CHAPTER 3

THE OFFICIAL STUDY OF DELAYS

3.1 PRE-INDEPENDENCE STUDIES

To deal with the question of delay in the disposal of civil cases in the High Courts as well as in the subordinate courts, a Committee was appointed in 1924 under the Chairmanship of Mr. Justice Rankin then *Puisne Judge* of the High Court of Judicature at Fort William in Bengal. The task of the Committee was "to enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the courts in India in the disposal of civil suits, appeals, applications for revision and other civil litigation (including the execution of decrees and orders), with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory dispatch of the business transacted in the courts and for the more speedy, economical and satisfactory execution of the process issued by the courts". The Committee, after a thorough and careful enquiry into the various aspects, forwarded an exhaustive report in 1925 to the Government.* Sir Taj Bahadur Sapru, one of Members of the Committee, in his 'Note on causes of delay in Civil Courts', had enlisted insufficient judge strength in some of the High Courts as one of the causes of delay.[1]

In 1949, the High Courts Arrears Committee was set up by the Government of India under the Chairmanship of Mr.Justice S.R.Das for enquiring and reporting, *inter alia*, as

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* See Law Commission of India - Seventy-seventh Report at para 1.12.

[1] Report of the Arrears Committee, 1989-1990, Vol. – II, Ch. 1, pg. 50

to what measures, if any need to be adopted to reduce the accumulation of arrears. The Committee recommended that inordinate delays in filling up vacancies on the High Court Bench should be avoided as much as possible and that there should be an immediate increase in the judge strength of such of the High Courts where the judge strength was not commensurate with even the current volume of work.[2]

The 1950 Uttar Pradesh Judicial Reforms Committee was of the unanimous opinion that the main cause of delay in the disposal of appeals in the Uttar Pradesh High Court was the shortage of Judges.[3]

3.2 POST-INDEPENDENCE STUDIES

3.2.1 Law Commission of India:

On November 19, 1954, a private member's resolution moved by Shri Thimmiah led the Government, in the spirit of the resolution, to appoint a Law Commission to examine the necessity of judicial reforms. This resolution[4] was the first effective and wholesome step taken to initiate the process of legal and judicial reforms India. The resolution read:

> "This House resolves that a Commission be appointed to recommend revision and modernization of laws, criminal, civil and revenue, substantive, procedural or otherwise, Procedural Codes and Indian Penal Code to reduce the quantum of case law and to resolve the conflicts in the decisions of High Courts on many points with a view to realize that justice is simple, speedy, cheap, effective and substantial."

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[2] *ibid*

On 5th August 1955, the then Law Minister made the following statement in the Lok Sabha announcing the Government of India's decision to appoint a Law Commission, its membership and the terms of reference. The announcement was to the following effect:

> "Suggestions have been made from time to time, both in Parliament and outside, that a Law Commission should be appointed for revising our statute law and suggesting ways and means of improving the system of judicial administration in the country. A few months ago we had a discussion in the country. A resolution to that effect was moved by Shri Thimmaiah. On that occasion, the Prime Minister accepted the resolution in principle and stated that Government was considering what exactly the terms of reference to the Law Commission should be, what should be its personnel, and various other details. "

3.2.1.1 Law Commission of India: 14th Report[5] (Sept. 1958)

The Government of India thereafter appointed a Law Commission under the Chairmanship of Shri. M.C. Setalvad, Attorney-General of India. The members of the Commission comprised of Chief Justices of two High Courts, retired High Court Judges, an Advocate General and some advocates from different High Courts. The following were the terms of reference for the Commission.

(i) To review the system of judicial administration in all its aspects and suggest ways and means for improving it and making it speedy and less expensive;

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[3] *ibid, p. 51*

(ii) To examine the Central Acts of general application and importance, and recommend the line on which they should be amended, revised, consolidated or otherwise brought up-to-date.

After completing the arduous exercise, the Commission submitted its report on 26.09.1958. It is in two volumes. The suggestions made in the report touched upon almost all the aspects of the Indian Judicial System as then recognized. It analysed the causes of delay in civil and criminal proceedings with reference to substantive and procedural laws, personnel manning the system, the Bar and professionalism required of the Bar.

The Commission discussed the subject of delays in the disposal of civil proceedings in India in Chapter 11 of its Report. At the outset, it was admitted that the delays are not a recent development in the country. They have been the subject of previous inquiries by several committees as well.[6] The Commission was of the view that delay results not from the procedure laid down by the Codes of Civil and Criminal Procedures but by reason of non-observance of many of its important provisions particularly those intended to expedite the disposal of proceedings. It was generally agreed that the provisions of the Code, if properly and rigidly followed, are designed to expedite rather than delay the disposal of cases.[7] The Commission emphatically brushed aside the view which attributed delays mainly to the cumbersome procedure on the ground that one fails to take

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[4] see Fourteenth report of Law Commission of India at page 1
[5] Reform of Judicial Administration
[6] 14th Report, p. 252
[7] *ibid* p. 263

into account numerous extraneous and personal factors responsible for delays, like inefficient and inexperienced judiciary, insufficient number of judicial officers, incompetent and corrupt ministerial and process-serving agency, the diverse delaying tactics adopted by the litigants and their lawyers, the unmethodical arrangement of work by the presiding judge and the heavy file of arrears. With these propositions in mind, the Commission proceeded to suggest certain measures for improvement which have been discussed in appropriate chapters.

It is relevant to notice here that the Commission after thorough examination of the indigenous systems operating in India before the advent of the present system, concluded that, "We can not see how the noble aims enshrined in the preamble of our Constitution can ever be realized unless we have hierarchy of courts, a competent judiciary and well-defined rules of procedure[8]".

The commission further opined, "Delays in disposal of cases and the accumulation of arrears are in a great measure due to the inability of the judicial officers to arrange their work methodically and to appreciate and apply the provisions of the Procedural Codes"[9].

3.2.1.2 Law Commission of India: 27th Report – CPC, 1908 (Dec. 1964)

The question of taking up revision of the Civil Procedure Code was considered at the meeting of the Law Commission held on 9th March 1959. It was decided that the

[8] at page 31
[9] at page 161

amendments suggested by the 14th Report will also be taken into consideration. Two important problems were identified at the outset itself – (a) costs, and (b) delay. It was opined that so far as the Code is concerned, the problem of costs is intimately connected with the problem of delay because costs increase in direct proportion to the length of a trial.[10] It was admitted that in view of the appalling back-log of cases which unfortunately became a normal feature of nearly all the courts of the country, the problem of delay in the law courts assumed great importance.[11] The Law Commission[12] was of the view that:

> "An ideal Code is one which strikes a just balance between a fair trial and expedition. Subject to the necessary safeguards to ensure a "fair trial", the procedure should be so simple that "*it is easier to decide a case than to invent reasons for not deciding it*". *(Emphasis supplied)*

It was further of the view that such [delay] tactics succeed not because of observance, but because of the non-observance, of the rules of procedure.[13]

Four causes of delay were identified namely, (1) insufficient number of judges, (2) inadequate ministerial staff, (3) personal factors, and (4) defects in procedure (pr.16).

The Commission suggested various amendments to the CPC. A Bill intended to implement this Report was duly introduced in Parliament but it lapsed.[14]

3.2.1.3 Law Commission of India: 54th Report – CPC, 1908 (Feb. 1973)

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[10] Pr. 8
[11] Pr. 9

Subsequently when the question of re-introduction of the Bill arose, the Government of India considered it proper to request the Law Commission to re-examine the proposals put forth by it earlier. The scope of the Report was proposed to examine the CPC from the angle of: (1) minimizing costs, (2) Avoiding delays in litigation, and (3) Implementation of the directive principles.[15] (pr. 1.3)

Giving due credence to the 27th Report, the Commission found it advisable to re-assess the requirements for amendment of CPC in view of problems of delays and costs.

The causes of delay were highlighted by the Commission to be[16] (i) the interval between the stages becomes very long in a particular case, or, (ii) a particular stage of procedure itself consumes excessive time, or, (iii) extraneous factors prevent a particular stage from being reached – for example, where the suit has to await its turn for a long period because of the heavy file of the court.

Among the various requirements for a simple, fair, effective, speedy and inexpensive procedure, the Commission *inter alia* pointed out the **requirement of control and supervision by the court of the progress of the proceedings**[17]

3.2.1.4 Law Commission of India: 77th Report – Delay and Arrears in Trial Courts

The Law Commission of India pursuant to the terms of reference, re-examined the

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[12] Pr. 15
[13] Pr. 17
[14] 54th Report of the Law Commission of India, pr. 1.2
[15] Directive Principles of State Policy, Arts. 39A and 50 of the Constitution of India
[16] See pr. 1.A.3

[17] pr. 1-B.5

problem of delay and arrears in trail courts and submitted its report to the Union Government on 27.11.1978.

In Chapter 14 of the Report, the Commission has summarized its conclusions and recommendations. It has tried to identify the stages of delay like summons; pre-trial procedure; pleadings and issues; Court diary; evidence and substitution of legal representatives, arguments, judgment and decree, conciliation, recruitment and personality of the trial judges, inspection of courts and training of judicial officers, cases under certain Special Acts, execution, criminal cases and above all, had made some general suggestions for bringing about improvement in the system.

3.2.2 Conferences and Seminars for Better Functioning of Judicial System[12]

Conference of Chief Ministers of all States and Chief Justices of all High Courts, Aug. 31 and Sept. 1, 1985, New Delhi:

On August 31, 1985, a Conference of Chief Ministers and Chief Justices of High Courts was held at New Delhi in order to have a frank interaction between them for improving the administration of justice in the country. It was attended by the Prime Minister and Chief Justice of India. The meeting reflected the consensus of the executive and the judiciary on reforms. It was resolved that the arrears in all courts should be eliminated with the utmost speed and all steps should be taken by the State Governments and High Courts, Supreme Court and the Central Government towards this end. It resolved to take the following definite steps for achieving the said end –

[12] See Law, Lawyers and Judges by Sri. H.R. Bharadwaj, former Union State Law Minister, at Chapter 6 Judicial Reforms.

1. Each State should assess the requirement of courts to meet the needs of the growing litigation and implement upon such assessment.

2. Vacancies in the posts of judicial officers belonging to the subordinate judicial services should be filled up without delay.

3. An institute or academy for the training of the judicial officers should be set up by the Central Government.

4. Provisions of the Civil and Criminal Procedure Codes need revision with a view to ensuring speedy disposal of cases.

5. Need for setting up of alternative dispute resolution mechanisms for the purpose of diverting a part of the workload of the courts, and in order to ensure speedy disposal of matters which may be entrusted to the adjudication of such dispute resolution mechanisms.

6. Statutory institution of Lok Adalat and cases which are pending in courts may also be referred to the Lok Adalat for the purpose of settlement.

7. State Governments should appoint special magistrates for disposing of cases

relating to offences under the Motor Vehicles Act and other petty offences.

8. Leading members of the Bar may be invited to act as additional judges of the district courts for a temporary period not exceeding two years.

9. Salaries and emoluments of the subordinate judiciary and conditions of service require considerable improvement.

Subsequently, having been felt that the "docket explosion" requires a scientific study as decided in the conference of Chief Justices of High Courts and Chief Justice of India, a committee of three Chief Justices headed by Justice V.S Malimath was constituted to identify the causes of accumulation of arrears. This Committee submitted its report[18] in 1990 identifying as many as 33 causes leading to delay in adjudication of cases in the High Courts and made suggestions for appropriately attending to the same.

Law Ministers' Conference, Oct. 17-18, 1992, Bangalore:

In order to ensure that the suggestions given by the Justice Malimath Committee is implemented, the Law Ministers' Conference was held at Bangalore on October 17-18, 1992. A separate meeting of Law Secretaries from the States was also organised, which was presided over by the then Union Law Secretary, to expedite the efforts. The programme of action was divided into three open ended groups comprised of Law Ministers and Law Secretaries to make in-depth study on the subjects allotted to them which were to meet separately and give their reports quickly on the subject entrusted to them. These Committees again resolved to take steps in 10 directions including the one for implementing the recommendations of Justice Malimath Committee. Following points were focused:

1. Need to take immediate action to upgrade the infrastructural facilities for the judiciary.

[18] Report of the Arrears Committee,1989-90, published by The Supreme Court of India (1990)

2. Alternative forums for dispute resolution such as Lok Adalats should be established.

3. There should be training institutions for training of judicial officers.

4. Problems connected with frequent adjournments, strikes, etc. cannot be effectively handled unless the judges and practicing lawyers are brought together to discuss the matter across the table.

The three Law Ministers groups met at Pondicherry, Panaji and Pachmarchi during February to May 1993. They made recommendations to the Ministry of Law and Justice. Sequentially, at the request of the Union Government, the committee comprised of Chief Justice of India Mr. M.N. Venkatachalaiah, two seniormost judges of the Supreme Court and three Chief Justices from High Courts, discussed the recommendations of the Law Ministers' Conference. One out of three Law Ministers Group also joined the informal discussions with the Judges Committee. After meetings of the Informal Committee, the Chairman, the Chief Justice of India approved the agenda for a wider discussion at a Joint Conference of Chief Ministers and Chief Justices of High Courts some time in December 1993.

Chief Ministers and Chief Justices' Meeting on Justice Administration System, Dec. 4, 1993, New Delhi

The Joint meeting of the Chief Ministers and Chief Justices of High Courts was convened in December 1993 at New Delhi. The then Prime Minister, P.V. Narasimha Rao presided over the meeting. The Chief Justice of India Mr.M.N. Venkatachalaiah delivered a special address. The meeting passed a unanimous resolution on 4.3.1993. The areas

deliberated upon were Transfer of Judges, Appointment of Judges as Commissions of Inquiry, Alternative Dispute Resolution, Appeals and Original Jurisdiction, Criminal Cases, Special Summary Procedure for "Rural Litigation", Concentration of Work, Handling of Judicial Work, Strikes by Lawyers and Administrative Tribunals.[13] The participants were of the view that:

1. The courts were not in a position to bear the entire burden of the justice system and emphasized the urgent need to strengthen the movement of Lok Adalats throughout the country for the resolution of disputes.

2. There is a need for restructuring the judicial system with a view to ensuring inexpensive and speedy resolution of **rural litigation**.

3. A convention should be evolved which would discourage the granting of **adjournments** save in exceptional circumstances and require the recording of reasons for granting them. Further, with regard to oral arguments, though it might not be possible to completely dispense with it, in the interest of expeditious disposal of cases, it was felt that **time limits** should be fixed in consultation with the counsel for the presentation of **oral arguments**. Also, parties should be made to present a **concise note of arguments**, including the case law to be relied upon, in advance before the commencement of oral arguments.

4. Need to avoid the writing of **long and elaborate judgments** and **time limit** should be prescribed for **pronouncement** of reserved judgments.

[13] See Annexure II, *ibid*

On November 17, 1994, another Law Ministers' Conference was convened by the State of West Bengal. It was unanimously agreed there that a comprehensive law on arbitration and conciliation be enacted based on UNCITRAL Model Law for International Commercial Arbitration. It was further agreed that ADR should be the preferred method for settlement of a wide range of disputes, especially commercial and civil. On November 23-25, 1995, a meeting of Law Ministers was held at Hyderabad to discuss about the subjects of Legal Education and Training.

3.2.3 Indo-US Study Group

In 1996, the former Chief Justice of India, Sri Ahmadi organised a study group in collaboration with ISDLS, a California (USA) based Corporation, which specialized in the reforms of legal systems, and the National Judicial Academy of India ('NJA') to prepare a comprehensive study for the reform of the Indian Civil Justice System.

This Study Group identified critical factors, which interact in a "casual relationship" with backlog and delays. It classified these factors into three areas. These are: (i) the internal court management system lacks accountability for the administration of the caseload. Administrative institutions fail to monitor and track the status, substance, and pace of civil litigation, thus forcing the courts to duplicate efforts and allowing controversies to languish without resolution; (ii) Judicial management of the legal process is undisciplined, unreasonably protracted, discontinuous, duplicative, and fragmented (providing lawyers with opportunities to conduct vexatious, frivolous, and dilatory litigation). Legal professionals fail to observe procedural requirements in the pretrial stages of cases, thereby allowing dilatory practices to protract the case life; (iii)

Available alternative and consensual means of dispute resolution are limited. There are insufficient opportunities for reconciliatory, consensual, and informal processes and flexible remedial action, as well as systemic disincentives against early settlement. This results in keeping more cases in the system for a longer time and leaves less time for formal legal adjudication to act as a means of last resort for irreconcilable legal conflicts.

3.2.4 Indian Institute of Management, Bangalore

The Indian Institute of Management had undertaken Gap Study pursuant to reference made to it by the First National Judicial Pay Commission. The scope of the study was extended to the following areas:

(a) To examine aspects of Court Management and File Management in the subordinate judiciary with a view to *improving productivity, reducing delays* and *making processes more citizen friendly.*

(b) To examine the process of Documentation and Record Management in courts and track the progress of cases through stages with a view *to improving judicial administration* and making the judiciary *less bureaucratic*, consistent with legal requirements, and

(c) To suggest ways and means of instituting a mechanism whereby the judiciary gets regular *feedback on administrative efficiency.*

This was the first time, the services of an expert agency from outside the judicial and legal fraternity was availed of to explore the causes and remedies of concurring arrears and delays. The study was made on a quite skilled and professional basis. It made a

survey of the system involving all the stakeholders like the Bench, Bar and the other limbs of Civil and Criminal justice systems and the citizens. Some of its recommendations are contained in Chapter 10 of the report. These recommendations have been discussed in detail at appropriate places in subsequent chapters.