discussions at various meetings and all these were again considered and finalized at the 64<sup>th</sup> meeting of the Commission held from Dec. 7<sup>th</sup> to Dec. 12<sup>th</sup>, 1964. The modus operandi seems to be the study of the intriguing points which had arisen in Courts, analyzing the mass of case laws on the subject, discussing conflicting judicial opinions and finally recommending amendments to the Code.

### *5.1.3 Fifty-Fourth Law Commission Report<sup>2</sup>*

This Report dealt with some aspects of revision of the Code of Civil Procedure, 1908. The Code was examined from the basic angle of minimizing costs and avoiding delays in litigation and taking into account its revised terms of reference.

The Commission found it advisable to issue a questionnaire<sup>3</sup> to elicit opinion on some of the important issues, which required considerable consideration. The Commission, while utilizing the efforts of the 27<sup>th</sup> Report, adopted the following strategy:

- (a) Where the Commission agreed with the recommendations made in the 27<sup>th</sup> Report, it was not considered necessary to deal with the matter except as stated in

---

<sup>1</sup> submitted to the Government of India on 13.12.1964

<sup>2</sup> submitted to the Government of India on 6.12.1973

the Report;

- (b) Where the Commission agreed with the earlier recommendations, and also considered it necessary to emphasize it, a brief reference was made in the Report;
- (c) Where the Commission disagreed with an earlier recommendation, or agreed with it subject to a modification, same has been stated in the Report;
- (d) On matters not considered in the 27<sup>th</sup> Report, which required to be discussed, the Commission expressed its views and suggested additional amendments wherever it was thought necessary.

#### *5.1.4 Seventy-Seventh Law Commission Report<sup>4</sup>*

The 77th Law Commission Report was on Delay and Arrears in Trial Courts. The Commission was required to review the system of judicial administration to secure elimination of delays and speedy clearance of arrears. This report is primarily based on the studies made by the earlier expert committees starting from 1925 (Rankin Committee). The history of the judicial system operating in India since the Sindhu period, analysis of procedural laws like CPC, court practices prevailing in other jurisdictions like USA, UK, Norway, Denmark, Pakistan, etc. and the final statistics regarding institutions and pendency of cases in the States and Union Territories of India were a part of the Report. It had also circulated questionnaire relating to both Civil and Criminal justice system to elicit informed opinions on the subject, which was circulated among all the

---

<sup>3</sup> The Questionnaire was issued in March, 1972

<sup>4</sup> submitted to the Government of India on 27.11 1978

sections of the society. In conclusion, the recommendations were based primarily on an in-depth analysis on workings of previous reports and the questionnaire approach.

### ***5.2 Indian Civil Justice System Reforms: Limitations and Preservation of the Adversarial System<sup>5</sup>***

In February and March of 1996, the study began with three weeks of conferences conducted in the four States. The study team held conferences with over 200 judges and 500 lawyers at Delhi, Mumbai, Kolkata, Chennai and Hyderabad. These visits included urban and semi-urban venues, such as Thane (outside of Mumbai) and Chinglepet (outside of Chennai), in order to assess the political support for change and the obstacles to reform and measure the extent of apprehensions expressed by the primary participants in the judicial process.

Subsequently, the study group conducted a detailed three-week study in June 1996 of Court administration, Case Management and alternative dispute resolution functions and mechanisms used in the United States.

In September 1996, the four State Study Groups conducted seminars (in Mumbai, Chennai, Hyderabad and Kolkata) on "the functions and mechanisms determined to be potentially adoptable to the Indian Court System". The State Judges and lawyers attended these. These seminars witnessed presentation of expert papers, lectures, demonstrations and commentaries. Subsequently, at each of the seminars, unanimous recommendations were adopted suggesting solutions for reforms.

---

<sup>5</sup> Hiram E.Chodosh, Stephen A.Mayo, A.M.Ahmadi, Abhishek M.Singhvi *published in 1978-98 [30] JILP*  
1

The methodology adopted by the study group was of survey, analysis, comparative study, participatory and consensual solution devising.

### **5.3 Indian Institute of Management, Bangalore<sup>6</sup>**

In order to gain an initial insight into the extent of delays obtaining at present in subordinate civil courts, a sample of sixteen "Order Sheets", taken out at random from the City Civil court in Bangalore, were examined. These "Order Sheets" containing revealing information about sources of delay formed a vital input for the Report. A Survey of stakeholders, viz. the Bench, the Bar, the limbs of the Civil and Criminal Justice systems and the citizens, was undertaken to elicit their views on problems encountered and possible improvements. The Survey was based on a carefully developed questionnaire, intended to sound the stakeholders on the process points where delay and inefficiency occur and elicit their views on various possible improvements. To interface the Survey with the available findings on the subject, relevant literature was also studied on suggestions made by various Commissions and several other experts on the question of reduction of delays and effecting process improvements. Various experts including Judges, Judicial officers, faculty of National Law School of India, retired senior police officers and other experts were consulted to generate suggestions for improvement at each stage of a case. The Survey was conducted in Bangalore, Mysore, Mangalore and Belgaum.

Interview was chosen as the primary method of data gathering. A team of fifteen

---

<sup>6</sup> Indian Institute of Management, Bangalore, *Report on Improving Work Methods and Work Environment in the Subordinate Courts in India submitted to The First National Judicial Pay Commission*, January 1999, pgs. 3-6

interviewers was selected from among those who have a legal background and have an acceptable level of credibility. They were briefed on the objective and methodology of the Survey.

The information gathered through the study was suitably coded and classified before analysis, incorporating necessary consistency checks. The data was entered into a spreadsheet software for consolidation and analysis.

#### **5.4 Whose Interests are Supreme? Organisational Politics in the Civil Courts in India, Association for Asian Studies, 1997 by Robert S.Moog<sup>7</sup>**

This book is the result of an individual's effort to understand and scoop out the problems of delay of justice in India by observing the two sets of district-level civil courts in Uttar Pradesh, the largest state in India. The work proceeds upon the hypothesis that the behaviour of these courts can be explained to a large extent by the actions of certain principal groups of actors within them who are pursuing their own interests through the use of whatever power is at their disposal.

The material was gathered over an eleven-month period in 1987 and during a six-week follow-up trip in 1991-92. The research was conducted in the northern Indian state of Uttar Pradesh and in New Delhi. Much of the material was collected through personal interviews and first-hand observation of court proceedings. Advocates, presiding officers, courthouse staff, litigants, academicians and members of the business community comprised the bulk of the interviewees. Time was spent in the courtrooms of

---

<sup>7</sup> Association for Asian Studies, Inc., 1997

approximately twenty presiding officers, many of whom were observed a number of times.

A significant amount of information was also gathered from newspaper accounts. The sources included both national newspapers (in English) and local or regional ones in Banaras, Deoria and Lucknow (in English and Hindi).

For the purpose of statistical data before 1976, the Reports on the Administration of Justice published by the High Court at Allahabad was looked into. For data after 1976, the author referred to some statewide statistics dealing with individual districts. In Deoria, the author had direct access to courthouse records. However, statistical data was pieced together with the help of the head ministerial officer of the court at Varanasi. The amount of useful, reliable and comparable purposes after 1976 was limited though. Where ever statistics were missing, estimates offered by presiding officers and advocates were used to fill in the gaps.

Rather than constructing this as a comparative study between Deoria and Varanasi, it seemed, to the author, more suitable to present the research in form of a "synthesized" case study using these two districts. Material from both districts is employed in creating a portrait of the district courts that, in the author's view, is applicable not only to all the districts in eastern Uttar Pradesh but much of it to India as a whole.