SUMMARY

India is a democratic society governed by rule of law and it is enshrined in the Constitution of India, which the people of this country have given to themselves. Rule of law means that law is supreme and the rule of law is protected when there is a legal system, which is readily accessible and responds to the needs and problems of citizens in a fair and non-discriminatory manner. The development of any country is measured by the economic and judicial system of governmental set-up and living standard of the people, which also includes fair and speedy justice. The Constitution has guaranteed its citizens fundamental rights which are basic human rights. The quest for truth is the foundation of justice system which aspires to preserve and protect the rule of law.

The delay in trial is not a recent phenomenon, of late it has assumed gigantic proportions, but the attitude of 21st century hesitates to respond positively to the ... of hallowed human rights, of the dignity of personhood versus blatant disregard by states of compassion for the undertrials.

Fair trial is the paramount prerequisite of administration of justice. The fairness can not be measured in absolute manner, but is always relative. The fair trial implies to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The main objective of the State is to provide society peaceful environment to people and to protect them from the offenders by giving appropriate punishment. The object of establishing courts is to bring justice to the door step of the litigants to save time, expenditure and serve justice speedily.

Speedy justice demands speedy and reasonably expeditious
trial. It secures the right to live with basic human dignity and right to individual liberty. There is a well-known saying "Justice delayed is justice denied". However, expeditious justice is very rare, as litigation has assumed alarming proportion with the explosion of population, expanding of business activities, sagging moral values, culture of demanding only rights and tardy disposal of cases by Courts, the arrears are mounting up day by day. This right of expeditious or speedy trial is the essence of justice and delay in the trial causes denial of justice to the accused.

**Hypothesis**

In India large number of pendency of cases in Courts is a major concern for both the parties as well as for the State, in spite of right of speedy trial declared as a fundamental right in catena of judgments under Article 21 of Constitution of India. Speedy and fair trial is the utmost and fundamental requirement for judicial accountability.

Researcher observed and perceived the adjudication process under the procedural laws under different dimensions. Researcher feels that one of the lacunae in adjudicating cases is slower disposal rate of cases. The frivolous, multiplicity of suits and vexatious litigations are also add to the arrears of cases, which further adds to this problem. Generally, the perception of public is that the provisions of revision and adjournments in Criminal Procedure Code, 1973 and in Civil Procedure Code, 1908 somewhere is the main reason for delay in dispensation of justice. In the light of applicability of law it is seen that the procedural methodology adopted by litigants/lawyers to get adjudication from courts is applied not to get or impart justice but to create unfairness and delay. The rationale behind the study is justified on the basis of assumptions and completed with reasons, justification, conclusion and
suggestions. On the above mentioned hypothesis and assumptions researcher made some objectives to complete the present work on “Fair and Speedy Trial: Need of the Time in Criminal Justice System”.

**Aims And Objectives**

In light of the above hypothesis, the objective of the study is to examine the legal framework of speedy trial and the lacunas. The specific objectives are:-

1. To study whether the provisions to have fair and speedy trial under Criminal Procedure Code are followed or not?
2. To study the reasons given by the judge to reject it;
3. To study the legal provisions and policies made till date for speedy and fair trial;
4. To study the evolution and developments in speedy and fair trial;
5. To assess the present system for speedy justice;
6. To assess the judicial practice of Hon’ble High Courts and Supreme Court with respect to their discretionary powers for speedy trial;
7. To study various pronouncements made in India and abroad;
8. To find out the ways by which this right can be assessed

**Research Methodology**

The methodology of the study shall primarily be doctrinal, discussing the philosophy and analyzing the books, journals and other literature on the subject. Researcher has analyzed the Judgments of reported cases for speedy trial, as decided by Hon’ble High Courts and Supreme Court time to time. The study encompassed doctrinal method of research by using primary and secondary sources. The basis of the study are pronouncements of Hon’ble Supreme Court and High Courts Report of Law Commission, Law books, Articles in law journals
and Newspapers.

Considering the nature of the subject, the researcher commenced his study by utilizing the rich treasures of books and treatises available in the library and pick up from them the material relevant for tracing the concept of speedy and fair trial thereafter proceeded ahead to extensively to examine other materials like the various legislations, commentaries by the jurists, the statutory interpretations by the Supreme Court and the High Courts of India. The researcher considers the ‘Doctrinal’ or the ‘Traditional’ method of research as the primary method for study. Researcher also intends to conduct research by applying the Anthropological Study, Critical Study, Comparative Study by collecting the data as secondary as well as Primary source of information.

An imperative is made by the researcher to analyze the judgments analytically, comparatively and anthropologically also by applying the tools of doctrinal research. On the basis of work done in the light of recommendations of law commission and other recommendatory bodies, the researcher gave suggestions after concluding her remarks about the concept and law of fair and speedy trial.

**Framework of the Study**

After making in-depth study on the subject, the research work is divided into six chapters

1. **Chapter 1.** In this chapter researcher discussed about the subject including an explanation about the nature and scope in the light of constitution of India, meaning, objective, hypothesis and research methodology followed in the present work.

2. **Chapter 2.** This Chapter covers the historical perspective followed in ancient, medieval period to provide fair and speedy trial. The different techniques followed to secure
justice to the litigants. Further researcher also discussed, analysed and explained the topic with meticulous planning.

3. **Chapter 3.** This chapter covers the recommendations in eighteen reports of Law Commission. Also, various Committees are constituted to curb the issues of delay are covered so as to secure fair and speedy trial.

4. **Chapter 4.** In this chapter researcher brings to light the Legal provisions relating to the fair and speedy trial by analyzing and examined them. Provisions and their interrelationship with each other are also discussed in detail.

5. **Chapter 5.** This chapter covers cases decided in the Hon’ble Supreme Court and High Courts on the topic of research. Also, the analysis is done which is supported with proper references.

6. **Chapter 6.** In this chapter, after making in-depth and extensive study on the subject, including the various aspects of the topic, researcher brings to light the conclusion and suggestions of the study.

Justice is the utmost urge of an individual. In the historical period, the concept of justice and trial had been examined and interpreted by the rulers in India by understanding the circumstances and situations. The denial of justice has caused the justice to be circumvented, to be mocked and the justice system to be undermined. History of our country is a witness, when justice was provided to many persons saving the life from wicked, crooked and evil persons. The Indian legal system is mainly based on foreign colonial legacy, which Britain evolved through many centuries, inherited its ideals and values which were imposed on India.

During the ancient period in India, the Hindu jurist took
great care to avoid delay. There are few precedents which shows that king had to suffer in a case of delay caused in deciding the dispute and the king occupied the pivotal position in imparting justice. The role of panchayats, secret agents, lawyers assisted in imparting justice, the rules of evidence and hierarchy also helped in securing fair and speedy trial for the parties.

In the medieval period in India, the Mughal Emperors prided themselves on their love for equity. The administration of justice was considered as an important duty which a sovereign could not afford to neglect and they took keen interest in it and attended most zealously to this duty. The importance of the role of king and qazi can be seen, Hazrat Umar laid down rules for administration of justice for the guidance of the court. Several legal principles were provided to dispense justice, The justice was dispensed by the subedars, faujdars, shiqdars, amils and kotwals on the basis of common law and equity. Speedy justice to prisoners was provided and delay in administration of justice was not liked by the rulers.

In British period, the first step to regulate the machinery of administration of justice was by Warren Hastings in his Judicial Plan of 1772. Later, a judicial system based on the principle of equity and justice, reformed criminal laws and proclamation of the sovereignty of law was introduced.

In Sanskrit, the synonymous of law is ‘dharma’. Manu defined dharma in the second verse as what is just and customary. In the legal sense, the sources of law imply those, which are recognized by and binding in law. However, apart from legal sense, dharma includes all the moral, religious, legal, ethical and social principles which guide the conduct of man and society.

The kingship was an unique institution in the ancient India. The whole philosophy was founded on great constitutional idealism. The king had constitutional and legal abilities combined
with high morality and generousity at heart which created a great image of integration among the people. Manu quotes the king should dress in simple attire and pleasent demeanour. The conduct of the king and judge was to earn confidence as an impartial deity of justice and to remain composed, present a pleasant look, wear a smile and not to brow beat even a murderer. While discharging the judicial functions, the king acted according to Shastras and impartial in his speech and action. The King possessed with knowledge in Vedas and the Anvikshiki which related to the learning regarding all cognant matters related to the science of justice. In coming to right decision justice, (nyaya) the reasoning or logical thinking (tarka) was necessary and the decision was given on proper reasoning. Incase of difficulty in reaching the right decision, the persons well-versed in the three branches of learning were consulted and the decision was impartial one. The king had to function as a leader of people, as Hitopadesha observed - If there be no efficient king as the leader of the people then the subjects plunge in to misery like boat plunged into a river without having a boatman.

In 1206, when Qutub Uddin Aibek, the founder of Turkish Slave dynasty established his government at Delhi in 1206, the whole of the Indian peninsula was not under him. The Turks had so far annexed Multan (1175-1176), the Punjab (1187), Ajmer, Delhi, Qannauj (1191-1193), Benaras, Bihar, Bengal and Bundelkhand(1197-1203).

The Muslim king in the Islamic state used to follow the rules laid down in Quran. However, it is found impracticable by a number of Muslim rulers to follow the Islamic law. The Mughal Emperors of India prided themselves on their love for equity and regarded the administration of justice as an important duty which a sovereign could not afford to neglect. They took keen interest in it and attended most zealously to this duty. Akbar restricted the
Islamic law and extended the general or customary law of land so as to include as many cases as possible.

Sultan Ala-ud-din Khilji, an orthodox ruler ordered that the rules and orders of the government solely depend on the judgment of sovereign and that Law of Prophet has no concern with it. He put into effect whatever he judged was for the better government of the country and paid no heed to the question as to whether what he did, was or was not authorised by the law.

The Mohameddan Criminal Law suffered from many defects. The English administrators realised from time to time that many provisions of the Mohameddan Criminal Law were repugnant to the good government, natural justice and common sense. They introduced several reforms from time to time to mould, refashion and amend the Mohameddan Law so as to adapt it to their new conceptions of policy and behaviour and throughout for a long time it continued to be the law of the land.

The transition from Hindu period to Mughal period saw a change in the administration of justice. New laws, principles, rules and regulations were framed. The main purpose of both the period was to provide 'justice'. In the islamic state, the Muslim king used to follow the rules laid down in Quran. However, in India, the sources of Muslim law are not in legislation and the law is provided under two heads the Shariat and Urfi law. The trial of the cases is governed by these two laws only. The Shariat is based on the principles of the Quran which has three components- the Quran, Hadis and Ijma. The Quran is an important source of law and is supreme. The Hadis provided the best interpretation of law. Ijma implies consensus of opinion of the most theologians of Islam was accepted as a right solution. In Urfi law, more discretion is given to jurists.

In the medieval period, there was different law for the Muslim and non-Muslims. The Delhi Sultanate attempted the
strict observance of Muslim Law but failed. Akbar worked for the emancipation of India and reversed policy laid down by Ullemas and the Islamic law was repealed for the non-Muslims. However, these reforms remain only during his reign only. The Sultan had at all stages influenced the administration of justice. He might appoint a Qazi-ul-Quzat, the chief Qazi and the Qazi. The Qazis were enjoined to be watchful and were not allowed to exceed their jurisdiction (Fiqh-e-Firoz Shahi). The Qazi used to base his decision on the Quran and the Hadis and then the Ijma of the Prophet’s companions and then on the Ijma of the Ulemas. He was primarily a judicial officer and sometimes performed civil, religious and clerical duties. He was appointed for one year which can be extended at the discretion of Sultan. Prior to Akbar’s rule, the Qazi held the court in a mosque or in his house where the complainants had free access and thereafter in state buildings only. The Muhammadan law allows a case to be referred to an arbitrator for decision. The arbitrator possesses the qualities of a Qazi. In the present times, India has Arbitration and Conciliation Act, 1996 which has given wide powers to decide the procedure, powers of the Arbitral Tribunal.

A Free generation of India fashioned a Constitution and a Republic, whose founding faith is the supremacy of law, social justice and secular democracy. The conscience of this document serves as a philosophy of our jurisprudence and the role of law in the social engineering. The Constitution of India in the Preamble provides to all its citizens social, economic and political justice which cannot be realized unless the three organs of the State, the legislature, executive and judiciary join hands together to find ways and means for providing to the Indian poor equal access to its justice system. The Indian legal system in its current condition is far from meeting its constitutional obligation of providing justice. In this super fast world, we seek super fast
justice but in olden days, litigants had enough time to spare for litigation. But time has changed how and Everybody is busy. All of us are in hurry. Many litigants give up litigation midway due to delay.

In order to ensure a system, where justice is available and redressal is satisfying the expectation of the people, there is need to develop a method whereby speedy trial is accessible. The demand of justice is not only that justice should be provided but also within a reasonable time. Justice should not only be done but also seems to be done. Delay made in the adjudication of a case, result in arrears, which violates the right of fair and speedy trial.

“Delay” though today has become a buzz word but it is not a recent phenomenon. Several committees and commissions have given recommendations on delay. After the Constitution of India was enforced in 1950, the First Law Commission in its Fourteenth Report in 1958 submitted an extensive list of recommendations on Reform of Judicial Administration. Thereafter, several commissions and committees made recommendations which have been implemented in the country from time to time. The main objective was to revamp the judicial system with a view to reduce delay and enlarge access to justice. The Right to Fair and Speedy trial is guaranteed as fundamental right under Article 21 of the Constitution of India, 1950. Any delay in expeditious disposal of criminal trial infringes the right to life and personal liberty guaranteed under Article 21 of the Constitution of India, 1950.

The concept of fair and speedy trial has been discussed in various Law Commission Reports and Committee Reports. They have scratched their heads to contain the spread of this disease and explore a solution of the problem. This right is violated, when there is long delay in adjudication of a case. It is now not
only a Directive Principle but also a Fundamental Right. The legal maxim ‘Justice Delayed is Justice Denied’ means that delay in justice causes denial of justice. The person who knocks the doors of court for justice receives only a future date of hearing. The definition should be provided to the term ‘arrears’ which will provide the time-frame which has not been till date done strictly.

The delay has to be curbed both at and during the trial. This recommendation can speed up the adjudication process. The trial procedure is complex and technical one which should be made simple and easily understandable (because the very purpose of Legislature is defeated). The criminal procedure is recommended to be segregated into parts so that justice is not delayed. The summary cases should be tried only summarily.

Another aspect which is for concern is lack of manpower. More appointments of judicial officers, ministerial staff and public prosecutors are recommended. The delay is caused not only by our lengthy criminal procedure but also by fewer people available on the other side. The ratio of judge to the population requires fivefold more appointments than the available number. Today, appointments are yearly or after every 2 years in the judiciary to overcome the pendency of cases.

In order to provide fair and speedy trial not only appointments but also efficiency of judges should be taken care of. Today, the judicial officers are provided one month intensive training. The knowledge, intelligence and firmness of the judicial officer are helpful as these can act as a tool for speedy justice.

The appointment of judicial officers should be through National Judicial Service Commission. The commission must consult Chief Justice of concerned High Court and the Chief Minister. The vacancy created by a retiring judge should be filled six months earlier which has not been accepted till date. The
strength of the judicial officer should be reviewed regularly. Reserve judge and honorary magistrate should be appointed and also Special magistrate for minor crimes are required. The appointments require establishment of more courts. Also, the latest computer technologies should be used.

Separate investigating agency and process serving agency is recommended which will be helpful in reducing political intervention and brings these agencies under the judiciary. Also, Separation of investigating agency from the police in order to maintain law and order in the country. These recommendations are positive steps in the direction.

Fast Track Courts or special courts should be established to reduce pendency. With the coming of new technologies and mechanism, Alternative dispute resolution has been recommended to provide speedy trial. Negotiations, conciliation and mediation provide adjudication at a faster rate. However, keeping in consideration the workload on High court it is recommended that the powers should be curtailed in cases of tax, labour and education matters. The Commission recommended a separate body parallel to the High Courts to be created which can give good results provided the selection procedure and qualifications are same as that of High Court judge. Also, there should be uniformity and certainty in certificate of Appeals in the criminal matters.

In order to secure fair trial, witness identification programme and witness protection scheme be introduced. There is classification on the basis of the victims. The age of the judicial officers for retirement be increased which according to the researcher can be used to train young judicial officers? Judicial strength is to be increased and case allocation to a judge should be done keeping in mind the time taken by the cases will give equal allocation of work.
Alternative Dispute Resolution techniques like arbitration, conciliation, mediation and Lok Adalat to be encouraged. Computerized inquiry and facilitation centers should be provided to help the litigants and more tribunals should be established. The judicial strength to be increased at all levels and the vacations should be reduced. These are the recommendations, which may be implemented from time to time to protect the rights of the parties and to establish confidence in judiciary.

The criminal procedure needs to be simplified for the common man. The party has a Fundamental Right to get fair and speedy trial. This right is violated when the backlog assigned to a judicial officer is also to be cleared off. It causes delay in the pronouncement of judgment. The individual trial of a case rather than mass production which presently can be seen in Section 233, Code of Criminal Procedure, 1973. The amendments are recommended in the Code of Criminal Procedure, 1973. The reformative step has been the concept of “plea bargaining” in which the accused by accepting his crime is given lesser sentence. Also, the prisoners languishing in jails get speedy disposal of their case.

Listing of the cases and in the chronological order should be done properly which will save the time of court as well as of the parties. The statements made by the hostile witnesses causes delay. Amendment Criminal Procedure Code, 1973 in Sections 249 and 256 is recommended as absence of complainant leads to dismissal.

Fair, Inexpensive and quick dispensation of justice is the ultimate aim of every legal system. 'Fair' implies a procedure which is just and in accordance with the principles of justice or rules thereof. Expeditious trial is the very soul and essence of criminal justice and delay in trial by itself would constitute a denial of justice. Delay in the disposal of cases is the greatest drawback in the administration of
justice in India. “Delay defeats Equality” as delay violates the right of parties.

Traditionally, the requirements of procedural fairness have been collectively known as ‘the rules of natural justice’. This phrase reflects that it was not vented by the judges, but reflected ‘natural’ or even God-given laws of fairness. These are designed to ensure minimum standard of procedural fairness which is instrumental in ensuring justice at all stages, times or places. The legislators, while framing the legislation has kept natural justice in view to protect the victim and the accused. In our Constitution, three wings of the Government are enshrined and each of the three wings legislature, executive and judiciary have to work independently, in spite of the fact they are interrelated to each other. The organs are required to understand each other better, so that they can function effectively in the interest of the nation and people at large.

The object of the Criminal Procedure Code, 1973 is further to ensure that an accused person gets a full and fair trial along with certain well-established and well-understood canons of law that accord with the notions of natural justice, which helps at every stage of the proceedings. There are numerous provisions in the Code of Criminal Procedure, 1973 which provides for early investigation and fair and speedy trial, in reality due to various factors such as overcrowded court dockets, absence of prosecutorial motivation, defence tendency to prolong, speedy trial is yet an illusory goal. The criminal administration system has to mould itself in order to ensure both fair and speedy trial to the parties.

It is observed that the need for fair and speedy trial has been met under the several provisions. The right to fair trial is provided in catena of provisions under the Indian Evidence Act, 1872 as well as under the provisions of Criminal Procedure Code, 1973. Researcher further observed, to facilitate the speedy trial, Indian Evidence Act, 1872 provides catena of provisions, during the study researcher
found that under Section 10 where a conspiracy is committed with a common design, the statement made by one conspirator and which is proved can be used as an evidence against the other conspirator which helps in speedy trial. Section 17 of Indian Evidence Act, 1872 provides about the definition of admission. The adverse statement made by a party can be evidence and relied upon. It provides speedy trial. However, statement made in his own interest cannot be evidence. Section 309 of criminal procedure code, 1973 provides that inquiry or trial shall be carried out expeditiously. In rape cases, the inquiry shall be completed within two months from the date of the commencement of the examination of witnesses. Section 327 provides a Court to be an open Court. However, in cases of trial of rape cases in camera trial will be held. As regards judgment in Section 353, the judgment is pronounced in the open Court. It can be pronounced immediately after the trial is complete or on a future date of which notice be given to the parties. The researcher agrees that these provisions are incorporated with intent to support fair and speedy trial. However, in the present scenario when large numbers of cases are pending in courts more measures in this direction are required.

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. 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. For the enforcement of rights of citizens and remedies thereto in case of violation thereof, courts have been established at all level in the country 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 nonchalantly. 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 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
failures in this area may gravely imperil the validity of the trial itself, if consequential miscarriage of justice has flowed.

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 Maneka Gandhi and Hussainara Khatoon 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.

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, recieved 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.

After making in-depth study, it may be concluded that the study of the history of fair and speedy trial helps to build principles and laws in the society and is a paradigm for the future. The study of fair
and speedy trial under historical perspective includes the ancient, medieval and british period. In the anciet period, the king was considered as an impartial deity of justice and earned confidence as he had good knowledge of (not about) the legal and moral principles and acted according to shastras. Learned Brahmans and hierarchy of courts helped in imparting justice with the King's court. Panchayats had provided justice at the grass root level and they were sanctioned by the king. The character of witness was given importance and in cases where witnesses are not available or did not tell the truth, secret agents were employed. The litigation in trifling actions was discouraged and adjournments were not preferred but were allowed when defendant was not aware of complaint. However, the people were given preference on the basis of high caste or suffered injury or needs important attention. The Judge played an important role to secure justice and in cases where caused delay or made unnecessary enquiries or imprisons an innocent or leaves guilty without trial or accepts bribe, was punished. In ancient time, the court took reference of general and special laws to reach a decision with reasons which helps the parties to know the reason behind the particular judgment. The party who won the case was given 'jayapatra'. In ancient times, presumption of innocence was followed and due consideration to the facts was given.

Researcher also analyzed the position of justice dispensation, in Mughal period. The plaintiff, called *Muddai* and defendant called *Muddai alaihi*. The oral plaint was put into writing by the assistant, which contains the names of the parties, parents, their addresses, the same particulars regarding witnesses, sufficient particulars of the claim, some cause of liability, cause of action and the relief prayed for. The Qazi did not take the decision in the absence of any party and three chances were given to appear and later, a representative was appointed for him. In medieval period, four broad categories of punishment —Hadd, Tazir, Qisas and Tashhir were prescribed. *Hadd*
means boundary or limit, *Tazir* means consuming, *Qisas* means retaliation and *Tashhir* was in which the offender faced a disgrace as he was paraded on an ass with the face turned towards the tail. Trials by ordeal were frequently resorted which is now considered against human rights. However, there were certain times when it was encouraged.

During research, the law commission reports are consulted and discussed in the light of Fair and Speedy trial. The Law Commission in its 14th Report (1958) recommended the reallocation of the work and provided the time-frame within which the case has to be adjudicated by the courts. Also, selection of reserve judge(s) and honorary magistrate(s) were recommended but no selections are made till date. Later in 27th report (1964), the Commission noted the four major factors of delay, suggested to curb delay, the trial procedure and recommended more appointments of the judicial officers and ministerial staff. In the present time, the appointments are made constantly after one or two years in the judiciary to overcome the pendency. New districts and courts are to be established to distribute the workload. In the 58th report (1970) of the Commission recommended alternative dispute resolutions for dispute settlement and to increase the age of retirement of a judicial officer. Later in 77th report (1978) recommended that with the help of police officers, the summons should be served and witnesses should appear in time without delay which has been implemented. Further, more appointments of the Public Prosecutor, improvement in the judicial infrastructure and providing intensive training programme for the trial judge are other steps in this direction. In 120th report, (1987) the Commission studied the statistics of different countries and recommended that India needs fivefold more judicial officer(s) than the available number. Also, it is considered as the duty of the State to provide judicial officers under Article 39A, Constitution of India, 1950. In 121st Report, (1978) the Commission recommended the manner of
the selection through National Judicial Service Commission, which must consult Chief Justice of concerned High Court and the Chief Minister to perform the function of selection and recommendation which is not yet implemented.

Researcher also analyzed the provisions of Criminal Procedure Code, 1973 Indian Evidence Act, 1872, which facilitate speedy trial. Section 10 of Indian Evidence Act, 1872 provides principle of agency which provides speedy trial as things said or done by conspirators in reference to common design may be used against other conspirators. It saves time and lessens the onus of proof on prosecution. Further, Indian Evidence Act, 1872 provides about the definition of admission and where an admission is made by a person an adverse statement in one's own interest is admissible as evidence which provides speedy trial of case (Section 17). However, statement made in his own interest cannot be evidence. Investigation has to be started without delay as Criminal Procedure Code, 1973 which provides the police officer himself or through his subordinate proceeds with the investigation to maintain speediness (Section 157) when the case is not of serious nature the officer-in-charge shall not investigate himself or depute his subordinate. Further, he shall not investigate where there are no sufficient grounds but is required to record reasons. This provision also secures fair trial. The time limit prescribed keeps the police vigilant to complete the investigation within the time frame. In case, the investigation is not complete then the accused has a right to bail on a bail bond which can be cancelled when special grounds exist. Further Section 173 of Criminal Procedure Code, 1973 provides about the duty of police to complete the investigation without unnecessary delay and to submit it to Magistrate, who has taken cognizance of the offence. In rape cases, the investigation may be completed in three months from the date of recording of information. However, the provision faces practical difficulties and lot of time is spent in completion and submission.
Researcher discussed about the judicial innovations for Fair and Speedy Trial in Chapter V. The judicial attitude maintained justice to be swift and sure in 1950s in *M.S.Sheriff case* two simultaneous proceedings were allowed and to punish guilty while events are fresh in public mind. Also, where accused makes a confession 8 days after arrest, or delay in receiving the judgment copy it is held that it has vitiated the trial. However, contrary to this in *Talab Haji Hussain’s case* where a bail is cancelled in bailable offences as the inherent power of High Court subsists supports fair trial. Later in 1970s, in *Maneka Gandhi case* (1978) the right to fair trial was declared as part of Fundamental right and duty on administrative authority to provide reasons. However, in *Maneka Gandhi v. Rani Jethmalani case* (1979) the Court refused to transfer the case Delhi on the ground that “is it necessitous” as the touch stone. The Court has favoured special courts for VIPs in *Re Special Courts Bill* (1979) which suffers a drawback of no transfer of cases. In 1980s, in *Gurubaksh Singh Sibbia case*, the Court held that Section 438 does not authorize the grant of blanket anticipatory bail for offences which are not yet committed or with regard to accusations not so far leveled or on mere general allegations. These are allowed only after keeping in view public interest which supports fair trial. Where excessive adjournments are taken by the accused and later he files a petition to dispose the case on grounds of delay, which in reality was caused by him only in *Diwan Naubat Rai case* (1989). The petition was dismissed in the light of fair trial. Later in 1990s, in *Supreme Court Legal Aid Committee Representing Under-Trial Prisoners case* (1994) the Supreme Court allowed release of the under trials due to delay in disposal of cases under the NDPS (Amendment) Act, 1988 subject to the directions mentioned in the decision. In *Delhi Domestic Working Women case* (1995) the Court laid down broad parameters to assist the victims of rape and to provide the fair trial. Later, in *Gurmit Singh case* (1996) it was considered that the trial of rape cases in camera
should be a rule and not an exception and as far as possible, trial in such cases may be conducted by lady Judges wherever available and to give importance to provisions of Section 327(2) and (3) Criminal Procedure Code, 1973. Also, delay in filing FIR in rape case cannot be a rule to discard the case in Gan Chand case (2001). However, in Surjan case (2002) it should be explainable and be of such nature that the Court must be able to certify that testimony is wholly reliable. In 2006, in Sakshi case new modes of information technology for the safety of victims are encouraged and Section 273 of Criminal Procedure Code, 1973 was interpreted. In 2005, in Debendra Nath Padhi case the Court refused to consider the material filed by the accused at the time of framing of charges which is later followed in Bharat Parikh case (2008). Later, in Zahira Sheikh case (2006) it is observed as State responsibility to protect the witnesses. The accused right to access evidence is discussed in Dhananjay Kumar Singh case (2006) according to Section 91 and Section 172 (3), Criminal Procedure Code, 1973 which is further discussed in Mrs. Kalyani Baskar v. Mrs. M.S. Sampoornam case (2007) that accused has right to produce and rebut the evidence. In 2009, a landmark judgment on rights of victim was delivered in NHRC v. State of Gujarat case where it is observed, “fair trial is concerned with the discovery and vindication and establishment of truth which are certainly the main purposes of courts of justice. 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”. In 2013, in Sushil Sharma case also known as “Tandoor case” where the deceased was murdered and was put in the tandoor. The Court refused to consider it as ‘rarest of rare case’ and commuted the death sentence to life imprisonment. The Court observed that fair trial is the right of an accused which involves following the correct procedure and giving opportunity to the accused to probabalize his defence.
After going through the historical aspects, legislative provisions and judicial innovations, for fair and speedy trial. The following suggestions are made by the researcher to overcome the problem of unfairness and delay in decisions.

**SUGGESTIONS**

**A.**

1. The investigation report submitted by the investigative officer should be in questionnaire format so that all important points are included.

2. The judicial officer’s appointment procedure should exclude the involvement of executive and legislature; the consent of all the members in the panel should be made compulsory for appointments.

3. Plea-bargaining applications should be decided in open Court.

4. Maintaining balance between ‘speedy trial’ and ‘justified justice’.

5. The copies of judgment should be supplied immediately either by making carbon copy to both the parties or by issuing Photostat copy which has to be certified by the Court.

6. There should be effective use of computers by providing laptops to judges and subscription of website.

7. The victims must be informed of their role, rights, and duties and about proceedings.

8. The vacancy created by the retirement of the judge should be filled six months prior or, another option is retiring judge be allowed to remain in position till the successor joins.

9. Endeavour should be made to minimize the inconvenience to victims by securing privacy and safety.

10. The details of the proceedings at every stage must be provided to the accused(s) and the victim(s) also.

11. All the processes during litigation shall be served on the advocate for the respective parties which they represent.
12. There should be preparation of report on yearly basis, about the cases handled by the lawyers, cases decided, adjournments along with reasons published as statistical data.

13. Latest law should be made available through trusted websites like Manupatra, SCC online.

14. There should be a Separation of Investigation officers and officers in maintenance of law and order.

15. There should be an installation of cameras in police stations so as to check public dealings.

16. The court and lawyers should avoid adjournments between deposition of witness and cross-examination.

B.

While researching on the subject, researcher also categorised few more suggestions; which are need based in the present scenario.

1. There is a need of more appointments and adequate infrastructure for the Judiciary.

2. There is a need to secure independence of judiciary so that the judicial officer should act fearlessly and use authority for societal benefit.

3. There is a need of shifting from criminology to victimology.

4. There is a need to curb the reasons for low conviction rate by including extra benefits to prosecutors and investigation officer.

5. There is a need of specialised courts and specialised judges in special cases under special Acts like IPR cases, LAC cases, and Cyber crime cases.

6. There is a need to shorten the time gap in receiving the police report and framing of charges.

7. There is a need to avoid lengthy judgments; simple, clear and concise manner should be followed.
8. There is a need to use e-mail and mobile for sending summons or important information to the parties which should be made known and should be recorded in the case file.

9. There is a need of comprehensive legislation on speedy trial to provide all essential requirements, procedure and penalty.

10. There is a need to inculcate respect for judiciary among the lawyers.

11. There is a need to inculcate integrity, ethics and professionalism among the lawyers.

12. There is a need to strengthen the video-conferencing between witness, court and under-trials.

13. There is a need of one entry system in judicial service—one entry and one exit. The present system needs to forego with.

14. There is a need to exclude certain type of offences from the category of offences i.e. traffic laws.