CHAPTER-III
ANALYSIS OF LAW COMMISSION REPORTS
AND COMMITTEES

Prelude

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.¹ 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.² Laws are made to regulate human relations on the basis of the policy adopted by the Government or the political party in a democratic setup.³ 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.⁴

In order to ensure a system, where justice is available and redressal is satisfying the expectation of the people, there is

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3. See supra note.1.
need to develop a method whereby speedy trial is accessible.\textsuperscript{5} 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.\textsuperscript{6} 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.\textsuperscript{7}

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.

3.1 14\textsuperscript{TH} REPORT OF LAW COMMISSION OF INDIA, 1958

In the 14\textsuperscript{th} report, Law commission noted that the delay in decision is as old as the law itself. The inordinate delay results in the miscarriage of justice and increases the cost of litigation. The compensation granted on these delays is totally in

\begin{itemize}
\item 5. Angelina J. Brar, “Plea Bargaining : An Instrument of Speedy Justice”, Souvenir of Confederation of Indian Bar on All India Seminar on Judicial Reforms held on 31.7.2010 and 1.8.2010 at Vigyan Bhawan, New Delhi at pg. 29.
\end{itemize}
fructuous. The legal maxim ‘Justice Delayed is Justice Denied’ is well established in the present system. However, the speedy justice never means a hasty or summary dispensation of justice. It is to be ensured that there should be determination of facts in controversy and the application of the legal principles on those determined facts.

The Commission\(^8\) is of the opinion that there is congestion of work in the higher courts, which is not found in the lower courts. So, there can be reallocation of work from higher courts to lower courts.

- The powers at the magisterial level should be increased which will allow large number of cases to be settled at that level only. This will provide more time to Session and High courts to decide other important matters.
- The preparation of case is inevitable before it is finally heard by the court. The preliminary steps like service of process which brings the contending parties together, the filing of written statement, inspection, interrogatories, the filing of documents should be seen before it is finally put for trial.
- The Commission is against mass production or assembly techniques as each case needs ‘individual attention’.
- It is believed that it is possible to lay down time limits for the conclusion of case by the court. The magisterial court should dispose criminal case in 2 months and committal proceedings in 6 weeks from the date of apprehension of accused. The Session case to be disposed of in 3 months from the date of apprehension of accused. The criminal appeals and revision should be disposed of in 2 months in the session and within 6 months in the High Court from

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the date of their institution. The cases which are not disposed within the time limit can be treated as 'arrears'.

- Since, the present strength is adequate to cope with the current cases but not arrears, there should be establishment of temporary additional courts at all levels.

- There is no appropriate increase in the judicial appointments corresponding to the number of case filed. High courts has complained and several times pointed about inadequate judicial officers at district level. It is required that High court should make careful examination of ratio of judicial officer for volume of work.

- A reserve judge should be appointed to meet the contingencies so that there is no court without a presiding officer.

- Honorary magistrates can be appointed to relieve the regular magistrates from petty cases. They like other magistrates are provided with necessary staff and should sit for fixed hours.

- In all summary cases, the procedure relating to summary cases should be allowed.

It may be said that the present report has brought into limelight the congestion of workload in higher courts which requires the work to be reallocated to lower courts. The implication of legal maxim 'Justice Delayed is Justice Denied' demands 'arrears' to be defined and has provided the time-frame with in which the case is to be adjudicated by the courts. The observation about the selection of reserve judge and honorary magistrate are other initiative steps made in this direction. However, no selections are made till date. No doubt, the

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9. In cases when judge is on leave or on deputation see 14th Report, vol.2, p. 159.
procedure to follow summary trial in summary cases will reduce
the pendency of cases.

The Commission recommended individual trial of a case
rather than mass production. However, the researcher is of the
opinion that those cases which can be tried together should be
allowed to avoid multiplicity of cases. Section 223 of Criminal

3.2 27TH REPORT OF LAW COMMISSION OF INDIA, 1964

In 1964, the Commission\textsuperscript{10} was established under the
headship of M.C. Setalvad, chairman. The Commission examined
the problem of congestion and the delay in disposal of cases. It
is found that the delay is caused mainly due to four factors
which are insufficiency of judicial officers, inadequate
ministerial staff, personal factors and defects in the procedure.

The Commission has made following recommendations to
overcome the delay and to provide speedy trial to the common
man:-

- More appointment of judicial officers and also, the present
  pay scale is inadequate.\textsuperscript{11}
- Sufficient strength of ministerial staff should be provided
to the judges to keep pace with the work effectively and
  properly.
- Defect at the stage of trial and during trial should be
  removed.

Most High Courts make appointments of judicial officers at
district level yearly.

The report has recommended more appointments of the
judicial officers and ministerial staff. It discussed the four major
factors of delay and suggested to curb delay at and during the

\textsuperscript{10} Law Commission of India, 27\textsuperscript{th} Report on The Code of Civil Procedure, 1908
(1964).

\textsuperscript{11} This report and 14\textsuperscript{th} Report have made recommendation for suitable hike in
the pay scale.
trial procedure. It has provided recommendations for procedural delay in civil matters which is outside the purview of this study. 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 established to distribute the workload.

3.3 58th Report of Law Commission of India, 1974

In 1974, the Commission\(^\text{12}\) is chaired by Justice P.B. Gajendragadkar. The report discussed the delay in disposal of cases which can be reduced in the following ways:

- Article 134(1) (c), Constitution of India, 1950 provides for certificate of Appeal in criminal matters. There are no grounds stated which results in lack of uniformity and certainty. Suitable amendment to be made similar to the one provided under Article 133(1) (c), Constitution of India, 1950.

- The service condition of judges should be improved drastically if the judicial machinery is to function efficiently. The commission suggested that the age of retirement to be raised from 62 years to 65 years of age.

- In matters of industrial dispute, collective bargaining should be taken as a resort, if it fails then arbitration or conciliation. Litigation should be the last resort and should have tribunals or appellate forums rather than invoking Article 136, Constitution of India, 1950.

The report has covered the constitutional provisions so that uniformity and certainty can be established in the certificate of Appeal in criminal matters. The Law Commission recommended alternative dispute resolutions for dispute settlement which will provide an amicable settlement to the parties at a speedier and cheaper rate. However, according to

researcher the increase in the age of judicial officer for retirement will not bring desired fruits. Their expertise can be used for the betterment of society by providing training to the young judicial officers.

3.4 77th REPORT OF LAW COMMISSION OF INDIA, 1978

In 1978, Law Commission of India submitted the 77th report under the chairmanship of Justice H. R. Khanna. The report noted about the delay in the disposal of cases in civil and criminal courts. The aspects covered here include recommendations on criminal matters and improvement in the efficiency of trial judges will help to tackle the problem of arrears.

i. The recommendations relating to criminal matters are as follows

- All criminal courts should keep a record showing the number of witnesses summoned for a date, the number examined, the number sent back and reasons for sending them back without examination. Besides the fact that the practice of sending back witnesses ought to be deprecated.
- Law should be amended so as to enable the Session Judge to act on evidence partly or wholly recorded by his predecessor judge.
- The practice of the police deliberately not producing all the material evidences on one date should be deprecated so as to clear the lacunae in the prosecution evidence. Several police officials ought to be deputed to ensure that witnesses turn up on the time of hearing as per the summons issued.
- Cases in which there are a large number of accused and one of them is absent on the day of hearing, the trial judge

in such contingencies should make direct representation of the absent accused by his counsel.

- Adequate number of Public Prosecutors should be ensured for cases pertaining to Prevention of Food Adulteration Act etc.
- Where the judicial officer exercises both civil and criminal powers, normally both types of cases should not be fixed on the same day.
- In all matters wherein appeal or revision is filed against an interlocutory order, the Appellate or revision court should ensure that such an appeal or revision is disposed of within a reasonable period of time.
- More allocation of funds by the State for the administration of justice is required. Adequate funds are required to build more courts and court rooms by which the justice delivery process will be speed up.

ii. The Commission expressed the view that improvement in the efficiency of trial judges will help to tackle the problem of arrears.

- The trial judge is the linchpin of the entire judicial system. The quality of trial judge should be improved by inculcating in the judicial officers professional competence, cool temperament and firmness. This can be ensured by upgrading the pay scale of the judges.
- The Commission recommended that there should be a 3 to 6 months training course for recruits to the subordinate judicial office.

The report gave a new wide connotation to the right to speedy trial. It recommended that the cases in which there is possibility of death sentence should receive priority over all other cases. The agony of the accused in these cases is enhanced by the uncertainty of fate which awaits them. It is essential that
the sword should not hang over them beyond the period which is absolutely necessary. The witnesses lose interest and are reluctant to turn up especially in old cases.

The report has brought the concern of delay and arrears in trial judges on mainly two aspects. Firstly, on the criminal procedure and secondly, on the efficiency of judges. The criminal procedure in India requires the task to be divided into parts to reach adjudication at a speedier rate. The justice delivery system require the contribution of police officers so that the summons serve and witnesses appear in time and all the material evidences produce without any delay. The record of witnesses called and produced should be maintained with reasons for non production. The judicial infrastructure needs improvement so that speedier adjudication can be provided to the parties.

On the second aspect, the efficiency of trial judge should be improved by providing intensive training so that the knowledge and intelligence can be best utilized for the speedier judgment delivery to the common man. The decorum of the court requires a judge who is firm; cool tempered and has competence in the field of law.

3.5 120th REPORT OF LAW COMMISSION OF INDIA, 1987

The report highlighted upon the problem of judicial manpower planning which has not improved proportionate to the development. Article 39-A of The Constitution of India, 1950 provides as a Directive principle of State policy to provide

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17. **Article 39-A - Equal justice and free legal aid**: The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
judicial services to the citizens. In case of less manpower, the disposal of cases is slow which affects the right of fair and speedy trial available to the party guaranteed under Article 21, Constitution of India, 1950. Following are the recommendations:

- Sound scientific analysis for calculation of number of judicial appointments is required. Correlation between increase in population with the number of judges\(^{18}\) is established. According to 1971 statistics, India has 10.5 judges per million populations; Australia has 577 judges for ten million population gives an average of 41.6 judges per million populations. In 1981, US have three times less population than India. US has 25,087 judges per million of population and the average is 107 judges per million population. So, we can establish inadequacy of strength. It is difficult to raise the strength by 25,087 in India. Law commission recommended reaching this strength by the year 2000.

- Another criterion is the correlation between number of judges and litigation rate. It will require strength of 40,357 whereas present strength is 7,675 judges. There has been an inadequate strength of Judges compared to the population of the country.\(^{19}\) But, the worst is the influence of politics into the appointments.\(^{20}\)

Justice Altamas Kabir\(^{21}\) has emphasized that the state government must be persuaded to agree to double the existing number of courts in subordinate judiciary, along with necessary

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18. The Commission has no set technical analysis available and thus has taken extensive opinion of general public and persons expert in the field.
21. 39th Chief Justice of India. At present, the 40th CJI is P.Sathasivam.
infrastructure and ad ministerial staff, at the earliest.\textsuperscript{22} According to the Supreme Court – supported National Court Management System it is estimated that the number of courts expanded six-fold while the number of cases expanded by doubles that is 12 fold. In order to achieve the ratio of 50 judges per million populations by the year 2040, when the population will be 1.5 billion and there will be a need to have 75,000 judges.\textsuperscript{23}

In the year 1987, Law Commission of India submitted its 120\textsuperscript{th} report in which the statistics of different countries were studied. The report shows that India needs fivefold more judicial officer than the available number. Also, considered as a Directive Principles of State Policy\textsuperscript{24} which mentions about the duty of the State to provide judicial officers. The present time has made it not only the duty of the State but also the fundamental right of individual to have fair and speedy trial. There is need to take measures that appointments are made on the merit of candidate. The present data on the appointment of judges requires much faster pace so as to be proportionate to the population.

3.6 121\textsuperscript{st} REPORT, LAW COMMISSION OF INDIA, 1987

The report\textsuperscript{25} recommended the reduction in delay by streamlining the process of appointment of judges. It made following recommendations:-

- National Judicial Service Commission with power to make appointments as a shared power should be created so that instead of an individual subjective opinion of a body, the selection should be arrived at after internal discussion and

\textsuperscript{22} “Double Strength of Judiciary: CJI”, \textit{The Times of India}, February 28, 2013 at pg. 21.
\textsuperscript{23} Dhananjay Maahapatra, “ India to have 15 crore pending cases by 2040”, \textit{The Times of India}, January 17, 2013 at pg. 17.
\textsuperscript{24} Article 39A, Constitution of India,1950.
\textsuperscript{25} Law Commission of India, 121\textsuperscript{st} Report on A New Forum For Judicial Appointments (1987).
deliberation from people who are supposed to have knowledge of the things.

- The function of the commission would be selecting and recommending persons for being appointed to the superior judiciary. The Supreme Court and High Court would devise methods for selection of judges to the subordinate judiciary.

- While filling the vacancy in the High Courts, the Commission must consult with the Chief Justice of concerned High Court and the Chief Minister. It will provide an opportunity to both to express their opinion.

- The Commission shall initiate the proposal for filling in the vacancy occurring on account of retirement six months prior to the occurrence of the vacancy.

The Law Commission recommended that the National Judicial Service Commission should comprise of eleven members with Chief Justice of India as the Chairman and three senior most judges of the Supreme Court, a retired Chief Justice of India (predecessor of the Chief Justice), three Chief Justice of High Courts according to their seniority, the Law Minister, the Attorney General and outstanding academic as members with a provision to co-opt the Chief Justice of High Court concerned in case of appointments to High Courts. It is opined\(^{26}\) that the instances where the predecessor and successor could not see each other eye to eye on many issues including judicial appointments. Another point for consideration, when the recommendations of National Judicial Service Commission is returned for consideration by the Government and after NJSC has reconsidered and reiterated it, the government does not

advise the President for appointment. The Supreme Court has vast powers to direct the executive to create more posts of judges and fill up the vacancies of the judges. In 2013, there are 275 High Court judges post vacant and which add to the misery of victim.

The present report recommended on the manner of the selection through National Judicial Service Commission. The Commission must consult Chief Justice of concerned High Court and the Chief Minister. It will perform the function of selection and recommendation. Also, the proposal to fill the vacancy six months prior, in cases of retirement of judges after their tenure is over. It is required to overcome the lacunas. However, this recommendation is in the present scenario is forgotten and is in limbo.

3.7 124th REPORT, LAW COMMISSION OF INDIA, 1988

The High Court has civil and criminal, ordinary and extraordinary, general and special jurisdiction. The High Court also has to hear the matters of Writs under Articles 226 and 227 of the Constitution of India. The Law Commission in its findings mentioned that there is need of decentralization of system of administration of justice by establishing other tiers or systems within the judicial hierarchy to reduce the volume of work in the Hon’ble Supreme Court and the High Courts. The inordinate delay in filling the vacancies and the present procedure for appointment of judges and the powers of High Court needs to be looked into to meet the needs of the common

27. Ibid.
28. See supra note.19.
29. “275 Judges’ Post Vacant in 24 HCs”, The Times of India, August 24, 2013 at pg. 13.Allahabad HC has 68, Andhra Pradesh has 22, Calcutta has 21, Punjab& Haryana has 21 and Mumbai has 16 post vacant.
man. The computer facility in the courts is the need of present time. The recommendations are as follows:---

- High court jurisdiction to be curtailed by excluding from its jurisdiction subject like direct and indirect taxation, labor disputes and education which deserve special attention by specialist courts/tribunals. The Commission should be established as an Appellate Authority.
- The retiring judge should be allowed to remain in position till the successor joins then the High Court and Supreme Court will always be manned by the full strength of its Judges.
- The services of retiring judges can be utilized to clear the backlog of the arrear cases.
- Computer facilities have not been made available to the higher courts in the 20th century. The telex, electronic typewriters, photocopiers are unknown in the courts and its libraries. The Law Commission recommended word processor, dicta phones, electronic typewriters to be made available at the residence and in the office to the judicial officers.

The Information and Communication Technology in the judiciary will smoothen and accelerate case progression to reach its logical end within the set time frame with complete de-mystification of judicial process ensuring transparency and accountability.31 In 2007, the Government has approved the implementation of computerization at all levels of judiciary in 2100 court complexes at subordinate judiciary and up gradation of ICT in Supreme Court and High Courts. This e-Court Mission Mode Project has set the time frame.32

31. See supra note.6.
As regards, the number of vacancies in the subordinate judiciary, the States and the High Court has to execute and implement a time bound exercise for filling the vacancies. It is considered with certainty that once the vacancies are filled up, there would be reduction in the arrears of the cases.  

In this report, the Committee recommended on the curtailment of High court jurisdiction from tax, labour and education subjects. The establishment of Commission which is parallel to the High Court is recommended which may give wrong consequences. High court should be above these subjects. The services of retiring judges can be utilized which till the present date is not utilized. The experience and knowledge of these judicial officers can be helpful in reducing the backlog. Also, the present judge should not leave the office till his successor joins is not yet implemented. The computer facility today has improved a lot and the judicial officers are provided with personal computers in most of the States.

3.8  125TH REPORT, LAW COMMISSION OF INDIA, 1988

The eleventh Law Commission recommended for splitting the Supreme Court into two and gave an additional reason for the same. The Commission stated the additional reason in paragraph 4.17 of the said Report as under:

"The Supreme Court sits at Delhi alone. Government of India, on couple of occasions, sought the opinion of the Supreme Court of India for setting up a Bench in the South. This proposal did not find favor with the Supreme Court. The result is that those coming from distant places like Tamil Nadu in the South, Gujarat in the West and Assam and other States in the East have to spend huge amount on travel to reach the Supreme

34. Law Commission of India, 125th Report on The Supreme Court – A Fresh Look (1988).
Court. There is a practice of bringing one's own lawyer who has handled the matter in the High Court to the Supreme Court. That adds to the cost and an adjournment becomes prohibitive. Adjournment is a recurrent phenomenon in the Court and Costs get multiplied. Now if the Supreme Court is split into Constitutional Court and Court of Appeal or a Federal Court of Appeal, no serious exception could be taken to the Federal Court of Appeal sitting in Benches in places North, South, East, West and Central India. That would not only considerably reduce costs but also the litigant will have the advantage of his case being argued by the same advocate, who has helped him in the High Court and who may not be required to travel to long distances. Whenever questions of constitutionality occur, as pointed out in that report, the Supreme Court can sit *en banc* at Delhi and deal with the same. This cost benefit ratio is an additional but important reason for reiterating support to the recommendations made in that report.\(^{35}\) The researcher opines that the splitting into four branches will be advantageous. Also, the advocate of High Court can approach Supreme Court easily rather than engaging a new lawyer.

**3.9 141\(^{st}\) REPORT OF LAW COMMISSION OF INDIA, 1991**

The Law Commission\(^ {36}\) observed that injustice is likely to be caused to the administration of criminal justice system in the situations where there is dismissal of case on the grounds of default of appearance.

- There is recommendation *inter alia* on amendment of Section 256, Code of Criminal Procedure, 1973 which enables restoration of a criminal case, wherein the accused has been acquitted for the non-appearance of

\(^{35}\) The information is collected from 229\(^{th}\) report.

complainant and when there is a sufficient cause for the non-appearance. A meritorious complaint cannot be allowed to be thwarted only on the ground that the complainant was absent, even though there existed good and sufficient cause for such absence.

- Empowering the courts to restore the applications which are dismissed for default in appearance so as to meet the ends of justice. Commission recommended a new Section 482A to be introduced in the Code.\(^{37}\)

The Law Commission has observed judicial pronouncements of different High courts and Supreme Court.

In the year 1991, the Law Commission recommended amendment in Code of Criminal Procedure, 1973 in Sections 256 and 482. However, no such recommendation is made till date. The acquittal of accused on the ground of absence of complainant should be evaluated so that the interest of prosecution is not defeated. Fair trial demands that right of both the parties should be protected which implies ends of justice is not achieved when the application is dismissed on default in appearance.

### 3.10 142\(^{nd}\) REPORT, LAW COMMISSION OF INDIA, 1991

The Law Commission\(^ {38}\) desired to infuse the life into reformative provisions embodied in Section 330, Criminal Procedure Code, 1973\(^ {39}\) and the Probation of Offenders Act, which has remained unutilized. The aim of the Commission was to make the Criminal Justice System just, efficient, speedy and

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37. 1. The court on its satisfaction that a sufficient cause has prevented person him from appearing may set aside the dismissal order. Also, the application is to be made within 30 days of expiry of the time period.
   2. No order against a person shall be made unless notice is served upon him.


cost-efficient so as to restore the confidence of the people in the system. The following recommendations are made:

- There should be re-examination and re-definition of crime under the various laws in the Criminal Justice System to ensure that appropriate procedures are available for different infringement of penal laws so that cases will be dealt with at a speed commensurate to the gravity of the infringement, with certainty in terms of time and punishment. Also, serious crimes yesterday may not be so considered today.

- It is necessary to not only re-classify crimes but re-classify them in such a manner that many of the crimes which today take up enormous time and expense are dealt speedily at different levels by providing viable and easily carried out alternatives to the present procedures and systems. In brief, many infractions of the law which are classified as crimes today and some considered serious, may not be so considered tomorrow.

- Plea-bargaining is considered as a viable alternative to deal with huge arrears of criminal cases. It can also include pre-trial negotiations. “Charge bargaining” or “sentence bargaining” results in a reduced sentence and early disposal. It ensures speedy trial along with benefits such as end of uncertainty, saving of cost of litigation, relieving of the anxiety that a prolonged trial might involve and avoiding legal expenses. It would enable the accused to start a fresh life after undergoing a lesser sentence. About 75% of total convictions are the result of plea bargaining in USA and they contrasted it with 75% of the acquittals in India.
• Concessional treatment should be provided to the accused, who have voluntarily pleaded guilty. This justification for introduction is that not just and fair for an accused who is honest and candid enough to plead guilty and another accused who claims to be treated at a considerable time and money cost.

The Law Commission has recommended introduction of chapter in Criminal Procedure Code, 1973 by which some of the charges are dropped or awarding lesser punishment under concessional treatment to the offenders who plead guilty on their own volition.\(^{40}\) The justification for introducing the scheme was that it is not just and fair that an accused who wants to change or an accused who is honest and candid enough to plead guilty should be treated at par with an accused who claims to be tried at considerable time-cost and money-cost to the community.\(^{41}\)

In 142\(^{nd}\) report, the Law Commission of India discussed a new concept of “plea bargaining”. Plea bargaining is a reformative step in which the accused by accepting his crime is given lesser sentence. Also, the prisoners languishing in jails get speedy disposal of their cases. The roots of confidence in the judiciary will become stronger. The judicial approach is to provide fair and speedy trial to the persons. Judicial activism has opened the doors for a person who is languishing in jail for years to get speedy trial of the case. Concessional treatment should be provided to the persons who have accepted their crime voluntarily.

\(^{40}\) B.L.Arora, *Law of Speedy Trial in India* (Universal Law Publishing Co., Delhi, 1\(^{st}\) edn., 2006).

\(^{41}\) Devina Gupta, “Plea Bargaining... A Unique Remedy to Reduce Backlog in Courts”, 116 *CrLJ* 67 (March 2010).
The right to speedy trial is protected in the criminal procedure of our country. This right begins with actual restraint imposed by way of arrest and is available to the parties at all stages of investigation, inquiry and trial. It is also available in the matter of appeal or revision. The delay caused to the parties results in prejudice to the parties. However, to decide how much delay can be said to be too long depends on several circumstances like nature of offence, number of accused and witness, workload of the court concerned, prevailing local conditions. The Court has to apply ‘balancing test’ among the above mentioned circumstances.

Section 309, Code of Criminal Procedure, 1973: 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:

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.

1. Ins. by Act 45 of 1978, Sec. 24 (w.e.f. 18-12-1978).

The Commission denied suggesting the time limit for trial of offences and considers being neither advisable nor practicable. However, the Commission has discussed the landmark judgment delivered by the Hon’ble Supreme Court in 1996 in the case of Common Cause v. Union of India, the Division Bench gave directions for fixing the maximum time limit for conclusion of trials and quashing the proceedings pending in criminal courts. The observations made are as follows:

1. (a) In case, the accused is facing trial for offences under Indian Penal Code or any other law punishable with imprisonment not exceeding three years, and if trial of such offences is pending for more than one year and if the accused has been in jail for a period of 6 months or more, such accused shall be released on bail or on personal bond.

(b) In case, the accused is charged with offences under Indian Penal Code or any other law punishable with imprisonment not exceeding 5 years and if the trial for such offences is pending for two years or more and if the accused has remained in jail for more than 6 months, such accused shall be released on bail or on personal bond.

(c) In case the offences under Indian Penal Code or any other law for which the accused have been charged are punishable with imprisonment of seven years or less and if the trial for such offences is pending for two years or more and if the accused has remained in jail for a period of one year or more, such accused shall be released on bail or personal bond.

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44. Ibid.
45. (1996) 6 SCC 775.
2. (a) In traffic offences pending for more than two years due to non-service of summons, the accused may be discharged.

(b) In any compoundable Indian Penal Code offences pending trial for more than two years, if the trial has not commenced, the Court shall discharge or acquit the accused and close the case.

(c) In case trial is pending in a non-cognizable and bailable offence for over two years, the Court shall discharge or acquit the accused and close the case.

(d) If offence is punishable with fine only and the trial has been pending over one year, the Court shall discharge or acquit the accused.

(e) If the offence is punishable with imprisonment up to one year and the trial therein has been pending for more than one year, the Court shall discharge or acquit the accused.

(f) If the offence is punishable with imprisonment up to three years and if trial therein has been pending for over two years without any progress, the Court shall discharge or acquit the accused.

The Law Commission has made following recommendations:--

- Separation of the investigating agency from the law and order police. The Commission adduced the following grounds in support of its recommendations:
  i) It will bring the investigating agencies under the protection of judiciary and greatly reduce the possibility of political or other type of interferences.
  ii) It will provide greater scrutiny and supervision by judiciary and public prosecutors.
iii) Efficient investigation of cases will reduce the possibility of unjustified and unwarranted prosecutions;
iv) It will result in speedier investigation which would entail speedier disposal of cases.
v) Separation will increase the expertise of the investigating officers.
vii) The investigating police would be in plain clothes and would be able to develop good rapport with the public.

The co-ordination between public prosecutor and investigating agency has to be established to reduce delay.

- Amendment should be made in the definition of warrant case and summons case. Warrant case should be directed in offences with minimum three years imprisonment. The summons case should be summarily triable only; the exception is if the Magistrate feels that the gravity and seriousness of the offence demands it to be converted to warrant case.  

- The material witnesses whose statements are recorded under Sections 161, 162, 164 and 172 be amended. This will prove to be effective in speedy trial of cases.

- Listing of the cases should be done in an effective manner. The witnesses are to be examined on the very day mentioned in the summons and the adjournment should be avoided. Also, Listing provides continuously one or two days to be devoted to a particular police station. The list should have cases of a particular police station according to the chronological order.

- The concept of plea bargaining should be given an experimental test in cases of imprisonment of less than

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46. Chapter VII, para 12 to 15.
47. Chapter IX, para 7.
seven years and those under Section 329 of Indian Penal Code, 1860.

- The right of personal liberty is affected when there is postponement of enquiry and trial. A time limit should be fixed for the period of postponement of trial of insane under trial.\(^48\) The Commission recommended insertion of Section 436A to provide release of under trials who are languishing in jails.\(^49\)

- The Commission recommended amendment in Section 437, Code of Criminal Procedure, 1973.\(^50\)

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\(^48\) Chapter XVI, para 12 to 16.

\(^49\) Section 436A, Code of Criminal Procedure, 1973 Where a person has, during the period of investigation, inquiry or trial under this Code of an offence under any law (not being an offence for which the punishment of death has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on his personal bond with or without sureties:

Provided that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail instead of the personal bond with or without sureties:

Provided further that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law:

Explanation – In computing the period of detention under this section for granting bail the period of detention passed due to delay in proceeding caused by the accused shall be excluded."

\(^50\) In section 437 of the principal Act,

(i) in sub-section (1),

(a) in clause (ii), for the words “a non-bailable and cognizable offence”, the words “a cognizable offence punishable with imprisonment for three years or more but not less than seven years” shall be substituted;

(b) after the third proviso, the following proviso shall be inserted, namely:

“Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life or imprisonment for seven years or more be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor.”

(ii) in sub-section (3), for the portion beginning with the words “the Court may impose”, and ending with the words “the interests of justice”, the following shall be substituted, namely: “the Court shall impose the conditions,

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and
- Appointment of Special Magistrate to deal with minor nature of criminal cases. Necessary modifications are to be made in Sections 13 and 18 of the Code of Criminal Procedure, 1973.

- Separate process serving agency under the control of government should be appointed so that the delay in service of summons and execution of warrants can be avoided.

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

and may also impose, in the interests of justice, such other conditions as it considers necessary.

51. Chapter XXI, para 40.11.
52. 13.Special Judicial Magistrates.
(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Judicial Magistrate of the second class, in respect to particular cases or to particular classes of cases or to cases generally, in any district, not being an metropolitan area:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Judicial Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

53. 18.Special Metropolitan Magistrates.
(1) The High Court may, if requested by the Central or State Government so to do, confer upon any person who holds or has held any post under the Government, all or any of the powers conferred or conferrable by or under this Code on a Metropolitan Magistrate, in respect to particular cases or to particular classes of cases or to cases generally, in any metropolitan area within its local jurisdiction:

Provided that no such power shall be conferred on a person unless he possesses such qualification or experience in relation to legal affairs as the High Court may, by rules, specify.

(2) Such Magistrates shall be called Special Metropolitan Magistrates and shall be appointed for such term, not exceeding one year at a time, as the High Court may, by general or special order, direct.

3) Notwithstanding anything contained elsewhere in this Code, a Special Metropolitan Magistrate shall not impose a sentence which a Judicial Magistrate of the second class is not competent to impose outside the Metropolitan area.

54. Chapter XXI, para 41.3.
• The strength of the courts should be reviewed periodically and new Section 23A should be inserted.

• Mandatory trial of specified cases through the summary procedure, compounding of offences etc.

• Provision under Section 309, Criminal Procedure Code, 1973 provides for the proceedings to be held expeditiously and on day to day basis. This provision suffers due to inordinate delay caused at the stage of trial, appeal and revision. The Commission has highlighted upon 77th report.

• There is periodic review of old pending cases so that these cases can be lessened from the court calendar.

The recommendation may be made applicable as an experimental measure to the offences which are liable for punishment with imprisonment of less than seven years and/ or fine including the offences under section 320, Criminal Procedure Code, 1973. It can also be applied in nature and gravity of offences and quantum of punishment. Justice B. N. Aggarwal has quoted that Plea-bargaining benefits both the State and the offender; while the State saves time, money and

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55. However, there no such amendment of Section 23 A.

23. Subordination of Executive Magistrates.

(1) All Executive Magistrates, other than the Additional District Magistrate, shall be subordinate to the District Magistrate, and every Executive Magistrate (other than the Sub-divisional Magistrate) exercising powers in a sub-division shall also be subordinate to the Sub-divisional Magistrate, subject, however, to the general control of the District Magistrate.

(2) The District Magistrate may, from time to time, make rules or give special orders, consistent with this Code, as to the distribution of business among the Executive Magistrates subordinate to him and as to the allocation of business to an Additional District Magistrate.

56. Chapter XXI, para 44.1.

57. The Commission provided twenty grounds of delay. See at Chapter XXI, para 39.3.

58. Para 39.6 at page no. 108.

59. The 154th Law Commission of India has endorsed this point from National Police Commission. (referred from Sankar Sen, “Pendency of Cases in the Trial Courts”, 22 no. 2 Indian Journal Of Criminology And Criminalistics and 3(2001).

60. See supra note.40.
effort in prosecuting the suspects, the latter gets a lenient punishment by pleading guilty". The imposition of sentence for a lesser offence or a lesser period serves the community interest and will facilitate an earlier resolution of a criminal case. These recommendations are later supported in the Mallimath Committee Report.

In the 154th report, the Law Commission of India recommended that the investigating agency and separate process serving agencies to be established. The investigating agency will work under the protection of courts which will reduce the political intervention and provides greater scrutiny, supervision and protection from courts. The process serving agencies will serve summons and execute the warrants in time. These agencies can be beneficial to provide fair and speedy trial and provided a continuous check is kept by the judiciary.

The report highlighted upon the case of Common Cause case where the Supreme Court has prescribed the time frame for the adjudication of a case. Also, the compounding of offences and summary procedure for summary case should be followed. However, the Commission denied suggesting the time limit for trial of offences.

Hostile witness’s statements also result in delay which requires amendment in the Sections 161,162 and 164, Code of Criminal Procedure, 1973. This amendment though provides a speedier adjudication but may affect the right of witness. The purpose of criminal administration is affected because statements may have been made in state of fear. Plea bargaining can be adopted as a new tool since the accused agrees to bargain

61. Supreme Court Judge, in his presidential address on the topic “Pendency of Cases and Speedy Justice”. (referred from Devina Gupta, “Plea Bargaining...A Unique Remedy to Reduce Backlog in Courts”, 116 CrLJ 67 (March 2010)).
for his punishment by accepting the committal of crime. It is provided in offences with less than seven years punishment and those which are compoundable with the permission of court.

The cases put up for trial on a specific day should be listed in a manner that witness's time is best utilized. The cases should take their chronological order and providing one or two days consecutively to one police station and the listing saves time and cost. The appointment for Special Magistrate for minor crimes and regular review of strength of court are the other recommendations in the direction of fair and speedy trial.


3.12 177TH REPORT, LAW COMMISSION OF INDIA, 2001

The Law Commission of India63 recommended the establishment of a separate investigating agency. It explained the need for separation of investigating agency from the police staff engaged in the maintenance of law and order. Their recommendation was:

“We recommend that the police officials entrusted with the investigation of grave offences should be separate and distinct from those entrusted with the enforcement of law and order and other miscellaneous duties. Separate investigating agency directly under the supervision of a designated Superintendent of Police is constituted. The hierarchy of the officers in the investigating police force should have adequate training and incentives for furthering effective investigations. We suggest that the respective Law and Home Departments of various State Governments

may work out details for betterment of their conditions of service.

The officials of the investigating police force be made responsible for helping the courts in the conduct of cases and speedy trial by ensuring timely attendance of witnesses, production of accused and proper coordination with prosecuting agency. Other necessary steps should also be taken for promoting efficiency in investigation. Accordingly, we recommend that necessary changes in the Police Acts, both Central and State, Police Regulations, Police Standing Orders, Police Manuals, be made by the Home Department in consultation with the Law Departments of State Governments."

Arrest is one of the most immediate preventive actions that can be taken by police and this power should not be curtailed. Today, only the fear of arrest is there among the criminals but not the fear of conviction because of the undue delays in the courts. The Commission observed the guidelines of D.K. Basu v. State of West Bengal\footnote{AIR 1997 SC 610.}{64}.

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\footnote{AIR 1997 SC 610.}{64} The principles laid down by the Hon’ble Supreme Court are given hereunder:

(i) The police personnel carrying out the arrest and handling the interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designations. The particulars of all such police personnel who handle interrogation of the arrestee should bear accurate, visible and clear identification and name tags with their designation. The particular of all such personnel who handle interrogation of the arrestee must be recorded in a register.

(ii) That the police officer carrying out the arrest shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may be either a member of the family of the arrestee or a respectable person of the locality from where the arrest is made. It shall also be counter signed by the arrestee and shall contain the time and date of arrest.

(iii) A person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock up, shall be entitled to have one friend or relative or other person known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee.

(iv) The time, place of arrest and venue of custody of an arrestee must be notified by the police where the next friend or relative of the arrestee lives outside the district or town through the Legal Aids Organization in the
The Law Commission in the year 2001 submitted its 177th report on law relating to arrest submitted that the defendant is afraid of jail and not conviction. The very purpose of law is to create fear against the crime and to prevent it. The Commission recommended the 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. However, in the present time there are investigating agencies like CBI (Central Bureau of Investigating), CID, IB, (Intelligence Bureau), CIA (Crime Investigation Agency) and RAW (Research and Analysis Wing) which take the matters on the seriousness and cases assigned. Also, the guidelines of D.K. Basu case on arrest are referred.

District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.
(v) The person arrested must be made aware of his right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.
(vi) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclosed the name of the next friend of the person who has been informed of the arrest and the names land particulars of the police officials in whose custody the arrestee is.
(vii) The arrestee should, where he so request, be also examines at the time of his arrest and major and minor injuries, if any present on his /her body, must be recorded at that time. The Inspector Memo’ must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.
(viii) The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention In custody by a doctor on the panel of approved doctor appointed by Director, Health Services of the concerned State or Union Territory, Director, Health Services should prepare such a panel for all Tehsils and Districts as well.
(ix) Copies of all the documents including the memo of arrest, referred to above, should be sent to the Magistrate for his record.
(x) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.
(xi) A police control room should be provided at all district and State headquarters where information regarding the arrest and the place of custody of the arrestee shall be communicated by the officer causing the arrest, within 12 hours of effecting the arrest and at the police control room it should be displayed on a conspicuous notice board.
A fair trial has two objectives in view, that is, first, it must be fair to the accused and secondly, it must also be fair to the prosecution or the victims. Thus, it is of utmost importance that in a criminal trial, witnesses should be able to give evidence without any inducement, allurement or threat either from the prosecution or the defense. The accused in our country have a right to an open public trial in a criminal court and also a right to examination of witnesses in open court in their presence. But, these rights of the accused are not absolute and may be restricted to a reasonable extent in the interests of fair administration of justice and for ensuring that victims and witnesses depose without any fear.

The report provided about three kinds of witnesses: (i) victim-witnesses who are known to the accused--these do not need protection of identity but if demanded, it should be provided; (ii) victims-witnesses not known to the accused (e.g. as in a case of indiscriminate firing by the accused) and (iii) witnesses whose identity is not known to the accused. Category (i) requires protection from trauma and categories (ii) and (iii) require protection against disclosure of identity. The identification protection is needed firstly at the stage of investigation and secondly, during inquiry and before recording evidence at the trial and thirdly, during recording of evidence during the trial in the Sessions Court. The Commission gave recommendations for the procedure to be followed depending on the type of victim-witness.

66. In cases where the victim-witness protection is to be given for the trauma, in Room A, the Presiding Judge, the court-master and the stenographer, the accused and the technical personnel will be present. In this Room B, the victim, the public persecutor and the pleader for the accused and the technical persons shall be present. Only when the victim has to identity the
In the second part, the recommendation is provided for Witness Protection Programmes and this programme referred to witness protection outside the Court. At the instance of the public prosecutor, the witness can be given a new identity by a Magistrate after conducting an ex parte inquiry in his chambers. In case of likelihood of danger of his life, he is given a different identity and may, if need be, even relocated in a different place along with his dependants till the trial of the case against the accused is completed.

In \textit{PUCL v. Union of India case},\textsuperscript{67} the Court held that there is a need to maintain a just balance between the rights of the accused for a fair trial (which includes the right to cross examine the prosecution witnesses in open court) and to the need to enable (1) prosecution witnesses whose identity is known to the accused to give evidence freely with being overawed by the presence of the accused in the Court and (2) protection of the identity of witnesses who are not known to the accused – by means of devices like video-screen which preclude the accused from seeing the witness even though the Court and defense counsel will be able to see and watch his demeanour.

In 2006, the Law Commission recommended that witness identification programme and witness protection scheme be introduced. The programme provided that in order to secure fair trial, not only the accused but the victim-witness also needs protection.

\textsuperscript{67} 2003 (10) SCALE 967.
3.1.14 213TH REPORT, LAW COMMISSION OF INDIA, 2008

The objective of the 213th Report is setting up of Fast Track Courts at Magisterial level with high-tech facilities. Over 38 lacs cheque bouncing cases are pending in various courts in the country.68 There are 7, 66,974 cases pending in criminal courts in Delhi at the Magisterial level as on 1st June, 2008. Out of this huge workload, a substantial portion is of cases under Section 138 of the Negotiable Instruments Act, 1881 which alone count for 5,14,433 cases (cheque bouncing).69 In Gujarat, approximately two lacs cheque bouncing cases are pending all over the State. 73,000 cases were filed under section 138 of the Negotiable Instruments Act, 1881 (cheque bouncing) on a single day by a private telecom company before a Bangalore court, informed the Chief Justice of India, K. G. Balakrishnan, urging the Government to appoint more judges to deal with 1.8 crore pending cases in the country.70 The number of complaints which are pending in Bombay Courts seriously cast shadow on the credibility of our trade, commerce and business. There is a need for immediate steps to be taken to ensure restoration of the credibility of trade, commerce and business.71 The present system of criminal jurisprudence is destined to fail if the backlog of cases is not substantially reduced. The following recommendations are made to curb backlog :

- Increase in the number of judicial officers will have to be accompanied by proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and

68. The Hindustan Times, New Delhi as on date 14.10.2008.
69. Speech delivered by Hon'ble Mr. Justice Ajit Prakash Shah, Chief Justice, Delhi High Court, at the inaugural of Dwarka Courts Complex, Delhi on 6th September, 2008.
71. KSL & Industries Ltd. v. Mannalal Khandelwal, 2005 Cri.L.J.1201 (Bom.), 1204.
their condition particularly in small towns and moffusils is pathetic.

- Alternative Dispute Resolution mechanisms such as negotiations, conciliation and mediation are the next best way for resolution of dispute. Litigation is just one way for resolution of dispute. Proper training and infrastructure should be provided to the mediators and conciliators.

- Fast Track Courts of Magistrates should be created to dispose of the dishonored cheque cases under Section 138 of the Negotiable Instruments Act, 1881.

- The Central Government and State Governments must provide necessary funds to meet the expenditure involved in the creation of Fast Track Courts, supporting staff and other infrastructure.

Speedy trial is considered as an integral part of the fundamental right of life and liberty and is envisaged in Article 21 of the Constitution of India. The backlog of cheque bouncing cases needs to be speedily disposed of through this measure lest litigants may lose faith in the judicial system. The commercial circles confidence should be kept intact.

There is alarming situation of the pendency of cases and the constitutional rights of a litigant demands for a speedy and fair trial. The Government of India should direct the State authorities to set up Fast Track Courts in the country which alone in the opinion of the Law Commission will solve the perennial problem of pendency of cases, which are even summary in nature.

The present pendency in cheque bouncing cases is 40 lacs, which further slowed down the justice delivery system. The Supreme Court has issued guidelines in 2010 judgment that the defaulters going for early settlement before the trial court would have to pay just the principal amount with applicable interest.
But if they approached the district court for settlement being convicted by the trial court, they would have to pay additional 10% of the cheque amount to avoid going to jail. If the defaulter agrees for settlement in High Court, then he would have to pay 15% of the cheque amount.\textsuperscript{72}

In the year 2008, Law Commission of India\textsuperscript{73} submitted the 213rd report relating to backlog under Section 138, Negotiable Instruments Act, 1881. In 2008, the backlog is 7,66,974 criminal cases of which substantial portion is of cases under Section 138, Negotiable Instrument Act, 1881. In order to overcome the pendency, the Commission recommended more appointments and a proportionate increase in the number of new court rooms. The present infrastructure is inadequate and condition particularly in small towns and moffusils is pathetic. The establishment of Fast track courts can provide the relief.

Alternative dispute resolution (ADR) mechanism comprises of negotiations, conciliation and mediation can provide adjudication at a faster rate. The parties of ADR have win-win situation. They agree to negotiate which can produce better results only when proper training is provided to the mediators and conciliators. Today, ADR has got recognition among people and the settlement achieved is given binding effect by the court. Lok adalats are established to deal with these cases at a speedier rate. In the yesteryears, the modes of ADR help in reducing the pendency.

\textbf{3.15 221\textsuperscript{st} REPORT, LAW COMMISSION OF INDIA, 2009}

The mounting of arrears of cases in High Courts and District Courts has been a matter of great concern for litigants as well as for the State. Since arrears are mounting by leaps and

\textsuperscript{72} Dhananjay Mahapatra, “SC : Over 40L Cheque Bouncing Cases Clogging Legal System”, \textit{The Times of India}, January 22, 2013 at pg.12.

\textsuperscript{73} Law Commission of India, 213\textsuperscript{th} report on Fast Track Magisterial Courts for Dishonoured Cheque Cases (2008).
bounds and there is no respite in sight which is mainly caused due to the reason of more institution of cases than their disposal at all the levels of judicial administration? The frivolous, vexatious and luxurious litigations also add to the mounting arrears. Such type of litigation has to be controlled rather than stopped.

It has affected the fundamental and legal right of the litigant to get speedy justice which is also the fundamental requirement of good judicial administration. In this Report, the following recommendations have been made:

- The Criminal Procedure Code, 1973 provides that all appeals against the order of acquittal passed by Magistrates in respect of cognizable and non-bailable offences in the cases filed on police report are being filed in the Sessions Court. But, appeal against order of acquittal which is instituted upon complaint still continues to be filed in the High Court except when special leave is granted by it on an application made to it by the complainant, according to sub-section (4) of Section 378,

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76. Earlier, appeal against the order of acquittal passed by Magistrates were being filed in High Court. This was situation prior to amendment of section 378 by Act 25 of 2005.

Amendment of Section 378.—In Section 378 of the principal Act,—
(i) for sub-section (1), the following sub-section shall be substituted, namely:—
“(1) Save as otherwise provided in sub-section (2), and subject to the provisions of sub-sections (3) and (5),—
(a) the District Magistrate may, in any case, direct the Public Prosecutor to present an appeal to the Court of Session from an order of acquittal passed by a Magistrate in respect of a cognizable and non-bailable offence;
(b) the State Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of an acquittal passed by any Court other than a High Court [not being an order under clause (a)] or an order of acquittal passed by the Court of Session in revision.”
Criminal Procedure Code, 1973.\textsuperscript{77} An amendment in Section 378 is recommended to enable filing of appeals in complaint cases also in the Sessions Court subject to the grant of special leave.

- The orders of acquittal passed by Magistrates (where the offence is cognizable and non-bailable) or by Sessions Courts in cases filed on police reports the appeal can be filed only at the instance of the District Magistrate or the State Government,\textsuperscript{78} as the case may be. The aggrieved person or the informant cannot himself file an appeal. However, he can prefer a revision. If the revisional Court finds that the accused has been wrongly acquitted, it cannot convict him\textsuperscript{79} but it has to remand the case. It is a cumbersome process and involves wastage of money and time. This provision also needs a change and in such matters also, where the District Magistrate or the State does not direct the Public Prosecutor to prefer appeal against an order of acquittal, the aggrieved person or the informant should have the right to prefer appeal, though with the leave of the Appellate Court. This will also give an opportunity to the aggrieved person to challenge the findings of fact recorded by lower court. Also, this will introduce more transparency and accountability in the

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\textsuperscript{77} Sub-sections (4) and (5) of section 378 Criminal Procedure Code, 1973, which provides for appeal in case of acquittal reads: “(4) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court. (5) No application under sub-section (4) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of six months, where the complainant is a public servant, and sixty days in every other case, computed from the date of that order of acquittal.”
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lower judiciary, as at present, the percentage of acquittal is quite high.

- A revision order passed by a Magistrate can be challenged either in the Sessions Court or the High Court.\(^8^0\) This provision is often misused. If there are several accused persons in a case and an adverse order is passed, some go to Sessions Court and others to High Court\(^8^1\) to try their luck. There may be occasions when one party may file revision in Sessions Court and the opposite party in High Court against the same order. Such type of situations should be removed. There should be only one forum for revision, that is, the Sessions Court against orders passed by Magistrates. When there is only one forum for revisions against orders passed by the Sessions Court, there is no necessity for having two alternative forums for challenging an order passed by a Magistrate. This will not only be less time-consuming but will also be less expensive for the litigants and pendency in High Courts will also be reduced.

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81. Section 401 Criminal Procedure Code, 1973 laying down High Court’s powers of revision, as it stands today, reads thus:
   “High Court’s powers of revision.- (1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 386, 389, 390 and 391 or on a Court of Session by section 307 and, when the Judges composing the Court of revision are equally divided in opinion, the case shall be disposed of in the manner provided by section 392.
   (2) No order under this section shall be made to the prejudice of the accused or other person unless he has had an opportunity of being heard either personally or by pleader in his own defence.
   (3) Nothing in this section shall be deemed to authorise a High Court to convert a finding of acquittal into one of conviction.
   (4) Where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.
   (5) Where under this Code an appeal lies but an application for revision has been made to the High Court by any person and the High Court is satisfied that such application was made under the erroneous belief that no appeal lies thereto and that it is necessary in the interests of justice so to do, the High Court may treat the application for revision as a petition of appeal and deal with the same accordingly.”
All such pending revisions in the High Courts can also be transferred to the Sessions Courts.

- The Criminal Procedure Code provides that no revision shall be maintainable against an interlocutory order passed in any appeal, inquiry, trial or other proceeding.\(^{82}\) However, the expression “interlocutory order” has not been defined in the Code. Though the said expression has been judicially interpreted but this has created confusion and litigants have to suffer for it. Now, there is a need for specific categorization of revision (revisable) orders by the Legislature and it should indicate the list in the Criminal Procedure Code, 1973 itself. This will reduce unnecessary litigation. The residuary matters, if any, can be left to the judicial discretion of the concerned courts.\(^{83}\)

- Efforts should be made to decide cases particularly miscellaneous matters (excluding the matters which require evidence of witnesses at the admission stage after affording opportunity to the concerned parties.

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83. Section 397, Code of Criminal Procedure, 1973 provides for calling for records to exercise powers of revision and reads as under:

“(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanations: All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them.”
The Law Commission of India in its 221st Report in the year 2009 has shown a concern for the arrears in the High Courts and District Courts. The arrears affect the litigants and State and violate the fundamental and legal right of the citizen to get fair and speedy trial. The amendments in Sections 378, 397 and 401 of Code of Criminal Procedure, 1973 are recommended. In Section 378, in complaint cases, appeal against an order of acquittal passed by a Magistrate to the Sessions Court be provided, of course, subject to the grant of special leave by it. Where the District Magistrate or the State does not direct the Public Prosecutor to prefer appeal against an order of acquittal, the aggrieved person or the informant should have the right to prefer appeal, though with the leave of the Appellate Court. Interlocutory order has not been defined, which can create ambiguity, however, different judicial decisions have defined its extent. The researcher thinks that amendment will crystal clear the definition for everyone. There should be only one forum for filing revisions against orders passed by Magistrates, that is the Sessions Court instead of two alternative forums as now provided which creates confusion as one party may go in revision to high court and other to sessions. This power should be given to sessions which will avoid multiplicity and reduce the burden of courts. All these amendments can help in adjudication at a speedier pace. In the present times, the Right to Information Act, 2005 has been introduced. It has brought transparency in the system. It will bring accountability of judicial officers.

3.16 229TH REPORT, LAW COMMISSION OF INDIA, 2009

The Law Commission64 report has looked into arrears of cases accumulated in the Supreme Court. The Supreme Court

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64. Law Commission of India, 229th Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai (2009).
has to adjudicate on cases coming from all over the country. Also, the establishment of Supreme Court in Delhi causes the litigant from East, West and South part of India to travel a long distance and huge amount to be spent. In 1950, the pendency was 690 cases (1,215 cases instituted and 525 disposed).85 However, in the year 2008, the pendency was 46,374 cases (28,007 cases instituted and 28,559 disposed).

The following recommendations are made by the Law Commission:--

- A separate Constitutional division86 and Legal division to be established. The proposed division will look into cases where substantial question of law or order or rule or any question relating to interpretation of constitution is involved.87
- Judges appointed in Supreme Court should from the beginning be assigned work of a particular division.88
- The Supreme Court should be split into Constitutional Division and Legal Division for appeals, the latter with Benches in four regions – North, South, East and West, is a subject of fundamental importance for the judicial system of the country which has to function according to the Supreme Court Rules, 1966.
- Increase in the judicial strength to overcome the accumulation of arrears. The ratio of judges to the cases was 1: 1855 in the year 2008.

85. The number of Supreme Court judges was 7 (seven).
86. Austria established the world’s first separate constitutional court in 1920. Also, Many continental countries have constitutional courts.
87. This recommendation is earlier made in tenth Law Commission in its 95th Report titled “Constitutional Division within the Supreme Court – A proposal”, 1984.
88. Article 246(1) read with Entry 77 of the Union List or statutory rules, vide article 145 of the Constitution are not adequate. The amendment in the Constitution would be necessary.
• Article 130 of the Constitution of India, 1950 should be given liberal interpretation or Parliament should enact a suitable legislation.

• The retirement age for the Supreme Court and High Court judges should be raised to 70 and 65 years respectively.

The recommendation on increasing the number has been implemented now and then; though the number of appointments was doubled the disposal has either gone down or not increased. As regard to, Article 130 of the Constitution of India, 1950 no constitutional amendment is required. Only the approval of the President is required for the Chief Justice to act in the matter.

In this report, the Law Commission recommended on the establishment of Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai or Hyderabad, Kolkata and Mumbai in order to reduce the heavy backlog of cases in the Higher Courts. The recommendation includes retirement age for the Supreme Court and High Court Judges to 70 and 65 years respectively to meet the problem of finding suitable persons for appointment of judges in these courts.

3.17 230TH REPORT, LAW COMMISSION OF INDIA, 2009

Speedy justice is the right of every litigating person. There is no denial to the fact that delay frustrates justice. In the present set-up, it often takes 10 – 20 – 30 or even more years before a matter is finally decided and in the past, litigation has

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89. Article 130 reads- “The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time „appoint‟.

90. See supra note 7.

91. Dr Shyamilha Pappu, “Strengthening the Administration of Justice Towards Reducing Pendency”, Souvenir of Confederation of Indian Bar on All India Seminar on Judicial Reforms held on 31.7.2010 and 1.8.2010 at Vigyan Bhawan, New Delhi at page no. .
increased immensely. The population growth, improved financial conditions, lack of tolerance and materialistic way of life may be some of the causes. But the delay in dispensation of justice has to be eliminated by taking effective steps otherwise the day is not far when the whole system will collapse.

Alarmed by the backlog of disposal of cases, Fast Track Courts or Special Courts have to be constituted. Thus, Fast Track Courts are to tackle Section 138 Negotiable Instruments Act, 1881. The inordinate delay in as the graph of such pendency is very high and alarming. It is high time to restore the confidence of people in the judiciary by providing speedy justice. A speedy trial is not only required to give quick justice but it is also an integral part of the fundamental right of life, personal liberty, as envisaged in Article 21 of the Constitution of India, 1950.

It is not uncommon for any criminal case to drag on for years. During this time, the accused travels from the zone of "anguish" to the zone of "sympathy". The witnesses are either won over by muscle or money power or they become sympathetic to the accused. As a result, they turn hostile and prosecution fails. In some cases, the recollection becomes fade or the witnesses die. Thus, long delay in courts causes great hardship not only to the accused but even to the victim and the State. The accused, who is not let out on bail, may sit in jail for number of months or even years awaiting conclusion of the trial. Thus, effort is required to be made to improve the management of prosecution in order to increase certainty of conviction and punishment for most serious offenders. It is experienced that there is increasing laxity in the court work by the police personnel, empowered to investigate the case.

In the present times, judiciary deserves more public confidence than ever before. The judiciary has a special role to play in the task of achieving socio-economic goals enshrined in the Constitution while maintaining their aloofness and independence. Judges have to be aware of the social changes in the task of achieving socio-economic justice for the people.

The Law Commission submitted the following recommendations:

- The formation and functioning of the High Courts in India need some major changes so that the people of the country get fair and speedy justice and moreover, the faith in the system is not shaken. The Commission found out that a huge pendency of cases exists in almost every High Court and the present strength of the judges is unable to cope with the alarming situation. The institution of cases is much more than the disposal and it adds to arrears of cases. It has become essential that the present strength of the judges should be increased manifold.

- Decentralization of the work of the High Court's has became a necessity and more benches should be established in all States. If there is manifold increase in the strength of the judges and the staff, all cannot be housed in one campus. Therefore, the establishment of new Benches is necessary. Also, it is in the interest of the litigants. The Benches should be so established that a litigant is not required to travel long.

- New establishments should be setup which will require money yet it is necessary as a development measure and particularly when efforts are being made for the all-round development of the country. Therefore, the money should not be a hurdle and the interest of the litigants should be protected. The existence of judges and advocates is because of the litigants and they are there to serve their
cause only. The litigating citizens have a fundamental right of life i.e. a tension-free life through speedy justice-delivery system. The creation of new Benches is beneficial for the litigants and the lawyers and a beginning has to be made somewhere. There is a huge pendency of cases in the Apex court also.

- The Commission also recommended to increase the number of working days which should be done at all levels of judicial hierarchy and must start from the Apex court. It is their moral duty to respond commensurately considering the increase in the salaries and perks of the Judge.
- Now the time has come that not only the strength of the Honorable Judges in the Supreme Court should be increased and recommendations are made to fill up the vacancies soon but also new Benches to be established.
- Frequent visits by the Judges to foreign countries at very high cost should be avoided in view of the austerity measures by the Government of India.
- An effort has been made in Gujarat State and Delhi to have some evening courts. The same system can be introduced in other States as well.

It is high time when all the judges at different levels of judicial hierarchy must devote full time to judicial work. There is long and inordinate delay in delivering judgments which should be avoided in public interest. It is felt that these suggestions will improve the functioning of the courts.

The increase in the number of judicial officer cannot be the sole answer to the delay. There is a need for institutional and systematic reforms for the judges.  

93. Sankar Sen, “Pendency of Cases in the Trial Courts”, 22 (2) Indian Journal Of Criminology And Criminalistics and 2 (2001). The author has looked into the cases pending per judge in the South Asian countries. The low remuneration has led to corruption, judicial incompetence, long trials and expensive justice as pointed in Human Development Report in South Asia(1999).
more than one shift may be considered by the Courts.\footnote{See supra note.33.} There is serious need to implement this all over India, and not only in two states.\footnote{See supra note.20.} Another option is to organize two shifts in the same building without incurring additional investment by adjusting time of working of two shifts, viz. The first shift can start at 7 O’clock and end at 1.30 P.M. and second shift can start at 2.00 P.M. and end at 8.30 P.M.\footnote{See supra note.19.} The High Court of Delhi has over 250 vacancies which can’t be filled due to absence of court rooms for them.\footnote{Abhinav Garg, “No space for more judges: HC to govt”, The Times of India, January 18, 2014 at pg. 3.}

In the year 2009, the Law Commission of India submitted its 230\textsuperscript{th} report on reforms in the judiciary. The report recommended more judicial officers to be appointed to cope with the pendency of cases. In India, the ratio of judge to the population dealt demands that not only the strength but also establishment of new Benches in Higher courts should be provided. At the trial court level also, Fast Track Courts or special courts should be established. This measure will be beneficial in reducing pendency.

The number of working days should be increased at all levels. The frequent visit by judges to foreign countries should be avoided. Today, the visit to foreign countries is checked. It is the duty of the judicial officers to give back to the society what they have got. It demands labor and time. More appointments and the increase in working hours will help in achieving the goal. It is believed that speedier disposal can be brought by carrying two shifts.

\textbf{3.18 233\textsuperscript{rd} REPORT, LAW COMMISSION OF INDIA, 2009}

The Courts exist for the dispensation of justice and not for the denial for technical reasons specially when the law and
justice demands it utmost. The Criminal Courts does not possess powers similar to that of Civil Court\(^98\) to restore a complaint dismissed in default, as the accused stands discharged or acquitted depending on the case being a warrant-case or a summons-case.

The Law Commission of India\(^99\) in this report recommended on restoration of complaints in criminal cases and inserting provisions on the lines of Order IX of the CPC enabling restoration of complaints:

- **Section 249, Code of Criminal Procedure, 1973\(^100\)** provides that the Magistrate has the discretionary power to discharge the accused when on the day of hearing the complainant is absent and the charges have not been framed in warrant case. Also, similar power exists in section 256\(^101\) to adjourn the proceedings in summons case. This section applies only to offences that may be lawfully compounded or are non-cognizable. The Magistrate must be vested with the power to restore the

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100. Section 249 relating to warrant-cases -
“Absence of complainant - When the proceedings have been instituted upon complaint, and on any day fixed for the hearing of the case, the complainant is absent and the offence may be lawfully compounded or is not a cognizable offence, the Magistrate may, in his discretion, notwithstanding anything herein before contained, at any time before the charge has been framed, discharge the accused.”
101. Section 256 relating to summons-cases -
“Non-appearance or death of complainant - (1) If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto, to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:
Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may dispense with his attendance and proceed with the case.
(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where non-appearance of the complainant is due to his death.”
complaint on file if sufficient cause is shown by the complainant for his absence on the date of hearing. In each case if the complainant shows sufficient cause for his absence, the Magistrate may restore his complaint on file. The period may be 15 days or 30 days from the date of discharge of the accused for moving the application. This amendment can be made in Criminal Procedure Code on the lines of Order IX of the CPC, 1908.

- In situations, where the case is dismissed on the ground of absence of complainant under sections 249 and 256, the complainants have to move the High Court under criminal case for revision, where the accused has been discharged or in appeal against acquittal where the accused has been acquitted. The Law Commission recommended that the provision for restoration of complaints in trial court itself will lessen the burden on the High Courts.

- The complainant has to knock the doors of the High Court under Section 482, Code of Criminal Procedure 1973 for the restoration of complaint. The subordinate criminal courts have no inherent powers. The trial court must be given powers on the lines of Section 151, Code of Civil Procedure, 1908 to do what is absolutely necessary for dispensation of justice in the absence of a specific enabling provision provided there is no prohibition and no illegality or miscarriage of justice is involved.

The Commission highlighted upon the Hon’ble Supreme Court observation in Janata Dal v. H. S. Chowdhary case on Section 482 of the Code of Criminal Procedure, 1973 closely resembles Section 151 of the Civil Procedure Code, 1908. In order to seek interference under the said section three

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103. AIR 1993 SC 892; Ram Narain v. Mool Chand, AIR 1960 All. 296.
conditions should be fulfilled: (1) the injustice which comes to light should be of a grave character and not of a trivial character; (2) it should be clear and palpable and not doubtful; and (3) there exists no other provision of law by which the party aggrieved could have sought relief.

If a Magistrate has the power to entertain a complaint and decide it on merits after summoning the accused, he should also have power to restore it on good or sufficient cause being shown and re-summon the accused to face the trial on merits.

A Division Bench of the Kerala High Court has in the matter of State Prosecutor held that the subordinate courts have the inherent power to act *ex debito justitiae* (in accordance with the requirement of justice) to do substantial justice for which alone the courts exist. The absence of any reference to any other criminal court in the said provision does not necessarily imply that such courts can in no circumstances exercise inherent power. Courts may act on the principle that every procedure should be understood as permissible till it is shown to be prohibited by law. In the cases of *Raj Narain v. State* and *In re, Biyamma* it was held that the High Court can revoke, review, recall or alter its own earlier decision in a criminal revision and rehear the same by virtue of its inherent power reserved under the said section.

The Supreme Court in the case of *A. S. Gauraya v. S. N. Thakur* specifically ruled that the Criminal Procedure Code, 1973 does not contain any provision enabling a Magistrate to exercise inherent power to restore a complaint by revoking his earlier order dismissing it for the non-appearance of the complainant.

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104. 1973 Cri L J 1288.
105. AIR 1959 All. 315(FB).
106. AIR 1963 Mysore 326.
In the year 2009, Law Commission of India submitted the 233rd report and recommended amendments in Section 249 and 256 of the Code of Criminal Procedure, 1973 on the similar lines of Code of Civil Procedure, 1908. In civil proceedings, there is restoration of suit even when the plaintiff is absent but in criminal proceedings the case is dismissed. The very purpose of justice is affected which can be restored only by making amendments in the Code.

Also, the horizons of inherent power under Section 482 require to be widened which by the 1973 Code is available only to the High Court. However, in civil suits under section 151, the power is available to all the courts. The required amendment will provide speedy trial to the parties. The Commission has referred to different judicial decisions. These amendments can provide speedy trial to the parties and will be beneficial in reducing the backlog. However, this change should be allowed keeping in view that the right of fair trial to the parties should not be defeated.

3.19 COMMITTEES ON FAIR AND SPEEDY TRIAL

RANKIN COMMITTEE

In 1925, the Rankin committee observed that the existence of arrears of cases is a serious obstacle. The prospects are gloomy until the burden of arrears is removed or appreciably lightened. The improvements in the methods can give satisfactory results only when the courts start with a reasonably clean slate.

The existence of mass of arrears takes the heart out of the presiding officers. He can hardly be expected to take a strong interest in the preliminaries. When he knows that the hearing of the evidence and decision will not be by him but by his successor after his transfer. So long as such arrears exist, there is temptation to which many residing officers succumb is to hold back the heavier contested suits and devote attention to the
lighter ones. The turnout of decisions to the contested suits is thus maintained somewhere near the figure of the institutions, while the really difficult work is pushed to background.

Here, the Committee has stressed that the workload can be reduced by making improvements in the methods. The researcher believes it is the fore-sightedness of the committee and should have been implemented to get results.

**Arrears Committee, 1949**

In 1949, a High Court Arrears Committee was set up by the Government of India under the chairmanship of Justice S.R. Das. The committee enquired and reported on the availability of curtailing the right of appeal and revision and also the extent of such curtailment. It has designed the method by which such curtailment should be affected and also the measures to be adopted to reduce the accumulation of arrears.

**Arrears Committee, 1972**

In 1972, High Courts Arrears Committee was set up by the Government of India under the Chairmanship of Justice Shah. The Committee noted the reasons for arrears as population explosion, increase in legislation by Parliament and State Legislature, inadequacy of judicial strength, unsatisfactory appointment of judges, inadequacy of staff and inadequately trained staff, failure to make optimum use of judge strength, large number of appeals from criminal courts and inadequacy of accommodation.

The Committee recommended that Section 438, Criminal Procedure Code, 1973 authorizing the Sessions Judge or District Magistrate to make a reference to the High Court in certain matters entails duplication of proceedings and avoidable waste of time. It is recommended that a Session Judge, who is

competent to pass an order under Section 436 setting aside an order of discharge should not even though he is competent to come to the conclusion that an order of a subordinate authority is not sustainable in law should not be competent to make an effective order rectifying the proceeding. It is recommended to make amendment in Section 438. Also, in appropriate cases the jurisdiction of the High Court may be exercised under Section 439 where the Court of Session as been guilty of a grave error of laws or facts. The other recommendations are:-

- Reducing the length of time in actual hearing of the case.
- Grouping and classification of cases.
- Optimum utilisation of judicial strength.

The Committee recommended upon Section 438 and 439, Criminal Procedure Code, 1973. The grouping and classification is done at the lower level as there is classification of cases. However, at the High Court level. In order to achieve optimum utilisation of judicial strength, steps like induction program, workshops are held. However, the reduction of length of actual hearing can not be implemented, as it is the essential function of Legislature which can not be performed by the Judiciary.

**Arrears Committee, 1990**

This committee is also known as Satish Chandra Committee. The following remedial measures are recommended for criminal cases--

- Criminal’s appeals involving sentences of death or imprisonment for life and appeals against acquittals in cases which are likely to result in the imposition of the sentence death or imprisonment for life should alone be heard by a Bench of two judges. The relevant rules or statutory provisions applicable to different High courts should be suitably amended.
• Session court should have exclusive power of revision against orders of criminal courts subordinate thereto. High Court should have power of revision against orders of the court of sessions/special courts other than those passed in exercise of their revisional jurisdiction. Section 397 of the Code of Criminal Procedure, 1973 should be suitably amended.

• Power of granting anticipatory bail under section 438 of the Code of Criminal Procedure, 1973 should be restricted to the Court of Session by effecting suitable amendment.

• State Governments should appoint not less than two Additional Public Prosecutors for each Criminal Court. Adequate attention must be paid to appoint competent lawyers as public prosecutors.

• State Government may set up proper machinery to carefully and objectively scrutinize proposal for preferring appeals against orders or judgments of acquittals to prevent frivolous appeals being filed by State against such decisions.

• Adequate number of police constables should be attached to each police station exclusively to attend to the work of each court as per its direction.

• The State Government should take immediate steps for providing presiding officers to man all the criminal courts.

• All State Governments should promptly provide adequate staff, funds and stationery for all criminal courts within their respective States.

In this report the committee made recommendations for the Criminal Procedure Code in sections 397 and 438 which increased the power of Sessions can reduce the workload of High
Court. The judicial strength, staff, police constables and funds should be adequate to keep the system in motion.

3.20 VOHRA COMMITTEE, 1993

The Committee found the reasons of inadequacy of the criminal justice system in the cases which are not heard timely and functioning of the government lawyers is grossly inadequate which results in a low percentage of convictions and mild punishments. Unless the criminal justice system is geared up, the work of the enforcement agencies cannot be effective.  

- The Committee in its report, *inter alia*, pointed out that “the nexus between the criminal gangs, police, bureaucracy and politicians” had come out clearly in various parts of the country. The existing criminal justice system, which was essentially designed to deal with the individual offences/crimes, was unable to deal with the activities of the mafia; the provisions of law in regard to economic offences were found to be weak and there were insurmountable legal difficulties in attaching/confiscating the properties acquired through mafia activities.

- The report suggested setting up of a nodal agency under the Ministry of Home Affairs, Government of India, to be handled directly by the Union Home Secretary, who would be assisted by one or more selected officers of the Ministry for the collection and compilation of all information received from different intelligence agencies.

- Changes in the legal system, simplification of the procedure and suspension of quick justice.

In this report, the committee recommended on the change in the legal system. It should be simplified so that it can be understood by a common man. The present system fails to deal

with the activities of the mafia; the provisions of law in regard to economic offences were found to be weak. However, POTA (Prevention of Terrorism Act), 2002 has been enforced to due to several terrorist attacks that took place in India. A nodal agency should be established for the collation and compilation of all information received from different intelligence agencies.

3.21 PADMANABHAIAH COMMITTEE ON POLICE REFORMS, 2000

The Padmanabhaiah Committee on Police Reforms was set up by the Ministry of Home Affairs, Government of India in January 2000. In addition to the Chairman, a former Union Home Secretary, the Committee consisted of four members, who were all policemen- two retired and two serving. The Committee did not have any representation from other sections of society or public. The committee recommended that there is need for comprehensive reforms in criminal justice administration. Public would soon lose faith in the criminal justice system unless the components of the systems are also thoroughly overhauled simultaneously. Today, the rule of law is gradually being replaced by the rule of politics is a cause of concern to all who are interested in establishing good governance in the country. The Padmanabhaiah Committee too has shown this concern.

In most parts of democratic world, multiple mechanisms have been set up to ensure the existence of an effective system of police accountability. Civic oversight of policing is increasingly being accepted as the most essential requirement of democratic policing.

The chairmanship of Sri K. Padmanabhaiah also recommended separation of investigation from the law and order wing. The report reads as--

110. The report was submitted by the Committee to the Central Government in October 2000. Till now, the report has not been released to the public.
“We feel that the long standing arguments whether crime and law and order should be separated should be ended once and for all. Most police officers are agreed that they should be separated but feel that the separation may not be practical. We are of the view that such a separation should be made in urban areas in all States as a beginning.”

Separation of crime from law and order will lead to greater professionalism and specialization and will definitely improve the quality of investigation. In Uttar Pradesh, this separation has already been put into effect in municipal and bigger towns from April, 2000. Maharashtra is also in the process of doing it.

In this report, the committee desired the criminal system to be overhauled. Multiple mechanisms should be set up. Also, there should be separation of crime from law and order. These recommendations will be beneficial to the society.

3.22 COMMITTEE ON REFORMS OF CRIMINAL JUSTICE SYSTEM, 2003 (also known as Mallimath Committee)

This committee was established under the headship Dr. Justice V.S. Mallimath, 2003. The aim of the Committee was to make specific recommendations on simplifying the judicial procedure so as to provide to the common man from the present. Criminal Justice System of our country requires just, efficient, speedy and cost-efficient judgments. There should be re-examination and re-definition of crime under the various laws in the Criminal Justice System so as to ensure that appropriate procedures will be available for different infringement of penal laws so that cases will be dealt with at a speed commensurate to the gravity of the infringement, with certainty in terms of time and punishment. The matter requires the attention of the legislature and judiciary because the Criminal Justice System has virtually broken down under the weight of case burden and a thorough overhaul is essential to make it speedy, efficient as
well as cost-effective. The judge population ratio of 10.5 or 13 Judges per million of people should be 50 Judges per million people in a phased manner within five years in its decision in *All India Judges Association and others v. Union of India case*.  

- Optimal use of public time and money for providing speedy and quality justice. The Chief Justice who has the right to constitute benches and assign work among the Judges should constitute benches to deal with criminal cases consisting of Judges who have specialized in criminal law.
- The right to speedy trial is thwarted by repeated adjournments. Adjournment is a curse of the courts. It should be made obligatory for the party applying for adjournment to pay cost in Section 309 of Code of Criminal Procedure. Costs, 1973 may be awarded to the opposite party or to the State which may be credited to victim compensation fund if one exists.
- The number of cases allotted to a judge should depend upon the time the cases are likely to take. Indiscriminate posting of a large number of cases should be avoided.
- Pre trial sittings should be encouraged to have speedy trial. In Criminal Procedure Code, there are sections 291-298 for pre-trial hearing. The High court can issue suitable instructions to the subordinate judicial officers.

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111. *AIR 2002 SC 1752.*
112. The quantum of costs should include the expenses incurred by the opposite party as well as the Court, the expenses of the witnesses that have come for giving evidence.
113. i. Exploring the scope for settlement without trial, such as compounding; ii. Admission and denial of documents as provided in S.294; iii. Calling for production of documents, if any, but not already filed; iv. Scope for the use of affidavits (S.295 and 296); v. Issues relating to proof and admissibility of documents; vi. Questions of law relating to maintainability and Jurisdiction; vii. Probable duration of the trial; viii. Issues relating to summoning and order of examination of witnesses; ix. Outlining broadly the scope of evidence; x. Settlement of issues; xi. Fixing the date/s for different stages, including examination of witnesses and hearing of arguments; xii. Such other matters that need to be attended to ensure speedy trial.
- Qualifications prescribed for appointment of Judges at different levels should be reviewed to ensure that highly competent Judges are inducted at different levels. Intensive training including practical programme should be devised and all the Judges given training not only at the induction time but also in service at frequent intervals.\textsuperscript{114}

- Special attention should be paid to enquire into the background and antecedents of the persons appointed to Judicial Officers to ensure that persons of integrity and character are appointed.\textsuperscript{115}

- A healthy convention should also be developed of making appointment of Judges specialized in criminal law that are required to sit on benches to deal with criminal matters.

- Training leads to efficiency in the profession. The committee viewed those regular well organized programs especially at the lower level, which at present is not adequate.\textsuperscript{116} The variation in the application of law and inexperience of all fields requires attention. Training should be provided not only at induction level but also in service.

- Application of modern management principles and to strengthen it with information technologies and optimal use of resources.

- Simplified and alternative procedures so that there is optimal use of the resources.

- A prompt and quality investigation is the foundation of the effective Criminal Justice System. There is a need for the Law and the society to trust the police and the police

\textsuperscript{114} The Committee also feels that criminal work is highly specialized and to improve the quality of justice only those who have expertise in criminal work should be appointed and posted to benches to deal exclusively with criminal work.

\textsuperscript{115} See supra note 7.

\textsuperscript{116} This view has been addressed at National Commission on Police Training.
leadership to ensure improvement in their credibility. The Investigation Wing should be separated from the Law and Order Wing.

- National Security Commission and the State Security Commissions at the State level should be constituted, as recommended by the National Police Commission.

- The committee suggested adopting good features of Inquisitorial system to strengthen the Adversarial system of our country.¹¹⁷

¹¹⁷. (1) A Preamble shall be added to the Code on the following lines: -
“Whereas it is expedient to constitute a Criminal Justice System, for punishing the guilty and protecting the innocent.
“Whereas it is expedient to prescribe the procedure to be followed by it,"Whereas quest for truth shall be the foundation of the Criminal Justice System,
“Whereas it shall be the duty of every functionary of the Criminal Justice System and everyone associated with it in the administration of justice, to actively pursue the quest for truth.
It is enacted as follows:
(2) A provision on the following lines be made and placed immediately above Section 311 of the Code
“Quest for truth shall be the fundamental duty of every court”.
(3) Section 311 of the Code be substituted on the following lines: -
“Any Court shall at any stage of any inquiry, trial or other proceeding under the 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 as it appears necessary for discovering truth in the case”.
(4) Provision similar to Section 255 of the Code relating to summons trial procedure be made in respect of trial by warrant and sessions procedures, empowering such court to take into consideration, the evidence received under Section 311 (new) of the Code in addition to the evidence produced by the Prosecution.
(5) Section 482 of the Code be substituted by a provision on the following lines:
“Every Court shall have inherent power to make such orders as may be necessary to discover truth or to give effect to any order under this Code or to prevent abuse of the process of court or otherwise to secure the ends of justice”.
(6) A provision on the following lines be added immediately below Section 311 of the Code. Power to issue directions regarding investigation
“Any court shall, at any stage of inquiry or trial under this Code, shall have such power to issue directions to the investigating officer to make further investigation or to direct the Supervisory officer to take appropriate action for proper or adequate investigation so as to assist the Court in search for truth.
(7) Section 54 of the Evidence Act be substituted by a provision on the following lines:
“In criminal proceeding the fact that the accused has a bad character is relevant”.
Explanation: A previous conviction is relevant as evidence of bad character.
Keeping in consideration the public interest and the large pendency and mounting arrears of criminal cases, the long vacations for the Supreme Court and High Courts in the larger public interest, the Committee feels that there should be a reduction of the vacations by 21 days. According to Chandra Kanta Negi, the High Court has to work for 210 days. Out of 365 or 366 days in a year, the working days are lessen by vacation of 48 to 63 days, every Saturday and Sunday and two weeks of public holidays.

However, till this happens, the Judges should sit on time. The Hon’ble Supreme Court Judges are the role model for High Court Judges and presiding officers of subordinate courts. If they are not punctual then it would be a bad precedent for others. However, the Bench of acting Chief Justice B.D. Ahmed and Justice Vibhu Bakhru turned down that the High Court judges spend vacation writing the judgments.

- The Chief Justice of Supreme Court and various High Courts should constitute a separate criminal division consisting of such number of criminal benches as may be required consisting of judges, who have specialized in criminal law.

- Arrears eradication scheme in which a charge should be given to retired judge of High Court who is known for effective and expeditious disposal of cases.

118. The working days of the Supreme Court be raised to 206 days and the working days of the High Courts be raised to 231 days. Also, See Chander Kanta Negi, "Judicial Reform and Speedy Justice in India", 44 Journal of Constitutional and Parliamentary Studies 291 (2010).

119. See supra note.72.

120. See supra note.97.

121. See supra note.7.

122. 1. Identification of cases under Section 262 of the Code or as petty cases under Section 206 of the Code and cases which can be compounded with or without the leave of the court.

2. On the coming into the force of the scheme, arrangements shall be made for sending all the compoundable cases to the Legal Service Authority for settling those cases through Lok Adalats on priority basis.
• "Fast Track Courts Scheme" be introduced to eradicate the arrears.123

If the Criminal Justice System has to increase its efficiency in rendering justice and become as quick it is fair, it would restore the confidence of the people in the system. The committee recommended not only re-classify crimes but re-classify them in such a manner that many of the crimes- which today take up enormous time and expense- are dealt with speedily at different levels by providing viable and easily carried out alternatives to the present procedures and systems. In brief, many infractions of the law which are classified as crimes today and some considered serious, may not be so considered tomorrow.

As is done in some countries, it may be considered to classify the offences into four Codes namely (1) The Social Welfare Offence Code (2) The Correctional Offence Code, (3) The Criminal Offences Code and (4) The Economic and other Offences Code.

A Social welfare offences Code would include offences that are social in origin or nature and cover offences that might be prevented through awareness programmes. For such offences community service is preferred to jail sentence.

The Correctional offences Code would include non-cognizable offences that are punishable with less than 6 months imprisonment, which need not be considered as crimes. The Criminal Offences Code would include all major/grave offences involving violence. Basically, this would really be the "crime" part of the offences. The enforcement agency would be the police

123. This has been recommended in 124th Law Commission Report, 1988 and also in 231st Law Commission Report, 2008. Also, see Manmohan Singh, Administration of Justice on Fast Track", 3, Kerala Law Times and 8 (2007) which provides that the initial scheme started was to end in 2005 and it will be carried till 2010.
and punishment will be imprisonment and fine. All the offences that fall within this category will be arrestable and mostly non-compoundable.

The Economic and other Offences Code would include all economic offences, like tax fraud, money laundering, stock market scams and also offences like cyber crimes, intellectual property violations etc. Although these are all clubbed together here, they will still require specialized, separate agencies that are responsible for dealing with them. Punishment will again have to, perhaps, be a combination of punitive fines and jail and community service.

It is said that the Indian Judicial system is cursed with proverbial delay resulting into arrears of cases, running for several years and decades. The fruits of litigation instituted by a person do not appear that they will be reaped by his grandson.\(^\text{124}\)

The recommendations can make the judicial delivery system easier, speedy, visible, transparent, accessible to all and acceptable to both the victim and the accused.\(^\text{125}\) The recommendation to follow inquisitorial system rather than adversarial system is required as the later is not effective in the present circumstances.\(^\text{126}\) The adversarial system is already taking a back seat in a number of legislations like N.D.P.S. and Negotiable Instrument Act.\(^\text{127}\)

In 2005, the Hon’ble Supreme Court has advised to follow any model case flow system relating to management of cases and

\(^\text{124}\) See Sau. S. S. Phansalkar Joshi, “Permitting Compounding of more Offences to Achieve the Aim of Speedy Trial and Success of Lok- Nyayalaya”, 107 vol.4 CrLJ 162 (2001).


\(^\text{126}\) Dinsoo R. Zaiwalla, “Delays and Failures in our Legal System”, 7, Lawyers Collective and 23 (1992). The author provides that in the adversarial system, the judge is permitted to act only on the evidence produced and the pleadings raised. However, in the inquisitorial system the judge can go beyond the ken of evidence produced and may independently inquire.

\(^\text{127}\) See supra note.125.
nor has it prioritized cases into Track I-Track IV. However, it is till date it is not followed. There is need for court management and case management.

In this report, Mallimath Committee noted that the criminal justice system needs the judicial procedure to simplify and reexamination of the old definitions of crime in the present day system. Simplification of procedure will help in using public money for other useful purposes. Also, judicial strength 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. Training and modern management principles can be used. Also, Fast Track Court Scheme and Arrears eradication scheme be introduced. The classification of the code in four streams namely Social Welfare Offence Code, Correctional Offence Code, Criminal Offences Code and Economic and other Offences Code are recommended. The vacation period of Supreme Court and High Court needs consideration to overcome pendency.

3.23 DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE ON HOME AFFAIRS 69TH REPORT ON ACTION TAKEN BY GOVERNMENT ON THE RECOMMENDATIONS/ OBSERVATIONS OF THE COMMITTEE

The Law Commission in the various reports has stressed upon the Government to act seriously on judicial reforms and to take effective steps for better administration of justice since about 2.5 crores of cases are pending before the courts and the people are disillusioned about the disposal. The Committee

128. See supra note 97.
129. See supra note 6.
expressed its serious concern over the pendency of cases and made the following recommendations:

- The Government to increase the number of posts of Judicial Officers, appointment of Special Judicial/Metropolitan Magistrates. Secondly, establishment of Special Courts or tribunals. Thirdly, improvement in the standard of Legal education. Fourthly, adoption of alternative modes of dispute resolution, such as arbitration and conciliation.

- Lok Adalats have been given a statutory base as supplementary forum for resolution of disputes. Efforts are also being made for increasing the use of information technology in courts for registration of cases, their allocation to judges, preparation of case lists, maintenance of case history, preparation of notices, warrants and other processes, preparation of certified copies, various reports and returns, accessing judicial pronouncements, databases. It is not enough to provide computers to the judges. They must know how to use the computers efficiently. There is a need to impart systematic computer training to court staff as well as judges. They can be benefited from various computer applications.\(^{131}\)

- Computerised enquiry and facilitation centers for helping litigants and advocates are also being set up in High Courts. Such centers are also proposed to be set up in district courts.

In 1987, the Legal Service Authority Act was enacted by which LokAdalats have been given a statutory base as supplementary forum for resolution of disputes.

\(^{131}\) see supra note 20, p.293.
The Commission directed the Government to furnish facts and figures of the fresh appointments of judges or judicial officers, to use of information technology in courts and to conduct Lok Adalats state-wise.

The committee feels that the time has come for introspection and to respond to the just expectations of the litigant public who clamor for speedy justice and access to justice round the year.

In this report, the Committee recommended the concept of legal aid by creating legal awareness. Alternative Dispute Resolution techniques like arbitration, conciliation, mediation and lok adalat to be encouraged. The judicial strength to be increased and more tribunals should be established. Computerized enquiry and facilitation centers should be provided to help the litigants.

3.24 ARREARS COMMITTEE, 2007

Arrears Committee observed that there is a lot of pressure of work in all the High Courts and the problem has become so acute, every possible endeavour should be made to effectively tackle this problem. The committee observed:-:-

“We are conscious of the fact that the Judges work very hard not only during court hours but outside the court hours, not only during working days of the High Court but also during holidays and vacations. We are also conscious of the fact that it is a highly taxing intellectual work which requires adequate time for relaxation. The Judges have to catch up with a lot of general reading, the progress and trends in law and jurisprudence in other countries in the

132. Arrears Committee was constituted by the Government of India on the recommendations of the Chief Justices’ Conference in 2007.
world. They may be required to participate in seminars for updating their knowledge and for mutual exchange of views. These being the special requirements of the Judges, their working cannot be compared to the working of other administrative and executive branches. These special requirements of the Judges cannot be served without providing vacations for reasonable periods. At the same time, the Judges, who should be vitally concerned with the problem of arrears, particularly when the problem has reached such critical levels, should come forward to make some sacrifice for achieving the larger goal at least for the next couple of years, until the problem is brought under control. It is against this background that we feel that we should come forward to make some sacrifice in the larger interest. This undoubtedly calls for hard work and sacrifice on the part of the Judges which we feel must be offered ungrudgingly and graciously for achieving the noble cause. We trust that the Bar will not be found wanting in making their own contribution by extending their full cooperation.

- The recommendations of the Arrears Committee are to reduce the vacations by 21 days.

As per the Supreme Court’s calendar for 2014, of the 365 days, the court will work for nearly 200 days whereas in 2013, the court worked for nearly 176 days and 189 days were holidays which included roughly 104 Saturdays and Sundays, and nearly two-and-a-half months of summer vacations.133

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In this report, the Committee appreciated the judicial officer for the task performed by them. Updation of knowledge, intellectual work and reading done. It cannot be compared with any other administrative and executive officer work. However, today the arrears of cases have reached a critical point. The contribution of judges and the Bar is required. The vacation of the judges should be reduced to 21 days is yet not implemented. This reduction, according to the researcher is not fully just. Reduction should be first implemented to some days and then later on increased to some more extent.

3.25 28TH REPORT, PARLIAMENTARY STANDING COMMITTEE ON RAJYA SABHA ON LAW AND JUSTICE, 2008

The Standing Committee has dealt with the Supreme Court (Number of Judges) Amendment Bill, 2008 and has noted that:

The inordinate delay in delivering justice to the people defeats the very purpose of the judiciary as an institution. The magnitude of the problem of the pendency of cases in various levels in the judiciary must be understood in the context that the people resort to judicial remedy as a last resort for the redressal of their grievances and to get justice. This is so because people have reposed their ultimate faith and trust in the judicial system above the legislature and executive. In this context pendency of cases hits the common man, seeking justice, the hardest. Perhaps, that is the reason that it is said justice delayed is justice denied. However, in spite of the
various measures taken by the Government and the judiciary itself, it is a matter of serious concern that the pendency or arrears of cases has been increasing steadily over the years bringing the judicial system as a whole to near stagnation. Further, the pendency of cases in the Supreme Court is very reflective of the delays in the judicial system, thus, a cause of extreme concern requiring immediate remedial steps.

The background note of the Department of Justice on the Bill for increasing number of Supreme Court Judges\(^\text{134}\) presented before the Standing Committee stated:

"The Chief Justice of India has informed that there were 41,078 cases pending in the Supreme Court as on 01.03.2007 and the Judges feel over-burdened and have been working under acute work pressure. He has further stated that despite satisfactory high rate of disposal, pendency of cases in the Supreme Court has constantly been on the rise due to comparatively higher rate of institution of cases. Pendency of cases in the courts could be directly ascribed to complex factors, with inadequate judge strength coming at the top”.

In the case of *P. Ramachandra Rao v. State of Karnataka* case,\(^\text{135}\) the poor judge- population ratio was described as the root cause for the delay in dispensation of justice.

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134. Law Commission of India, 229th Report on Need for division of the Supreme Court into a Constitution Bench at Delhi and Cassation Benches in four regions at Delhi, Chennai/Hyderabad, Kolkata and Mumbai (2009).

The report recommended increasing the number of judges. The Judge-Population ratio is 10.5 judges per 10 lakh people in India. In order to reduce pendency, the appointments should be made at pace with the institution of cases.\footnote{136}{See supra note.1.} Chief Justice Khare has quoted that the appointment of judges is very lengthy and Government alone is responsible for the delay.\footnote{137}{See supra note.19.} Article 130 of the Constitution of India, 1950 should be implemented. It provides that the Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President from time to time, appoint.\footnote{138}{See supra note.20.}

Here, the problem of pendency of cases has been looked into by the Committee. The delay in justice leads to denial of justice to the litigants. The faith, trust and confidence of a common man are shaken. The poor litigant is hit the hardest by the pendency. In the Apex court, the pendency in 2007 is 41,078 cases which shows immediate remedial steps to be taken. The committee recommended on increase in the number of judicial officers.

**National Court Management System (NCMS), 2012**

Justice S.H.Kapadia has constituted NCMS. This scheme consists of Chief Justice of India and will have 18 members.\footnote{139}{www.supremecourtofindia.nic.in/ncms27092012.pdf retrieved on February 2, 2014.} This Committee will work on the administration of cases from lower court to higher court. The system will need to include the following six main elements:

(1) A National Framework of Court Excellence (NFCE) that will set measurable *performance standards* for Indian courts,
addressing issues of quality, responsiveness and timeliness.

(2) A system for monitoring and enhancing the performance parameters established in the NFCE on quality, responsiveness and timeliness.

(3) A system of Case Management to enhance user friendliness of the Judicial System.

(4) A National System of Judicial Statistics (NSJS) to provide a common national platform for recording and maintaining judicial statistics from across the country. NSJS should provide real time statistics on cases and courts that will enable systematic analysis of key factors such as quality, timeliness and efficiency of the judicial system across courts, districts/states, types of cases, stages of cases, costs of adjudication, time lines of cases, productivity and efficiency of courts, use of budgets and financial resources. It would enhance transparency and accountability.

(5) A Court Development Planning System that will provide a framework for systematic five year plans for the future development of the Indian judiciary. The planning system will include individual court development plans for all the courts.

(6) A Human Resource Development strategy setting standards on selection and training of judges of subordinate courts. The System recommended for Case Management, following aspects may require to be looked into such as:-

a. Settling issues,

b. Encouraging parties to resort to ADR,

c. Extensive use of Order X of Code of Civil Procedure, 1908 in civil matters to narrow down issues,
d. Fixing time schedules for specific steps.

Also, procedure for assigning cases to specialized Courts need resolution. Computerization of Procedures be done. Procedures be so computerized that the moment a case crosses a particular stage, the website shows and computer sets the next stage.

The Hon’ble Supreme Court of India, in the case of All India Judges Association v. Union of India\textsuperscript{140} observed as under: -

"An independent and efficient judicial system is one of the basic structures of our Constitution. If sufficient number of Judges are not appointed, justice would not be available to the people, thereby undermining the basic structure. It is well known that justice delayed is justice denied. Time and again the inadequacy in the number of Judges has adversely been commented upon. Not only have the Law Commission and the standing committee of Parliament made observations in this regard, but even the head of the judiciary, namely, the Chief Justice of India has had more occasions than once to make observations in regard thereto. Under the circumstances, we feel it is our constitutional obligation to ensure that the backlog of the cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, we are of the opinion that time has now come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase, in the first instance, in the Judge strength.

\textsuperscript{140} 2002 (4) SCC 247.
from the existing ratio of 10.5 or 13 per 10 lakhs people to 50 Judges for 10 lakh people. We are conscious of the fact that overnight these vacancies cannot be filled. In order to have Additional Judges, not only the post will have to be created but infrastructure required in the form of Additional Court rooms, buildings, staff, etc., would also have to be made available. We are also aware of the fact that a large number of vacancies as of today from amongst the sanctioned strength remain to be filled. We, therefore, first direct that the existing vacancies in the subordinate Court at all levels should be filled, if possible, latest by 31st March, 2003, in all the States. The increase in the Judge strength to 50 Judges per 10 lakh people should be effected and implemented with the filling up of the posts in phased manner to be determined and directed by the Union Ministry of Law, but this process should be completed and the increased vacancies and posts filled within a period of five years from today. Perhaps increasing the Judge strength by 10 per 10 lakh people every year could be one of the methods which may be adopted thereby completing the first stage within five years before embarking on further increase if necessary.”

APPRAISAL

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.