CHAPTER IV
ECONOMICS OF LITIGATION

This chapter presents the theoretical framework for analysing the micro economics of litigations. It discusses certain most-widely used methods for calculating aggregate gains and losses in legal-economic issues and presents the Model developed for the study. This chapter also deals with decision-making behaviour of the litigants. The economic factors and economic aspects of litigation are also analysed in this chapter.

The economist's approach to litigation is different from the approach of a litigant and a lawyer. Economics of litigation is an area where traditional legal analysis has little interest to investigate. The economic approach to litigation is beneficial to both lawyers and economists in the disciplinary as well as policy formulation spheres. Economic analysis of the litigation discerns the different type of costs incurred for the litigation and the net benefit realised from it. This approach may help to revamp the administration
of civil justice in Kerala.

The focus of economic analysis of litigation is the cost of legal services. The most elementary observation is that if legal services are expensive, people will be reluctant to use them. The Constitution of India makes provision for fair administration of justice. Article 39-A of the Indian constitution directs the state to ensure that the operation of the legal system promote justice, on a basis of equal opportunities and shall, in particular, provide free legal aid, to suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. In spite of the constitutional provision there are umpteen instances where justice is denied to citizens as the real cost of legal services are heavy.

For the economics of litigation one has to assess the total gains and losses from litigation. A review of the

1 Article 39-A of the Ammended Constitution, Added by the 42nd Amendment Act, 1976.
major criteria for measuring gains and losses of legal issues may highlight the need for developing an original model for the present study.

Criteria For Measuring Gains and Losses

A number of tools and techniques have been developed for the economic analysis of legal issues. However, each of them has its own specific merits and drawbacks. None of those methods is applicable under all situations. The following are some of the major tools and techniques used in the economic analysis of legal problems. Economic theory is used to develop methods for economic valuation, a great variety of gains and losses.

Cost-Benefit Technique and Law

The most widely-used method for calculating aggregate gain and loss is the Cost-Benefit Analysis. The essence of Cost-Benefit Analysis is comparison of all the costs and benefits associated with a policy change. If the benefits should exceed the costs, there are grounds for
proceeding with the policy. It is important to note that the appropriate comparison is between what happens if the policy is pursued and what happens if it is rejected. In other words it is essential to have some way of predicting not only what will happen if we go ahead with the policy but also what will happen if we do not.

Let us take an example from law, there has been considerable controversy over legislation in the nineteenth century that gave great responsibility to employers for work accidents. It has been suggested that it is not sufficient to investigate whether safety records improved following the introduction of the more stringent rules. Rather, some assessment is needed of what would have happened to safety levels if the legislation had not been implemented to act as a base for comparing the outcome that the legislation actually produced. This is just like arguing that when compensation is being calculated in a tort claim, losses are measured by comparing the earnings prognosis before and after the event which occasioned the harm.
Hicks-Kaldor Test

This test relies upon the proposition that if those who gain from a policy change could at least potentially compensate the losers, then the policy change should be approved. If for example, improving airport facilities involves construction costs of Rs.100 lakh and will reduce property values in the neighbouring areas by Rs.20 lakh, but will bestow benefits on air travellers of Rs. 125 lakh, then construction should proceed. It will very often be impracticable to create devices that permit the gainers to actually compensate the losers and thus the test will be only hypothetical one, albeit one that will generally be able to produce a decision.

Pareto Test

According to Pareto Criterion any change that makes at least one individual better-off and no one worse-off is an improvement in social welfare. In other words under this test, a policy change is to be approved if and only if it makes at least one person in the economy better off but no one worse off. Since most government policies involve changes
that benefit some and harm others it is obvious that the strict Pareto Criterion is of limited applicability in real-world situations.

**Rawlsian Criterion**

The rationale of Rawlsian Criterion is that the appropriate test of a policy is to look first at its effects on the least well-off. Should these effects be deleterious, the policy is rejected, irrespective of the size of benefits that it may bestow upon the better-off.

**Distributional Weights**

This test proposes that explicit weights be assigned to the gains and losses accruing to different groups. That is to say that changes in the income levels of the less well-off may for example to be assigned more importance than changes in the income levels of the better off

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The Equi-Marginal Returns Rule

The equi-marginal return holds that resources should be allocated between alternatives so that marginal returns are equal in all uses. Whenever marginal returns are unequal, then obviously resources should be allocated to the higher-yielding activity. The equilibrium position is reached when the marginal returns are equal in all uses so that the equalisation of marginal returns is the optimising technique.

The Second Best Theorem

The second best theorem holds that, in a complex world, to make one part of the economy Pareto efficient is not necessarily to make the entire economy better off. This principle states that a judge who gives an award for damages is not only fixing a price but simultaneously affecting incomes and resources.

The Compensation Test

The compensation test holds that if the gainers in a new situation receive sufficient benefit to compensate the
losers, and after the compensation is paid the losers will not have lost their original welfare level then that is a reason for choosing the new situation. Similarly, if the losers in the proposed new outcome are able to compensate the potential gainers so that they forgo their gains, then that is a reason for choosing the present situation.

The above mentioned methods can in principle be applied to a wide range of issues. Within a particular set of rules they enable us to assess damages or at least to establish losses. These methods show that economists are able to portray the unknown economic effects of legal issues. There are many fields of law to which a more thorough understanding of economic arguments can make a significant contribution to academic as well as policy formulation spheres. Therefore, it is necessary for the economist to try and orient his work in these directions. However, the various tools and techniques existing in the economic analysis of law are not suitable for analysing the different aspects of the

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research problem. Hence a Model has been developed for studying the micro economics of litigations in Kerala.

Litigant's Behaviour under Uncertainty

Under condition of certainty, where all costs are known to all litigants in advance, litigation is risk free: every litigant chooses the course of action that is most beneficial to him. Consumers of legal services are assumed to maximise utility, where utility depends positively on the levels of economic benefits obtained. In the event of uncertainty, the concepts of certain cost and value are no longer sufficient: something has to be said about how litigants respond to being unsure about what costs they will incur or what gains they make.

The analysis of behaviour under uncertainty is based upon the proposition that litigants can make coherent and consistent choices between alternative courses of action, where the outcomes associated with one or more of these courses of action contains some element of uncertainty or risk. Choices of this kind can generally be characterised as
being amongst alternatives each of which has a number of possible outcomes, each outcome being expressed in terms of a financial gain or loss\textsuperscript{4}

The Game Theory Approach

Traditional tools of economic theory are not effective for analysing litigants behaviour under uncertainty. The Theory of Game could be used as an analytical apparatus for analysing the behaviour of litigants under uncertainty. The Game Theory lays down a rational course of action to an individual who is confronted with a highly uncertain situation. The final outcome of such an uncertain situation depends not only upon the actions of the individual in question, but also upon the action of others who are faced with similar problem of choosing a rational course of action. To be precise, the individual concerned faces a problem similar to that of the player of any game, say, the game of

The Game Theory approach to litigants is a useful tool which might lead to valid conclusions about the decision-making process of litigants in real world situations.

The game theory is applicable to a diversity of problems. It has been widely used in economics, business administration, sociology, political science as well as in military planning. We shall discuss the theory in relation to the decision-making behaviour of litigants only. As is well-known, the player has to select one among a variety of possible courses of action technically known as 'strategies'. "A strategy is defined as a complete set of plans of action specifying precisely what the player will do under every possible future contingency that might occur during the play of the game". There are several strategies open to the player; he has to select one out of them. This applies to the decision-making behaviour of litigants as well. A litigant

has to select one out of several strategies open to him. There are three strategies open to the litigant (1) making an out of court settlement and thus avoiding the litigation; (2) avoiding the litigation; and (3) deciding to litigate. A litigant could select any strategy best suited to his interests. But while selecting a particular strategy, the litigant will have to take into account the effects of the possible strategy adopted by his rival. The final outcome would depend upon the interaction of strategies adopted by both the plaintiff and the defendant in the game. The theory is applicable to a pair of litigants who are making dispute for some given private immovable property. What is gained by one is lost by the other.

The game theory is based upon an important assumption. According to this theory, a litigant, while selecting his strategy, will assume that the rival will adopt a strategy which will be most unfavourable to his interests. The game theory also assumes that a litigant knows all possible strategies open to him as well as those strategies available to the rival.
Litigants in the four districts of Kerala are classified as three groups based on their decision-making behaviour. 'Risk Averters' are not interested in taking risk and they always prefer to out of court settlements. They are not interested in unfair prospects from litigation. 'Risk Neutrals' will take fair litigations and avoid unfair litigations and thus be indifferent towards taking risk or avoiding risk. 'Risk Takers' are interested in unfair prospects from litigation and they are ready to take up risk for getting maximum benefit from litigation.

If a litigant, say a risk averter, plaintiff, is agreeing for an out of court settlement, the defendant correctly guess the position of the plaintiff and in order to exploit this situation he may turn as a risk taker and decide to litigate. then the plaintiff also be forced to act as a risk taker and finally it will end up in litigation. Hence, it is to be inferred that a decision taken by a litigant will have an appreciable effect on the decision of his rival.
The game theory approach could be applied to the decision-making behaviour of litigants in out of court settlements too. For example, in a dispute relating to a private immovable property, both plaintiff and defendant have decided for an out of court settlement. From the plaintiff's point of view, the best strategy is to try and create the impression that he will settle only for an amount that is close to the expected value of the disputed property. If the defendant knows that the plaintiff is very averse to taking risk, he may exploit this position by offering much a smaller sum in settlement. Then the plaintiff may reject the offer made by the defendant. These types of decision-making behaviour of litigants may sometimes end up in a fair out of court settlement and sometimes in litigation. These trend pin points to the fact that the result of the litigation would depend upon the interaction of strategies adopted by both the plaintiff and the defendant in the game.

MODELLING THE MICROECONOMIC EFFECTS OF LITIGATION

The cost of civil litigation has received considerable attention by economists and legal professionals.
as well as public at large concerned with the micro economic impact of civil litigation. Given the increasing cost of litigation, certain key questions are now being raised: Is cost of legal services reasonable to litigations? If not, what are the real micro economic effect of litigation, and to what extent can various policies ensure fair administration of civil justice?

In order to study the economics of the private litigations in Kerala the following model has been developed. Since the purpose of the model is to economically evaluate micro costs and benefits associated with litigations, social cost rendered by state for fair administration of justice is not considered. The model is developed for empirically verifying the economic rationale of litigations. It provides

6 The model developed for the study uses the legal-economic theoretical premises formed by the following economists.


three cost-benefit positions for empirically analysing the litigation scenarios. The empirical study is done by primary data which have been collected taking into consideration the opportunity costs of litigation. With the help of the model the issues emerging from the economic evaluation of the net benefits in litigations have been identified and recommendation are proposed for improving the present civil justice administration.

In the model section I, highlights the utility-maximising behaviour of litigants. Section II, discusses the theoretical approach for the estimation of total economic cost of litigation. The three cost-benefit positions for the empirical verification of the research problem are presented in Section III. Section IV, provides the assumptions of the model. Policy implications of the analysis are discussed at the end of the study.

I. Utility Maximisation in Legal Services

The model is based on the basic assumption that a litigant is rational. Rationality means that the litigant
will decide to litigate only when he believes that he will be getting some net economic benefit. So before deciding to go for litigation he will be comparing the costs and benefits associated with the litigations. In case he believes that litigation will result in economic loss, he will prefer an out of court settlement or no litigation at all. This highlights the fact that a rational litigant will always aim at maximising of economic benefit or minimising of economic cost in the private property litigation. In the model all micro private costs and benefits are estimated in terms of money. Hence, non-monetary aspects of private justice are disregarded in the model.

In the process of rational decision making the litigant is considering various choices. He can take a decision either to litigate or not to litigate. Sometimes he may prefer an out of court settlement. Even if he is losing in his litigation he expects only minimum economic loss by way of incurring economic cost. In other words, the utility maximising postulate is absolutely applicable to a consumer of legal services. Based on the utility maximising behaviour of litigants and the decision-making behaviour of litigants as
per the game theory approach, litigants have been classified into the three groups as Risk Averter, Risk Neutrals and Risk Takers.

II. Estimation of Total Economic Cost of Litigation

In addition to the direct monetary expenses by way of litigation costs, certain legitimate earnings are forgone by the litigant for the planning and operation of the suit. Hence this opportunity cost also should be included in the estimation of the total costs. Total benefit to the litigant is the actual monetary gain from the litigation. The net economic rewards from the suit can be calculated by deducting total economic costs including opportunity costs from total economic benefit. By and large, litigants are not including opportunity costs for the estimation of total costs.

Justice in the private property litigation 'pj' is obtained by deducting total economic cost 'tc' from the total monetary quantification of the subject matter in the litigation or the total benefit 'tb'. It is equal to net benefit 'nb'. Total cost 'tc' includes accounting cost 'a'
and opportunity cost 'o'. Accounting cost means those costs which involve cash payments by the litigant in his litigation. The different components of opportunity cost include the normal return on money capital invested by the litigant in his own litigation which he would have earned if invested it outside and the wages or salary for his services forgone, if any, and the money rewards that would have been attainable for the factors the litigant himself owns and employs including the time etc.

It can be represented as follows:

\[ p_j = t_b - t_c = n_b \]

where \( t_c = a + o \)

The present study includes both accounting cost and opportunity cost for the estimation of total economic cost.

III. Cost-Benefit Positions of Litigation Scenarios

For the empirical investigation of the research problem the following cost-benefit position could be used.
tc > tc .........................(a)

tb = tc ..........................(b)

tb < tc ..........................(c)

In position (a) i.e. tb > tc In this position total benefit is greater than total cost and seeking justice in the private property litigation is desirable. The greater the difference, the greater will be the desirability.

In position (b) i.e. tb = tc In this position total benefit is equal to total economic cost. Here the litigation is in no profit and no loss position, it means that the litigant is getting revenue equal to the total of accounting and opportunity cost and no more. The litigant has no net benefit from this position.

In position (c) i.e. tb < tc Here total benefit is less than total cost and seeking justice in the private property litigation is not desirable.
IV. Assumptions of the Model

The three important assumptions which underlie the modeling of the micro economic effects of litigation scenario can be briefly listed as follows:

1. Litigants are rational.
2. Cost and benefit of litigation can be measured in terms of money.
3. Absence of non-monetary considerations in litigation.

Conclusion

With the help of the Model\(^7\) the different aspects of the micro cost-structure of the private property litigations in Kerala could be analysed and it helps to identify and quantify the economic effect of the suits on measurable

\(^7\) The model is developed in tune with the World Bank-style model building method for studying different operational problems in economics. The analytical rationale of the model is based on the researcher's observations.
monetary variables. The administration of civil justice system ensures operational efficiency only if \( tb > tc \) i.e., the economic benefit to the litigant is greater than the economic cost he incurs. In other words, the administration of civil justice, with regard to the private property litigations, should ensure maximum benefit and minimum cost to the consumer of legal services.

Rationale of the micro economic Modeling of the Litigation

Economics of the litigation can be tackled at three levels. The first is to evaluate the micro economics of litigation. The second is to assess the efficiency of civil justice administration and the third is to prescribe proposals for ensuring maximisation of benefit to the consumer of private legal services.

Litigation is a non-market activity which can be approached with the apparatus of new-classical economics\(^8\).

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The economic approach to litigation is based on the analysis held by some economists that the core of economics, the theory of choice, is in principle applicable to all human and institutional behaviour. The fundamental ideas embodied in the economic approach to law are those of utility maximisation, stable preferences and opportunity costs.

Positive Analysis of the Model

The Model developed for the study has positive as well as narrative dimensions. Positive economic analysis of law seeks to explain the structure of the legal system as it is.

The main criticism that the civil lawyers may moot against the model is that the Model is too simplistic and does


not capture full complexity of the legal phenomena which the model seeks to portray and the assumption are unrealistic. In response to this, it may be stated that it is not the Model's assumptions that are to be verified but its analytical process and predictions.

The techniques of positive economics are most important to 'legal impact studies' or what Hirsch has called 'effect evaluation'. Legal impact studies seek to identify and quantify the effects of law on measurable variables.

The present study raised and tried to answer to the following two questions.

1. What are the economic effects of litigation?
2. Have the objectives civil justice administration been attained?

For answering these questions an empirical enquiry

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has been conducted. It is generally agreed among the public that the litigation must ultimately be evaluated in terms of its success in achieving its economic goals and not purely in terms of its formal legalistic point of view.

Normative Analysis of the Model

The aim of the normative economic analysis of law is to identify the situations in which private and social allocative efficiency are not attained and to prescribe suggestions for improving them.

The analysis begins with the working of the model. Justice in the private property litigation $pj$ is obtained by deducting total economic cost $tc$ from the total benefit $tb$. It is equal to net benefit $nb$. Total cost $tc$ includes accounting cost $a$ and opportunity cost $o$. It can be represented as follows:

$$ pj = tb - tc $$
$$ = nb $$

where $tc = a + o$
Litigants are generally not considering the reasonable earnings forgone by them for the planning and operation of the suit. For estimating the real economic cost, the opportunity cost of the litigation should also be included. In the process of benefit maximisation, along with the accounting cost a consumer of private legal services should consider and compute the different elements of the opportunity cost too.

The economically desirable position for the litigant i.e., is $tb > tc$. In this position total benefit is greater than total cost and seeking justice in the private property litigation is desirable. The greater the difference the greater will be the desirability. This is the ideal position for the litigant where utilisation of economic resources for the litigant is economically efficient. An economically efficient allocation of resources will imply an allocation that is economically efficient from the litigant's point of view who participated in the litigation. In other words economic resources of the litigant are to be efficiently allocated where total benefit exceeds total cost. From the normative angle, the litigation should show economic
efficiency even after including the opportunity costs because it places the utilisation of every economic resources that is used for the litigation makes the greatest possible contribution and tends to reward every litigant maximum economic benefit. This is the ideal situation of the litigation where litigant's economic resources are allocated to their highest comparatively valued uses.

The departure from the ideal position i.e., \( tb > tc \) is referred to as operational inefficiency of the civil justice system and invites the intervention of the State to ratify it. Although deviation from the ideal position may result from many factors viz. delay in the disposal of cases, access to legal services, delay in the execution of the decree etc., the most important one in the economic analysis of law is the consideration of opportunity costs.

Economic Factors and Litigation

Attainment of the ideal position in the model to a great extent depends upon the economic capacity of the litigants. This is because, for the employment of legal
services, a litigant has to utilise economic resources. The main issue that comes before the civil court is economic in origin and the litigants want to protect or improve their economic interests. The economic factors seem to have a significant effect on the costs and benefits of the litigation and the decision to settle out of court.

The major economic factors which are influencing the litigation are given below:

1. Litigation may be avoided due to the inability of incurring economic costs.

2. Litigants may lose in their suits owing to the inability of employing talented lawyers due to their heavy fees.

3. Out of court settlements may be made even incurring financial loss considering the prospective heavy costs.

4. Litigations may be discontinued due to the insufficiency of fund to meet the economic costs.

5. Inordinate delay in the disposal of the suits may increase the cost of litigation.
6. Execution procedures and the delay involved in it increases litigation costs.

7. A financially weaker litigant is forced to incur unreasonable costs when his opposite party is financially well off.

8. The opportunity of going for an appeal may be lost due to the inability of incurring heavy costs involved in it.

The litigation is a function of the economic capacity of the litigant means that economic resources are needed for litigation or the litigant should have adequate purchasing power for entering into the legal service market. Hence we may presume that the greater the resource position of the litigants, the greater will be their command for employing legal resources from the legal service market.

Though lawyers play a dynamic role between the court and the litigant, they are not considering the excessive trend in litigation cost. The legal education within which lawyers are trained and the existing civil procedures etc. are not creating proper cost-consciousness among advocates.
Litigants and Judiciary

The provision of legal services and its costs is a matter that has not attracted considerable interest of the judiciary. While administering civil justice, the court is not considering the real economic cost incurred by the litigant. Judiciary is mainly concerned with the enforcement of civil rights as per the available material evidences. The court is only considering the statement of cost presented by the concerned lawyers.

It is natural to believe that litigants may be expected to prefer cheap legal services to the present expensive ones. But the present lawyer-client relationship and administration of civil justice are such that they are not in a position to reduce litigation cost and provide maximum economic benefit to litigants.

Lawyers Approach Versus Economist's Approach

There is difference of opinion between economists and academic lawyers on the economic analysis of litigation.
Lawyer may not always consider the different type of costs involved in litigation. Lawyers are mainly concerned with factual descriptions with formal legal prepositions supported by arguments. A lawyer may not consider the total cost incurred for litigation and the net economic benefit derived from it. The economist on the other hand consider the costs and benefits of alternative choices before taking the decision to litigate, because the resources of litigant are limited. As far as an economist is concerned, the resources used in litigation have economic value. The decision to litigate for example, consumes economic resources, that will then be not available for other uses. This economic approach to litigation help in estimating the real value of resources expended for the litigation. This approach is also helpful for drawing attention to the hitherto unrecognised economic effects of litigation namely the opportunity cost of litigation.

Decision Making of Litigants

Decisions about litigations in private property are essentially practical matter. From the economic point of
view they can be approached with the apparatus applied to
decision making under 'uncertainty'. Before taking a decision
to litigate both the plaintiff and the defendants would
consider the prospective cost involved in going for the cases
and the benefit from so doing, because they have only limited
resources at their disposal. When both the plaintiff and
defendant are rational, they will try to maximise their
economic benefit and minimise their economic cost.

Some parties always take the decision to litigate
for getting more economic benefit. However, the comparative
benefit of an out of court settlement from pursuing a case is
to be determined only after empirically evaluating the costs
and benefit of the different private property litigations from
both these categories. Suppose, for example, there is a
dispute of an immovable property worth Rs.10,000/- and the
defendant offered Rs. 8,000/- for settlement. The fact that
to settle now involves only a loss of Rs.2,000/- and the
plaintiff has to decide whether or not to proceed with suit.

The next round of negotiation may add Rs. 1,000/- also to the plaintiff and it will be worthwhile to pursue the case if and only if there is a good prospect of getting more economic benefit than this Rs. 9,000/-. In other words to proceed with litigation is wise only if the net additional benefit is positive.

The main feature of negotiation is that one cannot predict how the other party will respond to the offer. There are three possible outcomes associated with taking the case into court: an award of zero if the facts are not proved, a full award, and an award that is in some proportion of the full award.

Litigants may be classified into three groups based on their nature of decision making behaviour. Certain litigants are interested to take risk for getting maximum benefit from litigation. On the other hand some are not interested in taking risk and they always prefer an out of court settlement even if financial loss is involved. Certain other litigants will take fair litigations and avoid unfair litigations and thus be different towards taking risk or avoiding risk.
From the plaintiff's point of view, the best strategy is to try and give the defendants the impression that he will settle only for an amount that is close to the expected value of the claim. If the defendant correctly guesses that the plaintiff is very averse to taking risk, he may exploit this information by offering much smaller sums in settlement. Then plaintiff may rejecting the offer made by the defendant.\textsuperscript{13}

Settlement Versus Trial

Trying to reach a settlement in the private immovable property litigation is like the process of negotiating to buy an item from a market. Buyers start by making low bids, sellers respond by offering high prices and so begins a process of negotiation which may end with the buyers going away empty-handed or reaching a point where both are happy. In the case of a suit, if the matter is not settled quickly then it will be necessary to collect the

\textsuperscript{13} Ibid P.191-194.
necessary evidence and to prepare for the possibility of a trial. Once this has been done, costs may be relatively limited until a trial actually takes place. The final stage is likely to be very costly, and one or other of the parties will find himself paying the bill. The parties will generally be interested to reduced the litigation costs. Whatever rules govern the assignment of litigation costs between the parties, the party confronted by the likelihood of having to pay the trial costs will be very anxious to avoid a trial and will adjust his offer to settle or his decision to accept an offer accordingly. Settlement at this juncture may avoid a significant proportion of counsel' fees. There are different reasons for quick settlement which are listed as follows.

1. The parties take very similar views about the likely outcome of a court hearing of the case, or the plaintiff takes a pessimistic view;

2. The cost a trial are in relation to the amount of damages.

3. The parties are represented by lawyers who are anxious for an early settlement.
4. The plaintiff is more averse to taking risks or is more impatient than the defendant.

5. There are inordinate delay in the disposal of cases.

As one might expect, the factors for most cases that go to trial include plaintiff being prepared to take risks, and plaintiffs taking more optimistic views of their prospects of success. In addition they expect that decisions by a court is more economically beneficial than out of court settlement.

It is clear that the plaintiff's decision about whether or not to go to trial depends upon certain factors. It looks more carefully now at the size of offers made by defendants. It may be noted that any offer to settle may be influenced by the defendants own attitude towards the risk. The nature of litigation costs, the rate of interest payable for the money borrowed for the litigation and the prospective net benefit from the suit etc. are the other different factors considered by the defendant for making an out of court settlement.
If one has decided to litigate, he has to employ an advocate. Advocates rely heavily upon the fees as a main source of income. Without the legal monopoly of the right to provide and charge for such services, the legal profession would be less profitable. The following are the different factors for the variations in advocate fees.

1. The complexity of the subject matter.
2. The skill, labour, specialised knowledge and responsibility involved on the part of the advocates.
3. The number and importance of the documents prepared and presented.
4. The time expended by the advocate.
5. The amount or value of the property
6. The importance of the matter to the client.
Courts Fees

A brief survey of the legal-economic rationale of the Court fees and Suit Valuation Act Existing in Kerala aims that some special service is intended or envisaged as a quid pro quo to the class of citizens which is intended to be benefited by the service. This Act also aims that there should be a broad relation between the amount so raised and expenses involved in providing the services.

Economic Aspects of the Legal Services

Discussion of the provision of legal services generally involves two different types of argument, namely issues of efficiency and issues of distribution. From an efficiency point of view, it is important that the price of legal services should properly reflect the cost of providing them. This is because of the reason that only in such circumstances resources will be sensibly allocated either within the legal sector or to the legal sector as against other sectors of the economy. From a distributive point of view the concern is to ensure that existing legal services are
fairly distributed. Views about what constitutes a fair
distribution differ widely: some people will argue that
willingness to pay the going market price is the best
criterion for judging who should get legal services while
others would argue that some notion of legal need is the prime
concern.\footnote{Roger Bowles., "Law and the Economy", Martin Roberston,
Oxford, 1982, p.204}