

## **Litigation & Delays in India.**

**Synopsis of the Article:** The Right to Litigate or the Right to get Access to Justice, has been amply provided in our Constitution & other national as well as international instruments, but David Porter of US Navy puts “Litigation as the basic legal right that guarantees every corporation its decade in court” obviously he said that in context of the Courts of America, but the situation is no better here, rather worse, decade is replaced by 15 years (which according to one study is the average life span of a case in India), clearly I don’t mean to endorse or even acquiesce with such pessimistic views but the level of implementation or the justice delivery system required to give life to these provisions, are grossly inadequate, & are fraught with various imperfections & evils such as Corruption, Delays etc, ...with delay being the major dent in the credibility of the system, as a famous saying goes “Justice Delayed is Justice Denied”...and due to these delays even after the most elaborately devised system of rights & obligations of people, being present, justice still remains a distant dream for the layman...but the silver lining is that Judiciary remains the most honest & trusted of the three governmental organs, & measures up remarkably well on the yardsticks of independence, fairness & acts as the custodian of the rights of the common man, it was meant to be & still commands respect, but the confidence it used to inspire among the people is corroding, the main reason behind the wounded credibility are the delays in justice delivery system.

### **Article Body: *Litigation & Delays in India***

**T**he word ‘Litigation’ in common parlance is used to refer to a controversy before a law court or simply put a ‘lawsuit’, but with the total pendency at last count exceeding 30 million cases, in a country characterized by grave economic conditions like ours it has become a luxury which few can afford.

[Add here] C.K.Takwani on Delays in judiciary – Cite Charles Dickens from the Pick Wick Papers. The delays associated with the town of Pirley in Charles Dickens Novel.

The Right to Litigate or the Right to get Access to Justice, has been amply provided in our Constitution & other national as well as international instruments, but David Porter of US Navy puts “Litigation as the basic legal right that guarantees every corporation its decade in court” obviously he said that in context of the Courts of America, but the situation is no better here, rather worse, decade is replaced by 15 years (which according to one study is the average life span of a case in India<sup>1</sup>), clearly I don’t mean to endorse or even acquiesce with such pessimistic views but the level of implementation or the justice delivery system required to give life to these provisions, are grossly inadequate, & are fraught with various imperfections & evils such as Corruption, Delays etc, ...with delay being the major dent in the credibility of the system, as a famous saying goes “Justice Delayed is Justice Denied”...and due to these delays even after the most elaborately devised system of rights & obligations of people, being present, justice still remains a distant dream for the layman...but the silver lining is that Judiciary remains the most honest & trusted of the three governmental organs, & measures up remarkably well on the yardsticks of independence, fairness & acts as the custodian of the rights of the common man, it was meant to be & still commands respect, but the confidence it used to inspire among the people is corroding, the main reason behind the wounded credibility are the delays in justice delivery system.

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<sup>1</sup> The Times of India, New Delhi – Monday August 17, 2009.

The real culprit is the huge pendency of cases before subordinate courts right upto the Supreme Court. Justice S.B.Sinha recently in a day long awareness programme for Judicial officers 'termed this is a gigantic problem, and his lordship, who is also the chairman of Mediation & Conciliation Project Committee went on to say "these undue delays are making people shy from justice delivery system", Justice Sinha further remarked that "We should uphold the maintenance of law and Constitutional values and do not forget that access to justice to everyone should be given utmost preference"<sup>2</sup>

The main reasons behind this huge pendency, or to be exact the influx of a large number of cases, are recent socio-economic advances and the resultant sensitization regarding legal rights, has led to a flood of people, increasingly approaching the courts of law, for the realization of their rights, but the existing Indian Judicial System, I am afraid to say has not kept up with the huge population & educational boom, & is fraught with problems such as 'low judge to population ratio', and as a large portion of these cases are against the government, disputes which could have been resolved at the outset with the authorities itself, due to improper governmental administration, these disputes also end up coming before the courts, as to this matter Dr.Manmohan Singh in a discussion, referred to the survey conducted in Karnataka according to which in 65% of civil cases the Government was a litigant and in 95% the appeals filed by it failed, the great villainous role played by the governmental administration becomes apparent by this, Couple this with the rampant corruption, Shortage of Funds, Staff, Infrastructural shortcomings, and you have the perfect recipe of a disaster or more succinctly put a 'litigant's nightmare'

Coming to the solution, The Intellectuals at Law Commission coming out with a fantastic & realistically sound solutions every now & then & the implementing authorities & the people in power not paying the slightest heed to it, has become needless to say almost customary now, the same happened in the present context too, the Law Commission in its 120th report<sup>3</sup>, submitted way back in 31-7-1987 recommended optimum figure of 107 judges per million by 2000, the ratio achieved by USA in the year 1981. It also recommended ratio of 50 judges per million of population, within a period of 5 years which was endorsed by the Standing Committee of Parliament headed by Shri Pranab Mukherjee, in its 85th report submitted in February 2002. The Supreme Court also directed increase in judges' strength to 50 per million in a phased manner. But despite all this, the strength of judges has not been increased, that is why also the judiciary is facing difficulties in tackling the problem of mounting arrears, the sorry state of affairs is apparent from the fact that India still has fewer judges than 15 per million, if compared to Canada [about 75 per million] & the USA [104 per million] it sounds drastically inappropriate to deal with the situation, furthermore The Law Commission in its 125th Report (1988) <sup>4</sup>recommended introducing shift system in the Supreme Court. In 1999, the then Law Minister, thought of shift system in all courts, but could not implement it. Shift system is in vogue in industrial establishments and some educational institutions because of necessity. With minimum cost, the shift system can yield maximum output, providing immense relief to lakhs of helpless litigants, endlessly waiting for justice, but in its entirety this system was never realised.

Another reason for the same is that judiciary accounts for just a mere meagre portion in the allocation of expenditure, for eg. In the tenth plan the judiciary was allocated a mere 0.078 per cent of the total expenditure, a small crumb more than the 0.071 per cent assigned in the Ninth Plan.

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<sup>2</sup> [http://www.dnaindia.com/india/report\\_pendency-of-cases-are-gigantic-problems-sc-judge\\_1264662](http://www.dnaindia.com/india/report_pendency-of-cases-are-gigantic-problems-sc-judge_1264662)

<sup>3</sup> [http://lawcommissionofindia.nic.in/old\\_reports/rpt120.pdf](http://lawcommissionofindia.nic.in/old_reports/rpt120.pdf)

<sup>4</sup> <http://lawcommissionofindia.nic.in/reports/report229.pdf>

It is also pertinent to note here that the Prime Ministers have been traditionally averse to discussing Judiciary's ailments or the plight of litigation in India, and it was no different this time as well, where the torturous state of litigation figured nowhere in the Prime Ministerial Speech on Independence Day, though he made amends & accepted the problem very next day at a conference.<sup>5</sup>

The Silver Lining is that if viewed from a different perspective, the Huge volume of new cases, coming up, is a definite sign of people reposing their faith in the administration of justice. It is a matter of contentment that the public at large continues to hold our judicial system by and large in high esteem despite their shortcomings and handicaps, and in order to sustain the continued faith of people in the justice delivery system – the huge pendency of cases need to be brought down to a manageable limit, so that cases are dealt & disposed in a more speedy & more efficient manner & to ensure that justice is hurried but not at all buried.

The brighter part of the problem is that the Anti-dotes to the problem, are not one but many, and if implemented with heart & soul, will reap great benefits.

ADR's Alternative Dispute Resolution Mechanisms, The philosophy of ADR systems is amply stated in the words of Abraham Lincoln "Discourage litigation, persuade your neighbors to compromise whenever you can. Point out to them how the normal winner is often a loser in fees, expenses, cost and time, as a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough."

Litigation through the courts and tribunals established by the State is one way of resolving the dispute which is an adversarial method of dispute resolution which leads to win-lose situation whereas in Alternative Disputes Resolution what is tried to be achieved is win-win situation for both the parties to the case. There is nobody who is loser and both parties feel satisfied at the end of the day. The ADR mechanisms include arbitration, negotiation, mediation and conciliation. Section 89 of the Code of Civil Procedure has been amended w.e.f. 1-7-2002 with a view to bring alternative systems into the mainstream. The challenge that we are facing today is bringing about awareness among the people about the utility of ADR and simultaneously developing personnel who will be able to use ADR methods effectively with integrity. This will not only provide speedy and inexpensive justice and reduce litigation, but will also bring peace and harmony in the society. Corporate entities & establishments are already reaping the benefits of ADR's, but it is high time these ADR's are introduced in day-2-day litigation as well

#### Fast Track Courts

Fast Track courts have proved their mettle, & their importance cannot be emphasized enough, on the recommendation of the 11th Finance Commission, 1734 Fast Track Courts of Sessions Judges were sanctioned for disposal of old pending cases and the said scheme was to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have been disposed of by these courts. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31-3-2010.

In view of the contribution made by the Fast Track Courts of Sessions Judges towards clearing of backlog, and number of huge pendency of cases triable by Magisterial Courts being 1,66,77,657 as on 31-12-2006,

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<sup>5</sup> Times of India, New Delhi, August 17th, 2009

there is an urgent need to formulate a similar scheme for setting up of Fast Track Courts of Magistrates in each State and Union Territory.

#### Mobile courts

Mobile courts that help taking justice to the door-step of the rural would significantly help in fighting the backlog, Mobile courts are also being set up which would not only educate the rural folk about their rights and responsibilities and provide swift justice and create a feeling of law and judiciary being very close to them, but will also help de-clog the expanding docket of our overburdened courts.

#### Lok Adalats

In order to achieve the objective enshrined in Article 39 A of the Constitution of India, the Legal Services Authorities Act, 1987 was enacted to provide free and competent legal service to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. To achieve that objective, Lok Adalats are being held at various places in the country and a large number of cases are being disposed of with lesser costs. Mobile Lok Adalats are presently in place in different parts of the State of Bihar and on the lines of steps taken by the High Court of Patna of holding mobile Lok Adalats, the other High Courts need also work on the same lines so that speedy and affordable justice could be made available to the litigants at their doorsteps.

#### Setting up of Gram Nyayalayas

Ministry of Law & Justice is going to draw a Gram Nyayalayas Bill with an objective to secure justice, both civil and criminal, at the grass-root level to the citizens, which would be the lowest court of subordinate judiciary and shall provide easy access to justice to litigant through friendly procedures, use of local language and mobile courts wherever necessary.

Last but not the least Plea bargaining - With the insertion of new Chapter XXI-A in the Code of Criminal Procedure by Act 2 of 2006, the concept of "Plea Bargaining" became a reality and part of our criminal jurisprudence. The practice of plea bargaining is prevalent in western countries, particularly the United States, the United Kingdom and Australia. In the United States, plea bargaining has gained very high popularity, whereas it is applied only in a restricted sense in the other two countries. Plea bargaining benefits both the State and the offender; while the State saves time, money and effort in prosecuting the suspects, the latter gets a lenient punishment by pleading guilty. One of the merits of this system is that it helps the court to manage its load of work and hence it would result in reduction of backlog of cases.

Plea bargaining apart, if the list of compoundable offences is widened and more offences are included therein and made compoundable, it too will help in making a dent in the mounting arrears and saving time of the courts.

Apart from these measures, increased use of technology, for e.g recording evidence through video conferencing, would reduce the hassles associated with a trial.

Concludingly, If followed properly the above measures would go a long way, to ensure the that "litigation" for a smooth affair for a litigant, as this is very pertinent to ensure & sustain people's faith in judiciary, & in the last to nullify the very common bar room anecdote 'that in the average Indian litigation winner is the loser and the loser is dead'.

Note: We are a group of law students from universities across India, working to provide free legal assistance to the weaker sections of the society, The related information is now available at : [www.lawstudentscollective.blog.com](http://www.lawstudentscollective.blog.com)