CHAPTER-I

INTRODUCTION

I. Prelude

Every individual in a democratic set up wants freedom. Without freedom no individual can lead a life as a free citizen of a country. This freedom is known as liberty under the Constitution of India. Article 21 of the Constitution of India speaks of right to life and personal liberty. Article 21 was not written on a clean slate. Its birth in the world history can be traced back to 1215, if not earlier, as it was in that year that *Magna Carta* saw the light of the day. Lest it is understood that concern for liberty was shown for the first time in 1215, it may be stated that the history of the origin and development of the concept of personal liberty can be found in Greek civilisation. *Magna Carta* of 1215 of course, is the immediate precursor, as it was in that year that King John granted the Charter of liberties under threat of civil war. King John promised that “to no one will be sell, to no one will be deny or delay right or justice.” Prior to this guarantee, however, other attempts were made to reduce delay in criminal proceedings. For example, with the Assize of Clarendon of 1166. King Henry II first introduced the elements of a jury trial into the criminal justice system of his day by declaring that criminal cases be brought before the king’s justices without undue delay. *Magna Carta* was followed by Petition of Rights in 1628; *Habeas Corpus* Acts of 1640 and 1679; and then by Bill of Rights in 1689, which declared the rights and liberties of the subjects.

The Struggle for liberty has furnished the most thrilling and inspiring saga of human history. Indian freedom struggle is no exception to it. Indians underwent severe hardships in their freedom struggle and many of them lost their lives. Britishers

---


2 “An Assize seems to mean in the first instance a sitting, a session for example of the King and his barons; then the name is transferred to an ordinance made at such a session.....” F. Maitland, the *Constitutional History of England* 12(1908).
paid almost sole attention toward the maintenance of law and order and the maintenance of status quo and liberties were denied to the subjects. Under the garb of maintaining law and order lots of atrocities and brutalities were committed on the Indians. It gave impetus to the Indian freedom struggle. The demand for personal liberties was implicit in the freedom struggle. Indian wanted some sort of guarantee they will be protected against repression by law and order maintenance agencies. However, the guarantee of Personal Liberty is not only a restraint on the Government but also a part of the cultural and social consciousness of the community.

The modern Indian Criminal law is a product of British Traditions and Experiences, which is known as “Common Law” in its general parlance. With the passage of time many amendments were made to suit the local requirements and the necessities. The researcher finds that the criminal justice system is plagued with many problems. Neither the Constitution of India nor any existing laws or Statutes specifically confer the right to speedy trial on the accused. Most of the existing laws also do not provide any time frame in which a trial must be concluded and where some time frame have been provided, the courts in India have held them to be ‘directory’ and not ‘mandatory’.

On the other hand, the right to speedy trial finds expression in the U.S. Constitution, State Constitutions, State and Federal Statutory Laws, and the State and Federal case laws. The Sixth Amendment to the U.S. Constitution, and the case law surrounding this amendment, provide the best place to start analysis of the basic questions of primary concern: What interests does this right protect? When and why are these interests triggered? And how should these interests be protected, both to prevent their violation whenever possible and to remedy the effects of violations when violations nonetheless occur? The words of the Sixth Amendment, *inter alia* guarantee that "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial by an impartial jury....."  

---

The Bill of Rights, originally applied only against the Federal Government \textit{(Barron v. Baltimore)}.\textsuperscript{5} It has since been "incorporated" via the Fourteenth Amendment to apply to the states as well.\textsuperscript{6} In a brief, the framers designed the right to protect a person from prolonged \textit{de facto} punishment—extended accusations that limit his liberty and besmirch his good name before he had a full and fair chance to defend himself. If government accuses someone, it must give him the right speedily so that he can prove himself at the trial and regain his good name and full liberty. And if government holds the accused in extended pre-trial detention. Courts must ensure that the accuracy of the trial itself will not thereby be undermined as might occur if a defendant's prolonged detention itself causes the loss of key exculpatory evidence.\textsuperscript{7}

The United States of America is the first country which has enacted a legislation to implement the constitutional guarantee of speedy trial to all accused persons. The Act is known as the Speedy Trial Act which was passed in 1974. This Act prescribes a set of time limit for carrying out major events in criminal proceedings. The United States Constitution explicitly lays down that the trial be speedy, otherwise the trial cannot be said to be fair. In United States, where officers are specially appointed or elected to represent the people in prosecutions, their position gives then an immense power for oppression, which is to be feared they do not always sufficiently appreciate and wield with due regard to the rights and protection of the accused. When a person charged with crime is willing to proceed at once to trial, no delay on the part of the prosecution is reasonable, expect only that which is necessary to secure the attendance of witnesses.

Since independence and the promulgation of our National Charter, rapid strides have been made in almost all fields. The communication revolution has opened the eyes, ears and minds of millions of people resulting in increasing

\textsuperscript{7} \textit{Supra} n. 3.
expectations of an ever growing population. The desire for quick, fair and affordable justice is universal. Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizens.

The Indian Constitution does not contain any express provision regarding the right to speedy trial. But the same is implied under Article 21 of the Constitution. Article 21 provides that “no person shall be deprived of his life or personal liberty except according to procedure established by law”. The most important terms in this provision are ‘procedure established by law’ A procedure prescribed by law for depriving a person of his liberty cannot be termed as ‘reasonable, fair and just’ unless it ensures a speedy trial for determination of guilt of the accused. No procedure which doesn’t ensure a reasonable quick trial be regarded as ‘reasonable, fair and just’ and will be in contravention of Article 21 of the Constitution and hence is not valid under law. Breach of this fundamental right has the potential of making the entire prosecution liable to be quashed and closed and the accused in all such cases will have to be declared innocent and set free. Speedy trial is, hence, the essence of criminal trial and there can be no doubt that a delay in trial per se constitutes denial of justice.

“During the framing of the Indian Constitution in the late 1940s, Constituent Assembly members, when drafting Article 21, discussed due process, fair trials, the right to life, and other issues; but the notion of a speedy trial was not explicitly included within the constitutional text,” recounts the paper. “It was only in 1979 [Hussainara Khatoon v. Home Ministry] that the Supreme Court of India held that a speedy trial was a fundamental constitutional right (under Article 21) for criminal defendants. But unfortunately the empirical reality for defendants in India awaiting trial has failed to conform to these repeated judicial pronouncements.” In the comparative context, the International Covenant on Civil and Political Rights, 1976,

---

8 *Hussainara Khatoon (IV) v. Home Secretary, State of Bihar*, AIR 1979 SC 1369.
9 Ibid.
which has over one hundred seventy state signatories, includes a promise to afford defendants the right to a speedy trial.\textsuperscript{10}

Judiciary in independent India is the most important institution for it has been entrusted with the job ranging from redressing the grievances of common man to resolving disputes between the Union and the States, as also between States\textit{inter se} arising mainly for want of legal interpretation of the Constitution and various laws. Judiciary is envisaged as the third pillar of the democratic system in which the masses have the faith as the protector of their Fundamental Rights. Of late, certain irregularities have crept in the judicial system and the arrears of cases in the Courts have attracted much attention due to their sheer magnitude and put a question mark on the efficacy of the judiciary because justice has to be associated with timely redressal to realize its true meaning. This is probably the reason for the phrase “Justice Delayed Is Justice Denied” to assume axiomatic proportions. The authorities who matter in this regard are very much concerned about this delay and are consistently trying to get rid of our system of this menace. Almost all the Hon’ble Chief Justices of India have shown their concern toward delayed justice and had tried to find out the causes for the same and also suggested means and methods, in their own ways, to combat same was the concern shown by the Governments in the past. Further, the legal experts are unanimous in their opinion that the present system of Criminal Jurisprudence is destined to fail if the backlog of cases is not substantially reduced. Several Law Commissions have recommended a complete overhaul of the criminal justice system. They have exhorted for a radical change in the working of law enforcement agencies, especially the police and public prosecutor to contain such delays in the recent past.

Trial of a case means the proceedings whereby the concerned parties put up their pleadings before the appropriate Court of Law for its consideration so as to arrive at a decision on the dispute. In a criminal trial, it is generally the State that

institutes the case against the accused as crime is considered to be an offence against the whole society and not against individual alone. Hence, it is the State that has on its shoulder the burden of investigation as well as prosecution in a criminal trial. All such trials have to be carried out as per the mandate of the law for the time being in force and according to the procedure prescribed under that law.

In a free society like ours, law is quite apprehensive of the personal liberty of every individual and doesn't tolerate the detention of any person without legal sanction. The right to personal liberty is a basic human right recognized by the General Assembly of the United Nations in its Universal Declaration of Human Rights. This has also been prominently included in the Convention on Civil and Political Rights, to which India is now a party. A speedy trial is not only required to give quick justice but it is also an integral part of the Fundamental Right to the life and liberty, as envisaged in Article 21 of the Constitution of India. Though not specifically enumerated as a fundamental right but the Court had interpreted it to be implicit in the broad sweep and content of Article 21. Article 21 provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law.” Further, the procedure contemplated by this article must be 'right', 'just' and 'fair' and not 'arbitrary', 'fanciful' or 'oppressive'; otherwise it would be no procedure at all.

It is understood that, a litigant must have an access to justice. The litigant is defined as a person involved in litigation. So, this research makes an attempt to determine as to how the capability of litigants is affected in light of provisions of the Constitution of India and United States of America and Indian judicial system. Right to speedy trial is the essence of criminal justice and there is no doubt that justice delayed is justice denied. In United States, speedy trial is one of the constitutionally assured rights. European Convention on Human Rights also provides that everyone

---

arrested or detained shall be entitled to trial within reasonable time or to release pending trial.

Yet, in India, nevertheless increasing numbers of accused were jumping bail while free during extended pretrial release, there is no such Law in India, however, the Hon’ble Supreme Court held that right to speedy trial is neither a fact nor fiction but a “Constitutional reality”. What is wrong if ‘Speedy Trial Act’ is enacted in India? In a landmark ruling, with profound implication, the Hon’ble Supreme Court reiterated that just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to Life and Liberty is one of the part of fundamental rights which recognizes right to speedy trial. Many people in our country who spend their precious time and money in prisons and courts for seeking justice for years together. It is detrimental to the economic, social and cultural development of the country like India. There is no paucity to say that the Judiciary as a whole enjoy a higher degree of trust than other branches of the government.

Law is one of the institutions which is central to the social nature of man and without which he would be a very different creature. It is one of the greatest civilizing forces of the human society, and that the growth of the civilization has been linked with the gradual development of a system of legal rules, together with the machinery for their regular and effective enforcement. The next question which comes up then here is what exactly is the aim of law……is it only to administer police activities in the state or does it aim towards a greater good or a goal. The administration of justice does not deal with punishment of the guilty alone but also the acquittal of the innocent. Fairness and speed are equally important in the administration of justice. Speed serves the best interests of the accused, the survivors and the society at large. However, judicial delays in India are endemic. No person can hope to get justice in a fairly and reasonable period. Proceedings in criminal cases go on for years, sometimes decades civil cases are delayed even longer.

---

Chapter 1

Law is also an instrument of justice and in many cases it is agreed that justice is the ultimate goal towards which law should strive. For most of us justice boils down to counting the utility of each individual equally, while others think that justice is a matter of respecting basic human rights. Justice is the ideal, morally correct state of things and persons. According to most of the many theories of justice, it is overwhelmingly important: John Rawls, for instance, claims that “Justice is the first virtue of social institutions, as truth is of systems of thought.”¹⁵ But, according to many theories, justice has not yet been achieved. Most people believe that injustice must be resisted and punished, and many social and political movements fight for justice worldwide. But the number and variety of theories of justice suggest that it is not clear what justice and the reality of injustice demand of us, because it is not clear what justice is. We are in the difficult position of thinking that justice is vital, but of not being certain how to distinguish justice from injustice in our characters, institutions or actions, or in the world as a whole. Justice in itself is a moral value, thus law without justice is a mockery, if not a contradiction.

II. Meaning and Concept of Speedy Trial

A "speedy" trial means that the defendant is tried for the alleged crimes within a reasonable time. A “speedy” trial basically means that the defendant is tried for the alleged crimes within a reasonable time after being arrested. Although most States in United States of America have laws that set forth the time in which a trial must take place after charges are filed, often the issue of whether or not a trial is in fact “speedy” enough under the Sixth Amendment comes down to the circumstances of the case itself, and the reasons for any delays. In the most extreme situations, when a court determines that the delay between arrest and trial was unreasonable and prejudicial to the defendant, the court dismisses the case altogether. In addition to this, guaranteeing the right to an attorney, the Sixth Amendment to the U.S. Constitution guarantees a criminal defendant a speedy trial by an “impartial jury.” This means that

a criminal defendant must be brought to trial for his or her alleged crimes within a reasonably short time after arrest. While the 6th Amendment to the United States Constitution expressly states that “in all criminal prosecution, the accused shall enjoy the right to a speedy and public trial,” our Constitution does not expressly declare this as a fundamental right. It is a truism that the State is the guardian of fundamental right of its citizens and is duty bound to ensure speedy trial and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. Speedy trial is recognized as one other essential principles of administration of justice in the modern democratic world and more particularly in the developed democracies. Further, the judiciary in India is known for its impartiality, independence and justice-oriented approach. However, the capabilities and ways of functioning of Indian Judiciary were under challenge as a feeling of disillusionment and frustration was witnessed among the people of this country. The biggest challenge being faced by the justice delivery system in India is that of delay in the dispensation of justice. Heavy back-log of cases in the Courts and inevitable delay in the dispensation of justice has been to such an extent that it is shaking public trust and confidence in the legal system and it is tending to erode the quality of social justice. So it is necessary to have speedy trial or speedy disposal of cases. By judicial interpretation and extension of the concept of personal liberty, the ‘Right to Speedy Trial’ has been incorporated under Article 21. But, it would be wrong to say that it is only by way of wide judicial interpretation of Article 21 that the concept of speedy trial has been included under Article 21 of our Constitution, rather in its true sense, it is well-embedded in the term ‘personal liberty’. By speedy trial we mean disposal of cases within a reasonable period of time. A procedure prescribed by law for depriving a person of his liberty cannot be termed as ‘reasonable, fair and just’ unless it ensures a speedy trial for determination of the guilt of the accused. The right to speedy trial was recognized by the Supreme Court in Hussainara Khatoon (iv) v. Home Secy, State of Bihar16 and observed that “no procedure, which doesn’t ensure a reasonably

16 (1980) 1 SCC 81.
quick trial, be regarded as ‘reasonable, fair and just’ and it will be violative of Article 21 and hence is not valid under law. Breach of this fundamental right has the potential of making the entire prosecution liable to be quashed and closed. And the accused in all such cases will have to be declared innocent and set at large”.

Personal liberty, which is inalienably linked to the democratic way of life, is a fragile but most prized right. Article 21 stands out as the beacon light for all freedom lovers promising the development of more rights when needed and ensuring a minimum degree of fairness in all proceedings.

Thus, the personal liberty being the cornerstone of our social structure, speedy trial is the essence of criminal trial and there can be no doubt that a delay in trial per se constitutes denial of justice. Justice that comes too late has no meaning to the person it is meant for. During a prolonged and unending trial, the priorities of an accused person towards his life changes along with the circumstances. The person can also loose everything on account of the pending proceedings. Therefore, the speedy trial should be recognized as an urgent need of the present judicial system in order to decide the fate of lakhs of litigants. It will help to enhance the faith of general public in the judicial system. In cases where the accused is the head of a family and is the only bread earner, it is not only the accused but his other family members also who suffer because of delays in trial. Speedy trial ensures that a society is free of such vices. Speedy trial would also help save an accused from psychological stresses such as worries, anxiety, and disturbance to peace at home etc. Speedy trial is, hence, a mandatory requirement as far as protecting the interest of an accused is concerned.

Uncalled delay often prejudices the prosecution and at times, witnesses are not available or evidences disappear by lapse of time due to various technical and non-technical reasons. When our Constitution has given us this fundamental right and our Supreme Court has recognized the same on more occasions than one, a realistic and practical approach should be adopted by all concerned to protect this integral right.
It is difficult to determine a precise time frame for a speedy trial. However, speedy trial not only means the commencement of trial within a statutory prescribed time frame from the time the suspect is arrested, it also encompasses the completion of the trial within the legally prescribed time frame. The speedy trial of offences has been the prime objective of the Criminal justice delivery system. The main aim is to inculcate Justice in society, justice is component of social justice since the Community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings. However, the crucial issues concerning its scope have not been decided.

III. Pendency of Cases in Various Courts

The high image of judiciary is now being fast eroded by huge pendencies in our Courts and long delays. Rather it is sometimes said that only those can afford to approach the Courts who have arms of silver which have no dearth of money in spending, and legs of steel which do not of coming again and again to courts. Our justice system is terribly cumbersome, exorbitantly expensive, long time consuming, dilatory, complex, cumulatively disastrous and also stressful, on account of variety of reasons, viz., the poor cannot reach the court because of heavy fee and other expenditure and mystique legal procedure. Truly admitting that our judiciary creaking under the seemingly impossible load of cases awaiting disposal needs urgent attention if we have to avoid collapse of the system, which could put in jeopardy the whole state of orderly society.

Coming to the facts in this regard, the numbers of pending cases at present amount to a staggering 29 million in all the courts taken together in the country. There are cases where the disposal has taken as many as 30 to 40 years. The Standing Committee of Home Affairs in its Report in 2007 relating to pendency of cases revealed the magnitude of the problem. Pendency of cases is spreading like epidemic, be it the Supreme Court,
High Court or Subordinate Courts. A statistical presentation of the number of pending cases in the Supreme Court, High Courts and Subordinate Courts is given below:

❖ **Pendency in the Supreme Court**

Long pendency of cases in the Supreme Court has become a matter of serious concern. But recently, the pendency of cases in the Supreme Court has shown a downward trend. More and more cases are being filed and the piles of arrears continue to mount. They seem like a tide-a-tide of papers and dockets that can’t be stopped. The institution of cases in the Supreme Court of India arose from 1,602 in 1950 to 2,131 in 1955 and to 6,441 in 1960. Further, the institution of cases arose from 5,351 in 1961 to 7,979 in 1965 to 16,106 in 1970 to 12,787 in 1975 to 14,501 in 1977 and 28,382 March, 1978. The pendency of cases which was 1,04,936 as on 31st December, 1997 came down to 58, 794 in 2004 and further down to 46,926 as on 31st December 2007. According to the latest statistics available from the Supreme Court’s report on vacancies and pending cases, the apex Court has now run up a backlog of 56,383 cases—the highest figure in a decade. The reason for backlog of cases pending is inadequate judge strength and the researcher find that there are 13.05 judges per 1 million people, as against Australia’s 58 per million, Canada’s 75, the United Kingdom 100 and the United States of America 130 per million. In 2002, the Supreme Court has directed the Centre to raise the judge-population ration to 50 per million in a phased manner, as recommended by the Law Commission in its 120th report. The suggestion has had little effect. In 2012, there were 61,876 cases pending in the Supreme Court.

❖ **Pendency in High Courts**

The pendency of cases in the High Court’s which was 33.65 lakh as on 31st December, 1999 increased to 35, 54, 687 on 31st December, 2001. The figures of pendency in the High Court’s as on 31st December, 2007 was 37, 00,223. According to the latest

---


18 Figure was given by Chief Justice K G Balakrishnan while inaugurating the "ALL INDIA SEMINER ON JUDICIAL REFORM" held from 23rd - 25th Feb. 2008 in New Delhi.

statistics available, the researcher find that in the country’s 21 High Courts, where 42,17,903 cases are awaiting disposal. The main reason for this is that 291 posts of judges against the sanctioned strength of 895- lying vacant for a long time. This vacancy level constitutes to 32 per cent. Various measures have been adopted in the High Courts for expeditious disposal of cases including classification and grouping of cases, computerization of records in all the High Courts. But the result is not satisfactory because there are cases pending in Madhya Pradesh, Patna, Rajasthan and Calcutta High Court since 1950, 1951, 1955 and 1956 respectively.

❖ Pendency of cases in Subordinate Courts

The situation of the pendency of cases is worst in the Subordinate Courts. As per available information, the pendency of cases in District / subordinate courts as on 31st December, 1997 was about 2 Crore, then to 2.02 Crore as on 21st December, 1998 and which has increased to 2,5285,982 as on 31st December, 2007. The researcher find that at the end of March 2011, the total number of pending cases stood at 2,79,53,070 in lower judiciary, which constitutes the base of the entire judicial pyramid. In subordinate courts, where we have the maximum backlog of cases, there are 3,170 posts vacant. The sanctioned strength of district judges has gone up to 17,151, according to the Supreme Court’s report on vacancies and pending cases. Filling these vacancies will have a direct impact on India’s governance indicators, improving investor sentiment and advancing economic growth.

Frankly speaking, the figures shown above do not include the cases pending in various tribunals and other quasi-judicial bodies. If those were also added to the grant total, the arrears in lower courts would well cross the figure of 3 crore, which is quite alarming and if not checked at the earliest, the system will crumble beneath its load.

20 Ibid.
21 Supra n. 17.
22 Ibid.
23 R.D. Sharma, op.cit. at 9.
24 R.D. Sharma, op.cit. at 9.
Justice V.V. Rao has once rightly stated that Indian judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts in the country. He further stated that “If one considers the total pendency of cases in the Indian judicial system, every judge in the country will have an average load of about 2,147 cases.” To reiterate, the apex Court in 2002 had suggested 50 judges per million population and if the norm of 50 judicial officers per million becomes reality by 2030 when the country’s population would be 1.5 to 1.7 billion, the number of judges would go up to 1.25 lakh dealing with 300 million cases.

While the maxim 'Justice Delayed is Justice Denied' holds true in all such cases, it is important to know the reasons for the delay. Delay is mainly caused inter alia due to delay in investigation, delay in framing issues/charges, delay in trial, non-attendance of witnesses, absence of lawyers, witnesses turning hostile, repeated adjournment of cases, lack of accountability of judges, delay in appointment of judges, lawyers often indulge in unethical practices of stalling court proceedings deliberately and a host of other causes. It is, hence, the duty of the judiciary to enforce the rule of law and to guard against the erosion of the rule of law. While noting with surprise the attitude of judges, the Supreme Court in a case observed: “Our justice system has become so dehumanized that lawyers and judges don't feel a sense of revolt in caging people in jail for years”. The Court further said that justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that. The inordinate, unexplained and negligent delay in pronouncing the judgment is alleged to have actually negatived the right of appeal conferred upon the convicts under the provisions of the Code of Criminal Procedure.

Equal justice for all is a cardinal principle on which entire system of administration of justice is based. It is so deep-rooted in the body and spirit of common law as well as civil law jurisprudence that the very meaning which we

---

26 Ibid. (Quoted by Press Trust of India).
attribute to the word ‘justice’ embraces it. The greatest challenge to the justice delivery system is the delay in the disposal of cases and prohibitive cost of litigation. Experience has shown that adjudication of disputes through Courts, while unavoidable, doesn’t, in every case, provide a satisfactory or amicable solution.\(^{28}\)

The legal strategy for modern India should aim at conciliation and not confrontation, in keeping with our tradition of tolerance and mutual accommodation. Alternative Dispute Resolution mechanism have been evolved to present a solution to legal disputes and to do complete justice to the parties in conflict. It is a voluntary process which is gradually gaining legal recognition. Alternative Dispute Resolution is, at present, a movement world-over to find an answer to never-ending litigation. The society as well as the parties to the dispute is equally under an obligation to resolve the dispute before it disturbs the peace in the family, business community, society or ultimately humanity as a whole. Arbitration, negotiation, mediation, conciliation and Lok Adalats are some of the accepted modes of alternative dispute resolution mechanisms. Certain kinds of disputes such as matrimonial disputes, family disputes with neighbours and several other categories of petty civil and criminal cases, which form a substantial percentage of pending litigation, can be better and more satisfactorily resolved by organized and institutionalized processes of arbitration, mediation, conciliation or Lok Adalat through intervention of public-spirited and respected senior citizens. The focus should be on “conciliation legal realism”. A judge should not merely sit like an umpire, but participate in the efforts to iron out differences and encourage the parties to arrive at a settlement. This would help reduce the backlog of cases, avoid multi-tier process and also lead to reconciliation of legal disputes without causing much enmity and bitterness.

Considering the mammoth size of arrears, alternative modes of dispute settlement is the best way to reduce the number of cases filed every day. The Malimath Committee made various recommendations on this aspect and a Bill to amend Civil Procedure Code was brought which contained *inter alia* provisions for

making it obligatory for the court to refer the dispute after the issues are framed for settlement either by way of arbitration, conciliation, mediation, judicial settlement or through Lok Adalat.\textsuperscript{29} It is only after parties fail to get their disputes settled through alternative dispute resolution methods that the suit shall proceed further in the Court in which it was filed. Besides this, there are other methods like setting up of Fast Track Courts, use of plea bargaining, widening the ambit of compoundable offences, decriminalization of petty offences and raising the number and strength of courts, improving the selection process of judges or setting up evening courts throughout the country to dispose of cases quickly and by which arrears of cases can be reduced. It is expected that efforts of these kinds would definitely help to reduce the burden on the Courts and decrease the accumulation of arrears.

**IV. Review of Literature**

The review of allied literature as well as previous research work is of paramount importance in research endeavour. Under this review of related literature an attempt has been made to review literatures available so as to draw some meaningful guidelines for the present research work. The researcher find only one book and few articles on the subject. Much to the credit of the academic interest of the intellectuals in relation to the subject, the work of Hari Om Maratha deserves specific mention. In his book "Law of Speedy Trial: Justice Delayed is Justice Denied", the author has dealt with the brief history of justice Delayed is Justice Denied, four articles of Supreme Court Judges, protection of life and liberty, Acts relevant to the subject and changes made in the Code of Criminal Procedure. To a large extent the book is edited one and informative only.\textsuperscript{30} However, an exhaustive article titled "Delay in Process, Denial of Justice: The Jurisprudence and Empirics of Speedy Trials in Comparative Perspective" is jointly written by Jayanth Krishnan and C. Raj Kumar. It deals with the brief overview of the academic literature on speedy trials, the Indian speedy trial landscape and proposals and reform initiatives along with preliminary observation.

\textsuperscript{29} See Section 89, Civil Procedure Code (added by the Amendment Act of 2002).

\textsuperscript{30} Hari Om Maratha, Law of Speedy Trial "Justice Delayed is Justice Denied" (2008).
The authors have tried to examine the current state of the Indian Criminal justice system and evaluated the positive court rulings that have translated into tangible changes for the criminally accused. The authors find that there exist a major gap in India between these encouraging judicial pronouncements and how the right plays out in reality. Further, the article written by R.D. Sharma is of great use for this research. The author has made a great deal in highlighting the backlog of cases in courts across the country and suggests that judicial system from the law to the judges’ selection needs revamp.

The Primary Source for this study have been the decisions rendered by the Supreme Court of India and the High Courts, reported in different Law Journals like, Supreme Court Cases, All India Reporter etc. These decisions of Courts came very handy because they gave me the first hand knowledge of the delay justice-delivery system in India and concern of the Courts regarding such delays. For example, the Supreme Court in **Hussainara Khatoon (iv) v. Home Secretary, State of Bihar** observed: “Procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.” Then the Supreme Court in **Kadra Pahadiya v. State of Bihar** observed “It is a crying shame upon our adjudicatory system which keeps men in jail for years and years without trial. The Court in a compassionate expression observed: “No one shall be allowed to be confined in jails for more than a reasonable period of time, which we think cannot and should not exceed one year for a session trial.... We fail to understand why our justice system has become so dehumanized that lawyers and judges don’t feel a sense of revolt in

---

33 (1980) 1 SCC 81.
caging people in jails for years without trial”. In another judgment with profound implication, the apex Court observed: “Although right to speedy trial is not expressly guaranteed a constitutional right in India, speedy trial is the essence of criminal justice and delay in trial by itself constitutes denial of justice. Pendency for long periods operates as an engine of oppression”. The decisions like these gave the proper direction to my work.

The Secondary Sources that have been referred to and relied upon are – articles written by eminent Judges, Jurists, Academicians, Lawyers, Journalists etc., published in leading law Journals like Modern Law Review, Journal of Indian Law Institute, Supreme Court Cases and All India Reporters and Souvenir on ‘All India Seminar on Access to Justice’ held from 23rd to 25th February 2008 in New Delhi. The secondary sources in the study are as important as the primary source because these sources provided the researcher with scholastic viewpoint of the topic under study. Among these sources, the Souvenir on ‘All India Seminar on Access to Justice’ came to be of great help because various articles in it have at length dealt with the pros and cons of the delayed justice delivery system in India.

Apart from these sources, an effort has been made to refer to various memorial lectures and inaugural and valedictory addresses given by eminent personalities related to the justice delivery system. One of such lecture was given by the then Speaker of Lok Sabha Mr. Somnath Chatterjee on the occasion of 50th Anniversary of the establishment of Karnataka High Court on 10th March, 2006 on the topic ‘Justice delivery system: Issues and Problems”, wherein he urged judiciary to find ways and means to expedite the justice delivery system so as to give relief to the lakhs of accused either languishing in jail or living in anxiety.

After going through the works in this area what has been experienced is that none of the works have deliberated upon the Courts vacations as a factor for mounting arrears of cases. Supreme Court and High Courts work 185 days and 210 days respectively in a year in comparison to 245 working days of other
Government establishments. In these working days, Supreme Court and High Courts work four hours thirty minutes and five hours respectively in each working days in comparison to seven hours in a day by other government establishments. Due to excessive court vacations, cases are pending in the Courts years after year and thereby increasing the cost of justice. So, it is the need of the hour that the vacation in the judiciary be made at par with the other government establishments so that the pending cases can be reduced by to some extent.

Another aspect which has gone unnoticed is that people always blame the judges for the delay but in reality the advocates are equally to be blamed. The Supreme Court in Judges Transfer case\(^{35}\) observed that “the advocates are equal partners with the judges in the Administration of Justice”. Therefore, the credit as well as discredit of the judiciary is to be shared by both the judges and the advocates. Further when an appeal is made to a High Court, such court intimates the trial court to send back the case file to such High court. But surprisingly trial courts take months together in sending the case file and thereby making delay in the disposal of cases.

V. Objectives of the Study

The aim of the study is to understand thoroughly what the concept of speedy trial is, and having done so, to analyze the introduction of the concept in India through the recent amendment of the Code of Criminal Procedure, 1973 and recent Judgments of the Courts. Being a comparative study, an analysis of the speedy trial system in the United States of America and thus an appraisal of the similarities and the differences that prevail as compared to the proposed practice of speedy trial in India is also one of the chief aims of the study.

The main objectives of the study are as under:

\(^{35}\) S.P. Gupta v. Union of India, AIR 1982 SC149.
(i) To evaluate and assess the justice delivery system in India and United States of America.

(ii) To discuss and analyze the constitutionality of the right to speedy trial.

(iii) To assess the judicial mechanism that was put into motion while executing the philosophy of speedy trial of India and United States of America.

(iv) To ascertain the impediments behind speedy trial and also to suggest ways and means to ensure speedy trial.

These objectives are proposed to be secured mainly by analyzing the judicial behavior and trends based on the judgments by the Supreme Court as well as High Courts. Further, the suggestions and recommendations given from time to time by various Committees and Commissions including the Reports of Law Commission are also considered in achieving the above-mentioned aims and objectives.

VI. Statement of the Problem

In India, neither the Constitution nor any existing laws or statutes specifically confer the right to speedy trial on the accused. Most of the existing laws also do not provide any timeframe in which a trial must be concluded; in cases where some timeframes have been provided, the courts have held them to be "directory" and not "mandatory".

Procedural law, i.e. the Code of Criminal Procedure (Cr. PC), 1973, provides a statutory time limit to complete an investigation. Section 167 of the Code further provides that a failure to complete investigation within the statutory time frame shall lead to release of the accused in custody on bail.

In a democratic society like India, for protecting and enhancing the rights of the people, the judiciary besides the Legislative and the executive body plays an important role. For the enforcement of rights of citizens and remedies thereto in case of violation thereof, Courts have been established at all levels in the country. These courts, by interpreting the laws, enhance justice to the individual and the society at
large. With the rapid growth in the population and the development in industrial and technological fields, the work load of the judiciary has been increased tremendously. With the increase in workload, the efficiency and the time consumed in disposing of cases is alarming and astonished and working of the Courts are hampered badly.

With the increase in the rate of pending cases and declination of pronouncement of judgments, our society now truly considers that “justice delayed is Justice denied”. Due to the delay in rendering justice, people are losing faith in the judicial system. The mounting arrears of cases in the trial and appellate courts coupled with increased recourse to court cases on account of awareness of rights on the part of the citizens, various legislative enactments and administrative measures touching the lives of citizens at all levels, have assumed serious proportions.

Life and liberty of a citizen guaranteed under Article 21 includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliation and indignities at the hands of the authorities to whom the custody of a person may pass temporarily or otherwise under the law of the land. A dignified life is not possible unless an accused is assured speedy disposal of his case. Therefore, speedy trial has been implied as a fundamental right under Article 21 of the Constitution of India.

Individual liberty is a cherished right and perhaps one of the most valuable fundamental right guaranteed by our Constitution. The interest of society can be served only if the Constitutional provisions are implemented in its strict sense and individual liberty of every person is harmonized with the social interest of the society. The state, as a guardian of the fundamental rights of its people, is duty-bound to ensure speedy trial and avoid any excessive delay in the trial of cases which could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. On pre-trial confinement, at times, an accused remains in jail for much longer period than even the maximum sentence which can be awarded to him on conviction for the offence of which he is accused. Many poor litigants, who fail to
provide financial security and surety, have to remain in jail for years. Thus our prisons are overcrowded resulting in heavy loss of state exchequers, which could have been saved by speedy disposal of cases. It is, therefore, the bounden duty of the trial court to ascertain that the cases are disposed of speedily at least of the under-trials who are languishing in jails for years. Yet, the judiciary is unable to enforce this, partly for want of adequate number of courts and Judges and partly due to their indifferent attitude towards the pending cases.

Criminal law remains ineffective without quick trial and prompt punishment. For a variety of reasons, witnesses tend to retract from their previous statements. Those who won over by threats or inducement, turn hostile. Investigating officers and prosecutors loose heart; Judges feel helpless. People lose confidence in the judiciary as either criminals go scot-free or innocents continue to be harassed. Thus, delay in disposing cases amounts to punishing an accused before he is tried and guilt is proved. This cycle of vices is harmful for the development and peace of any civilized society.

In 1979, the Supreme Court of India referred to the United States Constitution’s Sixth Amendment, held that defendants had a fundamental right to a speedy trial. Researcher has made earnest efforts to examine the evolution of the Indian jurisprudence on this matter, which has been quite favorable for defendants. Further the researcher stretched this line of inquiry to evaluate whether the positive court rulings have translated into tangible changes for the accused. The situation in India on right to speedy trial is thought to be much worse.

All these above issues led the researcher to take up this particular topic wherein an effort has been made to adumbrate the pros and cons of justice delivery system in India with an eye on ‘right to speedy trial’ which is implied under Article 21 of the Constitution of India.
VII. Hypothesis

Hypothesis is a tentative generalization the validity of which has to be tested. It provides a direction to the inquiry, aids in establishing a link between theory and practice and help to delimit the field of inquiry by singling out the pertinent facts on which to concentrate.

This study has been undertaken to put to test the following hypotheses regarding the delay in justice delivery system and to provide speedy trial to accused in India.

(i) The concept of speedy trial?

(ii) An unreasonable delay in the administration of justice results denial of justice.

(iii) Speedy trial is a mandatory requirement under Article 21 for protecting the interest of an accused.

(iv) Why has India not adopted time limit for completion of trial which earlier has been described as desirable by the Indian courts?

(v) Is existing laws are sufficient for Right to Speedy Trial under Criminal Justice System in India.

(vi) How does speedy trial in India differ from speedy trial in the USA?

(vii) Is speedy trial welcome and inevitable? Or is it only one of them or neither of them?

An honest and sincere effort has been made through this study to find out the veracity of the above hypotheses.

VIII. Universe of the Study

Since the present study is not based on empirical experience, the researcher has selected India as a whole for this present study. The thrust of the present research work has been on the basis of material collected from different sources. The
researcher while dealing with the concept of speedy trial, a comparative reference of United States of America has also been made.

The scope of the study is limited to analyzing the concept of speedy trial on mainly theoretical plane. Apart from this analysis, the researcher has included case laws wherever necessary.

IX. Research Methodology

In pursuing this study, the traditional doctrinal approach has been followed. However, as the legal research may not be done within the straight jacket formula of any particular recognized scientific method, a multi-pronged approach would be resorted to depending on the necessity. The method of writing adopted is both descriptive and analytical.

As regards the analysis of judicial approach to speedy trial, the methodology adopted would be analytical.

Further this study will also have the references to plethora of cases to ascertain the dicta laid down therein pertaining to right to speedy trial.

X. Scheme of Chapterisation

The thesis is entitled “Concept of Right to Speedy Trial: A Comparative Study of India and The United States of America”. It has been divided into Eight Chapters.

The First Chapter is entitled as “Introduction” which contains the brief background of the selected topic, conceptual aspect of the right to speedy trial, statistical figures of pendency of cases in the Supreme Court, High Courts, and Subordinate Courts, review of literature, objectives of the study, statement of the problem, hypothesis, universe of the study, research methodology followed and the scheme of the study.
Chapter 1

The Second Chapter is entitled as “Historical Background of Right to Speedy Trial at National and International Level”. In this Chapter an endeavor is made to find the historical background of right to speedy trial. This Chapter is very important from the point of view that it analyses the Right to Speedy Trial under Various International Instruments.

The Third Chapter is entitled as “Factors Responsible for Delays in Justice Delivery System in India”. In this Chapter a detailed discussion with regard to the Factors Responsible for Delays in India has been made. This chapter is the heart and soul of the thesis because it is only when the specific reasons for delay in disposal of cases is known, an effort to reduce delays can be initiated in a proper direction. A discussion of various factors responsible for delays in disposal of cases is followed by an analysis. Such factors for delays have been broadly discussed under two headings: Procedural factors and Substantive factors: Such factors inter alia include- delay in investigation, delay in service of Summons, absence of lawyers, judicial vacancies, non-attendance of witnesses, lack of accountability of Judges, witnesses turning hostile and various other factors.

The Fourth Chapter which is entitled as “Right To Speedy Trial as a Part of Fundamental Human Rights In India” In this Chapter, an endeavor is made to throw light on the constitutionality of the right to speedy trial. This Chapter is very important in the sense that this right is not directly mentioned in the Constitution of India rather it is implied under Article 21. Further there is a detailed analysis of the provisions of the Criminal Procedure Code and Civil Procedure Code dealing with Speedy Trial. An endeavour has also been made to analyze the judicial approach to speedy trial which is very much germane because it is the judiciary which has introduced the “Right to Speedy Trial” under the ambit of Article 21.

The Fifth Chapter is entitled as “Legal Position of Speedy Trial In United States of America and In Other Countries” Under this chapter, the statutory provisions dealing with speedy Trial in USA and in other countries like England,
Japan, Philippines, Nepal, Republic of Korea, Arizona is discussed. It is worth to mention here that the United States of America is the first Country in the world which has enacted a legislation to implement the constitutional guarantee of Speedy Trial to all accused persons. The Federal Act of 1974 is titled as the 'Speedy Trial Act, 1974'. This Act prescribes a set of time limits for carrying out the major events in criminal proceedings. Further this chapter will also throw light on the international norms regarding the right to Speedy Trial.

The Sixth Chapter which is entitled as “Right to Speedy Trial: A Comparative Study of United States of America and India” The Chapter deals with a thorough comparative analysis of right to speedy in United States of America and India. Being a comparative study, the researcher has drawn out the actual similarities as well as differences between the United States of America and the Indian systems as far as right to speedy trial is concerned. The researcher has made an attempt to deal with the general practice of right to speedy trial in United States of America, and India and simultaneously comparative analysis is also made.

The Seventh Chapter which is entitled as “Ways and Means of Speeding up of Justice Delivery System”. In this Chapter, an attempt is made to adumbrate the alternative ways to expedite the rate of disposal of cases. The most important alternative ways discussed are: extensive recourse to alternative dispute resolution techniques like arbitration, conciliation, mediation, negotiation, counseling, Lok Adalat, introducing the concept of Plea Bargaining, setting up of Fast Track Courts etc.

The Last Chapter is devoted to “Conclusion and suggestions”. In this Chapter various suggestions are provided for expediting justice delivery system in India which is in tune with the cherished principle of fundamental right to life and personal liberty. Such suggestions inter alia include increasing the number of regular courts, improvement of judicial infrastructure, extensive use of emerging
technology, statutory recognition of time-bound disposal of cases and making such
offences compoundable which will not cause serious alarm to parties and the
societies at large.