CHAPTER - V
FAIR AND SPEEDY TRIAL IN INDIA:
JUDICIAL INNOVATIONS

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Prelude

Judiciary occupies an important place in our government system and enjoys immense public confidence. It is a commonly heard remark that judiciary is our last hope. This shows the general deference to the institution of judiciary, as it is manned by persons who are devoted to the cause of justice.¹ The Court of law is a “temple of justice” where people go with the hope and belief that justice will be done to them. The end of the law is to render justice.² For the enforcement of rights of citizens and remedies thereto in case of violation thereof, courts have been established at all level in the country³ for performing the function of protecting the innocent and punishing the guilty. Both the parties are given the opportunity to present their case, which includes evidences, witnesses on the basis of which the case is decided.

Law to be just and fair has to be devoid of flaw and it has to keep the promise to do justice and it cannot stay petrified and sit nonchalantly⁴. Justice consists of restoring or maintaining a proper balance as justice deals with maintaining a proper balance, any case that might result in unfair advantage or

¹. Neha Gupta, “Role of Lawyers in Providing Speedy Justice”, 64, All India Arbitration Law Reporter 13 (2006 (4)).
disadvantage is a concern of justice. This shows that justice in criminal administration will follow the principles of natural justice. It means the trial should be fair, just and equitable, which is the expectation of the parties that the fair trial is provided. The term ‘fair trial’ covers in its ambit “a fair judiciary, which is competent and impartial; a fair prosecution, which brings all the important points into the notice of the Court and an atmosphere in which proceeding can be conducted calmly”.  

One of the most crucial aspects of the dispensation of justice is of time. If a case is not decided within the right time, or if too much time is taken in deciding it, justice cannot be said to have been done.

Nothing rankles more in the human heart than a brooding sense of injustice. Illness we can put up with, but injustice makes us want to pull things down. When only the rich can enjoy the law, as a doubtful luxury, and the poor, who need it most, cannot have it because its expense puts it beyond their reach, the threat to the continued existence of free democracy is not imaginary but very real, because democracy’s very life depends upon making the machinery of justice so effective that every citizen shall believe in an benefit by its impartiality and fairness. Justice is constant and perpetual. It is trite law, nevertheless fundamental, that the prisoner’s attention should be drawn to every inculpatory material so as to enable him to explain it. This is the basic fairness of a criminal trial and

5. Ibid.
7. The definition of Justice is adopted from Roman jurist Ulpian. Justinian, Das Corpus Juris Civilis Das Corpus juris civilis, Volume 6 (C.Flocke 1832).
failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed.\textsuperscript{8}

The function of judiciary is limited not only to adjudication of a case but also to the interpretation of law and judicial precedents. In 1950s, fair and speedy trial has been declared by the Court to be protected. However, in 1970s the landmark judgments were delivered which have changed the course of the river. Firstly, in \textit{Maneka Gandhi}\textsuperscript{9} and \textit{Hussainara Khatoon}\textsuperscript{10} cases, where fair trial and speedy trial has been declared as a fundamental right under Article 21 of constitution of India. The scheme of this chapter is studied into two parts mainly- which are ‘Fair trial’ and ‘Speedy trial’. The cases are arranged year wise so as to know the changing opinion of judiciary.

\textbf{5.1 FAIR TRIAL
5.1.1 Simultaneous proceedings

In \textit{M.S.Sheriff v. State of Madras case}\textsuperscript{11}, two persons Govindan and Damodaran were illegally detained by two police officers. This statement was accepted by one police officer and is denied by another, with an affidavit in support. The present case discusses two important questions, firstly, whether an appeal lies to the Supreme Court under Section 476 B of Criminal Procedure Code (old)for perjury and secondly, there are two simultaneous proceedings against the appellants, one is civil suit for damages for wrongful confinement and other is criminal prosecutions for wrongful confinement. The Constitutional Bench of Mehar Chand Mahajan(CJ), Vivian Bose, B.K. Mukherjea, Sudhi Ranjan Das, Ghulam Hasan held that appeal can be made

\begin{itemize}
\item \textsuperscript{8} \textit{Basavaraj R. Patil and others v. State of Karnataka and others}, (2000) 8 SCC 740.
\item \textsuperscript{9} AIR 1978 SC 597.
\item \textsuperscript{10} AIR 1979 SC 1360.
\end{itemize}
on the complaint of perjury in this Court and stayed the civil suit. The Hon'ble Supreme Court observed,

“No hard and fast rule be laid down but we do not consider that the possibility of conflicting decisions in the civil and criminal courts is a relevant consideration. The law envisages such an eventuality when it expressly refrains from making the decision of one court binding on the other, or even relevant, except for certain limited purposes, such as sentence or damages. The only relevant consideration here is the likelihood of embarrassment. Another factor which weighs with us is that a civil suit often drags on for years and it is undesirable that a criminal prosecution should wait till everybody concerned has forgotten all about the crime. The public interests demand that criminal justice should be swift and sure; that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Another reason is that it is undesirable to let things glide till memories have grown too dim to trust. This, however, is not a hard and fast rule. Special considerations obtaining in any particular case might make some other course more expedient and just.”

The pronouncements of the Apex Court have not yet improved the situation, the complaints of perjury are frequent. In case of two simultaneous proceedings, the accused is left to

11. AIR 1954 SC 397.
embarrassment, agony and fear of two adverse judgments but
the administration of justice is in favour of one trial.

5.1.2 Examination of Accused for Fair Trial

In the year 1955, in Manchander v. State of Hyderabad case, the accused was charged for murder of Manmath under Section 302, IPC, 1860 and was never questioned by the trial court and Session courts under Section 342 of the Code of Criminal Procedure, 1898 about the confession which was made by him after 8 days of arrest. The High Court altered the death sentence to one of rigorous imprisonment for life and excluded the confession. The matter came before Supreme Court and the Court observed that trial court and session court failed to understand the importance of Section 342 and so, the High Court decision is set aside. The Hon’ble Supreme Court acquitted the accused and observed that we are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial Judges omit to do their duty. “Justice is not one-sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us

13. AIR 1955 SC 792.
14. Section 342. Power to examine the accused (1) For the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witnesses for the prosecution have been examined and before he is called on for his defence.
(2) The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them; but the Court may draw such inference from such refusal or answers as it thinks just.
(3) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
(4) No oath shall be administered to the accused. The information on CrPc, 1898 is retrieved from http://bdlaws.minlaw.gov.bd/Sections_detail.php?id=75&Sections_id=21412 on 19.04.2014
to see that the guilty do not escape it is even more necessary to see that persons accused of crime are not indefinitely harassed. They must be given a fair and impartial trial and while every reasonable latitude must be given to those concerned with the detections of crime and entrusted with the administration of justice, limits must be placed on the lengths to which they may go. Except in clear cases of guilt, where the error is purely technical, the forces that are arrayed against the accused should no more be permitted in special appeal to repair the effects of their bungling than an accused should be permitted to repair gaps in his defence which he could and ought to have made good in the lower courts. The scales of justice must be kept on an even balance whether for the accused or against him, whether in favour of the State or not; and one broad rule must apply in all cases. The error here is not a mere technicality”.

This is the one of the first pronouncement which highlighted that the delay has not been condoned. The conduct of trial court and police officer on confession is given a serious note. It has provided fair trial. On the other side, the case also shows the victim to suffer and pay for the conduct of State. The case supported the maxim that hundred guilty may be acquitted but one innocent should not be convicted. The importance of Section 342 of Criminal Procedure Code has been highlighted properly.

5.1.3 Cancellation of Bail in Bailable Offences for Fair Trial

In the case of Talab Haji Hussain v. Madhukar Purshottam Mondkar,\textsuperscript{15} the accused was charged under Section 120-B, IPC, 1860 and was released on bail by the Magistrate under Section

\textsuperscript{15} AIR 1958 SC 376.
496, Code of Criminal Procedure, 1898\textsuperscript{16} but on the complaint for cancellation was refused which was later allowed by the High Court under Section 561A, Code of Criminal Procedure,1923\textsuperscript{17}. The Supreme Court held that the High Court has inherent power to cancel the bail granted to accused of a bailable offence and such power can be exercised in the interests of justice. The Court observed, "If fair trial is the main object of the criminal procedure, any threat to the continuance of fair trial must be immediately arrested.. if an accused person by his conduct has put the fair trial into jeopardy then the primary and paramount duty of criminal courts is to ensure that the risk to the fair trial is removed and criminal courts are allowed to proceed with the trial smoothly and without any interruption or obstruction and this would be equally true in cases of both bailable as well as non-bailable offences". Section 561A has to be exercised sparingly, carefully and with caution and only where such exercise is justified by the tests specifically laid down in the Section itself. The paramount purpose of the procedural code, whether criminal or civil is justice and when the ends of justice are put in jeopardy by the conduct of the accused that the inherent power can and should be exercised.

\textsuperscript{16} Section 496 1898 - In what cases bail to be taken - When any person other than a person accused of a non-bailable offence is arrested or detained without warrant by an officer in charge of a police-station, or appears or is brought before a Court, and is prepared at any time while in the custody of such officer or at any stage of the proceedings before such Court to give bail, such person shall be released on bail: Provided that such officer or Court, if he or it thinks fit, may, instead of taking bail from such person, discharge him on his executing a bond without sureties for his appearance as hereinafter provided: Provided, further, that nothing in this Section shall be deemed to affect the provisions of Section 107, sub-Section (4), or Section 117, sub-Section (3).

\textsuperscript{17} Section 561-A is added in 1923 in Cr.P.C.. It provides that nothing in the Code shall be deemed to limit or affect the inherent power of the High Court to make such orders as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice.
The cancellation of bail is the inherent power of the High Court which in the present time is provided under Section-482, Criminal Procedure Code, 1973. The purpose of both these provisions was to prevent misuse of law. The accused has taken undue advantage of bail and the decision of the Court is correct and is appreciable for fair trial.

5.1.4 Delay in Receiving Copy of Judgment Vititiates Fair Trial

In Iqbal Ismail Sodawala v. State of Maharashtra case, the provisions of Criminal Procedure Code, 1973 have been invoked as accused has received the copy of judgment after lapse of seven months and the judgment is not pronounced by Session Judge but apprised about the decision by the clerk. Here, the Supreme Court observed “the object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial.

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18. (1975) 3 SCC 140.

Section 366. Sentence of death to be submitted by Court of Session for confirmation:-(1) When the Court of Session passes a sentence of death, the proceedings shall be submitted to the High Court, and the sentence shall not be executed unless it is confirmed by the High Court.
(2) The Court passing the sentence shall commit the convicted person to jail custody under a warrant.

Section 367. Power to direct further inquiry to be made or additional evidence to be taken:-(1) If, when such proceedings are submitted, the High Court thinks that further inquiry should be made into, or additional evidence taken upon, any point bearing upon the guilt or innocence of the convicted person, it may make such inquiry or take such evidence itself, or direct it to be made or taken by the Court of Session.
(2) Unless the High Court otherwise directs, the presence of the convicted person may be dispensed with when such inquiry is made or such evidence is taken.
(3) When the inquiry or evidence (if any) is not made or taken by the High Court, the result of such inquiry or evidence shall be certified to such Court.

Section 371. Procedure in cases submitted to High Court for confirmation: In cases submitted by the Court of Session to the High Court for the confirmation of a sentence of death, the proper officer of the High Court shall, without delay, after the order of confirmation or other order has been made by the High Court, send a copy of the order, the seal of the High Court and attested with his official signature, to the Court of Session.
unless the same results in miscarriage of justice. In all procedural laws certain things are vital and other requirements which are not so vital”. Non-compliance of non-vital will amount to an irregularity which would be curable unless it has resulted in a failure of justice. The reason provided for delay is plea of paucity of staff which the Court has directed to be soon remedied. Section- 537, Criminal Procedure Code,1898\(^2\) provides mere procedural irregularity will not vitiate the trial unless the same results in miscarriage of justice. On the second contention, the Court held that the judgment was pronounced in the open Court by the judge and as the accused cannot understand English it was apprised to him by the clerk (Sheristedar). The appeal was dismissed by the High Court on merits.

In this case, due to paucity of staff the copy of judgment was received by the accused after seven months. The researcher agrees with the court that this delay has not vitiated the right of accused. However the need of the hour is to look into the delay caused in adjudication of case. It is required to overcome paucity of staff which still exists and affects the parties. The State machinery has to overcome this obstacle at all levels and the right of fair trial has to be protected. Judiciary while pronouncing the judgment should also provide the decision in the national or state language so that the accused should know not only about his imprisonment but also the observations of the Court on the contentions raised.

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\(^2\) Section- 537 provides, inter alia, that subject to the other provisions of the Code, no finding, sentence or order passed by a Court of competent jurisdiction shall be reversed or altered on appeal or revision on account of any error, omission or irregularity in the complaint, summons, warrant, proclamation, order, judgment or other proceedings before or during trial or in any inquiry or other proceedings under this Code, unless such error, omission, irregularity has in fact occasioned a failure of justice.
According to Section 354 of Criminal Procedure Code, 1973 the language of judgment should be in the language of Court. It also provides that if accused files an application for certified copy in his language, copy is to be provided, if it is practicable.\textsuperscript{21} The practicability gives discretion which can lead to refusal of copy in his language on several grounds—workload, less staff and working hours.

5.1.5 Fair Opportunity Provided

In \textit{Maneka Gandhi v. Union of India} case,\textsuperscript{22} Maneka Gandhi was issued a passport in June, 1976 under the Passport Act 1967. Later, on 2\textsuperscript{nd} July, 1977 the regional passport officer, New Delhi issued a letter addressed to Maneka Gandhi. In this letter, she was asked to surrender her passport under Section 10(3) (c) of the Act in public interest, within 7 days from the date of receipt of the letter. She immediately had written a letter to the Regional passport officer New Delhi seeking in return a copy of the statement of reasons for such order. However the Government of India, Ministry of External Affairs refused to produce any such reason in the interest of general public. The petitioner has filed a writ petition on the ground that passport of the petitioner has been impounded in public interest and without providing the reasons.

The majority opinion\textsuperscript{23} of the Hon’ble Court is as follows: “\textit{Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure which is prescribed by law, but that the procedure...}

\textsuperscript{21} Section- 363, Criminal Procedure Code. On the application of the accused, a certified copy of the judgment, or when he so desires, a translation is his own language if practicable or in the language of the Court, shall be given to him without delay, and such copy shall, in every case where the judgment is appealable by the accused be given free of cost.

\textsuperscript{22} AIR 1978 SC 597.

\textsuperscript{23} Ibid.
should be "reasonable, fair and just". The restriction on inherent fundamental rights of citizens must take care to see that ‘justice is not only done but manifestly appears to be done’. The power to refuse to disclose the reasons for impounding a passport is of an exceptional nature and it ought to be exercised fairly, sparingly and only when fully justified by the exigencies of an uncommon situation. The order against petitioner is quashed and held that the ambit of Article 21 includes the right to travel. The procedure has to be fair, just and reasonable, not fanciful, oppressive or arbitrary. Also, the ambit of Article 21 does not exclude Article 19 and even if there is a law prescribing procedure for depriving a person of personal liberty and there is consequently no infringement of the fundamental right conferred by Art. 21, such law ill so far as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that Article."

The expression "in the interest of the general public" has clearly a well defined meaning and the Courts have often been called upon to decide whether a particular action is in the interest of general public or in public interest and no difficulty has been experienced by the Courts in carrying out this exercise. Equality and arbitrariness are sworn enemies as one belongs to the rule of law in a republic while the other to the whim and caprice of an absolute monarchy. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omni-presence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It
must be right and just and fair and not arbitrary, fanciful or oppressive.

A fair opportunity of being heard following immediately upon the order impounding the Passport would satisfy the mandate of natural justice and a provision requiring giving of such opportunity to the person concerned can and should be read by implication in the Passports Act. If such a provision were held to be incorporated in the Act by necessary implication the procedure prescribed by the Act for impounding a passport would be right, fair and just and would not suffer from arbitrariness or unreasonableness. Therefore, the procedure established by the Passport Act for impounding a passport must be held to be in conformity with the requirement of Art. 21 and does not fall foul of that Article.

Kailasam, J. (Dissenting) observed that the application of natural justice and the duty to act fairly with a caution should not be extended to the extreme so that it adversely affects the administrative efficiency. Also, petitioner is not entitled to any of the fundamental rights enumerated in Article 19 of the Constitution and that the Passport Act complies with the requirements of Art. 21 of the Constitution and is in accordance with the procedure established by law."

This case has laid down a foundation stone by making right to fair trial as part of Fundamental right; however the researcher looks at two important issues—whether the fair trial is actually provided? Also, is it making the administrative body weaker? The fair trial can be seen in ambit of Criminal Procedure Code, 1973 and Constitution of India, 1950. Here, Articles 14, 19 and 21 are looked into by the Court. Also, the principle of natural justice provides for ‘reasoned decision’ should be provided which require the authority to provide reasons. This expansion of the scope of
natural justice has protected the right of individual on the contrary has curtailed the powers to the State to work. The efficiency and efficacy of administrative bodies is to be provided so that power can be used for the societal interest.

5.1.6 Transfer of Case Turned Down for Fair Trial

In the case of Maneka Gandhi v. Rani Jethmalani,\textsuperscript{24} the appellant was prosecuted for defamation and has filed a petition for transfer of case from Bombay to Delhi on the ground of non-availability of legal service and trial and the petition was dismissed. The Court held “assurance of a fair trial is the first imperative of the dispensation of justice and the central criterion for the court to consider when a motion for transfer is made is not the hypersensitivity or relative convenience of a party or easy availability of legal services or like mini-grievances. Something more substantial, more compelling, more imperiling, from the point of view of public justice and its attendant, environment, is necessitous if the Court is to exercise its power of transfer. This is the cardinal principle although the circumstances may be myriad and vary from case to case. We have to test the petitioner’s grounds on this touch-stone bearing in mind the rule that normally the complainant has the right to choose any court having jurisdiction and the accused cannot dictate where the case against him should be tried. Even so, the process of justice should not harass the parties and from that angle the court may weigh the circumstances”.

The case shows that parameters for transferability are not to be misappropriated. The grounds of transfer of cases are to be seen before allowing it. The principles of natural justice are to be followed and the personal liberty is not affected. The concept of

\textsuperscript{24} AIR 1979 SC 468.
fair trial is protected. It has to be protected so that influential person not makes it according to their whims and desires.

5.1.7 Special Courts for Fair Trial

In the case of Re Special Courts Bill 25 while dealing with the contention on the Special Courts Bill, 1976 which provides for trial of corruption cases against VVIPs in the special courts. The bill provided that case from special court will not be transferred and these courts are beyond the jurisdiction of High Court and their appointment will be through Central or State Government. The court held that the classification is valid and is not in violation of Article 14 of the constitution of India. However, the contention of non-transferability and appointment are considered as biased and prejudicial which is against natural justice. Regarding transferability Court noted that “Absence of such a provision may undermine the confidence of the people in the Special Courts. The manner in which a Judge conducts himself may disclose a bias or a Judge may not in fact be biased and yet the accused may entertain a reasonable apprehension on account of attendant circumstances that he will not get a fair trial. To compel an accused to submit to the jurisdiction of a court which, in fact, is biased or is reasonably apprehended to be biased is a violation of the fundamental principles of natural justice and a denial of fair play”.

The creation of special courts helps in speedier disposal of cases. However, as transfer of cases is not allowed in the Special Courts Bill which may affect the right of fair trial to the parties. The principles of natural justice are affected. In case of biasness, an alternative is required.

25. 1979(2) SCR 476.
5.1.8 **Anticipatory Bail**

In the case of *Gurubaksh Singh Sibbia v. State of Punjab*, the appeal was on the personal liberty and the investigational powers of the police. Here the High Court has given the following directions:

1. The power under Section 438, Criminal Procedure Code, is of an extra-ordinary character and must be exercised sparingly in exceptional cases only.

2. Neither Section 438 nor any other provision of the Code authorises the grant of blanket anticipatory bail for offences not yet committed or with regard to accusations not so far leveled.

3. The said power is not unguided or uncanalised but all the limitations imposed in the preceding Section 437, are implicit therein and must be read into Section 438.

4. In addition to the limitations mentioned in Section 437, the petitioner must make out a special case for the exercise of the power to grant anticipatory bail.

5. Where a legitimate case for the remand of the offender to the police custody under Section 167(2) Criminal Procedure Code, 1973 can be made out by the investigating agency or a reasonable claim to secure incriminating material from information likely to be received from the offender under Section 27 of the Indian Evidence Act, 1872 can be made out, the power under Section 438 should not be exercised.

6. The discretion under Section 438 cannot be exercised with regard to offences punishable with death or imprisonment for life unless the Court at that very stage is satisfied that such a charge appears to be false or groundless.

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(7) The larger interest of the public and State demand that in serious cases like economic offences involving blatant corruption at the higher rungs of the executive and political power, the discretion under Section 438 of the Code should not be exercised; and

(8) Mere general allegations of mala fides in the petition are inadequate. The court must be satisfied on materials before it that the allegations of mala fides are substantial and the accusation appears to be false and groundless.

The Hon'ble Supreme Court observed that the Session Court or the High Court were free to decide whether to grant or not to grant the anticipatory bail on the considerations similar to those mentioned in Section- 437 Criminal Procedure Code, 1973 or which were generally considered relevant under Section- 439, Criminal Procedure Code, 1973. In order, that the procedure prescribed by Section- 438 should be just and fair so as to be consistent with Article 21 of the Constitution, the Courts had

27. Section- 438(1) of the Code lays down a condition which has to be satisfied before anticipatory bail can be granted. The applicant must show that he has "reason to believe" that he may be arrested for a non-bailable offence. The use of the expression reason to believe" shows that the belief that the applicant may be so arrested must be founded on reasonable grounds. Secondly, if an application for anticipatory bail is made to the High Court or the Court of Session it must apply its own mind to the question and decide whether a case has been made out for granting such relief. It cannot leave the question for the decision of the Magistrate concerned under Section 437 of the Code, as and when an occasion arises. Such a course will defeat the very object of Section 438.

Thirdly, the filing of a First Information Report is not a condition precedent to the exercise of the power under Section 438. The imminence of a likely arrest founded on a reasonable belief can be shown to exist even if an F.I.R. is not yet filed.

Fourthly, anticipatory bail can be granted even after an F.I.R. is filed, so long as the applicant has not been arrested.

Fifthly, the provisions of Section 438 cannot be invoked after the arrest of the accused. The grant of "anticipatory bail" to an accused who is under arrest involves a contradiction in terms, in so far as the offence or offences for which he is arrested, are concerned. After arrest, the accused must seek his remedy under Section 437 or Section 439 of the Code, if he wants to be released on bail in respect of the offence or offences for which he is arrested.
been left free to exercise their discretion, which by their long training and experience they were ideally suited to do.

The researcher opines that the present case has given the liberty to the trial courts in anticipatory bail cases. It supported fair and speedy trial as the cases cannot be put under mentioned circumstances. This case helped the parties to get fair trial.

5.1.9 Adjournments

In the case of Diwan Naubat Rai and ors. v. State through Delhi\textsuperscript{28} the defendant has filed a writ petition for disposal of case as a time span of ten years have elapsed from the date of FIR has been filed. After one year, a new petition was filed as out of 110 dates in the court, even the charges have not been framed. It was dismissed, and the day to day trial was ordered by the Supreme Court. The Hon'ble Supreme Court observed that out of 110 dates only ten adjournments were taken by the prosecution. But, it has failed to fulfill Sections 207 and 311, Criminal Procedure Code, 1973,\textsuperscript{29} which requires at every step to summon every

\begin{footnotesize}
\begin{enumerate}
\item AIR 1989 SC 542.
\item Section 207. Supply to the accused of copy of police report and other documents. In any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:
\begin{enumerate}
\item the police report;
\item the first information report recorded under Section 154;
\item the statements recorded under sub-Section (3) of Section 161 of all persons whom the prosecution proposes to examine as its witnesses, excluding therefrom any part in regard to which a request for such exclusion has been made by the police officer under sub-Section (6) of Section 173;
\item the confessions and statements, if any, recorded under Section 164;
\item any other document or relevant extract thereof forwarded to the Magistrate with the police report under sub-Section (5) of Section 173:
\end{enumerate}
Provided that the Magistrate may, after perusing any such part of a statement as is referred to in clause (iii) and considering the reasons given by the police officer for the request, direct that a copy of that part of the statement or of such portion thereof as the Magistrate thinks proper, shall be furnished to the accused:
Provided further that if the Magistrate is satisfied that any document referred to in clause (v) is voluminous, he shall, instead of furnishing the accused with a copy thereof, direct that he will only be allowed to inspect it either personally or through pleader in Court.
\end{enumerate}
\end{footnotesize}
witness. The petition was dismissed and the case is sent back to Session Court.

This case shows the application of ‘principle of natural justice’ and the legal maxim that ‘no one can take benefit of his own default’. The 100 date(s) available show that prosecution was available and it was not their fault.

5.1.10 Right of Bail for under Trials

In Supreme Court Legal Aid Committee Representing Under-Trial Prisoners v. Union of India case, a writ petition was filed for releasing the under trials due to delay in disposal of cases under the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988. The Court refused to quash the proceedings but allowed to be released on bail subject to the directions mentioned in the decision. The Court held that the under trial is hit twice firstly when the bail is not granted and secondly, when there is a delay in providing speedy trial. The court gave eight directions on the basis of which the under trial can be released on bail. The directions are as follows:

- The directives in clauses (i), (ii) and (iii) shall be subject to the following general conditions:

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**Section 311. Power to summon material witness, or examine person present** Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned, as a witness, or recall and re-examine any person already examined; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.


31. The Court directed as under: (i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.
(i) the undertrial accused entitled to be released on bail shall deposit his passport with the learned Judge of the Special Court concerned and if he does not hold a passport he shall file an affidavit to that effect in the form that may be prescribed by the learned Special Judge. In the latter case the learned Special Judge will, if he has reason to doubt the accuracy of the statement, write to the Passport Officer concerned to verify the statement and the Passport Officer shall verify his record and send a reply within three weeks. If he fails to reply within the said time, the learned Special Judge will be entitled to act on the statement of the undertrial accused;

(ii) the undertrial accused shall on being released on bail present himself at the police station which has prosecuted him at least once in a month in the case of those covered under clause (i), once in a fortnight in the case of those covered under clause (ii) and once in a week in the case of those covered by clause (iii), unless leave of absence is obtained in advance from the Special Judge concerned;

(iii) the benefit of the direction in clauses (ii) and (iii) shall not be available to those accused persons who are, in the opinion of the learned Special Judge, for reasons to be stated in writing, likely to tamper with evidence or influence the prosecution witnesses;

(ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs 50,000 with two sureties for like amount.

(iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum fine of Rupees one lakh, such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for like amount.

(iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31A of the NDPS Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.
(iv) in the case of undertrial accused who are foreigners, the Special Judge shall, besides impounding their passports, insist on a certificate of assurance from the Embassy/High Commission of the country to which the foreigner-accused belongs, that the said accused shall not leave the country and shall appear before the Special Court as and when required;

(v) the undertrial accused shall not leave the area in relation to which the Special Court is constituted except with the permission of the learned Special Judge;

(vi) the undertrial accused may furnish bail by depositing cash equal to the bail amount;

(vii) the Special Judge will be at liberty to cancel bail if any of the above conditions are violated or a case for cancellation of bail is otherwise made out; and

(viii) after the release of the undertrial accused pursuant to this order, the cases of those under-trials who have not been released and are in jail will be accorded priority and the Special Court will proceed with them as provided in Section 309 of the Code.

However, the Court has refused to quash the proceedings, seeing the gravity of the offence. Court emphasized the importance of Articles 14, 19 and 21 Constitution of India, which sustain and nourish each other and any law depriving a person of "personal liberty" must prescribe a procedure which is just, fair and reasonable, i.e., a procedure which promotes speedy trial. A Special Court is constituted under the Narcotic Drugs and Psychotropic Substances (Amendment) Act, 1988, to decide which will provide speedy justice.
5.1.11 Rape victims

In the case of *Delhi Domestic Working Women v. Union of India* 32 a public interest litigation was filed by the Delhi domestic working women forum, petitioner invoked provision of Article 32 of the Constitution of India to expose the pathetic plight of four/six domestic servants who suffered sexual assault by seven army personnel. Victims - domestic servants were travelling by the Muri Express on a journey was from Ranchi to Delhi when they were assaulted and raped. The petitioner-forum visited the addresses of victim but failed to locate them. The petitioner forum was concerned as the victims were its members and to get the social, cultural and legal protection have knocked the doors of this court on the ground that speedy trial is one of the essential requisites of law. In a case of this character such a trial cannot be frustrated by prolongation of investigation. The Court has set parameters of expeditious conduct an investigation of trial otherwise the rights guaranteed under Articles 14 and 21 of the Constitution will be meaningless. *The Court gave broad parameters in assisting the victims of rape and to provide the fair trial:*-

1. *The complainants of sexual assault cases should be provided with legal representation. It is important to have someone who is well-acquainted with the criminal justice system.*

2. *Legal assistance will have to be provided at the police station since the victim of sexual assault might very well be in a distressed state upon arrival at the police station, the guidance and support of a lawyer at this*

32. 1995 SCC (1) 14.
stage and whilst she was being questioned would be of great assistance to her.

(3) The police should be under a duty to inform the victim of her right to representation before any questions were asked to her and that the police report should state that the victim was so informed.

(4) A list of advocates willing to act in these cases should be kept at the police station for victims who did not have a particular lawyer in mind or whose own lawyer was unavailable.

(5) The advocate shall be appointed by the court, upon application by the police at the earliest convenient moment, but in order to ensure that victims were questioned without undue delay, advocates would be authorised to act at the police station before leave of the court was sought or obtained.

(6) In all rape trials anonymity of the victim must be maintained, as far as necessary.

(7) It is necessary, having regard to the Directive Principles contained under Article 38(1) of the Constitution of India to set up Criminal Injuries Compensation Board. Rape victims frequently incur substantial financial loss. Some, for example, are too traumatised to continue in employment.

(8) Compensation for victims shall be awarded by the court on conviction of the offender and by the Criminal Injuries Compensation Board whether or not a conviction has taken place. The Board will take into account pain, suffering and shock as well as loss of
earnings due to pregnancy and the expenses of child birth if this occurred as a result of the rape.

Later, in the case of State of Punjab v. Gurmit Singh 33 a girl of 16 years after taking her matriculation examination was going to her maternal uncle's home. At that time, she was abducted in a car by the accused and two more persons, namely Jagjit Singh and Ranbir Singh. She was taken to the 'kotha' of tubewell where she was raped by three accused one-by-one. Later, again at night, she was raped against her will. Next morning, the accused made her sit in the car and was left at the school. She gave the matriculation examination and told her mother about the last night incident. The mother waited for her husband to return and agreed to take the matter to Sarpanch. As, no justice or relief can be provided by the Sarpanch and they filed a report to the police. Hon'ble Supreme Court observed it demonstrates lack of sensitivity on the part of Courts. The Hon'ble Court convicted the three accused and highlighted the importance of provisions of Section 327(2) and (3) Criminal Procedure Code 34 to provide fair trial to the victim and gave a direction not to ignore these provisions in the trial of rape cases in camera. The trial of rape cases in camera should be a rule and not an exception. Also, as far as possible, trial in such cases may be conducted by lady Judges wherever available so that the prosecutrix can make a statement with greater ease and assist the court to properly

33. 1996 SCC (2) 384.
34. **Section 327. Court to be open** - (2) Notwithstanding anything contained in sub-Section (1), the inquiry into and trial of rape or an offence under Section 376, Section 376-A, Section 376- B, Section 376-C or Section 376-D of the Indian Penal Code shall be conducted in camera: Provided that the presiding judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court. (3) Where any proceedings are held under sub-Section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.
discharge their duties, without allowing the truth to be sacrificed at the altar of rigid technicalities. Such ‘in camera’ trial would enable the victim of crime to be a little comfortable and to answer the questions with greater ease... Also, the Court should avoid disclosing the name of prosecutrix. These provisions are to be followed to give fair trial and to protect the interest of victims...

Section 114 A, Indian Evidence Act, 1872 provides a conclusive presumption.

In *State of H.P. v. Gan Chand case,* the victim was a 5 year and 6 month old girl who was alone at home when she was raped by a near relative (father’s elder brother). The mother of the victim had gone to the fields with the other two children. The mother on return at 7 p.m. found the victim below the cot and blood on her private parts. On the next morning, she told the incident to her in-laws who had defended their son (accused). Next day, the mother lodged the FIR. It was questioned by the accused counsel that statements cannot be relied upon as there is delay in filing the FIR. The High Court has doubted the prosecution story on the ground of delay in lodging FIR and change of place of incident and non-examination of the two or three little girls playing with the victim before the accused committed rape on her. The Supreme Court held, “delay in lodging the FIR cannot be used as a ritualistic formula for doubting the prosecution case and discarding the same solely on the ground of delay in lodging the first information report. Delay has the effect

35. It is inserted in 1983. **Section-114A. Presumption as to absence of consent in certain prosecutions for rape-**
In a prosecution for rape under clause (a) or clause(b) or clause(c) or clause(d) or clause(e) or clause(g) of sub Section (2) of Section 376 of the Indian Penal Code (45 of 1860), where sexual intercourse by the accused is proved and the question is whether without the consent of the women alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

of putting the Court on its guard to search if any explanation has been offered for the delay, and if offered, whether it is satisfactory or not. If the prosecution fails to satisfactorily explain the delay and there is a possibility of embellishment in the prosecution version on account of such delay,' the delay would be fatal to the prosecution. However, if the delay is explained to the satisfaction of the Court, the delay cannot itself be a ground for disbelieving or discarding the entire prosecution case."

However, in the case of Surjan v. State of M.P.\textsuperscript{37} here the victim was returning from fields. It was dark in the night and was drizzling. At that time, she was raped by six persons. This fact was not brought to the knowledge of any person for three days. Also, there is ten day delay in lodging FIR which could not be explained. Also, the medical examination was not brought in evidence by the prosecution. The High Court and trial Court has convicted the accused. The Supreme Court has acquitted them and observed that solitary testimony of victim of rape can be relied upon only when it inspires confidence and be of such nature that the Court must be able to certify that testimony is wholly reliable.

In the case of Salem Advocate Bar Association v. Union of India\textsuperscript{38}, the Supreme Court has given Model Case Flow Management Rules. these rules will be a step forward to the litigating public to have a fair, speedy and inexpensive justice. The Hon’ble Court had advocated that criminal appeals giving capital punishment, rape and cases involving sexual offences or dowry deaths cases in Track I category. Other case where the accused is not granted bail and is in jail is Track II. Cases of

\textsuperscript{37} AIR 2002 SC 476.
\textsuperscript{38} AIR 2005 SC 3353.
mass cheating, economic offences, illicit liquor tragedy and food adulteration cases in Track III. Offences which are tried by special courts like POTA and NDPS in Track IV. Track V – all other offences.

It is endeavored that High Courts must accord first priority to appeal on serious offences in Track I and must be wrapped within six months. However, in these offences also a delay is occurring. Track II cases within nine months, Track III within a year, Track IV and Track V within fifteen months.

Justice Altamas Kabir said, “The delay may be one of the factors contributing to the rise in number of such cases, in as much as, on account of such delay deterrence pales into insignificance. Time has come when these cases have to be dealt with expeditiously, lest we should fail in our endeavour to arrest the sharp increase of crimes of violence against women”. There is problem not only with the police for speedy investigation but also with the judiciary also to dispense justice. Fast track courts presided by well trained judges who were sensitized to understand the plight of rape victims during the trial and place due significance to her statements. Justice P Sathasivam said, “Fast track courts and day-to-day trial is must in all rape cases in which police is required to complete investigation

39. Serious offences like Capital punishment, Rape, Sexual offences and Dowry death.
40. Abhinav Garg, “Speedy Trials, Only on Paper”, The Times of India, January 8, 2013 at pg. 4. Here, a case is pending in Delhi HC where a man is convicted for rape has been awaiting decision since 2004. Also, in HC the demarcation of rape cases is not done and is combined with other criminal appeals.
42. Dhananjay Mahapatra, “ASG Hopes CJI will assure Speedy Trial”, The Times of India, December 25, 2012 at pg. 16. These views are of India's first women Additional Solicitor General, Indira Jaising.
expeditiously and scientifically to present cogent evidence before the trial court”.  

Another aspect which requires consideration is to ensure that no rapist walks free as a result of prosecution ineptitude. According to National Crime Report Bureau, 20,576 men were undergoing trial in 2011 whereas mere 268 of them were convicted. However, according to prison statistics of 2012 there were 14,296 only 8% were convicted. The percentage of undertrial and convicted prisoners to the total prisoners in various jails was reported as 66.2% and 33.2% respectively in the country during 2012.

In the case of *Delhi Domestic Working Women*, a sexual assault and rape has been suffered by domestic workers in a moving train. The court has issued several directions. However, later in the case of *Gurmit Singh*, the trial court shows harsh attitude towards a rape victim which has at all stages noted only on the faults of victim which have only made the victim to suffer till the justice was provided by the Supreme Court. The directions in of Delhi Domestic Working Women and Gurmit Singh case are today put in practice.

Later, in the case of *Gan Chand*, the Court has allowed the delay in filling FIR and observed no ritualistic formula can be laid down. The researcher opines that the views of Supreme Court have been a calculation. The sufferings of the victim and her widow mother have not been given due consideration.

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43. Dhananjay Mahapatra, “Fast-Track Courts a must in Rape Cases”, *The Times of India*, December 25, 2012 at pg. 16.
44. Sanjeev Shivadekar, “Rape Victims can pick Lawyer of Choice”, *The Times of India*, January 8, 2013 at pg. 9.
45. [http://ncrb.nic.in/PSI-2012/CHAPTER-6.pdf](http://ncrb.nic.in/PSI-2012/CHAPTER-6.pdf) as retrieved on 07.05.2014.
However, later in *Surjan* case, the accused was acquitted as there was ten days delay in lodging FIR which was unexplained. The researcher considers two issues. Firstly, the Court should have got the medical examination done or should have asked for its submission. Secondly, the High Court has assumed that prosecution has no reason to falsely implicate the accused. These two points should have been given a thought.

**5.1.12 Scope of Public Interest Litigation and Fair Trial (not on criminal aspect)**

In *Guruvayur Devaswom Managing v. C.K. Rajan and ors case*, the facts are that Shri Krishna Temple, Guruvayur has lakhs of devotees and the State of Kerala inorder to maintain proper administration passed Guruvayur Devaswom Act. One C. K. Ranjan has written a letter to the High Court regarding the misadministration and mismanagement. The High Court considered the letter as original petition. Thereafter, the Commissioner examined 85 witnesses and submitted 15 interim reports. A special leave petition (herein after referred as SLP) was filed in the Supreme Court whereby it was directed to the High Court to look into the aforesaid Act. Also, through another SLP, the petitioner wanted to restrain the Commissioner from submitting the final report. This petition was dismissed by the Supreme Court. The Hon’ble Court held that *when injustice is meted out to large number of people the Court will not hesitate to look into Articles 14 and 21, Constitution of India as well as the International Conventions on Human Rights so as to provide reasonable and fair trial*. Also, the *Court has powers under Article 32 and 226 of the Constitution to entertain PIL which is in interest of people*. The *Court has expanded its power of judicial review for*

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46. JT 2003 (7) SC 312.
the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by 'ignorance, indigence and illiteracy' and other down trodden who have either no access to justice or had been denied justice. A new branch of proceedings known as 'Social Interest Litigation' or 'Public Interest Litigation' was evolved. The Courts in 'pro bono publico' has granted the relief to inmates of the prisons, provided legal aid, directed speedy trial, maintenance of human dignity and covered several other areas.

In this case, in order to secure justice an interested person in public interest is allowed to file PIL. It secures the right of fair trial for the deprived section of the society. The PIL can also be filed for inmates and under trials and inmates of human dignity.

After, Legal Services Authority Act, 1987 was enforced in 1994 the protection is available to these people at the door step. It provides lawyers free of cost which supports fair trial. The expenses are borne by the State. NGOS are also working in this direction to protect the rights of these strata of the society.

5.1.13 New Modes to Overcome Delay

In the case of Sakshi v. U.O.I.47 a writ petition has been filed under Article 32 of the Constitution of India by an organisation Sakshi for providing legal, medical, residential, psychological or any other help, assistance or charitable support for women particularly the victims of sexual abuse and/or harassment, violence or any kind of atrocity or violation and is a violence intervention center. The respondents in this writ petition were (1) Union of India; (2) Ministry of Law and Justice; and (3) Commissioner of Police, New Delhi.

47. AIR 2004 SC 3566.
One of the contentions of petitioner is that the wider definition of Section 375 and scope of Section 377 is argued by the petitioner. The petitioner referred to Article 15(3) of the Constitution of India allows for the State to make special provision for women and children, the U.N. Right of Child Convention and the U.N. Convention on the Elimination of Discrimination against Women. The court held there is violation of international conventions. The respondent provided that amendment is made in Section 375, IPC and there is inclusion of Section-375 A to D. On this petitioner referred to United Nations Convention on the Elimination of All Forms of Discrimination against Women, 1979 and also Convention on the Rights of The Child adopted by the General Assembly of the United Nations on 20th February, 1989 and specially Articles 17(e) and 19.48

Another contention is the presence of accused be dispensed with and broader interpretation to be given to Section- 273 of Criminal Procedure Code, 197349. The Supreme Court has used

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48. Article 17 reads States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall --(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Articles 13 and 18.

Article 19
1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment maltreatment or exploitation including sexual abuse, while in the care of parent(s), legal guardian(s) or any other persons who has the care of the child.
2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement

the information technology for the safety of victims and the
witnesses and held that Section -273 of Criminal Procedure
Code, 1973 merely requires the evidence to be taken in the
presence of the accused and it nowhere provides that the
evidence should be recorded in such a manner that the accused
should have full view of the victim or the witnesses. The
recording of evidence by video conferencing has already been
upheld. Rules of procedure are handmaiden of justice and are
meant to advance and not to obstruct the cause of justice. The
court observed, “The mere sight of the accused may induce an
element of extreme fear in the mind of the victim or the witnesses
or can put them in a state of shock. In such a situation he or she
may not be able to give full details of the incident which may result
in miscarriage of justice. Therefore, a screen or some such
arrangement can be made where the victim or witnesses do not
have to undergo the trauma of seeing the body or the face of the
accused. Often the questions put in cross-examination are
purposely designed to embarrass or confuse the victims of rape
and child abuse. The object is that out of the feeling of shame or
embarrassment, the victim may not speak out or give details of
certain acts committed by the accused”. It is permissible for the
court to expand or enlarge the meanings of such provisions in
order to elicit the truth and do justice with the parties. In
holding trial of child sex abuse or rape, a screen or some
arrangements may be made where the victim or witness (who
may be equally vulnerable like the victim) do not see the body or
face of the accused. Recording of evidence by way of video
conferencing vis-a-vis Section-273 Criminal Procedure
Code, 1973 is permissible. The court looked into Section- 372 Sub-Section (2).50

The above judgment shows the advancement in information technology is a boon not only for the judiciary but also for the parties to get a fair trial and thus, protecting the sanctity of Article 21 of the Constitution of India, 1950. The reference of international conventions, Law Commission of India 156th Report and amendment in IPC, 1860 opened the doors for providing fair trial to the victim. However, supporting these new modes require that proper check to see authenticity be implemented.

5.1.14 Denial to Produce Evidence by the Accused Affects Fair Trial

The decision of a three-judge bench comprising Y.K.Sabharwal, D.M.Dharmadhikari and Tarun Chhatterjee, JJ. in the case of State of Orissa v. Debendra Nath Padhi51 on the issue whether the trial court can consider the material filed by the accused at the time of framing of charges. The Supreme Court observed that at the stage of the framing of the charges, the trial Court has either to discharge the accused under Section- 227 of Criminal Procedure Code, 197352. If not discharged, the Court has to frame the charges under Section- 228 of Criminal Procedure Code, 197353. Section-209, Criminal

50. Section 372(2) provides that notwithstanding anything contained in Sub-Section (1) the inquiry into the trial of rape or an offence under Section 376, Section 376A, Section 376B, Section 376C or Section 376D of the Indian Penal Code shall be conducted in camera.


52. **Section-227 Discharge.**- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

53. **Section -228 Framing of charge.**- (1) If, after such consideration and hearing as aforesaid, the Judge, is of opinion that there is ground for presuming that the accused has committed an offence which -
Procedure Code, 1973 has also been referred. The Court observed that there is no provision in the Code where the accused can file material evidence at the stage of framing of charges. It can be submitted only at the stage of trial. The Hon’ble Court observed that permitting the accused to adduce his defence at the stage of framing of charges and for examination thereof is against the criminal jurisprudence. That has never been the intention for over one hundred years now...there would be a mini-trial at the stage of framing of charges. Also, the expression in Section-227 of Criminal Procedure Code, 1973 that 'hearing the submissions of the accused' means hearing on the record of the case as filed by prosecution and documents submitted therewith and nothing more. The expression cannot mean opportunity to file material to be granted to the accused and thereby changing the settled law...also, under Section 91 in case the production of any document 'is necessary or desirable' for the purposes of investigation, inquiry, trial or other proceeding the Court may issue summons or a written order to produce it. Section 91 does not give right to the accused to produce a document. The Court set aside the High Court judgment and directed the trial Court to proceed from the stage of framing of charges. Also, as the charges are

(a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, and thereupon the Chief Judicial Magistrate shall try the offence in accordance with the procedure for the trial of warrant-cases instituted on a police report;

(b) is exclusively triable by the Court, he shall frame in writing a charge against the accused.

(2) Where the Judge frames any charge under clause (b) of sub-Section (1), the charge shall be read and explained to the accused and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried.
framed 11 years ago we direct the trial Court to expeditiously conclude the trial.

Later in the case of *Bharat Parikh v. C.B.I. & Anr* the Magistrate has framed the charges without complying the provisions of Section- 207 Criminal Procedure Code, 1973. When this was pointed to the magistrate, he discharged the accused. The issue was whether having framed the charges, can the Magistrate recall the order as the prosecution has not complied with Section 207, Criminal Procedure Code. Also, whether charges framed earlier will be void now and can be quashed by the High Court as its inherent power.

On the first issue, the Hon’ble Court held that having regard to the language of Sections 207 and 227 of the Code of Criminal Procedure, while framing charges the trial court can only look into the materials produced by the prosecution while giving an opportunity to the accused to show that the said materials were insufficient for the purpose of framing charge. The question of discharge by the learned Magistrate after framing of charge does not, therefore, arise. The decision of Debendra Nath Padhi’s case has been followed on this point. On the second issue, the Supreme Court observed that High Court can exercise its inherent power under Section 482, Criminal Procedure Code, 1973 to quash the charges framed but it has to be kept in mind that after the stage of framing charge, evidence has to be led on behalf of prosecution to prove the charge if an accused pleads not guilty to the charge and/or charges and claims to be tried. In exceptional circumstances, it may be quashed may be quashed to secure the ends of justice, but such a stage will come only after

54. 2008 (10)SCC 109
evidence is led, particularly when the prosecution had produced sufficient material for charges to be framed.

The Hon'ble Court held that the Magistrate has no power to recall its order against the accused. The power to recall the order is exist with High Court under Section- 482 of Criminal Procedure Code, 1973.

The researcher opines that the purpose of criminal justice system to protect fair and speedy trial is defeated in Section- 227 of the Code of Criminal Procedure, 1973 as while framing charges the trial court can only look into the materials produced by the prosecution and giving an opportunity to the accused to produce materials is not required. The accused has been given the opportunity to defend himself at a very later stage. Also, the older Code of 1898 under Sections 207 and 207A provided for it.\textsuperscript{55}

5.1.15 Role of witness

In the case of Zahira Habibullah Sheikh v. State of Gujarat\textsuperscript{56}, Zahira Sheikh, witness alleged that statement made in Court was under coercion. The Supreme Court has allowed the appeal and on the basis of report submitted by IO it was confirmed that 2 lacs excess amount is available with the witness. The witness

\textsuperscript{55} Section 207, CrPC,1898 inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207 (A). Under Section 207 (A) in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under sub-Section (1), to take evidence as provided in sub- Section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in sub-Section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in sub- Section (6) and to commit the accused for trial after framing of charge as provided in sub-Section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in sub-Section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in sub-Section (14).

was sentenced to one year imprisonment and rupees 50,000 as the cost. The Court looked into Section-311 of Criminal Procedure Code, 1973\textsuperscript{57} and read it in two parts: firstly, the use of 'may' which gives the Court the discretion to summon anyone as a witness at any stage of inquiry, trial and proceeding or examine any person present in the Court or recall and re-examine any person whose evidence has already been recorded. Secondly, the use of 'shall' which makes it mandatory for the Court to take the above steps in case new evidence appears to be essential to the just decision of the case. The Court observed that purpose of Section-311, Criminal Procedure Code is whether it is essential to the just decision of the case. It is to bring on record evidence not only from the point of view of the accused and the prosecution but from society's point of view also.

The Supreme Court observed: "Each one has an inbuilt right to be dealt with fairly in a Criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and to the society. Fair trial obviously mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated".

The Hon’ble Court observed that the State has a responsibility to protect the witnesses, starting with sensitive cases. It has to ensure that during the trial the witnesses could safely depose truth without any fear of being haunted by the another party. Also, legislative measures to emphasize

\textsuperscript{57} Section- 311. Power to summon material witness, or examine Person Present:- Any Court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person as a witness, or examine any person in attendance, though not summoned, as a witness, or recall and re-examine any person already examined ; and the Court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.
prohibition against tampering with witnesses, victim or informant have become imminent and inevitable need of the day.

The researcher opines that trial in a case is affected when the witness change his statement either willingly or forcefully. The Law Commission of India in its 198th report discussed witness identification vis-a-vis fair trial.

5.1.16 Right of Accused to Access the Evidences

In Dhananjay Kumar Singh v. State of Rajasthan case,58 the issue is whether the accused has a right to access to all the evidence gathered by the Investigating Agency during the course of investigation and would the denial be against fair trial and natural justice principles. The Court observed that the principles of natural justice were held to be an integral part of a fair trial in the context of Article 21 of the Constitution and the Universal Declaration of Human Rights, 1948.

As regards fair trial to access evidences, the juxtaposition was regarding Section 91 and Section-172 (3), Criminal Procedure Code. In order to harmonize the two Sections, it must be borne in mind that Section- 91(1) bestows the power to call for documents which would include case diary. This power is circumscribed in Section 91(3), Criminal Procedure Code. As regards, Section-172(3), it does not begin with a non-obstante clause ousting the jurisdiction of the Court under Section-91. Therefore, Section-172 does not limit the jurisdiction of Court under Section-91. Also, a limitation which is not expressly stated cannot be considered impliedly. Such interpretation would be against the canons of interpretation.

Section- 91 of the Code allows the accused to seek summoning of the case diary/ documents. It is for the Courts to

58. 2006 CrLJ 3873.
decide if the case diary is "necessary or desirable" for the just decision of the case. Also, if any objection is raised by the prosecution that is also considered. If the Court finds the application as vague or with ulterior motive, it should reject the application. Ultimately, the Court must perform the balancing act between the interest of the individual and of the society.

The Rajasthan High Court observed that the application nowhere states as to why the letters are "necessary and desirable" for the just decision in the case. The petition was dismissed.

The researcher opines that Section-91 gives the right to the accused to seek summoning of the case diary/ documents. But it is only provided when the Court considers it necessary or desirable. It is, therefore, considering individual interest vis-a-vis societal interest.

In the case of Mrs. Kalyani Baskar v. Mrs. M.S. Sampoornam the Court answered the issue of scope of Section-243, Criminal Procedure, 1973. Complaint was filed against accused regarding dishonour of cheque. The accused appeared before the Magistrate and filed an application under Section- 245 of Criminal Procedure Code, 1973 that the signature of the cheque be sent for expert opinion. The Judicial Magistrate has dismissed the application on the ground that it could be questioned at the time of trial.

Later, during the trial the accused preferred an application under Section-243 Criminal Procedure Code, 1973. The Magistrate dismissed the application on the ground that it is not mandatory to be sent for expert opinion. The Trial Court and the High Court observed that Section-243 Criminal Procedure

Code, 1973 deals with summoning of defence witnesses and cause any document or thing to be produced. The application was refused by both the Courts. An appeal by special leave is filed before the Hon’ble Supreme Court. The Honourable Court observed that Section 243(2) of Criminal Procedure Code, 1973 provides that the Magistrate holding the inquiry in respect of offences triable by him does not exceed his powers. In the interest of justice, he directs to compare the disputed signature or writing with the admitted writing or signature and to reach a conclusion. 'Fair trial' includes fair and proper opportunities allowed by law to the accused to prove innocence and, therefore, adducing evidence in support of the defense is a valuable right and denial of that right means denial of fair trial. It is essential that rules of procedure designed to ensure justice should be scrupulously followed and the courts should be zealous in seeing that there is no breach of them. The Court held that the appellant is entitled to rebut the case of evidence. The accused cannot be convicted without giving an opportunity to present his/her evidence and if it is denied to him/her, there is no fair trial.

60. See Section- 243of Criminal Procedure Code, 1973
(1) The accused shall then be called upon to enter upon his defence and produce his evidence; and if the accused puts in any written statement, the Magistrate shall file it with the record.
(2) If the accused, after he has entered upon his defence, applies to the Magistrate to issue any process for compelling the attendance of any witness for the purpose of examination or cross-examination, or the production of any document or other thing, the Magistrate shall issue such process unless he considers that such application should be refused on the ground that it is made for the purpose of vexation or delay or for defeating the ends of justice and such ground shall be recorded by him in writing:
Provided that, when the accused has cross-examined or had the opportunity of cross-examining any witness before entering on his defence, the attendance of such witness shall not be compelled under this Section, unless the Magistrate is satisfied that it is necessary for the ends of justice.
(3) The Magistrate may, before summoning any witness on an application under sub-Section (2), require that the reasonable incurred by the witness in attending for the purposes of the trial be deposited in Court.
The researcher opines that the concept of fair trial has been understood correctly and has been broadened to protect the rights of accused. Fair trial is secured when the opportunity is given to present evidence. The expert opinion on disputed handwriting protects it further.

5.1.17 Rights of Victim

In *NHRC v. State of Gujarat case*, six nine cases have been committed to Special Investigation Team under the headship of former CBI Director. It took notice of accused and victims which were earlier left away by the police. The Court observed, “fair trial is concerned with the discovery and vindication and establishment of truth which are certainly the main purposes of courts of justice. They are the underlying objects for the existence of the courts of justice... the application of these principles requires it to be fair not only to the accused but also to the victims. Denial of a fair trial is as much injustice to the accused as is to the victim and the society. Protection of victims and witnesses becomes necessary in several cases. A balance of interest between the interests of the accused and the public and to a great extent that of the victim have to be weighed not losing sight of the public interest involved in the prosecution of persons who commit offences”.

Bentham said, “Witnesses are the eyes and ears of justice”. If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial.

*The present case has* highlighted on another important need for the protection of witnesses and victims. The concept of fair trial cannot be limited to an accused, as it is the witness and

the victim who have faced and suffered from the criminal act of the accused. There shall be witness protection programme to help the witness and also there is a need for victims that they must be given their due concern in the society. Criminology has been studied and explored to a great extent which has left in victimology unexplored.

5.1.18 Delay in lodging FIR (the case was on agreement to sell) institution of matter in Civil and Criminal Court

In Kishan Singh (dead) thr. L.Rs. v. Gurpal Singh and Ors. Case, the Supreme Court observed that in cases where there is a delay in lodging a FIR, the Court has to look for a plausible explanation for such delay. In absence of such an explanation, the delay may be fatal. The reason for quashing such proceedings may not be merely that the allegations were an afterthought or had given a coloured version of events. In such cases the court should carefully examine the facts before it for the reason that a frustrated litigant who failed to succeed before the Civil Court may initiate criminal proceedings just to harass the other side with mala fide intentions or the ulterior motive of wreaking vengeance on the other party. Chagrined and frustrated litigants should not be permitted to give vent to their frustrations by cheaply invoking the jurisdiction of the criminal court. The court proceedings ought not to be permitted to degenerate into a weapon of harassment and persecution. In such a case, where an FIR is lodged clearly with a view to spite the other party because of a private and personal grudge and to enmesh the other party in long and arduous criminal proceedings, the court may take a view that it amounts to

an abuse of the process of law in the facts and circumstances of the case.

The mentioned case provided for check on delay in lodging FIR. The Court looks into explanation for delay rather than on the face of it quashing it. The seriousness or sensitivity of the case requires that reason for delay be seen and in appropriate cases be allowed.

5.1.19 Prescribed Procedure to be Followed

In the case of Sushil Sharma v. State (Nct) Of Delhi also known as “Tandoor case” the appellant Sushil Sharma was tried for offences punishable under Section-302, Section- 120-B read with Sections 302 and 201 of the Indian Penal Code, 1860. The facts are Sushil Sharma, the appellant and Naina Saini, the deceased were working for Delhi Youth Congress have married secretly. The deceased continued to live as the wife of the appellant till she was murdered. There was a park near Ashok Yatri Niwas, Delhi called “Bagia Bar-be-Que” which had a tandoor in it. The smoke spiralling and flames were leaping out of Bagia Bar-be-Que. hed the Bar-be-Que from the main gate of Ashok Yatri Niwas towards Ashoka Road. The appellant was noticed by them standing by the side of the kanat at the gate of the Bar-be-Que. It is believed by Anaroo Devi that the fire could have burnt the hotel. Accused no.2, Keshav was a worker of the Congress Party and was putting bamboos in the fire and was burning old banners, posters and waste papers of the party. When the fire was doused the police went near the tandoor and saw a part of human body inside it. By that time the appellant had run away from there. The whole body had burnt and is brought dead to the hospital. The parents of the deceased were

64. 2013 (12) SCC 622.
called to mortuary but they could not identify the body. When the appellant was taken to Lady Hardinge Mortuary and when the dead body was shown to him, he started weeping. It would be difficult, therefore, to say that he was remorseless.

Later, an abandoned Maruti car was found in Chankyapuri on inspection of the car, they found dried blood in the dicky and some hair stuck on the back of the left front seat. Here, the appellant had gone and spent the night of 2-3/07/1985 with PW-31 D.K. Rao after fleeing from his Bagia Restaurant. The flat was also searched and some cartridges, a lead bullet and a ply having a hole and an air pistol were seen in the said flat and seized in the presence of Ballistic Expert. The appellant then kept moving from city to city. He obtained anticipatory bail from Sessions Court at Madras which was cancelled on the request of Delhi Police. The appellant was later arrested in Bangalore. The appellant led the police to the room and produced a briefcase which was found to contain a revolver with its license in his name, four live cartridges and some other documents. All these articles were seized. He was brought to Delhi. Later on the basis of his statements one blood stained kurta-pajama was recovered from the bushes near Gujarat Bhawan at Malcha Marg. In the post-mortem report, the X-ray report showed the presence of two lead bullets extracted from the skull and neck of the deceased.

During trial, the accused admitted he was out of Delhi on the day of incident and knew the deceased since 1985. However, there is no contact after January, 1995. The Sessions Court after considering the evidence, convicted the appellant. The appellant was deeply in love with the deceased and knowing full well that the deceased was very close to PW-12 Matloob Karim, he married
her hoping that the deceased would settle down with him and lead a happy life.

The reference was made by the learned Sessions Judge under Section 366 of the Criminal Procedure Code, 1973 was heard by the High Court along with the appeal filed by the appellant challenging his conviction and sentence. The High Court dismissed the appellants appeal and confirmed the death sentence awarded to him. Hence, this appeal by special leaves.

The Board of Doctors who extracted the two bullets and opined that those two bullets caused death and is established to be caused by the appellant's revolver. Certain minor procedural irregularities have also been highlighted.

The Court observed, “It must be remembered that fair trial is the right of an accused. Fair trial involves following the correct procedure and giving opportunity to the accused to probabalize his defence. In a matter such as this, hurried decision may not be in the interest of the appellant”. Also, the appellant cannot draw any support from the fact that from the day of the crime till the final verdict, a long time has elapsed.

The Court held that the medical evidence does not establish that the dead body of the deceased was cut. The second post-mortem report states that no opinion could be given as to whether the dead body was cut as dislocation could be due to burning of the dead body. Also, there is no recovery of any weapon like chopper which could suggest that the appellant had cut the dead body. The appellant is the only son of his parents, who are old and infirm. As of today, the appellant has spent more than 10 years in death cell. Undoubtedly, the offence was brutal but the brutality alone would not justify death sentence in this case. The above mitigating circumstances persuade us to commute the death sentence to life imprisonment. The Court
held that life sentence is for the whole of remaining life subject to the remission granted by the appropriate Government under Section 432 and 433-A of the Criminal Procedure Code. Though the trial Court and High Court have put the case under ‘rarest of rare case’, the Supreme Court on the basis of above mentioned ground has negated it.

In this case, the accused has caused murder with a revolver and later put the dead body in tandoor of a park. The offence is commuted the death sentence to life imprisonment, as the medical report did not establish the dead body was cut. The accused has already spent 10yrs in jail. The time spent in the trial cannot be ground for commutation.

5.2 SPEEDY TRIAL

Giorgio Del Vecchio said, "Without Justice, life would not be possible and even if it were, it would not be worth living". The concept of speedy trial is as old as the Criminal Procedure Code. However, during that time the term 'speedy trial' was not used. The Court on the basis of facts and circumstances used to decide whether to quash the proceedings or not.

5.2.1 Criminal proceedings quashed on inordinate delay

The earliest pronouncement on speedy trial is in S. Veerabadran Chettiar v. E. V. Ramaswami Naicker case\(^{65}\) where the accused broke the idol of Lord Ganesha in public. The trial and Hon’ble High Court refused to consider it as an offence under Section 295 of Indian Penal Code\(^{66}\). The Hon’ble Supreme Court held the trial Court and High Court have given

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\(^{65}\) AIR 1958 SC 1032.

\(^{66}\) Section 295. Injuring or defiling place of worship with intent to insult the religion of any class.—Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both.
narrow approach to Section 295, IPC, 1860. Due regard is to be paid to the feelings of people and which was also the duty of the State for maintenance of law and order. The Hon’ble Supreme Court refused to send back the proceedings to lower courts considering the delay as unjust and improper since five years have already elapsed. The prosecution had to be vigilant and it was foolish to take the case mildly. Later in another case, the Court refused re-trial after a period of ten years.\textsuperscript{67} In the case of Babu v. Raghunath\textsuperscript{68} (it is a case on gift deed) the parties have to wait for 25 years to get justice. The Hon’ble Supreme Court held:

‘There is urgency for legal and judicial reform. Small changes in the procedural laws will not help. A drastic change, a new outlook, a fresh approach is needed taking into account the socio-economic realities and to provide a cheap expeditious and effective instrument for realisation of justice by all Sections of the people, irrespective of their social or economic position or their financial resources’.

In these early cases, to overcome delay, the Court has quashed further proceedings to secure social order in which such a justice shall be informed an institution of national life.\textsuperscript{69}

5.2.2 Position of under trials

In 1979, a writ petition of habeas corpus has come through the issues published in the Indian Express on dated 8\textsuperscript{th} and 9\textsuperscript{th} January, 1979 which brought to notice that a large number of

\textsuperscript{67} Chajju Ram v. Radhey Shyam, AIR 1972 SC 1367.
\textsuperscript{68} AIR 1976 SC 1734.
\textsuperscript{69} Article 38, Constitution of India, 1950. State to secure a social order for the promotion of welfare of the people.—(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.
pre-trial prisoners, men and women including children were in jails for years awaiting trial in courts of law for 5, 7 or 9 years or more than 10 years. A Full bench consisting of P. N. Bhagwati, R. S. Pathak, A. D. Koshal, JJ. was constituted in Hussainara Khatoon(I) v. Home Secretary, State of Bihar\textsuperscript{70}. Pathak, J. (minority opinion) observed that an unnecessarily prolonged detention in prison of under trials before being brought to trial is an affront to all civilized norms of human liberty. ‘Liberty’ of a person should be taken away only when the guilt is proved and not before. In the present case, the pre-trial prisoners due to their inability on financial grounds are languishing in jails for years. The Criminal Procedure Code provides amplitude of power to the courts to release without sureties for appearance. Bhagwati, J. and Koshal, J. (majority opinion) observed that it is a crying shame on the judicial system which permits incarceration of men and women for such long periods of time without trial. It is the need of hour to protect the basic freedom of these neglected and helpless human beings and to enforce the human rights. The following eight grounds are provided to decide whether the accused can be released on bond or not:

1. The length of his residence in the community.
2. His employment status, history and his financial condition,
3. His family ties and relationships,
4. His reputation, character and monetary condition,
5. His prior criminal record including any record or prior release on recognizance or on bail,
6. The identity of responsible members of the community who would vouch for his reliability.

\textsuperscript{70} AIR 1979 SC 1360.
7. the nature of the offence charged and the apparent probability of conviction and the likely sentence in so far as these factors are relevant to the risk of non appearance, and

8. any other factors indicating the ties of the accused to the community or bearing on the risk of willful failure to appear.

In *Hussainara Khatoon (II) v. Home Secretary, State of Bihar*\(^71\), the court looked into task done on the directions given above and observed that the right of speedy trial in Article 21 requires a ‘reasonable, fair and just’ procedure and the State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people as a sentinel on the qui-vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, appointment of additional judges and other measures calculated to ensure speedy trial.

The Court has considered the directions given above in *Hussainara Khatoon (III) v. State of Bihar*\(^72\) and observed:

“It is highly regrettable that those under-trial prisoners had remained in jail without trial for periods longer than the maximum

\(^{71}\) AIR 1979 SC 1369.

\(^{72}\) AIR 1979 SC 1377.
term for which they could have been sentenced if convicted. Some of the under-trial prisoners are lunatics or persons of unsound mind and it is difficult to understand how such persons could possibly be kept in the same jail along with other under-trial prisoners”.

It is the duty of the Court to inform the under-trial prisoner of his right to bail according to Section 167(2), Code of Criminal Procedure code, 1973 and this is the constitutional obligation of the State Government and the Magistrate. The court brought to the notice of State Government that more experts, more testing laboratory, serologists are required. Women under "protective custody" in jails to be transferred to remand or welfare homes so as to protect their Fundamental Rights under Articles 19 and 21. There is a need that the State Government should set up legal aid cells to provide free legal service to the persons who are unable to engage a lawyer.

The Court in Hussainara Khatoon (IV) v. State of Bihar case, 73 held "The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability".

In the case of Nimeon Sangma v. Home Secretary, Government of Meghalaya, Meghalya74, the Supreme Court on a

73. 1980 (1) SCC 98.
74. AIR 1979 SC 1518.
writ petition under habeas corpus had directed State to submit the present position of under trial prisoners and the Court emphasised that expeditious trial and investigation as the component of personal liberty. The delay deprives the accused of the freedom guaranteed under Article 21, Constitution of India, 1950. The importance of expeditious disposal of cases at all stages is discussed under Sections 167, 209 and 309 of Criminal Procedure Code, 1973. The Court directed that State shall take policy decisions to protect the accused who is indigent and cannot put the judicial process in motion. The State shall complete investigation within two months and commitment to Session Court in six months.

After Hussainara, another case Kadra Pehadiya and Ors. v. State of Bihar75 brought into limelight the position of undertrial prisoners, where four young boys have been in jail for about eight years without any progress in their trial. They were brought to jail in 1972 and till August, 1977 the trial has not started. This case has brought to light the shocking state of affairs. The Hon’ble Supreme Court observed:

“How can any civilized society tolerate a legal and judicial system which keeps a person in jail for three years without even commencing his trial?” The Constitution has no meaning and significance and human rights, no relevance for them. It is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial. The court has looked into Hussainara Khatoon’s case which provides that speedy trial is a fundamental right of an accused implicit in Article 21 of the Constitution. Firstly, the Supreme Court directed the State Government to inform about how many prisoners are there in the jails in the State of Bihar for

75. AIR 1982 SC 1167.
more than 12 months after the committal of their cases to the Court of Session. Secondly, the names of these prisoners with particulars of the jails in which they are lodged, the Sessions Court in which their cases are pending, the dates on which their cases were committed to the Court of Session and the offences with which they are charged. Thirdly, the High Court to inform about how many cases are pending in the court of session in the State of Bihar where committal to the Sessions Court has been made more than 12 months ago and the reasons for the delay in disposal. Fourthly, the State Government to file a list of under-trial prisoners who have been in jail for more than 18 months without their trial having commenced before the courts of magistrates”

In the case of R.D. Upadhyay v. State of A.P.and others76, the Hon’able Supreme Court had given certain directions to the Delhi Administration in the matter of grant of bail in respect of under trial prisoners who were undergoing imprisonment in respect of various offences. Nearly two years had elapsed since the passing of the said order. This period would have given an idea to the authorities regarding the impact of the order on the general law and order situation. The Court directed the Commissioner of Police, Delhi to submit a report in the form of an affidavit indicating the impact of the directions contained in the said order of this Court on the general law and order situation in the National Capital Region of Delhi.

The Supreme Court emphasised the right of speedy trial guaranteed under Article 21 of the Constitution of India directed the State to nominate 10 additional judges to take up exclusively trial and long pending cases of murder with in a period of six

months.\textsuperscript{77} The percentage of undertrial and convicted prisoners to the total prisoners in various jails was reported as 66.2\% and 33.2\% respectively in the country during 2012.\textsuperscript{78} In Delhi, Tihar Jail has 8,887 undertrial populations which is 73.37 percent of the total jail population. Special courts are organised at Tihar court complex inorder to reduce the undertrial population.\textsuperscript{79}

The Hon'ble Supreme Court has frowned upon the sentencing system which forces petty offenders to remain in jail even after serving their inability to pay the fine imposed on them along with the period of imprisonment. Where a substantial term of imprisonment is inflicted, an excessive fine should not be imposed except in exceptional cases. It is a penalty which a person incurs on account of non-payment of fine.\textsuperscript{80}

The series of judgment in Hussainara case shows a change in the attitude of judiciary firstly, speedy trial is made a Fundamental Right under Article 21 of Constitution of India. The minority has put it in concept of liberty which the researcher opines give a correct spectrum. 'Liberty' means the freedom to use what is properly or morally your property as you wish provided you respect the rights of others.\textsuperscript{81} Secondly, the Criminal Procedure Code, 1973, provides for bail. However, the

\textsuperscript{77} Sankar Sen, “Pendency of Cases in the Trial Courts”, 22 (2) \textit{Indian Journal Of Criminology And Criminalistics} and 1-6 at 5 (2001).

\textsuperscript{78} \url{http://ncrb.gov.in/PSI-2012/CHAPTER-6.pdf} as visited on 18.01.2014


\textsuperscript{80} Dhananjay Mahapatra, “Have a Heart for Poor Offenders : SC”, \textit{The Times of India}, October 7, 2012 at pg.15. The bench relaxed the prison term in default of payment in a NDPS case where the two accused were punished with 15-year imprisonment and a fine of Rs 1.5 lakh.

\textsuperscript{81} Ronald Dwarkin, \textit{Justice in Robes} 286 (Universal Law Publishing Co., Delhi, 1st Indian Reprint edn., 2007).
bail bond amount is a hindrance for poor people to be free. This gives rise to defendant being in jail even when bail is provided. The legal aid is available at all levels to defend the case but not to provide bail bond amount. There is a need to make necessary changes in the Statute so that bail bond amount can be foregone with. This case shows the pretrial release on bond with sureties has done more harm to the society as it has kept them languishing in jails for years and violated the human rights.

The Code of Criminal Procedure needs amendment in this respect. The Constitution of India does not expressly declare that right to speedy trial as a fundamental right. The right to a speedy trial was first recognised in this case. Speedy trial means reasonably expeditious trial, which is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21. Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law which has to be ‘reasonable, fair or just’. A long delayed trial violates the right of speedy trial. The direction was given to establish more courts and to submit the report on undertrial prisoners.

In Hussainara (III) case, it was observed that the undertrials have remained in jail. There is a duty on the Court under Section 167 (2), Criminal Procedure Code, 1973 to tell the accused about their right to bail. In Hussainara (IV) case, the Court has made it a State obligation to provide legal aid and the person must not suffer due to economic or social disability. Later in 1979 in Nimeon Sangma case, the Court looked into Sections 167, 209 and 309 of Criminal Procedure Code, 1973 for speedy trial. The State obligation for indigent person was also stressed. In 1981, Kadra Pehadiya case, the Court observed it is shocking
when four boys are in jail without any progress in their trial. This case shows that the Supreme Court has from time to time asked from the State the submissions of reports. Inspite of several provisions, speedy trial is not yet achieved. In *R.D.Upadhyay* case, the Court held that the directions given by the Hon’able Supreme Court have not followed even after the lapse of two years.

The researcher opines that provisions in the Code and the directions fail when implementation suffers. The present situation on speedy trial of under trials is not better. The above mentioned statistics supports it.

### 5.2.3 Constitution of Special Courts

In the *case of Re Special Courts Bill*82 while dealing with the contention that the Special Courts Bill, 1976 was violative of Article 14 of the Constitution of India. The court held that Parliament has power to constitute special courts provided the classification is a reasonable classification under Article 14 constitution of India to provide speedier trial to offences committed during emergency. Speedy trial is needed in every case but its need increases more when the offender sits at the top or the administrative pyramid. Krishna Iyer, J. observed,

“It is common knowledge that currently in our country criminal courts excel in slow-motion. The procedure is dilatory, the dockets are heavy, even the service of process is delayed and, still more exasperating, there are appeals upon appeals and revisions and supervisory jurisdictions, baffling and baulking speedy termination of prosecutions, not to speak of the contribution to delay by the Administration itself by neglect of the basic necessities of the judicial process. Parliamentary and pre -

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82. 1979 (2) SCR 476.
legislative exercises spread over several years hardly did anything for radical simplification and streamlining of criminal procedure and virtually re-enacted, with minor mutations, the vintage Code making forensic flow too slow and liable to hold-ups built into the law. Courts are less to blame than the Code made by Parliament for dawdling and Governments are guilty of denying or delaying basic amenities for the judiciary to function smoothly. Justice is a Cinderalla in our scheme. Even so, leaving V.V.I.P. accused to be dealt with by the routinely procrastinating legal process is to surrender to interminable delays as an inevitable evil. Therefore, we should not be finical about absolute processual equality and must be creative in innovating procedures compelled by special situations”.

The provision for speedy trial demands that the Bill can protect a particular class, provided Article 14 of Constitution is satisfied.

5.2.4 Special courts for NDPS cases

In Supreme Court Legal Aid Committee Representing Under-Trial Prisoners v. Union of India case, the Court dealt with the Narcotic Drugs and Psychotropic Substances Act, 1985 which provides for stringent provisions for the control and regulation of operations and for matters connected therewith. The Special Court is constituted to provide speedy trials. The importance of this provision is realised from the fact that in many States the constitution of Special Courts was delayed by a couple of years or even more. The Court held that deprivation of personal liberty without ensuring speedy trial violates Article 21 of the Constitution. The aim of speedy trial may be achieved if Special

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83. (1994) 6 SCC 731.
84. Section 36A to 36D, Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985).
Courts are constituted to try offences under the Act. It was expected that speedy trials and harsh punishments would help prevent and combat abuse of and illicit traffic in narcotic drugs, etc., and rid the society of drug menace.

The present position for NDPS cases in Delhi is 656 cases in Sessions Court and 594 cases at Magisterial level. The purpose of special courts is in itself not sufficient enough. There is a need for more special courts. In 239th Report of Law Commission of India, it is recommended that Judges trying serious offences under the special Acts such as PC Act, NDPS Act, Economic offences be not transferred (even when there are no specific complaints) before they complete their three year term. Also, there must be mobile vans having provision for video-recording of the scene of crime as well as that of searches and seizures on the spot. In the Districts where NDPS crimes are more, narcotics testing kits should be provided to every Police Station.

5.2.5 Delay in execution of sentence

In T.V.Vatheeswaran v. State of Tamil Nadu case, the appellant was sentenced to death in 1975 and was charged of committing wicked and diabolic murders and since then he was in solitary confinement. Before conviction he had been a 'prisoner under remand' for two years. The Supreme Court held that two years delay in execution of the sentence after the judgment of the trial court will entitle the condemned prisoner to ask for commutation of his sentence of death to imprisonment for life. It is observed:

86. Law Commission of India, 239th Report on Expeditious Investigation and Trial of Criminal Cases Against Influential Public Personalities (March 2012).
87. AIR 1983 SC 361.
“Sentence of death is one thing; sentence of death followed by lengthy imprisonment prior to execution is another. A period of anguish and suffering is an inevitable consequence of sentence of death, but a prolongation of it beyond the time necessary for appeal and consideration of retrieve is not”.

The Court observed the significance of the right of speedy trial and extended it to post-conviction stage. The prisoner under sentence of death is entitled to invoke the jurisdiction of the Supreme Court and demand the quashing of the sentence. The sentence was remitted to sentence for life imprisonment.

However, later in the case of Triveniben v. State of Gujarat the Court held that it may consider inordinate delay in light of all the circumstances of the case to decide whether the execution of death should be carried out or should be altered into life imprisonment. No fixed period of delay could make the sentence of death inexecutable. The decision of T.V.Vatheeswaran ‘s case was overruled. The time taken in disposal of mercy petition has to be taken into account.

In T.V.Vatheeswaran ‘s case the delay was allowed to result in remission of sentence. However, in later cases it was not remitted and the Court held it depends on the circumstances of the case. In 2014, in Rajiv Gandhi assassination case the remission was allowed. The pendency has to be looked firstly during the trial and secondly, when there is delay in execution of sentence. The victim and accused suffers twice. There is a need to achieve the goal of speedy trial considering the gravity of offence and impact.

89. (1988) 4 SCC 574. The Court overruled the T.V.Vatheeswaran’s case.
5.2.6 Trial regarding children

In the case of Sheela barse & ors. v. Union of India & ors.\(^91\)
The court has issued directions regarding physically and mentally retarded children who are kept in jail for ‘safe custody’. The Court observed that the child is a national asset and it is the duty of the State to look after the child with a view to ensuring full development of its personality. These children are to be kept in remand houses or observation homes and keeping in jails have violated Fundamental Right under Article 19 Constitution of India. When the child is kept languishing in jail, the human rights are affected. The greatest recompense which the State can get for expenditure on children is the building up of a powerful human resource ready to take its place in the forward march of the nation. If an accused is not tried speedily then the fundamental right to speedy trial would be violated which is implicit in Article 21 of the Constitution. The consequence of violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. The court gave following directions:

1. *Every State Government must take necessary measures for the purpose of setting up adequate number of courts, appointing requisite number of Judges and providing them the necessary facilities. It is also necessary to set up an Institute or Academy for training of judicial officers so that their efficiency may be improved and they may be able to regulate and control the flow of cases in their respective courts.*

\(^{91}\) AIR 1986 SC 1773.
2. A child-accused of an offence punishable with imprisonment of not more than 7 years is concerned, a period of 3 months from the date of filing of the complaint or lodging of the First Information Report is the maximum time permissible for investigation and a period of 6 months from the filing of the charge sheet as a reasonable period within which the trial of the child must be completed. If that is not done, the prosecution against the child would be liable to be quashed. State Governments must set up necessary remand homes and observation homes where children accused of an offence can be lodged pending investigation and trial.

3. If the pending cases relating to offences punishable with imprisonment of not more than 7 years then the State Government shall complete the investigation within a period of 3 months from today if the investigation has not already resulted in filing of charge sheet and if a charge sheet has been filed, the trial shall be completed within a period of 6 months from today and if it is not, the prosecution shall be quashed.

The right to speedy trial is a fundamental right implicit in Article 21 of the Constitution and observed that the consequence of violation of fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is a breach of the fundamental right. The Court answered
the question posed by Bhagwati J. in *Hussainara Khatoon’s case*.92

In *Sheela Barse case*, in 1986 the Court directed the State Government to provide observation and remand homes. The Parliament passed Juvenile Justice Act, 1986 and it has been later amended in 2000 and 2006. The present position is that juveniles are now kept in observation homes and rehabilitation centers. If within three months period the charge-sheet is not filed, then the juvenile will be released.

5.2.7 Delay Caused by prosecution

In the case of *Arjun Das v. State of Bihar*93 the delay in the administration of criminal justice is for more than a decade or which had straddled the State of Bihar, is epitomised in this set of twenty-eight criminal writ jurisdiction cases. Here, the petitioner-accused has contributed to the delay and later designed to stall the judgment in the case and to bring it within the rule for delay beyond seven years. The Court observed:

“Inordinate delays only tend to fade memories and bring in a host of factors which militate against the successful culmination of a criminal prosecution. One would, therefore, have imagined that the respondent State would, in its own interest, be solicitous of speed in criminal prosecution launched by it. Equally it seems to me that a prompt trial is in the interest of the accused and provides a fair defence as well”

The Court also observed that an outer time limit to concretise the right to speedy public trial is envisioned both by

93. 1988 (36) BLJR 95. The Court has made reference of Hussainara and Kadra Pehadiya case.
principle and precedent. It is further held that a callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reasons) in investigation and original trial for offences other than capital one could plainly violate the constitutional guarantee of a speedy public trial under Article 21”.

The Patna High Court held that the petitioner has disentitled himself to the benefit under Article 21 of the Constitution of India. The petitioner has contributed to the delay and at the later stage, perhaps, designedly to stall the judgment in the case and to bring it within the rule for delay beyond seven years.

The delay fades the memory of the people and it also puts accused in a stigma for that much time period. Law requires that a person in order to protect his right must come with clean hands. A person cannot take the benefit of his fault. This case comes within the rule that if delay and default is occasioned by the conduct of the accused himself he must be deemed to have waived his right to speedy public trial.

5.2.8 Delay caused by accused

Another important judgment on speedy trial is A. R. Antulay v. R. S. Nayak case,94 where the complaint is filed against the Chief Minister of Maharashtra under Prevention of Corruption Act, 1947 in the year 1981. The accused has filed a writ petition in 1990 under Article 32 of the Constitution to quash the proceedings on the ground of violation of his fundamental right to speedy trial. Here, 151 witnesses were

94. AIR 1992 SC 1701.
examined and it is evident that no delay has been caused by the prosecution. In order to calculate delay factors like whether the accused is responsible for delay; whether he is prejudiced by such delay in any manner, of course, in some case the delay may itself amount to prejudice; nature of offence with which the accused is charged are to be looked into and the following delays are to be totally ignored in giving effect to the plea of denial of Speedy Trial:

(A) Delay wholly due to congestion of the Court calendar, unavailability of judges, or other circumstances beyond the control of the prosecutor.

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

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

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

Later, in the case of Santosh Dev v. Archna Guha95, the complainant and her family members are detained under MISA, 1971 in 1974 and released after torture in 1977. She was tortured in a very inhuman manner by the accused-police officials in the torture chamber of the Police Headquarters. The delay has been caused by the accused at many stages. The Supreme Court has affirmed the High Court and Division Bench

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95. AIR 1994 SC 1229.
order which disallowed the petition for criminal proceedings to be quashed on the ground of an inordinate delay in view of nature of circumstances and delay caused in proceeding by the accused-petitioner himself. The single judge has quashed the proceedings which are considered unjustified by the Division bench. It is opined that if the said allegations are proved they constitute serious offences and, therefore, they ought to be tried in the interest of justice. Also, the court refused to apply Antulay’s case as right of speedy trial is not violated. The truth of the allegations can be arrived at only after a proper trial which, having regard to the nature of allegations and having regard to other circumstances should now take place without any further delay. The criminal proceedings were directed to be carried on regular day-to-day basis. The Court observed,

“How easy it has become today to delay the trial of criminal cases. An accused so minded can stall the proceedings for decades together, if he has the means to do so. Any and every single interlocutory is challenged in the superior courts and the superior courts, we are pained to say, are falling prey to their stratagems. We expect the superior courts to resist all such attempts. Unless a grave illegality is committed, the superior courts should not interfere. They should allow the court which is seized of the matter to go on with it.”

The court pointed out that no adjournment shall be granted except for very good and sufficient reasons. No court other than this Court shall be competent to entertain any appeal, revision or other petition (including writ petitions) against any interlocutory orders and the order/proceedings framing charges,
if any, against the accused, passed by the learned Magistrate in the said case.

These cases show how the accused took advantage of his status to undermine the interest of a common man. The adjudication has provided a confidence that fair trial is provided. Also, speedy trial cannot be claimed when the accused has himself caused delay. In A.R. Antulay case eleven directions are provided. Right to fair and speedy trial is implicit in Article 21 of Constitution and speedy trial at all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and re-trial. The court did not agree to fix time limit. In order to calculate delay the court gave 'balancing test' to balance and weigh the relevant factors in the delay. In Santosh Dev case, the Court favoured proper trial to seek justice which shows the bent of the judiciary not to quash the proceedings.

5.2.9 Rights of victim

In the case of Kartar Singh v. State of Punjab a number of writ petitions, criminal appeals and SLPs are filed challenging the vires of the Terrorist Affected Areas (Special Courts) Act (No. 61 of 1984), the Terrorists and Disruptive Activities (Prevention) Act (No. 31 of 1985) and the Terrorists and Disruptive Activities (Prevention) Act, 1987 (No. 28 of 1987) commonly known as TADA Acts (hereinafter referred to as the Act of 1984, Act of 1985 and Act of 1987 respectively) and challenging the constitutional validity of Section 9 of the Code of Criminal Procedure (U.P. Amendment) Act, 1976 (U.P. Act No. 16 of 1976) by which the Legislative Assembly of Uttar Pradesh has deleted Section 438 of the Code of Criminal Procedure as applicable to the State of Uttar Pradesh. The Supreme Court held that liberty of a citizen

96. (1994) 3 SCC 569.
must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution.\textsuperscript{97} The confession under Section 15, TADA Act is valid as it is signed by the person making the confession and also it is not arbitrary and uncontrolled as specifications and classification is made by the Central Government.

The Constitution Bench opined that the \textit{delay is dependent on the circumstances of each case because reasons for delay will vary, such as i) delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally ii) deliberate absence of witness or witnesses iii) crowded dockets on the file of the court.}

Here, the Court has secured that liberty of accused can not be seen in isolation. The judiciary protects the right of victim also.

\textbf{5.2.10 Criminal Proceedings unaffected on Inordinate delay}

In \textit{Indubhusan Das Gupta v. State case,}\textsuperscript{98} the petitioner-accused was charged on corruption charges and wanted case to be dismissed as there is lapse of 19 years. Here, 78 prosecution witnesses were examined and trial court observed for the delay caused both the parties is equally responsible. The Court

\begin{footnotesize}
\textsuperscript{97} (1994) 3 SCC 569 vide para 351.
\textsuperscript{98} 1995 Cri LJ 1180(Cal). (The Court referred into landmark judgment of Hussainara Khatoon and A.R.Antulay case which supports speedy trial under Article 21, the Constitution of India, 1950).
\end{footnotesize}
directed the trial court to expedite the trial preferably within six months.

The above discussed case shows the judicial trend for not dismissing the case on the ground of speedy trial. The researcher opines that one of the reason is both the parties are vigilant and responsible during the proceedings. The six months time to expedite the trial will provide the litigants fair and speedy trial.

5.2.11 Time limit prescribed

The Supreme Court in Common Cause v. Union of India case,\textsuperscript{99} delivered a division bench judgment under the guise of Justices Jeevan Reddy and S. B. Majumdar has given guidelines and directions to prescribe a time limit for the disposal of cases so as to provide speedy trial and to protect the spirit underlying Part III of Constitution and criminal justice system.

\begin{quote}
“1. (a) Where the offences under I.P.C. or any other law for the time being in force for which the accused are charged before any criminal court are punishable with imprisonment not exceeding three year fine and if trials for such offences are pending for one year or more and the concerned accused have not been released on bail but are in jail for a period of six months or more, the concerned criminal court shall release the accused on bail or on personal executed by the accused and subject to such conditions if any, as may be found necessary in the light of Section 437, Criminal Procedure Code,1973.

(b) Where the offences under I.P.C. or any other law for the time being in force for which the accused are any criminal court are not exceeding five year, with or without fine, and if the trials for such offence are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period
\end{quote}

\textsuperscript{99} (1996) 4 SCC 33.
of six months or more, the concerned criminal court shall release the accused on bail or on person bond to be executed by the accused and subject to the imposing of suitable conditions, if any, in the light of Section 437 Criminal Procedure Code, 1973.

(c) Where the offences under I.P.C. or any other law being in force for which the accused are charged before any criminal court are punishable with seven years or less, with or without fine, and if the trials for such offences are pending for two years or more and the concerned accused have not been released on bail but are in jail for a period of one year or more, the concerned criminal court shall release the accused on bail or on personal bond to be executed by the accused and subject to imposing of suitable conditions, if any, in the light of Section 437 Criminal Procedure Code, 1973.

2. (a) Where criminal proceedings are pending regarding traffic offences in any criminal court for more than two on account of non serving summons to the accused years/or for any other reason whatsoever, the court may discharge the accused and close the cases.

(b) Where the cases pending in criminal courts for more than two years under I.P.C. or any other law for the time being in force are compoundable with permission of the court and if in such cases trial have still not commenced, the criminal court shall, after hearing the public prosecutor and other parties represented before it or their advocates, discharge or acquit the accused, as the case may be, and close such cases.

(c) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force pertain to offences which are non-cognizable and bailable and if such pendency is for more than two years and if in such cases trials have still not
commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(d) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are pending in connection with offences which are punishable with fine only and are not of recurring nature, and if such pendency is for more than one year and if in such cases trial have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(e) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are punishable with imprisonment up to one year, with or without fine, and if such pendency is for more than one year and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.

(f) Where the cases pending in criminal courts under I.P.C. or any other law for the time being in force are punishable with imprisonment up to three years, with or without fine, and if such pendency is for more than two years and if in such cases trials have still not commenced, the criminal court shall discharge or acquit the accused, as the case may be, and close such cases.”

Here, the period of pendency of criminal cases will be calculated from the date the accused is summoned to appear in the court. However, the above directions shall not apply to cases of offences involving (a) corruption, misappropriation of public funds, cheating, whether under the Indian Penal Code, Prevention of Corruption Act or any other statute, (b) smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, (c) Essential Commodities Act, Food Adulteration Act, dealing with
Environment or any other economic offences, (d) offences under Arms Act, Explosive Substances Act, Terrorists and Disruptive Activities Act, (e) offences relating to the Army, Navy and Air Force, (f) offences against public tranquility; (g) offences relating to public servants, (h) offences relating to coins and Government stamp, (i) offences relating to elections, (j) offences relating to giving false evidence and offences against public justice (k) any other type of offences against the State (l) offences under the Taxing enactments and (m) offences of defamation as defined in Section 499 I.P.C.

This case has set time-limit and provided the exceptions also. The case shows the judicial intend for speedy trial in a new way. Though it provides speedy disposal but the concept of speedy justice fails. Justice requires a decision after fulfilling the relevant procedure and evidence. Justice is to be seen from the point of a 'reasonable man'.

Justice means it should not only be just but justified also. Just means it is legally or ethically correct or proper. It is free from any favouritism or self-interest or bias. 'Justified justice' means when there is a reasonable or adequate ground for providing that is legally or ethically correct or proper. A delayed justice affects the interest of the accused and the society.

5.2.12 Sanction

In Mansukhlal Vithaldas Chauhan v. State of Gujarat case, the High Court has issued a direction to the sanctioning authority to grant sanction which is a piquant situation as the judiciary has stepped in the shoes which is a discretionary power given to executive. The Hon’ble Supreme Court held that Section 197, of Criminal Procedure Code,1973 and Section 6, Prevention

100. AIR 1997 SC 3400.
of Corruption Act, 1947 requires a sanction from the Central or State government before a public servant is prosecuted. It is the discretionary power of the executive. Since, already fourteen years have elapsed and to start the proceedings from the stage of sanction is not fair, just and contrary to Article 21 of the Constitution of right to life and philosophy of criminal proceedings through a speedy trial.

In this case, the direction is given by the High court to the executive to grant sanction. It lies in the discretionary power of the executive to grant sanction or not. According to the doctrine of Separation of Powers, one organ of the government cannot transgress into the functions of another organ. The Supreme Court overruled the High Court decision.

5.2.13 Balancing of interest

In 1998, a Full Bench decision under the guise of Chief Justice of India M. M. Punchhi, Justice K. T. Thomas and Justice M. Srinivasan in Raj Deo Sharma v. State of Bihar
case a petition is filed where more than 13 years have elapsed since the institution of case and the right of speedy trial is violated. The Court stressed upon fair, just and reasonable procedure which is implicit in Article 21 of the Constitution and creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. Also, speedy trial is in public interest or social interest and does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

Later in 1999, on the plea of Central Bureau of Investigation the clarifications are made on the directions given

above in Raj Deo Sharma v. State of Bihar case, are given by Full Bench in which majority opinion is of Justice K. T. Thomas and Justice M. Srinivasan, the minority opinion is by Justice M. B. Shah.

Shah, J. (minority opinion) Speedy trial in civil and criminal case is a must. It is required in the spirit of Articles 14, 19 and 21 that the procedure must be just, fair and reasonable and to maintain law and order. Speedy trial is affected by insufficient number of courts and delay in appointment of judges. The reasons for delay are provided as follows:

"(i) The procedure is dilatory.

(ii) No effective steps are taken for radical simplification and streamlining criminal procedure except re-enacting with minor mutations.

(iii) Various appeals, revision applications, repeated anticipatory bail as well as regular bail applications and petitions under Articles 226 and 227 are entertained which is also a cause for delay in disposal of cases finally; FIRs and charges are quashed; lot of time is wasted in deciding interlocutory applications; slow motion becomes much slower when politically powerful and rich people figure as accused because of various contentions raised by filing interlocutory applications for getting benefit of technicalities despite various provisions in the Code.

(iv) Dockets are heavy; arrears are mounting; even the service of process is delayed.

(v) Neglect of the basic necessaries of judicial process by the administration (as observed "Justice is Cinderella in our scheme"). Governments are guilty of denying amenities for the judiciary to function smoothly.

102. AIR 1999 3524.
(vi) If ever the case reaches the stages of trial, the time taken for reaching that stage has its own toll resulting in acquittal of more than 90% of those who are tried.”

Justice Thomas pointed out that the powers of Courts are not curtailed. In cases, where the inability for completing the prosecution evidence within the aforesaid period is attributable to the conduct of the accused in protracting the trial then the court is not obliged to close the prosecution evidence within the aforesaid period. Also, where the trial has been stayed by orders of the court or by operation of law then this time period shall also be excluded for closing the prosecution evidence. Absence of presiding officer is a systematic delay and can be excluded. The power of trial court to provide speedier trial is in Sections 309\(^\text{103}\) and 311\(^\text{104}\), Criminal Procedure Code, 1973.

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103. **Section 309. Power to postpone or adjourn proceedings.**

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

(2) If the court after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

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

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

1[Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.]

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

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

104. **311. Power to summon material witness, or examine person present.**

Any court may, at any stage of any inquiry, trial or other proceeding under this Code, summon any person its a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine
Srinivasan, J. observed that *whenever right of speedy trial is violated only recourse open is not to quash the proceedings. It is to be decided on the basis of nature of offence and other circumstances in a given case. The court has power either to conclude the trial within fixed time where trial is not concluded or to reduce the sentence where trial is concluded.*

In 1998 *Raj Deo Sharma* case, it was held that speedy trial is in public interest and is the right of accused. Later in 1999, an appeal was filed to make the directions clear. The Court held that speedy trial is must in civil and criminal matters.

The court has supplanted the decision of A.R.Antulay case. However, the court did not recognize the ‘demand rule’ which provides that the right of fair and speedy trial exists even if it is not demanded by the accused. The court has applied ‘balancing test’ in which the above relevant factors have to be weighed and balanced.

The researcher opines that it is necessary to find solutions for the delay and to secure the belief of people in the judicial system. The case covering all stages of trial the Court has taken a wider view so as to protect the right of accused. The balancing test is appreciable as it is applied by seeing the circumstances and nature of offence. The court has discussed the demand rule which the researcher opines is a fundamental right under Article 21, Constitution and its high time for the State to perform its duty instead of taking benefit or a plea of loads of work.

It is the duty of the State to find means to overcome the delay and till this goal is achieved it is incorrect to give benefit to the accused persons of delay in cases of serious charges. This

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any person already examined; and the court shall summon and examine or recall and re-examine any such person if his evidence appears to it to be essential to the just decision of the case.
will hit the prosecution from both sides, first the injury caused by accused and second when accused is released due to delay without completion of trial.

5.2.14 Creation of more vacancies

In the case of All India Judges Association v. Union of India\textsuperscript{105} the recommendations of Shetty Commission were to increase judge strength fivefold, to fill up existing vacancies by 2003, to create ad hoc posts and commensurate infrastructure by 2007, and yet these directions still await implementation. As there is a backlog of vacancies which has to be filled and as the Judge strength has to be increased, it would be appropriate for the States in consultation with the High Court to amend the service rules and to provide for re-employment of the retiring judicial officer till the age of 62 years if there are vacancies in the cadre of the District Judge. We direct this to be done as earlier as possible.

In the present time, the different High Courts approved strength is 906 and the vacancies which are yet to be filled are 267.\textsuperscript{106} This information also shows that now there are permanent and additional posts created.\textsuperscript{107} Another issue which needs consideration is the less number of courtrooms, due to which Hon’ble High Court is unable to fill the vacancies.\textsuperscript{108} The Supreme Court has vast powers to direct the Executive to create more posts of judges and fill up the vacancies of judges. The

\textsuperscript{105} (2002) 4 SCC 247.
\textsuperscript{106} http://doj.gov.in/?q=node/90 as visited on 3.1.2014.
\textsuperscript{107} See Table on Vacancy retrieved from http://doj.gov.in/?q=node/90 as visited on 3.1.2014.
\textsuperscript{108} Abhinav Garg, “No Space for More Judges : HC to Govt”, The Times of India, January 18, 2014 at pg. 3. This article is relating to Delhi courts. Due to less courtrooms the HC is unable to fill vacancies of 271 judges.
system of two shifts in Courts at places where there is backog of cases.\textsuperscript{109}

The researcher opines that the judge-population ratio has to be checked at regular intervals. The aim and spirit to provide speedy trial is defeated when there are less judges, staff and infrastructure. The need to create vacancies to be meted out at regular intervals. Also, two shifts in Courts can be taken as a pilot project.

5.2.15 Special courts for sexual offences against women

In the case of Fatima Riswana v. State Rep. by A.C.P., Chennai and ors.\textsuperscript{110} The appellant is a prosecution witness who is exploited by one of the accused, Dr. Lal Prakash for making pornographic photos and videos. The matter is referred to Session Court for Fast Track Court. The Court is also a 'Mahila Court'. The accused filed several revision petitions to the High Court on the ground of non-supply of CD's. The High Court rejected the petition on the ground that it might give room for copying such illegal material and illegal circulation of the same. However, the court permitted the accused persons to peruse the CDs of their choice in the Chamber of the Judge in the presence of the accused, their advocates, the expert, the public prosecutor and the Investigating Officer. It is also observed by High Court that it is open to the learned District Judge concerned whether the said case should be transferred to some other court, if she feels embarrassment or it is open to the parties themselves to file transfer petitions at the earliest opportunity without causing any

\textsuperscript{109} J. C. Seth, “Justice In Time – Inventing Effective Measures”, 55 Arbitration Law Reporter and 32 (2004(2)).
\textsuperscript{110} 2005 (1) SCC 582.
further delay in the trial of the case since already this court has ordered expeditious trial of the case since all the accused are in jail. On another revision petition High Court allowed the transfer of case to IV Fast Track Court presided over by a male Judge. The prosecution has filed an appeal against this order to the Supreme Court.

The Hon’ble Supreme Court held that special courts are constituted to exclusively deal with offences against women and for speedy trial of cases of offences committed against women and also case under other Social Laws enacted by the Central and the State Governments for the protection of women. The appeal to transfer the case on the ground that the presiding officer is a lady officer does not hold much ground as interest of the victim of the porn videos is the utmost responsibility of the judicial officers and lawyers.

A Judicial Officer be it a female or male is expected to face this challenge when the call of duty required it. It is expected, Judicial Officer to get over all prejudices and predilections when situation requires, hence in our considered opinion the High Court was not justified in presuming embarrassment to the Judicial Officer solely on the ground that she is a lady Officer even when the Officer concerned had not expressed any reservation in this regard. If situation requires the Presiding Officer may make such adjustments/arrangements so as to avoid viewing the CDs in the presence of male persons. This is a matter of procedure to be adopted by the Presiding Officer. The matter is referred back to verses Fast Track Court. The case has overruled the decision of High Court.

In 2009 Justice Geeta Mittal in judgment of said, “ The courts have to play a participatory role in the trial and not as a
mere tape recorders to record whatever is being stated by the witnesses. The judge has to monitor in aid of justice in a manner that something which is not relevant, is not unnecessarily brought into record".111

These special courts act as fast track courts. The Delhi High Court has asked the courts to have day-to-day hearings in rape cases. It will not be possible as each trial court has atleast a backlog of 200 cases.112 After the 16 December, 2012 of rape incident in Delhi, the Centre has asked the State Government and High Courts to increase the strength of subordinate judiciary from 18,000 to 20,000.113 The Punjab and Haryana High Court has issued directions to the courts to hear cases of rape on daily basis. As a result of the directions, the Punjab’s Patiala Court has delivered verdicts in 11 cases of rape in 20 working days.114

The researcher opines that special courts for women support both fair and speedy trial. In the interest of the victim, it is required that the matter should be before a female judicial officers. However, in light of latest incident in Delhi regarding gang- rape of a girl in a moving vehicle on 16th dec., 2012 the legal system and administrative system is once again receiving an agitation from all over the country. The need of speedy trial is satisfied through special courts.

111. Smriti Sigh, “5 Special Courts not Enough for 1,000 Pending Rape Cases”, The Times of India, January 2, 2013 at pg. 3. The number of rape cases pending in trial courts of Delhi is 1,000.
112. Smriti Sigh, “5 Special Courts not Enough for 1,000 Pending Rape Cases”, The Times of India, January 2, 2013 at pg. 3. The number of rape cases pending in trial courts of Delhi is 1,000.
5.2.16 No Complaints on same cause of action (or delay in filing of complaint)

In *Motilal Saraf v. State of J&K case*, the appellant was a Manager in State Bank of India, Kashmir in 1980 and was arrested on charges of corruption of Rs. 700/- under Jammu & Kashmir Prevention of Corruption Act (for short, 'the J & K PC Act'). A challan was filed against the appellant under Section 173, Criminal Procedure Code, 1973 before the court of Special Judge. This was challenged by the appellant in the High Court that he was not a public servant. Also, no sanction is taken from the competent authority. The High Court held that the appellant is a public servant. Also, it was well settled that no prosecution could be brought before a Court without there being a proper sanction. In the departmental proceedings, he was dismissed and later, in appeal removed from services.

Later in 1986, the respondent again filed a challan as the appellant was no more in service and there is no need of sanction. Due to chronic militancy in Srinagar, the appellant has shifted to Jammu. The appellant filed a petition before the High Court seeking transfer of the case to the Special Judge, Jammu. The Special Judge of Jammu observed that it was immaterial whether at the time of the presentation of the charge-sheet the accused was in service or not, but the fact was that he had committed criminal mis-conduct while discharging his official functions and the cognizance taken against the appellant without sanction was bad in the eyes of law. The decision of Special Judge was not challenged and is considered final and binding.

Later in 2000, the respondent again filed a challan. The appellant has raised before the High Court that the said order be cancelled. The Hon’ble High Court dismissed the appellant plea, the appellant has come before Hon’ble Supreme Court on the ground that orders of High Court in the first instance and Special Judge, Jammu are final and binding.

The Hon’ble Supreme Court dismissed a fresh complaint which is made after 26 years of an earlier complaint and explained the meaning and relevance of speedy trial right as- “When we examine the instant case in the light of the aforementioned decisions of this Court and of the US Supreme Court, it becomes abundantly clear that no general guideline can be fixed by the court and that each case has to be examined on its own facts and circumstances. It is the bounden duty of the court and the prosecution to prevent unreasonable delay. The purpose of right to a speedy trial is intended to avoid oppression and prevent delay by imposing on the courts and on the prosecution an obligation to proceed with reasonable dispatch.”

The Union of India, the State Governments and all concerned authorities must take necessary steps immediately in order to make the administration of criminal justice effective, vibrant and meaningful. In the instant case not a single witness has been examined by the prosecution in the last twenty six years without there being any lapse on behalf of the appellant. Permitting the State to continue with the prosecution and trial any further would be total abuse of the process of law. Consequently, the criminal proceedings are quashed. The appeal is accordingly allowed and disposed of.

The principles of Limitation provide that law assist the vigilant and not those persons who sleep over their rights. The
respondent has to be vigilant enough to go in appeal in time. The respondent must have obtained the sanction inorder to start the judicial proceedings. The researcher opines that no prosecution witness is examined as everytime the issue was whether “Sanction” is obtained is discussed. The case has provided speedy trial a large horizon to cover all stages of trial.

5.2.17 Rights of the victim

In the case of Moses Wilson v. Kasturiba\textsuperscript{116} the Court held that in the matter of denial of speedy justice, the Court expressed the concern at delay in disposal of case. The right of a victim has been given recognition in the case of Mangal Singh and Anr. v. Kishan Singh and ors.\textsuperscript{117} wherein it has been observed that any inordinate delay in the conclusion of a criminal trial undoubtedly has highly deleterious effect on the society generally and particularly on the two sides of the case. It will be a grave mistake to assume that delay in trial does not cause acute suffering and anguish to the victim of the offence. In many cases, the victim may suffer even more than the accused. There is, therefore no reason to give all the benefits on account of the delay in trial to the accused and to completely deny all justice to the victim of the offence.

In Rattiram v. State of M.P case,\textsuperscript{118} the case is regarding the effect and impact of not committing an accused in terms of Section 193, Code of Criminal Procedure. Here, the Sessions Court took cognizance of the offences without the case being committed to it and now it is an uphill task for the accused to

\textsuperscript{116}AIR 2008 SC 379.
\textsuperscript{117}AIR 2009 SC 1535.
\textsuperscript{118}AIR 2012 SC 1485. The case is decided by a Full Bench Dalveer Bhandari, T.S. Thakur, Dipak Misra, J.J.. The charges are framed against the accused under Sections 147, 148 and 302 read with Section 149 of the Indian Penal Code.
show that failure of justice had in fact occasioned. After 1973, the committal court, in police charge-sheeted cases, cannot examine any witness at all. The Magistrate in such cases has only to commit the cases involving offences exclusively triable by the Court of Session.

The Court observed “the whole purpose of speedy trial is intended to avoid oppression and prevent delay. It is a sacrosanct obligation of all concerned with the justice dispensation system to see that the administration of criminal justice becomes effective, vibrant and meaningful. Speedy trial and treatment of a victim in criminal jurisprudence is based on the constitutional paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasized by this Court. It has been recognized as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The concept of speedy trial cannot be allowed to remain a mere formality”.

The researcher opines that the inclusion of non-compliance of Section 193, Criminal Procedure Code,1973 in Section 465, Criminal Procedure Code which does not vitiate the trial cases protected the right to fair and speedy trial. Also, this right is implicit in Article 21 of Constitution of India. This case also highlighted that the accused should have raised this issue that section 193 is not complied by during the trial and not on conviction. The liability or burden of proof is put on the accused. However, it is opined that the judiciary and the lawyers of both parties are to be vigilant and careful. The case did not give any direction to these bodies (judiciary and the lawyers).
5.2.18 Criminal proceedings unaffected by delay in proceedings

In the case of Ranjan Dwivedi v. C.B.I., Through the Director General\textsuperscript{119} the accused has filed a petition before Hon’ble Supreme Court for quashing of Sessions trial as there is delay in completion of trial which is of more than 37 years. The facts are that in 1975, the accused is tried for the assassination of Shri. L.N. Mishra, the then Union Railway Minister. A bomb-blast occurred at the Railway Station, Samastipur in which prosecution that is, Shri. L.N. Mishra died. The Central Bureau of Investigation filed charge-sheet in 1975. The matter was referred to Court in 1979. Additional Session Judge has framed the charges. In 1987, a Writ Petition was filed for quashing as 12 yrs have passed. The Hon’ble Court directed expeditious trial of the case. However, inspite of this direction the matter is not complete till 2012. The statement of accused under Section 313, Criminal Procedure Code,1973 is recorded and the case is now at the stage of arguments.

The Court has looked into all the landmark judgments and held that trial cannot be quashed. The Court observed “Here, delay is caused by exceptional circumstances. It may not be due to failure of plaintiff or by systematic failure but there is a good cause for the failure to complete the trial and such delay is not violative of the right of the accused for speedy trial. The trial cannot be terminated merely on the ground of delay without considering the reasons thereof...Also, looking into long adjournments sought by the accused persons, who are seven in

\textsuperscript{119} AIR 2012 SC 3217. In this case, L N Mishra, former Chief Minister of Bihar has died in a bomb-blast in 1975. The accused has produced 39 witnesses, out of which 31 have died. More than 20 different judges have heard the case.
number. The accused cannot take advantage or the benefit of the right of speedy trial by causing the delay and then use that delay in order to assert their rights”.

Chandramauli Kr. Prasad, J. observed that the trial cannot be terminated without looking into the reasons.

This case shows a delay of 37 years, where the deceased was the former Chief Minister. If this much delay is caused in a VIP case, then the justice to poor and weak is beyond imagination.120 The bench of Justice H L Dattu and C K Prasad said that there is no denying that delay had been frequent in the judicial system in India. Delay definitely affects the trial and the Hon’ble Supreme court had earlier struck down fixation of a time limit for completion of trial”.121 The Legislature only had the jurisdiction to amend the law and prescribe the time limit for completion of trials. The Bench wondered why the Trial Court adjourned proceedings for long intervals despite the 1991 directions of the Apex Court for a day-to-day trial.122

The researcher opines that the accused has already spent large time in jail during investigation and trial. The case has been put under exceptional circumstances for delay. The adjournments taken on account of accused. There is a need to provide justice which is not a delayed justice to the parties. The applicability and implementation of right of speedy trial is needed.

121. Dhananjay Mahaputra, “Fixing Time Limit for Speedy Trial will Prove Harmful SC”, The Times of India, July 26, 2012 at pg.11.
5.2.19 New Modes to Overcome Delay

In the case of M/S SIL Import, USA v. M/S Exim Aides Silk Exporters the respondent has served notice for dishonour of cheque by fax and later, by registered post. The Supreme Court observed that a notice envisaged under Section 138, Negotiable Instrument Act, 1881 can be sent by fax. There is no such requirement that notice must be sent by registered post or be dispatched through a messenger. Chapter XVII of the Act, containing Sections 138 to 142 was inserted in the Act as per Banking Public Financial Institution and Negotiable Instruments Laws (Amendment)Act, 1988. Technological advancements like Fax, Internet, E-mail, etc were on swift progress even before the Bill for the Amendment Act was discussed by the Parliament ... If the court were to interpret the words "giving notice in writing" in the Section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process will fail to cope up with the change of time. So if the notice envisaged in clause (b) of the proviso to Section 138 was transmitted by Fax, it would be compliance with the legal requirement.

Later in the case of Basavaraj R. Patil and others v. State of Karnataka and others the wife has filed a maintenance petition against the husband and demand of dowry from husband and in-laws. He was residing in USA and unable to come every time to the court. The question was whether an accused needs to be physically present for recording his statement under Section

123. AIR 1999 SC 1609.
313, Code of Criminal Procedure\textsuperscript{125} "for the purpose of enabling the accused personally to explain".

The trial Court has dispensed with the personal attendance of the accused. The complainant then filed revision before the High Court which held that the trial Court does not have the discretion to dispense with the physical presence of the accused. The accused has now filed an appeal before the Hon'ble Supreme Court and pleaded that no Court is so powerless to deal with these line of situations, where the accused is abroad.

The Court held through the majority that it would appear prima facie that the court has discretion to dispense with the physical presence of an accused during such questioning only in summons cases and in all other cases it is incumbent on the Court to question the accused personally after closing prosecution evidence.

The word 'May' in Section 313(1) (a) of the Code indicates that even if the court does not put any question under that clause the accused cannot raise any grievance of it. But if the court fails to put the needed question under clause (b) of the sub-Section it would result in a handicap to the accused and he can legitimately claim that no evidence, without affording him

\textsuperscript{125} Section 313 of the Code: Power to examine the accused.- (1) In every inquiry or trial, for the purpose of enabling the accused personally to explain any circumstances appearing in the evidence against him, the Court- (a) may at any stage, without previously warning the accused, put such questions to him as the Court considers necessary; (b) shall, after the witnesses for the prosecution have been examined and before he is called on for his defence, question him generally on the case: Provided that in a summons-case, where the Court has dispensed with the personal attendance of the accused, it may dispense with his examination under clause (b). (2) No oath shall be administered to the accused when he is examined under sub- Section (1). (3) The accused shall not render himself liable to punishment by refusing to answer such question, or by giving false answers to them. (4) The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.
the opportunity to explain, can be used against him. It is now well settled that a circumstance about which the accused was not asked to explain cannot be used against him.

The word 'shall' in Section 313(1) (b) of the Code is to be interpreted as obligatory on the Court and it should be complied with when it is for the benefit of the accused. But if it works to his great prejudice and disadvantage the Court should, in appropriate cases, e.g., if the accused satisfies the court that he is unable to reach the venue of the court, except by bearing huge expenditure or that he is unable to travel the long journey due to physical incapacity or some such other hardship relieve him of such hardship and at the same time adopt a measure to comply with the requirements in Section 313 of the Code in a substantial manner.

The concerned Section had to be considered in the light of the revolutionary changes in technology of communication and transmission and the marked improvement in facilities for legal aid in the country.

The Court has suggested that firstly, an application accompanied by an affidavit sworn to by the accused himself containing the narration of facts to satisfy the court of his real difficulties to be physically present in court for giving such answers, secondly, an assurance that no prejudice would be caused to him, in any manner, by dispensing with his personal presence during such questioning and thirdly, an undertaking that he would not raise any grievance on that score at any stage of the case on the basis of which questionnaire will be provided to dispense with physical presence.
In the case of *State of Maharashtra v. Dr. Praful B. Desai*\(^ {126}\)

Here, the complainant’s wife has received treatment for removal of uterus and has told the respondent about the advice given by Dr. Greenberg, who is practicing in New York. After the operation, she could not recover and later died. Dr. Greenberg is one of the witnesses who was in New York and could not be physically present in the Court. Here, Section 273, Criminal Procedure Code, 1973\(^ {127}\) which provides *‘evidence to be taken in presence of the accused’* is put for analysis. The term Evidence is defined under Section 3, Indian Evidence Act, 1872 as means and includes all documents including electronic records produced for the inspection of the Court. In order to interpret Section 273, the doctrine of "Contemporanea exposition est optima et fortissimm"\(^ {128}\) is given no application when interpreting a provision of an on-going statute/act like the Criminal Procedure Code. The Hon’ble Supreme Court held that recording of evidence through video conferencing satisfies the object of Section 273, that is evidence is recorded in the presence of the accused. The accused and his pleader can see the witness as clearly as if he is actually present in the Court. They can hear and rehear the deposition of the witness and can cross-examine the witness. The doctrine of "Contemporanea exposition est optima et fortissimm"\(^ {129}\) is given no application when interpreting a provision of an on-going statute/act like the Criminal

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126. AIR 2003 SC 2053
127. **273. Evidence to be taken in presence of accused:**- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal attendance is dispensed with, in presence of his pleader.
128. It implies contemporaneous exposition is the best and strongest in law. Whether the Legislators at the time of drafting have contemplated video-conferencing.
129. It implies contemporaneous exposition is the best and strongest in law. Whether the Legislators at the time of drafting have contemplated video-conferencing.
Procedure Code. It observed, “where the witness is necessary for the ends of justice and the attendance of such witness cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable, the Court may dispense with such attendance and issue a commission for examination of the witness to record the evidence by way of video conferencing in the light of the revolutionary changes in technology of communication and transmission and the marked improvement in facilities for legal aid in the country”.

In the present times the usage of information technology via email, fax a notice can be sent instantaneously. The delivery is assured and the time the recipient sees that can also be known. This process is not only fast but also accurate and cheap. These new techniques can be used where ever it is feasible.

The above judgments are an evidence of practical and vigilant approach of the judiciary in India. These information technologies are a boon not only for the judiciary but also for the parties to get speedy and fair trial and thus, protecting the sanctity of Article 21, Constitution of India, 1950. The funds should be made available to the courts at all levels and in each part of the country to develop information technology.

5.2.20 Judicial Sphere

The landmark judgment in 2002 in *P. Ramachandra Rao v. State of Karnataka*130 has made clear the intention of the legislature. The seven judge constitutional bench comprising of S.P.Barucha, CJI, S.S.M. Quadri, R.C. Lahoti, N. Santosh Hedge, Doraiswamy Raju, Ruma Pal and A. Pasayat, JJ. The judgment

130. AIR 2002 SC 1856
discussed all the important cases and embodiment of the spirit of Article 21 of Constitution of India by our founding Fathers. The interpretation lies in heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation which allows us to widen the arms of Article 21. Speedy trial has been included as the mental agony, expense and strain caused to all the parties. Speedy trial can be invoked at all stages including investigation, inquiry, trial, appeal, revision and re-trial. However the point for consideration is can a judicial verdict bar the trial beyond the limitation? Can judiciary devise a mechanism of bar of limitation which has not been chosen by Legislature and Statutes?

The Court has dealt with the vision casted in Article 21 in declaration of law in Maneka Gandhi v. Union of India\textsuperscript{131} and Hussainara Khatoon v. State of Bihar\textsuperscript{132}. Article 14, 19 and 21 are introduced so as to protect the individual and to secure the sanctity of State in achieving the objective mentioned in the Constitution. The purpose of Article 21 is not to deprive a person of life and liberty except according to procedure established by law requires the reasonableness of law and procedure which demands satisfaction of Article 14 and 19. Section 468, Code of Criminal Procedure applies only to minor offences and Court should extend the same principle to major offences.

The Court has affirmed here the decision in A.R.Antulay case which provides the case not to be quashed after prescribed time period but the Court should take in to account the reasons of delay. The court interpreted the last four guidelines of aforesaid case. The court holds "it is neither advisable nor

\textsuperscript{131} AIR 1978 SC 597.
\textsuperscript{132} AIR 1979 SC 1360.
feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings”. Also, the Court can invoke in its power under Sections 309, 311 and 258, Code of Criminal Procedure, 1973, the High Court under Section 482, Code of Criminal Procedure and Article 226 and 227, Constitution of India.

In Ramachandra Rao case, the Court held that directions in Common Cause and Raj Deo case are not in the arena of this present case for reference and appeal. The decision in this case does not allow the cases later mentioned above to be reopened. Also, there are different considerations to be taken into account in each case. This view was not accepted by Justice Doraiswamy Raju.

The Court has considered the spirit of Hussainara Khatoon (IV) v. State of Bihar133, 

"The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability.”

Justice Doraiswamy Raju has favoured A.R. Antulay’s decision and holds the opinion that Common Cause and Rajdeo case to be overruled in the administration of justice. It is opined, “This Court is the ultimate repository of all the judicial powers at

133. 1980 (1) SCC 98.
National level and is the Summit Court at the pyramidal height of Administration of Justice in the country. When necessitated, it effectively plays the role as ‘Sentinel on the qui vive’ to protect and enforce the fundamental rights and other constitutional mandates”.

In P. Ramachandra Rao case, the Court has covered the reasons for delay provided in Antulay’s case (1) non-availability of the counsel, (2) non-availability of the accused, (3) interlocutory proceedings, and (4) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In Kartar Singh’s case another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (i) delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally, (ii) the deliberate absence of witness or witnesses, (iii) crowded dockets on the file of the court etc. In Raj Deo Sharma (II), in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarized as, (1) Dilatory proceedings; (2) Absence of effective steps towards radical simplification and streamlining of criminal procedure; (3) Multi-tier appeals/revision applications and diversion to disposal of interlocutory matters; (4) Heavy dockets; mounting arrears; delayed service of process; and (5) Judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning.

The Court has noticed these as the reasons of delay:- (i) absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the
accused/witnesses; (iii) non-production of undertrial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience.

S H Kapadia, Chief Justice of India wrote a letter to Chief Justice of all 24 High Courts stating that the delay in disposing of corruption cases was harming efforts to “arrest” the social evil. The time – bound disposal of corruption cases is important not only to punish the guilty, but also to deter potential offenders.134

The researcher agrees with the majority view of Ramachandra Rao case not providing time limit, as the primary function of judiciary is to impart justice. The essential functions of the Government organs are to be performed by that organ itself. The Doctrine of 'Separation of Powers' does not allow transgressing into the essential functions of the organ. The opinion of Justice Doraiswamy Raju on the task of Supreme Court as a sentinel is true and as an interpreter of Constitution requires ‘Rule of Law’ doctrine to be defended. A responsibility lies on the Union and State government to provide judiciary the requisite funds, manpower and infrastructure and to strengthen it quantitatively and qualitatively.

5.3 FAIR TRIAL IS SPEEDY TRIAL

In the case of State of Maharashtra v. Champa Lal Punjaji Shah135 the facts are that a surprise raid is conducted in the house of the respondent. Central Excise officers discovered a large quantity of gold bars with foreign markings concealed in

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the false bottom of a steel almirah, the keys of which were found with him. On a charge for offences under section 120B I.P.C.’1860 read with section 135 Customs Act and rule 126 P(2)(ii) and (iv) of the Defence of India Rules 1962. The Additional Chief Presidency Magistrate convicted the respondent and variously sentenced him under different counts with imprisonment and fine. On appeal, the High Court acquitted him. The High Court observed that the steel almirah in the flat was not shown to have been specially made and that the keys of a similar almirah could well fit it.

The Court observed “although it is settled law that circumstantial evidence must be of a conclusive nature and circumstances must not be capable of a duality of explanations, the Court is not bound to accept any exaggerated, capricious or ridiculous explanation which may suggest itself to a highly imaginative mind”.

The Court observed that in India the right of speedy trial is not an expressly guaranteed constitutional right it is implicit in the right to fair trial which is a part of the right to life and liberty guaranteed by Articles of the Constitution. Fair trial implies speedy trial while a speedy trial is an implied ingredient of fair trial; the converse is not necessarily true. The question whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If delay is caused by the conduct of the accused or there is nothing to show that the accused had been prejudiced in the conduct of his defence there will be no justification to quash the conviction on the ground of delayed trial only. The Court negated the contention of lapse of time and that Court should not interfere with the acquittal order or at any rate

135. AIR 1981 SC 1675.
The accused should not be sent back to the prison and held “The offence is one which jeopardizes the economy of the country and it is impossible to take a casual or a light view of the offence. The offence with which we are concerned and the stakes involved clearly show that sympathy in this case would be misplaced.” The accused was convicted and the appeal of Central Government was allowed. The judgment of High Court was set aside.

In the case of Mohd. Hussain @ Julfikar Ali v. State (Govt. of Nct of Delhi)\textsuperscript{136}, on 30.12.1997 in one Blueline Bus which is carrying passengers on its route to Nangloi from Ajmeri Gate stopped at Rampura Bus Stand at Rohtak Road for passengers to disembark. The moment the bus stopped, an explosion took place inside the bus. The appellant and the other three accused were committed to the Court of Session by the concerned Magistrate. The three accused other than the appellant were discharged by the Additional Session Judge, Delhi. The Additional Session Judge awarded death sentence to the appellant under Section 302, IPC and also awarded to him imprisonment for life for the offences under Section 307, IPC and Section 3, Explosive Substances Act, 1908. The conviction and sentence is affirmed by the High Court. The appellant has pleaded in both the Trial Court and the High Court that he was not given fair and impartial trial and he was denied the right of counsel. This contention was noted in High Court. The Hon’ble Supreme Court observed:

“Speedy trial’ and ‘fair trial’ to a person accused of a crime are integral part of Article 21. There is, however, qualitative difference between the right to speedy trial and the accused’s right of fair trial. Unlike the accused’s right of fair trial, deprivation of

\textsuperscript{136} AIR 2012 SC 750.
the right to speedy trial does not per se prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of prosecution or dismissal of indictment. The factors concerning the accused’s right to speedy trial have to be weighed vis-a-vis the impact of the crime on society and the confidence of the people in judicial system. Speedy trial secures rights to an accused but it does not preclude the rights of public justice. The nature and gravity of crime, persons involved, social impact and societal needs must be weighed along with the right of the accused to speedy trial and if the balance tilts in favour of the former the long delay in conclusion of criminal trial should not operate against the continuation of prosecution and if the right of accused in the facts and circumstances of the case and exigencies of situation tilts the balance in his favour, the prosecution may be brought to an end. These principles must apply as well when the appeal court is confronted with the question whether or not retrial of an accused should be ordered.”

This case brought into light that fair trial includes speedy trial. However, converse is not true. The case has adopted an approach to the problem of delay. The reasons for the delay caused have to be looked into. Mere delay cannot be the defense. Later, a qualitative difference is discussed between fair trial and speedy trial. Speedy trial has to weigh rights of accused and public justice.
APPRAISAL

After making in-depth study of judgments, it may be said that the attitude of judiciary on fair trial in 1950s maintains that the criminal justice should be swift and sure; in *M.S.Sheriff's case*, it has been observed that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. Further in *Manchander's case*, court changed the trend that the fault on the part of Trial Court of not questioning on confession made after 8 days of arrest cannot be condoned. Contrary to this in *Talab Haji Hussain's case*, when the accused has been granted bail by the Trial Court, the same can be cancelled by the High Court. The fair trial is the main object of the criminal procedure and any threat to the continuance of fair trial must be immediately arrested. A bent has been made in 1970s when Court decided whether delay leads to vitiate of trial and those which do not vitiate. In *Iqbal Ismail Sodawala's case*, the delay of seven months in not providing the copy of the judgment due to paucity of staff was held to be not vitiating, as it does not affect the right of defendant who has been in jail during that period and also, since the delay has not affected the defendant right to appeal in High Court, it has not affected his right of fair trial. The trend of judiciary from 1950s to 70s show firstly, segregation in two categories that is, whether delay vitiates or does not vitiate the trial and secondly, is delay of seven month so meagre that the Hon’ble Court left this issue of paucity of staff. Further in 1978 in *Maneka Gandhi's case* it was declared that right to fair trial is a Fundamental Right and is implicit in Article 21, Constitution of India.
Later In Re Special Courts Bill case(1979) regarding trial of corruption cases against VVIPs in the special courts, according to the Special Courts Bill, 1976 is held to support fair and speedy trial. Hon’ble Supreme Court in Legal Aid Committee Representing Under-Trial Prisoners case observed that the right of fair trial is affected when the bail is not granted to under trials. The Court laid down the directions for bail provides a frame work to the lower courts and also supported the principle of Article 21, which provides fair trial as a Fundamental Right. Similarly, in the year 1995, in Delhi Domestic Working Women case, the directions are laid down for fair trial in rape cases. It is later supported for in camera-trial and the case to be heard by Lady Judge in Gurmit Singh case.

The concept of fair trial has been expanded in Guruvayur Devaswom Managing v. C.K. Rajan and ors(2003) case to cover Public Interest Litigation for the poorest of the poor, deprived, the illiterate, the urban and rural unorganized labour sector, women, children, handicapped by ‘ignorance, indigence and illiteracy’ and other down trodden, who have either no access to justice or had been denied justice. The Courts in ‘pro bono publico’ has granted the relief to inmates of the prisons, provided legal aid and directed speedy trial. Later on, video-conferencing of victim is allowed to provide fair trial and the scope of Section 273, Criminal procedure code has been widened in Sakshi case (2004).Another expansion is also seen in Zahira Habibullah Sheikh case(2006) which included the concept of fair trial and protection of the victim & witness, similarly in Dhananjay Kumar Singh case(2006) the principles of natural justice are considered
to be an integral part of a fair trial in the context of Article 21 of the Constitution and the Universal Declaration of Human Rights, 1948. Which allows the accused to seek summoning of the case diary/documents? It is for the Courts to decide, if the case diary is “necessary or desirable” for the just decision of the case. This provision promotes fair trial. Similarly in Sushil Sharma case(2013) known as 'Tandoor case” it is noted that fair trial involves following the correct procedure and giving opportunity to the accused to probabalize his defense.

On the other hand, in regard to right of speedy trial, after achieving independence in 1950, the goal of the State was maintenance of law and order in the country. The duty was casted on the Judiciary to provide protection to the rights of the litigating parties. The early cases of 1950s show that delay caused by the prosecution has been taken strictly by the Court. This trend continued till mid 70s. During 1970s, there were flood of cases, which brought the position of undertrials to limelight, the directions of the Court varied from State to take policy decisions to the time period for investigation to demand of list of undertrials. In the landmark judgment of Hussainara Khatoon (I) case, grounds are provided when the accused can be released without bail bond. In Hussainara Khatoon (II) case, speedy trial is not declared to be implicit in Article 21 of the Constitution of India, 1950. The right of speedy trial in Article 21 requires a ‘reasonable, fair and just’ procedure and the State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. In Hussainara Khatoon (III) case, speedy trial is provided to those
under-trial prisoners who had remained in jail without trial for periods longer than the maximum term for which they could have been sentenced if convicted.

In *A. R. Antulay case* (1992) the Court provided a list where delay does not affect Speedy trial. The right of speedy trial is available to the accused and not only when it is demanded. The court can either quash the proceedings or provide a time limit for the case to be concluded. Another jolt has taken in *Santosh Dev v. Archna Guha* case (1994) where the complainant and her family members were detained under MISA, 1971 and tortured in a very inhumane manner by the accused-police officials in the torture chamber of the Police Headquarters. The delay has been caused by the accused at many stages. The Supreme Court has affirmed the High Court and Division Bench order which disallowed the petition for criminal proceedings to be quashed on the ground of an inordinate delay in view of nature of circumstances and delay caused in proceeding by the accused-petitioner himself. The proceedings were directed to be carried on day-to-day basis. The earlier judgment of A.R.Antulay case was not applied by the Court. This case gave importance for the truth to be arrived through proper trial. In the same year, the bent of judiciary towards the right of victim was seen in *Kartar Singh v. State of Punjab* case, received a number of writ petitions, criminal appeals and SLPs are filed challenging the vires of TADA. The court observed that while dispensing justice in cases like TADA Act, the judicial officer should keep in mind not only the liberty of the accused but also the interest of the victim.
The Supreme Court in *Common Cause v. Union of India* case (1996) has given guidelines and directions for prescribing a time limit for the disposal of cases so as to provide speedy trial and to protect the spirit underlying Part III of Constitution and criminal justice system. This judgment was appreciated and the Court was flooded with the applications on the ground of time-limit. However, the flaw is faced in this judgment was that the work of judicial officer is changed from deciding a case to dispose of a case seeing the time limit prescribed.

In 1998, a Full Bench decided in *Raj Deo Sharma v. State of Bihar* case where more than 13 years have elapsed since the institution of case and the right of speedy trial is violated. Right to speedy trial is the right of the accused. Also, speedy trial is in public interest or social interest and does not make it any the less the right of the accused. The court applied ‘balancing test’ in which the above relevant factors have to be weighed and balanced. The Court made clarifications in 1999 and Justice Shah in minority opinion observed that speedy trial in civil and criminal case is a must. It is required in the spirit of Articles 14, 19 and 21 that the procedure must be just, fair and reasonable and to maintain law and order. Justice Thomas pointed out that the powers of Courts are not curtailed. Absence of presiding officer is a systematic delay and can be excluded. The power of trial court to provide speedier trial is in Sections 309 and 311, Criminal Procedure Code, 1973. Srinivasan, J. observed that whenever right of speedy trial is violated only recourse open is not to quash the proceedings. It is to be decided on the basis of nature of offence and other circumstances in a given case. In
another development in *State of Maharashtra v. Dr. Praful B. Desai case (2003)* where one of the witnesses was in New York. The court looked into Section 3, Indian Evidence Act, 1872 and Section 273 of Criminal Procedure Code, 1973. The Court observed that the right to have video conferencing is not a Fundamental Right under Article 21 of the Constitution. It is not necessary that in all cases the accused must answer by personally remaining present in Court. In order to provide fair and speedy trial, the recording of evidence of witness is allowed through video conferencing.

In order to overcome delay, the Court in the case of *All India Judges Association (2002)* gave directions to increase judge strength fivefold, to fill up existing vacancies by 2003, to create adhoc posts and commensurate infrastructure by 2007. These directions still await implementation. Similarly in *Fatima Riswana v. State Rep. by A.C.P., Chennai and ors case (2005)*, the court held that special courts are to be constituted to exclusively deal with offences against women and for speedy trial of cases of offences committed against women and also case under other Social Laws. In another exceptional case, *Ranjan Dwivedi (2012)* the delay in completion of trial was of more than 37 years, the Court held that the criminal proceedings are unaffected by delay in proceedings, when the delay is caused by the accused himself.

The researcher holds the view that fair trial which in 1970s was considered to be coming mainly from Article 21 has in the year 2000, considered the principle of natural justice in fair trial. The researcher also holds the view that inspite being declared a Fundamental Right and providing of reasons, the problem of fair
trial still exists. A distinction between discretionary and arbitrary has to be given consideration. The assurance of fair trial is judged on the touch-stone of petitioner's ground and the process of justice should not harass the parties and from that angle, the court has to weigh the circumstances in favour of speedy trial.

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