CHAPTER 4
JUSTICE DELIVERY SYSTEM: NATIONAL AND INTERNATIONAL THRUST FOR JUSTICE

 Bracelet gets decorated by diamond studded therein while the diamond gets sanctified by being embedded in the bracelet and the diamond and bracelet together decorate the hand on which the bracelet is put on. The second line provides that lotus gets decorated by the water in which it is found and because of the lotus, water gets dignified and because of the lotus and water together, the entire lake get beautified. The third line is that because of the Moon in the sky, the night gets decorated and because of the night, the Moon gets dignified and because of the Moon and the night, the entire sky gets dignified and the last line is that because of the poet, the Court of the king gets illuminated and because of the king’s Court, the poet gets dignified and because of the poet and the Court the king gets decorated.

 It is in this sense that the presence of international community keeps the national laws under control to realize the ultimate goals of the whole mankind i.e. a prosperous and happy world without poverty, hunger and injustice. Therefore both the national and the international community must put their best efforts to make the people to come out
of their pains and sufferings. To the aforesaid four lines of this verse, we may add that because of the good lawyers, the presiding judge gets decorated and because of the quality of the presiding judge, the advocates get sanctified and because of the combined operation of good lawyers and presiding judge the entire Court and judiciary get dignified. And because of all this, the whole humankind moves towards a better world.

4.1 National Perspective

4.1.1 Constitution of India

4.1.1.1 Introduction

“India with all its thousands of years of cultural heritage and Vedic Vintage, has not been able to assure to its people even a pretence of the preamble’s grand undertaking of Justice, Liberty, Equality and Fraternity to every citizen”.

Justice V.R. Krishnan Iyer.

A number of questions emerge when a society decides to organize it politically regarding the form of government, its organs and their functions and the rights of its subjects etc. Constitution is the basic or fundamental document of a society or a country, which has special legal sanctity, which sets out the framework and the principal functions of the organs of the government of a state and declares the principals governing the operation of these organs. The first and foremost function of the state is to ensure the observance and protection of the rights of the people. It is for this reason that the provisions of law and the mechanism provided for “administration of justice” is directed to achieve the following two objectives:

(a) The delivery of justice and;
(b) Effective, easy, inexpensive, speedy and without delay access of justice to the people.

A “living legal system” should not only yield proper and just solution, but also ensure justice in time and without delay. ‘Delay’ is a great reproach and the cry for ‘speedier justice’ is heard from all the quarters of life, slow justice is futile; over-speedy justice is undesirable. Delayed justice mars the spirit of the law. Justice-seekers, mostly the bulk consumers i.e. the poor will lose faith in the firmament of law itself, if justice is out of step and not within their reach and on time.²

India prides itself in being the ‘largest democracy’ in the world, where the “rule of law” prevails.³ It is a vast country, with more than one hundred crore population, being the ‘largest and the most ancient civilization’ in the world. After attaining independence, we consciously opted to retain the ‘British system’ of law and governance and some of the leading principles of western political and legal thought became part of our fundamental law and the legal system. These include the ‘supremacy of law’, notions of ‘equality and liberty’, as well as the system of ‘checks and balances’ to ensure separation of functions of the three organs of government i.e. Legislature, Executive and Judiciary.⁴

The ultimate goal of the law is to render ‘justice’ and to ensure to the humanity that its grievances would be redressed. It is for this reason that the Courts are known as “temples of justice”. Time and again, the Apex Court while feeling the pulse of the preamble of

Indian Constitution, deriving vigor from the Directive principles of the State Policy and realising the Constitutional responsibility has held, “the fair and just trial” embraces in its scope “the right to speedy justice” as well. Therefore, speedy trial is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. The justice delivery system requires trial with a reasonably quick speed. The trial includes all the stages of criminal justice system, namely, stage of investigation, inquiry, trial, appeal, revision and retrial. In short, everything commencing with an accusation and expiring with the final verdict - the two being respect: vely the *terminus a quo* and *terminus and quem* – of the journey, which an accused must necessarily undertake once, faced with an accusation in a Court of law. Almost a quarter of century ago, the Apex Court interpreted the right to justice in time as ‘fundamental right’. Yet, this right is a mere chimera and cliché for millions of litigants in India. Everything is not going right as was envisioned by our Constitutional fathers. Those who go to the judiciary for getting justice, feel frustrated. Their faith is getting diluted and everybody is raising finger at the institution which was once held to be sacrosanct and the aggrieved, exploited, downtrodden have also started wondering whether the arduous and expensive exercise of seeking justice is really a worth.

The Constitutional law, being the “basic and fundamental law” of the land is a subject of paramount importance: The ultimate goal of every organ of the state is to serve in the people of India upholding the “letter and spirit” of the Constitution. The Constitution of India

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6 Literally the time from which: Trayner’s Latin maxims, 598 (4th Edition).

7 *Ibid* – the point to which – a conclusion tends.


has defined and declared the ‘common goal’ for all it’s instrumentalities, as to secure to all the citizens of India, Justice; Liberty; Equality and Fraternity. The ‘eternal value’ of constitutionalism is the ‘rule of law’ which has three facets i.e. ‘rule of law’, ‘rule under law’ and ‘rule according to law’.  

“Constitution” is not a collection of abstract theories nor does it operate in a vacuum, it reflects a ‘way of life’ and it is the obligation of all instrumentalities of the Constitution to ensure that way of life. Similarly in practice the ‘judicial system’ does not operate in a vacuum. It is a part of the social and economic system and judiciary wields the judicial power of that system.

The founding fathers of the Constitution of India had talked of “Rule of law” and one can legitimately expect the trust, which was sought for, by them, from all the three organs, which cannot be lied by anyone. Each wing is required to achieve these “cherished goals” by following the ideals of self-restraint, honesty, mutual respect and fair treatment.

Our Constitution does not specifically enumerate the right to speedy justice as a fundamental right, but the Apex Court held that it is implicit in the broad sweep and content of Article 21 as interpreted by the Apex Court in Maneka Gandhi v. Union of India. S.K. Sharma writes, “The Indian Constitution does not specifically guarantee to an accused person the right to speedy trial, yet the speedy disposal of cases is desired as an objective of ‘rule of law’ in India. The ethics of

14 AIR 1978 SC 597.
distributive justice also necessitate the same. The very spirit and soul of the Constitution in the form of Article 21 in conjunction with Articles 14, 19, 38, 39 and 39-A make it a necessary concomitant of distributive Justice promised in the preamble of the Constitution. The right to speedy trial being an internationally recognized ‘human right’ is thus a part of our national grundnorm by virtue of Article 51 of the Constitution”.  

The right to seek “speedy justice” is a basic attribute of every civilized society. The “preamble,” the constitutional manifesto, declares that the very first objective and purpose of the Indian Constitution is, inter-alia, to ensure ‘equality’ in every respect and social, economic and political ‘justice’ to all its citizens. The preamble discloses the basic foundation on which our grand mansion of Democratic republic is founded. The spirit of the preamble pervades and manifests itself in every important provision of the Constitution. The right to speedy justice is an important attribute of social justice which is granted and guaranteed by the preamble to Indian Constitution. Without ensuring for the speedy justice, one cannot achieve the goals and the objectives of the Indian constitutions as enshrined in the preamble to the Indian Constitution.

In Part III of the Constitution of India embodied certain human values, principles and norms, which are essential for human dignity. Freedom and dignity of the individual find a place on the ‘highest pedestal’ under our Constitution. The individual has been afforded even the fundamental right to approach the Supreme Court of India.

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under Article 32 of the Constitution for the vindication of his fundamental rights enshrined in Part III of the Constitution. Three of the fundamental rights enshrined in Articles 14, 19 and 21 of the Constitution have given “vigor and life” to the concept of human dignity, liberty and the ‘rule of law’ under our Constitution.

“Democracy” can never succeed unless the people have respect for law and faith in Courts. Article 14, of our Constitution provides that the State shall not deny to any person “equality before the law” or “the equal protection of the laws” within the territory of India. This will lose all it’s meaning unless speedier justice can be administered to the litigant public. It is true that the test of any “good legal system” is not that it produces just solutions to legal problems but it must do so, with ‘reasonable speed and efficiency’ and is made available to all citizens alike. It should also be remembered that there cannot be equal justice, where the kind of trial, a man gets depends upon the amount of money he is in a position to spend. It, therefore, necessarily follows that effective justice has to be meted out to all aggrieved parties not only speedily, but it must also be made cheap so that it may be within the reach of everyone who wants to secure justice to his cause.

4.1.1.2 Preamble

The Constitution of India opens with a Preamble. The Preamble declares:

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21 Ibid at 71.
WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN, SOCIALIST, SECULAR, DEMOCRATIC, REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity; and to promote among them all,

FRATERNITY assuring the dignity of the individual and the unity [and integrity] of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

The Preamble is a key to open the mind of the makers and shows the general purpose for which they made the several provisions in the Constitution. The object of insertion of a preamble is to embody the spirit of the particular enactment. The framers of the Constitution have given the place of pride to the preamble which has always been a guiding star for all of us.

The main purpose of the preamble has been to ensure and to deliver justice to all. The term ‘Justice’ has been given the first place because it can cover within its wider wings the entire Constitution and it is always the goal of every civilization to harmonize the individual conduct with the general welfare of society. The preamble ensures social, economic and political justice which is more than ensuring the

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23 Inserted by the Constitution (42nd Amendment) Act, 1976.
24 Ibid.
25 Ibid.
26 Re Bambhari Union and Exchange of Enclave, Reference by the President under Article 143(1), AIR 1960 SC 845.
‘Judicial Justice’. After about 58 years of independence, we can see with great despair that our preamble has been brutally crucified by various organs of the society. Each element of the justice delivery system is playing with the lives of common man.

4.1.1.3 Fundamental Rights

Part III of the Constitution of India secures to the people of the India certain natural and inalienable rights which are necessary to preserve human liberty, to develop human personality and to protect the social and national fiber.

These fundamental rights represent the basic values cherished by the people of this country (India) since the Vedic times and they are calculated to protect the dignity of the individual and create conditions in which every human being can develop his personality to the fullest extent. They weave ‘a pattern of guarantees on the basic structure of human rights’, and impose negative obligations on the State not to encroach on individual liberty in its various dimensions.27

The purpose of these fundamental rights is to achieve the goals of ensuring justice to the people. These rights infuse life into the dead letters to the Constitution. In other words, Part III ensures right to life and liberty to the Constitution of India itself.

4.1.1.3.1 Article 14 Strikes at Arbitrariness: A Dynamic Approach

Article 14 is the first of the fundamental rights which contains the basis of a justice delivery system as it says, “The State shall not deny to any person equality before the law or equal protection of laws within the territory of India”. It is a “founding faith” and “a way of life”. The concept of equality is basic to the rule of law as well as the fundamental postulate of republicanism. The spirit of equality has also

27 Maneka Gandhi v. Union of India. AIR 1978 SC 597.
been found to carry great value even in the ancient systems of administration of justice. Manu, the great codifier of Hindu Law wrote:28

\[ \text{वधा सर्वाणि भूतानि धरा धारयते समात्} \]
\[ \text{लत्या सर्वाणि भूतानि चिन्धत्: प्रधिवं ब्रतम्} \]

The King should support all his subjects without any discrimination, in the same manner as the earth supports all living beings. [IX 311]

This depicts that in the eyes of the King who is the reflection of God on this earth, is to treat everyone equally irrespective of any discrimination of any kind. In the modern time, the concept of traditional monarchy has disappeared in most of the parts of the world. In India, the descendents of the dynastic rulers do not have any special status. Therefore the real power lies in the hands of the organs of the state i.e. Legislature, executive and the judiciary. Among these organs, the judiciary is considered have a upper hand because the duty to administer justice lies on it. It is these judges who are considered to convey the voice of God.

“Equality is a ‘dynamic concept’ with many aspects and dimensions and it cannot be cribbed, cabined and confined within traditional and doctrinaire limits, from a positivistic point of view, “equality is antithetic to arbitrariness”. In fact equality and arbitrariness are sworn enemies”.29 The Hon’ble Supreme Court of India in Maneka Gandhi v. Union of India,30 emphasized on the content and reach of the ‘great equalizing principle’ enunciated in

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30 Supra note at 27.
Article 14, it observed that “Equality is a dynamic concept with many aspects and dimensions”.  

The term ‘arbitrariness’ does not only require the passing of the test laid down in the various judgements of the Supreme Court particularly as provided in *Ram Krishna Dalmia v. Justice S. R. Tendolkar*, but also to pass the life giving test of ensuring living life to the people of this country. We are required to realize the needs of time.

In the present state of affairs, a common man is not equal to that of those who have resources because of which they can put the entire justice delivery system at ransom. These high-ups exploit the system on one hand, whereas the victims or the aggrieved ones wait for their tears to be wiped out. Tears are not wiped out but the victims or the aggrieved ones are wiped out by the stronger arms of time. It is at this place that the principle of equal treatment to all under similar circumstances without any privilege and immunity loses its existence. Therefore it would not be unjust to say that this sacred principle of equality in the eyes of law has been reduced to be a mere dead letter.

4.1.1.3.2 Right to life and personal liberty

4.1.1.3.2.1 Meaning

If the Constitution is a flower, Article 21 is its fragrance without which this sacred document would lose its sanctity, relevance and application. If the Constitution is an animate object, Article 21 is its soul. If the Constitution is like a family consisting of parents and all different relations from various sides, Article 21 is its only child which infuses the life itself and also the meaning, zeal, expectation to

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32 AIR 1958 SC 538.
the lives of the whole family, without whose existence, the family cannot survive. Article 21 guarantees,

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

The “right to life” means not merely the continuance of a person’s “animal existence”. It means the fullest opportunity to develop one’s personality and potentiality to the highest level possible. In the existing stage of our civilization, it implies a reasonable standard of comfort and decency.\(^1\)

The “personal liberty” is one of the cherished goals of the Indian Constitution and deprivation of the same can only be in accordance with law and in conformity with the provisions thereof, as stipulated under Article 21 of the Constitution of India. The Hon’ble Supreme Court of India has settled the legal position that to have speedy justice is a fundamental right, which flows from Article 21 of the Constitution.\(^2\)

Liberty is the greatest heritage of man, it is considered as the greatest possession of a man . . . .\(^3\) According to Jean Jacque Rousseau, “to renounce liberty is to renounce being a man, to surrender the right of humanity . . . . such a renunciation is incompatible with man’s nature: to remove all liberty from his will is to remove all morality from his acts”.


\(^3\) Dr. B.M. Sharma and C.P. Chaudhary, Expanding Dimension of Freedom, 1 (Oriental Publishing House, 1967).
The individual cannot attain the highest in him unless he is in possession of liberty. Without liberty life is lifeless, and worthless to live, as it aims at securing conditions essential for the development of human personality attainment of happiness and dignified existence in the society.

Personal liberty under Article 21 is a 'compendious' term to include within itself all the varieties of rights which go on to make up the “personal liberty” of a man other than those which are specifically dealt with, in the several clause of Article 19 (1). In Maneka Gandhi v. Union of India, the Supreme Court expanded the horizons of the expression “personal liberty” and gave it the widest possible meaning. It was held:

“The expression “personal liberty” is Article 21 is of the widest possible amplitude and it covers a variety of rights which go to constitute the personal liberty of a man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19, 20 and 22”.

It is this right to life and personal liberty which is sought to be safeguarded by the justice delivery system. No Constitution can dispense with the provisions ensuring and realising the right to life.

4.1.1.3.2.2 Procedure Established by Law

Article 21 provides that no person can be deprived of his life or personal liberty except according to “procedure established by law”. The right to life and personal liberty is allowed to be taken away

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37 Supra note 27.

38 Supra note 27. Also see Also see Joginder Singh v. State of UP, AIR 1994 SC 1349; D.K. Basu v. State of West Bengal, AIR 1997 SC 610.
under certain special circumstances. This can be done only if the procedural formalities are complied with by the law.

From *A. K. Gopalan v. State of Madras,*\(^3^9\) to *Maneka Gandhi v. Union of India,*\(^4^0\) the expression “procedure established by law” came to be interpreted by the Supreme Court and it was held that mere prescription of some kind of procedure is not enough. But the procedure must be just, fair and reasonable and not arbitrary, fanciful or oppressive. Thus the Court introduced the principle of natural justice even with regard to the procedure. In other words, the Court adopted the “due process of law”.

From a realist’s point of view, we can say that the modern system of dispensation of justice is taking huge tolls in every sphere of the lives of the subjects of this nation.

4.1.1.3.2.3 Discussion of the Constituent Assembly

In the Constituent Assembly there was a debate on as to the omission of the words “due process of law (the American concept) and the substitution of the word “according to the procedure established by law” (Japanese concept) in Article 21. Dr. B.R. Ambedkar,\(^4^1\) the chairman of the drafting committee of Constituent Assembly explained:

“The question of ‘due process’ raises in my judgment, is the question of relationship between the legislature and the judiciary. In a federal Constitution it is always open to the judiciary decide, whether any particular law passed by the legislature is *ultravires or intravires* ....”.

\(^3^9\) AIR 1950 SC 27.
\(^4^0\) *Supra* note 27.. 
\(^4^1\) Dr. Ambedkar, VII. *CAD.* pp. 999-1001.
The “due process” clause, in my judgment would give the judiciary the power to question the law made by the legislature on any ground. In other words, the judiciary would be endowed within the authority to question the law not merely on the ground, whether it was in excess of the authority of the legislature but also on the ground whether the law was a ‘good law’. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But it may not be a good law, that is to say, it violates certain fundamental principles and the judiciary would have the additional power of declaring the law invalid. The question now raised by the introduction of the phrase “due process” is whether the judiciary should be given additional power to question the laws made by the state on the ground that may violate certain fundamental principles.

In pursuance of recommendations and decisions of Constituent Assembly on the interim report, Sir B.N. Rau, Constitutional Advisor prepared a draft Constitution which included the phrase “due process” which became famous by reason of the Fourteenth amendment of the American Constitution. Sir B.N. Rau, was however advised by the Mr. Justice Frankfurter of the Supreme Court of United States against adopting “due process” in Indian Constitution. The original intention of the makers of the American Constitution according to Mr. Justice Frankfurter, was to use “due process” as a procedural safeguard only. But the Supreme Court of United States enlarged it to be a substantive safeguard also that made the judicial review, according to Mr. Justice Frankfurter “undemocratic”. Now the Courts could strike down the policies of the government by taking the stand that it is substantively opposed to the provisions of the

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42 VII. Constituent Assembly debates, pp. 999-1001 also see Nishtha Jaswal. The Role of the Hon’ble Supreme Court of India with regard to the study of right to life and personal liberty, 51 (1990).
43 Select Documents III, 3 (1967).
Constitution. Therefore the decision of the house went against the “Due Process of the Law” clause and the insertion of the expression, “Procedure established by law” was accepted.

4.1.1.3.3 Protection in respect of certain offences (Article 20)

No justice delivery system can ignore some of the basics as contained in Article 20 which provides protection to an accused in respect of conviction for offences. Such protection incarnates the rule of speedy justice via. fair, just, and reasonable procedure. Article 20 provides protection against:

(a) Ex-post facto laws [Article 20 (1)]

(b) Double Jeopardy [Article 20 (2)]

(c) Self-incrimination [Article 20 (3)]

Article 20 (1) provides:

“No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence”.

Article 20 (2) provides:

“No person shall be prosecuted and punished for the same offence more than once”. This clause enacts the well known principle

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45 Lily Thomas v. Union of India, AIR 2000 SC 1650, also see Maru Ram v. Union of India, AIR 1980 SC 2147.
of criminal jurisprudence that "no one should be put in jeopardy twice for the same offence". 46

Article 20 (3) provides:

"No person accused of any offence shall be compelled to be a witness against himself". This clause is based on the maxim "No man is bound to accuse himself". 47

The object is to avoid harassment which can be caused if the accused is not given the protection of these fundamental rules prevailing in the legal systems. Thus the mandate of the Article is clearly to advance justice.

4.1.1.3.4 Protection against arrest and detention: Article 22

Article 21, requires some procedure established by law to deprive a person of his life or personal liberty. However, the procedure must not only be provided by a valid law, but it must also be just, fair and reasonable. 48 Article 22 contains some minimum procedural requirements which must be complied with if such procedure is followed.

Article 22 (1) guarantees the following safeguards against arrest or detention made under the ordinary law relating to the commission of offences:

(a) Right to be informed, as soon as may be, of the grounds for arrest or detention.

The object of this guarantee is to enable the person arrested to know as to why and for what offence he has

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48 Supra note 27.
been arrested. It is to afford him the earliest opportunity to remove any mistake or misapprehension or misunderstanding in the mind of the authority making the arrest and to enable the detenu to prepare for his defence.\(^9\) Thus it compels the authorities to ensure speedy delivery of justice.

(b) **Right to consult and to be defended by a legal practitioner of his choice.**

The object of this guarantee is to enable the detenue to prepare for his defence at the earliest. This right belongs to the arrested person not only at trial stage but also at pre-trial stage, more over this right of the accused has been held to be constitutional duty of the State.\(^50\) Therefore it enable the accused to seek justice in time.

(c) **Right to be produced before the nearest Magistrate within 24 hours of arrest.**

This right has been guaranteed to avoid the miscarriage of justice by correcting and approving the executive action of arresting a person. The Magistrate must apply his judicial mind to determine whether the arrest is regular, legal and in accordance with the law.\(^51\) Thus it gives judicial stamp to delivery of speedy justice.

(d) **Right not to be detained in custody beyond 24 hours without the authority of the Magistrate.**

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The object behind Article 22 is to provide safeguards with a view to avoid any miscarriage of justice and to provide speedy justice. It is to correct and check the misuse of power by the executive in arresting or detaining the accused. The purposes are:

(i) to prevent arrest and detention for the purpose of extracting confessions, or as a means of compelling people to give information;

(ii) to prevent police stations being used as a substitute for prisons - a purpose for which they are unsuitable;

(iii) to afford an early recourse to a judicial officer independent of the police on all questions of bail or discharge.\(^5\)

In essence we can say that Article 22 safeguards the liberty of a human being from being jeopardized by the executive by ensuring early dispensation of justice.

### 4.1.1.4 Directive Principles of State Policy

Part IV of the Constitution provides certain directive principals for the guidance of the state in order to achieve the task of social reconstruction and economic upliftment of the people. In the opinion of Dr. L.M. Singhvi,\(^3\) "The Directive Principles of State Policy are the life-giving provisions of the Constitution. These principles constitute the stuff of the Constitution and its philosophy of Social justice. These principles represent the pledges and the promises of our...

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Constitution which is not merely a literary document but a living instrument”.

Just as the modern state tries to protect the deprived, neglected and poor Sections of society against the common dangers of life such as unemployment, disease, old age, social oppression etc., therefore it should also protect them when legal difficulties arise. While counting the factors contributing to the delay in the delivery of justice, apart from the legal procedures required to be followed by the Courts and the delaying tactics played by the interested parties, poverty of the litigant also contributes to the delayed justice. Therefore, to achieve the objective of speedy justice the problem of non-accessibility to the justice administration on account of poverty should be considered. The Constitution of India directs, to deal with this malady by providing free legal aid.54

Free legal aid to the needy is, in a sense vital to the very survival of our social system and for the speedy justice also. Its denial implies a failure of the rule of law.55 The Constitution of India having declared justice social, economic and political as one of the major goals of the polity, there is a strong case for Courts, judges and the judicial process to come to terms, and try to determine the constitutional rights of the poor as a class, scrutinize governmental policies impinging on the poor and the disadvantaged, and promote and safeguard their material interests. Article 14 of the Indian Constitution provides that the state shall not deny to any person equality before the law or the equal protection of the laws. Equality in the administration of justice can thus be said to form the basis of our Constitution.

**Article 38** of the Indian Constitution states that

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“The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may, a social order in which justice, social economic and political, shall inform all the institutions of national life. It is perfectly reasonable to hold that legal aid and speedy justice is a constitutional imperative”.

Article 39-A obligates the state to secure

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

In Hussainara Khatoon (IV) v. Home Secretary, State of Bihar, the Supreme Court observed as follows:

“The right to free legal services is therefore, clearly and essential ingredient of ‘reasonable, fair and just’ procedure for a person accused of an offence and it must be held implicit in the guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reason such as poverty, indigence or incommunicado situation and the state is under a mandate to provide a lawyer to an accused person if the circumstances of the case and the needs of justice so required, provided of course

56 This directive principle was inserted by way of 42nd amendment of the Constitution Act, 1976.
the accused person does not object to provision of such lawyer". 58

The Fourteenth Report of the Law commission pointed out that, equality before the law necessarily involves the concept that all the parties to a proceeding in which justice is sought, must have an equal opportunity of access to the Court and of presenting their cases to the Court. 59

The myriad fact situations bearing testimony to denial of such fundamental right of the accused persons on account of failure on the part of prosecuting agencies and the executive to act, and their turning almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution. The morass into which the justice delivery system has presently fallen into is not on account of failure of law but on the account of the failure of the man both in the Executive and in the Judiciary who wielded the law.

The Constitution has been reared for immortality, if the work of men may justify aspire to such a title. It may, nevertheless perish in an hour by the folly, or corruption or negligence of its only keepers, THE PEOPLE. 60

4.1.1.5 Constitution of India: Expanding Horizons

'No Constitution can assert to remain living if it does not correspond to the needs of time and of the living beings whose life it is expected to regulate.'

"Justice is dead: long live the law" seems to be the epitaph on the grave stone of the older order . . . justice is struggling to be born, constitutional organs must midwife it" the draconian laws of the

58 Ibid at 99.
60 Sachidananda Sinha in his inaugural address as provisional Chairman to the constituent Assembly, 31. December 9, 1948.
internal emergency period virtually wiped off personal liberty of the people. Therefore the judiciary awakened itself from the slumber and freed Article 21 which embodies the most fundamental of the Fundamental Rights enshrined in part III of the Constitution of India, that is right to life and personal liberty, from the traditional barriers imposed by A K Gopalan v. State of Madras.61

In Maneka Gandhi v. Union of India,62 for the first time the Supreme Court interpreted Article 21 as positive right. The Supreme Court of India overruled Gopalan’s case63 and held that the procedure must be just, fair and reasonable. . . . natural justice, the great humanizing principle intended to invest law, with fairness. In order that the “procedure” is just, fair and reasonable, it should confirm to the principles of “natural justice” thus by holding the concept of natural justice as an essential component of law under Article 21, the Court has imported into our Constitution the American concept of “due process of law”.64

After Maneka Gandhi decision, Article 21 came to be interpreted as sanctuary of human values, prescribing a fair, just and reasonable. According to P. N. Bhagawati, J. the decision of the Supreme Court, in Maneka Gandhi case65 constituted a “watershed” in the history of the constitutional law of India and marks the beginning of one of the most fascinating development of constitutional law made by any summit Court in the world. The Supreme Court has interpreted this right in a manner which would advance the basic human rights of the Indian people and by a process of judicial interpretation, read into

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61 Supra note 38.
62 Supra note 27.
63 Supra note 38.
65 Nishtha Jaswal, The Role of the Hon’ble Supreme Court of India with regard to the study of right to life and personal liberty, preface v (1990).
the words in which this rights is couched, a number of human rights so as the conform to the international human rights norms.

The “right to speedy trial, has been interpreted to be part of the fundamental right to life and personal liberty. Article 21 requires that a person can be deprived of his liberty only in accordance with procedure established by law which should be a just, a fair and reasonable procedure. A procedure cannot be reasonable, fair or just unless it ensures a speedy trial for determination of the guilt of the person deprived of his liberty”.66 Though, the right to speedy trial has not been specifically enumerated as a fundamental right in our Constitution, but the Court held that “it is implicit in the broad sweep and content of Article 21.67 The Supreme Court thus observed:

“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”.68

In Raghubir Singh v. State of Bihar,69 the Supreme Court reiterated that “the right to speedy trial” is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. However, the question, as to whether in a case, the right to speedy trial was infringed, would depend on a number of factors relevant for such determination. The Court might consider whether the delay was due to ‘the complex nature of the case’ or that it was caused by the prosecuting agency, or it might be due to the ‘delaying tactics’

67 Supra note 27.
68 Supra note 33.
69 AIR 1987 SC 149.
adopted by the accused. It has been further held, “the accused cannot be permitted to take advantage of his own wrong and take shelter under speedy trial to escape from prosecution”.

In *A.R. Antulay v. R.S. Nayak*, a Constitution bench of five Judges of the Supreme Court gave a wide consideration to the every fact of speedy trial. The Court stated that it was “neither advisable nor practical to fix any time limit for trial of offences . . . . We do not think it is possible to lay down any time schedules for the conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular Court, means of communication and several other circumstances have to be kept in mind”. The Court issued a number of the guidelines regarding speedy trial. The Court also forewarned that these propositions are neither exhaustive as it is difficult to foresee all situations, nor is it possible to lay down any hard and fast rules. These propositions are:

(c) The fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in accused to be tried speedily, the ‘Right to Speedy Trial’ is the right of the accused. It is also in public interest or that it serves the societal interest. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(d) The ‘Right to Speedy Trial’, flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

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71 *Supra* note 38.
(e) The concerns underlying the “Right to speedy trial from the point of view of the accused” are:

(i) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;

(ii) The worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(iii) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

(f) At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, “delay is a known defence tactic”. Since the burden of proving the guilt of the accused lies upon the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution. Of course, there may be cases where the right is alleged to be asserted and the answer is - who is responsible for the delay? The proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. The mere fact that an application/ petition is admitted and an order of stay granted by a superior Court is by itself no proof that the proceeding is not a
frivolous. Very often these stays are obtained on an ex-
parte representation.

(g) While determining whether undue delay has occurred
(resulting in violation of right to speedy trial) one must
have regard to all the attendant circumstances, including
the nature of offence, number of accused and witnesses,
the work-load of the Court concerned, prevailing local
conditions and so on – what is called, the “systematic
delay”. It is true that it is the obligation of the state to
ensure a speedy trial and state includes judiciary as well,
but a realistic and practical approach should be adopted
in such matters instead of a pedantic one.

(h) Each and every delay does not necessarily prejudice the
accused. Some delays may indeed work to his advantage.
However, inordinately long delay may be taken as
presumptive proof of prejudice. In this context, the fact
of incarceration of accused will also be a relevant fact.
The “prosecution become persecution”, but when does the
prosecution becomes persecution again depends upon the
facts of a given case.

(i) The “demand” rule cannot be recognized or given effect
to. An accused cannot try him: the Court at the behest of
the prosecution tries him. Hence, the plea of an accused
denial of speedy trial cannot be defeated by saying that
the accused did at no time demand a speedy trial. If in a
given case, he did make such a demand and yet he was
not tried speedily, it would be a plus point in his favour,
but the mere non-asking for a speedy trial cannot be put
against the accused. Even in U.S.A. the relevance of
demand rule has been substantially watered down in Barker and other succeeding cases.

(j) Ultimately, the Court has to balance and weigh the several relevant factors-'balancing test' or 'balancing process'- and determine in each case whether the right to speedy trial has been denied in a given case.

(k) Ordinarily speaking, where the Court comes to the conclusion that right to speedy trial of the accused has been infringed the charges or the conviction as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the Court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded, or as may be deemed just and equitable in the circumstances of the case.

(l) It is neither advisable nor practicable to fix any time limit for the trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to Speedy Trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of U.S.A too has repeatedly refused to fix any such outer limit in spite of the Sixth amendment. Nor it can be said that non-fixing
any such outer limit ineffectuates the guarantee of Right to speedy trial.

An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.73

While analyzing this judgment, Prof. P.S. Jaswal observed:

“There the clarion call given by the highest judiciary will awaken the executive and the subordinate judiciary from their deep slumber and they will join hand to make this right to speedy trial a living reality for the “little Indian”.

A Constitution bench of seven judges of the Apex Court in P. Ramachandra Rao v. State of Karnataka,74 Reiterated with approval the propositions expounding the right to speedy trial and laid down guidelines like they did in A. R. Antulay’s case.75 The Court observed that it was neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. Holding that the Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of the ‘Code of Criminal procedure, to effectuate the right to speedy trial, the Apex Court observed:

“In its zeal to protect the right to speedy trial of an accused, the Court cannot devise and almost enact bars of limitation beyond which trial shall

74 AIR 2002 SC 1856.
75 Supra note 38.
not proceed and the arm of law shall lose its
hold though the Legislature and the statutes
have not chosen to do so. Bars of limitation,
judicially engrafted, are no doubt, meant to
provide a solution to the aforementioned
problems. But a solution of this nature gives
rise to greater problems like scuttling a trial
without adjudication stultifying access to
justice and giving easy exit from the portals of
justice. Such general remedial measures cannot
be said to be apt solutions”.76

The Court, however found an appropriate occasion to remind the
union of India and the State Governments of their constitutional
obligation to strengthen the judiciary-quantitatively and qualitatively,
by providing requisite funds, manpower and infrastructure. It being
the constitutional obligation of the state to dispense speedy justice,
more so in the field of criminal law, the Court said paucity of funds or
resources was no defence to denial of right to justice, emanating from
Articles 14, 19 and 21 and the preamble to the Constitution as also
from the directive principles of state policy.77

Thus the right to get justice is the ultimate goal of any legal
system and the speedy trial is the essence of justice delivery system
and there can be no doubt that delays in trial by itself constitutes
injustice. A procedure which does not ensure a reasonably quick trial
can not be regarded as reasonable fair or just and it would
contemptuous of Article 21. There can, therefore, be no doubt that
speedy trial means speedy justice and by speedy trial we mean

76 Supra note 64 at 1869.
77 Ibid at 1873.
reasonably expeditions trial which is an integral and essential part of
the fundamental right to life and liberty enshrined in Article 21.\textsuperscript{78}

Recently, the Hon’ble Supreme Court of India issued directions
in \textit{All India Judges Association v. Union of India},\textsuperscript{79} to all states to
increase the strength of the lower judiciary five times than the existing
strength and also dispensed with the requirement of three years
practice in order to attract the best talent. The relevant paras of the
judgement are:

“24. Mr. F. S. Nariman has drawn our attention to yet another
important aspect with regard to dispensation of justice, namely, the
huge backlog of undecided cases. One of the reasons which has been
indicated even in the 120\textsuperscript{th} Law Commission Report was the
inadequate strength of Judges compared to the population of the
country. Even the Standing Committee of Parliament headed by Shri
Pranab Mukherjee in its 85\textsuperscript{th} Report, submitted in February, 2002, to
Parliament, has recommended that there should be an increase in the
number of Judges. The said committee has noted the judge-population
ratio in different countries and has adversely commented on the judge-
population ratio 10.5 judges per 10 lakh people in India. The Report
recommends the acceptance, in the first instance, of increasing the
dependence of judges to 50 judges per 10 lakh people as was recommended by
the 120\textsuperscript{th} law Commission Report.

25. An independent and efficient judicial system is one of the
basic structures of our Constitution. If sufficient numbers of judges
are not appointed, justice would not be available to the people, thereby
undermining the basic structure. It is well known that justice delayed
is justice denied. Time and again the inadequacy in the number of
judges has adversely been commented upon. Not only have the Law

\textsuperscript{78} \textit{Supra} note 13.
\textsuperscript{79} \textit{AIR} 2002 SC 1752; (2002) 2 SCJ 598.
Commission and the Standing Committee of Parliament made observations in this regard, but even the Head of the Judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard there to. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the Judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have additional judges, not only will be the posts have to be created but infrastructure required in the form of additional Court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies in the Subordinate Courts at all levels should be filled, if possible latest by 31\textsuperscript{st} March, 2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in a phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the judge strength by 10 per 10 lakh people every year could be one of the methods, which may be, adopted thereby completing the first stage within five years before embarking on further increase if necessary.

32. In the All India Judges’ case,\textsuperscript{30} this Court has observed that in order to enter the Judicial Service, an applicant must be an Advocate of at least three year’s standing. Rules were amended

\textsuperscript{30} (1993) 4 SCC 288 at 314.
accordingly. With the passage of time, experience has shown that the best talent, which is available, is not attracted to the Judicial Service. A bright young law graduate after 3 years of practice finds the Judicial Service not attractive enough. It has been recommended by the Shetty Commission after taking into consideration the views expressed before it by various authorities, that the need for an applicant to have been an Advocate for at least 3 years should be done away with. After taking all the circumstances into consideration, we accept this recommendation of the Shetty Commission and the argument of the learned Amicus Curiae that it should be no longer mandatory for an applicant desirous of entering the Judicial Service to be an advocate of the least three year's standing. We, accordingly, in the light of experience gained after the judgment in All India Judges' case, direct to the High Courts and to the State Governments to amend their rules so as to enable a fresh law graduate who may not even have put in even three years of practice, to be eligible to compete and enter the Judicial Service. We, however, recommend that a fresh recruit into the Judicial Service should be imparted with training of not less than one year, preferably two years”.

The remarks of a seven judges bench of the Supreme Court of India in P. Ramachandra Rao v. State of Karnataka,81 are also pertinent here:

“... The root cause for delay in dispensation of justice in our country is poor judge population ratio. Law Commission of India in its 120th report on man power planning in judiciary (July 1987), based on its survey, regretted that in spite of Article 39A added as a major directive principle in Constitution by 42nd amendment (1976), obliging the state to secure such operation of legal system as it promotes justice and to ensure that opportunities for securing justice are not

81 JT 2002(4) SC 92.
denied to any citizen. Several reorganization proposals in the field of administration of justice in India have been basically patchwork, ad hoc and unsystematic solutions to the problem . . . . The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population . . . . The law Commission suggested that India required 107 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e. 50 judges per million population in a period of five years but in any case not going beyond ten years. Touch of said sarcasm is difficult to hide when the Law Commission observed (in its 120th report, ibid) that adequate reorganization of the Indian Judiciary is at the one and at the same time everybody’s concern and therefore nobody’s concern”.

4.1.1.6 Other Provisions

Our constitutional fathers contemplated the situation in which a situation may arise that the higher Courts may be having excess workload. Therefore they included elaborate provisions for dealing with the excess work by inclusion of the following Articles:

“127. Appointment of ad hoc Judges. (1) If at any time there should not be a quorum of the Judges of the Supreme Court available to hold or continue any session of the Court, the Chief Justice of India may, with the previous consent of the President and after consultation with the Chief Justice of the High Court concerned, request in writing the attendance at the sittings of the Court, as an ad hoc Judge, for such period as may be necessary, of a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to be designated by the Chief Justice of India.

(2) It shall be the duty of the Judge who has been so designated, in priority to other duties of his office, to attend the sittings of the Supreme Court at the time and for the period for which his attendance is required, and while so attending he shall have all the jurisdiction,
powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

128. Attendance of retired Judges at sittings of the Supreme Court: Notwithstanding anything in this Chapter, the Chief Justice of India may at any time, with the previous consent of the President, request any person who has held the office of a Judge of the Supreme Court or of the Federal Court or who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court to sit and act as a Judge of the Supreme Court, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that Court:

Provided that nothing in this Article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that Court unless he consents so to do.

224A. Appointment of retired Judges at sittings of High Courts: Notwithstanding anything in this Chapter, the Chief Justice of a High Court for any State may at any time, with the previous consent of the President, request any person who has held the office of Judge of that Court or of any other High Court to sit and act as a Judge of the High Court for that State, and every such person so requested shall, while so sitting and acting, be entitled to such allowances as the President may by order determine and have all the jurisdiction, powers and privileges of, but shall not otherwise be deemed to be, a Judge of that High Court:

Provided that nothing in this Article shall be deemed to require any such person as aforesaid to sit and act as a Judge of that High Court unless he consents so to do". 
Even the parliament has been empowered to establish additional Courts for the better administration of laws as provided by Article 247 which is as follows:

“Notwithstanding anything in this Chapter, Parliament may by law provide for the establishment of any additional Courts for the better administration of laws made by Parliament or of any existing laws with respect to a matter enumerated in the Union List”.

These provisions make it clear that the administration justice by the Courts was given ample priority so that the fruits of freedom could reach to the people of this country.

4.1.2 Other Statutes

Rule 46 of the Bar Council of India requires, “Free legal assistance to the indigent and oppressed is one of the highest obligations an Advocate owes to Society”. Justice V.R. Krishna Iyer, while heading an expert committee on legal aid, stated and quoted in the famous case of M.H. Hoscot, “The finest hour of the Indian Bar arrives not when a fancied few draw astronomical incomes but when the profession as a whole with a lively sense of internal distributive justice agrees to be geared to a scheme of legal service at once competent, cheap and socially promising”.

The legitimate expectations of the people are that “whenever they come up with a grievance before an adjudicatory forum, the forum should decide the matter within reasonable time. The aim of law is to make the justice speedy, cheap and easy. The speedy justice

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is deep rooted in the body and spirit of criminal jurisprudence. The aim of the procedure to be followed in any adjudicatory proceeding should be to ensure the compliance with basic principles of natural justice and avoidance of formalism. In our quest for justice, it is necessary for us to discuss the distinction, importance and relationship between substantive and procedural law. The function of substantive law is to define, create or confer substantive legal rights or legal status or to impose and define the nature and extent of legal duties. Whereas the function of procedural law is to provide the machinery or the manner in which the legal rights or status and legal duties may be enforced or recognised by a Court of law or other recognised or properly constituted tribunal. The Hon'ble Supreme Court of India rightly discussed the relationship between the substantive and the procedural law in the following words, “A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.” Therefore, in a legal system, the procedural laws assume significant importance.

In a legal system whose pillars are nourished with the creed of distributive justice and human dignity, it is an affront to our sense of justice and democratic way of life that we are depriving a considerable Section of our citizens of their basic freedoms by this long-term

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85 *Supra* note 1.
incarceration. It is a great paradox that injustice is being administered to them in the process of and prayer for justice. The worst aspect of our Justice Delivery System is the delay caused in the disposal of the civil and criminal cases and detention of the huge number of under-trials particularly the poor-accused pending trial. The basic premise of criminal justice system is that the punishment must follow judgment of guilt and should not precede it and the accused is presumed to be innocent during all the stages of criminal prosecution till his guilt is proved beyond reasonable doubt by the prosecution. It is undesirable that the criminal prosecution should wait till everybody concerned has forgotten all about the crime. Undue procrastination of trials results in injustice for an unduly prolonged process results in destruction of evidence or the witnesses may die.

The distributive justice demands that the criminal justice should be swift and sure, that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. A criminal trial, which drags on for an unreasonable long time, is not a fair trial.

Our administration of justice is a legacy of British rule, this was grafted into Indian soil without realizing that it was unsuited to Indian conditions. Its innate complexity, rigidity and expensiveness, has resulted into a virtual denial of right to speedy justice. The tardy progress of the legal proceeding is the malady which threatens to bring the administration of justice to the grinding halt. The most unfortunate
development in the administration of justice is that it preserves the concept of justice in letter, but strangulates it in spirit.

Each and every provision of all the principal enactment relating to the procedures for the adjudication of the disputes coming before it are primarily concerned with two things:

1. In-time delivery of the justice; and

2. Procedural guarantees to both the sides particularly the accused-defendant for proving his innocence.

The changes being made from time to time are not able to meet the needs of present time. The Law Commission reiterated its stand by quoting from the Rankin Report:

"Unless a Court can start with a reasonably clean state, improvement of methods is likely to tantalise only. The existence of a mass of arrears takes the heart out of a presiding judge. He can hardly be expected to take a strong interest in preliminaries. When he knows that the hearing of the evidence and decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is a temptation to which many presiding officers succumb, to hold back the heavier contested suit and devote attention to the lighter ones. The turn-out of decisions in contested suits is thus maintained somewhere near the figure of institutions, while the really difficult work is pushed further into the background.91"

In the arrears committee headed by Justice V.S. Malimath (Malimath Committee) was constituted to identify various causes for accumulation of arrears in the High Courts and other Courts and to suggest remedial measures. Again the Malimath Committee made a

large number of recommendation for the reforms of criminal justice system regarding the justice to victims of crime and police investigation.\textsuperscript{92}

4.2 International Developments

4.2.1 Introduction

With the emergence of large number of nation states, the role of international community has increased in the largest proportions particularly in the post-second world war era. The problems facing the world family has been attempted to be tackled at various international forums. Among these problems, the issues relating to right to life and relating to making the life of people free from the problems of poverty, unemployment, corruption have been taken care of. Similarly the dispensation of justice has also become the focus of their deliberations. Therefore various international conventions, declarations and the efforts of the United Nations have, directly or indirectly, tried to ensure the rights emanating from the right to live with human dignity.

All human beings are born free and equal in dignity and rights. Their right to live in a peaceful and secure environment is fundamental to all human beings. Without them, the development of just, equitable and healthy society cannot exist. The right to seek “speedy justice” is not only a fundamental right enshrined in the Constitution of India but also a basic human (universal) right.\textsuperscript{93} The “universe of justice” is built on the reverence for human rights. V. R. Krishnan Iyer, J., has rightly pointed out,

\begin{small}
\textsuperscript{92} Extract from the report of Malimath committee on reforms of criminal justice system. Regarding justice to victims of crime and police investigations, Govt. of India, Ministry of Home Affairs, (March, 2003).

\end{small}
“In the modern times, faith in fundamental Human Rights and in the dignity and worth of a human person are the values and the goals which currently twinkle as stars in the sky and awe us verbally as incarnations in international instruments”.94

The philosophy of “Right to Speedy Justice” has its roots in the natural rights and was further developed by Charter of rights95 Magna Carta in 1215 AD, which provides:

“To no man will we deny, to no man will we sell, or delay, Justice or rights”.

Similar provisions were laid down in various National Constitutions and “Bills of Rights” like the Petition of rights (1627), and Bill of Rights (1689) Massachusetts, (1780) and of France, (1789) etc.96 “Unless the ‘Right to speedy justice and fair trial’ are secured in national and international scenes by Human Rights, the economic, political, social order and tranquility, will be shattered into pieces, chaos, confusion and anarchy will prevail, destroying the past, crucifying the present and forestalling the future of humanity”.97

4.2.2 The United Nations and International Conventions

International community as a body of nations stands on a higher footing with highest responsibility. It has made several efforts at various levels with regard to the problem of the whole mankind. In addition to other problems, the concept of “right to speedy justice” has been given due importance particularly by the Charter of Human


4.2.2.1 UN Charter

The charter of the United Nations accords the “highest place of importance” to the object of encouraging respect for the Human Rights.99

The “Preamble” to the Charter of the United Nations100 reads as:

We the people of the United Nations are determined. . . .

- To reaffirm faith in the fundamental “human rights”, in the dignity and worth of the Human person; in the equal right.

- To establish conditions under which justice and respect for the obligation arising from treaties and other sources of international law can be maintained.

- To promote social progress and better standards of life in larger freedoms.

Article 1 (3), of Charter of United Nation provides

“to promote and encourage respect for Human Rights and fundamental freedoms of all”.

100 Preamble to United National charter. . . . India is founding member Nation in resolution 2200 (XXI) of 16 December, 1966.
4.2.2.2 Universal Declaration of Human Rights

To achieve the objective contained in UN Charter, the United Nations General Assembly adopted the Universal Declaration of Human Rights on December 10, 1948. Its "preamble" provides:

"To reaffirm faith in fundamental human rights, in the dignity and worth of the human person".

The Universal Declaration of Human Rights, 1948, has become the basic international pronouncement of the inalienable and inviolable human rights: "Right to fair and speedy trial" is inherent in many provisions of Universal Declaration of Human Rights. The provisions are as follows:

(a) Article 3 provides that everyone has the right to life, liberty and the security of person.

(b) Article 5 provides no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.

(c) Article 8 envisages that everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

(d) Article 9 says no one shall be subjected to arbitrary arrest, detention, or exile.

(e) Article 10 declares that everyone is entitled in full equality, to a fair and public hearing by an independent

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and impartial tribunal, in the determination of his rights and obligations and of any criminal charges against him.

(f) Article 11 (1) stipulates that everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence.

4.2.2.3 The International Covenant on Civil and Political Rights, 1966

Besides the Universal Declaration of Human Rights, 1948, the United Nations General assembly also adopted two covenants. The International Covenant on Economic, Social and Cultural Rights, 1966, and the International Covenant on Civil and Political Rights, 1966. The convention on Civil and Political Rights clearly states in clear terms the need for an effective system and the due adherence to the basic principles of justice delivery system. The main provisions are as follows:

(a) The "preamble"...says that the rights mentioned in the Charter of United Nations providing for the 'inherent dignity' and 'other inalienable rights' are the foundations of freedom, justice and peace in the world.

(b) Article 2(3) states as:

"Each state party to the present Covenant undertakes:

(a) to ensure that any party whose rights or freedoms as herein contained are violated shall have an effective remedy, notwithstanding that the violation

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104 In Resolution 2200 (XXI) of 16th December, 1966.
has been committed by persons acting in official capacity;

(b) to ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the state, and to develop the possibilities of judicial remedy;

(c) to ensure that the competent authorities shall enforce such remedies when granted”.

(c) Article 9(3)\textsuperscript{101} states as:

“Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings and should occasion arise for execution of the judgment”.

(d) Article 9(4),\textsuperscript{106} reads as:

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

\textsuperscript{106} Ibid at 859-860.
(e) Articles 14(3) (b) and (c) directs for “speedy trial” in the following words:

“In the determination of any criminal charges against him, every one shall be entitled to the following minimum guarantees:

(a) To have adequate time and facilities for the preparation of his defence and to communicate with the counsel of his own choosing.

(b) To be tried without undue delay”.

4.2.2.4 Declaration on Protection from Torture

At its 30th Session, in 1975, the UN General Assembly adopted the declaration for protecting all persons from being subjected to torture and other cruel, inhumane or degrading treatment or punishment.107

4.2.2.5 The European Convention for the Protection of Human Rights And Fundamental Freedoms, 1950108

The Convention also guarantees the basic human rights including the right to have speedy justice.109

(a) Article 2 provides that everyone’s right to life shall be protected by law.

(b) Article 3 provides no one shall be subjected to torture or inhumane, degrading treatment or punishment.

(c) Article 5 (2) provides that everyone who is arrested shall be informed promptly in a language, which he

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107 Ibid at 862.
108 Supra note 90 at 16.
understands, of the reasons for his arrest and of any charge against him.

(d) Article 5(3) provides that everyone arrested or detained . . . shall be entitled to trial within a reasonable time or to be released pending trial.

(e) Article 6 provides for “right to a fair trial”. Article 6 (3)(b) provides as “to have adequate time and facilities for preparation of defence”.

**4.2.2.6 The American Convention on Human Rights, 1969**

The American Convention on Human Rights\(^\text{110}\) is another regional Human Rights Convention, which guarantees the basic Human Rights including right to have speedy and fair trial.

(a) Article 4 ensures right to life. It provides that every person has the right to have his life respected. This right shall be protected by law, and, in general from the moment of conception. No one shall be arbitrarily deprived of his life.

(b) Article 7 guarantees right to personal liberty. It provides that:

(i) Every person has the right to personal liberty and security.

(ii) No one shall be deprived of his physical liberty except for the reasons and under the conditions established before hand by the Constitution of the State party concerned or a law established in pursuance thereto.

\(^{110}\) Signed on 22\(^{nd}\) November 1969 at Costa Rica.
(iii) No one shall be subjected to arbitrary arrest or imprisonment.

(iv) Anyone who is detained shall be informed of the reasons for his detention and shall be promptly notified of the charges against him.

(v) Any person detained shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to be released without prejudice to continuation of the proceedings his release may be subject guarantee to assure his appearance at trial.

(vi) Anyone who is deprived of his liberty shall be entitled to recourse to a competent Court, in order that the Court may decide without delay on the lawfulness of his arrest or detention and order his release if the arrest or detention is unlawful.

(c) Article 8 ensures right to a fair trial. It provides:

(i) "Every person shall have the right to a hearing with due guarantees and a reasonable time, by a competent independent, and impartial tribunal, previously established by law, in the substantiation of any accusation of a criminal nature made against him or for the determination of his rights or obligations.

(ii) Every person accused of a serious crime has the right to be presumed innocent so long as his guilt has not been proved according to law. During the
proceedings, every person entitled, with full
equality to the following minimum guarantees:-

(a) Prior notification in detail to the accused of
the charges against him.

(b) Adequate time and means for the preparation
of his defence”.

Thus we can that the right to have speedy justice is not only
universally recognized but is also guaranteed by various international
and regional declarations and conventions.

4.2.3 The Right to Speedy Justice: The English law

In England, the right to speedy justice and fair trial is
recognized and guaranteed by the principles of natural justice, rule of
law and by the Magna Carta. The Magna Carta (*Magna Carta
Libertatum*) in 1215 AD, from which the “right to speedy trial” has
been derived, provides:

“To no man will we deny, to no man will we sell, or delay
justice or rights”.

The “Magna Carta” is itself, treated as “fundamental law” of the
land and no parliament would have ever dared to pass any law in
supposed breach of the same.111 Though England has no written
Constitution and as such it had no “constitutionally guaranteed
fundamental rights” but practically, human rights were always secured
in England, due to its free press and strong public opinion. Thus the
English law also recognizes the right of personal freedom, the right of
an individual to have any case affecting him to be tried in accordance
with the principles of natural justice, thus the “right of speedy trial” is

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111 Forgetting this implies limitation King Charles-I, had asserted his sovereign
powers under the “divine rights of kings” and ultimately he had to pay with his
head.
a part of personal freedom in England. Further the British parliament has now enacted the Human Rights Act, 1998, which requires that all the Courts are to interpret the English laws in conformity with the European convention on human rights as interpreted by the European Court of Human Rights.

In essence the denial of “right to speedy justice” in England, is a denial of human rights and natural right and also the violation of the “Rule of Law”.

4.2.4 The Right to Speedy Justice: The American Concept

In United States, the “right to speedy trial” is a constitutionally guaranteed right. The ‘sixth amendment’ expressly guarantees “the right to speedy trial” to an accused. This right is not only fundamental in nature but is also ensured by the “Due Process Clause” of the fourteenth amendment.

4.2.4.1 The doctrine of “due process of law”

The fifth and fourteenth amendments ensured that the federal or state authorities have no power to deprive a person of his life, liberty or property without “due process of law”.

‘Willis’: has beautifully summed up these guarantees as follows:

“The guarantee of ‘due process of law’ is so inclusive that, even if all constitutional guarantees are abolished, even then there still be a sufficient protection to personal liberty. . . . Legislature may have reasons for the enactment of laws but the Supreme Court of United

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115 Supra note 88 at 2.
116 Supra note 90 at 16.
States would measure the legislative reason with its own intellectual yard stick”.

The principle of “right to speedy trial” has also been incorporated into Virginia Declaration of Rights of 1776. The Federal Act, 1974 (i.e. Speedy Trial Act) which provides and establish time limits for carrying the major events – the information, indictment, arrangements and trial commencement in the prosecution of criminal cases.116

The constitutional rights to speedy trial have been thought essential to protect at least three basic demands of criminal justice in the ‘Anglo-American’ legal system.

1. To ‘prevent’ undue and oppressive incarceration prior to trial.

2. To ‘minimize’ anxiety and concern accompanying public accusation; and.

3. To ‘limit’ the possibilities that long delay will impair the ability of an accused to defend himself.117

4.2.4.2 The Rationale of “Right to Speedy Trial

The right to get effective justice at a reasonable speed is necessary for the following reasons:

1. It is the right of the defendant to have “prompt trial”.118 The trial must begin without “unnecessary delay” and with in time limits specified by law.119

2. The nature of “the right of speedy trial” is generally different from any of the other rights enshrined in the Constitution for the protection of the accused.

In Barker's case the Supreme Court of United States held that in addition to general concern that all accused person should be treated according to decent and fair procedure, there is also 'societal interest' in providing a “speedy trial”, which exists in the accused. This 'societal interest' includes the following considerations:

1. Lack of prompt trial contributes to a large backlog of cases particularly in urban Courts, which among other things, enable the defendant to negotiate more effectively for plea of guilty, to lesser offences and to otherwise manipulates the system.

2. Person releases on bond for lengthy periods awaiting trial have an opportunity to commit other crimes.

3. The longer an accused is free awaiting the trial, more tempting it becomes his opportunity to jump bail and escape.

4. Delay between arrest and punishment may have a detrimental effect on rehabilitation.

5. Confining accused persons who cannot give bails, to the jails contributes to the overcrowding and generally deplorable state of these institutions.

6. Overcrowding and deplorable conditions in jail can lead to violent rioting.

7. Lengthy pretrial detention is costly not only on maintaining the prisoners in jail but in terms of society’s

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loss of the prisoner's wages which he might otherwise have earned and in terms of the necessity at times of supporting families of incarcerated breadwinners.

In the *Peter H. Klopfer* case, Justice Powell, expressing 'unanimous' view of the Court observed that:

1. The "Right of Speedy Trial" is a more vague and generically a difficult different concept than other constitutional rights guaranteed to accused person and it cannot be qualified into a specific number of days or months and it is impossible to pin point a precise time in the judicial process when the 'right' must be asserted or considered waived.

2. While a defendant’s assertion of, or failure to assert, his "right to speedy trial" is one of the factor to be considered and inquiry into the deprivation of such 'right', the primary burden remains on the Courts and on the prosecution to assure that cases are speedily brought to trial.

3. A claim, of a defendant that he has been denied, his right to a speedy trial, is subject to a balancing test in which defendant are weighed and the Court should consider such factors like length of the delay, the defendant assertion or non assertion of his right, and prejudice to the defendant resulting form delay, in determining whether a defendant’s "right to speedy trial" has been denied.

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121 *Ibid* at 101.
(4) While the petitioner’s case, involving such an extraordinary delay was a close one, the facts that prejudice to him was minimal and that the petitioner himself did not want a ‘speedy trial’ outweighed the deficiency attributable to the state’s failure to try the petitioner sooner and hence the petitioner was not denied to his right to speedy trial.\(^{123}\)

Therefore we can say that the right to speedy trial is a constitutional guarantee in America.

4.2.5 The right to speedy trial: in Bangladesh

The Government of Bangladesh,\(^{124}\) in its bid to maintain order and security has enacted “The Law and Order Disruption Crimes (Speedy Trial) Act, 2002”\(^{125}\). It is special anti-crime, and anti-terrorism law, designed to combat crimes relating to toll collection hindrance of all traffic movement, vandalism, smuggling, terrorism, snatching, extortion, manipulation of tender and bidding, threats and ransom seeking. These designated crimes are thought to be responsible for the disruption of law and order and are to be tried “speedily and summarily” in special Courts. This new law has far-reaching constitutional and human rights implications.\(^{126}\)

4.2.6 India’s International Obligations

The “Right to speedy trial” being an internationally recognized human right, is thus part of our national *grundnorm*, by virtue of Article 51 of the Constitution.\(^{127}\) Article 51 (c) provides, “The states

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\(^{125}\) On 9 April, 2002.

\(^{126}\) *Supra* note 120 at 78.

\(^{127}\) *Supra* note 90 at 15.
shall endeavour to foster respect for international law and treaty obligations in the dealing of organized peoples with one another”.

Article 253 of the Indian Constitution provides, “Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”.

India has acceded to ‘The Universal Declaration of Human Rights, 1948’, and ‘The International Covenant on Civil and Political Rights, 1966’, and is a signatory to more than 16 other major international human rights instruments which requires the signatory country to evolve a system of speedy trial in criminal cases. But India has failed to implement these international instruments even if that the parliament has the power to make laws in this respect.

4.3 Conclusion

The analysis clearly proves the point that no system of the world can survive without providing and protecting various guarantees to each of its subject. Moreover the world community has always envisaged the emergence of a world where health, education and delivery of justice should get the highest priority.

“A seeker of truth neither desires to become a monarch nor desires to go to heaven to enjoy comforts at his will for his virtuous deeds nor desires to liberate himself from cycle of birth and death but

he only desires intensively to all animate and inanimate entities to be 
redeemed from their pains and sufferings”.

This verse depicts that the judges are the sages and seekers of 
truth from whom the people of whole mankind have high expectations. 
Their role has assumed gigantic proportion in the modern world. It is 
in this perspective that the national and international laws of the world 
are made to make and provide an effective Justice Delivery System.