DISCUSSION PAPER

Draft for Comments

May 2013

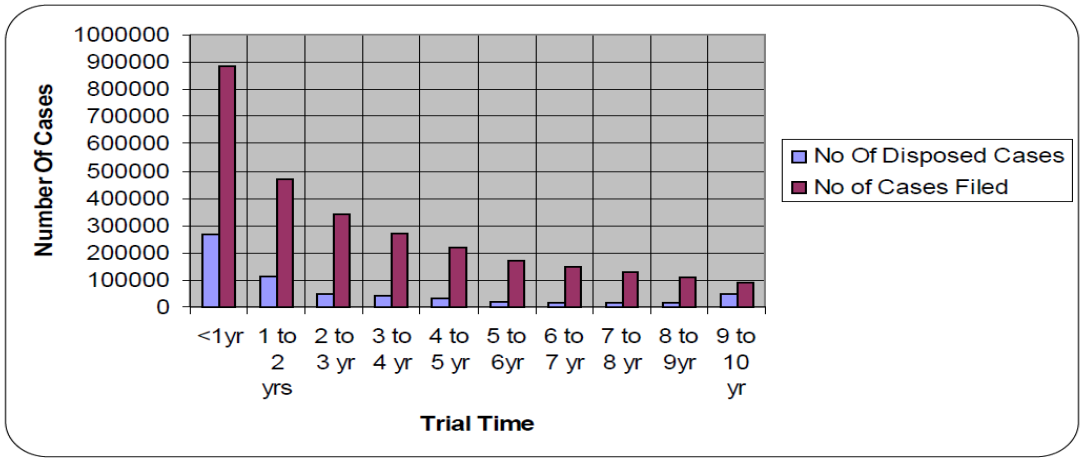
Judiciary – a crumbling pillar of Indian democracy?
Speeding up delivery of justice in India

The famous quote of George Washington which is over two centuries old is still valid: 'the administration of justice is the firmest pillar of government.' The current judicial scenario in India does not live up to this adage in a number of its manifestations. This discussion paper looks at one of them – that of the staggering arrears in disposal of cases in the various courts – estimated at 3.2 crore. After stating the problem, the paper discusses its various causes, steps/reforms taken to address the malaise and finally suggests a way forward for stimulating further discussions.

Background

Of the 3.2 crore pending cases in various courts of India, 56,383 are in the Supreme Court itself[1] and another 43.22 lakh before the country's high courts (October, 2012).[2] What is more alarming is that nearly 30 percent of cases, nearly one crore, are over five years old[3] and that the rate of disposal is considerably less than fresh cases being filed (Figure 1) on year-to-year basis till the year 2002. The Supreme Court-supported Scheme of National Court Management System (NCMS) set up recently has conservatively estimated that over the next three decades, the number of cases would increase five-fold to about 15 crore requiring some 75,000 courts/judges.[4] This alarming one-of-its-kind, if not the first, estimation signals an important change in perspective as it goes beyond the extant situation and underlines the imperative need for urgent and swift action before it is too late.

Figure 1: Cases filed and disposed (1997-2002) in 18 of the 21 High Courts in India



Source: Economic Analysis of the Indian Judiciary System
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1002670 accessed on January 18, 2013

The confidence of the citizenry in the judiciary has taken a hammering with dwindling reliability and dependability thereon bringing in its wake heightened social, political and economic tensions. For example, as of 2010, out of 430,000 people incarcerated in the country, a startling 70 percent (300,000) are under trial prisoners![5] In view of the prevailing scenario, a World Bank report has referred to the Indian judiciary as 'notoriously inefficient.'[6] Moreover, the International Finance Corporation in its 'Doing Business Report 2012' has ranked India at a dismal 182 in terms of enforcing contracts.[7]

There is an urgent need to make the judicial system 'five plus free' (free of cases over five years old) and to shorten the average life cycle of all cases to bring about the average to no more than about one year in each court.

Why the pile-up?

Shortage of judges

At present about 19,000 judges are dealing with a pendency of over 3 crore cases. The NCMS has put the statistics in perspective by stating that India has one of the largest judicial systems in the world and the system has expanded rapidly in the last three decades.[8] In the year 2011, on an average, each judge disposed 1,372 cases in a span of 12 months.[9] There have been nearly 30 percent vacancies in high courts for the past three years, besides 19 percent vacancies in lower courts.[10] Even the Supreme Court is plagued by such vacancies.

The Law Commission in 1987 had recommended 50 judges per million population as against the then-existing 10.5[11] (the ratio now (2013) is 15.5 per million, still grossly inadequate, as acknowledged by the Prime Minister himself).[12] To achieve this ratio, India will need 75,000 judges at the end of the next three decades.

Government litigation

Today, the government is a litigant in about 70 percent of pending cases and, what is worse, is the estimation that more than 60 percent of litigation in the country is between and amongst the Centre, the State, its undertakings and local authorities.[13] This phenomenon not only costs the exchequer but also wastes time of the courts both of which can be gainfully employed instead towards speedier delivery of justice.

Repetitive and unjustified adjournments

Sometimes deleterious adjournments are sought and granted deliberately only for the purpose of delaying a case. The corrosive effect of adjournments has been acknowledged in several instances by the Supreme Court itself. Supreme Court in its judgment relating to delay in disposing a case under the Narcotic Drugs and Psychotropic Substances (NDPS) Act, observed that the legislature had enacted a crucial amendment in the form of fourth proviso to section 309(2)[14] of the Criminal Procedure Code, 1973, to tackle the problem, but lamented that it awaits notification for more than three years.[15]

Absence of a mechanism for evaluation of judges

There is no system for assessing the performance and thereby of evaluation of judges in India unlike practices prevalent in some countries, such as the US and Sweden.[16] In these countries, the stress is on legal ability, integrity, fairness, communication and writing skills. In the Indian context, disposal of cases by judges *vis-à-vis* total pendency should form another performance indicator for increasing the effectiveness and work culture of the entire judicial system. Absence of such a review contributes to the mounting pendency.

Inadequate case management practices

The Civil Procedure Code, 1908; the Criminal Procedure Code, 1973 and the Consumer Protection Act, 1986 lay down time limits for disposal of cases. In 2005, the Supreme Court

directed high courts to formulate rules for fixing a time limit for disposal of civil and criminal cases so that the huge backlog could be cleared expeditiously.[17] (For other such cases in which the Supreme Court gave directions to the government and the judiciary, to further judicial reforms, please refer to Annexure I.) Since these have not yielded the desired results, there is a need to look at successful case management practices prevalent in other jurisdictions.

Miscellaneous

Often, the litigants have been extremely lethargic in filing appeals and condonation of delay by the courts only makes matters worse. In the case of *State of Karnataka vs Y Mooideen Kunhi* the former preferred an appeal in the High Court 14 years after losing a case before a land tribunal[18]!

A contentious part of the Contempt of Courts Act, 1971 is the clause c), sub-clause i) under Section 2. It lays down that criminal contempt means the publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which i) scandalises or tends to scandalise, or lowers or tend to lower the authority of any court… Former Supreme Court Judge, Markandey Katju interpreted that the purpose of the contempt power can only be to enable the court to function and the test to determine whether an act amounts to contempt of court or not is: does it make the functioning of the judges impossible or extremely difficult? If it does not, then it does not amount to contempt of court even if it is harsh criticism.

Frequent use of this power adds to the backlog. Can its applicability be studied in other countries to temper the provision with the aim of bringing in moderation?

Reforms undertaken/being tried

The earliest institution set up in independent India in 1955 for law reforms was the Law Commission. Since then 20 Law Commissions have been set up and currently the 20th Law Commission is in progress. One of its terms of references includes elimination of delays.

'It is manifest that many of the important recommendations made by the Law Commissions, from time to time, have not even been properly discussed, leave aside their implementation by the Government.' This is the poignant observation of the Supreme Court-supported NCMS in its Policy and Action Plan released in September 2012.

Earlier, in June 2010 the National Litigation Policy was released with the aim of substantially reducing the average time in disposal of court cases.

There have been other attempts as well in the recent past that seek to address the main causal factors. However, it is too early to assess whether or not these initiatives would bear fruit.

Lok Adalats

Lok Adalats (or people's courts) is a system of alternate dispute resolution developed in India. This system of dispute resolution relies upon voluntary participation and accommodation, fairness and compromise and can deal with both commercial and non-commercial cases. It has found to be suitable to the Indian environment, culture, and perception of justice and has been made use of in the disposal of disputes related to motor accident claims, matrimonial and family, labour, public services, bank recovery, etc. The primary aim of the system of providing relief towards the burden on courts and providing an alternative system of dispute resolution has been successfully achieved.

Specialised and fast track courts

There are some instances of specialised courts in India that should be emulated in other cases also. After Australia and New Zealand, India became only the third country to set up a full-fledged environmental court on October 19, 2010 to deal with the environment issues, make polluters pay.[19]

To deal with specific categories of crime like terror, sexual offences, corruption, etc. the concept of fast track courts was introduced. The Centre, however, discontinued the fast track court scheme in March, 2011 after running it for over 11 years. Several states decided to convert these courts to regular courts while others decided to run the same without central assistance. The Law Ministry also allowed morning and evening courts in 2010 but the scheme failed to take off resulting in non-utilisation of scarce funds. The Centre is now contemplating to divert this allocation towards setting up of fast-track courts.

However, these can at best be considered interim solutions to the overall burden of pendency and in the long run it is not only the specific categories but *all* cases that must be dealt with speed.

National Mission for Justice Delivery and Legal Reforms

The setting up of the National Mission for Justice Delivery and Legal Reforms was approved in June 2011.[20] The National Mission would help in implementing the two major goals of increasing access by reducing delays and arrears in the system and enhancing accountability at all levels through structural changes and setting performance standards and facilitating enhancement of capacities for achieving such performance standards. A mission mode approach is proposed to improve the infrastructure of subordinate courts under National Mission.

Scheme of National Court Management System

An eminent step towards judicial reforms is the setting up of the Supreme Court-supported NCMS referred to above. It will primarily deal with policy issues and focus on setting up of performance standards (develop a National Framework of Court Excellence); devise a system for monitoring and enhancing quality, responsiveness and timeliness; case management to enhance user friendliness of the judicial system; examine setting up of a National System of Judicial Statistics (NSJS); a Court Development Planning System and a Human Resources Development Strategy.

Indeed if this latest scheme were to be implemented in letter and spirit, it has the potential to adequately address the problems that the judiciary is currently faced with.

Way forward

In the face of global delays, the Judiciary has exhibited in some cases how speedily it can deliver (Table 1). However, one swallow does not make a summer and much remains to be accomplished. The factors responsible for the pile up and solutions thereto are also known to the government and the Judiciary. The National Litigation Policy (June, 2010) provides a framework for reducing average pendency time from 15 years to three years.[21] Please see Annexure II for further reference.

The Law Commissions, the National Mission for Justice Delivery and Legal Reforms and most recently, the Scheme of NCMS are manifestations of the present ‘strategy-in-use in India to address coordination and implementation failures is to: (1) appoint more committees to coordinate; and (2) more monitoring agencies’ as expounded by the Planning Commission, Government of India in its paper on India Backbone Implementation Network. Such endeavours would be useful in case they could develop the ability to get things done. Why not having a single agency to look generally into judicial reforms and specifically into delays to save on precious and scarce resources?

Table 1: Two Extremes	
Delayed justice	**Speedy justice**
1993 Blasts Trial The trial of the 1993 Mumbai blasts lasted 14 long years and even when concluded, the case remains unfinished since the trial of Mustafa 'tiger' Memon and Dawood Ibrahim, the main accused in the case could not take place.[22]	26/11 Terror Trial The trial of the 26/11 terror attacks in Mumbai made history by earning the distinction of being the fastest ever terror trial in India. The trial concluded in just 271 days. Ajmal Kasab, the lone surviving perpetrator of the attacks was convicted and given capital punishment on May 06, 2010.[23]
Bhanwari Devi Rape Case In spite of huge public support and a nation-wide campaign for justice for the gang-rape victim, Bhanwari Devi, the Rajasthan High Court had only one hearing in 15 years spanning between the rape and the year 2007. By then, two of the five accused were already dead. The case was also refused to be transferred to a fast track court.[24] As of December 2012, the case is still pending with the High Court.[25]	*Bitihotra Mohanti vs. State Case* One of the quickest rape trials to be conducted was in Alwar in 2006 where a German tourist was raped by the son of an Orissa IPS officer. The fast track court of R K Maheshwari finished the trial in 15 days from the time it received the case and convicted Bitti Mohanti, the accused. The Court started hearing the case just eight days after a complaint was lodged and took another five days to examine 21 witnesses to arrive at a verdict.[26]
Bhopal Gas Tragedy Case The tragedy took place in 1984. It is widely believed that a lot of injustice has been done to victims with the case taking over two decades to arrive at any decision, which was too little and too late in 2010. The then Union Carbide Corporation Chief Warren Anderson, now 93, is still absconding in the case.[27]	Verdicts in Punjab, Jodhpur In January 2013, a local court in Jodhpur convicted a man accused of misbehaving with a woman in a moving bus within six days of the crime. The police had filed the charge sheet within 16 hours of the act of misbehaviour.[28] Similarly a few days later in Punjab, a court in Patiala delivered a rape verdict within five working days since the start of the hearing, sentencing the convict to seven years of rigorous imprisonment.[29]

The strategies for highest overall impact would need to address both institutional and procedural problems. Suggestions range from filling up of vacancies at all levels in the judiciary, setting an outer time limit for completion of hearings, performance monitoring/accountability of the judges, just and proper appointment of judges, raising of the retirement age of the judges, introduction of technology, addressing issues such as

contempt of court/plea bargaining, etc. deserve to be pursued and various mechanisms for doing so are in place. However, there are some low-hanging-fruits by way of solutions available to the government to take effective steps forward.

Government litigation

Avoiding government litigation is one of such. In view of the fact that the government is a litigant in about 70 percent of pending cases and the estimation that more than 60 percent of litigation in the country is between and amongst the Centre, the State, its undertakings and local authorities at the cost of public money, this is obviously an area that has the highest potential to contribute towards reduction in pendency of court cases. The Supreme Court had asked the government to set up a mechanism to resolve such disputes before they are taken to the Court(s).

In its 1992 judgement (*ONGC vs Collector of Excise*), the court asked the government to form a High Power Committee to examine and resolve the dispute.[30] The idea behind setting up of this High Powered Committee, later called the 'Committee of Secretaries' and finally as 'Committee on Disputes (CoD) was to ensure that resources of the state are not frittered away in *inter se* litigation. Yet the mechanism has not achieved what it was expected to. Why should courts even entertain such litigation generally? This leads to the next solution, namely effecting progressive case management practices.

Case management practices[31]

In addition to strict adherence to the prescribed norms, the judiciary would need to look beyond. Experience from countries such as the UK, the US and Australia provide good leads. Case management refers to a judicial process that provides effective, efficient and purposeful judicial management to achieve a timely and qualitative resolution. This entails early identification of disputed cases of fact and law; establishing a procedural calendar; differential treatment of cases; early involvement of a judicial officer in planning the case; regular communication and above all assigning cases to alternative modes of dispute resolution. Fratricidal litigation between the various arms of the government falls within the ambit of alternative dispute resolution as also plea bargaining.

An eye on the future

In a first-of-its-kind projection, the scheme of NCMS has brought into perspective what the pile up would translate into over the next three decades. Two of the important factors considered by NCMS are the literacy rate and per capita income increases in the country. This brings into sharp focus issues of appointment of judges, their performance and accountability. If the fact of globalisation is also considered then it is apparent that the current system of appointment of judges through the collegium system would need to be replaced by an Appointment Commission that would need to keep in mind the necessity of knowledge of economics with judges, as predictably, we have various issues typical to globalisation in line. This overhaul is being contemplated by the government but is still far from being adopted.

While the above may take time to implement, raising retirement age of *performing* judges could be taken up urgently. Mechanisms should be put in place to evaluate the performance of judges as well as advocates to assure that standards suitable to the need for timely and efficient delivery of justice are maintained. Clarification on the use of contempt of court cases might also help contain addition of cases in the courts. Similarly, the success of *Lok Adalats* should

be taken note of and the system revived and institutionalised.

Another measure that can be taken to improve court efficiency is video coverage of court proceedings in India, taking lessons from countries like US, UK, Australia, New Zealand; even Mexico and Namibia, where court proceedings are recorded, are even open for television broadcast (in New Zealand). That shall bring in transparency, prevent lawyers from engaging in delaying tactics and shall also produce a better record of the proceedings.

Conclusion

As with almost all sectors, poor implementation is the root cause for the mounting pendency. Both the factors responsible for the accumulation of court cases as well as steps that can be taken to tackle the problem are on the table as enunciated by the Law Commissions; the National Litigation Policy; the National Mission for Justice Delivery and Legal Reforms and most recently, the Scheme of NCMS. A time has come to revisit the present strategy-in-use and to identify a single agency to be entrusted with task of time bound implementation.

Issues for Discussion

- With an estimated 3.2 crore pending cases in Indian courts at present that are likely to amass to about 15 crore over the next three decades, is it not time to act?
- Is the confidence of citizens in judiciary not dwindling thereby increasing social, political and economic tensions?
- How can 30 percent vacancies in high courts and 19 percent in lower courts be met with?
- Why should there be 60 percent of cases involving various arms of the government and why can this phenomenon not be checked?
- The causes and possible remedies have been identified by the Law Commissions; the National Litigation Policy; the National Mission for Justice Delivery and Legal Reforms and most recently, the Scheme of NCMS. In this context a) why the implementation is not being carried out? and b) Is there a need for a single agency to be made accountable for implementation?

Where prevails not evil mala fide, but the righteous philosophy of the Preamble,
A society blossoming with progress, and not writhing in hopeless shambles!
Where justice and fairness are within a comfortable reach,
Where dwell peace, prosperity, thanks to redemption from the corruption-leech!
A world not dictated by discretion erratic, instead governed by responsibility sublime,
Let's hope to see the unfeathered golden bird get her plumage again, which lasts forever this time!

Annexure I

Following are cases which were decided by the Supreme Court of India. The Supreme Court gave various directions to the Central and State Government as well as the Judiciary, to further Judicial Reforms in the country. Unfortunately even the directions given by the Apex Court have not been implemented.

CITATION	CASE AND GIST	DIRECTION OF COURT
Judgement delivered on January 29, 2013	***Noor Mohammed vs. Jetha Nand & Anr*** The Bench eloquently discusses the dire situation the Judicial System is in, and the apathetic attitude of the Bar towards the same Discusses causes of delay in justice with special emphasis on the corrosive effects of unnecessary adjournments Calls on the judicial society to ascertain speedy delivery of justice by minimising needless and wrongful delays in the process of litigation	1. In a democratic body polity which is governed by a written Constitution and where Rule of Law is paramount, judiciary is regarded as sentinel on the qui vive not only to protect Fundamental Rights of citizens but also to see that the democratic values as enshrined in the Constitution are respected and the faith and hope of the people in the constitutional system are not atrophied. Sacrosanctity of rule of law neither recognises a master and a slave nor does it conceive of a ruler and a subject but, in quintessentially, encapsules and sings in glory of the values of liberty, equality and justice In accordance with law requiring the present generation to have the responsibility to sustain them with all fairness for the posterity ostracising all affectations. To maintain the sacredness of democracy, sacrifice in continuum by every member of the collective is a categorical imperative. The fundamental conception of democracy can only be preserved as a colossal and priceless treasure where virtue and values of justice rule supreme and intellectual anaemia is kept at bay by constant patience, consistent perseverance, and argus-eyed vigilance. The foundation of justice, apart from other things, rests on the speedy delineation lis pendens in courts. It would not be an exaggeration to state that it is the primary morality of justice and ethical fulcrum of the judiciary. Its profundity lies in not allowing anything to cripple the same or to do any act which would freeze it or make it suffer from impotency. Delayed delineation of a controversy in a court of law creates a dent in the normative dispensation of justice and in the ultimate eventuate, the Bench and the Bar gradually lose their reverence, for the sense of divinity and nobility really flows from institutional serviceability. Therefore, historically, emphasis has been laid on individual institutionalism and collective institutionalism of an adjudicator while administering justice. It can be stated without any fear of contradiction that the collective collegiality can never be regarded as an alien concept to speedy dispensation of justice. That is the hallmark of duty, and that is the real measure. 11. The proceedings in the second appeal before the High Court, if we allow ourselves to say so, epitomises the corrosive effect that

CITATION	CASE AND GIST	DIRECTION OF COURT
		adjournments can have on a litigation and how a lis can get entangled in the tentacles of an octopus. The philosophy of justice, the role of a lawyer and the court, the obligation of a litigant and all legislative commands, the nobility of the Bench and the Bar, the ability and efficiency of all concerned and ultimately the divinity of law are likely to make way for apathy and indifference when delay of the present nature takes place, for procrastination on the part of anyone destroys the values of life and creates a catastrophic turbulence in the sanctity of law. The virtues of adjudication cannot be allowed to be paralysed by adjournments and non-demonstration of due diligence to deal with the matter. One cannot be oblivious to the feeling necessities of the time. No one can afford to sit in an ivory tower. Neither a Judge nor a lawyer can ignore "the total push and pressure of the cosmos". It is devastating to expect infinite patience. Change of attitude is the warrant and command of the day. We may recall with profit what Justice Cardozo had said: "It is true, I think, today in every department of law that the social value of a rule has become a test of growing power and importance". 12. It has to be kept in mind that the time of leisure has to be given a decent burial. The sooner it takes place, the better it is. It is the obligation of the present generation to march with the time and remind oneself every moment that rule of law is the centripodal concern and delay in delineation and disposal of cases injects an artificial virus and becomes a vitiating element. The unfortunate characteristics of endemic delays have to be avoided at any cost. One has to bear in mind that this is the day, this is the hour and this is the moment, when all soldiers of law fight from the path. One has to remind oneself of the great saying, "Awake, Arise, 'O' Partha". 23. We have referred to the aforesaid judgments solely for the purpose that this Court, in different contexts, had dealt with the malady of adjournment and expressed its agony and anguish. Whatever may be the nature of litigation, speedy and appropriate delineation is fundamental to judicial duty. Commenting on the delay in the justice delivery system, although in respect of criminal trial, Krishna Iyer, J. had stated thus: - "Our justice system, even in grave cases, suffers from slow motion syndrome which is lethal to "fair trial", whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."

CITATION	CASE AND GIST	DIRECTION OF COURT
		24. In criminal jurisprudence, speedy trial has become an indivisible component of Article 21 of the Constitution and it has been held by this Court that it is the constitutional obligation on the part of the State to provide the infrastructure for speedy trial 27. The anguish expressed in the past and the role ascribed to the Judges, lawyers and the litigants is a matter of perpetual concern and the same has to be reflected upon every moment. An attitude of indifference can neither be appreciated nor tolerated. Therefore, the serviceability of the institution gains significance. That is the command of the Majesty of Law and none should make any maladroit effort to create a concavity in the same. Procrastination, whether at the individual or institutional level, is a systemic disorder. Its corrosive effect and impact is like a disorderly state of the physical frame of a man suffering from an incurable and fast progressive malignancy. Delay either by the functionaries of the court or the members of the Bar significantly exhibits indolence and one can aphoristically say, borrowing a line from Southwell "Creeping snails have the weakest force". Slightly more than five decades back, talking about the responsibility of the lawyers, Nizer Louis[16] had put thus: "I consider it a lawyer's task to bring calm and confidence to the distressed client. Almost everyone who comes to a law office is emotionally affected by a problem. It is only a matter of degree and of the client's inner resources to withstand the pressure." 29. In a democratic set up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice dispensation system cannot be allowed to remotely conceive of a casual approach.

CITATION	CASE AND GIST	DIRECTION OF COURT
		"35. ...Courts have always been considered to have an overriding duty to maintain public confidence in the administration of justice – often referred to as the duty to vindicate and uphold the "majesty of the law". Due administration of justice has always been viewed as a continuous process, not confined to determination of the particular case, protecting its ability to function as a court of law in the future as in the case before it." Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be herculean, the same has to be performed with solemnity, for faith is the 'élan vital' of our system. 32. It is the duty of the counsel as the officer of the court to assist the court in a properly prepared manner and not to seek unnecessary adjournments. Getting an adjournment is neither an art nor science. It has never been appreciated by the courts. All who are involved in the justice dispensation system, which includes the Judges, the lawyers, the judicial officers who work in courts, the law officers of the State, the Registry and the litigants, have to show dedicated diligence so that a controversy is put to rest. Shifting the blame is not the cure. Acceptance of responsibility and dealing with it like a captain in the frontier is the necessity of the time. It is worthy to state that diligence brings satisfaction. There has to be strong resolve in the mind to carry out the responsibility with devotion. A time has come when all concerned are required to abandon idleness and arouse oneself and see to it that the syndrome of delay does not erode the concept of dispensation of expeditious justice which is the constitutional command. Sagacious acceptance of the deviation and necessitous steps taken for the redressal of the same would be a bright lamp which would gradually become a laser beam. This is the expectation of the collective, and the said expectation has to become a reality. Expectations are not to remain at the stage of hope. They have to be metamorphosed to actuality. Long back, Francis Bacon, in his aphoristic style, had said, "Hope is good breakfast, but it is bad supper". We say no more on this score. 33. It is also expected from the lawyers' community to see that delay is avoided. A concerted effort is bound to give results. Therefore, we request the learned Chief Justice of the High Court of Rajasthan as well as the other learned Chief Justices to conceive and adopt a mechanism, regard being had to the priority of cases, to avoid such inordinate delays in matters which can really be dealt with in an expeditious manner. Putting a step forward is a step towards the destination. A sensible

CITATION	CASE AND GIST	DIRECTION OF COURT
		individual inspiration and a committed collective endeavour would indubitably help in this regard. Neither less, nor more.
2011 (2) O.J.R. 579 (S.C.)	***M/S Shiv Cotex vs Tirgun Auto Plast P.Ltd.& Ors.*** While discussing the undue delays caused in the justice delivery system due to wrongful adjournments granted by the Courts in contravention of the provisions of the C.P.C., the Bench stated that the litigants as well as the Bar has the responsibility to carry out litigations with utmost respect to the judicial system of the Country. The Bench therefore disapproved of litigants callously seeking in numerous adjournments without any reasonable justification.	15. ……Is the court obliged to give adjournment after adjournment merely because the stakes are high in the dispute? Should the court be a silent spectator and leave control of the case to a party to the case who has decided not to take the case forward? It is sad, but true, that the litigants seek - and the courts grant - adjournments at the drop of the hat. In the cases where the judges are little pro-active and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation. It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further. The case in hand is a case of such misplaced sympathy. It is high time that courts become sensitive to delays in justice delivery system and realise that adjournments do dent the efficacy of judicial process and if this menace is not controlled adequately, the litigant public may lose faith in the system sooner than later. The courts, particularly trial courts, must ensure that on every date of hearing, effective progress takes place in the suit. 16. No litigant has a right to abuse the procedure provided in the CPC. Adjournments have grown like cancer corroding the entire body of justice delivery system. It is true that cap on adjournments to a party during the hearing of the suit provided in proviso to Order XVII Rule 1 CPC is not mandatory and in a suitable case, on justifiable cause, the court may grant more than three adjournments to a party for its evidence but ordinarily the cap provided in the proviso to Order XVII Rule 1 CPC should be maintained. When we say `justifiable cause' what we mean to say is, a cause which is not only `sufficient cause' as contemplated in sub-rule (1) of Order XVII CPC but a cause which makes the request for adjournment by a party during the hearing of the suit beyond three adjournments unavoidable and sort of a compelling necessity like sudden illness of the litigant or the witness or the lawyer; death in the family of any one of them; natural calamity like floods, earthquake, etc. in the area where any of these persons reside; an accident involving the litigant or the witness or the lawyer on way to the court and such like cause. The list is only illustrative and not exhaustive. However, the absence of the lawyer or his non-availability because of professional work in other court or elsewhere or on the ground of strike call or the change of a lawyer or the continuous illness of the lawyer (the party whom he represents must then make alternative arrangement

CITATION	CASE AND GIST	DIRECTION OF COURT
		well in advance) or similar grounds will not justify more than three adjournments to a party during the hearing of the suit. The past conduct of a party in the conduct of the proceedings is an important circumstance which the courts must keep in view whenever a request for adjournment is made. A party to the suit is not at liberty to proceed with the trial at its leisure and pleasure and has no right to determine when the evidence would be let in by it or the matter should be heard. The parties to a suit - whether plaintiff or defendant - must cooperate with the court in ensuring the effective work on the date of hearing for which the matter has been fixed. If they don't, they do so at their own peril. …..If despite three opportunities, no evidence was let in by the plaintiff, in our view, it deserved no sympathy in second appeal in exercise of power under Section 100 CPC. We find no justification at all for the High Court in upsetting the concurrent judgment of the courts below. The High Court was clearly in error in giving the plaintiff an opportunity to produce evidence when no justification for that course existed.
(2001) 7 SCC 318	***Anil Rai vs State Of Bihar*** The Bench addressed the delay in the justice system caused due to the Bench reserving the judgement in matters. The Court therefore gave direction for timely adjudication of matters by pronouncement of judgements within a specified time limit.	i) The Chief Justices of high courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, a column be added in the judgment where, on the first page, after the cause-title date of reserving the judgment and date of pronouncing it be separately mentioned by the court officer concerned. ii) That Chief Justices of high courts, on their administrative side, should direct the Court Officers/Readers of the various benches in high courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of that month. iii) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months the concerned Chief Justice shall draw the attention of the Bench concerned to the pending matter. The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover. iv) Where a judgment is not pronounced within three months from the date of reserving judgment any of the parties in the case is permitted to file an application in the High Court with prayer for early judgment. Such application, as and when filed, shall be listed before the bench

CITATION	CASE AND GIST	DIRECTION OF COURT
		concerned within two days excluding the intervening holidays. v) If the judgment, for any reason, is not pronounced within a period of six months any of the parties of the said lis shall be entitled to move an application before the Chief justice of the High Court with a prayer to withdraw the said case and to make it over to any other bench for fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.
2002 AIR 2096, 2002(5) SCC 1	***Brij Mohan Lal vs Union Of India & Ors on May 06, 2002*** The Bench gave clear directions for the setting-up, functioning and addressing of matters by Fast Track Courts.	8. Priority shall be given by the Fast Track Courts for disposal of those Sessions cases which are pending for the longest period of time, and/or those involving under-trials. Similar shall be the approach for Civil cases i.e. old cases shall be given priority. 9. While the staff of a regular Court of Additional District and Sessions Judge includes a Sessions Clerk and an office Peon, work in Fast Track Courts is reported to be adversely affected due to shortage of staff as compared to regular Courts performing same or similar functions. When single Orderly or Clerk proceeds on leave, work in Fast Track Courts gets held up. The staff earmarked for each such Court is a Peshkar/ Superintendent, a Stenographer and an Orderly. If the staff is inadequate, High Court and the State Government shall take appropriate decision to appoint additional staff who can be accommodated within the savings out of the existing allocations by the Central Government. 10. Provisions for the appointment of Public Prosecutor and Process Server have not been made under the Fast Track Courts Scheme. A Public Prosecutor is necessary for effective functioning of the Fast Track Courts. Therefore, a Public Prosecutor may be earmarked for each such Court and the expenses for the same shall be borne out of the allocation under the head 'Fast Track Courts'. Process service shall be done through the existing mechanism. 11. A State Level Empowered Committee headed by the Chief Secretary of the State shall monitor the setting up of earmarked number of Fast Track Courts and smooth functioning of such Courts in each State, as per the guidelines already issued by the Government of India. 12. The State Governments shall utilise the funds allocated under the Fast Track Courts Scheme promptly and will not withhold any such funds or divert them to other uses. They shall send the utilisation certificates from time to time to the Central Government; who shall ensure immediate release of funds to the State Governments on receipt of required utilisation certificates.

CITATION	CASE AND GIST	DIRECTION OF COURT
		18. The High Court and the State Government shall ensure that there exists no vacancy so far as the Fast Track Courts are concerned, and necessary steps in that regard shall be taken within three months from today. In other words, steps should be taken to set up all the Fast Track Courts within the stipulated time. It was submitted by learned counsel appearing for some of the parties that officers with tainted images have been appointed as Fast Track Courts. It is for the High Court of the concerned State to see if any undesirable person not fulfilling the requirements indicated in our directions above has been appointed, and to take immediate steps for terminating the appointment.
(2005) 6 SCC 344	***Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI)*** The Bench assessed the various reasons for delay in disposal of cases and therefore laid down the Model Case Flow Management Rules, so as to ensure speedy adjudication.	Report No.3 Report No.3 deals with the Case Flow Management and Model Rules. The case management policy can yield remarkable results in achieving more disposal of cases. Its mandate is for the Judge or an officer of the court to set a time-table and monitor a case from its initiation to its disposal. The Committee on survey of the progress made in other countries has come to a conclusion that the case management system has yielded exceedingly good results. Model Case Flow Management Rules have been separately dealt with for trial courts and first appellate subordinate courts and for High Courts. These draft Rules extensively deal with the various stages of the litigation. The High Courts can examine these Rules, discuss the matter and consider the question of adopting or making case law management and model rules with or without modification, so that a step forward is taken to provide to the litigating public a fair, speedy and inexpensive justice. We hope that the High Courts in the country would be in a position to examine the aforesaid rules expeditiously and would be able to finalise the Rules within a period of four months. A copy of this judgment shall be sent to all the High Courts through Registrar Generals, Central Government through Cabinet Secretary and State Governments/Union Territories through Chief Secretaries so that expeditious follow up action can be taken by all concerned. The Registrar Generals, Central Government and State/Union Territories shall file the progress report in regard to the action taken within a period of four months.
1980 1 SCC 93	***Hussainara Khatoon vs State of Bihar*** The Bench deliberated upon the issue of	We find from the lists of under-trial prisoners filed before us on behalf of the State of Bihar that the under- trial prisoners whose names are set out in the chart filed by Hingorani to-day have been in jail for periods longer than the maximum term for which they could have been sentenced; if convicted. This discloses a shocking state of affairs and

CITATION	CASE AND GIST	DIRECTION OF COURT
	undertrail prisoners and the necessity to assure fair and speedy trial to every person, so as to resume the faith in the common man in the judicial system.	betrays complete lack of concern for human values. It exposes the callousness of our legal and judicial system which can remain unmoved by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty. It is indeed difficult for us to understand how the State Government could possibly remain oblivious to the continued incarceration of these under- trial prisoners for years without even their trial having commenced. The judiciary in the State of Bihar also cannot escape its share of blame because it could not have been unaware of the fact that thousands of under-trial prisoners are languishing in jail awaiting trial which never seems to commence. We fail to see how the continued detention of these under-trial prisoners mentioned in the list of Hingorani can be justified when we find that they have already been in jail for a period longer than what they would have been sentenced to suffer, if convicted. They have in fact some jail term to their credit. We, therefore, direct that these under-trial prisoners whose names and particulars are given in the list filed by Hingorani should be released forthwith as continuance of their detention is clearly illegal and in violation of their fundamental right under Article 21 of the Constitution. It is, therefore, absolutely essential that persons accused of offences should be speedily tried, so that in cases where bail, in proper exercise of discretion, is refused, the accused persons have not to remain in jail longer than is absolutely necessary. We may also take this opportunity of impressing upon the Government of India as also the State Governments, the urgent necessity of introducing a dynamic and comprehensive legal service programme with a view to reaching justice to the common man. Today, unfortunately, in our country the poor are priced out of the judicial system with the result that they are losing faith in the capacity of our legal system to bring about changes in their life conditions and to deliver justice to them. The poor in their contract with the legal system have always been on the wrong side of the law. They have always come across "law for the poor" rather than "law of the poor". The law is regarded by them as something mysterious and forbidding-always taking something away from them and not as a positive and constructive social device for changing the socio economic order and improving their life conditions by conferring rights and benefits on them. The result is that the legal system has lost its credibility for the weaker sections of the community. It is, therefore, necessary that we should inject equal justice into legality and that can be done only by dynamic and activist scheme of legal services.

CITATION	CASE AND GIST	DIRECTION OF COURT
1994 SCC (6) 731	***S.C. Legal Aid Committee Representrial Under trial Prisoner Vs. Union of India*** The Bench gave the direction prohibiting undertrail prisoners who have already undergone half the maximum punishment for the charged offence, to be further detained.	It is because of this that we have felt that after the accused persons have suffered imprisonment which is half of the maximum punishment provided for the offence, any further deprivation of personal liberty would be violative of the fundamental right visualised by Article 21, which has to be telescoped with the right guaranteed by Article 14 which also promises justness, fairness and reasonableness in procedural matters.
AIR 2002 SC 1752	***All India Judges Association And ... vs. Union Of India*** The Bench delved into the matter of inadequacy in the number of judges in the Courts, which causes delay in the adjudication of matters. The Court directed that all the vacancies in Courts were to be filled and the general ratio of judge per unit population was to be increased.	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 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 affected 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

CITATION	CASE AND GIST	DIRECTION OF COURT
		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.
(2002) 4 SCC 578	***P. Ramachandra Rao vs. State of Karnataka*** The Bench delved into the rights of accused in Criminal proceedings and discussed that every individual has the fundamental right of fair and speedy trial as enshrined in Article 21 of the Constitution. The Court therefore stated that strict adherence to the provision of the Cr.P.C would ensure adjudication of matters within a reasonable time frame.	No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem __ of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. A perception of the causes for delay at the trial and in conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population-ratio. Law Commission of India in its 120th Report on Manpower Planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39A added as a major Directive Principle in the Constitution by 42nd Amendment (1976), obliging the State to secure such operation of legal system as promotes justice and to ensure that opportunities for securing justice are not denied to any citizen several reorganisation proposals in the field of administration of justice in India have been basically patch work, ad hoc and unsystematic solutions to the problem. The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission suggested

CITATION	CASE AND GIST	DIRECTION OF COURT
		that India required 107 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e. 50 judges per million population in a period of five years but in any case not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed (in its 120th Report, ibid) that adequate reorganisation of the Indian judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern. There are other factors contributing to the delay at the trial. In A.R. Antulay's case, vide Para 83, the Constitution Bench has noted that in spite of having proposed to go on with the trial of a case, five days a week and week after week, it may not be possible to conclude the trial for reasons, viz. (1) non-availability of the counsel, (2) non- availability of the accused, (3) interlocutory proceedings, and (4) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. *In Kartar Singh vs State of Punjab* (1994) 3 SCC 569 another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (i) delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally, (ii) the deliberate absence of witness or witnesses, (iii) crowded dockets on the file of the court etc. In Raj Deo Sharma (II), in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarised as, (1) Dilatory proceedings; (2) Absence of effective steps towards radical simplification and streamlining of criminal procedure; (3) Multi-tier appeals/revision applications and diversion to disposal of interlocutory matters; (4) Heavy dockets; mounting arrears; delayed service of process; and (5) Judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning. Several cases coming to our notice while hearing appeals, petitions and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are: (i) absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the accused/witnesses; (iii) non-production of undertrial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. It is common knowledge that appointments of public prosecutors are politicised. By convention, government advocates and public

CITATION	CASE AND GIST	DIRECTION OF COURT
		prosecutors were appointed by the executive on the recommendation of or in consultation with the head of judicial administration at the relevant level but gradually the executive has started bypassing the merit based recommendations of, or process of consultation with, District and Sessions Judges. For non- service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the Courts in expediting the trial. The members of the Bar shall also have to realise and remind themselves of their professional obligation –legal and ethical, that having accepted a brief for an accused they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the Court. All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the Legislature, the Judiciary, the Executive and representative bodies of members of Bar. The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression. Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to 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. Explanation-2 to Section 309 confers power on the Court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the Courts. Section 258, in Chapter XX of Cr.P.C., on Trial of Summons- cases, empowers the Magistrate trying summons cases instituted otherwise than upon complaint, for reasons to be recorded by him, to stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, to pronounce a judgment of acquittal, and in any other case, release the accused, having effect of discharge. This provision is almost never used by the Courts. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give

CITATION	CASE AND GIST	DIRECTION OF COURT
		effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 of Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution.
(1992) 1 SCC 225	***Abdul Rehman Antulay and Ors. Vs. R.S. Nayan and Ors*** The bench deliberated upon the reasons for delay in delivery of justice and the breach of rights of the common man of fair and speedy trial as given under Article 21 of the Constitution. The Bench gave guidelines to be followed for ensuring a more just judicial system which serves the citizens of the country aptly.	50. The provisions of the CrPC are consistent with and indeed illustrate this principle. They provide for an early investigation and for a speedy and fair trial. The learned Attorney General is right in saying that if only the provisions of the Code are followed in their letter and spirit, there would be little room for any grievance. The fact however, remains-unpleasant as it is-that in many cases, these provisions are honoured more in breach. Be that as it may, it is sufficient to say that the Constitutional guarantee of speedy trial emanating from Article 21 is properly reflected in the provisions of the Code. 54. In view of the above discussion, the following propositions emerge, meant to serve as guidelines. We must forewarn that these propositions are not exhaustive. It is difficult to foresee all situations. Nor is it possible to lay down any hard and fast rules. These propositions are : 1. Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or that it serves the societal interest also, does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. 2. Right to Speedy Trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view. 3. The concerns underlying the Right to speedy trial from the point of view of the accused are : (a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to

CITATION	CASE AND GIST	DIRECTION OF COURT
		unnecessary or unduly long incarceration prior to his conviction; (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and (c) Undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise. 4. At the same time, one cannot ignore the fact that it is usually the accused who is interested in delaying the proceedings. As is often pointed out, "delay is a known defence tactic". Since the burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by lapse of time really works against the interest of the prosecution. Of course, there may be cases where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case, where the Right to speedy trial is alleged to have been infringed, the first question to be put and answered is-who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application/petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex-parte representation. 5. While determining whether undue delay has occurred (resulting in violation of Right to Speedy Trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on-what is called, the systemic delays. It is true that it is the obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in such matters instead of a pedantic one. 6. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. As has been observed by Powell, J. in Barker "it cannot be said how long a delay is too long in a system where justice is supposed to be swift but deliberate". The same ideal has been stated by White, J. in U.S. v. Ewell, 15 Lawyers Edn. 2nd

CITATION	CASE AND GIST	DIRECTION OF COURT
		627, in the following words : The sixth amendment right to a speedy trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than more speed, as its essential ingredients; and whether delay in completing a prosecution amounts to an un-constitutional deprivation of rights depends upon all the circumstances. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become prosecution, again depends upon the facts of a given case. 7. We cannot recognise or give effect to, what is called the 'demand' rule. An accused cannot try himself; he is tried by the court at the behest of the prosecution. Hence, an accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet he was not tried speedily, it would be a plus point in his favour, but the mere non-asking for a speedy trial cannot be put against the accused. Even in US, the relevance of demand rule has been substantially watered down in Barker and other succeeding cases. 8. Ultimately, the court has to balance and weigh the several relevant factors-'balancing test' or 'balancing process'-and determine in each case whether the right to speedy trial has been denied in a given case. 9. Ordinarily speaking, where the court comes to the conclusion that Right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order-including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded-as may be deemed just and equitable in the circumstances of the case. 10. It is neither advisable nor practicable to fix any time-limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of Right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the

CITATION	CASE AND GIST	DIRECTION OF COURT
		complaint. The Supreme Court of US too as repeatedly refused to fix any such outer time limit in spite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of Right to speedy trial. 11. An objection based on denial of Right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis.

Annexure II

The National Litigation Policy was brought out in 2010. And since then, many states have framed the State Litigation Policy in consonance with it.

Tamil Nadu State Litigation
Policy http://www.tn.gov.in/departments/home/litigation_policy_2012.pdf
Kerala State Litigation Policy http://www.kerala.gov.in/docs/policies/32350_11.pdf
Jharkhand State Litigation
Policy http://www.jharkhand.gov.in/DEPTDOCUPLOAD/uploads/31/D201131010.pdf
Madhya Pradesh State Litigation
Policy http://mptownplan.nic.in/Rules/State%20Liligation%20Policy.pdf
Bihar State Litigation Policy http://law.bih.nic.in/litigation/litigation31-03.pdf
Haryana State Litigation
Policy http://haryana.gov.in/misc/HARYANA%20STATE%20LITIGATION%20POLICY.pdf
Orissa State Litigation Policy http://www.orissa.gov.in/law/Notifications/INTRODUCTION.pdf
Himachal Pradesh State Litigation
Policy http://himachal.nic.in/home/home/pdfs/2011HPLitigationPolicy.pdf

The UP government was also reported to have adopted the National Litigation Policy. Most recently reported was the adoption of the policy by Goa (March 13, 2013).

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