I. Conclusion

The right to speedy justice is not a fact or fiction but a Constitutional reality and it has to be given its due respect. If the administration of justice delivery system is to yield good results then the courts have to act with greater promptitude. A guilty person deserves to be punished promptly and an innocent should be released immediately because his protractions in the legal system can be most traumatic.

The time has come when the legal and judicial system has to be revamped and restructured so that injustice does not occur and disfigure fair and otherwise luminous face of our nascent democracy. The foregoing study discloses that inordinate delay has become a common feature of Indian legal system. The dictum ‘Justice Delayed’ postulates that an unreasonable delay in the administration of justice constitutes an unconscionable denial of justice. In every civilized society there are two sets of laws: Substantive Law and Procedural Law. Substantive law determines the rights and obligation of citizens. But the efficacy of substantive laws depends upon the procedural laws.

The study discloses that the right to a speedy trial is first mentioned in the landmark document of English law, the Magna Carta. The right to a speedy trial finds expression in the United States of America’s Constitution, State Constitutions, State and Federal Statutory Law and State and Federal case law. In United States, the right to speedy trial has been derived from a provision of Megna Carta and this right was interpreted and incorporated into the Virginia Declaration of Rights of 1776 and from there into the 6th Amendment of the United States Constitution. The right to speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an
accused to defend himself. The guarantee of a speedy trial is one of the most basic rights preserved by the American Constitution, it is one of those fundamental liberties embodied in the Bill of Rights which due process Clause of the 14th Amendment make applicable to the State. The protection afforded by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been accused in the course of the prosecution.

The study reveals that the problem of delay in disposal of case is not a new problem in India and has been in existence since a long time. However, it has now acquired terrific proportions. On the one hand, it has put the judicial system under strain and on the other hand, it has shaken the confidence of the people also. All the delay and lack of accountability and half baked schemes amount to a daily mockery of the fundamental right to speedy trial. The Supreme Court has time and again made it clear that “speedy trial is the essence to criminal justice and there can be no doubt that the delay in trial by itself constitutes denial of justice”. It has further added that there can be no doubt that speedy trial – and by speedy trial we mean a reasonable expeditious trial – is an integral and essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution. It is a very important obligation. Even apart from Article 21 the constitutional mandate for speedy justice is inescapable. The Preamble to the Constitution of India enjoins the State to secure social, economic and political justice to all its citizens. Further, the Directive Principles of State Policy declare that the state should strive for a social order in which such justice shall inform all the institutions of national life under Article 38(1).

The paramount purpose of speedy trial is to safeguard the innocent from undue punishments but prolonged pendency has created unaccountable barriers in this regard. Huge number of cases are pending for years together which create mental and economic pressures on the litigants. The study reveals that Indian Judiciary would take 320 years to clear the backlog of 31.28 million cases pending in various courts in India. The reason for backlog of cases pending is inadequate
judge strength which is 13.05 judges per one million people, as against Australia 58 per million, Canada’s 75, the United Kingdom 100 and the United States of America 130 per million. In 2002, the Supreme Court had directed the Centre to raise the judge – population ratio to 50 per million in a phased manner, as recommended by the Law Commission in its 120th report. The suggestion has had little effect. Besides this, there are number of factors which are solely responsible for the arrears of cases. Broadly there are two factors, viz., procedural and substantive. The procedural factor responsible for the delay in disposal of cases are (i) Pre-trial delays (ii) Delay during trial (iii) delay during appellate proceedings and (iv) delay during the execution proceedings. On the other hand, substantive factors include: (i) judicial vacancies/delay in appointment of judge, (ii) lack of accountability of judges, (iii) to many vacations in the courts, (iv) misuse of public interest litigation, (v) witnesses turning hostile (vi) writ jurisdictions and (vii) delay by the judges. In addition to these, the other causes attributed for delay are: inadequate number of courts, judicial officers are not being fully equipped to tackle cases involving specialized knowledge, dilatory tactics adopted by litigants and lawyers, who seek frequent adjournments and delay filing documents etc.

The study further reveals that the concept of speedy justice is sine qua non of criminal jurisprudence. The researcher find that a number of Committees were constituted to examine the problem of delay and the first Committee named as Justice Rankin Committee was set up. Since then several Committees have put forth recommendations. These include the PRS Legislative Research, Pendency of Cases in Indian Courts, Justice S.R. Das High Court Arrears Committee (1949), The Trevor Harris Committee in West Bengal (1949), the Wanchoo Committee in Uttar Pradesh (1950), Justice J.C. Shah Committee (1972), Statish Chandra Committee (1986) and the Malimath Committee (1990, 2000). At the Conference of Chief Justices and Chief Ministers, both the Prime Minister and the Chief Justice of India promoted reforms to ensure speedy justice. On October 24-25, 2009, members of the Supreme Court and High Courts, Ministry of Law and Justice, Bar Council, and
faculty of Indian Law Institute and other academic institutions gathered for a “National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays”.

The foregoing study also reveal that various reports on judicial Reforms have been submitted by the Law Commissions after in depth study, which have dealt with various aspects of Law-substantive and procedural. The Law Commission has addressed the issue in several reports since 1955: the 14th, 38th, 78th, 79th, 80th, 117th, 120th, 121st, 124th, 125th, 154th, 189th, 197th, 221st, 222nd, 229th and 230th reports dealt with issues of delay, pendency and arrears. It is manifestly clear that many of the important recommendations made by the Law Commissions, from time to time, have not been implemented by the Government. In its 239th Report the Law Commission of India suggested amendment to Code of Criminal Procedure, 1973 are desirable by which the High Courts will assume more proactive role in taking various measures. However, the Government has not yet considered this proposal.¹

The study also reveals that the recommendations regarding Court Management, Case Management were also made by the Law Commission of India. Further, a proposal was mooted and placed before the Chief Justice of India emphasizing the need for a comprehensive ‘National Court Management Systems’ for the Country that will enhance the quality, responsiveness and timeliness of Court. The Chief Justice of India after consultation with the Ministry of Law and Justice, Government of India, established National Court Management Systems by Order dated 02.05.2012 which states that the National Court Management for enhancing timely justice is established under overall control of the Chief Justice of India.

The foregoing study also reveals that the United States of America is the first country in the world which has enacted its Speedy Trial Act, 1974 and similarly in Philippines, the government has enacted a Speedy Trial Act of 1998 which ensures a

¹ This deals with amendment to Sections 477, 483, a new provision in Section 157A of the Code of Criminal Procedure, 1973.
speedy trial of all criminal cases. The Speedy right is an important concept in American law and the Speedy Trial Act of 1974 represents a well studied attempt to safeguard the vitality of the 6\textsuperscript{th} Amendment right. The right to speedy trial is commonly thought to be a right of an accused, but it actually benefits the society as a whole and not just individual defendant's. It reduces the time that an accused may suffer from personal anxiety and public suspicion. Also, it minimizes the chances that defences will be prejudiced because of the disappearance of witnesses or the fading of memories over time. On the whole, the right enhances the integrity and fairness of an entire criminal proceeding. The Study also discloses that in Japan, both the defendant and the government have a right to speedy trial. But Japan does not yet have a Speedy Trial Act. Right to speedy trial is implicit in Article 37(i) of the Japan's Constitution. In Nepal, the Common Code (Muluki Ain) prescribes the time frame for the completion of a trial by the Court. Similarly Article 27 of the Constitution of Republic of Korea provides that all citizens shall have the right to trial in conformity with the Act by judges qualified under the Constitution and the Act.

The foregoing study also makes a Comparative analysis of right of speedy trial in United States of America and India. The researchers have endeavoured to find out the similarities and dis-similarities between the United States of America and Indian Systems.

The study also discloses that there is growing dissatisfaction regarding the functioning of the executive and the legislature due to their inability to deliver effective governance to meet the needs and challenges of our times. In this background, it is a matter of great satisfaction that the public at large continues to hold the judiciary in high esteem. The judiciary, as custodians and watchdogs of fundamental rights of our people, is shouldering and discharging its responsibility very well indeed. But it is always wise to remain alert and watch out for the cracks and seat it swiftly. The problem of delayed disposal of cases is one of the most
visible cracks and the same has reached alarming proportion during the last three decades.

It is a truism that in a fair society laws are observed by both states and citizens. And 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 imparting justice. 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 ever growing population. The desire for quick, fair and affordable justice has become a common phenomena. On the other hand, there has been phenomenal increase in rate of crimes in society, the nature of crime, means and methods of committing crimes have also considerably 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 Court in India at different levels decides cases but pending cases are increasing day by day. The Courts take years to decide a case. It has rightly been said that the most glaring malady which has afflicted the judicial system is the tardy process and inordinate delay that takes 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 beneath the weight of pending cases which go on increasing every day.

These problems do not have an instant solution. For each problem there are number of reasons which need to be tackled, however, it requires a lot of time and will power on the part of the Parliamentarian 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 to find its fulfillment. Not every legal system succeeds in this 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 is well organized with high level of integrity and has been able to develop a system of Alternative Disputes Resolution. The Alternative Disputes Resolution mechanisms are in addition to courts and complement them. This mechanism is playing an important role in doing away with delays and conjunction in Courts. The Alternative Disputes Resolution Strategies include: arbitration, negotiation, mediation, conciliation, counseling and Lok Adalats. Lok Adalats strategy gives a feeling of tremendous satisfaction and encouragement and upto 31 March 2012 more than 1,120,232 Lok Adalats have been held and therein 43,041,883 case have been amicable settled. A sum of Rs. 115,821,527,600 were distributed by way of compensation to those who have suffered accident.

Further, a number of other relevant reforms and initiatives were taken to accelerate the disposal of cases and to remove the bottlenecks coming in the way of providing speedy and inexpensive Justice. These include: Fast Track Courts; Plea Bargaining; Use of Technology in Case Management; Specialization, Training and Qualifications for judges; Video Conferencing; shift system subordinate courts; e-court; National Legal Mission -Action Plan Implementation etc.

So the problem of delay in disposing of cases should be nipped in the bud. If due emphasis is not given to this problem, it may here cataclysmic effect on the whole society. If this problem is allowed to impregnate then the possibility is that the load of pending cases would be so much that we would reach a point of no return, where people would have to go away from courts without justice. The Court would become the Centre of denial of Justice, antithesis of what is meant for. Thus it is an apocalypse of the eventual happening. There has to be a sincere and serious
endeavour on the part of every member of the legal fraternity to annihilate the problem collectively. 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 the entire judicial system. Today, we need a legal system which has the ability to deliver the best quality of justice at least cost and in the shortest time. We are certainly reminded of a pertinent observation made by Hon’ble Justice D.A. Desai, Chairman (the then), Law Commission of India, who has rightly pointed out: “In view of the over rising graph of arrears, tinkering at the fringes for from yielding the desired results, have further aggravated the situation. The consumers of justice have been patiently waiting for justice to become people oriented”.

It is worthwhile to mention here that unless prompt and effective efforts are taken to ensure that justice becomes a inexpensive and expeditious, the entire system is likely to collapse underneath its weight. Sabyasaachi Mukherjee, the then Chief Justice of India, has rightly expounded the need to simplify the judicial system, revive the indigenous system and devise further means to ease the pressure on the court. The judiciary in India is expected to be the sentinel, sword, and shield of rights of the humblest millions with an assurance to bring justice to even the lowest of the law in an swift and expeditious manner.

II. Suggestions

A society is comprised of people and it reflects the collective ideologies of its people. Like individuals, the society also strives for progress, which can be achieved by synergetic cooperation between the citizens and those governing the society. The civil society through its executive governing body aims at an equitable distribution of resources between its members. In this process of equitable distribution, the society confers several rights to its citizen. Further, the Constitution of India reflects the quest and aspiration of the people when its preamble speaks of justice in all its

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forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other, sooner or later they would get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality. Further, if the right of any person is infringed in any manner or there is a threat to his liberty, he must have access to justice. Speedy trial, which is implied under Article 21 of the Indian Constitution, is one of the dimensions of access to justice. Unless there is a speedy disposal of cases, there cannot be real access to justice. Justice that comes too late has no meaning to the person it is meant for.

The forgoing study reveals that the formal justice delivery system in India has been cancerously sick with the well-known disease of “delay in justice dispensation”. Justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that. Therefore, to reduce the mounting arrears of cases and inordinate delay in disposal of cases, several initiatives have been taken from time to time but the result is not very encouraging.

After going through the pros and cons of the topic, it is expected that the following initiatives will be helpful in lessening the burdens of Courts:

(i) **Increasing the number of Regular Courts**

A solution to the problem can be obtained by assessing the requirements of a system which would deliver justice to a large number of litigants. The large intake of cases requires an increase in the number of courts, each with a judicial officer and corresponding infrastructure. There is also a huge backlog of pending cases and this backlog is increasing day by day. Each case requires a certain minimum of processing time at various levels of the court process including the time required for
a judge to study the case and dispose it as per law. Such requirement of time has to be planned beforehand and infrastructure should be developed accordingly for each court. It does not appear rational that everyone keep on complaining about the backlog of cases in Courts and yet there is never a proper proposal made for increasing the number of courts to cater to the large intake of cases and pending backlog. The pending cases cannot become zero overnight and processing time for each case cannot be reduced by magic. The number of courts will have to be increased to dispose of the backlog. A system should not exist only to perpetuate itself without serving the real objective for which it is established. The judicial system should serve the useful purpose of rendering justice within a reasonable time. If people don’t get their cases decided within a reasonable period of time, the system is not serving its purpose and it has to be reformed. So to dispose of the pending cases, there is a need of at least four-fold increase in the number of judicial officers.

(ii) Extensive Use of Emerging Technology

In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot lag behind and has to be fully prepared to meet the challenge of the age.

Dispensation of justice by adopting Information Technology has been advocated in Western Countries for the last two or three decades, but in India hardly any worthwhile effort has been made, particularly in judicial administration of subordinate courts of our country. Extensive use of Information Technology by judicial organ around the world has resulted in enhanced efficiency, effectiveness and optimal use of resources. Most of the bottlenecks identified by the judicial Commissions and Committees referring to delays, arrears and backlog can be partly tackled if a sound judicial management information system is introduced in India. Inter-Court and Inter-Court communication facilities, developed through use of Internet and video conferencing will not only save time but also increase
speed, efficiency and to render speedy justice. It is not enough to provide computers to the Registrar and to the Judges. They must know how to use the computers efficiently and effectively. There needs to be a systematic training of Court Staff in the use of computers and even for Judges who can get tremendous help from various kinds of programmes that are available on computers such as CDs of case laws, information from the internet and research facilities from specialized websites dealing with legal topics.

The increasing backlog of cases is posing a big threat to our judicial system. The same was even more in the early nineties but due to the computerization process in the Supreme Court and other courts the same has been reduced to a great extent. However, the backlog is still alarming. This is because mere computerization of courts or other constitutional offices will not make any difference. What we need is a will and desire to use the same for speedy disposal of various assignments. There is a lack of training among judges regarding use of Information Technology. This resource is based on the ground reality that mere computerization will not serve the purpose. However, the need of the hour is greater than mere provision of computers. For instance, there was a proposal in the Delhi High Court for connection of the computers of the concerned judges to the Central computer. Thus, whenever something is typed it would automatically go to the central computer and from there we can have the “Certified copies” of the concerned documents. This proposal has been applied to a great extent and now it is much easier to get the certified copies. Further, cause lists, name of the Judges, Courts numbers, name of the lawyers, etc. are all available on the Internet and the same has also facilitated speedier disposal of cases. However, we need more, we need a complete utilization of IT for the effective disposal of cases and witness protection. Video Conferencing has been talked about for quite some time but it is not being implemented which is a little surprising because it is one way of reducing costs, particularly in matters pertaining to under trials. If video conferencing facility is introduced, the cases can be recovered at an early date. For instance, we can use the facility of “Video
Conferencing” on a large scale. Presently, it is used in some cases. It is not uncommon for the criminal cases getting adjourned an account of inability of the police or jail authorities to produce the accused in the court. Sometimes the witnesses are residing at far off places or even abroad. It is not convenient for them to attend the Court at the cost of considerable time and expense. Video Conferencing is a convenient, secure and less expensive option, for recording evidence of the witnesses who are not local residents or who are afraid of giving evidence in open court, particularly in trial of gangsters and hardened criminals, besides saving the time and expenses of travelling. On the other hand, the Courts communicate with the Advocates/litigants through the process serving agency or the conventional postal system. It is possible to generate notices, summons etc. on computer and serve them through the use of electronic communications such as E-mail. Faster Communication will lead to faster progress of the case and eventually help in reducing arrears. Further, E-filing has been introduced in Supreme Court and the same should be started at other Courts also. There is also a need to start E-Court which are supposed to be paperless Court. In E-Court, case file is displayed on the monitor, orders are passed by the judges using dictation software and are digitally signed and then delivered through E-mail. There is a need to explore possibility of having E-Court at High Court level. We can use the medium of Internet for filing of cases, bail applications; serving of notices, etc. thus, much is still to be achieved.

(iii) Appointment of Judges by National Judicial Commission

There is a dire need of the hour to create a more effective judicial administration in India. Under Article 312 of the Constitution of India, Parliament is empowered to establish an All India Judicial Service, and a number of Law Commission Reports and other reports have advocated this. The creation of an All India Judicial Service would be extremely useful in addressing the problem of arrears in the Judicial system.
Appointment of judges should be made by National Judicial Commission consisting of Senior Supreme court Judges, eminent jurists, lawyers and the law ministers in order to accelerate the process of appointments commensurate to the vacancies and avoid political arbitrariness. The National Judicial Commission should regulate appointment of judges to lower, higher and specialized tribunals and such National judicial commission should have the power to ensure strict judicial discipline. The National Judicial Commission could provide information and evaluation of individual judges, and report on how individual judges are performing in addressing delays and arrears.

(iv) Revitalization of Judicial Academics

National Judicial Academy (NJA) has been set up with the objective of training of judicial officers of the States, Union Territories, organizing Conferences and Seminars relating to Court Management and Administration of Justice. Judicial academies have also been set up in almost all states. Establishment of Judicial academies are an important step towards judicial reform but these academies need to be revitalized and the expenditure on the improvement of judicial system should be considered as an investment. Such Judicial Academies should establish Research Centres on Judicial Reforms including subjects such as arrears of cases. The National Judicial Education Strategy, prepared by National Judicial Academy, seeks to enhance the performance of Judges by equipping them with better knowledge, tools and techniques, including Court management process and arrears reduction methodologies.

Extensive training of Judges at the grass roots level is extremely important and if judgments at the district level are of a high quality, the number of revisions and appeals may be reduced which ultimately will reduce the arrears of cases. The Court particularly, High Courts must show initiative in this regard and try and give more strength and vigour to the Judicial Academies by holding constant programmes for training of Judicial Officers in the districts. Performance indicators
have although been prepared by all High Courts but these need to be reconsidered because in some of the High Courts they are completely outdated and do not reflect ground realities.

(v) Imparting Judicial Education for better Court Management

In the concept of ‘divine right of kings’, the king, who used to be considered as incarnation of God, besides being the head of the administrative wing, the supreme commander of the armed forces, also functioned as the fountain-head of justice. The general belief for those who believed in the theory of divine right of kings was that “king can do no wrong.” The judges, too in the eyes of general public had a concept of divinity and the common man had such faith and belief that the judges having the concept of divinity in them knew everything on the universe and could not do any wrong. Even till the later part of 20th century, not only in our country, but in other countries like England, USA, the common view was that the judges did not require any training and their vast experience at the Bar coupled with intellect and instinct for fairness was considered enough. Educating Judges on judicial functions and training them on how to judge properly as a matter of fact are relatively new ideas which even till date are not yet accepted fully by the judicial fraternity as a whole. Some of the judges still believe that the same, in one way or the other, may amount to interference with their judicial independence whereas others resent the very idea of educating the Judges on the ground that the same amount to questioning their capacity and competence. However, with the explosion in knowledge and with the diversification of complex litigation, there has been increasing demand from many Judges themselves for the programmes of continuing education, tailored to specific problems and needs. The need for mandatory judicial education is now acknowledged throughout the world in one form or the other.

In our country despite realizing the importance of Judicial Education and repeated recommendations from various Commissions and Committees the pre-
service Institutional training to the new entrants and in-service training of Judicial Officers already in service had not received the desired attention.

The question of questions is as to why such training is necessary for judicial functionaries. Some may have a feeling that after basic routine education and professional education in Law College, coupled with some years of experience at the Bar, why should one be required to have Judicial Education. There is no doubt that a person after considerable experience at the Bar acquires that sort of legal knowledge but the fact remains that probably he would have not acquired the package of skills needed for his new role as Judge. The requirements of the job of a Judge decidedly differ substantially from that of an advocate. The judge needs to be able to preside over a courtroom, to be able to make reasoned decisions, to write a properly structured judgment and above all to listen rather than to talk. So, it is absolutely essential that a judge should fully understand the rules of procedure and evidence whether criminal or civil. He must be able to deal with disruptive people and with reluctant witnesses in his courtroom. He must have an understanding of the different ways and customs of all those who appear in front of him, whatever be their race, religion, gender, social background or state of health may be. The lack of appropriate knowledge on the part of the judge in the subject matter of his jurisdiction is bound to lead to delay and at times may even lead to a wrong exercise of discretion or a wrong decision not warranted by the facts or the law applicable leading to multiplicity of litigation.

Judicial Education has an equally important role to play in so far as a better court management is concerned. The concept of court management, though of recent origin, yet it has gained considerable importance because it has been tried and tested in many parts of the world and has been found to be a successful method of controlling the huge back log of cases. Court management, as such, was first introduced in the United States of America in the year 1972 and over the years it has gained so much importance that now it has now become imperative for all courts to
use court management techniques to reduce the caseloads. So far our country is concerned a lot requires to be done in the area of court management techniques.

It is high time that court management is taken out of the control of judges and entrusted to trained adjudicators who should be made accountable to the task of modernizing, maintaining and showing performance at all levels of judicial establishment. Judicial time should be devoted to judicial work only.

(vi) Protecting Witnesses From Turning Hostile

Witnesses turning hostile are one of the contributing factors for the delay in the expeditious delivery of justice. To protect a witness from turning hostile, the trial should be conducted in such a way that the witness does not come face-to-face with the accused, as it would help in reducing the psychological fear to a great extent. This could be done by not producing the accused in the court while the witness is deposing his testimony. Further the name of the witnesses should not be disclosed to the accused or his lawyers. The identity of witness should be changed and he should be kept under special protection.

The evidence of the witness should be video recorded in front of a Magistrate or the investigating officer of the case. This video-recorded statement should be made to three authenticated copies and the original should be sealed and presented to the court as evidence. This would ensure that the witness does not retract his statement later on and would also prevent tampering of the tapes.

Sections 191-193 of the Indian Penal Code deals with perjury. As per these provisions, a witness who turns hostile shall be punished with imprisonment of either description for a term, which may extend to seven years, and shall also be liable to fine. A hostile witness is no less than a rebellious violator of law. But our courts are customarily gracious to ignore or let off hostile witnesses thereby impairing the prosecution case. There may be untenable reasoning that if the hostile

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3 Section 193, Indian Penal Code, 1860.
witnesses are taken to task by the courts, the prosecution may face more difficult situations to procure the evidence. These loose arguments cannot justify a lenient attitude towards hostile witnesses. Even in most sensational and heinous crimes like rape, murder, dacoity etc., the conviction rate is most appalling and palpably low. Such a situation shakes confidence of the people in the judiciary. But some ray of hope has arisen after the Zahira Sheikh's conviction for perjury. It is hoped that the courts adopt similar approach in dealing with hostile witnesses.

Justice is not something which can be captured and captivated, in rigid formulae once for all and immutability and immortality cannot be attributed to the said principles. It is a perpetual process, a complex and shifting balance between many oscillating factors. The quest for the justice has been as challenging as the quest for the holy grave and as elusive as an angelic glow. The need of the hour is to endeavour to create justice, which is perceivable, permeable, and productive of values and peace in the society. The stream of justice should not be hindered or polluted by hostility of witnesses. Time has come to work for it.

(vii) Reforming the Legal Education in the Country

Revamping of the legal education is another aspect, which needs to be stressed because the real answer for most legal reform lies in reforming the legal education in the country, which will ultimately lead to the improvement of the overall situation in the judiciary. The quality of legal education imparted to a student or a prospective advocate plays an important role in the sense that it is at that stage he should be motivated to perceive the profession as the one essentially meant for social and public good and that he should do everything at his command for the speedy and proper disposal of cases without being unduly influenced by his own individual interest only. Although in recent years, large numbers of law schools have mushroomed in almost every State, but the quality of legal education imparted in these schools is pathetic and it does not match upto the challenges of the profession.
Some reforms aimed at improving the legal education have been undertaken recently in the country, but much remains to be done.

Money spent on improving the legal education should be considered as an investment. In this regard the Bar Council’s proposal to shut down all the evening Law Colleges and close down three-year law courses in favour of five year integrated law courses should be deliberated upon seriously. There is an eminent need to improve the quality of persons entering the legal profession. Appropriate filters in the form of strict qualification examinations for entry into law colleges and the Bar should be put in place so as to ensure that only the very best find their place in the legal profession and not those for whom there is no hope in any other profession.

Apart from the above mentioned suggestions for elimination of delay, following may be considered

(1) There is a need to enact a comprehensive law on the Speedy Trial on the lines of ‘The Speedy Trial Act, 1974’ as prevalent in United States of America and the same should apply to the both citizens and non-citizens. As there is no ‘Speedy Trial Act’ in India, criminal justice has not always moved swiftly in India. The existing laws are not sufficient for Right to Speedy Trial under Criminal Justice System in India. Therefore, ‘The Speedy trial Act’ is urgently needed. The Speedy Trial Act in India will to serve two purposes. Firstly, to prevent accused from languishing in jail for an indefinite period before trial. Pre-trial incarceration is a deprivation of liberty no less serious than post-conviction imprisonment. In some cases pretrial incarceration may be more serious because public scrutiny is often heightened, employment is commonly interrupted, financial resources are diminished, family relations are strained, and innocent persons are forced to suffer prolonged injury to reputation. Secondly, to ensure an accused’s right to a fair trial. The longer the commencement of trial is postponed, the more likely it is that witnesses will disappear, memories will fade, and evidence will be lost or destroyed. Of
course, both the prosecution and the defense are threatened by these dangers, but only the accused's life, liberty, and property are at stake in a criminal proceeding.

(2) There is need to incorporate provisions in Code of Criminal Procedure namely (1) delay should be avoided, (2) simplicity of procedure, (3) fair deal to the poorer sections of society and of course a fair trial in every case according to the principles of natural justice.

(3) In a vast majority of cases, adjournments are taken on false pretexts, and the law does not have any appropriate method to tackle them. The need of the hour is to have a strict view on adjournments.

(4) Every transfer of a judge involves repetitive and wasteful procedures which involve delays, deceleration in the process of disposal and unwanted adjournments. So the procedure regarding transfer should be made as simple as it can be within the shortest possible time.

(5) Once a trial court completes recording of evidence and hearing of arguments of advocates, it should be made mandatory for the judge to deliver the judgment within a maximum time limit of 30 days thereafter.

(6) There is a need to establish Magistrate Courts within the prison premises. It would not only save time but would also avoid bringing the accused to courts by handcuffing etc.

(7) Serving summons and warrant notices is another area which takes a lot of time. Hence, special steps should be taken to reduce time-consumption, modern gadgets such as phones, wireless systems, fax machines, internet facilities connected with police headquarters should be accepted as valid mode and should be made accessible to both Civil and Criminal Courts so that summons and notices can be sent faster.

(8) No oral evidence be insisted where matter rests solely on documentary evidence.
(9) Evidence should be tape-recorded or recorded by short-hand stenographers and a verbatim record should be kept in the Court which can be used while delivering decisions.

(10) There is a need to reduce the vacations of Judges and Subordinate staff i.e. summer vacation, winter vacation, puja vacation etc. and the judges should sit for the whole day so that the maximum number of cases can be disposed of. The system of vacations is legacy of the colonial rule. The situation as the country is facing demand that courts should do away with such long vacations.

(11) There is a need to avoid double numbering system of proceedings i.e. first time inward entry should be the final number of the proceeding as it will save time.

(12) There is need to reduce pre-trial scrutiny only to verify payment of proper court fees and other objections to be taken up by other side and fix a time limit.

(13) Preparation and Service of Summons should be allowed mainly through Advocates.

(14) The need is to give emphasis on final disposal of matters than on disposing interim applications and, therefore, interlocutory orders should be an exception rather than the rule. Interim orders should not result in prolongation of the case.

(15) In recording the plea of the accused, answers to each allegation should be recorded.

(16) Where an Advocate is appointed, presence of parties should be insisted upon only at crucial stages of trial.

(17) Copies of Judgments should be given in open court to parties and the same will save the time of the litigant.

(18) The judges are required to give precise and concise judgments. Lengthy judgments consume much of the time of the Judges as well as the court staff. Writing separate judgments even when the judges are concurring make the
exercise time-consuming and confusing. Thereby it becomes different to find the ratio in quick time.

(19) Supreme Court and High Court decisions ought to be published by those Courts just as the Acts and Rules published by the Government, since those decisions are constitutionally binding on lower courts.

(20) There is a need to make Arbitration procedure applicable to all courts and all complicated civil and criminal procedures which are the root cause of the delays should be abolished.

(21) Sincere attempts should be made to set up more specialized tribunals and reduce load on courts.

(22) There must be a process of progressive and massive decriminalization of offences now recognized and made culpable as penal offences. They should be treated as merely actionable wrongs for which compensation and not punitive action is the appropriate remedy.

(23) The class of compoundable offences under the Indian Penal Code (IPC) and other laws should be widened.

(24) In the disposal of arrears of criminal cases, experienced criminal lawyers be requested to work as part-time judges on a particular stipulated number of days on the pattern of ‘Records and Assistant Records’ in the United Kingdom. There is an existing provision in the Criminal Procedure Code for honorary Judicial Magistrates, which has not been utilized or its potential realized even in part.

(25) Magistrates and Sessions Judges while remanding person under trial to judicial custody should clearly indicate in the very order of remand the date of termination of the same. That is, the judicial remands should be self-limiting and should indicate the date on which the under-trial prisoner would automatically be entitled to get bail in terms of the conditions prescribed by the Supreme Court.
(26) There should be a comprehensive regular training and orientation programmes for all judicial officers and Court administration. A good training programme serves the futuristic need of the system by improving the potential to optimum level. The training needs to include Court and Case Management besides methods to improve their skills in hearing cases, taking decisions and writing judgments.

(27) In the proportion of population-judge ratio, India is today amongst lowest in the world. The existing strength being inadequate even to dispose of the fresh institution, the backlog cannot be reduced without additional strength, particularly, when the institution of cases is likely to increase in coming years. The judge population at present is 13.5 judges for one million citizens. In contrast there are 130 judges in the United States of America for one million citizens. In 2002, the apex Court of India has directed the centre government to raise the judge population ratio to 50 per million in a phased manner, as recommended by the Law Commission of India in its 120th Report. The Government of India should seriously think about it otherwise the legal system would collapse at any time.

(28) The right to appeal against interim and interlocutory orders should be curtailed because these are normally ploys to prolong the cases. Only summary appeals should be allowed. Further the overall appeal procedures should be made strict.

(29) Arrears before every judge should be made public every 6 month and the Chief Justice should be given power to discipline judges who is found to be dragging the cases.

(30) Judiciary should be made part of the plan so that there are more Courts, judges and law-clerks to assist the judiciary.

(31) Written brief should be made the norm and oral arguments should be minimal and time-bound.
(32) There is a need for a geographical decentralization of the judicial structure. Considering the enormous size of the country and the inconvenience caused to the litigants come from remote corners of the country—a Supreme Court bench be attached with every High Courts and a High Court bench be attached with every district Courts.

(33) Fast Track Courts should be treated as different from normal Courts and should be given very specific matters to handle. Over burdening would lead them handling an equal amount of litigation. Such Courts should only be given old pending matters or matters which are very complicated or the disposal of which require a large number of witnesses.

(34) There is a need to establish Gram Nayalayas as per the Gram Nayalays Act, 2008 at the grass roots level for the purposes of providing assess to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected there with or incidental thereto.

(35) Establishment of additional Courts at any level involves enormous expenditure—capital as well as recurring. Appointment of whole time staff—judicial and administrative for new courts involves considerable recurring expenditure. There is a need to strengthen the morning and Evening Courts and these courts should start functioning from 7:30 am to 10:00 am and from 5:00 pm to 7:30 pm respectively so that the functioning of existing courts may not suffers. The existing court buildings, furniture, library and other infrastructure and equipment could be used for the second shift, without the need for additional expenditure. Re-employment of retired judges, judicial officers and administrative staff would be far less burdensome to the exchequer, as they would be paid only the difference between the salaries and emoluments payable to serving judges and officers of the same rank and their pension.

(36) Judiciary is always held responsible for mounting arrears of case. But it does not control the resources of funds and has no powers to create additional
courts, appoint adequate court staff and augment the infrastructure required for courts. The National Commission to Review the Working of the Constitution noted that neither had any provision for funds for the judiciary been made under five years plan and nor the Finance Commission made any provision to serve the financial needs of the courts. There is a need to give financial autonomy to judiciary with regard to creation of posts, allocation of project costs and incurring of expenditure.

The study may be concluded by quoting Justice WARREN BURGER, the former Chief Justice of American Supreme Court who observed

“The harsh truth is that we may be on our way to a society overrun by hordes of lawyers, hungry as locusts and bridges of judges in numbers never before contemplated. The notion that ordinary people want black robed judges, well-dressed lawyers, fine paneled Court-rooms as the setting to resolve their disputes, is not correct. People with legal problems like people with pain, want relief and they want it as quickly and inexpensively as possible.”