CHAPTER II

THE ORIGIN OF AND THE NEED FOR THE RIGHT TO SPEEDY TRIAL

The right to speedy trial has its roots at the very foundation of English law heritage. Its first articulation in modern jurisprudence appears to have been made in *Magna Carta* (1215), wherein it was written, "We will sell to no man, we will not deny or defer to any man either justice or right." But evidence of recognition of the right to speedy justice in even earlier times is found in the *Assize of Clarendon* (1166).

By the late thirteenth century, justices, armed with commissions of gaol delivery and/or oyer and terminer were visiting the countryside three times a year. These justices, Sir Edward Coke wrote in Part II of his Institutes, "have not suffered the prisoner to be long detained, but at their next coming have given the prisoner full and speedy justice, . . . without detaining him long in prison." To Coke, prolonged detention without trial would have been contrary to the law and custom of England; but he also believed that the delay in trial, by itself, would be an improper denial of justice. In his explication of Chapter 29 of the *Magna Carta*, he wrote that the words "We will sell to no man, we will not deny or defer to any man either justice or right" had the following effect:

"And therefore, every subject of this realme, for injury done to him in bonis, terris, vel persona, by any other subject, be he ecclesiasticall, or temporall, free, or bond, man, or woman, old, or young, or be he outlawed, excommunicated, or any other without exception, may take his remedy by the course of the law, and
have justice, and right for the injury done to him, freely without sale, fully without any denial, and speedily without delay.”

To Coke, *Magna Carta* was one of the fundamental bases of English liberty. Thus, it is not surprising that when George Mason drafted the first of the colonial bills of rights,\(^5\) he set forth a principle of *Magna Carta*, using phraseology similar to that of Coke’s explication: “In all capital or criminal prosecutions,” the Virginia Declaration of Rights of 1776 provided, “a man hath a right . . . to a speedy trial . . . .”\(^6\) That this right was considered fundamental at this early period in the history is evidenced by its guarantee in the constitutions of several of the states of the new nation,\(^7\) as well as by its prominent position in the Sixth Amendment.

The history of the right to speedy trial and its reception in U.S. clearly establish that it is one of the most basic rights preserved by the Constitution. Today, each of the fifty States guarantee the right to speedy trial to its citizens.

However, the concept of speedy trial is not entirely rooted in Western legal thought.\(^8\) At page 544 of the Legal and Constitutional History of India by M. Rama Jois, Vol.I, 1984 edition, wherein the following dictum of *Katyan* has been noticed:

“(i) The king should not delay in examining the witnesses. A serious defect, namely, miscarriage of justice, would result owing to delay in examination of witnesses.

(ii) The king should himself examine the witnesses that are present (in court) and should consider along with the members of the court the statement made by them.

The concept of speedy trial so enthusiastically adopted at distant age, when
the world was still quivering under a medieval concept of criminology, was jealously guarded by a historical process and handed down to modern age in the form of Sixth Amendment of the American Constitution and in India by its induction into Article 21 of the Constitution by the Supreme Court and its inherent and latent omnipresence in the laws of the land.9

It seems incredible that a concept born nearly a thousand years ago, when dungeon would be filled for the theft of a loaf of bread would require reiteration in the years just before 21st century in India that too rather hesitantly in the initial stage.10

Indeed a look back into the legislative history would also indicate the concern of the law epitomized in the adage that justice delayed is justice denied. Even as regards the old Code of Criminal Procedure, 1898 the same was virtually overhauled by the amendment of 1955 to ensure speedier investigations and trials. Particularly with respect to the trials of sessions cases the commitment procedure was virtually abolished and in any case simplified in order to quicken up their pace. The subsequent 41st report of the law commission, which is the foundational base upon which the changes in the present Code of Criminal Procedure, 1973, have been wrought, is clearly indicative of the need for speed in this context in modern times.

STATUTORY PROVISIONS

Article 10 of Universal Declaration of Human Rights states that “Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.”

Article 14 (3) (c) of the International Covenant on Civil And Political
Rights states that "In determination of any criminal charge, everyone is entitled to be tried without undue delay."\textsuperscript{11}

Article 6 of the European Convention on Human Rights provides for right to a fair and public hearing, so also Article 3 of the European Convention on Human Rights provides that,

"every one arrested or detained — shall be entitled to trial within a reasonable time or to release pending trial."

Article 16 of the Draft Principles on Equality in the Administration of Justice reiterates that everyone shall be guaranteed the right to prompt and speedy hearing.

The American Convention on Human Rights under Article 8 provides for "Right to a fair trial."

In the United States, speedy trial is one of the Constitutionally guaranteed rights. The Sixth Amendment to the Constitution provides that,

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial."

This is in addition to the Fifth Amendment which \textit{inter alia} declares that "no person shall....be deprived of life, liberty or property, without due process of law" which corresponds broadly to Article 21 of the Constitution of India. (and clause 1 of Article 31, since deleted)

The Protection of Human Rights Act (Act No.10 of 1994), 1993 which defines "human rights" (S.2 (d)) meaning as the rights relating to life, liberty,
equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India, provides for setting up of Human Rights Courts for the purpose of providing for the speedy trial of offences.12

The provisions of the Code of Criminal Procedure provide for an early investigation and for a speedy and fair trial. The Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the code.13

The relevant provisions of the Code of Criminal Procedure of 1973 may be classified according to whether the accused is arrested and the gravity of the offence. This classification does not purport to be exhaustive.14

a. When the accused is arrested:

i) he/she has to be produced before a Magistrate within 24 hours of arrest. (Constitution, Article 22(2) and S.57)15

ii) if the arrest is effected before completion of the investigation, a report has to be made to the Magistrate. (S. 167(1))16

iii) custody before conviction is restricted:

1) before commencement of trial to a maximum of 15 days, which is extendable to 60 or 90 days depending on the gravity of the offence. (S. 167(2)) 17

2) during the trial to a maximum of 15 days, extendable without any limit, subject to a maximum of 15 days at a time, but limited to a total of 60 days if the offence is triable by the Magistrate. (S. 309 (2) read with S. 437 (6))18
3) the trial itself is to be completed expeditiously, and if cannot be completed in a day, has to be held on a day-to-day basis, adjournment beyond a day to be for a reason to be recorded. (S. 309(1))

except the last one, none of the limitations are applicable if the accused is free, pending trial.

b. Depending on the gravity of the offence:

i) accused to be released if the trial is not completed within 60 days of commencement of evidence, and he/she is in custody for the whole period and if the offence is triable by a Magistrate. (S.437(6))

ii) accused to be discharged if the offence is triable summarily and he is in custody for 6 months and investigation is not completed. (S. 167 (5) & (6))

iii) the pre-trial custody limit is not applicable if the offences are punishable with life imprisonment or death.(S.437(1)(i))

iv) the limit on pre-trial custody is not applicable in case of a record of prior conviction for certain offences. (S.437 (l)(ii))

There are some limits on the time, which may be taken for all stages of the proceedings, and there is conferred on the court, discretion to extend every such limit. (Except of course, the 24-hour limit imposed by Article 22(2) of the Constitution. Cf. Article 22(3) – exception in case of alien enemies and detainees under preventive detention laws.)

The Indian doctrine of speedy trial has developed independent of the statutory provisions.
NEED FOR SPEEDY TRIAL

Now, the question arises what is a trial? And why should a trial be speedy? Trial is essential to decide the guilt or otherwise of the accused and this should be done with reasonable dispatch.

Accusation by itself affects the accused. It does prejudice him in at least three ways. They are: (a) the stigma caused by accusation per se; (b) the trouble caused by frequent attendance at courts; and (c) arrest and incarceration before trial.

Delayed trials oppress not only the accused. Since the objective of the criminal justice system is primarily to secure the interests of the society and the victims, the victim too is often required to participate in the trial process, often as witness. As witness, he is called to the police station, at least questioned frequently during the investigation stage by the police. As both complainant and witness, he is expected to be in the court every time the case is posted. (Section 249 Cr.PC) If he chooses to come before the court as complainant, his presence is often more strictly enforced than that of the accused. Thus, it is not the accused alone who has to be present at the trial. If mere appearance in court is harassment, then it operates both ways.

That the criminal proceeding is titled “State v. Accused,” does not mean that victims have no interest in the trial. Every victim, and his dear and near closely follow the trial. After being injured by the crime, after being traumatized by the long interrogation by the police and a tiring wait at the court veranda, if the trial does not produce a result, does the Supreme Court expect the victim to agree with it when it calls itself the “sentinel on the qui vive” of his rights?
A long delayed investigation and trial will lead to the effacement of facts of the crime from the minds of the witnesses and by the process of the time, the rights of the victim family will suffer more than being protected if the trials are delayed. The only way the rights of the victim family are protected is by punishing the indicted person if he is really involved in the case by speedy collection of evidence by the Police, its production before the court with equal speed and the conclusion of the trial without delay. This is possible only when the State can provide machinery, infrastructure and wherewithal for the collection of evidence and its production in court as early as possible after the occurrence so that the facts are not lost in the dense fog of time.\textsuperscript{29}

Speedy trial is the only method by which justice can be meted out in its true, natural and legal form. Protracted and delayed investigation and trial negate the very concept of justice and fair play. The duty of a court of all levels is to do justice and the intention of justice can only be to find the truth. Justice is to see that it is done as expeditiously and as quickly as possible. Justice is to see that the innocent get a quick relief from their travail and the guilty their just dessert. Justice is not to involve an individual in a criminal case and lead the search for truth to languish for months, years and decades till that person is found either guilty or innocent. Justice is not to prosecute a person by his protracted involvement without the end being in sight for a long period. Truth can only be arrived at if the trial is promptly initiated and speedily concluded because it is only then that the courts would be able to discover whether the indicted person has committed the crime or has been incorrectly indicted.\textsuperscript{30}

As such, it is both in the interest of the accused as well as the society that a criminal trial is concluded soon. If the accused is guilty, he ought to be declared so. Societal interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable
dispatch - reasonable in all the circumstances of the case. Since it is the accused who is charged with the offence and is also the person whose life and/or liberty is at peril, it is but fair to say that he has a right to be tried speedily.\textsuperscript{31} Correspondingly, it is the obligation of the State to respect and ensure this right. It needs no emphasis to say, the very fact of being accused of a crime is cause for concern. It affects the reputation and the standing of the person among his colleagues and in the society. It is a cause for worry and expense. It is more so, if he is arrested. If it is a serious offence, the man may stand to lose his life, liberty, career and all that he cherishes.\textsuperscript{32}

Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding the criminal cases. It is a trite saying that justice delayed is justice denied. Table 25(b) of the NCRB report, 2000 furnishes the duration of trial of cases during 2000. It is seen that 10,392 cases of the duration of 3 to 5 years, 6,503 cases of the duration of 5 to 10 years and 2,187 cases of the duration of 10 years were disposed of by all the courts in India during 2000. Taking more than 3 years (sometimes even 10 years) amounts to denying fair trial. If the accused is acquitted after such long delay one can imagine the unnecessary suffering he was subjected to. Many times such inordinate delay contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time, or the witnesses do not remember all the details or the witnesses do not come forward to give true evidence due to threats, inducement or sympathy. Whatever may be the reason it is justice that becomes a casualty.\textsuperscript{33}

TRIAL PROCEDURE

Having examined the statutory provisions aiding in early investigation and speedy trial, and the need for speedy trial, it would be apt, at this stage, to look
into the trial procedure. The system followed in India for dispensation of criminal justice is the Adversarial system of common law inherited from the British colonial rulers. The accused is presumed to be innocent and the burden is on the prosecution to prove beyond reasonable doubt that he is guilty. The aim of the criminal justice system is to punish the guilty and protect the innocent. In the adversarial system truth is supposed to emerge from the respective versions of the facts presented by the prosecution and the defense before a neutral judge. The Judge acts like an umpire to see whether the prosecution has been able to prove the case beyond reasonable doubt. The trial is oral, continuous and confrontational. The parties use cross-examination of witnesses to undermine the opposing case and to discover information the other side has not brought out.34

The adversary system of trial enables an impartial and competent court to have a proper perspective of the case, and it is believed that on the whole this system is a better device to discover the truth in a fair manner. In our system of criminal trials, generally speaking, the prosecutor representing the State accuses the defendant (accused person) of the commission of the alleged crime; and the law requires him to prove his case beyond reasonable doubt. The adversary system as such recognizes equal rights and opportunities to both the parties, i.e., the State and the accused person, to present their cases before the court. But under the prevailing conditions in India, the equal legal rights and opportunities would in practice operate unequally and harshly, affecting adversely the poor indigent persons who are unable to engage competent lawyers for their defense.35

The most indispensable condition for a fair trial is to have an independent, impartial and competent judge to conduct the trial. In this respect the Code has made the following provisions.36

a) Separation of judiciary from the Executive,
b) Open courts,

c) judges and magistrates not to be personally interested in the case,

d) transfer of cases to secure impartial trial

e) competent judges made available through hierarchy of courts and

f) qualified judges and magistrates.

Adversary system as a means of securing fair trial would necessarily require not only competent and independent judges and magistrates, but also competent and able lawyers adequately representing the parties before the court.³⁷

Crime is a wrong done more to the society than to the individual victim of the crime. Therefore, in a criminal trial the State representing the society comes before the criminal court and seeks punishment to the accused person suspected of having committed the crime. In the case of a non-cognizable offence, the offence being in the nature of a private wrong, the aggrieved party or the complainant, and not the State, is the prosecuting party. Even in such a case, the State, through its Public Prosecutor can step in and take charge of the prosecution.³⁸

The adversary system of criminal trial assumes that the State using its investigative resources and employing competent prosecutors will prosecute the accused, who, in turn, will employ competent legal services to challenge the evidence of the prosecution. However, considering that most of the accused persons in India are uneducated and poor and are often unable to engage lawyers for their defense, it is highly important and necessary that proper arrangements are made for making the legal services available to them.³⁹

Article 22(1) of the Constitution, inter alia, provides that no person who is arrested shall be denied the right to consult and to be defended by a legal
practitioner of his choice. Similarly, S.303 of the Code provides that any person accused of an offence before a criminal court, or against whom proceedings are instituted, may of right be defended by a pleader of his choice. It has been held that the right to consult a lawyer for the purposes of defense begins from the time of arrest of the accused person and even before the actual beginning of the trial. If the right to counsel is essential to fair trial, it is equally important to see that the accused has the necessary means to engage a lawyer for his defense. The Code has therefore made provision to provide a lawyer to the indigent accused person in a trial before a court of session; the Code also enables a State Government to extend this right to any class of trials before other courts in the State.

The adversary system of trial that we have adopted is based on the accusatorial method; and the burden of proving the guilt of the accused is upon the prosecution and unless it relieves itself of that burden, the court cannot record a finding of the guilt of the accused. Every criminal trial begins with the presumption of innocence in favour of the accused; and the provisions of the Code are so framed that a criminal trial should begin with and be throughout governed by this essential presumption. To safeguard the interest of the accused, the following rights of the accused are recognized.

RIGHTS OF ACCUSED PERSONS AT THE TRIAL

a) Right to know of the accusation: In order to enable the accused to make preparations for his defense, it is essential that he be informed of the accusations against him. The Code therefore provides in unambiguous terms that when an accused person is brought before the court for trial the particulars of the offence of which he is accused shall be stated to him. In case of serious offences, the court is required to frame in writing a formal charge and then to read and explain the charge to the accused person.
b) Right of accused to be tried in his presence: The personal presence of the accused throughout his trial would enable him to understand properly the prosecution case as it is unfolded in the court. A trial and a decision behind the back of the accused person is not contemplated by the Code, though no specific provision to that effect is found therein. The requirement of the presence of the accused during his trial can be implied from the provisions which allow the court to dispense with the personal attendance of the accused under certain circumstances. S.317 however makes an exception to the above rule and empowers the court to dispense with the personal attendance of the accused person at his trial under certain circumstances. At any stage of inquiry or trial, if the court is satisfied that the personal attendance of the accused before it is not necessary in the interests of justice, or that the accused persistently disturbs the proceedings in court, the court may, if the accused is represented by a pleader, dispense with his attendance and proceed with such inquiry or trial in his absence, and may, at any subsequent stage of the proceedings, direct the personal attendance of such accused.

c) Evidence to be taken in presence of the accused: Except as otherwise expressly provided (by any such sections like S.205, 293,299,317), all evidence taken in the course of the trial or other proceedings shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in the presence of his pleader. However, it should not be understood that the above rule is applicable even where the accused by his own conduct makes recording of evidence in his presence an impossibility. Otherwise it would not only mean negation of a fair trial but also mean an end of all trial at the choice of the accused.

d) Right to cross examine prosecution witnesses: It is an important right for
the purposes of defense. A criminal trial which denies the accused person
the right to cross-examine prosecution witnesses is based on weak
foundation, and cannot be considered as a fair trial.\textsuperscript{48}

e) Right to produce evidence in defense: Though the burden of proving the
guilt is entirely on the prosecution and though the law does not require the
accused to lead evidence to prove his innocence, yet a criminal trial in
which the accused is not permitted to give evidence to disprove the
prosecution case cannot be considered as just and fair. The refusal without
any legal justification by a magistrate to issue process to the witnesses
named by the accused person has been held enough to vitiate the trial.\textsuperscript{49}

f) Doctrine of ‘autrefois acquit’ and ‘autrefois convict’: According to this
doctrine, if a person is tried and acquitted or convicted of an offence he
cannot be tried again for the same offence or on the same facts for any other
offence. This doctrine has been substantially incorporated in Article 20 (2)
of the Constitution and is also embodied in S.300 of the Code. The second
or subsequent trial in violation of the above doctrine would mean unjust
harassment of the accused person and can be considered as anything but
fair and has been prohibited both by the Code and the Constitution.

g) Expeditious trial: In every inquiry or trial the proceedings should be held as
expeditiously as possible, and in particular, when the examination of
witnesses has once begun, the same shall be continued from day to day
until all the witnesses in attendance have been examined unless the court
finds the adjournment of the same beyond the following day to be
necessary for reasons to be recorded.\textsuperscript{50}

The concept of fair trial has permeated every nook and corner of the
Criminal Procedure Code. This is what it should be. The major objective of the
Code is to provide for fair trial in the administration of criminal justice. A fair trial implies a speedy trial and long pre-trial incarceration would amount to violation of right to speedy trial and thus resulting in violation of human rights.

Speedy trial as such is not a specific fundamental right. The Criminal Procedure Code does not guarantee specifically any right to speedy trial. Nor is there any provision prescribing the maximum period for which a Magistrate can keep an under-trial in jail without trial. But the Apex Court has laid great emphasis on speedy trial of criminal offences, and has emphasized “it is implicit in the broad sweep and content of Article 21.”

A criminal trial which drags on for unreasonably long time is not a fair trial. A fair trial implies a speedy trial. This is particularly so in a case where the accused is not released on bail during pendency of the trial and the trial is inordinately delayed. No Procedure can be ‘reasonable, fair or just’ unless ‘that procedure ensures a speedy trial for determination of the guilt of such person.’ Long pre-trial confinement of an individual in prison jeopardizes his individual liberty. Speedy trial is thus “an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.”

ADMINISTRATION OF CRIMINAL JUSTICE

It is said that justice delayed is justice denied. Before examining the reasons for the tardiness in justice delivery system resulting in denial of justice, one must know in detail as to what is justice, the way in which justice is administered and different ways in which delays occur in administering the justice. According to Otto Bird “the most famous and influential definition in the entire discussion of justice is the one the Roman lawyers enshrined in the Justinian code: “justice is the constant and perpetual will of rendering to each his right.” To be just is to render to each what is his or her due. What is each person’s ‘right’ or
Administration of justice is the maintenance of right within a political community by means of physical force of the State. It is a device adopted by the modern and civilized community in replacement of the primitive working of private vengeance and valiant services. This administration of justice is divided into two parts namely (1) administration of civil justice and (2) administration of criminal justice. The former is dealt with in the civil proceedings and the latter with the criminal proceedings, and both of them are administered in different sets of circumstances. In the former decrees are granted, claims are allowed and specific performance, restitution, injunctions and the like are the result of the civil proceedings while in the criminal proceedings inflictment of punishment from the sentence of death to fine and binding over for a particular period to keep peace and release on bail, probation and admonition are the outcomes. Crime and punishment are the matters which have got an effect on the basic structure of the community and the science which seeks the root cause of such effect to ensure security to the society and individual are the matters of criminology and penology.

In every democratic civilized society, the criminal justice system is expected to provide the maximum sense of security to the people at large by dealing with crimes and criminals effectively, quickly and legally. More specifically, the aim is to reduce the level of criminality in society by ensuring maximum detection of reported crimes, conviction of the accused persons without delay, awarding appropriate punishments to the convicted to meet the ends of justice to prevent recidivism.

The criminal justice system serves the general functions of
a) protecting citizens' lives, safety, property and other rights as law provides;
b) preserving social and public order;

c) preventing crime by denying opportunities for crime and deterring would be offenders; and

d) enforcing the law with justice by apprehending and prosecuting suspects, adjudicating the accused, and administering sanctions to those convicted.57

These functions may be summarized as protection, order maintenance, law enforcement and crime prevention.

The system is sub-divided into four components each of which has its own specific functions.

1) Law enforcement,

2) offices of prosecution,

3) criminal trial courts, which involve the adjudication of cases to determine guilt or innocence and the proper sanctioning of those found guilty, all within the broader function of providing justice and

4) corrections.58

In the system of criminal justice administering of sanction should follow the adjudication. The primary principle of criminal law is that imprisonment may follow a judgment of guilt but should not precede it. Adjudication of guilt or otherwise is done through a criminal trial by an impartial court. The primary object of criminal procedure is to ensure fair trial to every person accused of any crime. The notion of fair criminal trial has close links with the basic and universally accepted human rights. (See Article 10 and 11 of the Universal Declaration of Human Rights as adopted and proclaimed by the General Assembly.
of the United Nations on December 10, 1948) A fair trial implies a speedy trial.

An accused is presumed to be innocent till he is proved guilty in a fair trial. But can the accused be allowed to be kept continuously in prison prior to being adjudicated guilty?

One such incident was noticed by Justice A.S. Anand, Chairman of National Human Rights Commission during his visit to Ambala central jail. He was astonished to observe that an accused by name Jaisingh had been rotting in jail for the past 26 years. He was committed to the prison on 4th September 1977 and had not been produced before any court since then. He was sent to the hospital for mental care on 9th May, 1979 and had been a forgotten species. The Human Rights Commission commented that this is gross violation of human rights and that the Judiciary and prison authorities failed to protect rights of the under-trials. Reports explaining the inordinate delay in dispensation of justice were called for from the Superintendent of the Hospital for Mental Care, Superintendent of central jail, Ambala and Additional Sessions Judge of Kurukshetra.

The purpose of criminal trial is to administer justice. What kind of justice is administered when persons are continuously kept in prison for years together without being brought to trial.

A very grievous aspect of the present-day administration of criminal justice which perpetrates great injustice on the accused persons is their long pre-trial incarceration. Thousands of accused persons languish in jails awaiting trial for their offences. (The law commission has in its 77th and 78th reports reported on this matter. It has said that the matter of reducing delay and arrears in trial courts is of “the greatest importance” to which “the highest priority” ought to be given. On 1.4.1977, there were over one lakh under-trials languishing in jails. The Commission has called the problem as ‘appalling.’) Sometimes, an under-trial
may remain in prison for much longer than even the maximum prison sentence which can be awarded to him on conviction of the offence of which he is accused. This adversely affects the rights of the under-trials who are presumed to be innocent till proven guilty. This also leads to overcrowding in prisons. Indian jails are overcrowded, like jails in most Western societies. But the scale and character of overcrowding are un-enviably unique. The Shah Commission found that as against the authorized capacity of 1,83,369 in all Indian prisons on 1st January, 1975 the total population of Indian jails was 2,20,146. Out of a total jail population of 2,20,146 the number of under-trial prisoners was 1,26,722.

A large number of people in Indian prisons are not convicts but people awaiting trial. The number of under-trials admitted to jails in 1960 was 5,93,398 as against 4,12,198 convicts. In a decade, in 1970, it rose significantly; there were 9,38,598 under-trials against 4,40,059 convicts. The Working Group on Prisons found that the under-trial admissions have risen in the whole country by 58 per cent, while the convict admissions have risen only about 7 per cent. There is an increase of nearly 29 per cent in the admission of under-trials in terms of the rate per one lakh of population from 1960 to 1970. Regional variations, of course, exist; the largest daily average population of under-trials is found in Bihar where it rose from 8,750 in 1961 to 22,460 in 1970. Substantial increases in this regard have also been noticed in Andhra Pradesh, Kerala, Madhya Pradesh and Orissa. “Marginal” increases are registered almost throughout India.

The statistics of the last few years show that at any given point of time the percentage of under-trial prisoners has always exceeded that of convicts. Out of total jail population of 1,41,767 as on 30th June, 1981 there were as many as 87,144 under-trial prisoners representing 61.5 per cent of the total jail population. The highest number of under trial prisoners over five years and above is 423 in Bihar. Under-trial prisoners form 64 per cent of the inmates of prison in most of
the States and Union Territories. The National Human Rights Commission says that 60 per cent of arrests are unnecessary and unjustifiable. Former Chief Justice Anand cites the case of an accused in West Bengal police custody for 37 years awaiting trial. The Supreme Court on an application requested the Chief Justice of the Calcutta High Court to nominate a Chief Judicial Magistrate to enquire into the manner in which under-trial was in custody for 37 years. More alarming statistics could be obtained from “Prison Statistics-2000.” (A publication of the National Crime Records Bureau of the Union Ministry of Home Affairs) All the inmates of prisons in Dadra Nagar Haveli are under-trials. 94.66 per cent in Meghalaya, 92.19 per cent in Manipur and 91.67 per cent Jammu and Kashmir jails are awaiting trial. In the states of Nagaland, Utter Pradesh, Bihar, Mizoram and Karnataka many prisoners are awaiting trial for years together.

These under-trial prisoners consisted principally of two categories: one representing those who were denied bail by the courts on account of their involvement in serious offences and the other consisting of those who could not furnish bail for one reason or the other. These under-trial prisoners were herded together in jails where the problem of overcrowding had reached unmanageable proportions and they were living in shockingly horrible conditions. Normal capacity of jail remains 1273 as against the actual prisoners between 2300 to 2500. No proper classification of different categories of prisoners depending on the nature and type of criminals is made, such as for under trials, females, habituals, casual offenders, juveniles, first offenders and political prisoners etc.

The 1920 Jail Committee described the state of under-trial prisoners as “among the least satisfactory features of prison administration in this country.” It observed that the “treatment of an under-trial, as soon as he enters a jail, resembles too nearly that of a convicted prisoner.” The practice of taking un-convicted prisoners through the streets from jail to court and back, often handcuffed,
sometimes fettered and roped, is “too common.” The Committee pointed to the virtual absence of segregation between under-trial and convict population in Jails and agreed with the view that “contamination begins in the under-trial yard.” The Committee appreciated that “the difficulties of providing adequate and efficient separation are very great. To accomplish this will involve a large amount of structural alteration in many prisons, while in some owing to the restricted area available, it will be actually impossible.” The Committee recommended that “if it were practicable, it would doubtless be desirable where large numbers of under-trial prisoners are received, to accommodate them in a separate jail.” Failing this, it recommended that the separate blocks within a prison for under-trial prisoners should be in the form of “separate enclosure outside the main gate.”

The Committee’s analysis and recommendations are held valid even today. The under-trials’ plight has actually worsened since independence. This is mainly due to the fact that overcrowding in jails has assumed monstrous proportions, with under-trial prisoners actually overtaking the total convict populations in most Indian jails. The command of Section 27(3) of the Prisons Act, 1894, requiring segregation of under-trials from convict population is thus regularly flouted with impunity by the States and the Union.

Added to this, the prison houses in most of the states barring exceptions are in a chaotic shambles. There, both under-trials and convicts including children are incarcerated and huddled together in crumbling structures, sometimes more than a century old, which are unfit for housing human beings. They are crowded beyond number and not unusually holding six or seven times the inmates for which they were originally designed, and wherein there is not enough space for the prisoners even to stretch themselves or sleep at night. In many supposed prisons the inmates take their turns to sleep at night in cells where even the most elementary conveniences necessary for human beings are denied. Indeed, it has to be seen to
be believed that prison inmates are herded together sometimes worse than animals.\textsuperscript{76}

The situations in Tihar Jail and incidents of blinding of under-trial prisoners that has happened in Bhagalpur Jail, is a reflection of crime explosion, judicial slow motion and mechanical police action coupled with unscientific negativity and expensive futility of the prison administration.\textsuperscript{77}

There are more innocent captives than adjudged criminals in the country. To make things worse, prison conditions are abominable and persons detained in prisons as under trials are often subjected to various forms of torture, ranging from hand cuffing to maiming. There is little justice within the four walls of prison.\textsuperscript{78}

Under-trial prisoners, between ten and eighteen years of age are employed as helpers. They cook, wash utensils, clean rooms, fetch water and do back breaking labour to help the men, who are employed to do these chores. They are kept confined into a ward which had no fan and no proper sanitary facilities. The boys are kept in jail as long as possible because without them the persons employed to do the menial duties would have no time to relax. They are taken from one court to another to be tried under one charge or another and kept in jail all the while.

A touching account of crime of punishment which in fact touches beyond tears is for children being lapped up and locked up for use as bonded labour on tramped charges in the punitive house of justice.\textsuperscript{79} Whenever the number of prisoners goes up, the police are asked to bring the boy to help the chores. One such instance has been narrated in Sunil Batra's case,\textsuperscript{80} when one boy was picked up from Defense colony in New Delhi kept in the police lock-up for the night and brought to jail in the morning. In this way young persons, exposed to violence and sufferings of a jail life, rub shoulders with hardened criminals and lead a tragic
existence. The position indeed was so deplorable in the State of Bihar that many of these under-trial prisoners were languishing in jails for years without even their trial having commenced. The Law Commission of India studied this problem in its report Congestion of Under-trial Prisoners in Jails. (78th report) (February 1979)

Unlike the American constitution, the Indian Constitution does not, in express terms, provide for the right to speedy trial. Probably this accounted for the absence of any litigation by the under trial prisoners in spite of there being a large number of them languishing in various prisons in this vast country. The unmasking of the horrendous situation prevalent in the Bihar Jails where a few hundreds of under trial prisoners were waiting for their trials for periods longer than the terms for which they would have been sentenced had they been convicted of the offences charged against them, has made the Indian Supreme Court to read the right of speedy public trial as an ingredient of the right to life and liberty guaranteed by Article 21 of the Constitution.

In spite of the activist interpretation given to the Article 21 reading right to speedy trial in the Article 21, there have been delays in dispensation of justice and delay defeats justice. The various factors which contribute for delay in criminal justice system are examined hereunder.

CAUSES FOR DELAY

Chief Justice Bhagwati observed, “I am pained to observe that the judicial system in the country is almost on the verge of collapse. These are strong words I am using but it is with considerable anguish that I say so. Our judicial system is cracking under the weight of arrears.”

1. ARREARS

Arrears cause delay and delay means negating the accessibility of justice in
true terms to the common man. In 1952, Motilal C. Setalwad, the first Attorney General of free India, wrote, “A burning problem which the citizens, lawyers and judges face alike is that of the congestion in courts of law and the consequent inordinate delays in administration of justice.” Inordinate delays only tend to fade memories and bring in a host of factors which militate against the successful culmination of a criminal prosecution.

Time consumption is a structural property of legal systems. This feature of the legal systems is related to the normativity of law. Except gross situations where the time taken is manifestly unreasonable (say 10-20 years) it would be somewhat dishonest to talk about “delays” in judicial decision-making without specifying how one decides what constitutes delay. Expedition by itself is no virtue; expedition in pursuit of equity is. But pursuit of equity (or justice) is after all, pursuit of excellence.

For well over a quarter century, the State has ignored the warning signals concerning the over load of its justice institutions and their possible break down. The Fourteenth Report of the Law Commission offers a diagnosis of the problem and makes many worthwhile recommendations as early as in 1958. The Commission’s Fourteenth Report was preceded, in 1949, by the Report of the High Court Arrears Committee under the chairmanship of Justice S.R. Das. Comprehensive reviews of state administration of justice were commissioned by the State of Utter Pradesh and West Bengal during the period 1949-51. In 1972, another committee reported under the chairmanship of Justice J.C. Shah. All these reports demonstrate the frightful urgency for combating the problem of overload and arrears.

According to Crime in India 1974 (1978) there were at the beginning of 1974, 13,07,933 total cognizable cases pending for trial before the Indian courts,
of which trial was completed only in 3,63,665 cases. The number of cases carried forward for trial for the next year was 8,68,836. In percentage terms, trial was completed only in 27.8 per cent cases, 66.4 per cent remained pending. In addition, there were 32,48,010 cases for trial under special and local laws throughout India; trial was completed in as many as 23,15,571 cases and yet the cases pending at the end of the year for trial amounted to a total of 9,09,542. The set of figures for the period 1975-76 provided for the first time in the Union law Ministry’s annual report, shows that the pendency before Sessions Courts on 1 July, 1975 was 1,02,245 cases (including original, appeals and revisions): the corresponding figure for the period 30th September, 1976 was a total of 1,24,442. While the number of pending criminal cases in the Magistrates’ Courts were 30,82,135 as on 1st July, 1975 it went up to 44,09,728 on September, 1976 despite the fact that as many as 3,45,847 cases were disposed of; the corresponding figures for 1976 were even better: 65,04,312 cases instituted; 61,19,004 disposed.90

Latest report of the National Crime Record Bureau,2000 published by the Ministry of Home Affairs, shows that in the year 1951 there were 6,49,728 cognizable crimes under the IPC. This has risen to 17,71,084 in the year 2000. In the year 1953 there were 49,578 violent crimes whereas in the year 2000 the number of violent crimes has increased to 2,38,381.

During the year 2000 the total number of cases charge-sheeted after investigation is 50,98,304. The total number of cases disposed of by the courts in the year is 9,32,774. So far as the cases under IPC are concerned, the analysis in the report on page 1 of the National Crime Record Bureau report shows that 79 per cent of IPC cases were investigated in the year 2000, 78.4 per cent of them were charge-sheeted, 18.3 per cent of them were tried and 41.8 per cent of them resulted in conviction. In many countries like UK, USA, France, Japan and
Singapore the rate of conviction is more than 90 per cent.  

Statistics for the year 2002 disclose that there are 21,600 cases pending in the Supreme Court, the number of cases pending in different High Courts is 34 lakhs and about 3 crores cases are pending in subordinate courts. Out of these pending cases 645 cases are pending for over 10 years in the Supreme Court and more than 5 lakhs cases in different High Courts.  

The myriad factors contributing to in-expedition can be categorized as  

a) government caused delays,  
b) court caused delays,  
c) Bar caused delays and  
d) Accused caused delays.  

2. STATE CAUSED DELAYS  

The State contributes to the crisis of the Indian legal system by its own lack of priority for matters relating to the administration of justice. This happens in several ways.  

A) DELAY IN JUDICIAL APPOINTMENTS  

First, judicial appointments are held up for no valid and publicly debatable reasons. Shah committee report tells the story that as many as 799 days were lost in a six year period (1965-70) in Punjab and Haryana by slow action on judicial appointments. For Patna High Court the corresponding figure is 694 days; for Bombay 454.5 days; for Delhi 450 days (for a five year period); for Calcutta, 390.5 days. Since 1973, a lot of thinking on judicial appointments has been generated in the country.
B) QUALITY OF JUDGES

Another related aspect of judicial appointments concerns the quality of judges appointed to the higher judiciary. The Fourteenth Report pointed out that ulterior considerations such as political influence, communal and caste factors, and undue executive and political factors are intruding in the appointment of judges. It is also pointed out that the Bar, which is the source of judicial appointees, has shown noticeable reluctance in supplying its leaders as judges for several reasons, the principal ones relating to emoluments and facilities for the performance of judicial tasks. This is, in a sense, a perennial problem.95

The not-too-well-thought-out, but basically sound, step of enabling the appointment of jurists to High Courts in the Forty Second Constitution (Amendment) Act was one way of meeting the problem; unfortunately, this is now summarily dropped. The existing provision relating to the appointment of jurists to the Supreme Court have not been used even once presumably because the “official” eye is unable to see even a single jurist in India. Clearly, the “closed shop” mentality of the Bench and the Bar has reinforced the State’s unwillingness to experiment in the arena of judicial appointments. Be that as it may, there is much to be said for diversifying the sources of judicial appointments in a situation where the requirement of minimum standing at the Bar has served the needs of competent judicial manpower somewhat indifferently.96

It is not only the quantity of judges but also the quality of judges which has suffered enormously. This can be achieved by laying down the objective criteria for selection and the material needed to satisfy those criteria. Honesty, integrity, good moral character are regarded as basic requirements to discharge judicial functions.97 Similarly for assessing professional competence several criteria may be identified, such as knowledge of substantive laws, procedural laws,
specialization in any branch of law, sound knowledge of fundamental principles of law and jurisprudence. The candidate must have a keen and analytical mind. He should have patience and must not easily lose temper. He should not be vindictive. At the same time he must know when to stop waste of time. He should be above narrow considerations, religious, regional, linguistic, political etc., as well as experienced in conducting different types of cases. The Malimath committee (Committee on Reforms of Criminal Justice System) recommended that a set of guidelines should be evolved prescribing the relevant qualifications, qualities, attributes, character and integrity that are necessary to be a good judge and indicate the evidence or material from which these can be inferred. Though induction of more judges may help in reducing the arrears it is the competence and proficiency of the Judges that contributes to better quality of justice.\textsuperscript{98}

If the judge is not competent he will take longer time to understand the facts and the law and to decide the case. This is one of the reasons which has contributed to enormous delay and huge pendency of cases. The quality of justice suffers when the Judge is not competent. Two areas which need special attention for improving the quality of justice are prescribing required qualifications for the Judges and the quality of training being imparted in the judicial academies.\textsuperscript{99}

A Judge who has specialized in a particular branch of law will take less time to decide the case than a Judge who has not acquired such expertise. Specialization contributes to better quality decisions, consistency and certainty. Speedy and quality justice being the need of the hour it is desirable to assign criminal cases to Judges who are specialized in that branch.\textsuperscript{100}

In the Supreme Court, as also in the High Courts, a separate criminal division should be constituted consisting of one or more criminal division benches as may be required depending upon the workload, to deal exclusively with
criminal cases. Judges who have acquired good experience in criminal law and are known for quick disposal should be assigned to sit on the criminal division.\textsuperscript{101}

Article 312 of the Constitution provides for creation of an All India Judicial Services. The First Law Commission headed by Justice M.C. Setelvad, recommended formation of All India Judicial Services. For the past many years, the need to have an All India Judicial Services has been stressed by different sections of the society. The Eighth Law Commission in its 77\textsuperscript{th} report mentioned about formation of All India Judicial Services. During 1986 in its 116\textsuperscript{th} report also the Law Commission stressed the need for creation of All India Judicial Services in order to have quality judges.\textsuperscript{102}

\textbf{C) JUDGE - POPULATION RATIO}

A second major factor is that the State, which has had all along the information concerning the dimensions of judicial workload, has surprisingly made no realistic assessment of the judicial manpower needed for maintaining an efficient and a just justice administration. The Shah Committee deplored this and made several constructive suggestions; it called for the fixation of optimum strength of the judiciary on statistical projections of the workload and pending cases. It also asked the governments to take into account the judicial time lost for special work (enquiry commissions) assigned to sitting judges and called for periodic appointment of \textit{ad hoc} judges.\textsuperscript{103}

The fixation of judicial strength at all levels has some relation to the undertrials. The size of many under trial prisoners in many states normally doubles the population of convicts undergoing punishment. In some states, people have been under trial for periods exceeding four to ten years. Offsetting of punishment, in case of eventual conviction, is no answer to the problem; the answer is in any case impossible if the trial does ultimately result in acquittal. In so far as the fixation of
judicial strength at all levels has some relation to this problem and indeed it may turn out to have a substantial relation, it becomes even more pressing for the State to engage in a perspective judicial manpower planning.\textsuperscript{104}

The root cause for delay in dispensation of justice in our country is poor judge-population-ratio.\textsuperscript{105} The Judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission\textsuperscript{106} suggested that India requires 100 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e., 50 Judges per million population in a period of five years but in any case not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed\textsuperscript{107} that adequate re-organization of the Indian Judiciary is at the one and at the same time everybody's concern and therefore, nobody's concern. This problem is not new to India. As far back as 1925, there were widespread complaints that the judiciary is understaffed and under-manned.\textsuperscript{108}

The problem was re-visited by the Law Commission in 1958.\textsuperscript{109} While the problem was easily identified, the solution - fixing the actual number of courts required to bridge the gap - was elusive. And for some reason or the other, everybody - including Justice Bhagwati - "passed the buck."\textsuperscript{110} The 14th Report of the Law Commission left it to the High Courts. Not that the High Courts did not try. The government was turning a Nelson's eye to the proposals for new courts. The 77th report of the Law Commission noticed and condemned the Governments' attitude.\textsuperscript{111} In this context, Hussainara\textsuperscript{112} appears to be an attempt to bring the executive out of its slumber in the matter of creating new courts. Thus, the point raised by Justice Sahay's dissent in Maksudan Singh v. State of Bihar\textsuperscript{113} remains valid and unattended to till date. As pointed out by him, the crucial difference between Indian and foreign systems lies in the relative numerical strength of the
The Supreme Court in its recent decision in *All India Judges Association and Others v. Union of India and others* directed that the existing judge population ratio of 10.5 or 13 judges per million people should be raised to 50 judges per million people in a phased manner within 5 years. Justice B. N. Kirpal (speaking for himself and G.B. Patnaik and V.N.Khare, JJ.,) observed, “An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of judges are not appointed, justice would not be available to the people, thereby undermining the basic structure.” He said, “it is our constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.”

D) INADEQUATE FACILITIES

And there is the problem of inadequate, and in some cases grossly so, facilities provided to subordinate courts in terms of both trained manpower and physical facilities. The same difficulties are faced, to no small extent, by the higher judiciary, and they affect the expeditious handling of litigation at that level. The Shah Committee put the matter bluntly: “Of all the delays which hamper the administration of justice, those caused by the inefficiency or inadequacy of the staff attached to the High Courts, are the least tolerable.” The increase in staffs has been “disproportionately small” compared with the increase in the workload of the High Courts. The lack of physical accommodation also affects the necessary augmentation of judge strength; the Committee found that it also led to inadequate utilization of judges, as because of want of accommodation often two judges assembled to decide cases which might be perfectly disposed of by one judge sitting singly.
The primary reason why trial of criminal cases is delayed in the courts of Magistrates and Additional Sessions judges is the total inadequacy of judge-strength and lack of satisfactory working conditions for Magistrates and Additional Sessions Judges.119 There are courts of Magistrates and Additional Sessions judges where the workload is so heavy that it is just not possible to cope with the workload unless there is increase in the strength of Magistrates and Additional Sessions.

Statistics for the year 2000 reveal that there are over 100 posts of High Court Judges vacant and out of 12,205 posts in subordinate courts, 1,500 posts are vacant.120 There are instances where appointments of Magistrates and Additional Sessions Judges are held up for years and the court has to work with depleted strength and this affects speedy trial of criminal cases. The Magistrates and Additional Sessions judges are often not provided adequate staff and other facilities which would help improve their disposal of cases.121

3. COURT CAUSED DELAYS

A) LACK OF COURT MANAGEMENT

The lack of court management procedures do contribute to the growing arrears.122 The Shah Committee was able to point out, as late as 1972, that the failure to maintain a proper notice of ready cases, failure to provide priority for old cases, failure to bunch together cases involving substantially similar points of law contributed to delay and arrears in the High Courts.123 Lack of court management results in delay in dispensation of justice. The first problems with regard to court management are posting a large number of cases which everyone knows cannot be dealt with on that day for sheer want of time. This leads to the court wasting considerable time in calling the cases. And the second problem relates to frequent adjournments.124
B) FREQUENT ADJOURNMENTS

It is a fact the superior court judges are unable to exercise any effective control over lawyers appearing before them. Prolonged argumentation and obsolete forensic styles continue to prevail; "sometimes passages from evidence are read out in extenso and decisions are read verbatim from the commencement to final order." Citations "of decisions from obscure sources is also a common occurrence." Judges have been unable to insist on an adequate written statement and have been unable to restrict counsel to the terms of whatever statement they submit. Control over adjournments is equally difficult, particularly with senior advocates, with whom most legal work is concentrated. The results can be best described in the words of the Shah Committee: "Often these Advocates are unable to attend to the cases in which they are engaged because the cases reach hearing before the different benches at the same time and they are unable also to give full attention to preparation of cases. The practice of allowing cases to be passed over because the Advocate is busy before another Bench leads to dislocation of court business. Again concentration of many cases in the hand of the Advocate on which he is unwilling to relax his hold makes it impossible for him to adequately prepare for his case."126

The conception of a lawyer as an "officer of the court" aiding it in impartial dispensation of justice seems thus to have more or less disappeared from India, if the above description is substantially correct. Of course, the judge needs the cooperation of the Bar for the efficient functioning of the court; but the existing rules of the game seem to allow far greater leverage to lawyers than to judges. One result is simply the inability to cope with the work; in other words, the accommodation between the judge and counsel is not only at the cost of justice to parties involved but also at the cost of efficiency in operating the overall system of justice of administration. This surely cannot be in the long-term interests of the
4. LEGAL PROFESSION CAUSED DELAYS

We have already noted how inequitable distribution of professional work, a dominant feature of the Indian Bar as presently organized, militates against expeditious handling of cases. Senior lawyers, in whose hands the work is heavily concentrated, contribute to delay and arrears by their non-availability and unpreparedness; what is more they seem to obstruct, in a variety of specialized ways the expeditious handling of cases. The senior Bar exerts mighty influence on the High Court judges, because its cooperation is so vitally necessary for the judiciary in its daily tasks. 128

5. ACCUSED CAUSED DELAYS

Though in criminal cases accused may not be responsible for most of the delays, delays occasioned by the accused, can not totally, be ruled out. An accused person, resolutely minded to delay the day of reckoning, may quite conveniently and comfortably do so, if he can but afford the cost involved, by journeying back and forth, between the court of first instance and the superior courts, at frequent interlocutory stages. Applications abound to quash investigations, complaints and charges on all imaginable grounds, depending on ingenuity of client and counsel. Not infrequently, so soon as a court takes cognizance of a case requiring sanction or consent to prosecute, the sanction or consent is questioned as improperly accorded, so soon as a witness is examined or a document produced, the evidence is challenged as illegally received many of them are taken up to the High Court and some of them reach the Supreme Court too on the theory that it goes to the root of the matter. There are always petitions alleging 'assuming, the entire prosecution case to be true, no offence is made out.' And, inevitably proceedings are stayed and trials delayed. 129
6. OTHER FACTORS

Other factors contributing to the delay at the trial are

1. absence of, or delay in appointment of public prosecutors proportionate with the number of courts/cases;

2. absence of or belated service of summons and warrants on the accused/witnesses;

3. non-production of under-trial prisoners in the court;

4. presiding Judges proceeding on leave though the cases are fixed for trial;

5. strikes by members of Bar and

6. counsel engaged by the accused suddenly declining to appear or seeking adjournment for personal reasons or personal inconvenience.

In A.R. Antulay's case, vide para 83, the Constitution Bench has noted that in spite of having proposed to go on with the trial of a case five days a week and week after week, it may not be possible to conclude the trial for reasons, viz.,

(1) non-availability of the counsel,

(2) non-availability of the accused,

(3) interlocutory proceedings, and

(4) other systemic delays.

In addition, the court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In the recent Paritala Ravindra's (MLA, Penugonda) murder case as many as 136 witnesses were examined and a 43 page charge-sheet was filed.
with hundreds of appendices. In the more recent Pramod Mahajan’s (BJP leader) murder case a 165 page charge is filed together with statements of 58 witnesses.

In Kartar Singh v. State of Punjab, another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as

1. delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally,
2. the deliberate absence of witness or witnesses,
3. crowded dockets on the file of the court etc., apart from inadequate judge strength.

The reasons for delay in disposal of criminal cases as succinctly summarized by Krishna Iyer, J. in the case of Re Special Courts Bill 1976:

"It is common knowledge that currently in our country criminal courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions, not to speak of the contribution to delay by the Administration itself by neglect of the basic necessaries of the judicial process. Parliamentary and pre-legislative exercises spread over several years hardly did anything for radical simplification and streamlining of criminal procedure and virtually re-enacted, with minor mutations, the vintage Code making forensic flow too slow and liable to hold-ups built into the law. Courts are less to blame than the Code made by Parliament for dawdling and Governments are guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderella in our scheme. Even so leaving V.V.I.P. accused to be dealt with by the
routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be finical about absolute processual equality and must be creative in innovating procedures compelled by special situations.”

In *Ganesh Narain Hegde* v. *S. Bangarappa,* a contention was raised that a complaint filed under Section 500 of the Indian Penal Code should not be allowed to be proceeded with after a lapse of a period of 12 years. While rejecting the said contention, the court held that the complainant was certainly not responsible for the delay. The learned Judge (Mukherjee, J.) observed:

“The slow motion becomes much slower motion when politically powerful or rich and influential persons figure as accused. FIRs are quashed. Charges are quashed. Interlocutory orders are interfered with. At every step, there will be revisions and applications for quashing and writ petitions. In short, no progress is ever allowed to be made. And if ever the case reaches the stage of trial after all these interruptions, the time would have taken its own toll; the witnesses are won over; evidence disappears, the prosecution loses interest — the result is an all too familiar one.”

The reasons for delay were summarized as under by Shah, J., in his dissenting opinion in *Raj Deo Sharma* v. *State of Bihar:*

1. The procedure is dilatory;

2. No effective steps are taken for radical simplification and streamlining criminal procedure except re-enacting with minor mutations;

3. Various appeals, revision applications, repeated anticipatory bail as well as regular bail, applications and petitions under Articles 226 and 227 are entertained which is also a cause for delay in disposal of cases finally;
FIRs and charges are quashed; lot of time is wasted in deciding interlocutory applications;

4. Dockets are heavy; arrears are mounting; even the service of process is delayed;

5. Neglect of the basic necessaries of judicial process by the administration. Governments are guilty of denying amenities for the judiciary to function smoothly;

6. If ever the case reaches the stage of trial, the time taken for reaching that stage has its own toll resulting in acquittal of more than ninety per cent of those who are tried.\textsuperscript{139}

In addition to the reasons enumerated, it has also to be observed that the legal system is also old and outdated. Lawyers, investigating agencies, judges and politicians have all to account for: 1) prolonging cases; 2) not increasing the number of judges; 3) the inadequate education of lawyers and their dilatory procedures, adopted in self interest; and 4) lack of awareness amongst members of the public about legal systems and procedures. Adjournments are rampant, and prosecutors are not selected on the basis of merit. Our system is more concerned with the accused than with the victim. The victim has to prove the guilt of the accused. Since legal processes are too time consuming, only moneyed people can buy time and people and get justice in their favour. This has shaken the confidence of the people in the capacity of the courts to redress grievances and give timely relief and justice. Since problems are not confined to the agency or point in the process, the entire apparatus from the point of making a complaint to the delivery of justice needs to be reviewed, and re-engineered.\textsuperscript{140}
Malimath Committee (Committee on Reforms of Criminal Justice System) in its report (Vol.I, March 2003) made the following recommendations:

Since large number of cases in which punishment is two years and less are tried as summons cases, the summary procedure prescribed by sections 262 to 264 of the Code, if exercised properly, would quicken the pace of justice considerably. The maximum punishment that can be given after a summary trial is three months. The committee feels that all cases in which punishment is three years and below should be tried summarily and punishment that can be awarded in summary trials should be increased to three years.¹⁴¹

The prosecution mainly relies on the oral evidence of the witnesses for proving the case against accused. There is no dearth of witnesses. Court should list the cases in such a manner as to avoid the witnesses being required to come again and again for giving evidence. The trial should proceed on day-to-day basis and granting of adjournments should be avoided. Evidence of Experts falling under sections 291, 292 and 293 of the Code may as far as possible be received under Affidavit.¹⁴²

In view of the large pendency and mounting arrears of criminal cases, the long vacations for the High Courts and Supreme Courts in the larger public interest, the Committee felt that there should be a reduction of the vacation. Accordingly, committee recommended that

1) working days of the Supreme Court be raised to 206 days and

2) working days of the High Court to be raised to 231 days

thus reducing the vacation by three weeks.¹⁴³ Consequently the Supreme Court and the High Courts shall reduce their vacation by 21 days on the increase in their working days.
The Government of India, in order to clear the arrears, has constituted Fast Track Courts. It was decided to set up 1734 Fast Track Courts during April 2001. Up to March 2004, a total number of 1400 Fast Track Courts were set up. Out of 8 lakh cases entrusted to these courts only 3.8 lakh cases were cleared. Initially the courts were instituted with a goal to clear 1,80,000 cases in the first year and clear the remaining cases during a five year period. However, these courts have been extended for a further period of five years. Though the scheme of Fast Track Courts is good it is beset with many practical problems besides being limited to dealing with sessions cases.

The Malimath Committee (Committee on Reforms of Criminal Justice System) in its report (Vol.I, March 2003) recommended a complementary strategy to tackle the huge arrears. The committee recommended working out an “Arrears Eradication Scheme” for tackling cases pending for more than two years. A separate cell to be constituted in the High Court whose duty shall be to collect and collate information and particulars from all the subordinate courts in regard to cases pending in the respective courts for more than two years, to identify the cases among them which can be disposed of summarily under section 262 of the Code. On coming into the force of the scheme, arrangements shall be made for sending all the compoundable cases to the Legal Service Authority for settling those cases through Lok Adalats on priority basis. The courts constituted under the Arrears Eradication Scheme shall dispose of the cases expeditiously. A case taken up for hearing should be heard on a day to day basis till conclusion. Only such number of cases as can be conveniently disposed of shall be posted for hearing every day. Once the case is posted for hearing it shall not be adjourned. If under special circumstances a case is required to be adjourned, it should be done for reasons to be recorded in writing subject to payment of costs and also the amount of expenses of the witnesses.
With regard to punishments, the Malimath committee (Committee on Reforms of Criminal Justice System) in its report (Vol.I, March 2003) recommends that there is need to have new forms of punishments such as community service, disqualification from holding public offices, confiscation orders, imprisonment for life without commutation or remission etc., since new forms of crimes have come into existence. The committee is in favour of reviewing the IPC.\textsuperscript{147}

The committee feels that the law should lean in favour of settlement of cases without trial, where the interest of the society is not involved\textsuperscript{148} and recommends implementation of 142\textsuperscript{nd} and 154\textsuperscript{th} reports of the Law Commission of India in regard to settlement of cases without trial.\textsuperscript{149}

Malimath Committee has given its recommendations for introducing the concept of ‘plea bargaining’ as one of the measures to bring reforms in the criminal justice system which would go a long way for early settlement of criminal cases and reduce the pendency substantially. The Law Commission of India in its 154\textsuperscript{th} Report has come out with this concept to lessen the burden of piling arrears awaiting trial. The commission also made it clear that ‘plea bargaining’ shall not be made available to habitual offenders and persons accused of offences against women and children.

When Parliament amended the Code of Criminal Procedure by Act 2 of 2006 adding a new chapter 21 (A), the concept of “plea bargaining” became a reality and part of our criminal jurisprudence. Plea bargaining means “the process whereby accused and the prosecutor, in a criminal case, work out a mutually satisfactory disposition of the case, subject to the approval of the court.” It involves the accused pleading guilty to the offence or to a lesser offence in return for a lighter sentence than otherwise imposable for that offence. This practice is
prevalent in western countries, particularly the United States, England, and Australia. In the United States, plea bargaining has gained very high popularity.

In India, plea bargaining cannot be availed of in respect of offences punishable with a sentence exceeding seven years. In other words, plea bargaining would not apply to serious offences. Other offences for which plea bargaining is not available are offences affecting socio-economic conditions of the country, offences committed against women and offences committed against children below the age of 14.

The process of plea bargaining commences when the accused files an application in the court concerned supported by an affidavit stating that he knew the extent of the punishment of the offence and that he is willing to plead guilty. The court would issue notices to the Public Prosecutor, the investigating officer and the person aggrieved to appear in the court who would sit together and work out a mutually satisfactory disposition. A report would be prepared by the magistrate which shall be signed by all the parties concerned followed by a judgment imposing lighter sentence on the accused and providing compensation to the victim. No appeal shall lie against such judgment.

Conceptually, the plea bargaining process reduces the administration of criminal justice to a barter system, where the haggling is between legal punishment and gains to the wrongdoer. Even innocent accused would capitulate to wrong compromises and wrong convictions in order to escape from the ordeal of a prolonged and expensive trial. Cases in which an accused might finally secure acquittal would be converted into cases of unmerited conviction.150
NOTES


3. "4. And when a robber or murderer or thief or receiver of them has been arrested through the aforesaid oath, if the justices are not about to come speedily enough into the country where they have been taken, let the sheriffs send word to the nearest justice by some well-informed person that they have arrested such men, and the justices shall send back word to the sheriffs informing them where they desire the men to be brought before them; and let the sheriffs bring them before the justices." (2 English Historical Documents 408 (1953)

4. 386 US 213, at p.224

5. See 1 Rowland, The Life of George Mason 234-266 (1892)

6. See Va. Declaration of Rights, 1776, 8

7. See Del. Const., 1792, Art. I, 7; Md. Declaration of Rights, 1776, Art. XIX; Pa. Declaration of Rights, 1776, Art. IX; Va. Declaration of Rights, 1776, 8. Mass. Const., 1780, Part I, Art. XI, provided: "Every subject of the commonwealth ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without being obliged to purchase it; completely, and without any denial; promptly, and without delay; conformably to the laws." This has been construed as guaranteeing to all citizens the right to a speedy trial. (See *Commonwealth v. Hanley*, 337 Mass. 384, 149 N. E. 2d 608 (1958). A similar provision was included in the New Hampshire Constitution of 1784,
Part I, Art. XIV. Kentucky, Tennessee, and Vermont, the three States which were admitted to the Union during the eighteenth century, specifically guaranteed the right to a speedy trial in their constitutions. (See Vt. Const. 1786, c. I, Art. XIV; Ky. Const. 1792, Art. XII, 10; Tenn. Const. 1796, Art. XI, 9) (386 US 213 at p.226)

9. Ibid para 40 at p.236
10. Ibid

11. Article 14 (1) All persons shall be equal before the courts and Tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (order public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgment rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires of the proceedings concern matrimonial disputes or the guardianship of children.

(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

(3) In the determination of any criminal charge against him,
everyone shall be entitled to the following minimum guarantees, in full equality:

a. To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;

b. To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;

c. To be tried without undue delay;

d. To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

e. To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

f. To have the free assistance of an interpreter if he cannot understand or speak the language used in the court;

g. Not to be compelled to testify against himself or to confess guilt.

12. S.30 Human Rights Courts: For the purpose of providing for speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a court of Sessions to be a Human Rights Court to try the said offences;
Provided that nothing in this section shall apply if:

(a) a court of Sessions is already specified as a special court; or

(b) a special court is already constituted,

for such offences under any other law for the time being in force.


15. Article 22: Protection against arrest and detention in certain cases:

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

S.57 of Cr.P.C.: Person arrested not to be detained more than twenty-four hours: No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under S.167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate’s court.

16. S.167: Procedure when Investigation cannot be completed in twenty-four hours:

(1) Whenever any person is arrested and detained in custody, and it appears that the investigation cannot be completed within the period of twenty-four
hours fixed by Section 57, and there are grounds for believing that the accusation or information is well founded, the officer-in-charge of the police station or the police officer making the investigation, if he is not below the rank of sub-inspector; shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries in the diary hereinafter prescribed relating to the case, and shall at the same time forward the accused to such Magistrate.

17. S.167 (2) The Magistrate to whom an accused person is forwarded under this section may, whether he has or has not jurisdiction to try the case, from time to time authorize the detention of the accused in such custody as such Magistrate thinks fit, for a term not exceeding fifteen days in the whole; and if he has no jurisdiction to try the case or commit it for trial, and considers further detention unnecessary, he may order the accused to be forwarded to a Magistrate having such jurisdiction:

Provided that:

(a) the Magistrate may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days, if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorize the detention of the accused person in custody under this paragraph for a total period exceeding,-

(i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years; 

(ii) sixty days, where the investigation relates to any other offence,
and, on the expiry of the said period of ninety days, or sixty days, as
the case may be, the accused person shall be released on bail if he is
prepared to and does furnish bail, and every person released on bail
under this sub-section shall be deemed to be so released under the
provisions of Chapter XXXIII for the purposes of that Chapter;

(b) no Magistrate shall authorize detention in any custody under this
section unless the accused is produced before him;

(c) no Magistrate of the second class, not specially empowered in this
behalf by the High Court, shall authorize detention in the custody
of the police.

18. S.309. Power to postpone or adjourn proceedings:

(2) If the court, after taking cognizance of an offence, or commencement of
trial, finds it necessary or advisable to postpone the commencement of, or
adjourn, any inquiry or trial, it may, from time to time, for reasons to be
recorded, postpone or adjourn the same on such terms as it thinks fit, for
such time as it considers reasonable and may by a warrant remand the
accused if in custody:

Provided that no Magistrate shall remand an accused person to custody
under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or
postponement shall be granted, without examining them, except for special
reasons to be recorded in writing:

(Provided also that no adjournment shall be granted for the purpose only of
enabling the accused person to show cause against the sentence proposed to
be imposed on him) (Ins. by Cr.P.C.(Amendment) Act, 1978, S.24)

Explanation 1: If sufficient evidence has been obtained to arise a suspicion that the accused may have committed an offence, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2: The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

S.437 (6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail, to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

19. S. 309. Power to postpone or adjourn proceedings: (1) In every inquiry or trial, the proceedings shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded.

20. S.437 (6) If, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be
released on bail, to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

21. S.167. Procedure when investigation cannot be completed in twenty-four hours:

(5) If in any case triable by a Magistrate as a summons case, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary.

(6) Where any order stopping further investigation into an offence has been made under sub-section (5), the Sessions Judge may, if he is satisfied, on an application made to him or otherwise, that further investigation into the offence ought to be made, vacate the order made under sub-section (5) and direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.

22. S.437. When bail may be taken in case of non-bailable offence: (Subs. Sec.(1) Sub. by Cr.P.C. (Amendment) Act 1980, w.e.f.23.9.1980)

(1) When any person accused of, or suspected of, the commission of any non-bailable offence is arrested or detained without warrant by an officer in charge of a police station or appears or is brought before a court other than the High Court or Court of Session, he may be released on bail but--

(i) such person shall not be so released if there appear reasonable grounds for believing that he has been guilty of an offence
punishable with death or imprisonment for life;

(ii) such person shall not be so released if such offence is a cognizable offence and he had been previously convicted of an offence punishable with death, imprisonment for life or imprisonment for seven years or more, or he had been previously convicted on two or more occasions of a non-bailable and cognizable offence:

Provided that the court may direct that a person referred to in clause (i) or clause (ii) be released on bail if such person is under the age of sixteen years or is a woman or is sick or infirm:

Provided further that the court may also direct that a person referred to in clause (ii) be released on bail if it is satisfied that it is just and proper so to do for any other special reason:

Provided also that the mere fact that an accused person may be required for being identified by witnesses during investigation shall not be sufficient ground for refusing to grant bail if he is otherwise entitled to be released on bail and gives an undertaking that he shall comply with such directions as may be given by the court.

23. Supra N.15 and Cf. Art. 22(3) - exception in case of alien enemies and detainees under preventive detention laws) (Art.22 (3) Nothing in Clause (1) and (2) shall apply--

(d) to any person who for the time being is an enemy alien; or

(e) to any person who is arrested or detained under any law providing for preventive detention.

25. Ibid

26. S.249. Absence of complainant: When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent, and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything hereinbefore contained, at any time before the charge has been framed, discharge the accused.


28. Ibid


30. Ibid at para 41 at p. 237


32. Ibid


34. Ibid at pp.23, 24

36. Ibid at p.135
37. Ibid at p.137
38. Ibid
39. Ibid at p.138
40. Moti Bai v. State AIR 1954 Raj.241, 243; 55 Cri.L.J 1591. See also In re Llyewelyn Evans AIR 1926 Bm.551, 552:27 Cri LJ 1169
43. Ss228, 240, 246, 251
44. Ss.228, 240,246
45. Ss.205,273
46. S.317(1)
47. S.273
48. State v. Anant Singh 1972 Cri.LJ 1327, 1332 (Cal HC)
50. S.309(1) Supra N.19
58. *Ibid* at p.9
64. *Ibid* at p.13
66. Revamping the Criminal Justice System – Article by Padma Ramachandran, Former Chief Secretary, Government of Kerala, reported in *The Hindu* dated 28th January, 2003

67. *Northern India Patrika*, December 17, 1999

68. Revamping the Criminal Justice System – Article by Padma Ramachandran, Former Chief Secretary, Government of Kerala, reported in *The Hindu* dated 28th January, 2003


72. The All India Jail Committee Report, 1919-20, at p.244

73. *Ibid* at p.245

74. *Ibid* at p.244


78. *Ibid* at p.409-410

79. *Ibid* at p.406


82. K. N. Chandrasekharan Pillai, Right to Speedy Trial In India – A Review, Cochin University Law Review 1987, p.109

83. For a history of the litigation leading to the pronouncement that Article 21 includes right of speedy trial, see Upendra Baxi, “Supreme Court under Trial – Under trials and the Supreme Court,” (1980) 1 S.C.C. Jour. 35. Also see *Hussainara Khatoon & Others v. Home Secretary, Bihar* AIR 1979 SC 1360

84. K. N. Chandrasekharan Pillai, Right to Speedy Trial in India – A Review, Cochin University Law Review 1987, p. 109


86. Anurag Agarwal, Justice Delayed is Justice Denied- Speedy Justice Through Arbitration, AIR 1999 Jour. p.177

87. Motilal C. Setalwad, Problems Before Legal Profession, AIR 1952 Jour.2


89. *Ibid*

90. *Ibid* at p.62

92. Article by Dr. M. Sridhar published in Eenadu Telugu Daily Newspaper dated 24th April, 2005


94. Ibid at p.65

95. Ibid at p.66

96. Ibid at p.66


98. Ibid

99. Ibid at p.135

100. Ibid at p.137

101. Ibid

102. Article by Dr. Jayaprakash Narayan, Convener, Lok Satta and Vote India published in Eenadu Telugu Daily dated 25th April, 2005


104. Ibid at p.67

107. 120th Report, supra
108. Sir T.B. Sapru in his note to the report of the Civil Justice Committee (1924-25) also known as the “Rankin Committee”
110. Hussainara Khatoon v. State of Bihar AIR 1979 SC 1360 (The High Courts were asked to fix the number of new courts required)
111. 77th Report “Delays and Arrears in Trial Courts” at p. 34
112. AIR 1979 SC 1360
113. AIR 1986 Pat.38
119. Sheela Barse v. Union of India AIR 1986 1773 para 12 at p.1779
120. Article by Dr. Madabhushi Sridhar published in Eenadu Telugu Daily dated 24th April, 2005.


126. *Ibid* at p.79.


128. *Ibid* at p.74-75.


132. *Ibid*.

133. (1994) 3 SCC 569.


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137. Ibid para 18 of AIR SCW and Cri LJ

138. AIR 1999 SC 3524

139. Ibid para 37 at p.3533

140. Revamping the Criminal Justice System, Article by Padma Ramachandran, Former Chief Secretary, Government of Kerala, published in *The Hindu* English Daily Newspaper dated 29th January, 2003


142. Ibid at p.284

143. Ibid at p.286

144. Article by Dr. Madabhushi Sridhar, Associate Professor, NALSAR, published in *Eenadu* Telugu Daily dated 24th April, 2005


146. Ibid at p.287

147. Ibid at p.287

148. Ibid at p.288

149. Ibid at p.289

150. K.T. Thomas, Plea Bargain – A fillip to Criminal courts, Article published in *The Hindu* English daily newspaper dated 27.11.2006