II. Comparative Introduction to the American Legal System

In the course of the thesis we will be examining and trying to learn from the American class action suits. As this is to be done it is advisable to get a comparative introduction of the American legal system applying mainly the same criterions of common law, civil law and personal laws which we have applied while introducing the Indian Legal System. At the outset, it may be borne in mind that even the American legal system is of British origin and has perhaps more similarities than differences with the Indian legal system. Whatever differences are found, are more due to differences in the socio-economic levels of the countries.

Like India too, U.S. was also a colony of England. At the time of separation of colonies from England, the American legal system adopted the English Common Law and has continued to develop a large body of American Common Law.

In U.S., judicial system is not unitary. It is duel in the sense that there are Federal and State Courts. The Federal courts decide the questions touching the Federal Law or the Central
Law whereas the State courts decide the questions relating to the State Law. At the helm of affairs is the Supreme Court of United States which is the highest court in the country and considers questions relating to Federal as well as State Law. No clear test has been developed yet to determine which cases arise under the Constitution Law or Treaties of the U.S. which are commonly known as the questions relating to Federal Law.

Coming to the Civil Law base, the Civil Law as I have pointed out above is distinguished from Common Law, where the Judges decide each case on its independent merits by applying the Law as it is enacted into the codes and not in conformity with the system of stare decisis i.e. system of precedence. In U.S. the American Congress and the State Legislators have adopted a number of Codes particularly in the middle of the 19th century\(^2\). The Codes spell out rules for major legal issues of property and procedure. Administrative law too has developed a great deal in the U.S.

It was around 1934, that the Supreme Court of United States was delegated by the American Congress the power to establish the Federal Rules of Civil procedure. Accordingly, these rules have
been made and continuously updated. Most of the States in the United States too have developed their rules of Civil Procedure modeled after Federal Rules of Civil Procedure.

Apart from the above two, the American Laws do give special protection to its aboriginal people e.g. the Red Indians and other backward classes e.g. Blacks under the affirmative action programs. However, special laws which India has particularly for minority religions are not seen in the United states.

In 1977, the leading legal dictionary in the United States, Martin Dale Hubbell listed about 4,50,000 members of the legal profession. The number has gone up since then and approaching one million. India stands next in the world with 2,28,000 lawyers in the year 1982. The United States has large law firms and most particularly in urban areas. The most financially successful members are the partners of the large Law firms. Professors at the finest Law Schools in the country enjoy high esteem and high income. Research activities are continuously going on. There is more collaboration division of work and specialisation amongst the lawyers as against India where the only broad
specialisation is that of civil and criminal lawyers.

The litigation in the United States is perhaps the highest in the world today. This can be looked at from two angles. One is that the rights of people do not go unasserted. On the other hand however, high litigation is often considered as an indication of breakdown of the mutual faith and trust in the society.

In United States, Jury system still prevails. Charging of contingency fees by the lawyers is allowed, which is prohibited in India. More elaborate discovery and investigative procedures and research is seen in the field than in India. Lawyers are just not engaged in litigation. They act also as negotiators and advisors to their clients. Pretrial conferences and discovery, summary methods of disposal often lead to speedy disposal of cases.

The American Supreme Court is not divided into benches, but sits enblock of 9 judges and decides all the cases by a majority view. Appointments to the judiciary are political in nature. In some states judges are elected and not selected.
Both India and the United States unlike the United Kingdom have written Constitutions. However, unlike India, the power of judicial review is not explicitly given in the American Constitution. But the same is assumed by the Courts from the landmark decision of J. Marshall in Marbury v. Madison in 1803.

American Judges unlike Indian Judges have law clerks who do research for the judge and often write preliminary drafts of judgements. Legal training in law schools is flexible, innovative, practically oriented, rigorous and full time. Socratic method which encourages discussion is used in law schools. Text-Books are really casebooks.

The advantages and criticisms of adversarial common Law based legal system narrated while appraising the Indian legal system apply even to American Legal System. However, American people are by their nature very innovative. They have tried to solve the problems in their legal system by researching and trying various legal devices. This will be clear at least to the extent of the subject matter of this thesis as we go on referring to the American class action suits. Americans we shall learn, have been eager to 'seize upon the
commonality of interest between group members as justification for joint litigation and as a means for greater access to justice.

Class action suits, as I have already pointed out are very popular in the United States. The questions then before us are why and how is it that inspite of having more similarities in our and American Legal Systems we have lagged behind in the utilisation of the legal device of Representative Suits (known as Class-Action suits in the United States). As we go on, the picture should get more and more clear and we will try to get answers to these questions.
Foot Notes of A comparative Introduction to the American Legal System.


(2) Supra Foot Note 1.


(4) Marbury V.Madison, (1803) 5 US(Crunch)137.

(5) Robert Hayden "Lawyers and Courts In Contemporary India", Film Guide, Courts and Councils: Dispute settlement in India, South Asian Area Centre, University of Wisconsin, U.S.A.