CHAPTER 9
CONCLUSION AND SUGGESTIONS

‘In India, major crimes are likely to remain unreported; if reported, frequently not registered; if registered, the true perpetrator not found/accused; if found, not prosecuted; if prosecuted, not charged; if charged, usually not convicted; if convicted, frequently not punished. Lenient view is usually taken at one stage or the other.

At each crucial stage – reporting the case, registering the FIR, detecting the true accused, sustaining the prosecution, framing the charges, convicting and actual punishing the guilty, the system has enough loopholes to allow criminals to walk free’.

The aforesaid lines aptly describe the existing state of affairs of the criminal justice machinery in India. Justice Delivery System aims to ensure that the justice should be cheap, handy, speedy and substantial. Moreover the Right to justice is deep rooted in the body and spirit of Jurisprudence. This goal of right to justice can only be achieved by the combined and result oriented collective creative thinking and planned action on the part of legislature, judiciary, executive, media, bar, society and the nation as a whole. The problems of delays in disposal of cases and arrears of cases are so complex that it is difficult to find immediate and satisfactory solutions. The masses have been crying in the wilderness for so many years, with a view to be ensured of right to justice.

The delay in dispensation of justice is not good for any society. When justice is not done promptly, it encourages people to adopt unethical and illegal means to settle their disputes. If this happens, it would ultimately lead to an anarchy and chaos in the society. Our country is on the verge of this disastrous situation. The maintenance of Law and order and dispensation of speedy justice is therefore *sine qua non* for an orderly society. The pendency of cases is constantly on the rise and is becoming unmanageable with each passing day. A bare glance at the increasing trend in pendency of cases is sufficient to portray the crisis with the judicial system. It is no exaggeration to state that our Justice Delivery System is cracking under the oppressive weight of the arrears and delays, which calls for its revamping in the proper perspective. From time to time several Commissions and Committees have studied the problem of arrears and delay in Courts. The augmentation and reforms whenever made in the system have effected only marginal improvements. However, the rate disposal of cases could never match the rate of filing of new cases and consequently, the arrears have been constantly on the increase.

The constant increase in the crime rate, recidivism and white-collar crimes speak volumes of truth that laws’ delays have brought disastrous consequences. Every day a new scam is unearthed in India. These scams will continue to occur so long we are not able to punish the offenders with a reasonable expediency.

Debates, deliberations, discussions and law, lawyers, legislation are there in abundance, still we are lagging far behind. Continued endeavors, though more in papers only, are being made so that law and justice could be brought out of the legal labyrinth and technical niceties of procedure in order to give justice a humanizing face. Justice and it’s expedient delivery therefore has become the need of the hour so as to maintain the trust and confidence of the people in the judicial system.
The problem of delays and arrears of cases in Courts is a complex problem and its causes are diverse and multidimensional. This is mainly due to the result of increasing institution of cases, which in turn relates to factors such as increase in crime rate, increase in population, awareness of rights and increase in litigation by and against governments etc. After going through the literature available, the personal first hand experience on the varied subjects leading to the delay in justice and analysis of the problem from different dimensions, the researcher has come out with some suggestions in order to cure the suffocation syndrome in our Justice Delivery System.

9.1 Suggestions for formulation of judicious policy

9.1.1 Introduction

Every institution of life and nation must feel the pulse of needs of times. If they fail to do so, disastrous consequences are bound to ensue. The terms ‘Law’, ‘Morality’, ‘Justice’, ‘Goodness’ or ‘Badness’ etc. are of such nature that their meaning changes from time to time, place to place, situation to situation and even person to person. Therefore, it is necessary for every institution of life and every organ of a nation to become a great visionary.

The requisite quality that our Justice Delivery System still lacks in substance even after 65 years of independence, baffles us. We must accept and understand that each and every action of each one of us, individually as well as collectively, or even in different capacities like a litigant, lawyer, academician, judge, police officer, legislature etc., has large reflections and repercussions on the life and liberty of many individuals as well as the nation as a whole.

Our judiciary itself claims and is considered to be the guardian of the lives and liberty of its people. It also claims it be working in accordance with recognised principles of natural law and common conscience. In the present scenario, the common man still has some
faith left, although on decline in institutional sanctity of Justice Delivery System.

Therefore, the researcher has innovated an entirely new concept which has been termed as 'Damnnum' principle which if followed, would spontaneously produce excellent results. On one hand, it will help the judiciary in handling the wrongdoers in at least in proven cases. On the other hand, it will impose the most suitable and appropriate penalties which will result in discouraging the wrong doer to again commit the wrong of putting fake arguments in the Court of law.

9.1.2 'Damnnum' principle

9.1.2.1 Meaning and the basic premises

The term 'Damnnum' means harm, loss or damage in respect of money, comfort, health or the like. For our purpose, it includes both foreseen as well as some of the unforeseen consequences which may vary from situation to situation. Some of the basic premises both recognised as well as unrecognised by our system, on which the principle is based, are as follows:

1. Everybody is presumed to know the natural consequences of his or her act/omission.

2. Everybody is presumed to have the requisite state of mind to cause such consequences, which have ultimately ensued from his or her act/omission.

3. The actionable civil and criminal wrongs that reach the Courts for adjudication are far less in number than those that actually happen.

4. The wrongdoer must be presumed to know not only the natural consequences but also he must understand that everyone has many things to do in life. Thus if
act/omission of the wrongdoer results into different type of damage or loss to a person in terms of money, time, health or otherwise, he is bound to pay for that to the aggrieved one.

5. The time of each person is important. If one is coming to Court, he is putting a lot of things at stake and therefore if one is able to prove his case, his sacrifice and the weight of burden of proof must be taken into consideration.

6. Those who put fake arguments after commission of a wrong, if opt to plead in the Court instead of accepting their fault/wrong, would be doing at their own risk at least in those cases wherein clinching and clear cut evidence is there.

There is an urgent need to change or we can say to introduce immediately the criteria of imposition of cost in any litigation. The cost is imposed only in those cases where there is widespread outrage of a right of other person. Since a large number of cases are pending and our resources are limited in terms of money, manpower etc., therefore in order to put the system on the track, we must adopt the policy of imposing costs which prime facie look too heavy and exemplary. This should be done not in all cases but only when there is clear and proven outrage of a person's right. The experience shows that in most of the cases, the party at fault first, tries to evade liability by all means of falsehood, secondly, even if the aggrieved is able to prove his case, he gets a meagre compensation. The policy should be to order party at fault to pay higher costs:

(a) For the loss caused to the aggrieved party directly by the wrong/fault; and
(b) For the loss that it must have caused to many other people who might not have come before the Court, if the party/wrongdoer deals with public; and

(c) For the loss of precious time taken unnecessarily of the Court in dealing with this matter, particularly in the cases wherein the Court has already settled the identical issue and still the wrongdoer forces the litigation.

The heavier and more difficult the burden of proof, the more should be the amount of punishment. Merely putting the burden of proof on the aggrieved party or the prosecution shall not be deemed to be sufficient because it must lead to one result. If such heavy burden is proved by the party particularly in those cases where there is not even an iota of doubt i.e. clear cut evidence, that party must be compensated equal to the heavy weight of burden of proof.

9.1.2.2 Consonance with principle of strict liability

The ‘damnum’ principle can be termed to be application of the principle of strict liability but on a wider canvas in the sense that the principle of strict liability applies in few situations irrespective of the fault theory. However, the ‘damnum’ principle is based on intentional fault, false claim, false defence theory. Both the concepts overlap each other at a small juncture in certain situations.

9.1.2.3 Hindrances in formulation

The first and foremost hindrance in the acceptability of this principle is that our Justice Delivery System is based on the principle of proportionate punishment i.e. everybody should be given the punishment to the extent of wrong done by him and nothing more. Even in the criminal justice system, a person is liable to the extent of his guilty state of mind. So an accused is punished in the form of sentence or otherwise in proportion to the wrong done keeping in view
the state of mind. That is why that the Criminal Procedure Code, 1973 introduced the concept of hearing of the accused on the quantum of punishment after the accused has been found guilty. The purpose is that the mitigating factors should be taken into consideration while imposing sentence on him. But the same does not seem to be true and applicable when we view the entire situation from the standpoint of the victim/aggrieved party. They should also be given the opportunity to put forth factors aggravating the situation as well as facts which were very difficult to prove for the victim and he has proved them. It may be taken into consideration while determining the quantum of punishment.

9.1.2.3.1 Disproportionate Punishment and Remoteness of Damages

The concept of 'proportionate' punishment itself has become disproportionate because we do not consider the fake pleas put forth by the accused/wrongdoer as well as the presumption of innocence prevailing in his favour all over the time only to ensure fair trial to the accused/wrongdoer probably denying the same to the victim. The following verses from Manu Smriti:4

ं देशकोली शासित च विधान चावश्च तत्तः

यथार्थत: संप्रभृष्टेऽयत्यायायति भु 16 ॥

The King should impose just and proper punishment on those who act unjustly, having due regard to the time, the place and circumstances under which the offence was committed, knowledge of law or understanding or education of the offender. [VII-16]

रश्मि: शाशित प्रजा: सर्वा रश्मि एवाभिमानी ॥

रश्मि: सुखेषु जागरिति रश्मि धार्मिकं विदुर्यूँ ॥ 181॥

Punishment alone regulates the conduct of all created beings. Punishment alone protects the people. The power of punishment of the State is the real protector of individuals throughout the day and night. [VII-18]

समीक्ष्य से पूर्व: सम्बस्तर रणजयति प्रजा: ।
असमीक्ष्य प्रणोदतु विनाशयति सर्वः: || 19 ॥

Punishment properly inflicted after due consideration, makes all people happy. If it is inflicted without due consideration, it destroys everything. [VII-19]

These verses clearly convince us that the punishment to be imposed on a wrongdoer/accused must be in consonance with the wrong committed against the individual as well as the nation as a whole so that it could become proportionate to the wrong done. Therefore the sentencing policy need to be viewed and applied in right perspective.

9.1.2.3.2 Possibility of misuse of the principal and remedies

One of the most important things to be kept in mind is to restrain the possibility of misuse of the doctrine in view of the conditions prevailing in India like poverty, unemployment etc. These conditions may encourage people to exploit the wrongdoer. That is why it is suggested that the compensation to be ordered under the last (abovesaid) two clauses can be ordered to be paid not to aggrieved one but it can be ordered to be paid

(a) to the state legal services authority for help of poor litigants, or

(b) to any recognized NGOs working in legal field or any other field of social welfare, or
9.1.2.4 Application on the nature of litigation

9.1.2.4.1 Civil cases

In such cases, generally the relief claimed is of damages in monetary terms. Even if the victim-complainant is able to prove his case beyond any reasonable doubt, he gets an iota of compensation. This can be appreciated in a better manner by way of the following illustration and its analysis:

Suppose a person goes to a shopkeeper to buy some eatables worth Rs. 100. After the purchase he also obtains the bill of this dealing. Subsequently, he finds the eatables totally unworthy of use by reason of adulteration, insects or the like. He immediately goes back to the shopkeeper and tries/pleads for the return/exchange of the eatables. As usual, the shopkeeper refuses to do the same on the ground that a thing once sold will not be returned or replaced. The shopkeeper openly challenges the consumer to do anything he wants.

Now, the adjudication of these cases so far as the amount of damages is concerned, must give due weightage to the factors on which the ‘damnum’ doctrine is based. First, all the consumers do not get or insist upon the purchase/cash receipt of the transaction. But incidentally or because of the awareness of the consumer he obtained the same. Secondly, most of the people do not go to Court for redressal of their grievance for a number of reasons like lack of awareness, illiteracy, lack of resources, high cost of litigation, delays and victimization of the victim-consumer-complainant etc. Thirdly, if the victim approaches the Court and proves his stand, he will get at the most a compensation of about Rs. 100 or so. Even if the shopkeeper knows from the day one that he will lose the case as he was at fault, he will take all the lame/fake excuses. Even after taking these types of
fake pleas and willfully prolonging the trial, he is not treated properly. Even in those cases wherein there is clinching as well as clear cut evidence not only ‘beyond any reasonable doubt’ but ‘beyond any kind of doubt’ like the cases where the victim-consumer-complainant has a video recording of the entire episode.

The consequence of imposing ordinary damages would not serve the purpose. It will not deter the shopkeeper-wrongdoer and it will not satisfy the victim-consumer-complainant. It is therefore required that on the above said lines, the ‘damnum’ doctrine should be followed in order to realize the true spirit of the justice delivery system.

9.1.2.4.2 Criminal Cases

In criminal cases, a lot of rights have been given to the accused-defendant. The adversarial system of justice is accused oriented. It gives fair trial to the accused as at all stages the presumption of innocence. The weight of this presumption is heavier in favour of public servants for any act done or purported to be done by them in discharge of their official duties. Even the Courts are also in favour of enlarging the accused on bail and also resort to statutory acquittal, releasing the accused if the trial is prolonged without the fault of the accused. The existence of these large number of favourable conditions and provisions completely forget the plight of the victims who continue to suffer firstly in the hands of the accused-defendant, secondly, at the hands of the system, and thirdly the aftermath of the wrong done brings huge repercussions on their lives.

Our Justice Delivery System does not give message to the criminals that they should accept/confess their guilt either at the first instance or at the beginning of the trial as provided in Sections 229, 241, 246 and 252 of the Code of Criminal Procedure, 1973, or the like provisions in other special or local laws. The purpose of these provisions is to save the time of the Courts by convicting the accused
in appropriate cases if the Court is convinced about the guilt of the accused. The implementation of ‘damnnum’ doctrine would persuade the accused to confess the guilt and it will make sure that in case of any palpably fabricated or false stories being made by them, they shall be liable not only for the offence for which they are tried but also for taking the wrongful pleas. This also partially touches the concept of ‘plea-bargaining’ which has been the subject matter of long standing debate among the contemporary jurists, judges and legal luminaries all over the country. The concept of ‘plea-bargaining’ has been introduced, but failed to bring visible results.

The ‘damnnum’ doctrine is related to the concept plea bargaining if the accused understands that acceptance of his guilt at the initial stage would not entail penalties under the damnnum doctrine.

9.1.2.4.3 White collar crimes and criminal

No society is immune from incidence of crime. Even a society with angelic qualities is not free from deviant behaviour. It is a universal truth that a person who has plenty of resources has more capacity as well as opportunity to commit crime and to protect and defend himself in case of detection of the same.

A white collar crime is a crime committed by a person belonging to the higher strata of the society in the course of his occupation, profession or otherwise, and which is committed not because of the compulsions of circumstantial necessities of life but in order to fulfill his avarice or greed. These criminals are called ‘highly placed persons’ because they have power or money in abundance. They are completely different from the ordinary criminals who, most of the times, commit crime to fulfill their bare necessity of life. So these ‘highly placed criminals’ deserve strict treatment for they can exploit the system with their resources in different ways as well as by taking advantage of the deficiencies of an adversarial system. This is a
principal reason that some of the leading jurists including Mr. V. R. Krishnan Iyer, have suggested that the white collar criminals should be given the death sentence depending upon the circumstances of a given case. Therefore the white-collar criminals deserve special treatment for the following reasons:

1. Our system reposes utmost faith in the ‘highly placed persons’ as every presumption goes in favour of such persons particularly when they are public servants. The system always protects the public servants.

2. Probably no white-collar crime can be committed without either active or passive participation of one or more of the public servants.

3. These criminals not only put the particular authority, institution or class of persons into peril but they cause the active risk of causing damage or loss to the entire nation as well as the whole humankind.

9.1.2.5 Some practical insights

In India, one of the fundamental reason behind delays in the justice delivery system is inadequate number of judicial officers at different levels particularly in the subordinate judiciary which is kingpin in the hierarchy of justice delivery system because it is upon the efficiency and effectiveness of these Courts on which depends the ultimate outcome of the cause. As a consequence of frequent outcries at different levels from time to time in the past, the period of the last ten years or so has seen the emergence of judicial activism in the field of appointment of judicial officers at the foundation levels because the higher Courts have refused to remain mute spectators and have ordered the executive to fill up the vacant posts. The experiences of the researcher are as follows:
9.1.2.5.1 Issue of Vacancies in the subordinate judiciary

In the years 1998, the Honorable Punjab and Haryana High Court in civil writ petition no. 14372/1998 titled as *Court on its own motion v. State of Punjab and Haryana and others*, passed an order dated 12 October 1998 that both states of Punjab and Haryana would conduct a test for the selection and appointment of judicial officers every year. The Court also directed that the required infrastructure must be provided for the same.

In the year 2002, the Honorable Supreme Court of India in civil writ petition no.1022 of 1989 titled as *All India Judges Association and others v. Union of India and others* passed an order dated 21st March 2002 that all the states shall increase the strength of subordinate judiciary from the existing ratio of 10.5 or 13 per 10 lacks people to 15 judges for 10 lacks people. It was ordered of be increased gradually in the next five years. It was further directed that the existing the vacancies in the subordinate Courts at all levels should be filled latest by 31st March 2003. The Court also lifted the condition of having 3 years’ practice for appearance in the examination for subordinate judiciary. This was done for the purpose of speeding up the large pendency of cases as well as to attract the young law graduates to the judicial services of the states because it was felt and stated in the judgement itself that the young lawyers do not find the judicial services attractive after three years’ of experience.

In the year 2002 itself, the state of Punjab through its Deputy Secretary, Department of Home Affairs and Justice filed an affidavit in civil writ petition no. 2509/2002 titled as *Parminder Singh Rai and others v. State of Punjab and others*, affirming that the state shall comply with the directions passed in civil writ petition no. 14372/1998...
Consequently, thousands of the candidates all over the country began their preparation for this competition. But most of the states did not bother to fill even the existing vacancies or doing anything to increase the vacancies as directed by the Supreme Court. The researcher tried to persuade a number of prospective candidates to raise their voice against the misgovernance, misrule and the unjust system as well as policy of the state. The candidates were not ready to come in confrontation with the state for the reason that they expected discriminatory behavior both in the examination as well as later on after their selection, if made. The researcher drafted a ‘National Interest Litigation’ consisting of around 80 pages which contained huge statistics regarding the number of pending cases as well as the duration of trials in different Courts. Ultimately the researcher along with one of his fellow researcher filed the civil writ petition no. 1337/2005 in the Hon’ble Punjab and Haryana High Court. The Court issued notices to the states of Punjab and Haryana on 24-01-2005. Till date more than 10 hearings have taken place. Some times the Courts pass oral strictures and the counsel for the government as a matter of tradition listens to the Court, but the governments as well as its officials remain unmoved. The following are the factors, which the Court in this case, should have been considered vis-à-vis any order that needs to be passed:

1. The Court ordered in 1998 (supra) that the vacancies must be filled up every year;

2. The Supreme Court ordered in 2002 (supra) to fill up the existing vacancies as well as to increase the vacancies every year;
3. The Government of Punjab filed an affidavit in the year 2002 to comply with the orders passed in 1998 (supra);

4. Even after the issuance of notice by the Court, the respective governments did not take adequate steps to fill up the vacancies or to build up the infrastructure required therefor;

5. Every time the government has been taking time for doing one related thing or the other.

In this background, it becomes necessary that ours Courts must follow the 'damnnum' doctrine not only in such cases of national importance but also in other ordinary cases with exceptional circumstances. Any of the following things could have been done:

1. The governments should have been grilled up severely for the first and the foremost goal of a democracy governed by the rule of law is to ensure the effective and efficient delivery of justice:

2. Sever strictures in writing should have been passed because the Court must understand that the people of this country and the temples of justice are being befooled by the power hungry politicians and the corrupt bureaucracy for their vested interests;

3. The exemplary cost should have been imposed because filing of this petition was not required when there are a number of orders already passed directing the same thing to be done. Though this cost should never go to the petitioner-researcher rather such type of cost should be spent on the development of the system or the like purpose already mentioned above etc.
9.1.2.5.2 Release of Subsidy Case

A scheme was introduced by the state of Punjab in 1999 for the grant of certified wheat seeds on subsidy basis on the fulfillment of certain guidelines and conditions by the duly authorized seed producers. Around 10 of the authorized persons fulfilled the requirements and completed all the formalities after selling the wheat seeds to the farmers. But the government did not release the amount of subsidy despite various reminders, personal visits and ultimately the service of legal notice.

One of the seed producers approached the Punjab and Haryana High Court though Civil Writ Petition no. 15102/2001. After giving various opportunities, the Court on 17/09/2002 ordered the respondent state to pay within a period of seven days the money along with interest at the rate of 12% per annum.

The other aggrieved parties began to wait hoping that they may not have to go to Court for the same relief, but the government did not pay for a long time. On 09/10/2002, another seed producers filed Civil Writ Petition no. 17191/2002 praying for the same relief. The petition went to a different Bench. The earlier judgement on identical facts was also attached with this petition. Ultimately on 30/10/2002, the Court passed the order to pay the amount within a period of two months but no interest was ordered despite a prayer for and insistence before the Court.

The remaining aggrieved parties also began to wait but nothing was done by the government to pay. On 20/01/2003, another seed producers filed Civil Writ Petition no. 1635/2003 praying for the same relief. The earlier judgement on identical facts was also attached with this petition. The petition now went to the bench which had passed the order in Civil Writ Petition no. 15102/2001 and ordered the
respondent state to pay within a period of seven days the money alongwith interest at the rate of 12% per annum.

Now the bench on 13.10.2003 passed the order to pay the amount alongwith interest at the rate of 9% per annum.

In this background, it becomes necessary that ours Courts must follow the 'damnum' doctrine not only in such cases of national importance but also in other ordinary cases with exceptional circumstances. Any of the following things could have been done:

1. The governments should have been grilled up severely for every petitioner had to come to the Court;

2. The exemplary cost should have been imposed because this petition should not have been required to be filed when there are a number of orders directing the same thing to be done.

3. In the third identical case, the rate of interest should be higher than the first case.

9.1.2.5.3 Illegal admission in LL.B. case

The daughter of a senior bureaucrat appeared in an entrance test for admission in professional course. She could not be selected so much so that she did not get even the qualifying marks required for being considered to get admission in an institution. After the declaration of result, the girl get a certificate issued from her home state and claimed a seat on that basis in the category for which she neither applied nor was entitled to nor could she pass the minimum requirement of securing the qualifying marks. She being the daughter of a senior bureaucrat, got a letter written from a senior politician to the Head of the institution for consideration of her case on humanitarian grounds. Ultimately, she got admission in violation of the rules. Sometimes later somebody came to know and filed a Civil
Writ Petition no. 3371/2003 in the High Court placing on record all the material including the letter written by the senior politician. The Court issued the notice and the petition took 17 dates to be disposed off. A brief analysis of the dates is as follows:

<table>
<thead>
<tr>
<th>Dates</th>
<th>Remarks in orders by the High Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>28-02-2003</td>
<td>Notice to all respondents.</td>
</tr>
<tr>
<td>24-03-2003</td>
<td>Respondents sought time to reply.</td>
</tr>
<tr>
<td>16-05-2003</td>
<td>One last opportunity to respondents. No further adjournment will be given.</td>
</tr>
<tr>
<td>20-05-2003</td>
<td>Respondent say reply is ready but the head of the institution is out of station so reply could not be signed. Time given.</td>
</tr>
<tr>
<td>15-07-2003</td>
<td>Directed to put on the next day for this no reason recorded.</td>
</tr>
<tr>
<td>05-08-2003</td>
<td>The respondent-girl did not appear despite service. So another date was given.</td>
</tr>
<tr>
<td>05-09-2003</td>
<td>Petitioner applied for treating it a public interest petition.</td>
</tr>
<tr>
<td>11-09-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>15-09-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>23-09-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>10-10-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>13-10-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>16-10-2003</td>
<td>Some documents were taken on record.</td>
</tr>
<tr>
<td>20-10-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>29-10-2003</td>
<td>Not taken up.</td>
</tr>
<tr>
<td>10-12-2003</td>
<td>The writ was dismissed on the grounds: The admission of the respondent can not be nullified for she has already completed almost half of the total course.</td>
</tr>
</tbody>
</table>

The analysis of this case shows that the Court legitimatized an illegal admission in favour of the persons who were high-ups. The
ultimate result in such cases which are in huge numbers, encourage people as well as the institution to adopt, continue and protect the malpractices. The Court did not bother even to pass any stricture. The institution continued to take adjournments time and again and ultimately, it succeeded in getting the petition dismissed on technical grounds.

9.1.2.6 Guidelines for Measurement of Cost


The need for an accurate assessment of the costs, direct and indirect, that are actually incurred by a litigant, has to be done. Even if a suit is dismissed/decreed with full costs and compensatory costs, what is taxed (or assessed) in favour of the successful party is perhaps only a very small portion of the costs that were actually incurred, let alone the loss suffered and compensation for the agony undergone. In other words, the end of litigation, even if delayed, is a relief to the party in the right, but it must have incurred expenses, which can be divided into following parts:

1. Direct expenses;
2. Indirect expenses;
3. Loss of usufruct and other opportunity or suffered other damage;
4. Cost of effort and time;
5. Hurt emotions. sleepless nights and perhaps even cost of medication for it, and much more. To constitute complete justice, reparation and compensation for each is necessary.
The question arises as to whether our rules, practices and conventions permit the same or not. Although the statutory provision (Section 35) is wide, the actual awards reveal a completely different and a dismal picture. Even for item (1) (direct expenses), not more than a small percentage thereof is actually recovered with the result that bulk of item (1) and each of items (2), (3), (4) & (5) remain uncompensated for. Apart from constituting injustice, it allows several of the factors to operate and then cause both accrual and delays in litigation. Therefore, along with an order imposing costs, it is also necessary that there be an accurate measure or assessment of the costs that are incurred. There are following reasons:

First, Rules fail to take into account the ground realities;

Second, the Practice that has evolved over the years has made an already bad situation worse;

Third, there are many expenses that are presently a must, but of a type that a claim for their reimbursement can never be put forward;

Fourth, by their very nature, it is not possible to make a 'debit entry' every time any expense is incurred;

Fifth, the Rules do not recognise hidden or indirect expenses;

Sixth, the Rules neither take into account a stage-wise break-up of items nor the factor as to who should be responsible for the Costs of a particular item;

Last, a specific provision is required in the Rules - and should that be found insufficient in the statute - that enables compensation for a host of losses, which, a successful litigant suffers in the process.

An attempt to list (as broad types) the expenses a litigant has to incur and the losses he has to suffer during the process;

1. Direct Costs
1. Expenses related to preliminary search for a suitable counsel dealing with the subject and conversant with the law upon it, including consultation charges paid to lawyers before deciding as to who is best suited for handling the brief.

2. Consultation fee and retainer paid for sending the preliminary notice, besides clerkage and stenographers’ charges.

3. Lawyer’s fee, which in District Courts is usually settled purportedly for conducting the entire case, but notwithstanding that and on account of delays, requires periodic replenishment. In the High Court, depending on the counsel, it can be ‘per hearing’. Often, a second opinion is sought which again costs money.


5. Costs incurred for investigation off acts which ought to be carried out before the pleadings are prepared and filed.

6. Court-fee paid (for plaintiff).

7. Photocopying, stenographers’ charges, site plan preparation charges, process fee and postage, etc.

8. In case there is an interlocutory application in which ex parte relief is claimed, it requires a lot of effort & expense to have the plaint presented as early as possible before the Court.

9. In case interlocutory relief is granted ex parte, in most cases it is necessary to incur further effort & expense to have the stay Orders processed, issued and served.
10. Serving the Court Summons, Notices and Orders upon the defendant is done by the process serving agency. To enable the ‘Service’ within a reasonable time means both effort and expense;

11. Expenses related to filing of miscellaneous applications, or replies thereto, which have become a custom, particularly for delaying the proceedings.

12. Tips paid to the Court staff as also the Bar Association employees for ferrying the files and books within the Court premises.

13. Expenses incurred for investigating what the available evidence would be for the case and collecting information, data, copies, etc.

14. Money deposited in Court for summoning of witnesses or documents.

15. Charges for transportation of witness to Court premises.

16. Fee paid to Local Commissioner/Receiver, plus transportation and miscellaneous expenses incurred by him.

17. Payments made to lawyer's clerk for file inspections, typing, certified copies, photocopies and other genuine or feigned expenses, or even plain *Bakshish*.

18. Money demanded (often falsely) for undesirable expenses.

19. Costs paid during the trial.

20. Court costs paid.

21. Cost of transportation for the lawyer to Court and back.
22. Cost of transportation to the clerk for doing tasks such as serving/collecting of copies, accompanying the process-server for service of summons, etc, and sometimes even coming to Court.

23. In case the litigant is from out of town, then every visit to the Court and/or counsel means travelling expenses and hotel bills. Besides this, a lot of expenses are involved in communicating with and sending documents to and from the lawyer's office.

2. Semi-Direct Costs

1. Every visit to the counsel’s office or Court involves transportation and other expenses even if it is the litigant’s own car.

2. Parking fees outside Court compound.

3. Telephone to the lawyer or others in relation to the case.

4. Costs of preparing duplicate or triplicate files/record.

5. In case a person is deputed the task of looking after litigation, then the time and effort expended by him by way of proportionate cost of his salary and other allowances.

6. Expenses incurred at the Court canteen for the litigant, counsel as also others who often tend to join in.

7. Stationery, office equipment, and secretarial services.

8. Keeping witnesses in good books/humour or cost of maintaining cordial relations with them.

9. Correspondence expenses.
10. Expenses on Diwali and other festivals/occasions upon witnesses, lawyers and others concerned.

3. **Indirect Costs**

1. Cost of time spent in Court, in the lawyer’s office or at home for understanding/preparing the case which may manifest itself also, as loss of wages/income/business.

2. Loss due to interim orders (in doing or not doing a certain act, deprivation from use and enjoyment of subject matter, etc.).

3. Loss on account of depreciation of value of subject matter due to lapse of time spent on litigation or by the property remaining stuck in litigation.

4. Involvement in litigation obviously results in lack of attention to both self and family with its consequential effects.

5. Compensation for harassment, tension and mental agony. Though the researcher does not agree with the entire enumeration made above regarding the costs, but this can act as a guiding star while considering the aforesaid principle as discussed above, and it can vary in the facts and situations of a particular matter.

9.1.3 **Conclusion**

In essence, it can be said that the observance of this doctrine would help the temples of justice to give appropriate relief to the victim and at the same time to penalize the wrongdoer/criminal to pay costs of taking wrong and fake pleas.
9.2 Suggestions for Reforming Laws

The form of the existing law does not change automatically with the change in terms of its application, facts and circumstances. Thus the need to re-form the laws arises.

9.2.1 Amendment in the Constitution

The mere declaration of the right to speedy trial as a fundamental right would not be sufficient. There are a huge number of laws and plethora of judgements declaring this and that right but in reality we are lagging far behind the current flow of time.

There is an urgent need to amend the Constitution particularly Articles 233 to 237 relating to appointment of judicial officers in the subordinate judiciary by paving way for the creation of ‘Indian Judicial Services’ on all India basis like the Indian Administrative Services. This suggestion has been hanging fire for some years, but to no avail. The necessity for the change is for two reasons:

1. To provide uniformity in standards for the conduct of judicial service examinations; and

2. To do away with the delay of appointment of judicial officers as the experience has shown that the states do not conduct the judicial service examinations at regular intervals and as per the requirements of the present time.

Even in the alternative the respective High Courts may be empowered to conduct the judicial services examinations. Some of the High Courts have stated doing the same.

9.2.2 Amendments in Code of Criminal Procedure

The Code of Criminal Procedure is the principal enactment governing the procedure to be followed in the trials and also guaranteeing various safeguards for the accused.
9.2.2.1 Time limit for conclusion of trial

The Supreme Court has time and again stated that it is difficult to fix the time limit for the conclusion of the trial. But for effecting speedy criminal justice in respect of trial of summons and warrant cases, a time-limit must be fixed for conclusion of trial with a condition that all sorts of dilatory and notorious tricks by either side for defeating the purpose of fair trial by adjournment petitions or other petitions for hampering the progress of trial, shall be severely dealt with by inflicting heavy cost. Necessary amendment of Code of Criminal Procedure in chapter XIX for trial of warrant cases and Chapter XX for trial of summons cases by Magistrate should be introduced. Section 309 Cr. PC in this regard has to be amended accordingly for introduction of minimum cost to ensure justice.

9.2.2.2 High valuation criminal cases to be tried by special Courts

Criminal case under Sections 420, 406, 408 etc. under the Indian Penal Code, 1860 or any other specific enactment involving high valuation, containing huge exhibits, documentary evidences, should be tried by special Courts. For this purpose, specially skilled persons having expertise in economic and commercial matters should be appointed.

9.2.2.3 Compounding of criminal cases

In case, offences under Sections 379, 381, 406, 407, 408, 411, 414 of the Indian Penal Code cannot be compounded where the valuation of property exceeds Rs. 200/-. Therefore Section 320 Cr.P.C. has to be amended in this regard. Non-compounding of offences creates a bar in speedy disposal. The list of the compoundable offences should be increased lest the witnesses are made to turn
hostile and such cases result in acquittal after a lot of wastage of time and energy of various agencies of the Justice Delivery System.

The needs of the present time calls for introspection in this regard because if the law does not allow this and parties reach at a compromise, they do not produce their evidence and ultimately the case ends up in acquittal for want of evidence. In less serious cases, compounding should be allowed on the basis of compromise between the parties as well as on payment of certain costs to the Court.

9.2.2.4 Section 207, Cr.P.C. to be Amended for Checking of Notorious Defence

In a case instituted on police report when the appearance of the accused is complete, there is mandatory provision of law that the accused shall be furnished with the copies of the statements and documents to be used against him during trial. There are cases which are pending only for furnishing the police papers to the accused for several years but the same is not being furnished and the trial keeps on lingering. An amendment should be made fixing thirty days or sixty days time after the appearance of the accused within which period the copies of police papers must be furnished to them failing which the accused should be discharged. Even a provision may be inserted after sub-clause (b) of Section 173 directing the investigating Officer to furnish as many copies of police diaries as many accused persons are charge-sheeted by them to face trial in absence of which the Court should not take cognizance of the case.

Even where the copy is supplied, many a times there is some defect in the copy supplied to the accused, the accused must state in writing to the Court on the date of supply of copy and not afterwards. Any subsequent plea for supply of defective copy by prosecution
should be rejected. Any such plea in the trial stage delays the trial and therefore it should be strictly dealt with so as to ensure in time justice.

9.2.2.5 Guilty-pleading can be allowed at any stage of trial

For speedy disposal in criminal justice system, guilty pleading should be allowed in the middle of trial.

9.2.2.6 Amendment of Section 309, Cr.P.C.

(a) Whenever a witness appears and the lawyer prays for adjournment on any frivolous ground. It should be summarily rejected. A minimum cost of Rs. 500/- may be awarded to each witness in deserving cases. In such a situation, prosecution should be allowed extended time and the time-limit for conclusion of trial should be extended accordingly.

(b) When the trial Magistrate/Judge/Public Prosecutor is absent on leave or the trial is deferred on any other ground, the trial period should be extended by adding the intermediate period of next date of evidence and the prosecution should be entitled to additional extended time.

(c) When main witness upon whom the success of a prosecution case depends is dead or not available after repeated attempts, that case is to be immediately closed without examining the other witnesses and accused shall be acquitted forthwith.

(d) The examination-in-chief and cross-examination should be completed in a day and only in exceptional circumstances, it should be deferred. It should be ensured that during the chief and cross-examination, a witness is not unnecessarily harassed for days together.
9.2.2.7 Amendment of Section 301(2), Cr.P.C

In most complicated serious cases, if a private person instructs a pleader or an Advocate to conduct prosecution, he should be given additional power to conduct the case with the permission of the conducting prosecutor for making the prosecution case successful and to ensure speedy justice.

9.2.2.8 Enhancement of Magistrate’s power to fine and imprison and setting up of second class judicial magistrate Courts

The Magistrate’s power of imprisonment and of fine should be extended. All summons and warrant procedure cases up to 3 years imprisonment and petty offences under Section 206 Cr.P.C. should to be tried by 2nd Class Judicial Magistrates.

9.2.2.9 Frame charges on application even in the absence of accused?

The charges are framed on the submission of charge sheet, if the case is made out in the opinion of the Court or in case of a complaint case after the examination of witnesses. A good number of cases remain pending in Trial Courts for non-appearance of the accused to answer to the charges and even though the Supreme Court has said that the charges can be framed in absence of the accused through the lawyer representing the accused. But the Trial Courts are hesitant to do so. Even where there is a petition u/s 317 Cr.P.C. to dispense with personal attendance of the accused or the personal attendance of the accused is dispensed with u/s 205 Cr.P.C. and the accused are represented through lawyer the Trial Courts are rejecting the petitions.

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*All India Seminar on ‘Judicial Reforms with special reference to arrears of Court Cases’ held on 29th & 30th April, 2005 at Vigyan Bhawan, New Delhi, by Kashi Nath Pandeya, Advocate. Supreme Court of India, 132.*
of framing of the charges or pleading guilty through lawyer and issuing warrant of arrest against the accused persons.

It is not worthwhile for the accused to appear before the Trial Court only to say “Yes” or “No” to the charges. Generally it happens in cases where the accused are employed quite away from the jurisdiction of the Trial Court and it is known to the parties and their respective lawyers that the accused is only to say “Yes” or “No”. Therefore this practice must be discarded and there should be a clear provision that if the lawyer for the accused files a petition duly signed by the accused, the Trial Courts must not refuse framing of the charges for the personal appearance of the accused.

Similarly, another amendment is desirable in Section 251 Cr.P.C. also so that the accused person may not be dragged to the law Courts for explaining substance of accusation to them during the trial of summon cases.

9.2.2.10 Petitions for maintenance of wives, children and parents

Section 125 of the Cr.P.C. has been enacted with the object of checking vagrancy and chaos in society. Such petitions for maintenance are huge in number but in very rare cases the petitioners actually succeed in securing an order of maintenance. Ultimately either the petitioner turn beggars or starves, or changes his/her pious path, and start indulging in immoral acts for his/her survival. Nobody applies his mind as to why these petitions generally fail or are delayed.

If anyone wants to secure an order of maintenance then the first thing what the petitioner has to do is to arrange for money to file petition in Court provided the petitioner does not seek the mechanism for free legal aid. When the petition is filed the matter lingers. The

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7 Ibid at 133-134.
petitioner has to maintain the lawyer first through whom he wants to succeed. He has to bear the cost of Court fee stamps and miscellaneous expenses too. In short, for having an order of maintenance of Rs. 100/- the helpless petitioner has to spend thousand of rupees and has to wait for years. This torture must end.

Hence the following procedural changes should be made:

(a) The petition for maintenance should be entertained without even any nominal stamp fee.

(b) In every Muffasil Court, a prosecutor should be appointed at the Government cost who should deal with the cases of maintenance under the said jurisdiction.

(c) There should be special judicial Court to expedite the petitions of maintenance quickly or some Court should be specially authorized by the High Courts to deal with the petitions for maintenance.

(d) The Trial Courts should be authorized to provide/pay the expenses incurred by the petitioner in producing the witnesses in Court and in attending the Court in person.

(e) Where desirable the High Court should make arrangement for mobile Courts who after service of notice on the opposite parties can go to the villages with the concerned prosecutor and can dispose off the case on the spot in one sitting.

(f) In every case the final order must be passed within a period of ninety days from the date of service of notice on the opposite party. If the State Government is unable to bear the burden of payment to the special prosecutor for this day to day work a fixed retainer fee per month plus their office maintenance should be born by the state.
Besides this there should be direction to the Courts that in case of petitioner's success the Court should direct the opposite party to pay Rs. 500/- consolidated to the prosecutor concerned and this amount should be realized from the opposite party as fine being the cost of litigation.

(g) The petitions for providing maintenance under Section 125 of Cr.P.C. are to be decided summarily. However, these cases are continues even for five years. These cases are made to consider like murder cases. The need is to sensitize the judicial officers to adopt the summary procedure in letter and spirit.

9.2.2.11 **Inherent power to the Sessions Courts under Section 482, Cr.P.C.**

For lessening the workload of the High Courts, some powers of the High Courts u/s 482, Cr.P.C. may be extended to the Principal District and Sessions Judges. The Principal Sessions Judges occupy the post after rich experience in the Bar and serving in the lower subordinate Judiciaries for a long period. They are capable of handling such powers. Therefore this can definitely reduce the pendency of cases in High Courts.

9.2.2.12 **The habeas corpus petition in the Sessions Court also**

The illegal detention of various persons by the police is a regular affair. The illiterate and ordinary people are not aware as to what is to be done. The procedure to file habeas corpus petition in the High Court is undoubtedly difficult particularly on account of distance. The experience also shows that before the arrival of the Warrant officer, the police releases the detenu for the reason either they get the information or by that time they are able to persuade the detenu to come to their terms. This requires an amendment in the
Crt. C. and the Constitution of India to empower the Principal/Senior-Sessions Judge to entertain the habeas corpus petition in order to immediately protect the life and liberty of the detenu.


Since in the present legal system, the delay hurts only one party (plaintiff who has not obtained any interim relief or defendant against whom interim relief is operating) but immensely benefits the other party, the legal system must provide for incentives for those who cooperate for early disposal of cases and strong disincentives for those who delay the proceedings. Therefore, Hon'ble Mr. Justice Mohit S. Shah, the Judge of the High Court of Gujarat has suggested the following amendments to the provisions of Sections 34 and 35 of the Civil Procedure Code. He has emphasized on the role of judges and lawyers for taking the initiative to suggest amendments to procedural laws because it is through them the bodies like Law Commission of India can circulate such suggested amendments, with or without modifications, amongst the representatives of the affected parties like Indian Banks Association, Financial Institutions, the concerned Ministries in the Union Government and State Governments, various Chambers of Industries and Commerce at the National level as well as the state levels, Bar Council of India and State Bar Councils etc.

The following may be added as Section 34A:

Section 34A - Rate of Interest may vary with pendency of the suit.

(1) Without prejudice to the generality of the foregoing provisions, but subject to the provisions of sub-Section (2) of this Section, the rate of *pendente lite* interest may be awarded by the Court in accordance with the following formula:-

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All India Seminar on 'Judicial Reforms with special reference to arrears of Court Cases' held on 29th & 30th April, 2005 at Vigyan Bhawan, New Delhi.
The Period during which the suit has remained pending from the date of service of summons on the defendant | Rate of Interest on the amount awarded
--- | ---
(i) within 1 year | 6%
(ii) more than 1 year but upto 2 years | 8%
(iii) more than 2 years but upto 3 years | 10%
(iv) more than 3 years but upto 4 years | 12%
(v) more than 4 years but upto 5 years | 14%
(vi) more than 5 years but upto 6 years | 16%
(vii) more than 6 years but upto 7 years | 18%
(viii) more than 7 years but upto 8 years | 20%
(ix) more than 8 years | 22%
(x) more than 10 years | 24%

(2) The period for which the case was adjourned at the instance of the plaintiff or his advocate shall be excluded while computing the period for determining the rate of interest under Sub-Section (1) of this Section.

The following may be added as Section 35C:

**Section 35C - Exemplary costs may vary with pendency of the suit.**
(1) Without prejudice to the generality of the foregoing provisions, but subject to the provisions of sub-Section (2) of this Section, where, the Court finds that the plaintiff's claim or a substantial part thereof or the defendant's claim or a substantial part thereof was false, frivolous or vexatious, the Court may direct the plaintiff or the defendant, as the case may be, to pay the other side the costs of the proceedings as under:

<table>
<thead>
<tr>
<th>The period during which the suit has remained pending from the date of service of summons on the defendant/s</th>
<th>Cost in terms of percentage of suit claim or Rs. (whichever is higher)</th>
</tr>
</thead>
<tbody>
<tr>
<td>(i) within 1 year</td>
<td>5% or Rs. 5000/-</td>
</tr>
<tr>
<td>(ii) more than 1 year but upto 2 years</td>
<td>10% or Rs.10000/-</td>
</tr>
<tr>
<td>(iii) more than 2 years but upto 3 years</td>
<td>15% or Rs.15000/-</td>
</tr>
<tr>
<td>(iv) more than 3 years but upto 4 years</td>
<td>20% or Rs.20000/-</td>
</tr>
<tr>
<td>(v) more than 4 years but upto 5 years</td>
<td>25% or Rs.25000/-</td>
</tr>
<tr>
<td>(vi) more than 5 years but upto 6 years</td>
<td>30% or Rs.30000/-</td>
</tr>
<tr>
<td>(vii) more than 6 years but upto 7 years</td>
<td>35% or Rs.35000/-</td>
</tr>
<tr>
<td>(viii) more than 7 years but upto 8 years</td>
<td>40% or Rs.40000/-</td>
</tr>
<tr>
<td>(ix) more than 8 years but upto 9 years</td>
<td>45% or Rs.45000/-</td>
</tr>
<tr>
<td>(x) more than 10 years</td>
<td>50% or Rs.50000/-</td>
</tr>
</tbody>
</table>

(2) The period for which the case was adjourned at the instance of the party in whose favour the order under sub-Section (1) is being passed or at the instance of his advocate/s shall be excluded while computing the period.
for determining the amount of costs under sub-Section (1) of this Section.

9.2.4 Amendments in Indian Evidence Act

In India, the conviction rate is too meager in comparison with institution of criminal cases and there is alarmingly rising rate of incidence of crimes and there is paramount necessity of convicting the real culprits, the following principles of criminal jurisprudence require re-thinking and moderation in view of the protective need of the society.

(a) Let ten guilty persons be acquitted and not a single innocent be punished;

(b) An accused must be presumed to be innocent till the contrary is proved;

(c) The prosecution has to prove the case against the accused beyond all reasonable doubt.

Where the environment of the Justice Delivery System is pro-accused but hostile to prosecution, the above principals are required to be moderated in view of the urgent need for the punishing the real offenders and speeding up the Justice. The presumption of innocence of the accused should be moderated in view of the growing incidence of crime. The Supreme Court in *Shivaji v. State of Maharashtra*, has observed:

“We may remind ourselves of a necessary social perspective in criminal cases which suffers from insufficient forensic appreciation. The danger of exaggerated devotion to rule of benefit of doubt at the expense of social defence and to the

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9 1973 Cri LJ 1783 (SC).
soothing sentiment that all acquittals are always good, regardless of justice to the victim and community, demand special emphasis in the contemporary escalating crime and escape. The judicial instrument has public accountability. The cherished principle of golden-thread of proof beyond reasonable doubt which runs through the web of our laws should not stretched morbidly to embrace every hunch, hesitancy and degree of doubt .... Our jurisprudential enthusiasm of presumed innocence must be moderated, by the pragmatic need to make criminal justice more potent and realistic. A balance has to be struck between choosing chance possibilities as good enough to set the delinquent free and chopping the logic of preponderant probability to punish the marginal innocents”.

So, considering the paramount need of punishing the offender, the yardstick of reasonable doubt requires to be moderated as follows:

(i) “A case need not be proved beyond all reasonable doubt in all situations”, because some doubts may naturally arise in prolonged cross-examinations of witnesses.

(ii) In all serious and complicated cases like murder, rape, dacoity etc., the burden of proving innocence should be shifted to accused to some extent. The Supreme Court observed in State of West Bengal v. Orilal Jaiswal.10

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10 1994 Cri LJ 2104 (SC).
"Exaggerated devotion to the rule of benefit of doubt must not nurture fanciful doubts or lingering suspicions and thereby destroy social defence. Justice cannot be made sterile on the plea that it is better to let hundred guilty escape than punish an innocent. Letting guilty escape is not doing justice according to law".

The Supreme Court observed in *State of U.P. v. Krishna Gopal*.11

"Doubts must be actual and substantial doubts as to the guilt of the accused arising from the evidence or from the lack of it as opposed to mere vague apprehensions. A reasonable doubt is not an imaginary, trivial or merely possible doubt, based upon reasons and common sense..... The concept of probability and degree of it cannot obviously be expressed in terms of writs to be mathematically enumerated.... Uninformed legitimization of trivialities would make a mockery of administration of criminal justice".

**9.2.5 Enactment of Prevention of Vexatious Litigation Act**

In the 189th Report of the Law Commission of India on 'Revision of Court-Fee Structure' (February 2004), there was a reference to 'frivolous and vexatious' litigation. The Commission referred to the constant demand for increase in Court fee to prevent frivolous or vexatious litigation. Though, the Commission agreed with

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the critical remarks of Lord Macaulay made over one hundred and fifty years ago in connection with the preamble to the Bengal Regulation of 1795. The preamble to the said Regulation stated that the purpose of prescribing higher Court fee in the said Regulation was intended to drive away “vexatious” litigation. But Lord Macaulay, who was then heading the Law Commission of pre-independent India, disagreed with the said statement in the preamble and said that the increase in Court fee, if it was intended to drive away vexatious litigation, it would also drive away genuine and bona fide litigation. He posed various questions:

“It is undoubtedly a great evil that frivolous and vexatious actions should be instituted. But it is an evil for which the Government has only itself and its agents to blame, and for which it has the power of providing a most sufficient remedy ........ ........ ................ Why did dishonest plaintiffs apply to the Courts before the institution fee was imposed? Evidently because they thought that they had a chance of success. Does the institution of fee diminish that chance? Not in the smallest degree. It neither makes pleadings clearer, nor the law plain ... It will no doubt drive away dishonest plaintiffs who cannot pay the fee. But it will also drive away honest plaintiff”.

The views of Lord Macaulay were accepted in the 14th Report of the Law Commission (Chapter 22, para 6) and it was observed:

“29. The argument that it is necessary to impose high Court fee to prevent frivolous litigation, already referred to has no substance”. (para 29, Ch 22)

These views were further reiterated in the 128th Report of the Law Commission on ‘Cost of Litigation’ (1988) (para 3.6).

In Chapter VII of the 189th Report, the Law Commission proposed that a separate law be made on the lines of the Madras Vexatious Litigation (Prevention) Act, 1949 (Act VIII of 1949). Under
Recommendation 10, in Chapter IX, the Law Commission recommended:

“We recommend that, on the lines of the above mentioned Madras Act VIII of 1949, a Central Act may be enacted to curb vexatious or frivolous litigation”.

That frivolous and vexatious litigation has to be separately tackled and not by way of increase in Court fee. The term ‘vexatious’ litigation means habitually or persistently filing cases on the issues in which have already been decided once or more than once or against the same parties or their successors in interest or against different parties. They are described in the Act as persons who ‘habitually’ and ‘without reasonable cause’ file vexatious actions, civil or criminal. It is not intended to deprive such a person of his right to go to Court. It only creates a check so that the Court may examine the bona fides of any claim before the opposite party is harassed and, therefore, to prevent an abuse of the process of Court. It subserves public interest and does not prevent a person declared to be habitual litigant from bringing genuine and bone fide actions. It only seeks to cut-short attempt to be vexatious.

So far as the term ‘frivolous’ litigation is concerned, a litigation may be frivolous, without the need for persistent filing of similar case, even if it has no merits whatsoever and is intended to harass the defendant or is an abuse of the process of the Court. Further, there are some existing provisions in the Code of Civil Procedure like Order 6 Rule 16, Order 7 Rule 1, Section 35A etc. which deal with ‘frivolous’ litigation. It is also necessary to deal with vexatious criminal proceedings which now fall under Section 250 of the Code of Criminal Procedure, 1973. Those provisions may indeed have to be strengthened further. This Report was intended to deal with prevention of vexatious litigation only.
9.2.5.1 Existing state enactments in India

At least in two States, Madras and Maharashtra there are statutes made by the State Legislatures in 1949 and 1971 respectively, to declare a person as a vexatious litigant and prevent him from initiating action in Court unless he obtains previous permission of a specified authority. In Kerala, a Bill has been proposed.

To declare a person as a ‘vexatious’ litigant and impose restriction on his right to ‘access to justice’ requires legislation on the subject. If litigation is found to be vexatious, it can be stayed by the Court under its inherent powers. The statements referred to above lay down the procedural aspects in regard to exercise of inherent power of the Court to prevent abuse of its process.

9.2.5.1.1 Madras Vexatious Litigation (Prevention) Act, 1949

The above Act refers to persons who habitually and without any reasonable ground, institute vexatious proceedings, civil or criminal. Sections 2, 3, 4 and 5 of the Act, provide for declaring a person as a vexatious litigant upon the application of the Advocate General and once he is so declared, he cannot initiate any action of a civil or criminal nature without prior leave of the Court. The declaration will be published in the State Gazette. The Madras Act is confined to old geographical areas of A.P. Kerala and Karnataka which were parts of Old Madras Province before the SR Act, 1956.

9.2.5.1.2 Maharashtra Vexatious Litigation (Prevention) Act, 1971

This Act of 1971 is otherwise on the same lines as the Madras Act of 1949. Under this Act, the Advocate General can apply for declaring the opposite party as a vexatious litigant, as per Section 2(j), but the applications have to be filed on the Appellate Side of the High Court and should be heard by a Division Bench of the Court and order
of the Court should be published as prescribed in the Act (published in the Gazette) and be circulated to such Courts as the High Court would order.

A person against whom an order under Section 2(i) was passed, could apply for leave to institute the either to the High Court (on the original side) or the High Court (on the appellate side) or to the District Judge or to the Sessions Judge, as the case may be, while instituting or continuing civil or criminal proceedings. Unless the Courts above referred to, grant permission for initiating or continuing the proceedings, the Court would not take up the action on adjudication.

9.2.5.1.3 Kerala Experience

The Kerala Law Reforms Committee has now recommended legislation on the same lines as the Madras Act of 1949 to be made applicable to the entire State of Kerala. The Government brought forward the Bill titled ‘The Kerala Vexatious Litigation (Prevention) Bill, 2002’. It applies to civil, criminal or other proceedings.

Section 2 of the proposed Kerala Act permits the Advocate General to move the High Court to declare a person as a vexatious litigant if he is “habitually and without any reasonable ground” initiating vexatious proceedings of a civil, criminal or of other nature in any Court or Courts. The person has to obtain leave of the High Court if he is initiating a proceeding in the High Court or of the District Court if he is initiating a proceeding in any other Court. Section 6 requires the order to be published in the Gazette. Section 3 requires the person to obtain leave of the High Court (in Division Bench) or District Court, as the case may be, by establishing prima facie grounds.

There are no such statutes in other States and that is the reason why the LCI has now recommended that Parliament make a law on the
9.2.5.2 The Competence of the Parliament

The Parliament has necessary powers to make a law on prevention of Vexatious Litigation, applicable uniformly to all States and Union Territories.

The Parliament has ample power under Entries 2, 11A, 13 and 46 of List III to legislate on the subject of vexatious litigation, in both civil and criminal jurisdictions. As much as these entries cover the same field as were covered by Entry 2 of List II and Entries 2 and 4 of List III of VII Schedule to the Government of India Act, 1935. Thus there is no difficulty on the question of legislative competence of Parliament.

9.2.5.3 Recommendations of LCI in 192nd report for preventing vexatious litigation in India and its analysis

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Keeping in view the existing laws on prevention of vexatious litigation, the particular aspects of the various legislations are as follows and in order to formulate the recommendations.

1. Retrospective Effect

Both the Madras and Maharashtra Acts as referred earlier, apply to initiation of civil as well as criminal proceedings. While the Madras Act does not apply to seeking leave for continuation of pending proceedings, the Maharashtra Act requires leave to be obtained to continue pending proceedings also, in case a person is declared a vexatious litigant during the pendency of such proceedings. In fact, in other countries too, the laws prescribe the need for leave for continuing pending proceedings. This being the position, the LCI
opined that once a person is declared to be a vexatious litigant, the proposed law should require leave not only to initiate civil or criminal proceedings but for continuing any civil or criminal proceedings which had already been commenced before the person was declared a vexatious litigant.

2. Declaration by Whom

The LCI is of the view that the application in this regard should be filed in the High Court and be dealt with by the High Court in a Division Bench.

However, it is recommended that this power can be given to the senior most District and Sessions Judge also qua his jurisdiction.

3. Grounds for the Declaration

As to the grounds to be alleged and established for declaring a person as a vexatious litigant, both Acts use the words ‘habitually and without reasonable ground instituted vexatious proceedings’. They do not use the word ‘persistent’, which word is used in Section 42 of the UK Act of 1981 and in other countries.

In the States in USA, another method is employed. In California, it is required to prove that in the preceding ‘seven year period’, the person has commenced, prosecuted or maintained propria persona at least five litigations other than in a small claims Court that have been (i) finally determined adversely to the person or (ii) unjustifiably permitted to remain pending at least for two years without having been brought to trial or hearing.

In Texas, the provision is similar but with a further condition that such litigations must have been ‘determined by a trial or appellate Court to be frivolous or groundless under the State or federal laws or rules of procedure’.
In Australia, the High Court Rules, 1952 (Rule 6.3.0) require proof that the person ‘frequently and without reasonable ground has instituted vexatious legal proceedings’.

In Western Australia, Section 3 of the Vexatious Proceedings Prevention Act, 2002, defines vexatious proceedings as those:

“(a) which are an abuse of the process of a Court or tribunal;

(b) instituted to harass or annoy, to cause delay or detriment, or for any other wrongful purpose;

(c) instituted or pursued without reasonable cause; or

(d) conducted in a manner so as to harass or annoy, cause delay or detriment, or achieve any other wrongful purpose”

In Queensland, Section 3 of the Vexatious Litigant Act, 1981 requires proof that the person had ‘frequently and without reasonable ground instituted vexatious legal proceedings’.

In New Zealand, Section 88A of the Judicature Act, 1908 uses the words ‘persistently and without any reasonable ground’.

In Canada, Section 40 of the Federal Courts Act, 1985 uses the words ‘persistently instituted vexatious proceedings’.

After examining the above statutes, the LCI did not incline to go by the test of seven cases in five years as adopted in some States in USA. So far as the Supreme Court Act of 1981 (UK) is concerned, it uses the words ‘habitually and persistently and without reasonable ground’.

The question is whether, in addition to the word ‘habitually’, we should also use the word ‘persistently’. The LCI recommended that the words ‘habitually’ and ‘persistently’ convey more or less the same meaning, and therefore, both need not be included.
Thus, we are of the view that it is not necessary to use both the words ‘habitually and persistently’. The words which have been used in the Madras and Maharashtra Acts, namely, ‘habitually and without reasonable cause’ are sufficient.

4. **Declaration against the cantankerous litigant whether he litigates against the same or different persons**

The Maharashtra Act uses the words “habitually and without reasonable ground instituted vexatious proceeding civil or criminal, in any Court whether against the same person or against different person”. The Madras Act of 1949 does not use the words, ‘whether against the same person or different person’. The UK Act (Section 42) also uses these words.

In our view, it will be more appropriate to use these words also, i.e. ‘whether against the same person or different person’.

5. **Who can file the Application**

As to who should file an application in the High Court to declare a person as a vexatious litigant, the Madras and Maharashtra Acts permit the Advocate General to file the application in the High Court.

In England, under Section 42 of the Supreme Court Act, 1981, the application is to be filed by the Attorney General.

In Australia, as per the High Court Rules, 1952, the application can be filed by a Law Officer, or the Australian Government Solicitor or the Principal Registrar of the Court.

In Western Australia, Section 4(2) of the Vexatious Proceedings Prevention Act, 2002 provides that an application can be filed by (a) the Attorney General, (b) Principal Registrar of the Supreme Court or the Principal Registrar of the District Court, or (c) with leave of Court by a person against whom another person has instituted or conducted
vexatious proceedings, or (ii) a person who has a sufficient interest in the matter.

In New Zealand, under Section 88A of the Judicature Act, 1908, the application has to be filed by the Attorney General.

In US, in California, under Section 391.1 of the Code of Civil Procedure, even ‘the defendant’ can move the Court but that is for an order requiring security on the ground that plaintiff is a vexatious litigant.

In Texas, Section 11.051 of the Civil Practice and Remedies Code is on the same lines as in California.

In Canada, under Section 40(2) of the Federal Courts Act, 1985, the application may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application.

The LCI is of the view that the Advocate General of the State and in the absence of an office of Advocate General (as in Delhi High Court), a Senior Advocate nominated by the High Court, should be entitled to file the application. The Registrar General of the High Court, as well as the person against whom another person has instituted or conducted vexatious proceeding must also be entitled, with leave of the Division Bench of the High Court, to file an application to declare the opposite party as a vexatious litigant. In such cases, the Court must also hear the Advocate General or the Senior Counsel nominated by it (where there is no office of Advocate General). The Court must also hear the person against whom the application is made.

6. **Nature of such Declaration**

Another question is as to what type of orders the High Court should pass in the applications. The High Court will, in such an application, after hearing the parties referred to above, no doubt
decide whether the opposite party is a vexatious litigant. But it shall also have to direct that the person so declared shall not initiate any civil or criminal proceedings, or if already instituted, shall not continue the same in the High Court or in any Court under the supervisory jurisdiction of the High Court without obtaining leave. (This will cover cases where a High Court has jurisdiction over more than one State/Union Territory). The order will include a direction that no civil or criminal proceedings shall be instituted or continued by a vexatious litigant:

(a) in the case of proceedings in the High Court, without leave of the High Court, and

(b) in the case of proceedings in the District and Sessions Court or in any Court under the supervisory jurisdiction of the High Court, without the leave of the District and Sessions Judge.

But, in the following cases, it shall not be necessary for the vexatious litigant to obtain leave for instituting or continuing the proceedings:

(a) where the vexatious litigant proposes to institute a proceeding in the appropriate Court for the purpose of obtaining leave;

(b) where in any matter instituted against the vexatious litigant, such litigant proposes to file or continue any recourse by way of defending himself;

(c) where in a proceeding instituted or continued by such vexatious litigant after obtaining leave from the appropriate Court, the said litigant proposes to file or take appropriate further proceedings.

7. **Grounds for the grant or refusal of such leave**
So far as the circumstances under which leave can be granted or refused, the following procedures are there in various jurisdictions.

In the Madras Act, 1949, Section 3 provides that leave shall not be given in respect of any proceeding which may be filed by the vexatious litigant unless the Court before which the leave application is filed finds a ‘prima facie’ ground for such proceedings.

The Maharashtra Act, 1971 refers to two conditions. Section 2(2) states that leave shall not be given unless the Court is satisfied that the proceedings are (a) not an abuse of the process of the Court, and (b) there is prima facie ground for the proceedings.

Section 42(3) of the UK Supreme Court Act, 1981 uses the words ‘unless the High Court is satisfied that the proceedings or applications are not an abuse of the Court in question and that there are reasonable grounds for the proceedings or application.

In USA, in California, Section 391.7(b) uses the words ‘only if it appears that the litigation has merit and has not been filed for the purposes of harassment or delay’.

In Texas, Section 11.102 also requires leave to be granted only if the case has merits or has not been filed for the purpose of harassment or delay.

In Australia, Section 63.6 of the High Court Rules, 1985 uses the words ‘unless the Court of Justice is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground for the proceedings’.

In Western Australia, Section 6(7) of the Act of 2002 provides that the Court must be satisfied that the proceedings are not vexatious and there is prima facie ground. ‘Vexatious’ is defined in Section 3 as being either abuse of process or instituted to harass or annoy or to cause delay or detriment or for any wrongful purpose or without
reasonable ground or conducted in a manner to harass or annoy or cause delay or detriment.

In Queensland, Section 11 of the Act of 1981 refers to prima facie ground or sufficient reason and also that there is no abuse of process of Court.

In New Zealand, Section 88A(2) of the 1908 Act provides that the leave is to be granted only if the Court is satisfied that the proceeding is not an abuse of process of Court and there is prima facie ground in the proceedings.

In Canada, in the 1985 Act, Section 40(4) also refers to the proceedings not being an abuse of process of Court and there being reasonable grounds for the proceedings.

On a consideration of the above statutes, the words in the Maharashtra Statute of 1971 should be adopted as the same provides that leave shall not be granted unless the Court is satisfied that the proceeding is not an abuse of process of Court and there are also reasonable grounds for the proceedings. (The Madras Act, 1949 does not refer to the other condition that the proceeding should not be an abuse of process of Court).

8. Modification or rescission of such declaration

A provision for modification or rescission of an order declaring a person as vexatious litigant is not contained in the Madras and Maharashtra Acts. The question arises whether it is necessary to have a separate provision.

In Section 7 of the Western Australia Act of 2002, it is stated that where, in respect of a vexatious litigant, a proceeding is stayed as he is prohibited from filing fresh cases, except with leave, the Court may, on the application of the said vexatious litigant, ‘rescind or vary’ the order.

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The LCI opines that such an express provision is not necessary inasmuch as the Court which passed an order declaring a person as a vexatious litigant can always rescind or modify it, if there is change of circumstances under its inherent power and in that case it has to hear the party at whose instance the person was declared vexatious litigant, as also the Advocate General or other Senior Counsel nominated by the High Court (where there is no office of Advocate General).

9. **Consequences of initiating or pursuing such proceedings by the cantankerous litigant without obtaining leave**

It has been debated as to what action is to be taken against a person (who is declared as a vexatious litigant and who is directed to obtain prior leave for initiating or continuing an action) but who violates the order and either initiates or continues a case, in violation of the order, without obtaining leave and without disclosure of the existence of an order against him.

Section 3 of the Maharashtra Act, 1971, and Section 4 of the Madras Act of 1949 are in *pari materia* and provides that such proceedings be dismissed. The only exception where leave has not to be obtained is an application seeking leave.

There does not appear to be any specific provision in the UK Act of 1981 but in USA, in California, Section 391.7 of the Code of Civil Procedure permits the Court to take action for contempt of Court. In Texas, Section 11.101 of the Civil Practice and Remedies Code also permits the Court to take proceedings for contempt of Court.

In Western Australia, Section 5 of the Act of 2002 permits imposition of costs and the striking out of the proceedings.

The LCI opines in two ways. One is that in such situation, the Court in which the proceedings are so instituted or continued without
obtaining leave in spite of an earlier direction to obtain leave, the Court should have power to dismiss the proceedings and also award costs against the person who is in such violation. This is the action that can be taken by the Court in which the person has instituted a case or is continuing a case without leave. The other is that in case of High Court which declared the person as a vexatious litigant and which imposed the condition that he should obtain prior leave, must take action for contempt of Court for violation of its order. It is needless to mention that no leave is required for filing an application for leave.

10. The Right to Appeal

The LCI opines that such orders shall be passed only by a Division Bench of the High Court, and therefore, it is not necessary to provide for any further right of appeal. However, the parties can always move the Supreme Court under Article 136 of the Constitution of India.

In my view, such right to appeal can be provided to such litigant against whom a declaration has been made, subject to the condition of depositing of some security bonds. In case his attempt becomes unsuccessful, the appellate Court may forfeit or allow him to release the security bonds. This will further keep a check upon such litigants to think before they file the appeal.

11. Communication to all and gazette publication

Almost all statutes provide for a gazette publication of the order of the Court declaring a person as a vexatious litigant. But, when in some States the subordinate Courts are in hundreds, it is possible that all the Courts do not have access to the gazettes. We are, therefore, of the view that whenever the Division Bench of the High Court passes such an order as stated above, a copy of the order must be communicated to all the subordinate Courts within its supervisory
jurisdiction. In addition to a Gazette notification, it may also be permissible for the High Court to give directions for publication of its order in any other manner it deems fit.

12. **Extension of period of limitation- whether required**

The Madras and Maharashtra Acts do not make any special provision. If the High Court restrains a person from initiating a proceeding, and the person has to apply for leave before the appropriate Court as stated above, there may be cases where the suit may, in some cases, get barred by limitation by the time leave is granted. The question is whether any special exemption or extension of time is necessary.

Section 15(1) of the Indian Limitation Act, 1963 provides that ‘in computing the period of limitation for any suit or application for the execution of a decree, the institution or execution of which has been stayed by injunction or order, the time of the continuance of the injunction or order, the day on which it was issued or made, and the day on which it was withdrawn, shall be excluded’.

Similarly, under Section 470(2) of the Code of Criminal Procedure, 1973, it is stated that where the institution of the prosecution in respect of an offence has been stayed by an injunction or order, then, in computing the period of limitation, the period of the continuance of the injunction or order, the day on which it was issued or made and the day on which it was withdrawn, shall be excluded.

In view of the above provisions, it is not necessary to make any special provision for exemption or extension of time in the proposed Act.

13. **Cases in more than one State can raise problems**

Let us assume that the High Court in State A has passed an order declaring a person as a ‘vexatious litigant’ and prohibited him
from initiating or continuing any case, civil or criminal, in any Court subordinate to it, without obtaining leave from the appropriate Court. Can the person so declared and so prohibited by injunction, bring or continue an action in any Court which is under the supervisory jurisdiction of another High Court?

In such a situation, the LCI opines that the opposite party against whom the case, civil or criminal, has been initiated or is being continued in another State, or the Advocate General or the Registrar General of the High Court can move the High Court in which such proceeding is instituted or continued or instituted or continued in a Court which is subordinate to the High Court, to pass a similar order declaring the person concerned as a vexatious litigant and to direct him to seek leave for continuing that case or for initiating any fresh case in any Court within the supervisory jurisdiction of that High Court.

This leads us to one conclusion that the vexatious litigant once declared must be kept under watch as he may not indulge in such activities again at different places.

14. Certain Exceptions

No rule can and should be absolute as the situations may necessitate otherwise. Where a person who has been declared as vexatious litigant, wants to move for anticipatory bail or is arrested and wants to file an application for habeas corpus or for bail. To require a person to seek prior leave in such cases would, in our view, be violative of basic right to liberty as guaranteed in Article 21 of the Constitution of India. In order to see that such cases are not covered by the word ‘criminal proceeding’, the LCI recommended that a definition of ‘criminal proceeding’ be inserted to the effect that a criminal proceeding means ‘the commencement or institution or
continuation of a proceeding seeking prosecution by way of complaint’.

Likewise, in so far as civil proceedings are concerned, we should exclude proceedings under 226 of the Constitution of India, because basically the intention is to stop vexatious civil litigation which starts with suits.

In my view, such declaration should also be allowed to be made by the Principal District Judge of a particular district for the reason that a number of vexatious cases are filed in the district Courts and there is no restraint upon such cantankerous litigants and there is nobody at the district level to point out such instances and there is nobody to take such pain to approach the respective High Courts.

It is further submitted that there is a great need to have a law on the same subject for being applied to the whole of India. It is, therefore, proposed to recommend the bringing into force of a comprehensive legislation on prevention of vexatious litigation applicable to all the States and Union Territories.

9.2.5.4 A Proposed Draft Bill

It may be described as ‘The Vexatious Litigation (Prevention) Bill, 2005’. A Bill to prevent the institution or continuance of vexatious proceedings, civil and criminal, in the High Courts and Courts subordinate thereto.

Whereas, it is expedient to prevent the institution or continuance of vexatious proceedings, civil and criminal, in the High Courts and in the Courts subordinate to the High Courts;

Be it enacted in the Fifty-Sixth Year of the Republic of India as follows:

1. Short title, extent and commencement:
This Act may be called “The Vexatious Litigation (Prevention) Act, 2005”.

It extends to the whole of India except the State of Jammu and Kashmir.

It shall come into force on such date as the Central Government may, by notification in the Official Gazette specify.

2. Declaration of a person as a vexatious litigant:

(1) An application under sub-Section (2) for declaring a person as a vexatious litigant, may be filed —

(a) by the Advocate General or in absence of office of Advocate General, by a Senior Advocate nominated by the High Court in this behalf; or

(b) by the Registrar General of the High Court; or

(c) with the leave of the High Court, by a person against whom another person has instituted or conducted proceedings, civil or criminal.

(2) If, on an application filed under sub-Section (1), the High Court is satisfied that any person has habitually and without any reasonable ground instituted vexatious proceedings, civil or criminal, in any Court whether against the same person or against different persons, the High Court may, after giving the person who has instituted such proceedings, an opportunity of being heard, declare that person as a vexatious litigant and shall also order as stated under sub-Section (1) of Section 3.

(3) When an application is filed by any person referred to in clause (b) or (c) of sub-Section (1), the Advocate General
or, in the absence of such an office, a Senior Advocate nominated by the High Court in this behalf, as the case may be, shall also be heard on the application.

(4) Application filed under sub-Section (1) shall be heard by the High Court in a Division Bench.

3. **Leave of Court necessary for vexatious litigant to institute or continue any civil or criminal proceedings:**

(1) Subject to the provisions of sub-Section (2), when the High Court under sub-Section (2) of Section 2 or under sub-Section (2) of Section 6 declares a person as a vexatious litigant, it shall also order that-

(a) no proceeding, civil or criminal, shall be instituted by the said person in the High Court or any other Court subordinate to that High Court; and

(b) no proceeding, civil or criminal, if already instituted by the said person in the High Court or any other Court subordinate to that High Court, shall be continued by him,

without obtaining leave of the appropriate Court or Judge referred to in sub-Section (3).

(2) It shall not be necessary for the person declared as a vexatious litigant to obtain leave in the following cases:

(a) where such person is instituting a proceeding in the appropriate Court or before the appropriate Judge for the purpose of obtaining leave;

(b) where, in any matter instituted against him, such person proposes to file or take appropriate proceedings to defend himself;
(c) where, in a proceeding instituted or continued by such person after obtaining leave from the appropriate Court or the Judge, the said person proposes to file or take appropriate further proceedings.

(3) In this Section and in Section 5, the “appropriate Court or appropriate Judge” means-

(a) the High Court, in the case of a proceeding proposed to be filed or continued by the person declared as a vexatious litigant in the High Court;

(b) the District & Sessions Judge, in the case of proceeding in any other Court subordinate to the High Court.

(4) Leave shall not be granted unless the appropriate Court or the appropriate Judge, as the case may be, is satisfied that the proceedings are not an abuse of the process of the Court and that there is prima facie ground in the proceedings proposed to be instituted or continued by the person declared as a vexatious litigant.

Explanation: In this Section and Section 5

(a) institution or continuation of civil or criminal proceedings does not include proceedings instituted or continued under Article 226 of the Constitution of India.

(b) institution or continuation of “criminal proceedings” means the commencement or institution or continuation of a proceeding seeking ‘prosecution’ by filing a complaint before a Criminal Court.

4. Publication and Communication of Order:
(1) A copy of every order made—
under sub-Section (2) of Section 2, declaring any person as a vexatious litigant,
shall be published in the Official Gazette and may also be published in such other manner as the High Court may direct.

(2) Every order referred in sub-Section (1) shall also be communicated to all the Courts subordinate to the High Court which passed such order.

5. **Procedings, civil or criminal, instituted or continued without leave of the appropriate Court to be dismissed and other consequences:**

(1) Any proceedings, civil or criminal, instituted or continued in any Court by a person against whom an order under sub-Section (1) of Section 3 has been made without obtaining the leave required to be obtained from the appropriate Court or appropriate Judge, shall be dismissed by the said Court.

(2) The Court while dismissing the proceedings under sub-Section (1) shall, in addition, further direct such vexatious litigant to pay costs.

(3) Every person referred to in sub-Section (1) who has instituted or continued any proceeding without leave as aforesaid, may also be liable for punishment for contempt of the High Court which had passed the order under sub-Section (1) of Section 3.

6. **Declaration and order by more than one High Court:**
(1) Where any person against whom an order under sub-
Section (1) of Section 3 has been made by a High Court, 
institutes or continues any proceeding, civil or criminal, 
in another High Court or in a Court subordinate to such 
High Court, then the persons referred to in sub-Section 
(1) of Section 2 may make an application to such High 
Court for declaring such person as a vexatious litigant.

(2) If, on an application filed under sub-Section (1), the High 
Court is satisfied that any person has been declared as a 
vexatious litigant under sub-Section (2) of Section 2, by 
another High Court, the High Court may after giving an 
opportunity of being heard to the person who has 
instituted or continued any proceeding, civil or criminal, 
declare that person as a vexatious litigant and shall also 
order as stated under sub-Section (1) of Section 3.

(3) Where an application under sub-Section (1) is filed, the 
provisions of sub-Sections (3) and (4) of Section 2, and 
Sections 3, 4 and 5 shall apply in relation to such 
application.

7. Power to make Rules

The High Court may frame rules for the purpose of 
implementing the provisions of this Act.

8. Saving

The provisions of this Act shall be in addition to and not in 
derogation of the provisions of any other law providing for striking 
out vexatious pleadings or prevention of abuse of process of law, or 
which require consent, sanction or approval in any form of any other 
authority for the institution or continuance of any civil or criminal 
proceeding.
9.3 Suggestions for Reforming Various Agencies of Justice Delivery System

A problem is not the result of one or two factors rather it is the result of a number of factors. While the need is to improve other facets, there is need to revamp other agencies. The agencies of justice delivery system namely investigating agency, prosecution and Courts need to improve in various respects.

9.3.1 Suggestions for expeditious investigations

The investigation is the bone of the criminal cases registered by the police. At least the heinous crimes can be solved by the trained and well-equipped agency only.

9.3.1.1 Modernization of Investigation Agencies

The Investigation Agencies must be well equipped to analyze the organization and planning of crimes, involving equipments like tapes recording, video tapes and electronic record etc. to ensure speed and accuracy. They need to be given the latest technologies to curb the crime and to nab the criminals.

9.3.1.2 Separate Investigation Department

The state government should create a special wing in police department solely for purpose of investigation and attending Court work. The separation of the investigation wing from the wing for maintenance of law and order has also been suggested by the Malimath Committee.

9.3.1.3 The Transfer Policies

The executive should frame the transfer policies in such a manner that investigation officer dealing with cases of major crime are not transferred. In this regard, the Supreme Court Judgement in
Prakash Singh V. Union of India should be implemented in letter and spirit.

9.3.1.4 Scientific investigation

The modern advancement of science and technology in the 20\textsuperscript{th} century has provided various instruments and equipments with accuracy and transparency for the conduct of investigation. The Justice Delivery System in India needs to upgrade and apply these scientific techniques so as to ensure in-time justice.

9.3.2 Suggestions for better docket control

Hon'ble Mr. Justice Mohit S. Shah,\textsuperscript{12} the Judge of the High Court of Gujarat has suggested the following Case Management techniques. These techniques intend to deal with the problem at the micro level of the individual case from the date of its institution till its disposal by an individual Judge, the Court Management or Docket Control aims to look at the problem from a macro level by seeking to deal with the pendency of cases in the Courts. The suggestions in this regard may be broadly classified into two categories.

1. Suggestions which could be acted upon by the Chief Judge of any Court as a part of the Docket Management which would not involve any financial burden. (Para 4)

2. Suggestions for Judge Management which could be acted upon by the High Court without any financial burden. (Para 5)

\textsuperscript{12} In ‘Delay in Civil Litigation’, All India Seminar on ‘Judicial Reforms with special reference to arrears of Court Cases’ held at Vigyan Bhawan, New Delhi, 85 (29\textsuperscript{th} & 30\textsuperscript{th} April, 2005).
9.3.2.1 **Docket management by the Chief Judge**

9.3.2.1.1 **Classification of cases**

All the cases are required to be classified depending on the nature of the subject matter of cases. At present, there is a broad classification of cases into different categories for the purposes of preparing roster, but not much beyond that.

1. Even within the existing classification of cases in the trial Courts, there is scope for sub-classification particularly amongst the Company Suits, Summary Suits and other suits. For instance, other suits relating to property could be classified into mortgage suits, partition suits, partnership suits etc.

2. Similarly in the High Court it is possible to make sub-classification particularly in Special Civil Applications like non-service matters. It is also possible to make sub-classification in service (employment) matters and labour matters. First appeals could be classified into various sub-categories over and above the existing broad classification into MA.C.T. Appeals (Motor Accident Claim Appeals), Municipal Valuation Appeals, Land Acquisition Compensation Appeals and Civil Appeals. The Civil Appeals could be sub-divided into Appeals against decrees in partnership suits, in partition suits, in suits for specific performance etc.

3. In the process of classification of old cases many fruitless or infructuous cases can be weeded out.

9.3.2.1.2 **Early assignment of case to the same trial judge**

A specified category of cases (sub-classified according to subject matter) could be assigned to a particular trial Judge having
familiarity with that branch of litigation, who will be in a better position to decide the cases more efficiently and expeditiously. By assigning the case to the same Judge from the date of institution, the Judge will also be in a position to effectively monitor the progress of the suit till its disposal. The Judge will also be in a position to ensure better compliance with the procedural rules regarding production of documents, discoveries, interrogatories, bringing the heirs of deceased parties on record within the period of limitation etc. The controversies between the parties could thus be narrowed down and the time for trial could be considerably reduced.

9.3.2.1.3 Special business for longer duration—trial Courts

While the civil suits and MACT cases assigned to a Judge in the City Civil Court remain with the same Judge, the specially assigned work keeps rotating every three months. It might take about 15 days to a month for the Judge to get conversant with the special work. Hence, if the special work is assigned for a period of 6 months, the Judge may be able to deal with the said special work more effectively.

9.3.2.1.4 Assignment of Cases

For assigning cases to different Courts, the Chief Judge will have to keep in mind the classification of cases as well as pendency of cases and then assign appropriate priorities. For instance, motor accident claim petitions, where widows and minor children are waiting for compensation, would ordinarily have to be given priority over civil appeals with the same pendency. For this purpose, the Chief Judge will have to decide what length of pendency for a given category of cases may be considered as reasonable pendency depending on the docket of the Court. Cases pending for any period longer than that period may be considered as "old cases" and given priority.

(1) Assignment of cases in trial Court: In many trial Courts, cases are assigned to different Courts by rotation. This
does not serve any useful purpose except ensuring numerically equal distribution of work amongst the available Courts at a particular level. Apart from classification of cases and expertise of a particular Judge in a particular branch of law, the Chief Judge will have to consider the pattern/s of litigation.

(2) Assignment of cases in High Court

(a) The assignment of old final hearing cases need not be confined to the same Judge who is assigned admission cases of that particular Supreme Court Bar Association category. For instance, although there may be only one Judge for hearing admission of First Appeals (i.e. appeals against recent decrees passed by Civil Judges Senior Division in the State) on 2/3 days in a week, old First Appeals could be assigned to four Judges on 2/3 days earmarked for final hearing old cases.

(b) In new as well as in old cases, assignment of cases to Judges having familiarity with that branch of litigation will be conducive to speedier and more effective disposal of cases.

(c) There are certain categories of heavily contested cases where against the decision of a single Judge, appeals are almost invariably filed e.g. writ petitions in election cases and in tender and contract cases. Such cases could be assigned right from the outset to a Division Bench, which will save considerable time of the Single Judge, during which a large number of less contested cases can be heard.
(d) Similarly a large number of less contested appeals like motor accident claim appeals can be assigned to Single Judges, where the amount involved is not more than Rs.5 lakhs.

(e) Certain categories of cases have a seasonal character. Students' petitions in admission cases are filed in a large number in the months of June and July. At that point of time, the Judge who is assigned such matters may not be given other heavy business.

9.3.2.1.5 Small number of cases to be notified

(a) Because the daily board of a trial Judge may consist of a large number of matters running into 100 or 200 at times, the lawyers, parties or even the Judge may not be in a position to have a realistic and practical estimate of the cases which are going to be taken up for trial. Instead, depending on the classification of cases and the duration for which they have been pending, if only a limited number of cases ripe for hearing are notified for trial, say 5, the lawyers as well as the litigants would be put to notice that the cases will go on trial and that adjournment applications will not be granted. It will also make the task of the Judge easier to manage the schedule. This will also reduce the burden on the lawyers of otherwise having to attend to a large number of cases, most of which are not to be tried in any case, but with uncertainty as to which cases would be taken up for trial.

(b) Whether in interlocutory applications in the trial Courts or in matters for preliminary hearing in the High Court, Case Management techniques will help in reducing the
number of matters to be notified. Only a limited number of cases, say 30 on a day, should be listed after reply and rejoinder are filed within the stipulated time limit.

(c) 80: 20 Rule In most of the Courts, 80% matters are capable of quick disposal, but 20% matters need more time and energy of the Court to be invested. While notifying cases, it must be ensured that on a given day, more than one heavily contested matter should not be notified.

9.3.2.1.6 Early notification of schedules (cause lists) and setting realistic short term targets for old cases

Trial Courts

The lawyers express frustration that the schedules/cause lists are available very late, some times not until the evening before the date of hearing. The case schedules or daily boards of 5 to maximum 10 old cases ripe for hearing before one Court should be notified well in advance, at least a fortnight or month's advance notice should be given.

High Court

Very often it happens that when old cases are notified for final hearing after a number of years or even when preliminary hearing cases are notified after a long period, lawyers request for time on the ground that they would like to take instructions about the developments in the intervening period, but the cases were listed only a couple of days earlier or just on the previous evening making it difficult to take instructions. Even if detailed listing of notified cases before a particular bench may be done after some time, it would be possible for the Registry to notify by a general intimation one or two months' in advance (including press notes) that all the cases of a
particular year/s, say. First Appeals, Second Appeals upto 1988 and Special Civil Applications upto 1996 will be taken up for hearing in the months of July/August, 2005. Then it would be for the lawyers to trace out their own papers of the cases of that particular year/s and start getting in touch with their clients instead of waiting for each individual case to be notified. Contacting clients and preparing for cases need not wait till the case is notified before a particular Judge on a particular date, for which one week's notice may suffice.

9.3.2.1.7 Exclusive days for old cases

Lawyers would generally prefer to avoid going for old cases when they have an opportunity of arguing for urgent stay orders in new cases. If specified days in a week are earmarked for hearing of old cases and the other days for new cases or the judicial hours are segregated in such a manner that old cases are taken up before the recess and new cases are taken up after the recess, this will avoid the dilemma to which the lawyers are put.

Such exclusive days should be earmarked for old cases; and not just for final hearing cases because otherwise 1 or 2 year old admitted cases may be taken up for final hearing.

This suggestion can be implemented if the cases of urgent nature are assigned to a large number of Judges.

9.3.2.1.8 Joint Consultative Committee

For implementing the above suggestions, apart from the initiative to be taken by the Judges, the lawyers would also have to be taken into confidence. As borne out by the experience of Judge Patterson, Chief Judge, San Diego Inferior Courts, if lawyers are taken into confidence, they are more likely to cooperate with the implementation of the reforms. Hence, if each Court has a joint consultative committee consisting of the Chief Judge, a few Judges, a
few office bearers of the Bar Association and the Government Pleader and the Public Prosecutor and if such committee has periodical 80 Supreme Court Bar Association meetings, all suggestions for reforms could be discussed, formulated and smoothly implemented.

9.3.2.2 Suggestions for Judge Management

The following suggestions are made for proper Judge Management with the ultimate goal of ensuring more efficient disposal of cases and reducing the delay in civil litigation.

9.3.2.2.1 More time for administration by the Chief Judge

The Chief Judge of any Court should be permitted to spend at least the half the time for administrative work because many of the suggested changes would require constant monitoring and also modifications from time to time. The inspiration and motivation that the Chief Judge can provide to his team can multiply disposal of cases more meaningfully and effectively. The performance of San Diego Inferior Courts under Chief Judge Patterson bears testimony to this principle.

9.3.2.2.2 Work norms: revision of norms for disposal

While assessing the performance of a Judge on the basis of Judgments rendered by him is a relevant criterion for assessing his judicial competence, only one fifth of the credit is given to Judges of the trial Courts and lower appellate Courts for disposal otherwise than by judgment. Hence, revision of disposal norms for giving greater weightage to cases disposed of by bringing about settlements would also be a good motivating force for the Judges to persuade the parties to avail of the alternative dispute resolution mechanisms and to ensure a smaller number of cases going to trial.
9.3.2.2.3 **Flexibility for Chief Judge in setting targets**

Since the norms for disposal are prepared keeping in mind an individual judicial officer, sometimes the Chief Judge of a Trial Court does not have the flexibility to make assignment in such a way that one Judge would take up only one category of cases. To take care of this situation, without reducing the number of cases required to be disposed of by all the Judges in that Court taken together, the Supreme Court Bar Association Chief Judge may be given discretion to assign the cases according to the exigencies of the situation and he may be required to ensure that the total number of cases required to be disposed of by that Court as an institution should not be less than the total number of disposals for individual Judges as per the prevailing norms.

9.3.2.2.4 **Peer Pressure**

The Indian experience, as indicated by Late Chief Justice M.C. Chagia of the Bombay High Court and the American experience, as indicated by Judge Henderson, Former Chief Judge of the Federal Court of San Francisco, has revealed that circulation of disposal figures amongst Judges gives the necessary impetus or acts as a motivating force to spur the Judges for disposal of more cases.

9.3.2.2.5 **More Incentives for Work**

Once the work norms are properly revised, greater weightage for disposal of cases in the confidential reports and in the matter of assessment of marks for preparing the select list for promotion of Judges to the higher cadre would also work as motivating factors for achieving better disposal of cases by the Judges.

9.3.2.2.6 **Judicial Training**

Training Judges for Court Management and Case Management is one of the dire necessities of the time.
9.3.2.2.7 Motivation and positive environment

None of the above suggestions would be effective unless the Chief Judge is able to motivate the other Judges and also create and maintain a positive environment for teamwork. In my view, the bane of public sector in general and Courts in particular is not so much corruption as the cynicism that assessment of an officer is not made on the basis of positive performance that he displays, but the assessment is to be made in inverse ratio to the number of mistakes which may be perceived, highlighted or blown out of proportion.

In the end, we can say that though the problems faced by the trial Courts and the High Court are quite daunting and formidable, they are not insurmountable. These suggestions may be implemented in different stages. The suggestions for dealing with new cases in the pilot project trial Courts, which have a bearing on the case management aspect, may be introduced in the cases to be taken up, say from 1st July, 2013, by assigning such new cases to a limited number of Judges without waiting for all the suggestions to be implemented for all cases which may not be possible at the first go.

9.3.3 Suggestions for Upgrading the Quality of Prosecution

No attempt has been made in India for upgrading the quality of prosecution. The successful prosecution is dependent upon the qualified and trained prosecutors. A prosecutor should be well qualified and trained to do the nature of jobs he is entrusted with. There is no suitable training for upgrading the quality of prosecutors. Without any previous suitable training of conducting these cases, he has to fight against the accused persons for securing conviction. A thorough knowledge and practical training for conducting these cases are necessary in this regard. So, for upgrading the quality of prosecution, the following suggestions are made.
1. For upgrading the quality of prosecutors, they should be selected preferably from qualified lawyers i.e. LL.M. candidates. The persons who found their place in the waiting list of candidates declared successful in the Provincial Civil Services may be offered the role of prosecutors.

2. There should be training of prosecutors for conducting complicated cases like Section 420, 468, 471, 406, 408, 409 of the I.P.C. and some Special Acts. The prosecutors should also be trained in the modus operandi of different culprits in committing crimes. Training in criminology, expeditious disposal of criminal cases, special skills and techniques for securing justice should be imparted to them.

3. For selection of talented prosecutors, like the IAS Indian Prosecution Service should be created.

4. All relevant Law Books, Law journals and diaries should be provided to the prosecutors.

9.3.4 Suggestions for upgrading the quality of magistrates, and staff etc.

For upgrading the quality of Justice Delivery System, the qualified lawyers should be appointed as Magistrates. They should have good command in English. A Magistrate should be imparted necessary training by the trained and experienced Judges and other experts so that they may get a clear-cut idea for trial of cases. In a metropolitan area, a Magistrate shall have to try various types of cases investigated by C.B.I. These types of cases contain numerous witnesses, bulky documents, huge exhibits for which a Magistrate may not have got any opportunity to conduct. So, in all these types of cases, proper training of the Magistrates is therefore a sine qua non. A
Magistrate should be imparted Special Training in respect of newly emerging laws like cyber laws etc. A short-term training in criminology, forensic science etc. is also necessary.

A Magistrate has to depend on the bench clerks and other staff of the Courts. The bench-clerks write the order-sheets and the Magistrate is to sign it. The bench clerks should have good command in English as the order sheet is written in English. As a result in many situations, there arises enormous disparity in the order sheet. It is not possible for Magistrate due to his extra-ordinary workload to look over every line of the order sheet. In such situations it is suggested that there should be compulsory and suitable training for all the bench clerks before their appointment. There should be training institutes for upgrading the quality of bench clerks. The bench clerks should be provided for short-period training for maintenance of the order sheet, different stages of summons and warrants procedure cases.

9.4 Recognition of Victim’s Right

"Tears shed for the accused are traditional and trendy but what the law has done for the victim of crime, the unknown martyr?"\(^{11}\)

Justice V. R. Krishna Iyer

These words make it clear that the criminal law in India is not victim-oriented, it is rather accused-oriented. The sufferings of the victim are entirely overlooked. The modern criminal law is designed to punish, rehabilitate and reform the criminal but it outrightly ignores the important by-product of crime i.e. the victim.

In order to develop a comprehensive compensation policy, the following points\(^{11}\) may be taken into consideration:

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1. A compensatory legal code for victim compensation should be enacted for fair treatment, assistance and adequate compensation.

2. It should be mandatory for the State to pay compensation to the victim of Crime, both for private criminal acts and criminal acts perpetrated by agencies, like the police etc. The obligations on the part of the State arise because of two reasons:
   (b) The welfare state is committed to the constitutional goal of social justice.
   (c) For its failure to protect the life, liberty and security of its citizens.

3. A Proper Compensation Board should be established for quick disposal of cases of victims of crime and lock-up deaths in police custody. The compensation to the victim or his dependents should be granted without delay taking into account the victim’s age, occupation etc.

4. Proper measures should be opted to minimize inconvenience of victims, to protect their privacy and wherever necessary to ensure their safety.

5. An adequate and systematic compensation scheme should be adopted to indemnify the victim just proportionate to the loss sustained by him due to the commission of the offence.

6. An interim compensation scheme should be enacted to enable the victim to successfully fight his/her case and meet medical and other ancillary expenses.

7. Informal compensation settlement mechanism like Lok Adalat should be evolved to compensate the women
victim's of crime without any need to go through the
ordeal of a regular Court procedure.

8. *Victims' Redressal Forums*, like Consumer Redressal
Forum, may be constituted by an Act of Parliament to
adjudicate the claim and award compensation to settle the
issues arising from payment of compensation.

9. The provisions of *Criminal Procedure Code* should be
amended for providing ample reparative support to the
victims of crime by making it mandatory for the Court to
award compensation.

10. Special provisions should be made for *the women victims*
of crime particularly in case where women are victims of
heinous and inhuman crimes like rape etc.

11. In the case involving abuse of power, compensation to the
victims of crime should be awarded by imposing personal
fines on the officials, who are responsible for such abuse
of power, e.g. police atrocities.

should be done so as to ensure responsiveness to the
changing circumstances of society.

13. A special fund in the name of *'Compensation Fund'*
should be established, which should be maintained and
managed by a 'Special Compensation Board' to be
created for this purpose.

14. The laws should be enacted by the Parliament, adopting
and incorporating the principles concerning payment of
compensation to the victims enshrined in the
*International Treaties and conventions*, so as to
strengthen the legislation relating to payment of compensation.

15. Effective steps should be taken to curtail the delay in disposal of the cases and the procedure should be made simple and reachable to the victims because poor people are the worst affected persons for the non-payment or inadequate payment of compensation.

From the detailed and in-depth study of various constitutional provisions, it can be said that the fabric of Justice Delivery System is perfectly woven with the combined benefits and interests of both the accused and the victims. But, it is the callous attitude and insensitive approach on the part of lawyers that most of the rights of the victim remain in the law books only. No doubt, a few enlightened and justice-oriented judges and advocates have been trying to help the victims by interpreting the domestic provisions and by utilizing various International Conventions.

A victim in the criminal justice process should have the right to watch the entire criminal trial. The “Fairness for victims”, is also internationally accepted basic elements of Justice Delivery System. These basic principles of fairness for victims are:

(a) The right to be treated with respect and recognition.

(b) The right to be referred to adequate support services.

(c) The right to receive information about the progress of the case.

(d) The right to be present and to be involved in the decision-making process.

(e) The right to counsel.

(f) The right to protection of physical safety and privacy.
The right to compensation from both the offender and the state.

9.5 Other Suggestions

In addition to the need for better co-operation between the bench and the bar, the role of law schools, teachers and students at different levels namely through media, public awareness, legal aid clinics etc. becomes crucial. The standard of legal education is also required to be improved. The following are some of the suggestions which can strike at the very root of the problem.

9.5.1 Witness Protection Programme

The following steps will go a long way in protecting witnesses from external influences and will adequately control the malady of hostile witnesses—

1. A special legislation should be enacted for protection of witnesses from all sorts of harassment. The legislation can be framed in the lines of The Victim and Witness

Some of the basic witness rights recognized in the civilized world are: (1) right to be protected from intimidation and harm; (2) right to be treated with dignity and compassion and respect of privacy; (3) notice of the status of the investigation and prosecution of the crime; (4) right to information on medical, facilities, social services, state crime compensation, and programs which provide counseling, treatment and other support; (5) secure waiting areas while at Court proceedings; (6) transportation and lodging arrangements. These rights should be provided for in the legislation so formulated.

Witness Protection Programme may consist of steps like on-call protection, security in Court, changing of personal date, concealing the witness’s address and requesting other authorities not to disclose it and temporary or permanent change of residence etc. The programs can be permanent or provisional and can be revoked if the conditions are not adhered to. In practice, problems will arise with respect to the rights of the defence, particularly when the police body which is responsible for the management of the protection programme is also involved in related investigations. So this programme is to be followed with utmost caution and only in cases involving heinous crimes and those involving high-profile cases.

Some of the alternative means of giving evidence are use of video-links or other audiovisual techniques, removing the defendant from the courtroom or allowing the witness to give evidence from a different location to that where the defendant is situated etc.
Protection Act, 1982 of the U.S.\textsuperscript{15} and The United Nations Declaration on Basle Principles of Justice for Victims of Crime and Abuse of Power in 1985.\textsuperscript{16}

2. A duty should be cast on the Investigating officer to get statements of all material witnesses questioned by him during the course of Investigation recorded on oath by the Magistrate under Section 164(5) of the Cr.P.C. and statements so recorded should be made as substantive evidence.\textsuperscript{17}

3. Immediate arrest of that persons/accused threatening the witnesses should be provided for.

4. Stringent penal provisions should be made for interfering with the discretion of the victim/witness. It can be argued that it is impossible to criminalize all conceivable forms of witness intimidation and that existing offences, such as offences against the life personal security of the witness (or his relatives) as well as those related to the integrity of the criminal justice system (contempt of Court and so on), may be sufficient. The tendency in many countries, however, seems to be to move towards the specific criminalisation of intimidation.\textsuperscript{18}


5. Victims/Witnesses should be informed of their rights. A number of countries throughout the world have made specific constitutional and legislative amendments to provide for witness/victim rights in their legal regime.¹⁹ The media can play an important role in this regard.

6. Courts should seriously respond to the crime of perjury, which is committed by witnesses with impunity in Courts. The impression in the mind of a witness that he can make a false statement in a Court and get away with it, with impunity, requires to be taken off by trying perjury cases swiftly, summarily and non-technically. A dozen of such punishments, duly publicized in press, will bring the desired result of creating a fear in the mind of witness inclined to favour accused persons for ulterior motives.

7. The examination of vulnerable or intimidated witnesses requires tact and understanding on the one hand, experience in questioning and good communication skills on the other. These capacities are necessary to make effective contact with the witness, to build mutual confidence with him or her and to obtain information that can be used as evidence in the case. Wherever possible, the staff responsible for the examination of witnesses should be selected from police officers experienced in this field.

9.5.2 **Introduction of Shift System** in the Courts

The establishment of additional Courts at any level involves enormous expenditure, both capital as well as recurring. The appointment of whole-time staff—judicial as well as administrative, to new Courts involves considerable recurring expenditure. On the other hand, if the existing Courts could be adapted to function in two shifts, with the same infrastructure, utilising the services of retired Judges and judicial officers, reputed for their integrity and ability who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly. The Law Commission in its 125th report dated May 11, 1988 had recommended, *inter alia*, introducing shift system in the Supreme Court to clear the backlog of cases by deploying retired judges. Even on November 5, 1999 the Union Law Minister (Mr. Ram Jethmalani) proposed introducing shift system in all Courts where the backlog of arrears was high. Shift system is there in industrial establishments and has already been introduced in educational institutions to cope up with the increased demand. It is time that it needs to be introduced in the Courts. Though the duration of the second shift could be lesser than the first one. The advantages would be:

1. The minimum expenditure with maximum output.

2. The existing Court buildings, furniture, library and other infrastructure and equipment could be used for the second shift.

3. The re-employment of retired judges, judicial officers and administrative staff would be far less burdensome to the exchequer, as they would be paid only the difference.

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20 All India Seminar on ‘Judicial Reforms with special reference to arrears of Court Cases’ held on 29th & 30th April, 2005 at Vigyan Bhawan, New Delhi, by P.P. Rao, Senior Advocate, Supreme Court of India, p. 92.
between the salaries and emoluments payable to serving judges and officers of the same rank and their pension.

4. The induction of experienced judicial personnel who enjoy high reputation for their integrity and ability will add to the credibility of the judicial system as a whole. With their rich experience they will be able to dispose of cases quickly and clear the arrears fast.

5. The prospect of re-employment after retirement of the most upright and efficient judges and judicial officers will act as an incentive to serving judges and judicial officers to remain honest and discharge their duties to the satisfaction of all concerned.

6. The reservoir of judicial experience readily available in the shape of retired judges and judicial officers is a precious human resource that is being wasted now. They can be easily persuaded to accept re-employment in public interest for running the second shift in Courts, assuring them of their pre-retirement seniority inter se.

9.5.3 Application of computer technology in the Court-process

There is an urgent need to introduce and apply the modern computer technology in our Courts particularly with respect to pending cases, copies of documents etc. The e-Court project has not been able to get expeditious results even after the lapse of about 10 years.

9.5.4 Establishment of Courts

There is a great disproportion between the requisite number of Courts and the existing number. A large number of judges in the subordinate as well as higher Judiciary should be appointed at the
earliest particularly with regard to the directions of the Supreme Court in *All India Judges Association v. Union of India.*

9.6 Suggestions for betterment of institutional measures

The philosophy of Alternate Dispute Resolution (ADRs) system is well-stated by Abraham Lincoln.22

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

Litigation does not always lead to a satisfactory result. It is expensive in terms of time and money. A case won or lost in a Court of law does not change the mindset of the litigants who continue to be adversaries and go on fighting in appeals after appeals. The Alternative Dispute Resolution system enables the change in mental approach of the parties. There is a long and unbroken tradition in India of the encouragement of ADRs. With the advent of the British Raj, the traditional institution of disputes settlement fell into disrepute and were gradually substituted and supplanted by the formal legal system, which was introduced in India by British. This substitution and supplanting virtually effected the traditional or non-formal legal system. After independence and against the backdrop of the failure of the formal legal system to bring justice and rule of law to the doorstep of the millions of impoverished and underprivileged citizens, there was a renewal of the traditional form of dispute resolution. Therefore, it is not substitution of one forum of dispute resolution for the other, but of examining and choosing the right mix of the formal legal system and ADR procedure. The advantages of the ADR procedures are the speed, flexibility in the schedule of hearing, reduction in the litigation costs due to quicker termination of proceedings, freedom of

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21 Supra note 5.
the parties to choose a referee with particular experience or expertise and being freed from the random assignment of judges under the judicial system of the state and lastly but the importance of secrecy which private hearing afford.

The ADR mechanism therefore involves a departure of what the philosopher Edward De Bona called, 'vertical thinking and adoption of lateral thinking' viz. the throwing up of new ideas and testing their efficiency. However continuous endeavors have to be made to introduce new solutions and procedures to make ADR more efficacious and result-oriented which could cater to the needs and aspirations of the society.

### 9.6.1 Lok Adalats

Most important and vibrant ADR system in India is through Lok Adalats. As observed by Justice J.N. Bhatt “It will become the savior of our legal system”.

This movement of Lok Adalats has gathered such a momentum that it has become very effective way of settling the disputes, not only that it has achieved popularity and public acceptance but it has also got the legal stamp.

In the phraseology “Lok Adalats” both words namely “Lok” and “Adalats” are equally thoughtful and profound and they influence the purpose of each other. “Lok” is a word of wide connotation. Apart from signifying the people in general, it conveys the abiding sense of supremacy and ultimate authority of the people especially in a democratic set up like ours.

The word “Lok” prefacing the word “Adalat” would therefore influence the meaning of latter by requiring it to be an institution not of formal and static significance inspiring awe in the minds of the

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23 S.S.P. Joshi, “Permitting compounding of more offences to achieve the aim of speedy trial and success of Lok Nyayalays”, 2001 Cri LJ Journal 163.
people, rather to be one entirely committed to serve the needs of Justice Delivery System with a missionary zeal. The aims, objectives and raison-d'-être of such Adalats must ultimately be judged and evaluated at the touchstone of the lofty concept of “Lok”. Even its functioning and methodology must be translated into practice to fulfill the hopes and aspirations of “Lok”. In Lok Adalats, the “Lok” content i.e. the public opinion aspect and the “Adalat” content i.e. the accurate thorough deliberation aspect have to be judicially blended and balanced.

At present many states in India have introduced Lok Adalats for urban and rural areas. These Adalats decide criminal, civil, and revenue cases pending before the law Courts by mutual consent of the parties, without going into the procedural formalities.

Lok Adalats have worked very well and satisfactorily in our country. Ever since 1987, when the concept of Lok Adalat has been giving statutory recognition. Some statistics are that up to 26-6-2004; 2,23,159 Lok Adalats have been held and therein 1,63,31,357 cases have been settled, half of which were motor accident claim cases. More than 4751 crores of rupees were distributed by way of compensation to those who had suffered 66,73,240 persons have benefited through legal aid and advice provided by these Lok Adalats. 24

The concept of Lok Adalat is gaining popularity in certain areas of law like Prison Lok Adalat, Motor Accident Claim Lok Adalat, Traffic Offences Lok Adalat etc. Then it is sufficient to say that it has made substantial contribution in taking justice to the doorstep of common man and providing for speedy justice. But it is not able to achieve its objectives to the fullest extent due to inherent limitations of Criminal Justice System like compounding of offences.

24 Supra note at 22.
9.6.2 Panchayati Raj institutions

In India, the Panchayati Raj Institution has been in existence from ancient times. In the past, the scope of Panchayati Raj system was to solve social problems with the help of few senior members of village called ‘Panchas’. The British rule caused irreversible deterioration to these institutions. After independence, the first Prime Minister of India Pt. Jawahar Lal Nehru adopted the American block model to secure the participation of people. The Indian constitution made special mention of Panchayati Raj institutions under the Directive Principles of State Policy. Article 40 provides,

“The State shall take steps to organize village Panchayats and endow them with such powers and authority be as may be necessary to enable them to function as a unit of self government”.

After a lengthy discussion and consideration for about 4 years, the Parliament passed Constitutionals Amendment Acts (73rd and 74th) in 1992 to ensure the effective participation of rural and urban people in the institutions of local self-government. These provisions invest these institutions with more powers and responsibility, functional and financial autonomy, regularity in election and organization. After passing of these acts, the rural and urban institution of local self-government have received much needed constitutional recognition. In fact it is a constitutional recognition of grass root level democratic set up.25 The need of the day is that the Panchayati Raj institutions should be given more teeth and even the power to decide petty matters, which would in effect mean taking the dispensation of Justice machinery to the grass root level.

9.6.3 Nyaya Panchayats

The Law Commission of India in its 154th report on Cr.P.C. 1973 has devoted a separate chapter on speedy justice in which it suggested and recommended the setting of Nyaya Panchayats to deal with the ordinary crimes which are of non-serious and not heinous in nature. The simple procedure prescribed for the conduct of proceedings before the Nyaya Panchayats may ensure the expedition disposal of cases placed before them and also reduce the docket explosion in the Courts. If petty matters are placed before the Nyaya Panchayats it would certainly relieve the workload of the Courts and they would be able to devote more time towards the cases of serious nature.

The constitution of more and more Nyaya Panchayats would certainly be a positive step for reducing input of fresh cases for trial in regular Courts. Similarly the petty cases like those challaned under different provisions of Motor Vehicle Act etc. can also be diverted to these Nyaya Panchayats for earliest and speedy disposal. Moreover on the spot disposal method can be adopted by these Nyaya Panchayats which would help in reducing the volume of cases for trial in Courts. Another advantage of these Nyaya Panchayats is that it suits the local needs and conditions. The purpose of organizing them is to make arrangement for settlement of petty disputes arising among rural people at the village level itself, without procedural formalities of legal systems and without any financial burden. So these

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Panchayats can function as effective instrument of justice to the satisfaction of the people and can ensure speedy justice.  

9.6.4 Rural Mobile Courts

Shri A.M. Ahmadi, the former Chief Justice of India said that the rural mobile Courts can play a major role in speeding up the process of delivering justice to rural poors at their door steps. The “Rural Zones” are to be created in which the cases will be classified according to their nature, contents and gravity. On the basis of this classification, it will be easy to dispose of them without long legal wrangles. This can be achieved by rural mobile Courts for which retired judges could be appointed. This setup will encourage out of Court settlements and could reduce the work load in the formal Courts. The budding lawyers, MBBS students, LLB Students, could work in rural mobile Courts and help in the speedy settlement of cases. The rural mobile Courts can expedite dispensation of justice to ensure that as many disputes as possible are settled without recourse of judiciary at alternative dispute settlement forums.  

9.6.5 Progressive legal aid and education programmes

Organized legal aid everywhere is the outcome of the universal ideology to create legal awareness among all Sections of the society and stretch the utilities of law and legal services at the doorsteps of the destitute millions.

The original idea of legal aid programme was that legal aid is to help an indigent litigant by providing the service of lawyer in a Court free of charge or with a token fee. Thus primitive concept of the legal aid service should be replaced with the progressive view that legal aid

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28 Supra note 27.
29 Ibid.
30 Ibid.
services should both be preventive and curative. Such services should comprise not only in helping a poor litigant in a Court of law pitted against the rich opponent but also aiding him with advice and assistance in resolving his dispute with his opponent by negotiation, conciliation, arbitration and other amicable means. This mission of legal aid service to its consumers is to discourage their foul litigating habits and to imbibe the disputing parties with sense of fellow feeling and searching of hearts to overcome the points of dispute with a policy of give and take.

9.6.6 Arbitration and Conciliation

ADR is an age old concept in India, originating in ancient India and is still prevalent in India. Arbitration Dispute Resolution is a part of Alternate Dispute Resolution (ADR) with other popular ADR processes like Conciliation and Mediation. In our country, Alternate Dispute Resolution is governed by the Indian Arbitration and Conciliation Act, 1996. The Arbitration and Conciliation Act, 1996 as it exists today has been created on the lines of the Model Law of the UNCITAL (United Nations Commission on International Trade Law). Alternate Dispute Resolution as such has been incorporated in Indian laws since 1840. Over a period of time, processes, procedures and powers pertaining to Arbitration and the right of parties to the same were incorporated in various enactments like the Civil Procedure Code, Indian Contract Act, Specific Relief Act and by further incorporation of Indian Arbitration Act 1899, subsequently repealed by the Indian Arbitration Act of 1940 and then finally by the Arbitration and Conciliation Act, 1996 which came in force with effect from 25th January 1996. The Arbitration and Conciliation Act 1996, seeks to consolidate and amend the laws pertaining to arbitration and seeks to fortify the domestic and international commercial arbitration including enforcement of the foreign arbitration awards on the lines of Model Law on International and

The biggest advantage of ADR and resolving disputes through Arbitration is the relative simplicity, economy, speed and privacy. However, over the time it has been observed that institutional arbitration through Associations or Societies like The “Indian Council of Arbitration” (ICA), “Federation of Indian Chambers of Commerce and Industry” (FICCI), FICCI Arbitration and Conciliation Tribunal (FACT), The Associated Chambers of Commerce and Industry of India (ASSOCHAM) etc. is the best since they conduct Arbitration as per rules laid down which have stood the test of time and where the reputation of the Arbitrator is impeccable while at the same time the parties to arbitration know very clearly what the cost of the said arbitration be. This unfortunately cannot be said about arbitrations conducted by retired Govt. servants, professionals and retired Judges etc. which usually is financially unviable and exorbitant.

It is unfortunate that most litigants and parties do not opt for institutional arbitration which has time and again proven its mettle in providing fast, economical and completely impartial resolutions of disputes within the ambit of strongly laid down process and guidelines. The misuse of the process of Arbitration by companies and parties is also not unheard of. A party may incorporate an Arbitration clause choosing venue of arbitration guaranteed to cause difficulties to the other party or name an arbitrator or quantify his per hearing fees guaranteed to cause financial hardship to the other party. If arbitration is to survive, the Courts and Arbitration Advocates, ADR lawyers must insist on institutional arbitration to ensure Alternate Dispute Resolution becomes a better alternative to Court litigation. Over the years, this weapon for the resolution of disputes has helped in the adjudication of differences between the parties. The need of the hour
is to encourage the same and to make efforts to make the people understand the true spirit of the enactment.

**9.6.7 Fast Track Courts**

Interminable, time consuming, complex and expensive Court procedure impelled jurists to search for an alternative forum, which is less formal, more effective and speedy for resolution of disputes avoiding procedural claptrap. But the proceedings in these forums are conducted inefficiently and without exception, they are challenged again in the Court, which has made lawyers laugh and legal philosopher weep. The experience backed with Law Reports bear ample testimony that the proceedings under these alternative forums have proximity, at every stage providing a legal trap to the unwary litigants. Informal forum chosen by the parties, has been clothed with “legalese” of unforeseeable complexity.32

This sad situation has compelled all those at the helm of affairs, to find alternatives solutions for redressal of legal grievances in and outside the Court. In the Court of law where the people have greater faith and confidence of getting justice, these alternatives solutions were created in the form of special tribunal and Courts etc. Therefore a new category of Courts like the Shatabdi and Rajdhani trains having faster speed have been created to achieve the goal of speedy justice. As per the purpose of its creation such Courts have been named as the Fast Track Courts. Even the Supreme Court has recognized the need of the fast track Court when it observed that,

“Access to justice is an integral part of the social justice and adequate number of fast track Courts with quick procedure are need to be in place”.33

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Ultimately this idea was crystallised by the Seventh Finance Commission, when it allocated Rs 502.9 crores under Article 275 of the Constitution for setting up 1734 fast track Courts. These Courts have been established to deal with long pending session cases and cases involving undertrial in jails. Finance Commission had suggested that the states may consider re-employment of retired judges for limited period, for the disposal of pending cases, because these Courts would not add to number of Court within a particular state. In Brij Mohanlal v. Union of India, the Supreme Court reiterated:

"An independent and efficient judicial system is one of the basic structures of our Constitution and the judges must be appointed hoping that they have the strength to put an end to injustice".

The constitutional validity of the ‘Fast Track Court’ scheme was upheld. The need for establishing fast track courts was quite pressing because the pending had piled up to the extent that the devotees had started losing faith in the ‘goddess of justice’. The number of pending cases in various Courts is indeed alarming. The launching of about 450 fast track Courts has been one of the measures to cut down judicial delays and to ensure justice in cases particularly those which were more than 3 years old. These Courts are working under the supervision of District and session judge, usually the judges carrying unquestionable reputation for honesty and integrity are appointed in these Courts. The Court work is not adjourned rather these Courts act free to fix the cases on shorter intervals. No doubt their rate of disposal has always been gathering

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35 AIR 2002 SC 2096.
momentum. These Courts are progressing well and by this time a good number of old cases have been disposed of. The fast track Courts disposed of 3.70 lakh of cases during last 3 years which clearly shows that the Fast Track Courts can be very helpful in reducing delays and arrears in judicial system.36

The ‘Fast Track Courts’ need to be available permanently after adopting a rational basis of ascertaining the total number of pending trials and deployment of proportionate manpower, vigorous judicial action must no longer be a matter of coincidence but a well thought out responsibility under the Constitution.37

The ultimate goal of Justice Delivery System is to serve the people of India, while upholding the letter and the spirit of Constitution. The eternal value of Constitutionalism is the rule of law which has three facets i.e. rule of law, rule under the law, and rule according to law. The hope of about a billion people is the protection of their lives, personal liberty, property and all other rights which the laws of land have granted and guaranteed. The society should always try to deliver speedy justice during all the phases of its growth and development. Practically speaking, in the earlier times king used to the foundation of Justice but later on with the development of an organised society and social institutions like the tribal or cast bodies, with a semblance of gram panchyats and later on clearly the Nyaya Panchyats. These turned out to be the institution of delivering justice in rural India. During the Muslim period followed by the English period the Courts took over the main task of delivering justice. Later with the independence and enactment of constitution the state became the “welfare” state and is under the constitutional mandate to ensure

36 Supra note 20.
speedy trial and therefore whatever is necessary for the achievement of this purpose must be done.

In democratic society, the concept of justice is not only confined to the judiciary alone, it is also true of all other pillars of democracy i.e. the Executive and the Legislative. If the people lose faith in Justice Delivery System, the entire democratic set up will crumble down. It is the trust and confidence of the people in the responsiveness and ability of every organ of the state to deliver the true, fearless and impartial justice, which is the foundation of democracy and bedrock of a civilized society. Although the purpose of law and its administrators has always been to deliver justice in a reasonable time and to avoid Laws Delays, but yet the fact remains that justice gets delayed in India. The seekers of justice approach the Courts with pain and anguish in their hearts on having faced with problems and having suffered physically or psychologically. They do not take law in their own hands, as they believe that they would get justice from the Courts. The Courts also owe an obligation to these people to deliver quick and inexpensive justice. But at the same time it is to be remembered that sheer quantum of justice without quality would be disastrous. The elements of judiciousness, equality and compassion cannot be allowed to be sacrificed at the altar of expeditious disposal. The hackneyed saying is that ‘Justice delayed is justice denied’. But this should also be kept in mind ‘Justice hurried is justice buried’. The Courts have “to decide the cases and not just dispose them of”. The Courts also cause delay of justice for various reasons. The long and complex procedure prescribed under the law, the provision of unlimited appeals, the delaying tactics adopted by the advocates, the litigating parties are some of the main reasons. Further the delays caused the investigating agencies, the delay caused by the accused by employing dilatory tactics, the part of the problems is also with the judiciary. In good many cases, it does not take much interest
in delivering speedy justice and many a time the lack of proper training to the junior members of judiciary also causes delay in the delivery of speedy justice. Therefore we can say that no single factor or agency is solely responsible for delay.

The different means aimed at delivering justice also suffers from certain inherent limitations. The Panchayati Raj institutions or the Nyaya Panchayats etc., uniformly suffers from the problem of very limited powers. The members of these bodies are largely ignorant about the provision of law and even about their own powers. The political rivalry leads to factionalism and for this reason people have little faith in such institutions of justice. The institutional measure of Lok Adalats as a new concept for giving final arbitral awards and to deliver justice in a speedy way had also achieved only a limited amount of success for the reason that the cases get referred to such Lok Adalats at a very late stage of the proceedings. The experience shows that such Adalats has been successful only in a limited area of litigation. In short the delay in dispensation of justice generates from the statutory and human limitations. This has resulted into piling of alarming heaps of pending cases in the Court. As per the statistics in the beginning of year 2003 as many as 36,40,870 cases were pending in various High Courts of the country and the position of the subordinate Court is even worse and alarming as there was a backlog of over 2 crore cases including 1.32 crore criminal cases. This large scale pendency of cases and the resulting loss of faith of Indian Masses in Justice Delivery System have shocked the administrators of Indian Democracy. But all these measures are not sufficient and the delays still exist and denial of speedy justice still exists in huge proportions. It is now the high time for the India to overhaul the Justice Delivery System not only to ensure of delivery of speedy justice but quality justice and to make justice humane because delay defeats the very purpose of justice. The problem of delay in
administration of justice is so complex that it is difficult to find immediate and satisfactory solutions. Though a sufficient number of means are available for speedy delivery of justice in India but they are required to be oiled, sharpened and strengthened in a way so that they are capable of delivering justice at lowest possible cost and in shortest possible time to the satisfaction of the people of India who wielded the sovereign power.

In essence, there are several deep-rooted causes of the delay i.e. denial of right to speedy justice. To be able to identify them and later on, to eliminate them require first courage of self-criticism and honest resolve on the part of the bench, bar, government and the people. In the ultimate analysis, the people are themselves to be blamed because one who tolerates injustice, in fact perpetrates injustice. The delays are the pathological symptoms of a sick society, to get rid of these oppressive and crippling delays not only the judicial delays must be eliminated but the nation as an organic whole must be healed and cured.