Chapter - III

SPEEDY TRIAL IN INTERNATIONAL PERSPECTIVE
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(A) International Covenants and Conventions

The speedy trial as a modern concept owes its origin to the Sixth Amendment to the Constitution of the United States of America. It provides “In all criminal prosecution, the accused shall enjoy the right to speedy and public trial”.

The right to speedy trial has been endorsed in almost all relevant International Charters and Conventions, most notably the International Convention on Civil and Political Rights (ICCPR), which India ratified on 10th April 1979. The (ICCPR) provides explicitly for the right to speedy trial. Article 19 (1) declares that “every one has the right to liberty and security of person and that no one shall be subject to arbitrary arrest or detention”.

Article 9 (3) declares further that “Any one arrested or detained on a criminal charge shall be brought promptly before a Judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be general rule that the persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial at any stage of the judicial proceedings and should occasion arise, for execution of the judgment.

Article 10 (1) says “all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.” Article 17 declares that the primary honour and reputation of an individual shall not be interfered with unlawfully Article 2 (2) creates an obligation upon the ratifying States to enact domestic legislation to give effect to the rights guaranteed by the Covenant. Article 3
creates a further obligation upon such States to ensure that the rights
guaranteed by the Covenant are made available to all their citizens.

The enforceability of International Conventions has come up before
the Supreme Court of India. The Supreme Court in People’s Union of India
vs. Union of India,¹ has observed that –

The provisions of the Covenant, which elucidate and go to
effectuate the fundamental rights guaranteed by our Constitution, can,
certainly be relied upon by courts as facets of those fundamental rights
and hence enforceable as such.

In Vishaka and others vs. State of Rajasthan and others,² the Supreme
Court observed:

“The International Conventions and norms are to be read into them in
the absence of enacted domestic law occupying the fields when there is no
inconsistency between them. It is now an accepted rule of judicial
construction that regard must be had to International Conventions and
norms for construing domestic law. When there is no inconsistency
between them. It is now an accepted rule of judicial construction that
regard must be had to International Conventions and norms for
construing domestic law. When there is no inconsistency between them
and there is a void in the domestic law while propounding the above
proposition. The court also referred to Nilabati Behera vs. State of
Orissa³ a provision in the ICCPR was referred to support the view taken
that an enforceable right to compensation is not alien to the concept of
enforcement of a guaranteed right as a public law remedy under Article
32, as distinct from the private law remedy in torts. The court said that
there was no reason why these International Conventions and norms
could not be used for construing the fundamental rights expressly
guaranteed in the Constitution of India”.

Any International Convention, not inconsistent with the Fundamental
Rights and in harmony with its spirit must be read into these provisions to
enlarge the meaning and content thereof, to promote the object of the
Constitutional guarantee.

1. 1997 (3) SCC 433.
3. 1993 (2) SCC 746.
However, it must be appreciated that at present treaties, agreements and Covenants that the government signs and ratifies do not automatically become a part of the domestic law but require parliament or State legislature to undertake legislation to so. As such, no one can lay claim or found any rights upon the provisions of an agreement or Covenant alone. However, on the question of human rights, the courts have declared that insofar as the rights contained in such International instruments are consistent with the fundamental rights guaranteed by part III of the Constitution of India, they can be read as facets of those rights and elucidate its contents.

**International Charter**

The right of a person arrested or detained on a criminal charge to a trial within a reasonable time is guaranteed by Article 9 (3) of the International Covenant. And Article 5 (3) and 6 (1) of the European Convention.

**European Convention:** While Article 5 (3) of the European Convention deals with the pre-trial stage, Article 6(1) relates to the trial on a criminal charge. While the object of Article 5 (3) is to bring the arrested person to trial, that is to say, to ensure that the accused person is not detained, pending trial, beyond reasonable time, the object of Article 6 (1) is to ensure that the proceeding of the criminal trial should not be protected beyond any reasonable time.4

But the reasonableness of the detention pending trial may be upheld in cases where the accused is likely to abscond or to commit further offence if released.5 But mere suspicion would not justify detention after a

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reasonable time, there must be a reasonable belief that the person has committed a crime and must be brought to trial.6

Coming to the National Constitution it would be suitable to discuss the law of speedy trial under two heads - (a) pre-indictment stage, and (b) post-indictment stage.

Pre-indictment Stage

In the U.S.A. though there has been some wavering of judicial opinion on this question, the prevailing view is that the word ‘prosecution’ in the 6th Amendment suggest that the guarantee of ‘speedy trial’ attaches only when a formal criminal charge or indictment is made and the criminal prosecution begins.7

Apart from any length of time that has elapsed from the moment of arrest, if delay in commencing the trial has caused prejudice to the accused. He can involve the ‘due process’ clause of the 5th or 14th Amendment, e.g. where the delay interferes with the ability of the accused to defend himself, by causing loss of evidence,8 impairment of the memories of witnesses and the like, which may induce the court to quash the indictment.9

In India, the right to be produced before the court at the pre-indictment stage is guaranteed by cl. (2) of Article 22 of the Constitution and section 61 of the Cr. P.C.

In case of inordinate delay in framing the charge, the High Court would quash the prosecution as an abuse of the process of court.10

Under the unwritten Constitution of England, it has been held that where the delay in launching the prosecution since the alleged date of

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commission of the offence is so prolonged as to render the delayed prosecution to be an abuse of the process of court, the High Court may stop the proceeding by issuing the writ of prohibition.\textsuperscript{11}

In such cases, the subordinate court may also decline jurisdiction to continue the proceedings in the exercise of its inherent discretion.\textsuperscript{12}

Adopting the foreign English view, it has been held in Kenya gives unfettered discretion to the Attorney General in the matter of prosecution. This discretion should be exercised in a quasi-judicial manner, and that the High Courts has inherent jurisdiction to quash the proceedings on the ground of abuse of proceedings where there is an inordinate delay in prosecution, unless good and valid reasons are shown.\textsuperscript{13}

**Post-indictment Stage**

Article 14.3 (c) of the International Covenant says- "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees in full equality to be tried without delay"

The Six Amendment to the American Constitution provides-

"In all criminal prosecutions the accused shall enjoy the right to speedy and public trial". It has also been attributed to "Due Process".\textsuperscript{14}

Section 11(b) of the Canadian Charter of Right provides-

"Whereas any person is charged with a criminal offence he shall be afforded a fair hearing within a reasonable time."

From the words 'charged with an offence', it has been held that the right to reasonable trial arises only after the person is charged, so that the

\textsuperscript{11} R. vs. Gray's JJ., (1982) 3 All ER 653 (658) (2 BD)
\textsuperscript{12} D.P.P. vs. Humphreys (1976) 1 All ER 497 (527-28) (HL).
\textsuperscript{14} Kolfer vs. N Cardina (1967) 396 U.S. 213.
reasonable time is to be calculated from the time of indictments and any pre-indictment delay would not be the violation of Section 11(b).^{15}

Section 20 of the Jamaica (Constitution) order in Council, 1962, provides-

"Whereas any person is charged with a criminal offence he shall be afforded a fair hearing within a reasonable time."

This provision has been reviewed by the Privy Council in several cases.^{16}

The Privy Council has held^{17} that where a conviction is set aside on appeal and a retrial is ordered, any unreasonable delay in commencing the retrial would be treated as a violation of Article 20 of the Constitution and that in determining the unreasonableness of delay, the court would adopt a more stringent standard in the case of a retrial than in the case of initial prosecution.^{18} Since the right to trial within a reasonable time follows from the wider concept of 'due process' which means that an incarcerated person should not be left to languish without any proper determination of the criminal proceeding against him owing to an unreasonable delay on the part of the State machinery. Under some Constitutions which do not explicitly guarantee a right to trial within a reasonable time, such right has been deduced from the comprehensive guarantee of 'Due process', as in section 4 of the Constitution of Trinidad and Tobago.^{19} The principle is that when a person convicted by a court is kept in prison in excess of the sentence awarded by the court it would no longer be justified by law.^{20}

In India, the right to speedy trial has been deduced from the concept of procedural 'fairness' which has been held to be inherent in Article 21 of

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15 Re Regina & Carker, (1984) 8 DLR (4th) 156 (BC) proper view, to contrary has been taken in India, Antulay vs Nayak (1992) 1 SCC 225 (para 86 (2))


17 Bell vs D P P. (1985) 2 All ER 585 (589, 592, 593) (PC)

18. Ibid

19. Abbott vs A G. of Trinidad (1979) I WLR 1342 (P.C.)

20. Ibid.
the Constitution, and has been extended to pre-trial stages, including investigation as well as trial proceedings, including subsequent proceeding up to execution of the sentence, including delay in disposal of accused's mercy petition. The court had already issued directions for speedy trial of criminal cases, which were given in the main Judgement in Rajdeo Sharma vs. State of Bihar, however, further clarifications were made to promote justice and effective implementation of the directions in a later case of Rajdeo Sharma.

The most conspicuous development of the Indian law on this point has been the consideration of the effect of delay in execution of a sentence of death, where our Supreme Court has followed the principles laid down by its American counterpart.

**Question of unreasonable delay**

Following American precedents, consensus has been arrived at by courts under various Constitutions on the following points:

1. In order to be a violation of the Constitutional guarantee for speedy trial or trial within a reasonable time:

   (a) The alleged delay must be due to some act or omission on the part of State, e.g. congestion in the court's docket, inordinate delay in executing a death sentence, and not due to delay in the part of the accused himself, e.g. in appealing against his conviction or sentence, or in bringing other motions.

   (b) In order to determine whether a particular period of delay in a proceeding on the part of the State should be held to be reasonable, the court has to take into consideration various factors, e.g.:

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(i) Length of the delay - In order to be unreasonable, the delay must be 'inordinate' or 'undue'\textsuperscript{27} having regard to all the circumstances, but no time schedule can be laid down in this behalf.

(ii) Nature of charge - what would be an inordinate delay in the case of an ordinary crime cannot be so in the case of a complicated charge, like that of conspiracy.\textsuperscript{28} In other words, in order to determine whether the detention since the arrest was unreasonably prolonged, the court should take into account the 'complexity' of the case.\textsuperscript{29}

(iii) The reasons given by the prosecution to justify the delay, a valid reason, for instance, would be the absence or no availability of an important witness.\textsuperscript{30}

On the other hand, where the attempt to delay the trial is deliberate in order to hamper the defence, it would weigh heavily against the Government.

(iv) Prejudice to the accused, where the delay is such as to cause the death or disappearance of witnesses or the loss of their memory, the accused can rely on this ground even though he has not led evidence on this point.\textsuperscript{31}

2. The standard of reasonableness will vary from case to case, having regard to its circumstances, the test being whether the delay would deprive the accused of a 'fair trial' or an adequate opportunity to defend himself.

3. Each and every delay, of course does not necessarily prejudice the accused; some delays may indeed work to his advantage. But inordinate long delay may be taken as presumptive proof of prejudice. Next, the accused's plea of denial of speedy trial cannot be defeated by saying that he did at no time demand a speedy trial. If in a given case, he did make such a demand and he was not tried speedily, it would be extra point in

\textsuperscript{27} Cf. Article 14, 33 (c), (1c)
\textsuperscript{28} Supra Note 24
\textsuperscript{29} (1961)4 YBECHR 240 (252)
\textsuperscript{30} Wemhoff case (1968) 11 YBECHR 796 (804)
\textsuperscript{31} See Supra Note 17
his favour, but the mere fact that he did not ask for it cannot be put against the accused.

4. In every case of complaint of denial of the right to speedy trial, it is primarily for the prosecution to justify and explain the delay.\textsuperscript{32}

\textbf{Remedies for the Violation of Right to Speedy Trial}

(a) Right to challenge detention in court:

Article 9 (4) of the International Covenant provides –

"Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceeding before a court, in order that, that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful".

Article 5 (4) of the European Convention is substantially the same. The object of this provision is to have judicial review or control over detention, so that it may not violate any Constitutional or Statutory provision or made unreasonably prolonged.

The European court has held\textsuperscript{33} that this agency of review must be judicial. Hence, where a magistrate orders the detention in an administrative capacity, and there is no provision for appeal against his order, there is a violation of Article 9 (4) of the Convention.

In countries such as United Kingdom\textsuperscript{34}, U.S.A. and India and European Human Right Court, the judicial remedy through which this review is ensured is the writ of \textit{habeas corpus}.

An application for the writ lies to a superior court, which may issue the writ commanding the detaining authority to produce the prisoner before it, and if the court finds the detention unlawful, it will set the prisoner free, at once.

\textsuperscript{32} See supra note 25

\textsuperscript{33} Vagrancy cases (against Belgium) 1971) 14 BECHR 786 (824-86)

(B) Development of the Right to Speedy Trial

At the outset, it would be important to look into how other legal systems respond to the problem of delay in criminal trials. The recognition of a defendant’s right to a speedy trial stems from the Magna Charta,\(^{35}\) which the English barons exacted from King John. Colonial America embraced the right to a speedy trial as part of its common law heritage. This right was formalized in the Sixth Amendment to the Constitution of the United States; similar provisions exist in every State Constitution. A wide source exists to justify the right to speedy trial such as Virginia Declaration of Rights, 1776 the International Covenant on Civil and Political Rights, 1976\(^{36}\). The Indian Supreme Court has interpreted the right to speedy trial as an essential ingredient of fair trial and the right directly flows from Article 21 of the Constitution of India.

The focus on speedy trial issue is important because society expects its criminal courts to be a forceful instrument both in controlling crime and in protecting the rights of the accused, the inability of the criminal courts to dispose of cases in a timely manner has emerged as a major concern. Delay between arrest and trial affects the ability of the court to determine the truth of the matter in controversy, diminishing the verdict’s reliability.

Western nations particularly U.S.A., England, Japan and Canada have succeeded to significant extent in arresting the menace of galloping pace of litigation by increasing number of Judges corresponding to case-load and not population-wise, adopting leap-frog procedures and regulating the hearings. Majority of appeals stop at High Courts. Appellate proceedings at every level are conducted through written briefs and transcript. Supreme Court and High Courts have not only limited the

\(^{35}\) 17 John, C. 39 (1215) (England)

\(^{36}\) Article 14 of the International Covenant on Civil and Political Right, 1976.
number of cases argued orally and amount of time allotted each argument but have recently reduced considerably the time for oral arguments.\(^{37}\)

In England some intermediary stages of appeals and revisions need to be abolished by adopting leap-frog procedures. It may be made no more necessary to write Judgements in dismissal of appeals as is prevalent in England. Large number of cases needs to be taken out from the arena of division benches.

Doctrine of “plea negotiation” and “charge reduction” as prevalent in USA and other countries would help in easing the criminal pressure. This is an agreement between prosecutor, lawyer and defendant after advice by the courts large numbers of cases are handled by this process, which involves intensive selectivity.

Another significant measure is to address social philosophy of ‘de-criminalization’ to deplete the unnecessary backlog of cases.

In U.S.A., Canada and England, many actions have been de-criminalized, which means removal of certain broad areas of offences from the status of criminal-acts like road traffic violations and some minor and petty offences.\(^{38}\)

However, Indian judicial scene is comparatively more dismal and disturbing. Long procrastinated trials moving at ambling pace, amending criminal trials, the torture of long waits for final decisions, repeated visits, enormous waste of man-hours in the courts that are over-burdened cause social tensions and frustrations and tend to weaken the system from within. Ultimately, it tells heavily upon the quality of justice. The way out of this crisis does not lie in condemnation of judiciary or Judges or lawyers or administrators. The phenomenon requires profound analysis. To start with there is immediate need for three-directional reforms to strengthen

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38. Ibid.
the administration of justice. First, there is need for substantive changes in laws and procedures with emphasis on alternative dispute resolution; Second, to treat judicial management as a philosophy by taking advantage of modern management and technology for system analysis and third, for making the judiciary as single authority to manage its affairs.

(1) Position in United States of America (USA)

➢ Source and Rationale

The right to a speedy trial have been derived from a provision of Magna Charta and it was a right so interpreted by Coke, “We will sell to no man, we will not deny or defer to any man either justice or right” 39 Much the same language was incorporated into the Virginia Declaration of Rights of 1776 and from there into the Sixth Amendment.40 Unlike other provisions of the Amendment, this guarantee can be attributable to reasons, which have to do with the rights of and infliction of harms to both defendants and society. The provisions is “an important safeguard to prevent undue and oppressive incarceration prior to trial, to minimize anxiety and concern accompanying public accusation and to limit the possibility that long delay will impair the ability of an accused” to defend himself.41 The delay alone may lead to the loss of witnesses through death or other reasons and the blurring of memories of available witnesses. But on the other hand, “there is a societal interest in providing a speedy trial which exists separate from and at times in opposition to the interests of the accused”. Accused persons in Jail must be supported at considerable public expenses and often families must be assisted as well. Persons free in the community may commit other crimes, may be tempted over a long

period of time to jump bail, and may be able to use the backlog of cases to engage in plea bargaining for charges or sentences which do not give justice to society. And delay often retards the deterrent and rehabilitative effects of the criminal law.\textsuperscript{42}

The United States of America is the only country, which has enacted a legislation to implement the Constitutional guarantee of speedy trial to all accused persons. The Americans base the right to a speedy on the 6\textsuperscript{th} Amendment to their Constitution.\textsuperscript{43} Most of the States have, in their respective Constitutions, provision similar in effect to that of the 6\textsuperscript{th} Amendment.\textsuperscript{44} Moreover, most of the States have enacted statutes, which provide for speedy trial of offences. Though most such statutes can be traced to the 18\textsuperscript{th} century and even earlier the Speedy Trial Act was enacted only in the year 1974,\textsuperscript{45} more as a response to growling protection against crimes being committed by accused out on bail.\textsuperscript{46}

➢ Scope and Application

The guarantee of a right to speedy trial is one of the most basic rights provided by the U.S. Constitution. It is one of those “fundamental” liberties embodied in the Bill of Rights, which the due process clause of the 14\textsuperscript{th}, Amendment makes applicable to the States.\textsuperscript{47} The safeguard “is activated only when a criminal prosecution has initiated and extends only to those persons who have been accused in the course of that prosecution”. Invocation of the right need not await indictment, information or other

\textsuperscript{42} Barker \textit{vs} Wingo, 407, U S 514, 519 (1972), Dickey \textit{vs} Florida, 398, U S 30, 42 (1970), (Justice Brennan Concurring) Congress by the Speedy Trial Act 1974, pub., L No 93-619, 88 State 2076, 18 U S C. 3161-74, has codified the law with respect to the right, intending to “give effect to the 6\textsuperscript{th} amendment right to a Speedy Trial” S Rep No 1021, 93\textsuperscript{rd} Congress, 2\textsuperscript{nd} Sess 1 (1974)

\textsuperscript{43} The relevant portion or the 6\textsuperscript{th} Amendment reads “In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial by an important jury”

\textsuperscript{44} Note, “Right to a Speedy Criminal Trial”, 57 Col L R 84 (1957)

\textsuperscript{45} Marc I. Steinberg, “Right to Speedy Trial The Constitutional right and its applicability to the Speedy Trial Act of 1974, 66 J Crim L r C 229 (1975)


\textsuperscript{47} Klopfer \textit{vs} North Carolina, 386 U S 213, 226 (1976)
formal charge but begins with the actual restraints imposed by arrest if those restraints precede the formal professing of charges.48

Justices Douglas, Brennan and Marshall disagreed, arguing that the "right to a speedy trial is the right to be brought to trial speedily which would seem to be as relevant to pre-trial indictment delays as it is to post-indictment delays," but concurring because they did not think the guarantee violated under the facts of the case. In United States vs. MacDonald, 456 U.S. 1 (1982), the Court held the clause was not implicated by the action of the United States when, in May of 1970, it proceeded with a charge of Murder against defendant under military law but dismissed the charge in October of that year, and he was discharged in December. In June of 1972, the investigation was reopened and an investigation was begun, but a grand jury was not convened until August of 1974, and possible prejudice that may result from delays between the time government discovers sufficient evidence to proceed against a suspect and the time of instituting those proceedings are guarded against by statutes of limitation, which represent a legislature Judgement with regard to permissible periods of delay.49

In two cases, the court held that the speedy trial guarantee had been violated by States, which preferred criminal charges against persons who were already incarcerated in prisons of other jurisdictions following convictions on other charges when those States ignored the defendants requests to be given prompt trials and made no effort through requests to prison authorities to obtain custody of the prisoners for purposes of trial.50 A State practice permitting the prosecutor to take nolle-prosequi with leave,

49. United States vs. Marion, 404 U.S. 307, 322-23 (1971) Cf. United States vs. Toussle, 397 U.S. 112, 114-15 (1970) In some circumstances, pre-accusation delay could constitute a due process violation but not a speedy trial, problem. If prejudice results to a defendant because of the governments delay, a court should balance the degree of prejudice against the reasons for delay given by the prosecution.
which discharged the accused from custody but left him subject at any
time thereafter to prosecution at the discretion of the prosecutor, the
statute of limitations being tolled was condemned was violative of the
guarantee.51

The Speedy Trial prescribes a set of time limits for carrying out the
major events in criminal proceedings such as the giving of information and
indictment in the prosecution of criminal cases.

The Speedy Trial Act divides the pre-trial stage into three and there
are different limits for each stage. The first interval is from arrest to filing
of charge/information with the court, for which the prosecution has 30
days. In the event the accused is not arrested, this period begins to run
from the time accused is summoned. The Second interval is from filing of
the charge till arraignment for which the limit is 10 days. From
arraignment till commencement of trial, further 60 days is provided. Thus,
once the accused is served with the summons or is arrested, the trial has to
come within 100 days.52

If the delay occurs in the first stages, that is, between arrest and the
arraignment the termination of the prosecution is automatic. But, once he
is arraigned the accused has to make a demand for dismissal. The Court
has the discretion to dismiss the prosecution with or without the liberty to
bring a fresh prosecution. However, such fresh prosecutions may be
barred by limitation. This discretion is to be exercised with reference to
three factors.53

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   (1957), the majority assumed and the dissent asserted that sentence is part of the trial and
   that too lengthy or unjustified a delay in imposing sentence could run afoul of this
guarantee.

52. On a comparison, under the Indian System, these stages roughly correspond to filing of
   the final report under section 173 cr. P.c. or earlier proceedings framing and reading over
   of charges and commencement of trial respectively.

   sanction for non-compliance with the Act: Defining the range of District Courts discretion
to dismiss” 78J. Crim. L. rc. 997.
(i) Seriousness of the offence.
(ii) Facts and circumstances leading to the dismissal.
(iii) Impact of the dismissal on the administration of justice.

These factors were considered and interpreted by their Supreme Court in *United States vs. Taylor.* In that case, lack of malice on the part of the prosecution is causing the delay, and granting of the offence (drug trafficking) were considered to justify the grant of leave to bring a fresh prosecution while dismissing the case. The court also held that these questions warrant detailed and reasoned decisions by the trial court for they will be considered as questions of the law for the purpose of review by the higher courts.

The right to a speedy trial is not only an important safeguard to prevent undue and oppressive incarceration but it serves to minimize anxiety and concerns that accompany the accusation. This right helps to limit the possibility of impairing the ability of an accused to defend himself. This right is actuated in the recent past and the courts have laid down a series of decisions opening up new vistas of fundamental right.

In fact, more cases are coming before the courts for quashing of proceedings on the ground of inordinate and undue delay stating that the invocation of this right even need not await formal arraignment of charge.

The guarantee of a speedy trial is one of the most basic rights guaranteed by the Constitution of U.S.A. it is one of these Fundamental liberties embodied in the Bill of Rights which the due process clause of the Fourteenth Amendment makes applicable to the States. The protection given by this guarantee is activated only when a criminal prosecution has begun and extends only to those persons who have been ‘accused’ in the course of the prosecution.

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The invocation of the right need not await arraignment, information or other formal charge but begins with the actual restraints imposed by arrest if those restraints precede the formal preferring of charge.\textsuperscript{56} Any prejudice that may occur from delays between the time governments discovers sufficient evidence to proceed against a suspect and the time of instituting those proceedings are guarded against by statutes of limitation, which represent a legislative Judgement with regard to permissible periods of delay.\textsuperscript{57} In these cases, the court held that the speedy trial guarantee had been violated by States which, preferred criminal charges against persons who were already incarcerated in prisons of other jurisdictions following convictions on other charges when those States ignored the defendant’s requests to be given prompt trials and made no effort through requests to prison authorities to obtain custody of the prisoners for purpose of trial.\textsuperscript{58}

\textbf{Constitutional Test}

A defendant is guaranteed the right to a speedy trial under the Sixth Amendment of the United States Constitution. In addition, States have provisions in their Constitutions that guarantee the same right. The text under the Sixth Amendment of the United States Constitution as to whether a defendants’ right to a speedy trial has been violated is a balancing test. The balancing test involves four factors:

1. the length of the delay
2. the causes of the delay
3. the extent of the defendants’ assertion of his or her right to speedy trial; and

\textsuperscript{56} United States vs. Marion, 404 U.S. 307 (313, 320, 322) (1971)
\textsuperscript{57} Id. Cf. United States vs. Toussie, 397 U.S. 112 (114) 115 (1970) in some circumstances, pre-accusation delay could constitute a due process violation but not a speedy trial problem. If prejudice results to a defendant because of the government’s delay a court should balance the degree of prejudice against the reasons for delay given by the prosecution.
\textsuperscript{58} Smith VS. Hooey, 393 US 374 (1969); Dickey VS. Florida, 398 US 30 (1970)
4. the nature and extent of the prejudice to the defendant as a result of the delay.

The balancing test requires a court to make a determination on a violation of the defendants' speedy trial rights on a case-by-case basis. The Supreme Court in case of Barker vs. Wingo59 formulated the Constitutional test for speedy trial; the court rejected a specific number of days or months as the Constitutional test. The court has also held that when the balancing test establishes a violation of the defendant's Constitutional right to speedy trial, the only appropriate remedy is dismissal of the criminal charges with prejudice.60

In Barker case, the Supreme Court unanimously held that a five-year delay was offset by the justification for the delay, by the defendant's acquiescence in the greater part of the delay, and by the absence of prejudice to the defendant.

Firstly, the length of the delay serves as a trigger for the application of the remaining factors of the balancing test. If a delay is not long enough to be considered prejudicial to a defendant, a court will not look to the other three factors. If the length of the delay is presumed to be prejudicial to the defendant, the other three factors are considered. A delay for a certain amount of time does not automatically result in a violation of the defendant's speedy trial rights. The length of the delay is usually considered according to the facts of the defendant's case, the seriousness of the defendant's offence, and any action or inaction on the part of a trial court or the prosecution. Analysis under the Barker case a delay that is "presumptively prejudicial" calls for the balancing test. A presumptively prejudicial delay is determined by the facts and circumstances of the case and by the pending charge. Thus, the court contended that - "the delay that can be tolerated for an ordinary street

59. 407 U.S. 514 (1972)
60. Strunk vs. United States, 412 U.S 434 (1973)
crime is considerably less than for a serious complex conspiracy charge".\textsuperscript{61} An analysis of cases using the Barker test shows that a delay of one year is generally considered sufficient to raise Sixth Amendment issue and invoke the balancing process,\textsuperscript{62} although is less complex cases the Barker test is generally invoked when the delay exceeds six months, as discussed in \textit{United States vs. Rucker}.

\textbf{Secondly}, in the case of \textit{United States vs. Herman}\textsuperscript{64} it was held that, once an unreasonable delay is established, the reason for the delay must be considered delay caused by the defendant cannot be the basis for claiming a violation of his Sixth Amendment right. The second test, the cause of delay, involves a consideration of the reasons for the delay and whether the delay should be weighed in favour of the prosecution or the defence. Over controlled court, dockets and an unintentional delay on the part of the prosecution is considered to neutral reasons for the delay. However, neutral reasons are generally weighed in favour of a defendant because the prosecution and trial court both have a duty to prevent an unreasonable delay. Therefore, over controlled dockets are not excuses for a delay.

If the prosecution deliberately attempts to delay a trial in order to impair a defendants' case, the delay is weighed heavily against the prosecution. However, good faith plea negotiations are considered a valid reason for a delay and are not weighed against the prosecution. If the defendant is responsible for the delay, the delay is weighed against the defendant.

In Barker case, the Supreme Court categorised the reasons for delay attributable to the prosecution into three classes, declaring that in the balancing test, different weights must be assigned to various reasons.

\textsuperscript{61} Barker vs. Wingo, 531 U.S. 514 (1972).
\textsuperscript{62} Rudstein, pp. 11,17
\textsuperscript{63} 496 F. 2d 1241 (8th Cir. 1974).
\textsuperscript{64} 576 F. 2d 1139, 1145 (5th cir. 1978).
An intentional delay by the prosecution for the purpose of harassing the defendant or hampering the defence normally tips the balance in the defendants' favour and is sufficient ground for dismissal of the charges.

As for the neutral reason for the delay, courts have not blamed the government when the delay is caused by court congestion or undermanned prosecution staffs and tend to treat these as justifiable reasons for delay.65

Finally, in Barke, the court found that a valid reason adduced by the government, such as the unavailability of a key prosecution witness, would excuse an appropriate delay without further balancing. Implicit in this justification for delay is a belief that the prosecution is not responsible for the witness unavailability and that a diligent effort to locate him must be made. Only reasonable delay on account of a missing witnesses will be considered appropriate, a criminal prosecution cannot be left spending indefinitely because of the disappearance of the witness.66 Other justified causes for delay are in competency of the accused,67 the complexity of the case68 and the unavailability of a defendant.69

The third test, a defendants' assertion of his or her right to a speedy trial, is not in and of itself determinative of the violation of a right to a speedy trial. However, the defendant's assertion of his or her right does receives strong weight under the balancing test. If the defendant fails to assert his or her right, he or she will have difficulty claiming that his or her right to speedy trial was violated. In Barker case it was held that the defendant's demand for a speedy trial to be merely one factor that should be weighed in the balancing test. The court specifically rejected the idea

65. cf. strunk, 436, United States vs. La Borde, 446 F. 2d 965, 968 (6th Cir. 1974).
66. United States vs. Auderson, 471 F. 2d 201 (5th Cir. 1973).
67. United States ex rel. little vs. Twomey, 477 F.2d 767 (7th Cir. 1973).
68. United States vs. Avalos, 541 F. 2d 1100, 1111 (5th Cir. 1976).
69. United States vs. Annerino, 945 F. 2d 1159, 1162-1164 (7th Cir. 1974).
that a defendant's failure to demand trial could constitute waiver of the speedy trial right. Most courts that have considered this issue however, have indicated a belief that a defendant who fails to assert the right does not in fact want a speedy trial. Those courts have weighed this failure against the defendant.\footnote{cf. United States vs. Greene, 578 F. 2d 648, 655 (5th Cir. 1978); United States vs. Lane, 561, F. 2d 1075, 1079 (2d Cir. 1977); United States vs. Roberts, 515 F. 2d 642 (2d Cir. 1975).}

\textbf{The fourth test}, prejudice to a defendant as a result of the delay, is determined in accordance with the defendant's interests. Such interests include the prevention of pre-trial incarceration, the minimization of anxiety and concern on the part of the defendant and the limitation of the opportunity to prepare a defence. The defendant initially has the burden of showing prejudice as a result of the delay. The defendant does not need to show actual prejudice. Once the defendant has shown some prejudice, the prosecution has the burden of proving that the defendant was not seriously prejudiced by the delay.

The final factor in the Barker formula, three interests were identified by the court -

(1) preventing oppressive pre-trial incarceration;
(2) minimizing the anxiety and concern of the accused; and
(3) limiting the possibility that the defence will be impaired. The Supreme Court found the last interest to be pre-eminent since the inability of a defendant to prepare his case adequately impairs the fairness and reliability of the guilt determining process.

The Supreme Court in Barker dismissed the ten months pre-trial incarceration as causing only minimal prejudice to the defendant, most courts have deemed this factor to weigh very little in the balancing test. Some courts, however, have found similar periods of incarceration to be oppressive within the Supreme Court's use of that term.\footnote{Chism vs. Koehler, 392 F. Supp. 659 (W.D. Mich. 1975); United States vs. Perry, 353, F. Supp. 1235 (DDC, 1973).}
Although the court in Basker case recognized that personal prejudice, such as the loss of employment or the experience of public scorn, is a factor to be considered, it held that such injury is a normal effect of being accused of criminal charges. Before delay can be considered to cause personal prejudice, a defendant must demonstrate more than the normal anxiety, embarrassment, and concern suffered by all defendants awaiting trial.

The most significant prejudice is that which impairs the defendant's ability to defend himself. Such prejudice arises when the defendant's witnesses have died or disappeared or is unable to recall past events accurately owing to the delay. Courts have expanded this list to include the destruction of documents or physical evidence, and the death of the defendant's attorney. The Supreme Court has held that a defendant need only show that one of these has occurred. The defendant need not make an affirmative showing of prejudice beyond the loss, although other courts have generally held that he must demonstrate actual prejudice as a result of the loss caused by delay.

The most serious type of prejudice is the impairment of an opportunity to prepare a defence. Witnesses may become unavailable and evidence may be lost during a lengthy delay.

A defendant often files a motion for a speedy trial as part of his or her pre-trial motions. The purpose of the motion is to secure an early trial date and to preserve any error that may result from a lengthy pre-trial delay.

If the defendants' right to a speedy trial has been violated, the case against the defendant must be dismissed. When the defendant files a

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72. United States vs. Burnett, 476 F. 2d 726 (5th Cir. 1973).
73. State vs. Bishop, 493 S.W. 2d 81 (Tenn. 1973).
75. Smith vs. United States, 577 F. 2d 1025 (5th Cir. 1978).
motion to dismiss based on a violation of his or her right to a speedy trial, the motion should allege that the delay was unduly lengthy, that the delay did not caused by the defendant and that the delay was prejudicial to the defendant.

**Speedy Trial Act of 1974 - An Overview**

The Federal Act of 1974 is titled the Speedy Trial Act and was passed in 1974. The Act establishes time limits for completing the various stages of a federal criminal prosecution, such as the giving of information and indictment etc.

The Speedy Trial Act require the trial of defendant to commence within **seventy days** from the filing date of the indictment or from the date on which the defendant appears before a judicial officer of the court in which the charge is pending, whichever date is later.\(^6\) The information or indictment must be filed within 30 days from the date of arrest of the service of summon.\(^7\)

Moreover, in order to ensure that accused persons are not rushed to trial without an adequate opportunity to prepare, the congress amended the Act in 1979 to provide a minimum time period during which trial must commence. The legislation has three major provisions:

**First:** it requires that a defendant be indicted and then tried within a mandatory period of time.

**Second:** it attempts to limit delay by curtailing a trial Judge's discretion to grant continuances (postponements of the action to a subsequent day).

**Third:** it authorises the imposition of sections upon attorneys who unjustifiably cause delay.

Thereby, the Act provides that trial may not begin less than **thirty days** from the date the defendant first appears in court, unless the

\(^6\) U.S.C. § 3161 (c) (1)

\(^7\) Id, (b)
defendant agrees in writing to an earlier date. In *United States vs. Raja Contreras*\(^78\), the U.S. Supreme Court held that this *thirty-day* trial preparation period not restarted upon the filing of a substantially similar superseding indictment. The indictment is dismissed at the defendants’ request; the provisions of the Act’s apply afresh upon reinstatement of the charge.\(^79\) If the indictment is dismissed at the request of the government, the *seventy days* time begins to run again upon the filing of the second indictment.\(^80\) If trial ends in a mistrial, or the court grants a motion for a new trial, the second trial must begin within *seventy days* from the date, the decision of trial becomes final.\(^81\)

Certain pre-trial delays are automatically excluded from the Act’s time limits, such as delays caused by pre-trial motions. In *Henderson vs. United States*,\(^82\) the Supreme Court held that the Act excludes all time between the filing of a motion and the conclusion of the hearing on that motion, whether or not a delay in holding that hearing is ‘reasonably necessary’. The Act also excludes a reasonable period (upto 30 days) during which a motion is actually ‘under advisement’ by the court.\(^83\)

Other delays excluded from the Act’s time limits include delays caused by the unavailability of the defendant or an essential witness\(^84\) delays attributable to a co-defendant\(^85\) and delays attributable to the defendant’s involvement in other proceedings; including delay resulting from an interlocutory appeal. (Note, however, that 30 day defence preparation period provided for in § 316 (c) (2) is calculated without reference to the section 3161 (h) exclusions).

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78. 474 US 231 (1985)
79. 18 U.S.C. § 3161 (d) (1)
80. Id (h) (6)
81. Id; (e)
82. 476 U.S. 321 (33) (1986)
83. 18 U.S.C. § 3161 (h) (1) (J)
84. Id (h) (3)
85. Id (h) (7)
A defendant may not expressly waive his rights under the Speedy Trial Act. This was ruled in *United States vs. Saltzman*.\(^86\) However, if the trial Judge determines that the 'ends of justice' served by a continuance outweigh the interest of the public and the defendant in a speedy trial, the delay occasioned by such continuance is excluded from the Act's time limits.\(^87\) The Judge must set forth, orally or in writing, his reasons for granting the continuance\(^88\) the government should make sure that the Judge enters an 'ends of justice' continuance and that he sets forth his reasons for doing so. It is the duty of the prosecution to bring a defendant to trial, and the failure of the defendant to demand the right is not to be construed as a waiver of the right.

The Act provides a sanction of dismissal for violation of its time limits that may be with or without prejudice to re-prosecution. In assessing whether dismissal should be with prejudice, the court must consider the seriousness of the offence, and the circumstances leading to dismissal, and the impact that re-prosecution would have on the administration of the Act and on the administration of justice.\(^89\)

In *United States vs. Taylor*,\(^90\) the Supreme Court held that a trial court must examine each statutory factor in deciding to dismiss charges with prejudice. The court in *Taylor* found that a minor violation of the time limitations of the act that did not prejudice the defendants' trial preparation did not justify the dismissal with prejudice of an indictment charging serious drug offences.

While a defendant cannot unilaterally waive his rights under the Speedy Trial Act, he can forfeit his to obtain a dismissal of the case for a claimed violation of the Act by failing to move for dismissal prior to trial.

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86. 984 F.2d 1087, 1090-1092 (10th Cir. 1993)
87. 18 U.S.C. § 3161 (h) (8) (A)
88. Ibid
89. 18 U.S.C. § 3161 (a) (1) - (a) (2)
90. 487 U.S. 326 (1988)
The statute provides that [failure of the defendant to move for dismissal prior to trial, shall constitute a waiver of the right to dismissal under this section.\textsuperscript{91}

The Speedy Trial Act 1974 is not applicable to juvenile delinquency proceedings, which have their own speedy trial provision.\textsuperscript{92}

Furthermore, the Inter-State Agreement on Detainer (IAD) provides its own time limits for persons incarcerated in other jurisdictions.\textsuperscript{93} In such a case, the government must comply with both the time limits of the IAD and Speedy Trial Act.

\section*{When the Right is denied:}

The right of a speedy trial is necessarily relative. It is consistent with delays and depends upon circumstances. It secures rights to a defendant. It does not preclude the rights of public justice.\textsuperscript{94} No length of time is \textit{per se} too long to pass scrutiny under this guarantee.\textsuperscript{95} But on the other hand neither does the defendant have to show actual prejudice by delay.\textsuperscript{96} The court rather has adopted an \textit{adhoc} balancing approach. We can do little more than identify some of the factors which courts should assess in determining whether a particular defendant has been deprived of his right. Though some might express them in different ways, we identify four such factors: length of delay, the reason for the delay, the defendant’s assertion of right, and prejudice to the defendant.\textsuperscript{97}

\textsuperscript{91} 18 U.S.C. § 3162 (a) (2)
\textsuperscript{92} Id. § 5036 (Speedy trial provision of the Juvenile Delinquency Act).
\textsuperscript{93} Id. Appendix 2 § 2, Articles III-VI
\textsuperscript{94} Beavers \textit{vs.} Havbert, 198 U.S. 77, 87 (1905) (holding that the guarantee could not be invoked by a defendant first indicted in one district to prevent removal to another district where he had also been indicted).
\textsuperscript{96} United States \textit{vs.} Marion, 404 U.S. 307, 320 (1971); Barker \textit{vs.} Wingo 407 U.S. 514 536 (1972) (Justice White Concerning)
\textsuperscript{97} Barker \textit{vs.} Wingo, 407 US 514 (530) (1972).
Features

A few important features of the Speedy Trial Act, 1974 have noted, firstly, it was implemented in a phased manner. The Act initially imposed a time limit of 180 days for the first year after it was enforced. In the second year, this was reduced to 120 days, and from the third year onwards, the limit is 100 days. A presiding officer of the court can ask for exempting his court from the purview of the Act, if he feels that his court is not in a position to meet the requirements of the Act on account of heavy workload.98

Secondly, there are provisions which enable the courts to exclude delays arising on account of certain specified factors like absconding or non-availability of the accused or a key witness, delays caused by other preliminary proceedings like those held to determine the mental fitness of the accused etc.99

The third feature of the Act is that an elaborate administrative set-up has been created by the Act to collect statistical data regarding implementation and impact of the time limits imposed by the Act on the administration of Justice. Relying on such, data have been found that there is frequent invocation of the time exclusion provisions in the Act, and at least 10% of the total cases take more than one year to conclude.100

Delay at pre-arrest Stage

The effects of delay upon a defendant have plagued the Anglo-American Justice System for many centuries. There is often significant delay when evidence of alleged criminal behaviour surfaces during the course of an investigation and a decision is made to postpone

99. S. 3161 (h), as quoted by Bridges, Ibid.
100. Ibid, also see, Julie Vennard, "Court Delays and Speedy Trial Provisions", 1985, Crim. L.R. 73.
an arrest until the investigation is concluded. This is specially true when
the evidence surfaces during an undercover operation and an arrest would
terminate the cover. Such delay can be prejudicial since the accused is not
even aware that he is a suspect and the passage of time may impair
memories, cause evidence to be lost, deprive the defendant of witnesses,
and generally interfere with his ability to defend himself. The Supreme
Court has declined to press the 6\(^{th}\) Amendment right into service in such
instances, relying generally upon statutes of limitation, which perform this
function by governing the permissible time between commission of a
crime and prosecution. In United States vs. lovasco,\(^{101}\) the Supreme Court,
faced with the issue of pre arraignment delay, held that “to prosecute a
defendant following investigative delay does not deprive him of due
process, even if his defence might have been somewhat prejudiced by the
lapse of time.” The court concluded that even if a defendant could
establish that he was prejudiced by pre-accusation delay, the charges
should not be dismissed if the delay is justified or necessary.

➤ Speedy Trials in the States

The administration of Justice in the States is a matter left to each
State government, provided that the procedures and rules adopted in each
State do not fall below the minimal level of fairness guaranteed by the due
process clause of the Fourteenth Amendment as set forth by the Supreme
Court in Barker case.

Priority is given for the criminal cases, many States have followed
the lead of Rule 50(a) of the Federal Rules of Criminal procedure and the
recommendations contained in the standards for criminal justice prepared
by the American Bar Association (ABA). The standards provided that
Criminal trials be given preference in the scheduling of court calendars
and that among criminal trials preference be given to the trials of

\(^{101}\) 431 U.S. 783 (1977).
defendants in custody and defendants whose pre-trial freedom is reasonably believed to present unusual risks to the community.\textsuperscript{102}

However, according priority to criminal cases often affects the civil calendar adversely.

\textbf{Controlling Continuances}

The greatest obstacle to the speedy disposal of criminal cases is the case with which an attorney is able to delay the commencement of a trial by obtaining a continuance. This fact is recognized in the American Bar Association (ABA) standards, which stipulate that a continuance should be granted only upon a showing of good cause and only for as long as is necessary. Underlying the stipulation is recognition that the need for prompt disposition of criminal cases should take precedence over the desires and convenience of the parties to the dispute. The emphasis is on the court’s responsibility independently to determine whether there is in fact cause for the continuance. John Poulous and Jerry Coleman have characterized the law of continuances in the States as falling into three main categories and a residual one. The three categories are the “good cause” requirement, the slightly lesser standard of “sufficient cause”, and the strictest standard, which requires that “exceptional circumstances” be shown before a continuance is granted. However, the majority of States fall into the residual category because they authorize granting continuances for such reasons as “in the ends of justice” or “in the interest of justice”,\textsuperscript{103} and grant continuances merely “for cause”,\textsuperscript{104} and grant continuances merely “for cause”.\textsuperscript{105}


\textsuperscript{103} (Alaska Crim. R. 45(d) (2) (1980); N.Y. Crim. Proc. Law (McKinney) § 30.30 (4) (g) (1972-1980 Cum. Supp.))

\textsuperscript{104} (Ohio Revs. Code Ann. § 2945.72 (H) (1975 r 1980 Supp.))

\textsuperscript{105} (D.C. R. Crim. P. 111 (1978-1979 Supp.))
State Speedy trial- Time limits

More than half of the States have statutory provisions and court rules requiring that in criminal cases commence within a certain number of days following a specific event. These time limits range from a minimum of Seventy-five days to a maximum of nine months. Illinois, for example, has stipulated 120 days from arrest; Pennsylvania, 180 days after the filing of the complaint; Ohio, 90 days from arrest for a defendant who is in custody and 270 days from arrest for a defendant who is free on bail; and Washington, 90 days from preliminary appearance.106

A substantial minority of States still measure by terms of court the time limits within which trial must begin, requiring that it commence within a fixed number of terms of court following the term in which the defendant was arrested.107 Finally, States such as Hawaii and New Jersey provide no certain time period within which trial must begin, leaving the matter entirely to the discretion of the trial court.108

Although the ABA standards stipulate that certain period of time be excluded in computing the time to trial, there is no clear trend among the States. Delay caused by court congestion illustrates the lack of uniformity.109 Arizona has adopted the ABA standards position that “congestion attributable to exceptional circumstances” will justify delay but that delay caused by chronic congestion is not excused. On the other hand, in Florida,110 docket congestion, no matter how exceptions, is not considered an excusable delay. Some States, such as Indiana, do excuse delay caused by docket congestion, Arkansas excuses delay “for want of

110. (Fla. R. Crim. p. 3.191 (f) (1975 r 1981 Supp.))
time to try the case” and such States as Kansas and Texas excuse delay where there is “insufficient time” to try the case.\textsuperscript{111}

(2) United Kingdom (U.K.)

The English criminal Justice system recognizes accused’s right as far back as 1679 in the Habeas Corpus Act.\textsuperscript{112} Section 6 of the Habeas Corpus Act, provided for release on bail or discharge of persons detained on accusation of high treason or felony in the courts of Assizes or Sessions, if indictment could not take place in the second term after committal.\textsuperscript{113} Assizes Relief Act 1889, Section 3 provided for released on bail of persons committed for trial to courts of sessions if they are not tries in the next sessions.\textsuperscript{114} The Criminal Justice Act, 1925, Section 14 (5) which was replaced by Section 10 (3) of Magistrates Courts Act 1952 also provided for release on bail of persons who could not be tried at the next Quarter sessions.\textsuperscript{115} These provisions only limit the pre-conviction custody of the accused.

\\begin{itemize}
\item[	extgreater] Statutory Regulations
\\end{itemize}

Some steps to regulate and limit the actual duration of the prosecution process was made in the Crown Court Rules and Indictment Rules, which are statutory regulations, issued in 1982 and 1983. Under these rules, the bill of indictment is to be prepared within 28 days of committal\textsuperscript{116} and the trial is to commence within 8 weeks of committal.\textsuperscript{117} Both these limits may be extended by the court.


\textsuperscript{113} Halsbury’s Statutes, IlInd ed. VS. 6, p. 89.

\textsuperscript{114} Id., VS. 5, p. 916.

\textsuperscript{115} Now, Bails Act, 1976.

\textsuperscript{116} Halsbury’s laws of England, 4\textsuperscript{th} ed., reissue VS. II(2) para 916.

\textsuperscript{117} Id., para 979.
The Prosecution Offenders Act, 1985

Section 22 enables the Secretary of State to prescribe custodial and overall time limit in respect of preliminary stages of trial. “Preliminary Stage” means, in Crown Court, proceedings prior to arraignment and in summary trials, proceedings prior to taking of evidence for the prosecution. The actual time limit has to be prescribed by the Secretary of State through delegated legislation.

The consequence of non-adherence with custodial time limit is bail. Consequence of non-adherence with overall time limits is acquittal.

According to the provision now in force, the custodial limits vary between 58 to 112 days depending on whether the offence is triable summarily or indictable and other factors like place of trial. The courts have the power to extend time limits on a case-to-case basis. Depending on factors like - 'good cause', where prosecution has 'acted with all due expedition' etc., and where the accused escapes or jumps bail, such orders are appealable, except when the accused is convicted.

(3) Australia

In Australia, there is no express provision of speedy trial governing the time, which may be taken for completion of criminal proceedings. The right to speedy trial is a creation of the courts proceedings' doctrine as

118. Prosecution of offenders Act, S. 22(11)
119. Id. S. 22(1) and (2)
120. Prosecution of offences (Custody time limit) Regulations, 1987 also see Supra n. 85 paras 851-855
121. Prosecution of offenders Act, 1985 S. 22(4)
122. Supra n. 5.
123. Prosecution of offenders Act, 1985, S. 22(3)
124. Id., S. 22(5) and (6).
125. Id., S. 22(7), (8), (9) and (10).
enunciated by the English House of Lords in Connelly vs. DPP\textsuperscript{126} and DPP vs. Humphrys\textsuperscript{127} and developed by the High Court of Australia in Barton vs. The Queen.\textsuperscript{128} None of these cases deal with delay. All that was laid down in these cases is that the courts have been power to dismiss prosecutions for abuse of their process.

Therefore, relying on these decisions, the lower courts in the country developed a preposition that were efflux of time will amount to an abuse of their process.\textsuperscript{129}

This was reversed by the High Court of Australia in Jago vs. District Court of New South Wales.\textsuperscript{130} In Jago, the accused, an ex-company director was indicted of an offence related with misuse of company funds, committed between April 1976 and June 1979. The High Court found that there is no common law right to a speedy trial in Australia. However, a proceeding may be permanently stayed if abuse of proceedings is proved as a matter of fact. Whether delay amounts to abuse is a question to be decided on a case-to-case basis.\textsuperscript{131} The court expressly laid down that permanent stay order granting immunity from trial is undesirable and ought to be the last resort. It was realistically accepted by the court that delay, especially in complex cases, is inevitable and on facts, found that Jago did not involve unreasonable delay.

C. Problem of Backlog And Delay-A Comparative Study

The change over from the Indian to the Anglo-Indian or the English legal and judicial system did not prove advantageous to this country. Rather we find ourselves now in enormous legal and judicial mess, the

\begin{itemize}
  \item \textsuperscript{126} (1964) AC 1254.
  \item \textsuperscript{127} (1977) AC 1.
  \item \textsuperscript{128} 147 CLR 75 (1990).
  \item \textsuperscript{129} Cases quoted by Justice John H. Phillips in "Delay and abuse of process", (1989) 63 ALJ 698. Also see, Richard G. Fox, "Jago's Case; Delay Unfairness and abuse of process in the High Court of Australia" 1990 Crim. L.R. 552.
  \item \textsuperscript{130} 63 ALJR 340 (1989).
  \item \textsuperscript{131} Ibid.
\end{itemize}
delays and heavy backlog making it worse. To quote Sir Henry Durand from his Article; “The State of society and civilization which pervades the many millions of India calls for a simple cheap and expeditious administration of justice. Ours is neither cheap nor expeditious. Indeed, it has become so complicated system that the people never presumed to understand it, whilst the pleaders and the subordinate ministerial officers are perfect adopts at making profitable use of intricacies. The English legal system was the greatest curse that could be inflicted on India.”

The judicial and Court administration in India bears important dissimilarities to its British progenitor. These differences are substantial. Some of them, however, are subtle and seem to gain scant recognition. The direction for improving the Indian Court system is to be found by recognising those differences. The comparisons with courts in other jurisdictions are not only useful and appropriate, but demonstrate new opportunities for reforming the Indian Court system that may either have been overlooked. Here making International Comparisons it may offer novel and it may also be proud as a means of identifying court system reform strategies in India.

1. **Two major System of Trial**

Coming more specifically to criminal procedure two major systems compete today, viz. -

(i) Inquisitorial System; and

(ii) Adversary or accusatorial system. The first is exemplified by the 18th and 19th century European codes, and the Anglo-American legal procedure, which has been adopted in India also. The two systems involve different conceptions of the appropriate role of; the court; the police; the counsel for the accused, the prosecutor, the accused, and the victim.

133. Judicial in India, Edited by Arnab Kumar Hazara Bibek Debroy, An article by Barry Walsh, p. 71.
134. Rene David, English law and French law (1980); at 23, 158-160.
(a) Inquisitorial System

Under the inquisitorial system, the court and its adjuncts (the examining magistrate and the public prosecutor) exercise full control over the preliminaries that is to say, the investigation and presentation of case at the trial. The offender, once formally accused, is the central party in the investigation, in the sense that he and his counsel are entitled to see all statements of witness and exhibits amassed by the police and examining magistrate, and to suggest further leads to be investigated. The victim of the offence is also a full party, in the sense that he may (with of his own) intervene as a “partie civile” in the pre trial investigation and in the trial, and have its claim to the civil relief (arising out of the crime) adjudicated in the criminal proceedings. The court exercises an affirmative role, rather than the role of an umpire in the conduct of the prosecution.136

(b) Adversary System

Under the accusatorial or adversary system, on the other hand, the accused (and his counsel, if any) are outside the preliminary investigation and have little right, any disclosure in advance of the prosecution evidence. At the trial, the court functions more as an umpire, leaving the presentation of the official case to the prosecuting attorney and responsibility of presenting whatever evidence could be presented on behalf of the accused (and cross-examination of prosecution witnesses) to the accused and his counsel.

Difference of Approach

The differences between the two systems are mainly due to different approaches. In an adversary model of procedural justice, it is assumed - at least in theory137 - that justice will emerge from the contending sides (prosecution and defence) possessing equal resources, doing their best to

136. Ibid.
present the strongest possible case, or to look after the interests of clients in the strongest possible way. These are of course restrictions on what the advocates can do in pursuing their clients' interest. They cannot for example, perjury or temper with evidence.  

"Procedural Justice" refers to the procedures for settling disputes or determining guilt or innocence. This form of justice should be distinguished from "distributive" justice, which refers to the just allocation of outcomes and resources. The distinction between distributive and procedural justice is elementary, but still relevant to the present discussion.

**Decision Maker**

In the adversary system, the decision maker is a third party, the Judge and/or jury. This third party is supposed to remain neutral and render the decision after hearing both cases made by the contending advocates.

Other legal systems depart from this basic procedural theory in critical ways. The prosecutor and decision maker may be the same person, or the fact finder may combine both the prosecutorial and defence attorney roles. But in American system (which is a variety of the adversary systems), the three roles (prosecution, defence and decision-maker) are kept distinct. As a consequence, if someone wishes to introduce certain skills or knowledge into the adversary system and that person does not happen to be a Judge or juror, the usual way is to enter on behalf of one of the adversaries.

In this respect, the practice in USA presents an extreme contrast with the other system. If even diverges from English system. In USA,

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139. Id. at 3
140. Id. at 22-27
there is minimum of pre-trial disclosure of evidence of the accused and a maximum latitude and obligation imposed as the defence counsel to make his own pre-trial investigation and to himself interview the witnesses.

Practices and Expectations – Differences

India has introduced economic reforms as back as in 1991, and has included itself in the race for globalisation but the legal system in India does not confirm global norms as globalisation requires legal system that confirms global norms.\textsuperscript{141}

In 2001, the Union Minister of Law commented, “If there is one sector that has kept away from the reform process, it is the administration of Justice”.\textsuperscript{142}

The differences that evolved regarding the entire legal system; the organisation of judiciary, training of lawyers, importance attached to juristic opinion, codification, case, law and so on.

The Indian court system suggests that it is very much modelled on the English adversarial common law system. With notable qualifications, such as the abolition of the Jury System in 1956, Indian trial and appellate courts follow the English model. The application of that system in India however has resulted in practices, which are significantly divergent from those of England, and other English speaking former British dominions that adopted English law – Such as USA, Canada, Australia and New Zealand. Unlike India, these other systems have been generally successful over the last 20 years or so in overcoming endemically large backlogs and delays in case of disposals. Through trial and error, and bitter experience in some cases, those other systems have identified the causes of backlog

\textsuperscript{141} Bibek Debroy, Rajiv Gandhi Institute for Contemporary Studies in India, Chapter 12 “Some issues for law reforms in India”.

\textsuperscript{142} R.N. Malhotra Memorial Lecturer on Judicial Reforms at Indian International Centre, New Delhi, February 14, 2001.
and delay and successfully applied usually similar methods to overcome them.

2. Judicial Productivity

Lack of Judges has been a view widely shared among Judges and commentators on the Indian judicial system are that there are not enough Judges for the workload, they have to bear. Three arguments are commonly offered in support of this. The first is that high rates of case pendencies\textsuperscript{143} across India are a reflection of there being not enough Judges to dispose of the cases before them. There is a logical and proper numerical relationship between a society's population and the number of Judges needed to service that population. The World Bank Report on justice sector at a glance, which surveyed the data in 30 countries in the 2000 came out with the finding that average number of Judges per 1,00,000 inhabitants was 6.38, however in India the corresponding number is 2.7 Judges.\textsuperscript{144} The proportion of Judges relating to the population in India is very low by world standards. Moreover, in those societies which are particularly litigious, and possibly India is one, the proportion of Judges relating to population should be even higher compared with less litigious systems. However, one necessary assumption, which seems to be implicit in this argument, is that Indian Judges are efficient in disposing of their caseloads. If, for example, there were good reasons why Indian Judges can be expected to be less productive than Judges in other countries, then presumably there would be an argument for having more of them relating to population. Similarly, if for no good reasons Indian Judges are less productive than other systems then there might be an argument for not increasing their numbers until their productivity is improved by other means. But evidence about the productivity of Indian Judges, as distinct

\textsuperscript{143} Pendencies mean the number of pending cases. The terms pendency caseload and backlog are also used to describe such cases.

\textsuperscript{144} World Bank Report on Justice Sector at glance, 2000.
from their workloads, is seldom if ever raised as a major factor in support of a case for increased judicial numbers. More commonly it seems to be assumed that Judges are sufficiently productive perhaps as productive as they will ever be.

It is difficult to ascertain judicial productivity without identifying an objective benchmark to indicate just how productive a Judge could be. If Judges across India share common managerial problems, such as low numbers and poor resources, as many believe to be the case, then it is unlikely than an objective bench mark of judicial productivity can be found within India. The problem in looking to other systems, or International comparisons, however, is in finding a system that is sufficiently similar so, as to permit reasonable comparison. The differences can be compensated for when data relevant to productivity is available. Here data has been readily accessible about court practices in Australia and the Delhi court system. As it turns out, comparing the court system of the National Capital Territory of Delhi with courts of Australia does offer some useful insights into the question of judicial productivity in India. Delhi, for instance, has 13.8 million people wherein Australia’s population is not much greater than 20 million. Both are common law systems that rank their courts into generally three levels. Both operate under codified Constitutional federal systems and each has jurisdictional ranges that are generally comparable for criminal and expellable jurisdictions. Here are some figures about each system that can be related to judicial productivity.\textsuperscript{145}

\textbf{Judge Population Ratio}

India is a vast country with more than one hundred crore population. Hence, the rate of crime and court legislations is also high. Till recently more than two crore cases were awaiting disposal in different

\textsuperscript{145} Supra n. 102 page 173.
court of the country. This over-crowding in the docket is due to several factors, like inadequate Judge-population ratio, poor infrastructure, slow investigation of criminal cases, cumbersome litigation procedure etc.\textsuperscript{146} Presently, Judges ration in our country is less than 13 per million population where as it 41.6 in Australia; 50.9 in England, 75.2 in Canada and 107 in United Sates of America.\textsuperscript{147} In the case of \textit{All India Judges Association vs. Union of India},\textsuperscript{148} reiterated in the case of \textit{Brij Mohan Lal vs. Union of India},\textsuperscript{149} the Hon'ble Supreme Court has directed the Government to at least increase the Judges ratio to 50 per million in the next year at the first instance.

As for High Court Judges in Delhi, excluding the Supreme Court Judges there are 30.8 Judges in Delhi per million of population.\textsuperscript{150} The comparable Australian figure is 44 Judges per million of population.\textsuperscript{151}

This shows that Australia has half as many Judges again as Delhi when compared proportionality to population. Acknowledging the poor strength of Judges the above comparison strongly supports the argument for increasing Judge numbers in Delhi to match the ratios in Australia represent as appropriate of course, that the ratios in Australia represent an appropriate benchmark for India.\textsuperscript{152}

\begin{itemize}
\item \textsuperscript{146} Aggarwal B.D. "New Read to Speedy Justice" AIR Journal Section 2003 p. 18.
\item \textsuperscript{147} Ibid.
\item \textsuperscript{148} (2002) 4SCC 247; 2002 SCC (LrS) 508.
\item \textsuperscript{149} (AIR 2002 SC 2096).
\item \textsuperscript{150} Sanctioned rather working numbers of Judges are used to ensure comparability with Australia. The working number of Judges in Delhi is closer to 21.5 Judges per million of population. The sanctioned numbers used are 33 High Court and 392 district court Judges in Delhi as against a population of 13,782,976 as determined in the year 2001 census.
\item \textsuperscript{151} Australian Judges were 881 as at January 2005 - Source Website of the Australian Institute of Judicial Administration \url{http://www.aija.org.au/judges magistrate.htm}. Australian Court disposal figures in 2003-04 were 742,900 Criminal cases. Source: Productivity Commission of Australia, Report on Government Services 2005, chapt.6.
\item \textsuperscript{152} E.g., Australia's Judges are distributed over a landmass 2.5 times the size of India, where as Delhi is effectively a city-State, a factor which implies that Australia might need more Judges than Delhi to cover a more widely dispersed population.
\end{itemize}
Recently Delhi High Court released its second Annual Report for 2007-08 has made these revealing facts public, claiming that it has acquitted well despite the crushing workload and less than required and sanctioned strength of the Judges.

Chief Justice A.P. Shah, released the Annual Report at a function on the court campus. The report claims that the court has been able to reduce arrears of main case from 79,818 in April 2007 to 74,599 by the end of March 2008.

The reduction in arrears includes 57.30 percents criminal cases that were more than 10 years old, the report says. The court disposed of 56,612 cases in 2007-08 while it received 47,017 cases.\(^{153}\) The court achieved these feats despite the fact that it did not function at its full sanctioned of 48, average number of Judge in 2007-08 were only 32, two-thirds of the sanctioned strength, the reports States.\(^{154}\)

**Ratio of Judges to disposals**

Regarding judicial productivity, it is better to consider disposals, rather than pendencies, because disposals represent actual productivity, whereas pendencies represent productivity that is yet to happen. Looking at disposals is useful because it gives an insight into judicial productivity in terms of what they do, rather than in terms of the population there serve. It also offers an indicator that can be related individually to each Judge. In Delhi courts, this ratio was 70% disposals per Judge per year.\(^{155}\) The comparable figure for Australian courts was 1,511 disposals per Judge.

\(^{153}\) The Hindu, 12.02.2009, p. 4.
\(^{154}\) Ibid.
\(^{155}\) Based on disposals of 79,297 civil and 95,898 criminal in district courts and 32,346 disposals in the High Court in 2004. Judge to disposal ratios are based on working rather than sanctioned number numbers of Judges which is taken to be 296 in Delhi in early 2005. Source: Barry Walsh ‘pursuing best practice levels of judicial productivity’. "Judicial Reforms in India", issues and aspects (2007).
or around double the level of Delhi disposals. This suggests that Delhi Judges have to work twice as hard to dispose of as many cases as Australia Judges.

Judges per Lakh of Disposals

There are 9 Judges in the U.S. Supreme Court for a lawyering people of 260 million, whereas the Indian Supreme Court has 26 Judges for more than 1000 million populace and often the later working under-capacity. The former Chief Justice of America Warren Burger concerned at the rising number, declared that no nine Judges in the world could decide nine thousand cases. But if the 26 Judges of the India's Apex Court can resolve tens of thousand of cases a year, we easily beat the American Judges in speed race. Then, a question will be asked whether our jurisprudence is on a qualitative or quantitative assessment? The strength of a judicial decision is the strength of the reasoning with which it is supported so said the great law-giver John Marshal. In the American Supreme Court, there is no Judgement like “Heard Dismissed” or Heard no merits dismissed”. Every case is argued in detail but within reasoned and well-documented Judgement. We will be surprised to know that a Judge in the U.S. Supreme Court decides only between 100 and 120 cases a year but the Indian tally is a many multiple. This quantum jump is possible only by discarding merit. Another indicator of judicial productivity is to measure the number of Judges needed to dispose of 100,000 cases in a year. This is useful for the purpose of justifying additional Judge appointments in tandem as a consequence of increases in caseloads. In Delhi District Courts 153 Judges are needed to dispose of 100,000 cases. The comparable figure for Australian Courts, however, is 66 Judges; which verifies the

point already made that Australian Judges have double the disposal capacity of Delhi Judges.

**Disposals per lakh of population**

In Delhi, the number of cases disposed per 100,000 of population is 1,506. The comparable Australian figure, however, is 6,651 or almost four and a half times greater. This suggests that the population of Delhi is at most, one quarter as litigious as the Australian population. It would seem that level of litigation is not necessarily a factor affecting the ability of Delhi Judges to dispose of cases. If litigation rates in Delhi rose to levels equivalent to Australia, then the average productive capacity of the Delhi courts would need to increase at least eight fold to cater for the additional work. If the working number of Judges in Delhi were to be double so as to match the ratio of Judges to population in Australia, it would only account for around half of the required increase in productive capacity.\(^{158}\)

Thus, it could be said that no increase in judicial numbers would overcome the reality that Delhi Judges are only half as productive as Australian Judges in terms of case disposal capacity.

Hence, the question arises why are Judges in Delhi, and presumably across India, so much less productive than Australian Judges? The answer is that, despite the similarities of each system. Indian courts administer cases in ways that are significantly different from the ways of Australian Judges. It is unlikely that Australian Judges work harder than Indian Judges’ work nor are they necessarily more learned or experienced. What is different is that they generally use case management and court management methods and practices which Indian courts generally do not referred to in this chapter as ‘best practice’. Many courts in England, USA, Canada, Australia and New Zealand we best practice methods, but not all of them. And those that do use best practice methods are not without their

\(^{158}\) Supra note 124.
problems from time to time. But the judicial leadership of each would vouch for the fact that when those practices are consistently used, they work so how is it that Indian practice differ from best practice.\textsuperscript{159}

\section*{Low Criminal Plea Guilty Rates}

Plea rates are the proportion of criminal cases in which the accused person pleads guilty and thereby avoids a trial. Sentencing a person who pleads guilty requires fewer resources for a court and the prosecution; and avoids the uncertainty of putting the accused to trial.

In Australian magistrates, courts over three quarters of criminal cases are disposed by plea or by comparable processes that do not involve a defended hearing.\textsuperscript{160} In contrast, rates of guilty pleas are not measured or reported by Delhi sessions courts or magistrates courts. Presumably, the same applies to most other Indian Criminal Courts. However, feedback from Indian Judges and advocates suggests that plea rates are uncommon if not rare, except possibly in non-custodial matters. The sad reason for this is likely to be that there is no incentive to plead guilty when there is a high probability in Indian criminal courts that the accused will be acquitted, either at trial or on appeal. Conviction rates indeed appear to be low. Presently the conviction rate in the trial courts is hovering around 60\% an average. Hardly 10\% convictions ultimately sustain after scanning of convictions by the successive appellate courts.\textsuperscript{161}

Hence, the 2003 Annual Report of the Delhi district courts for example, reported that only 31 per cent of criminal session’s cases and 55 percent of magistrate’s cases resulted in a conviction. To date little

\footnotesize{\textsuperscript{159} Ibid.  
\textsuperscript{161} Aggarwal B.A. “Speedy and Visible Justice” Cr. LJ. 2004 June, 110, p. J. 193.}
information is available on plea rates. It is clear that in most Australian and other criminal court systems that apply best practice methods the rates of guilty plea account for sizable propositions of criminal lists, allowing Judges of criminal courts much higher disposal rates than are achieved in Indian criminal courts.

➤ **Problem of Adjournment**

In Indian courts, most cases are adjourned multiple times and in unpredictable ways, even after a trial begin. In Australian courts, the reduction of the average number of case adjournments has been a major managerial priority in backlog and delay reduction for at least the last 20 years. Criminal case attendance rates\(^\text{162}\) for most courts in Australian States range from 0.3 to 6.3 adjournments per disposed cases.\(^\text{163}\) In India, attendance rates appear not to be counted by any court. Estimates offered by individual Indian Judges and advocates; however, put the rate of adjournments in Indian trial courts as typically between 20 and 40 times over the life of a case. An ADB study revealed that on a single randomly selected day in March 2004 the High Court of Delhi had listed before it an average of 100 cases per Judge of which 80 per cent were adjourned to another day.\(^\text{164}\)

➤ **Absence of Continuous Trial**

Unlike India the Australian courts share with many courts in England, the USA, Canada and New Zealand a Convention that a trial should as far as possible be conducted continuously, i.e. ordinarily a Judge

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\(^{162}\) The terms 'attendance' is used in Australia in lieu of adjournment when counting to total number of counted. The American term 'appearances' has not been adopted in this chapter as it can mean different thing in other jurisdiction i.e in Australia 'appearance' usually refers to whether or not a particular party or legal representative actually attended a scheduled hearing.

\(^{163}\) Average attendance rates can be less than one because many cases are disposed before being listed before a Judge.

should conduct a trial in a particular case, and normally no other, from start to closing submissions with minimal interruptions. This Convention probably stems from the Jury System, which demands that evidence be presented to jurors as quickly as possible so that they can deliberate on their verdict and then be discharged. Even in those jurisdictions in which Juries are no longer used, the commitment to pursuing continuous trials remains because of the recognised efficiencies they provide.

For reasons unclear, however, continuous trials in India have become largely extinct. Whilst Indian jurists and advocates would agree that continuous trials are desirable, it almost never happens.  

High adjournment rates in India appear to have two distinct causes, the first what it appears to be a well established practice that there is a separate hearing for each of the main stages of a trial. It is an undisputed practice, for example, that once the prosecution evidence has been given and cross-examination is complete, then the case should normally be adjourned to another day for the purpose of hearing the defence evidence. Australia does not have this Convention - there is normally an expectation that evidence for all sides and submissions will occur within a continuous, mostly unbroken trial. Indian courts on the other hand work on the assumption that a trial ought to occur in no less than five stages each separate by an adjournment i.e. -

- Cases fixed for prosecution evidence.
- Cases fixed for defence evidence.
- Cases fixed for appearance of the accused.
- Cases fixed for charge or particular of a statements.
- Cases fixed for final argument, and
- Cases fixed for accused statement, judgment or order.

165. The practice exists under legislative authority that a higher court in India can direct a lower court to try a particular case ‘from day to day’. But even in these circumstances such a direction is taken to mean no more than a requirement to bear one case at lest for part of the day, each consecutive day, whilst other cases are also heard.
The second cause of high adjournment rate is the effect of rising backlogs and case delays. Delhi High Court in its Annual Report for 2007-2008 reveal that the High Court registry received 3,32,141 cases for consideration and they were allotted for hearing to 24 benches, each of which had to deal with 13,839 listed matters in 2007-2008. Referring to a comparative study on courts in India and England, the report says that on an average each Supreme Court in that country has to decide only 150 cases every year.\textsuperscript{166}

Generally, as case lists have grown, individual cases have been listed for hearing no less frequently; but less time is available for them at each hearing by reason of there being more cases in each cause list. There is a common practice in India to take the evidence of one available witness and then adjourn, rather than risk that witness not being available on the next occasion. Australian courts avoid this practice. Instead, Australian courts would seek to deal with caseloads by maintaining a commitment to continuous trial and by applying other measures to deal with rising caseloads. So continuous trials offer outcome date certainty but fragmented trials do not. So, it would seem that if Indian courts aimed at more continuous trials then they could induce more case settlements with consequential reduction in their trial volumes and pendencies.

\begin{itemize}
\item \textbf{Recording of Evidence - A slow process}
\end{itemize}

In most of the Indian courts oral evidence is generally recorded by the presiding Judge's stenographer using a word processor. In some cases, manual typewriters are also used and sometimes the Judges themselves record evidence by hand. In most cases, the Judge dictates the words typed by a stenographer after the Judge hears the questions asked by advocates and the answers given

\footnotesize{\textsuperscript{166} The Hindu dated 12.2.2009, p.4}
by witnesses. Much court time is often spent supervising the typing of testimony in this way including dealing with arguments from advocates about the accuracy of the words dictated. Consequently, oral evidence in Indian courts tends to be taken slowly. It become more onerous if the language of the witness is not English, then Judge also act as interpreter when dictating in English.

In Australia, no court uses this method. They use shorthand writers, stenotype machine operators or electronic sound recording with associated verbatim transcript production. Noise recognition technology is still unreliable in a court environment. The preferred technology in courts that apply best practice is sound recording of court proceedings and full or partial text transcription from the recordings by typists working outside the courtroom. The introduction of sound recording to Indian courts would be possible by installing new courtroom hardware sound recorded courts would enable evidence to be taken much faster, possibly at twice the speed.

In this regard, the 188th Law Commission Report on proposal for Constitution of hi-tech, fast-track commercial divisions in High Courts has made various recommendations, where video conferencing is to be used for recording of evidence. Specifically, the report under “Functioning of video conferencing” mentions, in each court. There will be a video conferencing system with two cameras, one facing the Judges in the court, which can be viewed by the Judges and the advocates. There will also be a document camera for projecting paper documents on the plasma screens. A good public addressing system with wireless, microphones, two 29 inch TV sets, DVD recorder for recording the video conferencing proceeding and a computer system with Internet connectivity. This VC system will be connected to a remote VC system installed either
within or outside the country. These two locations can be connected using three pairs of ISDN lines, providing 384 kbps connectivity. With this capacity of connectivity, though the pictures will not be of the quality of usual TV pictures, but it will provide comfortable viewing of people on the screen. If the remote VC unit with which the EC 135 court's VC is connected is not in the same city, then STD rates of that city will be applicable as call charges during the period of VC conference.¹⁶⁷ As the VC facility is easy to operate, with little training to the Court staff it can be operated by themselves without any difficulty.

¹⁶⁷. 188th Law Commission Report, 2003