CHAPTER-I

SPEEDY TRIAL- CONCEPT
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I. An Overview

Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated, but when there is enormous delay in deciding the criminal cases.\(^1\) As in every democratic civilized study, our Criminal Justice System is also expected to provide the maximum sense of security to the people at large and thus dealing with crimes and criminals effectively, quickly and legally. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. A prolonged trial causes untold harassment to victims, accused, and witnesses. Various strategies and tools have been used in various jurisdictions to lessen the burden of trials, and ensure speedy disposal of cases.\(^2\)

Speedy justice demands speedy and reasonably expeditious trial of a case. Indian Judicial hatchet dug up deep into the philosophy of fundamental Rights of our Constitution and read the right to "speedy trial" implicit in the broad sweep and contents of Article 21 of the Constitution of India. This found approval with the Supreme Court in the landmark cases of \textit{M.H. Hoskot vs. State of Maharashtra}\(^3\) and \textit{Hussainara Khatoon vs. State of Bihar},\(^4\) where the Supreme Court observed that, "speedy trial, and by speedy trial we mean, reasonably expeditious trial is an integral and essential part of fundamental right to life and liberty as enshrined in Article 21 of the Constitution". In other landmark cases of \textit{A.R.Antulay vs. R.S.Nayak}\(^5\) and \textit{Sheel Barse vs. Union of India}.\(^6\) The Supreme

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3. AIR 1978 SC 1548
Court held that, "Right to speedy trial is implicit in Article 21 of the Constitution and the Consequence of violation of this right would be that the prosecution itself liable to be quashed on the ground that it is a breach of a fundamental right." Significance of speedy justice is not only emphasized in Municipal law but also in International Covenants, namely: The Covenant on Civil and Political Rights, 1966 recognizes the right of a person to be tried without undue delay. India having ratified the covenant has taken upon itself the legal obligation to enforce it.

Although the Sixth Amendment of the United States Constitution guaranteed the right to a speedy trial, The U.S. Supreme Court has refused to settle any precise time frame for the trial likewise, thirty five state Constitutions have speedy trial guarantees, but these provisions apply when the delay has been extensive.

The vagueness of the Constitutional standards, to achieve speedy dispensation of justice, the legislatures in recent years has shown considerable interest in putting some teeth into the guarantee of a speedy trial.

The best known and most comprehensive such effort is the Speedy Trial Act of 1974 (Amended in 1979). The Federal Speedy Trial Act of 1974 is an excellent example of effective legislation to expedite criminal trials.

The right to speedy trial is not expressly enumerated as one of the fundamental rights in the Constitution of India unlike the Sixth Amendment of the US Constitution, which expressly recognises this right in the United States. It inter-alia declares that in all criminal prosecutions accused shall enjoy the right to a speedy and public trial. This is in

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9. Ibid.
addition to the Fifth US Constitutional Amendment, which declares “no person shall be deprived of life, liberty or property without the process of law”. This corresponds broadly to Article 21 and also to the deleted clause-I of Article 31 of the Indian Constitution. Article 21 declares that no person shall be deprived of his life and liberty except in accordance with law. It reads as under:

“No person shall be deprived of his life or personal liberty except according to procedure established by law”.

For the first time, the Supreme Court of India in the case of Hussainara Khatoon (I) vs. Home Secretary, State of Bihar declared that the right to speedy trial was implicit in the broad sweep and content of Article 21. The right to speedy public trial was a facet of fair and reasonable procedure guaranteed by Article 21. It could not be arbitrary, fanciful or oppressive. The core of ‘speedy trial’ was considered as a protection against incarceration.

II. Concept and Meaning of Speedy Trial

Speedy justice is always been the sine qua non (necessary element) of criminal jurisprudence. It is an important safeguard to prevent undue and oppressive incarceration. It minimises anxiety and concern accompanying the accusation. It also limits the possibility of impairing the ability of an accused to defend himself. There also remains a keen societal interest in providing speedy justice. The right of speedy justice has been actuated in the recent past. The courts also, in series of decisions, have opened new vistas of fundamental rights.

It was the Virginia Declaration of Rights of 1776, which incorporated into it the concept of speedy trial for the first time. This concept travelled from there into the Sixth Amendment to the

10. AIR, 1979 SC 1360.
Constitution of the United States of America to bring it into effect that in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. It is worth mentioning in this connection that there is a Federal Act of 1974 in the USA, which is called Speedy Trial Act. This Act establishes a set of time limits for carrying out the major events, e.g., information, indictment, arraignment, in prosecution of criminal cases. Similar provisions exist in Canadian Laws also. The right to speedy trial is also recognised as a common law right, flowing from the Magna Carta. This is the view in United Kingdom, United States of America, Canada and New Zealand, which is not accepted in Australia. However, this right whether under common law or otherwise, does not provide an absolute relief to be given under various well-settled guidelines evolved in the judicial decisions. Further, under Article 14 of the International Convention on Civil and Political rights 1976, the right to a speedy trial is provided. Similarly, Article 3 of the European Convention of Human Rights and the Sixth Amendment of the U.S. Constitution refer to it as a basic right.

The Sixth Amendment spells out eight specific rights to which persons accused of a crime are entitled, among one of them is 'the right to a speedy and public trial'. Speedy means that an accused person can't be locked up and held in prison for years without a trial. Speedy Trial has been defined as it is the right of the defendant to have a prompt trial.

The U.S. Constitution and the Constitutions of almost all American states provide that the accused shall enjoy the right to speedy trial but the requirements vary among jurisdictions. Then every defendant is entitled to a speedy trial. Therefore, justice means grant of expeditious and

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12. Ibid.
13. Article 14 of International Covenant on Civil and Political Right.
14. Right to a Speedy Criminal Trial, 57 Col. 846 (1957) L.R.
inexpensive relief to the persons who approach the court with legal problems. Delay in providing justice has been interpreted as denial of justice as prolonged litigation causes financial burden and mental torture to the litigants besides eroding their faith in judiciary. Delay in the disposal of cases is the greatest drawback of administration of justice in India.

The right to speedy 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 Supreme Court, while delivering its Constitutional bench Judgement in the case of Abdul Rahman Antulay vs. R.S. Nayak\(^ {17} \) declared that right to speedy trial is implicit in Article 21 of the Constitution of India, and thus, constituted a fundamental right of every person accused of a crime. In Hussainara Khatoon (I) vs. Home Secretary, State of Bihar\(^ {18} \) the Supreme Court observed.

"Now obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable; fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure, which does not ensure a reasonably quick trial, can be regarded as reasonable, fair or just and it would fall foul of Article 21. There, can therefore, 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."

The right of the speedy trial must begin without unnecessary delay within the time limits established by law. These time limits can be pushed back by valid postponements for a variety of reasons.\(^ {19} \)

Most American and the federal Governments have enacted statutes setting forth the time within which the defendant must be tried following the date of his arrest, his first appearance or the filing of charges in court.\(^ {20} \)

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The Sixth Amendment applies only after a person becomes an 'accused' that is to say, after he has been formally charged with a crime or placed under arrest and detained for the purpose of answering a criminal charge. Once arrested, a person is deemed an accused and is entitled to a speedy trial even though he is later released.21

Most speedy trial statues in the U.S. provide method for comparing 'excludable delay' not included in calculations of elapsed time for speedy trial purposes. That the American Speedy Trial Act 18, U.S. CSS 316 (h) (7), excludes from the Act operation [a] reasonable period of delay when the defendant is joined for trial has not run and no motion for severance has been granted. And too, that a defendant's failure to object to continuance to his co-defendant may upon the defendant subsequent attempt to assert a speedy trial claim, impairs his ability to satisfy the prong of the four-pronged test.22

Examples of 'excludable delay' are periods of times spent on other proceeding concerning the defendant as hearing on mental competency to stand trial, on other charges or probation parole revocation hearing. Other examples are delays due to continuances granted at the request of the defendant or because of the absconding of the defendant, and the execution of procedures necessary to obtain the presence of a confined prisoner.23

In a number of American Federal Courts compliances have come at the price of delaying civil cases, civil trials are temporarily suspended in an effort to keep pace with courts criminal case load. Potential difficulties also arise because not all cases easily fit into the mandated time frames a

major murder case or a complex drug conspiracy trial takes longer to prepare than an ordinary burglary prosecution.

American state laws generally give wide discretion to judges in deciding that the time frames can be waived in the interest of Justice.24

III. Nature of delay and time-frame

In criminal proceedings, following delays are considered systematic delays, which are neither within the control of prosecutor nor accused.

a) Delay wholly due to congestion of the court calendar, non-availability of Judges, or other circumstances beyond the control of the prosecutor.

b) Delay caused by the accused himself not merely by seeking adjournments but also by legal devices, which the prosecutor has to counter.

c) Delay caused by orders, whether induced by accused or not, of the court, necessitating appeals or revisions or other appropriate actions or proceedings.

d) Delay caused by legitimate actions of the prosecutor e.g. getting a key witness who is kept out of the way or otherwise avoids process or appearance or tracing a key document or securing evidence from abroad.25

The above delays are not considered delays affecting the right to speedy trial. The delays being questioned are the deliberate delays resulting in protracting of proceedings either by the prosecutor or by accused. The accused may like to delay the proceedings as defence tactics and the prosecutor may like to prolong it because it has a case or it wants to harass or victimize the accused.

The violation of the right to a speedy trial is not established by delay alone. Rather, the determination of whether a case must be dismissed for lack of a speedy trial requires a balancing test, in which the conduct of

both the prosecution and the defence are weighed and the following factors are considered:

(a) **Length of delay**: The length of delay alone does not establish a violation of the right to a speedy trial. However, a delay of months in a case, which depend upon eyewitness testimony, has been presumed to be prejudicial to the accused.

(b) **Reason for delay**: A deliberate attempt by the prosecution to delay the trial weighs heavily towards a violation of the right to a speedy trial. On the other hand, a valid reason such as missing witness normally will justify the delay in the absence of prejudice to the accused.

1. If the delay is attributed to wilful tactics by the accused. He will be deemed to waive his right to a speedy trial.

2. The mere fact that the accused is serving in Jail sentence in another state does not justify a delay of his trial on the pending charge. The prosecution must attempt to have the other state temporarily give up custody for purposes of trial or the pending charge.

(c) **Defendants' assertion or non-assertion of right**: An accused may at any time waive his right to a speedy trial. But it must be shown that the waiver was knowing and intelligent. It cannot be implied from his silence.

(d) **Prejudice to Accused**: The nature and amount of prejudice resulting from the delay must be judged by what the right to speedy trial is designed to prevent namely, oppressive incarceration, loss of evidence, accuracy of witness testimony, anxiety to the accused and the like.

Under the American Federal Rules of Criminal Procedure, the accused must be brought before the magistrate at the stage of initial appearance "without unnecessary delay".

The emphasis on conducting a prompt inquiry arose from the U.S. Supreme Court rulings in which the court held under the MC Nabb-Mallory and the *Upsaw vs. United States* decision that an unjustified delay is unreasonable and sufficient to presume that all statements made by the arrestee between the arrest and the delayed

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hearing are inadmissible in evidence as the product of an unlawful detention.

In 1975 congress passed the Speedy Trial Act, under the provisions of this Act, the accused must be processed through the various trial stages within certain stipulated times. Failures by the American Federal Courts to comply with these times will result in the defendant’s motion for a dismissal of the charges.

Although many states have similar provisions that call for an initial appearance without unnecessary delay, most states courts (unless they too have adopted specific time frames under a “Speedy Trial Act” consider delays simply to be a part of the overall judicial process.

In reality the problems of delay in processing the defendant through the initial appearance are usually not that serious, the more serious delays usually occur late in bringing the accused up for the actual trial.

IV. Speedy Trial --The Enforcement Mechanism

If the accused is not brought to trial within the specified period the case is dismissed. American jurisdiction differs however, on whether dismissal on these grounds constitutes a bar to subsequent prosecution for the same offence. Ten states provide that the case must be dismissed if the time limits are exceeded. This can result in:

(a) A guilty defendant’s going free because of an administrative problem.
(b) It can also allow the prosecutor to procrastinate deliberately because there is too little evidence for conviction.
(c) Blame the judge when the case is dismissed.

28 Speedy Trial Act, p 2
29 Speedy Trial Act, p 9
30 Robert D Pursley, Op cit, p 271
31 Supra Note 25
Other states permit dismissal but allow re-prosecution, but it can undermine the effectiveness of speedy trial provisions by subjecting defendants to a series of re-prosecutions. In theory researchers approach to speedy trial laws with considerable scepticism.

However, the American Federal Speedy Trial Law has proven effective. The average criminal case filed in the federal courts in the early 1970s took seven months to reach a disposition. By the early 1980s, the average case was disposed of in less than three months. In addition to speedy trials reduce and decline recidivism in drunk driving cases in New York.

As, the Federal Speedy Trial Act, provides for the dismissal of the prosecution if the terms of the Act, are violated. There was substantial judicial debate in the American courts of appeals over the appropriate standard for determining whether such dismissal should be with or without prejudice.

In United States vs. Taylor, the Supreme Courts provided additional guidance to lower courts, on this issue, it stated that “Courts are not free simply to exercise their equitable power in fashioning an appropriate remedy for a violation of the Federal Speedy Trial Act, but in order to proceed under the Act, must consider at least the three specified factors in determining whether dismissal should be with or without prejudice. Hoping that the defendant/accused would file motion to compel, which would have tolled the running of the time periods under the American Federals of Speedy Trial Act. The prosecutor in United States vs. Hastings

intentionally failed to comply with a local discovery rule. However, the defendant did not file the motion to compel; the trial court considered the conduct of the prosecutor, in regards to the discovery rule, and dismissed the prosecution, with prejudice.

Following the lead of the U.S. Supreme Court in Taylor, the court of appeals in Hastings reversed the district's dismissal with prejudice. It concluded that since the discovery violation did not have the desired effect, it was not casually related to the speedy trial violations and not relevant to determining whether the dismissal should be with or without prejudice.36

V. Delayed Trial- The Prejudice Theory

Speedy trial is always considered a reasonable, fair and just trial but a delayed trial may not always be an unfair trial. The Supreme Court in State of Maharashtra vs. Champalal Punjaji Shah37 i.e. "...while a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. The delay may be occasioned by the tactics or conduct of the accused itself. The delay may have caused no prejudices whatsoever to the accused. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defence and it would be said that the accused had thus been denied of an adequate opportunity to defend himself, the conviction would certainly have to go. But if nothing is shown and there are no circumstances entitling the court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only".

36. Ibid.
37. AIR 1981 SC 1675.
That was the proposition in 1981. Much time has passed since then. The trend of later judgements lead to the conclusion that even if no prejudice has been caused to the charged officer or accused, he can still complain of infringement of his right to speedy trial. The charge sheet or conviction or punishment imposed can be quashed or the sentence reduced, if the delay was not caused by the delay tactics of the accused/charged officer and further provided that the charges were not serious.

One of the glaring lacunas of the existing Criminal Justice System is the inordinate delay caused in the disposal of the cases and detention of the accused in judicial custody pending trial.38

It is undesirable that the criminal prosecution should wait everybody concerned who has forgotten all about the crime. Procrastination of trial often entails injustice. Because of an unduly prolonged process, much often-material evidence may perish as when witness die39 or situations are altered to blurring of memories of available witnesses.40 "Justice delayed is Justice denied" is the well known maxim highlighting the importance of quick Justice.41 Thus, the significance and Judicial value of the speedy trial has been depicted by this well-known maxim.

The legal basis of the right was provided by the Magna Carta42 (1215) which proclaims that Justice or right will neither be sold nor denied or deferred to any man.

39. Ibid.
41. Ahmad Siddique, 'Criminology', 5th (Ed.) 2006, p. 47.
42. Id. p. 48.
According to Coke, prolonged detention without trial would not only be contrary to the law and custom of England but delay is a direct impact on the American colonies and the right of speedy trial as guaranteed by the Sixth Amendment of United States Constitution and also by all the States.

The need of the speedy disposal of the cases has been recommended by various commissions from time to time. Before the recognition of the speedy trial as the fundamental human right and need of the hour in Hussainara Khatoon vs. state of Bihar. The judiciary has earlier observed that the Jurisprudence of quick acting in the comprehensive remedy of all evils.

Justice Krishan Iyer in Schmitz’s case brought forward an importance of speedy trial and observed that a Jurisprudence of quick acting and comprehensive remedies, demanding restricting and streamlining of the Judicative apparatus, demanding operational speed and modernization of the whole adjective law and practice, is urgent and important. The legal instrumentality alone truly sustains the rule of law, which delivers Justice with inexpensive celerity, finality and fullness. The big right remedy gap is the basis of our system.

In another case, Justice Krishna Iyer suggested that systematic slow motion in dispensation of Justice must claim the nation’s immediate attention towards basic reformation of the traditional structures and procedure, and therefore, Justice Krishna Iyer made the following recommendation:

"Commercial cases should as far as possible, be adjusted by non-litigative mechanisms of dispute resolution, since forensic processes, dilatory and contentious hamper of the flow of trade and harm both sides whosoever wins or lose."

44. Trustee, Bombay Port vs. Premier Automobiles, AIR 1974 SC 2122.
The founding fathers of the Indian Constitution perhaps being conscious of the formidable hurdles involved, did not incorporate the right, as such, in the Constitution but in *Hussainara Khatoon (1) vs. Home Secretary State of Bihar*\(^45\) the Supreme Court held that the right to be implicit in Article 21 of the Constitution.

In holding so the Supreme Court reaffirmed its ruling in *Maneka Gandhi*\(^46\) that to fulfil the requirement of Article 21 the procedure should be reasonable, fair and just, and a quick trial can be regarded as having these qualities. The petition in *Hussainara’s* case was moved on behalf of certain pre-trial prisoners, many of whom had been languishing in Jails for years together waiting for the commencement of their trials. The court ordered the immediate release of all such prisoners. It has been hold by courts that the Constitutional rights of speedy trial includes within its sweep the expeditious filing and hearing of substantive appeals against convictions as well as acquittals. The right has been given extended scope to operate against long delay in the disposal of a mercy petition against the death sentence by the President of India.

Justice Krishna Iyer, while dealing with the bail petition in *Babu Singh vs. State of U.P.*\(^47\) case remarked:

"Our Justice System, even in grave cases, suffers from slow motion syndrome which is lethal to fair trial whatsoever the ultimate decision. Speedy Justice is a component of social Justice since the community, as a whole is concerned in the criminal is being condignly and finally punished within a reasonable time and the innocents being absolved from the inordinate ordeal of criminal proceedings".

VI. **Defects and Errors in Procedural Law:**

There is apparently widespread dissatisfaction with the way crimes and criminal are investigated, prosecuted and tried by the criminal system,

\(^{45}\) (1980) 1 SCC 81; 1981 SCC (cri.) 23

\(^{46}\) *Maneka Gandhi vs. UOI* 1 (1978) 1 SCC 248.

\(^{47}\) AIR 1983 SC 527.
which raises question against the Indian legal system and suffers from crisis. The chief causal factors of crisis are inherent that India has no legal system of its own. It is the legacy of common law a foreign legal system imported into the country.\textsuperscript{48} It has been unequivocally observed that modern Indian law is "notwithstanding its foreign roots and origin unmistakably Indian in its outlook and operation.\textsuperscript{49} Obviously, the system suffers from the ailment of adversarial processes, deterioration in its prestige, maximization of quantity and minimization of quality, corruption, delay etc. The menace of delay not only discerns justice denied, but is now vision as justice circumvented, justice mocked, and the system of justice undermined.\textsuperscript{50} Delay culminates a sense of injustice; long period's denial emanates uncertainty.\textsuperscript{51}

The problem of judicial delay seems to have reached such a climax of notoriety that one can hardly escape from its vice. Courts are no more cathedrals; they are casino where the throw of the dice matters.\textsuperscript{52} These terse comments upon the performance of Indian Judiciary compelled both the legislature and judiciary to have in depth introspection about the deficiencies in our legal system. Man lives in the short run, but litigation lives in the long run.\textsuperscript{53} Dispensation of justice becomes a mockery if it gets delayed and becomes long drawn out making it patently unjust and unfair to all concerned.

\textsuperscript{48} Seetalvad, M.C. The Role of English law in India (1965).
\textsuperscript{49} Vide Seetalval M.C. The Common Law India 225 (1961)
\textsuperscript{50} Speech of Richard Nixon, an Ex-President of USA Delivered at the National Conference of the Judiciary, Williamsburg, Virginia, 11 March 1991 as Quoted by Katz. Litwin, et al. in Justice is Crime 35(1972).
\textsuperscript{51} Mukherjee S.K. and A. Gupta: Delay in Administration of Criminal Justice (1978)
\textsuperscript{53} Speech of K.R. Narayanan, an Ex-President of India Delivered Golden Jubilee Celebration by Supreme Court of India, 28\textsuperscript{th} Jan.(2000) Quoted by B.D. Aggarawal "New Road to Speedy Justice" AIR (2000) P. J18.
\textsuperscript{53} Justice V.R. Krishna Iyer Quoted by Ex-President of India A.P.J. Abdul Kalam, address at the National Seminar on Delay in the Administration of Criminal Justice', Published in (2007) SCC (J) p.1.
Indian laws are also characterized as obsolete, out dated primitive and non-functional. It is not because the laws were fundamentally defective, but the prime reason for rejection of some century old laws is that they do not match with the fast changing social scenario. However, some of the new enactments will certainly dispel the lurking fear-psychosis that the existing law will fail to maintain the rule of law, to protect the rights and privileges of its citizens, more particularly of downtrodden who cannot afford long-drawn litigation.

Eminent jurist Mr. Nani A. Palkivala comments upon the sad affairs of delayed dispensation of Justice as follows:

“I am not aware of any country in the world where litigation goes on for as long as period as in India. The law may or may not be an ass, but in India it is certainly a snail and our cases proceed at a pace which would be regarded as unduly slow in a community of snails. Justice has to be blind but I see no reason why it should also be lame here it just hobbles along, barely able to walk. If litigation were to be included in the next Olympics, India would be certain of winning at least one gold medal”.

I remember reading a Russian Poet in my days as a student who described Justice as a train that is always late.

Almost all the Hon’ble Chief Justices of India have shown their concern towards delayed justice and tried to find out the causes for the same and also suggested means and methods, in their own ways, to combat the same was the concern shown by the Governments Hon’ble Justice A.S. Anand, the then Chief Justice of India had expressed his anguish when an accused charged with murder had been in the custody of police for more than thirty seven years awaiting trial.

One Ajay Kumar Gose was in the policy custody since his trial was stopped sine die in 1963 to get him treated for chronic Schizophrenia.

55. Speech of Hon’ble Mr. Justice Tarun Chatterjee, Judge Supreme Court of India delivered at the All India Seminar on Judicial Reform at Vigyan Bhawan, 23 February 2008, Vol. II, p. 42.
A small boy who was badly beaten up by his employer for stealing three-packets from a shop and was thereafter handed over to the police is the another case in the line. The boy was detained for a long time on the ground that there was none to bail him out. Another such case is that of a gambler from whom only Rs.1.10 was recovered and was kept in custody for a long period. Likewise, an Assistant Engineer, who was caught while accepting Rs. 180 as a bribe, had to be in judicial custody for sixteen years and ultimately sentenced to two years imprisonment. Who is going to explain such grave aberrations? Trial courts are thronged with millions of cases. The causes for this delay are multi-faceted. Be it the shortage of presiding officers, the lack of adequate infrastructure, the complexity of the legal procedures, apathetical and indifferent attitude of witnesses or the all-pervasive callousness of investigating and prosecuting agencies but the fact remains that delay in imparting justice is the reality of the day.56

Legal experts are unanimous in their opinion that the present system of Criminal Jurisprudence is destined to fail if the backlog of cases is not substantially reduced. Several Law Commissions have recommended a complete overhaul of the Criminal Justice System. They have exhorted for a radical change in the working of the law enforcement agencies, especially the police and the public prosecutors to contain such delays in the recent past. Recently the Law Commission has mooted the concept of 'Plea-Bargaining' - pre-trial negotiations between the accused and the prosecution in which if the accused agrees to plead guilty for the charge levelled against him he would get in exchange certain concessions as a quid pro quo, by taking a lenient view by the courts, particularly in cases of lesser gravity.57

Recently we have witnessed the respectable and responsible citizens

57. Ibid.
turning hostile and thus, becoming instrumental in delaying the delivery of justice and to defeat the very purpose of trials. The committee on reforms in Criminal Justice System, constituted by the Union Government under the Chairmanship of Justice V. S. Malimath, former Chief Justice of Karnataka and Kerala High Courts and also former National Human Rights Commissioner, went into this aspect. This committee was constituted because there has been a deep feeling of concern that the Criminal Justice System is collapsing gradually under its own weight. It was with a view to regain the lost confidence that the Union Government constituted the (CRCJS) with a comprehensive term of reference. The CRCJS was asked to examine, inter alia, the need to re-write Criminal Procedure Code, the Indian Penal Code and the Evidence Act, to make specific recommendation on simplifying the judicial procedure, suggest ways and means for developing synergy among judiciary, prosecution and police.

**Construction and Interpretation of Procedural Laws**

The purpose of procedural law is to regulate the procedure starting with filing of a case till the judgments, orders and decrees of the court are pronounced and enforced. As the procedural laws are viewed as means to achieve the ends of Justice, the Construction and interpretation of procedural laws by the courts are different from that of substantive law. In this process, the courts are always guided by the objects of procedural laws which are to facilitate justice but not to defeat justice. Statutes dealing with jurisdiction and procedure of the court have also on occasions received beneficial construction.58

Statutes dealing with jurisdiction and procedure, if they relate to the infliction of penalties are construed strictly and if there is ambiguity or doubt, usually it will be resolved in favour of a party in

58. Maxwell: The Interpretation of Statutes, 100 (1980).
the legal proceedings though such party may escape from the legal proceedings. In *Ram Das vs Ram Lubhaya*\(^5^9\) Justice Swatantra Kumar observed that the provision of procedural law may be construed liberally to achieve the ends of justice but no party could be permitted to abuse the process of the law including emerging out of procedural law.

**Procedural law – Need for Simplification**

In Indian legal system, importance of Procedural law is very significant at every stage of criminal proceeding. In implementing and following the procedural law, the courts play a pivotal role. The importance of procedural law was aptly summarized by Justice Sir Barnes Peacock by stating that the litigants in the *mofussil* at times are not properly examined. And as such the law of procedure entrusts the courts with the powers for obtaining the truth of the cases by examining the witnesses themselves.\(^6^0\) The rights and duties of the people are dealt within substantive laws whereas the procedural aspects relating to the enforcement of the aspects in substantive laws are dealt within the Code of Criminal Procedure, 1973 and the Indian Evidence Act, 1872 etc. Several provisions in these procedural laws overlap with each other due to the existence of elaborate explanation of the aspects relating to rules of procedure.

The necessity for the simplification of procedural laws is being felt not only among the legal intelligentsia but also among the common people who want speedy and impartial justice. The simplified procedure will reduce the pendency of cases in the courts and renders the justice required in time. In *Hussainara Khatoon vs. Home Secretary, State of Bihar*\(^6^1\), the Supreme Court held that the litigants have a

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61. AIR 1979 SC 1369.
fundamental right to speedy justice. In India, some of the major procedural laws which invariably invite simplification are: Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872 and substantive law like the Indian Penal Code, 1860, by enacting a new major Act called the Information Technology Act, 2000 (21 of 2000). The Procedural laws in India are to be renovated to utilize the technological developments. The procedural laws shall be modified to render speedy justice and the litigant should not suffer in person, property or in terms of financial aspects due to intelligible exploitation of procedural infirmities by the opposite party. Expeditious disposal of cases is the genesis of the basic rule of a procedural law. The complex nature of procedural laws is felt responsible for the pilling up of undisposed cases in the Indian courts. But there are other relevant causes which contribute to the increase of pendency of cases. In spite of the comment that the judicial process in India is slow, the courts in India are doing their best to render justice to the litigant. The procedural infirmities and errors in India could well be removed by the process of simplification of the procedural laws. Both the Bench and Bar play crucial role in the process of implementing the procedural laws, Justice Saghir Ahmad of Supreme Court attributed the inordinate delay in judicial decisions to the procedural laws both in the civil and criminal domains, which were a legacy of the British rule and he also called for enacting new procedural laws which might control the sprouting of off-shoots responsible for decisions at several levels.\footnote{Srijiwas, M.S.V. "Procedural Laws In India - Retrospective And Prospective Views" AIR 2001, J 238-239.}

Among the procedural laws relating to Criminal investigation and trial, the Code of Criminal Procedure, 1973 occupies a substantive portion. The Code of Criminal Procedure, 1898 was repealed by the newly drafted code of crime and criminality underwent a rapid change
due to scientific advancements. Time has proved that the present Code of Criminal Procedure, 1973 is not equipped well to cope up with all these factors in criminal investigation and trial. To review completely the criminal investigation sectors and investigating agencies, recently, the Union Home Ministry appointed a special committee headed by Justice V.S. Malimath. This committee is entrusted with the tasks of:

(a) to review exhaustively the criminal investigating principles
(b) the necessity to amend or rewrite the enactments like the Indian penal Code, 1860, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872, to suit to the changing time and
(c) to suggest measures to provide easy, less expensive and quick justice to the common man.

The Indian Evidence Act, 1872 is another major procedural law which is not in a position to tackle the litigation arising out of the developments in 'information technology' and new types of criminal cases including white collar and cyber offences. Biological developments in the subject of DNA and the advanced studies in the field of forensic science could be useful in crime detection. Indian Evidence Act, 1872 shall be amended conveniently to utilize the evidence arising out of these scientific innovations, since every piece of relevant evidence constitutes a veritable backbone of a case. Except new sections like 111-A, 113-A, 113-B and 114-A, there are no Amendments to the Indian Evidence Act, 1872 in terms of latest developments taking place in scientific fields.

Information Technology Act, 2000 proposes drastic Amendments to some of the sections in Indian Evidence Act, 1872 in respect of collecting electronic data and cases relating to cyber offences etc. This Information Technology Act, 2000 caused Amendments in Indian Penal Code, 1860 Bankers’ Books Evidence Act, 1891 and Reserve Bank of India Act, 1934. There must be more new and exhaustive provisions by way of Amendments in procedural laws in the fields like recording
of confessions, recording of statements by various grades of police officers, recording of dying declarations and granting of police and judicial remands etc.

The exercise of discretion by the court in implementing procedural law is not uncommon in daily business in the court. There are many instances of such discretionary powers of the Code of Civil Procedure, 1908, Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872. The proper use of these powers would certainly save the valuable time of the court by benefiting the litigant without giving scope for superfluous legal Wrangles across the Bar. No statute could be comprehensive to meet all the contingencies. In such circumstances, the inherent powers conferred upon the courts by the procedural laws will fill up the gaps in a statute; the courts shall use the inherent powers sparingly to avoid the prolonged legal battle.

The procedural law to be followed in the courts is as important as substantive law. In the Charanlal Sahu vs. Union of India, it was laid down that Art. 14 of the 'Constitution condemns discrimination not only by a substantive law but also by a procedural law.

It is established that the courts in India are always zealous and anxious to use the procedural law in deciding the cases. No doubt that certain word in the procedural law like ‘shall’ and ‘must’ sound that the section in the Act is mandatory. But it is not always so. Words appearing to be mandatory will also give the tone of directory in nature as could be found in Rosy vs. State of Kerala.

The above discussion confirmed that the existing criminal substantive laws and procedural law in their present form, are unable to answer the present day requirements and they need to be reviewed

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63. AIR 1990 SC 1480.
64. AIR 2000 SC 637.
them with a view to up-date them and to make them relevant to the modern and changed times and claims. It is disturbing that inspite of all efforts at national and international level, the goal of speedy trial as human rights for all people is still far off. The objective can be achieved by reviewing the law relating to registration of case (FIR), investigation of cases, means and method of producing evidence, definition of crimes, prosecution agency, system of bail and confessions.

Under these pathetic conditions, speedy justice to under trials in the framework of fundamental rights, human rights, Constitutional guarantee and procedural law assume great significance.