Chapter - V

SPEEDY TRIAL IN STATUTORY PROVISIONS
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A. Speedy Trial in Criminal Procedure Code

i) Brief History- An Outline

The Code of Criminal Procedure, 1973 is the backbone of Indian Criminal Justice System. The Code was given a new shape in the year 1973 by way of repealing the old Code, 1898 that later formed the basis of the present procedure. The main thrust of bringing this new legislation was to separate the judiciary from the executive in order to bring uniformity in the criminal justice administration throughout the country. Simultaneously, the new Procedural Law of 1973 accommodated various recommendations made by the Law Commission of India with a view to simplify the procedure for speedy trial of criminal cases.\(^1\) The Code of Criminal Procedure 1973 underwent drastic Amendments in 1955 by the Code of Criminal Procedure Amendment Act, 1955. In the Statement of objects and reasons of the Code of Criminal Procedure Amendment Bill, 1954 it was stated that the aim of a sound criminal procedure is two fold:

(1) to provide adequate facilities to every accused person for defending himself in a proper manner; and

(2) at the same time, to ensure speedy disposal of all criminal judicial business, so that innocent persons must not suffer from protracted proceedings and the real offenders must be punished as early as possible after proper trial.

In practice, it is apparent that the present Code of Criminal Procedure, 1973 does not encourage speedy disposal of cases and it leaves many loopholes that encourage guilty persons to postpone the proceedings as much as possible. This is very undesirable state of affairs

and there is a growing public demand for simplification of procedure, so that the proceedings may be brought to a speedy end.\textsuperscript{2}

Despite right to speedy trial is a fundamental right of an accused under Article 21 of Constitution of India, majority of the accused could not enjoy this right because of so many reasons. Whatever reasons they may be, the result is the long term detention of the accused. Such a long term detention deprives the basic human right of the accused, viz., right to live with basic human dignity, right to individual liberty, etc. At the same time such detention is quite contrary to the basic principles of criminal jurisprudence that the 'accused shall be presumed innocent till he is found guilty.\textsuperscript{3}

Several schemes for the Separation of judicial and executive functions of the magistrates were introduced the State legislature from time to time and the Code of Criminal Procedure, 1973 was accordingly amended and various other Amendments, were made at the state level. There was, however, a demand for the revision of the Code of 1973, partly to simplify the procedure to the extent possible, and partly to introduce a uniform system in the country in relation to judicial and executive functions of the magistrates, and to make the judiciary more effective. It was also considered desirable to introduce the special set up of criminal courts in the Presidency was in big cities. The Law Commission, therefore, submitted a revised draft for the Code of Criminal Procedure, 1973 in its 13\textsuperscript{th} report, which, after it underwent some changes at the hands of the Joint Select Committee of the Parliament, was passed in the Code of Criminal Procedure in 1973.\textsuperscript{4}

\begin{itemize}
\item \textsuperscript{3} K.Rama Chandra Reddy, 'Suggestions for Speedy Justice in Criminal Trials. SCJ-1990, Vol. 3, p. 8
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Therefore, sweeping changes were made to make Code of Criminal Procedure, 1973\(^5\) effective from 1974. The changes were intended mainly to bring speedy and fair justice to the litigants.

Important changes made by the new Code of Criminal Procedure 1973 to speed up the disposal of the criminal cases are as following:

1. The provision for stoppage of proceedings by a Subordinate Court on the intimation from a party to move a higher court for transfer of the case was omitted and a further provision was made that the High Court or the Court of Session will not stay proceedings unless it is necessary to do so in the interest of justice.

2. Limitation period for prosecution were now prescribed in the Code of Criminal Procedure, 1973;

3. In some cases, provision was made for the service of Summons by registered post;

4. The powers of revision against interlocutory orders was no more a part of the law, as it had a delaying effect on the disposal of criminal cases;

5. The preliminary inquiry which preceded the trial by a Court of Session popularly known as committal proceedings under the Code of Criminal Procedure, 1898 had been abolished.

6. The power to order costs was given to the court when adjournment was granted at the instance of a party to the preceding.

7. The scope of summary trials was widened by including offences punishable with imprisonment upto two years instead of six months as was under the Code of Criminal Procedure, 1898 and Summons procedure wad adopted for all summary trials;

8. The order as to retrial in case of any error, omission or irregularity in respect of a change was no more a necessity;

9. A sessions judge was empowered to conclude all sessions trial left part heard by his predecessor after the Code of Criminal Procedure Amendment Act ,1978;

10. Provision was made to adopt Summons procedure for the trial of offences punishable with imprisonment upto two years instead of up to one year as was under the Code of Criminal Procedure, 1898 enabling a large number of cases to be disposed of expeditiously;

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\(^5\) Code of Criminal Procedure 1973, received the assent of the president on 25 January 1974, which was published in the gazette of India.
There was no need to prove the genuineness of documents presented to the Court in case the opposite parties admitted its genuineness. Provision was made for obtaining admissions or denials regarding the genuineness of the documents filed by the parties in criminal cases;

The accused was enabled to plead guilty by post and to remit the fine specified in the Summons in petty cases.

Some of the important changes intended to provide relief to the poorer sections of the community, as provided in the Statement of Objects and Reasons, which was published in gazette of India dated December 22, 1970, are as follows:

(a) provision was made for giving Legal Aid to an individual accused in case triable by a Court of Session, the state governments was given power to extend this facility to other cases too;

(b) the courts were empowered to order payment of compensation by the accused to the victims of crimes, to a larger extent;

(c) Provisions as to costs were made for the defence in case of issue of commissions for examination of witnesses.

(d) Opportunity to make representation against the punishment before its imposition was provided to the accused.

Amongst the important changes introduced were separation of executive and judiciary in the country, abolition of Committal proceedings in cases exclusively triable by the Court of Sessions and abolition of third class magistrates.

The recent Amendments by two Amending Enactments made in 2006, the concept of Plea bargaining and some more Amendments have been incorporated in the Code of Criminal Procedure, 1973.

While formulating the new Criminal Procedure Code, a special importance was given to speedy justice and fair trial. These are the following consideration of Code of Criminal Procedure, 1973:

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6. Ie by Act No. 2 of 2006 w.e.f. 16 April 2006 and 5 July 2006 and by Act No 25 of 2005 which was further amended by Act No. 25 of 2006 w.e.f. 23 June 2006

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

(ii) Every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to society, and

(iii) The procedure should be to the utmost extent possible ensure fair deal to the poorer sections of the community.

ii) The Process of Criminal Trial in India

The Code of Criminal Procedure is the Procedural Law providing machinery for trial of offenders under the substantive criminal law, be it the Indian Penal Code, 1860 or any other penal statute. The Cr.P.C. contains elaborate details about the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. It divides the procedure to be followed for administration of criminal justice into three stages; namely:

- Investigation
- Inquiry, and
- Trial

Investigation is the preliminary stage conducted by the police and usually starts after the recording of a First Information Report (FIR) in the Police Station. If the officer in charge of a Police Station suspects the commission of an offence, from statement of FIR or when the magistrate directs or otherwise, the officer or any subordinate officer is duty bound to proceed to the spot to investigate facts and circumstances of the case and if necessary, takes measures for the discovery and arrest of the offender. Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence.\(^8\) Proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of

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8. Section 2(h) see also Narayan Swamy vs. State of Karnataka, 1991 Cri LJ 2125 (Kant H.C.) and Tung Nath Ojha vs. Haji Nasirudin Khan, 1989 Cri LJ 1896 (Pat. HC)
evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filing the charge sheet. Investigation ends in police report to the magistrate.

An ‘Inquiry’ according to the Code, means every inquiry which is conducted by a magistrate or court and which is not a trial. Inquiry consists of a magistrate, either on receiving a police report or upon a complaint by any other person, being satisfied of the facts.

Trial is the judicial adjudication of a person’s guilt or innocence. The term has not been defined in the Code. Under the Cr.P.C criminal trials have been categorized into three divisions having different procedures, called (1) Warrant (2) Summons and (3) Summary trials.

A warrant case relates to offences punishable with death, as imprisonment for life or imprisonment for term exceeding two years. The Code provides for two types of procedure for the trial of warrant cases by a magistrate, triable by the magistrate, viz., those instituted upon complaint. In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it.

In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc. In respect of offences

punishable with death, life imprisonment for term exceeding seven years, the trial is conducted in session's court after being committed to the court by a magistrate.

A Summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of Summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called notice to the accused when the person appears in pursuance to the Summon. The court has the power to convert a Summons case into a warrant case, if the magistrate thinks that it is in the interest of justice.

The High Court may empower magistrates of first class to try certain offences in a Summary way. Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgement containing a brief statement of the reasons for the finding.

Stages in Trial

The common features of the trials in all the three of the above mentioned procedures may be divided into the following different stages:

➢ Framing of Charge

This is the beginning of a trial. At this stage, the judges are required to weigh the evidence for the purpose of finding out whether or not a

prima-facie case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceed with the trial. If, on the contrary, upon consideration of the record of the case and documents submitted, and after hearing the accused person and the prosecution in this behalf, the judge considers that there is no sufficient ground for proceeding, the judge discharge the accused and record reasons for doing so. The words “no sufficient ground for proceeding against the accused” mean that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person.

The charge is read over and explained to the accused. If pleading guilty, the judge shall record the plea and may with discretion, convict him. If the accused pleads not guilty and claims trial, then trial begins. Trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge, trial of the accused starts. A charge is nothing but formulation of the accusation against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed.

- **Recording of Prosecution Evidence**

  After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is on oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution. Section 309 of the Cr.PC provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same
shall be continued day-to-day until all the witnesses in attendance have been examined.

➤ **Statement of Accused**

The court has power to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case.

➤ **Defence Evidence**

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge considers that there is no evidence that the accused has committed the offence, the judge is required to record the order of acquittal. However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused person is also a competent witness under the law. The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The witnesses produced by him are cross-examined by the prosecution. The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused person do not lead defence evidence. One of the major reasons for this is that India follows the Common Law System where the burden of proof is on the prosecution and the degree of proof required in criminal trial is beyond reasonable doubt.
Final Arguments

This is the final stage of the trial of a case. The provisions of the Cr.P.C. provide that when examination of the witnesses for the defence, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

Judgment

After conclusion of arguments by the prosecutor and defence, the judge pronounces his judgment in the trial. Here it is relevant to mention that the Cr.P.C. also contains detailed provisions for compounding of offences. It lists various compoundable offences under the Indian Penal Code, of which 21 offences may be compounded by the specified aggrieved party without the permission of the court and 36 that can be compounded only after securing the permission of the court. Compounding of offences brings a trial to an end.

Under the Cr.P.C. an accused can also be withdrawn from prosecution at any stage of trial with permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal.

iii) Legal position- Speedy Trial versus Judicial Delay

The Code of Criminal Procedure, 1973 is the Procedural Law providing for machinery for punishment of offenders under the substantive criminal law. The substantive criminal law may be Indian Penal Code, 1860 or any other penal statute. The Indian Evidence Act, 1872 governs rules of evidence.

The administration of justice does not deal with the punishment of the guilty alone; it also means acquittal of the innocent. Fairness and speed are equally important in the administration of justice. Speedy justice serves
the best interests of the accused the survivors and the society at large. However, judicial delays in India are endemic. No person can hope to get justice in a fairly reasonable period. Proceedings in Criminal cases go on for years, sometimes decades.

In India, neither the Constitution nor any existing laws or statutes specifically confer the right to speedy trial on the accused. Most of the existing laws do not provide any timeframe in which a trial must be concluded in case where some timeframes have been provided; the courts have held them to be 'directory' and not 'mandatory'. The Code of Criminal Procedure, 1973 provides a statutory time limit to complete an investigation. Section 167 further provides that a failure to complete investigation within the statutory timeframe shall lead to release of the accused in custody on bail.

Though numerous provisions exist in the Code, 1973 to provide for an early investigation and speedy trial and fair trial, in reality the problem of delay and backlog is rather acute in criminal cases, as compared to civil cases. The Indian justice process appears to be on the verge of collapse due to diverse reasons as visible from the following figures for the year 2005;

Trials were completed in 10,13,204 IPC crime cases out of total 69,91,508 cases pending for trials. 58,22,752 cases remained pending for trial in courts as on December 31, 2005. Conviction rate for IPC crimes remained almost static at 42.5 and 42.4 in 2004 and 2005 respectively.

- 28.7% of trials were completed in less than 1 year (2,91,210 out of 10,13,240).
- 37.7% of trials (3,41,560) were completed between within 1 to 3 years.
- 22.6% (2,29,103) were completed between 3 to 5 years
- 11.8% of trials were completed between 5 to 10 years (1,19,761) and
- 3.1% (31,606) cases took more than 10 years.\(^{13}\)

The above huge figures call for urgent remedial steps that the malice does not become irreparable. The delay in dispensation of justice within a time frame has brought a sense of frustration amongst the litigants who are compelled to live with these delays, leading to frustration, loss of faith and dissatisfaction amongst them. Such feeling amongst the litigants on account of delayed justice is a major threat to our country and such erosion of faith cannot be afforded at any cost. The public outrage over the failure of the criminal justice system in some recent high profile cases shook us all up into realization that something needs to be urgently done to revamp the process, though steering clear of knee jerk reactions, remembering that law is a serious business.\textsuperscript{14}

Speedy trial though recognized as an essential feature of right to fair trial has so far remained a distant reality in our criminal Justice Process. Speedy justice is an assurance extended to a citizen under the ambit of 'right to life' guaranteed under Article 21 of our Constitution.

\textbf{iv) Right of Accused and Victim}

In our criminal justice system, the legal ethics is very clear, "let thousand of criminals be let out but a single innocent should not be punished". Following this principle the judiciary requires all cases to be proved beyond reasonable doubt. In our system while "onus of proof" lies on prosecution to prove the accused guilty, the 'benefit of doubt' is always given to the accused. Starting from first step of arrest till end of trial in every stage the accused is conferred with several rights by the Supreme law of the land i.e., Constitution, the Criminal Procedure Code and also according to verdicts of the higher and apex judiciary of the country. Before the trying court, till his guilt is proved, the accused is also considered to be innocent and even as an under trial prisoner any violation of his rights is considered as Human Rights violation. To protect human

\textsuperscript{14} Id. Speech of Former CJ of India, Hon'ble Mr. Justice Y.K. Sabharwal at the Inauguration of the Joint Conference of Chief Justices and Chief Ministers held on 11th March 2006.
right of the accused, the Apex Court in *D.K. Basu vs. State of West Bengal*¹⁵ has held that transparency of action and accountability are perhaps the two possible safeguards which courts must insist upon. In this judgment, the Supreme Court has laid down more concrete and specific guidelines concerning arrest.

The rights available to accused under the Criminal Procedure Code, 1973 are as follows:

1. Right to be informed of the ground of arrest and right to bail - Ss. 50, 55 and 75. Cr.P.C.
2. Right not to be subjected to unnecessary restraint - S 49 Cr.P.C.
3. Right against arbitrary or illegal detention in custody - Ss. 56, 57, 50 and 76 Cr.P.C.
4. Right to be released on bail if arrested - Ss. 436, 436A, 437, 50(2) and 167 Cr.P.C.
5. Right to be produced before Magistrate within 24 hours of arrest - S. 57 Cr.P.C.
6. Right to a fair and speedy trial - S. 309 Cr.P.C.
7. Arrest without warrants is not possible in non-cognizable offence - Ss. 42, 151 and 155, Cr.P.C. (But in cases to prevent commission of cognizable offences or to ascertain correct name and address it is possible).
8. Right of the accused person to be examined by a Registered Medical practitioner to disprove the commission of an offence by him - S. 54 Cr.P.C. Reference 53 Cr.P.C.
9. Right to free *Legal Aid* at the expense of the State in certain cases - S. 304 Cr.P.C.
10. Right to obtain a receipt when property of the accused are seized - S. 100(6) and (7) Cr.P.C.

v) **Statutory Provisions**

Though numerous provisions provided in the form of time limit in the Code of Criminal Procedure, 1973 to provide for an early investigation and a speedy and fair trial, in reality, due to various factors such as

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overcrowded court dockets, absence of prosecution motivation, defence
tendency to prolong the trial, speedy trial is yet an illusory goal. There are
some provisions aims at curtailing the delay in investigation and trial of
offences are as following: Section 157(1) of Cr.P.C. requires the offices-in-
charge of a Police Station to send forthwith the report of the commission of
an offence to the concerned magistrate. Perusal of Section 167 (1) Cr.P.C.
indicates that the investigation is expected to be completed within 24
hours of arrest of the accused. In case it appears that the investigation
cannot be completed within 24 hours and the allegation against the
accused is well founded, the investigating officer has to forward the case
dairy along with the accused to the magistrate in order to seek further
custody of the accused. At this stage the magistrate can extend the period
of detention of the accused by 15 days, which can further be extended to 60
or 90 days depending upon the gravity of the offence.\textsuperscript{16} The accused
becomes entitled to be released on bail on the expiry of the period of 60 or
90 days as the case may be.

If in a case triable by a magistrate as a Summons case, the
investigation is not concluded within six months from the date on which
the accused was arrested, the magistrate is required to stop further
investigation into the offence.\textsuperscript{17} The investigation is allowed to go on
beyond six months only if the investigating officer satisfies the magistrate
that for special reasons and in the interest of justice the continuation of
investigation is not completed within the prescribed time frame, the
magistrate will not take cognizance of such offences.

Section 173 (1) of Cr.P.C. requires the police officer to complete the
investigation ‘without unnecessary delay’ and forward the report to the
magistrate ‘as soon as it is completed’. Further section 207Cr.P.C requires
that the copy of documents like the police report, copy of F.I.R., statements


\textsuperscript{17} Section 167(5), The Code of Criminal Procedure 1973.
recorded under section 161(3) except those portions for which request for exclusion is made, confessions and statements under section 164 or any other documents or relevant extract thereof is to be given free of cost to the accused “without delay”. Section 208 requires that where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 that the offence is triable by the Court of Session the Magistrate shall without delay furnish to the accused, free of cost, a copy of statements and confession recorded under section 200, 202, 161 or 164 of Cr.P.C.

All the above mentioned provisions in Criminal Procedure Code pertain to the stage of investigation into an offence. These provisions, besides laying down in broad terms, certain time limits subject to which investigation is to be carried out, also put time limits upon detention pending investigation. Section 468 of Cr.P.C. also in a way impose a time limit for completion of investigation as it debars courts from taking cognizance of certain, minor offences after expiry of certain period of limitation.\(^\text{18}\) Section 469 marks that the period of limitation commences from the date of offence, or the first on which such offence comes to the knowledge of aggrieved person.

Sec. 309 of Cr.P.C. mandates expeditious conduct of trial. In particular it requires that when the examination of witnesses has once begun, the same shall be continued from day to day until the witnesses in attendance have been examined, unless the court finds the adjournment of the proceeding beyond the following day to be necessary for that reasons to be recorded. Though the Code recognizes the power of the court to

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18. The period of limitation prescribed in Section 468 of Cr.P.C. is as:

- Six months, if the offence is punishable with fine only.
- One year, if the offence is punishable with imprisonment for a term not exceeding one year.
- Three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.
adjourn the proceedings from time to time after the cognizance of the
offence is taken or after commencement of the trial after recording reasons
for doing so, yet it provides that when witnesses are in attendance, no
adjournment or postponement shall be granted, without examining them,
except for special reasons to be recorded in writing.

Prior to the judgement of the Supreme Court in the case of
Hussainara Khatoon vs. home Secretary, State of Bihar, which held the right
to speedy trial to be part of Article 21 of the Constitution, the only solitary
provision which empowered the criminal courts to ensure speedy trial
including speedy recording of evidence (as also exist today) was Section
309, Cr.P.C. which reads as follows:

Section 309, power to postpone or adjourn proceedings
(1) In every inquiry or trial, the proceedings shall be held as expeditiously
as possible and in particular, which the examination of witnesses has once
begun, the same shall be continued from day to day until all the witnesses
in attendance have been examined, unless the court finds the adjournment
of the same beyond the following day to be necessary for reasons to be
recorded. (2) If the court, after taking cognizance of an offence or
commencement of trial, finds it necessary or advisable to postpone the
commencement of or adjourn, any inquiry or trial, it may, from time to
time, for reasons to be recorded, postpone or adjourn the same on such
terms as it thinks fit, for such time as it, considers reasonable and may by a
warrant remand the accused if in custody;

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

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

19. AIR 1979 SC 1360.
Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.\textsuperscript{20}

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

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

The mandate of section 309 has been pointed out by the Supreme Court in various cases such as *State of U.P. vs. Shambu Nath Singh.*\textsuperscript{21} But the fact remains that in spite of this legislative mandate, criminal cases are getting prolonged causing unnecessary harassment to the under trials. As in the said case itself the Apex Court observed, “Now we are distressed to note that it is almost a common practice and regular occurrence that trial courts flout the said command with immunity. Even when witnesses are present, cases are adjourned for less serious reasons or even on flippant grounds. Adjournments are granted to suit the convenience of the advocate concerned. We make it clear that the legislature has frowned at granting adjournments on that ground. At any rate inconvenience of an advocate is not a special reason for by passing the mandate of Section 309 of the Code”.

As mentioned hereinbefore, the right to speedy trial held in Hussainara Khatoon’s Case to be a part of the right conferred on an accused by Article 21 of the Constitution. In this case, writ petitions were field by a number of under trials in the nature of *Habeas Corpus* under

\textsuperscript{20} Ins. By Act No. 45 of 1978, Section 24 (w.e.f. 18-12-1978).

\textsuperscript{21} AIR 2001 SC 1403.
Article 32, seeking directions for their release as they were confined in jails in the state of Bihar for years awaiting their trials to begin for the offences charged with. The Supreme Court referred to the Sixth Amendment in the U.S. Constitution which provides that “In all criminal prosecutions, the accused shall have the right to a speedy and public trial” and Article 30 of the European Convention on Human Rights provides that “every one arrested or detained shall be entitled to trial within a reasonable time or a release pending trial”.

Reiterating the above view, again in Hussainara Khatoon (IV) vs. Home Secretary, state of Bihar, the Apex Court held that detention of under trials in jails for a period longer than what they can be sentenced if convicted, was illegal as being violative of Article 21 of the Constitution.

The scope of the right to speedy trial of a criminal case was widened enough by the Apex Court in A.R. Antulay vs. R.S. Nayak, wherein this right was held to include the stages of investigation, inquiry, trial, appeal, revision and re-trial. Observing that an accused should not be subjected to unduly or unnecessary or long incarceration prior to his conviction, it was held by the Apex Court that fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily, right to speedy trial is the right of the accused and it is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible.

The Apex Court refused to give recognition to the ‘demand rule and held that an accused cannot try himself. He is tried by the court at the behest of the prosecution. Hence, an accused’s plea of denial of speedy trial cannot be defeated by saying that the accused did not at any time demand a speedy trial and mere none asking of speedy trial cannot be put against him.

22. AIR 1979 SC 1360.
Though the Apex Court held that it is neither admissible nor practicable to fix any time limit for trial of offences. But at the same time also held that it is open to the court to make such appropriate orders including an order to conclude the trial is to be concluded or reducing the sentence where the trial has concluded as may be deemed to be just and equitable in the facts and circumstances of the case.

However, in spite of these judicial pronouncements of the Apex Court, the legislature did not reform its duty of ensuring speedy trial of criminal cases by improving its prosecution branch, speedy investigation and proper infrastructure in the courts. As a result, the Apex Court, being concerned about accused persons lodged in facts for very longer periods, passed various directions for release on bail of the under trials and speedy disposal of their cases in the case of Common Cause of Register Society vs. Union of India.23 The matter came up before the court in the form of a public interest litigation filed by the petitioner – Society under Article 32 of the Constitution, highlighting the plight of the under trails confined for years in jails without any disposal of their cases. Some of the directions given by the Apex Court regarding grant of bail are as follows:

1. Where, the accused is charged with the commission of an offence under IPC or any other law for the time being in force punishable with imprisonment not exceeding three years with or without fine. If the trial is pending for one year or more and the accused have not been released on bail and are in jail for a period of six months or more, the accused shall be released on bail subject to such conditions as may be necessary in the light of Section 437, Cr.P.C.

2. Where such an offence is punishable with imprisonment not exceeding five years with or without five and if the trial is pending for two years or more and the accused have not been released on bail and are in jail for more than six months or more shall be released on bail by the concerned criminal court.

23. AIR 1966 SC 1619
3. Where the offence is punishable with seven years or more with or without fine and if the trial for such offences is pending for two years or more and the accused have not been released on bail and are in jail for one year or more, shall be released on bail by the concerned criminal court.

Though these directions were given by the Apex Court in the year 1992 and although accused have been released on bail by the Apex Court in cases of undue delays in the beginning of the trial or during its pendency such as Satya Brat Gain vs. State of Bihar and Vivek Kumar vs. State of U.P. But the fact remains that a large number of accused persons are still languishing in jails for longer periods due to non-release on bail, due to various reasons such as past antecedents of the accused, manner of commission of offence, likelihood of witnesses being tempered with, etc.

➤ Amendment of Section 309 Cr.P.C.

Through the Code of Criminal Procedure (Amendment) Act, 2008, Section 309 of the Code has amended to expedite the inquiry or trial of rape cases and the same provision is made to complete the trial within a period of two months. The new provisions are as follows:

In Section 309 of the principal Act -

(a) in sub-section (1), the following proviso shall be inserted, namely:

"Provided that when the inquiry or trial relates to an offence under sections 367 to 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall as far as possible be completed within a period of two months from the dates of Commencement of the examination of witnesses."24

(b) in sub-section (2), after the third proviso and before Explanation I, the following proviso shall be inserted, namely:

(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party

(b) the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment.

(c) Where a witness is present in court but a party or his pleader is not present the other party or his pleader though present in court, is not ready to examine or cross-examine the witness. The court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.\textsuperscript{25}

Section 437(6) of the Code of Criminal Procedure provides that if the trial of a person accused of a non-bailable offence is not concluded within a period of sixty days from the date fixed for taking evidence, such person is to be released on bail if he is in custody.

**Provision of Speedy Pronouncement of Judgment**

In addition to the above provisions, which directly provides for expeditious conduct of trial, there is another provision, which aim at achieving the same end e.g. Section 355 (1) of the Code, which provides that the judgement in every trial in court of original jurisdiction shall be pronounced in open court by the presiding officer immediately. After the termination of the trial or at some subsequent time of, which notice, shall be given to the parties or then to the pleaders. Thus the provision clearly requires that the judgment to be pronounced soon after the completion of the trial so that there is no delay in the pronouncement of the judgment to the same.

Delay in pronouncing the judgment after the conclusion of arguments adds salt to the injury of the litigant public. Such a practice has been strongly disapproved by the various High Courts and they have exercised their supervisory authority quite often to chide or take action against erring officers of the subordinate judiciary.

The Calcutta High Court in *Surendra Nath Sarkar vs. Emperor*\textsuperscript{26} and Patna High Court in, *Jagannath Singh vs. Francis Kharia*,\textsuperscript{27} had set-aside the

\textsuperscript{25} Ibid.
\textsuperscript{26} AIR 1942 pat., 225.
\textsuperscript{27} AIR 1948 pat. 414.
judgment holding them bad in law only on the ground of delay in pronouncing the judgment for a period banning between six to ten months.

The Hon’ble judge of Patna High Court expressed his Wrath in *Sohagiya vs. Ram Brikhsh Mahto* in the following words when a magistrate took months to pronounce a judgement.

"The Magistrate who cannot find time to write judgement within reasonable time for hearing arguments ought not to do judicial work at all. This court strongly disapproves of the magistrate making such tremendous delay in the delivery of his judgement". As Section 353 (1) of the Code of Criminal Procedure clearly provides that the judgement in trial shall be pronounced in court immediately after the close of the trial or at some subsequent time of which notice shall be given to the parties. The Supreme Court of India has elaborated that the words ‘Some subsequent time’ mentioned in section 353 contemplate, the passing of the judgement without undue delay, as delay in pronouncement of judgement is opposed to the principle of law such subsequent time can at the most be stretched to a period six weeks and not beyond that time in any case.

The Apex Court in Maneka Gandhi’s case has evolved it, through a process of interpretation that speedy trial though not a specifically enumerated fundamental right in the Constitution, is an integral and essential part of Article 21 of the Constitution. The Supreme Court has repeatedly in *Husainara Khatoons*, *A.R. Antuley vs. R.S. Nayak*, *Raj Deo Sharma vs. State of Bihar*; and *Akhtari Bi vs. State of M.P.* held that the speedy trial of an accused is his fundamental right for being implicit in

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29. AIR 1978 SC 597.
30. AIR 1979 SC 1360
31. AIR 1992 SC 1701
32. AIR 1998 SC 3281
33. AIR 2001 SC 1528
the broad sweep and content of Article 21 of the Constitution though neither the Constitution nor legislation provides any time limit for High Courts to pronounce their judgements but it has to be without delay. Justice Thomas of Supreme Court in his concurring opinion in *Anil Rai vs. State of Bihar*\(^3^4\) expressed himself as follows:

"The Constitution did not provide anything in that area presumably because the architects of the Constitution believed that no High Court judge would cause such long and distressing delays. Such expectations of the makers of the Constitution remain unsullied during the early period of the post Constitution years. But unfortunately, the later years have shown slackness on the part of a few judges of the superior Courts of India with the result that once argument in a lis concluded before them the records remain consigned to hibernation. Judges themselves normally forget the details of the facts and niceties of the legal points advanced. Sometimes the interval is so long that the judges forget even the fact that such a case is pending with them expecting judicial verdict. Though it is an unpleasant fact is a stark reality".

In another case\(^3^5\) the Apex Court observed a long delay in delivery of the judgement gives rise to unnecessary speculation in the minds of the parties; *Bhagwandas F. Daswani vs. HPA International*.

*In Anil Rai vs. State of Bihar*\(^3^6\) the problem of delay in delivery of judgements has been elaborately treated. In this case the session’s court convicted nine persons on May 4, 1991. While they remained in Jail, a Division Bench of the Patna High Court heard their appeals. The arguments were concluded on August 23, 1995 and the judgement was reserved. The judgement was pronounced on August 14, 1997 when one of the judges reached near the date of his superannuation. One of the appellants had died in jail by then. In appeal before the Supreme Court justice Sethi and Thomas JJ took a serious note of "the inordinate, unexplained and negligent delay in pronouncing the judgement and


\(^3^5\) AIR 2000 SC 775.

\(^3^6\) 2001 AIR SCW 2833:(2001) 7 SC 318, 328.
termed it as a ‘horrible situation’ and ‘Shocking state of affairs prevalent in some High Courts’.

In the words of learned Sethi, J.:

“Such a delay is not only against the provisions of law but in fact infringes the right of personal liberty guaranteed by Article 21 of the Constitution of India. Any procedure or Course of action, which does not ensure a reasonable quick adjudication, has been termed to be unjust. Whereas justice delayed is justice denied, justice withheld is even worse than that”.

The learned judge further said,

In a country like ours where people consider judges second to God, efforts make the judges only to strengthen that belief of the common man. Delay in disposal of cases facilitates the people to raise eyebrows, sometimes genuinely, which if not checked, may shake the confidence of the people in Judicial System. A time has come when the judiciary itself has to assert for preserving its stature respect and regards for the attainment of the rule of law. For the fault of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy for which efforts are required to be made to come up to the expectation of the society by ensuring speedy, untainted and unpolluted justice.

Thomas J. felt equally concerned and commented, “It is difficult to comprehend how the judges would have kept the details and the nuisance of the arguments in their memory alive after the lapse of a long period.” He lamented by saying, it is disheartening that a handful of few are unmindful of their obligation and the oath of office they have solemnly taken as they cause such inordinate delay in pronouncing judgements. He was of the view that the situation, instead of improving has only worsened.

37. Ibid, 330.
38. Ibid. 343.
39. Ibid, 344.
For the expeditious pronouncement of judgements, Sethi J. issued detailed guidelines as mandate of the court by way of remedial measure. In the absence of any legislation, these instructions of the Apex Court until have to be followed and implemented. However, the chief Justice of the High Court was permitted to substitute these guidelines if he, to slash the interval between conclusion of arguments and delivery of judgement, evolves more effective measures. These guidelines can be enumerated succinctly as follows:

1. The Chief justice of the High Courts will direct that the date of reserving the judgement and that of its pronouncement be mentioned on the title page of judgement.

2. The chief Justice will ask various Benches in the High Courts to furnish every month other list of cases in which judgements reserved are not pronounced within that month.

3. The Chief Justice shall point it out to the concerned Bench when reserved judgement is not pronounced within a period of two months.

4. Where reserved judgement is not pronounced within three months, the application of either party for early pronouncement shall be listed before the concerned Bench within two days.

5. When the judgement is not pronounced within six months, either party may apply to the chief Justice for putting the case before some other Bench for fresh arguments; the chief Justice may grant the said prayer or pass any other appropriate order.

Thomas, J., the other judge on the Bench, reiterated these instructions in his separate concurring judgement for providing added emphasis on them. The Arrears Committee constituted by the Government of India had made somewhat similar recommendations. The Government of India constituted the Arrears Committee on the recommendation of chief Justices' conference in its report of 1989-90.

vi) Provision of Summary Trial

Summary trial implies speedy disposal. Summary trial of a case means a case, which can be tried and disposed of without following the
lengthy procedure of a normal trial. Summary trial is not intended for a contentious and complicated case, which necessitates a lengthy inquiry. In summary trial cases, though record sufficient for the purpose of justice has to be present yet not so lengthy as may impede speedy disposal of cases. The procedure prescribed for trial of Summons cases should be followed. No formal charge is framed. At the conclusion of the Summary trial, the Magistrate enters the accused plea and the findings in a form prescribed by Government. There is no appeal in such a trial if there is a sentence of fine only not exceeding two hundred rupees. There can, however, be an application for revision to the High Court.

Section 260, Cr.P.C. States – Notwithstanding anything contained in the Cr.P.C.

a) any Chief Judicial Magistrate,
b) Any Metropolitan Magistrate,
c) Any Magistrate of first class specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way, all or any of the following offences;

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
(ii) theft, under section 379, Section 380 or Section 381 of the Indian Penal Code, where the value of the property stolen does not exceed two thousand rupees;
(iii) receiving or retaining stolen property, under Section 411 of the Indian Penal Code, where the value of the property does not exceed two thousand rupees;
(iv) assisting in the concealment or disposal of stolen property, under section 414 of the Indian Penal Code, where the value of such property does not exceed two thousand rupees;
(v) Offences under section 454 and 456 of the Indian Penal Code.
(vi) insult with intent to provoke a breach of the peace, under section 504 and criminal intimidation, under section 506 of the Indian Penal Code;
(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
(ix) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle-Trespass Act, 1871.

Section 262 to 265, Cr.P.C. lay down the procedure, which should be followed by the Court in a summary trial.

In a case of summary trial, the court must give the substance of offence by mentioning all the necessary facts constituting the offence. Mere mention of section is not sufficient.

vii) Malimath on Trial Procedures-Recommendations

The committee is concerned with enormous delay in decision making, particularly in trial courts. At present, a large number of cases in which punishment is two years and less are tried as Summons cases. The summary procedure prescribed by section 262 to 264 of the Code, if exercised properly, would quicken the pace of justice considerably.

However, the number of cases, which are presently tried summarily, is quite small and maximum punishment that can be given after a summary trial is three months. In order to speed up the process, the committee feel that all cases in which punishment is three years and below should be tried summarily and punishment that can be awarded in summary trial should be increased to three years. At present only specially empowered magistrate can exercise summary powers which the committee feels should be given to all Judicial Magistrates First class.

Section 206 of the Code prescribes the procedure for dealing with "petty offences'. This provision empowers the Magistrates to specify in the Summons the fine, which the accused should pay if he pleads guilty, and to send the fine amount along with his reply to the court. This procedure is simple and convenient to the accused, as he need not engage a lawyer nor appear before the court if he is not interested in contending the case.
However, the definition of the expression ‘petty offences’ restricts it to those offences punishable only with fine not exceeding Rs. 1000/-.

In order to give benefit of this provision to a large number of accused, the committee has favoured suitable modification of the expression ‘petty offences’.

The following recommendations were made:

a) Section 260 of the Code may be amended by substituting the word “shall” for the words “may if he thinks fit.”

b) Section 260 (1)(c) of the Code be amended empowering any Magistrate of First class to exercise the power to try the cases summarily without any special empowerment in this behalf by the High Court.

c) The limit of Rs. 2000/- fixed for the value of property under section 260 (1) (c) (ii, iii, iv) be enhanced to Rs. 5000/-.

d) Section 262 (2) be amended to enhance the power of sentence of imprisonment from three months to three years.

e) Section 2 (x) be amended by substituting the word ‘three’ for the word ‘two’.

f) That all Magistrates shall be given intensive practical training to try cases following the summary procedure.

g) Section 206 be amended to make it mandatory to deal with all petty cases in the manner prescribed in sub-section (1).

h) In the proviso to sub-section(1) the fine amount to be specified in the Summons shall be raised to Rs. 2000

i) Notice to the accused under Section 206 shall be in form No. 30-A and the reply of the accused shall be in form No. 30-B as per annexure.

j) In sub-section (2) of section 206 the limit relating to fine be raised to Rs. 5000/-.

k) (a) Sub-section (3) of Sec. 206 shall be suitably amended to empower every Magistrate to deal with cases under sub-section (1). Offences which are compoundable under Sec. 320 or any offence punishable with imprisonment for a term not exceeding one year or with fine or with both.


42. At present one thousand’ subs, for the words “one hundred rupees” by Act. No.1 25 of 2005, Section 20 (w.e.f. 23.6.2006).
(b) (i) Section 62 of the Code amended by dealing reference to the need for rules by state Government for alternate modes of service.

(ii) In section 69 before the word 'witness' the word 'accused' be added wherever the word 'witness' occurs.

viii) Compounding of Offences

The first step to speedy trial could therefore, be to sit together and sort out the difference. The offences that may lawfully be compounded are those that are mentioned in section 320 of Criminal Procedure Code, 1973. The offences other than those mentioned in this section, i.e. Section 320, cannot be compounded. Further, the offences punishable under laws other than Indian Penal Code are not compoundable. Remedy for speedy trial for them lies somewhere else.\(^{43}\) Section 320(1) specifies the offences, which can be compounded without the permission of the Court. These offences are mostly of a minor nature viz injuring religious feelings S. 298, causing hurt - Section 323 and 324, wrongfully restraining or confining any person - Section 341 and 342, assault or use of criminal force. Sections 352, 355 and 358 mischief, Sections 426 and 427 criminal trespass and house trespass Sections 447, 448, criminal breach of contract of service - Sec. 491, Adultery. Section 497, enticing taking away or detaining with criminal intent a married women - Sections 498, defamation - Section 500, 501 and 502, insult intended to provoke breach of the peace - Section 504, criminal intimidation except when the offence is punishable with imprisonment for 7 years. Section 506, act caused by making a person to believe that he will be an object of divine displeasure Section 508 of Indian Penal Code, 1860.\(^{44}\)

Section 320 (2) of Criminal Procedure Code give the list of offences, which can be compounded with the permission of court only. These offences are mostly of the same nature as described in sub-section (1), but

\(^{43}\) Arora B.L. Law of speedy Trial in India, P. 141.

\(^{44}\) Phansalkar-Joshi, S.S. Permitting compounding of more offences to achieve the aim of speedy trial and success of lok-Nayalaya, Cr. LJ 2001 Nov., 107; p. 162-163.
in graver form like causing grievous hurt by dangerous weapon - Section 324, 325, 335, causing hurt by rash and negligent act - Sections 337 and 338. Wrongfully confining a person for more than 3 or 10 days or in a secret place - Section 343, 344 and 346, assault or criminal force to woman with an intent to outrage her modesty. Section 354, assault or criminal force in attempting wrongfully to confine a person - 357, theft - section 379, 381 dishonest misappropriation of property - section 403, criminal breach of trust - Section 406, 407 and 408, dishonestly receiving the stolen property or assisting disposal of the stolen property. Sections 411 and 414, cheating - Sections 417, 418, 419, 420, 421, 422, 423 and 424, Mischief by killing or maiming animal. Sections 428, 429 and 430, House Trespass to commute an offence punishable with imprisonment, Section 451, use of false or counterfeited trade Mark or property - Sections 482, 483 and 486, Bigamy - Section 498, defamation of person like president, vice president, Governor etc. Section 500, altering words or making gestures to insult modesty of woman - Section 509 of the Indian Penal Code, 1860.45

Section 320(3) of Criminal Procedure Code stipulates that the abetment or attempt to commit the above said offences described in sub-clauses (1) and (2) may also be compounded in the like manner. The crucial provision is contained in sub Section (9) which stipulates that no offence shall be compounded except as provided by this section. Therefore, no offences of I.P.C., which are not specified in these two Sub-sections, are compoundable. Moreover, the offences created by special laws not being specified in these two sub-sections, are also not compoundable. The compounding of offence other than those made compoundable by this section, is illegal as it is prohibited by Sub-section (9).46 The court also refuses to compromise a non-compoundable offence (vide state of U.P. V. Chandrapal Singh).47

45. Ibid.
46. Ibid.
47. 1968 Cr. LJ 1342 (All.)
Thus, even the cursory look at Section 320 of Cr.P.C., 1973 makes it clear that it leaves uncovered large category of offences, which cannot be compounded at all, even with the permission of the court. It may be of interest to note that whole of Indian Penal Code 1860 contains totally 511 sections that are so many numbers of offences, but out of them, under section 320 of Cr.P.C. only 57 offences can be compounded, some with the permission of the court, other without permission.

If speedy trial is the essence of criminal justice, then having regard to the mounting arrears of cases and the poor rate of conviction, which is 5 to 6% only, it is necessary to take a more pragmatic and more realistic view.

As observed by Krishna Iyer, J in case of Re. special Courts Bill, if the Justice is a Cinderella in our scheme, then something is seriously required to be done.

We have to be creative in innovating new ideas and provisions, being compelled by special situation of the present day. No one will disagree that we have reached at a stage where no effort should be spared to speed up the trial and reduce the number of arrears so that Judicial System can be saved from the disastrous consequences of being collapsed. A beginning is made in that direction with the initiative taken by the Apex Court in the case of common cause case and Raj Deo Sharma vs. State of Bihar where by State, lingering and in effective cases are tried to be disposed of, reducing the pendency considerably. Acting and proceeding on the same initiative and with the same intention. If more and more offences, both under Indian Penal Code and under other enactments, are made legally compoundable, by carrying out necessary Amendment in Criminal Procedure Code or by Pronouncing of Such epoch making

48. AIR 1979 SC 478.
50. 1998 Cr.LJ 4596: AIR 1998 SC 3281
judgement by the Apex Court, it will pave a new way of reducing the pendency.

**ix) Plea-Bargaining**

The problem of delay and backlog is rampant in criminal cases. Various strategies and methods have been used in various jurisdictions to lessen the burden and ensure speedy disposal of cases. One such strategy is plea bargaining. The Criminal Law (Amendment) Act, 2005 (which came into force with effect from 5th July 2006) has inserted Chapter XXI-A in the Code of Criminal Procedure, 1973 that for the first time accords recognition to the idea of plea bargaining within the Indian Criminal Justice System. For providing the Working details of the plea bargaining system, new sections 265A to 265L have been introduced with a view to providing for the qualifications for plea bargaining, the stage and procedure for making an application, the role of Court and the parties, the guidelines for mutually satisfactory disposition. The final disposition of the case by the court and its finality, the decoding of set-off benefit. The prohibition against use of plea bargaining depositions in any other proceedings and non-applicability of plea bargaining in juvenile justice proceedings, etc plea bargaining proceeding is a new technique for simplifying the rigor of the formal system as well as measure for the speedier disposal of cases. But this technique has immense significance from the point of view of the accused, who is accorded an option to bargain plea within the existing system. Thus, the rules relating to plea bargaining have special value not only for the accused, but also for those who are responsible for operating the system at the ground level.51

The concept of plea bargaining is a significant part of the criminal Judicial System in U.S.A. The success of plea bargaining as a procedure leading to high convictions has been proven in the United States, where

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the Supreme Court in a number of cases has upheld its Constitutionality and significance.52

Majority of the individuals who are accused of a crime give up their Constitutional rights and plead guilty. In a landmark judgement,53 the Supreme Court has held that there should be no element of punishment or retaliation as long as the accused is free to accept or reject the offer of the prosecution. Plea bargaining has over the years emerged as a prominent feature of the American Criminal Justice system where over 90% criminal cases are settled by plea bargaining rather than by a jury trial.

Thus, less than ten percent of criminal cases go to trial. The United States experiment shows that Plea bargaining helps the disposal of the accumulated cases and expedites delivery of justice. Plea bargaining was not favoured in Colonial America, infact, courts actively discouraged defendants from pleading guilty. As population increased and courts became overcrowned, trial in every case became lengthier and impossible. Thus, the need was felt for such a strategy, which can result in speedy disposal. Thereafter, in the 19* century, courts gradually started accepting guilty pleas and by the 20* century, the vast majority of criminal cases started being resolved with plea bargaining. It takes a more subtle from the United Kingdom, where the courts are still cautions about concerning their powers of passing a sentence in open court.54

➢ Concept of Plea Bargaining

Plea bargaining is a concept derived from USA, there is no perfect or simple definition of Plea bargaining. As the term implies, it involves an active negotiation process whereby offender is allowed to confess his guilt

53. Brodenkïrcher Vs. Hayes. The Apex Court however upheld the life imprisonment of the accused because he rejected the ‘plea Guilty’ offer of 5 years imprisonment.
in court if he so desires in exchange of lighter punishment that would have been fixed for such offence. Plea bargaining usually occurs prior to trial but may occur any time before a judgement is rendered. Black’s Law Dictionary defines it as “The process whereby the accused and the prosecutor in a criminal case work out a mutually satisfactory disposition of the case subject to court approval. It usually involves the defendant’s pleading guilty to a lesser offense or to only one or some of the counts of a multi-count indictment in return for a lighter sentence that possible for the graver charge.

From the point of view of the accused, it means that he bargain conviction and a lesser sentence, for a long, expensive and tortuous process of under going trial where he may be convicted. For the vast majority of cases, Plea bargaining – also known as negotiating a settlement, coping a plea, or coping out is the most important step in the criminal justice process in United States. Thus, it involves an active negotiation process by which the defendant offers to exchange a plea of guilty, thereby waiving his right to trial, for some concessions in charges or for a sentence recommendation. The offender is allowed to confess his guilt in court if he so desires in exchange of lighter punishment that would have been fixed for such offence.

➤ **Types of Plea-Bargaining**

There are mainly three types of Plea bargaining:

1. Charge Bargaining,
2. Sentence Bargaining; and
3. Fact Bargaining.

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55. Ibid.
The first category, i.e. charge bargaining, is such bargain in which a defendant pleads guilty to reduced charges. It occurs when defendant pleads guilty to necessarily included offences.\textsuperscript{57} For Example, a defendant charged with burglary may be offered the Opportunity to plead guilty to attempted burglary. A defendant charged with drunken driving and driving with license suspended may be offered the opportunity to plead guilty to justify the drunken driving charge.

The second type is Sentence Bargain: A Sentence Bargain occurs when a defendant is told in advance that his sentence will be reduced if he pleads guilty. This can help a prosecutor obtain a conviction if, for example, a defendant is facing serious charges and is afraid of being hit with the maximum sentence. Typically, sentence bargains can only be granted if the trial judge approves them. Many jurisdictions severely limit Sentence Bargaining.\textsuperscript{58}

The third type of plea i.e. least used negotiation in Fact Bargaining in which negotiation involves an admission to certain facts 'Stipulating' to the truth and existence of provable facts, thereby eliminating the need for the prosecutor to have to prove them in return for an agreement not to introduce certain facts into evidence.\textsuperscript{59}

**Plea bargaining – Indian Perspective**

Plea bargaining has been introduced in India in the Criminal Procedure Code by the Criminal Law (Amendment) Act, 2005 (Chapter XXIA). This lays down a procedure with a distinct feature of enabling an accused to file an application for plea bargaining in the court where the trial is pending. The Law Commission in its 154\textsuperscript{th} report recommended the introduction of 'Plea bargaining' as an alternative method to deal with


\textsuperscript{58} Manupatra Newsline 'Point of view, Plea Bargaining': A positive way Ahead in criminal Justice System', July-August 2006, Vol. I, p. 3.

\textsuperscript{59} Supra note 55 p. 46-47.
huge backlog of criminal cases. Later on, the Malimath Committee Report on criminal reforms also recommended that a system of Plea bargaining be introduced in the Indian Criminal Justice System to facilitate the speedy disposal of criminal cases and to reduce burden of the courts. The committee in its report cited the success of Plea bargaining system in USA and other European Countries to support its claim.

> **Position Before 2005**

The Act has sparked off serious public debate. It is generally criticized on the basis that it is not recognized under our criminal justice system and is against public policy. The Apex Court has also rejected the concept of plea bargaining time and again. And consistently opposed the incorporation of it in our criminal justice process as implicit in series of cases. In *Madanlal Ram Chandra Daga vs. State of Maharashtra*⁶⁰ the Supreme Court for the first time made an observation in regard to the efficacy of Plea bargaining and observed:

“In our opinion, it is very wrong for a court to enter into a bargain of this character. Offences should be tried and punished accordingly to the guilt of the accused; if the court thinks that leniency can be shown on the facts of the case, it may impose a lighter sentence. But the court should never be party to a bargain by which money is recovered for the complainant through their agency.”

The concept was again condemned in the case of *Murlidhar Meghraj vs. State of Maharashtra* wherein the Apex Court observed:

“To begin with, we are free to confess to hunch that the appellants had hastened with their plea of guilty hopefully, induced by an informal tripartite understanding of life sentence in lieu of nolo contendere stance. Many economic offenders resort to practices the American call Plea bargaining’ ‘Plea Negotiation’, Trading out’ and ‘compromise’ in criminal cases as a Trial magistrate drowned by a docket burden nods assent to the sub-rasa ante-room settlement. The businessmen culprit, confronted by a sure prospect of the agency and ignominy of tendency of a prison cell ‘trade out’ of the situation, the bargain being a plea of guilt coupled with a promise of ‘no jail’. It is idle to speculate on

⁶⁰ AIR 1968 SC 1267.
the virtue of negotiated settlement of criminal cases as obtain in the United States. But in our jurisdiction specially in the area of dangerous economic times and food offence this practice includes on society's interest by opposing society's decision expressed through predetermined legislative fixation of minimum sentences and by subtly subverting the mandate of the law".

On the same line, Plea bargaining was further, disapproved in Ganesh Mal Jashraj vs. Govt. of Gujrat and Thippaswamy vs. State of Karnatak. The Hon'ble Supreme Court in Kasambhi Abdul Rehman Bhai Sheikh and Others vs. State of Gujrat and another, held the practice of Plea bargaining to be unconstitutional, illegal and which would tend to encourage corruption, collusion and pollute the pure fount aim of justice. Even, as late as in the year 2000, in Uttar Pradesh vs. Chandrika, Apex Court reiterated its earlier view holding, that concept of Plea bargaining is not recognized and is against public policy under our criminal justice system. Further, it was observed that on the basis of Plea bargaining court cannot dispose of the criminal cases. The court has to decide it on merits. If the accused confesses its guilt, appropriate sentence is required to be implemented.

However, on the other hand, the view of law reformers including legal luminaries was in favour of introduction of concept of plea bargaining.

It appears that the thinking in favour of Plea bargaining were based on dire necessity for speedy justice in our criminal justice process as the arrears and delays were mounting day-by-day. One famous saying which aptly applies in this context, i.e., 'necessity has no law' and another being

61. AIR 1980 SC 264
62. 1983 Cr. LJ 1271 (SC)
63. AIR 1980 SC 854.
64. AIR 2000 SC 164.
"I find no hint throughout the universe of good or evil of blessings or of cure, I find alone necessity supreme".65

Thus, as per thinking practical, considerations make introduction of plea bargaining in our criminal justice process a necessity.

➢ The Provisions of Criminal law (Amendment Act 2005)

The newly introduced chapter XXI - A has incorporated Plea bargaining. Section 265A states as to against whom this chapter is applicable. The section elaborates that this chapter is inapplicable where the offender under which the accused punishable with more than seven years of imprisonment and/or where the offence is one which affects the socio-economic condition of the country or has been committed against a woman or child below the age of fourteen years.

Section 265B makes it mandatory for the accused to move an application for plea bargaining before the trial court and places the discretion and the trial court to determine whether such application has been moved voluntarily. The trial courts is also obligated to reject any application where it finds that the accused has been previously convicted by a court in a case in which he had been charged with same offence.

Section 265C ensures mutually satisfactory disposition of the case by retaining voluntary participation of all concerned parties in the proceedings.

Section 265D envisages the preparation of a report in the event of satisfactory disposition of a case.

Under section 265E the court is bound to dispose of a case, the event of satisfactory disposal, after awarding compensation to the victim and after hearing the parties on the aspect of quantum of punishment and thereafter awarding appropriate sentence which applicable cases, may

range from one-half to one-fourth of prescribed punishment for the said offence.

Section 265F makes it mandatory to pronounce the judgement in open court.

Section 265G provides that the judgement cannot be appealed against unless by means of a special leave petition or writ petition thereby ensuring a degree of finality.

Section 265H seven certain powers unto the court and Section 265-I provides that period of detention, if any, undergone by the accused shall be set off against the sentence of punishment imposed.

Section 265J is a non-obstinate clause and gives effect to the provisions of the chapter as against any other provision of the Code.

Section 265K is a beneficial clause in favour of the accused and states that any statements or facts used by an accused in an application under this chapter shall not be used for any purpose other than that prescribed under the chapter.

Section 265L states that nothing in this chapter shall apply to any juvenile or child as defined in clause(k) of section 2 of the juvenile Justice (Care and Protection of Children) Act, 2000.

This is the statutory provisions, in a nutshell, for the use of Plea bargaining in the Indian Criminal Justice Process. It would be pertinent herein to deal with the challenges, which the above procedure entails for Judiciary to ensure that the process does develop into a fruitful and beneficial reality.

In a country, like India, where there is great backlog of cases, the concept of Plea bargaining will help to reduce the backlog by expediting the cases. The main reason of introducing plea bargaining is that it will keep our system going. By using this, we can avoid the serious congestion
within the courts. The jails will no longer be over packed and occupants will not be under trials. The system suffers when there is enormous delay in deciding the criminal cases but the situation worsens when an innocent person is punished or a guilty person is exonerated. Plea bargaining, if successful, will ensure quick resolution of cases involving petty offences and courts will be able to concentrate on the cases involving serious offences and fulfilling its Constitutional obligation to provide a speedy trial. It will lead to load reduction as well as productivity enhancement as shown by the experience of United States.

Plea bargaining will not only restore the faith of people in judiciary but will also lead to lower crime rate. It is an attempt to tackle the court pendency and simplify the criminal procedure. Plea bargaining apart from guaranteeing speedy justice and reducing the pendency of cases in the court would also reduce the number of under trials in the prisons.\textsuperscript{66}

The legislation in its present form has considerable safeguards, like excluding the scope of plea bargaining from offences that affects the socio-economic conditions of the country or where an offence has been committed against a woman or a child below the age of 14 years. Moreover, this is not applicable if the court finds that the accused has been previously convicted by a court for the same offence. A positive beginning has been made with the first Plea bargaining case having been heard in Delhi High Court on 24\textsuperscript{th} July, 2006 in a 14 years old dispute between two families. The criminal justice system has a long way to go in India and Plea bargaining is indeed a positive way ahead.\textsuperscript{67}

**B. Speedy Investigation**

Investigation is the most important part of criminal jurisprudence. It is during investigation that the basic facts relating to crime committed are

\textsuperscript{66} Ibid.
enquired into. Unless there is an efficient, prompt, fair and impartial investigation, justice in criminal cases cannot be ensured. In the case of cognizable offence, it is the duty of police to hold an independent, unbiased and impartial investigation.

If investigation and eventual trial of cases are delayed the chances of miscarriage of justice and expenses of litigation increase tremendously. Delay gives an opportunity to the opposite party to win over witnesses and thus to deflect the course of justice. It also results in loss of evidence for disinterested witnesses not are personally involved with the incident may often forget details of the occurrence after a certain lapse of time. Then again, many a time even the remedy provided by the law becomes infructuous due to flux of time. Thus, it is rightly said, “justice delayed is justice denied”. Delay in investigation of cases, if not properly explain in the case diary and in course of the evidence of the investigating officer, may seriously affect the bonafides of an investigation and may even lead to failure of the case in hand. Similarly, unexplained delay even of one day in recording the FIR may prove fatal to a case. Thus, in *Santa Singh vs. State of Punjab*\(^68\) where there was inordinate delay in sending the sealed parcels of -

(a) the empty cartridge case recovered from the scene of occurrence and  
(b) the rifle recovered from the house of the accused for the opinion of the ballistic expert and  
(c) there was also delay of several days in the interrogation of the suspect after his arrest, the Supreme Court in acquitting the accused of the charge of murder despite the evidence of three eye witnesses observed:

> "The suspicious delays that have occurred as regards important steps in the course of the investigation render it unsafe to hold that the case of the prosecution has been established beyond reasonable doubt".\(^69\)

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68. 1956 Cr.LJ 930(SC)  
69. Ibid.
Similarly, in *R.P. Kapur vs. State of Punjab,* where there was extraordinary delay in the investigation and in submitting the charge-sheet, the Supreme Court remarked:

"It is an utmost importance that investigation into criminal offences must always be free from any objectionable features or infirmities which may legitimately lead to the grievance of the accused that the work of investigation is carried on unfairly or with an ulterior motive." Even three days unexplained delay in examining eyewitnesses has been held to be fatal as it casts doubt on the veracity of such witnesses.

Courts have no control over such investigations. A defective investigation with some irregularity or even illegality generally is not treated as a ground to reject the prosecution case if the case is otherwise found established against the accused. A police officer is free to collect information of an occurrence of a cognizable offence, on his own, even without registering a case. A female police officer should be associated as investigating officer with the case involving dowry death as held by Hon'ble Supreme Court in *Bhagwant Singh Vs Commissioner of Police.*

Investigation can be conducted even after submission of challan so long as the court has not taken cognizance. In rare cases, court may permit further investigation even after it has taken cognizance of the offence. A defective and delayed investigation may lead to nabbing of an innocent person or full facts about the crime may not see the light of the day.

Reasonably expeditious investigation of crimes is in the interest of both, the society as well as the accused. From the point of view of society, expeditious investigation of crimes increases efficacy in the criminal law process and respect for the law. From the point of accused, Constitutional guarantee of speedy investigation is essential to protect at least three basic

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70. 1960 Cr. LJ 1239(SC)
71. Ibid.
72. Basudev Sahu V. State, 1985 Cr. LJ (NOC) 29 (Orissa).
demands of criminal justice system, as pointed out in Richard M. Smith Vs. Fred M. Mooley.74

(1) to prevent undue and oppressive incarceration prior to trial;
(2) to minimize anxiety and concern accompanying public accusation;
(3) to limit the possibilities that long delay will impair the ability of an accused to defend himself."

Article 21 of the Constitution of India confers upon every individual a fundamental right not to be deprived of his life or liberty except in accordance with due procedure prescribed under law. The procedure prescribed under law has to be necessarily reasonable, fair and just. Under Article 21 of the Constitution, the right to speedy investigation is a fundamental requirement.

Hence, it is the state that has on its shoulders the burden of investigation as well as the prosecution in a criminal trial.

Speedy and expeditious investigation and trial, which have been envisaged under section 309(1) of the Code of Criminal Procedure, 1973 reflect the spirit of Article 21 of the Constitution of India.

Procedural prescription for securing speedy investigation is given under section 173 of the Code, which directs that every investigation shall be completed without unnecessary delay. Sections 157, 168, 173 should be read conjointly for speedy investigation. In cases of investigation relating, to summons cases, if the investigation is not concluded within a period of six months from the date of arrest of the accused. The magistrate is bound to make an order stopping further proceedings in the investigation unless the investigating officer satisfies the Magistrate that for some special reasons and in the interest of justice continuation of the investigation beyond six months is necessary.

The order passed by the Magistrate is subject to review by session’s judge who may direct further investigation to be made into the offence subject to such directions with regard to bail and other matters as he may specify.\(^75\) In *Sushil Kumar vs. State of West Bengal*\(^76\) the Calcutta High Court took the view that principle behind this provision is that the investigation agency may not harass a person for long by binding him over in less serious cases.

So far as the investigation of cases triable as warrant cases is concerned, there is no specific provision in the Code analogous to section 167 (5) of the Criminal Procedure Code where the Magistrate could enforce speedy investigation.

However, the Code only prescribes statutory protection against prolonged custodial detention of the accused pending investigation, such protection are in the form of right to be released on bail after detention in custody for a specific period. If the police do not file a final report against the accused within the period of sixty or ninety days, as specified in section 167, a valuable right to be released on bail accrues to the accused. By incorporating these provisions in the Code it seems, legislature intended that the Magistrate is required to monitor the investigation and see if the investigation is being conducted expeditiously and if not, whether to authorize further detention of the accused in custody. However, there is no provision under which a Magistrate can give specific directions to the police to speed up investigation and failing which he may take action in the direction of stopping the investigation.

Inordinate delay by the police in the investigation of criminal cases is violative of fundamental right under Article 21 of the Constitution and gives rise to a right in favour of the accused to move the High Court under Article 226 or to the Supreme Court under Article 32 of the Constitution.

\(^{75}\) Section 167 (5)(6) of Cr. P.O.C. 1973

\(^{76}\) 1987 Cri L.J. 1517 (Cal. H.C.)
for the enforcement of his right. In cases of inordinate delay there are two
approaches followed by the courts. The first approach is to release the
accused on personal bond or without any bond, where an accused had
been in Jail for the maximum term which could have been awarded to him
if found guilty for the offence he was charged with, he was ordered to be
released from custody forthwith. In cases where no charge sheet had been
filed for three years, accused remaining in Jail custody, they were ordered
to be released on furnishing personal bonds in meagre amount.\footnote{Mohd. Saleem Khan V. State of UP AIR 1982 SC 1996. See also Mantoo Mazoomdar vs. State of Bihar AIR 1980 S.C. 847.}

The second approach is somewhat radical and revolutionary. In Krishna Bahadur vs. State\footnote{1981 Cr. LJ NOC 208 Mad.} where the accused was in Jail for over 40
months without any charge sheet having been filed by the police, it held
that the delay in submission of final report was not bonafide but really in
pursuance of malafide exercise of investigational powers obviously
designed to keep the prisoner under detention for an indefinite period.
In this case, the petitioner was set free.

The second approach adopted by various High Courts seems to be
more effective. Inordinate delays in investigations raise presumption that
either there is no evidence against the accused to put him on trial or the
investigation is malafide with a view to keep the accused in custody or
harass the same. In both the cases, the appropriate remedy is quashing of
the investigational proceedings.

In Madheshwardhari Singh vs. State of Bihar\footnote{AIR 1986 pat. 324 (FB): 1986, Cr. LJ 1771.} was held that speedy
trial a Constitutional right. Right to speedy trial is applicable not to
proceedings before court but also to police investigation preceding it.
In the case of Raghubir Singh vs. State of Bihar,\footnote{AIR 1987 SC 194: 1987 Cr. LJ 157: (1986) 4 SCC 481.} It was held that right to
speedy trial, which is a fundamental right of an accused, shall be construed as including period of investigation.

In *Seeta Hemchandra Shashilal vs. State of Mahashtra*,\(^81\) the court held that where accused is alleged to have committed offences punishable under the prevention of corruption Act, no period has been fixed by the legislature for taking cognizance; hence, cognizance cannot be quashed on the mere ground of delay in completing investigation.

The Jammu and Kashmir High Court\(^82\) held that speedy trial includes within its sweep the investigatory police proceedings in a criminal prosecution. In *Abdul Rehman Antulay vs. R.S. Nayak*,\(^83\) now the Supreme Court has finally settled the position that right to speedy trial flowing from Article 21 of the Constitution of India encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial, by this decision the Apex Court has broadened the scope of this right.

The Criminal Procedure Code of 1973 too has emphasized the need for speedier investigation in criminal cases and in the case of petty offences has either barred investigation beyond a certain period of time or barred the taking of cognizance thereof by the court after a fixed time schedule.\(^84\) Thus when the highest court and the law of the land have both enjoined on all concerned to expedite investigation of cases it does not behave any investigating officer not to investigate cases with utmost promptness. Santa Singh’s case\(^85\) should be a pointer to all investigating officers in the country. It must, however, be said in all fairness to the

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82. Kuldeep Singh vs. State of J & K 1989 Cr. LJ 1941 (SC)
83. AIR 1992 SC 1630.
84. Sections 167(5) & (6) and 468-473 Cr.P.C., 1973, also Nimeon Sangma vs. Govt. of Meghalaya, 1979 Cr. LJ 944 (SC),” Hussainara Khatoon vs. State of Bihar, 1979 Cr.LJ 1036 at pp. 1045 (SC), See also Mantoo Majumdar vs. State of Bihar, 1980 Cr. LJ 546 (SC).
85. 1956 Cr. LJ 930 (SC)
investigating officers that at present their strength is inadequate and in addition to their duties as investigating officers, they are also saddled with all sorts of law and order, bandobast, and VIP duties which take a lot of their time to the detriment of investigation of cases. They also lack transport facilities and modern equipment. In the circumstances, the Law Commission of India recommended for increase the strength of the Police Station, modernizing their equipment and means of transport and also urged for creation of a separate investigating cadre consisting of officer who will have no other duties than investigation of crime.86

Investigation is the first step on the basis of which prosecution files a case against accused in the court which tries the accused for alleged offence. It includes all proceedings under Criminal Procedure Code for the collection of evidence conducted by a police officer or by any person (other than a Magistrate) who is authorized by a Magistrate in this behalf.87 The Supreme Court has viewed the investigation of an offence as generally consisting of:

- Ascertainment of the facts and circumstances of the case;
- Discovery and arrest of the suspected offender,
- Collection of evidence relating to the commission of the offence which may consists of;
  - The examination of various person (including the accused) and the reduction of their statements into writing, if the police officers think fit,
  - The search of places or seizure of things considered necessary for the investigation or to be produced at the trial; and
  - Formation of the opinion as to whether on the materials collected there is a case to place the accused before a magistrate for trial, and if so, taking the necessary steps for the same by the filing of a charge sheet under section 173 of Cr.P.C.88

For the effective discharge of its duties, police has the power to arrest any person in certain circumstances. Arrest of an alleged offender even before magistrate issues Summons or warrants against him is thus provided so as to secure his presence during the trial. Police may take long time for the investigation into an offence and thus delaying the initiation of the process of trial, which begins on the filing of charge sheet by the prosecution in court. In order to check this, Cr.P.C. impose certain restrictions with respect to time to be taken for investigation by police and incarceration of accused pending such investigation.

According to Section 57 of Cr.P.C., every such person has to be produced before the nearest magistrate within a period of twenty four hours of such arrest. Excluding the time necessary for the journey from the place of arrest to the court of the magistrate and arrestee cannot be detained in custody beyond the said period without the authority of a magistrate.

No police officer has the authority to detain a person arrested without warrant in custody for a period longer than twenty-four hours. But if it appears to the officer in charge of the Police Station or the police officer making the investigation (not below the rank of the sub-inspector) that the investigation cannot be completed within the said period. And there are grounds for believing that the accusation is well founded he is required to transmit a copy of the entries made in his diary and at the same time forward the accused to the nearest judicial magistrate. Such magistrate, whether he has or has not the jurisdiction to try the case, from time to time may authorize the detention of the accused in such custody for a term not exceeding fifteen days in the whole. The magistrate, who

has jurisdiction to try the case, may authorize the detention of the accused person. Otherwise than in the custody of the police, beyond the pried of fifteen days if he is satisfied that adequate grounds exists for doing so but even the magistrate cannot authorize the detention of the accused person in custody for a total period exceeding:

- Ninety days, where the investigation relates to an offence punishable with death imprisonment for life or imprisonment for a term of not less than ten years.\(^{94}\)
- Sixty days, where the investigation relates to any other offence.\(^{95}\)

The police are required to complete investigation without unnecessary delay on the completion of investigation. If there is not sufficient, evidence or reasonable ground of Suspicion the accused is to be released on executing a bond to appear when so required before a magistrate empowered to take cognizance.\(^{97}\) And if, there is sufficient evidence or reasonable ground of suspicion then the officer incharge of the Police Station forwards the accused under custody to a magistrate empowered to take cognizance of the offence upon a police report and to try the accused or commit him for trial on completion of investigation the officer in charge of the Police Station is also required to send a report to a competent magistrate.\(^{99}\) Such a report is known as 'police report' popularly called 'charge-sheet' or 'challan'. When a charge sheet is filed in a case in respect of, this there is sufficient evidence to forward the accused person to a magistrate. Then along with the charge sheet all the documents or their extracts on which the prosecution proposes to rely (other than

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94. Section 167 proviso (a)(i), Cr.P.C., 1973
those already sent to the magistrate during investigation\textsuperscript{101} and statement of witnesses whom the prosecution proposes to examine have to be forwarded to the magistrate.\textsuperscript{102}

The Constitutional right to speedy trial is applicable not only to proceedings before court but also to police investigation preceding it.\textsuperscript{103}

The report of the police is not binding on the court. Even where the police report discloses that no case was made out still the Magistrate can take cognizance and issue process.\textsuperscript{104}

The power of the Magistrate to order police investigation under section 156(3) is different from the power to direct investigation conferred by Section 202(1). The two operate in distinct spheres at different stages. The first is exercisable at the pre-cognizance stage, the second at the post cognizance stage. A Magistrate can also under section 159 direct an investigation or preliminary inquiry into a case which may have been reported by the police as not worth investigation.

The official investigation should be totally extricated from any extraneous influence; as such, the police investigation should necessarily be conducted with the fund supplied by the state. The funding of investigation by private/interested parties would vitiate the investigation contemplated in Code.\textsuperscript{105}

\section*{Interference in Investigation by Courts}

There is a clear demarcation of function between judiciary and police department. Courts normally do not interfere with investigation but a court may interfere in case of violation of fundamental right of an

\begin{itemize}
  \item \textsuperscript{101} Section 173(5)(a)Cr.P.C. 1973.
  \item \textsuperscript{102} Section 173(5)(b), Cr.P.C. 1973.
  \item \textsuperscript{103} Supra note 21.
  \item \textsuperscript{104} H.S. Bains vs. State, AIR 1980 SC 1883: (1980) 4 SCC 631.
\end{itemize}
accused and or where investigation is conducted contrary to the procedural safeguards in violation of the rights of an accused.

Privy Council in *King Emperor vs. Khwaja Nazir Ahmad*,\(^{106}\) observed:

> "Just as it is essential that every one accused of a crime should have free access to a court of justice, so that he may be duly acquitted if found not guilty of the offence with which he is charged. So, it is of the utmost importance that the Judiciary should not interfere with the police in matters which are within their province and into which the law imposes on them the duty of inquiry"

The functions of the judiciary and the police are complementary, not overlapping, and the combination of the individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function.

### Fixing Time Limits for Report

A Magistrate will be justified in prescribing a time limit for the police to complete the investigation and send a report. If police shows lethargy, a Magistrate can address the police to facilitate and expedite report.

In *Frances Coralie Mullin vs. W.C. Kambahra*,\(^{107}\) the Supreme Court observed:

> "The role of the courts in cases of preventive detention has to be one of eternal vigilance. No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The courts writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provision of Article 22 and the courts exacts compliance. Article 22 (5) vests in the detenue the right to be provided with an opportunity to make a representation. The principal enemy of the detenue and high right to make a representation is neither high-handedness nor mean mindless insensibility, but the routine and the red-tape of bureaucratic machine".

An accused has a Constitutional right to be protected from torture by police during investigation. Offences committed outside India do not

\(^{106}\) AIR 1945 PC 18.

fall within the territorial limits of any court in India. Police can also not investigate the same.

➢ **Filing of Charge-Sheet**

Every police officer conducting an investigation has to maintain a case diary on day-to-day basis setting forth the time at which he received the information, the time at which he began and closed his investigation and the places he visited in connection with and during the course of investigation, etc. The court may send for the police diary of the case under trial and way use it, not as evidence, but to refresh memory and in aid of trial. The accused and his agents are not entitled to see the police diary.

Investigation involves not only collection of evidence but formation of opinion also. Therefore, there are three different kinds of reports to be made by police officers at three different stages of investigation:

1. a preliminary report from the officer incharge of a Police Station to the Magistrate.108
2. reports from a subordinate police officer to the officer-incharge of the station.109
3. a final report of the police officer to the Magistrate as soon as the investigation is complete.110

According to Section 173 of Cr. P. C., three courses of action are open the Magistrate or the court on receipt of a charge-sheet:

(i) It may accept the report and drop the proceedings;
(ii) It may discharge with the report and drop the proceedings; Section 173(1) every investigation under this chapter shall be completed without unnecessary delay.

2.(i) As soon as it is completed the officer-in-charge of the Police Station shall forward to a Magistrate empowered to take

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108. Section 157 Cr.P.C. 1973
109. Section 168 Cr.P.C. 1973
110. Section 173 Cr.P.C. 1973
cognizance of the offence on a police report, a report in the form prescribed by the state Government, stating the particulars.

3. Where a superior officer of police has been appointed under section 158, the report shall, in any case in which the State Government by general or special order so directs, be submitted through that officer, and he may, pending the orders of the Magistrate, direct the officer-in-charge of the Police Station to make further investigation.

4. Whenever it appears from a report forwarded under this section that the accused has been released on his bond, the Magistrate shall make such order for the discharge of such bond or otherwise as he thinks fit.

5. When such report is in respect of a case to which section 170 applies, the police officer shall forward to the Magistrate along with the report.

(a) all documents or relevant extracts thereof on which the prosecution proposes to rely other than those already sent to the Magistrate during investigation.

(b) the statement recorded under section 161 of Cr.P.C. of all the persons whom the prosecution proposes to examine as its witnesses.

6. If the police officer is of opinion that any part of any such statement is not relevant to the subject-matter of the proceedings or that its disclosure to the accused is not essential in the interest of justice, and is inexpedient in the public interest he shall indicate that part of the statement and append a note requesting the Magistrate to exclude that part from the copies to be granted to the accused and stating his reasons for waking such request.

7. Where the police officer investigating the case finds it convenient so to do, he may furnish to the accused convenient so to do, he may furnish to the accused copies of all or any of the documents referred to in sub-section (5).

8. Nothing in this section shall be deemed to preclude further investigation in respect of an offence after a report under sub-section (2) has been forwarded to Magistrate and where upon such investigation, the officer-in-charge of the Police Station obtains further evidence, oral or documentary, he shall forward to the Magistrate a further report or reports regarding such evidence in the form prescribed, and the provisions of sub-section (2) to (6) shall, as far as may be, apply in relation to such report or reports as they apply in relation to a report forwarded under sub-section(2)".
Word "custody" appearing in section 170 Cr.P.C. does not contemplate either police or judicial custody. It only connotes the presentation of the accused by investigating officer before the Magistrate or the court at the time of filing of the chargesheet. Thereafter, the role of the Court starts.

A combined reading of section 157, 167 and 173 of Criminal Procedure Code indicates that the accused is entitled to speedy trial as guaranteed under Article 21 of the Constitution.

➢ The Committee on Reforms – Police Investigation

It is the duty of the state to protect fundamental rights of the citizens. The state has constituted the criminal justice system to protect the rights of the innocent and punish the guilty. The system devised more than century back, has become ineffective; a large number of guilty go unpunished in a large number of cases; the system takes years to bring the guilty to justice and has ceased to deter criminals. Crime is increasing rapidly everyday and types of crimes are proliferating. The citizens live in constant fear. It is therefore, that the Government of India, Ministry of Home Affairs constituted the committee on reforms of criminal Justice system to make a comprehensive examination of all the functionaries of criminal justice system.

A prompt and quality investigation is therefore the foundation of the effective criminal justice system. Police are employed to perform multifarious duties and quite often, the important work expeditious investigation gets relegated in priority.111

A separate wing of investigation with clear mandate that it is accountable only to Rule of Law is the need of the day. Therefore, the apparatus designed for investigation has to be equipped with laws and procedures to make it functional in the present context.112

111. Recommendations of Committee on Reforms of Criminal Justice System Cr. LJ.
112. Ibid.
To improve quality and speedy investigation the commission recommended the following measures:\textsuperscript{113}

(a) The post of an Addl.Supintendent of Police (ASP) may be created exclusively for supervision of crime.

(b) Another, Additional SP in each district should be made responsible for collection, collation and dissemination of criminal intelligence; maintenance and analysis of crime data and investigation of important cases.

(c) Each state should have an officer of the IGP rank in the State Crime Branch exclusively to supervise the functioning of the police. The crime Branch should have specialized squads for organized crime and other major crimes.

(d) Grave and sensational crimes having inter-stated and transactional ramifications should be investigated by a team of officers and not by a single investigating officer.

(e) The senior most police officer posted at the Police Station must investigate the cases exclusively tried by the session’s judge.

(f) Fair and transparent mechanisms shall be set up in place where, they do not exist and strengthened where they exist, at the District Police Range and State level for redressal of public grievances.

(g) Police establishment Boards should be set up at the police headquarters for posting, transfer and promotion etc. of the District level officers.

(h) The existing system of police commissioner’s office, which is found to be more efficient in the matter of crime control and management, shall be introduced in the urban cities and towns.

(i) Deputy S.P. level officers to investigate crimes need to be reviewed to investigate crimes need to be reviewed for reducing the burden of the circle officers so as to enable them to denote more time to supervisory work.

(j) Criminal cases should be registered promptly with utmost promptitude by the Station House Officers (SHO).

(k) Stringent punishment should be provided for false registration of cases and false complaints. Section 182/211 of I.P.C. be suitably amended.

(l) Specialized units/squads should be set up at the state and District level for investigating specified category crimes.

\textsuperscript{113} Ibid.
A panel of experts be drawn from various disciplines such as auditing, computer science, banking, engineering, and revenue matters etc. at the state level from whom assistance can be sought by the investigating officers.

With emphasis on compulsory registration of crime and removal of difference between non-cognizable and cognizable offences, the work load of investigation agencies would increase considerably. Additionally, some investigators would be required to be done by a team of investigators. For liquidating the existing pendency and for speedy and quality investigation including increase in the number of investigating officers is of utmost importance. It is recommended that such number be increased at least two fold during the next three years.

Similarly, for ensuring effective and better quality of supervision of investigation the number of supervisory officers (additional SPs/Dy SP) should be doubled in next three years.

Infrastructural facilities available to the investigating officers specially in regard to accommodation, mobility, connectivity, use of technology, training facilities etc. are grossly inadequate and they need to be improved on top priority.

Criminal Investigation by Scientific Method

Narcoanalysis Test and Brain Mapping

Development of new tools of investigation has led to the emergence of scientific tools of interrogation like the Narcoanalysis test and brain mapping. Such tests are a result of advances, in science but they often raise doubts regarding basic human rights and also about their reliability, legal questions are raised about their validity with some upholding its validity in the light of legal principles and others rejecting it as a blatant violation of Constitutional provisions.

Narcoanalysis is a scientific tool of interrogation, and helps a lot in crime prevention and detention. It also helps in getting clinching evidences and is an effective and non-hazardous methods of inducing hypnosis, according to the police, if a criminal was put under narcoanalysis then he would reveal about the crime committed, where he had hidden the weapons used in committing the crime and why did he do
it? This would help in getting the motive for the crime and collect other evidence needed for prosecution.\textsuperscript{114}

\section*{The Legal Aspect: The Dilemma}

The privilege against self-incrimination is a fundamental canon of common law criminal Jurisprudence.

The characteristics features of this principle are –

- The accused is presumed to be innocent.
- That it is for the prosecution to establish his guilt and
- That the accused need not make any statement against his will.

The privilege against self-incrimination thus enables the maintenance of human privacy and observance of civilized standards in the enforcement of criminal justice Article 20(3), which embodies this privilege reads, “No person accused of any offence shall be compelled to be a witness against himself.”

On analysis, this provision will be found to contain the following components:

- It is a right available to a person “accused of an offence”;
- It is a protection against such “compulsion” resulting in his giving evidence against himself.\textsuperscript{115}

All the three ingredients must necessarily co-exist before the protection of Article 20(3) can be claimed. If any of these ingredients is missing, Article 20(3) cannot be invoked. The main issue thus is the question of its admissibility as a scientific technique in investigations and its ultimate admissibility in court as forensic evidence.\textsuperscript{116}

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\textsuperscript{114} All India Seminar on Judicial Reforms, on 23rd & 24th Feb. 2008 Souvenir by Malak Bhatt P. 116.
\textsuperscript{115} www Legal service India.com/article/19-silence-of-The - Lambs Article-20(3)- In- Administrative Proceedings, html.
\textsuperscript{116} Ibid.
\end{flushleft}
It is well established that the right to silence has been granted to the accused by virtue of the pronouncement in the case of *Nandini Sathpathy vs. P.L. Dani*[^1] no one can forcibly extract statements from the accused, who has the right to keep silent during course of investigation. But by the administration of these tests, forcible intrusion into one’s mind is being restored.

**The Precedent: Telgi and What Followed**

Abdul Karim Telgi, the Kingpin in the stamp paper scam, was among the first to hit the headlines for undergoing narcoanalysis, earlier, Veerappan’s men were ‘narcoanalysed’ to find out where the bring and had hidden the ransom money he had received for releasing actor Raj Kumar. The accused in the Godhara train burning, Mumbai train blasts, Nithari killings and Aurushi murder, besides gangster Abu Salem and a number of people charged with terrorism have been put through the ‘truth serum’ test.

To get an accused narcoanalysed, the police need just say ‘suspect not cooperating with investigation’. The courts have been giving go-ahead and some scientists, who claim that the method reveals the truth, have been conducting the test in India for the past eight years. In fact India is the only country in the civilized World where narcoanalysis is being used by investigative agencies.

A special court dealing with cases under the Maharashtra Control of Organized Crime Act (MCOCA) in Pune had allowed the special Investigation Team (SIT) probing the multi crore fake stamp paper scam to put Abdul Karim Telgi through an array of scientific tests, in order to aid speedy investigation and facilitate the collection of evidence. The Karnataka Forensic Science Laboratory (KFSC) is Bangalore conducted a polygraph test, brain mapping, and a narcoanalysis procedure on Telgi. The

[^1]: AIR 1978 SC 1025.
Narcoanalysis test yielded an immense amount of information but doubts were raised about its value as evidence. The use of drugs on Telgi in order to extract the truth created a controversy. The aforesaid controversy is also considered by the Karnataka High Court in the case of Smt. Selvi vs. State by Koramangla Police Station.

The new trend of using scientific test in investigation was welcomed by the police for having immense potential for the greater good of the society. The intention of using Truth serum was to help investigations with leads to corroborate evidence that had already been gathered. According to defence lawyers, Narcoanalysis report had no evidential value as the test violated Article 20(3) of the Constitution.

C. Speedy Services of Summons

After taking Cognizance once, the magistrate forms an opinion that there is sufficient ground for proceeding; the further orders are issued only after a list of prosecution witnesses has been filed. On the basis of the nature of the case magistrate is empowered to issue, Summons or warrant. Where the case appears to be a Summons case he issues summons for the attendance of the accused. Where the case appears to be a warrant case he may issue a warrant or Summons. If the law in force requires process fees or other fees to be paid no process is issued

120. The Code of Criminal Procedure, 1973, Section 204(2)
121. Section 2(W) of Cr.P.C. defines Summons Case as: Summons case means a case relating to an offence and not being a warrant case.
122. The Code of Criminal Procedure, 1973, Section 204(1)(a)
123. Section 2(x) Cr.P.C. defines warrants as ;Warrant case means a case relating to an offence punishable with death, imprisonment for life or imprisonment for a term exceeding two years
124. Id. Section 204(4)
unless such fee is paid, and if such fees is not paid the magistrate may dismiss the complaint.\textsuperscript{125}

Lapses of time in paying process fee or in furnishing copies of the aforesaid documents to the accused at times contributors in a major way towards delaying the process of trial.

The delay in the delivery of Summons also adds in delaying the process of trial. A Summons is an authoritative call to appear in court for a certain purpose. The Summons from court may be to the accused to a witness to produce document or to a person to show cause. Summons should be clear and specific in terms as to title of court, place day and hour of attendance. Non compliance with the requirements of the forms can not be treated highly especially when essential features, like the nature of the offence charged are not mentioned. Where Summons is disobeyed, it is the bounden duty of the court to act according to law for disobedience to Summons.

Section 62 of the Code of Criminal Procedure deals with personal service, in case of personal service process server must satisfy himself that the right man has been found and then deliver or tender him one of the duplicates of the Summons Showing him the original, if asked. Tender is sufficient Service, although there may be refusal to receive or to sign receipt, which is not an offence.\textsuperscript{126} But the tender must be real tender of a document which is understood by the person to be served, and he must have waived actual delivery.

All that a Magistrate has to do that at the stage of section 203 or 204, Cr.P.C. is to see whether, on a cursory perusal of the complaint and the evidence placed, there is \textit{prima-facie} evidence in support of the charge levelled against the accused. If he finds \textit{prima-facie}, that there is sufficient

\begin{itemize}
    \item \textsuperscript{125} The Code of Criminal Procedure, 1973,
    \item \textsuperscript{126} Sarkar \textit{on}, Criminal Procedure, 5th Ed. 1988, p. 51.
\end{itemize}
ground for proceeding against the accused, he orders the issue of process to the accused.

Where the Magistrate dismisses the complaint, the recording of reasons is mandatory. Omission to record the reasons vitiates the order, failure to record reasons is a direct disobedience of law and not a mere irregularity which can, however, be cured by section 464 or 465. The order passed by the Magistrate must show his application of mind and should be a speaking order. However, for issuing process under section 204, it is not necessary to give detailed reasons.

At the time of issuing process, the accused has no *locus standi* to participate in the inquiry and the case has to be judged exclusively from the point of view of the complainant only. The accused is not entitled to be heard on the question whether the process should be issued against him or not. He has no right to participate in proceedings either in police case or in complaint case.

Where cognizance has been taken against an accused under section 204 or a person has been summoned as an accused. The court can reconsider the order at a later stage when the accused applies for setting aside the order.

Where on the dismissal of a complaint by the Magistrate, the sessions Judge held that there are sufficient materials to proceed, the Magistrate has no option but to direct the summoning of the accused in the light of the order of the superior court.

Where the accused in a complaint case are of different districts of state, the Magistrate should invariably issue Summons to the accused dispensing his personal attendance and permitting him to appear through

128. Criminal Procedure Code 1973
129. Id., Section (202)
130. Id., Section 319.
pleader. This will automatically minimize mischievous and vexations complaints simply filed for causing harassing and humiliation to the accused.

In the case of *Nirmaljit Singh Hoon vs. State of West Bengal*, a three judge Bench of Hon'ble Supreme Court held:

"If the Magistrate before whom the complaint is made or to whom it has been transferred, after considering the statement on oath of the complainant and his witnesses and the result of inquiry or investigation under section 202, Cr.P.C. is of the opinion that there is no sufficient cause for proceeding, he may for reasons to be recorded briefly, dismiss the complaint. If, on the contrary, the Magistrate taking cognizance of the offence is of the opinion that there is sufficient cause for proceeding, he should issue process against the accused in accordance with section 204 of the Code. It may be noted that the evidence which is required to be adduced by the complainant at that stage may not be sufficient for recording a finding of conviction, but that fact would not absolve the complainant who wants the Magistrate to issue a process against the accused persons from leading some credible evidence as may prima facie show the commission of the offence”.

In *Subramanium Sethuraman vs. State of Maharashtra*, a three Judge Bench of the Supreme Court held: “The issuance of process under section 204 of the Code is a preliminary step in the stage of trial contemplated in chapter XX, Cr.P.C. such an order made at a preliminary stage being an interlocutory order, the same cannot be reviewed or reconsidered by the Magistrate, there being no provision under Cr.P.C. for review of an order by the same court. Hence, it is impermissible for the Magistrate to reconsider his decision to issue process in the absence of any specific provision to recall such order. It is true that the case of *Adalat Prasad vs.

131. (1973) 3 SC 753; (1973) SCC (Cri) 521: AIR 1972 SC 2639.
Rooplal Jindal\textsuperscript{133} pertained to a Warrant case whereas Mathew case,\textsuperscript{134} pertained to a Summons Case. To this extent, there is some difference in the two cases, but that does, in any manner, make the law laid down by the Supreme Court in Adalat Prasad case bad law.”

\textbf{Fourteenth Report of Law Commission of India}

Delay in services of summon - Magistrates generally send a packet containing Summonses by post to the concerned Police Station within whose jurisdiction the witnesses reside, generally no record is kept by the Station House Officer (SHO), to show the receipt of the packet of Summonses. Often the police officers allege that these Summonses were not received by them or did not reach them in time to effect service.\textsuperscript{135}

In this connection we may draw attention to certain instructions framed in the state of Madras. These rules provide that a magistrate, whenever he has to issue Summonses, should hand over the Summonses to a police officer of that station which has to serve them if he appears before him that day in any connection or is otherwise present in court. This would be easy because Summonses would be ready in respect of the cases which are posted a fortnight or three weeks ahead. Ordinarily, the police officers or constables of that station would appear in the court of the magistrate either in connection with a pending case on for the delivery of property or the return of warrants and other purposes. The Summonses are handed over to the police officer on such occasions and his acknowledgement is taken in a register kept for the purpose. A similar register is maintained against the name of the court. Immediate action is expected to be taken for the service of Summonses and the served copies thereof have to be sent to the court in advance of the hearing. Superior police officers have to inspect these registers, with a view to ensure that

\textsuperscript{133} (2002) 7 SCC 338; 2004 SCC(Cri.) 1927.
\textsuperscript{135} Law Commission of India, 14th Report, Vol. II
prompt action is taken or receipt of the Summonses. They are also authorized to look into the register of Summonses kept by the court and compare, them with the police registers. We have referred to certain other details of this method in our chapter on the supervision of Subordinate Courts similar instructions issued elsewhere would in our view, help to avoid delays arising from non-service of Summonses. These instructions will achieve their purpose only if their working is properly supervised.

D. Speedy Inquiry

In common parlance, 'investigation' and 'inquiry' are used as synonymous or inter-changeable terms. The Criminal Procedure Code, however, uses them differently and with specific distinct connotations. An 'Inquiry', according to the Code, means every inquiry which is conducted by a magistrate or court and which is not a trial.

An 'inquiry' is never conducted by the police though in common parlance we talk of police inquiries.

The term 'trial' has not been defined in the Code. It means the judicial process in accordance with law whereby the question of guilt or innocence of the person accused of any offence is determined. Therefore, where a magistrate or court conducts an inquiry for deciding as to the guilt or innocence of any person accused of any offence, such an inquiry is not just an 'inquiry' but it is termed as a 'trial'. But where the inquiry relates to a matter other than the determination of guilt or innocence in respect of any alleged offence, such an inquiry is not a 'trial' but a mere 'inquiry'.

The regime of criminal trial in India is regulated by the Code of Criminal Procedure and the Indian Penal Code. The provisions of the

137. CR.P.C. 1973, Section 2(g)
Cr.P.C. clearly contain essential ingredients of speedy trial including speedy inquiry.

And the Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provision of the Code. Section 309(1) stipulates a positive move towards speedy inquiry, and as such it reads:

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

E. Free Legal Aid

Free Legal Aid is one of the specific rights of the accused as flowing from the fountainhead of the Constitution of India and as embodied in the Criminal Procedure Code, provides free Legal Aid to accused at state expense where in a trial before the Court of Session is not represented by a pleader and where appears to the court that the accused has not sufficient means to engage a pleader. The High Court may, with the previous approval of the State Government, make rules providing for:

(a) The mode of selecting pleaders for defence;
(b) The facilities to be allowed to such pleaders by the courts; and
(c) The fee payable to such pleaders by the Government and generally, for carrying out the purposes of sub-section (1).

The State Government may, by notification, direct that, as from such date as may be specified in the notification the provisions of this section shall apply in relation to any class of trials before other courts in the state as they apply in relation to trials before courts of session.138

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Access to Speedy Justice

The Constitution of India recognized importance of access to justice to courts, particularly the High Courts and the Supreme Court. The right under Article 32 to petition the Supreme Court for enforcement and protection of a fundamental right is itself a fundamental right.\(^39\)

It is also to be stated that ‘Right to access to courts’ includes right to Legal Aid and engaging Counsel. Article 39-A was introduced in the Constitution 42\(^{nd}\) Amendment Act, 1976 and it provides that:

"The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free Legal Aid, by suitable legislation or schemes or any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

In the decision of Hussainara Khatoon vs. State of Bihar,\(^140\) Where the court was appalled at the plight of thousands under trials languishing in the jails in Bihar for years without ever being represented by a lawyer. The court declared that "there can be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

The Apex Court pointed out at Article 39-A of the Constitution emphasized that free legal services was an inalienable element of 'reasonable, fair and just' procedure and that the right to free legal services is implicit in the guarantee of Article 21. Justice Bhagwati declared: Legal Aid is really nothing else but equal justice in action. Legal Aid is in fact the delivery system of social justice. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as

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139. The Constitution of India Article 32.
contravening Article 21 and we have no doubt that every state Government would try to avoid such a possible eventuality”. He reiterated this proposition in *Suk Das vs. Union Territory of Arunachal Pradesh*¹⁴¹ and said “It may therefore now be taken as settled law that free legal assistance at State Cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty and this fundamental right is implicit in the requirement of reasonable, fair and just procedure prescribed by Article 21.”. This part of the narration would be incomplete without referring to the other astute architect of human rights jurisprudence, justice Krishna Iyer in *M.H. Hoskot vs. State of Maharashtra*,¹⁴² he declared: “If a prisoner sentenced to imprisonment is virtually unable to exercise his Constitutional and statutory right of appeal inclusive of special leave to appeal for want of legal assistance, there is implicit in the court under Article 142 read with Article 21 and 39-A of the Constitution of India, power to assign counsel for such imprisoned individual ‘for doing complete justice’.

To support this number of Apex Court verdicts there are some facts and figures which confirm to above decisions.

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<tr>
<th>Particulars</th>
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<th>High Court</th>
<th>Supreme Court</th>
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</thead>
<tbody>
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<tr>
<td>Number of Vacancies of Judges in Courts</td>
<td>3,233</td>
<td>284</td>
<td>02</td>
</tr>
</tbody>
</table>

Reference: *Supreme Court Quarterly Newsletter October – December, 2007 (Released on 24 January 2008).*

➢ Financial Support Provided by the Government to have Access to Justice

Judicial administrations in the country have the deficiencies due to lack of proper planning and adequate financial support for establishing

¹⁴¹ (1986) 2 SCC 401.
¹⁴² (1978) 3 SCC 544.
more courts and providing them with adequate infrastructure. For several decades, the courts have not been provided with any funds under the five-year plans nor has the Finance Commission been making any separate provisions to serve the financial needs of the courts.\textsuperscript{143} The edifice of the administration of justice rests on the shoulder of district judiciary, as the majority of the litigants go only upto district level. The High Courts have power of Superintendence over the state Judiciary but they do not have any financial powers to acquire new manpower or infrastructure.

The Financial Budget of the financial year 2007-2008 out of its total “Demand for Grants” of Rs. 23,11,132.98 crores granted only Rs. 817 crores to Ministry of law and justice.\textsuperscript{144} It comes to be 0.036\% approximately only.

\begin{itemize}
\item[\textbf{Financial Autonomy in the Functioning of Judiciary}]
\end{itemize}

Today, the judiciary in India is blamed for the huge back log of cases as mentioned above. It is high time that the public is made aware that during the last 60 years after independence, the Government for improvement of the infrastructure of the Judiciary has paid little attention.

There is a dearth of courts and judges and of building for both courts and Judges and officers and staff. In several cases, even minimum facilities have not been given. The reason is that there is no planning and proper budgeting of the courts’ requirements in consultation with the Judiciary as is done in other countries nor is there a long-range plan or at least a Five Year Plan. The result is that most courts are over burdened with cases on the civil and criminal side. Delay results in a serious infraction of right to speedy trials, to violation of human rights in various cases. A stage has reached when the parties are thinking of taking the law into their hands.

\begin{footnotesize}
\begin{itemize}
\item[\textsuperscript{143}]
\item[\textsuperscript{144}]
http://indiabudgetr.nic.in
\end{itemize}
\end{footnotesize}
At this above scenario, it has become necessary to go into the subject of ‘financial independence’ or ‘financial support’ of the Judiciary in India at some length on a comparative basis and also to consider the need for adequate provision for the Judiciary as a ‘plan’ subject. First of all it has already been justified that the independence of the Judiciary is part of the basic structure of our Constitution.

In *S.P. Gupta vs. Union of India & Another*, Bhagwati J. (as he then was) observed that “the concept of independence of the Judiciary is a noble concept which inspires the Constitutional scheme and constitutes the foundation on which rests the edifice of our democratic polity.” In the same case, Fazal Ali, J. Stated that, it has, however, not been doubted by Counsel for any of the parties that independence of Judiciary is doubtless a basic structure of the Constitution”. Again in *Shri Kumar Padma Prasad vs. Union of India & Others*, Kuldip Singh, J. observed that the “Independence of the Judiciary is the basic feature of the Constitution of India”.

By giving financial autonomy to judiciary, it shall be protected against economic, political and other influences, which would ensure impartiality. The nation expects from the Superior Judicial officers, the wisdom of Solomon; the courage of David, the strength of Samson, the patience of Job; the leadership of Moses; the kindness of Good Samaritan. the strategic training of Alexander; the diplomacy of Lincoln and the tolerance of carpenter of Nazareth and the intimate knowledge of every branch of natural, biological and social sciences. A reference may be made to Article 50 of the Constitution of India, which enjoins the state to

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146. (1992(2) SCC 428 at 446 and 456)
147. Hon’ble Justice Arjit Pasayat, Judge, Supreme Court of India; Safeguarding Judicial Independence, First South Asian Regional Judicial Colloquium on Access to Justice, New Delhi 1-3 November 2002.
separate the Judiciary from the executive with the intent to minimize the Judiciary from any form of executive control or interference.

Independence of the Judiciary deals with the independence of the individual Judges in relation to their appointment, tenure, payment of salaries and also non-removal except by process of impeachment. The independence has also other facets including the 'Institutional independence of the Judiciary'. One of the accepted facets of 'institutional independence' is the one concerning the financial resources and financial freedom or autonomy that is to be given to the Judiciary. Today, this concept has been developed and accepted in most of the democracies governed by the rule of law. The doctrine of separation of powers has been suitably modified and adjusted to achieve the above goal of financial freedom of the Judiciary. It must never be overlooked that where judicial pay levels are very low, especially subordinate Judiciary, judges often take on other work, sometimes of a nature demeaning of Judicial status. This distracts them from their judicial duties. Certainly, also low pay makes judges vulnerable to corruption. The dependence of the judiciary on the Executive branch for its resources is another factor, which impairs its independence. The Judiciary has no power of purse. At best it has to act within the allocation of funds made to it in the annual budget. More often, the allocation of fund is assessed as part of a departmental budget, control over which is exercised by the Minister responsible. Consequently, the Judiciary cannot spend a rupee more even if it is necessary for streamlining the machinery of justice and improving its performance.

If the Judiciary wants to introduce modern science and technology in the functioning of the Court system, to expand its facilities, or appoint more judges with a view to expediting the disposal of cases, it cannot do so unless the executive makes the necessary funds available. Thus the executive can twist the arm of the Judiciary if it does not behave to its
liking. This absence of financial autonomy has an adverse impact on the independence of the judiciary as an institution.

There is need for budgetary independence that is the ability of the judiciary to exercise control over its own funds and apply these funds in accordance with its own priorities for a better administration of justice.

➢ **How to Achieve Financial Autonomy for Judiciary?**

There are two methods devised by professors of Yale University for identifying the financial needs of the courts, presenting them clearly, getting the required appropriations, and administering the funds in an intelligent and responsible manner.148

These methods are as follows:

➢ **The Constitution Theory of Inherent Power**

The doctrine of inherent power implies that the courts are a constitutionally created branch of government who's continued effective functioning is indispensable; performance of that Constitutional function is a responsibility committed to the courts; this responsibility implies the authority necessary to carry it out, therefore, the courts have the authority to raise money to sustain their essential functions. The doctrine presents the alluring prospect of obtaining funds through writs of mandamus thus avoiding the Bargaining and uncertainty of the legislative process. Even its most extensive formulations, however, have been somewhat ambiguous, never precisely defining the needs to be covered. A court has inherent power, to determine what funds are reasonably necessary for its efficient and effective operation, and to compel the executive and legislative branches to provide such funds. Such statements have raised hopes that the doctrine can be used by courts to achieve fiscal independence.

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— The Administrative Concept of Unitary Budgeting

Unitary budgeting represents a fundamental departure from traditional court fiscal management. It locates in one central authority the ultimate responsibility for planning, channelling, and auditing all judicial expenditures within a state. Under unitary budgeting statutes, authority in court fiscal matters accompanies ultimate administrative authority in the court system.

The preparation of a consolidated budget is entrusted to the administrative head of the judicial department; the Chief Justice may assume the task or designate the Chief Court administrator to do so. Court finance is simply the fiscal counterpart of court administration. When a court system is administratively and functionally integrated, the budget expresses the means by which the various activities of the system are to be carried out. When a system is not administratively integrated, its budget is a formal, but not functional document. It simply aggregates expenditures for activities that are only nominally related to each other.

- The National Commission to Review the working of the Constitution, 2002, in its consultation paper on Financial Autonomy for Indian Judiciary has proposed that Judiciary must be included separately in the plan by the planning commission and separate allotment be made by the planning commission and the Finance Commission.

- Law Commission of India in its 189th Report on Revision of Court Fees Structure, February, 2004, has made following observations to achieve financial autonomy of the courts;

  "Every law made by parliament or the state Legislatures creates new civil rights and delegations and creates new criminal offences. Before such laws are introduced, a judicial impact assessment has to be made as to the impact of the acts on the courts - such as how many civil cases the Act will generate or how many fresh criminal cases will go before the courts. To that extent, each Bill must, in its Financial Memorandum, Seek budgetary allocation but in the last five decades, this has not been done."
We may state that in the United States a statute specifically requires judicial impact assessment and adequate budgetary provisions to be made. Unfortunately, this is not done in India. The principle here is that the expense for the judicial branch must be met from the general taxes that are collected by the state."

- Revenue earned by the state through the functioning of the Courts should be at least allocated to judicial wing only and state should not invest it elsewhere.

- The National Commission to Review the working of the Constitution, 2002, recommended that 'access to justice' must be incorporated as an express fundamental right as in the South African Constitution of 1996. In the South Africa Constitution, Article 34 reads as follows:

"Article 34: Access to courts and Tribunals and speedy justice:

(1) Every one has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or tribunal or forum or where appropriate another independent and impartial court, tribunal or forum.

(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, Tribunals or other forum and the state shall take all reasonable steps to achieve that object."

Accordingly, the National Commission for Review the working of Constitution has recommended insertion of Article 30A on the following terms:

"30A: Access to courts and Tribunals and Speedy Justice:

(1) Everyone has a right to have any dispute that can be resolved by the application of law decided in a fair public hearing before an independent court or where appropriate, another independent and impartial tribunal or forum.

(2) The right to access to courts shall be deemed to include the right to reasonably speedy and effective justice in all matters before the courts, Tribunals or other forum and the state shall take all reasonable steps to achieve the said object."
The main advantage of this Article will be that it will create legal obligation of the state to fulfil the needs of common man to have access to justice. It is because if it will be incorporated a Directive Principles of state policy then it will not be enforceable. Even though now Directive Principles of State Policy should be made binding because India is no more an infant state.

At present, hardly 0.2 per cent of GNP (or 0.73 per cent of the total revenue) is spent on Judiciary in India (when half of this is realized by state Governments through court fees and fines) as compared to other countries such as the United Kingdom, the United states and Japan where it is between 12 and 15 percent of the total revenue. It must be emphasized that it is not enough merely to lay down principles for the financial independence of the Judiciary. These principles have to be implemented. Society must be made aware of their importance and any violation of them exposed. In this way public opinion be created in defence of the financial autonomy of the Judiciary and so ensure by necessary outcry that the Executive does not erode the maintenance of judicial independence. It should be made as a slogan for 2009 General Elections.