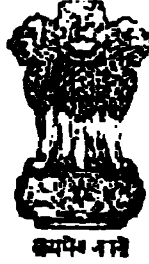

LAW COMMISSION OF INDIA

SEVENTY SEVENTH REPORT

DELAY AND ARREARS IN TRIAL COURTS

November, 1978

D. O. No. F. 2 (7)/77-L.C. *November* 27, 1978

My Dear,

I send herewith the seventy-seventh Report of the Law Commission relating to delays and arrears in trial courts.

The subject was taken up for consideration pursuant to the terms of reference of the Law Commission, according to which the Commission should, inter alia, keep under review the system of judicial administration to secure elimination of delays and speedy clearance of arrears.

I must place on record my appreciation of the assistance rendered by Shri P. M. Bakshi, Member-Secretary in the preparation of this Report.

With kind regards.

Yours

(Sd/)
(H. R. KHANNA)

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CONTENTS

CHAPTER		TOPIC	PAGE
1.	—	Problem of delay and arrears in trial courts	1
2.	—	The Trial Court Judge	5
3.	—	The present system evaluated: comparison with ancient judicial system	7
4.	—	Stages of delay—summons	11
5.	—	Pleadings and issues: the pretrial procedure	13
6.	—	Court diary and evidence and substitution of legal representatives.	18
7.	—	Arguments, judgment and decree	23
8.	—	Conciliation	26
9.	—	Recruitment and personality of the trial judge; inspection of courts and training of judicial officers	31
10.	—	Cases under ceratin special Acts	37
11.	—	Execution	39
12.	—	Criminal cases	41
13.	—	Some general suggestions	46
14.	—	Summary of conclusions and recommendations	49

APPENDICES

Appendix 1	—	Figures of pendency in subordinate courts for the year 1977	61
Appendix 2	—	The special list system in Kerala	87
Appendix 3	—	Questionnaire issued by the Law Commission of India	91

CHAPTER 1

PROBLEM OF DELAY AND ARREARS IN TRIAL COURTS

The problem.

1.1. The problem of delay in the disposal of cases pending in law courts is not a recent phenomenon. It has been with us and has us since a long time. A number of Commissions and Committees have dealt with the problem and given their reports. Although the recommendations, when implemented have had some effect, the problem has persisted. Of late, it has assumed gigantic proportions. This has subjected our judicial system, as it must, to severe strain. It has also shaken in some measure the confidence of the people in the capacity of the courts to redress their grievances and to grant adequate and timely relief.

The judiciary in the modern State.

1.2. A State consists of three organs, the legislature, the executive and the judiciary. The judiciary, it has been said, is the weakest of the three organs. It has neither the power of the purse nor the power of the sword, neither money nor patronage nor even the physical force to enforce its decisions. Despite that, the courts have, by and large, enjoyed high prestige amongst, and commanded great respect of, the people. This is because of the moral authority of the courts and the confidence the people have in the role of the courts to do justice between the rich and the poor, the mighty and the weak, the State and the citizen, without fear or favour.

Activities of the modern State.

1.3. A modern State has to arm itself with immense powers with a view to implementing socio-economic policies and schemes for welfare measures. These powers have to be exercised through a host of officers at various levels of administration. The grant of such powers has to be cushioned with the right of aggrieved citizens to approach the courts with a view to ensure that in exercise of these powers, the State acts within the bounds of the law and the executive officers do not act arbitrarily or capriciously. The liberties of the citizens face real danger in insidious encroachments by men of zeal, well-meaning but lacking in due deference for the rule of law.

Public confidence in Courts.

1.4. For efficient discharge of the responsibilities of the courts, it is essential that the broad confidence which the people have in them, the high prestige and the great respect they have enjoyed should be maintained and not be subject to any eclipse. The community has a tremendous stake in the preservation of image of the courts as dispensers of justice. Weakening of the judicial system in the long run has necessarily the effect of undermining the foundations of the democratic structure.

Arrears—in terms of number of pending cases and duration.

1.5. Long delay in the disposal of cases has resulted in huge arrears and a heavy backlog of pending file in various courts in the country. A bare glance at the statements of the various types of cases pending in different courts and of the duration for which those cases have been pending is enough to show the enormity of the problem. The delay in the disposal of cases understandably causes dismay to, and creates disillusionment in, all those who knock at the doors of the courts. If the number of cases in the disposal of which there is delay is very large, the dismay and distillusionment would necessarily become widespread.

Long delay has also the effect of defeating justice in some cases. As a result of such delay, the possibility cannot be ruled out of loss of important evidence because of the fading of memory or death of witnesses. The consequence 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 disappearance of material evidence.

Caution against undue haste.

1.6. While laying stress on the necessity of elimination of delay in the disposal of cases, we must guard against undue speed or haste in the matter of disposal, because this would be substituting one evil for another evil. Any stress on speedy disposal of cases at the cost of substantial justice would impair the faith and confidence of the people in the judicial system—perhaps in a much greater degree than would be the case if there is delay in the disposal of cases. It has to be borne in mind that in the disposal of cases certain procedural requirements which ensure fair trial and satisfy the demands of justice have to be

followed. Without complying with such procedure, a trial in a court of law can hardly be said to satisfy the minimum requirements of a judicial trial; it would, in fact, be a mockery of a trial. It would be wholly wrong to bring about speed in the disposal of court cases at the cost of substantial justice. Our object, therefore, should be to ensure that consistently with the demands of fair play and substantial justice, ways and means might be found to eliminate delays in the disposal of cases.

Need for effective steps.

1.7. There is another aspect of which also we must not lose sight. Whatever suggestions we make for eliminating delay in the disposal of cases can prove useful only if something effective can be done to deal with the huge arrears which have already piled up. No reform, and no suggestion for improvement, would make any mark if the existing courts remain burdened with the heavy backlog of pending cases. The existence of such heavy backlog presents an almost insurmountable barrier to improvement in methods. Suggestions for improvement can yield results only if something concrete is done with regard to the already existing heavy backlog of cases and if at least some of the courts can start with a clean slate.

As long as courts remain burdend with arrears, the other suggestions for expediting the disposal of cases would be nothing more than palliatives and would not provide any effective relief. The position as it emerges at present is that even if service is effected and issues are framed within one month of the institution of a suit, the cases would still linger on for years in most of the courts because the courts would remain pre-occupied with the disposal of older cases which account for the backlog of arrears. Any serious attempt to eliminate delay in the disposal of cases must, at the threshold, seek effective remedy for clearing the huge backlog of arrears.

We have appended[1] charts and statements to this Report showing the institution and disposal of cases in various States. From the perusal of the figures mentioned therein, it would appear that the courts at present by and large are only disposing of that number of cases in a year as are instituted in that year. The result is that the number of pending cases with all the heavy backlog remains as it is. To cope with the backlog of cases, we must have additional number of courts which may deal exclusively with the old cases. In some States, we also find that the existing number of judges is not enough to cope even with the fresh institutions. In such States the number of courts would have to be increased on a permanent basis so that the disposal may keep pace with the institutions.

View of Rankin Committee.

1.8. We can also do no better in this respect than repeat what was said by the Rankin Committee[2] as far back as 1925. The position since then, if anything, has aggravated out of all proportion. The Committee observed:—

> "Improvement in methods is of vital importance. We can suggest improvements, but we are convinced that, where the arrears are unmanageable, improvement in methods can only palliate. It cannot cure. It is patent that, when a court has pending work which will occupy it for something between one year and two years or even more, new-comers have faint hopes. When there is enough work pending at the end of 1924 to occupy a subordinate judge till the end of 1926, difficult contested suits instituted in 1925 have no chance of being decided before 1927. Whatever be the improvement in methods, improvement in methods alone cannot be expected in such circumstances to produce a satisfactory result even in a decade.
>
> "Until this burden is removed or appreciably lightened, the prospect is gloomy. The existence of such arrears presents further a serious obstacle to improvement in methods. It may well be asked—Is there much tangible advantage gained by effecting an improvement in process serving, pleadings, handling of issues and expediting to the stage when parties are in a position to call their evidence, when it is a certainty that, as soon as that stage is reached, the hearing must be adjourned to a date eighteen months ahead or later, to take its place, in its turn, for evidence,

[1]Appendix 1.

[2]Rankin Committee.

arguments and decision? Unless a court can start with a reasonably clean slate, improvement of methods is likely to tantalise only. The existence of a mass of arrears takes the heart out of a presiding officer. He can hardly be expected to take a strong interest in preliminaries, when he knows that the hearing of the evidence and the decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is a temptation to which many presiding officers succumb, to hold back the heavier contested suits and devote attention to the lighter ones. The turn-out of decisions in contested suits is thus maintained somewhere near the figure of the institutions, while the really difficult work is pushed further into the background."

Criterion for treating a case as an old one—civil cases.

1.9. One of the important questions which we have to consider is as to what should be the criterion to determine as to when a judicial case can be treated as an old case in the trial court. So far as this question is concerned, we are of the opinion that a civil case, which would include a civil suit as well as a case under a Special Act, should be treated old if a period of one year elapses since the date of its registration till the pronouncement of the final judgment in the case. We are conscious of the fact that suits of higher value generally require voluminous evidence to be recorded. At the same time, we cannot lose sight of the fact that before 1947, in a number of States, which were then known as provinces, the subordinate judges who tried these cases managed to finish majority of them within a year. It may be that in some cases the period taken for disposal of the case was longer, and this would remain true even in future. Such cases should, in our opinion, be treated to be of an exceptional nature. The target for most of the cases, in our opinion, should be a period of one year.

Criterion for criminal cases.

1.10. For criminal cases, the earlier criterion in some of the States was to dispose them of within four months. Although that should be the desideratum, the more realistic period for the disposal of these cases, in our opinion, should be six months. The period would be calculated from the date of filing of the charge sheet or complaint till the date of pronouncement of final judgment. In case of sessions trials, the above period should also include the time during which proceedings remained pending before the committing magistrate.

Radical changes why not suggested.

1.11. Those who may be looking for suggestions of radical changes and major innovations in this Report may perhaps experience some disappointment. The system of administration of justice which we have in the country, in our opinion, is basically sound and by and large suitable. It is the same system which is in force in the United Kingdom, United States, Australia, Canada and a number of other countries. The system, no doubt, has to be adapted to our national needs and we should not be averse to making for this purpose such changes as are called for. The history of our judicial system shows that many such changes have, in fact, been made with the above object in view. Despite, however, the basic soundness of the system, some weaknesses have manifested themselves. It should be our endeavour to remedy the defects which are responsible for those weaknesses. One such weakness is that of undue delay in the disposal of cases. This weakness, as stated above, in a considerable measure, has affected the image of the system and undermined people's confidence in its efficacy. We are in this Report concerned with identifying the factors responsible for the said weakness and with suggesting consequential remedies.

Past attempts to tackle delay at all India level.

1.12. To deal with the question of delay in the disposal of civil cases both in the High Courts as well as in the subordinate courts, a Committee was appointed in 1924 under the Chairmanship of Mr. Justice Rankin of Calcutta High Court.[1] The task of the Committee was "to enquire into the operation and effects of the substantive and adjective law, whether enacted or otherwise, followed by the courts in India in the disposal of civil suits, appeals, applications for revision and other civil litigation (including the execution of decrees and orders), with a view to ascertaining and reporting whether any and what changes and improvements should be made so as to provide for the more speedy, economical and satisfactory despatch of the business transacted in the courts and for the more speedy, economical and satisfactory execution of the process issued by the courts". The Committee, after a thorough and careful enquiry into the various

[1]Rankin Committee.

aspects, forwarded an exhaustive report in 1925. In 1949, a High Court Arrears Committee was set up by the Government of India under the Chairmanship of Mr. Justice S. R. Das for enquiring and reporting as to the advisability of curtailing the right of appeal and revision, the extent of such curtailment, the method by which such curtailment should be effected, and the measures which should be adopted to reduce the accumulation of arrears. A number of suggestions were then made by this Committee. At the end of the year 1969, the Government of India constituted a Committee presided over by Mr. Justice Hidayatullah, the then Chief Justice, to go into the problem of arrears in all its aspects and to suggest remedial measures. Upon the retirement of Mr. Justice Hidayatullah, Mr. Justice Shah was appointed the Chairman of that Committee.[1]

Committees appointed in various States.

1.13. Apart from the above three Committees which worked at all-India level, some Committees were appointed in different States to look into the problem of delay.

One such Committee was in West Bengal. This Committee was constituted in 1949 under the Chairmanship of Sir Trevor Harries, the then Chief Justice of the Calcutta High Court. Another Committee was constituted in 1950 in Uttar Pradesh under the Chairmanship of Mr. Justice K. N. Wanchoo.

Law Commission's Reports.

1.14. Besides the above, the Law Commission of India presided over by Mr. M. C. Setalvad, in its fourteenth Report made in 1958, went into all aspects relating to Reform of Judicial Administration, including the question of delay in the disposal of cases in different courts and exhaustively dealt with the matter. We shall have occasion to refer to this Report.

Successive Law Commissions have, after that also, when making their recommendations for revision of the procedural Codes, addressed themselves, *inter alia*, to the need for reducing delay at various stages of the trial, both in civil and in criminal cases. Reference may be made, in particular, to the 27th and 54th Reports of the Law Commission dealing with the Code of Civil Procedure and the 41st Report dealing with the Code of Criminal Procedure.

When the Law Commission reviewed the structure and jurisdiction of the higher judiciary (58th Report), it took note of the imperative need to reduce arrears in the higher Courts.

[1]High Court Arrears Committee Report (1972).

CHAPTER 2

THE TRIAL COURT JUDGE

2.1. While dealing with the question of delay in the disposal of judicial cases, we should primarily direct our attention to the trial courts.

Importance of trial courts.

If an evaluation were made of the importance of the role of the different functionaries who play their part in the administration of justice, the top position would necessarily have to be assigned to the trial court judge. He is the key-man in our judicial system, the most important and influential participant in the dispensation of justice. It is mostly with the trial judge rather than with the appellate judge that the members of the general public come in contact, whether as parties or as witnesses. The image of the judiciary for the common man is projected by the trial court judges and this, in turn, depends upon their intellectual, moral and personal qualities.

2.2. What we mean primarily by the problem of court congestion is the problem of 'system' delay, such that even though the parties are ready and anxious to try their case, the court system cannot accommodate them promptly because there are other controversies waiting ahead of them for the court's time. Systemic delay also exists in obtaining decisions after trial and in appeal proceedings, but these affect relatively few cases compared to delayed trials. Delay is the product of too much court business for too few judges, creating an imbalance in their work-time relationship. More precisely, systemic delay occurs when the demand made by a group of cases for courtroom processing exceeds the supply of court resources, namely, judge time, available to process them. A remedy that works is one that restores equilibrium by favourably adjusting the balance.[1]

System delay.

2.3. There has, of late, been manifold increase in the number of civil and criminal cases and this increase has subjected the trial judges to extreme strains. The problems faced by the trial courts call for great qualities of head and heart.

Personality of the trial judge.

Another misconception which also needs to be removed is that as ours is a Governmtnt of laws and not of men, the personality of the trial judge makes no difference. Most of us who are familiar with the functioning of the courts would bear out that the above notion is divorced from realities. A trial judge's ability, efficiency and tact or the lack of them can make all the difference regarding the fate of cases handled by him. It has to be borne in mind that the work in a court of law is not purely mechanical. The cases do not always proceed on set lines. There is no limit to the variety of new situations which can arise in human relationship in the complex society of today. No courts and no judge-made precedents can provide guidance nor can any fixed formula furnish solution in those situations. It is in such like situations for which there are no guidelines or precedents that the personal qualities and worth of a judge make themselves manifest. It is when the colours do not match, observed Justice Cardozo, when the references in the index fail, when there is no decisive precedent, that the serious business of the judge begins. Errors committed by the trial judge who is not of the right calibre can sometimes be so crucial that they change the entire course of the trial and thus result in irreparable miscarriage of justice. Apart from that, a rectification of the error by the appellate court which must necessarily be after lapse of a long time, can hardly compensate for the mischief which resulted from the error committed by the trial judge.

2.4. The notion about the provisional nature of the trial court decisions being subject to correction in appeal, or what has been called the "upper-court myth", ignores the realities of the situation. In spite of the right of appeal, there are many cases in which appeals are not filed. This apart, the appellate courts having only the written record before them, are normally reluctant to interfere with the appraisement of evidence of witnesses by the trial judges who have had the advantage of looking at the demeanour of the witnesses. The appellate

The "upper court" myth.

[1] See Harry W. Jones (Ed.), The Courts, The Public and the Law Explosion (1965 Ed.), pages 32 to 38.

court, it has been said, operates in the partial vacuum of the printed record. A stenographic transcript *fails to reproduce tones of voice and hesitations of* speech that often make a sentence mean the reverse of what the mere words signify. The best and most accurate record of oral testimony is like a dehydrated peach; it has neither the substance nor the flavour of the peach before it was dried.

Mr. Justice Hanna's view.

2.5. The importance of the role of trial Judges has been described by Mr. Justice Hanna of the Irish Free State. The learned Judge said[1]:

> "Sometimes the judges of the higher courts think—and I am bound to say I thought sometimes myself—that the restoration of law and order depended upon what the high court judges did in dealing with the heavier classes of crime. But I have finally come to the conclusion...........that the real basis of establishment of law and order lies in the competency, honesty and fidelity of the lowest rank of judges".

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[1]Mr. Justice Hanna (Irish Free State).

CHAPTER 3

THE PRESENT SYSTEM EVALUATED: COMPARISON WITH ANCIENT JUDICIAL SYSTEM

Whether System Unsuited to Indian Conditions

The present system and its links with traditional methods.

3.1. In answer to the criticism that the present judicial system is unsuited to the Indian conditions and is something alien transplanted on the Indian soil, it may be observed that though some of the changes in the early period of British rule in India were influenced by the system prevailing in England in those days, the changes did not have the effect of ousting the personal laws. No judicial system in any country is wholly immune from, and unaffected by, outside influences, nor can such outside influence be always looked upon as a bane. The laws of a country do not reside in a sealed book; they grow and develop. The winds of change, and the free flow of ideas, do not pass the laws idly by. As has been observer[1], even in procedural law, which was codified by the foreign rulers in this country, the basic principles of a fair and impartial trial, which were well-known to their predecessors, were adhered to. In the matter of substantive law as well, the British did not wholly bring in the Western concepts. The personal law of the various communities living in this country remained the determining factor in questions like succession, inheritance, marriage, caste, religious institutions, etc. New laws were enacted to provide for matters which were either not fully covered by the indigenous law, or where such laws were not clearly defined and ascertainable, or were otherwise not acceptable to the modern way of thinking. Such outside influences are, however, an integral part of the historical process of development of thought and institutions all over the world, and once the new concepts get assimilated, they cease to be alien in character. Viewed in this light, it seems hardly correct to say that the present judicial system is a foreign transplant on Indian soil, or that it is based on alien concepts unintelligible to our people. The people have become fully accustomed to this system during more than a hundred years of its existence. The procedures and even the technical terms used by the lawyers and the Judges are widely understood by the large majority of litigants.

Popular feeling.

3.2. The popular feeling that institutions like panchayats, councils of elders, assemblies of brother-hood or of respectables of the locality in fact represent the indigenous system of this country reveals insufficient appreciation of the important fact that the sphere of activity of such institutions was confined to settling petty disputes, mostly by the method of conciliation and compromise. With the growth of society, the function of administration of justice was transferred to the king, who came to be known as the fountain-head of justice. The king administered justice either himself or through his officers. A regular hierarchy of courts was set up which gradually developed into the sophisticated system. The panchayats and the assemblies of the brotherhood or of local respectables, however, did not cease functioning altogether because of their useful role of settling minor disputes in rural areas through compromise and that is why the British retained them through necessary legislation.

Fallacy of agrarian society.

3.3. The criticism that the present system of administration of justice is not suited to the genius of our people is based on the ground that our society is basically an agrarian society, not sophisticated enough to understand the technical and cumbersome procedure followed by our courts.

Judicial procedure in ancient India.

3.4. We do not propose to go into details of ancient Indian judicial procedure. However, it would be appropriate to state that the rules of procedure and evidence in ancient India were sophisticated enough. In broad outlines there is considerable similarity between the system then in vogue and the system now in force. Let us mention some of the interesting rules of the ancient system. A civil judicial proceeding was commenced ordinarily by filing a plaint before a competent authority. A plaint, it was provided,[2] must be brief in words, unambiguous, free from confusion,[3] devoid of improper arguments and capable of meeting opposite arguments.

[1]Pakistan Law Reform Commission Report (1967-70), page 101.

[2]Brihaspati, cited by M. K. Sharan, Court Procedure in Ancient India (1978), page 57 (300 A.D.—500 A.D.).

[3]*Cf.* Kane, History of Dharmasastra (1972), Vol. 3, page 299 (words containing no coherent sense).

Rules of pleading in ancient India. 3.5. There were elaborate rules about the contents of the plaint; for example[1], plaints concerning immovable property were required to state, *inter alia*, the country and place (town or village) the situation (boundaries), name of the field and so on. There was to be a written statement to be filed by the defendant in reply to the plaint. The written statement must meet all points of the plaint, must not employ vague words, must not be self-contradictory and so on[2].

Witnesses in ancient India. 3.6. Witnesses could be summoned by the order of the judge. According to the celebrated work Arthasastra:[3]

> "The parties shall themselves produce witnesses who are not far removed either by time or place. Witnesses who are far away or who will not stir out shall be made to present themselves by the order of the judge."

Consequences of default. 3.7. Manu[4] enumerates numerous situations in which a plaintiff may be non-suited or a defendant may lose his cause. According to Kautiliya, failure by a defendant to file the reply within three fortnights would mean the loss of the suit by the defendant.[5] A similar injunction is also to be found in Manu.[6]

Means of proof. 3.8. The various means of proof were classified as human or divine. The human means of proof were sub-divided into documents, witnesses and possession. There is the famous text of Yajnavalkya[7] enumerating three means of proof. There were even directions for comparison of handwriting.[8] In the absence of human proof, divine proof (orders) supplied the deficiency.[9]

After evidence had been led, a decision had to be rendered on the basis of certain recognised principles. These principles are enumerated in some of the smritis[10] as eight-fold, namely, the three means of proof[11] (pramanas), logical inference, the usage of the country, oaths and ordeals, the edict of the king and the admissions of the litigants. The successful party was entitled to a *jayapatra* (document of success). Rendering of the judgment represented the fourth and the last stage of the law suit.[12] Several modes of execution were known.[13] These included, *inter alia* imprisonment, sale, demand for additional security and fine.

Misconduct by ministerial staff. 3.9. There are directions to the effect that if a clerk of the court makes errors in writing which lead to a miscarriage of justice, he should be punished.[14]

Res judicata. 3.10. The doctrine of res judicata was well-known.[15]

Criminal justice in ancient India. 3.11. It would appear that the criminal justice system was equally sophisticated. Ancient Indian law-givers and commentators exhibit a richness of thought and variety; reminiscent of modern legal systems.

Substantive law. 3.12. In substantive criminal law, for example, we find an elaborate classification of offences. The broad categories were five, namely, abusive words, assault, theft, adultery and crimes of violence.[16] There were, however, a number

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[1]Katyayana, cited by M. K. Sharan, Court Procedure in Ancient India (1978), page 57 (400 A.D.—600 A.D.).

[2]Sukra, IV, 5.139, cited by M. K. Sharan, Court Procedure in Ancient India (1978), page 57.

[3]Kautiliya, Arthasastra, Book 3, Chapter 11, verse 50; Kangle, Kautiliya Arthasastra (University of Bombay) (1970), Part II, page 230.

[4]Manu, VIII, 53-58, Vol. 25, Sacred Books of the East (1967), pages 263-264.

[5]Kangle, Kautiliya Arthasastra (University of Bombay) (1965), Part III, page 218.

[6]Manu, VIII, 58, Vol. 25, Sacred Books of the East (1967), page 264.

[7]Yajnavalkya, II, 22 (100 A.D.—300 A.D.); Kane, History of Dharmasastras, Vol. 3, page 304.

[8]Vishnu, VIII, 12; M. K. Sharan, Court Procedure in Ancient India (1978), page 96.

[9]Yajnavalkya, II, 22.

[10]Sukra, IV, 5.271; Kane, History of Dharmasastra, Vol. 3, page 379.

[11]Documents, witnesses and possession.

[12]Kane, History of Dharamasastra (1972), Vol. 3, page 260 and page 379.

[13]M. K. Sharan, Court Procedure in Ancient India (1978), page 183.

[14]Kangle, Kautiliya Arthasastra (University of Bombay) (1965), Part III, page 221, referring to verse 4.9.17 of the Book on Arthasastra.

[15]Kane, History of Dharmasastras (1972), Vol. 3, page 301.

[16]Kane, History of Dharmasastras (1972), Vol. 3, page 515.

of variations or aggravations in each of these broad categories. For example, theft was classified into three kinds according to the value of the things stolen—trifling, middling and grave or high.[1] Another interesting refinement was the classification of thieves into open or patent thieves and secret thieves, reminding us to a certain extent of the modern discussions about white collar criminals and others. In open or patent thieves were included traders who employ false weights and measures, gamblers, quacks, persons giving bribes, persons who profess to arbitrate, persons who manufacture counterfeit articles and the like.[2] "Concealed thieves" are illustrated by persons who move about with tools for house-breaking without being observed. These were again sub-divided into nine categories.[3]

Learned discussions as to the right of private defence were not unknown.[4]

Punishment of abetment.

3.13. Detailed rules are to be found for the punishment of abettors. The rules relating to abetment and the penalties for various species of abetment as provided by Katyayana[5] offer an interesting parallel to the graded punishment in the Indian Penal Code for various species of abetment.

Offences.

3.14. The range of offences itself was surprisingly large. Not only were offences such as murder, rape, dacoity and the like (which may be called conventional offences) punishable, but there were provisions punishing other crimes as well. For example, not running to the rescue of another person in distress was an offence.[6] This is a surprisingly modern provision, as it should be noted that it is only during the last twenty years or so that the question whether such an omission ought to be made an offence has been seriously debated in common law countries.

3.15. Punishment is prescribed for causing damage to trees in city parks, to trees providing shade, to trees bearing flowers and fruits, to trees which are useful, to trees in holy places, or trees serving as boundary marks.[7]

Even the giving of a wrong decision, if done corruptly by a judge, was regarded as punishable.[8]

An interesting provision was that punishing a person who made a breach in an embankment.[9] Equally interesting is the provision punishing a person who, except in case of extreme necessity, drops filth on the king's high road.[10]

Criminal procedure.

3.16. As to judicial procedure in criminal cases, the law-givers seem to have been aware of the presumption of innocence, there are texts which forbid conviction merely on suspicion.[11] Rules for the evaluation of evidence of various classes of witnesses are met with. The famous Sanskrit play *Mrichhakatikam* has an interesting trial scene that reveals stages of procedure not very different from a modern criminal trial.

Perjury.

3.17. Perjury and other offences by witnesses were punished severely by the criminal law[12], the penalty being fine and banishment.

Punishment—type of.

3.18. There were six types of punishment,—fine, reprimand, torture, imprisonment, death and banishment.

The punishment was graded according to several factors. It was material to consider whether the offence was the first crime of the offender[13] or whether it was his second criminal act, and so on. The time and place (of the offence) and the strength and knowledge (of the offender) were to be fully considered[14]

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[1] Kane, History of the Dharmasastra (1972), Vol. 3, pages 519, 520.

[2] Kane, History of the Dharmasastra (1972), Vol. 3, page 520.

[3] Katyayana, Verses 832-834, as quoted by Kane, History of the Dharmasastra (1972), Vol. 3, page 529.

[4] Kane, History of the Dharmasastra (1972), pages 507-508.

[5] Katyanaya, Verses 832-834, as quoted by Kane, History of the Dharmasastra (1972), Vol. 3, page 529.

[6] Kangle, Kautiliya Arthasastra (1965), Part 3, page 230.

[7] Kangle, Kautiliya Arthasastra (1965), Part 3, page 229, citing chapter 3.18 and 3.19.

[8] Kautiliya IV.9; Kane, History of the Dharmasastra (1972), Vol. 3, page 271.

[9] Manu IX, 279; Vol. 25, Sacred Books of the East, page 392.

[10] Manu IX, 282; Vol. 25, Sacred Books of the East, page 392.

[11] Kane, History of the Dharmasastra (1973), page 521.

[12] Manu VIII, 120-123; Vol. 25, Sacred Books of the East, page 275.

[13] Manu VIII, 129; Vol. 25, Sacred Books of the East, page 276.

[14] Manu VIII, 16; Vol. 25, Sacred Books of the East, page 218.

Compensation to victim.

3.19. It is one of the justified complaints against the modern penal law that in criminal proceedings the injured party is generally neglected. In ancient Hindu Law, the law-givers were fully aware of the necessity of directly compensating the victim of the crime. Thus, Manu says.[1]

> "If a limb is injured, a sound (is caused) or blood (flows), the assailant shall be made to pay (to the sufferer) the expenses of the cure, or the whole (both the usual amercement and the expenses of the cure as a) fine (to the king)"

Manu adds—

> "He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay to the king a fine equal to the (damage)".

It would appear that on the basis of the injunctions contained in the texts, one could construct an entire code of criminal law.

Gradual evolution.

3.20. We have just noticed that the present judicial system is the result of a gradual process which has been going on incessantly, and that it is not the product of one day. Changes, modifications and amendments have been made both in the hierarchy of courts as well as in the procedures followed by them, as the society gradually became more and more developed. The present day complications and delays in disposal of cases are not so much on account of the technical and cumbersome nature of our legal system as they are due to other factors operating in and outside the courts. In spite of the fact that we are still heavily dependent on agriculture, we can no longer be regarded as an undeveloped peasant society, in view of the great strides that have been made in the direction of industrialisation and urbanisation of population, besides expansion of trade and commerce. It will be a retrograde step to revert to the primitive method of administration of justice by taking our disputes to a group of ordinary laymen ignorant of the modern complexities of life and not conversant with legal concepts and procedures. The real need appears to be to further improve the existing system to meet modern requirements in the context of our national ethos and not to replace it by an inadequate system which was left behind long ago.

[1]Manu VIII, 287; 288 Vol. 25, Sacred Books of the East, page 393.

CHAPTER 4

STAGES OF DELAY: SUMMONS

Scrutiny of plaint.

4.1. In dealing with the question of delays in the disposal of civil suits in the trial courts, we must first direct our attention to the points of bottleneck, or stages of the suit where delays actually take place. After a plaint is filed in court, the same is scrutinised by a court official with a view to seeing as to whether proper court fee has been paid and whether the other formalities for filing the plaint have been complied with.

In some courts considerable time elapses between the filing of the plaint and the registering of the suit. It should be ensured that the time taken for this purpose should not exceed one week.

Issue of summons to defendant.

4.2. The Court then fixes a date for which summonses are issued to the defendant. These summonses are prepared by the court official on a printed form. As the duties of the court official are manifold, it takes him a number of days to prepare the necessary summonses. It would result in considerable saving of time and ensure prompt issue of summons if, along with the plaint besides the copies of the plaint, the necessary forms of summons, duly filled in, are also filed by the plaintiff. All that would have to be done in such an event by the presiding officer or some other authorised official would be to insert the date of hearing in the blank left for the purpose, sign the summons and put the seal of the court on the same.

Summons to be sent through process server as well as by post.

4.3. Complaints are often made against the process servers of getting mixed up with one of the parties to the case and on that account not getting service effected. Usually, the defendant is interested in delaying the case and in lieu of some gratification, it is stated, the process server makes an incorrect report of his being not available. On other occasions, a plaintiff gets an *ex parte* stay-order or other such order prejudicial to the defendant and is interested in not getting service effected upon the opposite side with a view to prolonging the operation of the *ex parte* order. In such an event it is not unusual for a plaintiff to get an incorrect report from the process server regarding the non-service of the defendant. To get over such a state of affairs, it is desirable that the summons should issue to the defendant both in the ordinary way and by registered cover. This is what is now required as a result of the amendment already made in the Code of Civil Procedure.[1] The registered cover should be sent acknowledgment due.

Service of summons.

4.4. There are some salutary provisions of the Code which should be kept in view in order to avoid delay at the stage of service of summons upon the defendant. Where the court is satisfied, or has reasonable cause to believe, that the defendant is keeping out of the way for the purpose of avoiding service, or when for any other reason the court is satisfied that summons cannot be served in the ordinary way, the court has the power of directing substituted service as contemplated by Order V, rule 20 of the Code of Civil Procedure.[2] Some of the methods of effecting substituted service are by affixation of a copy of the summons on a conspicuous part of the court house and also upon some conspicuous part of the house (if any) in which the defendant is known to have last resided or carried on business or personally worked for gain or by intimation by beat of drums in the locality wherein the defendant is known to have last resided or by publication in a newspaper having circulation in that locality. Substituted service is as effectual as if it had been made upon the defendant personally. In case the circumstances warrant, the court should readily make use of the provisions of Order V, rule 20 in the matter of getting service effected.

Representative suit.

4.5. Where the number of defendants is very large and they have the same interest in the suit, full use should be made of the provisions of Order I, rule 8 of the Code of Civil Procedure which permit a person to sue or defend a suit on behalf of other persons having the same interest.

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[1] O. 5, R. 19A, Code of Civil Procedure. (Simultaneous issue of summons for service by post in addition to personal service).

[2] O. 5, R. 20, Code of Civil Procedure.

Administrative supervision of process servers.

4.6. To obviate delay in the matter of effecting service because of neglect, lethargy or other extraneous consideration on the part of the process servers, it is necessary that there should be proper administrative supervision of their work. It also makes it necessary to ensure that the process serving agency is manned by persons of the requisite calibre and integrity. This question is to some extent linked with the pay scales of the process servers. If necessary, the same should be suitably revised. With a view to secure proper administrative supervision, we have in some States a judicial officer who is designated as Administrative Sub-Judge and who spends a major part of his time in supervising and looking after the work of process servers and bailiffs in big cities.[1] It may be useful to adopt similar practice in large cities in other States.

The suggestion that some incentive may also be provided to process servers for getting personal service effected on a number of persons in a month may also be looked into.

Examination of process server.

4.7. According to Order V, rule 19 of the Code of Civil Procedure, where a summons is returned under rule 17, the Court shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another court touching his proceedings, and may make such further enquiry in the matter as it thinks fit; and shall either declare that the summons has been duly served or order such service as it thinks fit. This provision underlines the importance of the reports of the process server and contemplates that those reports should be correct. To ensure that the above provision is not reduced to a dead letter, we are of the opinion that in those cases where the court as a result of enquiry comes to the conclusion that the process server has made a false report, it should take stringent and prompt action against the process server concerned. Such action, we have no doubt, would act as a deterrent for other process servers making false reports. It would also obviate the necessity of applications under Order IX, C.P.C. for setting aside *ex parte* decree or *ex parte* proceedings which consume so much of the time of the court.

[1]See also para. 11.4, *infra*.

CHAPTER 5

PLEADINGS AND ISSUES: THE PRE-TRIAL PROCEDURE

Compliance with Order 7.

5.1. Order VII of the Code of Civil Procedure specifies the particulars which must be contained in a plaint. If proper attention is paid at the appropriate time to ensure that all the requirements of Order VII have been complied with, it would eliminate many causes of delay which occur on account of non-compliance with those provisions. Particular attention should be invited to Order VII, rule 14, according to which, where a plaintiff sues upon a document in his possession or power, he should deliver the document or a copy thereof to be filed with the plaint.

O. 8, R. 1—Written statement to be filed at first hearing.

5.2. It has come to the notice of the Commission that in many of the States the defendant does not file the written statement on the first date of hearing and that a number of adjournments covering a period of many months are granted for this purpose. According to the provisions of Order VIII, Rule 1 of the Code of Civil Procedure, the defendant shall, at or before the first hearing or within such time as the court may permit, present a written statement of his defence. In fact, in the summonses which are issued to the defendant in regular suits, it is indicated that the defendant should file his written statement on the first hearing.

O. 5, R-5—Summonses for settlement of issues and summons for final disposal.

5.3. Attention in this connection may be invited to the provisions of Order V, Rule 5 of the Code of Civil Procedure, according to which the court shall determine, at the time of issuing summons, whether it shall be for settlement of issues only or for the final disposal of the suit, and the summons shall contain a direction accordingly. It would therefore, follow that except in cases where the summons is issued for the final disposal of the suit, the summons shall be for the settlement of issues. Such settlement of issues can take place only if the written statement is filed. It is, therefore, implicit in a summons for the settlement of issues that the written statement be filed on the date of hearing after service of the defendant.

Filing of written statement.

5.4. In fact, the summonses which are issued in such cases are required, as a result of amendment made by Act 104 of 1976 to the Code of Civil Procedure, to expressly contain a direction that the defendant should file the written statement on the above date of hearing.[1]

It would, of course, be open to the court to extend the time for filing the written statement in appropriate cases, but the normal rule should be to file the written statement on the first date of hearing.

Copies of written statements to be filed.

5.5. It should also be imperative for the defendant to file, along with the written statement, a copy of the same for being supplied to the plaintiff. Some High Courts have already made a provision about that by making the necessary amendment[2] in Order VIII, rule 1 of the Code of Civil Procedure. The requirement that the defendant should produce all documents in his possession or power on which he bases his defence or any claim for set-off should also be enforced. This would prevent delays and adjournments for the production of those documents.

Laxity in filing written statements.

5.6. The main reason for the omission of the defendants in many States to file the written statement on the first date of hearing has been the laxity in enforcing the provisions of Order VIII, rule 1, C.P.C. The Commission was told that the practice prevailing in some States is that on the first date of hearing the defendant merely puts in appearance along with his counsel whom he engages just on that date and gets a date. He thereafter goes back to his village with a view to secure documents which may form the basis of his defence. It seems that it is because of the prevalence of the general impression that written statements are not to be filed on the first date of hearing, that there is non-compliance with the requirements of the Code of Civil Procedure. This results in repeated trips by the defendant from his village to the district or Taluka head-quarters where the court

[1] See Appendix E to the Code.

[2] Local amendments as to Order 8, R. 1, as to the copies of written statements.

2—468 LAD/ND/78

holds its sittings. The repeated trips also put unnecessary financial burden upon the parties. All this can be obviated if the provisions of the Code are enforced by the court and an impression comes to prevail that it is necessary to file the written statement on the first date of hearing. The effect of that would be that as soon as service is effected upon the defendant, he would immediately start moving in the matter and try to secure necessary documents before the date of hearing. If, however, the time-lag between service of the defendant and the first date of hearing is too short, that may be a good ground for giving him another date for filing written statement.

Necessity to record statements before issues.

5.7. One of the most important provisions which can go a long way in curtailing the evidence and circumscribing the area of controversy is that contained in Order X, C.P.C., relating to examination of the parties by the court before the framing of the issues. Experience tells us that if proper use is made of these provisions and the statements of parties are recorded before the framing of the issues, many admissions, which do not appear in the pleadings, are made. Even when the parties are at variance on certain points, the statements can reveal the absence of difference up to a certain extent. The admission about the execution of documents before the framing of the issues also helps in narrowing the area of controversy. The inevitable effect of all this would be to obviate the necessity of producing evidence in respect of matters which stand admitted as a result of the recording of statements of parties under Order X.

Order X, how to make more effective.

5.8. In order to be in a position to make effective use of the provisions of Order X, it is essential that the trial judge should have read in advance the pleadings of the parties and should know the case of each party as set out in the pleadings. It is only then that he would be able to put the crucial questions to the parties while recording their statements for narrowing the area of controversy. This apart, statement before the framing of the issues also helps in clearing the obscurities, designed and inadvertent, in the pleadings and knowing the exact stand of the parties from which they would find it difficult to wriggle out subsequently.

Issues to be framed by the Judge.

5.9. Familiarity with the pleadings is also of vital importance for the trial judge in framing the issues. The practice which prevails in subordinate courts in some States of depending upon the draft issues supplied by the counsel of parties, without the trial judge himself applying his mind to the pleadings and the issues, is extremely undesirable. It, in effect, is tantamount to the abdication of an essential function by the trial judge. Although it is desirable to ask counsel for the parties about the issues framed in the case and to ask for their comments and suggestions regarding the form of an issue and the desirability of framing an additional issue, it must not be forgotten that the primary responsibility to ensure that correct issues are framed is that of the trial court. Such responsibility should neither be shirked nor abdicated.

In the above context, the observations made by the Civil Justice Committee presided over by Mr. Justice Rankin[1] have as much relevance today as they had at the time when they were made in 1925 :—

> "Not only is the law clear. The duty of the court to frame the issues itself and frame them properly is laid down in many circulars and rules of High Courts. Presiding officers ignore the directions of the law and the orders of their own High Courts and continue to leave the framing of issues to other persons. There is no reason of course why they should not take suggestions from the parties as to the issues to be framed. It would be unwise for them not to take such suggestions. The taking of suggestions is, however, a very different matter from the ignoring of their own responsibility. When we endeavoured to ascertain the views of presiding officers as to why they did not follow the clear law on the subject, we were often met with the reply that under present conditions presiding officers have no time to comply with the law and the rules.
>
> "This objection will not survive examination. If the law directs presiding officers to perform a particular duty, that duty must be performed and time must be found for its performance, but apart from that, this objection is unsustainable. In suits, where the contest is slight, the examination of the parties and of the pleadings should occupy a very short time before the issues are framed. These cases occur for the most part in

[1]Rankin Committee.

the courts of munsifs. There, although the work is frequently very heavy, the time necessary for the purpose is not considerable and can be found. In suits in which the contest is severe, considerable time must occasionally be devoted to the purpose, but those suits occur usually in the courts of subordinate judges who do not decide many contested suits in a year. When the preliminary work has been done carefully and intelligently, there will be a very great saving of time in the later stages. Three hours spent upon the examination of parties, the studying of the pleadings and careful scrutiny of the documentary evidence may mean five or six days saved during the subsequent hearings."

Law Commission's view in the 14th Report.

5.10. About the necessity of recording statements of parties before framing issues in big complicated cases, the Law Commission, in its fourteenth report,[1] observed:

"As pointed out by the Uttar Pradesh Judicial Reforms Committee, the presiding officer is over-worked and has to rush through the process of settling issues and does not have sufficient time to make proper use of Order X. Further, in view of the heavy arrears in many of the Courts, the presiding officers are not inclined to spend time and labour over preliminary steps in cases which they themselves may not be called upon to try. In simple cases of small value, the examination of parties under these rules may probably put an end to the suit by the examination demonstrating that the parties are not at variance on any matter whatever, or have only trifling differences. In difficult and complex cases a great saving of time will result, if proper and timely use is made of these provisions. It should be the duty of the district judges at the time of inspection to see whether the presiding officers make proper use of these provisions. Their failure to observe these rules should also be taken into consideration in deciding upon the officer's fitness for promotion."

5.11. Regarding framing of issues, the Law Commission in that report stated[2]:

"The court is undoubtedly entitled to invite the advocates of the parties to state the points on which the parties are at issue. But the framing of proper issues is the responsibility of the court. The issues constitute the points of dispute on which the parties go to trial and give notice to the parties of the matters on which they have to adduce evidence or expound the law. Unless, therefore, the issues are complete and precise, the trial cannot come to a satisfactory conclusion. If issues do not reflect the real points in dispute, advantage is likely to be taken of these defects at a subsequent stage or in appeal. Delay and injustice will often result by the omission of the first court to deal with and decide the real points in dispute."

O. 11—Discovery and Inspection, and O. 12—Admissions.

5.12. Other provisions which may have the effect of considerably curtailing evidence and narrowing the area of controversy are contained in Order XI and Order XII of the Code of Civil Procedure. While the former relates to discovery and inspection, the latter Order pertains to admissions. Under Order XI, any party to a civil suit by leave of the court may deliver interrogatories in writing for the examination of the opposite parties. Order XI also provides for application for discovery of documents and for their inspection. Order XII provides for notice to admit documents as well as to admit facts. Occasion for use of these provisions would generally arise in those civil cases where a number of questions of fact arise and the case involves many issues. In comparatively simple cases, it would hardly be necessary to resort to these provisions. As observed by the Rankin Committee,[3] the framers of the Code anticipated that in mofussil courts the members of the Bar would not easily or quickly accustom themselves to the new procedure provided and would not avail themselves of its provisions. They, therefore, inserted in section 30 of the Code a provision which gives the court authority to order discovery and inspection of its own motion. Their anticipations have unfortunately been fulfilled and the power given to the court has not been utilised. At the same time, there can be no doubt that a judicious use of these provisions can considerably narrow down the area of controversy and curtail the volume of evidence.

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[1]Fourteenth Report, Vol. 1, page 313.

[2]Fourteenth Report, Vol. 1, page 372, para 26, para 28.

[3]Rankin Committee.

Pre-trial procedure in U.S.A.

5.13. In the U. S. A. we have pre-trial procedure. The scope of pre-trial discovery under the federal rules is very broad and covers any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defence of the examining party or to the claim or defence of the other party, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence.

The federal rules also provide for a pretrial conference "called by the judge and attended by the parties and their lawyers". The purpose of the conference is to simplify the issues, secure agreements on facts which are not really in dispute, and give the parties another opportunity to see if the case can be settled without trial.

5.14. Regarding the success of discovery and pre-trial procedures, the following opinion has been expressed in the Courts, the Public and the Law Explosion edited by Harry W. Jones[1]:—

> "The discovery and pre-trial procedure has been in operation in the United States District Courts for over twenty-five years and has served as a model for reformed state court procedure in a majority of the states. There is no doubt that it has produced beneficial results: cases are better prepared, actual trial time has been saved by pre-trial processing, settlements without trial have been encouraged, and probably the quality of justice has improved in the cases which do go to trial. The procedure is not, however, an unmixed blessing. Critics claim that it is not appropriate in all types of cases, that it is subject to abuse, that it has increased the costs of litigation, and that it has contributed to court congestion by increasing pre-trial delay. Further study and experience will be necessary before a balance can be struck between the merits and demerits of the system and a determination made as to the modifications indicated."

In our opinion, the provisions contained in Orders X, XI and XII, of the Code of Civil Procedure are sufficient to deal with the situation in India and it is not necessary to transplant the pre-trial system with all its amplitude on the Indian soil. We may also in this context refer to the observations of the Law Commission in its Fourteenth Report with which we agree and which read as under[2]:

> "The working of the system of pre-trial procedure which has been introduced in some states in the United states was examined by Evershed Committee. The American system made it clear that the success of these pretrial conferences depended for the most part on the personality of the Judge and his willingness to deal and aptitude for dealing with such proceedings. 'No doubt', said the Committee, 'it would be the same in England'. We believe it would be the same in India as well. The Committee examined this procedure with reference to the Rules of Practice and Procedure in England and came to the conclusion that the existing rules relating to the summons for directions in Order 30 of the Rules of the Supreme Court give all the powers that are needed. The Committee took the view that the general adoption of the pre-trial conference procedure in all forms of proceedings would not be advisable in England. The procedure has undoubtedly its attractions, particularly to those who have become accustomed to its working. After careful consideration we have reached a clear conclusion that it would not be appropriate for adoption in this country—certainly not for the purpose of saving costs. ......More than this, the procedure may become somewhat elaborate and of long duration, possibly developing into a 'finishing expedition'.
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> "As to the introduction of similar provisions for a similar procedure in India, the witnesses before us have pointed out that the practice already obtains in a modified form under the provisions relating to the examination of parties and discovery and inspection under Orders X, XI and XII of the Civil Procedure Code. The provisions for the amendment of

[1]Harry W. Jones (Ed.), The Courts, the Public and the Law Explosion (1965). Pages 22, 23 article by Milton D. Green, "The Business of the Trial Courts".
[2]Fourteenth Report, Vol. 1, page 323.

pleadings are found in Order VI, Rules 16 and 17, of the Civil Procedure Code. Rule 16 gives power to the Court at any stage of the proceedings to order to be struck out or amended any matter in any pleading which may be (1) unnecessary, (2) scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. Similarly the duty of framing precise issues is cast upon the court under the provisions of Order XIV and if these issues are framed after the preliminary examination of the parties and the reading of pleadings as already suggested, it would no doubt lead to a considerable simplification of the issues. Thus, it can be said that the rules of the Civil Procedure Code amply provide for all the matters enumerated in Rule 16 of the Rules of the Civil Procedure for the United States District Courts."

Conciliation.

5.15. We may now consider the desirability of the trial court initiating conciliation proceedings. It would also be necessary in this context to find out the stage at which efforts should be made for conciliation. It may be mentioned that the Code of Civil Procedure does not contain express provisions for this purpose. Under Order XXXIIA, which was inserted with effect from February 1, 1977, by Act 104 of 1976, a duty has been cast upon the courts to make efforts for settlement in suits relating to matters concerning the family. Apart from such disputes, as already mentioned, the Code does not contain any specific provisions. We are dealing elsewhere in this Report[1] with the question about the desirability of having conciliation councils or boards and the necessity of conciliation efforts by such councils or boards. We are concerned here with the question as whether a trial judge might himself undertake the role of a conciliator. In this respect, we are in agreement with the view expressed by the Law Commission in its Fourteenth Report that the trial judge could himself act in a way as a conciliator. The proper time for initiating and tactfully helping parties to arrive at a compromise would be when the clarification of the pleadings and the examination of parties under Order X, Rules 1 and 2 take place. Sometimes, it happens that judges who try to induce the parties to come to an amicable settlement are misunderstood. That should not, as observed by the Law Commission in its Fourteenth Report,[2] make a judge deny himself all initiative in the matter of suggesting a compromise or deter him in helping the parties in arriving at a settlement in suitable cases. As observed by the Commission, a competent and experienced judge who has learned to make a proper use of the provisions of Order X will have no difficulty in perceiving cases pre-eminently suitable for a compromise. A few tactful words by the Judge at a suitable opportunity, without the appearance of taking a view on either side and without playing an unduly active role, may bring about the desired result. The promotion of a compromise in suitable cases should be left largely to the initiative and the personality of the judge and to the parties and their lawyers. The Bar can undoubtedly play a very useful and significant part in bringing about a compromise.

To reproduce a passage from the American Bar Association Journal[3]:

"Lawyers perform a real service to their clients and to society and the courts when they make settlements that are right settlements; where there are two sides to a case, where the issue may well be in doubt, where the facts are honestly in conflict or where the law is unsettled, there is always some figure which is fair to both sides. It should be the lawyer's aim to make such a settlement if he can"

[1] See Chapter relating to Conciliation (Chapter 8, *infra*).

[2] Fourteenth Report, Vol. I, pages 320-321, para 38, second sub-para.

[3] Emory R. Buckner (May 1929), American Bar Association Journal, "The Trial of Cases", cited in 14th Report, Vol. I, page 321, para 38, last sub-paragraph.

CHAPTER 6

COURT DIARY AND EVIDENCE: SUBSTITUTION OF LEGAL REPRESENTATIVES

Court Diary and Evidence

Court Diary—fixing cases—important function of the Judge.

6.1. In the matter of controlling the court diary and in fixing cases for each working day, the trial judges discharge a very important duty. There is quite often a tendency on the part of presiding judges to leave the matter of fixing dates to their readers or sheristadars. This is extremely undesirable, because such a practice is liable to be abused by the readers or sheristadars. The question as to how many cases of various categories,—i.e., miscellaneous cases, issue cases, evidence cases and argument cases,—should be fixed on a day calls for judicious appraisement of the capacity of a judge to deal with a number of cases within the limited court time. Such a power should not be delegated by the presiding judge to subordinate officials.

Practice of fixing too many cases not desirable.

6.2. The practice which prevails in some courts of fixing a number of cases on a day on which there is no reasonable chance of their being taken up for hearing, should be avoided. As it is, we find that some courts spend half an hour 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.

Referring to the practice of some courts fixing more work than they could complete on the ground that if work just sufficient for the day were fixed, some cases might collapse and the presiding officer might thus be left without full occupation, the Rankin Committee observed[1]:

> "The utmost concession that should be made to this view, would be to fix for hearing on one day perhaps one quarter more than could be done on it and to give the undone work precedence on the next date. We have been unable to find in the majority of cases that any such practice has been adopted. More work is fixed for the day than can possibly be got through, whatever drops out, and precedence is not given to the undone work on the next date.
>
> In any circumstances the principle is vicious. It appears to be based upon the idea that the courts may safely ignore the convenience of the public, in order to enable them to show a tale of work, which they suppose will be considered satisfactory by the higher authorities. It must be impressed and impressed very clearly that the first consideration should be the convenience of the public and that all other considerations should give way to that."

The above observations, in the opinion of the Commission, provide a good rule for guidance.

Creation of additional courts.

6.3. There must be some kind of standard for the number of cases pending in court. Whenever there are indications of an increase in the number of cases in a court beyond the prescribed standard, efforts should be made to relieve the congestion by having additional courts.

Prolix examination of witnesses.

6.4. A very important, if not the most important, stage in the trial of a case is the recording of evidence. There is, it is said, a tendency in India to over-prove allegations. This is true not only of essential allegations, but also of allegations which are not very essential. This results in considerable time of the court being taken up in the recording of oral evidence even at the point of examination-in-chief in a large number of cases. If that be true of examination-in-chief, the position is much worse in cross-examination. Cross-examination of witnesses often tends to be unduly prolix. Some clients are inclined to judge the proficiency of the counsel by the length of his cross-examination of a witness. This attitude reveals a pathetic ignorance of the technique of effective cross-examination. We may also in this context refer to the observations of the Civil Justice Committee[1]:

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[1] Rankin Committee.

"The impression created in the minds of those who are acquainted with the procedure in English Courts of Law, as to the production of evidence in courts in India is that there is a tendency in India to over-prove essential allegations. There is further a tendency to prove and to over-prove unessential allegations. Such observers wonder at the extraordinary elaboration with which the examination-in-chief is conducted. Every sort of detail, however distant may be its bearing upon the value of the evidence of the witnesses, is brought out, and much time is taken up in eliciting and recording unessential particulars to which no reference is usually made in argument, and to which no reference can be made usefully.

Even more surprising is the cross-examination. It is not too much to say that cross-examination frequently extends over a period which is more than six times as long as is necessary to produce useful results. The waste of time is most noticeable in cases of larger value, especially in which the dispute relates to valuable landed property It is difficult to exaggerate the unnecessary labour and the delays caused thereby.

It is not easy to devise a remedy. The litigants prefer that examination and cross-examination should be conducted in this manner, and the methods are the traditional methods of many District Bars. We feel that we should not be justified in suggesting alterations in the law by which presiding officers would be authorised to terminate the examination of any particular point. It seems only possible to wait, till litigants begin to see for themselves that in their own interests there should be expedition. At present we must leave the solution to the good sense of the Bench and Bar."

Control of cross-examination by the trial judge.

6.5. Sometimes questions which are put to the witnesses in cross-examination are unnecessary and uncalled for; on occasions harassing and even slanderous. It is on such occasions that it becomes necessary for the trial judges to control the proceedings. Although it is essential that all reasonable opportunity be afforded to counsel for parties to prove their case and bring material on record by explaining and cross-examining witnesses which may support the respective cases of parties, the presiding officers have also to ensure that under the cover of that the file is not burdened with wholly irrelevant and unnecessary material. Experience tells us that many presiding officers, with a view to avoid a piquant situation with an aggressive counsel, adopt the path of least resistance and allow most things to be brought on record which an aggressive counsel desires. The trial judge who is shaky in professional understanding, imperfect in moral resolution or unduly conciliatory in personality, will inevitably be over-powered and overborne by forceful and aggressive trial counsel. Cases have not been unknown when some judges have revealed psychic inability to stand up abrasive and strong-willed leaders of the bar. The way the witnesses are treated in witness-box while being subjected to cross-examination by the cross-examining counsel was described by Harold Laski after his gruelling cross-examination at the hands of Sir Patrick Hastings in the following words[1]:—

"He performs his war dance about you like a dervish intoxicated by the sheer ecstasy of his skill in his own performance, ardent in his knowledge that, if you trip for one second, his knife is at your throat......He moves between the lines of sarcasm and insult. It is an effort to tear off, piece by piece, the skin which he declares no more than a mask behind which any man of understanding could have grasped the foulness of your purpose. He treats you, not as a human being, but as a surgeon might treat some specimen he is demonstrating to students in a dissecting room"

Need to avoid harassment of witnesses.

6.6. Whether the above criticism is well-founded or not, the courts must ensure, while affording every reasonable opportunity to the counsel to cross-examine a witness, that the witness is not subjected to harassment as might deter all decent, self respecting persons from coming into the witness-box and giving evidence about facts within their knowledge. Sections 148 to 152 of the Indian Evidence Act, 1872 arm the courts with sufficient power for this purpose.

Role of the Judge.

6.7. We in India have adopted the accusatorial system as against the inquisitorial system which is in vogue in many of the countries of the European continent.

[1]Harold Laski.

In an accusatorial system it is for the parties or their counsel to prove their respective case or demolish that of the adversary, while, in an inquisitorial system, a great responsibility for bringing the true facts on the record lies on the presiding officer of the court. Despite the fact that we have adopted the accusatorial system, the trial judges, in our opinion, should not play an altogether passive role, leaving it to the parties and their counsel to bring on record such facts as they may consider essential. The trial judges, we feel, should take greater interest in the proceedings before them and should by putting appropriate questions to the witnesses elicit such information as may be helpful in finding the truth for determining the points of controversy and also for the purpose of removing obscurities on questions of fact.

Evidence not to be taken in instalments.

6.8. Another salutary practice which must be adhered to while recording evidence is to complete the entire evidence and to avoid recording of evidence of a party in a case in instalments. According[1] to clause (a) of the proviso to sub-rule (2) of rule 1 of Order XVII of the Code of Civil Procedure, when the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that, for exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary. As things are at present, the practice prevailing in most of the courts is to record evidence in instalments. Such a practice was condemned by the Law Commission in its Fourteenth Report in the following words[2]:

> "It has also been brought to our notice that in many States the provisions of Order XVII, rule 1, are disregarded and the hearing of a case once begun is not continued from day-to-day. This happens in spite of the instructions to the contrary laid down by all the High Courts for the guidance of subordinate courts. Our examination of the order sheet of a large number of suits in the courts of munsifs and subordinate judges in West Bengal and Uttar Pradesh showed the utter confusion which prevails in the matter of fixing the dates of hearing. Day after day the cases were adjourned either because the lawyers are engaged elsewhere or because the court is otherwise busy. Indeed, so chaotic were the files, that cases were often adjourned to a future date only for the purpose of fixing the next date of hearing. This difficulty, in our opinion, is created by a total disregard of the provisions of Order XVII, Rule 1 and a failure to appreciate that it contemplates the continued hearing of a case, once it has started, from day to day until it is finished. In various States we found the subordinate judiciary acting as if they understood the Code to provide the contrary. They seemed to think that interrupted hearings should be the rule and a day-to-day hearing the exception. We found in some States the cross-examination of a witness spread over several hearings with breaks running in some cases into months. It seemed to be the invariable practice to adjourn the case after the closing of the plaintiff's evidence and before the starting of the defendant's evidence. It would also appear to be common practice to adjourn the case after the recording of evidence is completed to enable the counsel to prepare their arguments. A further adjournment invariably takes place after the arguments are closed for the judge to deliver his judgment. It needs to be emphasised that every step in this method of what may be described as the hearing of a suit through a series of adjournments, is contrary to the Code. There is no reason why all the witnesses in the case whether those of the plaintiff or of the defendant should not be examined in a series, the evidence followed immediately by arguments of counsel, and, in most cases, the judgment following the close of the arguments."

We fully agree with the above observations.

Affidavits.

6.9. In the matter of recording evidence, we should also consider the desirability of proving things like those of a formal nature by affidavits, instead of by oral evidence. As it is, the general practice is to call witnesses to Court even though their evidence is of a very formal character. Much time of a number of witnesses whose evidence is of a formal nature and, to some extent, of the courts, would be saved if, instead of producing them in courts, the facts in

[1]Order 17, rule 1 (2), Proviso, C.P.C.

[2]Fourteenth Report, Vol. 1, page 335, para 63.

respect of which they have to depose are proved by means of the affidavit filed by them in accordance with 0.19, C.P.C. Without expressing our concurrence, we may refer to the observations of Lord Devlin[1] who has gone to the extent of saying--

> "We shall not make any worthwhile saving in the cost of litigation so long as we accept it as the inalienable right of every litigant to have the whole of his evidence and argument presented by word of mouth. It is not a right that is recognised by any legal system except the English and those that are based on it."

6.10. In the matter of adjournments certain changes have been made in Order XVII of the Code of Civil Procedure with effect from February 1, 1977 by Act 104 of 1976. The new provisions, if enforced strictly, would prevent unnecessary adjournment of cases. We have referred above[2] to one of those provisions in connection with avoiding the recording of evidence in instalments. The other provisions are[3]:

Adjournments.

> "(b) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.
>
> (c) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment.
>
> (d) where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant the adjournment unless it is satisfied that the party applying for adjournment could not have engaged another pleader in time.
>
> (e) where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such order as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid."

It is further provided:

> "Where the evidence or a substantial portion of the evidence of any party has already been recorded and such party fails to appear on any day to which the hearing of the suit is adjourned, the court may, in its discretion, proceed with the case as if such party were present."

6.11. We have appended at the end of this Report[4] the details and particulars of the Special List System which has been adopted in Kerala for the disposal of cases in subordinate courts. We have been informed that the system has proved effective in reducing the backlog of cases and ensuring early disposal of old cases.[5] The other High Courts may examine the question of adopting the system in their respective States, either in its entirety or with such modifications as may be considered necessary.

Special List System.

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[1]See Law Quarterly, Vol. 15, No. 1 (Indian Law Institute, W. B. State Unit), page 48.

[2]Para 6.8, *supra*.

[3]Order 17, rule 1(2), Proviso, C.P.C.

[4]See Appendix 2 (Special List System in Kerala).

[5]14th Report, Vol. 1, pages 333-334, para 59 for a brief description of the Madras system.

Legal representatives.

6.12. One of the causes of long delay in the disposal of cases is the inordinate length of time which is consumed in bringing on record the legal representatives of a party who dies during the pendency of the case. The amendment made in Order XXII, Rule 4 of the Code of Civil Procedure and the insertion of Rule 4A in that Order by Act 104 of 1976 may, to some extent, be helpful in relieving the difficulty.

Commissions.

6.13. Another cause of delay in the disposal of cases is the provision about issue of commissions for the examination of witnesses or for local inspection.[1] Quite frequently, the needful is not done by the next date of hearing, and the case has to be adjourned repeatedly on that account. Necessary directions may be given, while issuing the commission, to ensure that the needful is done before the next date of hearing. Only in exceptional cases, the necessity should arise for giving another date for the purpose. Obligation may also be cast, except in some particular cases, on the party desiring the examination of a witness on commission to ensure his presence before the commissioner on the date fixed.

[1]Order 26, Code of Civil Procedure.

CHAPTER 7

ARGUMENTS, JUDGMENT AND DECREE

7.1. The next step after the completion of evidence relates to arguments in the case. The desirable practice for this purpose is to hear arguments immediately after the conclusion of the evidence. As it is, we find that in most of the courts there is time lag, sometimes considerable, between the conclusion of the evidence and the addressing of arguments in the case. From a practical point of view, the above practice now adopted not only causes inconvenience; it also results in duplication of labour. If evidence is recorded at a stretch—as is normally contemplated by the Code of Civil Procedure,—and the arguments are heard soon after the close of evidence, everything would be fresh in the minds of the counsel for the parties as well as the presiding officer of the court. This would facilitate the task of the Court in appreciating the contentions advanced and apraising the evidence adduced at the trial. On the contrary, if arguments are heard after a great length of time, that whole thing would have to be re-read by the counsel for the parties and lengthy passages from the evidence would have to be read by them for the benefit of the presiding officer with a view to acquaint him with the things brought out in the deposition of the witnesses. The general experience is that arguments advanced soon after the close of evidence take much less time compared with arguments which are advanced after a long interval of time.

Arguments

7.2. In heavy or complicated cases wherein voluminous evidence has to be referred to and various complex questions of law arise for determination, it may be necessary to grant short adjournments to enable the parties' counsel to prepare for arguments. The adjournments granted for this purpose should not be so long as might result in effacing or fading out of the impressions created by the evidence of the parties on the mind of the judge and the counsel. In any case, the recourse to adjournment should be had only in some of the cases and not invariably in every case, complicated or simple, as a matter of course.

Long adjournment not to be granted.

7.3. There is a common complaint of lengthy arguments being addressed. It may not be out of place to refer to the observations made in the Fourteenth Report of the Law Commission[1] which read as under:

Lengthy arguments.

"It is true that in many cases arguments are unduly prolix. Sometimes the arguments become lengthy because the court either from inexperience or for other reason is unable to control counsel. Some lawyers are longwinded; others are brief and to the point. Similarly some judges are unable to control the arguments while some are inclined not to hear any arguments at all and cut them very short. The Court which has heard the case from day to day should be familiar with the evidence and can if necessry go through the record of the case before the arguments are commenced to refresh its memory. The presiding officer who has followed the evidence will be in a much better position to control arguments. The control of arguments is a matter which must pre-eminently be left to the capacity, experience and discretion of the judge and the good sense of the advocate. We do not think it is practicable to confer any special powers on the judge in this respect.

Very often, delay is occasioned by the postponement of arguments to a later date on the conclusion of the evidence. The law contemplates that arguments shall be heard immediately after the evidence is concluded. In many cases, however, arguments are postponed either because the lawyers are not ready or because the court has other work on hand. If the court's diary is methodically prepared in the manner already indicated, there will be fewer occasions for a judge to postpone the arguments on the conclusion of the evidence. The Court must insist upon the lawyers appearing in the case presenting their arguments immediately on the conclusion of the evidence. Such a practice prevails on the original side of the High Court in Bombay, where however heavy the record, counsel never ask for time to prepare their arguments. In cases of exceptional difficulty, complexity and a heavy record, it may perhaps be reasonable

[1] 14th Report, Vol. 1, pages 345, 346.

to give a short adjournment to enable the lawyers to prepare their arguments; but the normal rule should be to hear the arguments immediately on the conclusion of the evidence."

Citation of authorities.

7.4. One general tendency is to cite a very large number of authorities and to read lengthy passages from those judgments. Experience tells us that the fate of most cases depends upon facts. The law bearing on the cases is well-settled by statute or the pronouncements of the highest court. It would be much better if the judgments of the trial courts deal with questions of fact by appraising the evidence, refer to the relevant statutory provisions applicable to the matter and cite such of those authorities as have a direct bearing. Burdening of the judgments with too many authorities mostly with a view to distinguish them has invariably the effect of making judgments unduly lengthy. It has to be borne in mind that the primary function of the judge is to decide the case before him. A judgment should set out the salient facts of the case, deal with the points of controversy, appraise the relevant evidence, discuss the questions of law which arise and incorporate the findings of the court on the various issues. The judgment should conclude by stating in precise language the actual relief, if any, granted to the plaintiff.

7.5. A judgment, it needs to be emphasised, is not a medium to display the learning of the judge, on points which have only incidental bearing. The function of a judge while deciding a case is not the same as that of a research scholar writing a thesis on a particular branch of law. The art of writing not very long judgments while at the same time dealing with all material points of controversy can be acquired only slowly and gradually. It is indeed learning the art of condensing the maximum of ideas into the minimum of words

Brevity not at the cost of completeness.

7.6. There is, however, one danger which we have to guard against. Brevity in the matter of judgments should not be used as a justification for not dealing with inconvenient contentions and not facing the crux of the argument of a counsel against whom the judge decides the matter. The stress on brief judgments should certainly not provide a cover for mental lethargy nor an alibi for intellectual dishonesty. A balance has, therefore, to be kept in the matter.

Interval between arguments and judgment.

7.7. We also wish to emphasise the importance of ensuring that the time-lag between the conclusion of arguments and the pronouncement of judgment should not be very long. Complaints are sometimes made of some judicial officers sleeping over their judgments and taking unusually long time for this purpose. This must be put an end to. It is also a mistake to suppose that judicial officers can produce better judgments by taking long time for their preparation and pronouncement. We would in this context draw attention to the proviso appended to sub-rule (1) of Rule 1 of Order XX of the Code of Civil Procedure by Act 104 of 1976, according to which,[1] where the judgment is not pronounced at once, every endeavour shall be made by the court to pronounce the judgment within fifteen days from the date on which the hearing of the case was concluded but, where it is not practicable so to do, the court shall fix a future day for the pronouncement of the judgment, and such day shall not ordinarily be a day beyond thirty days from the date on which the hearing of the case was concluded, and due notice of the day so fixed shall be given to the parties or their pleaders. provided further that where a judgment is not pronounced within thirty days from the date on which the hearing of the case was concluded, the Court shall record the reasons for such delay and shall fix a future day on which the judgment will be pronounced and due notice of the day so fixed shall be given to the parties or their pleaders.

DECREE

Preparation of decree.

7.8. The necessity of avoiding delay in the preparation of the decree after the pronouncement of judgment must also be emphasised. In this context, we would like to invite attention[2] to Rule 6A inserted in Order XX of the Code of Civil Procedure by Act 104 of 1976. According to sub-rule (2) of the newly added Rule, every endeavour shall be made to ensure that the decree is drawn up as expeditiously as possible, and, in any case, within fifteen days from the date on which the judgment is pronounced; but where the decree is not drawn up within

[1] O. 20, R. 1, C.P.C.
[2] O. 20 R. 6A(2), C.P.C.

the time aforesaid, the Court shall, if requested so to do by a party desirous of appealing against the decree, certify that the decree has not been drawn up and indicate in the certificate the reasons for the delay.

Stage after preliminary decree—Progress report to be called for.

7.9. One other stage where considerable delays take place in certain category of suits is that subsequent to the passing of a preliminary decree. In suits for rendition of accounts or for partition, the courts, after awarding preliminary decree, generally appoint a Commissioner for going into the accounts or for effecting partition by metes and bounds. Experience tells us that such proceedings before the Commissioner linger on for a long time. In one metropolitan city, the above task is performed by a judicial officer, while in other towns it is actually entrusted to Commissioners. Complaint all the same has been made that even before the said judicial officer the proceedings take unusually long time. It is necessary that the court awarding the preliminary decree should keep a strict watch with a view to ensure that proceedings after the preliminary decree do not get protracted indefinitely. This can be done by asking for some kind of progress report whenever request is made for extension of time for completing the proceedings. Some credit may also be given, in terms of statistics, for awarding the final decree.

CHAPTER 8

CONCILIATION

Advantages of conciliation.

8.1. One of the methods which can be devised for relieving the courts of the heavy load of cases is the adoption of the system of conciliation of civil cases.

Settlement of cases by mutual compromise is quite often a better method of ending the civil dispute than the alternative of fighting the case to the bitter end, by taking up the matter in appeal from one court to the other. The latter method, apart from burdening the parties with heavy financial expenditure, also quite often leaves a trail of bitterness. Results more in consonance with justice, equity and good conscience can sometimes be achieved by having a mutual settlement of the dispute than by having a court decision one way or the other.

Other countries.

8.2. According to the Fourteenth Report of the Law Commission,[1] the system of conciliation was being tried in three countries. The relevant passage in the Report reads as under:

> "The Code of Civil Procedure does not contemplate such (conciliation) proceedings but such a procedure exists in Japan, France and Norway. In Japan it is the duty of the court either on the application of the parties or *suo moto* to send all civil proceedings either to a body consisting of two laymen and a judge or to judicial commmissioners for a negotiated settlement. If the conciliation court succeeds in persuading the parties to arrive at a settlement, its terms are recorded by the court and the order becomes binding as a judgment. In the event of a failure, the proceeding is dealt with in the ordinary manner. In France, all cases go to a Cantonal Court presided over by a layman for conciliation and an agreed settlement. Failing a settlement, the case goes for disposal to the court. In Norway, such proceedings are an essential preliminary to a proceeding in a civil court. The proceedings first go before a conciliation council, composed of three mediators, designated by the local authority. The council can record an agreement. If any of the parties fail to appear, the council can in petty cases settle the proceedings. If the conciliation proceedings fail, the parties may approach the court for the redress of their grievances."

Conciliation in Japan.

8.3. The characteristics of the conciliation system in Japan have been given in a publication entitled "Outline of Civil Trial in Japan" issued by the Supreme Court of Japan in 1969. The passages in this respect read as under[2]:

"4. Conciliation Cases.

> Conciliation is a system peculiar to Japan. Its special characteristic is to settle disputes not by means of a formal court decision but by mutual concession of the parties concerned through the good offices of the Conciliation Committee, composed of either one judge or one judge and two Conciliation Commissioners, appointed from among the people in general. Since the proceedings are simple and inexpensive, the extent of utilization is very great. So, in one sense, it may be said that it fulfils a part of function of legal aid in our country. In 1968, cases newly received for conciliation numbered 54,323 while the total number of cases received by the courts of the first instance was 184,808. The ratio between the two is roughly one to three. Judging from this fact, we can easily tell what an important part the process of conciliation plays in settling civil disputes. It may also be interesting to note that the number of cases involving domestic disputes newly received for conciliation in 1965 of the Domestic Relations Division of the Family Court amounted to 60,015.
>
> Historically this system was originally adopted in 1922 for the purpose of settling disputes involving land and house lease as indicated in

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[1]Fourteenth Report, Vol. 1, page 319, para 36.

[2]Supreme Court of Japan, Outline of Civil Trial in Japan (1969).

the Law for Conciliation concerning Lease of Land or House, but since then its scope has been expanded and now it is made available to settle all types of civil disputes.

The proceedings in conciliation cases are commenced, as a rule, on the application of the parties concerned, but the courts on their own motion, occasionally refer cases pending before them for conciliation. Determination as to whether a case should be disposed of by the Conciliation Committee or by the judge is a matter within the discretion of the court. On the date of conciliation, the Committee or the judge in charge as the case may be, summons the parties concerned and endeavours to settle the disputes either by persuading them to make concessions, or by suggesting proper conditions of settlement.

When conciliation is successfully accomplished, the terms of conciliation are entered in a protocol. Such a protocol has the same force and effect as a finally binding judgment. On the other hand, if the conciliation has not been successful, the proceedings come to an end with the disputes still remaining unsettled. In that event, if the court deems it necessary, it may resort to the judicial process and adjudicate the case by entering a judgment in place of an agreement, taking every circumstance into consideration, regardless of the failure of conciliation."

8.4. In Norway, when it is intended to bring an action against someone, the case cannot as a rule be brought before the court unless an attempt has been made to settle the dispute by way of mediation. Such mediation is carried out by the conciliation council. This council is composed of three members elected by the rural or town councils for a period of four years. As a rule, each municipality is to have a conciliation council. It is, however, permissible to divide a municipality into several different conciliation council jurisdiction. According to the publication "Administration of Justice in Norway" edited by the Royal Norwegian Ministry of Justice,[1] there were in 1957 about 750 conciliation councils. Professional members of the Bar and certain State officials were not eligible as conciliators. Conciliators were normally always non-lawyers. They were paid a petty small fee for handling of each individual case; otherwise, they received no salary. There is no mediation by the conciliation council in matrimonial cases, descent cases, cases brought against the State or municipal authorities or institutions. The procedure adopted by the conciliation council has been described as under :

Norway.

> "It is up to the one who intends to bring the action to request mediation by filing a summons with the Conciliation Council, usually at the place where the other party is domiciled. The summons must state the subject matter of the dispute. The chairman of the conciliation council will then summon the parties to a sitting of the council, where they, as a rule, must appear in person. They are not allowed in any case to let professional barristers appear in lieu of them or to appear accompanied by barristers. If the Conciliation Council succeeds in bringing about a settlement between the parties, a formal agreement is entered into and is recorded in the official records of the Conciliation Council. Such a formal agreement will, in the main, have the same effect as a final judgment. If the parties fail to agree, the dispute will usually be referred to the Court for trial.
>
> The Conciliation Council may, however, pronounce judgment in any case, provided both the parties appear and request the Council to settle the dispute. On the request of one of the parties only, the Conciliation Council may deliver judgment in cases concerning the boundaries of bounds of estates or grounds, in cases concerning established partial rights in immovable property as well as in cases involving claims for compensation for damage inflicted on such property, provided the value of the matter in dispute does not in any such case exceed Kr. 4,000 (i.e. about £ 200), and in cases involving other claims of an economic nature if the value of the matter in dispute does not exceed Kr. 1,000 (i.e. about £ 50). On the request of the plaintiff the Conciliation Council may moreover deliver judgment in debt cases, provided the value of the

[1]Royal Norwegian Ministry of Justice, Administration of Justice in Norway (1957), pages 29-30.

matter in dispute does not exceed Kr. 10,000 (i.e. £ 500), if the defendant fails to appear, or if he appears and acknowledges his obligation to pay the principal debt. In practice the privilege of delivery of judgment by the Conciliation Council is only exercised to a small extent, apart from cases where the defendant fails to appear. In such cases judgment is delivered on the basis of the plaintiff's representation of the case in so far as it does not conflict with established facts."

Figures in Norway.

8.5. According to the above publication,[1] in 1954 the conciliation courts (councils) dealt with 24,773 cases. Of these, 2,712 cases were settled by way of mediation; 6,477 cases were referred to courts of justice for trial; 9,065 were settled by what is technically called "delivery of judgment by default", while 761 cases were otherwise adjudged. The remaining 5,758 cases were rejected, formally taken out of the council or discontinued.

The fact that mediation has already been tried without success in cases referred to the Court of justice does not prevent the court in question from attempting mediation at any stage of the proceedings. This also applies to cases in which conciliation council has no jurisdiction. Judgments delivered by the conciliation council can be appealed to the Country or Town Court.

The figures in Norway of total number of cases in the year and the number of cases in which reconciliation was brought about during the years 1971 to 1976 are given in the publication "Civil Judicial Statistics 1976" published by Central Bureau of Statistics, Oslo, Norway[2]. These figures are as under :

Year	Total number	Reconciled
1971	60295	4500
1972	70106	4820
1973	79520	5159
1974	84004	4909
1975	80803	4524
1976	81460	4329

Views expressed in the discussions with the Chairman in Norway.

8.6. The Chairman of the Law Commission who happened to be in Europe in some other connection, had the occasion to discuss the conciliation system with some of the judges and a leading member of the Bar in Norway. It transpired during the course of the discussion that most lawyers considered the conciliation machinery in Norway to be more or less a formality, as not more than 10 per cent of the cases got compromised. No lawyer can appear before the conciliation council. Only a small court fee is necessary for proceedings before conciliation councils. In case conciliation efforts fail, separate plaint with proper court fee is filed in regular courts.

View all the same was expressed that the conciliation procedure was not without its utility, especially in cases of small value.

Denmark.

8.7. It also transpired during the course of the talk in Norway that the conciliation system had been earlier in vogue in Denmark, but it was given up nearabout the year 1952.

France.

8.8. Conciliation procedure was in vogue in France, but in the fifties of this century, the procedure about conciliation was given up. About two years ago, it has again been revived in the parts of France, as it was felt that the system was not altogether without merit.

But it was, according to French officials in the course of discussions with the Chairman, too early to express any opinion about the success of the sysem after its revival in France.

Pakistan.

8.9. The system of conciliation has also been tried in Pakistan. The Conciliation Courts Ordinance was promulgated in 1961. The Ordinance brought about important changes in regard to settlement and adjudication of petty civil and criminal cases. Primarily the role of the court is to conciliate between the parties and that is why it has been given the name of the Conciliation Court.

[1] Royal Norwegian Ministry of Justice, Administration of Justice in Norway (1957), page 31.

[2] Central Bureau of Statistics, Oslo, Norway; Civil Judicial Statistics, 1976.

The Chairman has to constitute the Court every time a case is brought to him for settlement. Each of the parties to the dispute has to nominate two representatives out of whom one must be a member of the Union Council concerned. So, the constitution of the Court varies with each case. The system of settlement of petty disputes through local tribunals has also been extended to urban areas. The Report of the Pakistan Law Reforms Commission 1969-70 published in 1970 sheds light on the working of the conciliation courts. We can do no better than reproduce two paragraphs from that Report:[1]

"In spite of all the objections made against the system of local tribunals, we find that the Conciliation Courts have been playing a useful role in settling disputes amicably. By and large people are satisfied with the sense of participation the system gives them and in principle the institution of Conciliation Courts is not open to any serious objection. These Courts have not only provided relief to the ordinary courts but have also enabled the parties to get quicker and cheaper justice. It will appear from Appendix I to this Chapter that each year quite a sizeable number of cases which otherwise would have come up before the regular courts both on the civil and the criminal side have been dealt with by these Courts in both the wings of the country. In a developing society like ours where our financial resources are more needed for development projects, it will not be advisable to scrap this system as otherwise it would undoubtedly necessitate the setting up of more law courts and consequently an increase in the expenditure. The Conciliation Courts have also saved the people from unnecessary litigation expenses because only a nominal fee is charged from the petitioner on the petition filed by him in a Conciliation Court. The parties are also saved from the expenses of engaging lawyers because the provisions of the Conciliation Courts Ordinance do not permit the appearance of legal practitioners in proceedings before a Conciliation Court. As the witnesses are available at hand, the parties do not have to incur any heavy expense for taking them to the Tehsil. Sub-divisional or the district headquarters where the courts are situated.

The criticisms levelled against the Conciliation Courts are based on a comparison of these Courts with the ordinary law courts. This comparison is, however, not justifiable because the Conciliation Courts have been set up to give effect to the long established custom of settlement of disputes through mediation, arbitration and compromise, whereas the ordinary courts are primarily required to decide all matters brought before them in accordance with law. In the case of Conciliation Courts, adjudication of disputes is not the primary function. A Conciliation Court has to adjudicate only where its efforts at conciliation have failed. In most of the cases, they do succeed in effecting conciliation between the parties. It was suggested to us that the jurisdiction of the Conciliation Court should be confined only to bringing about compromises between the parties and settling disputes through conciliation and in case of failure to let the matter to go to the regular courts for adjudication according to law. This suggestion cannot be accepted, because a tribunal which is empowered to settle a dispute through conciliation only without having any power to decide it in the event of failure of conciliation cannot function successfully. No one would like to take a dispute before a tribunal which does not possess the power of finally determining it. It is for this reason that the village *panchayats* even in the earliest days enjoyed powers of deciding cases where the parties failed to reach at some settlement. The decisions of these *panchayats* were always respected because the members of the *panchayat* enjoyed full and complete confidence of the parties. It is, therefore, not desirable to deprive the Conciliation Courts of their judicial powers and to restrict or limit their function only to the settlement of disputes through conciliation."

Recommendation as to conciliation system being introduced on experimental basis

8.10. It would appear from the above that the system of conciliation has not been an unqualified success in the countries in which it has been tried. At the same time, it cannot be denied that the system is not without its merit.

[1]Pakistan Law Reforms Commission Report.

We would recommend the setting up of conciliation boards on experimental basis in certain areas in disputes giving rise to claims for the recovery of money not exceeding five thousand rupees. Every such board should cover a block of population of about one lakh in rural areas and about two lakhs in urban areas. Every aggrieved person, *before filing a suit* for the recovery of money not exceeding five thousand rupees, should first approach the conciliation board. The board should try to get the dispute amicably settled within three months of the service of the notice on the person complained against.

Settlement by the Conciliation Board.

8.11. If settlement is arrived at within that period, the settlement should be reduced to writing. It should be signed by all concerned and be filed in court like a compromise. If no settlement is arrived at within three months, an order should be made by the board to that effect. Even if no order about settlement having been not arrived at is made by the Board within the above period of three months, the court shall presume that no settlement was possible.

Such category of suits as may be considered advisable may be kept out of the jurisdiction of the conciliation boards.

Procedure of proceedings taken in suit.

8.12. No plaint should be filed in any court relating to a dispute mentioned above without the aggrieved person first approaching the conciliation board. In case, however, sufficient ground or urgency is shown to the satisfaction of the court for straightaway starting such proceedings without approaching such board, the court may entertain such a plaint. In case no such sufficient cause or urgency is shown, it would be within the competence of the court to reject the plaint or, in appropriate cases, to stay further proceedings in the suit till such time as recourse is had to the board. Suitable provisions for this purpose will have to be enacted if it is decided to adopt the above scheme. The details of the scheme can also be gone-into at that stage.

Experimental basis.

8.13. As mentioned earlier,[1] the setting up of the conciliation boards would have to be done only on experimental basis in certain areas. If it is found that the conciliation boards have proved a useful agency in relieving the work-load of courts and the experience in other respects is also happy, we might extend the system to more areas. In case, however, our experience is to the contrary, we may do away with conciliation boards even in those areas where they are set up on an experimental basis.

Inducing parties to resort to arbitration.

8.14. It might also seem desirable to induce the parties to resort to arbitration in case conciliation proceedings fail. The efforts of the conciliation board should be, as mentioned above,[2] to bring about conciliation between the parties. In case, however, the parties somehow do not agree to a mutually acceptable compromise formula, in that event, the conciliation board might suggest to the parties the desirability of referring the matter to arbitration.

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[1]Para 8.10, *supra*.

[2]Para 8.11, *supra*.

CHAPTER 9

RECRUITMENT AND PERSONALITY OF THE TRIAL JUDGE: INSPECTION OF COURTS AND TRAINING OF JUDICIAL OFFICERS

Recruitment and Personality of the Trial Judge

Personality.

9.1. Whatever suggestions may be made to improve the working of our subordinate judiciary with a view to eliminate delays and ensure prompt disposal of cases, everything in the ultimate analysis would depend upon the personality of the trial judge. A trial judge indeed is the linchpin of the entire system. Nowhere, it has been said, in the whole range of public office are weaknesses of character, intellect, or psychic constitution revealed more mercilessly than in the discharge of the responsibilities of a trial judge. The advocates engaged by the rival parties fight tenaciously to protect the interest of their clients. No one can preside effectively over such a situation if he is mediocre in intellect or professional skill, lacking in decisiveness, or is otherwise not emotionally stable. The court-room decorum, it has been observed, has to be maintained with a firm hand if cases are to be tried fairly and expeditiously. As the case proceeds, the trial judge is called upon to make many rulings and pass interlocutory orders which are of great strategic and tactical importance for the ultimate decision of the case. These rulings have to be given and orders made under the pressure of the trial and without opportunity for elaborate arguments. The trial judge, it has been said by the American writer H. W. Jones,[1] who is shaky in professional understanding, imperfect in moral resolution, or unduly conciliatory in personality, will inevitably be overpowered and overborne by forceful and aggressive trial counsel. The evil that weak judges do, less often from partiality, as commonly supposed, than from simple psychic inability to stand up to abrassive or strong willed leaders of the trial bar is a bitter but largely untold story in the administration of justice. Other shortcomings which sometimes mar the proceedings in a court of law and leave a bad taste with litigants and witnesses are short temper, peevish nature, irascible disposition, overbearing manners and undue impatience of a trial judge. Proper and fair trial requires not only professional competence; it also needs cool temperament, mental firmness and capacity for remaining unruffled despite the provocation given and the stress and strain caused by the unscrupulous conduct of those who appear during the course of the trial. If, as observed by Roscoe Pound, men count more than machinery in administration of justice, it is imperative that they should be men of the right calibre.

Need to attract bright young law graduates.

9.2. It is, therefore, essential to attract young bright law graduates and lawyers of the right calibre to the judiciary. This can only be done if there are good pay-scales for the judicial officers. It is, no doubt, true that the pay-scales of the judicial officers should normally be such as fit in with the general pattern of pay-scales of government officers of equivalent rank in other departments; it has, at the same time, to be borne in mind that bright young lawyers can earn much more in the profession. Unless, therefore, we are going to be content with mediocrity manning our judicial services, some allowance would have to be made for the consideration that by sticking to the profession, bright young lawyers can earn much more. One way of meeting the objection that there should not be much disparity between the pay-scales of judicial officers and those in other government service is to give higher initial pay to a judicial officer by taking into account the number of years he has practised in the profession. It is also noteworthy to observe in the above context that unlike people joining other services, those entering the judicial service do so at a higher age because of the requirement about practice at the bar for a certain number of years. Keeping in view the fact that the age of retirement is the same for both judicial officers and those in other branches of administration, it would follow that the judicial officers would be putting in less years of service.

14th Report.

9.3. It may, in the above context, be pertinent to refer to the observations of the Law Commission presided over by Shri M. C. Setalvad in its fourteenth Report. The Commission said:—[2]

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[1] Harry W. Jones, "The Trial Judge—Role Analysis and Profile" in Harry W. Jones (Ed.), The Courts, the Public and the Law Explosion (1965), page 137.

[2] 14th Report, Vol. 1, page 163, para 8.

"In the matter of scales of pay and remuneration, the judiciary compares unfavourably with the executive branches of the Government. It is true that, generally speaking, the scales of pay of the judicial officers and the corresponding executive officers are identical in many of the States. However, it has to be remembered that the executive officers are, by and large, recruited at a much younger age than the judicial officers. The entrant to the judicial service is required to be a graduate in law and in most of the States it is also necessary that he should have practised for a certain number of years at the Bar. On the other hand, for recruitment to the executive branches of Government service, a degree in arts or science is, generally speaking, sufficient. In the result, a person entering the judicial service does so when he is about twenty-six or twenty-seven years of age and at a time when his contemporaries who have entered the executive service of the Government have already acquired a certain seniority in the service and have come to draw a higher salary. It will thus be seen that a person joining the judicial service starts with a lower remuneration than what he would have received if he had entered the executive service a few years earlier. It has also to be noted that owing to the lesser proportion of superior posts in the Judicial Service promotions come less quickly to the judicial officers, and a person who has entered the service as a munsiff, assuming that he is fit and fully qualified, take much longer time to become a district judge than would an equally competent deputy collector to reach the position of a collector. Again the judicial officer, having started at a later age, has a shorter span of service than the executive officer and this effects his pension and other retirement benefits."

Requirement of practice.

9.4. One other question linked with the above is whether practice at the bar for a number of years should be made compulsory before a person can be recruited as a judicial officer. In case the answer be in the affirmative, another question which would arise would be as to what should be the period of practice. Protagonists of the view that it should not be necessary to insist upon practice for a number of years at the bar assert that practice of three to five years serves no useful purpose. During the first three to five years, an average practitioner hardly picks up much practice. As such, it is stated, he does not acquire great familiarity with the procedural and substantive aspects of the legal system. It is only the exceptional, favourably situated young man, enjoying the advantage of having a senior member being interested in him, who would gather much experience at the bar in so short a time. Such an exceptional person, as observed in the fourteenth Report of the Law Commission, would naturally not care to be a competitor for entrance into the subordinate judicial service. It, therefore, happens that most of the people who strive to get into the judicial service after three to five years at the bar are the disappointed persons. Recruitment from the bar is thus described by some people as recruitment from amongst the disappointed members of the bar who have failed to make much headway in the profession.

Recruitment from the bar.

9.5. As against the above view, a substantial body of opinion still favours the retention of the system of recruitment from the members of the bar after they have practised for a number of years. According to this opinion, the system of recruitment from the bar has been in operation for the last many years and recruitment on the whole has been satisfactory. It is also emphasised by the persons subscribing to this view that even though a member of the bar does not pick up much practice during the first three to five years of his career at the bar, he still gets some familiarity with the working of the courts which proves to be of considerable help.

We have considered the pros and cons and are of the opinion that the present system of insisting upon a number of years of practice at the bar as mandatory for recruitment to the subordinate judicial service should continue. The minimum period of practice, in our opinion, should be three years. Some exception regarding requirement of minimum practice may possibly have to be made in the case of law graduates employed in courts.

All India Judicial Service.

9.6. At the same time, we are of the view that the suggestion to have an All India Judicial Service of the same rank and same pay-scales as the Indian Administrative Service should receive serious consideration. According to article 312, as now amended, Parliament may by law provide for the creation of one or more all-India services (including an all-India Judicial Service) common to

the Union and the States. We are conscious of the fact that a school of thought and many States are strongly opposed to the creation of all-India Judicial Service. The objection is mostly based upon the consideration that since the proceedings before the subordinate courts would be conducted in regional languages, members of the higher judicial service hailing from other States would not be in a position to efficiently discharge their functions. This difficulty can be obviated if, like recruits to the Indian Administrative Service, the recruits to the All India Judicial Service also undergo a training period of two years. During that period, they can acquire also familiarity with and mastery of the regional language of the State to which they are to be allocated after the completion of their training period. The requirement about practice at the bar may perhaps have to be waived for recruitment to All India Judical Service, as they will be recruited at a comparatively younger age. It should, however, be essential that the competitors are graduates in law.

Attraction of All India Service.

9.6A. Another reason which should weigh in favour of the creation of the All India Judicial Service is the attraction that an All India Service holds for bright young graduates, including law graduates. The result is that many of them compete for and are selected for the Indian Administrative Service. If the All India Judicial Service is created with the same rank and pay scale as Indian Administrative Service, the Judicial Service would hold perhaps greater attraction for bright law graduates. The Judicial Service in such an event would not be denuded of talented young persons. The Law Commission presided over by Shri Setalvad also felt this difficulty and observed[1] that an important factor which detracts from the attractiveness of the judicial service is the inferiority of the status of a judicial officer compared with that of the executive officer. The Law Commission in this connection referred to the following observations of an experienced Chief Justice:—

> "One reason why meritorious young men or young practitioners of some standing keep away from the judicial service is the comparative inferiority of the status of district judicial officers vis-a-vis officers of the district executive. Formerly, the district judge, like the district magistrate, used to be a member of the Indian Civil Service and his position in the District was superior to that of the District Magistrate. —Under the present system, the district magistrate is a member of the Indian Administrative Service which is a service of an all-india character, while the district judge is a member of the higher judicial service which is a State service. The difference in the category of the cadres to which they belong is reflected in the status they occupy in relation to each other and in the estimation of the public. Vis-a-vis the district magistrate, the district judge feels small and is treated as a person of little consequence. Nor can the district judge attain the sense of independence which he might have acquired, if he had not been under the administraive control of the State Government in regard to his service."

Recruitment from other States.

9.7. One of the essential needs for the due administration of justice is not only the capacity of judges to bring a dispassionate approach to cases handled by them, but also to inspire a feeling in all concerned that a dispassionate approach would underlie their decision. Quite often, cases which arouse strong local sentiments and regional feelings come up before courts of law. To handle such cases we need judges who not only remain unaffected by local sentiments and regional feelings, but also appear to be so. None would be better suited for this purpose than judicial officers hailing from other States. It is a common feeling amongst old lawyers that apart from cases with political overtones, the English judges showed a sense of great fairness and brought a dispassionate approach in the disposal of judicial cases handled by them. We in India are in the fortunate position of having a vast country. There can, therefore, be no difficulty in having a certain percentage of judicial officers who hail from other States. The advantage gained by having persons from other States as judicial officers would be much greater compared with any disadvantage which might accrue therefrom. It would also, to some extent, result in national integration.

Training.

9.8. Question has also been raised as to whether we should have a training course for all recruits to the judicial service before they actually start functioning

[1] 14th Report, Vol. 1, page 164, para 9.

as judicial officers. We are in favour of having a training course lasting for a period of three to six months for recruits to the subordinate judiciary. Such period can be utilised for giving intensive training to the judicial officers by competent and experienced members of the judiciary. The stress in such a course would be to acquaint the recruits with procedural requirements for dealing with different stages of cases. For example, the recruits can be trained as to how to record statements of parties before framing issues, how to frame issues and how thereafter to record evidence and write judgment. The recruits can also be trained in the art of writing interlocutory orders. Apart from that, recruits can be made familiar with different stages of execution proceedings and also taught how to dispose of matters at each of those stages. One aspect of training can also cover the method of dealing with administrative matters which are a part of the duties of a judicial officer.

Inspection.

9.9. The need for periodic and intensive inspection of the subordinate courts by the District Judge and a Judge of the High Court must also be emphasised. In carrying out the inspection, the inspecting judge not only brings to the notice of the subordinate judge any of the mistakes and errors committed by him; he also acts as a guide and mentor for the young junior officer. The emphasis in inspection should be to bring about improvement of the functioning of the officer concerned. The inspection can also provide an opportunity to the subordinate judge to bring to the notice of the inspecting Judge some of the difficulties which might have been experienced by him.

While stressing the necessity of inspection of the subordinate courts by the High Court Judges, we would like to sound a note of caution against a practice which has also come to our notice in a State of deputing one High Court Judge for inspection of all the courts. The better practice in our view would be to depute a separate judge for inspection of courts in each district.

Judges in charge of districts.

9.10. In some High Courts, one judge is placed in charge of each district for one or two years. He periodically visits the district with a view to ensure proper functioning of the courts and to see that the cases do not get old. It is staid that this practice has yielded good results. This may probably be due to the fact that the judge in charge of the district is able to scrutinise more closely the returns received from the subordinate courts of the district from time to time and suggest measures and give appropriate directions through the District and Sessions Judge for the disposal of old cases and, if necessary, impress upon the Chief Justice the necessity for the etablishment of additional courts on a permanent or temporary basis in the district for disposal of old cases and for coping with the current file. He will be also in a position to suggest such other remedies and measures as may be called for in the district of which he is in charge:

Control of arrears by High Courts.

9.11. We feel that it is primarily for the High Court in each State to ensure that arrears of cases in subordinate courts are cleared or brought under control. Repeated reports of the Law Commission or other Committees appointed for the purpose are not going to bring forth the desired results unless adequate steps for clearing old cases are taken in every State. The State Governments on their part should lend all effective co-operation and assistance to the High Courts for this purpose. The Chairman of the Law Commission was informed during his visit to one of the States that as many as sixty posts in the Munsiffs' cadre were lying vacant for many months and a number of the munsiff courts in several talukas were not functioning at all for want of presiding officers. This was a perturbing revelation. Apart from the inadequacy in the strength of the subordinate judiciary to deal with the arrears and the fresh institutions, the failure to fill up the vacancies immediately they arise will inevitably contribute to the accumulation of more arrears; it will also bring about a sense of frustration and helplessness among the litigant public which, for no fault of its own, is prevented from getting appropriate redress from the courts in time. This must shake the public confidence in the judiciary and undermine the image of the courts. It must be ensured that such a state of affairs does not recur in future.

High Court's recommendation as to strength of judicial officers to receive prompt attention.

9.12. A common complaint which has been made is that there are not enough number of judicial officers. The increase in the strength of the judicial officers has not been commensurate with the increase in the number of pending cases. Complaint also is made that whenever the High Court makes a recommendation for increasing the strength of judicial officers in a district, the matter has

to be referred to State Government which takes many months—or even sometimes more than a year—to give its decision on the recommendation. The decision quite often is to turn down the recommendation of the High Court. Even when the recommendation is accepted, the lapse of time between the date of recommendation and its acceptance robs the original recommendation of its effectiveness as a result of further aggravation of the problem. We are of the view that a recommendation of the High Court for increasing the strength of judicial officers in a district should receive prompt consideration and not be lightly turned down. It may perhaps be considered in the above context as to whether we should not have a convention that the recommendation of the High Court in this respect, in the absence of some compelling reason, be binding upon the State Government. It is presumed that the High Court would not lightly make a suggestion for increase in the strength of the judicial officers.

Retired officers.

9.13. In the context of the heavy backlog of civil and criminal cases for the clearance of which we need additional courts for a period of a few years, we may point out the desirability of utilising the services of some retired judicial officers. The judicial officers retire in some States at the age of 55 and in other States at the age of 58 years. Many of them are known for their integrity, efficiency and quick disposal. The High Court is presumed to know as to which of the many judicial officers who have retired recently possess the above qualifications. To prevent appointment of judicial officers who have become senile or out of touch with the judicial work because of the passage of long time since their reirement, it may be necessary to lay down that judicial officers only in the age group of 55 to 62 years should be appointed for this purpose. The appointment should be made by the State Government on the recommendation of the High Court. No one should be appointed for the post unless his name is recommended by the High Court. For the work done by the judicial officers, they would, in addition to pension, be paid such honorarium as may be prescribed. A number of old cases may be assigned to such judicial officers for disposal, and they would be expected to dispose them of within the prescribed time. The appointment should normally be made for a period of two or three years, with power to the State Government to extend the period of appointment at the recommendation of the High Court.

Designation.

9.14. One difficulty which may be experienced in having retired judicial officers known for their integrity, efficiency and quickness is that such judicial officers would normally retire after becoming district and sessions judges. They would, at least on that account, be reluctant to act as munsiffs or subordinate judges or magistrates. To get over this difficulty, we might give them special designation like Special Judge (Civil) or Special Judge (Criminal).

Jurisdiction.

9.15. They should hear old cases pending in the courts. Appeals against their judgments or orders should lie straight to the High Court and not to the court of district and sessions judge.

Once the suggestion about the utilisation of services of retired judicial officers is accepted, necessary statutory amendments would have to be made.

Appointment of members of the bar for disposal of old cases.

9.16. It may, however, be not enough to have retired judicial officers to deal with old cases. Some special recruitment may have to be made from bright young members of the Bar who have practised for at least seven years for disposal of old cases. These members of the Bar would necessarily have to be given a higher start and on satisfactory performance, be ultimately absorbed in service as District and Sessions Judges or Additional District and Sessions Judges. This fact might act as an incentive and induce bright young lawyers to join the service.

Without that assurance it would not be possible to attract bright lawyers who have put in more than seven years practice to the job. It is most unlikely that they would offer themselves for the special recruitment if the prospects be that after the clearance of arrears, they would have to revert back to their practice. It also seems apposite that the procedure for the special recruitment may be substantially the same as that for appointment of District Judges from the Bar. The reason for that is that in the matter of selection for a judicial post from amongst the members of the Bar with some standing, the High Court is in a much better position compared to any other agency to appraise the merit and suitability of the candidate. According to article 233 of the Constitution, appointment of persons to be District Judges in any State has to be made by the Governor of the State in

consultation with the High Court exercising jurisdiction in relation to such State, while according to article 234, appointment of persons other than District Judges to the judicial service of a State has to be made by the Governor of the State in accordance with the rules made by him in that behalf after consultation with the State Public Service Commission and with the High Court exercising jurisdiction in relation to such State. The expression "District Judge" includes, *inter alia*, as mentioned in article 236, Assistant District Judge and Assistant Sessions Judge. If the recruitment of the members of the Bar has to be in accordance with article 233, in that event the persons to be appointed as a result of special recruitment may be designated as Assistant District and Sessions Judges till such time as they are appointed District and Sessions Judges or Additional District and Sessions Judges. One difficulty which may, however, be experienced in designating them as Assistant District and Sessions Judges is that only such of the criminal cases would be heard by them as are triable by the Court of Sessions. Another snag in the proposal is that though there is reference to Assistant District Judge in article 236, there are so far as we are aware no Assistant District Judges functioning in any State. The concept of Assistant District Judges would thus make a departure from the known hierarchy of judicial officers. In the alternative, if the recruitment is to be governed by article 234, in that event such rules may be framed for the special recruitment as may conform more or less with the procedure prescribed by article 233. Perhaps the latter alternative in view of the difficulties pointed out earlier may seem preferable. We may add that the practice of recruiting bright young lawyers who have practised at the Bar for at least seven years for the post of higher judicial service is already in vogue in most of the States.

Serving judges to be asked to deal with old cases

9.17. In addition to the above, some of serving judicial officers can also be asked to deal exclusively with old cases. The diversion of some of these officers towards the disposal of old cases is possible and would not affect the disposal of fresh cases, because the workload of the existing courts would get considerably reduced on account of the transfer of old cases to courts dealing with such cases. Care, however, must be taken, while diverting some judicial officers towards the disposal of old cases, to see that the number of courts dealing with fresh or not old civil and criminal cases is enough to dispose them of within a period of one year or six months respectively.

Need to clear backlog within about three years.

9.18. While setting apart and creating certain courts for dealing with old cases, we should ensure that their number is such as might make it possible that all arrears are cleared within a period of about three years.

CHAPTER 10

CERTAIN CASES UNDER SPECIAL ACTS

10.1. There are certain cases which, by their very nature, have an element of urgency about them and call for speedy disposal. Quite a number of these cases are under special Acts. One such category is of matrimonial cases. When persons approach the courts in such cases, they do so with a fond hope that the cases will be decided at an early date. As it is, we find that these cases drag on for years. Of what avail is a decree of divorce granted in matrimonial proceedings, when the parties are past the stage of youth by the time the relief is granted? Young people should get relief in matrimonial cases when they are still young. It would be a pity if they have to waste years of their youth because of the long-drawn course of the matrimonial cases. It is also plain that there are great possibilities of young people going astray if quick relief is not granted to them in matrimonial cases.

Matrimonial cases.

Linked with matrimonial cases are cases relating to the custody and guardianship of minor children. The need for their urgent disposal is as great as for matrimonial cases.

10.2. A second category of cases which call for early disposal are eviction cases. Such cases obviously call for an early disposal.
especially those on the ground of *bona fide* personal necessity of the landlord.

Ejection cases.

10.3. A third category of cases calling for speedy disposal are those filed before Motor Accidents Claims Tribunals.[1] Many of these claims are made by widows and children of persons who lost their lives as a result of the accident. Quite a large number of these widows and children are in straitened circumstances because of their having lost the adult earning member of the family as a result of the accident. At most of the places, the district judge is designated as the Motor Accidents Claims Tribunal. He, however, because of pressure of other work, has hardly enough time to deal with these cases. In a place like Delhi, there was, till recently, only one Tribunal and the number of cases pending before the Tribunal was so large that they would remain pending for five or six years or even more. This causes—as it must—great dismay and frustration amongst the people.

Motor Accidents Claims.

The entire object of appointing Motor Accidents Claims Tribunals and of creating third party liability by statute is set at naught by the inordinate length of time taken to dispose of these cases.

10.4. We are also of the view that the power of designating and appointing judicial officers as the Motor Accidents Claims Tribunal[1] should vest in the High Court.

Power of appointing Accidents Claims Tribunals to be with High Court.

Every effort should be made to see that such claims are disposed of within a period of less than a year. Likewise, the courts dealing with matrimonial cases should give priority to the disposal of these cases.

10.5. Another category of cases requiring speedy disposal are those under the Indian Succession Act, 1925. Some of these cases are applications for succession certificates, while others are petitions for probate or letters of administration. Quite often, the money belonging to a deceased person remains locked up because the heirs are not legally entitled to claim the money from the persons or institutions, like banks, with whom it is lying, without obtaining succession certificate or probate or letters of administration, as the case may be. This quite often results in great distress to the widow and the children of the deceased person.

Cases under Succession Act.

10.6. It is, therefore, essential that the cases of the above categories should receive prompt attention and they should not be allowed to linger on for a long time.

10.7. There should be enough number of judicial officers to deal with the above categories of cases. While the number of cases like eviction cases in each district would be so large as to keep fully occupied one or more than one judicial officer,

Need for enough number of judicial officers.

[1]Section 110, Motor Vehicles Act, 1939.

the number of other cases, like claims arising out of accidents under the Motor Vehicles Act, may not be sufficient to keep the judicial officers fully occupied in some of the districts. For the quick disposal of such cases, two alternative solutions are possible. One solution is to have one Motor Accidents Claims Tribunal for a number of such districts. The other solution is to vest the powers of the Tribunal in an Additional District Judge or a senior Subordinate Judge, who should set apart a number of days in a month for the exclusive disposal of such claims.

If the number of such cases in the court concerned be not sufficiently large to keep it fully occupied, the court should set apart a sufficient number of days in a month for the disposal of these cases with a view to ensure that these cases are disposed of as quickly as possible and do not, in any case, take more than a year to be decided.

The same observations will also hold good for cases under the Indian Succession Act.

Labour disputes.

10.8. One category of disputes, even though not strictly civil disputes, where there is need for speedy adjudication, are those relating to labour, between management and workmen. Any protraction of these disputes impinges upon industrial production and often results in loss of numerous man-hours. Prolongation of these disputes also leaves a bitter scar on management-workmen relations, and makes restoration of industrial harmony difficult. It is, therefore, essential that there should be enough number of labour courts and industrial tribunals, so that the disputes do not linger on and there is speedy adjudication of such disputes.

CHAPTER 11

EXECUTION

11.1. The execution of decrees represents a very important feature of civil litigation. Leaving aside the limited number of decrees like declaratory decrees which by their very nature are inexecutable, all other decrees have to be executed before the relief sought by the successful aggrieved person is obtained by him in concrete terms. Unless, therefore, a decree-holder is in a position to effectively execute his decree, the decree obtained by him would be no more than a piece of paper or a teasing illusion. Complaint has been repeatedly made that many of the decree-holders in India find it difficult to obtain full, and in some cases even a partial, satisfaction of their decrees. The Government of India in a letter addressed to the Provincial Governments in June 1923 referred to the statistics in different courts with a view to highlight the non-satisfaction of the decrees in a large number of cases.[1] The Law Commission, in its Fourteenth Report[2] also referred to it when it said that the general complaint against the system of execution of decrees of civil courts in India is that in a large number of cases the decree-holders, who have obtained after much trouble and expense, decrees for payment of money or for delivery of specific property or for other relief, are not able to obtain full, or even a partial, satisfaction of their decrees. The evil was noticed as far back as 1872 by the Privy Council in the *Maharaja of Darbhanga's case*[3] wherein it was stated that the difficulties of a litigant in India begin when he has obtained a decree.

Importance of execution.

11.2. One great obstacle in obtaining satisfaction of the decree is the tendency on the part of a judgment-debtor to file objections either himself or through some other person. Most of these objections, when scrutinised, are found to be without merit. The fact that those objections are ultimately found to be without merit affords poor consolation to the decree-holder because, in any event, the objections have the effect of delaying the process of the satisfaction of the decrees. Many decree-holders on account of the above dilatory tactics of the judgment-debtors prefer to forgo complete satisfaction of the decree and agree to a partial satisfaction of the decree by way of settlement.

Objections to cause delay.

11.3. Complaint is quite often made that courts do not devote as much attention to execution cases as they do to regular suits. The reason for that is stated to be that the disposal of an execution case does not add to the unit of cases disposed of by the courts. In many States there are instructions or regulations prescribing a number of units for disposal by each judicial officer at the district level. To meet this difficulty, we might either allow some credit, in terms of units or otherwise, for those cases in which the decree-holder gets complete satisfaction of the decree. In the alternative, we might have a quarterly statement from each of the judicial officers in the district giving statistics about the cases in which there was satisfaction of the decree, either fully or in part, as also the cases in which there was no satisfaction of the decree. The fact that in some courts the percentage of the complete satisfaction of the decree was very high should count as a plus point in favour of the presiding officer of that court.

Attention not paid to execution

11.3A. The Commission was informed in one State by judicial officers dealing with urban property eviction cases that it takes normally about two years to recover possession of the demised premises in execution proceedings after the disposal of appeal against eviction order. Successive attempts are made to obstruct the delivery of possession by various persons, mostly in collusion with and at the instance of the judgment-debtor. Such obstructions necessitate filing of applications and replies thereto in the executing court and their disposal, quite often after recording of evidence. All this highlights the importance of giving due attention to the execution proceedings and the need to give some credit for

Eviction cases—execution.

[1]Letter dated 25/28 June, 1923, addressed by the Government of India to the Provincial Governments, quoted in the Civil Justice Committee Report, page (v)-(vi) and the 14th Report, Vol. I, page 431, para 2.

[2]14th Report, Vol. I, page 431, para. 1.

[3]*The General Manager of the Raj Darbhanga* v. *Moharaj Coomar Rampus Singh*, (1872) 14 Moors's Indian Appeals 612.

statistical purposes to the judicial officers for the disposal of these proceedings. To discourage frivolous obstructions, the executing courts have ample power to award suitable costs against those offering such obstructions. In case of contumacious obstruction, the court has also the power under sub-rule (2) of rule 98 of Order XXI of the Code of Civil Procedure to order detention in civil prison of the person offering such obstruction.

Nazirs and their pay scales.

11.4. The satisfaction of a decree in quite a large number of cases depends upon the Nazirs who are entrusted with carrying out the different steps in the course of the execution of a decree. Attachment of properties is effected through them. Delivery of immovable property in respect of which a decree for possession has been awarded in favour of a decree-holder is also made by the Nazirs. It is, in our opinion, essential that the officials concerned with the execution of decrees should be men of experience and, by and large, should project an image of integrity and efficiency. It is with this end in view that we might think of revising the pay-scales of these officials. It is also essential that the work of these officials should be constantly supervised by a judicial officer.[1]

[1]See also para 4.6, *supra*.

CHAPTER 12

CRIMINAL CASES

12.1. Most of our general observations about civil cases, apart from those relating strictly to procedure, would also hold good for criminal cases. There is one aspect which we want particularly to highlight. The chances of miscarriage of justice as a result of delay in the hearing and disposal of court cases is much greater in criminal cases than in civil cases. The decision of a civil case generally depends more upon documentary evidence than upon oral evidence. As against this, the decision of a criminal case depends more upon oral testimony of witnesses than upon documentary evidence. The chances of the fading out of memory in some essential matters are considerable as a result of passage of time. Apart from that, there are also possibilities of the material witnesses succumbing to undue pressure and being won over, if there be long time lag between the actual occurrence and the date of recording of their depositions in court. It is, therefore, essential, so far as criminal cases are concerned, that the delay in their disposal be eliminated as far as possible.

Importance of oral evidence.

12.2. Complaints are quite often made of witnesses being kept waiting and not being examined on the day for which they are summoned. This is an extremely undesirable practice. It actually proceeds upon the assumption that one need not take into account the convenience of the witnesses. Every criminal court, in our view, should keep a register showing the number of witnesses summoned for a date, the number of witnesses actually examined and the number of witnesses who were sent back without being examined and the reasons for their non-examination. These registers should be produced before the inspecting judge at the time of inspection. Monthly statements giving figures for the month, based upon these registers, should be submitted to the High Court for scrutiny.

Witnesses not to be kept waiting.

12.3. According to section 326 of the Code of Criminal Procedure, 1973, whenever any Magistrate[1] after having heard and recorded the whole or any part of the evidence in an inquiry or a trial, ceases to exercise jurisdiction therein and is succeeded by another Magistrate who has and who exercises such jurisdiction, the Magistrate so succeeding may act on the evidence so recorded by his predecessor and partly recorded by himself, provided that if the succeeding Magistrate is of opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, he may re-summon any such witness, and after such further examination, cross-examination and re-examination, if any, as he may permit, the witness shall be discharged. The section further provides that when a case is transferred under the provisions of the Code from one Magistrate to another Magistrate, the former shall be deemed to cease to exercise jurisdiction therein, and to be succeeded by the latter

Evidence recorded by predecessor.

The above section, by its terms, does not apply to courts of session. Otherwise also, the Code of Criminal Procedure contains no such provision for the court of session. The result is that if the presiding officer of the sessions court is transferred or otherwise ceases to preside over that court after recording part of the evidence, the successor has to record that evidence all over again. This results in duplication of labour and wastage of the time of the court. It also results in prolonging the trial. There are a number of cases in the court of session in which voluminous evidence has to be recorded during a period of weeks and sometimes of months. If in such cases after a major part of the evidence has been recorded, the presiding officer is transferred or for some other reason ceases to preside over that court, the whole process would have to be repeated all over again.

12.4. Instances have also not been lacking when witnesses have gone back on their earlier depositions during the course of *de novo* trial as a result of undue pressure. This results, as it must, in miscarriage of justice. The underlying reason of the existing law is the desirability to ensure that the judge who decides the case should also record the entire evidence, as he would have the

Difficulties of de novo trial.

[1] Section 326, Code of Criminal Procedure, 1973

advantage of looking at the demeanour of the witnesses. Though we do not deny the force of the above view, we feel that the disadvantage accruing therefrom in present times when there are a number of cases in the court of session wherein voluminous evidence has to be recorded, is much greater. In the circumstances, we would like to have the same law to operate in the court of session as prevails in the court of magistrates. It is also noteworthy that power would still be there in the sessions court, even after section 326 is made applicable to that court, of recording the evidence of any witness *de novo* whenever that court feels it necessary to do so in the interest of justice.

Recommendation in 41st Report.

12.5. We may also mention that the Law Commission in its Forty-first Report,[1] had also made a similar observation when it observed, after referring to section 350 of the Code of Criminal Procedure of 1898, corresponding to section 326 of the new Code:—

> "The section is confined to cases in Magistrate's courts, and is inapplicable to the Courts of Session, we have considered the advisability of extending this rule to Sessions cases, as we understand that sometimes Sessions Judges are transferred, leaving behind part-heard cases which have to be heard all over again. It would be an ideal position if such transfer did not take place, as Sessions cases are to be heard from day-to-day and decided within a few days. It is obviously desirable that in serious cases the whole evidence should be heard by the Judge who finally decides the case. However, having regard to the realities of the situation, it is necessary to make some provision for cases where such transfers do take place, because a mandatory provision for a *de novo* trial may often cause considerable inconvenience and hardship. We, therefore, propose to extend the section to Judges of Sessions Courts by referring to 'Judge or Magistrate' instead of 'Magistrate' only."

Cases under Prevention of Corruption Act, 1947.

12.6. Cases under the Prevention of Corruption Act are tried in the sessions court and the judges of that court sit as special judges for the trial of those cases. Sub-section (3A) of section 8 was inserted by Criminal Law Amendment Act (Act 2 of 1958) in Criminal Law Amendment Act of 1952. According to that sub-section, the provisions of section 350 of the Code of Criminal Procedure, 1898 shall as far as possible be applied to the proceedings before a special judge and for the purpose of the said provisions, a special judge shall be deemed to be a magistrate. The reasons which operated with the legislature in preventing the necessity of *de novo* trial in cases under the Prevention of Corruption Act would also, in our opinion, hold good even for other cases tried by the sessions court.

Piecemeal recording of evidence not to be encouraged.

12.7. Our above observations should in no way be construed to provide a stamp of approval for piecemeal recording of evidence in the court of session. We would like to emphasise that, as far as possible, every effort should be made to record the entire evidence in a case tried by the Court of session at a stretch, so that immediately after the recording of the evidence and the statement of the accused, the court may be in a position to proceed with argument and pronouncement of the judgment. It is, however, hard realities and the undesirable results which accrue from the compulsion for recording voluminous evidence *de novo* in heavy cases which impel us to suggest that the provisions of section 326 should also be made applicable to the court of session.

Service on witnesses.

12.8. We have in the earlier paragraph[2] emphasised the necessity to record the entire evidence in criminal cases at a stretch. This would be necessary not only in the courts of session but also in the courts of magistrates. Such a course is feasible only if all the witnesses whose evidence has to be recorded are actually present in court premises on the date fixed for trial. As it is, we find that all the witnesses are seldom present on the date of hearing. This is particularly so in the courts of magistrates. The inevitable effect of that is that the evidence has to be recorded piecemeal and there is long time lag between the recording of the evidence of different witnesses. This is a most unwholesome practice and the sooner it is put an end to, the better. In not very distant past the investigating agency, at least in some States, evinced keen interest in the court proceedings and ensured that all witnesses were present in court on the date of hearing. The result was that the entire prosecution evidence was recorded at a stretch and cases were disposed of very quickly. The importance of the

[1] 41st Report, Code of Criminal Procedure, 1898, Vol. 1, page 217, paragraph 24.77

[2] Para 12.2, *supra*.

above practice, in our opinion, should be brought home to all concerned in the present times. It seems to us desirable that at least two police officials at every police station should be set apart for getting service effected upon witnesses for cases relating to that police station and for ensuring their presence on the date of hearing. We may also in the above context refer to the provisions of section 309 of the Code of Criminal Procedure. According to these provisions, in every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. It is also further required, according to the above section[1], that when witnesses are in attendance, no adjournment or postponement shall be granted without examining them, except for special reasons to be recorded in writing.

Practice of not producing all material witnesses on one date criticised.

12.8A. It has been brought to the notice of the Commission that the police agency quite often deliberately refrains from producing all material witnesses before the magistrate on one date, as it wants to know the trend of the defence case as manifested by the cross-examination of the first witness. The production of other witnesses is held up to a later date with a view to make up lacunae in prosecution evidence during the intervening period. This practice of deliberately not producing all material witnesses on one date of hearing, in our opinion, is not only unfair and not warranted by the provisions of the Code of Criminal Procedure, it also results in prolongation of the trial.

Traffic offences.

12.8B. In one metropolitan city, the pending file in the court of magistrates is 3,33,000. Out of them, over 3 lacs of cases relate to traffic offences, while about 27,000 cases relate to municipal offences. All these cases are to be tried summarily. Some of the cases are more than one or two years old. The delay in the disposal of these cases is attributed to the fact that the police agency which is entrusted with the task has not been able to get service effected upon the accused. Some of the accused persons tried for traffic offences, were cyclists who, it is stated, did not state correctly their names and addresses, and effecting service upon them has been difficult. Another reason for delay is stated to be the diversion of the police constables, entrusted with the task of getting service effected, to other duties relating to law and order.

Concentration by the police on investigation

12.9. It is commonly said that the investigating agency now-a-days is not able to devote as much time as it should do to criminal cases pending in courts, because the police which constitute the investigating agency is over-burdened with manifold other duties, including those relating to maintenance of law and order. We are of the view that those officials of the police force who are concerned with the investigation of cases should, as far as possible, concentrate upon investigation and looking after the progress of the cases even after they are filed in court. They should not, as far as possible, be deputed for other purposes. Piecemeal recording of evidence and delaying the disposal of cases undoubtedly causes hardship to the accused, but more than that, it results quite often in wrongful acquittals. Wrongful acquittals are as undesirable as wrongful convictions. Both shake the confidence of the public in the administration of justice. The beneficiaries of wrongful acquittals are undoubtedly the anti-social elements. It is plain that wrongful acquittals would give incentive and provide encouragement to criminals and the enemies of society.

Separation of investigating agency.

12.9A. It may have to be considered in the above context as to whether it is not desirable to separate the investigating agency of the police from that dealing with general problems relating to maintenance of law and order. An investigating agency not burdened with other duties would not only ensure prompt and efficient investigation of crime: it would also help in the quick disposal of court cases and prevent miscarriage of justice. It may be mentioned that the Law Commission presided over by Shri Setalvad in the Fourteenth Report supported the idea of separation of the investigating agency.[2] The question as to whether the investigating agency should be not susceptible to executive interference and, for that purpose, be independent of the executive control may also need consideration.

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[1]Section 309, Cr. P.C. 1973.

[2]14th Report, Vol. 2, page 741, para 24.

Petty cases

12.10. There are a very large number of petty cases like those relating to traffic offences, pending in criminal courts. Complaint is often made by the people prosecuted for such offences that they have to wait for a long time in courts on the date for which they receive notice or summons and that the time spent and the inconvenience to which they are subjected are out of all proportion to the gravity of the offence. Most of the persons involved in these offences are not disposed to contest the case. It is for this reason that section 206 of the Code of Criminal Procedure, 1973, provides that if, in the opinion of a Magistrate taking cognizance of a petty offence, the case may be summarily disposed of under section 206 the Magistrate shall,[1] except where he is, for reasons to be recorded in writing, of a contrary opinion, issue summons to the accused requiring him either to appear in person or by pleader before the Magistrate on a specified date; or if he desires to plead guilty to the charge without appearing before the Magistrate, to transmit before the specified date, by post or by messenger to the Magistrate, the said plea in writing and the amount of fine specified in the summons or if he desires to appear by pleader and to plead guilty to the charge through such pleader, to authorise, in writing the pleader to plead guilty to the charge on his behalf and to pay the fine through the pleader, provided that the amount of fine specified in such summons shall not exceed one hundred rupees. Likewise, sub-section (1) of section 130 of the Motor Vehicles Act, 1939 provides that the Court taking cognizance of an offence under this Act,—

(i) may, if the offence is an offence punishable with imprisonment under this Act, and

(ii) shall in any other case, state upon the summons to be served on the accused person that he—

(a) may appear by pleader and not in person, or

(b) may, by a specified date prior to the hearing of the charge, plead guilty to the charge by registered letter and remit to the Court such sum (not exceeding the maximum fine that may be imposed for the offence) as the Court may specify:

Provided that nothing in this sub-section shall apply to any offence specified in Part A of the Fifth Schedule.

Traffic offences.

12.11. One difficulty which, however, arises is in cases where the policeman on duty finds a person violating a traffic law. In such cases, the policeman hands over to the person violating the traffic law what is commonly known as a ticket for appearance in court on a date specified in that ticket. Most of the persons to whom such tickets are handed over are not disposed to contest the case in court. It would, in our opinion, be appropriate that (in the case of persons other than professional drivers) for some specified traffic offences of a minor nature, the ticket shoud also contain separately the amounts of fine for various categories of traffic offences in respect of different types of vehicles, so that if the person who is found committing the infraction of law is so inclined, he can plead guilty and also remit the amount of fine to the court concerned before the date of hearing.

English law as to certain traffic offences.

12.12. We may also in this connection refer to the scheme of the English law, viz., section 80 of the Road Traffic Regulation Act, 1967 which deals with punishment without prosecution of offences in connection with lights, reflectors and obstruction. According to that section[2] where a police constable finds anyone in some specified areas committing an offence in respect of a vehicle as under:

(a) by its being left or parked during the hour of darkness without lights or reflectors as required by law, or

(b) by its obstructing a road, or

(c) by the non-payment of the charge made at a street parking space,

he may give the person concerned a prescribed notice in writing, offering the opportunity of the discharge of liability to a conviction of that offence by payment of a fixed penalty within 21 days of the service of the notice The fixed penalty for the offence shall be £2 or one-half of the maximum amount of the fine to which a person not previously convicted is liable on summary conviction of the offence, whichever is less.

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[1]Section 206, Code of Criminal Procedure, 1973.

[2]Section 80, Road Traffic Regulation Act, 1967 (Eng.).

12.12A. In criminal trials we wish to emphasise the importance which attaches to the framing of the charge. The trial magistrates should take particular interest in this matter, and should not leave it to the prosecutors to give to them a draft of the charge. Many subsequent complications can be avoided and delays on that account obviated, if a charge is properly framed and worded.

Framing of the charge and examination of the accused.

Likewise, it is necessary that while recording statements under section 313 of the Code of Criminal Procedure, the magistrates should take particular care to ensure that all incriminating pieces of evidence are put to the accused. Failure to do so sometimes results in undeserved acquittal, and on other occasions, in remand of the case.

12.13. It has been brought to the notice of the Commission that the disposal of cases in which there is a large number of accused gets delayed because one of the accused absents himself on the date of hearing. The result is that the case cannot proceed, and all the witnesses and the other accused who are present have to go back without anything substantial being done in the court. The trial magistrate might in such cases direct representation of the absent accused by his counsel. Difficulty in such cases can arise if the counsel declines to represent the absent accused on the date of hearing. The hope of the Commission is that responsible members of the Bar would offer all co-operation in the matter.

Absence of one of the accused.

12.14. Complaints have also been heard that there are not enough number of prosecutors, and quite often the trial court has to wait for the prosecutor to be free from another court before starting the criminal case.

Number of prosecutors.

This has been particularly so in cases under the Prevention of Food Adulteration Act, as also in cases investigated by the Central Bureau of Investigation.

This, in our opinion, is a wholly unwarranted practice. There should be as many prosecutors as there are criminal courts. One prosecutor should normally be set apart for each Criminal Court and he should see to it that the Court is not kept waiting on his account.

Efforts should be made to attract bright young lawyers as prosecutors. Cases have not been unknown of wrongful acquittals because of the fact that the prosecutor is lacking either in efficiency or in diligence.

12.15. In certain areas the same judicial officer exercises both civil and criminal powers. Normally, the judicial officer should not in such cases fix both civil and criminal cases on the same day, as this causes great inconvenience to counsel, litigants and witnesses. If such a course cannot be avoided, in that event it would be appropriate to set apart separate time for civil cases and criminal cases.

Civil and criminal cases heard by the same court.

12.16. Cases in which there is possibility of death sentence should receive priority over all other cases. The agony of the accused in these cases is enhanced by the uncertainty of the fate which awaits them. It is essential that the sword of Democles should not hang over them beyond the period which is absolutely necessary.

Death sentence.

4—468 L. A. D./ND/78

CHAPTER 13

SOME GENERAL SUGGESTIONS

Persons of the right calibre to be recruited.

13.1. Efforts should be made to draw talented young persons to the judicial service. The scales of pay for judicial officers and other amenities to them should be sufficiently attractive and be of such a nature as can provide them a reasonably decent standard of living. Such scales of pay may deter, though not rule out altogether, any temptation being thrown in the way of judicial officers. View has been expressed by a large number of judges and the lawyers that there is lot of scope for improvement in the recruitment of judicial officers. Every effort, therefore, should be made to recruit candidates of the right calibre.

Training.

13.2. The judicial officers have to face all kinds of situations in courts, including difficulties created by obstructionist and cantankerous litigants and overbearing and aggressive counsel. To enable them to meet such situations and to equip them properly for the discharge of their responsibilities, it is essential that there should be a course of training for all judicial officers before they start functioning as judicial officers.[1]

13.3. With the increase in the number of judicial officers, there will also have to be increase in the number of court rooms. Much needs to be done in this respect even for the present strength of the judicial officers. Complaints have been made that in some places sufficient number of judicial officers have not been posted because there are not enough court rooms. In other places the complaint is that some of the judicial officers have to function in shabby or small-sized court rooms. It has to be borne in mind that no court can function efficiently and with requisite dignity if it does not have a proper court room. We require in a court room a dais for the judge to sit, a witness-box, a dock for the accused in criminal cases, space for lawyers to sit and from where to address the court, and space to accommodate the parties and others interested in the case. Reader and the stenographer in some courts sit at the same level as the presiding officer and in other courts at a slightly lower level. Besides the regular court room, there is also needed an ante room or a chamber for the presiding officer and another room for keeping the records of cases pending in the court. The court clerks also sit there.

Each court room has also to be suitably furnished and provided with sufficient number of books. Although it may be permissible to have an element of austerity in furnishing a court room, it must also be kept in view that there is a certain standard of furnishing which cannot be dispensed with in a court room. Likewise, we cannot do without certain law books. They constitute essentials of a court room. Apart from certain law books which are necessary in each court room, there can be a set of law books which can cater to the needs of a number of courts situated in the same building.

We have dealt above with the requirements of each court room. It needs hardly to be emphasised that in every court building, there has to be provision for a Bar room, waiting space for the litigants and witnesses as well as provision for public conveniences. In one metropolitan city, the facilities for this purpose for the Magistrates Courts were of a most scanty character. There was no proper space for those attending the courts. Although the strength of the Bar was more than 400, the Bar Room consisted of two small court-rooms and of a verandah. The members of the Bar have consequently to sit in a place covered with asbestos sheets.

Residence of judicial officers.

13.4. The question of providing residential accommodation to judicial officers is of great importance. As it is, we find that in a number of places a judicial officer, on being transferred to a new station, has to look for residential accommodation. For this purposes, he may have to approach some landlords or take the assistance of some local lawyers. It is plain that any of such practices is highly undesirable and is liable to be abused. To prevent this, we must have at all places where courts function sufficient number of residential houses for

[1]See also Chapter

judicial officers. These should be at the disposal of the District Judge and should be allotted to the successor as soon as the present incumbent of the judicial office is transferred or retires.

Transport for judicial officers.

13.5. In big cities like Bangalore and Madras, the judicial officers, especially at the subordinate level, have to spend about an hour in the morning in going by public transport buses to the court and an hour in the evening in reaching back their places of residence. It would result in considerable saving of time and thus operate as a great economy if, in each big city, there are three or four vans at the disposal of the courts to operate in different areas for bringing judicial officers to the courts and for taking them back after the court time to their homes. This would provide extra time to the judicial officers to attend to their files and to prepare their judgments.

Appeal against interlocutory orders.

13.6. In all matters in which an appeal or revision is filed against an interlocutory order, the court to which the appeal or revision is filed should ensure that such an appeal or revision is disposed of within a reasonable length of time, so that the cases do not get delayed on that score.

Sending back record of trial court.

13.7. It should be ensured that the record of the trial court is normally sent back within 10 days of pronouncement of judgment in an appeal or revision against an interlocutory order. Similar course should be adopted if the case is remanded on appeal or revision to the trial court.

Stenographers.

13.8. Judicial officers should be provided with stenographers to whom they can dictate the judgments. This would result in considerable saving of the judicial officer's time and thus operate as economy in the ultimate analysis.

Typing of evidence.

13.9. The evidence in the courts of District and Sessions Judges should normally be typed, so that after the completion of depositions carbon copies of the same can be immediately supplied to the counsel for the parties.

Delay in supplying copies.

13.10. Long delays take place in supplying copies of judgments and depositions to the parties by the copying agency. These delays can be avoided or cut short if, instead of typing out the copies, the whole thing is done by mechanical or electronic process.

Miscellaneous applications.

13.11. Miscellaneous applications should not be kept pending for a long time and should be disposed of immediately after giving notice of those applications to the opposite parties. Not very long and elaborate orders should be needed to dispose of these applications. It should be quite enough if the main contentions advanced and the main reasons which prevail with the judicial officers in disposing of those applications are indicated in the order.

Supply of copies of judgment.

13.12. In all cases where a carbon copy of the judgment is not available, certified copies of the judgment prepared by mechanical or electronic process should be supplied to the parties within a period of 15 days of the pronouncement of the judgment. Carbon copies of the judgment, if ready, are required to be furnished immediately, on pronouncement of judgment under Order 20, Rule 6B, Code of Civil Procedure, inserted in 1976.

Credit in statistical purposes for compromise in civil cases or composition of criminal cases.

13.13. It was brought to the notice of the Commission at one place that no credit is given, while evaluating the out-turn of a judicial officer, for civil cases in which there is compromise. Likewise, no credit is given in those criminal cases where the offence is compounded. The result is that the presiding officers have no impetus to encourage compromise or composition of the offence even in those cases where the parties are inclined to do so, and a slight word by the presiding officer would bring about this result. Some credit, in our opinion, be given for such cases also, while evaluating the out-turn.

Punctuality of Judicial officers

13.14. One factor which causes considerable inconvenience and irritation to the litigants, witnesses and the members of the Bar, and which also results in lower out-turn of judicial work, is the tendency on the part of some judicial officers not to observe strict court timings. Fortunately, this shortcoming is restricted to a few judicial officers, but it is they who on account of this habit bring a bad name to the judiciary. It is plain that if the judicial officers do not start the court work punctually, and do not adhere to the court timing, those who have to attend the court would not be able to adjust their other engagements. With a view to ensure that judicial officers stick to the court timings, it is necessary that the District Judge should pay surprise visits to the different courts. Necessary action may be taken against those who are found to be recalcitrant in this respect.

False statements.

13.15. There is a tendency on the part of some persons to make statements on oath and file affidavits containing averments which are false. Some of them even feel no compunction to resort to patent falsehood in judicial proceedings. All this affects the image of the judicial system. We have to dispel the impression that falsehood pays in court and that persons can resort to it with impunity. It may, therefore, seem essential that whenever a clear case of falsehood becomes manifest, necessary action against the delinquent might be taken in accordance with law.

Financial Impact.

13.16. Some of the suggestions made in this Report would necessitate the allocation of more funds by the State for the administration of justice. This cannot in the very nature of things be helped and the government, in our opinion, should not be loath to do the needful for this purpose. Due and proper dispensation of justice is one of the most essential functions and obligations of the State. The State cannot evade or shirk its responsibility in this behalf on grounds of economy. Such an approach would be grounded on false notions of economy. Nothing rankles more in human heart than a brooding sense of injustice. Delay in the affording of judicial redress in cases where wrong has been done quite often leads many persons to settle scores by extra-legal methods. These in their turn create fresh problems of law and order and further add to the work-load of the courts. Despite the heavy demands on the State exchequer which is already hard pressed to find funds for the various activities of the State, especially in the field of nation-building, we feel that there is no alternative to the allocation of additional funds for administration of justice, if something real and effective has to be done to contain the people's resentment arising from the existing tardy judicial process.

Further recommendation to the waste if necessary in future.

13.17. Before concluding we may add that if some matters come to our notice necessitating further recommendations, a supplementary report would be sent.

CHAPTER 14

SUMMARY OF CONCLUSIONS AND RECOMMENDATIONS

Our important conclusions and recommendations in this Report are summarised below:—

1. Problem of delay and arrears in trial Courts

(1) The problem of delay in law courts has of late assumed gigantic proportions. It has shaken the confidence of the public in the capacity of the courts to redress their grievances and to grant adequate and timely relief.[1]

(2) The judicial system has enjoyed high prestige of the people. In a modern State, vast powers are granted to numerous authorities for carrying out governmental functions. The right of aggrieved citizens to approach the Courts acts as a cushion to the grant of powers to a host of officers. For the efficient discharge of the responsibilities of Courts it is essential that the great respect they have enjoyed should be maintained. Weakening of the judicial system in the long run undermines the foundations of the democratic structure.[2]

(3) A civil case should be treated as old if a period of one year elapses since the date of its registration till the pronouncement of judgment. This applies to civil suits as well as to cases under Special Acts[3].

(4) A criminal case should be disposed of within six months. In case of sessions trials, the above period should include the period of pendency of commitment proceedings[4].

2. The Trial Court Judges

(5) The importance of the trial Judge should be properly understood and appreciated[5].

3. The present system evaluated : comparison with ancient judicial system

(6) In answer to the criticism that the present judicial system is unsuited to Indian conditions and is an import from an alien country, it is pointed out that no judicial system in any country is wholly unaffected by outside influences, nor are such influences to be looked upon always as a bane[6].

(7) The general notion that institutions like panchayats, councils of elders and the like, represent the entire indigenous system of India, is misconceived. These institutions were concerned with settling petty disputes. With the growth of society, a regular hierarchy of courts came into existence[7].

(8) The ancient Indian judicial system and procedure, both civil and criminal, contained definite and detailed rules[8].

(9) The present judicial system is the result of gradual process of evolution. Modifications have been made in the hierarchy of Courts to meet the requirements of a developing society. The delays are due to the many factors, including those operating in and outside the Courts[9].

(10) It will be a retrograde step to revert to the primitive method of administration of justice by taking disputes to a group of ordinary laymen not conversant with legal concepts and procedures. The real need is to further improve the existing system to meet modern requirements[10].

[1]Para 1.1.
[2]Para 1.4.
[3]Para 1.9.
[4]Para 1.10.
[5]Chapter 2.
[6]Para 3.1.
[7]Para 3.2.
[8]Para 3.4 to 3.19.
[9]Para 3.20, earlier half.
[10]Para 3.20, latter half.

4. Stages of delay : summons

(11) The time taken in scrutiny of the plaint should not exceed one week (between the filing of the plaint and the registering of the suit)[1].

(12) Along with the plaint, besides the copies of the plaint, necessary forms of summons duly filled in with necessary particulars except the date should also be filed by plaintiff[2] so as to save the time at present taken in preparing the form of summons.

(13) Long delays take place in getting service effected upon the defendants. To obviate this delay, summonses to the defendants should be issued both in the ordinary way (for service through the process server) and by registered cover. acknowledgement due[3].

(14) Where the circumstances warrant, the Court should readily make use of the provisions of O.5, r. 20, C.P.C. for substituted service[4].

(15) Full use should be made of O.1, r. 8, C.P.C., which permits representative suits[5].

(16) There should be proper administrative supervision of the work of process servers. If necessary, their pay scales should be suitably revised. The practice prevailing in some States of having an Administrative Sub-Judge who supervises the work of process servers and bailiffs in big cities can be usefully adopted in other States also. The suggestion that some incentive should also be provided to process servers in getting personal service effected on a number of persons in a month may also be looked into[6].

(17) Stringent and prompt action should be taken against process servers making false reports[7].

5. Pleadings and issues : pre-trial procedure

(18) Many causes of delay would be eliminated if proper attention is paid in ensuring compliance with provisions of Order 10, Code of Civil Procedure[8].

(19) Judicial Officers should normally insist upon the filing of the written statement on the date immediately after service of summons on the defendant. Repeated adjournments for this purpose should be avoided[9].

(20) The requirement of the defendant filing copy of the written statement and of the defendant producing all documents in his possession or power should be enforced. If necessary, local amendment may be made for the purpose[10].

(21) Laxity in enforcing the provisions of O.8, r. 1, C.P.C. is the main reason for omission of the defendants in many States to file the written statement on the first date of hearing[11].

(22) Proper use of the provisions of Order 10, C.P.C. relating to examination of parties before framing issues would go a long way in curtailing the evidence and circumscribing the area of controversy. Experience shows that in the course of such examination, many admissions including admissions as to documents, are made which narrow down the scope of controversy. This would obviate the necessity of producing evidence in respect of matters which stand admitted as a result of such examination[12].

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[1] Para 4.1.
[2] Para 4.2.
[3] Para 4.3.
[4] Para 4.4.
[5] Para 4.5.
[6] Para 4.6 (Administrative supervision of process servers). See also para 11.4.
[7] Para 4.7.
[8] Para 5.1.
[9] Para 5.2. to 5.4.
[10] Para 5.5.
[11] Para 5.6.
[12] Para 5.7.

(23) In order to be in a position to make effective use of the provisions of Order 10, C.P.C., it is essential that the trial judge should have read the pleadings of the parties and should know the case of each party as set out therein[1].

(24) The practice prevailing in subordinate courts in some States of depending upon draft issues supplied by counsel, without the trial judge himself applying his mind, is extremely undesirable.

(25) A judicious use of the provisions of Order 11, C.P.C. (discovery and inspection of documents) and Order 12, C.P.C. (admissions) can considerably narrow down the area of controversy and curtail the volume of evidence[2].

(26) In the U.S.A., the pre-trial procedure has been stated to have produced beneficial results. The provisions of Orders 10, 11 and 12, C.P.C. are sufficient to deal with the situation in India, and it is not necessary to transplant the pre-trial system with all its amplitude on the Indian soil.[3]

(27) In appropriate cases, the trial judge himself can act as a conciliator.[4] The Bar also can play a significant part in bringing about compromise.

6. Court diary and evidence and substitution of legal representatives

(28) The work of controlling the court diary and the fixing of dates should be done by the presiding officers and should not be left to the Reader or Sheristadar. While fixing cases for a particular date, the presiding officer should ensure that the number of cases fixed on a particular date is such as can reasonably be disposed of on that day, allowing at the same time a margin for the collapse of one or two cases because of unforeseen circumstances.[5]

(29) It is not desirable to fix a case for a date on which there are no prospects of its being taken up. The better course would be to fix one quarter of work more than can be disposed of on a day.[6]

(30) There must be some standard for the number of cases pending in a court. Whenever there are indications that the number of cases goes beyond that standard, additional courts should be created.[7]

(31) There is a tendency to over-prove allegations of fact. Unnecessary prolongation of depositions should be avoided.[8]

(32) Control may be exercised by the trial judge when questions, that are uncalled for, harassing or slanderous, are put in cross-examination.[9]

(33) Although we have adopted the accusatorial system, the trial judge should not play an altogether passive role, but must take greater interest and elicit such information as may be helpful in finding the truth.[10]

(34) Entire evidence should, as far as possible, be recorded at a stretch.[11]

(35) Desirability of proving things like those of a formal nature by affidavits instead of by oral evidence be considered.[12]

(36) The provisions of Order 17, Code of Civil Procedure as amended, be enforced strictly, to prevent unnecessary adjournment of cases.[13]

(37) Feasibility of adoption of the list system in force in Kerala in other States may be considered.[14]

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[1]Para 5.8.
[2]Para 5.12.
[3]Para 5.14.
[4]Para 5.15.
[5]Para 6.1.
[6]Para 6.2.
[7]Para 6.3.
[8]Para 6.4.
[9]Para 6.6.
[10]Para 6.7.
[11]Para 6.8.
[12]Para 6.9.
[13]Para 6.10.
[14]Para 6.11 (Special list system).

(38) In regard to bringing on record legal representatives of deceased parties, the recent amendments made in Order 22, Code of Civil Procedure, may be kept in view.[1]

(39) While issuing commissions for the examination of witnesses, direction should be given to ensure that the needful is done within the time fixed.[2]

7. Arguments, judgment and decree

(40) Arguments should be heard soon after the close of evidence. The general experience is that arguments so heard take much less time than arguments advanced after a long interval.

In heavy cases involving voluminous evidence and complex questions of law, an adjournment may be necessary for hearing arguments, but it should not be too long.[3]

(41) Unduly lengthy arguments may be avoided.[4]

(42) Tendency to cite needlessly large number of authorities and read lengthy passages from judgments may be avoided.[5] Judgments of trial courts should deal with questions of fact by appraising the evidence, referring to relevant statutory provisions and citing such authorities as have direct bearing.[5]

Brevity in judgments, however, should not be used as a justification for not dealing with inconvenient contentions or crucial arguments.[6]

(43) Order 20, Rule 1, Code of Civil Procedure should be complied with as to the time within which the judgment should be pronounced.[7]

Time lag between pronouncement of judgment and preparation of decree should not be long. Order 20, Rule 6A, Civil Procedure Code, lays down 15 days as the normal interval.[8]

(43A) In suits for accounts for partition, after the preliminary decree is passed, proceedings before the Commissioner linger on for a long time. To avoid such delay, the court should keep a strict watch, and some kind of progress report should be asked for when a request is made for extension of time for completion of the proceedings. For awarding the final decree, credit may be given for stastical purposes.[9]

8. Conciliation

(44) One of the methods which can be devised for relieving the Courts of the heavy load of cases is the adoption of system of conciliation of civil cases.[10] The system is in force in Japan[11] and Norway.[12] It was previously in force in France; it was abolished a few years ago, but has been revived to a limited extent.[13] It is in force for certain cases in Pakistan.[14]

(45) In the countries in which it has been tried, the system of conciliation has not been an unqualified success. At the same time, the system is not without its merit. The Commission recommends the setting up of conciliation boards on experimental basis in selected areas in disputes giving rise to claims for recovery of money not exceeding five thousand rupees.[15]

(46) If the settlement is arrived at within three months, it should be reduced to writing, signed by all concerned and filed in court, like a compromise. If no settlement is arrived at within three months, the court should make an

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[1] Para 6.12 (O. 22, R. 4, 4A, Civil Procedure Code).
[2] Para 6.13.
[3] Para 7.1 and 7.2.
[4] Para 7.3.
[5] Para 7.4.
[6] Para 7.5.
[7] Para 7.6.
[8] Para 7.8.
[9] Para 7.9.
[10] Para 8.1 and 8.2.
[11] Para 8.3.
[12] Para 8.4 to 8.6.
[13] Para 8.8.
[14] Para 8.9.
[15] Para 8.10.

order to that effect. Even if no order about settlement having been not arrived is made within the above period of three months, the court shall presume that no settlement was possible.[1]

Such category of suits as may be considered proper may be kept out of the jurisdiction of the conciliation boards.[2]

(47) No plaint in the absence of a sufficient cause should be filed in court relating to a dispute mentioned above without the aggrieved person first approaching the conciliation board.

Suitable provisions may be enacted if this scheme is adopted.[3]

(48) The setting up of such boards should be done only on experimental basis in certain areas.[4]

9. Recruitment and personality of the trial Judge — inspection of courts and training of judicial officers

(49) The trial Judge is the linchpin of the entire system. He has, in the course of the proceedings, to give a number of rulings on the spur of the moment. Proper and fair trial requires not only professional competence, but also cool temperament and firmness.[5]

(50) It is essential to attract young bright law graduates and lawyers of the right calibre to the judiciary. This can be done if there are good pay scales. It should be remembered that bright young lawyers can earn much more in the profession. Higher initial pay be given to a judicial officer by taking into account the years of practice.[6]

(51) The present system of insisting upon a number of years of practice at the bar should be retained, the period being 3 years. The only possible exception could be for law graduates employed in courts.[7]

(52) The suggestion to have an all India Judicial Service with the same rank and pay scales as the Indian Administrative Service should receive serious consideration.[8]

(53) The advantages gained from having all India Judicial Service will outweigh any supposed disadvantage.[9]

(54) There should be a training course of about 3 to 6 months for recruits to the Subordinate Judicial office. The recruits should, by such training, be acquainted with procedural requirements for dealing with different stages of cases, including the writing of judgments and interlocutory orders and dealing with administrative matters.[10]

(55) Need for periodic inspection of subordinate courts by the District Judge and a Judge of the High Court must be emphasised. The emphasis in inspection should be to bring about improvement in the functioning of the officer concerned.[11] A separate Judge should be deputed for inspection of courts in each district.[12]

(56) The practice in some High Courts of one judge being made in charge of each district for one or two years is stated to have yielded good results.[13]

[1]Para 8.11.
[2]Para 8.11.
[3]Para 8.12.
[4]Para 8.13.
[5]Para 9.1.
[6]Para 9.2 and 9.3.
[7]Para 9.4 and 9.5
[8]Para 9.6.
[9]Para 9.7.
[10]Para 9.8. See also para. 13.2
[11]Para 9.9.
[12]Para 9.9.
[13]Para 9.10.

The High Court should ensure that arrears in subordinate courts are cleared and brought under control.[1]

(57) Long delays in filling up vacancies of judicial officers should be avoided.[2]

(58) Recommendation of the High Court for increase in judicial strength should receive prompt consideration from State Government and should not, in the absence of some compelling reason, be turned down.[3]

(59) To clear the heavy backlog, the services of retired judicial officers known for their integrity, efficiency and quick disposal should be utilised. Such officers should be appointed only on the recommendation of the High Court.[4]

In addition to appointing retired judicial officers, some special recruitment may have to be made from bright young members of the Bar who have practised for at least seven years for disposal of old cases. These members of the Bar would necessarily have to be given a higher start and, on satisfactory performance, be ultimately absorbed in service as District and Sessions Judges or Additional District and Sessions Judges.[5]

Some of the serving judicial officers can also be asked to deal exclusively with old cases.[6]

The number of additional courts should be such as to make it possible that all arrears are cleared within a perio of about three years.[7]

10. Cases under certain special Acts

(60) There are certain categories of cases under special Acts which, by their very nature, have an element of urgency about them and call for speedy disposal. The following categories are discussed:

(a) **Matrimonial cases.**—These cases drag on for years. A decree of divorce granted when the parties are past the stage of youth is not of such avail. Such delay might also lead to young people going astray. Matrimonial cases should therefore be disposed of early.

Linked with matrimonial cases are cases relating to custody and guardianship of minor children[8] which stand on the same footing.

(b) **Eviction cases.**—Especially those on the ground of bona fide personal necessity of the landlord.[9]

(c) **Cases filed before Motor Accidents Claims Tribunals.**—Many of these claims are by widows and children of persons who lost their lives in the accident. Delay causes great dismay and frustration amongst the people.[10]

(d) **Cases under the Indian Succession Act, 1925.**—Quite often, money belonging to a deceased person remains locked up because the heirs cannot receive payment without obtaining succession certificate, probate or letters of administration, as the case may be.[11]

It is therefore essential that the cases of above categories should receive prompt attention.[12]

(61) There should be enough number of judicial officers who should deal with the above categories of cases.[13]

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[1]Para 9.11.
[2]Para 9.11.
[3]Para 9.12.
[4]Para 9.12 to 9.15.
[5]Para 9.16.
[6]Para 9.17.
[7]Para 9.18.
[8]Para 10.1.
[9]Para 10.2.
[10]Para 10.3.
[11]Para 10.5.
[12]Para 10.6.
[13]Para 10.7.

(62) Apart from the above, following specific suggestions and observations have been made in respect of the above categories of cases:—

(a) Courts dealing with matrimonial cases should give priority to the disposal of these cases.[1]

(b) The number of cases for eviction in each district would be so large as to keep fully occupied one or more than one judicial officers.[2]

(c) (i) At most places, the district Judge is designated as the Tribunal for Motor Accidents Claims, but he has hardly enough time to deal with them.[3] The powers of designating and appointing judicial officers as such tribunal should vest in the High Court.[4]

(ii) Every effort should be made to see that Motor Accidents claims are disposed of within less than a year.[5]

(iii) The number of such cases in some districts may not be enough to keep the judicial officers fully occupied. One solution is to have one Tribunal for a number of such districts. The other solution is to vest the powers in an Additional District Judge or a senior subordinate judge, who should set apart a number of days in a month for the exclusive disposal of such claims.[6]

(d) Similar observations will hold good for cases under the Succession Act.[7]

(63) There is also need for speedy adjudication of disputes relating to labour, between management and workmen. There should be enough number of labour courts and industrial tribunals[8] in the interest of industrial harmony and to ensure higher production.

11. Execution

(64) Need to pay sufficient attention to the execution of decrees is emphasised.[9]

(65) One great obstacle in obtaining satisfaction of the decree is the tendency on the part of a judgment-debtor to file objections either himself or through some other person. Most of these objections, when scrutinised, are found to be without merit.[10]

(66) The tendency of the courts not to pay attention to execution work because of the fact that the disposal of an execution application does not count towards the standard disposal must be deprecated.

To meet this difficulty, we might either allow some credit (in terms of units or otherwise) for those cases in which the decree-holder gets complete satisfaction of the decree or in the alternative, we might have a quarterly statement from each of the judicial officers in the district, giving statistics about the cases in which there was satisfaction of the decree, either fully or in part, as also the cases in which there was no satisfaction of the decree. The fact that the percentage of complete satisfaction of the decree in a court was very high should count as a plus point in favour of the presiding officer of that court.[11]

(66A) In eviction cases relating to urban property, delay is caused by successive attempts to obstruct delivery. Due attention should therefore be paid to execution proceedings and in the statistical abstracts credit should be given for the disposal of these proceedings. Executing court can also exercise the powers amply conferred by the present law to stop such obstructions.[12]

[1]Para 10.4.
[2]Para 10.7.
[3]Para 10.3.
[4]Para 10.4.
[5]Para 10.4.
[6]Para 10.7.
[7]Para 10.7.
[8]Para 10.8.
[9]Para 11.1.
[10]Para 11.2.
[11]Para 11.3.
[12]Para 11.3A.

(67) The satisfaction of a decree in quite a large number of cases depends upon the Nazirs who are entrusted with carrying out the different steps in the course of the execution of a decree. The officials concerned with the execution of decrees should be men of experience and, by and large, should project an image of integrity. We might think of revising the pay-scales of these officials. The work of these officials should be constantly supervised by a judicial officer.[1]

12. Criminal cases

(68) In criminal cases, it is particularly necessary that delay be eliminated, since the decision depends upon oral rather than documentary evidence, and with the passage of time, the memory of witness fades.[2]

Every criminal court should keep a register showing the number of witnesses summoned for a date, the number examined, the number sent back and reasons for sending them back without examination.[3] The tendency of some criminal courts of sending back witnesses without examining them must be deprecated.

(69) The law should be amended to enable a Sessions Judge to act on evidence partly or wholly recorded by his predecessor.[4]

(70) At least two police officials at every police station should be set apart for getting service of summonses effected upon witnesses for cases relating to that police station and for ensuring their presence on the date of hearing.[5]

(70A) The police quite often deliberately refrain from producing all material witnesses on one date, the object being to clear up the lacunae in the prosecution evidence after the defence case becomes manifest by cross-examination. This practice is unfair and not warranted by the Criminal Procedure Code, and results in prolongation of the trial.[6]

(70B) In one metropolitan city, in the courts of Magistrates, there was a huge pending file relating to traffic and municipal offences to be tried summarily, some of which were more than one or two years old. Delay in disposal was attributed to the fact that the police had not been able to get service effected upon the accused.[7]

(71) Officials at the police station who are concerned with investigation should concentrate on investigation. As far as possible, they should not be deputed for other purposes.[8]

(71A) Desirability of separating the investigating agency of the police from that dealing with law and order may have to be considered. The question whether the investigating agency should be not susceptible to executive interference and, for that purpose, be independent of executive control may also need consideration.[9]

(72) The Motor Vehicles Act, 1939, section 130(1) provides for a special procedure for certain traffic offences whereunder the accused can plead guilty to the charge by post and remit the specified fine. In the case of persons other than professional drivers for some specified offences of a minor nature, the ticket issued by the policeman should also contain separately the amounts of fine for various categories of traffic offences in respect of different types of vehicles, so that if the person committing the infraction of law is so inclined, he can plead guilty and also remit the amount of fine to the court concerned before the date of hearing.[10]

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[1]Para 11.4 (and also para 4.6).
[2]Para 12.1.
[3]Para 12.2.
[4]Para 12.3 to 12.7 (Section 326, Cr. P. C. 1973).
[5]Para 12.8.
[6]Para 12.8A.
[7]Para 12.8B.
[8]Para 12.9.
[9]Para 12.9A.
[10]Para 12.11.

(73) Disposal of cases in which there is a large number of accused, gets delayed because one of the accused absents himself on the date of hearing. The trial court in such contingencies should consider the advisability of directing representation of the absent by counsel [1]

(73A) Having regard to the importance attached to the framing of the charge, the trial magistrates should not leave it to the prosecutor to frame a charge.[2]

(73B) In recording statements of the accused under section 313, Cr. P.C. the magistrates should ensure that all incriminating pieces of evidence are put to the accused.[3]

(74) Complaints have been heard that there are not enough number of prosecutors, particularly in cases under the Prevention of Food Adulteration Act and those investigated by the Central Bureau of Investigation. Steps should be taken to ensure that there are as many prosecutors as there are Criminal Courts.[4]

(75) Where the same Judicial Officer exercises both civil and criminal powers, normally he should not fix both the type of cases on the same day. If such a course cannot be avoided, he should set apart separate time for civil and criminal cases.[5]

(76) Cases in which there is possibility of death sentence should receive priority over all other cases.[6]

13. Some general suggestions

(77) To draw talented young persons to the Judicial service, scales of pay and other facilities in respect of judicial officers should be such as to provide a decent standard of living.[7]

(78) To enable judicial officers to meet the various kinds of situations that they have to face in court, there should be a course of training for all judicial officers before they start functioning.[8]

(79) Adequate court rooms, equipped with proper facilities and sufficient accommodation, should be provided. These should be suitably furnished and provide with a sufficient number of books. There should also be provision for a bar room and waiting space for the litigants.[9]

(80) Providing residential accommodation to judicial officers is of great importance. There should be sufficient number of residential houses for judicial officers, which should be at the disposal of, and be allotted by, the District Judge.[10]

(81) In big cities three or four vans should be placed at the disposal of, and be allotted by, the District Judge for bringing judicial officers to the court and for taking them back to their homes.[11]

(82) In all matters in which an appeal or revision is filed against an interlocutory order, the appellate or revisional court should ensure that such an appeal or revision is disposed of within a reasonable length of time.[12]

(83) It should be ensured that the record of the trial court is sent back within 10 days of the judgment,[13] in appeal or revision against interlocutory orders. Similar course should be adopted if the case is remanded on appeal etc. to trial court.[14]

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[1]Para 12.12.
[2]Para 12.12A.
[3]Para 12.12A.
[4]Para 12.14.
[5]Para 12.15.
[6]Para 12.16.
[7]Para 13.1.
[8]Para 13.2 (See also para 9.8).
[9]Para 13.3.
[10]Para 13.4.
[11]Para 13.5.
[12]Para 13.6.
[13]Para 13.7.
[14]Para 13.7.

(84) Judicial officers should be provided with stenographers for dictating judgments.[1]

(85) Evidence in courts of District and Sessions Judges should normally be typed, so that carbon copies of deposition can be supplied immediately to the parties.[2]

(86) Long delays take place in the grant of copies of judgments and depositions. These can be cut short if, instead of typing, the whole thing is done by mechanical or electronic process.[3]

(87) Miscellaneous applications should be disposed of immediately after giving notice. The orders passed thereon should not be unduly long or elaborate.[4]

(88) Where carbon copy of the judgment is not available, certified copies by mechanical or electronic process should be supplied within 15 days. Carbon copies, if ready, must be furnished immediately under O. 20, r. 6B, C.P.C.[5]

(89) In statistical abstracts, credit should be given for civil cases in which there is a compromise and criminal cases in which there is a compounding of the offence.[6]

(90) Judicial officers who are unpunctual bring a bad name to the judiciary. To ensure punctuality, it is necessary that the District Judge should pay surprise visits to the different courts and take necessary action against those who are recalcitrant.[7]

(91) False statements on oath and false averments in affidavits should not be tolerated. Whenever a clear case of falsehood becomes manifest, necessary action against the delinquent might be taken in accordance with law.[8]

(92) Some of the suggestions made in this Report would necessitate the allocation of more funds by the State for the administration of justice. This cannot, in the very nature of things, be helped and the government should not be loath to do the needful for this purpose. Due and proper dispensation of justice is one of the most essential functions and obligation of the State. The State cannot evade or shirk its responsibility in this behalf on grounds of economy.[9]

(93) If matters come to the Commission's notice necessitating further recommendations, a supplementary report would be sent.[10]

[1]Para 13.8.
[2]Para 13.9.
[3]Para 13.10.
[4]Para 13.11.
[5]Para 13.12.
[6]Para 13.13.
[7]Para 13.14.
[8]Para 13.15.
[9]Para 13.16.
[10]Para 13.17.

H. R. Khanna	. *Chairman*
S. N. Shankar	. *Member*
T. S. Krishnamoorthy Iyer	. *Member*
P. M. Bakshi	. *Member-Secretary*.

Dated, NEW DELHI,

the 27*th November*, 1978.

APPENDIX 1

FIGURES OF PENDENCY IN SUBORDINATE COURTS

(Civil and Criminal cases)

5—468 L.A.D.(ND)/78

TABLE I

Table showing institution and disposal of Regular Suits and Miscellaneous Cases during the quarter ending December, 1977 and disposal as percentage of Institution during 4th quarter of 1976 and Ist, 2nd, 3rd and 4th Quarters of 1977

Name of the State	Institution and otherwise			Disposal			Percentage of disposal over Institution during				
	Regular Suits	Misc. Cases	Total	Regular Suits	Misc. Cases	Total	4th quarter of 1976	Ist quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pra-Pradesh .	21,942	1,31,211	1,53,153	23,063	1,32,478	1,55,541	105·4	107·9	92·6	96·6	101·6
2. Assam .	1,428	1,004	2,432	1,230	762	1,992	101·9	106·0	105·1	100·4	81·9
3. Bihar . .	9,344	3,539	12,883	7,709	3,123	10,832	222·8	130·2	84·5	96·1	84·1
4. Gujarat .	12,697	9,563	22,260	12,235	8,373	20,608	102·5	99·3	69·2	103·8	92·6
5. Haryana .	9,100	1,176	10,276	9,239	1,208	10,447	124·6	110·3	86·8	89·5	101·7
6. Himachal Pradesh . .	1,463	1,459	2,922	1,361	1,311	2,672	106·4	124·8	123·9	102·9	91·4
7. Jammu & Kashmir					Not received						
8. Karnataka .	10,168	6,788	16,956	8,656	7,190	15,846	94·2	96·7	69·2	91·0	93·5
9. Kerala .	10,714	35,542	46,256	11,771	38,031	49,802	105·8	104·0	92·9	102·0	107·7
10. Madhya Pradesh	18,423	4,989	23,412	18,671	4,930	23,601	109·1	114·3	74·2	89·5	100·8
11. Maharashtra .	25,459	14,348	39,807	21,080	13,631	34,711	97·1	103·3	78·3	88·0	87·2
12. Manipur .	44	88	132	38	96	134	77·1	100·4	104·1	98·2	101·5
13. Meghalaya .						Not received					
14. Nagaland .	33	8	41	39	21	60	38·9	113·7	123·2	148·8	146·3
15. Orissa . .	3,245	2,834	6,079	3,168	2,690	5,858	115·8	132·4	67·3	105·1	96·4
16. Punjab .	12,888	6,166	19,054	13,841	6,858	20,599	101·7	111·2	87·2	90·0	108·6
17. Rajasthan .	7,699	3,669	11,368	7,240	4,188	11,428	109·9	104·0	86·9	83·7	100·5
18. Sikkim .	39	43	82	32	49	81	111·3	102·9	93·6	115·3	98·8
19. Tamil Nadu .	18,087	89,459	1,07,546	18,582	88,605	1,07,187	105·1	100·6	92·0	101·4	99·7
20. Tripura .	188	103	291	369	99	468	44·5	72·5	64·4	122·1	160·8
21. Uttar Pradesh	36,996	23,008	60,004	35,017	21,511	56,528	102·4	92·3	113·5	95·1	94·2
22. West Bengal	16,625	3,523	20,148	11,409	2,801	14,210	81·2	89·3	91·0	91·0	70·5
UNION TERRITORIES											
1. A & N Islands	22	4	26	21	10	31	168·8	166·7	77·8	82·1	119·2
2. Arunachal Pradesh .	2	..	2	4	..	4	200·0	..	50·0	200·0	200·0
3. Chandigarh .	201	602	803	113	616	729	91·0	106·1	113·1	73·1	90·8
4. Dadra & Nagar Haveli .	2	3	5	10	7	17	75·0	957·1	100·0	500·0	340·0
5. Delhi . .	4,249	2,092	6,341	3,545	22,223	5,768	103·8	105·4	108·9	95·2	91·0
6. Goa, Daman & Diu .	439	192	631	345	137	482	71·3	84·7	131·0	106·0	76·4
7. Lakshadweep	5	125	130	14	107	121	108·9	91·7	80·6	94·4	93·1
8. Mizoram .	56	65	121	45	64	109	117·1	83·9	120·3	126·4	90·1
9. Pondicherry .	599	981	1,580	656	803	1,459	102·0	101·3	81·0	108·0	92·3
TOTAL .	2,22,157	3,42,584	5,64,741	2,09,503	3,41,922	5,51,425	105·9	103·4	89·4	96·0	97·6

TABLE II

Table showing total strength of courts functioning, disposal of Regular Suits and Miscellaneous Cases in Units and rate of disposal per court on the basis of time devoted by courts to civil work in original Jurisdiction during 4th Quarter of 1976 and 1st, 2nd, 3rd and 4th Quarters of 1977

	Disposal of one Regular suits	Disposal of one Misc. cases
(a) After full trial	6 Units	2 ULits
(b) Without Trial	1/4 Unit	1/12 Unit
(c) by transfer	1 Units	1/3 Unit
(d) Without contest, ex parte admission of claims, compromise or arbitration	2 Units	1/2 Unit

Name of the State/Union Territories	Total strength of courts	Disposal in units during					Average rate of disposal per court during				
		4th quarter of 76	1st quarter of 77	2nd quarter of 77	3rd quarter of 77	4th quarter of 77	4th quarter of 76	1st quarter of 77	2nd quatrer of 77	3rd quarter of 77	4th quarter of 77
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh .	186	1,12,891	83,762	69,435	1,08,958	1,03,438	600·5	475·9	436·7	637·2	556·1
2. Assam .	23	4,431	6,026	6,590	6,742	3,377	142·9	241·0	235·4	232·5	146·8
3. Bihar . .	213	30,484	30,950	32,106	33,235	15,891	87·3	146·0	145·3	155·3	74·6
4. Gujarat .	124	38,814	37,586	22,799	42,186	33,532	320·8	308·1	262·1	357·5	270·4
5. Haryana .	47	17,450	17,820	15,410	20,652	21,683	545·3	540	467·0	543·5	461·3
6. Himachal Pradesh . .	18	5,459	4,422	8,127	5,372	5,313	303·3	245·7	451·5	298·4	295·2
7. Jammu & Kashmir .	Not received										
8. Karnataka .	114	27,858	29,791	20,461	35,380	30,014	255·6	256·8	170·5	305·0	263·3
9. Kerala . .	96	45,653	50,866	28,203	48,797	47,977	475·6	529·9	290·8	488·0	499·8
10. Madhya Pradesh . .	108	49,188	53,790	34,054	59,857	49,034	268·8	275·8	181·1	328·9	454·0
11. Maharashtra .	173	66,104	72,098	51,239	73,670	53,343	382·1	497·5	299·6	533·8	308·3
12. Manipur .	5·5	379	497	619	598	246	216·6	142·0	112·6	70.4	44·7
13. Meghalaya	Not received										
14. Nagaland .	19	108	395	184	207	248	9·0	30·4	7·7	10·4	13·1
15. Orissa .	52	10,735	15,327	6,348	12,048	9,377	104·2	255·5	105·8	334·7	180·3
16. Punjab .	81	29,318	31,849	25,171	30,244	34,637	451·0	513·27	364·8	373·4	427·6
17. Rajasthan .	66	20,886	19,211	16,342	23,259	20,127	300·5	282·5	267·9	352·4	305·0
18. Sikkim .	1·75	250	205	230	192	184	71·4	273·3	131·4	109·7	105·1
19. Tamil Nadu .	150	91,292	91,729	52,904	1,03,566	92,111	656·8	764·4	397·8	699·8	614·1
20. Tripura .	4	395	650	744	901	904	79·0	130·0	148·8	180·2	226·0
21 Uttar Pradesh	349	94,858	99,928	77,007	1,24,472	92,422	403·7	283·1	305·6	371·6	264·8
22. West Bengal	126	24,472	33,935	38,254	40,609	21,773	191.2	275·9	308·6	324·9	172·8
UNION TERRITORIES—											
1. A & N Islands	1·25	64	39	36	64	68	42·7	26·0	24·0	51·2	54.4
2. Arunachal Pradesh .	1	4	..	4	17	19	0·7	..	..	17·0	19·0
3. Chandigarh .	2·55	1,000	1,129	814	611	772	800·0	501·8	361·8	271·6	343·1
4. Dadra & Nagar Haveli .	0·25	4	353	6	3	39	16·0	1412·0	12·0	6·0	152·0
5. Delhi . . .	36	14,843	15,399	11,879	14,086	11,863	436·6	427·8	330·0	391·6	329·5
6. Goa, Daman & Diu .	9	1,382	1,602	1,150	1,804	1,267	172·8	188·5	135·3	212·2	140·0
7. Lakshadweep	1·25	103	32	41	15	68	51·5	128·0	41·0	15·0	55·2
8. Mizoram .	1	588	495	519	159	372	235.2	495·0	519·0	159·0	372·0
9. Pondicherry	8·5	2,974	2,847	1,362	2,931	2,903	424·9	438·0	209·5	366·4	341·5
TOTAL .	2.016·75	6,92,450	7,02,733	5,22,048	7.90,645	6,53,002	325·2	349·9	272·7	393·4	323·8

TABLE III

Pendency of Regular suits and miscellaneous Cases on the Original side as on 1-1-1977, 1-10-1977 and 31-12-1977 and rate of increase / decrease during the 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977

Name of the State/ Union Territories.	Pendency as on-			Rate of increase or decrease					Percentag ncrease o. decrease in the period from 1-1-77 to 31-12-77.
	1-1-77	1-10-77	31-1-77	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977	
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	2,15,605	2,22,661	2,18,273	—3·7	—4·3	+4·3	+2·6	—1·1	+1·2
2. Assam	14,933	14,537	14,977	—0·3	—1·3	—1·3	—0·1	+3·0	+0·3
3. Bihar	1,49,877	1,49,475	1,51,526	—8·7	—3·7	+2·9	+0·6	+1·4	+1·1
4. Gujarat	1,20,348	1,26,433	1,28,085	—0·5	+0·1	+5·8	—0.8	+1·3	+6·4
5. Haryana	25,061	26,770	26,599	—5·7	—2·9	+4·7	+5·0	—0·6	+6·1
6. Himachal Pradesh	17,832	16,513	16,763	—1·1	—2·9	—[illegible]·2	—0·5	+1·5	—6·0
7. Jammu & Kashmir				Not received					
8. Karnataka	1,80,014	1,87,166	1,88,276	+0·5	+0·3	+2·7	—1·0	+0·6	+4·6
9. Kerala	87,232	86,623	83,077	—2·7	—2·1	+2·5	—1·0	—4·1	—4·8
10. Madhya Pradesh	1,00,352	1,06,400	1,06,211	—1·8	—3·1	+5·8	+3·4	—0·2	+5·8
11. Maharashtra	3,50,871	3,6[illegible],878	3,70,974	+0·4	—0·4	+3·0	+1·7	+1·4	+5·7
12. Manipur	538	531	529	+9·8	—0·2	—2·2	+1·1	—0·4	—1·7
13. Meghalaya					Not received				
14. Nagaland	381	332	313	+56·3	—4·2	—3·6	—5·7	—5·7	—17·8
15. Orissa	22,954	22,232	2[illegible],453	—3·7	—10·0	+9·4	—1·6	+1·0	—2·2
16. Punjab	53,633	56,700	55,055	—0·5	—3·0	+4·7	+4·2	—2·9	+2·7
17. Rajasthan	71,903	75,345	75,285	—1·4	—0·7	+1·8	+3·7	—0·1	+4·7
18. Sikkim	236	228	229	—3.3	—0·8	+2·1	—4·6	+0·4	—3·0
19. Tamil Nadu	1,75,507	1,79,168	1,79,527	—2·9	—0·3	+3·4	—0·9	+0·2	+2·3
20. Tripura	2,815	3,086	2,909	+12·5	+5·1	+7·3	—2·8	—5·7	+3·3
21. Uttar Pradesh	2,19,072	2,23,540	2,27,016	—0.7	+2.7	—2.5	+1.9	+1.6	+3.6
22. West Bengal	1,84,252	1,91,312	1,92,250	+1.9	+1.3	+1.2	+1.2	+3.1	+7.0
UNION TERRITORIES									
1. A & N Islands	97	98	93	—10.2	—12.4	+7.1	+7.7	—5.1	—4.1
2 Arunachal Pradesh	5	14	12	—16.7	+100.0	+28.6	—33.3	—14.3	+140.0
3. Chandigarh	2,846	2,899	2,973	+2.6	—2.1	—3.4	+7.7	+2.6	+4.5
4. Dadra & Nagar Haveli	140	64	52	+0.7	—42.9	—	—20.0	—18.7	—62.9
5. Delhi	31,961	31,451	32,024	—0.9	—1.2	—1.5	+1.1	+1.8	+0.2
6. Goa, Daman & Diu	6,458	6,329	6,478	+2.8	+1.4	—2.6	—0.7	+2.4	+0.3
7 Lakshadweep	113	142	151	—9.6	+4.4	+17.8	+2.2	+6.3	+33.6
8. Mizoram	216	180	192	—7.7	+11.6	—11.3	—15.1	+6.7	—11.1
9. Pondicherry	2,545	2,563	2,684	—1.5	—0.7	+7.3	—5.5	+4.7	+5.5
TOTAL IN THE COUNTRY	20,37,797	20,96,670	21,09,986	—1.6	0.9	+2.5	+1.3	+0.6	+3.5

TABLE IV

Table showing institution and disposal of Regular and Miscellaneous Appeals in district Appellate Courts during 4th quarter of 1977 and percentage of disposal over Institution during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977

Name of the State/Union Territory	Institution and otherwise received			Disposal			Percentage of disposal over Institution during				
	Regular Appeals	Misc. Appeals	Total	Regular Appeals	Misc. Appeals	Total	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh	2,893	1,642	4,535	2,478	1,885	4,363	106·3	105·7	57·9	107·5	96·2
2. Assam	154	55	209	111	45	156	76·1	105·6	82·6	82·6	74·6
3. Bihar	1,432	490	1,922	1,2[illegible]0	481	1,711	181·9	107·2	98·6	89·1	89·0
4. Gujarat	844	413	1,257	794	359	1,153	90·0	101·8	80·8	126·8	91·7
5. Haryana	2,092	456	2,548	1,778	378	2,156	93·0	72·8	88·3	91·2	84·6
6. Himachal Pradesh	802	226	1,028	192	243	435	87·2	72·4	88·3	91·1	42·3
7. Jammu and Kashmir	Not received.										
8. Karnataka	1,147	1,127	2,274	1,317	1,048	2,365	111·4	130·2	94·4	143·8	104·0
9. Kerala	1,966	781	2,747	2,447	866	3,313	113·1	118·6	74·1	116·9	120·6
10. Madhya Pradesh	2,293	1,188	3,481	2,068	1,081	3,149	82·8	109·4	84·8	114·6	90·5
11. Maharashtra	1,833	758	2,591	1,562	579	2,141	126·2	97·4	84·7	121·3	82·6
12. Manipur	11	—	11	9	3	12	100·0	141·2	100·0	114·3	109·1
13. Meghalaya	Not received.										
14. Nagaland	20	—	20	12	—	12	59·3	66·7	19·8	425·0	60·0
15. Orissa	536	236	772	462	228	690	89·1	105·1	69·8	105·6	89·4
16. Punjab	3,310	628	3,938	3,435	692	4,127	101·0	108·6	104·6	103·0	104·8
17. Rajasthan	1,384	738	2,122	1,198	562	1,760	101·5	95·6	92·6	91·2	82·9
18. Sikkim	—	—	—	—	—	—	—	—	120·0	25·0	—
19. Tamil Nadu	3,049	1,573	4,622	3,376	1,792	5,168	105·9	112·9	80·4	115·4	111·8
20. Tripura	35	20	55	29	15	44	176·9	173·9	195·1	89·3	80·0
21. Uttar Pradesh	8,801	5,347	14,148	7,198	5,619	12,817	100·4	97·0	135·8	103·7	90·6
22. West Bengal	1,227	604	1,831	1,035	529	1,564	108·7	108·1	105·2	104·1	85·4
UNION TERRITORIES											
1. A. & N. Island	—	—	—	—	—	—	—	200·0	—	100·0	—
2. Arunachal Pradesh	1	—	1	1	2	3	—	—	—	50·0	300·0
3. Chandigarh	17	74	91	23	59	82	69·9	116·9	130·6	121·2	90·1
4. Dadra and Nagar Haveli	—	1	1	—	1	1	—	—	—	—	100·0
5. Delhi	369	688	1,057	308	609	917	90·7	90·5	91·6	85·9	86·8
6. Goa, Daman & Diu.	43	42	85	55	17	72	98·5	113·9	91·2	65·1	84·7
7. Lakshadweep	1	—	1	5	1	6	50·0	25·0	—	—	600·0
8. Mizoram	16	15	31	6	15	21	62·5	110·0	89·0	178·6	67·7
9. Pondicherry	65	50	115	57	65	122	110·1	85·6	83·5	121·2	106·1
TOTAL in the country	34,341	17,152	51,493	31,186	17,174	48,360	105·6	103·7	96·7	107·3	93·9

TABLE V

Table showing total strength of Courts for Appellate Civil work, disposal in Units and average rate of disposal per court on the basis of time devoted by Courts to Appellate Civil work during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977

		Regular Appeals	Miscellaneous Appeals
(a) After full hearing	=	2 units	1 unit
(b) Dismissal or not prosecuted	=	1/6 unit	1/12 unit
(c) Transferred to other courts	=	½ unit	½ unit

Name of the State/Union Territory	Total strength of courts for Appellate work	Disposal in Units during					Average rate of disposal per court on the basis of time devoted by courts to appellate civil work during				
		4th quarter of 76	1st quarter of 77	2nd quarter of 77	3rd quarter of 77	4th quarter of 77	4th quarter of 76	1st quarter of 77	2nd quarter of 77	3rd quarter of 77	4th quarter of 77
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh	26	3,683	3,355	2,036	4,444	4,454	147·3	119·8	91·0	170·9	171·3
2. Assam .	4	223	372	354	407	191	37·2	67·6	88·5	101·8	47·8
3. Bihar . .	86	2,112	2,169	1,962	2,452	1,212	41·4	37·4	36·3	40·2	14·1
4. Gujarat .	18	1,705	1,713	1,371	2,225	1,518	81·2	100·8	76·2	92·7	84·[illegible]
5. Haryana .	11	1,556	1,701	1,101	1,229	2,314	311·2	243·0	220·2	245·8	210·4
6. Himachal Pradesh	2	357	230	298	378	436	102·0	57·5	74·5	94·5	218·0
7. Jammu and Kashmir	—	—	—	—	—	—	—	—	—	Not received.	
8. Karanataka .	30	3,570	4,182	2,389	4,429	3,083	274·6	154·9	95·5	158·2	102·8
9. Kerala .	21	4,476	4,737	2,036	3,733	3,998	223·8	236·9	101·8	186·7	190·4
10. Madhya Pradesh	31	3,335	5,745	3,289	5,503	3,567	238·2	287·3	96·7	157·2	115·1
11. Maharashtra	27	4,812	3,860	2,741	3,214	2,925	209·2	175·5	137·1	120·4	108·3
12. Manipur .	0·5	12	30	29	34	21	48·0	60·0	58·0	68·0	42·0
13. Meghalaya .	—	—	—	—	—	—	—	—	—	Not received	
14. Nagaland .	3	66	—	17	16	24	8·25	—	5·7	5·3	8·0
15. Orissa . .	8	636	1,034	449	947	625	212·0	54·4	28·1	236·8	78·1
16. Punjab . .	14	2,782	2,669	3,060	3,963	3,824	252·9	242·6	255·0	330·8	273·1
17. Rajasthan .	11	1,431	1,721	1,160	1,876	1,392	124·4	143·4	96·7	170·5	126·5
18. Sikkim . .	0·25	—	—	7	1	—	—	—	28·0	4·0	—
19. Tamil Nadu	14	6,946	6,562	3,092	6,835	5,907	248·1	285·3	93·7	427·2	421·9
20. Tripura .	1	57	104	114	56	42	57·0	104·0	114·0	56·0	42·0
21. Uttar Pradesh .	86	12,034	13,380	10,883	14,158	10,507	218·8	142·3	143·2	168·6	122·2
22. West Bengal	30	2,161	2,896	3,090	3,301	1,534	74·5	111·4	118·8	122·3	51·1
UNION TERRITORIES											
1. A. & N. Islands	0·25	—	3	—	2	—	—	—	—	8·0	—
2. Arunachal Pradesh	1	—	—	—	2	2	—	—	—	—	2
3. Chandigarh .	0·75	93	144	91	111	81	124·0	192·0	121·3	148·0	108·0
4. Dadra and Nagar Haveli	0·25	4	2	—	—	—	16·0	8·0	—	—	—
5. Delhi . .	8	848	835	627	1,108	824	105·0	104·4	78·4	158·3	103·0
6. Goa, Daman and Diu.	1	158	115	83	101	96	316·0	230·0	110·7	202·0	96·0
7. Lakshadweep	0·25	4	2	—	—	3	5·3	2·7	—	—	12·0
8. Mizoram .	1	27	41	139	72	26	27·0	41·0	139·0	72·0	26·0
9. Pondicherry .	2	193	190	94	190	169	77·2	76·0	37·6	126·7	84·5
TOTAL in the Country	438·25	53,332	57,792	40,512	61,787	48,775	154·3	137·3	101·8	149·9	111·3

TABLE VI

Table showing pendency of Regular and Miscellaneous Appeals in District Courts as on 1-1-1977 and 1-10-1977 and 31-12-1977 and rate of increase or decrease in pendency during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977 and also the number of cases increased or decreased and percentage increase or decrease within a period of 12 months i.e. from 1-1-1977 to 31-12-1977

Name of the State/Union Territory	Pendency as on			Rate of increase or decrease during					No. of appeals increased or decreased during the year	Percentage increase or decrease during the year 1977
	1-1-77	1-10-77	31-12-77	4th quarter of 76	1st quarter of 77	2nd quarter of 77	3rd quarter of 77	4th quarter of 77		
1	2	3	4	5	6	7	8	9	10	11
1. Andhra Pradesh	12,319	13,430	13,602	-1.6	-1.5	+13.1	-2.2	+1.3	+1,283	+10.4
2. Assam	1,870	1,992	2,045	+3.8	-0.9	+3.0	+4.4	+2.7	+175	+9.4
3. Bihar	14,005	14,230	14,441	-10.1	-1.5	+0.3	+2.8	+1.5	+436	+3.1
4. Gujarat	6,734	6,622	6,726	+2.1	-0.3	+3.8	-4.9	+1.6	-8	-0.1
5. Haryana	5,033	5,785	6,177	+1.6	+10.7	+2.2	+1.5	+6.8	+1,144	+22.7
6. Himachal Pradesh	1,524	1,703	2,296	+3.6	+6.6	+2.5	+2.3	+34.8	+772	+50.7
7. Jammu & Kashmir									Not received	
8. Karnataka	15,966	14,147	14,056	-1.8	-5.4	+0.8	-7.1	-0.6	-1,910	-12.0
9. Kerala	12,825	12,405	11,839	-3.3	-4.8	+5.4	-3.6	-4.6	-986	-7.7
10. Madhya Pradesh	13,200	12,624	12,956	+4.4	-3.4	+3.4	-4.6	+2.6	-244	-1.8
11. Maharashtra	19,592	19,513	19,963	-4.1	+0.4	+2.2	-2.9	+2.3	+371	+1.9
12. Manipur	45	35	34	— ..	-15.6	— —	-7.9	-2.9	-11	-24.4
13. Meghalaya									Not received	
14. Nagaland	4	65	73	-14.4	+25.0	+1,460.0	-16.7	+12.3	+69	+1,725.0
15. Orissa	2,840	2,929	3,011	+3.2	-1.9	+7.1	-1.9	+2.8	+171	+6.0
16. Punjab	8,381	7,948	7,759	-6.1	-1.9	-1.6	-1.8	-2.4	-622	-7.4
17. Rajasthan	7,878	8,260	8,622	-0.3	+1.0	+1.4	+2.4	+4.4	+744	+9.4
18. Sikkim	6	10	10	..	+33.3	-12.5	+42.9	—	+4	+6.6
19. Tamil Nadu	15,954	15,235	14,689	-2.0	-3.9	+4.7	-5.1	-3.6	-1,265	-7.9
20. Tripura	325	258	269	-5.8	-10.5	-13.4	+2.4	+4.3	-56	-17.2
21. Uttar Pradesh	38,858	35,452	36,783	-0.2	+1.3	-8.4	-1.7	+3.8	-2,075	-5.3
22. West Bengal	9,309	8,776	9,043	-2.0	-2.6	-1.8	-1.5	+3.0	-266	-2.0
UNION TERRITORIES										
1. A. & N. Islands	3	2	2	+100.0	-50.0	+100.0	+100.00	—	—	—
2. Arunachal Pradesh	..	3	1	—	—	—	—	-66.7	+1	—
3. Chandigarh	229	167	176	+17.4	-9.6	-10.6	-9.7	+5.4	-53	-23.1
4. Dadra & Nagar Haveli	27	55	55	-11.5	-85.2	+1250.0	+1.9	—	+28	+103.7
5. Delhi	4,471	4,809	4,949	+2.0	+2.1	+1.4	+3.9	+2.9	+478	+10.7
6. Goa Daman & Diu	600	651	664	+0.5	-1.7	+1.7	+8.5	+2.0	+64	+10.7
7. Lakshadweep	14	20	15	+27.3	+21.4	+23.5	-4.8	-25.0	+1	+7.1
8. Mizoram	67	54	64	+15.5	-3.0	+16.9	-28.9	+18.5	-3	-4.5
9. Pondicherry	453	469	462	-3.0	+6.2	+3.5	-5.8	-10.5	+9	+2.0
Total in the Country	1,92,532	1,87,649	1,90,782	-1.7	-1.1	+0.7	-2.2	+1.7	-1,749	0.9

TABLE VII

General result of Trial of civil Cases in the Courts at district level on the Original side during the year 1977

Name of the State/Union Territory	Pendency as on 1-1-1977			Institution during the year 1977			Disposal during the year 1977			Pendency as on 31-12-1977		
	Regular Suits	Misc. Cases	Total	Regular Suits	Misc. Cases	Total	Regular Suits	Misc. Cases	Total	Regular (2+5—8)	Misc. (3+6—9)	Total (4+7—10)
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	78,143	1,37462	2,15,605	86,755	4,66,854	5,53,609	83,679	4,67,262	5,50,941	81,219	1,37,054	2,18,273
2. Assam	1,15,551	3,382	14,933	8,034	5,044	13,078	8,507	4,527	13,034	11,078	3,899	14,977
3. Bihar	122,326	27,551	1,49,877	62,988	18,524	81 512	6 2,245	17,617	79,862	1 23,069	28,457	15,15,26
4. Gujarat	86,982	33,366	1,20,348	58,007	37,454	95 461	52,325	35,399	87,724	92,664	35,421	1 28,085
5. Haryana	21,268	3,793	25,061	33,628	4,616	38,244	32,391	4,315	36,706	22,505	4,094	26,599
6. Himachal Pradesh	12,389	5 443	17,832	5,400	5,735	11,135	6,346	5,858	12,204	11,443	5,320	16,763
7. Jammu & Kashmir						Not available						
8. Karnataka	62,286	1,17,728	1,80,014	40,761	26,971	67,732	34,719	24,751	59,470	68,328	1,19,948	1,88,276
9. Kerala	4,22,888	44,944	87,232	41,612	1,26,370	1,67,982	45,696	1,26,441	1,72,137	38,204	44,873	83,077
10. Madhya Pradesh	81,933	18,419	1,00,352	79,625	20,681	1,00,306	75,548	19,897	94,445	87,010	19,201	1,06,211
11. Maharashtra	2,57,194	93,677	3,50,871	1,17,079	67,250	1,84,329	99,675	64,551	1,64,226	2,74,598	96,376	3,70,974
12. Manipur	364	174	538	431	554	985	428	566	994	367	162	529
13. Meghalaya						Not available						
14. Nagaland	211	170	381	161	94	255	185	138	323	187	126	313
15. Orissa	14,849	8,105	22,954	14,444	11,915	26,359	15,044	11,816	26,860	14,249	8,204	22,453
16. Punjab	35,320	18,313	53,533	49,302	25,982	75,284	49,185	24,677	73,862	35,437	19,618	55,055
17. Rajasthan	55,965	15,938	71,903	31,970	14,849	46,819	28,678	14,759	43,437	59,257	16,028	75,285
18. Sikkim	173	63	236	130	170	300	144	163	307	159	70	229
19. Tamil Nadu	90,248	85,259	1,75,507	72,948	3,34,406	4,07,354	70,294	3,33,040	4,03,334	92,902	86,625	1,79,527
20. Trpura*	2,161	654	2,815	1,205	619	1,824	1,215	515	1,730	2,151	758	2,909
21. Uttar Pradesh	1,64,034	55,038	2,19,072	1,74,734	88,613	2,63,347	1,73,451	81,952	2,55,403	1,65,317	61,699	2,27,016
22. West Bengal	1,48,410	35,842	1,84,252	75,218	19,167	94,385	63,755	17,632	18,387	1,59,873	37,377	1,97,250
UNION TERRITORIES												
1. A. & N. Islands	85	12	97	82	28	110	87	27	114	80	13	93
2. Arunachal Pradesh	..	5	5	8	2	10	6	6	12	12**	..	12**
3. Chandigarh	822	2,024	2,846	675	2,604	3279	504	2,648	3,152	993	1,980	2,973
4. Dadra & Nagar Haveli	121	19	140	11	8	19	87	20	107	45	7	52
5. Delhi	21,953	10,008	31,961	16,782	9,183	25,965	16,319	9,583	25,902	22,416	9,608	32,024
6. Goa, Daman & Diu	4,668	1,790	6,458	1,780	750	2,530	1,058	1,002	2,510	4,940	1,538	6,478
7. Lakshadweep	56	57	113	18	334	352	24	290	314	50	101	151
8. Mizoram	135	81	216	292	226	518	295	247	542	132	60	192
9. Pondicherry	1,239	1,306	2,545	2,554	3,314	5,868	2,407	3,322	5,729	1,386	1,298	2,684
TOTAL IN THE COUNTRY :	13,17,174	7,20,623	2,20,37,797	9,76,634	12,92,314	22,68,948	9,23,747	12,73,021	21,96,768	13,70,071	7,39,915	21,09,986

@?The pendency of Misc. Cases in Bihar on 31-12-1977 shuold be 28458.

*Revised pendency. (2897 M.A.D.R. Cases included).

(b) The pendency of Misc. Cases in Madhya Pradesh comes to 19203.

**The pendency of Regular Suits as on 31-12-1977 should be 2 of Misc. Cases 1 in Arunachal Pradesh.

TABLE VIII

General result of trial of Civil Cases in District/Additional Judges Courts on the Original side during the year 1977

Name of the State/ Union Territory	Pendency as on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency as on 31-12-76-77		
	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	517	8,301	8,818	869	36,572	37,441	896	37,293	38,189	490	7,580	8,070
2. Assam	245	882	1,127	224	1,044	1,268	164	906	1,070	305	1,020	1,325
3. Bihar	748	4,324	5,072	438	3,553	3,991	426	3,579	4,005	760	5,295	5,053
4. Gujarat	120	5,558	5,678	63	6,069	6,132	91	5,782	5,873	92	5,845	5,937
5. Haryana	573	618	1,191	673	892	1,565	520	575	1,095	726	935	1,661
6. Himachal Pradesh	Not available Separately											
7. Jammu & Kashmir	Not available											
8. Karnataka	90	3,640	3,730	324	3,988	4,312	314	3,639	3,953	100	3,989	4,089
9. Kerala	46	4,684	4,730	573	10,268	10,841	313	9,007	9,320	306	5,945	6,251
10. Madhya Pradesh	5,439	3,875	9,314	6,200	4,839	11,039	5,600	4,511	10,111	6,039	4,203	10,242
11. Maharashtra	43,847	4,848	48,695	10,743	3,952	14,695	8,803	3,393	12,196	45,787	5,407	51,194
12. Manipur	23	19	42	43	32	75	45	42	87	21	9	30
13. Meghalaya	Not available											
14. Nagaland	Not available Separately											
15. Orissa	33	777	810	27	956	983	36	802	838	24	931	955
16. Punjab	1,518	1,323	2,841	531	3,085	3,616	1,679	2,557	4,236	370	1,851	2,221
17. Rajasthan	3,061	3,716	6,777	2,056	3,586	5,642	1,490	3,218	4,708	3,627	4,084	7,711
18. Sikkim	24	29	53	37	105	142	30	97	127	31	37	68
19. Tamil Nadu	688	5,058	5,746	694	24,245	24,939	1,197	24,177	24,374	185	5,126	5,311
20. Tripura	75	266	341	46	308	354	46	226	272	75	348	423
21. Uttar Pradesh	3,089	8,225	9,314	3,961	17,969	21,930	4,074	17,441	21,515	1,976	7,753	9,729
22. West Bengal	10,443	9,424	19,867	11,353	5,490	16,843	9,851	5,425	15,276	11,945	9,489	21,434
UNION TERRITORIES												
1. A. N. Islands	3	6	9	7	14	21	6	13	19	4	7	11
2. Arunachal Pradesh	Not received Separately											
3. Chandigarh	3	562	565	—	409	409	—	549	549	3	422	425
4. Dadra & Nagar Haveli.	Nil											
5. Delhi	817	3,803	4,620	814	2,875	3,689	718	3,438	4,156	913	3,420	4,153
6. Goa, Daman & Diu	183	430	613	36	164	200	52	155	207	167	439	606
7. Lakshadweep	—	—	—	—	—	—	—	—	—	—	—	—
8. Mizoram	Not received separately											
9. Pondicherry	6	175	181	6	319	325	4	363	367	8	131	139
TOTAL in the country.	70,591	69,543	1,40,134	39,718	1,30,734	1,70,452	36,355	1,27,188	1,63,543	73,954	73,086	14,740

*Pendency of Miscellaneous Cases in Bihar on 31-12-1977 ought to be 4298 instead of 4295.

TABLE IX

General result of Trial of cases in Senior/Subordinate Judges Courts on the original side during the year 1977

Name of the State/ Union Territory	Pendency as on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency as on 31-12-77		
	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	10,114	33,080	43,194	7,877	1,01,103	1,08,980	6,504	98,189	1,04,693	11,487	35,994	47,481
2. Assam	2,248	489	2,737	1,227	447	1,674	1,138	388	1,526	2,337	548	2,885
3. Bihar	27,141	13,230	40,371	15,356	7,594	22,950	16,773	7,541	24,314	25,724	13,285	39,009
4. Gujarat	42,911	12,306	55,217	27,162	12,391	39,553	23,423	11,268	34,691	46,650	13,429	60,075
5. Haryana	2,856	1,259	4,115	4,956	1,509	6,465	5,376	1,453	6,829	2,436	1,315	3,751
6. Himachal Pradesh	Not available separately											
7. Jammu & Kashmir	N.A.											
8. Karnataka	7,953	23,332	31,285	4,660	14,588	19,248	3,183	13,397	16,580	9,430	24,523	33,953
9. Kerala	6,503	19,008	25,511	5,837	35,899	41,736	5,770	35,626	41,396	6,570	19,281	25,851
10. Madhya Pradesh	8,135	2,642	10,777	8,683	3,524	12,027	7,998	3,421	11,419	8,820	2,743	11,563
11. Maharashtra	37,310	17,420	54,730	19,743	11,495	31,238	15,845	9,505	25,354	41,204	19,410	60,614
12. Manipur	151	39	190	179	230	409	154	200	354	176	69	245
13. Meghalaya	N.A.											
14. Nagaland	Not available separately.											
15. Orissa	4,554	3,545	8,099	3,461	4,494	7,955	3,628	4,455	8,083	4,387	3,584	7,971
16. Punjab	1,850	2,843	4,693	4,098	5,302	9,400	3,285	4,407	7,692	2,663	3,778	6441
17. Rajasthan	4,198	1,072	5,270	2,311	1,005	3,316	2,117	1,024	3,141	4,392	1,053	5445
18. Sikkim	149	34	183	93	65	158	114	66	180	128	33	161
19. Tamil Nadu	30,588	39,523	70,111	23,186	1,16,583	1,39,769	20,826	1,15,681	1,36,507	32,948	40,425	73,373
20. Tripura	378	131	509	136	131	267	151	137	288	363	125	488
21. Uttar Pradesh	22,726	9,362	32,088	19,281	15,669	4,947	18,868	13,994	32,862	23,139	11,034	34,173
22. West Bengal	27,119	3,996	31,115	15,446	3,162	18,608	14,582	3,058	17,640	27,983	4,100	32,083
UNION TERRITORIES												
1. A & N Islands	82	6	88	75	14	89	81	14	95	76	6	82
2. Arunachal Pradesh	Not available separately.											
3. Chandigarh	177	369	546	165	486	651	84	558	642	258	300	558
4. Dadra & Nagar Haveli	121	19	140	11	8	19	87	20	107	45	7	52
5. Delhi	3,475	4,407	23,152	12,781	3,943	16,724	12,121	3,727	15,848	19,405	4,623	24,028
6. Goa, Daman & Diu	2,590	1,129	3,719	913	423	1,336	801	679	1,480	2,702	873	3575
7. Lakshdweep	30	41	71	3	98	100	7	70	77	26	68	94
8. Mizoram	Not available separately.											
9. Pondicherry	428	629	1,057	733	1,708	2,441	662	1,714	2,376	499	623	1,122
TOTAL	2,59,057	1,89,911	4,48,968	1,78,373	3,41,867	5,20,240	1,63,582	3,30,592	4,94,174	2,73,846	2,01,189	4,75,037

*Pendency of Misc. cases on 31-12-1977 in Bihar ought to be 13283 instead of 13285, in Madhya Pradesh 2745 instead of 2743 and Chandigarh 297 instead of 300.

TABLE X

General result of Trial of Civil Cases in Munsif Courts on the original side during the year 1977

Name of the State/ Union Territory	Pending as on 1-1-1977			Institution during 1977			Disposal during 1977			Pending as on 31-12-77		
	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	56,301	92,872	1,59,173	75,860	3,18,917	3,94,777	74,19[illegible]	3,22,4[illegible]	3,96,[illegible]	67,[illegible]	89,380	1,57,[illegible]
2. Assam	9,058	2,011	11,069	6,583	3,553	10,136	7,205	3,233	10,438	8,436	2,331	10,767
3. Bihar	73,520	9,959	33,479	42,278	7,318	49,596	36,655	6,464	43,119	79,143	10,813	89,956
4. Gujarat	28,361	10,772	39,133	21,529	11,340	32,869	19,616	10,322	29,938	30,274	11,790	42,064
5. Haryana	17,839	1,916	19,755	27,999	2,215	30,214	26,495	2,287	2,8782	19,343	1,844	21,187
6. Jammu & Kashmir	Not available separately.											
7. Himachal Pradesh												
8. Karnataka	54,243	90,756	1,44,999	35,777	8,395	44,172	31,221	7,715	38,937	58,798	91,436	1,50,234
9. Kerala	35,739	21,252	6,991	35,202	80,203	1,15,405	39,613	81,808	1,21,421	31,328	19,647	50,975
10. Madhya Pradesh	59,789	10,212	70,001	48,107	9,816	57,923	44,438	9,462	53,900	63,458	10,566	74,024
11. Maharashtra	1,24,343	45,386	1,69,729	63,849	26,817	90,666	52,450	25,434	77,884	1,35,742	46,769	1,82,511
12. Manipur	190	116	306	209	292	501	229	324	553	170	84	254
13. Meghalaya	Not available.											
14. Nagaland	Not available											
15. Orissa	9,224	3,776	13,000	8,544	6,434	14,978	8,960	6,527	15,487	8,808	3,683	12,491
16. Punjab	31,701	14,100	45,801	44,249	17,568	61,817	43,875	17,678	61,553	32,075	13,990	46,064
17. Rajasthan	46,810	11,006	57,816	26,084	10,087	36,171	23,438	10,365	33,803	49,456	10,728	60,184
18. Sikkim	Nil											
19. Tamil Nadu	55,818	40,678	96,496	43,651	1,93,578	2,37,229	43,188	1,93,182	2,36,370	56,281	41,074	97,355
20. Tripura	1,708	257	1,965	1,023	180	1,203	1,018	152	1,170	1,713	285	1,998
21. Uttar Pradesh	1,15,684	35,168	1,50,852	125,259	47,721	1,72,980	1,27,887	44,853	1,72,740	1,13,05[illegible]	38,036	1,51,[illegible]92
22. West Benga	1,04,275	12,215	1 16,490	45,808	10,238	56,046	36,332	8,940	45,272	11,3,751	23,513	1,37,264
UNION TERRITORIES												
1. A & N Islands												
2. Arunachal Pradesh	Not available separately.											
3. Chandigarh	642	1,093	1,735	510	1,706	2,216	420	1,541	1,961	732	1,258	1,990
4. Dadra & Nagar Haveli.	Nil											
5. Delhi	Nil											
6. Goa, Daman & Diu	1,895	231	2,126	831	163	994	655	168	823	2,071	226	2,297
7. Lakshadweep	26	16	42	15	237	252	17	220	237	24	33	57
8. Mizoram	Not available separately.											
9. Pondicherry	805	502	1,307	1,815	1,287	3,102	1,741	1,245	2,985	879	544	1,423
TOTAL	8,37,971	4,14,294	12,52,265	6,55,18[illegible]	7,54,065	1,413,247	6,19,644	7,54,329	1,373,973	8,73,509	4,18,030	12,91,539

TABLE XI

General result of Trial of Civil Cases in Small Cause Courts on the original side during the year 1977

Name of the State/Union Territory	Pendency as on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency as on 31-12-77		
	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total	Regular suits	Misc. cases	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	1,211	3,209	4,420	2,149	10,262	12,411	2,089	9,371	11,460	1,271	4,100	5,371
2. Assam					Nil							
3. Bihar	20,917	38	20,955	4,916	59	4,975	8,391	33	8,424	17,442	64	17,506
4. Gujarat	15,590	4,730	20,320	9,253	7,654	16907	9,195	8,027	17,222	15,648	4,357	2,005
5. Haryana					Nil							
6. Himachal Pradesh					Not Available Separately							
7. Jammu & Kashmir					Not Available							
8. Karnataka					Nil							
9. Kerala					Nil							
10. Madhya Pradesh	8,570	1,690	10,260	16,635	2,502	19,137	16,512	2,503	19,015	8,693	1,689	10,382
11. Maharashtra	51,694	26,023	77,717	2.2744	24,986	47,730	22,573	26,219	48,792	51,865	24,790	76,655
12. Manipur					Nil							
13. Meghalaya					Not Available							
14. Nagaland					Nil							
15. Orissa	1,038	7	1,045	2,412	31	2,443	2,420	32	2,452	1,030	6	1,036
16. Punjab	251	47	298	424	27	451	346	35	381	329	39	368
17. Rajasthan	1,896	144	2,040	1,519	171	1,690	1,633	152	5	1,782	163	1,945
18. Sikkim					Nil							
19. Tamil Nadu	3,154	..	3,154	5,417	..	5,417	5,083	..	5,083	3,488	..	3,488
20. Tripura					Nil							
21. Uttar Pradesh	23,535	3,283	26,818	26,233	7,257	33,490	22,622	5,664	28,286	27 146	4,876	32,022
22. West Bengal	6,573	207	6,780	2.611	277	2,888	2,990	2,09	3,199	6,194	275	6,469
UNION TERRITORIES :												
1. A & N Islands					Nil							
2. Arunachal Pradesh					Not Available Separately							
3. Chandigarh					Nil							
4. Dadra & Nagar Haveli					Not Available separately							
5. Delhi	2,391	1,798	4,189	3,187	2,365	5552	3,480	2,418	5,898	2,098	1,745	3,843
6. Goa, Daman & Diu					Nil							
7. Lakshadweep					Nil							
8. Mizoram					Not Available Separately							
9. Pondicherry					Nil							
TOTAL	1,36,820	41,176	1,77,996	97,500	55,591	1,53,091	97,334	54,663	1,51,997	13,6916	42104	1,79,09[illegible]

TABLE XII

General Result of Trial of Civil Cases on the appellate side in the Courts functioning at District level in 1977

Name of the State	Pendency on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency on 31-11-77		
	Regular Appeal	Misc. Appeals	Total	Regular Appeals	Misc. Appeals	Total	Regular Appeal	Misc. Appeal	Total	Regular Appeals	Misc. Appeals	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	7,994	4,325	12,319	9,715	5,724	15,439	7,827	6,329	14,156	9,882	3,720	13,602
2. Assam	1,481	389	1,870	923	388	1,311	838	298	1,136	1,566	479	2,045
3. Bihar	11,171	2,834	14,005	8,619	2,378	10,997	8,079	2,490	10,569	11,716*	2,725*	14,441*
4. Gujarat	5,588	1,146	6,734	3,448	1,705	5,153	3,357	1,804	5,161	5,679	1,047	6,726
5. Haryana	4,384	649	5,033	5,459	1,127	6,596	4,503	949	5,452	5,350	827	6,177
6. Himachal Pradesh	752	772	1,524	1,485	680	2,165	717	676	1,393	1,520	776	2,296
7. Jammu & Kashmir						Not Available						
8. Karnataka	10,819	5,147	15,966	5,258	4,503	9,761	5,228	5,443	11,671	9,849	4,207	14,056
9. Kerala	10,275	2,550	12,825	8,098	3,325	11,423	8,912	3,497	12,409	9,461	2,378	11,839
10. Madhya Pradesh	9761	3439	13,200	10,354	5,147	15,501	10,459	5286	15745	9656	3,300	12,956
11. Maharashtra	17,031	2,561	19,592	7,978	3,213	11,191	7,764	3,056	10,820	17,245	2,718	19,963
12. Manipur	36	9	45	66	10	76	73	14	87	29	5	34
13. Meghalaya						Not Available						
14. Nagaland	4	..	4	73	45	118	33	16	49	44	29	73
15. Orissa	2,134	706	2,840	2,387	1,089	3,476	2,229	1,076	3,305	2,292	719	3,011
16. Punjab	6,814	1,567	8,381	10,715	2,588	13,303	11,077	2,848	13,925	6,452	1,307	7,759
17. Rajasthan	5,142	1,736	7,878	5,150	2,478	7,628	4,677	2,207	6,884	6,615	2,007	8,622
18. Sikkim	4	2	6	9	2	11	5	2	7	8	2	10
19. Tamil Nadu	10,857	5,087	15,954	12,496	5,987	18,483	13,235	6,513	19,748	10,118	45,71	14,619
20. Tripura	266	59	325	112	86	198	171	83	254	207	62	269
21. Uttar Pradesh	19,753	19,105	38,858	34,831	22,546	57,377	33,195	26,257	59,452	21,389	15,394	36,783
22. West Bengal	6,866	2,443	9,309	7,403	3,673	11,076	7,447	3,895	11,342	6,822	2,221	9,043
UNION TERRITORIES												
1. A & N Islands	2	1	3	2	..	2	2	1	3	2	..	2
2. Arunachal Pradesh	..	..	..	2	4	6	1	4	5	1	..	1
3. Chandigarh	104	125	229	146	232	378	183	248	431	67	109	176
4. Dadra & Nagar Haveli	..	27	27	50	2	52	..	24	24	50	5	55
5. Delhi	1,995	2,476	4,471	1,522	2,570	4,092	1,354	2,260	3,614	2,163	2,786	4,949
6. Goa, Daman & Diu	478	122	600	260	156	416	239	113	352	499	165	664
7. Lakshadweep	14	..	14	8	1	9	7	1	8	15	..	15
8. Mizoram	65	2	67	54	125	179	98	84	182	21	43	64
9. Pondicherry	312	141	453	268	282	550	212	329	541	368	94	462
TOTAL in the country	1,35,102	[illegible]	1,91,532	1,31,901	70,066	2,06,967	1,32,922	75,803	2,08,725	1,39,086	51,696	1,90,782

*Pendency on 31-12-1977 in Bihar ought to be 11,711 Regular Appeals and 2,722 Miscellaneous Appeals.

TABLE XIII

General Result of Trial of Civil Cases in District/Additional District Judges Courts on the appellate side During the year 1977

Name of the State	Pendency on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency on 31-12-1977		
	Regular Appeals	Misc. Appeals	Total	Regular Appeals	Misc. Appeals	Total	Regular Appeals	Misc. Appeals	Total	Regular Appeal	Misc. Appeals	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	4,516	848	5,464	6,610	2,190	8,800	6,004	2,094	8,098	5,222	944	6,166
2. Assam	228	120	348	149	105	254	97	78	175	280	147	427
3. Bihar	4,886	1,638	6,524	4,887	1,515	6,402	4,128	1,556	5,684	5,652*	1,596*	7,248*
4. Gujarat	4,677	880	5,557	2,965	1,384	4,349	2,966	1,428	4,394	4,676	836	5,512
5. Haryana	1,862	283	2,145	3,619	509	4,128	2,904	502	3,406	2,577	290	2,867
6. Himachal Pradesh						Not Reported Separately						
7. Jammu & Kashmir						Not Available						
8. Karnataka	797	3,452	4,249	484	2,392	2,876	560	3,538	4,098	721	2,306	3,027
9. Kerala	4,377	887	5,264	3,866	1,371	5,237	4,561	1,453	6,014	3,682	805	4,487
10. Madhya Pradesh	9,761	3,439	13,200	10,354	5,147	15,501	10,459	5,286	15,745	9,656	3,300	12,956
11. Maharashtra	17,031	2,560	19,591	7,978	3,213	11,191	7,764	3,055	10,819	17,245	2,718	19,963
12. Manipur	36	9	45	66	10	76	73	14	87	5	29	343
13. Meghalaya						Not available						
14. Nagaland						Not Reported Separately						
15. Orissa	1,129	511	1,640	1,322	684	2,006	1,233	702	1,935	1,218	493	1,711
16. Punjab	3,667	939	4,606	8,289	2,027	10,316	5,551	1,661	7,212	6,405	1,305	7,710
17. Rajasthan	5,092	1,471	6,553	3,809	2,031	5,840	3,892	1,880	5,772	5,009	1,622	6,637
18. Sikkim	4	2	6	9	2	11	5	2	27	8	2	10
19. Tamil Nadu	3,893	1,867	5,760	5,612	2,270	7,882	6,056	2,291	8,347	3,449	1,846	5,295
20. Tripura	97	18	115	74	29	103	73	27	100	98	20	118
21. Uttar Pradesh	13,911	12,539	26,450	27,727	19,463	47,190	26,991	21,896	48,887	14,647	10,106	24,753
22. West Bengal	5,174	2,044	7,218	6,354	3,239	9,593	6,248	3,391	9,639	5,280	1,892	7,172
UNION TERRITORIES												
1. A & N Islands	2	1	3	3	..	2	2	1	3	2	..	2
2. Arunachal Pradesh						Not Reported Separately						
3. Chandigarh	98	125	223	130	232	362	171	248	419	57	109	166
4. Karnataka	—	27	27	50	2	52	—	24	24	50	5	55
5. Delhi	920	916	2,836	777	2,101	2,878	859	1,847	2 706	838	2,170	3,008
6. Goa, Daman & Diu	478	122	600	260	156	416	239	113	352	499	165	664
7. Lakshadweep						Not Reported Separately						
8. Mizoram												
9. Pondicherry	297	88	385	232	146	378	176	214	390	353	20	373
TOTAL in the country	83,033	35,785	11,819	95,625	50,218	1,45,843	91,012	53,301	144,313	87,658	32,702	120,355

*Pendency on 31-12-1977 in Bihar ought to be Regular Appeals 5,645 and Miscellaneous Appeals 1597.

TABLE XIV

General Result of Trial of Civil Cases in Senior **Civil Judges/Sub-Judges Courts on the appellate side during the year 1977**

Name of the State/Union Territory	Pendency on 1-1-1977			Institution during 1977			Disposal during 1977			Pendency on 31-12-1977		
	Regular Appeals	Misc. Appeals	Total	Regular Appeals	Misc Appeals	Total	Regular Appeals	Misc Appeals	Total	Regular Appeals	Misc. Appeals	Total
1	2	3	4	5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	3,378	3,477	6,855	3,105	3,534	6,639	1,823	4,235	6,058	4,660	2,776	7,436
2. Assam	1,253	269	1,522	774	283	1,057	741	220	961	1,286	332	1,617
3. Bihar	5,285	1,196	6,481	3,732	863	4,595	3,951	934	4,885	60,64*	1,129*	7,193*
4. Gujarat	911	266	1,177	483	321	804	391	376	767	1,003	211	1,214
5. Haryana	2,522	366	2,888	1,850	618	2,468	1,599	447	2,046	2,773	537	3,310
6. Himachal Pradesh	Not Reported Separately											
7. Jammu & Kashmir	Not Available											
8. Karnataka	10,022	1,695	11,717	4,774	2,111	6,885	5,668	1,905	7,573	1928	1,901	11,029
9. Kerala	5,898	1,663	7,561	4,232	1,954	6,186	4,351	2,044	6,395	5,779	1,573	7,352
10. Madhya Pradesh	—											
11. Maharashtra	..	1	1	..	Nil	..	..	1	1	..	Nil	..
12. Manipur	—											
13. Maghalaya	Not Available											
14. Nagaland	Not Reported Separately											
15. Orissa	1,005	195	1,200	1,355	495	1,470	996	374	1,370	1,074	226	1,300
16. Punjab	3,147	528	3,775	2,426	561	2,987	5,520	11,87	6,713	47	2	499
17. Rajasthan	1,050	265	1,315	1,341	447	1,788	785	327	1,112	1,606	385	1,991
18. Sikkim	—											
19. Tamil Nadu	5,964	5,230	10,194	6,884	3,717	10,601	7,179	4,222	11,401	6,669	2,275	9,554
20. Tripura	169	41	210	38	57	95	98	56	154	109	42	151
21. Uttar Pradesh	5,842	6,566	12,408	7,104	3,083	10,187	6,204	10,565	4,361	6,742	5,28	12,030
22. West Bangal	1,692	399	2,091	1,049	434	1,483	1,199	504	1,703	1,542	329	1,871
UNION TERRITORY												
1. A & N Islands	—											
2. Arunachal Pradesh	Not Available Separately											
3. Chandigarh	6	..	6	16	..	16	12	..	12	10	..	10
4. Dadra & Nagar Haveli	—											
5. Delhi	1,075	560	1,635	745	469	1,214	495	413	908	1,325	616	1,941
6. Goa, Daman & Diu	—											
7. Lakshadweep	14	..	14	8	1	9	7	1	8	15	..	15
8. Mizoram	Not Available Separately											
9. Pondicherry	15	53	68	36	136	172	136	115	151	15	74	89
TOTAL in the Country	31,248	30,870	72,118	39,662	18,994	58,656	41,061	21,722	62,783	49,847	18,146	67,993

*Pendency on 31-12-1977 in Bihar ought to be 5,066 Regular 1,125 Miscellaneous Appeals.

TABLE I

Table showing institution and disposal during the 4th quarter ending December, 1977 and disposal as percentage of institution during the 4th quarter of 1976, 1st, 2nd, 3rd and 4th quarter of 1977 in the Session Courts.

1 Original = 5 Appeals or 5 Revisions

Name of State/Union Territory	Institution during quarter	Disposal during quarter	Disposal as percentage of institution during				
			4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1. Andhra Pradesh	1,042	1,101	99·1	97·2	113·8	98·7	105·7
2. Assam	322	238	75·0	78·3	83·0	82·6	73·9
3. Bihar	2,579	1,613	84·0	85·1	83·6	79·8	62·5
4. Gujarat	605	654	90·3	99·2	128·3	80·7	108·1
5. Haryana	718	729	96·3	58·8	140·7	84·9	101·5
6. Himachal Pradesh	99	102	91·4	65·9	120·8	114·5	103·0
7. Jammu & Kashmir	N.A.	N.A.	91·7	85·5	N.A.	N.A.	N.A.
8. Karnataka	352	377	114·7	98·7	113·9	125·2	107.1
9. Kerala	420	472	101·7	102·6	60·9	114·2	112·4
10. Madhya Pradesh	1,899	1,961	99·5	110·1	102·7	97·2	103·3
11. Maharashtra	1,253	1,259	118·9	101·9	111·9	92·7	100·5
12. Manipur	47	29	74·3	96·5	96·2	104·7	59·6
13. Meghalaya	N.A.	N.A.	57·1	32·0	N.A.	N.A.	N.A.
14. Nagaland	26	70	79·2	120·0	107·4	76·9	169·2
15. Orissa	385	378	100·0	106·9	77·8	89·6	98·2
16. Punjab	1,040	1,002	114·0	113·9	110·9	91·8	96·3
17. Rajasthan	1,320	1,124	86·2	101·7	97·4	78·8	85·2
18. Sikkim	12	13	84·6	91·7	80·0	33·3	108·3
19. Tamil Nadu	851	752	118·3	100·0	68·9	112·7	88·4
20. Uttar Pradesh	13,984	14,377	77·7	88·9	94·6	100·4	102·8
21. Tripura	42	49	92·3	108·0	144·1	135·6	116·7
22. West Bengal	632	731	90·4	97·8	105·2	109·2	115·7
UNION TERRITORIES							
1. A. & N. Islands	5	4	66·7	20·00	100·0	150·0	80·0
2. Arunachal Pradesh	21	8	61·2	63·6	92·3	100·0	38·1
3. Chandigarh	12	15	77·8	68·2	92·3	150·0	125·0
4. Dadra & Nagar Haveli	4	5	300·0	50·0	150·0	133·3	125·0
5. Delhi	315	301	109·4	125·8	147·4	106·5	95·6
6. Goa, Daman & Diu	36	33	100·0	193·3	76·2	120·5	91·7
7. Lakshadweep	..	..	..	..	..	..	..
8. Mizoram	108	25	91·8	200·0	29·5	118·5	23·2
9. Pondicherry	17	17	155·6	90·9	59·3	100·0	100·0
TOTAL in the country	28,146	27,438	91·9	95·5	97·1	96·8	97·5

TABLE II

Table showing the number of courts available for criminal work in Sessions Courts, disposal in units and average rate of disposal per Court during 4th Quarter of 1976 and 1st, 2nd, 3rd and 4th Quarters of 1977

Name of the State/ Union Territory	Number of Courts available for criminal work	Disposal in Units during			Average rate of disposal per court during				
		4th quarter of 1976	3rd quarter of 1977	4th quarter of 1977	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	32	783	754	1,101	26·1	19·6	18·1	23·6	34·4
2. Assam	9	228	280	238	32·6	28·9	25·4	31·1	26·4
3. Bihar	87	1,754	2,657	1,613	18·3	22·3	25·3	25·8	18·5
4. Gujarat	22	558	613	654	29·4	24·5	28·6	29·2	29·7
5. Haryana	14	287	231	729	41·0	47·1	70·6	33·0	52·1
6. Himachal Pradesh	3	170	63	102	48·6	36·7	38·7	21·0	34·0
7. Jammu & Kashmir	N.A.	110	N.A.	N.A.	15·7	16·0	N.A.	N.A.	N.A.
8. Karnataka	15	422	477	[illegible]77	12·4	22·5	20·8	28·[illegible]	25·1
9. Kerala	16	436	491	472	2[illegible]·3	29·3	17·0	28·9	29·5
10. Madhya Pradesh	73	1,782	2,172	1,961	25·5	31·8	24·6	31·0	26·8
11. Maharashtra	55	1,530	1,519	1,239	26·8	29·6	21·6	23·0	22·9
12. Manipur	2	26	45	28	13·0	2[illegible]·5	25·5	22·5	14·0
13. Meghalaya	N.A.	116	N.A.	N.A.	8·0	4·[illegible]	N.A.	N.A.	N.A.
14. Nagaland	5	19	30	70	[illegible]·2	[illegible]·0	[illegible]·8	5·0	14·0
15. Orissa	20	363	395	378	14·0	11·3	8·4	18·8	18·9
16. Punjab	20	922	983	1,002	57·6	61·8	47·8	49·2	50·1
17. Rajasthan	30	849	1,189	1,124	30·3	38·0	36·3	[illegible]·7	37·5
18. Sikkim	0·5	33	1	13	66·0	44·0	32·0	2·0	26·0
19. Tamil Nadu	20	939	978	752	67·1	34·9	30·0	65·2	[illegible]7·6
20. Tripura	4	84	80	49	28·0	[illegible]7·3	21·3	2[illegible]·0	2·3
21. Uttar Pradesh	203	4,691	16,127	14,377	2[illegible]·1	30·4	67·1	84·4	70·8
22. West Bengal	48	782	1,500	731	19·1	22·6	24·1	28·8	15·2
UNION TERRITORIES									
1. A & N Islands	0·5	2	6	4	4·0	2·0	6·0	12·0	8·0
2. Arunachal Pradesh	3	9	12	8	2·2	1·8	3·[illegible]	3·0	2·7
3. Chandigarh	1	14	12	15	14·0	[illegible]5·0	12·0	12·0	15·0
4. Dadra & Nagar Haveli	0·5	3	4	5	..	20·0	6·0	8·0	10·0
5. Delhi	13	420	396	301	30·0	35·2	30·2	33·0	23·2
6. Goa, Daman & Diu	1	38	53	33	38·0	87·0	32·0	53·0	33·0
7. Lakshadweep	1	..	..	..	..	2·0	..	..	..
8. Mizoram	2	493	3[illegible]	25	493·0	3·3	4·3	10·7	2·5
9. Pondicherry	1	14	16	17	14·0	5·0	2·3	8·0	17·0
TOTAL in the Country	701·5	17,777	31,116	27,438	25·3	27.5	35·5	44·0	30·

TABLE III

Table showing pendency in Sessions Courts on 1-1-1977, 1-10-1977 and 31-12-1977 and rate of increase or decrease during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977

Name of the State/ Union Territory	Pendency as on			Rate of increase or decrease in pendency during					%age increase or decrease in pendency in the period from 1-1-77 to 31-12-77
	1-1-77	1-10-77	31-12-77	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977	
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	1,064	934	875	— 0.1	— 0·1	—10·8	— 1·5	— 6·3	—17·8
2. Assam	1,572	1,752	1,836	+ 5·0	+ 4·4	+ 3·2	+ 3·5	+ 4·8	+16·8
3. Bihar	17,275	18,766	19,732	+ 2·0	+ 2·3	+ 2·4	+ 3·7	+ 5·1	+14·2
4. Gujarat	917	892	842	+ 7·0	— 0·6	—19·3	+19·9	— 5·6	—8·2
5. Haryana	1,226	1,355	1,344	+ 0·8	+18·8	— 9·8	+ 3·1	— 0·8	+ 9·6
6. Himachal Pradesh	378	407	405	+ 4·1	+15·1	— 4·6	— 1·9	— 0·5	+ 7·1
7. Jammu & Kashmir	NA.	NA.	NA.	NA.	NA.	NA.	NA.	NA.	NA.
8. Karnataka	798	663	638	— 6·3	+ 0·5	— 5·4	—12·6	— 3·8	—20·0
9. Kerala	518	619	567	— 1·3	— 2·3	+34·4	— 9·0	— 8·4	+ 9·5
10. Madhya Pradesh	3,089	2,900	2,837	+ 3·0	— 6·6	— 1·6	+ 2·2	— 2·2	— 8·2
11. Maharashtra	3,264	3,192	3,186	— 6·9	— 0·8	— 5·1	+ 3·9	— 0·2	— 2·4
12. Meghalaya	NA.	NA.	NA.	NA.	NA.	NA.	NA.	NA.	N.A.
13. Manipur	45	47	66	+25·0	+ 2·2	+4·3	— 2·1	+40·4	+46·7
14. Nagaland	82	85	41	+82·2	— 4·9	— 3·6	+10·5	—51·8	—50·0
15. Orissa	1,147	1,248	1,255	— 0·1	—20·4	+ 7·9	+ 3·4	+ 0·6	+ 9·4
16. Punjab	1,669	1,550	1,588	—12·0	— 7·6	— 5·2	+ 6·0	+ 2·5	— 4·8
17. Rajasthan	3,167	3,498	3,695	—10·4	— 0·6	+ 0·9	+10·1	+ 5·6	+16·7
18. Sikkim	54	62	60	+10·2	+ 3·7	+ 7·1	+ 3·3	— 3·2	+11·1
19. Tamil Nadu	715	809	908	—16·9	Nil	+28·5	—12·0	+12·2	+27·0
20. Tripura	216	158	151	+ 3·8	— 5·6	—12·7	—11·2	— 4·4	—30·1
21. Uttar Pradesh	32,924	36,341	35,948	+ 4·2	+ 2·1	+ 1·3	— 0·2	— 1·1	+ 9·2
22. West Bengal	3,315	3,148	3,019	+ 2·6	+ 0·8	— 1·9	— 3·9	— 3·1	— 7·[illegible]
UNION TERRITORIES :									
1. A. & N. Islands	4	6	6	Nil	+75·0	+14·3	—25·0		+50·0
2. Arunachal Pradesh	37	41	55	..	+10·8	..	..	+34·	+48·7
3. Chandigarh	19	23	20	+18·8	+36·8	+ 3·8	—14·8	13·	+ 5·3
4. Dadra & Nagar Haveli	7	7	6	—22·2	+28·6	—11·1	—12·5	—14·5	—14·3
5. Delhi	1,082	830	844	— 3·2	— 9·3	—12·9	— 2·8	+ 1·7	—22·0
6. Goa, Daman & Diu	165	124	127	Nil	—25·5	+ 8·1	— 6·8	+ 2·4	—23·0
7. Lakshadweep	..	..	..	..	..	..	.		..
8. Mizoram	177	198	281	+22·6	— 2·8	+18·0	— 2·5	+	+58·8
9. Pondicherry	14	21	21	—26·3	+14·3	+31·3	..	..	+50·0
TOTAL in the Country	74,941	79,676	80,383	+ 1·3	+ 1·1	+ 0·9	+ 1·3	+ 0·9	+ 7·3

TABLE IV

Table showing institution and disposal of cases during the 4th Quarter of 1977 in the Magisterial Courts and disposal as percentage of institution during 4th Quarter of 1976 and 1st, 2nd, 3rd and 4th Quarters of 1977

Name of the State/ Union Territory.	Institution during the 4th quarter of 1977			Disposal during the 4th quarter of 1977			Disposal as percentage of institution during				
	Police Challans	Complaint cases	Total	Police Challans	Complaint cases	Total	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh	63,627	27,545	91,172	65,499	28,153	93,652	103.9	99.8	94.8	101.9	102.7
2. Assam	12,328	12,849	25,077	7,290	10,590	17,880	91.1	77.1	88.1	89.7	77.3
3. Bihar	33,523	19,450	52,973	28,113	17,743	45,856	81.3	155.5	107.0	100.1	86.6
4. Gujarat	91,738	1,41,427	2,33,155	88,860	1,78,665	2,67,525	90.5	87.6	113.8	92.7	114.7
5. Haryana	9,775	2,470	12,245	10,179	2,199	12,378	95.7	101.3	98.7	94.0	101.1
6. Himachal Pradesh	2,315	1,799	4,114	1,905	2,028	3,933	92.8	98.5	82.0	100.6	95.6
7. Jammu & Kashmir	...	...	...	...	...	...	98.4	85.0	N.A.	N.A.	N.A.
8. Karnataka	56,040	7,978	64,018	51,646	7,544	59,190	97.4	95.5	92.5	99.7	92.5
9. Kerala	33,900	12,090	45,990	35,111	12,283	48,394	104.4	106.5	100.2	97.9	94.9
10. Madhya Pradesh	84,441	12,941	97,382	72,275	11,942	84,217	103.4	143.7	91.3	96.6	86.5
11. Maharashtra	1,80,046	57,180	2,37,226	1,73,295	56,670	29,965	96.3	107.4	111.6	121.2	96.9
12. Manipur	242	796	1,038	479	381	860	142.8	21.6	69.8	120.8	82.9
13. Meghalaya	N.A.	N.A.	N.A.	N.A.	N.A.	N.A.	66.0	122.0	N.A.	N.A.	N.A.
14. Nagaland	272	17	289	294	14	308	101.2	64.3	63.1	108.9	106.6
15. Orissa	16,789	10,849	27,638	13,805	8,657	22,462	80.2	253.5	78.6	180.9	81.3
16. Punjab	17,592	3,446	21,038	16,554	3,766	20,320	83.0	101.4	76.8	96.1	96.6
17. Rajasthan	27,856	18,987	46,843	24,691	20,110	44,801	88.4	94.1	101.8	89.2	95.6
18. Sikkim	417	39	456	1,077	39	1,116	193.5	82.0	86.2	101.3	242.7
19. Tamil Nadu	1,98,669	36,432	2,35,101	2,09,343	42,342	2,51,685	106.7	90.5	96.7	103.7	107.1
20. Tripura	3,305	971	4,276	11,208	910	12,118	157.9	102.8	116.7	124.6	283.4
21. Uttar Pradesh	1,00,813	71,532	1,72,345	1,04,540	75,426	1,79,956	88.8	91.9	96.2	97.3	104.4
22. West Bengal	33,310	23,691	1,12,031	84,501	26,319	1,10,820	85.9	97.3	117.2	72.8	98.9
UNION TERRITORIES											
1. A. N. Islands	1,383	67	1,450	1,538	66	1,604	96.1	111.7	135.2	161.0	110.65
2. Arunachal Pradesh	148	51	199	133	26	159	94.8	88.4	135.0	67.3	79.9
3. Chandigarh	204	81	285	182	100	292	89.0	103.0	84.8	85.0	102.5
4. Dadra Nagar Haveli	90	4	94	123	5	128	71.9	190.0	123.8	196.3	136.2
5. Delhi	1,03,413	32,322	1,41,735	98,674	20,267	1,18,941	78.9	71.7	115.6	132.5	83.5
6. Goa, Daman & Diu	915	205	1,120	1,070	170	1,240	3746.2	992.8	335.6	311.9	110.7
7. Lakshadweep	11	2	13	5	..	5	566.7	85.7	50.0	66.7	38.9
8. Mizoram	197	13	215	149	19	168	38.5	35.7	175.2	129.7	78.1
9. Pondicherry	3,311	87	3,398	4,062	91	4,153	128.0	104.8	106.1	95.7	106.5
Total in the Country	11,43,100	4,59,326	16,38,426	11,07,611	5,26,525	16,34,136	96.4	100.6	103.3	100.2	99.7

TABLE V

Table showing number of Magisterial Courts functioning during 4th Quarter of 1977 and] average rate of disposal per Court in units on the basis of time devoted by Courts to criminal work during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th Quarters of 1977 in Magisterial Courts.

Disposal of—

(i) One Police Challan or complaint cases after full trail . . . . — 1 unit

(ii) 20 Police Challan cases by receiving and accepting FR/FF, Compounding or withdrawal . . . . — 1 unit

(iii) 20 Complaint cases by dismissal, absence of complaint, compounding or withdrawal . . . . . — 1 unit

(iv) 10 Police Challan or Complaint cases by committal to Sessions Courts . . . . . . — 1 unit

(v) 50 Uncontested Police Challan or complaint cases . . . . — 1 unit

Name of the States/ Union Territory	No. of courts available for criminal work	Disposal in units during					Average rate of disposal per court in				
		4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1976	4th quarter of 977	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh . .	184	13,157	11,428	12,182	14,015	12,145	74.3	62.4	61.8	72.6	66
2. Assam	53	2,984	2,748	3,335	3,502	2,423	50.6	50.0	59.6	67.4	45.7
3. Bihar	410	8,759	15,879	13,452	15,952	9,465	22.5	43.2	34.5	42.0	23.1
4. Gujarat	118	30,422	23,674	23,303	25,032	21,852	257.8	217.2	173.9	218.0	185.2
5. Haryana . . .	41	3,309	3,305	2,880	3,124	3,881	103.4	106.6	87.3	82.2	94.7
5. Himachal Pradesh . .	18	756	1,063	790	781	701	42.0	59.1	43.9	43.3	58.9
7. Jammu & Kashmir .	N.A.	7,121	5,714	N.A.	N.A.	N.A.	192.5	154.4	N.A.	N.A.	N.A.
8. Karnataka . . .	88	7,609	6,798	6,752	7,742	7,148	65.0	70.1	69.5	88.0	81.2
9. Kerala	107	13,562.	12,720	12,625	11,137	13,157	131.4	123.5	123.8	111.4	123.0
10. Madhya Pradesh . .	221	17,782	20,452	13,730	16,335	13,765	91.7	146.1	92.8	111.1	62.3
11. Maharashtra . . .	330	33,065	34,600	33,769	37,369	24,780	114.4	125.8	102.0	121.3	82.6
12. Manipur . . .	4	180	94	121	176	142	36.0	47.0	30.3	44.0	35.3
13. Meghalaya . . .	N.A.	115	71	N.A.	N.A.	N.A.	61.0	10.1	N.A.	N.A.	N.A
14. Nagaland . . .	15	377	88	113	140	93	15.1	4.2	5.4	6.7	6.2
15. Orissa	120	5,580	14,153	6,241	7,166	5992	67.2	132.3	50.7	49.4	49.9
16. Punjab	76	5,498	5,484	4,246	5,173	6,409	100.0	96.2	66.3	63.4	84.3
17. Rajasthan . . .	192	9,300	8,239	8,182	9,072	7,802	65.2	58.4	54.9	52.7	4.6
18. Sikkim	4.5	38	43	140	50	46	8.4	9.6	31.1	11.1	10.8
19. Tamil Nadu . . .	221	33,864	23,784	27,208	34,123	34,217	169.2	112.7	126.0	155.1	154.8
20. Tripura	25	549	611	518	665	1,281	25.8	27.8	21.6	26.6	51.2
21. Uttar Pradesh . .	619	38,729	37,502	42,531	47,039	39,623	79.4	70.4	68.6	75.1	64.0
22. West Bengal . . .	172	8,721	9,183	9,139	25,905	8,607	52.2	54.7	53.8	154.2	50.0
UNION TERRITORIES :											
1. A. & N. Islands . .	3	147	172	194	177	185	49.0	57.3	64.7	59.0	61.7
2. Arunachal Pradesh .	5	17	223	24	20	31	1.2	2.6	2.7	6.7	6.2
3. Chandigarh . . .	2	112	97	70	83	94	56.0	48.5	35.0	41.5	47.0
4. Dadra & Nagar Haveli .	0.5	6	10	12	22	25	60.0	100.0	120.0	220.0	50.0
5. Delhi	48	4,560	5,962	4,678	5,866	5,127	108.6	145.4	95.3	119.7	106.8
6. Goa Daman & Diu .	7.5	1,118	540	336	363	318	159.7	72.0	44.8	48.4	42.4
7. Lakshadweep . . .	1	4	1	1	2	1	4.0	1.0	1.0	2.0	1.0
8. Mizoram . . .	8	90	7	102	127	55	45.0	0.9	12.8	15.9	6.0
9. Pondicherry . . .	6	391	239	354	401	323	65.2	34.1	50.6	66.8	53.8
Total	3,069.5	2,50,022	2,45,684	2,26,342	2,72,559	2,19,668	88.2	88.0	76.0	91.5	716

TABLE VI

Table showing pendency of Police Challan and Complaint cases in Magisterial Courts as on 1-1-1977, 1-10-1977 and 31-12-1977 and rate of increase or decrease in pendency during 4th quarter of 1976 and 1st, 2nd, 3rd and 4th quarters of 1977

Name of the State/ Union Territory	Pendency as on			Rate of increase or decrease in pendency during					Increase or decrease in pendency in a period of 1-1-77 to 31-12-77
	1-1-77	1-10-77	31-12-77	4th quarter of 1976	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977	
1	2	3	4	5	6	7	8	9	10
1. Andhra Pradesh	69,430	72,840	70,360	—5·3	+0·3	+7·4	—2·6	—3·4	+1·3
2. Assam	95,856	106,899	114,096	+2·3	+5·6	+3·0	+2·6	+6·7	+19·0
3. Bihar	504,283	472,737	479,854	+2·1	—5·5	—0·8	..	+1·5	—4·8
4. Gujarat	425,260	450,516	416,156	+8·0	+9·3	—8·0	+5·3	—7·6	—2·1
5. Haryana	35,286	35,963	35,830	+1·3	—0·3	+0·4	+1·9	—0·4	+1·5
6. Himachal Pradesh	14,895	15,732	15,913	+2·7	+0·4	+5·3	—0·2	+1·2	+6·8
7. Jammu & Kashmir	Not applicable.								
8. Karnataka	61,983	70,817	75,643	+3·1	+5·7	+7·8	+0·3	+6·8	+22·0
9. Kerala	60,119	57,984	60,580	—3·5	—5·2	—0·2	+1·9	+4·5	+0·8
10. Madhya Pradesh	281,660	257,542	270,707	—1·3	—12·2	+2·8	+1·3	+5·1	—3·9
11. Maharashtra	721,861	605,829	613,090	+1·7	—3·0	—4·5	—9·4	+1·2	—15·1
12. Manipur	18,243	20,778	20,956	—4·4	+13·2	+2·1	—1·4	+0·9	+14·9
13. Meghalaya	Not applicable.								
14. Nagaland	867	1,204	1,185	+5·5	+19·7	+20·4	—3·7	—1·6	+36·7
15. Orissa	184,475	144,060	149,164	+4·1	—28·5	+4·6	+4·4	+3·5	—19·1
16. Punjab	46,570	51,315	52,033	+7·0	—0·4	+9·0	+1·5	+1·4	+11·7
17. Rajasthan	245,556	253,602	255,644	+3·3	+1·2	—0·3	+2·4	+0·8	+4·1
18. Sikkim	1,874	2,087	1,427	—10·3	+5·7	+5·9	—0·4	—31·6	—23·8
19. Tamil Nadu	81,518	111,062	94,478	—21·6	+33·8	+11·3	—8·5	—14·9	+15·9
20. Tripura	17,396	15,769	7,927	—15·5	—0·7	—2·8	—5·5	—49·7	—54·4
21. Uttar Pradesh	533,591	592,157	584,536	+4·7	+3·3	+1·3	+1·1	—1·3	+9·5
22. West Bengal	712,112	755,607	756,818	+3·4	+0·6	—3·0	+3·8	+0·2	+6·3
UNION TERRITORIES									
1. A & N Islands	3,832	2,310	2,156	+2·5	—7·8	—11·9	—26·1	—6·7	—43·7
2. Arunachal Pradesh	223	189	229	—1·8	+5·8	—15·3	+17·0	+21·2	+2·7
3. Chandigarh	1,715	1,822	1,815	+2·6	—0·7	+3·3	+3·5	—0·4	+5·8
4. Dadra & Nagar Haveli.	400	209	175	+13·0	—22·0	—7·7	—27·4	—16·3	—56·2
5. Delhi	260,454	245,167	267,961	+9·7	+12·2	—4·4	—12·3	+2·9	+2·9
6. Goa, Daman & Diu	18,164	4,073	3,953	—66·9	—51·9	—28·1	—35·2	—2·9	—78·2
7. Lakshadweep	15	25	33	—48·3	+6·7	+37·5	+13·6	+32·0	+120·0
8. Mizoram	716	701	748	+84·0	+21·6	—13·5	—6·9	+6·7	+4·5
9. Pondicherry	1,804	1,576	1,321	—41·3	—9·8	—13·9	+12·5	—16·2	—26·8
TOTAL	44,00,158	43,50,572	43,54,790	+1·7	—0·2	—1·3	—0·1	+0·1	—1·1

TABLE VII

Table showing number of Police Challan cases pending for want of FF/FR or charge sheet at the end of 4th quarter of 1977 alongwith percentage thereof during the 1st, 2nd, 3rd and 4th quarters of 1977 and number of cases increased or decreased in the period from 31-12-76 and 31-12-77 and percentage thereof

Name of the State/ Union Territory	Police challan cases pending on 31-12-77			Police challan cases pending for want of FR/FF or Charge-sheet as percentage of total Police Challan cases at the end of				No. of Police challan cases pending for want of FR/FF or Charge sheet		No. of cases increased or decreased in the period from 31-12-76 to 31-12-77	%age decrease in the period from 31-12-76 to 31-12-77
	For want of FR/FF or charge-sheet	Otherwise	Total	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977	on 31-12-76	on 31-12-77		
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh	27,225	29,089	56,314	45.2	46.4	49.0	48.3	26,662	27,225	+563	+2.1
2. Assam	24,505	33,638	[illegible]	30.6	29.2	30.8	38.9	13,922	24,505	10583	+76.0
3. Bihar	90,414	1,82,848	2,73,262	30.6	31.8	32.0	33.1	89,186	90,414	+1228	+1.4
4. Gujarat	630	73,594	74,224	4.5	4.5	1.1	0.8	5,717	630	—5087	—89.0
5. Haryana	2,505	26,850	29,355	14.4	8.7	[illegible]	8.5	4,608	2,505	—2103	—45.6
6. Himachal Pradesh	1,167	[illegible]	[illegible]	13.2	11.3	12.7	11.5	1,280	1,167	—113	[illegible]
7. Jammu & Kashmir	Not applicable.										
8. Karnataka	12,477	[illegible]	[illegible]	18.2	15.0	16.0	19.8	9,124	[illegible]	[illegible]	+36.9
9. Kerala	20,293	[illegible]	45,216	42.4	43.4	[illegible]	44.9	20,829	20,293	[illegible]	—2.9
10. Madhya Pradesh	1,545	2,30,648	2,32,193	0.9	0.7	0.6	0.7	2,282	1,545	—737	—32.3
11. Maharashtra	6,745	4,63,168	4,69,913	0.9	1.0	[illegible]	[illegible]	4,484	6,745	[illegible]	+50.4
12. Manipur	2,804	4,906	7,710	44.1	56.6	38.0	36.4	2,454	2,804	350	[illegible]
13. Meghalaya	Not applicable.										
14. Nagaland	67	1,083	1,150	2.3	1.0	25.7	5.8	127	67	—60	[illegible]
15. Orissa	9,710	80,104	[illegible]	8.7	6.8	9.4	10.8	10,178	9,710	[illegible]	[illegible]
16. Punjab	1,599	41,571	[illegible]	6.0	[illegible]	2.4	[illegible]	1,776	1,599	[illegible]	—10.0
17. Rajasthan	34,995	2,34,880	2,69,875	20.4	19.5	21.1	20.6	31,736	34,995	+3259	+10.3
18. Sikkim	..	1,297	1,297	0.3	..	..	..	9	..	—9	—100.0
19. Tamil Nadu	13,664	66,161	79,825	12.2	11.[illegible]	10.2	17.1	9,821	13,664	+3843	+39.1
20. Tripura	1,235	4,521	5,756	9.3	11.9	13.9	21.5	1,199	1,235	[illegible]	+3.0
21. Uttar Pradesh	17,699	3,68,311	3,86,010	4.6	5.1	5.0	4.6	24,977	17,6[illegible]	—7278	—29.1
22. West Bengal	42,063	2,54,239	2,96,302	11.4	[illegible]	14.1	14.2	44,486	42,063	—2423	—5.4
UNION TERRITORIES											
1. A & N Islands	799	1,198	1,997	27.1	25.[illegible]	30.7	40.0	[illegible]	[illegible]	[illegible]	+26.0
2. Arunachal Pradesh	[illegible]	147	170	14.8	12.2	6.8	13.5	49	[illegible]	—26	[illegible]
3. Chandigarh	..	834	834	..	..	..	..	..			..
4. Dadra & Nagar Haveli	..	163	163	..	..	..	..	..	..		..
5. Delhi	974	1,68,494	1,69,468	3.4	0.2	0.1	0.6	[illegible]	974	[illegible]	—55.[illegible]
6. Goa, Daman & Diu	..	2,466	2,466	0.1	..	..	..	..	..		..
7. Lakshadweep	19	3	22	27.3	55.6	93.8	86.4	9	[illegible]	+10	+111.1
8. Mizoram	82	649	731	13.7	[illegible]	10.7	11.2	[illegible]	82	—9	—9.9
9. Pondicherry	941	292	1,233	63.3	76.5	79.7	76.3	1,174	941	—233	—19.8
TOTAL	3,14,380	22,61,435	25,75,815	10.5	11.0	11.6	12.2	3,09,018	3,14,380	+5362	+1.7

TABLE VIII

Table showing number of complaint cases pending on account of enquiries not completed u/s 202 Cr. P.C. at the end of 4th quarter of 1977 along with percentage thereof during 1st, 2nd, 3rd and 4th quarters of 1977 and number of cases increased or decreased in the period from 31-12-1976 to 31-12-1977 and percentage thereof

Name of the State/ Union Territory	Complaint cases pending on 31-12-1977			Complaint cases pending on account of enquiries not completed u/s 202 Cr.P.C. percentage of total complaint cases				No. of complaint cases pending on account of enquiries not completed u/s 202 Cr.P.C.		No. of cases increased or decreased in the period from 31-12-76 to 31-12-77	%age of increase or decrease in the period from 31-12-76 to 31-12-77
	On account of enquiries not completed u/s 202 Cr.P.C.	Otherwise	Total	1st quarter of 1977	2nd quarter of 1977	3rd quarter of 1977	4th quarter of 1977	on 31-12-76	on 31-12-77		
1	2	3	4	5	6	7	8	9	10	11	12
1. Andhra Pradesh .	170	13,876	14,046	0.2	0.5	0.2	1.2	18	170	+152	+844.4
2. Assam . . .	126	50,827	50,953	0.1	0.2	0.1	0.2	66	126	+60	+90.9
3. Bihar . . .	27,304	1,79,288	2,06,592	10.7	10.2	14.9	13.2	23,914	27,304	+3390	+14.2
4. Gujarat . . .	374	3,41,558	3,41,932	0.1	0.1	0.1	0.1	501	374	—127	—25.3
5. Haryana . .	190	6,285	6,475	8.8	0.8	4.4	2.9	363	190	—173	—47.7
6. Himachal Pradesh	47	5,679	5,726	1.6	0.8	0.7	0.8	85	47	—38	—44.7
7. Jammu & Kashmir.	Not applicable.										
8. Karnataka . .	432	11,198	11,630	5.5	5.8	5.1	3.7	537	432	—105	—19.6
9. Kerala . . .	11	15,353	15,364	0.1	0.1	0.7	0.1	13	11	—2	—15.4
10. Madhya Pradesh .	1,386	37,128	38,514	4.4	3.8	3.8	3.6	1,299	1,386	+87	+6.7
11. Maharashtra . .	1,238	1,41,939	1,43,177	0.8	1.0	0.8	0.9	1,197	1,238	+41	+3.4
12. Manipur . . .	..	13,246	13,246	..	..	..	..	..	..	..	..
13. Meghalaya . .	Not Available.										
14. Nagaland . .	..	35	35	6.3	14.3	12.5	..	..	..	..	..
15 Orissa . . .	464	58,886	59,350	0.5	0.6	0.5	0.8	444	464	+20	+4.5
16. Punjab . . .	164	8,699	8,863	2.4	1.6	1.2	1.9	162	164	+2	+1.2
17. Rajasthan . . .	11,881	73,888	85,769	6.1	5.9	13.0	13.8	4,980	11,881	+6901	+138.6
18. Sikkim . . .	..	130	130	10.1	57.1	..	..	25	..	—25	—100.0
19 Tamil Nadu . .	128	14,525	14,653	0.2	0.1	0.2	0.9	44	128	+84	190.9
20. Tripura . .	4	2,167	2,171	0.3	0.4	0.3	0.2	14	4	—10	—71.4
21. Uttar Pradesh .	14,341	1,84,185	1,98,526	7.3	7.7	6.8	7.2	12,147	14,341	+2194	+18.1
22. West Bengal	4,547	4,55,969	4,60,516	0.6	0.6	1.2	1.0	2,300	4,547	+2247	+97.7
UNION TERRITORIES											
1. A & N Islands .	8	151	159	10.7	8.2	3.8	5.0	21	8	—13	—61.9
2. Arunachal Pradesh .	..	59	59	40.0	25.0	7.4	..	1	..	—1	—100.0
3. Chandigarh . .	..	981	981	..	..	..	..	..	..	..	..
4. Dadra and Nagar Haveli	..	12	12	6.7	..	..	..	..	..	..	..
5. Delhi .	195	98,298	98,493	0.4	0.1	0.2	0.2	434	195	—239	—55.1
6. Goa, Daman & Diu	26	1,467	1,487	2.0	1.6	1.2	1.7	24	26	+2	+8.3
7. Lakshadweep .	..	11	11	40.0	..	55.6	..	..	..	..	..
8. Mizoram . .	..	17	17	..	5.9	..	..	..	..	..	..
9. Pondicherry . .	5	83	88	5.2	..	4.4	5.7	3	5	+2	+66.7
Total	63,041	17,95,134	17,77,815	2.9	2.8	3.6	4.5	48,592	63,041	+1 449	+297

TABLE IX

Statement of work done in the Session Courts during the year 1977

Name of the State/ Union Territory	Pendency as on 1-1-1977			Institution during the year			Disposal during the year			Pendency as on 31-12-1977		
	Original	Revision	Appeals	Original	Revision	Appeals	Original	Revision	Appeals	Original	Revision	Appeals
1	2	3		5	6	7	8	9	10	11	12	13
1. Andhra Pradesh	722	512	1,359	2,796	1,276	5,936	2,545	1,308	6,103	573	280	1,232
2. Assam	1,297	514	831	1,046	648	527	783	564	610	1,560	598	780
3. Bihar	13,764	4,941	12,616	8,716	5,017	7,148	5,291	4,790	7,218	16,189	5,168	12,546
4. Gujarat	725	380	552	1,869	1,576	1,991	1,994	1,354	1,964	600	602	609
5. Haryana	953	349	1,017	2,283	814	2,283	1,172	758	2,307	1,064	405	993
6. Himachal Pradesh	131	175	212	325	162	297	295	204	253	127	113	256
7. Jammu & Kashmir	Not applicable.											
8. Karnataka	521	433	951	1,910	701	1,403	1,095	728	1,750	436	406	604
9. Kerala*	255	556	759	973	1,458	1,428	944	1,356	2,441	284	649	765
10. Madhya Pradesh	1,840	2,334	3,953	5,470	3,901	6,268	5,561	4,116	8,858	1,749	2,079	3362
11. Maharashtra	2,557	1,455	2,085	3,718	4,796	5,112	5,953	4,415	4,725	2,322	1,866	2,456
12. Manipur	32	50	14	157	174	40	139	166	33	50	58	21
13. Meghalaya	Not applicable.											
14. Nagaland	77	12	15	110	2	6	150	3	14	57	11	7
15. Orissa	587	705	2,097	1,020	693	2,341	986	722	1,938	622	676	2,490
16. Punjab	725	1,690	2,702	2,536	1,589	4,713	2,506	1,530	4,909	935	759	2,506
17. Rajasthan	1952	1,586	4,491	3,118	2,416	7,164	2,890	2,529	5,555	2,180	1473	6,100
18 Sikkim	54	..	2	56	6	6	52	2	3	58	4	5
19. Tamil Nadu	427	251	1,193	1,367	1,230	7,694	1,299	1,013	7,394	511	478	1,499
20. Tripura	165	143	103	226	247	117	288	236	141	104	156	79
21. Uttar Pradesh*	31,272	2,922	5,536	51,813	7,852	11,131	33,755	7,550	11,995	34,398	3,282	4,467
22. West Bengal	3,163	498	270	3,851	1,509	1,172	4,134	1,541	1,102	2,890	436	360
UNION TERRITORIES												
1. A & N Islands	4	..	1	13	6	14	12	4	11	5	2	4
2. Arunachal Pradesh	36	1	2	57	..	2	39	1	1	54	..	3
3. Chandigarh	11	11	31	28	44	87	30	32	85	9	23	33
4. Dadra & Nagar Haveli	7	..	1	11	2	8	13	2	5	5	..	3
5 Delhi	857	336	921	922	502	1,609	1,116	505	1,830	663	203	700
6. Goa, Daman & Diu	113	34	177	67	146	352	101	149	371	79	81	355
7 Lakshadweep	1	..	..	..	2	..	1	..	..	..	2	..
8. Mizoram	177	..	..	184	2	..	80	..	..	281	2	..
9. Pondicherry	2	14	47	21	37	140	16	42	124	7	9	63
Total	63,79	18,904	41,930	92,763	36,848	71,990	62,838	35,910	71,741	67,992	19,841	42,103

* The figures of Kerala, Orissa and Uttar Pradesh do not tally as the revised figures were submitted by those States/High Courts.

TABLE X

Statement of work done in the Magisterial Courts during the year 1977

Name of the State/ Union Territory	Police Challan Cases				Complaint Cases			
	Pendency as on 1-1-77	Institution during the year	Disposal during the year	Pendency as on 31-12-77	Pendency as on 1-1-77	Institution during the year	Disposal during the year	Pendency as on 31-12-77
1	2	3	4	5	6	7	8	9
1. Andhra Pradesh	56,797	2,69,036	2,69,519	56,314	12,633	1,08,727	1,07,314	14,046
2. Assam	51,120	45,226	33,203	63,143	44,736	54,386	48,169	50,853
3. Bihar	2,74,335	1,35,612	1,36,685	2,73,262	2,29,948	83,666	1,07,022	2,06,592
4. Gujarat	84,715	4,15,545	4,26,036	74,224	3,40,545	7,15,837	7,14,450	3,41,932
5. Haryana	29,159	35,287	35,091	29,3[illegible]5	6,127	7,401	7,053	6,457
6. Himachal Pradesh	9,431	8,965	8,209	10,187	5,464	8,130	7,868	5,726
7. Jammu & Kashmir	Not available.							
8. Karnataka	52,486	2,50,285	2,38,756	64,015	9,497	30,747	28,614	11,630
9. Kerala*	45,502	1,35,240	1,35,626	45,216	14,617	56,892	56,145	15,364
10. Madhya Pradesh	2,44,568	3,05,198	3,17,573	2,32,193	37,092	44,959	43,537	38,514
11. Maharashtra	5,64,475	8,11,720	9,06,282	4,69,913	1,57,386	2,87,904	3,02,113	1,43,177
12. Manipur	5,910	3,668	1,868	7,710	12,333	3,247	2,334	13,246
13. Meghalaya	Not available.							
14. Nagaland	804	1,557	1,211	1,150	63	300	328	35
15. Orissa*	1,11,933	69,474	91,065	89,814	72,542	49,273	63,223	59,350
16. Punjab	37,173	59,901	53,904	43,170	9,397	13,301	13,835	8,863
17. Rajasthan	1,60,571	1,06,720	97,416	1,69,875	84,985	88,169	87,385	85,769
18. Sikkim	1,719	2,242	2,664	1,297	155	314	339	130
19. Tamil Nadu	66,926	1,05,586	9,92,686	79,825	14,593	1,69,747	1,69,687	14,653
20. Tripura	14,563	11,243	20,050	5,756	2,833	3,745	4,407	2,171
21. Uttar Pradesh*	3,60,456	4,87,574	4,87,562	3,86,010	1,73,135	3,36,379	3,08,657	1,98,526
22. West Bengal	3,11,815	4,33,076	4,48,589	2,96,302	4,00,297	1,83,653	1,23,434	4,60,516
UNION TERRITORIES								
1. A & N Islands*	3,683	6,276	7,977	1,997	149	264	254	159
2. Arunachal Pradesh*	204	400	382	170	19	118	85	59
3. Chandigarh	855	1,000	1,021	834	860	477	356	981
4. Dadra & Nagar Haveli	384	354	575	163	16	20	24	12
5. Delhi	1,69,746	3,35,119	3,35,397	1,69,468	90,708	1,07,122	99,337	98,493
6. Goa, Daman & Diu	16,816	3,436	17,786	2,466	1,348	894	755	1,487
7. Lakshadweep	12	26	16	22	3	15	7	11
8. Mizoram	714	659	642	731	2	129	114	17
9. Pondicherry	1,740	14,863	15,370	1,253	64	431	407	88
TOTAL	26,78,611	49,55,288	50,83,161	25,75,815	17,21,547	23,56,947	22,97,253	17,78,975

*The figures of Orissa, U. P., Kerala, A & N Islands and Arunachal Pradesh do not tally.

APPENDIX 2

SPECIAL LIST SYSTEM IN KERALA

It should be the aim of every court to dispose of the cases before it with the utmost expedition consistent with a full and fair hearing, without sacrifice of quality and with as little expense and inconvenience as possible to the parties and others concerned. This requires (apart, of course, from what is most important, earnestness on the part of the presiding officer) a suitable ordering of the work of the court. Of extrinsic factors the greatest impediment is the gross over-posting courts generally make with the attendant evils of indiscriminate adjourments and piecemeal hearings extending over months, often years. In a good many munsiffs' courts as many as 30 to 40 suits are posted for trial for a day whereas there is no reasonable chance of more than two being tried. In a magistrate's court, as many as 30 or 40 witnesses are summoned whereas there is no prospect of more than 10 being examined. Apart from the waste of time involved in calling the cases, in ordering applications for adjournment—one side or the other, in almost every case, will seek an adjournment— and securing with difficulty sufficient work for the day—in some courts, the roll-call, as this process is called, takes the best part of the morning—this results in a state of uncertainty as to which of the cases posted will actually be taken up for hearing and leaves the parties, the lawyers and the court itself in a state of unpreparedness. Since almost all the cases will have to be adjourned for want of time, no one takes the posting seriously. No one holds himself in full readiness since that would be a waste of time, money and energy, the odds being that the case will not be taken up. A number of cases are begun and then adjourned to be heard piecemeal at long intervals, even witnesses being examined piecemeal; a large number of part-heard cases accumulate—in some courts, there are more than a hundred at a time; with a mind already mortgaged to so many part-heard matters, neither the court nor counsel are able to bestow much thought to or come to grips with the matter actually on hand; at each hearing of a case much of what was done before will have been forgotten and will have to be recalled; the more difficult cases are passed over to grow older, everybody concerned being pre-disposed in favour of the lighter cases; and the numerous adjournments which even the simplest case suffers not merely involve more work for everybody concerned, and a less satisfactory conduct and disposal of the case itself, but also entail unnecessary expense of time and money to the parties in attending court, in bringing witnesses and in instructing the lawyers. Witnesses are not examined on the days on which they are in attendance with the result that they are not in attendance when they are required. And, it often happens that, owing to the failure of the other work posted, a lawyer is compelled to get on with a case on a day when, owing to the absence of witnesses or for other reasons, he is not really ready to do so, the case having been adjourned on the days he was ready; and not infrequently, the charge is levelled that for the sake of an easy disposal, the presiding officer insists on a case in which the parties are not ready for being heard, adjourning at the same time cases in which the parties are ready. In defence of this system of over-posting (if system it can be called), it is often urged that it makes for larger disposals and permits of accommodation to the bar while ensuring that the court is not left without work. It is also that there is an understanding that only the oldest of the cases will be taken up. If that be so, it is difficult to understand why the newer cases should be posted at all, for, it would follow that the parties concerned would not expect them to be taken up and would therefore not be ready. In fact, over-posting tends to smaller not larger disposal; it certainly makes for unsatisfactory and haphazard trials and disposals; and while if only a sufficient number of cases are posted for a day, the court can reasonably insist on that work being ready—and, once parties and their lawyers have had sufficient notice of the posting of a case for trial there would appear to be no justification for further accommodation—the result of posting more is that no one will be quite ready and that one side or the other in each case will ask for an adjournment. The refusal of an adjournment will be resented when so many cases have perforce to be adjourned and the result might well be to leave the court without sufficient work for the day.

The expeditious and satisfactory disposal of cases demands that, once a case is begun, it should be heard continuously from day to day——where, as in a warrant case, the trial is in stages, each stage should be heard from day to day. This is indeed enjoined by both the codes of procedure—see section 344 of the Criminal Procedure Code and the proviso to Order XVII rule 1 of the Civil Procedure Code. Adjournments should not be granted except for good and sufficient cause and unless justice would otherwise suffer; and, of course, a person must suffer the consequence of his own default. The ideal would be for one case to be completed before another is taken up, and, to reach as near as possible to that, it is essential that no more work should be posted for a day than can reasonably be expected to be taken up. And, time permitting, all the work posted for the day must be taken up.

One great advantage of posting only as much work as can be taken up and of the certainty that the work will be taken up is that the lawyers can study the cases for the day thoroughly in advance and be fully prepared to conduct them.

The presiding officer also can, and should, prepare himself by going through the papers which should be taken home the previous evening.

The following system of posting of contested matters of various classes for actual hearing (as distinguished from the preliminary work necessary to make a case ready for hearing) is commended.

CIVIL

A. Original Suits

This may be called the "Special List System". Under this system no contested suit will be taken up for trial unless it is posted for the day in the special list to be prepared and published in the following way. In a munsiff's court, the Bench Clerk will, as at present, post all ready contested suits in the hearing book at the rate of, say, about six a day, so that all the ready suits will be called up once in two months or three months. But it will be clearly understood that this posting is merely formal and intended only for the purpose of reporting compromise, death or parties and the like, and that no suit will be called on for hearing unless it is in the special list. The special list will be prepared at the beginning of a month for the whole of the following month. For each day of the following month two suits (and no more) will be selected from out of the suits posted for the day in the hearing book. One will invariably be the oldest of these suits; the other will be chosen from among the remaining suits having regard to the nature of the old suit. Almost always, the old suit will be a heavy suit and therefore the second suit chosen should be a light suit. The result will be that there will be only two suits posted for a day, and, roughly speaking, one will be heavy and the other light. (When a statutory stay which has been in force for some time is vacated, there will generally be a large number of old suits available for trial, in which, by reason of the new law, there might not be much evidence to adduce and the trial of which might not take much time. Under such circumstances, both the suits selected may be old suits and more than two may be posted per day if there is a reasonable prospect of the trial being completed).

This list which is a provisional list will be published (by affixture to the court notice board, a copy being sent to the Bar Association) by the 5th of each month. Between the 5th and the 10th any representation which the lawyers might have to make will be heard and the necessary changes made. The final list will be published by the 10th—the list, it will be recalled, is for the following month—and it will be clearly understood that, except for compelling cause, no adjournment will be given thereafter. No hardship whatsoever is involved in this, since every lawyer and every party has clear notice ranging from three to seven weeks that his suit will be peremptorily taken up for hearing on a particular day.

So far as suits not appearing in the special list are concerned, it will be sufficient to formally adjourn them with the remark,

"Not in the list. Adjourned...............".

With regard to suits that are in the special list, these suits must be taken up without fail so long as there is time, unless circumstances compel an adjournment. If for any reason, a suit posted for the day cannot be taken up, it will stand out of the list and be formally adjourned to some other day unless for some special reason, such as that the suit being a very old suit cannot wait till it gets into the special list again, the presiding officer thinks it necessary to post it peremptorily to a particular date.

(Such posting will be made in consultation with both sides, and, if necessary, one of the suits already posted for that day in the special list will be removed from the list, this being notified on the notice board). Failing that, the suit will not be taken up until it reappears in the special list and it will not be allowed to interfere with the postings already made in the special list for the month or for the following month.

Ordinarily, it can be expected that the evidence in the light suit will be completed before the lunch interval, and, by the lunch interval, it should ordinarily be possible to say whether that in the heavy suit will be completed that day or will go to the next day. If it is expected to take a substantial part of the next day also, the heavy suit posted for the next day will be taken out of the list and the lawyers concerned informed accordingly. It will not ordinarily be necessary to take out the light suit which may be completed before the part-heard heavy suit from the previous day is taken up. And, so on, if the heavy suit goes to a third or a fourth day. In any event, once a suit is taken up for hearing, the trial must proceed from day to day, until the evidence on both sides is completed, and there should not be more than one part-heard suit at a time. Once the evidence is closed, the suit may be adjourned, if necessary, to some convenient later day for arguments. (This will be necessary only in the case of complicated suits. In most suits arguments should be heard immediately after evidence is closed, when the evidence is fresh in the minds of the advocates and the presiding officer, and, if that is done, it should be possible to pronounce judgment within a week if it is not done forthwith by dictation from the bench. If the provisions of Order XVIII, rules 1 and 2 regarding the opening of a case and addressing the court at the close of the evidence are followed—they rarely are—the address or "argument", as it is called, should not take much time). But, the trial proper should be from day to day.

It is essential that for the proper working of this system that no adjournments are granted except for really compelling reasons. Even so, it might sometimes happen that both the suits posted for the day collapse. In that event, which can happen only very occasionally, the time left over can profitably be utilised by the presiding officer in checking the various branches of his office or in dictating judgments that have been reserved.

It is necessary that no suit should appear in the special list until it is fully ready for trial. Commissions and the like should be taken out at the earliest possible opportunity and the taking out of a commission after a suit has come into the special list should be discountenanced. Presiding officers should themselves settle issues (there is no objection to obtaining draft issues provided the actual settling is done by the officer after acquainting himself with the pleadings) and the time spent by them on this will

be amply repaid. If this is done, the presiding officer will know at the time of settling issues whether a commission or other preliminary work will be necessary before the suit can be taken up for hearing, and, if this is necessary, he will post the suit to a particular day for an application for the purpose and the suit will not be regarded as ready until the preliminary work is done. He will also be able to make a note in the notes paper regarding the light or heavy nature of the suit and this will be helpful in preparing the special list.

It is also necessary that the provisions of Order VI rules 14 to 18, Order VIII rule 1 and Order XIII, rules 1 and 2, Civil Procedure Code, are strictly enforced and that documents are filed long before the suit appears in the special list. This can be ensured by allowing applications to excuse delay, if they are allowed at all, only on terms which should be very heavy once a suit has come into the special list. The provisions in question are designed not so much to check the production of spurious documents (which with some forethought can be manufactured in time) but to prevent either party from taking the other by surprise; and after some time it would be as well to enforce the provisions very strictly in respect of cases that have appeared in the special list.

In the Sub Courts, of course, it will not be possible to post two suits for a day and some modification will be necessary. Posting can be on a weekly instead of on a daily basis. Three suits may be selected for a week. One must be the oldest of the suits posted in the hearing book for the week; the remaining two may be selected from the rest having regard to the heaviness of the first, preference being given to the older suits; it will be convenient if the old heavy suit is always posted to a particular day of the week, say, Monday, the two light suits being posted to Thursday (or Wednesday) and Friday. In the hearing book also postings should be on those same days so that a selected suit will be posted in the special list for the same day as it stands posted in the hearing book. When sessions postings are made, the suit posted for the day should, if the sessions case is likely to take time, be removed from the list and the lawyers concerned informed forthwith. In Sub Courts there can be no risk of the work entirely collapsing for a sufficient number of appeals can be posted for each day.

To enable a check as to how the system is being worked, each court will send the District Judge a copy of its list at the end of the month with remarks as to the progress made in each case as illustrated in the form given below. The District Judge will review the working of the system by each court and submit the lists with a copy of his review to the High Court.

It is made clear that the system is not intended to fetter in any way the discretion vested in the court to grant adjournments under Order XVII rule 1 of the Code of Civil Procedure. It only emphasizes that an adjournment should, as the rule itself says, be granted only for sufficient cause, and that, as the proviso to the rule lays down, the hearing should be from day to day. An adjournment should, of course, be granted if otherwise justice would suffer but no one should be allowed to take advantage of his own default—he must suffer its consequences.

FORM

Date	Suits posted	Progress made	Hour at which court rose for the day
1-6-1970	O.S.3/70	Heard. Judgment reserved and pronounced on 5-6-70.	
	O.S.112/67	Part-heard. Trial continued on 2/6, 3/6. Judgment pronounced on 15-6.	5 p.m.
2-6-1970	O.S.315/69	Compromised.	
	O.S.118/67	Removed from the list because of part-heard O.S.112/67	5 p.m.
3-6-1970	O.S.15/70	Dismissed for default	
	O.S.10/68	Removed from the list because of part-heard O.S.112/67	4 p.m.
4-6-1970	O.S.463/69	Decreed ex parte	
	O.S.1/66	Adjourned because of death of plaintiff	3 p.m.

B. OTHER PROCEEDINGS

8. *Other proceedings*

Other proceedings involving the examination of witnesses may, and once they become old should, be treated as original suits for the purposes of the special list.

C. APPEALS

A certain amount of latitude is permissible in the case of appeals and other proceedings not involving the examination of witnesses, but, even so, in appeals and other cases requiring preparation, the lawyers must be given fair notice as to which of the many cases posted in the hearing book are to be actually taken up. At a fixed hour every day, either just before or immediately after the lunch break, the work for the following day can be settled in open court giving the lawyers concerned an opportunity of being consulted. Only as much work as can be taken up should be posted for the day, trial work being ignored against the possibility of its collapse. Preference should be given to old cases. A list of cases to be heard the following day should be published on the notice board by 3 p.m. each day and ordinarily adjournments should only be for want of time.

CRIMINAL

Sessions cases

Sessions cases should be given precedence over all other work and no other work should be taken up on sessions days until the sessions work for the day is completed.

A sessions case once posted should not be postponed unless that is unavoidable, and once the trial has begun, it should proceed continuously from day to day till it is completed. If for any reason, a case has to be postponed or adjourned, intimation should be given forthwith to both sides and immediate steps be taken to stop the witnesses and secure their presence on the adjourned date.

On receipt of the order of commitment the case should be posted for trial to as early a date as possible, sufficient time, say, three weeks, being allowed for securing the witnesses. Ordinarily, it should be possible to post two sessions cases a week, the first on Monday and the second on Thursday, but sufficient time should be allowed for each case so that one case does not telescope into the next. Every endeavour should be made to avoid telescoping and for this, if necessary, the court should commence sitting earlier and continue sitting later than the normal hours. If the entire day is devoted solely to sessions work and if proper control over the proceedings is exercised by the judge, the ordinary run of cases should not take more than two days and only very heavy cases need go beyond the third day. Judgment in the case begun on Monday should ordinarily be pronounced in the course of the week and that begun on Thursday the following Monday.

Appeals and Revisions

These should be posted as early as possible, usually within three weeks of institution. The posting should be made as far as possible in consultation with both sides and so as not to clash with sessions work. These cases should be given precedence over all other work, except sessions work, and, ordinarily, no adjournment should be given although there is no great harm in following the "one adjournment" rule followed by some judges whereby one short adjournment (and no more) of a week or ten days is given on request.

Inquiries and Trials by Magistrates

The posting of cases involving the examination of witnesses should be so made that the number of witnesses summoned for a day should not greatly exceed the number that can be examined. A magistrate should know, roughly speaking, how many witnesses can be examined in the time left after dealing with cases not involving the examination of witnesses. If, for instance, eight witnesses can be examined, not more than ten or twelve should be summoned for the day and cases for trial must be posted accordingly. Of course, there can be no hard and fast rule. It might be that in one case there are a large number of short witnesses while in another there are few witnesses, but each with a long story to tell. However, with some care in posting, it should be possible to ensure that, by and large, the witnesses in attendance on a day are examined on that day or at least on the following day.

Each stage of a case should be tried continuously from day to day as enjoined by section 344 of the Criminal Procedure Code and while the posting should, as far as possible, be made to suit the convenience of both sides, adjournments should be granted only for sufficient cause.

When the accused is not in custody or has not been bound over and his presence has to be secured, the case may first be posted for the appearance of the accused. In a summons case the questioning of the accused under section 242 of the Code should be done on the very day of his appearance and if there is no conviction under section 243, the case should be posted to a convenient date as early as possible for the examination of the prosecution witnesses. The prosecution witnesses should be examined continuously and at the close of the prosecution evidence, the accused should straightaway be examined under section 342 of the Code. Thereafter, if the accused wants witnesses to be examined in his defence, the case should be adjourned to some convenient date as early as possible for the examination of defence witnesses who should also be examined continuously. Arguments should be heard on the completion of the evidence and ordinarily no adjournment should be given for the purpose.

In a preliminary enquiry under section 207A, that section itself requires that the case should ordinarily be posted for enquiry within fourteen days of the receipt of the charge-sheet, a later date being permissible only for reasons to be recorded in writing. Here too, the witnesses for the prosecution should be examined continuously and at the close of the evidence it should be possible to examine the accused and complete the enquiry and either frame a charge or decide to discharge the accused. In an enquiry under section 208, the prosecution witnesses should be examined continuously and the accused examined at the close of the prosecution evidence. Then an adjournment should be given if there are witnesses for the defence and such witnesses should also be examined continuously. Arguments, if any, should be heard on the completion of the evidence and a charge framed or a decision to discharge the accused taken without delay.

In warrant cases instituted on a police report, the stage of discharging the accused under section 251A(2) or framing a charge under section 251A(3) can be reached on the very day of the accused's appearance. If there is no conviction under section 251A(5), the case should be adjourned to a convenient date as early as possible for the examination of the prosecution witnesses, whose examination must proceed continuously. At the close of the prosecution evidence, the accused should be examined, and, if he has witnesses to summon in his defence the case should be adjourned to some convenient date for the examination of defence witnesses which also should be done continuously. Arguments, if any, should be heard forthwith and the trial closed.

Likewise, in a case instituted otherwise than on a police report, each stage of the case should be heard continuously and arguments heard on the closing of the evidence.

APPENDIX 3

LAW COMMISSION OF INDIA

DELAY IN DISPOSAL OF CASES AND PENDING ARREARS IN COURTS

INTRODUCTORY NOTE

For some time past, public attention has been focussed on the problem of delay in the disposal of cases and pending arrears in the courts. Statistics relating to judicial business, in general, show a continuous increase in the volume of pending litigation. There is already a backlog of cases in many courts; further increase may put a severe strain on the largely over-burdened judicial machinery, and pose a pressing challenge. In specific terms, the figures of institution, pendency and disposal of cases in the High Courts and subordinate Courts show that the burden has been constantly increasing. The judicial system, by and large, is working well, and this is reflected in the relatively high popular esteem of the courts. But it is apprehended that the increasing volume of cases before the courts might affect the quality of justice and shake public confidence in the courts.

The Law Commission of India has, in conformity with its terms of reference, decided to elicit informed opinion on the subject by means of this Questionnaire.

This Questionnaire, it is needless to say, is not based on any pre-conceived notions as to the remedies that should be adopted to reduce the arrears. The objective is to explore all possible avenues, and to elicit opinion in the hope that ultimately an effective and practicable solution, substantially acceptable to all concerned, might emerge.

Efforts and proposals to solve the problem of arrears in the Courts have been many and varied in the past. There have been suggestions for the appointment of additional judges, changes in the distribution of business, amendments in the rules of procedure, the elimination of delaying tactics and the like. The problem, however, has persisted, requiring again a review of the position.

It is no exaggeration to speak of an impending crisis in judicial administration. To understand how this crisis has come about, it is necessary to inquire into the factors leading to workloads and the procedure adopted for disposal of that load.

The factors leading to judicial workloads may be broadly classified as extra-legal and legal. For example, with the increase in population, there is naturally an increase in the work of the courts. In addition, our society is now far more complex than twenty-five years ago. These are extra-legal factors.

New rights have been brought into being, and older rights (such as contract and property) have been made subject to Government regulation and legal control. New social interests are also pressing for recognition in the courts. In part, the increase is contributed by legislation and by broadened governmental programme of all kinds, since issues arising out of these ultimately reach the courts for resolution. These factors may be described as legal.

All these developments have increased the demands on the law and its institutions, and it is desirable to ascertain the factors leading to increase in judicial business. The first few questions therefore solicit views on this aspect.

In terms of improving disposal, two general approaches are available. The resource inputs (Judges, clerks and facilities) can be increased, or the existing resources can be utilised more efficiently.

It is axiomatic that the workload of a court is determined by the number of cases that have to be handled, multiplied by the average amount of work that has to be performed in connection with each case. The volume of institution and the rate of disposal, therefore, form the subject matter of the bulk of the questions. The time that is needed for disposal necessarily involves an examination of the procedure for disposal—which has been dealt with in a few questions.

The workload so arising has to be distributed amongst the Judges available. Their numerical strength, and the time actually applied by them in disposing of the workload, are therefore relevant and form the subject of a few questions. Attention has also been paid to the question of adequacy of the staff of the Courts.

Bearing in mind that the overall reduction of arrears could be achieved by improving one or more of these three factors, namely, by reduction in the number of cases, reduction in the average amount of work that has to be performed in connection with each case and reduction of the workload of each Judge (by increase in the total number of judges), the Commission has, in the Questionnaire, included questions that deal not only with the organisation of the courts, the number and selection of Judges and the distribution of business, but also with certain suggestions concerned with jurisdiction of courts. Attention has also been paid to the aspect of distribution of business.

Many of the questions focus attention upon the appellate process and appellate jurisdiction. Nobody can object to a given volume of appeals, however large—or for that matter, to a given volume of any other type of litigation—but if the volume has a serious effect on the speed of disposal, or otherwise has an adverse impact on the judicial process, the matter requires attention.

A view has been expressed that if the High Court is to function well, it is important that certain judges should specifically be assigned to deal with specific subjects so that they can develop expert knowledge in the field. Some of the questions, therefore, deal with this aspect.

The questions relating to delay in the subordinate courts take into account the recent amendments in the Code of Civil Procedure, 1908 and the recent revision of the Code of Criminal Procedure, 1973. It may be that experience of the working of the amended or revised law has not yet been long enough to justify further changes. However, the Commission would like to elicit informed public opinion on the relevant issues.

Some of the questions might appear to carry radical implications. In putting forth these questions, as already stated, the Commission has no pre-conceived notions. The hard facts of delayed justice have, however, driven many persons to a re-thinking about the existing system.

The solution may not be found in any single administrative or procedural measure or merely in the increase in the number of Judges or Courts, but in a combination of several measures, and the efficient use of judicial time and the active co-operation of the legal profession with the Courts in the expeditious disposal of the work of the Court.

It is in this background that the Law Commission of India has decided to elicit views on various aspects of the problem of arrears. The Commission will be grateful for reasoned and detailed expression of views on each question. On any matter not covered by specific questions but regarded as relevant to the problem of arrears in the Courts, suggestions are, of course, welcome.

HIGH COURTS

The problem and its principal causes

Causes.

Q. 1. (a) If you regard the problem of arrears in the High Courts as requiring serious consideration, to what extent is it due, in your opinion, to one or the other of the following factors:—

(i) increased institution of cases;

(ii) decreased disposal of cases.

(b) If, in your view, arrears in High Courts can be attributed to increased institution, please state what, in your view, are the main factors contributing to such increased institution.

What measures would you suggest to remedy the defects?

Decrease in disposal-causes.

Q. 2. If arrears in the High Courts are, in your view, due to decrease in disposal, what are the concrete factors to which you would attribute such decrease, and the remedies that you would suggest to improve the position?

Organisation of the High Courts—

Selection of Judges and Distribution of Business

Hearing by Single Judge.

Q. 3. It has been suggested that High Courts in which there is a sizable number of cases pending for more than one year, should adopt a system whereunder all cases should be heard by single Judges, excepting—

(a) death sentence cases and appeals against acquittal;

(b) appeals, where allowed, against judgments of Single Judges;

(c) cases where there is a statutory requirement to the contrary; and

(d) cases where hearing by a bench of three Judges is necessary to settle the law on a particular point or for other special reasons.

It has been further suggested that the constitution of benches with more than three Judges in such High Courts should not be permissible under any circumstances.

What are your views in the matter?

Special knowledge.

Q. 4. It has been suggested that cases relating to a particular branch of law should be heard only by Judges with special knowledge of such branch of law, and also that the High Court may be divided into different jurisdiction, such as:

1. Civil;
2. Criminal;
3. Writs;
4. Tax;
5. Labour.

What are your views in the matter?

Hearing by same Judge.

Q. 5. It has been suggested that as a rule the same Judge or Bench should hear a case in all its stages, including preliminary admission, consideration of interlocutory orders and final hearing.

What are your views in the matter?

Jurisdiction of the High Courts: Suggested Limitations

Q 6. Have you any suggestion to make as to— *Original jurisdiction.*

(a) the ordinary original civil jurisdiction of the High Courts, or

(b) limiting appeals from district court to questions of law, or

(c) abolishing or limiting Letters Patent Appeals, in cases where such appeal is at present permissible—

(i) against an original judgment ? or

(ii) against an appellate judgment on first appeal ?

Q. 7. It has been suggested that in order to reduce the arrears in High Courts, proceedings for the grant of certificates by the High Court under article 133 or 134 of the Constitution should be eliminated, leaving it for the Supreme Court alone to grant such leave under article 136 of the Constitution. *Appeals under Articles 133-134.*

What are your views in the matter ?

Q. 8. There has been a recommendation by the Law Commission[1] and the High Courts Arrears Committee[2] to the effect that the procedure of reference to the High Courts in direct tax cases against judgment of Income Tax Tribunals should be replaced by an appeal to the High Court on question of law. What other measures besides such an amendment would help in facilitating or expediting the disposal of matters relating to direct taxes ? *Income-tax references.*

Procedure for hearing in the High Courts

Q. 9. It has been suggested that it should be provided that no relief should be granted in any appeal, revision or writ petition if the court is satisfied that no substantial injustice has been caused to the person seeking relief, even if there have been any irregularities. *Relief to be granted only if substantial injustice.*

How far do you agree with the suggestion and in what respects do you regard the existing provisions in the Code of Civil Procedure[3] on the subject as requiring to be amplified ?

Q. 10. It has been suggested[4] that in order to avoid delay, civil appeals and Revisions should be filed in the original court which passed the impugned decree. This court should forward the appeal to the High Court, along with the records of the case, and should also fix the date for appearance of the parties in the High Court. *Filing of appeals.*

Do you agree with the suggestion ?

Q. 11. (a) It has been suggested[5] that service of notices should be effected by registered post in all proceedings and, in case of failure at the first attempt, the person seeking relief from the court should be required to effect service on the other parties and to file an affidavit of service[6]. *Service.*

What are your views in the matter ?

(b) It has been suggested[7] that the service of notice in appeals through the process server should be abolished.

(i) The first service may be effected by registered post upon the party.

(ii) All other notices including notice of appeal in the matters still pending in court should be effected on the counsel, it being a statutory liability of the counsel to accept service of notices

Do you agree with the suggestion ?

Q. 12. It has been suggested[8] that—

(a) in civil appeals, the preparation and printing of the paper books should be left to the parties, and they should file them in 3 months' time in the High Court upon the completion of service ; *Paper books.*

(b) in criminal appeals, the paper books need not be prepared. The trial court should record evidence on the typewriter and the carbon copy of the evidence may be placed on the record of the case ;

(c) paper books should be cyclostyled

Do you agree with the suggestion ?

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[1]Law Commission of India, 58th Report (Structure and Jurisdiction of the Higher Judiciary) (January, 1974), page 75, para 6.23.

[2]High Courts Arrears Committee Report (1972), Chapter V, para 43, page 60 and para 80, page 69.

[3]Sections 99 and 99A, Code of Civil Procedure, 1908, as amended in 1976.

[4]Suggestion of a High Court Judge.

[5]Suggestion of a High Court Judge.

[6]Compare Order 5, Rule 19A, Code of Civil Procedure, 1908 (as amended).

[7]Suggestion of a High Court Judge.

[8]Suggestion of a High Court Judge.

Perjury

Q. 13. It has been suggested that in case of clear perjury being established either in an affidavit or in oral evidence, the court should have the power to impose punishment straightaway after giving an opportunity to the person concerned, instead of merely filing a complaint in a criminal court. A right of appeal, should, however, be given to such person. How far do you regard the existing law[1] on the subject as requiring amplification in this regard ?

Arguments and judgment in High Courts

Q. 14. It has been suggested that except with the leave of the court—

Time limits.

(a) a maximum limit of 15 minutes for the hearing of a case at the stage of admission should be prescribed ;

(b) a maximum limit of 10 minutes for hearing of an interlocutory matter should be prescribed.

Do you agree with the suggestion ?

Citation of case law and consolidated fee.

Q. 15. The following suggestions relating to arguments, intended to expedite the disposal of cases, have been made: —

(a) Citation of case law should be restricted normally to not more than two cases only, in support of one proposition, with liberty to hand over a typed list of other authorities, with relevant paragraphs extracted if necessary.

(b) Counsel should be required to settle a consolidated fee in a case (fees on daily basis being prohibited) so that there may be a positive incentive to compress the arguments as much as possible.

(c) Unnecessary, lengthy and repetitive arguments should be declared as professional misconduct, proceedings for which may be initiated by a complaint of the court.

What are your views in the matter ?

Scrutiny of papers without oral argument.

Q. 16. In regard to the appeals, there is a difference between the practice in England and Commonwealth countries on the one hand and the United States on the other hand. One study has described the position in these terms[2]: —

"Both in England and in the United States, appellate dockets are to some degree within the control of the judges. In other words, while some appeals can be taken as a matter of right, others can be taken only by permission.

In the United States, leave to appeal ordinarily can be granted only by the Court to which the appeal is taken. Thus only the United States Supreme Court is empowered to grant certiorari to review the decisions of state supreme courts or federal courts of Appeals. .

A difference exists between the two countries as to the form in which applications for leave to appeal are made. In the United States applications are made in writing and decided by the court on the papers alone, without hearing oral arguments."

How far do you regard such a procedure as suitable for adoption, with or without modification, in the High Courts in India in regard to admission of appeals ?

Judgment.

Q. 17. The following suggestions have been made relating to judgments in order to expedite disposal: —

(a) Judgments should be required to be very brief. They may contain the broad reasoning only, and the citation of authorities should be confined to their gist,[3] without quoting extracts, unless the question of extracts is absolutely necessary for distinguishing a case.

(b) Reading of judgments in court should be eliminated, so that only the operative order is pronounced.[4]

(c) Judgments should be delivered ordinarily within a week of the conclusion of the hearing and, in no case, after more than one month[5].

What are your views in the matter ?

Other measures relating to High Courts

Misbehaviour or incapacity.

Q. 18. Two suggestions have been made to facilitate the quick disposal of cases in the High Courts—

(a) Persistent and serious unpunctuality should be declared as misbehaviour for the removal of a High Court Judge under article 217, proviso (b), read with article 124(4) of the Constitution.

[1]Section 344, Code of Criminal Procedure, 1973.

[2]Delmar Karlen, "Appeals in England and the United States" (1962) 78 L.Q.R. 371, 377, 378.

[3]Compare High Courts Arrears Committee Report (1972), Chapter V, para. 106, page 74.

[4]Compare Order 20, Rule 1(2), Code of Civil Procedure, 1908, as amended in 1976.

[5]Compare Order 20, Rule 1(1), proviso, Code of Civil Procedure, as amended in 1976.

(b) Inadequacy in the disposal of cases which is both serious and persistent in the opinion of the Chief Justice should be declared as incapacity for the removal of a High Court Judge under article 217, proviso (b), read with article 124(4) of the Constitution.

What are your views in the matter ?

Q. 19. It has been suggested that in order to reduce arrears in High Courts— *Vacations and working hours.*

(a) summer vacations should be reduced to four weeks ; and

(b) working hours should be increased by half an hour daily or in the alternative by half a day, that is, three hours' work on Saturdays.

The above special arrangements, it is stated, may continue till the arrears are cleared. What are your views in the matter ?

Q. 20. (a) Do you suggest any increase in the strength of Judges of the High Court, and if so, what should be the criterion on the basis of which it should be increased ? *Inadequate strength as a cause of arrears.*

(b) Would you suggest the exercise of the power under Article 224A of the Constitution for appointing such of the retired Judges as were known for their expeditious disposal of cases ?

SUBORDINATE COURTS

Questions applicable to civil and criminal courts

Q. 21. What is the hierarchy of civil courts and what are the limits of the pecuniary jurisdiction of each civil courts ? *Hierarchy.*

Q. 22. (a) What, in your opinion, are the causes of delay in the trial courts in the disposal of cases ? *Causes.*

(b) Have you any suggestions to make for cutting short such delays ?

Q. 23. How far is delay due to— *Specific causes.*

(a) inadequate number of Judges ?

(b) insufficient accommodation, lack of books, lack of stenographic assistance or other factors by way of unsatisfactory conditions of work affecting quality of work ?

(c) defects in the procedure ?

Please indicate concretely the defects in procedure and the remedies suggested to remove those defects.

Q. 24. Are the members of the subordinate judiciary of the same level in regard to their knowledge of law, efficiency, hardwork, integrity and punctuality as that of the members of the subordinate judiciary in the past ? If, in your view, there has been a decline in this regard, to what specific cause do you attribute such decline ? *Level of subordinate judiciary.*

Q. 25. How are judicial officers recruited ? Are they raw law graduates or it is necessary that they should have practised and if so, what should be the minimum period of practice ? Would you suggest any change in the period ? If so, what ? Have you any other suggestion as to method of recruitment of judicial officers ? *Recruitment of subordinate judiciary.*

Q. 26. Have Judicial Officers to report periodically particulars about individual cases which are more than one year old (in the case of civil cases) and more than six months old (in the case of criminal cases) ? *Periodical reports of old cases.*

Q. 27. Should petty criminal cases be disposed of by some agencies other than Stipendiary Magistrates—for example, village panchayats, honorary magistrates and Justices of the Peace ? *Petty criminal cases-disposal by other agencies.*

Q. 28. Should village panchayats be invested with jurisdiction to try petty civil cases ? *Village Panchayats.*

Q. 29. Should we have some provision for pre-trial proceedings in civil cases as might reduce the workload of the court by obviating the necessity of court proceedings ? *Pre-trial.*

Q. 30. What are the court timings, and do the judicial officers adhere to those timings and maintain punctuality ? *Court timings.*

Q. 31. Do the people generally have confidence in the courts ? If not, to what specific causes would you attribute decline in confidence ? *Public confidence.*

Q. 32. Do you find that the recording of the evidence of witnesses on commission impedes speedy disposal ? Has it been your experience that parties interested in delaying disposal resort to it as dilatory tactics ? If so, what remedies would you suggest to improve the situation ? *Commissions for recording evidence.*

Q. 33. Do you agree with the suggestion that the examination-in-chief of the witnesses should be replaced by an affidavit, allowing the parties a right of cross-examination and re-examination of the witness, with a proviso whereunder the court may, in special cases, permit examination-in-chief in the interests of justice ? *Affidavits.*

[NOTE.—*Even if examination-in-chief is replaced by affidavit, there may be cases where it will continue to be necessary, for example, where a party desires to examine a public officer. In most cases, a public officer called upon to make an affidavit on matters within his personal knowledge would decline to do so at the request of a party without an order of the court and would prefer to be summoned and examined in court. Further, sometimes a witness, even if he is not a public servant, may be unwilling to make an affidavit.*]

Witnesses in attendance.

Q. 34. Does it frequently happen that witnesses who are present in court in obedience to a summons of the court have to go back without being examined in court? Are any statistics maintained to show as to how many witnesses had to go back in such circumstances without their evidence being recorded because of want of time on the part of the court?

Recording of evidence without interruption.

Q. 35. Would you consider it appropriate that once the recording of evidence of witnesses of a party has commenced, the trial of that particular case should continue and no new case should be taken up till evidence of all the witnesses present in that case has been completed?

Arguments.

Q. 36. (a) Is it your view that arguments should follow immediately on completion of the recording of evidence?

(b) Would you consider it appropriate to have some time-limit for oral arguments, which counsel can, if so desired, supplement by written submissions?

Judgments.

Q. 37. Are you of the view that judgments should be shorter than at present and need not deal with each and every point advanced or with all the authorities cited by counsel at the Bar? Is it likely that shorter judgments may result in arbitrariness, or provide a cover for mental lethargy and an attitude to shirk or avoid dealing with inconvenient arguments?

Ruling on objections to evidence.

Q. 38. Do you consider it necessary that the presiding officer should, when he allows or disallows a question objected to by the adverse party, record an order giving his reasons? In case he allows a question despite such objection, is it, in your view, desirable that he should record the question and answer with a note that it was objected to but has been allowed after over-ruling the objection?

CIVIL CASES

Normal time for disposal.

Q. 39. What, in your opinion, should be the normal time within which civil suit of different categories should be disposed of, and beyond which it should be considered an old one?

Specific causes of delay.

Q. 40. How far is delay in civil cases due to—

(a) delay in the service of process?

(b) non-utilisation of the provisions relating to the examination of the parties before the framing of issues or provisions provided for interrogatories or discovery, inspection and production of documents?

(c) lengthy evidence and cross-examination?

(d) large number of witnesses on the same point?

Would you suggest any remedies to improve the situation in this regard?

Congestion in court.

Q. 41. How far has the congestion of cases in each court led to delay in disposal?

Normal workload.

Q. 42. What should be the normal workload for each of the different categories of courts?

Section 80 C.P.C. and analogous provisions.

Q. 43. Do you agree that in order to avoid needless technical defences, the provisions of section 80 of the Code of Civil Procedure, 1908 and analogous provisions in other enactments, requiring notice of suit to the Government and public authorities, should be deleted? In case section 80 is retained, would you suggest any modification therein?

Role of the presiding officer.

Q. 44. Should the presiding officer take a more active part in relation to evidence, instead of adhering to the present practice whereunder the presiding officer leaves it generally to the parties to lead such evidence as they think fit?

Too many witnesses.

Q. 45. It has been suggested that in civil cases, a party should not be allowed to produce too many witnesses[1] for proving the same fact and that the court should be given power to disallow the production of too many witnesses on the same fact.

What are your views in the matter?

Provisional decree.

Q. 46. There is a suggestion that a civil court should be empowered, on being satisfied at any stage that the balance of probability was overwhelmingly in favour of the plaintiff, to pass a provisional decree in favour of the plaintiff, subject to its being set aside by the final judgment in the case.

Do you agree with the suggestion?

Machinery for settlement.

Q. 47. Should there be some machinery for negotiating settlement between the parties during the course of the trial?

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[1]Order 16, Rule 1 and 1A of the Code of Civil Procedure, 1908.

Q. 48. It has been suggested that in suits for eviction, damages for use and occupation of the premises[1] should be fixed at the real letting value in the market, plus 10% thereof, instead of the rent for which the premises were last let, in order to discourage frivolous defences which are often advanced merely for prolonging the dispossession of the tenant.

Mesne profits.

What are your views in the matter ?

Q. 49. Have you any suggestion regarding the provisions relating to costs ?[2] How far would you favour an amendment of the Code of Civil Procedure, 1908, to the effect that in civil cases,[3] if the suit or defence should be found by the court to be frivolous, the court should have power to direct the party concerned to pay to the opposite party, his costs on an actual basis and not merely on the basis of the legal taxable costs ?

Costs in frivolous cases.

Q. 50. Would you favour the insertion in the Code of Civil Procedure, 1908 of a provision to the effect that where a civil suit is withdrawn or compromised before the hearing of arguments, there should be—

Refund of court fees on withdrawal or compromise.

(a) a refund of half of the court fees on the plaint if the suit be withdrawn or compromised before the commencement of evidence and after that refund of one-fourth of the court fees on the plaint ;

(b) taxing of only half of the legal costs ?

Q. 51. It has been suggested that there should be inserted in the Code of Civil Procedure, 1908, a provision empowering the court to incorporate, in a decree for money, a direction that if the debtor does not execute the judgment within a specified period, interest will be calculated *at an increased rate* according to a scale linked with the period of delay.

Interest at enhanced rate.

What are your views in the matter ?

Q. 52. It has been suggested that the setting up of a single executing court for a particular local area would make for speedy and effective execution of decrees. Do you agree with the suggestion or do you envisage any practical difficulties in its implementation ?

Single executing court.

Small causes

Q. 53. (a) What is your experience as to delay in disposal of cases in small causes court ? Are they decided at the first hearing, or are adjournments granted very frequently ?

Delay in small causes.

(b) It has been suggested that adjournments in the Courts of Small Causes should not, in any case, exceed a month, to ensure expeditious disposal of cases. Do you agree with the suggestion ?

(c) Have you come across cases of delay in courts of Small Causes in the filing of written statements, preparation of judgments, or other matters vital to the progress and conclusion of the trial ?

CRIMINAL CASES

Q. 54. Do you consider the replacement of the Code of Criminal Procedure, 1898, by the Code of Criminal Procedure, 1973, as having resulted in expediting the disposal of cases ?

New Code of Criminal Procedure.

Q. 55. How far would you suggest an extension of the procedure for imposing a penalty or fine without trial, on the plea of the accused sent by post to the court, to cases not covered by the present law?[4]

Plea of guilty by post.

Q. 56. Is the procedure under sections 208-209 of the Code of Criminal Procedure, 1973, in regard to sessions cases, an improvement over the pre-1973 position from the point of view of ensuring a speedy and fair trial of the accused ?

Sessions cases New procedure.

[Under the Code of 1973, elaborate commitment proceedings in sessions cases are abolished. When the case is instituted on police report, the Magistrate taking cognizance does only the preliminary work of supplying the accused with copies of the police report, statements of witnesses, documents etc., and then sends the case to the court of session. When the case is instituted otherwise than on a police report, the Magistrate makes a preliminary inquiry and then commits the case to the Court of Sessions.].

Q. 57. If, in your view, the procedure in the Code of 1973 in regard to sessions cases is not an improvement,—

Whether old position should be restored.

(a) should the pre-1973 position be restored, by adopting section 207A of the Code of 1898 as inserted in 1955 and by making suitable modifications in various sections of the Code of 1973 ; or

(b) should the pre-1955 position be restored, by adopting sections 207 et seq. of the Code of 1898 as they stood before 1955 ; or

(c) is it, in your opinion, yet too early to judge the effect of the change made by the Code of 1973 ?

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[1]Cf. section 2(12) of the Code of Civil Procedure, 1908, defining "mesne profits".

[2]Order 20A of the Code of Civil Procedure, inserted in 1976, and also section 35 of the Code.

[3]Section 35A of the Code of Civil Procedure, 1908.

[4]Sections 206 and 263, Code of Criminal Procedure, 1973

Evidence before courts of session.

Q. 58. It has been suggested that the provision in the new Code of Criminal Procedure, 1973,[1] requiring the evidence in trials before the court of session to be taken down ordinarily in the form of question and answer causes delay and should be replaced by a provision to the effect that ordinarily it should be taken down in the form of narrative.

What are your views in the matter?

Medical experts.

Q. 59. There is a suggestion that in trials other than those for murder, the report of an official medical expert as to the medical examination of any person or the post-mortem examination of any dead body should be permitted to be given in evidence, by making a suitable addition to the present section[2] relating to depositions of such experts, subject to the right of the prosecution or the defence to call the expert evidence.

Do you agree with the suggestion?

Compensation to victims of crime.

Q. 60. Do you favour any further enlargement of the power of the court to require the offender to properly compensate the victim of the crime?[3]

Finality of certain miscellaneous orders.

Q. 61. It has been suggested that there should be inserted in the Code of Criminal Procedure a provision to the effect that any person aggrieved by an order of the Magistrate under the following sections of the Code of Criminal Procedure, 1973, may appeal to the Court of Sessions and that the order passed in such appeal shall not be subject to further appeal or revision:

Section	*Topic*
Section 125	Maintenance.
Section 127	Alteration in maintenance.
Section 138	Public Nuisances
Section 145	Dispute as to immovable property.

Do you agree with the suggestions?

GENERAL

Avoidance of technical arguments as to non-compliance.

Q. 62. What changes, if any, would you suggest in the Limitation Act, the Evidence Act and the Procedural Codes in order to avoid the raising of technical arguments relating to non-compliance with their provisions?

[NOTES.—Under the Limitation Act, 1963, if a suit is barred by limitation[4] then it shall be dismissed, although limitation has not been set up as a defence. If technical arguments raising the question of non-compliance with the provisions of the Act are to be discouraged or minimised, one possible device that could be adopted is to provide that an objection as to limitation, if not taken at the earliest opportunity, shall be disallowed. In this connection, reference may be made to an analogous provision in the Code of Civil Procedure, 1908, as to objections in regard to jurisdiction.[5]].

The question to be considered is whether a similar provision should be inserted in regard to the law of limitation, by amending the relevant portion of section 3[6], Limitation Act, 1963, and also by inserting a provision barring dismissal of the suit unless the defence of limitation was raised at the earliest possible opportunity.

Section 21 of the amended Code of Civil Procedure, 1908 reads as follows:—

"21. Objections to jurisdiction—

(1) No objection as to the place of suing shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court

"unless such objection was taken in the Court of first instance at the earliest possible opportunity, and, in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice.

(3) No objection as to the competence of the executant Court with reference to the local limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the executive Court at the earliest possible opportunity, and unless there has been a consequent failure of justice."

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[1]Section 276(2), Code of Criminal Procedure, 1973.

[2]Section 291, Code of Criminal Procedure, 1973.

[3]Section 357, Code of Criminal Procedure, 1973.

[4]Section 3(1), Limitation Act, 1963.

[5]Section 21, Code of Civil Procedure, 1908, quoted *infra*.

[6]Section 3, Limitation Act, 1963.

FRIVOLOUS OBJECTION AS AN OFFENCE

Q. 63. The *following* suggestion has been made in order to discourage frivolous objections in regard to civil claims:

Deliberate disregard of legal right —*Proposed* new offence.

If a party claiming to be entitled *to relief* of a civil nature serves due notice on the other party demanding such relief and the other party fails to comply with such notice within a reasonable time without just cause or excuse even when it is in a position to comply with the notice, *where it is proved beyond reasonable doubt that there was no triable question of fact or law which could possibly* have supported such deliberate disregard of legal rights and that the failure to comply with the notice was dishonest. Of course, the burden of proving *all these ingredients* may, as usual, lie on the prosecution

Do you agree with the suggestion? If so, for what classes of claims would you consider the enactment of such a *provision* appropriate?

Q. 64. It has been suggested that arbitration should be made compulsory in certain types of cases. Have you any suggestions to make in this regard? Who should, in such an event, be the authority to appoint the arbitrator?

Compulsory arbitration.

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