New liberalized as early as in 1981. ever

New blood in the procedure needs to be injected and sooner the better. The late Mr. M.

C Stalvad, the first Attorney General of India, in his address to the Bar Association of India said: No doubt the British system of administration was very good and led to excellent results, but it had its defects which have been accentryated in two ways. We are now a democratic country and we are a much more populous country. In these days, therefore, what is required is a radical change in the method of administration of justice. We want courts to which people can go with ease and with as little cost as possible. It is not merely the quickness of justice but it is the easy approach and quick disposal both which are needed and that only can be achieved if the system is completely overhauled: This was said about 40 years ago. Have we made any important? Chief Justice Ranganath Mishra had given an optimistic note. He in his law Day speech in 1990 observed. In these forty years law has considerably progressed in many aspects.

The bar of locus stand was liberalized as early as in 1981. Ever since then, these have been a sizeable mould to the nature of litigation particularly in superior courts. In these 8-9 years, Public and has served the cause of the community to a great extent. It is in this group of cases that the court has exhibited its competition of being a social auditor. The impact of the judicial process in social living has been clear and discernible; the common man has perhaps been able to see the benefit the judicial system is capable of bringing about. Admires and credits often indicate that for reasons which are more than one judicial system has shown appearances of cracks and fatigue.

It has therefore become necessary to deal with the situation both promptly as also dexterously. It would not be enough to overcome the almost inevitable inefficiency of justice according top law. But far-reaching changes are certainly impossible while the regime of individualism upon which are prevailing ideal is based is considered desirable. As long as individual interest is preferred to general interest, both civil and criminal justice must remain inefficient and insufficient to a large extent. Those who speak of judicial inefficiency are usually unaware of the highly artificial meaning of the conception. The law is efficient in civil suits when it enters judgement and issues execution as expeditiously as possible. Thereafter its efficiency ceases to be the primarily consideration.

As a result of the humanitarism which is the necessary corollary of the present individualism a whole series of obstacles arise in the enforcement of execution. The property of the debtor is often put beyond the reach of the creditor either by the procedural delays which make it possible for the debtor to transfer it or by formal exemptions from executions. The person of the debtor is of course beyond seizure. In this respect the law of previous centuries, more judicial inefficiency is usually unaware of the highly artificial meaning of the conception. The law is efficient in civil suits when it enters judgement and issues execution as expeditiously as possible. Thereafter its efficiency ceases to be the primary consideration.

As a result of the humanitarianism which is the necessary corollary of the present individualism a whole series of obstacles arise in the enforcement of execution. The property of the debtor is often put beyond the reach of the creditor either by the procedural delays which make it possible for the debtor

to transfer it or by formal exemptions from execution. The person of the debtor is of course beyond seizure. In this respect the law of previous centuries, more frequently recognized rights of provisional arrest and imprisonment for debt, was certainly more ‘ efficient’.

But a return to the older law will hardly recommend itself now. In any event there would still remain the economic poverty of the debtor to defeat the efficiency of the law, and it is safe to venture that the latter would be blamed exclusively for every miscarriage of justice. In the criminal law the situation is somewhat reversed.

Once judgement against an offender is given, it is much more certain to be executed. But the concern for the individual is manifest in the procedure to judgement. The provisions are not only considered procedural safeguards but are great constitutional rights. They are indeed constitutional rights which have-been own only after many centuries of bloodshed and in no democracy would their abandonment be seriously considered. The almost insoluble dilemma is that they benefit not only the ordinary citizen who occasionally finds himself in the coils of the law but the professional criminal who by long experience has learned to take advantage of all its defences. Since it is difficult to secure radical alternation of fundamental social institutions, the reform of judicial administration usually concerns itself with adjustments of the judicial machinery. Reforms of procedure are far more frequent than changes of substantive law. Perhaps that is one of the reasons why the results frequently leave so much to be desired.

It is true that the distinction between substantive law and procedure to a great extent is artificial. All reforms of procedure affect substantive rights but certainly they cannot improve the situation where the substantive right is of a dubious character. In general the creation of new courts or the appointment of additional judges to existing courts is a very frequent expedient in reforms. Its popularity with politicians arises from the fact that it increases their patronage by providing new offices to fill. Changes in steps in procedure often have the curious result of increasing the congestion of the courts at least for some time. A great deal of litigation is often necessary to settle their effect. The fundamental puzzle of procedural reform is the indispensably of any one particular device. Since legal technique permits of a considerable degree of variance for the accomplishment of similar ends, it can be said that almost any form of procedure reasonably adapted to secure the fundamental purposes of the law will work if there is the will to make it work.

On the other hand, it must be remembered that men discharge their civil obligations and abstain from crime not only from fear of legal sanctions but also from moral and practical considerations. The modem tendency certainly has no forms of social control. Finally, it must be realized that even the defects of the administration of justice, at least in civil matters, any have some social value in discouraging litigation, in impelling men to exhaust the possibilities of conciliation. In an acquisitive society, it is perhaps desirable that the paths of litigation be strewn with a few thorns. Arrears in Courts: Popular dissatisfaction with the administration of justice has certainly not been less in the twentieth than in previous centuries. In a period of

particularly accelerated tempo, it would seem easy to explain the prevailing dissatisfaction in terms of institutional transitions. If, however, the phenomenon is constant, it can hardly be explained entirely as the result of changing conditions.

An explanation solely in terms of sociological differentials can be adequate only if more fundamental factors are absent. It is for instance tempting to assign the prevalence of perjury, which so often in modern courts undermined the administration of justice, entirely because of the decline in influence of religious ideas. But perjury has always been a not infrequent crime. It should certainly be no less powerful a restraint to fear for the punishments of this world than to fear the terminates of the next. Authority has maintained itself somehow despite the decay of religious institutions. To take another stock illustration, the vast improvement in means of communication has undoubtedly given the criminal facile means to attempt escape but the advantage is balanced by the ease with which public authorities may pursue him. There is again the pernicious influence of the modern city. To it is attributed the congestion of the courts which is supposed to be the very basis of the modern maladministration of justice.

But mere size hardly account for the evils of metropolitan justice. As a matter of fact the city has been the originator of most of the improvements of procedure in the history of legal systems. If there are more litigants in the city, it has the necessary wealth to secure additional judges and good lawyers. There is a general consensus that our judicial system today from the highest to the lowest is suffering from many ailments. Everyone speaking about judicial system starts with an apology and admission of the falling

standards. Justice V D Tulzapurkar of the Supreme Court has observed: In fact, the superior judiciary of the country has of late been under constant onslaughts, external as well as internal which are bound to cripple the health, welfare and progress of our body politic, as an ailing heart cannot ensure vigorous blood supply for the sound health of its people. Former Chief Justice P. N.

Bhagwati in his Law Day speech in 1985 said: I am pained to observe that the judicial system in the country is almost on the verge of collapse. Our judicial system is crashing under the weight of arrears. It is a trite saying that justice delayed is justice denied. We often utter this platitudinous phrase to express our indignation at the delay in disposal of cases but this indignation is only at an intellectual and years to get justice. They have to pass through in our own courts have to wait patiently for years and years to gets justice. They have to pass through in our own courts have to wait patiently for years and years gets justice.

They have to pass through the labyrinth of one court to another until their patience gets exhausted and they give up hope in utter despair. The only persons who benefit by the delay in our Courts are the dishonest who can with impunity avoid carrying out their legal obligations for years and each affluent person who obtains orders and stays or injunctions against Government and the public authorities and then continues to enjoy the benefit of such stay or injunction for years, often at the cost of public interest. About Supreme Court, the Chief Justice observed: The Supreme Court is today on the brink of collapse with the enormous inflow of cases and heavy arrears. I, for me, do not think that a large increase in the number of

judges is desirable. If the number of Judges is unduly increased, the Supreme Court will become like a glorified High Court with fragmented bench structures.

The Supreme Court will lose its identity as a Summit Court and there will be losing its identity as a Summit Court and there will be no cohesiveness and uniformity. Equally I am not in favour of curtailing in any manner whatsoever the extraordinary jurisdiction of the Supreme Court under Article 136. Law’s Delays: The law’s delay is classic and universal; it has served to describe the almost immemorial condition of civil suits. The dockets, or the calendars of civil causes, are always overcrowded and it may take years to get a trial on merits. The expenses of commencing a civil action and the legal costs involved are too heavy, and it becomes hardly worthwhile to base an action on a small claim. The procedure is too elaborate and technicalities impede the litigant at every stage.

Even after an initial judgement, a number of appeals may be a further cause of delay. Where, the final judgement is secured, execution is more than likely to be returned unsatisfied. Under such circumstances the honest litigant is impeded in the assertion of his legal rights, while paradoxically enough the dishonest litigant is encouraged to assert unfounded or exaggerated claims. The very expenses of engaging upon a protracted litigation should cause parties to settle for smaller sums or go without redress and justice. Delay and technicality are operative not in civil actions alone. The condition is not better in the administration of criminal justice.

In the pre- democratic era the arbitrary character of criminal justice led to accusations of excessive harshness, while and present the outcry is against an excessive tenderness towards malefactors. Many criminals are never even chance to escape by taking advantage of the loopholes of the law. The inherent drama of a criminal trial in the very nature of things always favours the defence. Except in matrimonial actions and libel cases a civil trial is usually free of such influence. On the other hand, corruption, favouritism and perjury are especially operative in criminal trials. Every period has its own cause celebrate. It is a hearsay that wealthy and powerful malefactors escape while the poor and friendless go to jail.

Innocent men are sometimes framed by the police; and it is small comfort that the same technique is employed to get professional criminals behind the bars upon fabricated charges. Justice H R Khanna of the Supreme Court had observed: Another thing which is shaking the confidence of the people in the judicial system is the high incidence of acquittals and the increasing failure of the system to bring major culprits to book. Judges, of courses, have to give their verdict on the material on record and no one can and should expect the courts to hold a person guilty unless there is credible evidence to substantiate the charge against him. One major reason for the high percentage of acquittals is the decline in the high percentage of acquittals is the decline in the quality of police investigation and its consequent inability to procure and produce credible evidence as may establish the guilt of the accused. Such decline in its turn has been due to interference by the politicians in the investigation of cases.

It is well-known that the greater a person is a goonda or an anti-social being the greater in his value and utility at the time of elections. When politicians seek and secure the assistance of anti-social beings at the time of the elections, the latter extend their assistance in the expectation that when those antisocial elements are in trouble at the hands of the law enforcement agencies, the politicians to the anti-social beings when in difficulty is the quid pro quo for the help given by the anti-social beings at the time of elections. All this naturally makes the task of the police Investigation of crimes extremely difficult. This apart, we find that a good bit of the time of the police force is taken in the security and other arrangements for the VIPs.

Demonstrations, bandhs, strikes, hartals and agitations have increasingly become a part of cur public life and call for considerable attention of the police force, investigation of crimes occupies comparatively lower priority in the functioning of the police. The result as such is deterioration in the quality of investigation and the increasing inability of the police force to adduce credible evidence at the trial. Be that as it may, whatever may be the reason for the high incidence of acquittals the inevitable effect of that would necessarily be the loss of confidence of the people in the courts to bring the major culprits to book? We have to bear in mind that if the people lose their faith in the judicial system and carry the impression that the judiciary is not able to punish the culprits, the victims and the kinsmen of the victims would resort to extra-legal methods to settle scores with the culprits whose identity is normally known to them. It is plain that such a state of affairs would lead to chaotic and anarchical conditions. Technicalities of Law and its Procedure: A universal rather than a particularistic mode of approach explains a great

many of the defects of judicial administration. Litigiousness is a strong characteristic of human nature. All over the world a forensic display attracts the admiration of the multitudes.

Curiously, legal technicalities are despised; at the same time, their ingenuity is applauded. Disappointed litigants are riot always silent. In their defeat they appeal from ‘ law’ to Justice Lawyers as a class has too much to gain from maintaining the intricacies of their art and to simplify it to great extent would make their service unnecessary. For many reasons legal institutions lag behind changes of public opinion much mere than other institutions. The procedure in the Civil and Criminal Courts has become too technical, cumbersome, expensive and slow. There are too many appeals. It was the best when introduced in the social and political ethos of that time, but it now has become a rain soaked blanket on the back of a common litigant.

The judges, lawyers and the defendants have litigant. The judges, lawyers and the defendants have now vested interest in this procedure. Chief Justice Shri P. N Bhagwati in his Law Day speech delivered in 1986 says: There are still unfortunately in our country a few lawyers and jurists who ostrich-like want to bury their heads in sand and refuse to recognize the new change which is taking place in the judicial process as a result of public interest litigation. Trained in the old British tradition of adversary justice and born and brought up in an era where the doctrine of lassies afire prevailed and with their minds fossilized and overtaken by senility, they find it difficult to reconcile themselves to the new wind of change which is roaring down in ancient corridors.

They are intellectually still living in the first half of the 20th century or perhaps even the 19th century and cannot grow out of that mould. They are so much accustomed to treading the beaten path that they cannot tolerate any departure or change, To th6m the justicing process is merely an intellectual exercise where judges and lawyers can display their learning and scholarship, the have-nots and the handicapped, the lowly and the lost have no place in their scheme of things. They want the judiciary to continue dispensing justice processed in the ramshackle and anachronistic Anglo-Saxon jurisprudence because for them those who dispense jurisprudence are demi-gods. But these so called champions of justice do not realize that there are large masses of people in the country who are entitled to justice and if they do not get it soon. They will one day storm the highway and destroy those who claim it to be their exclusive right to walk along it. Fortunately, as a result of public interest litigation, the weaker sections of the people, the disadvantaged segments of the community are now for the first time looking up to the courts as their protector against injustice.

So far the courts had been inaccessible to them. But now their problems can be brought before the courts and justice ensured to them through the strategy of public Interest Litigation. A near revolution is taking place in the judicial process, notwithstanding the unreasoned criticism of a few who live in ivory towers and palatial buildings, unmindful of the misery, suffering and exploitation of the underprivileged segments of society who constitute over 50 percent of the population of this country. Conditions of Subordinate Judiciary: The conditions of Subordinate Judiciary, which forms the backbone of the judicial structure, are pitiable; Chief justice Shri P. N.

Bhagwati had this to say about it: There are large numbers of cases pending in the subordinate courts of District Judges, Civil Judges and Munsiffs. It is not possible to cope with this large inflow of cases in the subordinate courts unless and until we bring about structural changes, but even within the existing system, we can do very much if we improve the salary and conditions of service of our subordinate judges and provide them better working condition. We are unable to attract good talent in the subordinate judiciary because of the rather poor remuneration and unsatisfactory conditions of service of subordinate judges. We do not have enough number of judges in the subordinate judiciary in many of the states nor do we have enough number of courts. The subordinate judges in quite a few states have no housing facilities and they have to depend on lawyers and, sometimes, even on litigants to obtain housing accommodation and that too at exorbitant rent which they can hardly afford. There are not even proper court buildings at many places. Moreover we do not give to our subordinate judge’s pre appointment training or continuing in service training.

We proceed on the assumption that as soon as they are appointed as subordinate Judges, some divine wisdom descents upon they and they acquire skill and capacity to deliver justice. The reason for all this is that in many of the states, administration of justice has a low priority. When finances are needed for the purpose of improving the judicable system at the lower levels, there are redundancies to make such finances available. We do not seem to realize that it is subordinate courts which form the basis of the pyramid of justice and unless the base is strengthened, the pyramid is bound to crumble. It is often forgotten that the contact of the common man with

the justice system occurs only at the level of the subordinate courts; he has rarely occasion to go to the High Court and therefore, if we want to inspire confidence in the common may that he can get justice, it is imperative to strengthen the subordinate judiciaries. There is also lack of appreciation on the part of many, that if there is a strong subordinate judiciary, the number of appeals to the High Courts will go down and the burden of the High Courts will be considerable reduced.

Impartiality of Judges and their integrity: There has always been insistence upon the superior integrity of judicial administration. There is also need for the sublimity of justice. The administration of justice is considered not only as a function of the state but as something of a mystery. This is apparent from many familiar practice and sentiments. At least High Courts of justice are everywhere required to be architecturally magnificent. A trial, particularly a criminal trial, is as much a rite as a religious ceremony.

The proceedings are arranged to impress both the participants and the spectators with solemnity of the occasion, with the majesty of the administration of justice. Not only the vulgar but the enlightened still respond to the ritual with some feeling to awe. The reasons for these peculiar attitudes towards judicial administration hark back to an early period in the history of the state, which established the primary importance of rendering justice between man and man. There is a persisting memory of the anarchy of the period of self-help. The early sacral affiliations of the administration of justice are also not forgotten. When the king as sorted his power over warring and intractable, justice was established as the very

foundations of kingdoms. The common man now had some measure of relief against the aggressions of the mighty.

In his gratitude he invested justice with special attributes of sanctity. For many centuries the state remained almost solely the policing state, and the administration of justice was the only public function it undertook in the interest of the common man. Legal justice was synonymous with social justice, and it was natural enough that it should be appreciated very highly. Today the state undertakes many administrative services, and the contact of the average citizen with the state is far more frequent through its administrative than its judicial agencies.

The average man today may not pass through life without coming into contact with the judicial agencies. The average man today may not pass through life without coming into contact with the judicial machinery of the state. But it is still considered far less calamitous to have to pay a bribe for an occupational license than to be denied justice in the courts or to get it by paying for it. Nothing more can undermine the certainty of justice than lack of impartiality. Thus the integrity of the administration of justice has been elevated as an idea!. More over the insistence has been upon a superior degree of integrity as compared with other breaches of administration.

Judicial administration has been surrounded with special safeguards. The modern state has striven to achieve a legal justice that should be far superior to its economic justice. In large measure it has succeeded. A judicial scandal is considered especially deplorable. The slightest hint of irregularity or impropriety in the courts is a cause for great anxiety and alarm. A

legislator or an administrator may be found guilty of corruption without apparently endangering the foundations of the state but a judge must keep himself absolutely above suspicion. To speak of " the independence, impartiality and integrity of the judges and administration of justice has become almost a fetus." The courts/judges have now to realize that its sacrosanct nature, its high pedestal, its power of contempt will not save it if they are not fair, impartial and honest.

The modern tendency is that the right to criticize judges be one of the safeguards to ensure very high standards of performance. Our Supreme Court observed in one of the cases: Wise judges never forget that the best way to sustain the dignity and status of their office is to deserve respect from the public at large by the quality of their judgements, the force, fairness and objectivity of their approach and by the restraint, dignity and decorum with which they observe their judicial conduct. India Today summed up the situation thus: Judges today are a community under siege. They are being divested of the single virtue that has been their armour and sword credibility. It is not the tragedy of just a few hundred individuals that their ability and intentions are being brought into question. When these individual happen to be the guardians of our liberty and property, the interpreters and watchdogs of our Constitution, it becomes a national catastrophe. It affects and stultifies each one of us.