JUSTICE SOBHAG MAL JAIN MEMORIAL LECTURE

ON

DELAYED JUSTICE

TO BE DELIVERED BY

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ON TUESDAY, THE 25TH JULY, 2006

Constitution of India reflects the quest and aspiration of the mankind for justice when its preamble speaks of justice in all its forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, they would get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality.

The success of the Indian Judiciary on the Constitutional front is unparallel. Its contribution in enlarging and enforcing human rights is widely appreciated. Its handling of Public Interest Litigation has brought its institutions closer to the oppressed and weaker sections of the society.

Indian Courts are held in high esteem not only by developing but by developed countries as well. There is wide-spread praise for the quality of the judgments delivered, and the hard-work being done by Indian Judiciary. Only last month, Lord Chief Justice of England & Wales in his farewell speech delivered at the conclusion of Indo British Legal Forum meet in Edinburgh, publicly appreciated the enormous work done by Supreme Court of India in developing the concept of rule of law and due process of law enshrined in Article 21 of our Constitution and enlarging its scope to the extent of encompassing the right to live in a healthy environment. We, the citizens of India, can legitimately feel proud of this recognition. However, there is growing criticism, sometimes from uninformed or ill-informed quarters about the inability of our Courts to effectively deal with and wipe out the huge backlog of cases.

Many countries world over are facing problem of delay in dispensation of justice. It is a major problem being faced by Indian Judicial system.

'Delay' in the context of justice denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. In an adjudicatory system, whether inquisitorial or adversarial, an expected life span of a case is an inherent part of the system. No one expects a case to be decided overnight. However,

difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when we say there is delay in dispensation of justice. A scanning of the figures would show that despite efforts being made at various levels and substantial increase in the output being given by the system, the gap between the expected and actual life span of the cases is only widening.

India has been making rapid strides in almost all the fields. The revolution in the field of communication, has substantially increased the expectations of an ever growing population. In the initial years of our democracy, the level of literacy in the country was low and in the name of electronic media we had only a radio. But, with the rising of literacy level, proliferation of channels and increase in the readership of newspapers, there is growing awareness of legal rights, resulting in substantial increase in the number of cases coming to the Courts. The desire for quick and affordable justice is universal. Any increase in the number of cases on account of better awareness of the legal rights is a welcome development and should not be a cause of concern. We, however, owe a duty to find suitable ways and means to cope with the increased load of work on the system. We have to ensure that the fundamental right to a speedy trial does not remain merely a pipedream to millions of people. The very existence of an orderly society depends upon a sound and efficient functioning of its Justice Delivery System. Delay in disposal of cases not only creates disillusionment amongst the litigants, but also undermines the vary capability of the system to impart justice in an efficient and effective manner.

Long delay has also the effect of defeating justice in quite a number of cases. As a result of such delay, the possibility cannot be ruled out of loss of important evidence, because of fading of memory or death of witnesses. The consequences thus would be that a party with even a strong case may lose it, not because of any fault of its own, but because of the tardy judicial process, entailing disillusionment to all those who at one time, set high hopes in courts. The delay in the disposal of cases has affected not only the ordinary type of cases but also those which by their very nature, call for early relief. The problem of delay and huge arrears stares us all and unless we can do something about it, the whole system would get crushed under its weight. We must guard against the system getting discredited and people losing faith in it and taking recourse to extra legal remedies with all the sinister potentialities.

The problem is much more acute in criminal cases, as compared to civil cases. Speedy trial of a criminal case considered to be an essential feature of right of a fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable. If the accused is acquitted after such long delay one can imagine the unnecessary suffering he was subjected to. Many times such inordinate delay contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time, or the witnesses do not remember all the details or the witnesses do not come forward to give true evidence due to threats, inducement or sympathy. Whatever may be the reason, it is justice that becomes a casualty. We must

realize that the very existence of an orderly society depends upon a sound and efficient functioning of criminal justice system.

We are parties to international agreement and treaties like GATT, WTO. We have to march forward with advancement in the fields of science and technology, trade and commerce so as to not only retain but increase our share in prosperity and achievements and for that purpose it would be necessary to have an efficient and effective justice delivery system at affordable costs.

The Courts do not possess a magic wand which they can waive to wipe out the huge pendency of cases nor can they afford to ignore the instances of injustices and illegalities only because of the huge arrears of the cases already pending with them. If the courts start doing that, it would be endangering the credibility of the Courts and the tremendous confidence they still enjoy from the common man. The heartening factor is that people's faith in our judicial system continues to remain firm in spite of huge backlogs and delays. It is high time we make a scientific and rational analysis of the factors behind accumulation of arrears and devise specific plan to atleast bring them within acceptable limit, within a reasonable timeframe. We have, however, to put our heads together and find out ways and means to deal with the problem, so as to retain the confidence of our people in the credibility and ability of the system. There are volumes of Law Commission Recommendations, Expert Committee Reports and Opinions of Jurists, highlighting the problem and suggesting ways and means and yet the system has not been able to bridge the gap between institution and disposal and has not been able to cause any dent in the mountain of arrears of cases.

It is my firm belief that the steps I propose to suggest if taken in the right earnest will go a long way in reducing the burden of arrears and it may be possible to bring them within manageable limits. Many of these suggestions have already been made at different forums. The need of the hour is to act upon those suggestions swiftly and decisively.

2. THE EXTENT OF PROBLEM

Institution, disposal and pendency of civil and criminal cases **in High Courts**, during last 7 years is as under:-

CIVIL CASES			
YEAR	INSTITUTION	DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	816912	712482	2353453
2000	795007	735301	2387526
2001	874125	796228	2465423
2002	932186	842646	2554963
2003	988449	982580	2560832
2004	1016420	863286	2811382
2005	1082492	934987	2870037

CRIMINAL CASES			
YEAR	INSTITUTION	DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	305518	267992	404353
2000	321615	283700	447552
2001	341301	297370	491483
2002	402016	343900	532085
2003	396869	367143	561811
2004	432306	375917	613077
2005	460398	403258	651246

CIVIL AND CRIMINAL CASES			
YEAR	TOTAL INSTITUTION	TOTAL DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	1122430	980474	2757806
2000	1116622	1019001	2835078
2001	1215426	1093598	2835078
2002	1334202	1186546	3087048
2003	1385318	1349723	3122643
2004	1448726	1239203	3424459
2005	1542890	1338245	3521283

Institution, disposal and pendency of civil and criminal cases **in subordinate Courts**, in the last 7 years is as under:

CIVIL CASES			
YEAR	INSTITUTION	DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	3302042	3217516	7020973
2000	3170521	3186753	6925913
2001	3373469	3140099	7211809
2002	3385715	3342653	7254871
2003	3170048	3121978	7302941
2004	3697242	3726970	7042245
2005	4069073	3866926	7254145

CRIMINAL CASES			
YEAR	INSTITUTION	DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	9429233	9177244	13477427
2000	9643398	9451770	13338454
2001	10064701	9354812	14202763
2002	11159996	10177254	15185505
2003	11635833	10874673	15946665
2004	11888475	10857643	17624765
2005	13194289	12442981	18400106

CIVIL AND CRIMINAL CASES			
YEAR	TOTAL INSTITUTION	TOTAL DISPOSAL	PENDENCY AT THE END OF THE YEAR
1999	12731275	12394760	20498400
2000	12813919	12638523	20264367
2001	13438170	12494911	21414572
2002	14545711	13519907	22440376
2003	14805881	13996651	23249606
2004	15585717	14584613	24667010
2005	17263362	16309907	25654251

The figures would show that Institution of civil cases in High Courts was 10,82,492 and disposal was 9,34,987 in the year 2005, institution of criminal cases being 4,60,398 and disposal being 4,03,258 during that period. Institution of civil cases in subordinate courts was 40,69,073 and disposal was 38,66,926 in the year 2005, institution of criminal cases being 1,31,94,289 and disposal being 1,24,42,981 during that period. Thus, annual institution in the High Courts as well as in the subordinate courts exceeds disposal in civil as well as criminal cases. The figures would also show that the **disposal** of civil and criminal cases in the **High Court** rose from 980474 in the year 1999 to 1338245 in the year 2005, the cumulative increase in six years being 36%. However, the **institution** increased at a faster speed from 1122430 to 1542890 in the year 2005, the cumulative increase being 37%. Consequently the **pendency** increased from 2757806 at the end of 1999 to 3521283 at the end of the year 2005.

Analysis of the figures would show that in **Subordinate Courts** the **disposal** of civil and criminal cases increased from 12394760 in the year 1999 to 16309907 in the year 2005, the cumulative increase being 32% but, again the **institution** increased more rapidly, from 12731275 in the year 1999 to 17263362 in the year 2005 and cumulative increase being

36%. As a result the **pendency** which stood at 20498400 cases at the end of year 1999 rose to 25654251 at the end of 2005.

In the first quarter of the current year, the High Courts disposed of 350481 cases. However, the institution during this period being 392292, the pendency at the end of March, 2006 rose to 3560614 as against 3521283 at the end of December, 2005. Subordinate Courts other than the Courts in Bihar disposed of 3664680 cases between 1-01-2006 to 31-01-2006. Institution during this period being 3730240, there was increase of 65560 cases in the pendency of Subordinate Courts, in the last quarter.

It is true that the pendency of cases is always highlighted whereas the increase in institution on account of a number of factors and the increase in disposal despite the constraints faced by the system, is not always appreciated, but still we cannot deny the responsibility of the system and its functionaries to deliver an efficient and economical justice to our people.

3. INCREASE IN THE STRENGTH OF JUDGES

The present sanctioned strength of High Court Judges is 726 and the actual strength 588 leaving 138 vacancies. The sanctioned strength of subordinate judges was 14582 and the working strength 11723 on 30th April, 2006, leaving vacancy of 2860 Judicial Officers.

The average disposal per judge comes to 2455 cases in the High Courts and 1430 cases in the subordinate courts, if calculated on the basis of disposal in the year 2005 and working strength of judges as on 31st December, 2005. Applying this average, we require 1434 High Court judges and 18376 subordinate judges only to clear the backlog as on 31st December, 2005 **in one year**. The requirement would come down to 717 High Court judges and 9188 subordinate judges, if the arrears alone have to be cleared in the **next two years**. The existing strength being inadequate even to dispose of the annual institution, the backlog cannot be wiped out without additional strength, particularly when the institution is likely to increase and not come down in coming years.

The Governments should not allow their financial constraints to come in the way of increase in the strength of judges. As per the information collected by First National Judicial Pay Commission, every state except Delhi has been providing less than 1% of the budget for subordinate judiciary whereas the figure is 1.03% in case of Delhi. In terms of G.N.P., the expenditure on judiciary in our country is hardly 0.2 per cent, whereas it is 1.2 per cent in Singapore, 1.4 per cent in United States of America and 4.3 per cent in United Kingdom.

Several statutes like Indian Penal Code, Code of Civil Procedure, Code of Criminal Procedure, Transfer of Property Act, Contract Act, Sale of Goods Act, Negotiable Instruments Act etc., which contribute to more than 50% to 60% of the litigation in the trial Courts are

Central enactments, referable to List I or List III and these laws are administered by the Courts established by the State Governments. The number of Central laws which create rights and offences to be adjudicated in the subordinate Courts are about 340. It is obvious that the central Government must establish Courts at the trial level and appellate level and make budgetary allocation to the States to establish these courts to cut down backlog of cases arising out of these central statutes. The central Government must estimate and pay for their recurring and non-recurring expenditure of the State Courts to the extent the Courts spend time to adjudicate disputes arising out of central statutes. **Article 247 of the Constitution enables Union Government to establish additional courts for better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List. This Article is specially intended to establish courts to enable parliamentary laws to be adjudicated upon by subordinate courts but has not been resorted to so far.**

So far backlog in subordinate courts is concerned, additional courts must be created and additional judicial officers must be appointed till the backlog is cleared. Ad hoc Judges under Article 224A of the Constitution should be appointed to clear the backlog in the High Courts for a period of five years or till the backlog is cleared. All the cases which are pending in the High Court for two years or more can be allocated to these ad hoc judges. Since the annual institution in High Courts as well as in subordinate courts exceeds their respective annual disposal, additional judges in High Courts as well as in subordinate courts should be appointed on permanent basis to deal with the increase in institution over the disposal.

As many as 2860 posts of Judicial Officers were vacant in Subordinate Courts as on 30th April, 2006. Sincere attempts should be made to fill up these vacancies at the earliest possible. For this purpose examination for recruitment of Judicial Officers should take place atleast twice a year and a panel of suitable officers should be prepared to fill up the vacancies arising till the preparation of next panel. Wherever the vacancies are to be filled up by way of promotion, it should be done within three months from the date of vacancy so that the Court does not remain vacant for a long period.

4. AUGMENTING OF INFRASTRUCTURE

Increase in the number of Judicial Officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and moffusils is pathetic. A visit to one of these Courts would reveal the space constraints being faced by them, over-crowding of lawyers and litigants, lack of basic amenities such as regular water and electric supply and the unhygienic and insanitary conditions prevailing therein.

The National Commission to review the working of the Constitution noted that judicial administration in the Country suffers from deficiencies due to lack of proper planned and adequate financial support for establishing more Courts and providing them with adequate

infrastructure. It is, therefore, necessary to phase out the old and out-dated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes. In order to ensure that the new buildings meet all the requirements of the courts and their officers, it is desirable to prepare standard building plans and construct buildings accordingly. In order to provide information to the litigants it is necessary to have facilitation centres in each court complex which should be manned by competent court officers and should be linked to the computer network.

In the Ninth Plan (1997-2000), the Centre released Rs.385 crores for priority demands of judiciary which amounted to 0.071 per cent of the total expenditure of Rs.5,41,207 crores. During Tenth Plan (2002-2007), the allocation was Rs.700 crores, which is 0.078 per cent of the total plan outlay of Rs.8,93,183 crores. Such meagre allocations are grossly inadequate to meet the requirements of judiciary. Unlike in other departments of the Government, more than half of the amount which is spent on Indian Judiciary is raised from the Judiciary itself through collection of court fees, stamp duty and miscellaneous matters.

The Governments should provide adequate funds at the disposal of the High Courts for augmenting the infrastructure. There is a plan scheme of the Government – Centrally Sponsored Scheme for Development of Infrastructure in Judiciary, which includes construction of court buildings and residential accommodation for Judges/Judicial Officers, covering High Courts and subordinate Courts. The Central Government's share is restricted to the funds made available by the Planning Commission and the expenditure under the Scheme is shared by the Central and State Governments on 50:50 basis. It is seen that sometimes State Governments do not release matching grant. Consequently, central grant is not released and either the Scheme lapses or it does not take off. State Governments should release the matching grant, so that Central Government share of the grant can also be utilized.

5. **SHIFT SYSTEM**

Establishment of additional courts at any level involves enormous expenditure – capital as well as recurring. Appointment of wholetime staff – judicial and administrative for new courts involves considerable recurring expenditure. On the other hand, if the existing courts could be made to function in two shifts, with the same infrastructure, utilizing the services of retired Judges and Judicial Officers, reputed for their integrity and ability, who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly.

Shift system has been in vogue in industrial establishments since long. It was introduced in educational qualifications to cope up with increased demand. It is high time to introduce it in Courts as well.

The existing court buildings, furniture, library and other infrastructure and equipment could be used for the second shift. Re-employment of retired judges, Judicial Officers and

administrative staff would be far less burdensome to the exchequer, as they would be paid only the difference between the salaries and emoluments payable to serving judges and officers of the same rank and their pension. The induction of experienced judicial personnel who enjoy high reputation for their integrity and ability will add to the credibility of the judicial system as a whole. With their rich experience they will be able to dispose of cases quickly and clear the arrears fast.

Also, the prospect of re-employment after retirement of the upright and efficient judges and judicial officers will act as a incentive to serving judges and judicial officers to remain honest and discharge their duties to the satisfaction of all concerned. The reservoir of judicial experience readily available in the shape of retired judges and judicial officers is a precious human resource which we can hardly afford to waste.

I hope and am quite confident that members of Bar would extend full cooperation

6. FINANCIAL AUTONOMY:

Judiciary is always held responsible for mounting arrears of Court Cases. But it does not control the resources of funds and has no powers to create additional Courts, appoint adequate Court staff and augment the infrastructure required for the Courts. For this reason, the shift system cannot be introduced. The High Courts have power of superintendence over the State judiciary but do not have financial power to create even post of one Subordinate Judge or subordinate staff or to acquire land or purchase building for setting up Courts or for their modernization.

The National Commission to review the working of the Constitution noted that neither had any provision for funds for the judiciary been made under the Five years Plan for several decades nor the Finance Commission made any provision to serve the financial needs of the Courts.

Ideally, judiciary should be given autonomy with regard to the creation of posts, allocation of project and incurring of expenditure. For this purpose the Governments must allocate adequate percentage of its funds for judiciary and all the expenditure on judiciary should come from the planned funds. Confirmant of financial autonomy by earmarking the funds generated by the Courts in a separate account and giving expert financial assistance through officers deputed from Comptroller and Auditor General, with full power to the Chief Justice to spend this amount will go a long way in meeting the requirements of judiciary.

However, the Governments have been reluctant to grant even limited financial autonomy to the High Courts. Recently concluded Conference of Chief Justices passed a resolution recommending that :

(i) budgetary demands made by the High Courts which are generally bare necessities need to be accepted ordinarily and allocation made by way of planned expenditure.

(ii) Within the over all budgetary limit the Chief Justice/High Court should have power to appropriate and reappropriate the funds.

The recommendations need to be implemented at the earliest possible so that the High Court can have a say in allocation of funds keeping the emergent requirements into mind.

7. JUDICIAL IMPACT ASSESSMENT & FINANCIAL MEMORANDUM TO BILLS

Every Bill in Parliament or State Legislature does have a Financial Memorandum attached to it and the Memorandum mentions the allocations required from the Consolidated Fund of the Union/State but it confines itself to the expenditure for administrative purposes. The judicial impact of legislation on the Courts is not being assessed in India as is done in the United States where, there is a special statute for this purpose. Almost every statute made by the Parliament or State Legislatures, creates rights and offences which go for adjudication before the trial and appellate Courts.

Whenever a new legislation is passed it should be accompanied by a budgetary estimate of its impact and necessary financial allocation should be made in the Bill itself, to meet the expenditure likely to be incurred on setting up additional courts required to deal with increase in workload and providing infrastructure for them.

8. CASE MANAGEMENT AND COURT MANAGEMENT:

While Case Management techniques deal with the problem at the micro level of the individual case from the date of its institution till its disposal by an individual judge, Court Management or Docket Control aims to look at the problem from macro level by seeking to deal with the pendency of cases in the entire Court.

Case Management as stated by Lord Woolf in his report "Access to Justice" has the following dimensions:

1. Identifying key issues in a case.
2. Encouraging parties to settle cases or agree on issues.
3. Summary disposal of weak cases and trivial issues
4. Deciding the order in which the issues are to be resolved.
5. Fixing time table for parties to take specific steps
6. Allocating each case to specific track (Fast Track/Multi Track)

Today, court management has gained considerable importance because it has been tried and tested in other parts of the world and has been found to be a successful method of

controlling the huge backlog of cases, Court Management was first introduced in America in 1972 and over the years it has gained so much importance that it has become imperative for all courts to use court management techniques to reduce the caseload. This has now become a science involving not only court management but also case-flow management, which is the study of the time taken in various stages in litigation. It is not difficult in India to adopt the strategy of court management because the giving of adjournments and dates is in the hands of the judge and he can control the time spent at each stage of a case. By practicing this method, it is possible to have a case ready for disposal within a specified period of time.

Classification and Assignment of cases: In Supreme Court of India the cases expected to be filed in the Court have been divided into 45 sub-categories which have been further divided into sub-categories. Each matter is categorized as per those sub-category, each sub-category has been allocated to one or more judge and allocation of cases is made accordingly. There is scope for classification not only in High Court but also in subordinate Courts. A specified category of cases can be assigned to one or more judges having familiarity with that branch of litigation and such Judges will be in a better position to decide the case more efficiently and expeditiously. The present practice in most of the Trial Court is to assign cases by rotation. This does not serve any useful purpose except ensuring numerical equal distribution of work amongst the available Courts.

There are certain categories of heavily contested cases where against the decision of a Single Judge of the High Court appeals are almost invariably filed. Such cases can at very outset be assigned to a Division Bench which will save considerable time of the Single Judge which he will be able to devote in less contested cases. If necessary, Rules of the High Court can suitably be amended to make this provision.

Cause List of Subordinate Courts: In Subordinate Courts a practice has developed to fix many more cases than the Court can possibly hear on a day. Court spends considerable time every day in calling certain cases with a view to adjourn them to a future date. The time spent for this purpose can hardly be considered to have been put to any constructive use. The practice of fixing more work than can be finished in a day seems to have arisen from a desire to provide against a possible breakdown of the day's file by reason of unforeseen circumstances. It is also due to the Presiding Officer not giving his personal attention to the fixing of his daily list and leaving it to his bench clerk or other ministerial officer of the court to post cases for hearing.

The question as to how many cases of various categories should be fixed on a day calls for a judicious appraisal of the capacity of a Judge to deal with the number of cases he can handle within the limited Court time available to him. An attempt should be made in consultation with Advocates to estimate the time, a particular case will take to hear. The time required for the purpose may exceed the estimate or may be below the estimate. But the fact

remains that no attempt is made to such an estimate and more work is fixed in a day then can possibly be done. If the Judge monitors the Court diary on the basis of an estimate of the time that will be required by the case, the number of adjournments can be substantially reduced.

If only a limited number of cases are notified for trial the lawyers as well as the litigants would be put to notice that the cases will actually go on trial and adjournments will not be granted. It will also make it easier for the Judge to manage the schedule and will also reduce the burden on lawyers, who have to attend a large number of such cases which are not to be tried on that day.

Once the case attains the stage of hearing that is when the issues or charges are framed, the case should be set for final hearing on a date keeping in view the load on the court docket on such date, when in all probabilities, it can be heard. For this purpose, the Presiding Judge has to be always vigilant about the number of cases pending for hearing on his docket and fix the case keeping such pendencies in view.

9. ADR METHODS AND LOK ADALATS

Whenever a person has civil dispute with someone, he would go to a lawyer. In our country, lawyer would advise him to file a case in a Court of law for redressal of his grievance. If he receives a legal notice, the advice of lawyer would be either not to respond or send a reply through him. But this is not the position in the other countries, such as USA where a person going to lawyer, is advised to go for negotiation with the other party. Both the parties, generally represented by lawyers, would discuss and try to resolve the dispute by negotiations and the success rate is very high.

Litigation through the Courts and Tribunals established by the State is one way of resolving the disputes. The Courts and Tribunals adjudicate and resolve the dispute through adversarial method of dispute resolution. Litigation as a method of dispute resolution leads to a win-lose situation. Associated with this win-lose situation is growth of animosity between the parties, which is not congenial for a peaceful society. One party wins and other party is a loser in litigation, whereas in Alternative Dispute Resolution, we try to achieve a win-win situation for both the parties. There is nobody who is loser and both parties feel satisfied at the end of the day. If the ADR method is successful, it brings about a satisfactory solution to the dispute and the parties will not only be satisfied, the ill-will that would have existed between them will also end. ADR methods especially Mediation and Conciliation not only address the dispute, they also address the emotions underlying the dispute. In fact, for ADR to be successful, first the emotions and ego existing between the parties will have to be addressed. Once the emotions and ego are effectively addressed, resolving the dispute

becomes very easy. This requires wisdom and skill of counseling on the part of the Mediator or Conciliator.

The alternative modes of disputes resolution include arbitration, negotiation, mediation and conciliation. The ADR system by nature of its process is totally different from Lok Adalat. In Lok Adalat, parties are encouraged to come to compromise and settlement on their own, whereas in the mediation and conciliation system, the parties have before them many alternatives to solve their difference or disputes. Instead of obtaining a judgment or decision, the parties through ADR might agree for a totally new arrangement, not initially agreed or documented.

Negotiation as the term implies, signifies resolving disputes by dialogue. In fact, we negotiate everyday willingly or unwillingly – even when there is no dispute. We go to shop to buy– we negotiate with shopkeeper; we have to buy property, we negotiate through a dealer. When there are disputes between management and workers, union would send charter of demand to the management which would be followed by negotiations, which take place across the table between representatives of the workers and the management.

The mediator has a diverse role to play. He will act as a link between the two contesting parties. He will ascertain the nature of real dispute and narrow-down the areas of controversy. He will guide the parties in which direction they can arrive at a compromise or settlement. He can, if necessary, prepare documents suggesting arrangements for resolving their disputes. In U.S.A. there are private mediation firms which employ full time mediators and possess infrastructural facilities to hold a large number of mediations. More people go to such firms rather than wait in Courts. Also, there are Court Annexed Mediation Centres, running on funds made available by the Government. There are thousands of lawyers practising exclusively as mediators. Retired Judges also act as mediators. There are mediators who specialize in various branches such as intellectual property, accident, commercial cases etc. and more than 90% of the cases do not go to trial.

Sections 61 to 81 of the Arbitration and Conciliation Act, 1996 contain the detailed scheme of conciliation. Section 67 of the Act also contemplates that the role of the conciliator is the same as the role of the mediator in the American legal system. In fact, conciliation and mediation are generally interchangeable.

The main problem being faced in this regard is that there are not many trained mediators and conciliators. Also, there are very few trained personnel to impart training to prospective mediators and conciliators including Judicial Officers and members of the Bar, about Alternative Disputes Resolution methods and pre-trial settlement of cases. Judicial Officers are already overburdened and find no time to adopt these modes of Alternative Disputes Resolution. Senior Judicial Officers having aptitude for ADR methods should be

trained in mediation, conciliation etc. and made incharge of mediation and conciliation centres. They can also be asked to provide training to prospective mediators and conciliators who can then undertake the task of settlement of disputes by way of mediation/conciliation. However, ultimately the responsibility of mediation has to be on the shoulders of members of Bar.

Code of Civil Procedure has recently been amended by incorporating Section 89 with a view to bring alternative systems into the mainstream. However , we are yet to develop a cadre of persons who will be able to use these ADR methods in dispensing justice. Lawyers by and large still believe that litigation is the way of resolving disputes. Litigants are also advised accordingly. 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.

We have to identify the target groups. It could be retired judges, senior advocates etc. on whom litigating parties can have faith. A section of lawyers will have to be trained for functioning as mediators and conciliators. This job requires not only knowledge of law but tact, skill and capacity to bring parties to terms. This is a new challenge before the legal profession. They will now have to develop expertise to act successfully as mediators and conciliators.

It is also necessary to provide adequate infrastructure for conciliation/mediation centers by giving them adequate space and manpower and other facilities. In Salem Advocates Case [2005 (6) SCC 344], Supreme Court has appreciated the suggestion that expenditure of compulsory conciliation/mediation envisaged in Section 89 of CPC should be borne by the Government since it may encourage parties to come forward and make attempts at conciliation/mediation. Central Government was directed to examine the suggestion and if agreed request the Planning Commission and Finance Commission to make specific allocation for Judiciary for incurring the expenses for mediation/conciliation under Section 89 of Code of Civil Procedure.

Government is the biggest litigant and if government is to be involved in this ADR system in negotiation and mediations etc. its officers would have to take lead in this cause.

I wish to recall what Abraham Lincoln said more than a century ago:

> "Discourage litigation, persuade your neighbours to compromise, whenever you can. Point out to them the normal winner is often a real loser; in fees, expenses and waste of time. As a peacemaker, the lawyer has a superior opportunity of being a good person."

LOK ADALAT: Lok Adalat is another alternative to JUDICIAL JUSTICE. This is a recent strategy for delivering informal, cheap and expeditious justice to the common man by way of

settling disputes, which are pending in Courts and also those, which have not yet reached Courts by negotiation, conciliation and by adopting persuasive, common sense and human approach to the problems of the disputants.

Now Lok Adalats find statutory recognition in Legal Services Authorities Act enacted pursuant to the Constitutional mandate of Article 39A of the Constitution of India. Lok Adalat is no more an experiment and has already become an effective and efficient alternative mode of dispute settlement which is widely recognized as a viable, economic, efficient and expeditious form for resolution of disputes. The award made by Lok Adalat is deemed to be decree of Civil Court which is final and binding on all the parties without providing for any appeal.

Chapter VI-A of Legal Services Authorities Act provides for establishment of permanent Lok Adalats for the public utility services. Till date permanent Lok Adalats for public utility services have not been established in many States. Those State Governments should be persuaded to establish permanent Lok Adalats for public utility services without any further delay.

Periodically Lok Adalats should be organized so that litigation of villagers is resolved amicably in villages themselves without being allowed to be dragged on through appeals to Tehsil and District Courts upto High Court and Supreme Court. Disputes like relating to title to properties, boundaries of fields, irrigation facilities, easementary rights, cooperative loans, buying and selling transactions, rights concerning women and similar other disputes typical to the village community, including their family disputes, are most suitable for being handled in Lok Adalats, where they can be resolved by consensus without disturbing atmosphere of peace and cooperation in village communities.

The cases which seem easy for compromise can be sent to Lok Adalats. The cases, for which some other method of resolution is seen to be better suited to both the parties, may go to mediation and conciliation and the cases in which technically or commercial expertise is needed are better handled in institution of arbitration by a panel of arbitrators.

10. MODERNISATION AND COMPUTERISATION OF COURTS:

In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenge of the age. Inter-court and Intra-court communication facilities, developed through use of Internet not only save time but also increase speed and efficiency. Day-to-day management of Courts at all levels can be simplified and improved through use of Technology including availability of Case Law and administrative requirements.

Using various I.T. tools it is possible to carry out bunching/grouping of the cases involving same question of law. If this is done, all such cases can be assigned to the same Court, which can dispose them of by a common Order. If point of law involved in the matter is identified in each case, it is possible to allocate subsequently cases involving the same question of law to the same Court, for being heard along with the previously instituted case.

As of now the Courts communicate with the Advocates/litigants through the process serving agency or the conventional postal system. It is possible to generate notices, summons etc. on computer and serve them through the use of electronic communications such as E-Mail. Addresses of advocates and the litigants can be entered in computer for the purpose of communication. Faster communication will lead to faster progress of the case and eventually help in reducing arrears.

Video Conferencing: It is not uncommon for the criminal cases getting adjourned on account of inability of the police or jail authorities to produce them in the Court. Sometimes the Witnesses are residing at far off places or even abroad. It is not convenient for them to attend the Court at the cost of considerable time and expense.

Video conferencing is a convenient, secure and less expensive option, for recording evidence of the witnesses who are not local residents or who are afraid of giving evidence in open court, particularly in trial of gangsters and hardened criminals, besides savings of time and expenses of traveling. Recently, Code of Criminal Procedure has been amended in some States to allow use of Video Conferencing for the purpose of giving remand of accused persons thereby eliminating need for their physical presence before the Magistrate.

11. TRAINING OF JUDGES AND JUDICIAL STAFF

Regular training and orientation sharpens the adjudicatory skills of Judicial Officers. A good training programme serves the futuristic needs of the system by improving the potential to optimum level. If judgments at the level of trial courts are of a high quality, the number of revisions and appeals may also get reduced. If the Judge is not competent he will take longer time to understand the facts and the law and to decide the case. The training needs to include Court and Case Management besides methods to improve their skills in hearing cases, taking decisions, writing judgments. It is also necessary to train Judicial Officers in the new legislations and the expanding field of trade and commerce so as to keep them well informed and enable them to handle new and complicated legal issues in an efficient manner.

National Judicial Academy was set up in Bhopal on 17th August, 1993, and it is imparting comprehensive training to Judicial Officers at the level of District Judges. The courses and training modules designed by National Judicial Academy have won appreciation not only from the participants but also from the foreign visitors.

Eighteen State Judicial Academies have been set up for States. Training in State Judicial Academies is imparted mainly by senior Judicial Officers and High Court Judges. They have their independent curricula, induction training as well as inservice education. There is an urgent need to augment the capacity of these institutes by providing dedicated faculty and necessary tools and equipments including study material and technology required for imparting the training. Computer operations and management skills also need to be imparted through appropriate modules. First National Judicial Pay Commission in Chapter 13 of its Report stressed for an imperative need for organized programme of judicial education and training not only at the time of selection and appointment, but on a continuing basis. The Central and State Governments should allocate sufficient funds for the purpose.

Carrying out of judicial reforms and implementation of new initiatives such as modernization and computerization of Courts and use of Alternative Dispute Resolution methods require participation of and concerted efforts from not only Judges but also from Court personnel, who manage the system. Therefore, extensive training including training while on work, needs to be given to Court staff as well so as to harness and enhance their knowledge and skills and also to motivate and gear them up, for the task assigned to them. Trained Court staff can be of immense help in categorization of cases, grouping and bunching of the matters involving similar questions of law and / or facts, preparation of cause list, listing of matters, maintenance of old record including its digitization, proper maintenance and upkeep of infrastructure, including Court libraries, application of Information and Communication Technology in Justice Delivery System and proper management and utilization of the resources available to Judicial Institutions.

National Judicial Academy and State Judicial Academies can play an important role in appropriate training of Court Administrators and Staff. Training modules and programmes designed by one Academy can be utilized by other Academy as well, to train the Officers and officials of the Courts within their respective States.

12. FAST TRACK COURTS OF MAGISTRATES AND FAST TRACK COURTS FOR CIVIL CASES:

On the recommendations of the 11th Finance Commission 1734 Fast Track Courts were sanctioned for disposal of long pending Sessions and other cases out of which 1549 were functional when the Scheme was to end on 31st March, 2005. The term of 1562 Fast Track Courts has been extended for another five years. The figures for last three years show that Fast Track Courts of Sessions Judge disposed of 133475 cases in the Year 2003, 168861 cases in the Year 2004 and 171626 cases in the Year 2005. Therefore, Fast Track Courts have been quite successful in reducing arrears.

Most of the criminal cases in Subordinate Courts are pending at the level of Magistrates. 16234223 main criminal cases (excluding Interlocutory/Interim and Bail applications) were pending in Magisterial Courts as on 31st December, 2005. Keeping in view the performance of Fast Track Courts of Session Judges and contribution made by them towards clearing the backlog of cases, Government of India should formulate a similar scheme for setting-up of Fast Track Courts of Magistrates in each State/Territory. Cases from regular Courts can be transferred to Fast Track Courts of Magistrates for quick disposal.

Pendency of civil cases in subordinate courts, though not as large as of criminal cases, is quite huge and is increasing every year.

Analysis of data would show that barring the years 2000 and 2004, disposal of civil cases has always been less than the institution and the pendency has increased by 328232 cases in last five years. It is common knowledge that a large number of pending civil cases are very old. Since the yearly institution is more than the yearly disposal, the arrears cannot be wiped out by regular courts. It would, therefore, be necessary that at least part of pending civil cases are also transferred to Fast Track Courts for disposal, so that regular Civil Courts can deal with remaining cases and fresh institutions and decide them expeditiously. Initially, the cases which are pending for more than three years can be transferred to Fast Track Courts, for disposal.

13. TRANSFER OF PETTY CASES FROM REGULAR COURTS:

As many as 4134024 cases involving petty offences were pending in Magisterial Courts as on 31st December, 2005. Since the pendency before Magisterial Court is very high, we need to transfer such cases to Courts of Special Magistrates, to be manned by retired Judicial Officers/Senior Government servants who can make extensive use of I.T. tools in disposal of such cases viz. by entering their particulars such as next date and the order passed on computer, issuing computerized receipts against which document, if any, impounded by police in traffic challans may be returned and issuing computer generated cause list of such cases. State Governments should take immediate steps to appoint such Judicial Magistrates in adequate number to deal with such cases and provide necessary infrastructure including accommodation and Court staff for them. Section 206 of Criminal Procedure Code has now been amended, so as to enable the magistrate to impose fine upto Rs.1,000/- for petty offences. Therefore, more offences can now be covered under the definition 'petty offences', by making necessary amendments in this regard.

14. CASES UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT:

As on 31st December, 2005, 16,66,873 cases under Section 138 of Negotiable Instruments Act were pending in Magisterial Courts. No provision for creating additional

Courts was made while amending Section 138 of Negotiable Instruments Act to provide for prosecution in case of dishonour of Cheques etc.

It is, therefore, necessary to set up additional Courts to deal exclusively with such complaints. In the meanwhile the High Court can consider assigning these complaints to Civil Judges wherever the pendency before Magisterial Courts is substantially more than the pendency before Civil Courts.

15. OLD CASES:

As many as 531477 more than ten years old cases were pending in the High Courts alone as on 31st December, 2005. The pendency of such cases in Subordinate Courts is bound to be many times more. The High Court should consider segregation of courts so as to earmark separate courts to deal with old cases and new cases, in order to ensure that new cases do not become old cases of tomorrow. The High Courts should set up benches exclusively for regular hearing of criminal appeals/petitions pending for more than 3 years, cases in which the accused is in custody or the proceedings before the trial Court have been stayed and civil cases in which injunction or stay order has been passed, so as to take up them on priority basis and as far as possible dispose them of within one year.

The cases in which in which proceedings before the trial Court have been stayed by the Sessions Courts/Fast Track Courts of Sessions Judges, sessions cases in which the accused is in jail for more than 3 years and civil cases in which injunction or stay has been granted by subordinate courts should be identified and disposed of on priority basis, as far as possible within one year.

A suitable mechanism should be devised to ensure that stay of proceedings before the trial court terminates at the end of six months, unless extended, for adequate and special reasons to be recorded in writing.

16. GOVERNMENT LITIGATION

Government is the biggest litigant whether as petitioner or as respondent. Large number of appeals/revisions and other proceedings filed by the Government are dismissed as frivolous and unwarranted. In fact, thousands of Special Leave Petitions and appeals are filed after substantial delays and are dismissed on the ground of delay only.

The cause of such large litigation is unwillingness on the part of the government officers to take decisions which invariably have financial implications.

Section 80 of Code of Civil Procedure is not utilized at all by Government departments for settling the cases out of the Court as no one wants to take responsibility for the decision.

Despite admonition from Supreme Court, there is a tendency on the part of public servants to raise technical pleas, to defeat just claims of the citizens.

All the Governments should develop an in-house mechanism for settling such disputes, to which they are parties, before they reach the court and also by taking a conscious decision whether to litigate or not to litigate by constituting high power committees assisted by former Judges or Legal Advisors of outstanding integrity and independence.

They can be requested to act in the redressal cells voluntarily or on remuneration to be paid by the concerned government departments.

Approach to law courts by suits, writ petitions or petitions in Service Tribunals should be allowed only after the grievance is examined and decided in the cell to be set up in each department. In those adjudicatory forums also, as far as possible, the judge should encourage the parties to come to mutually agreed terms thus solving their problems and differences in a manner as to satisfy both the parties.

The Civil Procedure Code, 1908, as amended in 1976, inserted Rule 5B in Order XXVII casting a duty on the court in suits against the Government or a public officer to assist in arriving at a settlement in the first instance. The potential of this provision does not appear to have been tapped fully. The reason is obvious. Unless the Government or the public officer or their lawyer is prepared to settle the dispute at that stage the trial court can do nothing.

17. DISCRETIONARY PROSECUTION

It is difficult to enforce the formal system of charge and adjudication in respect of all the offences irrespective of their nature, implication and magnitude. There are simply too many offences, too many offenders and too few resources to deal with them all. In some countries, including U.K., the principle of discretionary prosecution has replaced the principle of obligatory prosecution. A case is sent for trial only if the prosecuting agency is of the opinion that the prosecution of the accused would be in public interest. We can consider and opt the same principle with such modifications as may be deemed appropriate in our circumstances. State can notify the offences which can be considered for prosecutoral discretion. This will enable the prosecuting agency as well as the courts to devote their time and energy to those prosecutions, which are found necessary in public interest.

18. SERVICE OF SUMMONS :

Service of summons upon the parties and/or the witnesses is probably the most import step in progress of the case and consumes a lot o time of the court. The cases are frequently adjourned on account of non-service of the parties or witnesses. The normal practice is to serve the summon through a process server. Complaints are often made that

the process server connives with one party to the case and on that account does not get the service effected. Most of the times, the defendant is interested in delaying the case, and in connivance with him the process server makes an incorrect report such as the person summoned not being available or the house having been found locked. Sometimes the plaintiff who has obtained an ex-parte injunction or other such order, prejudicial to the defendant, is not interested in getting service effected upon the opposite party with a view to prolong the duration of ex-parte order. In such an event it is not uncommon for the plaintiff to obtain an incorrect report regarding non service of the defendant. Similar practices are adopted for prolonging the trial by not allowing the service to be effected on the witnesses.

As far as the civil cases are concerned, Code of Civil Procedure, now provides for transmission of summons not only by registered post but also by courier, fax or e-mail. Hence the Court need not rely exclusively on the process server and can liberally use the alternative modes of service.

As regards criminal cases, it has been experienced that inability of the prosecution to serve and produce the witnesses is the biggest cause for delay in the trial of criminal cases. Many a times the accused deliberately obstructs service of summons upon the witnesses in connivance with the process server of the Police Station. Sometimes it is done with a view to gain time to win over the witness. With the passage of time, sometimes the witnesses changes his place of residence and chances of serving the summons upon him become remote. The Investigating Officers get transferred by the time the case comes up for trial. Except CBI, no other prosecuting agency appoints pairvy officers to pursue the case and make efforts to serve and produce the witnesses. In countries such as U.K., the concerned Police Officer not only serves the summons, he also remains in contact with him and takes trouble of reminding him to attend the Court on the scheduled date. It should be mandatory for the Investigating Officer to remain present on each date of trial, till examination of prosecution witnesses is completed. It should also be his responsibility to take the summons of the witnesses and serve the same upon them. Wherever it is not feasible for him to personally serve the summons he should be responsible to ensure service through the concerned agency.

Section 62 of the code provides that summons shall be served by a Police Officer, or subject to such rules being framed by the State Government, by any officer of the Court or other public servant. Unfortunately rules have not been framed by many State Governments to enable service other than through police officers. Since the criminal Procedure Code itself provides for other means of service, namely through registered post in the case of witnesses, section 62 should be amended to provide for service on accused through registered post with acknowledgement due and wherever facilities of courier service are available, the same should also be adopted. If fax facilities are available the same should be used. As in civil cases, service through court official can also be provided and in case of the accused who is absconding, the summons can be served on an adult member of the family or affixed on a

prominent place at his residence and the same should be treated as sufficient service so that in case of non-appearance a warrant can be issued.

19. INTERLOCUTORY APPLICATIONS:

Simultaneously with institution of civil litigation, the process of filing interlocutory applications (IAs) commences, which continues till the judgment is pronounced. Such applications pertain to dispensation with issuance of statutory notices against government and statutory bodies, which otherwise is a condition-precedent for maintainability of such suits, grant of temporary injunction, for directing the defendants to furnish securities, appointment of receivers, issuance of commissions, addition of parties, amendment of pleadings, summoning of witnesses for examination, cross-examination, re-examination and so on and so forth. A lot of judicial time is spent on hearing and disposal of such applications. The Courts need discourage, frivolous and unnecessary applications by dismissing them with exemplary costs. As for as possible, such applications should be heard and disposed of on the very first hearing, so that an unscrupulous litigant is not able to gain time and cause delay, which is the primary aim behind filing many such applications.

20. ADJOURNMENTS

A notorious problem particularly in the trial courts is the granting of frequent adjournments, many a times on flimsy grounds. This malady has considerably eroded the confidence of the people in the Judiciary. Adjournments not only contribute to delays in the disposal of cases, they also cause hardship, inconvenience and expense to the parties and the witnesses. The witness has no stake in the case and comes to assist the court to dispense justice. He sacrifices his time and convenience for this. If the case is adjourned, he is required to go to the Court repeatedly. He is bound to feel unhappy and frustrated. This also gives an opportunity to the opposite party to threaten or induce him not to speak the truth. The right to speedy trial is thwarted by repeated adjournments.

Code of Civil Procedure after its amendment w.e.f. 1.7.2002 permits adjournment of not more than three times to a party during the hearing of the suit. Recording of reasons is mandatory for granting adjournment. The amendment further enjoins upon the court to make such order as to costs occasioned by the judgment or such higher costs as the courts deems fit thereby making awarding of costs mandatory and linking it to the actual cost suffered by the opposite party. Therefore, the legislature has already given ample power to the court to exercise full control on the hearing and not permit a party to delay the progress of the case. The grounds for adjournment are numerous. Sometimes the number of cases set down for trial on a day proves to be excessive, sometimes the court has the time to try the case but the parties desire adjournment. A number of cases are adjourned only because of convenience of the advocates. Under the law a judge can refuse adjournment on the ground of convenience of the advocate but in practice he rarely does so. A judge becomes unpopular if he refuses

adjournment on such ground. It is noticed that civil work is concentrated amongst a few leading advocates, who are unabale to attend all the cases accepted by them. The Supreme Court, in the case of NG Dastane v. Srikant Shivde [(2001) 6 SCC 135] taking note of the problem was of the view that seeking unwarranted adjournment when witnesses are present in the court without making any other arrangements for their examination is a dereliction of advocate's duty to the court and such dereliction, if repeated, would amount to misconduct of the advocate concerned. It is for the Bar to come forward to sort out this problem and refrain from seeking adjournment unless absolutely unavoidable.

21. STRIKE BY LAWYERS:

Nowhere else, the strikes by lawyers is ever heard of. Legal profession is essentially a service oriented profession. Though the entry to the profession can be made merely by acquiring the requisite qualification, the honour as a professional can be maintained by its members only from their conduct, both in and outside the court. As responsible officers of the court they have an overall obligation of assisting the court in a just and proper manner in the administration of justice. In Harish Uppal v. Union of India a Constitution Bench of the Supreme Court declared that the lawyers have no right to strike or to give a call for boycott not even of a token strike. The sections affected by the strikes, namely the Courts as well as litigants, are innocent and have done nothing wrong to the advocates. Why should they be then targeted by lawyers going on strikes and abstaining from work. When the workmen go on strike, they target the management on account of injustice caused to them. When Government servants are on strike, they want it to listen to their grievances but, in case of strike by lawyers generally the grievance is neither against the Court nor against the litigating public.

It is high time, the lawyers realise the undesirability of strikes and the immense damage they cause not only to the system but to their own credibility as well.

22. PRE TRIAL HEARINGS IN CRIMINAL CASES:

The concept of pre-trial hearing which is common in several countries such as United Kingdom has neither been adopted nor given a statutory recognition in our country. Section 294 of the Code of Criminal Procedure envisages that the particulars of every document filed by the prosecution or the accused shall be included in a list, and the other party or its pleader "shall" be called upon to admit or deny the genuineness of each such document. Where the genuineness of such document is not disputed, the document may be treated as 'proved'. This provision, unfortunately, is rarely utilized.

It is necessary to make an express provision in the Code of Criminal Procedure holding pre-trial hearing for dealing with the matters such as admission and denial of documents; to explore the possibility of taking evidence on affidavits, as provided in Section 294 and 296 of

the Code, to identify the question of law, if any, relating to maintainability and jurisdiction, to decide the order of examination of witnesses, to assess the time required for recording the evidence, to fix the dates for examination of witnesses and to explore the scope of settlement without trial such as compounding inappropriate cases.

23. PLEA BARGAINING

Delay and heavy workloads in the courts have resulted in the informal system of pre-trial bargaining and settlement in some western countries, especially in the United States. The system is commonly known as "plea bargaining". A suspect may be advised to admit part or all the crime charged in return for a specified punishment or rather than await trial with the possibility of either acquittal or a more serious punishment. Plea bargaining as most criminal justice reformers believe, is more suitable, flexible and better fitted to the needs of the society, as it might be helpful in securing admissions in cases where it might be difficult to prove the charge laid against the accused.

On recommendations of Malimath Committee, Code of Criminal Procedure has been recently amended by adding Chapter XXI A, consisting of 12 Sections. The Central Government, however, is yet to notify the offences affecting the socio-economic condition of the country, which have been kept out of the purview of plea bargaining. It is expected that this provision will be utilized sincerely and honestly so as to achieve the desired result of reduction in arrears and expeditious disposal of the criminal cases. Not only will it expedite the disposal of the cases, it may also result in adequate compensation for the victim of the crime, since he along with prosecutor will be in a position to bargain with the accused.

24. ARREARS ERADICATION SCHEME

Malimath Committee has recommended working out of an Arrears Eradication Scheme, for tackling cases which are pending for more than two years. The scheme envisages identification of cases which can be summarily disposed of under Section 262 of the Code, as also the petty cases under Section 206 as well as the cases which can be compounded. It has been recommended that all the compoundable cases be sent to Legal Services Authority for settling through Lok Adalat. The Courts constituted under the scheme will take-up hearing on day-to-day basis and only such number of cases shall be posted for hearing as can be conveniently disposed on everyday. Once the case is posted for hearing, it shall not be adjourned except under special circumstances, and on payment of costs and expenses of witnesses. A retired High Court Judge may be deputed as incharge of the scheme. He shall estimate the number of additional Courts required for eradication of arrears and move the concerned authorities to appoint them along with the required staff, Public Prosecutors and necessary infrastructure. The recommendation is pending for last more than three years. The scheme should be formulated and implemented without further loss of time

25. PROCEDURAL IMPROVEMENTS IN TRIAL OF CRIMINAL CASES:

(i) In a case instituted on police report, the accused is entitled to true copies of statements and documents proposed to be used against him during trial. It is frequently seen that the cases are adjourned many a times only on account of failure of the prosecution to supply these statements and documents to all the accused. Photocopiers can be provided to all the Courts so that instead of calling the investigating officer and directing him to provide the deficient copies, it is possible to supply the sufficient copies then and there, thereby eliminating the need for adjourning the case only for this purpose.

(ii) **Exemption from personal appearance of the accused**: No useful purpose is served from insisting upon personal appearance of the accused except when he is required to be identified by the witnesses during the course of evidence. Therefore, trial courts should be liberal in granting exemption wherever the accused is represented by a counsel, who is ready to proceed with the hearing of the case and the accused is not required to be identified by the witnesses.

(iii) **Framing of charge**: Many a times, framing of charge is to be deferred merely because the accused or some of them are not present to answer the charge. Even where exemption from personal appearance of the accused has been dispensed with and they are represented by a lawyer, trial courts insist upon personal appearance of the accused to answer the charge. There is no justification for insisting upon personal appearance of the accused to answer a charge if his counsel is ready to carry out the task on his behalf on his instructions and has been duly authorized in this behalf.

(iv) **Public Prosecutor**: It is not infrequent that either no regular public prosecutor is posted in a Court or in case a regular prosecutor is on leave, no alternative arrangement is made. Even if alternative arrangement is made, the public prosecutor deputed as a substitute, having not read the file, does not take much interest in the case and either the witnesses are not examined or their examination is cursory. Many a times, one public prosecutor is given charge of two or three courts and consequently the work of some or the other courts suffers on account of non-availability of the prosecutor. It is, therefore, necessary that the number of prosecutors should not be less than the number of criminal courts and leave vacancy reserve of prosecutors should be available to the Directorate of Prosecution, so that the work of any court does not suffer on account of leave of regular prosecutor.

(v) **Compounding**: A perusal of Section 320 of Code of Criminal Procedure shows that not many cases can be compounded with or without permission of the Court. There is an imperative need to enlarge the list of compoundable offences. In particular the offences against human body and against private property, offences relating to documents and property marks should be allowed to be compromised, barring some valid exceptions. Malimath Committee has already recommended amendment of Section 320 of Code of

Criminal Procedure so as to provide for compounding of offences punishable with imprisonment for a period not exceeding one year or with fine or with both, besides offences enumerated in the Section. However, the Government is yet to implement this part of the recommendations.

(vi) **Statement of Case:** Malimath Committee has recommended that the prosecution be required to file a statement of prosecution containing all relevant particulars including date, time, particulars of offences, part played by the accused, motive for the offence, nature of evidence, names of witnesses and such other particulars as are necessary to fully disclose the prosecution case. This statement shall be served on the accused and on framing of charges, he shall submit the defence statement giving specific reply to other material allegations made in the statement. If the accused is claming benefit of any general or special exception, he will be required to plead the same in his reply. On considering the prosecution statement and defence statement, the court shall formulate the points of determination that arise for consideration and will also indicate on whom the burden of proof lies. The allegations which are admitted or are not denied need not be proved. The Government is yet to accept this recommendations. As and when implemented it will go a long way in reducing the number of witness and the time taken for completion of trial.

26. **PROCEDURAL IMPROVEMENTS IN TRIAL OF CIVIL CASES**

(i) **Written Statement**: Order VIII, Rule 1 of Code of Civil Procedure requires the defendant to file the written statement within 30 days from the date of service of summons and ordinarily, the Court also should not extend the time for filing the written statement beyond 90 days from the date of service of summons. As held by Supreme Court in Salem Advocates Bar Association's case , only in exceptional cases the Court should permit filing of written statement beyond the upper limit of 90 days.

Our system gives no incentives for honesty and reasonableness on the part of a litigant nor are there sufficient disincentive or penalties for dishonesty and/or unreasonableness. If we want to curb dishonest practices on the part of unscrupulous litigants, it is imperative that the delay must hurt dishonest litigants more than honest litigants.

(ii) **Costs:** If the costs imposed upon the defaulting party or the party responsible for delaying the matter are realistic, he/she will be discouraged from prolonging the case as there won't be much incentive left for causing delay in trial. The costs have to be actual reasonable costs including cost of time spent by successful party, cost of transportation and lodging, if any and other incidental costs besides Court fee, lawyers fee, typing charges etc. High Courts should immediately make rules and regulations or give practice directions so as to provide appropriate guidelines for subordinate Courts in this regard, as mandated by this Court in Salem Advocates case, wherever this has already not been done.

(iii) **Examination of Parties:** Order X Rule 2 of Code of Civil Procedure mandates the Court to examine orally such of the parties to the suit appearing in person or present in Court, as it deems fit with a view to elucidate the matters in controversy in the suit. It is seen that the Courts do not always examine the parties in terms of the statutory provision. It is likely that if the parties are thoroughly examined with reference to the averments made in the pleadings, they will admit many facts, thereby reducing the necessity of recording evidence. The Court should, therefore, always direct personal appearance of the parties with a view to examine them under Order X Rule 2 of the Code of Civil Procedure.

(iv) **Discovery and Inspection:** The provisions of Order XI of Code of Civil Procedure providing for discovery by interrogation, production and inspection of documents are not used frequently. If full use of these provisions is made, unnecessary evidence can be curtailed and trial can be expedited.

(v) **Issues:** Framing of issues is an important task to be performed by the Courts after careful examination of the pleadings of the parties. Only necessary issues of facts and law arising from the pleadings should be framed. Sometimes, the suit can be disposed of only on an issue purely of law covered by Order XIV, Rule 2 of the Code of Civil Procedure. Such an issue can be treated as preliminary issue, instead of leaving it to be decided along with issues of fact or mixed issues of fact and law.

(vi) **Evidence on Affidavits:** It has been experienced that the entire pleadings of the parties are almost reproduced in the affidavits of witnesses instead of confining them to the fact required to be proved by the witness. The Court should carefully scrutinize the affidavits before serving copy on the opposite party and wherever it is found that the scope of affidavit has been unnecessarily enlarged by referring to the facts not to be proved by the witness or by the referring to legal propositions in the affidavit, such affidavit should be rejected with heavy costs.

(vii) **Ex-parte Injunctions:** Order XXXIX, Rule 3 of the Code of Civil Procedure contains a legislative mandate to the Courts not to grant ex-parte injunction unless the very object of granting injunction would be defeated by the delay. Wherever the Court proposes to grant injunction without notice to the opposite party, it is mandatorily required to record reasons for its opinion. If the provisions are strictly adhere to, many frivolous suits will not be pursued when an unscrupulous plaintiff is unable to secure ex-parte injunction, which was the primary motive for filing civil suit. Wherever ex-parte injunction is granted by the Court it must comply with the provisions of the Rule 3A of Order XXXIX of the Code of Civil Procedure by disposing of the injunction application within 30 days from the date on injunction was granted. If it is really unable to do so, it is mandatorily required to record reasons for such inability. However, it is experienced that the provisions of Rule 3 are observed more in breach than in compliance. The legislative direction must be honoured and every attempt should be made to

dispose of the injunction application within 30 days, wherever the Court deems it appropriate to grant an ex-parte injunction.

CONCLUSION

27. We will have more litigation in future when those sections of the society, who have remained oppressed and unaware of their legal rights, become more aware of their rights due to spread of legal literacy, and increased awareness equipped by effective legal aid and advice. While laying stress on the urgent need of elimination of delay and reduction of backlogs, we cannot afford to act in undue haste so as to substitute one evil for another one. Stress on speed alone at the cost of substantial justice may impair the faith and confidence of the people in the system and cause greater harm than the one caused by delay in disposal of cases.

I will conclude by referring to the observation made by Justice Warran Burger, former Chief Justice of the American Supreme Court observed in the American context :

> "…… The notion – that ordinary people want black-robed judges, well dressed lawyers, fine paneled courtrooms as the setting to resolve their disputes, is not correct. People with legal problems. like people with pain, want relief and they want it as quickly and inexpensively, as possible,"

INDEX OF LECTURE