Chapter - II

SPEEDY TRIAL - HISTORICAL PERSPECTIVE
(A) The system of criminal justice In Ancient India

(I) An overview

In the Rig-Veda, Sabha, Samiti and Vidatha have been defined as the meeting places of the people or the assemblies of the warriors. Since such assemblies exercised judicial functions, so they decided the disputes both private and public. In such assemblies, the King or the tribal chief, as the case may be, had been the Supreme authority. The Atharva Veda describes the Sabha and the Samiti as the two daughters of Prajapati (the Creator). According to Sayana, the Sabha was an assembly of learned men and the Samiti as an assembly of warriors. So whatever their nature and composition may be, it is well established that such assemblies exercised the judicial powers and both civil and criminal matters were within their purview. However, with the progress of Aryan Civilization, the Sabha usually with the King as its head came to exercise all judicial functions.1

Besides the Sabha and Samiti, Yajnavalkya also refers to judicial functionaries, which acted almost like courts. These were the King’s functionaries, the village community the guilds and families, Narda has explained this almost similarly too. The objective of having such functionaries was to make justice available to the people in their own places and thus the justice was not only cheap but also expeditious. The parties and their witnesses were not travel far off places to seek Justice. In addition to these functionaries, the King had also appointed a lord over each village as well as lords for ten villages, lords for twenty villages’ lords for a hundred villages and lords for thousand villages. The lord of one village was subordinate to the lord of ten villages, the

latter to the lord of twenty and so on. Each subordinate lord was duty bound to inform his immediate superior lord full details about the crimes committed in his village or villages. In towns, there were superintendents of all affairs who were entrusted with the responsibility of personally visiting and supervising the system of justice at these levels. The King had a minister who kept a general control over the affairs of all the officials who were connected with the decisions of crimes committed in towns or villages. In the way a compact system of administration of justice was developed under which every official entrusted with judicial functions was under the control and supervision of his superior who not only prevented the miscarriage but also brought administration of justice at every village or town under the direct control of the King. Thus, the parties to the disputes were protected from capricious and arbitrariness of judicial officials which not only warranted fair and impartial justice but also a speedy Justice. Thus, the disputants were protected from ruinous litigation and justice was expeditious at all levels.

(II) Review of Ancient literature

The classical literature Ramayana, Mahabharata, Dharmasasatra, Nitisastra, Arthasastra, Smritis, Rigveda, seem to have had warned that culpable delay in dispensation of Justice was in itself an act of injustice. The Anglo-Saxon Magna Carta is in a similar Vein.

During the ancient times, Hindus inhabited the Indian Sub-continent predominantly and it was a homogenous society.


The fountainhead of Justice has always been the domain and prerogative of the ones who yielded power. The Ultimate and absolute power of the State always remained with the King who used to administer law with the aid and advice of able ministers and learned Brahmins. The law applied was on the basis of ancient religious texts and social practices. Kautilya's "Arthashastra, Manusmriti", and other texts replete with knowledge and wisdom were the guiding force.

Justice delivery has always been looked as an important function of the state right from the beginning of the civilization. There were many schools of dharma shastras like Manu, Brahaspati, prasar and other shastras. Kings who did not follow the religious text and practices and who not deliver justice to their subjects are condemned with contempt even today. Kings also appointed Judges to administer law and maintain order amongst the subjects.

The ancient law givers emphasised the evil of delay in disposal of cases. Sukra said that the King could not give much time for the preparation and trial of cases. Great evils flow from delay and it may amount to denial of justice. In certain types of cases, no delay be granted and the law givers laid down certain rules regarding this point.

Yajnavalkaya's Rule

Yajnavalkaya's laid down that in accusation of Sahasa (crimes with violence like murder, robbery etc) theft, defamation and abuse, hurt and assault and cow (killing) in accusation of the major suits character of women, the cases should be disposed expeditiously (speedily). In other cases, the court could grant delay at its discretion.

An analysis of the above provisions should that most of the accusation named above were of criminal nature and therefore required

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4. Arora, B.L., Law of Speedy Trial, p.2
5. Ibid.
speedy trial unless a murderer, a robber, a prisoner, an incendiary and such criminals are brought to book and punished speedily, such culprits may commit other offences and spread terror in the locality of their operation causing serious danger to law and order. The witness may also forget the defamatory words alleged to have been uttered.

In the case of accusation of Pataka like killing of Brahman, or drinking of wine etc., it is more serious type of defamation when a Brahman is falsely accused of having drunk wine, for example, unless the court takes prompt action in calling the accuser to prove his case, the Brahman's reputation is at stake. Similarly, accusation of unchastety or adultery against a women, required to be promptly tried by the court. Accusation of killing of cow by a Hindu was and is considered to be grave charge amounting to serious defamation and required prompt action.

Narada's Rule

Narda said, "In matters relating to cows, land, gold, women, theft, parusya (defamation, insult, hurt, assault, etc.) Sahasa (murder, rape, etc.) accusation of pataka (like killing of Brahmana, drinking wines) are urgent matters, the cases must be disposed of immediately (as speedily as possible)".

Katyayana's Rule

Katyayana said, 'In matters relating to cows and bullocks, land, women, child birth, in the matters relating to rape and sexual offences with an unmarried girl, in theft, in quarrels, in violent crimes, in dispute over treasure troves, matters causing fear and false evidence, the case should be tried immediately.\(^6\)

Some of the above disputes really required quick and early decisions. Either in cases of criminal misappropriation and criminal breach

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\(^{6}\) Katyayana quoted in Sm.c. III-I, 94.
of trust probably, the accused was to be punished for his crime at an early date after the charge or if he was innocent, the imputation against his character (involved in the charge) required to be cleared. The same argument of the alleged criminal breach of trust could also arise in Yacitaka case, where for instance, a woman borrowed an ornament from her friend, did not return the same, and claimed it as her own. In the matter of buying and selling, the purchased commodity might be punishable or be subject to fluctuation of price thereof. There was fixed rule of time, after which an article could not be returned etc.

Therefore, when disputes over such matters came up before the court, they required speedy disposal. Intimidation was a matter involving the problem of law and order and required to be curbed with a strong hand and promptly. When a person was accused of giving false evidence, it was necessary that the accused should not be granted delay, because with the passing of time, the exact words used might be forgotten and he might be encouraged to be a false witness in these cases also.

**Period of Delay**

*Katyaayana* laid down the general proposition that when the occurrence was recent the dispute should be settled speedily. But where the cause of action took place in the long past, the court might grant adjournment.\(^7\)

He elaborates this proposition by saying that if occurrence is recent, no time should be granted. If it took place a month ago, only one day’s adjournment may be granted, if it took place six years ago three days adjournment, if it took place twelve years ago, a weeks time may be granted; if it took place thirty years ago ten days or fifteen days adjournment and if it occurred more than thirty years ago, an adjournment

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\(^7\) Katyaayana quoted in Sm.c. III-I 95.
of one month may be granted and an adjournment of three fortights can be granted if the period is still longer.

From the above provisions, it appears that the disposal of cases in ancient India was perhaps much quicker than it is today, when cases remain pending for years and even for filing the statements, adjournment of several months is granted.

(III) Judicial Administration in Ancient India

Judicial Administration in India was well developed in the ancient as well as medieval India. Almost all-third book of Kautilya is devoted to Judicial Administration.

Both the Arthasastra and the Dharmasastras establish the fact that the King was the fountain of justice. In addition to the King himself as a court of ultimate resort, there were four classes of courts. The King’s court was presided over by the Chief Judge, with the help of counsellors and assessors. There were three other courts of a popular character called PUGA, SRENI and KULA, these were not constituted by the King.

There were not, however, private or arbitration courts but people’s tribunals, which were part of the regular administration of justice, and their authority was fully recognized. PUGA was the court of fellow townsmen or fellow-villagers, situated in the same locality, town or village, but of different castes and callings. SRENI was a court of judicial assembly consisting of the members of the same trade or calling, whether they belonged to the different castes or not.

KULA was the judicial assembly of relations by blood or marriage. KULA, SRENI, PUGA and the court presided over by the Chief Judge (PRADVIVAKA) were courts to which persons could resort for the settlement of their cases and were a cause was previously tried, he might appeal in succession in that order to the higher courts. As the Mitakshara puts it, ‘In a cause decided by the King’s officers although the defeated
party is dissatisfied and thinks the decision to be based on misappropriation the case cannot be carried again to a PUGA or the other tribunals.

Similarly, in a cause decided by a Puga, there is no resort to Sreni or Kula. In the same way in a cause decided by a Sreni, no recourse is possible to a Kula. On the other hand in a cause decided by Kula, Sreni and other tribunals can be resorted it. In a cause decided by Sreni, Puga and the other tribunal can be resorted to. Moreover, in a cause decided by a Puga the Royal Court can be resorted to. These inferior courts had apparently jurisdiction to decide all lawsuits among men, excepting violent crimes.

From the above account of the judicial system in ancient India, the following points may be noted:

a) King was supposed to be fountain of justice in a figurative manner. The actual dispensation of justice was done by a complex system consisting of a hierarchy of people’s tribunals and the Royal Court headed by the Chief Judge.
b) People at large participated in the dispensation of justice through Kula, Puga and Sreni.
c) There was more than an arm’s length distance between the persons exercising the legislative function and the judicial system.
d) King’s will had no role to play in the dispensation of justice and it was neither possible for him to show any favours or disfavours in matters involving justice. We have seen earlier that King’s will had no role in the legislative function also.

In view of the above points, the following observations can be made about the role of Kings in ancient India:

a) A King was supposed to be responsible for execution of the legislative will an administration of justice in his Kingdom.
b) A King had no direct or indirect legislative powers.
c) A King was supposed to be the “fountain of justice” but he had no direct role in the judicial process where an elaborate system of judiciary consisting of royal courts and people’s tribunals was operational.
d) In ancient India, a King and his ministers could not even act as interpreters of law.
However, a change in medieval times took place when Kings started patronizing the writing of commentaries and digests. The picture that emerges from the above observations is very different from the image of a King in Europe, where based on the theory of divine power of the King, ‘Sovereignty of the Crown is supreme’ and ‘A King does no wrong’ were the well-accepted rules.

A ritual that was carried out at the time of coronation of any Hindu King (until very recently) illustrates the position of the King in ancient India. After the coronation, the crowned King declares that he is all-powerful. As soon as he declares his acquired power, the Rajguru (the chief representative of the University) hits him with a Dand (a wooden rod) and tells him that Dharma and not he is the most powerful. The act of hitting him with a Dand is a symbolic punishment to remind him of his subordination to the law as decided by the intellectual class. This is unimaginable in the coronation of a European King.

A satisfactory and rational system of criminal procedure should protect citizens from false, frivolous and vexatious complaints, and from undue restraint on account of petty offences and it should grant; the accused a reasonable and honest trial in which he has every facility to prove his innocence and should further provide for appeal or revision in cases where injustice has occurred owing to the imperfections of the human machinery.

A court of justice is that place where the science of practical life i.e. the varied interests of men are enquired into and decided according to the dictates of the Dharam-shastras. Such a court had ten requisites according to Sukraniti and Brahspati. These are:

The King, his chosen officer, the assessors, the Smriti, the accountant, the scribe, gold fire, water and the King’s servant. The King’s officer is the speaker, i.e. the mouthpiece of the court, the King is the
punishing authority and the assessors are the judges of evidence the Smrti
gives the law, the accountant makes the calculations, the scribe writes the
depositions, gold and fire are for administering ordeals, and water is
required for the thirsty and the nervous, the King's servants are for
enforcing the attendance of the accused and the witnesses.

**Initiation of Proceedings**

As in modern times, it was recognized that the State need not
directly take up the prosecution of all kinds of offences. Similarly, the non-
cognizable offences were compoundable, on the score that an amicable
settlement between the parties is more satisfactory in the case of petty
offences, than a criminal conviction and the consequent ill feeling
engendered between the parties.

The King and his judges could enquire into a crime only after the
presentation of a written complaint by the party aggrieved or some near
relative or of his friend. Cognizance by the court based on information laid
by Government spies or volunteer informers was allowed only in the case
of chhalas or misdemeanours, Aparadhas or felonies and the cases in which
the King was himself a party. Chhalas included destroying roads, water
reservoirs, houses, house trespass and indecorous behaviour before the
King. Aparodhas included disobedience of King's order, murder adultery,
theft and destruction of foetus. The offences concerning the King included
sedition, counterfeiting King's coin, disclosure of King's secrets, rescuing a
prisoner, obstruction of public proclamations.

A criminal trial began therefore, by the complainant or the informer
presenting his complaint or laying his information before the court.

8. Manu viii, p. 43.
(IV) Theory of Justice

Justice had various phases in ancient India. The word Dharma has also been used in the sense of justice. Manu has given a very interesting picture of justice in Chapter VIII of his book. Where justice is destroyed by injustice, truth by falsehood and judges connive at it, they are themselves destroyed. Therefore, justice being violated destroys; but justice being preserved preserves; therefore, justice must not be violated, lest violated justice destroys us. The only friend who follows men even after death is justice; for everything else is lost at the same time when the body perishes. One quarter of the guilt of unjust decision falls on him who commits the illegal acts, one quarter on the false witnesses, one quarter on the judges, and one quarter on the King”. Judges must be virtuous having capacity to administer justice and at the same time being highly moral character.

Manu further says – having occupied the seat of justice, with covered body and having worshipped the main deities with concentrated mind, the King should begin the trial of the cases. Legal philosophy of ancient India has a charming phase. The positive law of ancient India can be divided into the following forms:

(i) Substantive Law – It had eighteen titles of law which contained civil and criminal law separately;
(ii) Procedural law - It had the following titles
   a) Requisite qualifications of a judge,
   b) Elegance of judicial procedure,
   c) Rules of witnesses,
   d) Documentary evidence,
   e) Rules of limitations,
   f) Rules of conduct in judicial trial,
   g) Decision of trial court, and
   h) Appeal
In the modern world in the nature of legal rights there are some changes due to the advancement of civilization and the growth of new social needs, but the fundamental ingredients of legal rights and the method of judicial procedure are practically the same. In the modern world, the horizon of law has become more widened due to the legislative system and systematised judicial precedents. In ancient India law, making mainly depended on the Rishis who were obliged to read the social feelings, mental vision and moral integrity of the individuals and the social thinking and above all the needs of the people. As they were great thinkers, so their fertility of brain enabled them to have creative and working visualization of the pulse of the nation. They ably succeeded in evolving law highly practical and efficacious for the society.

(V) Distinctive Feature of Administration of Criminal Justice

Sir Henry Maine's proposition that Crime and Sins are convertible terms in ancient law is applicable to the evolution in Hindu jurisprudence; but the Civil Law could not be said in Hindu jurisprudence to have originated from the Law of Crimes. The Smritis deal with contracts with a wealth of detail and penetrating insight. The contrary proposition may be ventured that "Criminal Law" was a creature of the "Civil Law". The preponderance of the idea of "Civil injury over that of public wrong is inseparable from the following features:

a) No separate chapter is devoted to Criminal Law in the earlier Smritis.

b) Fewer references to it warrant the "mixed Civil and Criminal character of offences".

c) In transgressions of Law besides punishment of the culprit, liability to pay substantial damage to the injured party is provided for.

10. C. S. Sastry Fictions in Hindu Law texts; 35.
Yajnavalkya refers to abuse, assault, heinous offences, \textit{(Sahasas)}, theft, adultery, and miscellaneous offences under the heading of Sahasa.\footnote{Yaj. Smriti, Book II, Ch. XVIII to XXV.}

\textit{Res Judicata} is defined by Harita thus: Rules regarding persons who can be witness and who cannot be witness, admissible evidence, oaths resorted to where witnesses are not available, where witnesses are not necessary, punishments for perjury and for withholding evidence, and the examination of witnesses after being bound down firmly by oaths (Narada I. 168) are found in great minuteness in the \textit{Smritis Narada}\footnote{Narada, I, 230.} says where an equal number of witnesses are found on both sides with a good memory the evidence is entirely valueless due to the subtle nature of the \textit{Law of Evidence}. In prosecution for defamation, assault and violent offences, counter-charges are allowable.\footnote{(Yaj. II. 10).} Evidence is divisible into human and divine. Human evidence is to consist of document, possession, witnesses and the divine when and where necessary through ordeals. Document is divided into written by oneself and written by another. Or again into three, written by the King, written in public by a public scribe, and written by the party himself. (Brh. VIII. 3.)

The Evidence must be from persons who are known to be learned. (Narada I. 147) (Also Manu VIII, 74). The following persons can be witnesses: Trustworthy men of all castes, a person who has personal knowledge of a thing, Manu. VIII 69), women of even slaves and other dependent souls may be heard in suits of a grave charge (Narada, I. 188).

In competency to be a witness may be due to: (a) a text of law, (b) depravity, (c) contradiction, (d) volunteering nature, (e) intervening disease, (f) the relationship with parties. Eleven kinds of witnesses are mentioned (Narada I. 140-152). Possession as a juristic concept has been examined. Title generally is the root and possession is the branch.
Gradation of Courts

The courts presided over by the King was the highest court. There were other courts, some of them appointed by the King and the others, which people's courts recognized by the Smritis as having the power to administer justice.\(^{14}\)

(1) Kula (gatherings or family councils), Shreni (Corporation), Gana (Assembly), Adhikrita (Court appointed by the King), Nripa (King himself).

These are invested with the power to decide cases. Among these each of the courts mentioned later is superior to the one mentioned earlier.

The People's Courts (Gram Nyayalaya)

(i) \(Kula:\) An assembly of impartial persons belonging to the family or caste of the litigants, functioning as panchayatdars or panchayat mandali to decide disputes among those belonging in to the same family or caste.\(^{15}\)

(ii) \(Shreni:\) Corporation of persons following the same craft, profession or trade.

(iii) \(Gana:\) Assembly of person belonging to one place but to different castes of following different avocations.

Appellate Jurisdiction

A \(Shreni\) can review the decision of a \(Kula,\) and a \(Gana\) has the power to review the decision of a \(Shreni\).\(^{16}\) Judges have power to review the decisions of a Gana and the King is the highest court of appeal and his decision is final.\(^{17}\) As regards the existence of these courts, after considering, the historical evidence and the indications available there from, the Law Commission in its Fourteenth Report has said:

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14. Kat. 82.
15. 1-2-3 Sm.Ch. P. 40; Gharpure, p. 33.
16. Br. P. 281.29(p. 16.13-14-15-S);
"Though ancient writers have outlined a hierarchy of courts as having existed in the remote past the exact structure that obtained cannot be ascertained with any definiteness; but later works of writers like Narada, Brihaspati and others seem to suggest that regular courts must have existed on a considerable scale, if the evolution of a complex system of procedural rules and of popular tribunals, particularly the village courts, survived for a long time and existed even at the time of the commencement of the British rules in India. Their continuance was favoured by their antiquity and the absence of any other effective tribunals within easy reach; the structure of the village society in those days; the nature of the principle functions which these tribunals discharged which were conciliatory; and the non-interference by local rules with the working of these tribunals.\textsuperscript{18}

**Court's Holiday** - The eighth day (Ashtami) and the 14\textsuperscript{th} day (Chaturdasi) every fortnight and the full moon and new moon days were to be holydays for the King's Court.\textsuperscript{19}

**Salient Feature of Judicial Administration in Ancient India**

**Dharmadhikaran (*Hall of Justice*)**

The court hall was called Dharmadhikaran (Hall of Justice). The *Smritis* prescribed that a spacious hall in the palace should be reserved for holding the King's court. Br. P. 279-18 states that the court hall should be on the eastern side of the palace, facing East. Trees should be grown in the premises and water should be made available in the vicinity. It should be equipped with the required number of seats, decorated with flowers and jewels, and pictures and idols of deities should be displayed on the walls.\textsuperscript{20}

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\textsuperscript{18} Fourteenth Report, Vol. 1, p. 27.
\textsuperscript{19} Saraswati Vilasa, p. 72 Quoting Harita; H.D. Vol. III, p. 277.
\textsuperscript{20} Kat. 52;
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The place where the truth (in a dispute) is investigated according to the Dharmasastras is called Dharmadhikarana (Hall of Justice). The court was called Dharmasana (seat of Dharma) by Manu and Narada, and Dharmasthana (place of Dharma) by Sankalikita.

(VI) Kautilya; Law and Administration of Justice

The administration of justice is treated in a special Adhikaran, book. Three, which also sets forth in detail the law to be administered in the courts. The judges are called Dharmasthas, a name which apparently refers to the Dharma or law, by which they are to be guided in their work. It may be noted that the Smritis generally do not show acquaintance with this designation. It is found only casually mentioned by Manu in a passage which is very likely derived from the present Arthasastra text or one very much similar to it. The usual word for a judge in later times is Nyayadhish.

It is stated that three judges, of the status of an Amatya, should be appointed at each of the following places; Janapa a frontier post the headquarters of ten villages, Dronamukha, the headquarters of 400 villages, and Sthaniya, the chief city among 800 villages, which in effect is the capital of the state. The reference to Anzgrahana as a seat for a judicial court implies that justice is intended to be made available to the subjects very much nearer their places of residence than seems possible even today, it is not clear if a gradation among the courts at the different places mentioned in contemplated and if appeals from a court at a smaller place are intended to be enter trained in a court at a bigger place.

Since there is no reference to any gradation among the Dharmasthas and since all Dharmasthas wherever they work are to be understood as apparently enjoying the same status, it would appear that all courts at the various places mentioned are on the same footing. Perhaps the only appeal

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21. Manusmirt (8.57) i.
22. Arthasastra (3.1.19)
23. Arthasastra (3.1.1)
from the judgement of any court would be directly made to the King, whose final authority in pronouncing a judgement in any legal matter must be supposed to be unquestioned.

In the Chapter, which refers to the King himself as the judge, a list of priorities is laid down for taking up cases for consideration. The affairs of temples, hermitages, heretics, Brahmins learned in the Vedas and so on are to be taken up first in this order, then those of minors, old persons, and sick persons. It is, however, added that in urgent matters and in matters of great importance, the rule about priorities may be set aside. It may be supposed that the same considerations are meant to apply to cases coming before the Dharmasthas.

The Dharmasthas are to look into what are called Vyavahararthaas, that is, cases arising out of mutual transactions (Vyavahara) among the subjects. A vyavahara is a transaction or an affair between two parties. It covers not only such transactions between two parties as marriage, incurring of debts, sale etc., but also such affairs as Sahasa or forcible seizure, Anupraveaa or trespass with criminal intent. Kalaha or scuffle and so on, in which two parties are involved, in all these cases of Vyavahara, if one of the two parties feels aggrieved, he has to take the matter to a Dharmastha court before the state can do anything about it. The nature of the wrong suffered may be a monetary or other loss or a physical or other injury. As Bellower says, we have in all cases a private suit for redress of wrong or injury.

Ordinarily, unless the aggrieved party lodges a complaint, the judge cannot proceed in the matter. However, in the case of affairs concerning temples, Brahmins, ascetics, women, minors, aged persons, sick persons and orphans, the Dharmastha is allowed to institute proceedings suo moto, if these do not approach the court. It is laid down in that connection, that the

24. ArthaSastra (1.19.29-30.)
25. ArthaSastra 4.3.1.1)
affairs of these parties must not be dismissed on the plea of absence of jurisdiction or by postponing them (kalacchala) or on grounds of adverse possession. When a complaint is brought before him, the judge is to get the following details written down by the clerk of the court the time and place of the transaction, the amount of debt, and the name, caste, place of residence etc. of the complainant as well as of the defendant. He is then to record the causations put to both of them along with their replies. Before, however, the case is proceeded with; the judge is to ask both parties to furnish competent sureties (Avastha). This is intended to ensure that the fine will be received by the state whichever party loses the suit.

It seems that the law of procedure and the law of evidence were first framed in connection with suits concerning the non-payment of debts (Ruddana). Similarly, it is in the section on Madana that we have a discussion on witnesses, their number, their admissibility, trustworthiness and so on. It is obvious that debt was the most ancient and the most common form of Vyavahara, about which disputes were taken to the court.

It is stated that when witnesses have to be called, there should be at least three of them or two if both parties agree, but never one in a dispute concerning a debt. That they should be trustworthy and honest or acceptable to both the parties is naturally emphasized. Some persons however, are inadmissible as witnesses, either because they have an interest in one of the parties to the suit, such as his kinsmen or dependents, or because they suffer from some physical or social disability, such as blind or deaf person as or outcasts, or because they hold certain positions, such as that of a state servant the King himself is not to be a witness. Women as such appear to be inadmissible as witnesses. Exceptions however, allowed

26. ArthaSastra (3.20.22)
27. ArthaSastra 3.1.17)
28. ArthaSastra 3.11.26ft.)
29. ArthaSastra (3.11.26-27)
in cases of abuse, assault, theft or adultery, when the only inadmissible witnesses are declared an enemy of the accused, a wife's brother or an accomplice of the complainant.\textsuperscript{30}

When different witnesses give mutually contradictory evidence, the judge is to accept the testimony of the majority or that of those among them who are known to be upright or who are accepted by both sides. If witnesses testify to an amount less than, the one claimed by the plaintiff, a part of the excess claimed is to be imposed as a fine on him. However, they testify to an amount larger than the one claimed, the excess is to be taken by the state. Because of the plaintiffs' carelessness, the amount was heard wrongly by witnesses or was wrongly entered by him in the plaint; the testimony of witnesses is to prevail\textsuperscript{31}.

For perjury, the different schools of \textit{Arthasastra} had recommended in various kinds of punishment, more or less severe. Disagreeing with them, Kautilya himself seems to recommend only a fine of 24 panas for giving false evidence and 12 \textit{panas} for refusing to give evidence.\textsuperscript{32} Perhaps he thought that too severe a penalty might lead to difficulties in getting witnesses. It is possible that he also does not quite approve of the rule in\textsuperscript{33} which makes a witness liable to pay the decretal amount for refusing to give evidence, though this cannot be proved.

The text knows documentary evidence, but it does not discuss the question of their admissibility or validity. This shows that, it attaches more importance to the testimony of witnesses than to documentary evidence. Obviously, we have here an earlier stage in the growth of the law of evidence. Kautilya says in his \textit{Arthashastra} – that the King should employ one fourth of the total revenue for the maintenance of the State servants.

\textsuperscript{30. ArthaSastra (3.11.28-29)}
\textsuperscript{31. Arth Sastra (3.11.41-43)}
\textsuperscript{32. ArthaSastra (3.11.48-49)}
\textsuperscript{33. ArthaSastra (3.11.38)
The King should look to the bodily comforts of his servants by providing such emoluments that may inspire them to work.

The sons and wives of those who die while on duty (EXTRA JUDICIAL STAFFS) shall get substantive wages and subsistence. The family members of the aged and deceased servants shall also be shown favour. On occasions of funeral, sickness or child-birth the King shall give presentations to his servants concerned therein. In the case of death, illness and child-birth etc. in the family of the State servants the King should extend pecuniary help to them 160 panas.

(VII) The Present System- Comparison with Ancient Judicial System

In answer to the criticism that the present system is unsuited to the Indian conditions and is some thing alien transplanted on the Indian soil, it may be observed that through the changes in the early period of British rule in India were influenced by the system prevailing in England in those days, the changes did not have the effect of ousting the personal laws, no judicial system in any country is wholly immune from, and unaffected by, outside influences, nor can such outside influence be always looked upon as a bane. The laws of a country do not reside in a sealed book, they grow and develop. The winds of change, and the free flow of ideas, do not pass the laws idly by. As has been observed, even in procedural law, which was codified by the foreign rulers in this country, the basic principles of a fair and impartial trial, which were well known to their predecessors, were adhered to. New laws were enacted to provide for matters which were either not fully covered by the indigenous law, or where such laws were not clearly defined and ascertainable or were otherwise not acceptable to the modern way of thinKing. Such outside influences are, however an integral part of the historical process of

development of thought and institutions all over the world, and once the new concepts get assimilated, they cease to be alien in character. Viewed in this light, it seems hardly correct to say that the present judicial system is a foreign transplant on Indian soil, or that it is based on alien concepts unintelligible transplant on Indian soil, or that it is based on alien concepts unintelligible to our people. The people have become fully accustomed to this system during more than a hundred years of its existence. The procedures and even the technical terms used by the lawyers and the judges are widely understood by the large majority of litigants.

**Criminal justice in Ancient India**

It would appear that the criminal justice system was equally sophisticated. Ancient Indian lawgivers and commentators exhibit a richness of thought and variety; reminiscent of modern legal systems.

In substantive criminal law, for example, we find an elaborate classification of offences. The broad categories were fine, namely, abusive words, assault, theft, adultery and crimes of violence. There were, however, a number of variations in each of these broad categories. For example, theft was classified into three kinds according to the value of the things stolen: trifling, middling, and grave or high. Another interesting refinement was the classification of thieves into open or patent thieves and secret thieves, reminding us to a certain extent of the modern discussion about white-collar criminals and others. In open or potent thieves were included traders who employ false weights and measures, gamblers, quacks, persons giving bribes, persons who profess to arbitrate, persons who manufacture counterfeit articles and the like. "Concealed thieves" are illustrated by persons who move about with tools for house-breaking without being observed. These were again sub-divided into nine

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36. Id. p. 519
37. Id., p. 520
categories.\textsuperscript{38} Learned discussion as to the right of private defense was not unknown.\textsuperscript{39}

**Punishment of Abetment**

Detailed rules are to be found for the punishment of abettors. The rules relating to abetment and the penalties for various species of abetment as provided by Katyayana\textsuperscript{40} offer an interesting parallel to the graded punishment in the Indian Penal Code for various species of abetment.

**Offences**

The range of offences itself was surprisingly large. Not only were offences such as murder, rape, dacoity and the like (which may be called conventional offences) punishable, but there were provisions punishing other crimes as well, for example not running to the rescue of another person in distress was an offence.\textsuperscript{41} This is surprisingly modern provision, as it should be noted that it is only during the last twenty years or so that the question whether such an omission ought to be made an offence has been seriously debated in Common Law Countries.

Punishment is prescribed for causing damage to trees in city parks, to trees providing shade, to trees bearing flowers, and fruits, to trees, which are useful, to trees in holy places, or trees serving as boundary marks.\textsuperscript{42}

Even the giving of a wrong decision, if done corruptly by a judge, was regarded as punishable.\textsuperscript{43}

\textsuperscript{38} Katyayana, Verses 832-834, as quoted by Kane, "History of the Dharmasastra", 1972, Vol. 3, p. 529.
\textsuperscript{39} Kane, History of Dharmastras, 1972, p. 507.
\textsuperscript{40} Katyanaya, verses 332, as quoted by Kane, "History of the Dharmasastra", 1972, Vol.3, p. 529.
\textsuperscript{41} Kautiliya Arthasastra, 1965, part 3, p. 230.
\textsuperscript{42} Id., p. 229 Chapt. 3.18.
\textsuperscript{43} Kautiliya iv.9; Kane, "History of the Dharmasastra", 1972, vol. 3, p. 271.
Criminal Procedure

As to judicial procedure in criminal cases, the lawgivers seem to have been aware of the presumption of innocence; there are texts, which forbid conviction merely on suspicion. Rules for the evaluation of evidence of various classes of witnesses met with. The famous Sanskrit play *Mrichhakatikam* has an interesting trial scene that reveals stages of procedure not very different from a modern criminal trial.

Perjury and other offences by witnesses were punished severely by the criminal law, the penalty being fine and banishment.

There were six types of punishment, reprimand, torture, imprisonment, death and banishment.

The punishment was graded according to several factors. It was material to consider whether the offence was the first crime of the offender or whether it was his second criminal act, and so on. The time and place of the offence; and the strength and knowledge (of the offender) were to be fully considered.

It is one of the justified complaints against the modern penal law that in criminal proceedings the injured party is generally neglected. In ancient Hindu Law, the lawgivers were fully aware of the necessity of directly compensating the victim of the crime. Thus, Manu says:

“If a limb is injured, or blood (flows) the assailant shall be made to pay (to the sufferer) the expense of the cure, or the whole (both the usual embracement and the expenses of the cure as a) fine (to the King)”

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44. Manu viii, 120; Vol. 25 Sacred Books of the East, p. 275
45. Manu viii, 129; Vol. 25 Sacred Books of the East, p. 276
46. Manu viii, 16; Vol. 25 Sacred Books of the East, p. 218
47. Manu, vii, 207, 288; Vol. 25 Sacred Books of the East, p. 393
Manu adds -

"He who damages the goods of another, be it intentionally or unintentionally, shall give satisfaction to the (owner) and pay" "to the King a fine equal to the (damage)".

It would appear that on the basis of the injunctions contained in the texts, one could construct an entire code of criminal law.

We have just noticed that the present judicial system is the result of a gradual process which has been going on incessantly, and that it is not the product of one day. Changes, modifications and amendments have been made both in the hierarchy of courts as well as in the procedures followed by them, as the society gradually became more and more developed. The present day complications and delays in disposal of cases are not so much on account of the technical and cumbersome nature of our legal system as they are due to other factors operating in and outside the courts. Inspite of the fact that we are still heavily dependent on agriculture; we can no longer be regarded as an undeveloped peasant society, in view of the great strides that have been made in the direction of industrialization and urbanization of population, besides expansion of trade and commerce. It will be a retrograde step to the primitive method of administration of justice by, taking our disputes to a group of ordinary laymen ignorant of the modern complexities of life and not conversant with legal concepts and procedures. The real need appears to be to further improve the existing system to meet modern requirements in the context of our national ethos and not to replace it by an inadequate system, which has left behind long ago.

B. Judicial Administration In India During Medieval Period

(i) Concept of Justice in Islam

The concept of justice in Islam is that it should be impartial and no respecter of persons, high or low prince or peasant, white or black, Muslim
or non-Muslim. The Book of God enjoins upon the believers to decide cases on the basis of equity, justice and upright testimony:

O, ye who believe, be maintainers of justice, bearers of witness for Allah’s sake though it may be against your own slaves or your parents or near relations, be he rich or poor. Allah is most competent to deal with them both, therefore do not follow your low desires lest you deviate, and if you swerve or turn aside then surely Allah is aware of what you do.48

O, ye who believe, stand out firmly for God, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just, that is next to piety and fear God, for God is well acquainted with all that ye do.49 The Muslim Canon law has also laid down strict rules for the guidance of the Qazis in administering justice without distinction of race and creed, friends and foes. The Second Caliph (Hazrat Umar) issued a farman to the governor of Kufa containing instructions for the administration of justice. One of the instructions is “Treat all men justly and on equal footing when they appear before you in the court.50 Another farman containing the following instruction: in dealing justice regard all men as equal, and treat the near and remote on equal footing, and keep yourself free from corruption”.51

The two main functions of an Islamic state, according to historians, are firstly to establish peace and harmony in the state and afford protection to the weak against the strong, secondly, to punish evil doers and restore to the injured his due right. This last mentioned duty rests on the judge. Hence, the dignity of the judicial office has always been given great importance in Islam.

48. (Al-Quran, IV: 135)
49. (Al-Quran, V. 9)
(ii) Extent and Application of Muslim Law

It is ordinarily believed by the common people that the Muslim Sovereigns governed India with the laws of Shara (canon laws of Islam) "imported ready made from outside India". This is not wholly true. The fact that Muhammadan Law consists of two parts, religious and secular and that each portion has its special application, it is important to mention that the Shariat enjoins that the cannon law should be made applicable only to those who believe in the Islamic religion. Consequently, the whole body of the Muslim law is not applicable to non-Muslims. The Muslim jurists have classified the Muslim law under two broad heads - Tashri’yi, religious and Ghair-teshri’yi, secular. The purely religious portion of law is applicable to Muslims only. The secular portion which is in substance common to all nations, applies to Muslims and non-Muslims alike. The principle is thus stated in the Fatawai-Alamgiri: "Non Muslim Subjects (Dhimmi) of a Muslim state are not subjects to the laws of Islam". Their legal relations are to be regulated “according to precepts of their own faith”.

Such being the policy of the Islamic law, the extent of its application to India during the Muslim rule may be stated as under:

Civil Law

(a) The purely personal law of Islam relating to inheritance, succession, marital rights, guardianship, will, endowment, gift, etc. was applied to Muslims only, as was the case under the British rule.

(b) The secular portion of the civil law relating to trade, barter, exchange, sale, contract, etc., was made applicable to Muslims and non-Muslims alike.

The laws of the land – The system of taxation relating to land revenue, minerals, quarries, manufacture, agriculture, excise, Octroi (chungi),

54. Ibid.
merchandise, Sea-borne trade, etc., were adopted from the people of this country by the Muslim sovereigns of India with necessary modifications. These taxes and imports were levied on and realized from all races (including Muslims) alike.

The Religious and Personal Laws of the Non-Muslims - The Hindus, the Buddhists and other non-Muslim subjects were governed by their own respective religious and personal law. When the tribunal happened to be the court of the Qazi, or the court of the sovereign the suits involving the points of personal law of the Hindus, were used to be decided with the aid of the learned pandits and Brahmans, in the case of the other races, with the aid of their learned men.55

Criminal Law

(a) The portion of the Islamic canon law which deals with religious infringement, was applied to Muslims only; such as drinking, marrying within the prohibited degree, apostasy, etc. For such offences non-Muslims were not held liable to punishment under the laws of Shara.56

(b) That portion of the Islamic criminal law which punishes the acts which constitute crimes in the estimation of all nations, was applied to Muslims and non-Muslims alike, e.g. adultery, murder, theft, robbery, assault, etc.57

The Qanun-i-Shahi or the Edicts and Ordinance, contained in the Farmans and Dastur-ul-amal for the guidance of the officers of the State. They were the common law of the people of the country as opposed to the Canon law. These Qanun were binding upon the judicial and executive officers, and in compliance therewith the courts of common law were established in India.

Such have been the scope and extent of the law applied to the Muslim and non-Muslims of India during the Muhammadan rule. It is

57. Ibid.
clear that the body of laws which controlled the social life and regulated the legal relations of the Indians (including Indian Muslims) consisted at least of three kinds of laws – the Indian law,\(^{58}\) the Muslim Law, and the *lex loci* or the municipal laws of the country, which did not properly come within the scope of the Hindu or Muhammedan Law, but many of them consisted of the various local taxes and duties and customs. This kind of law was often imposed by the *Farmans* and Edicts of the emperors. It should be noted that the municipal laws as well as the various local taxes and imposts which are mentioned in the books on *Fiqqh* as imposed by Caliphs, were not applied by the Muslim sovereigns to the Indian people. Further, the secular portion of the Muslim Law underwent changes and was often modified by the *Shahi Farmans*. Hence it is not correct to say that the Muslim Rulers governed outside India with the laws imposed were ready made from India.\(^{59}\)

**iii) Administration of Justice during Muslim Rule**

The history of judicial system of India traced here relates to the period covered by the Medieval Age and extends upto the middle of the 18\(^{th}\) century. The age had its ideals of justice and standards of punishment. In order to make a clear picture, the administration of justice during Muslim rule is divided into four periods;

1. The period of conquest and military occupation – From the Arab conquest of *Sindh* till the invasion of *Sabuktgin* (712-991 A.D.)
2. The period of successive invasions without any attempt to establish a government in India – From the death of *Sabuktgin* till the invasion by Muhammad *Ghori* (999-1206 A.D.).
3. The period of settled government with judicial tribunals – From the time of Slave Dynasty till the death of Sher Shah (1206 – 1555 A.D.).
4. The period of well-established government with extensive judicial and administrative machinery from the Mughal Rule till the grant of the *Diwani* (1555-1765 A.D.)

\(^{58}\) i.e. The laws of the Hindus, the Buddhists, the Jains, etc.

\(^{59}\) Sarkar: “Mughal Administration,” p. 6.
First Period

The famous Arab general, Muhammad Bin Qasim defeated Rai Dahir and annexed Sindh and Multan. Although the provinces were held by the Arabs, it was merely a military occupation. There was no Muslim Government in the proper sense of the term. Muhammad Bin Qasim entrusted the internal administration of the conquered provinces to the Brahmans who held important positions in the reign of Rai Dahir.

The administration of the country was, therefore, carried on by the Indians themselves without any interference by the conqueror. The administrative and judicial machinery remained the same in the hands of the Hindu officials, who held courts and administered justice in accordance with their Shastra. During this period no portion of the Mohammedan law not even the law relating to Dhimmi (non-Muslims), was applied to the conquered provinces. As regards the Muslim soldiers who remained in the occupation of the country, they were governed by the Muslim law, and their disputes were decided in the court of Qazi with the assistance of Mufti. In the case of miscarriage of justice the provincial Governor (Amil) used to hear appeal - more properly speaking, revise the judgement of the Qazi in consultation with the Qazi and Mufti who assisted him (the Governor) in arriving at a right conclusion.

Second Period

The period of successive invasions and turmoil began from the incursions of Subuktigin (991 A.D.) and lasted till the permanent conquest of India by Muhammad Ghori (in 1206 A.D.) During this period, Sultan Mahmud of Ghazni led his famous expeditions to India. He did not establish any stable government. All his invasions were plundering
expeditions. "Of this period we have no record of the Muslim administration of justice in India".  

**Third Period**

The period of the settled government commenced from the slave dynasty (1206 - 1290 A.D.) and continued during the reign of Khilji dynasty (1290 - 1321), the Tuglaq dynasty (1321-1413), the Lodi dynasty (1451-1526) and the Sur dynasty (1539-1555) during these periods there was a permanently settled government in India, and the administrative and judicial machineries were set up for the better working of the government.

One of the noteworthy features of the Muslim Sovereignty of India is that from the time of the slave kings the Muslim sovereign adopted India as their home and Muslim became the permanent inhabitants of this country. There were no doubt influx and efflux, but the influx was greater than the exodus. Consequently, the monarchs began to devote greater attention to the consolidation of the government of the country. This led to the rapid improvement of the Civil and Judicial Administration.

**Pre-Mughal Period**

Before discussing the administration of justice during Mughal Period, it is important to survey the administration of justice during Pre-Mughal period. The reason is obvious. The Mughal system of the administration of justice was of slow growth; the judicial machinery was set up gradually and from time to time modified and improved upon what had existed in the pre-Mughal period.

**Tribunals**

During this period regular tribunals were established; judicial officers of different grades were appointed, court houses *(Mahkuma-i-*

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adalat) built, rules of procedure as prescribed in the law books observed, and the decrees passed by the judges, enforced. Further, the court of revision (mirafi at) was constituted, censors Muhtasibs were appointed for the supervision of public morals and illegal traffic and for the control of grog shops and suppression of gambling dens. The chief Judge (Qazi-ul-Quzat) was first appointed to supervise the work of the subordinate Qazis at the time of Qutbuddin Aybak. Hasan Nizami, the author of Taz-ul-Ma'sir to remark: "he extinguished the flame of discord by the splendour of the light of justice." 63

Suits and Appeal

It was the practice of the Muslim sovereigns to administer justice in person. Almost all the Muslim monarchs of these periods used to hold court and hear suits and appeals. Al-Badayuni point out that Sultan Muhammad Tughlaq constituted himself “the Supreme Court of appeal”, and used to revise the decisions of Qazis for the ends of justice. 64

Al-Badayuni says:

"The Sultan used to keep four Muftis to whom he allotted quarters in the precincts of his own palace. So that when any one was arrested upon any charge, he might in the first place argue with the Muftis about his due punishment. He used to say, be careful that you do not fail in the slightest degree by defect in speaking that which you consider right, because if any one should be put to death wrongfully the blood of that man will be upon your head.’ Then if after long discussion they convicted (the prisoner) even though it were midnight he would pass order for his execution”. 65

From the above description, it is clear that the sovereign's court (Diwan-i-Adalat) was original as well as appellate.

64. “Muntakhab-i-Tawarikh,” p. 311 (translated by G.I. RanKing)
Dr. Muhammadullah points out that Muhammad Tughlaq “appointed distinguished officers of the state as judges irrespective of the fact whether they were Umama or not”. Ibn Batuta speaks very highly of the Sultan; in his opinion “of all men this king is the most humble and of all men he most loves justice, the Sultan submitted to the decrees of the court passed against himself.”

Although the Muslim sovereigns of India were absolute monarch, they were subject to the court of justice and used to uphold the majesty of law. There have been cases in which Muslim sovereigns have bowed to the authority of the law courts sometimes against their will.66

Raziya Begum

Sultana Raziya (daughter of Altamish) furnished a striking example that a Muslim lady can be a Queen and Qazi under the Muslim law. Chand Sultan is another example which demonstrates that the daughters of Islam enjoy the same rights and privileges as her sons.

Razia Begum “gave up the seclusion of Zanana and transacted business in open court like a King. She even put on the head dress of a man”. She used to hold court and dispense justice in person with the Qazis and Muftis who attended the audience its duties in the usual manner.

Ghai Suddin Balban

He established a strong government and effected certain improvements in the administration of justice. He was an impartial dispenser of justice, and “never showed any partiality towards any of his subjects even if they were his kin and relations. Balban also established a system of espionage with a view to make the administration of justice efficient; the spies were called upon the report every act of misconduct and every instance of miscarriage of justice to the monarch directly”. Hence the

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system of espionage was carried to the extreme by the Mughal Emperors of India.

During the reign of Sultan Sikandar Lodi the designation of Qazi-ul-Qazat (chief Judge) was changed to Mir-i-Adl and the court of the chief judge was replaced by Dar-ul-Adl. He initiated several reforms in the Judicial and administrative machinery of the government but could not give effect to them owing to his death.67

Judicial Reforms of Sher Shah

During the sultanate of Sher Shah both the judicial and the executive machinery was greatly improved. He introduced various reforms, which may be summarized thus: The provinces of his empire were divided into administrative units called Sarkar’s, which were again subdivided into Parganas. He appointed Shiqdars a new set of officials who were the executive officers for the administration of criminal justice, and Munsifs who used to try civil suits. The village administration was left to the village community, the autonomy of which was not disturbed. Sher Shah appointed Muqaddams or the village headmen who were held responsible for the commission of offence in the village, and required to produce the offenders before the proper authority. The duties of the Muqaddams were to keep watch over thieves, robbers and bad characters and to detect crimes when committed.

During the reign of the predecessors of Sher Shah, the judiciary under the chief Qazi were called Dad-bak, i.e. the dispenser of justice.68

iv) Mughal Period - Speedy Justice an Overview

The Muhgal Dynasty was established in 1526 A.D. by Zahiruddin Babar, the period was the Golden Age of the Muslim rule in India. Babar defeated the last Lodi Sultan of Delhi and brought the Sultanat to an end.

His son Humayun, was turned out of the country by Sher Shah Sur in 1540, but he regained his Kingdom in 1555 by defeating Sikandar at Sirhind, and from that date the Mughals ruled India effectively until 1750 A.D. and nominally up to 1857, when the last Mughal Emperor was succeeded by Queen Victoria as Empress of India.69

The influx of cases was meagre in the Mughal period or because of some other reason there was no specific provision of speedy trial.

The literature available concerning the criminal justice system during initial stages of the Mughal period in India succinctly discerns that it was endeavoured to dispose off the cases as quickly as possible so that neither the evidence of witnesses decayed nor the sequence of events were obliterated by lapse of time.70

The Mughal Emperors were extraordinary hard working they kept an eye on all departments of the State including that of law and justice. The Mughal emperor used to hold his court everyday where ordinary cases were decided. Akbar held his court after prayers and administered justice there.71 Every Mughal Emperor, however, set apart a day of the week for administration of justice. In the case of Akbar, it was Thursday72 for Jahangir Tuesday and for Shah Jahan and Aurangzeb Wednesday.

William Hawkins who visited India during Jahangir's reign (1608-13) remarked that the Indian Kings sat “daily in justice every day”

69 Muhammad Basheer Ahmad, “The Administration of Justice in Medieval India. Published by The Aligarh Historical Research Institute For the Aligarh University (1941) p. 133.

70 S.P. Sangar, Administration of Justice in Mughal India 10(1967); W.H. Moreland, From Akbar to Aurangzeb 5-7 (1923); Ram Prasad Khosla, Mughal Kingship and Nobility 126(1967); R.C. Majumdar, et.al. An advanced History of India 552(1970); Vincent Smith Akbar the Great Mughal 344 (1918); Abul Fazal, Ain-e-Akbari translated by H. Blockmanu. Vol.III p. 399, K.C. Vyas and D.R. Saedesai, India through the Ages 142 (1967); Ashirbadi Lal Srivastava, Evolution of Administration (1556-1605 A.D.), Vol. II pp. 273-6 (1973); Francis Berver, Travel in Mughal Empire (1656-1668 A.D.) 102 (1968); H.M. Elliot and John Dow-son, History of India as told by its Historian, Vol. III, pp. 170-3.


72 Id. Bev. III, p. 1069; Text, III, 717.
Nicholas Withington (1612-16) observed that Jahangir sat in his court at Agra three times a day to do his 'great justice'. Edward Terry (1616-19) confirms this and adds that any complaint there could hold up his petition and was sure to receive a hearing. We learn from the account of William Hawkins that Jahangir came to the audience Hall at 3 O'clock and took his seat on the royal throne while his nobles and Mansabdars kept standing. For two hours, he "hearth all cases in this place". According to another account, he came to the court between 3 and 4 O'clock in the afternoon and did not leave till the evening.73

The Mughal emperors even when out of the capital did not neglect the cause of justice. While embarking on the Bengal expedition, Akbar held his court in the boat and decided cases there.74 Even while he was on March the King failed not to hold the court in tent and administer justice. "The king of Hindustan Seldom fails even when in the field, to hold this assembly twice during the 24 hours, the same as when in the capital.

Besides the special day reserved for the administration of justice, the Mughal emperor used to hear cases in the Diwan-i-Aam also on almost all the days of the holding of the court. When the petitions of the aggrieved concerning different matters were presented, the persons involved were ordered to present themselves before the emperor who heard their complaints and delivered judgement usually on the spot. In certain cases full investigation ordered, sent for detailed report and then gave the decision. According to Bernier, Aurangzeb devoted two hours on another day to hear in private the petitions of ten persons selected from the lower order. One day he fixed to attend the justice chamber, called 'Adalatkhan, where he was assisted by two principal Qazis.75

74. Akbar Nama, III, 88; Bev. II, p. 124.
75 Bernier, I.P. 263; Manucci, II, p. 462.
The emperor was supposed to dispose of a large number of cases at a court of first instance and as the highest court of appeal. From the above finding one thing is clear that the trials in Mughal India by the Kings were ‘Speedy’ and so the punishments.

**Functionaries under Administration of Justice/Courts**

During the Sultanate, the department of law and justice was named as *Mahekmae Qaza*. The word *Qaza* was, replaced by ‘*Adalat*’ under the Mughals and the word ‘*Mahekmae Adalat*’ was generally adopted for the Department of Justice as distinct from *Mahekmae Shariya* used for questions related with religion.

The *Qazi, Mir Adl, Mufti* and *Darogha-e-Adalat* belonged to the *Mahekmae Adalat*, but there were also officers of the revenue and other departments who had power to try cases such as the *Diwan, Faujdar, Kotwal* and *Amalguzar* etc.

In Mughal India, there were mainly three agencies in general charge of Judicial Administration. The Emperor and his agents like the provincial governor, the *Faujdar* in the *Sarkar* and the *Kotwal* usually administered political cases. Robbers and rebels working in organized bands would claim the attention of and receive punishments from these secular officers.

The *Qazi* administered *Shar'i* or sacred law. His jurisdiction was confined only to questions connected with religion. He decided disputes concerning family law and marriage, inheritance or *auqaf* and also criminal cases.

For the Hindus and the village people there were the courts of the Brahmin *Pandits* and the castes elders. They administered the Common (unwritten law) or codes of tribal traditions. They were not subordinate to the *Qazi*, nor had anything to do with the *Shar'i* law.

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(V) Procedure Adopted for Administration of Justice

From the treatises on *Adab-ul-Qazi*, i.e. practice and procedure to observe by the court are as follows:

The trial should be held in an open court. The *Qazi* is required to sit in the court of justice (*Darul Qaza*). The peons and orderlies must be present at a distance in the court. The public as well as the parties and their witnesses are allowed to have a free access to the court. The peons are to regulate the crowd and keep order in the court. The *Katib*, the writer or the clerk of the court, is to sit near the *Qazi*. His duty is to receive plaints and petitions and to record evidence under the direction of the court. The *Qazi* sit on the *masnad*, some times on a raised platform covered with carpet. The parties are to sit in front of the *Qazi* and must be treated on equal footing whatever may be their respective position. The Mufti and *Ulama* (the law officers of the court) are to take their seats near the *Qazi*. The usher calls in the parties. The *Vakil* represents the parties or the parties themselves state their case. No oath is to be administered in the first instance, because evidence is incumbent of the part of the plaintiff and oath on the defendant.\(^{78}\) The *Katib* records the statements and the evidence. However, it is held better that the *Qazi* should himself take down the evidence. After hearing the plaintiff and his witnesses, if the *Qazi* thinks that a *prima facie* case has been established, and that the statements of the witnesses are in the conformity with the allegations in the plaint, he will call upon the defendant for an answer. This can be done either by way of denial, or by a way of avoidance. If the parties desire to examine witnesses and ask for time, the *Qazi* must grant time and adjourn the hearing. Otherwise, he is to adjudge the case on materials before him. The order of the court is to be noted in the register of the case.

\(^{78}\) Hidaya (Grady), p. 451
The judgement and decree are to be drawn up and *Mahzur and Sijil* (decree and records of proceedings) are to be prepared in accordance with certain rules and embodied in the prescribed forms.79

**Jurisdiction**

*Qazis* were enjoined to watchful of their jurisdiction to whatever offices they appointed and were not to exceed it (*Fiqh-e-Firoz Shahi*). They were supposed to try only those classes of cases, which were specified in their letter of appointment (*Fatawa* Vol. III. *Adabul Qazi*). The King, *Qaziul Quzat*, the *Subahdar* within the *Subah* and the *Qazi-e-Subah* within his charge alone had inherent jurisdiction in civil and criminal cases.

The *Qazis* could not decide suits in which they were personally interested80 (*Fatawa*) but they could be appointed in their home district81, vide letters of appointment in the Appendix. Emphasis was laid on the trial of case on the spot if possible.

The powers of the Appellate courts and their jurisdiction in Revision were not defined. The principle underlying the system as followed by the Sultans and adopted by the Mughal Emperors was that a decision of a lower court could be challenged in a higher court and the political divisions of the State determined the status of the courts. From the nature of their office, the King and the *Qaziul Quzat* possessed jurisdiction to try cases all over the empire.

**Procedure in Criminal Cases**

In Mughal India, the procedure adopted for deciding Criminal cases was simpler.

There was no system of 'commitment for trial' and the criminal courts followed a uniform practice. The criminal complaint was to be

80. Section 556, Criminal Procedure Code in British India.
presented to court personally, or through a representative. The government prosecutions were instituted by Mohtasibs or Kotwals. The court had power to call the accused at once or it could insist upon hearing the complainant’s evidence before summoning him vide complaints of Sir Thomas Roe against Zulfiqar Khan and Asaf Khan. In petty cases, no record was kept except a note in register (Musajjilat). The sentence was pronounced in open court.

**Ex-Party Proceeding**

Evidence could be heard in the absence of an absconding accused, but prosecution witnesses were to be recalled when he was arrested and his trial Commenced. (Kitabul Ikhtyr Ms. Add. 22714 f. 35). (Kitabul Mafqud, Figh-e-Firoz Shahi). The practice in Mughal India that if the complainant was absent the accused was to be released. In a murder case, i.e. State vs. Sulaiman and others, the heirs of the deceased did not appear to prosecute the case and the accused were discharged. In another case, State vs. Sulaiman and others (collections) a murder case, the heirs of the deceased did not appear to prosecute the case and the accused were discharged. This can only happen in British India if the alleged offence is punishable with not more than six-month’s imprisonment. No judgement could be pronounced in the absence of both the parties and their counsel. (Vakil).

**Process of Prosecution**

In offences against religion, Mohtasib or the Censors of Morals were the prosecutors. In other state prosecutions, the Kotwal had this duty or

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83. Muhammad Basheer Ahmad, 'The Administration of Justice in Medieval India (1941) p. 183.
84. Ibid.
the Faujdar in places where there was a Faujdar but no Kotwal. Shiqahdars also could report the Qazis for cognizance of cases in Parganas.

The sole purpose of the office of Qazi was to dispense justice. The procedures laid down in this connection are to help him and provide him facilities to carry out the judicial work, and not to bind him by the regulations of the work if the same are inconsistent with the fair and speedy administration of justice. Hence, there are some provisions in the procedure in courts to expedite the administration of justice.

**Law of Limitation**

The Shara' fixes no limitation for anything the author of Ikhtyar (Ms. Add. 22714) mentions at several places that in criminal cases evidence was to be produced without delay. For summoning the evidence, one month from the date of the presentation of the suit was recommended in Hidayah. In the old Turkish Empire, definite periods were prescribed within which evidence, oral and documentary had to be produced. This was not prohibited by any express rule of the Shara and therefore, the Ulema agreed to it.

There are no records to show if any regulations were issued in Medieval India limiting the time within which suits or appeals were to be filed. The Dastural Amal Ms. 2907 (I.O.L.) prepared in 1793 A.D. by East India Company for its courts in South India fixed a limitation period, but it did not show whether the regulation was borrowed from the system previously in force.

**Arbitration (Tahkim)**

The Cannon law of Islam (Sharah) allows arbitration between the parties i.e. called Tahkim. The law confers the right upon the parties to refer their dispute to an arbitrator of their choice. The arbitrator has the power to

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87 Vide Br. Mus. Add. 22714 f. 11.
examine witnesses, administer oath like a court, and give award according to the facts of the case and in accordance with the law to which the parties are subject. If the parties accept the award, the decision of the arbitrator will be binding upon the parties and will have the force of a decree. However, if a party does not accept the award and refers it to the Qazi for its revision (marafia) the letter has the power to interfere and set it aside if the award is not in accordance with the law; otherwise, the Qazi will pass a decree in terms of the award.

No arbitration was allowed in certain criminal matters, which entail the specific punishment of hadd and retaliation.\(^\text{88}\) Misdemeanours, i.e. offences of man vs. man were not subject to arbitration, which was allowed mostly in cases of Debt, Trade, Accounts, Commerce and Petty quarrels. (Hidayah, p. 329).

**Compounding of offences**

Generally, in private complaints, which were not prosecuted by State, compounding of criminal cases was allowed (Kitabul Ikhtayar p. 59). In other cases, the permission of the court was necessary. The present Criminal Procedure Code, 1973 in India has laid down that certain offences which are of a private nature and relatively not quite serious as compoundable offences and some other as compoundable only with the permission of the court U/Sec. 320(1) and 320(2) respectively, but Qazis went so far as to allow a murderer to expiate his offence by payment of 'Qisas' (blood fine) vide State Vs. Nurjhan, Tuzuk (Shibli) p. 30 and Ata Husain Vs. Ashiq Husain and others (1853) (Baqiat, p. 34), an obvious impossibility today. According to the Fiqh-e-Firoz Shahi the parties to a criminal case could compromise only if the accused was in the custody of the court lest a compromise should be exacted from him under pressure.

\(^{88}\) Sharh-i-Vaqaya, Vol. III Chapt. On Arbitration
For the same reason no weight was given to confessions made to the police.

VI. The Working of the Judicial Machinery

*Courts* - The immediate successors of the Prophet (PBUH) organised\(^89\) Court in mosques where every person could approach them without hindrance. The *Abbaside* Caliphs erected separate buildings for their *Qazis*. The earlier Emperors of Delhi and Mughal rulers did the same.\(^90\) The court buildings in the time of the Sultanates were known as *Darul Qaza*, or *Darul Adl*. The Mughals called them *Adalat* or *Kachehri* and built such court in every city and town.

**Court Working Hours**

The court hours were not fixed by the emperor till about 1672, and generally announced by the presiding officers themselves. When Aurangzeb learnt\(^91\) from the report of *Waqae Nigars* that the courts in the province of Ahmadabad sat only on two days. He issued directions that the presiding officers should sit regularly on Saturdays, Sundays, Mondays, Tuesdays and Thursdays. On Wednesdays, the *Qazi-e-Subah* was to sit with the Governor on his Bench\(^92\), and Friday could be enjoyed as a holiday.

European travellers and Persian historians have noted about the punctuality with which the first seven Mughal Emperors sat in court. Colonel Dow, in his enquiry, says,\(^93\) "time had established into an almost indispensable duty that the Emperor with his assessors, the principal judges, was to sit for two hours every day in the hall of justice to hear and decide cases. Shahjahan who took great delight in promoting justice

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89. *Hidaya*, Translated by Hamilton, p. 337.
90. Ibn Batuta, P. 114; Manrique II, pp. 159.
92. Id. P. 282.
frequently exceeded the usual time”. The court Hours fixed by Emperor Aurangzeb\textsuperscript{94} were from two ‘gharis’ (hours) after sunrise to a little after midday. These hours seem to have been maintained both in the hot and cold weather. The practice of some of the Mughal Emperors was to sit in the court at 7.30 am.\textsuperscript{95}

According to Monserrate “everything that goes on” in court was regulated clocklike.

**Court Vacations**

As Rae Bhara Mai has pointed out\textsuperscript{96} there were meagre cases for disposal in courts, and we were not aware about any regular court vacations. According to Bernier the “Kings of Hindustan” Seldom failed, even when in the field, to hold trials “the same as when in the capital”, and the custom was regarded as a matter of law and duty and the observance of it rarely neglected.

**Disposal of Cases**

The disposal of cases by the Qazis or the emperors may be ascertained or estimated by the description of some cases, which were disposed of speedily are as following:

**Case Widow Vs. King Ghyas\textsuperscript{97}**

Court: Qazi Siraj Uddin Qazi-e-Subah, Bengal.

“One day, while the King was amusing himself in the practice of archery, one of his arrows by chance wounded a boy, the son of a widow. The women immediately reached to the tribunal of the Qazi, Siraj-e-addeen, and demanded justice. The judge was confounded, and said to himself ‘if I summon king to my court, I shall run risk of being disobeyed; and if I

\textsuperscript{94} Mirat Vol. I p. 275
\textsuperscript{95} Alamgir Namaah, p. 1079.
\textsuperscript{96} Elliot, Vol. VII. p. 172.
\textsuperscript{97} Stewart - “History of Bengal”, (About 1490 A.D.) pp. 90-91.
pass over his transgression, I Shall be one day summoned before the court of God, to answer for my neglect to duty'. After much reflection, he ordered one of the officers to go and summon the King, to answer the complaint of the woman. The officer, dreading to enter abruptly the palace with such an order, considered on some means to get introduced into the presence of the King. At length he ascended the minaret of the mosque adjoining the palace, and at an improper hour called the people to prayers. The King hearing his voice ordered some of his guards to bring before him the man who thus made a mockery of religion.

When the officer was introduced into the royal presence, he related the circumstance of his call to pray for the King and also concluded by summoning His Majesty to the Qazi's tribunal. The King instantly arose, and, concealing a short sword under his garment, went before the Qazi; who, far from paying him any mark of respect, said to him with a tone of authority, 'you have wounded the son of this poor widow; you must, therefore, immediately make her an adequate compensation, or suffer the sentence of the law'. The King made a bow, and, turning to the woman, gave her such a sum of money as satisfied her: After which he said, "Worthy Judge, the complainant has forgiven me'. The Qazi asked the woman if such was the fact and if she was satisfied, to which the woman having assented, was dismissed.

The Qazi then came down from his tribunal and made his obedience to the King: who, drawing the sword from beneath his garment, said, 'Qazi, in obedience to your commands, as the expounder of the Sacred law, I came instantly to your tribunal. However, if I had found that you deviated in the smallest degree from its ordinances I swear that with this sword I would have taken off your head! I return thanks to God that matters have thus happily terminated and that I have in my dominions a Judge who acknowledges no authority superior to the law'. The judge taking up the scourge said, I also swear, by the Almighty God, that if you
had not complied with the injunctions of the law, this scourge should have made your back black and blue! It has been a day of trial for us both. "The King was much pleased and handsomely rewarded the upright judge.

**In another case -**


Court - Emperor Aurangzeb

The appellant was sent to the lockup on some charge details of which could not be ascertained. The following judgement was delivered:

"The order, sending the appellant to jail is illegal. He should be released forthwith. The case is transferred to the court of the Chief Justice for decision in accordance with law so that justice should be done to everybody. By God’s grace the Qazi is honest, pious and decides the disputes impartially”. An order of the Qazi must be obeyed.”

**A Murder case - State Vs. Sulaiman Beg**

Complaint of Nirman and Widow of Deceased

Court - Saadat khan. Qazi-e-Subah

Judgement - “The complainants alleged that the accused killed Bishnath when he was sleeping in his threshing floor. The parties were summoned. The complainants are absent and there is no one to prosecute this case. The accused denies the allegation. The complainants were directed to produce evidence today, but there is none to support their complaint. The accused is, therefore, discharged; let a copy of the order be given to him”.

**Theft Case - State Vs. Madari Faqir**

Court - Qazi of the District Parenda.

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98. (Collections) Jaunpur, 1680 A.D.
99. (Collections), South India 1670 A.D.
Judgement - "It is alleged that Madari Faqir entered the house of a widow at night. When she discovered his presence, she raised a cry for help. The police came up and arrested the accused, who was prosecuted for committing burglary. The accused denies the allegation and says that he had gone out to pass water when the widow shouted out and himself went to her help when the police arrested him. As nothing was found on the person of the accused, I consider his case doubtful and acquit him. He should be released forthwith."

Delay in proceedings

During the Mughal period instructions were occasionally issued\(^{100}\) by the Emperors to Judges to expedite trials "Those who apply for justice" states one of Akbar's Ains "let them not be inflicted with delay and expectation let him object to no one on account of his religion or sect." Bernier, a contemporary traveller in the 17\(^{th}\) century, thinks that the suits were "speedily decided".\(^{101}\) According to Terry, a European missionary attached to the staff of Sir Thomas Roe, the trials were "Conducted quickly".

Manucci says that the Emperor "Causes the judgement he pronounces to be executed on the spot." But, it seems, special emphasis was laid on speedy decision of criminal cases.\(^{102}\) In civil cases sometimes the proceeding took considerably more time. Abdul Wahab's civil suit was referred twice within the space of one year by the Qazi-e-Subah to Jahangir for orders on preliminary issues only as the Defendant was a high personage of the Imperial court (Tuzuk. 306 S.A.).

The Governor of Kara disapproved of the delay in Hamiyat At vs Gauri Shankar (Baqat, p. 32) and Sikander Lodi is said to have taken to task his Chief Mir Adl for prolonging proceedings for two months in a suit.

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\(^{100}\) Ains-e-Akbani, Translated by Jarret, Vol II, p 38 Mirat-e-Ahmadi I, pp 282-283
\(^{101}\) Travels p 236 also Manrique Vol II, p 189
\(^{102}\) Mirat-e-Ahmadi, Supplement, Baroda, Vol I, p 278
which he could finish in one day. (Elliot IV, p. 454, Kennedy I, p. 110). The delay in civil suits may have been due to the emphasis laid in the Sharia on compromise (As such Khairun).

According to Khafi Khan, Chief Justice Abdullah (1678-1690) was an over-scrupulous judge and usually tried to get the parties to compromise. Bernier thinks that compromise (Musaliah Baba) was often effected were the parties where poor. The law, however, did not suggest any delaying of proceedings in order to get a compromise only. The principle was stated. Individual rulers\textsuperscript{103} as Sir Henry Elliot observes, in most cases “never showed any delay”. Fryer who visited India in the reign of Aurangzeb speaks of lawsuits being soon ended.

**VII Legal Reforms By Aurangzeb**

Among the Medieval rulers Aurangzeb’s reforms in judicial administration stands out prominent of which survive to this day.

- Firstly he started the system of “Remand” by the court to police custody (Mirat I, pp. 278-282). The Kotwals were ordered to obtain a written order from the Qazi to keep a man under custody.

- The second step Aurangzeb took particular notice of the delay, which he marked in the disposal of work in some courts and issued directions that all criminal cases must be tried without delay.\textsuperscript{104} In this connection he issued a detailed Farman\textsuperscript{105} that prisoners were not to be taken into custody until prima facie ‘Legal evidence’ (Subut-e-Sharai) was available and that no prisoner was to remain in Jail without a lawful charge. By a curious coincidence when Aurangzeb was issuing these regulations in India 1679, the British Parliament was enacting *Habeas Corpus Act* for

\textsuperscript{103} Lt. Col. A Dow, C.U.L. ‘History of Hindustan’ Vol. Ill, p. 334. “Delay in the execution of justice (under the Mughals) subjected the Judge to the risk of compensating the aggrieved party for the loss”.


\textsuperscript{105} British Musuem Manuscript Add. 6580.
England. Aurangzeb disliked long adjournments. If after the first date of hearing the case was not taken up, next day the Kotwal was required to send the under trial prisoners daily to the courts till matters were decided (Mirat I, pp. 282-283) he himself set the example by sitting in his court daily.  

- The third important aspect of the judicial administration introduced was that the keepers of state records of rights were directed to permit the public to examine them.

- Fourthly government "Vakils" were appointed in every district.

- Fifthly Aurangzeb, in addition to his notable achievement of compiling the Fatawa-e-Alaamgiri, framed written regulations (Zabth) on every conceivable subject and required strict adherence to every detail of them.

- Sixthly, according to Colonel Dow Aurangzeb reformed the system of appeals. Since the time of Akbar the Emperors had tried cases personally and their interest in giving 'impartial' decisions used to attract litigants from far off corners of the Empire. Aurangzeb realizing the expense and trouble to which such litigants were put in coming to capital, issued orders that parties should get their disputes decided by the local Qazi in the first instance, and that the laws of the Empire should be widely proclaimed, by the various state officials so that intending litigants should understand their position before starting on a journey to the capital. Civil appeals were only admitted "beyond a

107. Dow III, P. XXVI "The Registers of rents to be left open for the inspection of all that the people might distinguish extortion from the just demands of the crown".
certain sum”, and in criminal matters appeal against a Governor’s Bench could lie by way of petition only.110

Auagrangzeb appointed a court ‘Diwan-e-Mazalim’111 on the model of the Abbasids rulers112 “to redress wrongs”. It resembles the Court of Crown cases reserved in medieval England. Its function was to admit petitions of appeal. Sir Jadunath Sarkar thinks that the Diwan-e-Mazalim was the name of the court held by Aurangzeb on Wednesday. Aurangzeb took special care to see that his orders in appeal were conveyed to inferior courts without the least possible delay.

(C) THE SYSTEM OF JUDICIAL ADMINISTRATION DURING THE BRITISH REGIME

The British regime in India started with the establishment of East India Company. The first few institutions introduced by the Britishers to the system of judiciary in India during the 17th century were the Mayor’s Courts at Bombay, Madras and Calcutta. After acquiring from the Mughal Emperor the Diwani, i.e. the power to collect revenue the Britishers established the Divani Adalat (civil courts) and the Faujdari Adalats (criminal Courts). But appeals from the Divani institutions had to be carried to the Governor-in-Council, and in criminal cases to the Nazim at Murshidabad, which took a long time for disposal of the case. Later appeals were taken in certain cases to the judicial committee of the Privy Council in London. With the establishment of British rule the common law got imported in India slowly and gradually in as much as the establishments by the East India Company became the nurseries of the English law in India which in course of time brought about tremendous influence over the laws and the system of administration of justice in the

110. Dow III, p. XXXIII.
whole of this subcontinent.” Introduction of the Indian Penal Code, Evidence law, and Criminal Procedure Code bore the influence of common law solely for the purposes of the administrative expediency as well as to prolong the duration of Judicial Proceedings.

Though, the Britishers did take the step of reducing delay in the disposal of cases. Lord Cornwallis devised the plan of having a civil and criminal court at every 10 kilometres, and Lord William Benetik planned the establishment of intermediary courts of appeal so that the litigants do not have to travel a long distance for appeals. The judicial business of the Privy Council was minimized by enlarging the jurisdiction of the appellate courts. Yet there was delaying the disposal of cases. One reason for this problem was that the judicial officers were mostly Europeans who availed vacations twice in a year. Thus allowing the work to remain attended for months together.

The cumbersome procedures brought from England as part of the common law were yet another factor responsible for the problem of delay. The major concern of Government for delay in judicial business centred round the question of allowing reference, revision and appeal in various matters at various stages of the legal process.

The Britishers had also introduced, on the pattern of their own system of administration, quasi-judicial institutions like the tribunals vesting them with a part of normal powers to decide disputes. These experiments had been initiated by way of alternative dispute resolution mechanism. They also encouraged the system of arbitration mediation and conciliation so that the delay in disposal of cases was minimized. Several committees and commissions were appointed to examine the problems arising from the application of laws and the functioning of the legal institutions.

Prominent among them was the law commission of India, which from 1850's onwards took upon itself the task of suggesting a reform of the judicial system and a revision of the substantive and procedural laws. Based on the recommendations of the law commission changes were made in the rules of law and the organization of judicial institutions. The Indian Penal Code, 1860 and the Criminal Procedure Code, 1861 are the most significant developments during the British Regime towards building a system of criminal justice. But that as it may, these laws produced, the ills of adverse processes which even continue in Independent India.

II. Present Structure of Judicial Administration in India

The concept of justice is neatly interwoven in the Indian society. Ours has been a democratic republic since time immemorial and we have glorious past of functional accomplishments and admirable social purpose which forms the justice administration in India. Our courts have a solid structural framework with well established laws and justice has been an outcome of a symbiotic relationship.

Various types of courts and quasi-judicial bodies function under the vast canopy of Indian judicial system of the country. Here it would be worthwhile mentioning that the Supreme Court of India and law commission of India are the custodian and the patron of the system respectively. The present administration of criminal justice system in India is essentially a legacy of British rule but this statement does not imply that we had never been a good judicial set up in our country. As per the records in the annals of Indian Legal History, we have had a well flourished and organized criminal justice system.

The Dharmsastras and the Arthashastra enumerate a full-fledged and well-developed system of criminal adjudication. The Neetishastra mentions King as a fountain of justice and it was his sacred duty to punish the
wrong doers and if he flinched from discharging this study, he was bound to go to hell.\textsuperscript{115}

*Kautilya’s Arthashastra* is a monumental treatise on the judicial administrative system and it seems that this system was almost established. However we must accept this bare truth that the regular hierarchy of criminal courts was yet to fully evolve in the indigenous Hindu Kingdoms.

During the medieval and Moghul’s period Nawabs and Nazims were in charge of criminal justice administration and they could even decide cases punishable with capital punishment. Criminal courts were known as *Sadar Faujdari Adalats*. Mohammedan criminal laws were expounded by *Hidaya* and *Fatwa*. *Hidaya* contained the general principles of Muslim criminal law whereas *Fatwa-e-Alamgiri* was a collection of case laws for the guidance of criminal law courts.

Then came the era of British rule in India and the criminal justice system introduced by the Britisher’s was a queer mixture of Anglo-Saxon judicial principles and ancient and medieval norms of criminal jurisprudence as well as the available traditions and practices of indigenous people. This criminal justice system was an outcome and admixture of a churning off process, of all three aforementioned judicial systems, which resulted in such a fine structural system, which had been adopted by independent India with some minor changes in its superstructures. So now, ours is a system, which contains best of the both world.

**III. Present Structure Defective from Indian point of view**

The State of society and civilization which pervades the many millions of India, calls for a simple, cheap, expeditious administration of justice ours is neither cheap no expeditious.\textsuperscript{116}

It is said in some quarters that the present system of administration of justice does not accord with the pattern of our life and conditions. Large masses of our population are illiterate and live in the villages. These conditions demand, it is said, “a system of judicial administration suited to the genius of our country or an indigenous system”. Even the Uttar Pradesh, Judicial Reforms Committee of 1950-51, stated, though by majority that “it cannot be denied that the rules of procedure and evidence which they (the British) framed to regulate the proceedings in court, were in some cases foreign to our genius and in many cases were made a convenient handle to defeat and delay justice”.\footnote{117}

In India today, criminal trials take five to 10 years to conclude and civil suits are finally decided at times after 20 or 25 years. This is an intolerable situation. However, we inherited from the British a fine system of laws, the court system was creating even then, with considerable delays; 62 years of independence has only made the situation much worse. In the 1950s and 1960’s, writ petitions in the Bombay High Court were heard in a year or two; today they are rarely heard for five to ten years! The situation is no better elsewhere, and is much worse in some High Courts.

To cite one example - after the notorious security scam of the early 1990s, Parliament enacted a special law designed for the sole purpose of ensuring a speedy trial of offenders. For this purpose, a special court consisting of a High Court judge was set up. Yet it took seven years for the first conviction of Harshad Mehta, and it will be a year or two more before the issue is finally concluded in the Supreme Court. If such a long time is taken to hold a trial under a special law, it is easy to imagine the time an ordinary criminal trial takes.

The plight of under trials languishing in jail for years without a trial became so unbearable that the Apex court stepped in with directions that those not accused of very serious crimes just be released on bail after some time and must be discharged if the period they have served in jail exceeded the maximum sentence they would have had to suffer even if they had been convicted. The orders of the Supreme Court were eminently fair and reasonable but they reveal a situation, which is grotesque and a negation of the first principle for the rule of law; a man, who may well be innocent, stays in jail without even being tried for the period he would have served had he been guilty.\footnote{Indianisation of Legal System, Legal System under Strain. Editorial, "Civil & Military Law Journal", Vol. 35, Oct. -Dec. 1999. p. 237.}

A former Minister of State for Law and Company Affairs, O. Rajgopal has called for a national debate for greater Indianisation of the judicial system. In an interview to the Malayalam daily "Janmabhoomi", he said the country had adopted the British Judicial system, which was continuing even 60 years after Independence. This was one of the main reasons for delay in disposal of cases, and the backlog, which kept mounting year after year. In the past 62 years, the British judicial system, which was based on the culture and life-style of that country, had been blindly adopted. We should have a system, which suits our needs.

Need of Indigenous Judicial System – (An opinion)

The Law Commission of India had elicited opinion on these views. The answer they have received state with almost complete unanimity that the system which has prevailed in our country for early two centuries though British in its origin has grown and developed in Indian conditions and is now firmly rooted in the Indian soil. It is analysed that it would be disastrous and entirely destructive of our future growth to think of a radical change at this stage of the development of our country. It is further submitted that the state envisaged by our Constitution which itself is
based largely on the Anglo-Saxon model to think of remodelling its system of Judicial administration on ancient practices, adherence to which is totally unsuitable to modern conditions and ways of life.\textsuperscript{119}

**Required Modification – Need of the Hour**

According to the opinion of Law Commission, regarding reforms of judicial administration radical changes not necessary, and accordingly submits that we must nevertheless, fail to distinguish between essential principles of our present system and its subsidiary features like clumsy and cumbrous procedure. It should not be forgotten as pointed out those charged with fashioning our laws, have while regarding the English laws and institutions was a model, consciously and continuously attempted to modify and mould them to suit Indian life and Indian conditions. That attempt was continued throughout the period of British rule with the subsequent association in an ever-increasing degree of Indian legislators, Indian judges and Indian administrators in the making of laws and the administration of justice. It may be that we have failed to make our laws and our court systems and procedures conform sufficiently to the needs of our people. To that extent, no doubt, they require modification and adjustment. Law commission have endeavoured to give attention to these points of view, but such changes can only be made within the framework of a system suited to our present conditions and needs, which are industrial economy. We have necessary and practicable to make a distinction between the fundamentals, which must exist in any modern system for the administration of justice and the procedures and practices by which the system is to be operated.

They agree with the observations of the Uttar Pradesh Judicial Reforms Committee that “the need of the hour is that rules and procedures and evidence should be simplified that justice may have available to the

rich and the poor alike and that it may be prompt and effective”. But simplification cannot mean a sacrifice of fundamentals and essentials, “The real need of the hour is the inculcation of a higher sense of duty, a greater regard for public convenience, greater efficiency in all those concerned in the administration of justice”. In any case, whichever way our needs are looked at, little is to be gained by an insistence on what has been called an indigenous system suited to the genius of our country.120

The problem of delay in administration of justice has not been altogether ignored by the government. They have first, done the usual. They have appointed several commissions and committees to submit reports. After the reports come, usually after several years, many of the recommendations are not implemented, particularly those which involve spending substantial sums of money

Immediately after Independence, the Government of India entrusted to the Law Commission of India the task of plugging loopholes in the criminal justice system and suggesting measures to correct the system by turning it to the avowed principles of constitutional morality, viz., social or disruptive justice, liberty and equality shorn in inefficiency, incorruptibility and inordinate delay. Unequivocally, the commission has been making indepth examinations of the system contained in the statutory books. It works indeed have staggering as well as telling revelations. It dealt with administration of Justice at length, and a fortiori, suggested reformative measures in improving the Criminal Procedure Code thus making the criminal justice process (Investigation, as well as trial) (i) speedy, (ii) inexpensive; (iii) lessening bottlenecks; (iv) minimising adversaries; and (v) reducing if not completely eliminating the official serfdom.121

120. Ibid.
Consequently, the Code of Criminal Procedure, 1898 was extensively reformed on the lines recommended by the Law Commission of India\textsuperscript{122} viz., to (i) provide adequate facilities to every accused person to defend himself in a proper manner, and (ii) ensure at the same time, speedy disposal of all criminal judicial business. However, simplification and shortening of the procedure could not ameliorate the problem of protracted criminal justice business and its adverse effects. Naturally, on renewed terms of reference, the law commission has had occasions and opportunities to look into anomalies, ambiguities of the criminal justice process, and to suggest ways and means of speeding up trials and avoiding, long delays.

Thirty Second,\textsuperscript{123} Thirty Third,\textsuperscript{124} Thirty Fifth,\textsuperscript{125} Thirty Seventh,\textsuperscript{126} Forty First,\textsuperscript{127} Forty Eight,\textsuperscript{128} Seventy Seventh,\textsuperscript{129} Seventy Ninth,\textsuperscript{130} One Hundred Forty Second\textsuperscript{131} and One Hundred Fifty Fourth.\textsuperscript{132}

Report of the Law Commission is pointedly indicative in this perspective. However, the commission submitted a comprehensive report which, \textit{inter alia}, suggested a whole-sale revision of the Code of Criminal Procedure in as much as it yielded results when the central government took serious as well as conscientious steps by bringing the new code of

\begin{enumerate}
\item Old Cr. PC was replaced by Act of 1973.
\item Law Commission of India, Thirty second report on Section 9 of Cr. PC, (1967).
\item Id., Thirty Third Report on Section 44 of Cr. PC, (1967).
\item Id., Thirty Fifth Report Capital Punishment (1967).
\item Id., Thirty Seventh Report on Section 1 to 176 of Cr. PC, (1967).
\item Id., Forty First Report on the code of Criminal Procedure (1898-1969).
\item Id., Forty Eight Report on some questions under the code of Criminal Procedure Bill, (1970).
\item Id., Seventy Seventh Report on Delay and Arrears in Trial courts (1979).
\item Id., Seventy Ninth report on delay and Arrears in High Courts at others Appellate courts (1979).
\item Id., One hundred forty Second, report on concessional treatment for offenders who on their own initiative choose to plead guilty without any bargaining (1991).
\item Id., One hundred fifty fourth report on the Cr. PC, 1973 Act No. 2 of 1974, (1996) recommended concept of plea Bargaining
\end{enumerate}
criminal procedure in the statutory books by dropping out the old one from it.\textsuperscript{133}

The Code of Criminal Procedure, 1973 has been enacted by embodying or bringing together the following considerations, viz.:

(a) an accused person should get a fair trial in accordance with accepted principles of natural justice;

(b) every effort should be made to avoid delay in investigations and trial which is harmful not only to individuals involved but also to society; and

(c) The procedure should not be complicated and to the utmost extent possible, ensure a fair deal to poorer sections of the community.

Some of the glaring changes made by the new code were to overcome the bottleneck of the adversarial process, and as such this code aimed at speeding up disposal of criminal cases with the unmentioned parameters in view:

(i) The preliminary inquiry otherwise known as committal proceedings is abolished, since it causes delay;\textsuperscript{134}

(ii) The Jury trial is abolished;\textsuperscript{135}

(iii) A provision is made for the summons procedure for offences punishable with imprisonment upto two years;\textsuperscript{136}

(iv) A provision is made for the summon procedure for all summary trials\textsuperscript{137} for offences punishable with imprisonment upto two years.

(v) The powers of revision against interlocutory orders are taken away.\textsuperscript{138}

(vi) The compulsory of proceedings by a subordinate court on more information from a party of his intention to move a higher court for transfer of the case is omitted.\textsuperscript{139}

\begin{footnotesize}
\textsuperscript{134} Sec. 206-20 of the old code has been omitted from the new code. See, the recommendations of law commission of India, Supra note 127.
\textsuperscript{135} Sec. 226-69, 274-83 of old code have been replaced; See supra Note 126, Vol. II, p. 873; Supra Note 127.
\textsuperscript{136} See forty first reports.
\textsuperscript{137} Supra note 125, also supra note 127.
\textsuperscript{138} Sec 397 (2) of new code. There was no corresponding provision in S. 435 of old code.
\textsuperscript{139} Forty fist report, Supra Note 127; S. 407, new code.
\end{footnotesize}
(vii) A provision is made for payment of cost by the party at whose instance adjournments are granted.\textsuperscript{140}

(viii) A provision is made for the service of summons by registered post in certain cases.\textsuperscript{141}

(ix) In petty cases, the accused is enabled to plead guilty by post and remit the fine.\textsuperscript{142}

(x) A re-trial need not necessarily be ordered in case a court of appeal or revision discovers any error, omission or irregularity in the charge leading to failure of justice;\textsuperscript{143} and

(xi) Continuation of part-heard cases by the successors in office in respect of courts of magistrate is extended to courts of sessions.\textsuperscript{144}

Section 167, 309 and 468 of the new code synthesis the above mentioned changes particularly relating to speedy trial, elimination of delays in investigating and trial proceedings. Section 167 has been designed to control the malady of protracted investigation. It is now mandatory on the part of the police to forward the accused to the nearest magistrate within 24 hours. He also can authorise the lock-up beyond that period but not exceeding 90 days where the investigations relates to an offence punishable with death, imprisonment for life or imprisonment for a term not exceeding 10 years, or 60 days the alleged accused person shall be released on bail. The procedure thus contemplated therein a time bound programme. Section 309 stipulates a positive move towards minimising the delay occurring at the trial level, and as such, it reads:

"In every inquiry or trial, the proceeding shall be held as expeditiously as possible, and in particular, when the examination of witnesses has once began the same shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds the adjournment the same beyond for reasons to be recorded".

\textsuperscript{140} Id., para 24.26; S. 309, new code.
\textsuperscript{141} Id., para 6.6; S. 69, new code.
\textsuperscript{142} Id., para 17.6, 20.2; S. 2.53, new code.
\textsuperscript{143} Id., para 45.9; S. 464(2)(b), new code.
\textsuperscript{144} Id., para 24.77; S. 35, new code.
Section 468 of Cr. PC provides that no court shall take cognisance of an offence except as specified after expiry of the period of limitation. Such period shall be six months if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. The cumulative effect or impression of these provisions is to ensure that the criminal justice process does not cause inordinate delay in administration of Justice and violative of Article 21 of the constitution of India.

Be that as it may, not much progress seems to have been made, for the new criminal Justice process has not facilitated the speedy disposal of criminal cases and reduced the overcrowdness of the workload, and, naturally, this could not given a sound beguiling to improving the process.

IV. Structure and composition of judicial system in India

Modern judicial court system is a three tier structure namely Supreme Court of India at national level, which looks into the matter of union and federal level. Next in hierarchy are High courts, which are generally concerned with state or provincial level matters. At last but not the least subordinate courts are responsible for imparting justice at the district and sub-division level.

Furthermore, there are several special courts formed for the purpose of dealing with specific nature of cases. All such courts along with all the subordinate courts have been kept under the superintendence of the concerned high courts for the purpose of administration of justice.

The Structure of Judiciary in India

The Preamble speaks of "We, the people of India resolving to secure inter alia “justice – social, economic and political to all its citizens. The juxta-position of words and concepts in the Preamble is important. Most significantly, Justice is placed higher than the other principles of
‘Liberty’, ‘Equality’ and ‘Fraternity’. Again, the Preamble clearly enjoins precedence to social and economic justice over political justice.

All authorities, civil and judicial, in the territory of India shall act in the aid of the Supreme Court as ordained by Article 144. The power to make Rules for regulating the practice and procedure of the Supreme Court vests in it under Article 145. The jurisdiction of the High Courts in relation to the administration of justice in the Court including power to make rules of court is preserved by Article 225 of the Constitution.145

A Constitution Bench of the Supreme Court has held that, apart from Article 225, the High Court may derive Rule-making powers from substantive provisions, such as Article 235 (control over subordinate courts), where the nature of powers conferred by the Article would include power to make rules to regulate the exercise of the power.146 The power of superintendence over all courts and tribunals throughout the territories in relation to which the High Court exercises jurisdiction conferred by Article 227, includes under Article 227(2) (b), power to make and issue general rules and prescribe forms for regulating the practice and procedures of such courts.

Thus, the Constitution of India envisages a major role to be played by High Court in relation to the administration of justice not only in the High Court but also in relation to the courts subordinate to such High Court. The power, by its very nature, is obviously coupled with the duty to render proper administration of justice.

Role and Jurisdiction of Supreme Court in India

The appellate jurisdiction of the Supreme Court can be invoked by a certificate granted by the High Court concerned under Article 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or

final order of a High Court in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

The Supreme Court has also a very wide appellate jurisdiction over all courts and Tribunals in India in as much as, it may, in its discretion, grant special leave to appeal under Article 136 of the Constitution from any judgement, decree, determination, sentence or order to any cause or matter passed or made by any Court or Tribunal in the territory of India.

The Supreme Court has special advisory jurisdiction in matters, which may specifically be referred to it by the President of India under Article 143 of the Constitution. There are provisions for reference or appeal to this Court under Article 317(1) of the Constitution. Appeals also lie to the Supreme Court under the Representation of the People Act, 1951, Monopolies and Restrictive Trade Practices Act, 1969, Advocates Act, 1961, Contempt of Courts Act, 1971, Customs Act, 1962, Central Excises and Salt Act, 1944, Enlargement of Criminal Appellate Jurisdiction Act, 1970, Trial of Offences Relating to Transactions in Securities Act, 1992, Terrorist and Disruptive Activities (Prevention) Act, 1987 and Consumer Protection Act, 1986. Election Petitions under Part III of the Presidential and Vice Presidential Elections Act, 1952 are also filed directly in the Supreme Court.

Under Articles 129 and 142 of the Constitution, the Supreme Court has been vested with power to punish for contempt of Court including the power to punish for contempt of itself. In case of contempt other than the contempt referred to in Rule 2, Part I of the Rules to Regulate Proceedings for contempt of the Supreme Court, 1975, the Court may take action (a) *suo-moto*, or (b) on a petition made by Attorney General, Or Solicitor General or (c) on a petition made by any person and in the case of a criminal contempt with the consent in writing of the Attorney General or the Solicitor General.
Under Order XI, of the Supreme Court Rules the Supreme Court may review its judgement or order but no application for review is to be entertained in a civil proceeding except on the grounds mentioned in order XLVII, Rule I of the Code of Civil Procedure and in a criminal proceeding except on the ground of an error apparent on the face of the record.147

Roles and Jurisdiction of High Courts in India

High Courts in our country form a substantial pillar of democracy. Understandingly they have got greater power in their respective jurisdiction when compared to the Supreme Court of India. They are having a monitoring power over the subordinate judiciary, which forms the justice dispensing system at grass root level. As far as judicial courts in India are concerned, the Constitution of India establishes a hierarchy of courts in the union of India and its states. The Supreme Court of India occupies paramount position in the hierarchy of courts in our country at the Union level. At the state level, the high courts are given the highest position and they occupy second hierarchical level.

Roles and Functions of Subordinate Judiciary in India

Highest court in each district is that of the District and Sessions Judge. This is the principal court of civil jurisdiction. The cases triable by Sessions Court are tried by it. It has the power to award any sentence including capital punishment.

There are many other courts subordinate to the court of District and Sessions Judge. There are three tier systems of courts, on criminal side the lowest court is that of the judicial Magistrate. Civil Judge (Junior Division) decides civil cases of small pecuniary stake. Judicial Magistrates decide criminal cases.

Judicial independence of each court is the characteristic feature of district judiciary. In each district there is a strong Bar which ensures that courts

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147. Supreme Courts Rule, Published By Supreme Court of India.
decide cases according to law and without fear or favour. The greatest problem of district courts is that of huge pendency of cases leading to undue delay in decision of cases.

(V) Speedy Trial - Alternative Measures

We would now advert to some of the positive measures that have been taken in the past which have already started results and are significantly contributing in increasing disposal in subordinate as well as the High Courts and those which are still required to be taken for dispensation of speedy and affordable Justice. The following measures that have already been taken are:

1. Setting up of Fast Track Courts of sessions Judges.
2. Setting up of Mobile Courts.
3. Introduction of Shift system in subordinate courts.
4. Lok Adalats.
5. ADR system.
6. Setting up of e-committee.
7. Setting up of Gram Nayalayas and,
8. Insertion of chapter XXI-A in the code of criminal procedure about plea bargaining.\(^{148}\)

With the judicial system in most of the countries being burdened with cases, any new case takes a long time to be decided. And till the time of the final decision comes, there is a state of uncertainty, which makes any activity almost impossible. Commerce, business, development, work, administration, etc., all suffer because of long time taken in resolving disputes through litigation. Moreover, reminding of a pertinent observation made by Hon'ble Justice D.A. Desai, Chairman Law Commission of India, who has rightly pointed out.\(^{149}\)


"In view of the our rising graph of arrears, tinkering at the fingers far from yielding the desired results, have further aggravated the situation, the consumers of justice have been patiently waiting for justice to become oriented."

To get out of this maze of litigation, courts and lawyers chamber, most of the countries encourage alternative methods of dispute resolution. India has the long history of such methods being practiced in the society at the grass root level. These are called Panchayat and in the legal terminology, these are called arbitration. These are widely used in India for resolution of disputes relating to both commercial and non-commercial matters. Other alternative methods being used are Lok Adalat (people’s court), where justice is dispensed summarily without too much emphasis on legal technicalities. Methods like negotiation, mediation and cancellation are being increasingly used to resolve disputes instead of going for litigation. There have been recent amendments in the procedural law of India to incorporate these methods so that people get Justice in a speedy manner and there is lesser conflict in the society.

How to secure to all the citizens the Justice which the Constitution of India requires is a big question being faced by the judiciary. The courts dockets are overloaded and everyday new cases are being filed. It is getting humanly impossible to decide all these cases by the regular courts in a speedy manner. This is not the situation which India facing alone. This, unfortunately, is the situation in a large number of jurisdictions.

It takes long time to get justice through the established courts system. Obviously, this leads to a search for alternative, complementary and supplementary mechanism to the process of the traditional court for inexpensive, expeditious and less cumbersome and also, less stressful resolution of disputes. But, the elements of Judiciousness, fairness, equality and compassion cannot be allowed to be sacrificed at the altar of expeditious disposal. The hackneyed saying is that 'justice delayed is
justice denied’. But justice has to be imparted: ‘justice cannot be hurried to be buried’. The cases have to be decided and not just ‘disposed off’.

**Fast Track Courts**

On the recommendation of the 11th Finance Commission, 1734 Fast Track Courts of sessions Judges were sanctioned for disposal of old pending cases and the said scheme was to end on 31-3-2005. Out of 18,92,583 cases, 10,99,828 have been disposed of by these courts. Keeping in view the performance of Fast Track Courts and Contribution made by them towards clearing the backlog, the scheme has been extended till 31-3-2010.

In view of the contribution made by the Fast Track Courts of Sessions Judges towards clearing of backlog, and number of huge pendency of cases triable by Magistrate Courts being 1,66,77,657 as on 31-12-2006, there is an urgent need to formulate a similar scheme for setting up of Fast Track Courts of Magistrates in each state and Union Territory.\(^{150}\)

**Mobile Courts**

Mobile Courts are also being set up which not only educate the rural folk about their rights and responsibilities and provide swift Justice and create a feeling of law and Judiciary being very close to them, but will also help declog the expanding docket of our overburdened courts.\(^{151}\)

**Shift System in subordinate courts**

The State of Gujarat has taken a lead in introducing shifting system in subordinate courts w.e.f. 14-11-2006. Sixty evening courts are already in place in different parts of the state.

As per the figures made available, the number of cases that have been disposed off from 14-11-2006 to 31-3-2007 is 57, 384, which is highly

\(^{150}\) Ibid.

\(^{151}\) Ibid.
commendable. It is, therefore, high time that shift system is introduced in subordinate courts all over the country, as it would help reduce backing considerably.

**Lok Adalat**

In order to achieve the objective enshrined in Art. 39-A of the constitution of India, the Legal Services Authorities Act, 1987 was enacted to provide free and competent legal services to the weaker sections of the society to ensure that opportunities for searching justice are not denied to any citizen by reason of economic or other disabilities. To achieve that objective, Lok Adalats are being held at various places in the country and a large number of cases are being disposed off with lesser costs. Mobile Lok Adalats are presently in place in different parts of the State of Bihar and on the lines of steps taken by the High Court of Patna of holding mobile Lok Adalats, the other High courts need also work on the same lines so that speedy and affordable justice could be made available to the litigants at their doorsteps.\(^52\)

**First Lok Adalat of Supreme Court:**

The Supreme Court, in its first Lok Adalat on May 3, 2008, settled 25 cases arising out of appeals relating to Motor Accident Compensation claims and matrimonial and labour matters pending for years.

Inaugurating, chief justice K.G. Bal Krishnan said courts should settle disputes through Lok Adalats at regular intervals to meet the biggest challenge to the Judiciary i.e. pendency.

"Lok Adalat comes as a relief to a large number of litigants and as solution for the courts burdened with a large pendency of cases. Lok Adalat would help in the settlement of cheque dishonour cases; motor accident claims cases and other criminal cases which are compoundable."\(^53\)

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\(^53\) The Hindu, May 4, 2008.
Alternative Dispute Resolution Mechanism (ADR)

The philosophy of ADR system is well stated by Abraham Lincoln-

"Discourage litigation; persuade your neighbours to compromise whenever you can. Point out to them how the normal winner is often a looser in fees, expenses, cost and time."

Litigation through the courts and tribunals established by the state in one way of resolving the dispute, which is an adversarial method of disputes Resolution what is tried to be achieved, is win-win situation for both the parties. There is nobody who is loser and both parties feel satisfied at the end of the day.

Setting up of e-Committee

For providing speedy and timely justice to the litigant, Information technology was first time introduced in the Indian Judiciary by Mr. Justice G.C. Bharuka in the year 1991 in the Patna High Court. After Mr. Justice Bharuka was transferred to Karnataka High Court, it was a boon in disguise for the people of Karnataka where he had done extensive work for introduction of IT in Indian Judiciary and was conferred a doctorate degree. His famous treatise "Rejuvenating Judicial System through E-Governance & Attitudinal change" was published in the year 2003 appreciating the outstanding word done by Dr. Justice Bharuka in the field of IT, the Union Government constituted an e-committee under his championship. In June 2006, the Union Cabinet declared the project to be one of the Mission Mode project under the National E-Governance plan in February 2007 accorded sanction to the budgetary requirements for its implementation. For the first phase funds to the time of Rs. 441.80 crores have been approved. The e-courts project is to be implemented in three phase over a period of five years, has already commenced by providing laptops to all the Judicial Officers throughout the country and three months training would be provided to each and every Judicial officers.
In the first phase, the goals that are sought to be achieved, *inter alia*, are, capacity building of the Judges for delivery of speedy and quality Justice, availability of ICT modules for assessing work performance and cases flow management of all courts in the country online accessibility of order, judgements and case related data, instant availability of status of cases, Judgements and order of all courts through Internet, Kiosks and Judicial Service Centres, facility for e-filing in the Supreme Court and High Courts.

In the second phase, the steps intended to be adopted are facilities of vide conferencing at all court complexes e-Filing in all district and subordinate courts. In the third phase, online information between the courts, prosecuting and investigation agencies, prisons and scientific tools to help in identifying habitual criminals professional witnesses and litigants and in resolution of complex factual disputes would be available.\(^{154}\)

**Setting up of Gram Nyayalayas**

The Ministry of Law and Justice in drawling a Gram Nyayalayas, bill with an objective to secure speedy justice, both civil and criminal, at the gross root level to the citizens, which would be the longest court of subordinate Judiciary and shall provide easy access to justice to litigant through friendly procedures, use of local language and mobile courts wherever necessary.

**Plea Bargaining**

With the insertion of new chapter XXI-A in the code of criminal procedure by Act 2 of 2006, the concept of “plea bargaining” became a reality and part of our criminal jurisprudence. The practice of plea bargaining is prevalent in Western Countries, particularly the United States and the United Kingdom and Australia whereas it applied only in restricted sense in the other two countries. Plea bargaining benefits both

\(^{154}\) Id, p. J-6-7.
the state and the offender while the state saves time, money and effort in prosecuting the subjects, he later gets a lenient punishment by pleading guilty. One of the merits of this system is that it helps the court to manage its load of work and hence it would result in reduction of backlog of cases. Prior to the criminal law (Amendment) Act, 2005, the concept of plea Bargaining was totally alien to our Indian Criminal Justice process and the Apex Court examining the concept of plea bargaining in *State of U.P. vs. Chandrika* observed it to be against public policy. In the same year the Apex Court also observed that neither the trial court nor the High court has jurisdiction to by pass the minimum sentence prescribed by law on the premise that a plea bargain was adopted by the accused.

However, a formal proposal for incorporating it into the Indian Criminal Justice process was put forth in 2003 through the Criminal law (Amendment) Bill, 2003. However, those provisions failed to come through and were reintroduced with slight changes through the criminal law (Amendment) Bill, 2005, which was passed by both the houses of parliament. And was thus finally incorporated into the code of criminal procedure, 1973, and came into operation from July 5, 2006.

The plea-bargaining lays down a procedure with a distinct feature of enabling an accused to file an application for plea-bargaining in the court where the trial is pending, the Act further requires the court after receiving the application, must examine the accused in camera to ascertain whether the application has been filed voluntarily. Once the court is convinced that the accused is participating in the plea-bargaining voluntarily, the court must then issue notice to the public prosecutor or the complainant to work out a mutually satisfactory disposition of the case. The negotiation of such a mutually acceptable settlement is left to the free will of the prosecution (including the victim) and the accused. If a

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155. AIR 2000 SC 164.
settlement is reached, the court can award compensation based on it to the victim and then hear the parties on the issue of punishment. The court may release the accused on probation if the law allows for it, if a minimum sentence is provided for the offence committed, the accused may be sentenced to half of such minimum punishment, if the offence committed does not fall within the scope of the above, then the accused may be sentenced to one fourth of the punishment provided or extendable for such offence, the accused may also avail of the benefit under section 428 of the Code of Criminal Procedure, 1973 which allows setting off the period of detention undergone by the accused against the sentence of imprisonment in plea-bargained settlements. The court must deliver the judgement in open court according to the terms of the mutually agreed disposition and formula prescribed for sentencing including victim compensation. It may be noted that this judgement is final and no appeal lies apart from a writ petition to the State High Court under Article 226 and 227 of the constitution or a special leave petition to the Supreme Court under Article 136 of the constitution.157

*In addition to above the Act also provides:*

1. If the accused is a first-time offender, the court will have the option of releasing him/her on probation. Alternatively, the court may grant half the minimum punishment for the particular offence.

2. The plea-bargaining is applicable only in respect of those offences for which punishment of imprisonment is upto a period of 7 years. It does not apply where such offence affect the socio-economic condition of the country or has been committed against a woman or a child below the age of 14 years.

3. The application for plea-bargaining should be filed by the accused voluntarily.

4. The statement or facts by an accused in an application for plea bargaining shall not be used for any other purpose other than for plea-bargaining.158

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158. Ibid