I. Prelude

In a fair society laws are observed by both States and Citizens. Any social conflicts that arise are resolved through fair and prompt judicial decisions. The Constitution of India imposes heavy duty on the Judicial system for providing legal mechanism to deal with the problems relating to importing justice. The setting up of an independent judicial system, inclusion of fundamental rights and directive principles of state policies further shows the commitment of our founding fathers of the Constitution in making the judicial system an effective organ of state machinery on which people can rely with trust and hope for justice. The doctrine of speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself.\footnote{Moti Lal Saraf v. State Of Jammu & Kashmir & Another, In the Hon’ble Supreme Court of India, Appeal (crl.) 774 of 2002, decided on: 29.09.2006.} Further, it is the primary function of the government to protect the basic right to life of the citizen. The State has to give protection to persons against lawlessness, disorderly behaviors, violent acts and fraudulent deeds of others. Liberty cannot exist without protection of the basic rights of the citizens by the government. It is true that whatever views one hold about the penal law, none will question its importance to society.

Since independence and the promulgation of our Constitution, 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 expectations of an every growing population. The desire for quick, fair and affordable justice has become a common phenomena. Protection of life and liberty have been given a pre-
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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 citizen. This Article has come to occupy the position of ‘broadening omnipresence’ in the scheme of fundamental rights. It has become a ‘sanctuary for human values’ and therefore has been rightly termed as the ‘fundamental of fundamental rights’. Any deprivation or breach of this valuable and most cherished right is not permissible unless the procedure by law for that purpose is just, fair and reasonable.

Frankly admitting the dual role of law in society as an instrument of social change as well as a means of social control has created confusion about the actual effectiveness of law in society. Law, as an instrument of social change, has not been able to precipitate desirable social changes in society effectively. There has been phenomenal increase in rate of crimes in society, the nature of crime, means and methods of committing crimes have also considerable changed. All this has posed a number of problems to law enforcement agencies. Delay in disposal of cases is a normal feature in the Country and a number of efforts have been made to counter this evil practice but it seems that it will stay in the society. The Courts in India at different levels decides cases but pending cases are increasing day by day. The Courts take years to decide a case. It is rightly said that the most glaring malady which has afflicted the judicial system is the tardy process and inordinate delay that take place in the disposal of cases. The piling arrears and accumulated workload of different courts present a frightening scenario. As a matter of fact, the whole system is crumbling down under the weight of pending cases which go on increasing every day. The delays in trials have now become proverbial. The crisis gripping the criminal justice system has serious implications for the Rule of Law and the protection of human rights.

Peace is the *sine qua non* for development. Disputes and conflicts dissipate valuable time, effort and money of the society. It is of utmost importance that there should not be any conflict in the society. But in a realistic sense, this is not possible. So, the next best solution is that any conflict which raises its head is nipped in the bud. With the judicial system in most of the countries being burdened with cases, any
new case takes a long time to be decided. And till the time the final decision comes, there is a state of uncertainty, which makes any activity almost impossible. Commerce, business, development work, administration, etc., all suffer because of time taken in resolving disputes through litigation. To get out of this maze of litigation, Courts of most of the countries encourage alternative methods of dispute resolution. India has a long tradition and history of such methods being practiced in the society at grass-roots level. These are called Panchayat and in the legal terminology these are called arbitration. These are widely used in India for resolution of disputes-both commercial and non-commercial. Other alternative methods being used are Lok Adalat (People’s Court), where justice is dispensed summarily without too much emphasis on legal technicalities. Methods like negotiation, mediation and conciliation are being increasingly used to resolve disputes instead of going for litigation. There have been amendments recently in the procedural law of India to incorporate these methods so that people get justice in a speedy manner and there is lesser conflict in the society.2

The Constitution of India guarantees ‘Right to Constitutional Remedies’ as a fundamental right. The Government provides free legal aid to the needy. However, in a country of continental dimensions and with population more than a billion, it becomes very difficult to provide free legal aid to everyone. The National Legal Services Authority (NALSA) is trying to spread ‘legal literacy’ which is a step more than ‘literacy’. People care about their rights much more when they are aware and are ‘legal literates’. Efforts are also being done at provincial level. All these efforts seem to be a small drop in the ocean, but small drops make mighty oceans.

**Mahatma Gandhi,**4 the father of the Nation, wrote in his autobiography about the role of law and lawyer: “I had learnt the practice of law. I had learnt to find out the better side of human nature, and to enter men’s hearts. I realized that

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the true function of a lawyer was to unite parties fallen apart. The lesson was so indelibly burnt into me that the large part of my time during the twenty years of my practice as a lawyer was occupied in bringing about private compromises of hundreds of cases. I lost nothing thereby—not even of money, certainly not my soul."

Any conflict is like cancer. The sooner it is resolved the better for all the parties concerned in particular and the society in general. If it is not resolved at the earliest possible opportunity, it grows at a very fast pace and with time the effort required to resolve it increases exponentially as new issues emerge and conflicting situations galore. One dispute leads to another. Hence, it is essential to resolve the dispute the moment it raises its head. The method to achieve this goal must be agreeable to both the parties and it should achieve the goal of resolving the dispute speedily. This state of uncertainty and indecisiveness should be as brief as possible to avoid all psychological, physical and mental losses.5

The Constitution of India in its preamble has defined and declared the common goal for its citizens as “to secure to all the citizens of India, justice-social, economic and political; liberty; equality and fraternity”. The eternal value of constitutionalism is the rule of law which has three facets i.e. rule by law, rule under law and rule accordingly to law. How to secure to all the citizens the justice which the Constitution talks about is a big question being faced by the judiciary. The Courts dockets are overloaded and new cases are being filed every day. It is becoming humanly impossible to decide all these cases by the regular courts in a speedy manner. And, this is not the situation in India alone. This, unfortunately, is the situation in many countries of the world.6

With the evolution of modern States and sophisticated legal mechanisms, the Courts run on very formal processes and are presided over by trained adjudicators

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5 Supra n. 2 at 33.
6 Id. at 34.
entrusted with the responsibilities of resolution of disputes on the part of the State. The seekers of justice approach the Courts of justice with pain and anguish in their hearts on having faced legal problems and having suffered physically or psychologically. They do not take the law into their own hands as they believe that they would get justice from the Courts at the end.\(^7\) It is the obligation of judiciary to deliver quick and inexpensive justice shorn of the complexities of procedure. However, the reality is that it takes a very long time to get justice through the established court system. Obviously, this leads to a search for alternative complementary and supplementary mechanism to the process of traditional Civil Court for inexpensive, expeditious and less cumbersome and less stressful resolution of disputes. But, the elements of judiciousness, fairness, equality and compassion\(^8\) cannot be allowed to be sacrificed at the altar of expeditious disposal. The hackneyed saying is that ‘justice delayed is justice denied: justice cannot be hurried to be buried’. The cases have to be “decided” and not just “disposed of.” This creates the dilemma of providing speedy and true justice. This is easier said than done.

The Indian judiciary is held in very high esteem in all the developing as well as the developed countries of the world. However, there is a criticism that the Indian judiciary is unable to clear the backlog of cases. Available and relevant statistics would show that though the pendency of cases is always highlighted, what is never spoken of are the figures of annual filing and disposal. During the year 2001-2004, on an average, the subordinate Courts have disposed of 13 million cases every year while the High Courts have disposed of 1.5 million cases per year. The fast Track Courts have disposed of 370,000 cases during the same period. The Supreme Court of India is disposing of about 50,000 cases per year.\(^9\)

\(^7\) Ibid.


\(^9\) Figure was given by Chief Justice K G Balakrishnan while inaugurating the “ALL INDIA SEMINER ON JUDICIAL REFORM” held 23\(^{rd}\)-25\(^{th}\) Feb. 2008.
The law Courts are confronted with four main problems:

(a) The number of Courts and Judges in all grades are alarmingly inadequate

(b) Increase in flow of cases in recent years due to multifarious Acts enacted by the Central and State Governments;

(c) The high cost involved in prosecuting or defending a case in a court of law, due to heavy Court-fee, lawyer’s fee and incidental charges;

(d) Delay in disposal of cases resulting in huge pendency in all the Courts.

Justice V.V. Rao, the then judge of Andhra Pradesh High Court has said that ‘Indian judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts, including High Courts in the country.’ He further said that ‘if one considers the total pendency of cases in Indian Judicial system, every judge in the country will have an average load of about 2147 cases.’ He further stated that ‘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 upto 1.25 lakh dealing with 300 million cases.’

These problems do not have an instant solution. For each problem, there are a number of reasons which need to be tackled; however, it requires a lot of time and will power on the part of the leaders of the nation to tackle the situation. Till the time it is done, the country has to move on. Disputes will keep emerging and if not resolved, they shall keep on piling making life difficult for everyone in the society.

In every civilization, and India is no exception, pursuit of justice is instinctive. It is an individual and societal instinct and every society strives to attain it through its legal system. The degree of perfection attained by a legal system may be measured by the extent to which it exists in good instinct for justice system to express itself and to find its fulfillment. Not every legal system succeeds in this

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11 Ibid.
goal. Sometimes a legal system fails to achieve its purpose because of defects and deficiencies in its substantive laws and sometimes mainly because of infirmities in its procedural rules. Fortunately, the judicial system in India is well organized with high level of integrity, and has been able to develop a system of Alternative Dispute Resolution.

II. Alternative Dispute Resolution Mechanisms

Alternative Dispute Resolution, as the name suggests, is an alternative to the traditional process of dispute resolution through courts. It refers to a set of practices and techniques to resolve disputes outside the courts. It is mostly a non-judicial means or procedure for the settlement of disputes. In its wider sense, the term refers to everything from facilitated settlement negotiations in which parties are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems of mini trial that look and feel very much like a court room process. It is not intended to replace or supplant the courts of the land but is in addition to the traditional system. It is not an alternative to the court system in a restrictive sense. The need for public adjudication and normative judicial pronouncements on the momentous issues of the day is fundamental to the evolution of the laws of the land. ADR is necessary to complement and preserve this function of the courts. It has some instrumental and intrinsic functions. It is instrumental in so far as it enables amicable settlement of disputes through means which are not available generally to court. It is intrinsic because it enables the parties themselves to settle their disputes.\(^{12}\)

Alternative Dispute Resolution mechanisms are in addition to courts and complement them. The traditional system of dispute resolution is afflicted with inordinate delays. Nowhere, however, does backlog and delay appear to be more accentuated than in modern-day India. ADR mechanisms play an important role in

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\(^{12}\) B.M. Manoj; "Future of ADR in India" Published in _Nyaya Deep, Journal of NALSAR_; December, 2006; p. 68.
doing away with delays and congestion in courts. The Indian civil justice system serves the interests of a diverse and exploding population of the largest democracy and the seventh largest national market in the world. This formidable responsibility combined with the recent drive toward greater political accountability in the public administration and post 1991 market reforms places very greater pressure on the civil justice system. An estimated backlog of 31.28 million cases and reported delays in some urban areas of over twenty years, currently undermine the effective enforcement of the substantive civil and commercial rights. Backlog and delay have broad political and economic implications for the Indian society. If India fails to face and meet these challenges, it will not be able to realize fully its legal commitment to democratic and liberal economic policies. All agree that this crisis calls for the careful adaptation of workable solutions. In cases such as motor accident claims, the victim may require the compensation to be paid without delay in order to meet medical and other expenses. In matter such as these, Alternative Dispute Resolution mechanisms can help victims obtain speedy relief. In addition to reducing the burden on the courts and proving speedy justice to people, Alternative Dispute Resolution mechanisms have been introduced and are being utilized for a number of other reasons also. Alternate Dispute Resolution mechanisms are relatively inexpensive in comparison with the ordinary legal process. These mechanisms, therefore, help litigants who are unable to meet the expenses involved in the ordinary process of dispute resolution through courts. Furthermore, ADR mechanism enhances the involvement of the community in the dispute resolution process. 13

ADR mechanisms provide for more effective resolution of disputes as the parties are more involved in the process and the process is swift. Court processes that are traditionally practiced may not in every case provide the best approach towards the resolution of disputes. For instance, in the case of matrimonial disputes, which are sensitive in nature, involving both legal as well as emotional questions.

13 Ibid.
the parties are not interested in winning or losing, but in reaching a solution. Inordinate delays that are a part of the ordinary legal process may emotionally affect the parties and cause frustration. The matter may be more effectively resolved, if it is not dealt with in a mechanical and technical manner. The procedures employed in Alternate Dispute Resolution are flexible and informal in contrast to the formal and rigid procedures followed in the ordinary process of dispute resolution in courts of law. These processes thus facilitate access to justice.

Alternative Dispute Resolution mechanisms have number of advantages\(^4\) which are entitled as under:

(1) One of the foremost advantages of the Alternate dispute Resolution process is that the dispute remains under the control of the parties themselves and any settlement entered into is their own and does not represent a dictate from an outsider. The process of Alternate Dispute Resolution be it mediation, negotiation or Lok Adalat implies a greater involvement of the disputing parties. The parties are actively involved in the process of dispute resolution and can, therefore, more effectively reach a settlement of the dispute.

(2) ADR processes are not afflicted with the rigorous rules of procedure. No fixed set of rules are employed as such, be it in mediation or negotiation or even in Lok Adalats. In case of arbitration, however, the rules of arbitration institutions, which are fixed, are sometimes applied. In fact, the parties may meet and fix the procedures for themselves with the help of a mediator. It is much easier with more informal procedures to avoid the confusion involved in the usually stringent procedures.

(3) ADR processes are sometimes confidential and generally without prejudice. For instance in the case of conciliation proceedings, the Arbitration and Conciliation Act, 1996 specifically provides for the confidentiality of all matters relating to the proceedings. In arbitration agreements also, the parties  

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themselves, often provide for confidentiality of the proceedings and the awards.\footnote{Section 75 of the Arbitration and Conciliation Act, 1996.}

(4) As ADR is not adversarial and aims for all sides ending up with at least a solution that is acceptable to all the parties involved, disputants can save face which again is important and indeed vital in relationship. Differences can be eased through this process and future relationship may be preserved and continued. Particularly in business relationships, the parties may wish to resolve their disputes amicably and carry on their trade in future. In such circumstances, ADR mechanisms such as mediation or arbitration may provide more effective means for the settlement of their disputes.

(5) Another advantage of Alternate Dispute Resolution mechanisms is that they can be used at any time either immediately after dispute arises or when dispute is pending with the court. In case of commercial relationships, the parties may agree at the time of entering into the contract to resort to any of the Alternate Dispute Resolution mechanisms in case a dispute arises. It can be terminated at any stage by any one of the disputants. \textit{In Salem Advocate Bar Association, T.N. v. Union of India},\footnote{(2003) 1 SCC 49.} Hon’ble Mr. Justice B.N. Kirpal (the then Chief Justice of India), observed, “In certain countries of the world, where ADR has been successful to that extent, that over 90 per cent of the cases are settled out of the Court. There is a requirement that the parties to the suit must indicate the form of ADR which they would like to resort during the pendency of the trial of the suit.”

(6) The parties are free to choose their mediator or arbitrator. This can lead to the appointment of persons who are familiar with the business or have other relevant expertise and can thus play a vital role in the effective resolution of the dispute.
ADR Strategies includes the following

(i) Arbitration  (ii) Negotiation  (iii) Mediation (iv) Conciliation  (v) Counseling  (vi) Lok Adalats

(i) Arbitration

Arbitration is a process in which a neutral third party or parties render a decision based on the merits of the case. The parties to the arbitration have some control over the design of the arbitration process. In the Indian context, the scope of the rules for the arbitration process are set out broadly by the provisions of the Arbitration and Conciliation Act, 1996 and in the areas uncovered by the Statute the parties are free to design an arbitration process appropriate and relevant to their disputes. There is more flexibility in the arbitration process than in the traditional courts system as the parties can facilitate the creation of an arbitral process relevant to their disputes. Once the process is decided upon within the parameters of the Statute, the arbitrator assumes full control of the process. Among the advantages of the arbitration process are considerable saving in time and money as compared to a trial; the limited possibility for challenging the award which again contribute to the lower costs and finality of outcome; and greater participation by the parties than is the case in the courts/tribunal system.17

(ii) Negotiation

It is the simplest means for redressal of disputes. Negotiation in principle is any form of communication between two of more people for the purpose of arriving at a mutually agreeable solution. In negotiation the disputants may represent themselves or through negotiating agents. In this form of ADR, the disputants or their agents maintain control over the negotiation process. Communication is the key to resolve disputes, so this method becomes vital. Objectively and willingness to reach at and accept a negotiated settlement on the part of both the parties are indispensable needs

of a successful negotiation. The benefits of negotiation are, namely, (i) It is a communication based technique, (ii) It is voluntary, (iii) It is non-binding, (iv) There is greater control of procedure and final outcome, (v) there is wide range of possible solutions, maximize joint gains, and (vi) It is swift, economical, private and uncomplicated. There are several techniques of negotiation such as competitive bargaining, cooperative bargaining and principled negotiation which are but different facets and styles of negotiations. In the competitive bargaining, the negotiators are essentially concerned with substantive results and advocate extreme positions, create extravagant issues, mislead the other negotiators, create extravagant issues negotiator or even bluff in order to gain an advantage and to ascertain the other negotiator’s bottom line. The dominant negotiator attempting the competitive bargaining technique makes concessions rarely and grudgingly.¹⁸

In cooperative bargaining, both negotiators focus on building up a relationship of trust and cooperation. In this strategy the negotiators are prepared to make concession even on substantive issues as the endeavour is to preserve the relationship.

In principled negotiations, the negotiator focus on the interest of each of the disputants, with the goal of creating satisfactory and elegant options for resolutions, which may be assessed by objective criteria.¹⁹

(iii) Mediation

Mediation is a form of alternative dispute resolution and involves the act of a neutral third party (usually a retired judge or an experienced lawyer) to facilitate the settlement of dispute between two contending parties.

The process of mediation aims to facilitate the development of a consensual solution by the disputing parties. The mediation process is overseen by a non-partisan third party- the Mediator. The authority of the mediator vests on the consent

¹⁹ *Id.* at 21.
of the parties that he should facilitate their negotiations. The mediator has no independent decision-making power, jurisdiction or legitimacy beyond what is voluntarily offered by the parties themselves. This process, as is apparent, is in contrast to our adjudicative system where the court is an authoritative third party decision-maker.  

Mediator employs several strategies, sub-strategies and techniques to encourage the parties to reach an agreement. Sometimes mediators generate objective criteria, viz., standards for determining fairness which are recognized and agreed by the parties to the dispute. These standards may not be the same as legal standards. For example, objective criteria may include industry or commercial practices which do not have legal recognition, but may be agreed upon as fair standards for resolution of disputes by the parties themselves. In some case the mediator assists the parties with specific provisions of a settlement arrangement. In any event the essence and effectiveness of mediation is in the ability to create conditions under which the parties will conclude a successful negotiation.

Mediation is being increasingly used in the Commercial sector at national and international level because it is relatively cheap, less time consuming and settle disputes in consensual manner. World over the mediation process is now used in a wide range of conflicts such as family matters, major commercial and business disputes, personal injury suits, employment disputes, medical care disputes as well as conflicts having a public dimension such as environmental disputes, professional disciplinary proceedings and criminal prosecutions as well.

Mediation like other ADR strategies has distinct advantages over the traditional court’s / tribunal’s format of dispute resolution. The advantages of ADR including mediation are the informality of the process, the ability of the process to focus on the disputing parties’ interests and concern rather than exclusively on their

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21 Ibid.
legal rights; much greater involvement of the parties in the process; the essential confidentiality of the process and the high success rate.\textsuperscript{22}

(iv) Conciliation

This is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator. The conciliator is, in the Indian context, often a Government official whose report contains recommendations. The conciliation process is sometimes considered synonymous to mediation. There is, however, a difference where a third party is informally involved without a provision under any law, it is known as mediation. In other words, a non-statutory conciliation is what mediation is. However, in effect and structure, conciliation and mediation are substantially identical strategies where a stranger to the dispute provides assistance to parties to a dispute. Both the conciliator and mediator are required to bring to the process of dispute resolution fairness, objectivity, neutrality, independence, and considerable expertise to facilitate a resolution of the conflict.\textsuperscript{23}

(v) Counseling

Counseling is the most important component of ADR. Lawyers should be trained as lawyer counselors. Counseling is a process that enables a person to sort out issues and reach decisions affecting his or her life. Although, counseling is often sought at times of change or crisis but it can also help us at any time of our lives. It involves talking with a person so as to help that person solve a problem or help create conditions that will cause the person to understand and improve his behaviour, character and values of life.

\textsuperscript{22} Supra n. 17 at 21.
\textsuperscript{23} Id. at 25.
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(A) Stages in Legal Counseling

The various stages of legal counseling are:

(a) Fact Gathering: The Lawyer-counselor has to first gather enough facts to form an accurate picture of the client’s situation, facts as the client sees them and facts that the lawyer helps the client to see. The information that the lawyers gather depends on:

- The lawyer’s approach;
- The client’s initial impression of the lawyer and the place at which they work together;
- The initial feelings of the lawyer and client with regard to each other;
- The manner in which the lawyer goes after the information;
- The lawyer’s perception of the facts as the client provides them;
- The lawyer’s understanding of the clients concerns, as these are placed in their broader context (the client’s story and how the client sees the world).

(b) Choice: Choice is the direction that the clients determine to take as a result of counseling. The lawyer helps the client make up his mind. The client has to make a choice about what he wants to do or what course of action he has to follow.

(c) Decisions: The lawyer-counselor has to work with the client to come to a decision. The lawyer can suggest options, provide information (about law, the options available to the client as well as other pertinent information), identify moral concerns, predict consequences and represent the interest of persons who are not in the room, but will be affected by the decision. After a client has determined what decision he is going to take, he has to decide how he is going to carry out what he has chosen to do and what legal strategies can be used. The skills required in assisting and guiding the client to reach a decision

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24 Justice S. B Sinha; “ADR VISION 2025”; Published in NYAYA KIRAN, Journal of Delhi Legal Service Authority; Jan- Mar, 2008; p. 8.
include-interaction skills, skills involving cooperation, coordination, explanation, foresight and a sense of consequence.

According to Richard Wallen, there are four stages involved in the process of counseling. These are: Interview, Choice, Decision and Solution. The steps involved in reaching a solution are: \(^{(i)}\) Formulation \((ii)\) Producing proposals, and \((iii)\) Forecasting consequences.

(B) Role of the Counselor

The role of the counselor is basically to be there for the client. He/She does not analyze, criticize, agree, disagree, advice, and interpret verbally or non-verbally. The counselor should help and guide the parties and should not pass a judgment on them. S/he must remain objective throughout the process. A counselor should work as an information-giver, consultant and resource builder. S/he does give supportive expectant and validatory attention to the client to his/her words, tone of voice, posture, etc.

According to Benjamin, P.I. \(^{26}\) although counselors sometimes have to ask questions but a few protective standards have to be adopted by them:

- The Counselor should be aware of the fact that s/he is asking questions.
- The Counselor should challenge the questions that s/he is about to ask.
- The Counselor should examine carefully the various kinds of questions available and types of questions s/he personally tends to use.
- The Counselor should consider alternatives to asking questions.
- The Counselor should be sensitive to the questions the client is asking, whether he is asking them outright or not.


\(^{26}\) B.S Murphy, "ADR's Impact on International Commerce", Dispute Resolution Journal, December 1993, pp. 68-77.
(vi) Lok Adalats

Undoubtedly Lok Adalat concept and philosophy is an innovative Indian contribution to the world of jurisprudence. The institution of Lok Adalat in India, as the very name suggests, means People’s Court. “Lok” stands for people and the vernacular meaning of the term “Adalat” is the Court. Lok Adalat is not an invention but a discovery that arose out of necessity. It is not new to India and has very deep and long roots not only in recorded history but even in pre-historical era. It existed in all societies and continues to exercise decisive influence in the life of village folk even today. The concept of Lok Adalat was in practice centuries ago in India. We find mentioning of the existence of Lok Adalat in both Vedic and post-vedic literature. It is true that the advent of Britishers in India gave a death blow to the functioning of Lok Adalat, yet we find that these courts survived for long and existed even at the time of the British rule in India. India has a long tradition and history of such methods being practiced in the society at grass roots level. These are called Panchayat and in the legal terminology, these are called arbitration. These are widely used in India for resolution of disputes both commercial and non-commercial. Other alternative methods being used are Lok Adalat (People’s Court), where justice is dispensed summarily without too much emphasis on legal technicalities. It has been proved to be a very effective alternative to litigation. Lok Adalat is one of the fine and familiar forums which has been playing an important role in the settlement of disputes.

The ancient concept of settlement of dispute through mediation, negotiation or arbitral process known as “People’s Court verdict” or decision of “Nyaya-Panch” is conceptualized and institutionalized in the philosophy of Lok Adalat. Some people equate Lok Adalat to conciliation or mediation; some treat it with negotiations and arbitration. Those who find it different from all these, call it “People’s Court”. It involves people who are directly or indirectly affected by dispute resolution. The salient features of this form of dispute resolution are

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participation, accommodation fairness, expectation, voluntariness, neighbourliness, transparency, efficiency and lack of animosity.  

However, the modern version of Lok Adalat has arisen out of a deep concern expressed by three different expert Committees viz., Committee of Processual Justice to the People (1973); Gujarat Legal Aid Committee (1977) and Juridicare: Equal Justice Social Justice Report (1977), set up by the Central Government and the Government of Gujarat to make recommendations for improving Justice delivery system and the alarm generated by the judicial circles on mounting arrears of cases pending for long at different levels in our country. Thus, the Lok Adalat has its origin not in any statutory law but is devised and developed by people themselves as a “participatory instrument of democratic judicial-making”.

Truly admitting that the accumulated frustration is the biggest simple reason for the people having responded with hope, excitement and zeal to experiment in holding Lok Adalats in our Country. Lok Adalats have worked very well and satisfactorily in our country. Camp of Lok Adalat was started initially in Gujarat in March, 1982 and now it has been extended throughout the country. The evolution of this movement was a part of the strategy to relieve heavy burden on the courts with pending cases. The reason to create such camps were only the pending cases and to give relief to the litigants who were in a queue to get justice. The first Lok Adalat was held on March 14, 1982 at Junagarh in Gujarat, the land of Mahatma Gandhi. Lok Adalats have been very successful in settlement of motor accident claim cases, matrimonial / family disputes, labour disputes, disputes relating to public services such as telephone, electricity, bank recovery cases and so on.

Some statistics may give us a feeling of tremendous satisfaction and encouragement. Up to 31 March, 2012 more than 1,120,232 Lok Adalats have been held and therein 43,041,883 cases have been amicably settled, half of which were motor accident claim cases. A sum of Rs. 115,821,527,600/- were distributed by

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28 Supra n. 2 at 35.
29 Id. at 36.
way of compensation to those who had suffered accident and 13,557,631 persons have got benefit through legal aid and advice in the Lok Adalats as on 31.03.2013.\textsuperscript{30}

(A) Benefits of Lok Adalats

The benefits that litigants derive through the Lok Adalats are many.

Firstly, there is no Court fee and even if the case is already filed in the regular Court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.

Secondly, there is no strict application of the procedural laws and the Evidence Act while assessing the merits of the claim by Lok Adalat. The parties to the disputes though represented by their advocate can interact with the Lok Adalat judge directly and explain their stand in the dispute, which is not possible in a regular court of law.

Thirdly, disputes can be brought before the Lok Adalat directly instead of going to a regular court first and then to the Lok Adalat.

Fourthly, the decision of the Lok Adalat is binding on the parties to the dispute and its order is capable of execution through legal process. No appeal lies against the order of the Lok Adalat whereas in the regular law courts there is always a scope to appeal to the higher forum against the decision of the trial court, which causes delay in the final settlement of the dispute. The reason being that in a regular court, decision is that of the court but in Lok Adalat it is mutual settlement and hence there is no cause for appeal. In every respect the scheme of Lok Adalat is a boon to the litigant public where they can get their disputes settled fast and free of cost.\textsuperscript{31}

The system has received laurels from the parties involved in particular and the public and legal functionaries, in general. It also helps in emergence of jurisprudence of peace in the larger interest of justice and wider sections of society. Its process is voluntary and works on the principle that both parties to the disputes are willing to sort out their disputes by amicable solutions. Through this mechanism,


\textsuperscript{31} Supra n. 17 at 38.
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disputes can be settled in a simpler, quicker and cost-effective way at all the three stages i.e. pre-litigation, pending litigation and post-litigation.

(B) Procedure at Lok Adalat

The procedure followed at the Lok Adalat is very simple and shorn of almost all legal formalism and rituals. The Lok Adalat is presided over by a sitting or retired judicial officer as the Chairman, with two other members, usually a lawyer and a social worker. It is revealed by experience that in Lok Adalat, it is easier to settle money claims since in most of such cases the quantum alone may be in dispute. Thus, the motor accident compensation claim assets are brought before the Lok Adalat and a number of cases are disposed of in each Lok Adalat. One important condition is that both the parties in dispute should agree for settlement through Lok Adalat and abide by its decision.32

A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter which may be pending before any Court as well as matters at pre-litigative stage i.e. disputes which have not yet been formally instituted in any Court of Law. Such matters may be civil or criminal in nature, but any matter relating to an offence not compoundable under any law cannot be decided by the Lok Adalat even if the parties involved therein agree to settle the same. Lok Adalats can take cognizance of matters involving not only those persons who are entitled to avail free legal services but of all other persons also, be they women, men, or children and even institutions.33

Anyone, or more of the parties to a dispute can move an application to the Court where their matter may be pending, or even at pre-litigative stage, for such matter being taken up by the Lok Adalat. In such a situation, the Lok Adalat Bench constituted for the purpose shall attempt to resolve the dispute by helping the parties to arrive at an amicable solution and once it is successful in doing so, the award

32 Id. at 37.
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passed by it shall be final which has as much force as a decree of a Civil Court obtained after due contest.

(C) Legislation Pertaining to Lok Adalat

The Parliament, however, impressed and influenced by the positive and enthusiastic response of the public towards Lok Adalats, has endeavoured to give it a statutory status with the result that the Legal Services Authorities Act, 1987 has been passed. The Lok Adalats, which have so far been functioning on an informal basis, tried to have a statutory base with the enforcement of the Legal Services Authorities Act, 1987. The Act could so far been brought into force on account of several amendments on November 9, 1995.

Ever since 1987, Lok Adalats have been given statutory recognition. The Legal Services Authorities Act, 1987, pursuant to the constitutional mandate in Article 39-A of the Constitution of India,\(^4\) contains various provisions for settlement of disputes through Lok Adalat. Thus, the ancient concept of Lok Adalat has, now got a statutory basis. It is an Act to constitute legal services authorities to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunity to everybody. In 2002, Indian Parliament amended the Legal Services Authorities Act, 1987 by inserting a new Chapter VI-A requiring establishment of Permanent Lok Adalats for Public Utility Services.

The Legal Services Authorities Act, 1987 as amended in 2002 provides for setting up of a “Permanent Lok Adalat” which can be approached by any party to a dispute involving “public utility services” which have been defined in the Act (as

\(^4\) Article 39A provides that the State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall, in particular, provide free legal aid, by 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.
amended) to include transport services for the carriage of passengers or goods by air, road or water; postal, telegraph or telephone services; insurance service and also services in hospital or dispensary, supply of power, light or water to the public conservancy or sanitation. Any civil dispute with a public utility service and where the value of the property in dispute does not exceed Rupees one million (about US $ 2200); or any criminal dispute which does not involve an offence not compoundable under any law, can be taken up in the Permanent Lok Adalat.\(^{35}\)

An important feature of this amendment is that after an application is made to the Permanent Lok Adalat, no party to that application can invoke jurisdiction of any Court in the same dispute. Such disputes involving public utility services shall be attempted to be settled by the Permanent Lok Adalat by way of conciliation and failing that, on merit, and in doing so the Permanent Lok Adalat shall be guided by the principles of natural justice, objective fair play, equity and other principles of justice without being bound by the Code of Civil Procedure and the Indian Evidence Act.\(^{36}\)

Besides the Legal Services Authorities Act, there have been several other changes in the law in recent times and one of the most important being the amendment in Code of Civil Procedure. Section 89 of the Code of Civil Procedure as amended in 2002 has opened the scope for introduction of conciliation, mediation and pre-trial settlement methodologies. The mediators and conciliators shall have to be trained so as to acquire professional expertise in the art of mediation and conciliation in India.\(^{37}\)

The Constitutional validity of amendments made to Section 89 of the Code of Civil Procedure incorporating Alternative Disputes Resolution methods have been upheld by the Supreme Court of India in *Salem Advocate Bar Association, Tamil Nadu v. Union of India*.\(^{38}\)

\(^{35}\) (2003) 5 SCC (Journal) 43.

\(^{36}\) *Id.* at 45.


\(^{38}\) AIR 2005 SC 3353.
Some of the relevant Sections from the Legal Services Authority Act, 1987 are quoted as under:

**Section 19**

1. Central, State, District and Taluk Legal Services Authority has been created who are responsible for organizing Lok Adalats.

2. Conciliators for Lok Adalat comprise the following:
   
   (a) A sitting or retired judicial officer.
   
   (b) Other persons of repute as may be prescribed by the State Government in consultation with the Chief Justice of High Court.

**Section 20: Reference of Cases**

Cases can be referred for consideration of Lok Adalat as under:

1. By consent of both the parties to the disputes.

2. One of the parties makes an application for reference.

3. Where the Court is satisfied that the matter is an appropriate one to be taken cognizance by the Lok Adalat.

4. Compromise settlement shall be guided by the principles of justice, equity, fair play and other legal principles.

5. Where no compromise has been arrived at through conciliation, the matter shall be returned to the concerned Court for disposal in accordance with Law.

**Section 21**

After the agreement is arrived by the consent of the parties, the conciliators pass award. The matter need not be referred to the concerned Court for consent decree.

The provisions of the Act envisage as under:

1. Every award of Lok Adalat shall be deemed as decree of Civil Court

2. Every award made by the Lok Adalat shall be final and binding on all the parties to the dispute.
3. No appeal shall lie from the award of Lok Adalat.

**Section 22**

Every proceedings of the Lok Adalat shall be deemed to be judicial proceedings for the purpose of:

(i) Summoning of Witnesses.

(ii) Discovery of documents.

(iii) Reception of evidence.

(iv) Requisitioning of Public record.\(^{39}\)

The idea of establishing permanent and continuous Lok Adalats in all the districts in the country was first thrown up for deliberations by the then Chief Justice Dr. A.S. Anand vide his letter dated 8.12.1997 addressed to all Chief Justices of the High Courts. The schematic concept of permanent Lok Adalats received statutory recognition with the introduction of Section 22-B of the Act by way of amendment. Under the new scheme, the permanent Lok Adalat will, in the first instance, try to bring about conciliation between the parties and in case the parties are not able to arrive at settlement, the permanent Lok Adalat shall proceed to dispose of the matter on merit. There is a difference between the Lok Adalat and permanent Lok Adalat. In Lok Adalat if the parties fail to resolve their disputes, the cases will go back to court and in the case of pre-trial Lok Adalat the parties on failure of such conciliation may approach the court, but the Lok Adalat cannot try the cases. The novelty of the permanent Lok Adalat is that, in the event of failure of disposal of dispute by way of conciliation, the permanent Lok Adalat shall proceed to decide the dispute on merit provided the dispute does not relate to any offence. Hence, the permanent Lok Adalat can act as a Court or Tribunal in case of failure of reconciliation between the parties. The award of the permanent Lok Adalat, whether made on merit or on settlement shall be final and binding on parties and be deemed to a decree of a civil court.

\(^{39}\) *Supra* n. 33 at 8.
The newly inserted Section 22-B provides for establishment of permanent Lok Adalats for exercising jurisdiction in respect of public utility services and important features of the amendments to the Legal Services Authorities (Amendment) Act, 2002 are as follows:

(i) It seeks to provide compulsory pre-litigative mechanism for conciliation and settlement of cases relating to public utility services.

(ii) The public utility services like transport of passengers or goods by air, road or water, postal, telegraph or telephonic service, supply of power and water to the public, public conservancy or sanitation, hospitals and insurance have been brought within the purview of the permanent Lok Adalats under Section 22-A(b) of the Act.

(iii) After an application is filed by any party before the permanent Lok Adalat for settlement the opposite party is summoned. Both the parties thereafter are requested to file statement, reply and documents and permanent Lok Adalat assists the parties in their attempt to reach an amicable settlement of the dispute in an independent and impartial manner. If settlement is arrived at an award is passed. Where the parties fail to reach at an agreement, the permanent Lok Adalat decides the dispute on merit. In deciding the dispute on merit, the permanent Lok Adalat is guided by the principles of natural justice, objectivity, fair play, equity and other principles of justice but is not bound by the Code of Civil Procedure, 1908 and the Indian Evidence Act, 1872.

(iv) After application is made to permanent Lok Adalat, no party to that application is entitled to invoke jurisdiction of any court in the same dispute.

(v) The permanent Lok Adalat shall not have jurisdiction in respect of any matter relating to an offence not compoundable under any law or where the property in dispute exceeds ten lakh rupees.
(vi) Every award of the permanent Lok Adalat shall be deemed to be a decree of a Civil Court. It shall be final, binding and shall not be called in question in “original suit, application or execution proceedings.”

(vii) Permanent Lok Adalat envisaged under the Act shall consist of a person who is or has been, a District Judge or Additional District Judge or has held judicial office higher in rank than that of the District Judge as Chairman and two other persons having adequate experience in public utility services as members. These permanent Lok Adalats have to be established by the National Legal Services Authority or the State Legal Service Authorities.

The importance of the amendment in Legal Services Authorities Act lies in promoting the welfare of the society by enabling the people to approach permanent Lok Adalats. The amendment attempts to remove the helplessness of a consumer which he faces in the field of Public Utility Services.\(^40\) Hence, the Act is a milestone on the path of civil society in realizing equal justice for all. Courts in India are overburdened with pending cases. Lack of financial resources of the State exchequer has all along been a hindrance in the way of providing adequate infrastructure to meet the ever growing needs of the litigants. The statistical returns in many States make it evident that the problem of docket of explosion has sufficiently been arrested by the mechanism provided under the Act resulting in qualitative as well as quantitative improvement of justice delivery system in India. The permanent Lok Adalats, when established in all the States, prove to be effective, litigant friendly and less expensive mechanism to resolve certain serious disputes.

(D) Finality of Lok Adalat Award

One issue that often raises its head is the finality of the award of the Lok Adalat. During the Lok Adalat, the parties agree to abide by the decision of the judge of the Lok Adalat. However, it is often seen that later the same order is challenged on several grounds. In one of the recent decisions, the Supreme Court of India has once

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again laid to rest all such doubts. In unequivocal terms, the Court has held that
award of the Lok Adalat is as good as the decree of a Court. The award of the Lok
Adalat is fictionally deemed to be decree of Court and therefore the Courts have all
the powers in relation thereto as it has in relation to a decree passed by itself. This
includes the powers to extend time in appropriate cases. The award passed by the
Lok Adalat is the decision of the Court itself though arrived at by the simpler
method of conciliation instead of the process of arguments in Court.\textsuperscript{41} In \textit{P.T
Thomas v. Thomas Job},\textsuperscript{42} the Supreme Court held that an award given of the Lok
Adalat made with the consent of the parties is not appealable under Section 96(3) of
the Code of Civil Procedure.

(E) Consent of Parties

The most important factor to be considered while deciding the cases at the Lok
Adalat is the consent of both the parties. It cannot be forced on any party that the
matter has to be decided by the Lok Adalat and then any party cannot walk away
from the decision of the Lok Adalat. In several instances, the Supreme Court has
held that if there was no consent, the award of the Lok Adalat is not executable and
also if the parties fail to agree to get the dispute resolved through Lok Adalat, the
regular litigation process remains open for the contesting parties.\textsuperscript{43}

A compromise is always bilateral and means mutual adjustment.
"Settlement" is termination of legal proceedings by mutual consent. If no
compromise or settlement is or could be arrived at, the Lok Adalat can pass no
order.

Hence, it may be summed up that the legal Services Authorities Act, 1987 is a
milestone on the path of the civil society in realizing equal justice for all. Courts in India
are over-burdened with the pending cases. Lack of financial resources of the State.

\textsuperscript{41} Justice A. M Ahmadi; \textquote{Workshop on 'Lok Adalat' –An Appraisal'}, Legal Aid News Letter, Vol.
XII, April-June, 1992, p.9.
\textsuperscript{42} AIR 2005 SC 3575.
\textsuperscript{43} \textit{Ibid.}
Exchequer has all along been a hindrance on the way to providing adequate infrastructure to meet the ever growing needs of the litigants. The statistical returns in different States in India makes it evident that the problem of docket explosion has sufficiently been arrested by the mechanism provided under the Act resulting in qualitative as well as quantitative improvement of justice delivery system in India. The concept of Lok Adalat is no longer an experiment in India, but it is accepted as a viable, economic, efficient, informal, expeditious form of resolution of disputes. It is a hybrid or admixture of mediation, negotiation, arbitration and participation. Experience has shown that it is one of the very efficient and important alternative disputes resolution and most suited to Indian environment, culture and social interest.

III. Other Relevant Reforms and Initiatives

Truly admitting that the Courts in India are functioning according to the procedure laid down in the Criminal Procedure Code, Civil Procedure Code, Indian Evidence Act etc. to accelerate the disposal of cases and to remove the bottlenecks coming in the way of providing speedy and inexpensive justice, there is a need to amend certain provisions of the existing statutes that is, the High Court Acts and Rules, Code of Civil Procedure, the Code of Criminal Procedure, Indian Evidence Act, augmenting the strength of courts, setting up of alternative modes of disposal and provision of modern information technology to courts. A number of steps have been taken as a part of judicial reforms. Setting up of National Judicial Academy, computerization and net working of courts, setting up of Fast Track Courts are important among such steps. Hence, speedy trial is a very important fundamental right and there is need to look into the various ways by which it can be ensured.

(i) Fast Track Courts

Setting up of fast Track Courts is yet another mode of speeding up the justice delivery system in India. Fast Track Courts had originally been meant for reducing

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pendency in criminal matters, but with the passage of time the same have to be introduced to reduce pendency in civil matters also. The Conference of the Chief Ministers of the State and the Chief Justices of the High Courts was held on 16th August, 2009 in which various matters were deliberated. The important decisions taken in the Conference were as under: (i) Setting up of Fast Track Courts of Magistrates and (ii) Fast Track Civil Courts. The Fast Track Courts Scheme originally contemplated establishment of five courts per district in approximately 600 districts, thus making a total of 3000 courts in the Country. The 11th Finance Commission in its report recommended a provision of Rs. 502.90 crore for creating of 1734 additional courts in the country for the period 2001-2005 under a scheme specifically for the purpose of disposing long pending criminal cases. These Courts were known as Fast Track Courts. The first series of courts were setup on April 1, 2001. Around 2500 Fast Track Courts were functional as on March 2007. Due to the effectiveness of the Fast Track Courts, the Central Government has also approved the continuation of the existing Fast Track Courts and that at least a 1000 more Fast Track Courts became functional by the end of 2008. The objective behind the setting up of such courts was mainly the discharge of under-trials languishing in jails for petty offences. There are around 1.80 lakhs such cases all over the country. This also addresses a serious human rights issue as the right to a speedy trial has been held to be a fundamental right by the apex Court in a number of judgments. Further the cost effectiveness of the mechanism also helps in reducing the jail expenditure, which may then be utilized for other purposes.45

Fast Track Courts have various problems in their operation:

(a) Precise form and contents needs to be clearly defined.

(b) Problem of manpower and lack of attention to such courts by practicing lawyers etc.

45 Extract from Lecture delivered by Mr. K.K Manan, Chairman Bar Council of Delhi, in the All India Seminar on Judicial Reforms in New Delhi on 25th Feb 2008.
(c) The legal sanctity of Fast Track Courts have also been challenged on the ground that they do not form part of the judiciary and that their decisions are, therefore, not binding or final.

(d) There has been a criticism that “Justice hurried is justice buried.”\(^{46}\)

Therefore, it would be necessary that a least part of pending cases should be transferred to Fast Track Courts for disposal. Further, the Government has taken serious note of the rape cases and now rape accused are being convicted through speedy trials. Earlier they used to get bail and would roam around openly for years. Similar steps should be taken in other serious offences also and then gradually to all Criminal cases. Thus, Fast Track Courts are the need of the hour when a large number of cases are pending in Courts. Most of the cases can be expeditiously disposed of without risking the fairness and finality of any settlement so arrived at.

(ii) Plea Bargaining

From time immemorial, pursuing justice in cases which involve two human beings has been one of the primary aims of any civilization. One of the latest developments in the Criminal justice system can be seen in the concept of plea bargaining. The concept first originated in the United States of America. Initially, it started as a practice which did not have any judicial recognition, and no laws regulated it. As the practice evolved however, the instances of plea bargaining increased substantially, and the bargains themselves also became more and more detailed and two sided rather than a single offer from the prosecutor. The judges obviously became aware of such negotiations as time went on, and eventually noticing that this practice was actually resulting in a lot of convictions and also speedy disposal of case, the practice was formalized by many States by passing legislations regulating plea bargaining. On the other hand, in India various strategies and tools have been used in various jurisdictions to lessen the burden of trials and ensure speedy disposal of cases. One such strategy is Plea Bargaining, which is presently in place

in a number of countries including India. The Code of Criminal Procedure (Amendment) Act, 2005 has introduced the concept of plea bargaining in India. It affords all members of the community to resolve cases without going to trial. The accused, the victim and the prosecution settle the outcome between themselves and the judge gives his approval. It is hoped that ADR in this context will be able to bring the accused and the victims of the crime together and help them to reach a mutual satisfactory disposition that will both compensate the victim and re-establish contact between the accused and the victim.

There is no perfect or simple definition of ‘Plea Bargaining’. As the term implies, Plea Bargaining involves an active negotiation process whereby offender is allowed to confess his guilt in court if he so desires, in exchange of lighter punishment that would have been fixed for such offence. Black’s Law Dictionary defines it as: “the process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendants pleading guilty to a lesser offence or to only one or some of the counts of a multi-count indictment in return for a lighter sentence than that possible for the graver charge.” Black’s Law Dictionary at p. 1152. In Simple words, it is an agreement between the accused and the prosecution, wherein the agrees to plead guilty or ‘no contest’ to a charge framed against him and in return of this plea of guilty he gets certain concessions from the prosecution. Such concessions range from the prosecution dropping some or the more serious charges, to charging the accused with a lesser crime and the accused pleading guilty to this charge only, to the prosecutor recommending lesser sentences to the judge.

The Law Commission of India in several reports suggested the inclusion and implementation of plea bargaining in India i.e. in 142\textsuperscript{nd}, 154\textsuperscript{th} and 177\textsuperscript{th} Reports.

Plea Bargaining can mainly be classified into three types (1) Charge Bargaining; (2) Sentence Bargaining and (3) Fact Bargaining. Each type involves

\footnote{Black’s Law Dictionary at p. 1152.}
implied sentence reductions but differs in the ways of achieving those reductions. The Charge bargaining is such bargain in which a defendant pleads guilty to reduced charge. Second type is Sentence bargaining which involves assurance of lighter or alternative sentences in return for a defendants pleading guilty. The third type of plea bargaining is the Fact bargaining and is least used in which negotiation involves an admission to certain facts in return for an agreement not to introduce certain other facts into evidence.\(^48\)

Plea bargaining is the primary apparatus through which judges, public prosecutors, accused, investigating officers and victim cooperate and work together towards their individual and collective goals. In most cases, plea Bargaining is to avoid the uncertainty of the trial and minimize the risk of undesirable results for either side. The reasons for plea bargaining by either side may be several and are as follows:

For accused: The Principal benefit of Plea Bargaining for most of the accused is to receive a lighter sentence for a less severe charge than what might result from taking the case to trial and losing. There may be other benefits as well, such as:

(a) Getting out of Jail;
(b) Resolving the matter quickly;
(c) Having Fewer or less serious offences on One’s record;
(d) Avoiding hassles of finding a good lawyer for contesting the trial;
(e) Avoiding publicity.\(^49\)

For Judges and Prosecutors: Crowded calendars and over burdened prisons provide powerful incentive to many judges and prosecutors. Plea bargaining helps Courts and prosecutors manage caseloads. Judges often reason that using plea

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\(^{49}\) Id. at 53.
bargains to process out offenders allows judges to preside over efficient trials and to minimize the risk of rulings being overturned on appeal.  

For Victim: Plea Bargaining has canvassed ‘victim oriented reform’ to the criminal justice administration. For the first time, a system of taking care of the interests of the victim has been introduced. It provides greater respect and consideration towards victim and their rights. It does so by giving greater choices to them in satisfactory disposition of the case and by providing a compulsory composition.

The procedure to be followed for plea bargaining has been laid down in a newly added chapter XXI-A in Code of Criminal Procedure, 1973. This newly added Chapter is titled as Plea Bargaining, Consisting of Sections 265-A to 265-L. The proceedings must be initiated by the accused filing an application in the Court in which his case is pending trial under section 265-B. Section 265-C provides for the guidelines for working out the mutually satisfactory disposition of the case and the role that the Court must play in it, which include issuing notices to all the relevant parties (including the Police Officer who investigated the case) and ensuring that the whole proceedings are carried out voluntarily. The judgment of the Court must be delivered in Open Court, and no appeal from such judgment lies except under Special Leave Petition under Article 136 or writ petitions under Articles 226 and 227 shall lie in any Court against such judgment.

(iii) Use of Technology in Case Management

While Case Management techniques deal with the problem at micro-level of individual case from the date of institution till its disposal by an individual judge, Court Management or Docket Control aims to look at the problem from Macro-level by seeking to deal with the pendency of cases in the entire Court.

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51 Ibid.
Case management through the use of technology is yet another means of curtailing delays in disposal of cases. Case management can be defined as a judicial process which increases judicial control over (i) the identification of substantive issues, (ii) the exploration of utilizing ADR, and (iii) the time required to complete the procedural steps of a civil litigation. Case management, as a device, should be put into practice whenever and wherever it is feasible throughout the life of a case, the object being to save the maximum avoidable time of the judges and make it available to the judges to use it. Case management has become an important job activity in the legal arena when we have to wade through huge paper work in a time bound program. The benefits that the user could get by the application of technology in case management is: enhanced Flexibility, increase in productivity, improvement in litigant services, optimizing profits and reducing costs. This can indeed be achieved if the technology can define workflows to meet specific requirements; specify procedures including automatic updates of key dates and reminders to lawyer diaries; create screen layouts for the input and display information, design document in word processing system; process multiple task simultaneously on a single matter and electronically store documents with easy and precise retrieval capacity.\(^52\)

Case management refers to control of the movement of cases through a court or a method of managing cases within the litigation process. Lawyers generally need ‘Case Management Software’ to effectively manage their caseloads. With reference to a court, it is a sort of court process that allows a judge to monitor and manage the progress of a case as it moves through the system.\(^53\)

The basic goals of any case management from the point of view of Court are:\(^54\)

1. To reduce unnecessary delay in reaching a final determination of a case;
2. To reduce the costs of those involved in the case;

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\(^52\) Justice M.Y. Eqbal, *op. cit* at 67.
\(^53\) *Ibid.*
\(^54\) *Id. at* 316.
3. To encourage people involved in litigation to have a direct part in finding mutually satisfactory solutions.

4. To give the courts a wider power to decide cases or issues at an early stage without full trial.

5. To suggest the use of alternative dispute resolution (ADR) where that is likely to be beneficial.

Case Management Software

For a better management of cases it is sine qua non to use case management software that consists of a database that is designed for lawyers and law firm staff to easily manage all the information.

Following are the uses of Case Management software:

(a) Relodex

"Relodex" in western parlance is a sort of folder that contains the name address, phone number and other pertinent information of key contacts. Relodex include information of clients, interested parties, other lawyers, judges, and just about everyone else with which the lawyer / law firm has contact. All the constituents of firm are hooked by a password with the CMS. The moment there is a change in Relodex, it is available to everybody in the firm. Meaning thereby, there is no more looking in the paper file to find the client’s phone numbers other pertinent information. Everything is available in the Relodex.55

(b) Case/Matter Database

Another function of Case Management Software is to open the case or matter. Understanding how a new matter is created is key to understanding information flow in the firm/law department. In law firms/law departments, various pieces of the case information pass through many hands in different formats e.g. paper form,

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55 Id. at 318-319.
handwritten or typed information, multiple documents forms, papers presented at
trial court, appellate court, court of revision etc. All these form a part of case
database. This will be important in getting information about a case, list of
witnesses, their statements, opposing counsels etc.

c) Case Calendar

Functions of Case Management software is the calendar system. All the law firms
maintain a case diary at Trial Court levels. High Court or Supreme Court providing
for individual lawyer cause list. Well but they do not provide who is to file what?
What is to be done next? Microsoft Outlook provide for these facilities. But they are
not Case Management Software by themselves. So the Case Management Software
should be able to provide for the calendaring facility as well. What if you could
“assign” a list of critical dates to one key date? For example, a trial date is set. All
you to do is to schedule the trial date and time and a list of ticklers, deadlines, and
appointments are automatically calendared for you. If the trial dates changes, you
simply change the key date and all assigned ticklers are automatically changed with
it, taking into account holidays and weekends. This is called “rules based”
calendaring and is a part of many of the case management systems.56

d) Case Diary

During the hearing of a case, lawyers plead so many things in Court but some of
them don’t become a matter of record; it is a matter of memory of the judge and the
opposing party lawyer. This could simply be encapsulated all these information in
one go. Say a lawyer say – “I assure you that I will file my counter within a week.
My steno was sick and I could not get the dictation to present the memo to the
court” (In a case where counter affidavit has not been filed since 6 months). This
becomes a part of case diary and the dictating machine records these words into the
Case management software like this:

“Court Name .........

56 Id. at 320.
Advocate Shah – “I assure you that I will file my counter within a week. My steno was sick and I could not get the dictation to present the memo to the court”

Judge – “And you are granted this adjournment on your assurance that you will not seek any further time. Your client has already taken 6 months.”

Advocate Joshi – “Your Honor! I hope this is the last chance or else we close his right to file a counter.”

They do not form part of case records, but a sort of case diary monitoring the conduct of parties during the case. Yes, this makes every word concerning case, recordable and we make everybody responsible for what they say or did during the case.\footnote{Ibid.}

The case diary is a key component in a Case Management system. The attorney will use this function more than any other feature because it becomes the centre for case information and communications. This will constantly push up a lawyer to finish work in time and meet with deadlines rather than failing them.

(e) Document Generation

Just think of all those events that take place in a case. We start from trial court. In a civil case, for instance, a suit is instituted, written statement filed, list of witnesses, list of exhibits (documents admitted to evidence), list of documents not admitted, statements by experts, witnesses, plaintiff, defendant etc. This is than supplemented by various papers those are created during appeals, revisions, reviews and other rounds of litigations. What if we could simply connect them with hyperlinks? Click
to one document and get another. Read into the documents and relate all documents giving same message in one group. Document Review process and concept searching- all in one place giving out all relevant documents at a push of a button. Same set of documents is available to all the parties and to the court from same data base.

The Case Management Software is automatically integrated with your word processor and you need to enter data once that is updated as and when entered. So it is seen that by using a Case Management Software, the legal profession can change from a “word processing centric” environment to a “case management centric” environment. The Case Management System is the main system on the computer desktop-not the word processor. Everything happens from within the Case Management System.

Today, Court Management has gained considerable importance because it has been tried and tested in other parts of the world and has been found to be a successful method of controlling the huge backlog of cases. Court Management was first introduced in United States of America in 1972 and over the years it has gained so much importance that it has become imperative for all courts to Court Management techniques to reduce the case load. This has now become a Science involving not only Court Management but also – flow management, which is the study of the time taken in various stages in litigation.

It is not difficult in India to adopt the strategy of court management because the giving adjournments and dates is in the hands of the judges and he can control the time spent at each stage of a case. By practicing this method, it is possible to have a case ready for disposal within a specific period of time.

(iv) Improving the Quality of Justice: Specialization, Training and Qualification

It is necessary that the cases must be assigned according to the specialized area of the judges in order to curb down the delay in providing justice. Assigning cases
without considering specialization, results in delay in deciding the matters. Normally the same judge is assigned civil as well as criminal cases which results in taking more time to understand the facts and circumstances of the case and the law on the subject.

The Malimath Committee suggested that some specialized Tribunal be established to deal with the matters pending to tax, services, labour etc; separately. It also suggested that specialization provides consistence, certainty, speedy and quality judgments.\(^58\)

The Committee suggested that the newly appointed judges and the judges promoted from subordinate courts to the higher courts should be given intensive training for a reasonable period to improve their skills in hearing cases, taking decisions, writing judgments and in court management. The incompetence of the judge should be removed through proper training. It also recommended that special attention should be paid in the matter of prescribing qualifications for recruitment of judges at all levels and to improve the methodology for selecting the most competent person with proven integrity, character, having regard to the nature of functions which a judge is required to discharge. No other consideration other than merit and character should be taken into consideration in choosing a judge for the Courts.\(^59\)

(v) **Video Conferencing as an aid to Speedy Justice**

According to the National Human Right Commission over 70% of the prisoner population across jails in India constitutes the hazy world of the under trials. The local jail population is almost thrice the capacity of the jails resulting in overcrowding of 31.2%. The plight of these under-trials has always been a cause of a lot of deliberation and claim for reforms. Often under-trials keep languishing in

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\(^{59}\) Ibid.
jails for years together for petty offences only because the justice system is unable to give them a hearing and hence face incarceration without even being heard.\textsuperscript{60}

The former Chief Justice of India Y.K. Sabharwal was of the opinion that the advantages of information technology should be put to use in facilitating judicial work for speedy justice. A radical solution to the problem of under trial which has been presented is to link the prisons and the courts through video conferencing and thereby facilitate the proceeding through electronic means.

Video Conferencing system have been established and implemented in the States of Bihar, Karnataka, Tamil Nadu, Andhra Pradesh and Pune.

Video Conferencing eliminates security concerns raised in the transportation of inmates from the jails to the courts. It reduces the number of jail personnel needed for inmate movements, thereby saving time and money. Another very crucial area in which Video-Conferencing may of immense help is in proceedings for extension of reward. Under the law, reward can be given in 15 days time period, a right which is blatantly disregarded by the current system due to logistical barriers. Section 167(2) (b) of Code of Criminal Procedure, 1973 requires that “No Magistrate shall authorize detention in any case unless the accused is produced before him. However, the accused are routinely not produced in the Court and often the trial courts extend remand without evaluating whether that cause are reasonable enough to justify non-production. Hence, the use of video links between the courts and prison has been suggested to facilitate production of under trials and speedy disposal of the cases.\textsuperscript{61}

However, the use of video links at a trial raised a number of objections. The key objection reveled against it is based on the irrefutable importance of the physical presence of the accused at the trial to secure his rights to a fair trial. The necessity of the accused to be present at the trial can never be overemphasized

\textsuperscript{60} A.I.R. 1981 SC 641.  
\textsuperscript{61} Supra n. 58.
through Video conferencing, the accused may not be able to plead his case effectively and the copies of the charge sheet cannot be served immediately to the accused during the trial. The accused is required to understand and then sign the plea, this inability will further delay the trial. It would also hinder private communication between the counsel and the accused. In view of these objections the use of Video Conferencing to enable the electronic presence of the accused at his trial might put his right to a fair trial enshrined under Article 21 in grave danger.

In *Kalyan Chand Sarkar v. Rajesh Ranjan*\(^{62}\) the Supreme Court directed that the trial be held by Video conferencing and has observed, “It is true that in a normal trial in the Criminal Procedure Code, 1973 requires the accused to be present at the trial but in the peculiar circumstances of this case a procedure will have to be evolved which will not be contrary to the rights given to an accused under the Criminal Procedure Code but at the same time protect the administration of Justice. In our opinion, this is one of those rare cases wherein frequent visit from the place of detention to the court of trial would prejudice the security of both the respondent and others involved in the case.\(^{63}\)

However, the present law of the land is insufficient to enable the use of Video Conferencing fittingly and in the appropriate manner to achieve the optimum and reduce its misuse to the minimum. The legislators are required to give this subject-matter sufficient consideration so as to enable justice to reap its benefits and at the same time shield it from its dangers.

Video Conferencing may be used in certain cases without hesitation, for instance, in case of expert witness, testimonies child sexual abuse cases and civil proceedings.

\(^{62}\) *AIR 2005 SC 972.*

\(^{63}\) *Supra* n. 58.
(vi) **Infrastructural Adjustment**

Increase in the number of judicial officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their conditions particularly in small town and moffusils are pathetic.

The National Commission to review the working of the Constitution noted that judicial administration in the country suffers from deficiencies due to lack of proper planned and adequate financial support for establishing more courts and providing them with adequate infrastructure.

The Centrally Sponsored Scheme for Development of Infrastructural Facilities for the judiciary has been modified under the National Mission for Justice Delivery and Legal Reforms, where the focus is on subordinate judiciary and funding has pattern increased from 50:50 to 75:25. For North Eastern States it will be at 90:10 ratio. The last year of 11th Plan saw a surge in the allocation for infrastructure to Rs. 500 crore for a single year. Lack of judicial infrastructure has direct co-relation with efficiency of the judicial machinery. The compiled information submitted to Supreme Court by Department of Justice shows that there are 762 proposals pending with State Governments for release of around Rs. 1000 crore as on 12 September, 2011. An estimated 2868 judicial officers are staying in rented premises and 2282 are staying in common pool quarters and 654 proposals are pending with State Governments for release of Rs. 421 crore as on 12.9.2011. The Department of Justice had collected preliminary data of requirements from states on infrastructure for subordinate judiciary and they total up to over Rs. 7000 crores and roughly therefore Rs. 5000 crores will be required in the next five years to complete the infrastructure for subordinate judiciary. These estimates pertain to the year 2010 and may change in subsequent years on account of inflation.

During Tenth Plan (2002-2007), the allocation was Rs. 700 Crores, which is 0.78% of the total plan outlay of Rs. 8,93,183 Crores. Such meager allocations are
grossly inadequate to meet the requirements of judiciary. Unlike in other departments of the Government, more than half of the amount which is spent on Indian Judiciary is raised from the Judiciary itself through collection of court fee, stamp duty and miscellaneous matters. In 2010, Finance Commission recommended to allocate Rs. 5,000 crore to improve justice delivery system for five year period 2010-15. It is great achievement in Indian Judicial history, that Government has declared that next five years as a period of judicial reform. Government has planned to invest Rs. 250 crores for capacity building.  

(vii) **Shift System in Subordinate Courts**

Establishment of additional Courts at any level involves enormous expenditure, capital as well as recurring. Appointment of wholesome staff-judicial and administrative for new courts involves considerable recurring expenditure. On the other hand, if the existing courts could be made to function in two shifts with the same infrastructure, it would certainly ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly. In few States (Rajasthan and West Bengal) night courts are being held for speedy disposal of the delayed cases.

Government is going to invest half of the money, about 2,500 crores, for increasing the number of the courts operating in morning and evening, allotted for judicial reforms in 2010.  

(viii) **Judicial Impact Assessment and Financial Memorandum to Bills**

Every Bill in Parliament or State Legislature has a Financial Memorandum attached to it and the Memorandum mentions the allocations required from the Consolidated Fund of the Union or State, but it confines itself to the expenditure for the administrative purposes. The Judicial impact of legislation on the Courts is not being assessed in India as done in the United States where, there is a special statute

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65 Ibid.
for this purpose. Almost every statute made by the Parliament or State Legislatures, creates rights and offences which go for adjudication before the trial and appellate courts.

Whenever a new legislation is passed it should be accompanied by a budgetary estimate of its impact and necessary financial allocation should be made in the Bill itself, to meet the expenditure likely to be incurred on setting up additional courts required to deal with increase in workload and providing

(ix) E – court

There should be provision for establishment of e-court hence computerization of district and subordinate courts has gained momentum and under e-court mission mode project almost equal amount of the expenditure in previous 4 years, has been planned in the last year of the 11th plan. Out of the targeted completion of computerization of 14249 Courts by 2014, already 8000 Courts have been ICT enabled and 12000 Courts were aimed for completion in March, 2012.

(x) National Legal Mission –Action Plan Implementation

The tentative action plan of the National Legal Mission, inter-alia, covers policy and legislative change such as All India Judicial Service, Litigation Policy, Judicial Impact Assessment, Amendment in Negotiable Instrument Act and Arbitration and Conciliation Act, Legal Education Reforms, etc., Re-engineering procedures and alternate methods of Dispute Resolution such as identification of bottlenecks, procedural changes in Court procedural changes in Court processes, statutory amendments to reduce and disincentives delays, Fast tracking of procedures, appointment of Court Managers and Alternate Dispute Resolution, etc. Focus on Human Resources Development such as strengthening State Judicial Academies, Training of Public Prosecutors and strengthening National Judicial Academy and Training of Mediators, leveraging ICT in the judiciary and use in a criminal justice delivery and creation of National Arrears Grid. The tentative action plan will be further reviewed and finalized by the Advisory Council and Governing Council.
A provision of Rs. 30 crore during the 12th Five Years plan period may be provided for undertaking various initiatives under the Action Plan for effective implementation of various initiatives to be undertaken by the National Mission, close monitoring of the activities in the States/UTs and liaison between the State Government and the High Court is necessary. Analysis of the data received is useful in identifying trends of institution/disposal, the nature of cases clogging the courts so that adequate reform measures could be put in place to achieve the desired results.

The Research and Policy Unit may undertake appropriate studies/research in the field of Judicial Impact Assessment in order to arrive at a conscious decision for implementation of the same in India.

Thus, a provision of Rs. 110.00 crore during the 12th five year plan period may be made for the above initiatives.

The Vision Statement and Action Plan adopted in the National consultation for strengthening the judiciary towards reducing pendency and delays held by Department on 24-25 October, 2009 clearly recognize that “Ultimately, an efficient legal and judicial system which delivers quick and quality justice reinforce the confidence of people in the rule of law, facilitates investment and production of wealth, enables better distributive justice, promotes basic human rights and enhances accountability and democratic governance.

The courts and districts would be selected in such a manner that they represent the well administered courts as well as those that are in the maximum need of assistance.

The National Mission and Directorate will implement this project with a dedicated project team created for this purpose. The details of activities proposed to be undertaken are as under:
(a) E-justice: IT systems would be introduced in the model Courts, which will enable the citizens to litigate a dispute through electronic means. A software will be developed in order to cater to the following.

Workload balancing, File tracking, Document management, Exhibit management and enabling e-litigation including e-filing, e-payment of court fee, e-notarization of the e-documents to be filed in courts etc.

(b) SMS information system: This system will enable the litigants and lawyers to receive SMS with information regarding the cases filed, such as the next date of hearing, the present status of the case and objections, if any, raised by the court registry regarding the plaint filed by them.

(c) Date Management systems: The details regarding the existing active cases and the new cases will be filed directly online on the software developed for this purpose. An interface of the data management system would be available with the judge who will get all information pertaining to the case on their monitors.

In the event, case has been pending in the court for more than 3 years, the system will itself generate warnings to enable the judge to fix a shorter duration for the next hearing. Further, the system will also keep track of the adjournment sought by the parties and inform the judge accordingly. All the tracked information will become part of the arrears grid so that it can be used to either adequately train or warn the judges, as suitable. This system will also require developing timeliness standards and judging the disposal rate against these standards.

(d) Physical Record Management: The project will aim at improving the case management systems by migrating the active paper files to newly created e-record system by scanning the physical files of the existing cases. However, till the time the paper files are migrated to the new system, the model court may be provided with the packaging equipments such as bar codes/radio frequency identification tags feasibility designs and phased rollout of optimal courtroom audio and video systems to accelerate trial management. IT systems
will also be used to establish linkages between the courts, prisons, policy stations and legal services authorities to ensure that those in custody have access to legal aid and court without fail.

(e) Judicial collaboration mechanism: The project will help generate momentum for enhanced judicial productivity in the subordinate courts by supporting judicial collaboration mechanisms in the form of participatory meetings comprising the higher and the subordinate Judiciary. This will enable the subordinate courts to developed monitor time standards supported by trained staff and to optimize use of delay and backlog reduction techniques to meet the timeliness standards.

(f) Reforms in the court administration: It is proposed to reform the court administration through a clear division of work between judicial and non-judicial staff as well through upgrading of skills and competencies in court administration and management in collaboration with the state judicial academics.

IV. Recommendations of Various Commissions and Committees

It is of paramount importance to reform the problem of delays at the earliest and provide justice to citizens of this country in a reasonable time. It is imperative so that the faith of the society in the justice delivery system can be maintained in a country like India where people consider judges only next to God. Keeping this in view, various Commissions and Committees from time to time, recommended measures for tackling the mounting arrears of cases:

(i) Parliamentary Standing Committee on Home Affairs

Law Reform is a vast and complex topic. It embraces legislative reforms, reforms of the judicial system and most importantly reforming the mindsets of the Judges, the Lawyers and the Legislators. Financial constraints are a major fetter on wide ranging reforms. There is a plethora of unimplemented recommendations and
reports gathering dust. The reason for this is that the executive and the politician are a low-priority enterprise with no vote catching potential. All over the world and amongst the youth, there is spirit of questioning. Every institution is under scrutiny. The citizen demands, particularly in a democratic country like ours, that the legal and judicial system must reform and justify its existence by serving the community. The God-like mystique of the judiciary wearing impressive judicial robes is fast dissolving. Our legal and judicial system has to earn the respect of the community and compete with the systems of other countries of the globe.

The 85th Report of the Parliamentary Standing Committee on Home Affairs on “Law’s Delays: Arrears in Courts”\textsuperscript{66} has come out with alarming figures. It estimates that 24 million cases are pending in different courts all over the country. Some of them are pending since 1950. The judge-population ratio is 10.5 Judges for every 10 lakh citizens. In contrast there are 107 Judges in the USA for 10 lakh citizens. In India, only 0.2 percent of the GNP is spent on the judiciary. The High Courts have become the biggest bottle-necks in the judicial hierarchy with arrears of 8 lakhs in Allahabad, 6.5 lakhs in Madras, 3.08 lacs in Kerala and 2.4 lakhs in Bombay.

Parliamentary Standing Committee on Home Affairs in its Eighty-fifth Report deliberated on a variety of topics of judicial reforms and found that there is immense scope and wide ambit of judicial Reforms and it was necessary to identify specific problem areas. The issue which arose for the Committee’s deliberations, included, \textit{inter alia}:

\begin{itemize}
  \item[i.] Vacancies of judges;
  \item[ii.] Pendency of cases in courts;
  \item[iii.] Specific action plans to tackle them;
  \item[iv.] Centrally sponsored schemes for infrastructural development of the judiciary;
\end{itemize}

\textsuperscript{66} Report was released in March 2002.
v. Need for amendment in the Memorandum of Procedure of Appointment of Judges of Supreme Court and High Courts;

vi. Improvement in the quality of judgments and the need to tune our legal system to the post-WTO and the international patent regime;

vii. Increasing the sanctioned strength of Judges of High Courts and Subordinate Courts;

viii. Setting up of Benches of Supreme Court and High Courts;

ix. Setting up of tribunals to decide disputes relating to matrimony, education, elections petitions, and company matters, etc.;

x. Increase the age of retirement of High Court and Supreme Court Judges;

xi. Provisions of adjournments;

xii. Provision of loans for young lawyers for libraries and computers;

xiii. Use of retired judicial human resource to dispose of pending cases;

xiv. Procedural reforms to curb delays;

xv. Providing modern infrastructural facilities up to the subordinate courts;

xvi. Alternative dispute resolution mechanism;

xvii. Introduction of case management system in the courts;

xviii. Classification, categorization and bunching of cases;

It was felt that to remove the bottlenecks arising out of the inherent deficiencies in law which results in the law’s delays and to accelerate the disposal of cases, there is need to amend the existing statutes, i.e. the High Court Acts and Rules, Civil Procedure Code, Criminal Procedure Code, India Evidence Act and other procedural laws. It is also imperative to augment the strength of courts to provide them full physical and functional facilities, institution of alternative modes of disposal and provide modern information technology to courts. The Law Commission of India in
its 154th Report (1996) had already made a number of recommendations for speedy disposal of criminal cases.

The Committee requested the Ministry of Home Affairs to apprise it on the status of implementation of the recommendations. The Ministry informed the Sub-Committee that the report was referred to all the State Governments / Union Territory Administrations for their views/comments as the Criminal Law and Criminal Procedure are on the Concurrent List of the Seventh Schedule to the Constitution of India and Criminal Laws are administered by the State Governments. The views of the State Governments may be summed up as follows:


ii. On the point of separate investigating agency, while the States commended the idea behind the proposal but they expressed apprehensions as to its practicability on account of financial implications.

iii. Some States expressed the view that the provisions relating to anticipatory bail should be restricted in its application. There should be no bar to arrest the person by the police during the pendency of the application for anticipatory bail. After charge sheet is filed, anticipatory bail should not be granted.

iv. There was general agreement that many more offences be made compoundable.

v. The concept of plea bargaining found favour with most of the States [Now plea bargaining has been introduced by the Criminal Law (Amendment) 2005].

vi. As regards victimology, control of victimization and protection of victims of crimes, there was general agreement, but it was considered necessary that nature of the Crime, victim and amount of compensation for each offence should be duly considered and laid down.
vii. Some States expressed the view that for minor offences of regulatory nature, there need not be strict separation between the judiciary and the Executive. The Executive Magistrates may be given the power to try and dispose them of such offences are generally victimless crimes. One State suggested that cases of Maintenance may be given to Executive Magistrates, for granting interim relief after a short inquiry and thereafter the case may be passed on to the Judicial Magistrate concerned.

viii. One State suggested that Section 9 of the Code of Criminal Procedure be amended on the lines of Section 11 thereof with a view to enable the State government to establish Special Courts of Sessions Judges. It further suggested that in cases triable by Sessions Court, there should not be any committal proceeding of cases triable by them.

ix. The concept of Nyaya Panchayat was welcomed by most of the States.

tax. Almost all the States agreed on the concept of establishing independent Directorate of Prosecution. Most of them already have established the Directorate. States were also of the view that the Directorate of Prosecution should be neither under the police nor under the Home Department. It should only be under the Department of Law to ensure its independence.

xi. One State noting that the subject-matter of penal law and criminal procedure is in the Concurrent List, expressed the view that there need not be uniform law for the whole country. States may have their own amendments, suitable to their needs.

(ii) National Commission to Review the Working of the Constitution (NCRWC)

The National Commission to Review the Working of the Constitution which was set up by the Government of India in 2002 had also given various suggestions for better management of court work, computerization of court system and increased
settlements by Lok Adalats, etc. to bring down the arrears. The following suggestions were given by the NCRWC:

(1) In the matter of appointment of Judges of the Supreme Court, it would be worthwhile to have a participatory mode with the participation of both the executive and the judiciary in making recommendations. The composition of the Collegium gives due importance to and provides for the effective participation of both the executive and the judicial wings of the State as an integrated scheme for the machinery for appointment of judges. A National Judicial Commission under the Constitution should be established.

The National Judicial Commission for appointment of judges of the Supreme Court shall comprise of:

(i) The Chief Justice of India : Chairman
(ii) Two senior most judges of the Supreme Court : Member
(iii) The Union Minister for Law and Justice : Member
(iv) One eminent person nominated by the President after Consulting the Chief Justice of India : Member

The establishment of a National Judicial Commission and its composition are to be treated as integral in view of the need to preserve the independence of the judiciary.  

(2) A committee comprising the Chief Justice of India and two senior-most Judges of the Supreme Court will comprise the committee of the National Judicial Commission exclusively empowered to examine complaints of deviant behaviour of all kinds and complaints of misbehaviour and incapacity against judges of The Supreme Court and the High Courts. If the Committee finds that the matter is serious enough to call for a fuller investigation or inquiry, it shall refer the matter for a full inquiry to the Committee [constituted under the Recommendation No. 122 of ‘National Commission to Review the Working of the Constitution.’

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The Committee under the Judges Inquiry Act shall be a Permanent Committee with a fixed tenure with composition indicated in the said Act and not one that is constituted ad-hoc for a particular case or from case to case, as is the present position under Section 3(2) of the Act. The tenure of the Inquiry Committee shall be for a period of four years and to be re-constituted every four years. The President in consultation with the Chief Justice of India shall constitute the Inquiry Committee. The Inquiry Committee shall inquire into and report on the allegation against the Judge in accordance with the procedure prescribed by the said Act, i.e. in accordance with the Sub-sections (3) to (8) of Section 3 and Sub-section (1) of Section 4 of the said Act and submit their report to the Chief Justice of India, who shall place before a Committee of seven senior-most judges of the Supreme Court. The Committee of seven Judges shall take a decision as to - whether (a) findings of the Inquiry Committee are proper and (b) any charge or charges are established against the judge and if so, whether the charges held proved are so serious as to call for his removal (i.e. proved misbehaviour) or whether it should be sufficient to administer a warning to him and/or make other directions with respect to allotment of work to him by the concerned Chief Justice or to transfer him to some other Court (i.e. deviant behaviour not amounting to misbehaviour). If the decision of the said Committee of Judges recommends the removal of the Judge, it shall be a Convention that the judge promptly demits office himself. If he fails to do so, the matter will be processed for being placed before Parliament in accordance with Articles 124(4) and 217(1) Proviso (b). This procedure shall equally apply in case of Judges of the Supreme Court and the High Courts except that in the case of a Supreme Court Judge the judge against whom complaint is received or inquiry is ordered shall not participate in any proceeding affecting him.
In appropriate cases the Chief Justice of the High Court or the Chief Justice of India, may withhold judicial work from the judge concerned after the Inquiry Committee records a finding against the Judge.\(^8\)

(3) Article 124(3) contemplates appointment of Judges of Supreme Court from three sources. However, in the last fifty years not a single distinguished jurist has been appointed. From the Bar also, less than half a dozen Judges have been appointed. It is time that suitably meritorious persons from these sources are appointed.\(^9\)

(4) The retirement age of the Judges of the High Court should be increased to 65 years and that of the Judges of the Supreme Court should be increased to 68 years.\(^10\)

(5) In the matter of transfer of Judges, it should be as a matter of policy and the power under Article 222 and its exercise in appropriate cases should remain untouched. The President would transfer a Judge from one High Court to any other High Court after consultation with a Committee comprising the Chief Justice of India and the two senior-most Judges of the Supreme Court.\(^1\)

(6) A proviso should be inserted in Article 129 so as to provide that the power of court to punish for contempt of itself inherent only in the Supreme Court and the High Courts and is available as part of the privilege of Parliament and State Legislatures, and no other court, tribunal or authority should have or be conferred with a power to punish for contempt of itself.\(^2\)

(7) A suitable provision may be inserted in the Constitution so as to provide that except the Supreme Court and the High Courts no other court, tribunal or authority shall exercise any jurisdiction to adjudicate on the validity or declare

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\(^{68}\) Ibid, Recommendation No.123.
\(^{69}\) Ibid, Recommendation No. 124.
\(^{70}\) Ibid, Recommendation No.125.
\(^{71}\) Ibid, Recommendation No. 126.
\(^{72}\) Ibid, Recommendation No.127.
an Act of Parliament or State Legislature as being unconstitutional or beyond legislative competence and so ultra vires. Such a provision may be made as clause (5) of Article 226.73

(8) ‘Judicial Council’ at the apex level and Judicial Councils at each State at the level of the High Court should be set up. There should be an Administrative Office to assist the National Judicial Council and separate Administrative Offices attached to Judicial Councils in States. These bodies must be created under a statute made by Parliament. The Judicial Councils should be in charge of the preparation of plans, both short term and long term, and for preparing the proposals for annual budget.74

(9) The budget proposals in each State must emanate from the State Judicial Council, in regard to the needs of the subordinate judiciary in that State, and will have to be submitted to the State Executive. Once the budget is so finalized between the State Judicial Council and the State Executive, it should be presented in the State Legislature.75

(10) The entire burden of establishing subordinate courts and maintaining subordinate judiciary should not be on the State Governments. There is a concurrent obligation on the Union Government to meet the expenditure for subordinate courts. Therefore, the Planning Commission and the Finance Commission must allocate sufficient funds from national resources to meet the demands of the State judiciary in each of the States.76

(11) The Presiding Officers in Courts should be adequately trained. To ensure competence, there should be a proper selection, freedom of action, training, motivation and experience. To maintain their competence it is necessary to have continuing education for the judges. Some National Judicial Institutions

73 Ibid., Recommendation No. 128.
74 Ibid., Recommendation No. 129.
75 Ibid., Recommendation No. 130.
76 Ibid., Recommendation No. 131.
have to be properly structured to give such training. There should be a proper monitoring of moving the judges where work demands such movement from places where there are no arrears of work. There has to be systematic assessment of training needs of judicial personnel at different levels.  

(12) The Government should ensure basic infra-structure needed to all courts and arrange to ensure that courts are not handicapped for want of infra-structural facilities. Governments, both at the Centre and in the States, should constitute Committee of Secretaries to review government litigation with a view to avoid adjudication, wherever possible, give priority in filling of written statements, wherever required, and instruct government advocates to seek early decision on government litigation.

(13) In the Supreme Court and the High Courts, judgments should ordinarily be delivered not later than ninety days from the conclusion of the case. If a judgment is not rendered within such time – it is possible that the complexities of the case and the effect the decision may have on another similar situation might compel greater and larger judicial consideration and contemplation – the case must be listed before the Court immediately on the expiry of ninety days for the Court to fix a specific date for the pronouncement of the judgment.

(14) An award of exemplary costs should be given in appropriate cases for abuse of process of law.

(15) The recommendations of the Law Commission of India in regard to the Nagar Nyayalayas, Conciliation Courts, ADR systems of urban litigation, evidence recording by Commissioners, etc. as incorporated in the Code of Civil

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77 Ibid, Recommendation No. 132.
78 Ibid, Recommendation No. 133.
79 Ibid, Recommendation No. 134.
80 Ibid, recommendation No. 135.
Chapter 7

Procedure (Amendment) Act, 2000 should be brought into force with such modifications as would take care of a few serious objections.\(^{81}\)

(16) The provisions relating to Conciliation in the Arbitration and Conciliation Act, 1996 should be suitably amended to provide for obligatory recourse to conciliation or mediation in relation to cases pending in courts. Further, the scope and functions of the Legal Services Authorities constituted under the Legal Services Authorities Act, 1987 should be enlarged and extended to enable the Authorities to set up conciliation and mediation for a and to conduct, in collaboration with other institutions wherever necessary, training courses for conciliators and mediators.\(^{82}\)

(17) Each High Court should, in consultation with the Judicial Councils referred to in recommendation No- 129, prepare a strategic plan for time-bound clearance of arrears in courts under its jurisdiction. The plan may prescribe annual targets and district-wise performance targets. High Courts should establish monitoring mechanisms for progress evaluation. The purpose is to achieve the position that no court within the High Court’s jurisdiction has any case pending for more than one year. This should be achieved within a period of five years or earlier.\(^{83}\)

(18) The criminal investigation system needs higher standards of professionalised action and it should be provided with adequate logistic and technological support. Serious offences should be classified for purpose of specialized investigation by specially selected, trained and experienced investigators. They should not be burdened with other duties like security, maintenance of law and order etc., and should be entrusted exclusively with investigation of serious offences.\(^{84}\)

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\(^{81}\) Ibid, Recommendation No. 136.
\(^{82}\) Ibid, Recommendation No. 137.
\(^{83}\) Ibid, Recommendation No. 138.
\(^{84}\) Ibid, Recommendation No. 139.
(19) The number of Forensic Science Institutions with modern technologies such as DNA fingerprinting technology should be enhanced.\textsuperscript{85}

(20) The system of plea-bargaining (as recommended by the Law Commission of India in its Report) should be introduced as part of the process of decriminalisation.\textsuperscript{86}

(21) In order that citizen’s confidence in the police administration is enhanced, the police administration in the districts should periodically review the statistics of all the arrests made by the police in the district as to how many of the cases in which arrests were made culminated in the filing of charge-sheets in the Court and how many of the arrests ultimately turned out to be unnecessary. This review will check the tendency of unnecessary arrests.\textsuperscript{87}

(22) The Legal Services Authorities in the States should set up Committees with the participation of civil society for bringing the accused and the victims together to work out compounding of offences.\textsuperscript{88}

(23) Statements of witnesses during investigation of serious cases should be recorded before a Magistrate under Section 164 of the Code of Criminal Procedure, 1973.\textsuperscript{89}

(24) The case for a viable, social justice-oriented and effective scheme for compensation victims is now widely felt. The Government at the Union level and in the States are well advised under the Directive Principles as well as under International Human Rights obligations to legislate on the subject of an effective scheme of compensation for victims of crime without further delay.\textsuperscript{90}

\textsuperscript{85} *Ibid*, Recommendation No.140.  
\textsuperscript{86} *Ibid*, Recommendation No. 141.  
\textsuperscript{87} *Ibid*, Recommendation No.142.  
\textsuperscript{88} *Ibid*, Recommendation No.143.  
\textsuperscript{89} *Ibid*, Recommendation No. 144.  
\textsuperscript{90} *Ibid*, Recommendation No. 145.
(25) The tremendous support which the criminal justice might derive from the people once the compensation scheme is introduced even in a modest scale, and the possibilities of advancing the crying need for social justice in a very real sense, are attractive enough for the State to find money to float the scheme immediately.91

(26) The National Informatics Centre in collaboration with or with the assistance of the Indian Law Institute and the Government Law Departments should set up a Digital Legal Information System in the country so that all courts, legal departments, law schools would be able to access and retrieve information from the data bank of the important law libraries in the country.92

(27) Progressively the hierarchy of the subordinate courts in the country should be brought down to a two-tier of subordinate judiciary under the High Court. Further, strict selection criteria and adequate training facilities for the Presiding Officers of such Courts should be provided. In order to cope up with the workload of cases at the lower level and also to curtail arrears and delay, the States should appoint Honorary Judicial Magistrates selected from experienced lawyers on the criminal side to try and dispose less serious and petty cases on part-time basis on the pattern of Recorders and Assistant Recorders in United Kingdom. They could set for, say, 100 days in a year and hold court later in the evenings after regular court hours. This would relieve the load on the regular magistracy.93

(28) Since the issues relating to human rights, more particularly relating to unlawful detention, have now occupied the centre-stage, both nationally and internationally, it shall be desirable that the Protection of Human Rights Act, 1993 may be suitably amended to provide that, in addition to the powers generally vested in that Court, such courts shall have the power to issue

91 Ibid, Recommendation No. 146.
92 Ibid, Recommendation No.147.
93 Ibid, Recommendation No.148.
directions of the nature of a *habeas corpus* as was available to the High Courts under Section 491 of the Code of Criminal Procedure, 1898. Vesting of such power will go a long way in providing help to the indigent and vulnerable sections of the society in view of the proximity and easy accessibility of the Court of Session.\(^94\)

(iii) **Malimath Committee**

Justice Malimath Committee under Chairmanship of Justice V.S Malimath, former Chief justice of Karnataka/ Kerala High Court, was constituted by Govt. of India to revamp Criminal Justice System. The Committee submitted its report to the Government of India on March 2003. The terms of reference of the Committee were:

(i) To examine the fundamental principle of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications or amendments are required thereto.

(ii) To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to rewrite the code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India.

(iii) To make specific recommendations on simplifying judicial procedures and practices and making the delivery of justice to the common man closer, faster, uncomplicated and inexpensive.

(iv) To suggest ways and means of developing such synergy among the Judiciary, the prosecution and the police as restores the confidence of the common man in the criminal justice system by protecting the innocent and the victim and by punishing unsparingly the guilty and the criminal.

\(^{94}\) *Ibid*, Recommendation No.149.
(v) To suggest sound system of managing on professional lines, the pendency of cases at investigation and trial stages and making the police, the prosecution and the judiciary accountable for delays in their respective domains.

(vi) To examine the feasibility of introducing the concept of federal crime which can be put on List-I in the Seventh Schedule to the Constitution of India.

In its report the Committee has observed that there is huge backlog of criminal cases in the country and unless concerted efforts are made on a war-footing, the position will not improve and people will continue to suffer. On the basis of terms of reference the Malimath Committee made the following recommendations:

1. Abolition of Original Civil Jurisdiction of the High Court.
3. Filing of certified copy of decree to be dispensed with.
4. High Courts to specify categories of cases which could be heard by Single Judge, or by a Division Bench.
6. Work of serving summons and notices should be entrusted to the process servers of the courts in addition to the police at present.
7. Convention to be evolved that would discourage granting adjournments.
8. Court should avoid writing long and elaborate judgments.
9. Reserved judgments should ordinarily be delivered within a reasonable time.
10. Court to prepare lists of old cases and arrange their early disposal.

The Malimath Committee made another set of recommendations for setting up of Alternative Tribunals to reduce pendency in High Courts besides the following:

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1. Setting up of Industrial Relations Commission.

2. Setting up of Rent Tribunals.

3. Extension of Jurisdiction of Central Administrative Tribunals to the teaching and non-teaching staff of universities. Earlier teaching and non-teaching staffs were not covered by the CAT’s jurisdiction.

4. Setting up of tribunal/machinery for early disposal of cases concerning students’ admissions/examination malpractices, educational programmes, affiliation and de-affiliation of colleges, election to universities/bodies, etc.\(^\text{96}\)

Setting up of alternative tribunals viz; Industrial Relations Commissions; Rent Tribunals; and setting up of tribunals with jurisdiction on various educational malpractices are likely to help reduce the burden on courts.

Considering the mammoth size of arrears, alternative modes of dispute settlement are the best way to reduce the number of cases filed everyday. The Malimath Committee and Chief Ministers and Chief Justices Conference, 1993 made recommendations on this aspect and a Bill to amend Civil Procedure Code i.e. The Code of Civil Procedure (Amendment) Bill, 1997 was brought which contained \textit{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. 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 failed.\(^\text{97}\)

It is expected that efforts of this kind would definitely help reduce the burden on the courts and decrease the accumulation of arrears. The Committee felt that the government should encourage Non-government organizations to spread awareness among the people especially people of low-income groups, about the futility of frivolous cases to be filed in the court and persuade them to adopt

\(^{96}\) \textit{Id.} at 262.

\(^{97}\) \textit{Id.} at 264.
methods like arbitration, mediation, and other modes of out of the Court settlement. The Committee was of the view that an enlightened Bar and the Bar Councils have a crucial role to play in the process.

(iv) Initiatives taken by the Supreme Court

The Supreme Court has taken certain steps which have resulted in a substantial reduction in accumulated arrears. It has successfully implemented the cardinal principles of Active Case Flow Management Technique (ACMT) by creating dual tracks, one for keeping abreast of current filings and the other to deal with old pending matters. It is a model which replicated for dealing with the arrears in the High Courts and Subordinate Courts. A report on “Modernization of Civil Justice System in India: Implementation Plan”, prepared by the Study Team Constituted by the National Judicial Academy and submitted to the Hon’ble Chief Justice of India, was referred to for detailed discussion on the monitoring, co-ordination and case-flow tracking.

Another area where the apex Court has concentrated its energy is on adjournments. Adjournments have been made an exception. Now adjournments in Supreme Court can never be taken for granted and cases scheduled for a particular date are invariably listed on that day. Indeed, listing is entirely computer managed, except for extremely urgent listing required within less than 15 days for which a special oral mention has to be made to the Chief Justice.

In the apex Court, the cases listed for a day which were earlier adjourned owing to the absence of any Judge are now immediately redistributed on the very day over the remaining Benches and thus dealt with or disposed of on the same day, despite an inevitably enhanced work load for each bench.

Bench stabilization in the apex Court over three–month or six-month periods ensures that the same or similar subjects out of the 56 computer classified subjects go to the same Benches as far as possible, thus expediting disposal.
On the Human Resource front, the apex Court has made efforts to streamline the distribution of work in all the departments in such a way that intra-departmental and inter-departmental file movement can be minimized. It has reorganized the staff strength depending on the filings and pendency.

The apex Court has made use of the computer in the most effective way. Computerization at every level in the Department of Registry has increased efficiency considerably. Maximum information covering numerous fields and criteria are fed into the computer in respect of each case, thus ensuring maximum information retrieval at the touch of a button and a Judis Programme has already incorporated all the Supreme Court judgments into the computer.

In addition, the following steps have also been taken in the apex Court:

a) More practical categorization and grouping of cases involving similar questions of law.

b) No accumulation of defective matters;

c) Reservation of sufficient slots for old, pending, miscellaneous and Special Leave Petition matters so that they are listed in Chronological order in sufficient numbers.

It is significant that despite poor infrastructure and other constraints in lower courts they have made a dent, however small, on the problem of arrears. Those courts deserve better facilities and better working conditions. All necessary steps may be taken to secure expeditious handling of cases in the High Courts and the Subordinate Courts by filling the vacancies of Judges; application of Active Case-Flow Management Technique (ACMT); stricter control over adjournments; reallocation of cases when a bench is unable to sit; bench stabilization; and manpower management to reduce time taken in file movement. Need is felt for giving top priority to improve manpower and infrastructural facilities at the Subordinate / district court levels so as to facilitate wiping out of the arrears and swift disposal of
cases. Budgetary allocations have to be augmented substantially. There is need for a greater sense of purpose.

(v) Reports of the Law Commission of India and National Police Commission

Law Commission of India delved into the problem of delay in trial of criminal cases and suggested many remedial measures from time to time. To protect the human rights of the accused by speedy trial, the following important recommendations have been made by the Law Commission and National Police Commission in its reports from time to time:

a) To separate the investigating wing from the wing entrusted with the enforcement of law and order in the Police Department.\(^98\)

b) To provide sufficient funds to the Judiciary to increase the existing number of criminal courts, with sufficient supporting staff including stenographers and to modernize the subordinate judiciary with equipment like Xerox machines, electronic typewriters and computers.\(^99\)

c) To make statutory provision for settlement of disputes by Conciliatory Board under the supervision of Subordinate Criminal Court.\(^100\)

d) To depute one Senior Additional District and Sessions Judge in each district for devoting whole time in monitoring disposal of old cases by making monthly inspection of each Court and co-ordination with other functionaries of the district, government and High Court.\(^101\)

e) To recruit young talented law graduates in Judiciary by creating Indian Judicial Service.\(^102\)

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\(^{100}\) Id. at 26-30.

\(^{101}\) Id. at 34.

f) To train Judicial Officers by establishing National Academy for Training of Judicial Officers.\textsuperscript{103}

g) To establish a prosecuting agency with all infrastructures, so that it may work not only as a legal wing of the police department but also as an effective segment of Criminal Justice System.\textsuperscript{104}

h) To institute Gram Nyayalayas to deal with ordinary crimes and disposal of petty cases at taluk level.\textsuperscript{105}

\textbf{(vi) Initiative taken by the Government}

To reduce delay and increase the rate of disposal of cases, the Government of India proposes to computerize all the lower courts in the country. A scheme for computerization of all the 13000 District and Subordinate Courts, prepared in accordance with the National Policy and Action Plan, has been approved by the Government of India on 8\textsuperscript{th} February 2007 with National Informatics Centre (NIC) as the implementing Agency. The coverage of the project includes Information and Communication Technology (ICT) enablement of all the District and Subordinate Courts of the Country and upgrading the infrastructure of the Supreme Court and all the High Courts.\textsuperscript{106}

The project is to be implemented in three phases over a period of five years. The first phase of implementation completed in the year 2009. The implementation of the project will go a long way in reducing the huge back-log of cases.

\textbf{V. Sum Up}

It is revealed from the foregoing study that the alternative dispute resolution mechanisms are the best possible to resolve disputes between the parties. ADR mechanisms provide for more effective resolution of disputes as the parties are more

\textsuperscript{103} 117\textsuperscript{th} Report of Law Commission of India Nov. 1986 pp. 34-46.  
\textsuperscript{104} 4\textsuperscript{th} Report of National Police Commission of India, pp. 23-26, June,1980.  
\textsuperscript{105} Supra n. 82 at 183.  
involved in the process and the process is swift. Court processes that are traditionally practiced may not in every case provide the best approach towards the resolution of disputes. For instance, in the case of matrimonial disputes, which are sensitive in nature, involving both legal as well as emotional questions, the parties are not interested in winning or losing, but in reaching a solution. Inordinate delays that are a part of the ordinary legal process may emotionally affect the parties and cause frustration. The matter may be more effectively resolved, if it is not dealt with in a mechanical and technical manner. The procedures employed in Alternate Dispute Resolution are flexible and informal in contrast to the formal and rigid procedures followed in the ordinary process of dispute resolution in courts of law. These processes thus facilitate access to justice. So it is high time that an immediate solution to the growing backlog of cases is sought on a priority basis so that the confidence of the people in the judicial system remains intact. If this is not done on a priority basis it would not only be the defeat of our constitutional philosophy but also contribute to the collapse of our entire judicial system. Law is an important instrument of social and political change. There is an urgent need of law to reduce the pendency of cases in courts and also to reduce the average life span of litigation. The need of the hour is that there should be time limit of each stage be fixed and as soon as any stage exceeds its time limit, a scrutiny mechanism should come in picture as to what are the causes of delay, the ways to redress them and penalty for those who caused such delay. For this, a law which specifically deals with speedy trial has to come in picture.