LAW COMMISSION OF INDIA

ONE HUNDRED TWENTY-NINTH REPORT

ON

URBAN LITIGATION
MEDIATION AS ALTERNATIVE TO ADJUDICATION

1988

D.A.DESAI
Chairman

LAW COMMISSION
GOVERNMENT OF INDIA
SHASTRI BHAVAN,
NEW DELHI

D.O.No.44(1)/86-LC.Pt.I

August 8, 1988.

Shri B.Shankaranand,
Minister for Law and Justice
Government of India,
Shastri Bhavan,
NEW DELHI

Dear Shri Shankaranand,

As by now you must be aware that the task of studying and recommending judicial reforms was assigned to the present Law Commission by the Government of India in February 1986 with a request to accord priority to the same. Accordingly, the work schedule of the Law Commission was redrawn and study of every term of reference drawn up for the benefit of the Judicial Reforms Commission was undertaken and report in respect of each was submitted. The present report deals with 'Urban Litigation - Mediation as Alternative to Adjudication'. With the submission of the present report, being 129th Report of the Law Commission, all the terms of reference in the content of studying judicial reforms are covered save and except term No.6 relating to 'the role of the legal profession in strengthening the system of administration of justice'. By the time of the expiry of the term of the present Law Commission, I sincerely hope to submit the report on that last remaining term of reference so as to complete the work set apart for Judicial Reforms Commission.

This report may be read with report dealing with 'Gram Nyayalaya' (No.114) and the reports relating to 'All India Judicial Service'(No.116), ' The High Court Arrears - A Fresh Look' (No.124) and'The Supreme Court - A Fresh Look' (No.125). These reports are inter-linked and inter-connected and, therefore, they have to be treated as a package which, when implemented, it is hoped, would bring about rejuvenation of the system of administration of justice which at present is under great strain.

I hope for early and expeditious implementation of these reports.

With regards,

Yours sincerely,

Encl: 1 Report

(D.A.DESAI)

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CHAPTER I

INTRODUCTORY

1.1. The Indian judicial system is pyramidic in character, with courts at taluk level at the foot of pyramid, moving vertically upward through the district level where there is a Court of District and Sessions Judge/City Civil Court in some cities, a... then further upward the High Court at the State level. At the national level, there is an apex court - Supreme Court of India. The system is one integrated whole. And a rot has set in at each layer of pyramid. That prompted a thinking in the Government of India that a Judicial Reforms Commission should be set up. The terms of reference of the proposed Commission were drawn up. Later on the task was assigned to the Law Commission. Conscious of the fact that the system is highly centralised, which contributed to making the system dysfunctional, the terms of reference included the following:-

> "1. The need for decentralisation of the system of administration of justice by -
>
> (i) establishing, extending and strengthening in rural areas the institution of Nyaya Panchayats or other mechanisms for resolving disputes;
>
> (ii) setting up of a system of participatory justice with defined jurisdiction and powers in suitable areas and centres;

(iii) establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Supreme Court and the High Courts.

2. .....

3. The procedural laws with a view generally to disposing of cases expeditiously, eliminating unnecessary litigation and delays in hearing of cases and reform in procedures and procedural laws and particularly to devising procedures appropriate to the terms envisaged in items 1(i) and 1(ii).".

Obviously where the whole system from the bottom to the top requires to be analysed in depth with a view, if necessary, to restructure it, the normal course is to begin from the bottom. Accordingly, the Law Commission, after having been satisfied that the system at present in vogue is unsuitable for resolution of disputes arising in rural areas, devised a new model - Gram Nyayalaya - for resolution of disputes arising from rural areas.[1] Unlike the present model, it was to be a different model, participatory in character where people's direct participation in the administration of justice would be ensured so as to impart respectability and credibility to the system. Today there is such a yawning chasm between justice system and the people for whom it is devised that over a period credibility of the system is considerably eroded. The participatory model - where people themselves participate in

administration of justice - would restore credibility, ensure respectability and impart a touch of informality in resolution of disputes.

1.2. The next layer moving vertically upward is the one at district level where the principal court of original jurisdiction is the District Court. At this level the two streams of civil and criminal justice merge in the sense that the District Court is styled as 'District and Sessions Court' and the Judge presiding over it is designated as 'District and Sessions Judge'. The Constitution vested the control over district courts and courts subordinate thereto in the High Court,[2] yet the service up to and inclusive of District Judge was part of the judicial service of the State. The State had power to legislate about that service in view of pre-amended entry 3 of State List which read, "Administration of justice; constitution and organisation of all courts, except the Supreme Court and the High Courts,...". Entry 3 was amended by deleting the aforementioned words by the Constitution (Forty-second Amendment) Act, 1976, which simultaneously provided for inserting entry 11A in the Concurrent List in the same language. Even thereafter, the service up to and inclusive of District Judge formed part of State Judicial Service. While

there are a number of all-India services, such as I.A.S., I.P.S., I.F.S., I.A. & A.S., et al, there is no all-India judicial service. Article 312 of the Constitution, which confers power to set up an all-India service, was specifically amended to confer power to set up an all-India judicial service by the Constitution (Forty-second Amendment) Act, 1976. The Law Commission, therefore, dealing with the first intermediate stage examined the feasibility of setting up an all-India judicial service to be styled as 'Indian Judicial Service' and submitted its report.[3]

1.3. Thereafter the Law Commission focussed its attention first on the High Court[4] and then on the Supreme Court of India.[5]

1.4. One segment of administration of justice, both civil and criminal, remained to be explored, that is, the litigation at the urban level. This report deals with the same.

1.5. The Law Commission issued a comprehensive working paper (see Appendix I) specifying the areas of urban litigation where reform is not only overdue but is urgently needed. In the working paper, the Law Commission pointed out the tremendous congestion in dockets in urban centres on account of litigation explosion with consequent

delay in resolution of disputes leading to certain undesirable developments threatening the very existence of the system. In separating the problem of urban litigation from the one in rural areas, the Law Commission is guided by the fact that till now the present monolithic system of administration of justice offered the same model procedure for resolution of disputes by the same prolix, even though the disputes arising in rural areas are comparatively simple in character compared to the disputes in urban areas. A very simple dispute arising in rural area would be dealt with by the Judge of the civil or the criminal court, as the case may be, in the same manner as the dispute would be dealt with in highly developed urban areas, with the consequence that a simple dispute remains unresolved for years, nay decades, causing misery to the disputants, imposing an unbearable load on the system and rendering the system highly expensive. It is admitted on all hands that this monolithic approach requires to be largely abandoned. The State court system which has been operating in this country since the advent of the British rule requires to be modified by inviting people's participation in it. Therefore, a participatory model has been recommended for resolving disputes in rural areas.

The working paper invited a discussion whether the same model with necessary modifications can be of help and use in dealing with urban litigation. The working paper also sets out the nature of litigation coming to urban courts, the causes for delay in disposal of the same and tentative suggestions for remedying the situation.

1.6. The High Courts, Judges at other levels, organised Bar and even some litigants responded to the working paper and either agreed with some of the tentative suggestions made by the Law Commission or offered their own solution. The High Court of Jammu and Kashmir, Chief Justice and some Judges of the Andhra Pradesh High Court and some Judges of the City Civil Court submitted their detailed response to the working paper. The High Courts of Gujarat and Madras and the Supreme Court of India stated that they had no comments to offer on the working paper.

1.7. The working paper was also sent to all the State Governments requesting them to send in their comments as early as possible. The Government of Sikkim desired to have a copy of the report of the Law Commission on Gram Nyayalaya before furnishing comments/views on the working paper. A copy was sent but thereafter nothing was heard from the Sikkim Government. A detailed reply was received

from the Government of Maharashtra. After pointing out that the Government of Maharashtra has framed a scheme, known as 'The Maharashtra State Legal Aid and Advice Scheme, 1979', it proceeds to state that it has established Legal Aid and Advice Boards at the State, district and taluk levels. Each such Legal Aid Board was required to constitute a Conciliation Cell. Anyone seeking legal aid may have first to satisfy the Board that he/she is entitled to legal aid. Once the eligibility is established, the case is referred to the Conciliation Cell. The Cell issues notice to the opposite party and tries to bring about settlement. Conciliation proceeding is required to be over within a period of one month, failing which the matter is presented to the court for disposal according to law. It also suggested setting up of Lok Nyayalaya, increasing the Judge strength proportionately after taking into consideration volume of litigation in all districts in the State. Other suggestions were the reduction in adjournments, restriction on the advocate's right to appear in certain type of litigation and, for its own reasons, agrees with the statement in the working paper that section 115 of the Code of Civil Procedure requires to be deleted. The Government of Andhra Pradesh

promised to send at a later date its response to the working paper but none was forthcoming. The Government of West Bengal submitted detailed response to the working paper. It leaned in favour of setting up a court with two trained Judges for rent litigation. It leaned in favour of participatory model. The Government of Tripura was not in favour of participatory model as it apprehended that 'justicing is a technical subject which cannot be left to inexperienced, rustic people in the name of village tradition and culture'. The Commissioner of Police, Union territory of Delhi, giving his response to the working paper offered his own suggestions emphasising the fact that the strength of the magistrates, prosecutors and investigating officers should be fixed in relation to the workload. He was of the opinion that a number of offences which are set out in the Penal Code deserve to be deleted and the procedure should be recast.

1.8. The Law Commission, with a view to having an exhaustive debate on the subject, organised workshops at Delhi, Bombay, Puri in Orissa, Shillong in Meghalaya and Shimla in Himachal Pradesh. The workshops were attended by Chief Justice and Judges of High Courts, Judges of the

district and subordinate judiciary, lawyers, law academics and others. By the interaction of various interest groups at the workshops, numerous suggestions emerged which would help in formulating the recommendations. The debate was thorough and incisive. The workshops generated immense interest in the subject. This would become apparent from the names of the participants set out in Appendix II.

1.9. The materials gathered and the information available to the Law Commission is varied and extensive and would assist in making concrete and effective recommendations.

CHAPTER II

NATURE OF LITIGATION IN URBAN COURTS

2.1. While the nature of litigation qualitywise is undergoing a change, quantitywise the graph of number of causes brought to the court is shooting up. Two developments have contributed to this situation. When the country undertook planning for its economic development as reflected in successive Five Year Plans, the pace of industrialisation accelerated. In the initial stages, industries were located in urban areas where electric motive power and water were easily available. An industrial undertaking generates local employment at lower levels. With the proliferation of industries in urban areas, coupled with the lack of employment in rural areas except as farm labourer which is dwindling on the elimination of zamindaries, process of urbanisation accelerated. People in search of petty jobs moved in numbers from rural to urban areas. Housing as an industry had not developed. There was a body of opinion that Rent Restriction Acts have proved to be a disincentive to development of

housing as an industry. Availability of accommodation in urban areas compared to its demand gradually became scarce. Slums came into existence. In cities like Bombay, pavement dwellers became a regular feature. The demand on the availability of housing accommodation compared to the supply was so high that in order to protect tenants from being exploited, every State enacted its Rent Restriction Act. Today, the largest litigation in urban courts relates to rent and possession of urban dwellings. This is the major head under which there is maximum litigation. The Law Commission in the course of its enquiry has collected certain figures in relation to about 16 States showing the litigation under the heading 'Rent and Possession'. Maharashta leads. The information in this behalf, which is set out in details in Appendix III, will show at a glance that if litigation under this head is tackled in a scientific manner, the burden on the court system in urban areas would be considerably eased.

2.2. Before the advent of freedom, when money-lending was a controlled avocation,

money suits used to clog the courts. Money suits comprised suits for recovery of money advanced or suit to recover the price of goods sold. Where money-lending has been a regulated business under the local laws, the litigation under the heading 'Money Suits' has dwindled, though various devices are resorted to to extricate oneself from the rigours of the money-lending regulation Acts.

2.3. The next head under which suits used to be filed were 'Suits on Mortgage'. The banking industry probably alone is the initiator of suits on mortgage.

2.4. The next important heading under which there is considerable litigation in urban courts can be appropriately described as 'Property Suits'. They include suits for inheritance/succession, partition, maintenance, easements and trespass. The last may include also the boundary disputes.

2.5. One more sub-head under which the suits are filed is 'Suits on Contracts'. Either the suits are for specific performance or for damages for breach of contract or for recovery of amount payable under the

contract.

2.6. The suits for inheritance and partition have more or less remained at the same level but suits for recovery of damages for breach of contract or for injunction or for specific performance are proliferating.

2.7. Suits on easements are few and far between.

2.8. Litigation involving family disputes such as divorce, judicial separation, restitution of conjugal rights, custody of children and alimony is on the increase. This is broadly the pattern of litigation in urban areas.

2.9. The pendency in various courts in urban areas is staggering. As on 31st December, 1984, 2,48,845 cases were pending in Sessions Courts. Similarly on the same date, 77,41,459 cases were pending in Magisterial Courts. As on the same date, 29,22,293 cases were pending in civil courts of original jurisdiction and 10,91,760 cases were pending on the appellate side. The relentless rise in the pendency may be judged from the information supplied in a tabulated form

hereunder:-

Year-wise position in District and Subordinate Courts

Year	Institution	Disposal	Pendency
(1) SESSIONS COURTS			
1982	231992	210971	199829
1983**	296192	273976	222045
1984**	296678	269878	248845
(2) MAGESTERIAL COURTS			
1982	8077950	7676075	6749813
1983**	8595527	4896129	7439211
1984**	7940978	7638730	7741459
(3) CIVIL COURTS (Original Side)			
1982	2712309	2613670	2625399
1983**	2056298	1888959	2792738
1984**	2143599	2016044	2922293
(4) CIVIL COURTS (Appellate Side)			
1982	232364	206736	945728
1983**	881088	778763	1048053
1984**	1030054	986347	1091760

** Does not include figures pertaining to the State of Sikkim.

[Source: Report for 1987-88 of the Government of India, Ministry of Law and Justice, p.32.]

CHAPTER III

HOUSE RENT/POSSESSION LITIGATION

3.1. The moment one focuses one's attention on urban litigation, the institution of suits involving rent and possession of urban property stares into face. It is a post-war phenomena. It is an inevitable consequence of ever-rising urbanisation process. It is attributable to the harsh law of demand far outweighing the supply and its consequences.

3.2. More and more people migrated from the rural areas to the urban areas in search of livelihood. Availability of the jobs in rural areas was so scarce that the rural population in search of petty jobs migrated to nearby cities. Housing industry did not and could not cope with the mounting demand for housing accommodation. Apart from the emergence of slums, the pressure on availability of accommodation was so heavy that unless the greed for thriving at the cost of needy seekers of scarce accommodation is regulated and checkmated by adequate legislation, the seekers of accommodation were likely to be exposed to exploitation by the owners of urban property. This situation led to the enactment of Rent Restriction Acts by almost all State Legislatures

as the subject of 'land, including the relation of landlord and tenant', is comprised in entry 18 of the State List.

3.3. A mere look at various Rent Acts would show the divergence in approach of various State Legislatures. This was sought to be justified on the one hand by saying that the local Acts reflect peculiar local situations and seek to meet local requirements and on the other hand urged that the degree of protection must differ from place to place relatable to the availability or the scarcity of the housing accommodation in the area. There is no material or appreciable difference between the position of a tenant in a city like Madras in Tamil Nadu compared to his counterpart in a city like Bombay in Maharashtra State or Calcutta in West Bengal. And yet the differential treatment is so glaring that one fails to understand why the Tamil Nadu Legislature would not grant that much protection which the Maharashtra Legislature considered appropriate to grant.

3.4. To illustrate, section 14 of Tamil Nadu Buildings (Lease and Rent Control) Act, 1960, having the marginal note 'Recovery of possession by landlord for repairs or for re-construction', enables a landlord to obtain possession by an

order of the Controller, if he is satisfied - (a) that the building is bona fide required by the landlord for carrying out repairs which cannot be carried out without the building being vacant; or (b) that the building is bona fide required by the landlord for the immediate purpose of demolishing it and such demolition is to be made for the purpose of erecting a new building on the site of the building sought to be demolished, directing the tenant to deliver possession of the building to the landlord before a specified date. Sub-section (2)(a) of section 14 ensures that if possession is given for repairs, on the completion of repairs the tenant would be re-inducted in possession. But when it comes to eviction on the ground that possession of the building is required by the landlord for the immediate purpose of demolition, the only assurance which the landlord has to give to the Controller is that he would substantially commence reconstruction within the time specified. There is no assurance that on the building being reconstructed, the tenant would be inducted in the building or in part thereof. Compare this provision with section 13(1)(hh) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, which provides that the landlord shall be entitled to recover possession

of any premises if the court is satisfied 'that the premises consist of not more than two floors and are reasonably and bona fide required by the landlord for the immediate purpose of demolishing them and such demolition is to be made for the purpose of erecting a new building on the premises sought to be demolished'. Sub-section (3A) of section 13 further provides that no decree for eviction shall be passed on the ground specified in section 13(1)(hh) unless the landlord produces at the time of the commencement of the suit a certificate granted by the Tribunal under sub-section (3B) and gives an undertaking, amongst others, that the new building shall contain not less than two times the number of residential tenements, and not less than two times the floor area, contained in the premises sought to be demolished. Section 17B further provides that where a decree for eviction has been passed by the court on the ground specified in section 13(1)(hh) and the work of demolishing the premises and of erection of new buildings has been commenced by the landlord, the tenant may, within six months from the date on which he delivered vacant possession of the premises to the landlord, give notice to the landlord of his intention to occupy as tenant the premises in the new building on its completion on the conditions set out in the

section. An obligation has been cast on the landlord to intimate to the tenant the date of completion of the construction of the new building by section 17C. The landlord then is under an obligation to intimate to the tenant the date on which the erection will be completed and on that date the tenant shall be entitled to occupy the tenement assigned to him by the landlord. This is the whole scheme of law under the Bombay Act where possession is sought on the ground of demolition of the building. Now the Tamil Nadu Act also permits eviction on the ground that the building is to be demolished but there is absolutely no countervailing obligation on the landlord to reinduct the tenant in the new building nor the tenant has any right to that effect.

3.5. The Tamil Nadu Act did not impose any obligation on the landlord seeking possession on the ground that possession of a building is required for immediate demolition to reconstruct and re-induct tenant. This uninhibited right to seek possession on the ground that possession of the building is required for immediate demolition gave rise to numerous litigations where even possession of a recently constructed building was sought on the ground of immediate demolition. There was a whole nefarious purpose behind this

move. It is a notorious fact that when a building is under construction and intended to be let out, the prospective tenants in search of accommodation give advance loans on the assurance of securing accommodation. If such building is demolished, there can be fresh exploitation of such condum tenants. Such a nefarious practice was curbed by the provision in the Bombay Rent Act as delineated hereinbefore.

3.6. Numerous matters under Tamil Nadu Act came before the Supreme Court for possession under section 14 of the Tamil Nadu Act. Possession in each case was sought by the landlord on the ground that the building is required for immediate demolition. The Court took notice of the fact that unlike other Rent Acts, the Tamil Nadu Act did not provide for re-induction of the tenant into the reconstructed building. Allowing the appeal of the tenants, the Court held that: "The age and decrepit condition of the building is a relevant factor amongst several others which will have to be considered while adjudicating upon the bona fide requirement of the landlord under that provision (section 14B) and might receive greater emphasis in a case where the enactment, as is the case here, contains no provision for reinducting the evicted tenant into the new building than

where the concerned enactment has such a provision.".[1] In other words, the absence of a provision for re-induction of tenant in the newly constructed building is a relevant factor to be taken into consideration for determining the bona fides of the landlord and in some cases the Court insisted upon the landlord giving an undertaking that on the tenant evicting the premises and handing it over to the landlord for immediate demolition, the landlord must commence reconstruction within the specified time and complete it within a reasonable time and re-induct the tenant. The Court drew inspiration from provisions of Rent Acts in other States. The appeals of the tenants were allowed and the cases were remanded to the Controller.

3.7. A grievance can be made that the approach discloses usurpation of the legislative power of the State Assembly. Conceding that the Judges have to interpret law and should not assume the role of legislators, yet it is well established that they may legislate interstitially and where the provision is brazen-facedly unfair as is the case here, the temptation to legislate cannot be thwarted. Where such a situation comes across, the Judges do not fold up their hands but would enquire what would they have done if they had been

the legislators and to straighten out the ruck in the texture and iron out the creases.

Said Lord Denning, L.J.:-

> "When a defect appears a Judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament - and then he must supplement the written words so as to give 'force and life' to the intention of legislature. A Judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A Judge must not alter the material of which the Act is woven, but he can and should iron out the creases.".[2]

The Supreme Court put its seal of approval on this statement of law.[3] Consciously, and sometimes not so consciously, this is being done is a fact, and whatever be the criticism it cannot be wished away. More so when avoiding to do it would lead to manifest injustice. The Law Commission is conscious of the fact that the aforementioned observation was not approved by the House of Lords and in fact it was adversely commented upon but that is hardly relevant.

3.8. Another illustration would further buttress this position. Delhi being the capital town, the Delhi Rent Control Act includes some special features which are absent in rent laws in other States. A large number of buildings in Delhi are either State owned or constructed by Delhi Development Authority. But apart from the members of the affluent section of the society who have built their houses, numerous co-operative housing societies have come into existence formed by employees of the Central Government and Delhi Administration. Most of them while occupying Government accommodation available to them by virtue of their office built their houses and rented them out at very high rents. As if this is not sufficient, there is a provision in Delhi Rent Control Act which by itself renders insecure the possession of the tenant, simultaneously giving leverage to the landlord to extort higher rent on the pain of dispossessing the tenant. Section 21 of the Delhi Rent Control Act provides that: 'Where a landlord does not require the whole or any part of any premises for a particular period, and the landlord, after obtaining the permission of the Controller in the prescribed manner, lets the whole of the premises or part thereof as a residence for such period as may be agreed to in

writing between the landlord and tenant and the tenant does not, on the expiry of the said period, vacate such premises, then, notwithstanding anything contained in section 14 or in any other law, the Controller may, on an application made to him in this behalf by the landlord within such time as may be prescribed, place the landlord in vacant possession of the premises or part thereof by evicting the tenant and every other person who may be in occupation of such premises.'. The object underlying this provision was that numerous Government officers may be posted out of India for short durations and during the period of their absence from India, they may be able to rent out premises with the assurance that on their return they can evict the tenant without going through the rigmarole of a suit. The way in which this section is implemented has led to numerous extra legal devices. The landlord invoking jurisdiction under section 21 gets a decree for possession in advance. At the end of the specified period which is usually not exceeding two years, the decree can be executed even without notice to the tenant. Section 21 was used by unscrupulous landlords to let out the premises for the specified period on the ground that he/she does not temporarily require the same. At the end of the prescribed period, the landlord would call upon the tenant to

vacate but would renew for a further specified period the tenancy by the same procedure at an enhanced rate. Interpreting section 21 in a case in which a landlady had let out premises by invoking section 21 in 1968 for a term and thereafter from time to time continued the possession of the tenant on a phased lease and increase in rent, the Court observed as under:

> "We can correctly visualise the scope and sweep of this provision (Section 21) only in its proper social setting. It carves out a category for special treatment. While no landlord can evict without compliance with sections 14, 19 and 20, does a liberal eviction policy underlie Section 21? Apparently contrary but actually not, once we understand the raison d'etre of the section. Parliament was presumably keen on maximising accommodation available for letting, realising the scarcity crisis. One source of such spare accommodation which is usually shy is potentially vacant building or part thereof which the landlord is able to let out for a strictly limited period provided he has some credible assurance that when he needs he will get it back. If an officer is going on

other assignment for a particular period, or the owner has official quarters so that he can let out if he is confident that on his retirement he will be able to re-occupy, such accommodation may add to the total lease-worthy houses..... Section 21 is the answer. The law seeks to persuade the owner of premises available for letting for a particular or limited period by giving him the special assurance that at the expiry of that period, the appointed agency will place the landlord in vacant possession."[4]

The Court then proceeded to point out that 'It is easy to envisage the terrible blow to the rent control law if section 21 were freely permitted to subvert the scheme of section 14'.[5] The Court came to the conclusion that if the landlord at the end of every specified period repeatedly renews tenancy under the pretext of the accommodation being available temporarily for a short period, then such exercise would be violative of section 21 and it would be open to the Controller when warrant for possession is sent to enquire whether section 21 was wrongly invoked and deny the relief.

3.9. One more illustration would bring to fore the denial of protection to tenant under Delhi Rent Control Act. Section 14, with the marginal note of 'Protection to tenant against eviction', sets out grounds, proof of anyone of which would enable the landlord to re-enter. Right of re-entry of a landlord in demised premises is made specifically subject to the provisions of section 14. One of the grounds enabling the landlord to obtain possession of the demised premises is 'that the premises let for residential purposes are required bona fide by the landlord for occupation as a residence for himself or for any member of his family dependent on him, if he is the owner thereof, or for any person for whose benefit the premises are held and that the landlord or such person has no other reasonably suitable residential accommodation'.[6] If the ground herein specified is invoked by a landlord, he can proceed according to the procedure prescribed in Chapter IIIA of the Act. This Chapter was introduced by Delhi Rent Control (Amendment) Act, 1976, which came into force with effect from 1-12-1975. Section 25B provides that where an application is made by a landlord for the recovery of possession of premises on the grounds specified in section 14(1)(e), the same shall be dealt with in

accordance with the procedure specified in the section. Briefly, the procedure specified is of a summary nature, the peculiar feature of which is that on the service of a summons of an application for recovery of rent made by the landlord, the tenant shall not contest prayer for eviction from the premises unless he files an affidavit stating the grounds on which he seeks to contest the application for eviction and obtains leave from the Controller in the manner provided in the section. The Controller would give leave to tenant to contest the application if the affidavit filed by the tenant discloses such facts as would disentitle the landlord from obtaining an order for recovery of possession of the premises on the ground mentioned in section 14(1)(e). In no other Rent Act throughout the length and breadth of this country except the Delhi Rent Control Act, the tenant is left at the mercy of the court even with his initial right to defend the action. The law reports bristle with numerous orders at the Supreme Court level where not only the Controller misdirected himself in refusing leave but the same was upheld in a revision petition to the High Court and the tenant was evicted without a semblance of defence being heard. Leave to defend oneself was treated a stage where long orders were

written by Controller as if evidence has been led and that is required to be appreciated. Ultimately the Supreme Court had to point out that "Restrictions on the landlord's unfettered right to re-entry may be stringent or not so stringent depending upon the local situation. But the underlying thrust of all rent restriction legislations universally recognised must not be lost sight of that the enabling provisions of Rent Restriction Acts are not to be so construed or interpreted as would make the protection conferred on the tenant illusory by a liberal approach to the desire of the landlord to evict tenant under the camouflage of personal requirement".[7] The Court pointed out that the procedure prescribed in section 25B is harsh compared to the normal procedure prescribed for dealing with application for eviction on grounds other than the one mentioned in section 14(1)(e). And it would be surprising to recall here that no appeal was provided against the decision of the Controller refusing to grant leave. The Controller was the final arbiter in a summary procedure of the destiny of the tenant. The Court further proceeded to point out that the object and purpose of rent control statutes of putting a fetter on the unrestricted right of re-entry enjoyed by the landlords with a view to protecting the tenants

assuring security of tenure, must always inform and guide the interpretative process of such socially-oriented beneficial legislation. The tenants in other parts of the country are not exposed to such harsh procedure almost bolting the doors of the courts for justice.

3.10. These illustrations amply demonstrate the need for a uniform Rent Act applicable to the whole country excluding such areas where inadequacy of accommodation is not a problem. Enactment of Rent Act being within the purview of the State Legislature, the Law Commission is not undertaking this exercise. However, time is ripe for formulating a model Rent Act.

3.11. The huge backlog of cases under the Rent Acts and inordinate delay in disposal of cases have brought to fore some undesirable developments. The pendency and the consequent delay in disposal of cases under Rent Acts in various States may be appreciated from the information herein supplied (Appendix IV). The duration varies from 244 days in a small State like Sikkim to 5,950 days in West Bengal and 1,359 days in 27 districts of Maharashtra. The figure does not take account of the duration in disposal of cases in the Bombay Small Causes Court where

reportedly the case is not finally disposed of by the trial court before the expiry of seven years from the date of its institution.

3.12. So the question that stares into the face is whether some peripheral reform in the present method of disposal of disputes under Rent Act would improve the situation or a radical departure is necessary. There is little scope for improvement or reform of the present method. Therefore, some alternatives have to be found.

3.13. Responses to the working paper disclose four distinct approaches:

(1) The suggestion made by the Law Commission itself in the working paper for response and comment, namely, the same model which the Law Commission recommended for Gram Nyayalaya.[8].

(2) The second alternative suggested was that instead of one Judge or Controller, whatever be the designation, hearing the case, a Bench of Judges, minimum two, should hear the cases and there shall be no appeal against their decision save and except a revision on question of law to the District Court.

(3) The third alternative suggested was that some form of neighbourhood justice centres must be set up for resolution of disputes under rent laws because these disputes have a local flavour and people in the vicinity of the premises involved in dispute would be better suited to deal with the dispute.

(4) Conciliation Court system now working with full vigour in Himachal Pradesh.

All the four models may be separately examined.

3.14. The court system set up by British rulers has continued to be operative till today with minor modifications. The model is of a State court, presided over by a professionally trained lawyer who enters judicial service. This model is in vogue for over 150 years. This model has practically become dysfunctional. The system is in total disarray. In the seminar at Bombay, it was pointed out to the Law Commission that the gross and unreasonable delay in disposal of disputes under the Rent Act has given rise to an undesirable tendency adopted by some landlords in utilising the services of members of the underworld who, by sheer threat and violence, inculcate such fear in the tenant that he is forced to leave the premises and the landlord,

without the intervention of court system, regains possession. Undoubtedly the service is for a price and the Commission was told that the price varies according to the locality where the premises are located and the carpet area of the premises of which possession is sought. The phenomenon is thoroughly disturbing and is offered as a proof of the utter failure of the system.

3.15. Another undesirable feature of the system that was brought to the notice of the Law Commission at the same seminar was that the litigation under the Rent Act has acquired the connotation of a need-based litigation and that results in proliferation of litigation from court to court. To be specific, it was stated with emphasis at the seminar that it is almost impossible to get even a minimum accommodation - a roof over the head - except for a huge price styled as 'premium' or paghri, payment and acceptance of which is illegal and violative of section 18 of the Bombay Rent Act and yet it is indulged into freely. A tenant in an action for eviction, even if he honestly believes that the landlord's petition for possession is genuine, yet he would resist eviction at any cost and if

defeated, would prefer appeals after appeals and when finally thrown out, would resist execution only because once out of the premises, he has nowhere to go. This lack of availability of accommodation also contributes to delay in disposal of litigation when the tenant seeks adjournment by applying every device available to him. Therefore, it does not require elaborate discussion to reach an affirmative conclusion that the present model for resolution of disputes under Rent Act throughout the length and breadth of this country is a disaster and a dismal failure. The alternative has to be found.

3.16. The first alternative suggested is to adopt the model recommended by the Law Commission where a professional Judge interacts with lay Judges from the society and by the interaction of both, they reach a reasonable conclusion in a short time and dispose of the disputes. Obviously there will be no appeal against this decision and only a revision petition will be permissible on a question of law to the District Court. It would be merely adding to the length of this report if the entire model and the method of making it operational has to be discussed over here. The only thing the Law Commission would like to reiterate is that a de-professionalised model of

justice delivery system has been gaining acceptance in a number of countries. The indigenous juristic potential of the people, including their own sense of justice, is allowed room for development. This can be achieved by people's participation in the administration of justice.[9] The Law Commission further reiterates the method for drawing up a penal of lay Justices and the model of the constitution of the court composed of a professional Judge and two lay Judges.[10] The only difference in this case from what has been recommended in the report on Gram Nyayalaya is that this body, which should be styled as 'Nagar Nyayalaya', need not visit the site unless necessary because its seat would be in the urban areas and it would be dealing with disputes in urban areas where distance may not be prohibitive. Incidentally it was stated that in selecting two lay Judges, attempt must be made to involve the interests affected by decisions under Rent Act. It was said that two lay Judges must be drawn, one each from the Associations of landlords and tenants which have come into existence in almost every city where a Rent Act is in force. After mature consideration, this suggestion does not meet with the approval of the Law Commission

inasmuch as the experience shows that bias is inherent in such composition of the court. To illustrate, some decades back, Government of India set up a Wage Board for engineering industry. The composition of the Wage Board was so planned that all affected interests did find a representation on the Wage Board. Accordingly, the Chairman of the Wage Board was a man drawn from Judiciary. There were two independent members, two members represented the workmen and two members represented the employers. The Wage Board took about five years to give an award. The startling outcome was that the Wage Board gave four awards: one by the Chairman; second by the two independent members; third by the representatives of the workmen; and fourth by the representatives of the employers. This is an eye-opener. The Law Commission is informed that such an experience recurred when the Wage Board very recently set up for working and non-working journalists gave an award granting interim relief. These experiences have moulded the thinking of the Law Commission in disapproving the suggestion of drawing one lay Judge from the association of landlords and the other from the association of tenants because both of them may not be in a position to disabuse their mind about the bias by association.

3.17. The second model suggested was that instead of one Judge, as at present, hearing the disputes, styled as either 'Munsif' or 'Civil Judge' or 'Rent Controller', a Bench of two should hear the cases following the same procedure, and their opinion should be final. No appeal should be provided against the decision of the Bench save a revision on a question of law.

3.18. Every statement of known legal position need not be elevated to the status of a question of law. The question of law must be such for which there is no binding decision of the High Court to which the urban court would be subordinate or of the Supreme Court of India. The question of law has to be specifically stated while entertaining the revision and the revision petition must be confined to that question of law alone and nothing else.

3.19. The third alternative suggested was that Neighbourhood Justice Centres should be set up where these disputes can be conveniently resolved. Before the enactment of Rent Act, subject to the provisions of the Transfer of Proprty Act, landlord enjoyed an unrestricted right of re-entry. In order to checkmate the tendency to informally use this right, Rent Act usually

imposed a restraint on the right of re-entry by making a provision that on proof of certain positive and affirmative facts the landlord can re-enter, otherwise the tenant will have the protection of statutory tenancy. One such enabling ground to be found in all Rent Acts is the reasonable requirement of the premises by the landlord for his own use or for the use of the person for whose benefit the premises are beneficially held. Litigation for recovery of possession on the aforementioned ground is probably the highest in the litigation under the Rent Acts. Now when a landlord seeks possession on the ground of bona fide personal requirement, two incontrovertible facts emerge: (1) that at some point of time he did not need the premises and could let it out for extra income by way of rent; and (2) that his personal circumstances have altered so drastically that the accommodation at his disposal is insufficient to provide for his needs and, therefore, he must get back the accommodation in possession of the tenant. In resolving these disputes, the court's approach is to ascertain whether the need is genuine in the sense that the accommodation at the disposal of the landlord is insufficient or that his circumstances have so altered that he must get back into the possession of accommodation occupied

by the tenant. The size of the landlord's family, the increase in the size since the premises were let out, other changes in the landlord's family such as partition between brothers or marriage of sons or the increase in the size of the family for other reasons are all relevant considerations. Change in the position of landlord such as that premises were let out when landlord was in service and he is about to retire and needs the premises for his own use is equally relevant. But these are relatively simple issues. However, experience shows that numerous witnesses are examined on either side to establish this simple point. It is a waste of court's time. Those in the neighbourhood where the premises are situated are bound to be aware of the size of the landlord's family, the changes that have occurred in the family, the incompatibility amongst family members for various reasons and if the dispute is brought to a Neighbourhood Justice Centre, it can be easily disposed of rather than a court dealing with the same.

3.20. Setting up Neighbourhood Justice Centres is of recent origin. By 1980 about over one hundred such Centres have been set up in different parts of United States of America.[11] His counterpart, though not wholly analogous, is Comrade's Courts

in U.S.S.R. An integrated centralised justice system has become static and there was a demand for decentralisation of justice system by creating a complementary system. The model of such decentralised system was almost wholly to be different from the existing system. This thinking gave rise to the concept of setting up Neighbourhood Justice Centres. The departure will be noticed that while the court has an adjudicatory approach, the Neighbourhood Justice Centre would try to reconcile the two parties and bring them to a common understanding of problems as far as possible. The utility of the system lies in the fact that it is believed:

> "A good neighbour is someone who keeps to himself but is there if needed. You borrow a cup of sugar (for a party) but you don't invite them to the party".[12]

Another view expressed was that:

> "Yeah, I know just about everything in the neighbourhood, but they're not my friends; I guess I like to know who they are, but that's all there is to it".[13]

The Neighbourhood Centre may consist of three local residents and if a retired Judge is residing in the area, preferably he should be included.

Such a locally situated centre holds promise of being more conveniently located, more considerate, and much faster in processing cases than the State set up court system. Coupled with this is the advantage of an informal, non-adjudicatory style which would be very appealing. A legislation would be necessary to set up such centres. It would not be difficult to set up such centres in urban areas. Fairly well educated local residents would be available to work into centres. And their knowledge of local conditions, traditions and local needs would assist them in an informal manner to resolve the dispute. And this would reduce the load on the court system considerably.

3.21. The fourth alternative suggested was introduction of Conciliation Court as at present in vogue in Himachal Pradesh. It is a model which can be combined with any of the other three models. It may be examined. Available mechanisms for resolution of disputes are: adjudication by courts, arbitration, mediation, negotiation and various blends of these and other devices, such as Ombudsman or fact finding inquiry body. Conciliation is one such method. It has hardly been put to test save to a limited extent in labour laws. It is a model worthwhile examining.

3.22. Parliament envisaged introduction of conciliation as a mode for resolution of disputes in civil litigation. Order XXVII provides for suits by or against the Government or public officers in their official capacity. Rule 5B was introduced in Order XXVII by the Code of Civil Procedure (Amendment) Act, 1976. It reads as under:

> "5-B. Duty of Court in suits against the Government or a public officer to assist in arriving at a settlement.- (1) In every suit or proceeding to which the Government, or a public officer acting in his official capacity, is a party, it shall be the duty of the Court to make, in the first instance, every endeavour, where it is possible to do so consistently with the nature and circumstances of the case, to assist the parties in arriving at a settlement in respect of the subject-matter of the suit.
>
> (2) If, in any such suit or proceeding, at any stage, it appears to the Court that there is a reasonable possibility of a settlement between the parties, the Court may adjourn the

proceeding for such period as it thinks fit t enable attemp s to be made to effect such a settlement.

(3) The power conferred under sub-rule (2) is in addition to any other power of the Court to adjourn proceedings.".

Identical provisions can be found in sub-sections (2) and (3) of section 23 of Hindu Marriage Act, 1955 and sub-section (1) of section 9 of the Family Courts Act, 1984. Though rule 5B is limited in its application to a suit to which the Government or the public officer acting in his official capacity is a party, it is time to expand the coverage of the method of resolution of disputes therein provided to all suits in civil courts, including the claim for compensation before the Motor Accidents Claims Tribunal. Rule 5B provides that in a suit to which it applies, it should be the duty of the Court to make, in the first instance, every endeavour where it is possible to do so consistently with the nature and circumstances of the case to assist the parties in arriving at a settlement in respect of the subject matter of the dispute. Where the court is of the opinion that there is a reasonable possibility of a settlement between the parties to the suit, the proceedings may be adjourned for such period as it

thinks fit to enable attempts to be made to effect such settlement. Rule 5B expects the court before which the suit is pending to itself attempt to conciliate the dispute. An apprehension was entertained that if the attempt at conciliation fails, the presiding Judge whose efforts failed may be embarrassed in proceeding with the suit on merits. What is the way out?

3.23. Chief Justice of Himachal Pradesh High Court, Justice P.D. Desai, being aware that the system is over-stretched and bursting at the seams, with a view to salvaging the system coupled with a burning desire to make the system result-oriented assisted by an uncanny vision, has used this provision so successfully that the scheme of Conciliation Court framed by him and successfully operated by him may now be accepted by all courts. Not confining the conciliation process to the suits to which rule 5B would apply, the Chief Justice has made it applicable to all types of litigation set out in the scheme under the heading 'Identification and Transfer of Cases to the Conciliation Courts'. Frankly speaking, hardly any litigation of civil nature is left out of the purview of the Conciliation Court. He has not only successfully worked the scheme but obtained results which are very encouraging. This can be

deduced from the information hereunder supplied:

S. No.	Period	Number of cases disposed of by the Conciliation Courts.
1.	1-9-84 to 31-12-84	176
2.	1-1-85 to 31-12-85	1,890
3.	1-1-86 to 31-12-86	4,897
4.	1-1-87 to 31-12-87	8,544
		15,507

As the scheme is extended to Motor Accidents Claims Tribunal, durin the period August 1, 1986 to December 1, 1987, the Conciliation Court disposed of 261 claim cases out of 555 pending before the Tribunal and the settlements resulted in distribution of compensation to the tune of Rs.56,75,056. The results are so encouraging that the success of the model cannot be put into question. And in a State like Himachal Pradesh where the concentration of litigation may not be as high as in Bombay or Calcutta or Madras, the impact of the system in reduction of litigaton can be said to be noteworthy.

3.24. What is the scheme? Briefly, the scheme envisages the setting up of Conciliation Court earmarked for this purpose to which all suits at a preliminary stage after pleadings have been filed are transferred. Conciliation Court is presided over by a Judge other than the one who would have jurisdiction to try the suit in urban areas where there is more than one court. At the taluk level if there is only one court, eschewing any inhibition of embarrassment, the presiding Judge of the same Court attempts to conciliate in the matter under the scheme.

3.25. The Conciliation Court, in order to form an opinion about the alternative formula for an amicable settlement, goes through the case papers and also verifies the facts from the counsel as well as from the parties to the extent necessary and endeavours to evolve a fair and just formula, acceptable to both parties, for an amicable settlement of the issues in dispute. The Judge, with his suave persuasiveness, participates in this process. The Judge is expected to bring to bear on the subject his understanding, narrowing down the area of conflict, persuading the parties to accept a fair settlement, and is required to put his concentrated efforts in this behalf. The

Conciliation Court, in the initial stage of the operation of the scheme, got the guidance and advice of superior judicial officers and now there is a trained cadre of Judges in Himachal Pradesh who successfully operate the scheme.

3.26. The senior members of the Bar, amongst others, are invited for personal discussion by the District Judge, Additional District Judge and Conciliation Court with a view to impressing upon them that the project is on trial basis and its success would materially help in making the system resilient which had become static. It was also to be impressed upon them that this approach would save cost, avoiding the inevitable necessity of calling witnesses, long drawn out cross-examination and unending arguments and all that goes with a routine litigation in civil courts at present times. It is open to the Conciliation Court to frame issues and even try such cases on merit or dismiss in default of appearance or proceed ex parte in appropriate cases but with a note of caution that the powers of dismissal for default or proceeding ex parte are to be sparingly used with a limited end in view of securing the presence of the parties and their counsel in order to facilitate the conciliation work. It is thus an informal approach uninhibited by the Code of

Civil Procedure and informality permeates the proceeding before the Conciliation Court so as to help the parties in not taking up hostile adversorial attitude but try to narrow the difference and ultimately resolve the dispute. If the parties agree to a compromise, the same is recorded as required by Order XXIII, rules 1 and 2 of the Code of Civil Procedure. The litigation ends there.

3.27. In the event of failure of the Conciliation Court, the suit is returned either as a whole or, where parties have narrowed down the area of dispute, with the narrow area for adjudication by the court in whose jurisdiction the suit was filed. The scheme differs from the adjudicatory process in civil court in the sense that it has an informal atmosphere and approach of give and take and appreciation of the point of view of both sides and even help of senior advocates who are not engaged by the parties. As the scheme is successfully working, it must be accepted as a model and the Law Commission is informed that recently judicial officers of the Rajasthan State Judiciary supported the introduction of the model in Rajasthan State.[14]

3.28. While approving the scheme as a whole, to make it more efficient and effective, it is

necessary to remove the difficulty experienced by the Conciliation Court in Himachal Pradesh in settling disputes between the parties by way of conciliation when the parties do not appear in person before the court. No one, under the provisions of the Code of Civil Procedure, 1908, as amended in 1976, can be compelled to appear before the court. It may be pointed out that an ex parte decree on merits can be passed. But that would not help in resolving the dispute by the interface between parties. Order X rule 4 of Code of Civil Procedure gives power to the Court to pronounce the judgment against the party or to make any other suitable order in this behalf only if the Pleader to the party is unable to answer any material question relating to a suit. In other words, a party cannot be ordered/directed to appear in person before the court under existing provision of Order X rule 4 Code of Civil Procedure with a view to securing the personal attendance of a party in the court for specific settlement. It is, therefore, necessary to empower the court to deal efficiently with the absenteeism. This can be done by making the following amendements in order X of the Code of Civil Procedure:-

(i) The following may be added as sub-

clause (c) immediately after sub-clause (b), clause (i) rule 2 of Order X of the Code of Civil Procedure:

> "may require the attendance of any party to the suit or proceedings, to appear in person with a view to arriving at an amicable settlement of the dispute between the parties and make an attempt to settle the dispute between the parties amicably."

(ii) The following may be added as clause (3) immediately below clause (2) of rule 4 of Order X Code of Civil Procedure:-

> "Where a party ordered to appear before the court in person with a view to arriving at an amicable settlement of the dispute between the parties, fails to appear in person before the court without lawful excuse on the date so appointed, the court may pronounce judgment against him or make such order in relation to the suit as it thinks fit".

With these additions, the Law Commission is of the opinion that the scheme will be very effective and must be made obligatory in all courts, removing

the limitations that are to be found in rule 5B of Order XXVII in the matter of application of the procedure to suits other than those set out therein. In fact, the scheme must apply to all suits of a civil nature coming before civil courts.

3.29. There is an identical provision in rule 3 of Order XXXIIA introduced in the Code of Civil Procedure by the same amending statute which makes the procedure therein applicable to suits and proceedings set out in sub-rule (1). The scheme must mutatis mutandis apply to them also without any further variation. The scheme in its full outlines is annexed at Appendix V to this report.

3.30. In a Seminar/Workshop organised at Bombay, various suggestions were made for effectively dealing with urban litigation. Bombay presumably has the highest concentration of urban litigation at all levels. This will be clear from the fact that in order to reduce the pressure on the High Court, a City Civil and Sessions Court was set up at Bombay in the year 1948. Initial sanctioned strength of Judges was 4. As on April 30, 1988, 37 Judges were in position in the City Civil and Sessions Court and 53,266 civil suits and 4,944 criminal cases await disposal. Pendency of civil

matters include suits more than 10 years old. To highlight this position it may be mentioned that six States have set up City Civil Courts. They are Gujarat, Calcutta, Tamil Nadu, Karnataka, Maharashtra and Andhra Pradesh. A chart showing the jurisdiction of the City Civil Court, the area in which the Court was set up, the initial sanctioned strength of Judges, present strength of Judges, initial arrears with which it started and the present arrears will be found at Appendix VI.

3.31. When these disturbing figures were highlighted at the Seminar/Workshop, a suggestion was made whether the court can be empowered to compel parties to go to arbitration. It may be recalled that the participants in the Seminar/Workshop included a number of High Court Judges, some City Civil Court Judges and Judges from other ranks. The suggestion was by a member of the Judiciary. As the provisions of Arbitration Act, 1940 today stand, before a party can be forced to resort to arbitration, there must be a subsisting arbitration agreement between the parties or even in a matter pending in the court, parties can resort to arbitration by consent of all the parties involved in the dispute. In the absence of an arbitration agreement or in the absence of the consent being accorded, the court

is powerless to force parties to go to arbitration. The Judges clearly were of the opinion that there are numerous cases in which arbitration would be a better mode of resolution of dispute than a proceeding in the court. The suggestion deserves serious consideration and amendment to the Arbitration Act may become a necessity. It is not possible to deal with the suggestion in this report but it would be worthwhile to have a seprate report on the subject which the Law Commission, time permitting, would undertake.

3.32. Thus we have four different models. They cannot be said to be exclusive of each other in character. One or two can be said to be complementary to each other, such as the Conciliation Court model can be introduced with any other model. But the choice has to be made from three models, such as whether the present system should continue or whether a Bench of two Judges should hear the case or the participatory model must be introduced. After mature consideration, the Law Commission is of the opinion that the participatory model should be introduced along with Conciliation Courts.

CHAPTER IV

LITIGATION OTHER THAN ONE UNDER THE RENT ACT

4.1. Once litigation under Rent Act, which clogged the dockets of the courts in urban areas, is taken care of, it is necessary to consider whether suits other than suits under Rent Acts, such as suits arising out of the dispute as to inheritance and succession, partition, maintenance and suits on easements, can be dealt with by the existing system efficiently and within time. The suits covered by the Family Courts Act are not taken note of here as a separate forum is set up for their disposal and that would further ease the pressure on civil courts. The pressure of the litigation under the Rent Act is so high that the courts are unable to find any time for litigation of any other nature. If the litigation under the Rent Act is taken over by a new participatory model, the existing courts would be able to find sufficient and adequate time for suits of other nature hereinabove mentioned. The suits involving a dispute as to inheritence/ succession, partition, maintenance are amongst near relations. The disputes involving inheritance and succession, coupled with disputes arising out of wills, are amongst generally blood relations who are the kith and kin of the deceased

and are inter-related. Undoubtedly sometimes this litigation is fought with vengeance. But it is here that the Conciliation Court system will be put to test. If, therefore, these suits are kept within the purview of the courts as at present functioning with an obligatory duty to set up Conciliation Courts, the resolution of such disputes can be speedily achieved. The intervention of court brings to bear its persuasive power on the litigants and lawyers appearing in the matters. Near relations can be easily persuaded to take fair and just and rational attitude. That will be the test of Conciliation Court scheme. Therefore, the Law Commission is of the opinion that in respect of the suits hereinabove mentioned, the Conciliation Court system must be made compulsory by an effective amendment to the Code of Civil Procedure on the lines of rule 5B of Order XXVII thereof to widen its application to encompass suits of the aforementioned nature.

4.2. There remain suits involving disputes about easement rights as also suits either for specific performance of contract or for damages complaining breach of contract.

4.3. Suits involving disputes as to easement

rights are few and far between. In congested cities, especially within the old city walled area, suits complaining of infringement of easement of light and air crop up in courts. However, with the advance of town planning schemes, the number is going down. At any rate, court will have enough time to deal with the same and no change is necessary there.

4.4. Similarly suits for specific performance of contract or for damages for breach of contract can be taken care with the extra time available to the courts if the recommendations herein made are fully implemented.

4.5. It may incidentally be mentioned that suits raising issues under service jurisprudence used to crop up in courts. With the establishment of Central Administrative Tribunal enjoying exclusive jurisdiction in this behalf, it is not necessary to make any specific provision for such suits in respect of Central Government servants. However, section 4(2) of the Administrative Tribunals Act, 1985, empowers the Central Government on a request in this behalf from any State Government to set up an Administrative Tribunal to exercise the jurisdiction, powers and authority under the Act for the State. The Law Commission is of the opinion that every State Government must take step

for setting up Administrative Tribunal under the Act.

CHAPTER V

- MISCELLANEOUS SUGGESTIONS

5.1. Viewing the court procedure as at present in vogue in courts at close quarters, two things emerge which can be said to be time consuming, contributing to the delay in disposal of cases pushing up arrears in courts. The maximum consumption of time takes place in recording oral evidence and listening to arguments both at the interim and final stage.

5.2. Dealing with the consumption of time in recording evidence, subject to few exceptions which are of a marginal nature, it is time to relieve the courts from the boredom of doing this work and investing its precious time in this otherwise avoidable exercise.

5.3. Order XVIII rule 4 of the Code of Civil Procedure, 1908, provides that the evidence of witnesses in attendance shall be taken orally in open Court in the presence and under the personal direction and superintendence of the Judge. Rule 5 provides that in cases in which an appeal is allowed, the evidence of each witness shall be:

(a) taken down in the language of the court:

(i) in writing by, or in the presence

and under the personal direction and superintendence of, the Judge; or

(ii) from the dictation of the Judge directly on a typewriter; or

(b) if the Judge, for reasons to be recorded, so directs, recorded mechanically in the language of the Court in the presence of the Judge.

Rule 8 provides that where the evidence is not taken down in writing by the Judge or from his dictation in the open Court, or recorded mechanically in his presence, he shall be bound, as the examination of each witness proceeds, to make a memorandum of the substance of what each witness deposes and such memorandum shall be written and signed by the Judge and shall form part of the record. It may be mentioned that the expressions "the Judge directly on a typewriter" or "may be mechanically recorded" were introduced by the amending Act of 1976. This amendment authorised the court to use a tape recorder which was frowned upon earlier. However, even if the tape recorder is to be used, the proceedings shall take place in the presence of the Judge. Therefore, even if the tape recorder is used, the time of the Judge is not spared for other work. Consequently, the pressure on the court's time is

not reduced even though mechanical device can be used in recording evidence. However, permitting the evidence to be mechanically recorded is a step in good direction and deserves to be approbated.

5.4. Section 75 of the Code of Civil Procedure confers power on the court to issue a commission, amongst others, to examine any witness. The power is not hedged in by any conditions. However, Order XXVI of the Code of Civil Procedure, 1908, prescribes conditions under which a commission can be issued. Rule 1 of Order XXVI provides that a commission may be issued to examine a person as witness resident within the local limits of the jurisdiction of the Court in which the suit is pending if the person is exempted in the Code of Civil Procedure from ttending the Court or is, from sickness or infirmity, unable to attend. Rule 4 prescribes conditions for the exercise of power conferred by section 75 to issue commission by providing that a commission for examination may be issued if -

(a) he is resident beyond the local limits of his jurisdiction; or

(b) any person who is about to leave such limits before the date on which he is required to be examined in Court; and

(c) any person in the service of the

Government who cannot, in the opinion of the Court, attend without detriment to the public service.

The power to issue commission for examination of a person as a witness is hedged in by the conditions thus specified in rules 1 and 4 of Order XXVI. These provisions would barely help in dealing with the issue of saving the Judges' precious time in recording evidence.

5.5. The power conferred by section 75 and the provisions of Order XVIII will have to be expanded to a certain extent as to help the court in appointing a Commissioner sua motu to record evidence of witnesses present in the court.

5.6. If on a given day more than one suit is fixed for recording evidence and witnesses are present in all the suits, the distinct possibility is that the court would not be able to record evidence of all witnesses and some witnesses will have to go back for no fault of theirs. And the court would be occupied for the whole day in recording evidence - a function which can be best left to a Commissioner. If a Commissioner is appointed to record evidence of witnesses, it would save a lot of time of the court and would assist it in concentrating on disposal of suits.

This appears to be the purpose underlying the amendments made by the Allahabad High Court to various rules comprised in Order XXVI of the Code of Civil Procedure. Rule 1 of Order XXVI of the Code of Civil Procedure, as amended by the Allahabad High Court, widens the power of the court to issue commission, the only condition imposed being that the court thinks it necessary so to do in the interest of justice or expedition. Rule 2 as it stands enables the court to exercise the power suo motu. Rule 4, as pointed out earlier, permits the court to issue commission only in the circumstances specified therein. As far as U.P. is concerned, rule 4 has been deleted, implying that the power of widest amplitude conferred by amended rule 1 can be exercised without being hedged in by any conditions. Any evidence recorded on commission cannot be used in evidence without the consent of the party against whom the same is offered, as provided in rule 8, and the embargo would be lifted only in the circumstances set out in clauses (a) and (b) of rule 8. By the amendment made by Allahabad High Court, rule 8 has been deleted and while so doing, the expression 'subject to the provisions of rule 8' in rule 7 of Order XXVI have also been deleted and in its place the words 'evidence in the suit' have been added.[1] The cumulative effect of these

amendments would enable the court to issue commission when it is expedient in the interest of justice or expedition to examine any witness. Properly construed, in the situation hereinbefore set out, the court may issue commission to examine witnesses in the court. To make the provision effective, it would be advantageous for each court, with the prior approval of the High Court, to draw up a panel of lawyers willing to work as Commissioners for recording evidence. On the commencement of the work of the court on a given day, the presiding Judge will enquire as to how many witnesses are present in all the suits fixed for recording evidence and then immediately appoint available lawyers as Commissioners and they will record evidence. This would leave the presiding Judge time to deal with all suits without spending his time in the mechanical exercise of recording evidence. This would considerably save court's time and expedite disposal of cases.

5.7. It needs haraly to be stated that the cost of Commission in the circumstances herein discussed shall be borne by the State for obvious reasons. Ordinarily the Code of Civil Procedure expects the presiding Judge to record evidence. He is relieved of this duty so that he can

concentrate his attention on disposal of cases. On his behalf, the Commissioner would record evidence, not at the request of the parties to the suit but at the instance of the Judge exercising his suo motu powers. Therefore, the State must bear the cost of Commission.

5.8. Long, unending and repetitive arguments is the bane of the present day justice system. Illustrations of long drawn out arguments spreading over months have already been noticed and it is unnecessary to repeat them here.[2] If the superior courts could hardly control and condone this undesirable feature of court procedure, it would be sheer travesty to expect Judges of the subordinate courts to deal effectively with local lawyers in this behalf. And in the course of a trial, oral arguments are offered at various stages, including also when an adjournment is moved and opposed. Every application under the Code of Civil Procedure is hotly contested. But the two most important stages where arguments consume avoidable long time are at the stage of confirming or vacating interim relief and at the stage of final submissions after evidence is recorded. Both stages may be examined.

5.9. Order XXXIX rules 1 and 2 of the Code of Civil Procedure, 1908, as amended in 1976, confer power on the court to grant interim relief of the nature set out therein and in the circumstances prescribed therein. It is an unfortunate experience of the Judges in the subordinate trial courts to hear arguments for and against granting interim relief spread over days and months. Long arguments have the tendency to end in longer orders because the order granting or refusing relief is appealable[3] and if the arguments advanced are not dealt with, the order is vigorously attacked in the appellate court. Therefore, the Judge tries to cover all arguments and in the process writes an unusually long order. The Law Commission came across a recent case in which the City Civil Court at Ahmedabad wrote an order extending over hundred pages refusing to grant interim relief. The experience generally is that by the plaintiff moving for relief under Order XXXIX rules 1 and 2 of the Code of Civil Procedure, 1908, an ex parte order is snatched and then there is total reluctance to get it heard to determine where the rule nisi should be confirmed or discharged. This resistence leads to various ancillary applications diverting the court's attention from the main issue. The arguments generally spread over a wide canvass and are heard

for a number of days. Now this situation can be taken care of by the court itself by granting ex parte order limited to certain days, say about a fortnight, and if the plaintiff thereafter fails either to serve the same to the other side or shows reluctance to proceed in the matter, the rule nisi should get discharged automatically by the efflux of time. This will put a pressure on the plaintiff to proceed with the matter. If, on the other hand, the defendant shows reluctance to proceed with the matter, the rule can be confirmed without further arguments. This will put a pressure on both sides to get the interim relief application disposed of in a short time. The time limited to one hour at best may be fixed for either side. Equally time consuming is the final arguments. As a rule, it is never heard from day-to-day. The hearing spreads over months. This evil can be put a stop to by insisting upon written submissions and the pointed attention to some aspects can be made in the court by limiting the time granted to each side. With regard to the High Court and Supreme Court, a suggestion to this effect has been made by the Law Commission already[4]. It is time to extend this method to courts subordinate to the High Court. For the weighty consideration therein mentioned, the Law

Commission is of the opinion that the courts must be empowered to limit oral arguments to specific time after written submissions have been furnished to the court. This would also assist the subordinate courts in writing effective judgments because written submissions would be handy.

5.10. The adversorial system now prevalent in our courts provides a place of pre-eminence to the members of legal profession. One can hardly think of a successful working of adversorial system in the absence of legal experts assisting the parties in search of justice. This is the first and primary role of the members of the legal profession. But there is a more important and more ethical role which the members of the legal profession have to play and that is as officers of the court. Their role is as important as, if not more than, the role of the Judge who would ultimately render his opinion. In this sense lawyers are called the officers of the court. They assist in search of truth, in rendering justice and in imparting a healing touch to the parties. They are performing this dual role. The Law Commission, however, feels that this is a narrow and imperfect view of the role of the lawyers participating in adversorial system. It is, therefore, time to add a third dimension to their

role, namely, accountability of the legal profession to the society.

5.11. There is a tremendous misunderstanding about the role of legal profession. Apart from the larger question of the role of legal profession in a constitutional democracy, even on a narrower plane as officers of the court involved in dispensation of justice, their accountability to the society has not been spelt out. As officers of the court involved in the process of resolution of disputes, they have to contribute to bring about a satisfactory resolution of disputes. This is specifically the role of legal profession in adversorial system. Instead there is a tremendous misappreciation about the role when occasionally they are condemned as 'brokers interested in perpetuation of disputes'. A leading Gujarati daily 'Jai Hind' described them in editorial columns as kajiya dalals. A prosecution was launched against the editor, complaining of defamation of the members of the profession. A petition was filed on behalf of the editor in the Gujarat High Court praying for quashing the prosecution.[5] The court meticulously examined the role of legal profession in the modern society and especially in India, pointing out that the profession has suffered erosion in

its status. Undoubtedly the court also peeped at the other side of the picture which was described as brighter side. Legal profession has evoked high admiration and pungent criticism. It is time for the profession to sit up and re-appraise its role in the modern society and find ways and means of establishing its accountability to the society. The profession has to have a re-appraisal of its behaviour qua courts, qua clients, their mode and method of charging fees, their life style, all of which enter the verdict about the role of the profession. One can look upon with pride at the role of the legal profession in our movement for independence. But since the independence, even though one may not like to admit, the profession has lost its place of pre-eminence. The strike of the lawyers in Delhi for months on end with balance sheet of profit and loss to the legal profession yet to be drawn up, coupled with the acrimonious exchange before Madhwa-Goswami Committee, would leave no doubt in the mind of anyone that it did not cover the profession with glory. Its net outcome, one can say with confidence, is that as the cases were not being heard, arrears further piled up and the worst sufferers were neither the Judges nor the courts nor the lawyers but the litigants for whom the profession claims to exist. This fall out reveals

the total absence of social audit and accountability of the profession to the society.

5.12. Legal profession is a monopolistic profession. Every monopoly has an inbuilt potentiality of the abuse of its monopolistic character. Legal profession has been described as monopolistic in character because unless one is a member of the club, entry to which is by enrolment by Bar Council composed of lawyers, one cannot practise before a court or tribunal. To that extent, it is a closed door club with eligible criterion for entry and the power to grant admission vests in the members of the profession. It is thus a monopolistic profession. Therefore, in order to curb the necessary evils of a monopoly, it is of primary importance that a monopoly must be accountable to the consumers of its service. In the wider perspective of constitutional democracy, apart from accountability to the consumers of justice, namely, litigants, a profession given monopolistic character by the society itself must be accountable to the society at large. It is this dimension of the profession which by some method must now be highlighted. There can be a multi-dimensional approach to this aspect. The Law Commission in this report touches only one.

5.13. Apart from litigation involving Government or a public servant acting in discharge of his duties, there are certain statutes under which a right cannot be claimed unless a notice of demand is served upon the person against whom the right is claimed and relief is to be prayed for. Section 80 of the Code of Civil Procedure prescribes a statutory notice to be served in the manner prescribed in the section when either a Government or a public servant acting in discharge of his duties is to be sued. Similarly, under the Transfer of Property Act, if the landlord wants to re-enter the premises demised by him, a notice terminating the tenancy has to be served unless the tenancy has expired by efflux of time. This position has hardly undergone a change even after the introduction of Rent Acts. Even when a writ petition is to be filed praying for mandamus a notice making demand of justice has to be served. The concept of serving notice deserves to be expanded to all potential areas where conflict may lead to litigation. The Law Commission is of the view that in any litigation except where some urgent relief is necessary, a notice of demand must be issued on behalf of the person who claims a certain right or relief against another person which may as well include an artificial person or

a juristic person. The purpose in introducing a stage of notice is to inform the other side that a litigation is contemplated and give him an opportunity to avoid litigation. If the other side is not enamoured of litigation and is willing to act fairly and justly, the notice will put him on the guard that a possible litigation is threatened unless the parties meet and resolve the dispute.

5.14. Ordinarily the party seeking to initiate any suit or legal action will approach the lawyer first. The lawyer should give a notice and in that notice he must specify that the other side should, on receipt of the notice, nominate his lawyer. This must be made obligatory. Once the other side nominates his lawyer and replies to the notice, it must be made statutorily obligatory for both the lawyers to meet within a period of 15 days within which no action can be commenced. Even if the limitation for the suit or legal action is to expire, by a statutory provision it will be extended by 15 days being the period of grace within which the lawyers must meet. At this meeting, the lawyers should start appreciating each other's point of view, exchange evidence and attempt to find out whether a reasonable solution of the dispute by fair approach of give and take

is possible. Minutes of the meeting must be maintained. If the dispute is resolved, the consent terms must be drawn up and submitted to the court under Order XXIII rule 3 of the Code of Civil Procedure upon which the court must pass a consent decree. If the whole dispute is not resolved in course of the negotiations at the meeting but a partial agreement is achieved, the same must be recorded and treated as binding on both sides. The litigation may start only for the remainder of the dispute. Failure to resolve the dispute at the negotiating stage may permit a litigation to be started but in that event the plaint must aver that such an effort has been made and the document evidencing the attempt must be disclosed along with the plaint. The other side, on being informed that litigation has been filed must appear without waiting for a summons to be served. The court must then enquire about the area of dispute not resolved and refer the matter to the Conciliation Court. If possible, the Conciliation Court should persuade the parties to come to a fair settlement. The Conciliation Court, after having perusal of the documents prepared at the negotiating stage, must ascertain which party was unjustifiably recalcitrant at the time of negotiation. It must be ascertained at two stages, namely, at the stage of meeting of the

lawyers and at the stage when the matter is dealt wit by the Conciliatic Court. Ultimately if the trial goes on, the party shown to be recalcitrant and also shown to be unjust in approach must be visited with heavy cost, inclusive of the cost of establishment of the court as spelt out by the Law Commission in its earlier report.[6]

5.15. To reclaim the glory of the profession, only a minor step is suggested here. If implemented in letter and spirit, the Commission is confident that instead of being accused of being 'brokers of dispute', they would acquire the status of healers and solvers of dispute. In order to bring about this result in a small way, the Law Commission recommends that on the notice and the reply being ex hanged, a statutory duty must be cast on the lawyers to meet and either resolve or narrow down the area of dispute and regular reports of the achievement in this behalf must be published. That published report would be subjected to social audit which would not only help in improving the image of the profession, but would provide objective evidence of their contribution to reclaiming the system under unbearable pressure.

CHAPTER VI

REVISIONAL JURISDICTION OF HIGH COURT

6.1. Section 115 of the Code of Civil Procedure, 1908, confers power on the High Court to call for the record of any case which has been decided by any court subordinate to High Court and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in exercise of its jurisdiction illegally or with material irregularity,

the High Court may make such order in the case as it thinks fit. A proviso has been engrafted to this section by the Amendment Act of 1976. It is not necessary to reproduce the same here.

6.2. This jurisdiction is briefly described as revisional jurisdiction of the High Court. Experience has shown, and no statistical support need be given to substantiate the proposition, that this revisional jurisdiction has been largely responsible for holding up the trial of suits and delaying the disposal of the suits. The First Law

Commission in its 14th Report examined the advisability of retention of the revisional jurisdiction and recommended its retention by providing certain checks in exercise of the jurisdiction.[1] While comprehensively dealing with the Code of Civil Procedure, the Law Commission in its 27th Report reiterated its recommendation in the 14th Report.[2] While re-examining the Code of Civil Procedure, the Law Commission in its 54th Report recommended total deletion of section 115 of the Code of Civil Procedure observing that often the cause of delay in the trial of suits is entertainment of petitions for revision against interlocutory orders which invariably result in stay of proceedings. In fact, in many cases, the object of the parties in invoking the revisional jurisdiction of the High Court appeared to be to delay the progress of the proceedings.[3] The High Court Arrears Committee expressed the opinion that the revisional jurisdiction of the High Court against interlocutory orders should be abolished.[4]

6.3. As if this revisional jurisdiction had not done enough harm, article 227 of the Constitution has been so interpreted as to widen the scope of revisional jurisdiction of the High Court. Article 227 of the Constitution confers power of superintendence over all courts and tribunals by

the High Court throughout the territories in relation to which it exercises jurisdiction. This power of superintendence has been interpreted to confer wider jurisdiction compared to one conferred by section 115 Code of Civil Procedure of correcting any and every error committed by the subordinate court through the progress of the litigation. Whenever a constraint was felt in exercise of revisional jurisdiction under section 115 of the Code of Civil Procedure, the parties invoked the wider jurisdiction under article 227. The State of U.P. amended section 115 of the Code of Civil Procedure in its application to the State by confining the revisional jurisdiction of the High Court to the suits wherein the value of the subject matter of dispute was Rs.20,000 and above or suits instituted before August 1, 1978, and in all other cases transferred the same to the District Court. Confirming the validity of the amendment, the Supreme Court observed that 'access to justice also implies finality within reach of the rich and the poor..... Judicial reform is up to now a tinkering exercise, not an engineering project, but even that little tinkering is fiercely challenged as litigative anathema by the profession which is unfortunate'.[5]

6.4. The Satish Chandra Committee differed with

the recommendation of the Law Commission and leaned in favour of the amendment made by the State of U.P. in section 115 with some further expansion of the jurisdiction of the District Court.

6.5. Has the situation improved? The answer is obviously in the negative. What is the utility of a revisional jurisdiction of the High Court or even of the District Court against interlocutory orders? One can appreciate a revision petition against a final order and the expression 'final order' should not be the subject matter of another round of litigation. The expression 'final order' must mean final disposal of the litigation as a whole in which the order is passed and nothing further is required to be done by the court dealing with the litigation. But when it comes to interlocutory orders, experience shows that even a rejection of an application for adjournment of a suit has been the subject matter of a revision petition.

6.6. It is generally accepted that anyone interested in delaying the progress of the suit would make any application, though utterly irrelevant, invite an order and approach the High Court in revision. Till it is admitted, adjournment of the suit will be sought on the

ground that the order of the court is already under challenge. If admitted, stay would follow as a matter of course and the progress of the suit would be held up for years. The abuse of the provision can be spelt out by an illustration. Order IX rule 8 of the Code of Civil Procedure provides that the court shall dismiss the suit for default of appearance of the plaintiff on the date when the suit is fixed for hearing. Order IX rule 9 provides that when the suit is so dismissed, the plaintiff may apply for an order to set aside the dismissal and if he satisfies the court that there was sufficient cause for his non-appearance when the suit was called on for hearing, the court shall make an order setting aside the dismissal upon terms as to costs. Order XLIII rule 1 clause (c) confers a right of appeal against an order made under Order IX rule 9 rejecting an application for an order to set aside the dismissal of a suit. The policy of the law appears to be that if the court which dismissed the suit is satisfied that there was sufficient cause for the non-appearance of the plaintiff on the date fixed for hearing the suit, it shall set aside the dismissal of the suit and if the court does not set aside the order dismissing the suit, the order of the court rejecting the application

can be reviewed by an appeal. This necessarily implies that if the application is granted, no appeal would lie. And it should be so. If the order dismissing the suit is not set aside, the plaintiff becomes non-suited. Therefore, he is given a right of appeal. If, on the other hand, the court sets aside the order dismissing the suit, the matter would proceed further. The defendant cannot then make a grievance about it. Experience, however, shows that even though the policy of law as disclosed by a combined reading of rules 8 and 9 of Order IX and Order XLIII rule 1(c) is that only the order dismissing the suit for default of appearance may be reviewed by an appellate court, yet the defendant generally questions the correctness of the order granting the application for setting aside the dismissal of the suit by way of revision. During the time the revision is pending further hearing of the suit will be stayed. Years after revision application is dismissed which obviously it would be, the suit would again be revived and proceeded further. And such tactics have been often resorted to. This is the harm caused by exercise of revisional jurisdiction. The gain is little because where interlocutory orders are of some consequence, Order XLIII rule 1 provides for appeal against the same. Therefore, having regard to all the

circumstances of the matter and experience so far collected and the previous opinions expressed and the present emerging situation, the Law Commission is of the view that section 115 should be deleted so far as interlocutory orders are concerned. This would remove the stagnating phase of the progress of the suit.

CHAPTER VII

CRIMINAL JURISDICTION

7.1. While dealing with urban litigation, it would be a glaring omission if some change is not suggested in the present court structure dealing with criminal cases in urban areas. Undoubtedly when an exhaustive revision of the Code of Criminal Procedure is undertaken, the question of dealing with criminal litigation can be adequately dealt with. Even then during the interregnum, certain steps can be taken which would reduce the burden on the criminal courts in urban areas.

7.2. During the British rule and for some years after independence, there was a method of appointing honorary magistrates to deal with ordinary routine criminal cases, such as violation of municipal law, traffic regulations, simple private complaints and matters alike in character. The research shows that in appointing honorary magistrates under the British rule, the test was of loyalty to British regime. The power was used for extending State largesse. Some title holders under the British regime were appointed as honorary magistrates. Even then,

some of them acquitted extremely well but by and large a good number of them did not come up to expectation with the result that the system came into abuse. And nemesis overtook it. The system was discontinued. Instead full time stipendiary magistrate's courts were set up.

7.3. The criminal litigation has proliferated so much and the crime chart is going up at such a break-neck speed that it is rather difficult to provide for the system of stipendiary magistrates for all sorts of criminal cases. There is a body of opinion that large number of offences as set out in the Indian Penal Code of 1860 vintage deserve to be deleted consistent with the mores of the present day society. There is a belief that being guilty of over-legalisation; a case is made out for delegalisation. The behaviours that need to be decriminalised are those of homosexuality, prostitution, abortion, bigamy, et al. This requires an indepth study and the Law Commission has started its research in this behalf. However, it will take some time before a thorough probe can be made and a well-considered report is submitted.

7.4. During the interregnum, the system of

appointing honorary magistrate must be re-introduced. But departing from the past practice, a specific qualification must be prescribed that only those retired personnel of the judiciary who in their active life rendered service as Judges should alone be appointed as honorary magistrates. There are now nearly hundreds of retired Judges available for being appointed as honorary magistrates. Their experience in decision making, their expertise in dealing with cases, their sense of justice and fairplay and their rational approach acquired over a whole working life would make them ideal honorary magistrates. They can be entrusted with any work which a stipendiary magistrate can undertake.

7.5. Therefore, it is hereby recommended that honorary magistrates, subject to condition in the foregoing paragraph, may be appointed at once. They should sit in the same courts where the regular courts sit in the early hours of the morning. Their terms and conditions of payment can be worked out and they will be able to take over all the old cases on which they can concentrate, relieving the burden on the sitting Judges. This one

suggestion would help in reducing the burden in urban criminal litigation.

7.6. In preparing this report, the Law Commission must acknowledge with thanks the assistance rendered by Mrs. Jyotirmoyee Nag, retired Judge of the Calcutta High Court.

7.7. The Law Commission recommends accordingly.

(D.A. DESAI)
CHAIRMAN

(V.S. RAMA DEVI)
MEMBER SECRETARY

NEW DELHI,

August 8, 1988.

NOTES AND REFERENCES

Chapter I

1. LCI, 114th Report on Gram Nyayalaya.
2. The Constitution of India, article 235.
3. LCI, 116th Report on Formation of an All India Judicial Service.
4. LCI, 124th Report on The High Court Arrears - A Fresh Look.
5. LCI, 125th Report on The Supreme Court - A Fresh Look.

Chapter III

1. Metalware and Company etc. v.Bansilal Sarma and Co. etc., (1979) 3 SCC 398 at 407.

2. Seaford Court Estates Ltd. v. Asher, (1949) 2 All ER 155 at 164.

3. Bangalore Water Supply and Sewerage Board v. Rajapa, (1978) 2 SCC 213 at 285.

4. S.B.Noronah v. Prem Kumari Khanna, AIR 1980 SC 193 at 195-196.

5. Id. at 197.

6. Section 14(1) (e) of the Delhi Rent Control Act.

7. Precision Steel and Engineering Works and Another v. Prem Deva Niranjan Deva Tayal, (1982) 3 SCC 270 at 279.

8. LCI, 114th Report on Gram Nyayalaya.

9. Ibid., for a fuller discussion of the model of participatory justice, reference is invited to paras 5.6 to 5.9.

10. Ibid., for a fuller discussion of the selection for empanelling lay judges, reference is invited to paras 5.16 to 5.19.

11. Roman Tomasic and Malcolm M.Feelay, Neighbourhood Justice : Assessment of an Emerging Idea, (1982), p.x.

12. Id. at p.82.

13. Ibid.

14. Indian Express (Delhi Edition), dated 19th Feb., 1988, p.10.

Chapter V

1. B.V.Viswanatha Aiyer, The Code of Civil Procedure, 4th Edition, Vol. II, pp. 1048-1052 under Order XXVI, rules 4, 7 and 8.

2. LCI, 124th Report on The High Court Arrears - A fresh Look, paras 4.12 to 4.17; and LCI, 125th Report on The Supreme Court - A Fresh Look, paras 2.18 and 4.18.

3. See Code of Civil Procedure, Order XLIII, rule 1 (r).

4. LCI, 99th Report on Oral and Written Arguments in the Higher Courts.

5. Narottamdas L. Shah v. Patel Maganbhai Revabhai and Another, 1984 Gujarat Law Herald 687.

6. LCI, 128th Report on Cost of Litigation.

Chapter VI

1. LCI, 14th Report on Reform of Judicial Administration, para 30, p.429.

2. LCI, 27th Report on Code of Civil Procedure, 1908, para 57, p.25.

3. LCI, 54th Report on Code of Civil Procedure, 1908, pp.96-97.

4. Report of the High Court Arrears Committee, 1972, para 71, p.67.

5. Sri Vishnu Awtar etc. v. Shiv Awtar and Others, AIR 1980 SC 1575.

6. B.V.Viswanatha Aiyer, The Code of Civil Procedure, 4th Edition, Vol. I, p.351.