CASE MANAGEMENT AND ITS ADVANTAGES

By Justice M. Jagannadha Rao

'Case Management' as a system of rules has not been introduced in India. For the first time, pursuant to the direction issued by the Supreme Court of India in SALEM ADVOCATES BAR ASSOCIATION vs. UNION OF INDIA, the Committee constituted by the Supreme Court in that case has circulated Model Rules in a Consultation Paper sent to the High Courts, Bar Councils and Bar Associations. Some responses have come in to this paper.

In the Consultation Paper prepared by the Committee appointed by the Supreme Court, it has tried to explain the concept of 'Case Management'. It has referred to Lord Woolf's Interim Report on 'Access to Justice' (http://www.lcd.gov.uk/civil/interim/chap5.htm) and to the final Report of Lord Woolf (http://www.lcd.gov.uk/civil/final/contents.htm) and the Report of the Australian Law Reform Commission on 'Judicial and Case Management' (1996) (http://www.austlii.edu.au/au/other/alrc/publications/bp/3/management.html).

In the United States of America, sec. 479(c)(1)-(3) of the Civil Justice Reform Act, 1990 (28.U.S.SC) which required 'case management' systems be introduced, was adopted in response to strong and persistent demand for reform of the civil litigation process to reduce cost and delay. In enacting it, Congress stated:

"Evidence suggests that an effective litigation management and cost-and-delay-reduction programme should incorporate several interrelated principles – including –

(A) the differential treatment of cases that provides for individualized and specific management according to their needs, complexity, duration and probable litigation careers;

(B) early involvement of a judicial officer in planning the progress of a case, controlling the discovery process, and scheduling hearings, trials and other litigation events;

(C) regular communication between a judicial officer and attorneys during the pre-trial process."

(See Manual for Litigation Management and Cost and Delay Reduction, Federal Judicial Centre, 1992, Washington DC)

In the United States, where now case-management systems are firmly established, the Federal Judicial Centre, Washington D.C. has referred to the 'active role' of the Judge:

"to anticipate problems before they arise rather than waiting passively for matters to be presented by counsel. Because the attorneys may be immersed in the details of the case, innovation and creativity in formulating any litigation plan may frequently depend on the court."

The courts' substantive role consists of the 'Judge's involvement' not merely limited to procedural matters but refers to his becoming familiar, at an early stage, with the substantive issues in order to make informal rulings on issues, dispositions, and narrowing, and on related matters such as scheduling, bifurcation and consideration and discovery control'. The Judge periodically 'monitors' the progress of the litigation to see that schedules are being followed and to consider necessary modifications in the litigation plan. The Judge may call for interim reports between scheduled conferences. But, at the same time, time-limits and the controls and requirements are not imposed arbitrarily or without considering the views of counsel, and are subject to revision when warranted by the circumstances. Once having established a programme, however, the Judge expects schedules to be met and when necessary impose appropriate sanctions for dereliction and dilatory tactics (Manual of Complex Litigation, 3rd, 1994, Federal Judicial Centre, Washington D.C., quoted in Lord Woolf's Interim Report, Chapter 5, para 20).

In Canada, according to the Ministry of Attorney General Ontario, Canada, 1993 as quoted in Lord Woolf's Interim Report, Chapter 5, Para 18, it is stated as follows:

> "Case management is a comprehensive system of management of time and events in a law-suit as it proceeds through the justice system, from initiation to resolution. The two essential components of case-management system are the setting of a time table for pre-

determined events and suspension of the progress of the law-suit through its time-table".

In Australia, Prof. Sallman of the Australian Institute of Judicial Administration (quoted in Lord Woolf's interim report, Chapter 5, para 9) stated as follows:

> "The Revolution has involved a dramatic shift from a laissez faire approach in conducting court-business to an acceptance by courts of the philosophical principle that it is their responsibility to take interest in cases from a much earlier stage in the process and manage them through a series of milestones to check-posts. Most courts have now acted upon this philosophy and introduced a variety of schemes, the common denominator of which is substantially increased court supervision and, in some instances, control … The essence of it is the adoption by courts of a systematic, managerial approach to dealing with case loads."

(UK) Lord Woolf's Reports on 'Case Management':

Lord Woolf's 'case management' recommendations, to the extent relevant for us, are as follows:

(1) There should be a fundamental transfer in the responsibility for the management of civil litigation from litigants and their legal advisors to the courts;

(2) The management should be provided by a three tier system:

(i) an increase in small claim jurisdiction;

(ii) a new fast track for cases in the lower end of the scale; and

(iii) a new multi-track for the remaining cases

(3) The court shall have an enlarged jurisdiction to give summary judgment on the application of the claimant or defendant or an courts' own initiation, on the ground that a case (or past of a case) has no realistic prospect of success.

(4) All cases where a defence is received will be examined by a 'procedural judge' who will allocate the case to the appropriate track.

(5) In the large court centers, Judges engaged on the management and trial of civil proceedings, should work in turns and normally a case should be handled only by members of the same team.

(6) The fast-track, which is primarily for cases where the value does not exceed 10,000 pounds, will have a set time-table of 20-30 weeks, limited discovery, a trial confined to not more than 3 hours and no oral evidence from experts; and would also have fixed costs.

(7) On the multi-track, case-management will usually be provided by at least two interlocutory management hearings; the first will usually be a 'case-management conference' shortly after the defence is received (usually conducted by the procedural Judge) and the second will be a pre-trial review (monthly conducted by the trial Judge).

(8) The multi-track cases will proceed according to the fixed time-table and initially to an approximate date of trial and subsequently to a fixed date of trial.

These recommendations were finalized in a very elaborate final report by Lord Woolf.

Objections to 'case management' and answers thereto:

In as much as it appears to us that the same objections are likely from the Bar and the Bench in India as in UK, we shall refer to them as raised in UK (see Section II, Chapter I of Lord Woolf's final Report):

(a) The first objection was that the proposals will undermine the adversarial nature of the civil justice system;

(b) Judges are not well-equipped to manage;

(c) Reading the papers of the case, conducting conferences and pre-trial reviews, will add significantly to the burden of hard-pressed Masters and District Judges;

(d) It would also mean increase in the number of interlocutory hearings;

(e) More staff and sources will be necessary.

In reply to the above objectives, Lord Woolf pointed out that:

(a) the adversarial role will continue but will function in an environment which will focus on the key issues rather than allowing every issue to be pursued regardless of expense and time, as at present;

(b) there functions will not be performed by all Judges but only by procedural Judges (i.e. Masters and District Judge), although in

complex cases, Civil Judges and High Court Judges will perform the tasks;

(c) Some steps indicated by the procedural Judges may be altered by trial Judges;

(d) All cases need not go through the system but cases will be selected for the purpose;

(e) There is need for training both Judges and staff;

(f) The proposals do add additional burden but the idea is to persuade parties to take to ADR systems in most cases, leaving complex cases alone for the courts;

(g) In several cases, the issues can be identified at an early stage and at the pre-trial review, and courts will try to minimize the time and expense;

(h) Case management hearings will then replace rather than add to the present system of interlocutory hearings;

(i) As agreed by the Bar Council and Law Society, additional staff and funds will be necessary;

(j) Counsel shall have to file statements as to submissions;

(k) Existing available resources have to be prioritized;

(l) Law clerks must be employed to help the Judge in these tasks;

(m) Increased use of information technology will help to release some staff for the other additional work.

Simple cases should be allocated to ‘fast track’ and complex cases to ‘multi-track’. However, some cases have to be excluded from ‘fast-track’.

Lord Woolf in his final Report recommended exclusion of the following cases from the 'fast-track', namely, suits:

(a) which raise issues of public importance; or

(b) which are test cases; or

(c) where oral evidence of experts is necessary; or

(d) which require lengthy oral arguments or significant oral evidence which cannot be accommodated within the fast track hearing time; or

(e) which involve substantial documentary evidence.

Transfer from 'fast-track' to 'multi-track', is also be permissible in appropriate cases.

The Australian Law Reform Commission (1997)

The Australian Law Reform Commission in a background paper called "Judicial and Case Management" (1999) has elaborately considered this subject.

It defines 'Judicial Management' as a term used to describe all aspects of judicial involvement in the administration and management of courts and the cases before them. It includes procedural activism by judges in pre-trial and trial process and in 'case management'. At its broadest, it also encompasses questions of court governance and court administration. 'Case management' is defined as referring to process involving the control of movement of cases through a court or tribunal (case flow management) or the control of the total workload of a court or tribunal. Case

management in courts is often, but not always, performed by Judges. When it is performed by Judges, it is referred to as 'judicial case management'.

'Case management' means that the 'progress of cases' before the courts must be 'managed, in one sense, its direction from traditional adversarial case management which had left the pace of litigation primarily in the hands of the legal practitioners. The courts' role was simply to respond to processes initiated by practitioners. But, the objectives of new 'case management' include:

(a) early resolution of disputes;
(b) reduction of trial time;
(c) more effective use of judicial resources;
(d) the establishment of trial standards;
(e) monitoring of case loads;
(f) development of information technology support;
(g) increasing accessibility to the courts;
(h) facilitating planning for the future;
(i) enhanced public accountability;
(j) the reduction of criticism of the justice system by reason of perceived inefficiency (J. Wood, 'The Changing Face of the Case Management: The New South Wales Experience, Paper, Aug. 1994)

M. Soloman & D. Somesflot in their 'Case Flow Management to the Trial Court' (American Bar Association, 1997) have identified the following aspects:

(a) judicial commitment and leadership;
(b) court consultation with the legal profession;
(c) court supervision of case progress;
(d) the case of standards and goals;
(e) a monitoring information system;
(f) listing for credible dates;
(g) strict control of adjournments.

It has been stated in the Report of the Commission that case flow management has helped bring about substantial procedural, operational and cultural changes in the judicial systems of Australia.

In our country, we have not had any specific rules of case-management where Judges monitor the movement of cases throughout its career in the Court or any system of different tracks. We have ad hoc systems improvised by each High Court but not a uniform system.

One of the main items which involve considerable waste of the judicial time of every trial Judge is the system of calling out all the listed cases – which are not yet ripe for final disposal – to find out whether (a) notices are served, (b) whether defects are cured, (c) whether affidavits, reply or rejoinder affidavits are filed, (d) whether notices in applications for bringing legal representatives or record are served, (e) whether parties have

taken various steps necessary to be taken at various stages of the case. This part of the work, in several trial Courts, takes more than an hour of the Judge's time. By the time regular work is taken up, the Judge loses the freshness of the morning and is already tired. We must dispense with this system and innovate a system in lieu thereof whereby this work is delegated to a senior ministerial officer or a court manager or another judicial officer who can take up this work on a Saturday in regard to the matters to be listed in the ensuing week before all the Judges in the particular Court. One or more judicial officers may do this work on behalf of all other judicial officers in regard to the lists of all of them. May be, some other alternative can also be found. In case, default order have to be passed, the matters can be listed before Court.

Nextly, let us examine the manner in which Judges in our Courts deal with the cases every day in the trial Courts. They first take up urgent interlocutory matters on the civil side and then take up the regular matters which are ready for final disposal. So far as the matters which are taken up for final disposal are concerned, they are normally listed according to the year in which the case was filed and numbered, the older cases being listed above the latter cases.

There is normally no distinction made in our Courts between simple cases, and medium or more complex cases. All of them are put in one basket and taken up according to their year and number. In this process, simpler cases which would not have taken much time get mixed up with every other type of case and linger on in the Courts for number of years.

There is no reason why simpler cases should not be put on fast track as in other countries. Those cases which are not that simple can be put in a middle track and more complex cases can be put in the normal track.

The above exercise if done at an early stage of the filing of a case, the Judge and the lawyer can easily distinguish a case which is in one track from those in other tracks. Fast track cases which are simpler can be taken up on specified dates in a week or during a fortnight/month and disposed of early rather than being kept waiting according to their year of institution and number.

In the last two decades, fortunately we have followed the procedure of clubbing cases which raise same issues. This has resulted in grouping cases which are similar or connected and helped in their disposal in a block. This process must be continued with vigour. It would help if, when cases are filed in the Court, they are assigned a particular number or identity according to the subject and statute involved and straightaway grouped by the computer. In fact, further sub-grouping is also possible. Formats must be devised which lawyers have to fill up at the time of filing of cases, so that it will be easy for the registry to group the cases. Government pleaders' offices can also be compelled to store information in their registers or computers, stating under which statute each case falls or as to the point it raises and the Government lawyers can be frequently asked to come out with the list of cases which belong to the same category. Cases raising the same point, when they start in any Court, must be first listed for early hearing and disposed of before the flood actually invades

the Court. The tendency to allow such batch-cases to accumulate into hundreds should be deprecated.

Every High Court could have a small department of experienced officers who can be asked to

(1) take up the old cases and find out why they are not ripe, what defects have to be cured, or why parties are not served with notices or why legal representatives are not brought on record or why paper books have not been filed by the counsel;

(2) club cases into groups and sub-groups containing identical issues;

(3) prepare a brief resume of the facts and the issues raised.

It is time counsel are required to file written submissions before making their oral submissions. With increase in number and inadequate Court strength, this system has been introduced in several countries to save time. If both sides are required to file their written submissions in advance, it will first compel the counsel to read the facts and case law thoroughly at home before the oral submissions are made, and it will enable them to focus on the real issues arising. The Judges can read these submissions before the oral arguments are heard and this helps in shortening the time for oral arguments. The argument that with written submissions being filed, advocacy as an art will die is not acceptable. Even

after written submissions are filed, the lawyer need not read it. He can still argue to explain the submissions given in writing. In fact, greater skills are required to put the points in a nutshell. Those who are accustomed to diffused arguments will now be required to practice the art of brevity and clarity.

Case Management systems are many and can be innovated by every Court or by every Judge. But at least some of them can be and have to be standardized so that they are invariably followed. In several countries, the rules of Court or practice directions limit even the time for oral arguments. We have not gone that far. For the present, if written submissions are filed before oral submissions are made, there can be substantial saving of time. As of today, counsel try to develop the case in Court after hearing the opposite side and after hearing the reaction of the Judge. In view of the heavy pendency of the cases, it is necessary to make suitable changes in this behalf.

Yet another important aspect which is now very important is the one relating to 'costs'. In our country, the Courts do not award costs to the successful party in most cases. Every Judge says that "in the circumstances of the cases, the parties shall bear their own costs". In fact, no circumstances are ever mentioned. Time has come when the Court must make a positive order on the principle that costs follow the event and where costs are not awarded, the Court must assign valid reasons. The tendency of the Courts not to award costs has encouraged several litigants to abuse the legal process and delay the disposal of cases. In fact, whenever a party

is found to have deliberately delayed the legal process he must be asked to pay compensatory costs or exemplary costs. In several countries, heavy costs are awarded against the unsuccessful party and such a procedure has been a serious deterrent against the institution of unreasonable and frivolous cases or raising such defences. It is time, the Courts start imposing heavy costs in deserving cases.

Court management has various aspects some with which we are familiar and are implementing, some with which we are familiar but not implementing and some with which we are not familiar. Case management and allocating cases to different tracks and deciding simpler cases early is one which we have not yet started practising. If Case Management is introduced by appropriate rules, it can surely become a very efficient tool for the proper and timely disposal of simpler cases and also for the purpose of allocating more time to complex cases.