CHAPTER 1

INTRODUCTION

Legislation on economic issues is as old as legislation itself. Ancient law like the laws of Hammurabi, the Roman Laws, Common law in England, the laws of the Tudors on monopolies, the legislation by the enlightened despots of the 18th century in Europe, had an economic objective in view. The modern trend in economic legislation began with English legislation in the 19th century embodying the teachings of Adam Smith's system of natural liberty, which is enshrined in his 'Wealth of Nations'. Then came Ricardo with his Theory of Rent. When Malthus introduced the Theory of Population, people were anxious about the growth of population as a threat to economic well-being and has accounted for all legislation and administrative regulations for reducing population growth. The utilitarian J.S. Mill's Systems of Political Economy influenced the parliamentary legislation of Ireland in favour of tenants and landlords. According to Marshall, man's economic behaviour was based upon the delicate balance between the search for satisfaction and the avoidance of sacrifice.
He advocated the cause of trade unions, a minimum wage and a provision of employment by the state if and when necessary.

J.M. Keynes in his 'Theory of Employment' emphasises the importance of public expenditure in times of depression, and pumping money in times of slump and restriction of money flow in times of boom. After the Second World War, economists have been grafted into the departments of governments especially in financial legislation.¹

The inter-relationship between legal and economic forces can be traced from very ancient times. Evolution of economic doctrines from the very beginning reveals the significance of the economic aspects of the legal process. For attaining peace and prosperity in any society, justice has to be its basis. Justice is a relative term varying in dimensions of time and place. Law is the instrument for delivering justice. Rules of conduct enforced by the state to maintain peace and order in society are called 'laws'. Laws attempt to provide security and uniformity by regulating human

actions. Enforcement of law is imperative for any civilized society.

There are different branches of law, such as criminal law, civil law etc. Civil law ensures the assertion or enforcement of civil rights and civil remedy i.e., damages obtainable in a court of civil jurisdiction. The need for an economic approach to civil justice arises from the fact that the use of economic resources in the suits are desirable only when the benefit from the litigation exceeds the cost. Since property being a legal-economic concept, the economic evaluation of private property litigations may explore the legal-economic nexus in the doctrinal as well as policy formulation spheres.

The focus of the present study is on issues related to Legal-Economics. The economic approach to legal issues is based on the belief held by both legal professionals and economists that law and economics are complementary disciplines and that collaboration is highly beneficial. The principles of economic analysis can help our understanding of the law. Economic approach has important effects on the costs
and benefits that prospective litigants may expect from litigation and their decisions to litigate or to settle out of court. Economic consideration is also helpful to understand the significance of litigation costs, the practical problems of legal administration and the provision of legal services. The economic approach to law is mainly based on the belief held by some economists that the core of economics, the theory of choice, is in principle applicable to all human and institutional behaviour.

Statement of the Problem

The main purpose of enforcement of civil rights by litigants is to enjoy economic benefits. The general belief among litigants is that while enforcing their civil rights they may be able to enjoy economic benefits. If litigation costs exceed the expected benefit, it is unwise on the part of the litigant to use economic resources in the course of legal

2 Roger Bowles, Law and the Economy, Martin Robertson, Oxford, 1982

proceedings. When a litigant undertakes an act of litigation, he has to incur different types of costs. An average litigant in Kerala is only considering the direct litigation costs as given in the Civil Rules of Practice in Kerala. According to the Civil Procedural Approach to litigation costs, a litigant is not estimating the indirect, hidden, and opportunity cost of litigation. An accountant also will consider only the cash payments and charges paid by the litigant to the suppliers of legal services. An economist's approach to litigation costs may highlight the real costs involved in litigation and traces the major issues related to the accelerating trend in litigation costs.

The logic of litigant's behaviour in an economist's view is rational decision-making. Before taking a decision to litigate, the party will have to compare the costs involved in going for a litigation with the benefits from doing so. In the process of rational decision-making the litigant has to consider and compute the real litigation costs. The litigant has to spend a certain amount of money for his litigation. If the money expended by the litigant in his own litigation had been invested elsewhere, he would have earned a certain amount
of interest or dividends. Moreover, a litigant devotes time to his litigation and contributes managerial ability to it. If the litigant had not entered into his own litigation, he might have sold his services to others for some concrete material benefit. Hence, for an economic evaluation of cost and benefit in litigation, both accounting and opportunity cost should be estimated and the real cost structure could be exposed. The opportunity cost of litigation can be given a money value. For example, the factors which are used for a litigation may also be used for commencing a new business. Thus, the opportunity cost of the litigation is the business enterprise forgone or sacrificed, which could have been conducted with the same amount of factors that have gone into the litigation.

Private property can be considered as the basic Legal-Economic logic of any system. The present study is an attempt to evaluate the individual litigations in private immovable property related to land and buildings, which are capable of economic evaluation.
Objectives of the Study

The main objectives of the present study are listed below.

1. To develop a Model for studying the micro economics of litigations in Kerala.
2. To identify the major cost-raising factors in litigations in Kerala.
3. To study the micro cost-benefit structure of private immovable property litigations in Kerala.
4. To examine the decision making behaviour of litigants.
5. To propose suggestions and recommendations for reducing litigation costs.

Scope of the Study

Enquiries reveal that no specific study has so far been conducted in Kerala on the micro economic characteristics of litigations. Hence the present study is a modest attempt to analyse the economics of private immovable litigations during the ten-year period between 1980 and 1990. Since the
study is confined only to the micro cost-benefit aspects of individual litigations, litigations between individuals and individuals are only considered.

Methodology

The study is explorative in nature and is mainly based on primary data. Two-way primary level enquiry have been conducted, using pre-tested schedules and questionnaires, to collect first hand information regarding litigation costs. Surveys were conducted among both individual litigants and legal professionals. These surveys were conducted in the four districts of Kerala viz. Thiruvananthapuram, Kottayam, Ernakulam and Malappuram. These four districts have been selected for giving proper geographical representation. The population of the study is informed litigants who have completed graduation and above thirty five years of age. The population size is fixed as 8000 litigations in private immovable property. Four hundred cases were selected to collect details: 90 litigations from Thiruvananthapuram, 172 from Kottayam, 88 from Ernakulam and 50 from Malappuram. Stratified sampling method was followed in the selection of
sample groups. Number of samples were selected from each district according to the total number of cases in each district. The number was arrived at after detailed consultations with leading civil lawyers in the four districts and by verifying the administration reports of the civil justice in Kerala published by the Government of Kerala. All the relevant information for the study such as cost-consciousness, financial status of litigants, nature of litigation, period of litigation, direct cost, indirect costs, hidden costs, opportunity costs etc. have been covered in the questionnaire.

Data was also collected from legal professionals. From 500 leading legal professionals who have more than twenty years of experience in the private immovable property litigations, 200 were selected to collect details, 50 from each district. Information also gathered from distinguished judicial officers and other knowledgeable parties connected with litigations.
The study has also made use of data from the following secondary sources.

1. Reports of Law Commissions of India.
3. The High Court of Kerala.
5. Offices of the Leading Advocates in Kerala.

An attempt has been made to develop a Model for evaluating the micro costs and benefits associated with the litigations and to empirically verify the economic rationale of litigations. The Model is explained in detail in Chapter IV.

As a prelude to the empirical exercise, the institutional framework of the Judiciary is studied in a historical perspective, which is helpful to understand the procedural aspects of administration of civil justice in Kerala.
Limitations of the Study

In this study it is assumed that a consumer of legal services is rational. Non-monetary issues related to suits are not considered in this study. Cases were taken only from the subordinate courts in the four districts such as Thiruvananthapuram, Kottayam, Ernakulam and Malappuram. As the litigations in the High Courts are mainly issues involved in questions of law, the study does not include suits decided by the High Courts. It is practically not possible to determine the real money value of private immovable property and to compute the real money value of litigation cost. Hence discounting method is not used. The study is confined only to the individual litigations related to land and buildings.

Operational Definitions

In this study 'justice' refers to justice in private immovable property litigation and the term 'litigation' refers to private immovable property litigation. 'Cost' refers to micro cost and benefit to micro benefit of private immovable property litigation.
Scheme of the Study

For the purpose of analysis, the study is divided into seven chapters.

Chapter One deals with the introduction. It consists of statement of the problem, objectives, methodology, limitations etc. The first chapter provides a structural background of issues analysed in subsequent chapters.

The Second Chapter introduces Legal Economics and discuss the major trends in the literature on economic analysis of law. This chapter incorporates the economic background of basic legal issues with particular reference to the private property litigations.

Chapter Three seeks to focus on the conceptual issues in justice and discusses the history as well as the nature of civil justice administration in India. This chapter also emphasises the legal and economic issues involved in the concept of property.
Chapter Four provides the theoretical framework for analysing the micro economics of litigations. This chapter introduces the various tools and techniques existing in the economic analysis of law and presents the Model developed for the study.

Chapter Five deals with the conceptual and computational aspects of the cost-benefit structure of litigations with special emphasis on opportunity costs.

Chapter Six focuses on the cost-benefit analysis of litigations.

Summary, findings and prospects of the study are presented in the Seventh Chapter.