article 2
of the International Covenant on Civil and Political Rights
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special report

judicial delays *to* criminal trials in Delhi

any person whose rights or freedoms are violated shall have an effective remedy, determined by competent judicial, administrative or legislative authorities

The meaning of article 2: Implementation of human rights

All over the world extensive programmes are now taking place to educate people on human rights. As a result today there exists a vast number of persons and organisations firmly committed to human rights; more than at any other time in the history of humankind. Yet human rights continue to be monstrously violated.

It is time for the global human rights movement to examine why it may not yet be achieving real improvement in the global human rights situation. One factor hindering honest examination is the belief that improvement of knowledge about human rights will by itself end human rights violations. This is a myth based on the corresponding belief that education is itself capable of improving things.

In reality human rights can only be implemented through a system of justice. If this system is fundamentally flawed, no amount of knowledge—no amount of repetition of human rights concepts—will by itself correct its defects. Rather, these need to be studied and corrected by practical actions. Hence research and intimate knowledge of local issues must become an integral part of human rights education and related work.

article 2 aims to do this by drawing attention to article 2 of the International Covenant on Civil and Political Rights, and make it a key concern of all partners in the global human rights community. This integral article deals with provision of adequate remedies for human rights violations by legislative, administrative and judicial means. It reads in part:

> 3. Each State Party to the present Covenant undertakes:
>
> (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
>
> (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
>
> (c) To ensure that the competent authorities shall enforce such remedies when granted.

Sadly, article 2 is much neglected. One reason for this is that in the 'developed world' the existence of basically functioning judicial systems is taken for granted. Persons from those countries may be unable to grasp what it means to live in a society where 'institutions of justice' are in fact instruments to deny justice. And as these persons guide the global human rights movement, vital problems do not receive necessary attention. For people in many countries, international human rights discourse then loses relevance.

Other difficulties also arise with article 2. One is the fear to meddle in the 'internal affairs' of sovereign countries. Governments are creating more and more many obstacles for those trying to go deep down to learn about the roots of problems. Thus, inadequate knowledge of actual situations may follow. A further and quite recent disturbance is the portrayal of national human rights institutions and their equivalents as surrogate agencies for dealing with article 2 related issues. Some state parties may agree to new national human rights institutions taking on this role because they know that by doing so they may avoid criticisms of a more fundamental nature.

Thus after many years of work, the Asian Legal Resource Centre began publishing *article 2* to draw attention to this vital provision in international law, and to raise awareness of the need to implement human rights standards and provide effective remedies at the local level in Asia.

Relevant submissions by interested persons and organizations are welcome.

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India's *dharmachakra* seen but not felt

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The concept of justice was once not alien to India. The logo of the Supreme Court depicts the *dharmachakra*, the wheel of justice from the 3rd century BCE lion capital with the inscription, "Yadho dharmasthadho jayah." The phrase, in Nagri script, means, "Victory is where justice reigns." The logo was adopted on 28 January 1950, when the court was first set up in the Chamber of Princes, within the parliament building of New Delhi, just two days after India became a republic.

By the time I enrolled as a lawyer in India, some 44 years had passed since the establishment of the Supreme Court. Among my first cases was a matter of the partitioning of some land between its co-owners. For my senior colleagues at the law firm, it was a relatively safe case to give a young lawyer with hardly a week's experience in the court. For them the main contest had been concluded several years before, when the preliminary decree had been awarded. All that was left was to execute the partition in terms with the decree.

It took me a while to gather and read all the old documents pertaining to the case, which in reality consisted of nothing much other than a few title deeds, a death certificate, a copy of both the judgment and decree from the trial court and a few dozen addresses. While I was studying these, what struck me was that the case was about 23 years older than me. It had started in 1950 and had taken about 40 years to be decided, during which time the original parties had died.

Curious to know what kept the court from deciding the case for such long time, I traced out the proceedings from the day it was filed in court to the day I was handed the brief. Again there was nothing much, apart from adjournments for various reasons, some on the request of the lawyers for both the plaintiff and the defendants, and quite a few because the court probably thought that the case could not to be heard on a particular day.

Surprisingly, at no point did the court or either of the parties to the case, through their lawyers, insist that it be finalised; or at least there was no record of any such insistence.

> **"In India a delay of even ten years fails to excite interest or sympathy for the affected parties"**

When I appeared in the court, I brought my observations regarding this long period of time to the attention of the judge. The judge, who was also relatively young, agreed that the case must not continue any further without some strong reason. The case was finally disposed of in a matter of three days. When I described my experience, with certain pride, to some of the senior members of the bar they laughed at me and said that I was no good for the profession.

Fourteen years hence and I am now quite sure that there was some truth in what they said. However, the truth is with a twist. The legal profession in India is no good for me, since I have lost my trust in the system. I also know for sure that I am by no means alone in having this feeling. Most of India is with me.

Discussions about the Indian legal system often revolve around the innovative methods that its courts have used to intervene on socially and politically important issues. The use of public interest litigation is one example. Often people also discuss landmark judgments, such as the Golaknath case, Keshavananda Bharati case, Maneka Gandhi case, Minerva Mills case, D K Basu case and recently, the Prakash Singh case. The Government of India also readily cites these cases to show off the courts and their relative independence when compared to their counterparts across the world.

However, the independence of the courts and judges is but one factor in a meaningful and functioning legal system. Domestic laws, ease of access, court facilities, speed of trial and the quality of legal professionals are among the other important elements.

Among these, the time that it takes for Indian courts to dispose of cases is something that the government does not advertise abroad, yet it is perhaps what distinguishes India's courts most markedly from those in other jurisdictions in the region and perhaps all around the world. Whereas a two or three year delay in an ordinary case even in relatively underdeveloped jurisdictions is considered unreasonable, in India a delay of ten years fails to excite interest or sympathy for the affected parties, most of whom, whether the accused or victims, are poor.

The case of Afsar contained in this special report that advocate Salar M Khan has prepared for *article 2*, 'Judicial delays to criminal trials in Delhi' (vol. 7, no. 2, June 2008), is illustrative. Although Afsar was acquitted, it took the courts 11 years to decide his case. There is at present no way in India to compensate Afsar for his being forced to face criminal charges for over a decade despite the absence of a single independent witness to support the case against him, or for the days he remained in custody.

"The government of India has tried to address the delays; however, its attempts have been half-hearted"

The certainty of long delays has rendered India's courts instruments of injustice rather than justice. The filing of cases, both civil and criminal, has become a means of harassment rather than a way to obtain justice.

Those with genuine disputes find ways to settle them without approaching the courts; often these means are themselves illegal. Once a rare phenomenon, limited to the acts of organised crime syndicates in large cities like Mumbai or Kolkota, in the last decade extralegal methods to dispute solving have now sprung up everywhere. In one case where local people apprehended a suspected thief during the last year, a police officer joined them in beating up the suspect in public, rather than in performing his duty and affecting an arrest. In some areas, "justice" is now obtained through the parallel institutions of Naxalite and Maoist insurgent groups. Many ordinary villagers prefer their swift and certain judgments to the refined dictums of some of the finest jurists in the world handed down decades later.

That the courts are now seen as places to be exploited is a consequence not only of criminals' behaviour but also that of corrupt law-enforcement officers. In Kerala, for example, a circle inspector of police stationed in Thrissur district named Sasheedharan was infamous for running a gang of local hoodlums who acted as debt collectors. He charged a certain amount for their services as collectors and also for the guarantees of legal protection in the courts that he offered. He finally fell victim to a rival gang and was dismissed from the service, but had made enough money that he no longer required a government salary or pension to survive.

Even if police officers are not themselves involved in manipulating and using the courts like this, delays in cases greatly harm morale. If an investigating officer is aware that a case is not likely to be decided for years and that in the meantime the accused may commit similar offences or jump bail, it diminishes the likelihood that the officer will investigate honestly and earnestly as required by law. It also increases the chances of that officer committing acts like assault and torture. The long delays in cases can thus be linked to the high incidence of custodial abuse and violence during criminal investigations, as the perception is that what is meted out to the accused there and then might be the only punishment that the person gets.

Many delays are a result of fundamental problems within the prosecutor's office. Prosecutors often do not have even the minimum materials with which to do their jobs. Most lack basic facilities, like a telephone. It is thus impossible for prosecutors to liaise with the investigating agencies to ensure proper and timely conduct of trials, such as by seeing to it that their witnesses turn up on the appointed day.

For instance, in the sixth of the case studies in this report, that of Shiv Pujan Rai and another, the prosecution failed to ensure that the forensic science report needed to secure the

evidence of possessing drugs was brought into the court in a timely manner, causing a delay of about six months. Thereafter, the prosecution did not produce the three police witnesses of the recovery of the drugs until the end of the trial, at which point it became apparent that discrepancies in their testimonies could have had a significant bearing on the case had they been brought to the court at the start. All in all, the case came up for hearing on 62 occasions and the two accused, both too poor to hire lawyers or seek bail, remained in jail for about four years before being acquitted.

"The *dharma* that is inscribed in the Supreme Court's logo has long been brutally suppressed"

The government of India has tried to address the delays; however, its attempts have been halfhearted and counterproductive. For example, setting up fast-track courts without appointing new judges and prosecutors is as good as having no new courts at all. In several states, even today the new buildings for these courts stand empty for want of judges and prosecutors, clerical staff and equipment.

More alarming, however, have been some of the proposals to amend criminal procedure of the sort outlined in this report. Among them have been the government's attempts to fasten non-retractability to the statements given by the witnesses to investigating officers through an amendment to section 161 of the Code of Criminal Procedure (CrPC), 1973 and the Evidence Act, 1872, by making these statements admissible in a court of law and thereby prevent witnesses from turning hostile and allowing the accused to go free.

The experiences from high-profile trials like those following the Gujarat massacre reveal the inadequacies and inappropriateness of such approaches. Witnesses reverse or alter testimony for many reasons, including fear of the accused. Alternatively, they may be coerced into testifying only to later reveal that they were not witnesses to crimes at all. Without any witness protection programme in India, delayed trials place witnesses at heightened risk; in Gujarat many accused who were released on bail spent their time haunting witnesses and threatening them not to depose. The state administration exploited long delays in cases to see that the accused were acquitted.

Although many of the causes of delays can be attributed to specific institutional and administrative problems, in some respects their causes are much more deeply embedded in India's society than this. The *dharma*, or justice, that is inscribed in the Supreme Court's logo has long been brutally suppressed by centuries of caste discriminatory practices, beginning from the latter half of the 2nd century BCE. Since then, it has been the concept of inequality by birth, not equality by law, which has been enforced in India. The *dharmachakra* is thus seen over the Supreme Court building yet not felt by the society over which it supposedly reigns.

In the modern setting, among those who stand to gain from leaving things as they are, those who are accorded an unequal status are India's legislators. An estimated 65 per cent of them are facing criminal charges, including of rape, murder and fraud. Little wonder that these corrupt politicians lack the motivation to bring about change to the woeful state of the country's courts. Their inaction can in this light be seen as nothing but the continuation of over two millennia of unjust practices continued to the present day in a new form.

The present study

Salar M Khan, the author of the study in this edition of *article 2*, 'Judicial delays to criminal trials in Delhi' (vol. 7, no. 2, June 2008), is a Delhi-based lawyer who has been practicing since 1992, specialising in constitutional and criminal law. He has appeared before various courts and commissions in many cases with bearing on human rights in India. Currently he and another advocate, Ashok Agrwaal, are running an Internet discussion group called 'Article 21-NOW', referring to the right to life under article 21 of the Constitution of India, which concentrates on personal liberty, custodial killings and fake encounter killings. (The group can be visited at: http://groups.google.co.in/group/article21now?hl=en&lnk=gschg.) Khan is also associated with the Campaign against Impunity of the South Asia Forum for Human Rights (SAFHR) along with many other civil society groups spread over the whole of India.

Although Khan knows from personal and professional experience the obstacles to justice in India posed by the many delays in cases before India's courts, he has explicated these not simply by stringing together stories from his day-to-day practice but through an informative study of both the numbers and durations of delays in Delhi and through the examination of ten case studies of ordinary criminal cases gone wrong in the courts. Together these paint a graphic picture of India's collapsing criminal justice system, of which the Delhi courts are just one part and by no means the worst.

In addition to his study of the delays in courts, Khan has also provided for this edition, as a useful and appropriate supplement, a discussion of proposed amendments to the Code of Criminal Procedure. If introduced, these amendments will in the interests of administrative expediency rather than justice greatly undermine basic protections for parties in criminal cases, as well as witnesses. Many are reconfigurations of the proposals from the earlier Malimath Committee which the legal fraternity has already soundly rejected. These proposed amendments, Khan concludes, should for the most part be given similar short shrift, leaving aside those in the interests of victims rights and a few other measures that are long-overdue.

Introduction: Judicial delays to criminal trials in Delhi

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This report contains the findings of a study into the nature and extent of judicial delays in criminal trials in the courts of Delhi. The first two chapters comprise one part, speaking to the law in India as a whole. The remaining three chapters comprise another part, addressing the issues, data and specific case studies found in Delhi, which is the national capital and second most populous city in India.

Chapter 1 gives a brief outline of criminal investigation and trial procedures in India in a layperson's language. This outline facilitates understanding of the empirical analysis and the case studies carried in the later chapters.

Chapter 2 discusses the legal position regarding the obligation to conduct (and the right to obtain) a speedy trial in India. The analysis includes a discussion of India's obligations as a signatory to the International Covenant on Civil and Political Rights, and the Supreme Court's views on the enforceability of international treaties and instruments in the domestic legal arena.

Chapter 2 also discusses three recent judgments of the Supreme Court, delivered in January 2008, which illustrate how the reality continues to remain diametrically opposite to the pious pronouncements on the importance of 'speedy trial'. All three cases were murders. In one the proceedings took nearly 29 years, finally culminating with acquittal in the Supreme Court. The trial court had acquitted the accused in 1981 but the high court had reversed this decision and sentenced him to life imprisonment in October 2005. In all, the accused spent about three years in jail. Another followed a delay of 13 years and the other around 20 years.

Chapter 3 details the judicial administration in Delhi, including a brief historical background, such as the number and location of courts, their organizational structure, current case backlog, budgetary allocation, judge-population ratio, case load per judge, etc.

Chapter 4 analyses the nature and extent of delay in criminal trials. The analysis is based upon the cases listed before all the 135 criminal courts of the city on a one particular typical day, selected at random. The study finds that in the sessions courts the overwhelming majority of cases carrying 2006 as the year of commission of offence had been pending for more than a year. Specifically, it shows that approximately 67 per cent of the pending criminal trials are one to five years old, 12 per cent six to ten years old, 4 per cent 11-15 years old, and around 2 per cent pending for more than 15 years. On the date selected a mere 14 per cent of the matters had come up for trial in the same year as the crime allegedly occurred. Similarly, the courts of the Metropolitan Magistrate also have matters pending trial for offences registered more than 19 years ago. The analysis shows that approximately 51 per cent of pending cases in these are between one to five years old, 21 per cent six to ten years old, 7 per cent 11-15 years old, and around 1 per cent pending for more than 15 years. A mere 20 per cent of the matters taken up on the day studied pertained to the year 2007.

Chapter 5 contains ten narrative case studies from the criminal courts of Delhi drawn from the sample of cases obtained by the author of this report. The accused and the victims in all the case studies were poor. The case studies illustrate how criminal trials get delayed and how that affects the accused as well as the victims of crimes. These case studies show the insensitivity of the criminal justice apparatus to the most basic rights of persons, whether victims or accused. The case studies have been selected with a view to illustrating that delays in dispensing justice not only infringe on the rights of the accused who are in custody but also on those accused who are out on bail, as the latter are forced to live for years with a sword of Damocles hanging over their heads. The narratives also show that when the prosecution delays the production of its witnesses, evidence gets destroyed. In one of the cases the material witness had ceased to live at the address on record with the prosecution and could not be examined for this reason. In another case, a material witness died before he could be examined. In a further two cases, the accused persons remained in jail for a long period of time before the court acquitted them.

1. The process of criminal trial in India

The Code of Criminal Procedure, 1973 (the CrPC) is the procedural law providing the machinery for punishment of offenders under the substantive criminal law, be it the Indian Penal Code, 1860 or any other penal statute.

The CrPC contains elaborate details about the procedure to be followed in every investigation, inquiry and trial, for every offence under the Indian Penal Code or under any other law. It divides the procedure to be followed for administration of criminal justice into three stages: namely investigation, inquiry and trial.

Investigation is a preliminary stage conducted by the police and usually starts after the recording of a First Information Report (FIR) in the police station. If the officer in charge of a police station suspects the commission of an offence, from statement of FIR or when the magistrate directs or otherwise, the officer or any subordinate officer is duty-bound to proceed to the spot to investigate facts and circumstances of the case and if necessary, takes measures for the discovery and arrest of the offender.

Investigation primarily consists of ascertaining facts and circumstances of the case. It includes all the efforts of a police officer for collection of evidence: proceeding to the spot; ascertaining facts and circumstances; discovery and arrest of the suspected offender; collection of evidence relating to the commission of offence, which may consist of the examination of various persons including the accused and taking of their statements in writing and the search of places or seizure of things considered necessary for the investigation and to be produced at the trial; formation of opinion as to whether on the basis of the material collected there is a case to place the accused before a magistrate for trial and if so, taking the necessary steps for filing the charge-sheet. Investigation ends in a police report to the magistrate.

Inquiry consists of a magistrate, either on receiving a police report or upon a complaint by any other person, being satisfied of the facts.

Trial is the judicial adjudication of a person's guilt or innocence. Under the CrPC, criminal trials have been categorized into three divisions having different procedures, called warrant, summons and summary trials.

A warrant case relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The CrPC provides for two types of procedure for the trial of warrant cases by a magistrate, triable by the magistrate, viz., those instituted upon a police report and those instituted upon complaint. In respect of cases instituted on police report, it provides for the magistrate to discharge the accused upon consideration of the police report and documents sent with it. In respect of the cases instituted otherwise than on police report, the magistrate hears the prosecution and takes the evidence. If there is no case, the accused is discharged. If the accused is not discharged, the magistrate holds regular trial after framing the charge, etc. In respect of offences punishable with death, life imprisonment or imprisonment for a term exceeding seven years, the trial is conducted in a sessions court after being committed or forwarded to the court by a magistrate.

A summons case means a case relating to an offence not being a warrant case, implying all cases relating to offences punishable with imprisonment not exceeding two years. In respect of summons cases, there is no need to frame a charge. The court gives substance of the accusation, which is called "notice", to the accused when the person appears in pursuance to the summons. The court has the power to convert a summons case into a warrant case, if the magistrate thinks that it is in the interest of justice.

The high court may empower magistrates of first class to try certain offences in a summary way. Second class magistrates can summarily try an offence only if punishable only with a fine or imprisonment for a term not exceeding six months. In a summary trial, no sentence of imprisonment for a term exceeding three months can be passed in any conviction. The particulars of the summary trial are entered in the record of the court. In every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

The common features of the trials in all three of the aforementioned procedures may be roughly broken into the following distinct stages:

1. Framing of charge or giving of notice

This is the beginning of a trial. At this stage, the judge is required to sift and weigh the evidence for the purpose of finding out whether or not a *prima facie* case against the accused has been made out. In case the material placed before the court discloses grave suspicion against the accused that has not been properly explained, the court frames the charge and proceeds

with the trial. If, on the contrary, upon consideration of the record of the case and documents submitted, and after hearing the accused person and the prosecution in this behalf, the judge considers that there is not sufficient ground for proceeding, the judge discharges the accused and records reasons for doing so.

The words "not sufficient ground for proceeding against the accused" mean that the judge is required to apply a judicial mind in order to determine whether a case for trial has been made out by the prosecution. It may be better understood by the proposition that whereas a strong suspicion may not take the place of proof at the trial stage, yet it may be sufficient for the satisfaction of the court in order to frame a charge against the accused person.

The charge is read over and explained to the accused. If pleading guilty, the judge shall record the plea and may, with discretion, convict him. If the accused pleads not guilty and claims trial, then trial begins. Trial starts after the charge has been framed and the stage preceding it is called inquiry. After the inquiry, the charge is prepared and after the formulation of the charge, trial of the accused starts. A charge is nothing but formulation of the accusation made against a person who is to face trial for a specified offence. It sets out the offence that was allegedly committed.

2. Recording of prosecution evidence

After the charge is framed, the prosecution is asked to examine its witnesses before the court. The statement of witnesses is on oath. This is called examination-in-chief. The accused has a right to cross-examine all the witnesses presented by the prosecution. Section 309 of the CrPC provides that the proceeding shall be held as expeditiously as possible and in particular, when the examination of witnesses has once begun, the same shall be continued day-to-day until all the witnesses in attendance have been examined.

3. Statement of accused

The court has powers to examine the accused at any stage of inquiry or trial for the purpose of eliciting any explanation against incriminating circumstances appearing before it. However, it is mandatory for the court to question the accused after examining the evidence of the prosecution if it incriminates the accused. This examination is without oath and before the accused enters a defence. The purpose of this examination is to give the accused a reasonable opportunity to explain incriminating facts and circumstances in the case.

4. Defence evidence

If after taking the evidence for the prosecution, examining the accused and hearing the prosecution and defence, the judge considers that there is no evidence that the accused has committed the offence, the judge is required to record the order of acquittal.

However, when the accused is not acquitted for absence of evidence, a defence must be entered and evidence adduced in its support. The accused may produce witnesses who may be willing to depose in support of the defence. The accused person is also a competent witness under the law. The accused may apply for the issue of process for compelling attendance of any witness or the production of any document or thing. The witnesses produced by him are cross-examined by the prosecution.

The accused person is entitled to present evidence in case he so desires after recording of his statement. The witnesses produced by him are cross-examined by the prosecution. Most accused persons do not lead defence evidence. One of the major reasons for this is that India follows the common law system where the burden of proof is on the prosecution, and the degree of proof required in a criminal trial is beyond reasonable doubt.

5. Final arguments

This is the final stage of the trial. The provisions of the CrPC provide that when examination of the witnesses for the defence, if any, is complete, the prosecutor shall sum up the prosecution case and the accused is entitled to reply.

6. Judgment

After conclusion of arguments by the prosecutor and defence, the judge pronounces his judgment in the trial.

Here it is relevant to mention that the CrPC also contains detailed provisions for compounding of offences. It lists various compoundable offences under the Indian Penal Code, of which 21 may be compounded by the specified aggrieved party without the permission of the court and 36 that can be compounded only after securing the permission of the court. Compounding of offences brings a trial to an end.

Under the CrPC an accused can also be withdrawn from prosecution at any stage of trial with the permission of the court. If the accused is allowed to be withdrawn from prosecution prior to framing of charge, this is a discharge, while in cases where such withdrawal is allowed after framing of charge, it is acquittal.

2. Analysis of the legal position in India on speedy trial versus judicial delay

The Code of Criminal Procedure, 1973 (the CrPC) is the procedural law providing for machinery for punishment of offenders under the substantive criminal law. The substantive criminal law may be the Indian Penal Code, 1860 or any other penal statute. The Indian Evidence Act, 1872 governs rules of evidence.

The administration of justice does not deal with the punishment of the guilty alone; it also means acquittal of the innocent. Fairness and speed are equally important in the administration of justice. Speed serves the best interests of the accused, the survivors and the society at large.

However, judicial delays in India are endemic. No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. Civil cases are delayed even longer. This is despite the legal position strongly favouring speedy trial.

The setting

Some cases decided by the Supreme Court of India in January 2008 are of relevance in establishing the setting for the discussion that follows.

Puran Singh versus State of Uttaranchal
Appeal (Crl.) 437 of 2006

On 10 January 2008, the Supreme Court acquitted appellant Puran Singh of murder in a case that had run for the last 29 years. At the time of judgment he was in jail. It is significant that the court heard his appeal out of turn. But for this, the case would have lingered on much longer.

The case pertained to a murder committed on 3 August 1979 near Akhori Village, Patwari Barab Circle, Ukhimath Tehsil, Chamoli District (Uttarakhand). The Sessions Judge, Chamoli (Uttarakhand) acquitted the accused on February 6, 1981.

However, the government appeal was allowed by the high court on 25 October 2005. The court convicted the accused person and ordered him to undergo imprisonment for life.

"The right to speedy trial has been endorsed in almost all relevant international charters and conventions"

Puran Singh filed a Special Leave Petition before the Supreme Court of India. He also applied for bail as he was taken into custody after his conviction in October 2005. He remained in custody for around one-and-a-half years at this time, in addition to from August 1979 to February 1981.

On 10 April 2006, the Supreme Court of India admitted the appeal and issued notice on prayer for bail. On 24 November 2006, when the matter was called out, the court fixed final hearing of the appeal and observed that in view of that order, it was not necessary to deal with bail application. Finally the appeal came up for out of turn hearing and the accused was acquitted.

Sattatiya a.k.a. Satish Rajanna Kartalla versus State of Maharashtra, *Appeal (Crl.) 579 of 2005*

In another judgment of the Supreme Court delivered shortly thereafter, on 16 January 2008, it acquitted appellant Sattatiya a.k.a. Satish Rajanna Kartalla of the charge of murder committed on 1 October 1994 at Greater Mumbai (Maharashtra).

Though in the present case the gap between the date of registration of the crime and the final acquittal was only around 13 years, the delay is completely inconsistent with the basic human rights of the accused person. The appellant remained in jail throughout this period as two courts, the sessions court as well as the high court, had sentenced him to life imprisonment.

According to the prosecution, on 1 October 1994, one Dr Rasiklal Dwarkadas Dani, a resident of Pratap Building 173, Dadiseth Agyari Lane, Mumbai, telephonically informed the Tilak Nagar Police Station that a man who was later on identified as (another) Satish was lying in a pool of blood. Police reached the spot and removed that person to GT Hospital, where he was declared dead on arrival. The information given was treated as the First Information Report. From the papers found in the pocket of the clothes of the deceased, the police contacted his brother, Rajaiyya Pochyya Bandapalli, on the same day and recorded his statement.

On October 3, the appellant and one Devabhuma Badapatti were arrested. After completing the investigation, the police submitted findings in the Court of the Metropolitan Magistrate who committed the case to the Court of the Sessions, Greater Bombay. The Additional Sessions Judge relied on circumstantial evidence and convicted both accused under section 302 read with section 34 of the Indian Penal Code (IPC) for murdering the deceased and sentenced them to life imprisonment.

On appeal, the Division Bench of the High Court upheld the conviction of Sattatiya and confirmed the sentence of life imprisonment awarded to him, but acquitted Devabhuma Badpatti on the ground that there was no evidence against him.

The appellant came to the Supreme Court by filing a Special Leave Petition, whereupon it acquitted him.

Sambhaji Hindurao Deshmukh and Others versus State of Maharashtra, *Appeal (Crl.) 1097 of 2005*

The Supreme Court on 17 January 2008 this time acquitted five persons accused of a murder that occurred on 18 May 1988 in a village of Satara District, Maharashtra.

In this case, the proceedings continued for around 20 years. There were originally six accused , but one of them died during trial. They had been acquitted in the trial court on 30 January 1995. The state government filed an appeal before the Bombay High Court, which set aside their acquittal in March 2005 and convicted all of them for the murder.

The accused appealed before the Supreme Court, which restored the judgment of the trial court. The accused persons were in jail at the time of pronouncement of the judgment in the Supreme Court.

"The enforceability of international conventions has come up before the Supreme Court of India"

Speedy trial under international law

The right to speedy trial has been endorsed in almost all relevant international charters and conventions, most notably the International Convention on Civil and Political Rights (ICCPR), which India ratified on 10 April 1979.

The ICCPR provides explicitly for the right to speedy trial. Article 9(1) declares that "every one has the right to liberty and security of person [and that] no one shall be subject to arbitrary arrest or detention". Article 9(3) declares further that,

> Any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that the persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial at any stage of the judicial proceedings and, should occasion arise, for execution of the judgment.

Article 10(1) says that "all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person". Article 17 declares that the privacy, honour and reputation of an individual shall not be interfered with unlawfully.

Article 2(2) creates an obligation upon the ratifying states to enact domestic legislation to give effect to the rights guaranteed by the covenant. Article 3 creates a further obligation upon such states to ensure that the rights guaranteed by the covenant are made available to all their citizens.

The enforceability of international conventions has come up before the Supreme Court of India. The Supreme Court in *People's Union of India versus Union of India* [1997 (3) SCC 433] has observed that

> The provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such.

"The courts have declared that insofar as the rights in international instruments are consistent with the fundamental rights guaranteed by the Constitution of India, they can elucidate its contents"

In *Vishaka and Others versus State of Rajasthan and Others* [1997 (6) SCC 241] the Supreme Court observed:

> The international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law.

While propounding the above proposition, the court also referred to *Nilabati Behera versus State of Orissa* [1993 (2) SCC 746] wherein a provision in the ICCPR was referred to support the view taken that an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right as a public law remedy under article 32, as distinct from the private law remedy in torts. The court said that there was no reason why these international conventions and norms could not be used for construing the fundamental rights expressly guaranteed in the Constitution of India:

> Any international convention not inconsistent with the Fundamental Rights and in harmony with its spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.

However, it must be appreciated that at present treaties, agreements and covenants that the government signs and ratifies do not automatically become a part of the domestic law but require parliament or a state legislature to undertake legislation to do so. As such, no one can lay claim or found any rights upon the provisions of an agreement or covenant alone. However, on the question of human rights, the courts have declared that insofar as the rights contained in such international instruments are consistent with the fundamental rights guaranteed by part III of the Constitution of India, they can be read as facets of those rights and elucidate its contents.

In India, neither the constitution nor any existing laws or statutes specifically confer the right to speedy trial on the accused. Most of the existing laws also do not provide any timeframe in which a trial must be concluded; in cases where some timeframes have been provided, the courts have held them to be "directory" and not "mandatory".

Procedural law, i.e. the Code of Criminal Procedure (CrPC), 1973, provides a statutory time limit to complete an investigation. Section 167 further provides that a failure to complete investigation within the statutory timeframe shall lead to release of the accused in custody on bail.

The Supreme Court of India in its landmark judgment in *Hussainara Khatoon versus State of Bihar* [1980 (1) SCC 98] explicitly held speedy trial as part of article 21 of the constitution guaranteeing right to life and liberty. The Supreme Court took the matter up when the *Indian Express* newspaper carried a news story about the state of under-trial prisoners in Bihar, some of them were in jail for as many as five, seven or nine years and a few of them for even more than 10 years without their trials having begun. Justice P N Bhagwati observed:

> There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the undertrial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice.
>
> ...
>
> We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted by this Court in *Maneka Gandhi v. Union of India*. We have held in that case that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just". If a person is deprived of his liberty under a procedure which is not "reasonable, fair or just", such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Now obviously procedure prescribed by law for depriving a person of his liberty cannot be "reasonable, fair or just" unless that procedure ensures a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as "reasonable, fair or just" and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The court came down harshly on the state for pleading financial and administrative constraints in providing speedy trial:

> The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of this Court, as the guardian of the fundamental rights of the people, as a sentinel on the *qui vive*, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures calculated to ensure speedy trial...

"The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done"

—Suprme Court of India

The court also criticized monetary based approach of bail:

> One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pretrial detention is our highly unsatisfactory bail system. It suffers from a property oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice.

"Procedure established by law does not mean any procedure but a procedure that is reasonable, just and fair"

The court further observed that the practice of release of accused only against bail with monetary sureties had done more harm than good. It noted that if the accused has roots in the community and is not likely to abscond, a personal bond should usually be adequate to issue a release order.

In *Maneka Gandhi versus Union of India and Another* [1978 (1) SCC 248], a Constitution Bench of the Supreme Court went into the meaning of the expression "procedure established by law" in article 21. The court held that the procedure established by law does not mean any procedure but a procedure that is reasonable, just and fair. The court read articles 19 and 14 into article 21 of the constitution for this purpose:

> The law must therefore now be taken to be well-settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that Article...
>
> Now, if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, *ex-hypothesi* it must also be liable to be tested with reference to Article 14...
>
> There can be no doubt that [article 14] is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic...
>
> In fact equality and arbitrariness are sworn enemies; one belongs to the rule of law in a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is unequal both according to political logic and constitutional law and is therefore violative of Article 14. Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be "right and just and fair" and not arbitrary, fanciful or oppressive; otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

In *Sheela Barse versus Union of India* [1986 (3) SCC 632], a social worker had taken up the case of helpless children below age of 16 illegally detained in jails. She prayed for the release of such young children from jails, supply of information as to the existence of juvenile courts, homes and schools and other necessary directions for proper looking after of the children in custody.

In the judgment, the Supreme Court observed that where the court comes to a conclusion that the right to speedy trial of an accused has been infringed, the charge or conviction, as the case may be, must be quashed. The court directed the state governments to take steps for completing an investigation within three months in cases lodged against children. Further, it directed the establishment of an adequate number of courts to expedite the trial of children detained in various jails.

"The provisions of the CrPC are consistent with the right to speedy trial but are honoured more in breach than in compliance"

In *Abdul Rehman Antulay and Others versus R. S. Nayak and Another* [1992 (1) SCC 225], a five-judge Constitution Bench of the Supreme Court reiterated the position that a right to speedy trial is implicit in article 21 of the constitution. In this case the court also laid down detailed propositions of law on speedy trial.

The court observed that that the provisions of the CrPC are consistent with the right to speedy trial and if followed in letter and spirit, there would not be any grievance but, unfortunately, these provisions are honoured more in breach than in compliance. The court specifically mentioned section 309 of the CrPC, which provides that the proceedings shall be held as expeditiously as possible and in particular that when the examination of witnesses has begun it shall continue from day-to-day until all the witnesses in attendance have been examined.

Another landmark judgment was *Supreme Court Legal Aid Committee Representing Undertrial Prisoners versus Union of India and Others* [1994 (6) SCC 731]. In this judgment, the Supreme Court of India, while dealing with the Narcotic Drugs and Psychotropic Substances Act, 1985, laid down certain conditions for mandatory release of under-trial prisoners on bail where trial was not completed within a specified period of time. The court's directions with respect to pending cases included:

> (i) Where the undertrial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and find, such an undertrial shall be released on bail if he has been in jail for a period which is not less than half of the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of the Special Judge concerned with two sureties for like amount.
>
> (ii) Where the undertrial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine, such an undertrial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50, 000 with two sureties for like amount.
>
> (iii) Where the undertrial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of ten years and a minimum find of Rupees of one lakh [100,000], such an undertrial shall be released on bail if he has been in jail for not less than five years provided he furnishes bail in the sum of Rupees one lakh with two sureties for the like amount.

> (iv) Where an undertrial accused is charged for the commission of an offence punishable under Sections 31 and 31-A of the Act, such an undertrial shall not be entitled to be released on bail by virtue of this order.

"It is necessary to ensure that criminal prosecutions do not operate as engines of oppression"
—Suprme Court of India

The court subjected the directives in clauses (i), (ii) and (iii) above to the same general conditions as ordinarily apply, which include deposition of the under-trial prisoner's passport with the court; reporting to the police station prosecuting the case at prescribed periods, and an obligation not to leave the jurisdiction of the trial court without the court's express permission. Further, the court denied the benefit of the above directions to those accused that are likely to tamper with evidence or influence prosecution witnesses.

The issue of the huge number of pending and delayed criminal cases came up before the Supreme Court in a petition filed by a non-governmental organisation. The Supreme Court in the case reported as *Common Cause versus Union of India & Others* [1996 (4) SCC 33] observed:

> It is a matter of common experience that in many cases where the persons are accused of minor offences punishable for not more than three years—or even less—with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jails for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Quite often, the private complainants institute these proceedings out of oblique motives. Even in case of offences punishable for seven years or less - with or without fine—the prosecutions are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to the poorer sections of the society, who are unable to afford competent legal advice. Instances have also come before courts where the accused, who are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. It is also necessary to ensure that these criminal prosecutions do not operate as engines of oppression.

The court issued detailed guidelines for the release of under-trial prisoners and the ending of proceedings. The court ordered the release of under-trial prisoners on bail in cases involving offences under the IPC or any other law in force at the time if the offences are punishable with imprisonment not exceeding

i. Three years with or without fine and if trials for such offences have been pending for one year or more and the accused concerned have been in jail for a period of six months or more.

ii. Five years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have been in jail for a period of six months or more.

iii. Seven years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have not been released on bail but have been in jail for a period of one year or more.

The court ordered the quashing of criminal proceedings and discharge or acquittal of accused persons in cases involving offences under IPC or any other law in force at the time in cases of

i. Traffic offences, if the proceedings have been pending for more than two years on account of a non-serving summons to the accused or for any other reason.

ii. Offences compoundable with the permission of the court, if the proceedings have been pending for more than two years and trials have still not commenced.

iii. Non-cognizable and bailable offences that have been pending for more than two years and trials have still not commenced.

iv. Offences punishable with fine only and are not of recurring nature, and have been pending for more than one year and trials have still not commenced.

v. Offences punishable with imprisonment of up to one year, with or without fine, and have been pending for more than one year and trials have still not commenced.

The court said that the period that a criminal case has been pending must be calculated from the date that the accused are summoned to appear in court. Further, the court excluded offences

i. Of corruption, misappropriation of public funds, cheating, whether under the IPC, Prevention of Corruption Act, 1947, or any other statute;

ii. Concerning smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985;

iii. Under the Essential Commodities Act, 1955, Food Adulteration Act, and acts dealing with the environment or any other economic offences;

iv. Under the Arms Act, 1959, Explosive Substances Act, 1908, and Terrorist and Disruptive Activities Act, 1987;

v. Relating to the army, navy and air force;

vi. Against public tranquility;

vii. Relating to public servants;

viii. Relating to coins and government stamps;

ix. Relating to elections;

x. Relating to giving false evidence and offences against public justice;

xi. Of any other sort against the state;

xii. Relating to taxation; and

xii. Of defamation as defined in Section 499 of the IPC.

In the second *Common Cause Judgment* [1996 (6) SCC 775, 199], the Supreme Court clarified that the time-limit mentioned regarding pending criminal cases in the first judgment shall not apply to cases wherein the delay of criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the accused or on account of any other action of the accused which results in prolonging the trial. It added further categories of offences from its directions above, regarding offences

i. Of matrimony under the IPC including section 498A or under any other law;

ii. Under the Negotiable Instruments Act, including offences under its section 138;

iii. Relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under the IPC or under any other law;

iv. Under Section 304A of the IPC or any offence pertaining to rash and negligent acts which are made punishable under any other law; and,

v. Affecting public health, safety, convenience, decency and morals as listed in chapter XIV of the IPC or such offences under any other law.

The Supreme Court in *Shaheen Welfare Association versus Union of India* [1996 (2) SCC 616] granted relief to under-trial prisoners held under the Terrorist and Disruptive Activities (Prevention) (TADA) Act, 1987, due to delays in their trials. The court divided the TADA under-trial prisoners into four classes for the purpose of granting bail, specifically, those

i. Whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular, and who cannot therefore receive liberal treatment;

ii. Whose overt acts or involvement directly attracts section 3 or 4 of the TADA Act, who can be released on bail if they have been in prison for five years or more and whose trial is not likely to be completed within the next six months, unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses.

iii. On trial not because of any activity directly attracting sections 3 and 4, but by virtue of section 120B or 147 of the IPC, who can be dealt with leniently and can be released if they have been in jail for three years; and,

iv. Found possessing incriminating articles in notified areas booked under section 5 of the TADA Act, who can be dealt with leniently and can be released if they have been in jail for two years.

In *Raj Deo Sharma versus State of Bihar* [1998 Indlaw SC 1131], the Supreme Court issued certain directions for effective enforcement of the right to speedy trial as recognized in *Antulay's Case* [1992 (1) SCC 225], and prescribed time limits for completion of prosecution evidence in criminal trials. During the hearing of this case, certain facts were brought to the notice of the court. It was found that in Bihar alone, several cases were pending for more than 25 years. A report submitted by the Special Judge, CBI Court, Patna in December 1996 pointed out that in one case pending from 1982 the prosecution had cited as many as 40 witnesses but had examined only three witnesses up to 1996, the last in 1993. The report also pointed out that thereafter, the prosecution had taken 36 adjournments to examine the remaining witnesses, but had not produced even one of them. After discussing the existing case law, the Supreme Court laid down, among other things, that if an offence is punishable with imprisonment for a period

"It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible"

i. Not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed, irrespective of whether the prosecution has examined all the witnesses or not and the court can proceed to the next stage of trial. Furthermore, if the accused has been in jail for a period of over half of the maximum period of punishment prescribed for the offence, bail shall be granted.

ii. Exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of three years from the date of recording the plea of the accused on the charges framed, whether the prosecution has examined all the witnesses or not.

In the second *Raj Deo Sharma Case* [1997 (7) SCC 604], the court clarified that if the delay in trial has been caused on account of the conduct of the accused, no court is obliged to close the prosecution evidence within the period prescribed. Further, if the trial has been stayed by the orders of the court or by operation of law, the time during which the stay was in force shall be excluded from the period established for closing prosecution evidence.

In conclusion, the law of India governing the right to speedy trial can be summed up as follows:

i. The fair, just and reasonable procedure implicit in article 21 of the Constitution of India grants the accused the right to be tried speedily. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. However, it is neither advisable nor practicable to fix any time limit for trial of offences. It is for the court to weigh all the circumstances of a given case before deciding whether there is denial of the right to speedy trial.

ii. The right to speedy trial flowing from article 21 encompasses all stages; namely, investigation, inquiry, trial, appeal, revision and retrial.

> **“Inordinately long delays may be taken as presumptive proof of prejudice”**

iii. While determining whether undue delay has occurred, all the attendant circumstances must be considered, including nature of offence, number of accused and witnesses, the work load of the court, and prevailing local conditions. The state is obliged to ensure a speedy trial, but a realistic and practical approach should be adopted in such matters instead of a pedantic one.

iv. Each and every delay does not necessarily prejudice the accused. However, inordinately long delays may be taken as presumptive proof of prejudice. The incarceration of the accused is relevant. The prosecution should not be allowed to become a persecution. But the point at which this may happen depends upon the facts of a given case.

v. Whether the accused asked for a speedy trial or not is immaterial. However, the accused cannot plead for violation of the right to a speedy trial if they are guilty of dilatory tactics or the delay has occurred due to the operation of any order of a higher court staying the proceedings.

vi. If the court concludes that the right to speedy trial of an accused has been breached, it may quash the charge or conviction, but that is not the only course open to it. The court may make other appropriate orders considering the nature of offences and other circumstances in a given case.

3. An overview of criminal justice administration in Delhi

Delhi is the national capital and second most populous metropolitan city of India. It is a centrally administered union territory. However, in 1991, it was given its own legislative assembly with limited powers and declared the National Capital Territory of Delhi.

Delhi was a part of Punjab Province under the British colonial regime. In 1912, it was taken out of the province and made a separate legal entity under immediate authority and management of the Governor General of India in Council. Simultaneously the Delhi Laws Act, 1912 was enacted for enforcing the existing laws in Delhi.

In 1915 the government added the area falling on the other side of the Yamuna River to the territory (now known as the Trans-Yamuna), thus defining its present-day boundaries, which encompass an area of around 1483 square kilometers.

Delhi has a population of 13,782,976 as per the 2001 census. The population grew by over 46 per cent in the decade up to the census. If the growth rate has continued, it can be estimated that the present population of Delhi is around 17 million.

The High Court of Delhi

Delhi has had its own high court since 1966; prior to that the District Courts of Delhi remained under the administrative control of the Punjab High Court. Up to 1971, the High Court of Delhi exercised jurisdiction not only over the Union Territory of Delhi, but also over the state of Himachal Pradesh.

Initially, the High Court of Delhi had four judges. In January 2008, its sanctioned strength was 28 permanent judges and eight additional judges. Six out of 24 benches were hearing criminal matters, broadly classified into writ petitions, appeals, revisions, and bail applications, which are allocated to separate benches to be heard in accordance with this classification.

Subordinate criminal trial courts

The entire judicial district of Delhi comprises of one sessions division and one judicial district, headed by one district and sessions judge. There are a number of additional sessions judges exercising jurisdiction and powers equivalent to a sessions judge, trying serious cases such as murder or rape, and also hearing criminal appeals and revisions against the orders passed by metropolitan magistrates. Delhi also has one chief metropolitan magistrate and five additional chief metropolitan magistrates.

The number of the courts of the sessions and courts of metropolitan magistrates vary from time to time depending upon the quantity of work and the number of officers available.

Delhi has two judicial services, created in 1970, namely the Delhi Higher Judicial Service and the Delhi Judicial Service. The strength of these two services has been increased from time to time. Currently, the sanctioned strength of the Delhi Higher Judicial Service is 169 while the Delhi Judicial Service has 218 posts.

The District and Sessions Judge of Delhi is the head of the district judiciary in Delhi. The judge holds court at the Tis Hazari Courts Complex. All the subordinate administrative offices of the judge are located in the same complex. In addition, there are three more court complexes in the district, namely Patiala House, Karkardooma, and Rohini.

Criminal justice is administered through the courts situated at various complexes according to police districts. Delhi has been divided into three ranges, 10 districts and 136 police stations for the purpose of policing. The districts are central, east, New Delhi, north, northeast, northwest, south, southwest, west and Outer Delhi, the last created in September 2007, having been previously part of the northwest district.

Tis Hazari Courts Complex

The Tis Hazari Courts Complex is the biggest of its kind in Asia. The construction of the building was completed in 1958 and Justice A N Bhandari, Chief Justice of the Punjab High Court, inaugurated it in the same year. Initially, it had three floors and a fourth floor was added later.

The District and Sessions Judge of Delhi heads the complex, which houses 132 courts, out of which 45 are criminal courts, and of which 16 are presided over by additional sessions judges, one by the chief metropolitan magistrate, two by additional chief metropolitan magistrates, and 26 by metropolitan magistrates. These courts cover five of the ten police districts, namely north, northwest, Outer Delhi, west and central.

On 30 September 2007, 3444 criminal cases were pending in the courts of additional sessions judges at Tis Hazari while 136,992 were pending in the courts of the metropolitan magistrates.

Patiala House Courts Complex

The Patiala House Court Complex is situated in the palace of the erstwhile Maharaja of Patiala near India Gate. The criminal courts at Patiala House deal with cases pertaining to New Delhi, south and southwest police districts. The complex houses courts of 11 additional sessions judges, one additional chief metropolitan magistrate and 25 metropolitan magistrates dealing with criminal justice. It also houses motor accident claims tribunals.

On 30 September 2007, 5382 criminal cases were pending in the courts of additional sessions judges at Patiala House while 227,345 were pending in the courts of the metropolitan magistrates.

Karkardooma Courts Complex

The Karkardooma Courts Complex houses criminal courts presided over by nine additional sessions judges, one additional chief metropolitan magistrate, and 22 metropolitan magistrates. They deal with cases from the east and northeast police districts. The complex also houses some courts dealing with cases of civil, labour, rent, and motor accident claims.

On 30 September 2007, 4861 criminal cases were pending in the courts of additional sessions judges at Karkardooma while 152,046 were pending in the courts of the metropolitan magistrates.

Rohini Courts Complex

Presently 30 courts are operational in the Rohini Courts Complex, dealing with civil, criminal, rent and motor accident claims cases pertaining to the west and northwest police districts. The criminal courts are presided over by eight additional sessons judges, one additional chief metropolitan magistrate, and 19 metropolitan magistrates.

On 30 September 2007, 5099 criminal cases were pending in the courts of additional sessions judges at Karkardooma while 121,614 were pending in the courts of the metropolitan magistrates.

Budgetary allocations

It is interesting to see the government's budgetary allocations for the functioning of all these courts.

The total budget of the government of Delhi in 2005-06 was 115 billion rupees, while in 2006-07 the amount was increased by over 16 per cent to 133.45 billion. The total in 2007-08 was 185.61 billion, a further increase of almost 40 per cent.

For the Delhi High Court alone, in the financial year of 2005-06 the total expenditure was over 387 million rupees. In 2006-07 the estimated budget, however, was 158,000 rupees less than was spent the year before. However, actual expenditure exceeded this amount by more than 77 million rupees, or 19.89 per cent

up on the previous year. In 2007-08, the budget allocation is over 537 million rupees, a net increase of 72 million on the year before, or 15 per cent.

Increase in government budget 2005-06 to 2007–08:

61%

Increase for judiciary:

37%

TABLE 1: Delhi High Court, budgetary allocations (in thousands of rupees)

Year	Plan	Non-plan	Total
2005-06 (actual)	41,778	345,650	387,428
2006-07 (estimate)	*25,800*	*361,470*	*387,270*
2006-07 (revised)	69,600	394,900	464,500
2007-08 (estimate)	*61,600*	*475,700*	*537,300*

The civil and sessions courts in 2005-06 spent more than 653 million rupees. The budget for financial year 2006-07 was over 794 million; however, actual expenditure came to be only around 767 million, an increase of some 113 million rupees on the year before, or 17.34 per cent. And for 2007-08, the budget to these courts is 872 million, a further increase of almost 105 million rupees on what was spent the year previously, or 13.68 per cent up.

TABLE 2: Delhi Civil & Sessions Courts, budgetary allocations
(in thousands of rupees)

Year	Plan	Non-plan	Total
2005-06 (actual)	18,199	635,465	653,664
2006-07 (estimate)	*30,000*	*764,425*	*794,425*
2006-07 (revised)	33,523	733,494	767,017
2007-08 (estimate)	*31,000*	*841,005*	*872,005*

The magistrates courts incurred actual expenditure of over 107 million rupees in the financial year 2005-06. The budget for financial year 2006-07 was almost 128 million but this came out to be over 132 million, or a 23.57 per cent increase over the previous year. In 2007-08, the budget is more than 163 million rupees, a net increase of over 30 million or 23.06 per cent more than the previous year.

When figures for all three courts are combined it shows that the increase in the budget of financial year 2006-07 over previous year was 18 per cent, while in financial year 2007-08 the increase was only 15.27 per cent.

TABLE 3: Budgetary allocations across courts in Delhi (in thousands of rupees)

Year	High court	Sessions & civil courts	Magistrates courts	Total
2005-06 (actual)	387,428	653,664	107,372	1,148,464
2006-07 (estimate)	*387,270*	*794,425*	*127,840*	*1,309,535*
2006-07 (revised)	464,500	767,017	132,688	1,364,205
2007-08 (estimate)	*537,300*	*872,005*	*163,295*	*1,572,600*

This is very low in comparison to the total budget of the government. The increase between the budgets of 2005-06 and 2007-08 was 61.4 per cent whereas the increase in budgetary allocation for judiciary was only 36.93 per cent.

That the judiciary is a low priority is also clear given that in 2005-06 expenditure on it as a percentage of the total budget was 0.99, while in 2006-07 it was 0.98 per cent and in 2007-08 it came down to 0.84 per cent.

Judges per million inhabitants of Delhi:

7.94

Judge-population ratio and caseloads

There are a total of 135 criminal courts in Delhi, both at the sessions and magisterial levels. Out of these, 43 courts are at the level of additional sessions judge and 92 are presided over by metropolitan magistrates. Therefore, the overall judge-population ratio in Delhi is 7.94 judges per one million inhabitants. Since there are 43 additional sessions judges in Delhi, this ratio comes to 2.52 per million. Metropolitan magistrates are 5.47 per million, as their total number is 92.

The effects of these low judge-population ratios can be seen in caseloads. Given that the total number of cases pending in the courts of metropolitan magistrates on 30 September 2007 was 637,997, a magistrate on that day had an average caseload of 6934.75 cases. This was a 3.9 per cent increase on three months earlier.

TABLE 4: Pending cases in Delhi Sessions Courts (30 June – 30 September 2007)

Nature of proceedings	Total cases on 30 June 2007	Total cases on 30 Sept 2007	Change in total
IPC Section 302	1402	1451	+49
Sessions trials other than for murder	6895	7077	+182
Criminal appeal	996	1019	+23
Criminal revision	1300	1385	+85
Miscellaneous	47	52	+5
NDPS	1257	1299	+42
NDPL	4409	4811	+402
Essential Commodity Act	15	18	+3
Departmental inquiry	63	40	-23
SC/ST Act	58	56	-2
Complaint cases/SEBI	163	166	+3
TADA	2	2	0
POTA	9	7	-2
MOCOCA	14	15	+1
Official Secrets Act	26	22	-4
Anti-Corruption Act	1353	1364	+11
Execution	3	2	-1
TOTAL	**18,012**	**18,786**	**+774**

TABLE 5: Pending cases with Delhi Metropolitan Magistrates
(30 June – 30 September 2007)

Nature of proceedings	Total cases on 30 June 2007	Total cases on 30 Sept 2007	Change in total
Police challans	204,755	203,530	-1225
Complaint cases	23,413	24,034	+621
Negotiable Instruments Act, Section 138	356,394	381,745	+25,351
Other acts	24,362	23,520	-842
Miscellaneous	5127	5169	+42
TOTAL	**614,051**	**637,997**	**+23,946**

In addition, in 2007 court working days numbered only around 280. Add to this leave taken by each individual judicial officer, attending of other duties like training courses as well as seasonal vacations, and the average working days of a criminal court comes to around 220 in a year.

Percentage of under-trial prisoners in Delhi awaiting trial for more than one year:

23%

Consequences

That Delhi's criminal justice system is badly clogged is an understatement. The system is collapsing under the weight of overload. Every person connected with the criminal courts knows this fact. The system is fast losing its credibility among law-abiding citizens and, unfortunately, illegitimate alternatives are growing.

The most badly hit are the under-trial prisoners. The jails in Delhi, as on 30 November 2007, were housing 11,836 prisoners: around double their capacity. Leaving aside other consequences, the delay in justice delivery is causing enormous misery to these prisoners, of whom on that day alone 9084 or 76.75 per cent were under-trial. Among these, 138 had been languishing for more than five years while 1999 had been in jail for between one and five.

4. Judicial delays to criminal trials in Delhi

Judicial delay to criminal trials in the courts of Delhi is endemic. It does not need any empirical data to prove. The objective of the present study is to understand its scope and causes.

The study is confined to trials in criminal cases pending before all 135 criminal courts in Delhi, including those heard by both additional sessions judges and metropolitan magistrates. It does not include time taken in criminal appeals. Generally a criminal appeal lies with the high court in cases decided before sessions courts, while cases before metropolitan magistrates are appealed in sessions courts. There are certain statutory limitations on the right of appeal.

The present study has taken into account only those matters that were on the cause lists of the courts on a single typical working day, 16 November 2007. These cause lists are not comprehensive. Generally, there are certain matters that are left out inadvertently by the court staff, and such matters are added subsequently during the day when a party points out the same. Besides, there are certain additional matters that are handled in the courts but not listed in the cause lists, including fresh applications filed by the parties for miscellaneous purposes, acceptance of sureties in cases where bail is granted by the courts, and production of newly-arrested persons for extension of police or judicial remand. The actual workload of the criminal courts is thus more than what has been recorded here.

In two courts out of the 135, the cause list used was dated 20 November 2007. This is because one court of an additional sessions judge at Tis Hazari did not have a cause list for November 16 while that of a metropolitan magistrate at the same complex had many matters listed without information about the year that the offence was committed. November 20 was also a normal working day.

The cause lists prepared by the criminal courts in Delhi generally divide the matters according to the purpose for which the matter has been listed on a particular date. The division is

Additional sessions judges in Delhi:

43

Number of cases handled in one day:

531

generally made as follows: Miscellaneous matters; charge; prosecution evidence; statement of accused; defence evidence; final arguments; and, final order or judgment. The cause list of a Delhi criminal court typically has the following columns: serial number; case number assigned by the court; cause title; First Information Report (FIR) number, its year and the name of the police station where it was made; and, provisions of law.

This same division has been used for this study, with numbers tabulated on the basis of year of registration of offence as per information provided in FIR column of the cause list. In this respect, it is pertinent to mention that the court-assigned number generally does not give accurate idea about how long a case has been pending as it is changed as and when the case is transferred from one court to another. However, the year given in the FIR column gives the year of registration of offence and, therefore, can generally be taken as the year that an offence was committed. The same cannot be done where criminal proceedings have been instituted on private complaints, which have no FIR. In these cases this study has been obliged to take the year that an offence was committed as the year of the case number assigned by the courts, which requires the assumption that these cases have continued in the same court since institution in the same year that the offence was committed.

Finally, for the purpose of analysis, all the criminal appeals and criminal revision petitions listed before the additional sessions judges have been taken as miscellaneous matters, as the present study focuses on criminal trial only.

Overview of the courts of additional sessions judges in Delhi

Under the CrPC an additional sessions judge has jurisdiction and powers equivalent to a sessions judge. The judge's work includes trial of serious cases such as death, murder and rape, which are committed for trial in the sessions courts by magistrates, and the hearing of criminal appeals and revisions against orders passed by metropolitan magistrates. The cause list of an additional sessions judge in Delhi also contains criminal appeals and criminal revision petitions. A sessions judge or additional sessions judge has powers to award any sentence authorized by law, but a sentence of death must be confirmed in the high court.

On the day under study the 43 courts of additional sessions judges in Delhi had 531 criminal matters listed before them, or an average of 12.35 matters per court per day. Out of these, 213 pertained to miscellaneous proceedings, criminal appeals and criminal revision petitions, while 318 were listed for conducting trials. In other words, on an average working day, approximately 40.11 per cent of the matters listed before the courts of additional sessions judges, or 4.95 matters per court per day, are not for the purpose of trial. Of the remaining percentage, trial is often not conducted for various reasons ranging from the absence of witnesses to paucity of time.

TABLE 6: Snapshot of the Delhi Sessions Courts, 16 November 2007

Particulars	Number	Number/court
Matters listed for criminal trial	318	7.40
Matters listed for miscellaneous purposes/ criminal appeals/criminal revisions	213	4.95
TOTAL	**531**	12.35

Percentage of criminal matters in sessions courts of Delhi listed for trial: 60%

Breaking down the 318 matters listed for trial before additional sessions judges, 184 or 57.86 per cent were listed for the purpose of recording prosecution evidence while the remaining 134 were for various other purposes like framing of charge (58), recording the statement of the accused (20), recording of defence evidence (13), final arguments (33), and final order (10). Framing of charge constituted approximately 18.24 per cent of all matters.

An analysis of the data according to the year that a crime was committed gives the most revealing picture about the extent of delays in criminal justice administration in Delhi and may be taken as representative of the state of criminal cases pending in the courts. From this data, it may be said that approximately 67.29 per cent of the pending criminal trials are one to five years old, approximately 12.26 per cent six to 10 years old, 4.08 per cent 11-15 years old, and around 2.20 per cent pending for more than 15 years. On the day under study, the courts in Delhi had three matters fixed for trial that pertained to crimes committed more than 19 years ago. At the same time, a mere 14.15 per cent of the matters listed were coming up for trial in the same year as the offence.

TABLE 7: Criminal matters pending for trial before Delhi Additional Sessions Courts, 16 November 2007, by year

Year	Charge	Prosecution Evidence	Statement of Accused	Defence Evidence	Final Arguments	Judgment	TOTAL
Pre-1990	0	2	0	0	1	0	**3**
1990	0	1	0	0	0	0	**1**
1991	0	2	0	1	0	0	**3**
1992	0	1	0	0	0	0	**1**
1993	0	4	1	0	0	0	**5**
1994	0	2	0	0	0	0	**2**
1995	0	2	0	0	0	0	**2**
1996	1	1	0	0	1	0	**3**
1997	2	1	0	0	0	0	**3**
1998	0	5	0	0	2	0	**7**
1999	0	4	3	0	1	0	**8**
2000	2	1	0	1	3	0	**7**
2001	2	7	0	2	2	1	**14**
2002	6	11	2	1	5	1	**26**
2003	2	25	5	0	5	0	**37**
2004	2	24	2	5	1	2	**36**
2005	9	32	5	1	6	5	**57**
2006	13	37	2	2	4	0	**58**
2007	19	22	0	0	2	1	**45**
TOTAL	**58**	**184**	**20**	**13**	**33**	**10**	**318**

Charge

The cause lists of the additional sessions courts had 58 matters listed before them for the purpose of framing charge. The cause lists reveal that one criminal case pertaining to the year 1996 was listed on that day for framing of charge. Only 19 out of 58

Percentage of criminal cases in sessions courts of Delhi awaiting prosecution evidence for over a year:

88%

Percentage waiting for more than five years:

18%

cases pertaining to the current year had reached this beginning stage of trial. This means that the sessions courts in Delhi take more than one year to start trial in around 67.24 per cent of criminal cases. Additionally, 55.17 per cent of total matters fixed for this purpose were one to five years old while 10.34 per cent were pending for six to ten years.

Prosecution evidence

The cause lists had 184 matters listed before them for the purpose of recording prosecution evidence. The cause lists reveal that two criminal cases pertaining to the years prior to 1990 were listed on that day. Only 22 out of 184 cases pertaining to the current year had reached this stage of trial while another 37 criminal cases pertained to 2006.

The data show that 70.10 per cent of the matters fixed for prosecution evidence were pending for one to five years, 9.78 per cent for six to 10 years, 5.43 per cent for 11-15 years, and 2.71 per cent were pending for more than 15 years. This means that around 88.04 per cent of criminal cases pending for recording of prosecution evidence before the sessions courts in Delhi remain at this stage of trial a year after the offence has been committed, while approximately 67.93 per cent may continue to be at this stage of trial more than two years after.

Statement of accused

The cause lists of the additional sessions courts had 20 matters listed before them for the purpose of recording statements of accused persons. The cause lists reveal that one criminal case pertaining to the year 1993 was listed on that day. By contrast, not a single case pertaining to the current year had reached this stage of trial.

Defence evidence

The cause lists had 13 matters listed before them for the purpose of recording defence evidence on 16 November 2007. One criminal case pertaining to the year 1991 was listed on that day. They show that 69.23 per cent of the cases listed for this purpose were pending for one to five years while the remaining five cases pertained to the period of more than five years. No case pertaining to the current year had reached this stage of trial.

Final arguments

The cause lists of the additional sessions courts had 33 matters listed before them for final arguments. The lists reveal that one criminal case pertaining to a year prior to 1990 was listed on that day while 21 cases were pending for a period of between one to five years, and 10 cases for more than five years after the commission of offence. It is interesting to see that two cases

pertaining to the current year had also reached this stage of trial. These two cases are completely against the trend and would deserve close study to see how they reached this stage so quickly.

Judgment

The cause lists of the Additional Sessions courts of Delhi had ten matters listed before them for pronouncement of judgments. One case pertaining to the current year had reached this stage of trial, again, making it a subject for special study. The rest of the matters listed before the courts were in conformity with the trend of delay. The data showed that one case listed for this purpose pertained to the year 2001, meaning that the case had taken six years. The cause lists also revealed that 90 per cent of cases listed for the purpose on that day had taken more than two years after the offence was committed to reach a conclusion. It is also appears that 80 per cent of the cases had taken a period of one to five years to complete.

Overview of the courts of magistrates in Delhi

Delhi was declared a metropolitan area by a notification under section 8(1) of the CrPC with effect from 1974. Accordingly, it does not have judicial magistrates ranked first or second-class. The judicial magistrates functioning in Delhi are all conferred with the powers of metropolitan magistrates. Similarly, the courts of the chief metropolitan magistrate and those of the additional chief metropolitan magistrates have powers equivalent to the chief judicial magistrates of non-metropolitan areas under the CrPC.

The chief metropolitan magistrate, the additional chief metropolitan magistrates and the metropolitan magistrates are subordinate to the sessions judges. The chief metropolitan magistrate can award any sentence authorized by law other than a sentence of death, imprisonment for life or imprisonment for a term exceeding 7 years. A metropolitan magistrate can impose a sentence of a term not exceeding 3 years and fine not exceeding 10,000 rupees or both.

Delhi has one chief metropolitan magistrate, five additional chief metropolitan magistrates and 86 metropolitan magistrates; 92 in total. The chief metropolitan magistrate holds his court at the Tis Hazari Courts Complex, which also houses two courts of additional chief metropolitan magistrates. The Karkardooma, Patiala House and Rohini court complexes have one additional chief metropolitan magistrate each.

The metropolitan magistrates look after the work of about 136 police stations across Delhi, and most look after cases pertaining to more than one station. There are eight courts at the magistrate's level dealing exclusively with matters pertaining to women, and some courts deal exclusively with cases relating to the Negotiable Instruments Act, 1881.

The office of the chief metropolitan magistrate, apart from its judicial and administrative work, also covers the special metropolitan magistrates (traffic) having their courts at eight

different places in Delhi. These magistrates handle all the traffic cases for Delhi by disposing of the challans issued by traffic police against offenders.

Magistrates in Delhi:

92

Number of cases handled in one day:

6801

The chief metropolitan magistrate also exercises administrative control over the special metropolitan magistrates and municipal magistrates who look after offences pertaining to littering, sanitation and public health.

The offices of the chief metropolitan magistrate and additional chief metropolitan magistrates together handle the work of summons, production warrants, bailable and non-bailable warrants, recovery warrants, detention orders, parole, transit remands etc., received from different states of India and get the same prepared according to the requirements of the processes at the earliest possible time. They also handle complaints and transfer applications received directly from the magistrates and the litigants regarding pending cases.

When it comes to pending cases before the metropolitan magistrates of Delhi, the situation is appalling: on 16 November 2007 one of the matters listed before an additional chief metropolitan magistrate in the Patiala House Courts Complex pertained to an offence registered in 1974. Aside from this one case, there were a further 6800 criminal matters listed before the courts. This means that on average a metropolitan magistrate in Delhi is expected to handle approximately 74 matters per day. As has been mentioned earlier, in addition to these, there are many other affairs that the courts deal with daily that are not recorded on the cause lists.

TABLE 8: Snapshot of the Delhi Magistrates Courts, 16 November 2007

Particulars	Number	Number/court
Matters listed for criminal trial	2030	22.07
Matters listed for miscellaneous purposes	4771	51.85
TOTAL	**6801**	**73.92**

It is significant that out of these 6801 matters, 4771 pertained to miscellaneous proceedings, while the remaining 2030 were listed for trial. In other words, on an average working day, approximately 70.15 per cent of the matters listed before metropolitan magistrates are not for the purpose of trial at all.

Another important fact is that 3736 matters, 55 per cent, pertained to section 138 of the Negotiable Instruments Act, 1881 alone. In this regard, according to official statistics of 30 September 2007 noted above out of all matters pending before magistrates in Delhi, those under section 138 of the Negotiable Instruments Act were 381,745 out of the total of 637,997, an even higher figure of 59.83 per cent of all cases.

Section 138 of the Negotiable Instruments Act pertains to the dishonouring of cheques due to insufficient funds in a drawer's account. The offence under this provision of law does not require *mens rea*, that is, knowledge of wrongdoing. Therefore, it is not an offence in conventional terms and the overload of these cases on the criminal justice system is a consequence of the failure of the civil justice system in India.

Cases under section 138 were transferred to the courts of metropolitan magistrates only in 2004. Earlier, these matters were being filed in the courts of additional sessions judges. In section 138 cases, evidence is taken on affidavit and the opposite party has a right to cross-examine the deponent or witness. This simple procedure for filing of evidence has allowed the magistrates' courts to list a larger number of matters for recording of prosecution evidence than would otherwise be the case. It is also significant that in most of these matters, the parties settle the dispute before conclusion of trial.

Of the 2030 matters listed for criminal trial, 1200 were listed for the purpose of recording prosecution evidence while the remaining 830 were listed for various other purposes like framing of charge, recording of the statement of accused, recording of defence evidence, final arguments, and final order. Therefore, approximately 59 per cent of the matters listed for trial were listed for recording prosecution evidence. This percentage is almost equal to that of the matters listed before additional sessions judges for this purpose on the same day. Another major part of the trial matters pertained to framing of charge, at 16.50 per cent.

TABLE 9: Comparison of matters listed for trial in the subordinate trial courts of Delhi, 16 November 2007

Matter	Before additional sessions judges		Before magistrates	
	Number	Percentage	Number	Percentage
Framing of charge	58	18.24	335	16.50
Recording prosecution evidence	184	57.86	1200	59.11
Recording statement of accused	20	6.28	97	4.78
Recording defence evidence	13	4.09	36	1.78
Final argument	33	10.38	292	14.38
Judgment	10	3.15	70	3.45
TOTAL	**318**	**100**	**2030**	**100**

Again, it is the year-by-year breakdown of cases that is most illuminating about the delays in Delhi courts: 13 magistrates on 16 November 2007 had matters fixed for trial relating to crimes dating to more than 19 years ago.

If we take the matters listed for trial on the relevant day as representative of the criminal cases pending trial in Delhi, we find that approximately 50.64 per cent of the pending criminal trials are between one to five years old, approximately 21.08 per cent six to ten years old, 6.89 per cent 11-15 years old, and around 1.13 per cent pending for more than 15 years. A mere 20.24 per cent of the matters have come up for trial in the same year.

Percentage of criminal cases in Delhi pending for 1 to 5 years:

51%

Percentage pending for 6 or more years:

29%

TABLE 10: Criminal matters pending for trial before Delhi Metropolitan Magistrates Courts, 16 November 2007, by year

Year	Charge	Prosecution Evidence	Statement of Accused	Defence Evidence	Final Arguments	Judgment	TOTAL
Pre-1990	1	5	1	1	5	0	**13**
1990	0	2	1	0	1	0	**4**
1991	0	3	0	1	2	0	**6**
1992	3	10	0	0	3	1	**17**
1993	1	3	1	1	5	1	**12**
1994	3	10	1	2	4	0	**20**
1995	2	14	5	1	5	1	**28**
1996	1	34	5	2	15	6	**63**
1997	4	42	4	0	12	2	**64**
1998	5	40	7	3	8	2	**65**
1999	3	58	7	0	11	6	**85**
2000	11	80	2	0	9	0	**102**
2001	13	68	4	1	23	3	**112**
2002	19	79	9	1	11	10	**129**
2003	25	112	12	6	24	3	**182**
2004	46	129	11	4	19	4	**213**
2005	68	128	5	2	14	4	**221**
2006	68	134	8	4	57	12	**283**
2007	62	249	14	7	64	15	**411**
TOTAL	**335**	**1200**	**97**	**36**	**292**	**70**	**2030**

Charge

The cause lists of the metropolitan magistrates had 335 matters listed before them for the purpose of framing of charge or issuance of notice. In the summons procedure of criminal trial, court issues notice to the accused persons instead of framing a formal charge.

The cause lists reveal that one criminal case pertaining to a year prior to 1990 was listed on that day for framing of charge. Only 62 out of 335 cases pertaining to the current year had reached this beginning stage of trial, or only 18.50 per cent of criminal cases at this stage of trial before the metropolitan magistrates in Delhi, while approximately 81.50 per cent of cases on charge had taken more than one year, and approximately 61.19 per cent had taken more than two years, while 10.74 per cent had been pending for a period between six to 10 years and 2.98 per cent for a period between 11 to 15 years.

Prosecution evidence

The matters listed for recording of prosecution evidence are huge in number. The cause lists had 1200 matters listed before them for the purpose of recording prosecution evidence on 16 November 2007 alone, of which five criminal cases pertaining to the years prior to 1990 were listed. Only 249 out of the 1200 cases, or 20.75 per cent, were pertaining to the year of 2007. Furthermore, 48.50 per cent of the cases listed were pending for a period between one to five years, 24 per cent from six to 10 years, 5.92 per cent for 11 to 15 years, and 0.83 per cent for more than 15 years.

Statement of accused

The cause lists had 97 matters listed before the magistrates for the purpose of recording statements of accused persons. The cause lists reveal that one criminal case pertaining to a year prior to 1990 was listed on the studied day while there was also

one case from 1990. Fourteen cases pertaining to the current year had reached this stage of trial. The data reveals that approximately 46.39 per cent of cases pending at this stage of trial pertained to cases registered between one to five years ago. The cases pending between six to 10 years were 24.74 per cent, and 12.37 per cent of the total cases were pending for a period between 11 to 15 years.

Defence evidence

Thirty-six matters were listed for the purpose of recording defence evidence. One criminal case pertaining to a year prior to 1990 was among them, while another seven cases pertained to the period where the offence had been registered more than ten years ago. In sum, 47.22 per cent of the matters listed for this purpose were pending for a period between one to five years, 16.66 per cent for six to ten years, and a further 16.66 per cent for a period more than ten years.

Final Arguments

The cause lists of the metropolitan magistrates had 292 matters listed before them for final arguments. Five criminal cases pertaining to the years prior to 1990 were listed on November 16 for final arguments, while there were 64 cases from 2007, or 21.91 per cent. Although this figure sounds high, on enquiry it was found that 45 out of these 64 cases were in the four courts exclusively dealing with cases of the Negotiable Instruments Act, 1881. The data reveals that 42.80 per cent of the cases listed for this purpose were pending for a period between one to five years, 21.57 per cent for six to 10 years, 10.96 per cent for 11 to 15 years and, 2.73 per cent for more than 15 years.

Judgment

The cause lists of the courts of metropolitan magistrates had 70 matters listed before them for pronouncement of judgments on the relevant day. Nine matters pertained to cases in which the offence was registered more than 10 years ago. The cause lists also reveal that 47.14 per cent of cases listed on that day were pending for a period between one to five years, 27.14 per cent for six to 10 years, and 4.28 per cent for more than 15 years. Around 21.43 per cent pertained to the current year. Again, this number is quite high and contrary to the trend and deserves deeper enquiry. However, from preliminary observation it can be said that some magistrates are now taking extraordinary efforts to dispose of cases expeditiously.

Conclusion

The cause lists show that delay has become a matter of routine in Delhi. Magistrates in Delhi have on average 13 matters listed per court for recording of evidence. It is impossible to record evidence for such a large number of cases in a single day. Recording of evidence is the most time consuming process in a criminal trial, yet still the courts have listed such large numbers of cases for this purpose, which explains why the adjourning of cases has become the norm in Delhi courts.

Percentage of criminal cases in magistrates courts awaiting prosecution evidence for over a year:

89%

Percentage waiting for more than five years:

31%

5. Ten case studies of judicial delay in Delhi

1. State versus Durga Burman

This case pertained to the alleged seizure of cannabis. The accused was poor and could not engage a private lawyer to defend himself so the court provided him with counsel. He remained in jail for around 20 months during trial. Finally, he was acquitted and released. The accused was unnecessarily detained for a long time because the trial was needlessly delayed as the police took around six months to file the forensic science laboratory report in respect of the cannabis allegedly seized from him. The court took a further 14 months to conclude the trial.

Date registered: 16 February 2006
PS: Railway Main Delhi, New Delhi
FIR: 48/06
U/S: 20/61/85 NDPS Act
Accused: Durga Burman
Decided by: ASJ Babu Lal (NDPS), Tis Hazari, Delhi SC No. 123/07
Date decided: 29 October 2007

According to the police, on 16 February 2006 Sub-Inspector Ranbir Singh along with Head Constable Dhani Ram, Constable Pradeep and Constable Lal Bahadur were on duty at DFMD, West Passenger Hall Gate, Delhi Railway Station, when at about 2:30pm Durga Burman (44) was seen carrying a white plastic bag on his head. Upon seeing the police, he allegedly turned back, which created suspicion and caused the police party headed by Sub-Inspector Ranbir Singh to chase and apprehend him. The plastic bag was checked and it was allegedly found to contain local cannabis.

The police supposedly requested four to five passersby to assist with the proceedings as witnesses but they all went away without disclosing their names, telling that they had genuine difficulties to do that. The police informed Additional Station House Officer Inspector R S Meena telephonically about the recovery of the cannabis from the accused. They also reportedly gave a notice under section 50 of the Narcotic Substances and Psychotropic Substances Act, 1985 to the accused person and he was apprised of his legal right that he could be searched in the presence of a gazetted officer or a magistrate, if he desired, but he declined and refused to be searched by them too.

At about 3pm Inspector R S Meena also came at the spot along with Constable Sri Ram. A polythene bag allegedly containing cannabis was taken out from the plastic bag. The recovered cannabis was weighed and it came to 30 kilograms, out of which one kilogram was taken out as a sample and was placed in a

cloth packet. The remaining cannabis was put back in the polythene and was sealed. The prescribed form for sending the sample to Forensic Science Laboratory was filled out at the spot.

Both packets and the laboratory form and copy of the seizure memo were reportedly handed over to the Additional Station House Officer who left the spot with Constable Sri Ram. The information about the seizure of the cannabis was reduced to writing and the same was sent to the police station for registration of First Information Report (FIR) through Constable Lal Bahadur.

Thereafter Assistant Sub-Inspector Bhoom Singh along with Constable Lal Bahadur came to the spot; he handed over a copy of the FIR, the accused was arrested, and a site plan was prepared and the information was sent to superior officers.

Thus all investigations were completed on the day of arrest, except that the sample of cannabis was sent to the Forensic Science Laboratory on February 28. The charge sheet was ready on March 3; however, it was only filed on March 30, without a report from the Forensic Science Laboratory regarding the contents of the seized material.

The case came up for hearing on 33 dates. Due to the lack of a forensic report, the matter was adjourned until April 10, and again to April 19 when Assistant Sub-Inspector Bhoom Singh appeared and informed the court that the report was still not available. The judge himself wrote to the Director of the Forensic Science Laboratory, Rohini, Delhi to expedite the report as the accused person was in jail. The case was adjourned to April 29, when the forensic report was filed and the court appointed counsel for the accused and adjourned to May 12, when the accused requested a new copy of the charge sheet as his was misplaced and the matter was again adjourned to May 25 when the accused and counsel were supplied fresh copies of the charge sheet and the matter was adjourned to June 2.

Charge was framed on 2 June 2006 and the court ordered the prosecution to lead its evidence on July 31. In order to prove its case, the prosecution examined 11 witnesses out of which Sub-Inspector Ranbir Singh, Constable Pardeep, Head Constable Dhani Ram and Constable Lal Bahadur were witnesses of the alleged recovery of the cannabis and the rest of the witnesses pertained to the investigation.

Witness testimonies were recorded on July 31, August 28, September 26, November 11 and December 5. On the first two dates two witnesses were absent despite having been summonsed; the court issued bailable warrants against both of them. On the second date the witnesses were not cross-examined because the court-appointed defence counsel was absent.

The court fixed 3 January 2007 as the next date for prosecution evidence but on that day no witness appeared. For next two dates, i.e. February 7 and March 17, the judge was on leave. On April 17, examination of witnesses for the prosecution continued

and the court appointed a new counsel for the accused as the previous one had been selected for appointment to the judiciary. The case was adjourned to May 2, but as no prosecution witness appeared on that date the matter was adjourned to May 28, when the prosecution evidence was closed and the case adjourned to July 2 for recording the statement of the accused.

In the meantime the judge was transferred and the one who was appointed in his place was not conferred powers under the Narcotic Drugs and Psychotropic Substances Act, 1985, to conduct trial and therefore no proceedings took place on two dates, i.e. on July 2 and 17.

Thereafter, the matter was transferred to the court of a judge who had powers under the Narcotic Drugs and Psychotropic Substances Act, 1985. On 2 August 2007, the judge issued notice to the defence counsel and adjourned the matter to August 17.

On next four occasions, i.e. August 17 and 25, September 3 and 10, the judge did not have time to record the statement of the accused. The matter again came up again on 24 September 2007 but the judge was on leave.

Finally, the statement of the accused was recorded on 8 October 2007. The accused stated that he was innocent and he did not wish to lead evidence in his defence.

The matter was fixed for final arguments on 16 October 2007, however, the judge was busy in some other case, therefore he fixed the case for the next day and the final arguments were heard on October 17.

The court fixed October 22 and then 25 for pronouncement of the judgment but the judge did not have time on those dates.

Finally on 30 October 2007, the court acquitted the accused Durga Burman. The judgment was dictated to the stenographer and taken in short hand, which shows that the judge did not have sufficient time to write the judgment even on that day. After 20 months Durga Burman was allowed to go free.

2. State versus Ravinder Kumar

This is a case relating to causing simple injury by rash and negligent driving. The offence is a bailable offence entailing punishment up to six months and also a fine up to 1000 rupees. There is no minimum mandatory sentence. The offence is cognizable and bailable; therefore, the offender is arrested but released by the police upon furnishing bail bonds. In this case the prosecution did not have any sense of urgency in calling a material witness who was needed to complete the matter, who was apparently expected to wait indefinitely at his given address until some day that the prosecution might call him to give his testimony before the court: an unreasonable expectation in a big metropolis like Delhi.

According to the prosecution, on 3 January 2000 at about 1pm on Palam Road, near Hanuman Mandir, Delhi Cantonment, the accused was allegedly driving a Zen car with registration number UP 16 3067 in a rash and negligent manner endangering human life. He struck one cyclist, namely Babu Lal Shukla, causing simple injuries. Since the alleged act was a cognizable offence

under sections 279 and 337 of the Indian Penal Code (IPC), 1890, an FIR was registered and the accused person was arrested and released on his personal bond and a surety bond.

Date registered: 3 January 2000
PS: Delhi Cantonment
FIR: 7/00
U/S: 279/337 IPC
Accused: Ravinder Kumar
Decided by: Magistrate Kuldeep Narain, Patiala House, New Delhi
Date decided: 17 October 2007

The police filed charge sheet in this case on 22 April 2000. It is significant that the charge sheet was ready on 29 January 2000; though all the evidence annexed with it pertained to the investigation carried out on January 3, and then almost a further three months passed before it was lodged.

The court adjourned the matter to 12 December 2000 for issuing notice to the accused, when he was give notice of the charge and the case was fixed for prosecution evidence on 3 November 2001. On that date the accused filed an application seeking exemption from personal appearance on medical grounds. It was allowed and the case was adjourned to 4 September 2002 for prosecution evidence; however, the court record keeper failed to bring the file before the judge on that day and it was again adjourned to October 5 when the accused again sought exemption on medical grounds and the case was adjourned to 10 January 2003. However, no proceedings took place on that date as the judge was on leave and case was further adjourned to September 5.

The trial began on 5 September 2003, when the first prosecution witness was examined and discharged. The court directed that the injured/complainant be examined on 25 May 2004. However, on that date he was on leave and the matter was adjourned to 8 March 2005, which was declared a holiday; therefore, the matter was taken up on 9 May 2005 and was adjourned without any further evidence being given to 27 July 2006, when the second witness was examined and discharged.

The prosecution then reported that the injured Babu Lal Shukla had left his address. The court ordered that his presence be secured through the investigating officer/Station House Officer/ Deputy Commissioner of Police (South West) and adjourned the case to 18 January 2007, when the judge was on half day's leave, so the matter was adjourned to 17 October 2007, when the prosecution again reported that the injured/complainant Babu Lal Shukla was not available at the given address. The court said:

> In the present case notice U/S 279/337 IPC was framed vide order dt. 12.12.2000 in which accused pleaded not guilty and claimed trial. The prosecution so far examined two witnesses namely PW [Prosecution Witness]-1 Anand and PW-2 retired SI Lakhi Ram, mechanical inspector.
>
> So far both the PWs are formal in nature.
>
> In the present case Babu Lal Shukla was injured/complainant. He was not examined as he could not be served with the summons.
>
> Vide order dt. 27.7.06, PW Babu Lal Shukla was ordered t be served through IO/SHO/DCP-SW. Today the summons sent to PW Babu Lal Shukla received back and it is reported that he has left the given address and his current whereabouts are not known. In the given circumstances,

in my considered opinion, no fruitful purpose would be served in further examining the other PWs. I deem it fit to close the PE [Proseuction Evidence]. The PE is closed.

Since nothing incriminating has come on record against accused so far recording of SA [Statement of the Accused] is hereby dispensed with.

Vide my separate order, accused is acquitted.

It is significant that the trial in this case started on 12 December 2000; however, no efforts were made to summon the injured/complainant expeditiously. He was summoned first time for tendering his evidence on 25 May 2005. The prosecution did not make any efforts to trace this witness till 27 July 2006 when it informed the court that the injured/complainant had left his given address. The court issued a summons to trace him; however, there is nothing on record to show that efforts were made to do this except from filing the same old report that he had left the given address. Non-production of this witness caused unnecessary harassment to the accused for more than seven years and resulted in a denial of justice due to the miscarriage caused by the delay.

3. State versus Afsar

The case pertains to the alleged illegal possession of a knife. The offence entails imprisonment that shall not be less than one year but may extend to three years and also imposition of a fine. The proceedings continued for around 11 years, yet there were only two witnesses in the case, neither of who was examined. The accused remained in jail for 24 days before filing of the charge sheet against him, and subsequently he was sent back to jail for a further five days as he failed to appear on the date fixed for trial. However, the police failed to produce witnesses for around 11 years despite the fact that all the witnesses in this case were policemen. Even after that time, the assistant public prosecutor sought opportunity to produce witnesses before the court. However, the court did not allow the same and acquitted the accused.

Date registered: 30 July 1996
PS: New Delhi Railway Station
FIR: 543/96
U/S: 25/54/59 Arms Act
Accused: Afsar
Decided by: Magistrate S K Gautam, Tis Hazari, Delhi
Date decided: 6 November 2007

According to the prosecution, on 30 July 1996 Assistant Sub-Inspector M A Khan and Constable Jai Prakash were on patrolling duty in the area of the New Delhi Railway Station. At around 11:10am, both these policemen reached at platform 10. When they reached the southern side of the platform, they allegedly saw the accused sitting in a suspicious manner. When they approached him, he tried to run away; however, he was caught. The policemen allegedly recovered one switch-operated knife from his possession. The knife was measured and a sketch prepared. Thereafter, it was sealed in a packet and was taken into police possession and a seizure memo recorded. Assistant Sub-Inspector M A Khan reduced the information to writing and Constable Jai Prakash was sent to register the FIR.

The accused was produced before the concerned metropolitan magistrate on the same day and was sent to jail till 13 August 1996 when the investigating officer sought a further 14 days remand on the ground that investigations in the case were not complete. The accused was remanded till August 27 but subsequently granted bail on August 16 and released on August 23 as arrangement of sound surety took some time. Thus, the accused person remained in custody for 24 days at this time.

The police filed a charge sheet against the accused on October 25. It is pertinent to note that all the evidence annexed with the charge sheet bears the date of 30 July1996; therefore, it may be safely assumed that no investigation took place after that date, yet it took about three months to file the charge. The court thereupon ordered that the accused be summoned and fixed 24 April 1997 as the next date of hearing. However, the accused did not appear and the court issued a non-bailable warrant against him and fixed August 18 as the next date of hearing. When the accused appeared voluntarily on that day a copy of the charge sheet was supplied to him and the case was fixed for framing of charge on 21 April 1998, whereupon the accused was again absent. The court issued another non-bailable warrant and adjourned the case to November 5; however, the accused did not appear and had not been arrested. The court again issued a warrant and adjourned to 17 May 1999.

In the meantime, on 6 November 1998 the accused appeared before the court and sought cancellation of the warrant. However, the court sent him to jail till November 20. In response the accused moved a bail application again and it was allowed on November 11, whereupon he was released after five days in jail.

The court framed charges against the accused person on 20 November 1998 and ordered the prosecution to produce witnesses. Thereafter, the case came up for prosecution evidence 14 times, on 22 October 1999; 17 April and 29 August 2000; 24 January, 6 June and 27 November 2001; 11 November 2002; 6 November 2003; 10 August 2004; 15 March and 22 December 2005; 15 May 2006; and 19 March and 6 November 2007. On these dates, the investigating officer was present to give his evidence only thrice but was not examined as the defence counsel was not available once and the judge was on leave twice. On two occasions the court had to issue bailable warrants against the investigating officer to get his presence in the court. The prosecution did not produce witnesses on nine occasions.

Finally on 6 November 2007 the judge decided that enough opportunities had been granted to the prosecution and it had failed to produce a single witness before the court:

> I have perused the entire file. Case is pertaining to the year 1996 and charge was framed against accused on 20.11.1998, since no witness has been examined by the prosecution. Even today no witness has appeared for his examination-in-chief. I think sufficient opportunity has been granted to prosecution for PE since then no witness has been examined, therefore, I do not deem it proper to adjourn the matter any further for PE. Accordingly PE is closed.
>
> Since I do not find any incriminating evidence against accused, therefore, statement of accused is hereby dispensed with.
>
> Vide separate judgment of today accused Afsar, S/o. Abdul is acquitted from the charge leveled against him.

The trial took more than 11 years to conclude. There were only two witnesses; both of them were policemen. Neither was examined and the accused person had to suffer 29 days in prison and 11 years on trial.

4. State versus Shahnawaj & Another

This is a case pertaining to wrongful restraint and causing simple injury. The offence entails a punishment of one-year imprisonment and fine up to 1000 rupees for voluntarily causing simple injury, while for wrongful restraint punishment is simple imprisonment of a term that may extend to one month and a fine of up 500 rupees. These proceedings continued for around nine years from the date of incident. The offences were allegedly committed on 5 November 1998. The first date for recording of prosecution evidence fixed by the court was 15 September 2005. During the course of trial only two out of six witnesses cited in the charge sheet were examined. Meantime, the injured/complainant died, not due to the injuries inflicted by the accused persons but of a natural death, before he could be brought in the witness box. It is pertinent that the injured complainant died prior to the start of prosecution evidence being given yet the prosecution neither informed the court of the exact date of death nor was any document confirming his death ever filed in court.

Date registered: 5 November 1998
PS: Sri Niwas Puri
FIR: 1115/98
U/S: 341/323/34 IPC
Accused: Shahnawaj & another
Decided by: Magistrate Ravinder Bedi, Patiala House, New Delhi
Date decided: 2 November 2007

According to the prosecution, one Mohammad Abbas was wrongfully restrained and attacked by two accused at around 9:30pm on 5 November 1998 near his house in the Okhla area of Delhi, causing simple injuries to his face, jaw and other body parts with a sharp-edged weapon, whereupon he had to be hospitalized. Sub-Inspector Sanjeev and Constable Prabhudhan reached the Holy Family Hospital where the injured Mohammad Abbas was admitted. His statement was recorded and a criminal case was registered at the Sri Niwas Puri Police Station, Delhi.

Since both the offences were bailable, upon arrest the accused persons were released on bail on 7 November 1998.

Police filed a charge sheet on 22 April 2000, i.e. around one-and-a-half years after the date of incident. A perusal of the charge sheet shows that it had been finalized on 28 March 1999 but was presented to the court on 22 April 2000. The court registered the case, issued summons to the accused and adjourned the matter to 1 December 2001, i.e. around one year and seven months later, when it was found that the summons issued to the accused persons had not been reported back. The court again issued summons and notice to sureties. The matter was adjourned to 27 February 2003, i.e. around one year three months later.

Both the accused persons appeared before the court on 27 February 2003, and copies of the charge sheet were supplied to them. The matter was adjourned to 22 August 2004, i.e. around one year and six months later, for recording prosecution evidence. This date was declared a holiday, therefore, the matter was taken up on the next day and adjourned to 29 November 2004. However, on this date neither of the accused persons appeared. The court issued non-bailable warrants against them. The case was adjourned to 17 March 2005. Both the accused persons appeared before the court on the next date and the warrants were cancelled.

On 17 March 2005, the court was informed that the complainant/injured had died. The court summoned the complainant's uncle and fixed March 21 for the purpose. However, the uncle of the injured/complainant did not appear and the matter was adjourned to September 15 for recording prosecution

evidence. On this date, i.e. after around five years from the date of incident, testimony of one witness was recorded. On that day, the court was informed that two other witnesses were not available at their given addresses. The court adjourned the matter to 19 April 2006 for the remaining prosecution evidence, but on that date neither did any witness nor did the investigating officer appear. The court directed issuance of bailable warrants against the investigating officer and also directed the Station House Officer at Sri Niwas Puri to verify whether the injured/ complainant had died or not.

On 12 September 2006, a report confirming death of the injured/complainant was placed on record. No witness appeared. The court issued bailable warrants against the witnesses and the matter adjourned to 6 April 2007 and taken up the following day as the date fixed was again declared a holiday. On that day, as before, no witness appeared and the matter was adjourned to 2 November 2007 as the last opportunity, when one witness appeared and testified about examining the x-ray sheets of the injured. No other witness appeared. The court closed the prosecution evidence. Since no incriminating evidence was on record, the court acquitted both the accused persons.

5. State versus Sheikh Jahangir

This case pertains to an alleged rape. The accused remained in jail from 18 July 2006 to 8 October 2007 without any trial. He was granted bail by the court but could not secure it as he was not able to provide surety.

Date registered: 18 July 2006
PS: Lajpat Nagar
FIR: 809/06
U/S: 376 IPC
Accused: Sheikh Jahangir
Decided by: ASJ Vinod Kumar, Patiala House, New Delhi
SC No. 122/06
Date decided: 8 October 2007

According to the prosecution, on 18 July 2006 at around 4am the accused person Sheikh Jahangir (27) entered the residence of the prosecutrix, namely Sunita Devi, wife of Jeewan Paswan. According to the prosecution, her husband was sleeping outside. It is alleged that after entering, the accused raped the prosecutrix who at first thought him to be her husband but after some time realized that he was not her husband. The prosecutrix called her husband but the accused was able to run away. On the statement of the prosecutrix, the FIR was registered and the accused was arrested.

The charge sheet against the accused was filed on 12 September 2006. It is significant that the evidence filed with charge sheet shows that it was completed on July 27 but it took more than one-and-a-half months for the police to prepare and file it before the court, and even then it did not contain the Forensic Science Laboratory report with details of clothes, swabs, and blood samples obtained during the investigation. The forensic report was completed later, dated 18 December 2006. The application seeking to file the report in the court is dated 9 March 2007 while it was filed on July 2. Therefore, the police took more than six months to file the report in this case.

Meanwhile, on 26 September 2006, the concerned magistrate supplied copies of the charge sheet and directed that the accused be produced before concerned the sessions court on 9 October 2006, when December 12 was fixed for framing of charge against the accused person. On that date a counsel was appointed to

defend the accused. The court also framed charges and the case was adjourned to 5 March 2007 for prosecution evidence; however on that day and on the next date of March 9 the judge was on leave.

On 22 May 2007, the prosecution witness who had registered the FIR was present. The additional public prosecutor submitted that he wanted to examine the prosecutrix first; therefore, this witness was discharged and the court directed that the prosecutrix and the investigating officer alone should be summoned on July 2 for recording of their evidence.

On 2 July 2007, the investigating officer informed the court that the prosecutrix was not "traceable at the given address". She sought further time to produce her, which was allowed, and the case was adjourned to August 8, when the officer told the court that she had been traced to a new locality and further time was needed to find her. The court allowed it but at the same time allowed a bail application of the accused on furnishing a personal bond for 20,000 rupees with one surety of like amount.

The case was adjourned to 12 September 2007 for prosecution evidence. On that date neither the prosecutrix nor the investigating officer appeared. On September 18 it was the same story again and the case was adjourned to October 8 as the last opportunity. The court on that day refused to grant further time and pronounced the judgment:

> IO SI Joseph is present. She has filed the report that she has made all efforts to trace out the prosecutrix. It is submitted that for this purpose she had sent Ct. Mahesh. He has recorded statements of witnesses. It is submitted by investigating officer that she has made all possible efforts to trace out the prosecutrix but she has been unable to do so. Ld. APP seeks one more opportunity. However in the present case accused is lying in J/C since 19 July 2006. Many opportunities have been given to trace out the prosecutrix. Despite best efforts made by the investigating officer, the prosecutrix is not traceable. Even the husband of the prosecutrix, who is a material witness, is not traceable. All other witnesses are formal in nature. Therefore I am not inclined to grant any further opportunity to the prosecution. The prosecution evidence is closed by this order. Since there is no evidence against the accused, SA dispensed with. Final arguments heard. Accused is acquitted...

6. State versus Shiv Pujan Rai & Another

This case pertains to seizure of a large quantity of cannabis. The prosecution cited and examined 11 witnesses. Both the accused persons belonged to villages near Patna in Bihar. They were poor and could not afford to engage private lawyers. Both of them were provided with counsel. During the trial one of the accused, Shiv Pujan Rai, tried to engage private lawyer but the lawyer did not continue. Trial could not start for about six months, as the Forensic Science Laboratory report was not available. The court framed charges on 1 April 2004 and prosecution evidence started. The case came up for hearing before the trial court on 62 occasions. The judge was not available on 13 occasions. One or the other of the lawyers appointed by the court was either absent or quick in seeking adjournments. Recording of almost all of the witnesses continued over more than one sitting per person for various reasons, either because the judge did not have time or defence counsel were either absent or sought adjournment. On two occasions recording

of evidence was stopped for the reason that one suitcase which was to be shown to the court as evidence was accidentally locked and the police could find any person to open it. The prosecution did not produce the three police witnesses of recovery at the beginning of trial. They were produced last. Discrepancies in their testimony could have had significant bearing on the release of the accused persons on bail, although the accused did not move any bail application during trial. Both remained in jail for about four years. Ultimately the court held that the prosecution had failed to prove its case and they were acquitted.

Date registered: 6 December 2003
PS: Railway Main Delhi, New Delhi
FIR: 370/03
U/S: 20/61/85 NDPS Act
Accused: Shiv Pujan Rai; Vidya Devi
Decided by: ASJ Babu Lal (NDPS), Tis Hazari, Delhi
SC No. 135/07
Date decided: 31 October 2007

According to the prosecution, on 6 December 2003, Assistant Sub-Inspector Ashok Kumar along with Head Constable Ayaz Khan and Constable Lal Bahadur were on duty near the eastern side of the stairs of platform 4/6 of Delhi Railway Station. At about 12:30am the accused persons were going outside the station and on seeing police they allegedly turned back. On suspicion, they were stopped. Shiv Pujan Rai (43) was carrying two suitcases on his head and Vidya Devi (35) had one suitcase in her right hand and a bag over her left shoulder. Both of Shiv Pujan's cases were checked and allegedly contained cannabis, as did the suitcase and bag of Vidya.

The police reportedly told both accused that since cannabis had been recovered from them and they might be in possession of other narcotics, therefore, their search was to be taken and it was their legal right, if they so desired, to have it done in the presence of a gazetted officer or a magistrate, a right that both reportedly declined. The police also gave them written notices notice under section 50 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

The police informed the station house officer of the Railway Main Delhi Police Station about the matter and requested eight to ten passersby to join the proceedings as witnesses but all of them refused. The cannabis allegedly recovered from Shiv Pujan was weighed and found to be 38 kilograms while from Vidya it was 32 kilograms. The police reportedly took out one kilogram of cannabis from each of all three suitcases and the bag as samples and packed them in separate cloth packets. The remaining cannabis was packed separately in four packets. The police claimed that they filled in the prescribed form for sending the samples for testing to the Forensic Science Laboratory on the spot and that all eight packets and the form were sealed and the case property was seized as per seizure memos.

The information was reduced to writing and was sent to the police station through Constable Lal Bahadur. Thereafter, Sub-Inspector Ranbir Singh came to the spot and took possession of all documents and evidence and custody of the accused. A site plan was prepared; a report was sent to the superior officer; sample packets were sent to the Forensic Science Laboratory for chemical analysis.

Upon completion of investigation, the police filed a charge sheet against both the accused persons for possession of cannabis entailing punishment up to five years imprisonment and also a fine that may extend to 50,000 rupees on 3 February 2004. The charge sheet did not contain the forensic report and the court

recorded that it was awaited. The matter was adjourned to February 17, when Shiv Pujan Rai's counsel filed his power of attorney while the court appointed counsel for Vidya Devi. The matter was adjourned to 1 March 2004 to enable the police to file the forensic report; however, by this time it was still not ready. On March 15, the court issued notice to the investigating officer, as the forensic report was not filed on that day as well. The matter was adjourned to 31 March 2004 but neither the forensic report was filed and nor did the investigating officer appear. In fact, the notice issued to the investigating officer was not even received back.

The matter was adjourned to April 8, when the investigating officer, Sub-Inspector Ranbir Sing, appeared before the court and said that the forensic report was still not ready. The judge decided to write to the director of the Forensic Science Laboratory, Rohini, Delhi to expedite the forensic report. The court fixed 26 April 2004 as date for filing of the forensic report. The court directed the investigating officer to be present on that day; however, on that day again neither the forensic report was filed nor did the investigating officer appear. The court issued a bailable warrant against the investigating officer and fixed May 3 as the next date of hearing.

This date was declared a holiday therefore, the matter was taken up on 4 March 2004. On that day again neither the forensic report was filed nor did the investigating officer appear. The court again issued a bailable warrant against the investigating officer and fixed 15 May 2004 as the next date of hearing.

Around six months after the alleged seizure of cannabis, on 7 May 2004, the forensic report was filed. Now the charge sheet was complete. This become possible only when the court repeatedly issued bailable warrants against the investigating officer and the judge himself wrote to the director of the Forensic Science Laboratory. Copies of the forensic report were supplied to the accused persons on May 15.

The court found a *prima facie* case against both the accused persons and framed charges on 1 June 2004. The matter was adjourned to July 9, when three prosecution witnesses gave their statements but could not be cross-examined as the accused persons sought adjournment. Shiv Pujan Rai also asked for court-appointed counsel. The court appointed the lawyer representing Vidya Devi to him also and directed him to supply the necessary documents before adjourning the matter to August 3 when he did so and the case was again adjourned to August 12. However, on that date and the following, September 3, the judge was on leave. On October 5, prosecution witnesses statements were recorded and the matter adjourned to November 6 for remaining prosecution evidence. However, on that day the judge was again on leave, therefore, the matter was adjourned to December 9, when no witness appeared. The court ordered issuance of bailable warrants against two witnesses while summons with regard to two other witnesses were not received back. The case adjourned to 19 January 2005.

On 19 January 2005, examination-in-chief of the sixth prosecution witness was recorded, and two other witnesses were discharged without examination. The counsel for the accused persons was absent. The case was adjourned to February 15 but as the judge was on leave the matter was adjourned to March 23 when the examination-in-chief of the seventh prosecution witness was recorded and another witness was discharged without her examination as defence counsel was not present. Shiv Pujan engaged a lawyer who filed his power of attorney. The case adjourned to April 23 when fresh power of attorney was filed again on behalf of Shiv Pujan and the examination-in-chief of the eighth prosecution witness was partly recorded but stopped midway when a suitcase which was to be exhibited in court did not open as its middle lock got stuck. The court directed the police to arrange a person who may unlock the suitcase. The case adjourned to May 20, when four witnesses were present but the lawyer for the accused sought adjournment and the matter was moved to July 4, at which time the lawyer for Shiv Pujan Rai cross-examined the seventh prosecution witness while counsel for Vidya Devi was not present. The matter was adjourned to August 2 when the court appointed a new counsel to her and examinations-in-chief of the ninth and tenth prosecution witnesses were partly recorded and the matter was adjourned to September 2, when the examination-in-chief of the eleventh prosecution witness was partly recorded.

Thereafter the matter was fixed for 23 September, 31 October and 25 November 2005; and 10 January, 10 February, 7 March, 12 April, 9 May, 5 July, 21 August, 6 September and 11 October 2006, however, no trial took place. Out of these 12 occasions, the judge was not available on six occasions; lawyers were not available due to a strike on two occasions; court-appointed counsel was not available on one occasion; a new court-appointed counsel for Shiv Pujan Rai sought adjournment on one occasion; the public prosecutor was on leave on one occasion, and on the last date the statement of the eight prosecution witness could not be recorded for non-availability of a person who could open the suitcase which had got stuck on 23 April 2005 during recording of evidence. The court had directed arrangement for opening the suitcase on that date but apparently nobody cared and even after the lapse of more than a year the suitcase again derailed the trial.

On 8 November 2006, the statement of the eleventh prosecution witness was partly recorded and the matter was adjourned to November 29 when the witness completed testimony and statements from the eighth and tenth witnesses also were taken. On the next two dates, i.e. 6 January and 21 February 2007, no prosecution witness was available, while on March 5 the lone remaining was present but sought adjournment because of illness, whereupon the witness testified on March 21 and the prosecution evidence was closed. The matter was adjourned to April 11 for recording of the statements of the accused persons.

On 11 April 2007, statements of the accused persons were recorded and the case was adjourned to May 5; however, on this date the public prosecutor was on leave and the matter was adjourned to May 29 when counsel for defence requested an adjournment. On next two dates, i.e. July 11 and August 16, the judge was not available. The case was transferred to a new court and adjourned to August 23. Finally, on September 20 arguments on behalf of the accused persons were heard and the matter was adjourned to September 26 when the judge sought some clarifications and adjourned the matter to October 1. However, on that date the defence counsel were absent while on October 11 the judge was on leave. On October 18, counsel for Vidya Devi sought adjournment to cite some precedents before the court and the matter was adjourned October 20 when the court heard further arguments and matter was again adjourned to October 25 for judgment, but on that day and October 30 the court did not have time for judgment so the matter was adjourned to October 31.

On 31 October 2007, the judge pronounced both the accused persons not guilty and ordered their release.

7. State versus Virender a.k.a. Lilu

This case pertains to a narcotic drug user. He was arrested under the provisions of the Narcotic Drugs and Psychotropic Substances Act, 1985, as possession of such drugs in small quantities for personal use is a punishable offence entailing a sentence of up to one year and fine. He was imprisoned for 107 days as an under-trial prisoner.

Date registered: 24 February 2004
PS: Sadar Bazar, New Delhi
FIR: 74/04
U/S: 27/61/85 NDPS Act
Accused: Virender a.k.a. Lilu
Decided by: Magistrate Vinay Singhal, Tis Hazari, Delhi
Date decided: 13 November 2007

Police caught the accused on 24 February 2004 at about 2pm on Rani Jhansi Road near Gali Chimini Mill, Sadar Bazar, New Delhi. He was allegedly consuming heroin using a matchstick, paper pipe and aluminum foil. The matchstick, cigarette foil and foil pipe were seized. No narcotics or psychotropic substances were recovered.

The accused remained in custody till April 8, i.e. 43 days. He was granted bail on that day upon furnishing his personal bond for 5000 rupees.

On June 11, the police filed a charge sheet before the metropolitan magistrate at Tis Hazari. It is pertinent to note that all the documents annexed with the police report are dated 24 February 2004, suggesting that no investigation was carried out after that date. The station house officer in charge of Sadar Bazar station had also apparently signed the charge sheet on May 22. However, the magistrate found that the forensic report regarding the contents of the seized material was not produced, therefore, he ordered the police to file the forensic report. He also ordered issuance of summons to the accused for appearance before the court. The court fixed 27 May 2005 as the next date of hearing.

The order sheet dated 27 May 2005 says that the accused did not appear on that day. The court ordered issuance of bailable warrant against the accused. However, it erroneously recorded that the Forensic Science Laboratory result had been filed. The court fixed 3 March 2006 as the next date of hearing.

On 3 March 2006, the accused was again absent. The court forfeited his bail bond and ordered issuance of non-bailable warrant, then fixed October 31 as the next date of hearing, when it directed attachment of property of the accused and stated process of declaring him a proclaimed offender. The case was fixed for hearing again on 11 September 2007.

On 11 September 2007, the accused person Virender a.k.a. Lilu voluntarily appeared before the court. Instead of canceling the non-bailable warrants, the court had him arrested and sent to jail. The court ordered that the accused be produced before it every 14 days for extension of his judicial remand, i.e. on 25 September, 9 and 23 October, and 6 November 2007.

The court found that despite the order dated 11 June 2004, the police had not in fact filed the forensic report. The court ordered that the investigating officer be present and explain reasons for non-compliance before fixing November 13 as the next date of hearing. But on that day, neither the Forensic Science Laboratory result was filed nor was the investigation officer present, despite the order of the court.

By 13 November 2007 the accused had remained in jail for 64 days without any proceedings before the court; he moved an application pleading guilty and seeking that he be released on the sentence already undergone by him. The court framed charges under Section 27 of the Narcotics and Psychotropic Substances Act, 1985 to which he pleaded guilty. The court convicted him on his plea of guilt and sentenced him to the period already undergone by him.

8. State versus Sri Chand & Ors

This is case pertains to a young man who was murdered by his neighbours in the presence of his brother and father on 25 January 1992. His younger brother Baleshwar was also attacked and injured in the same incident. The family of the deceased took full interest in the prosecution of the accused persons and attended every date at the trial court to see that they got justice. The trial continued for around five years. Finally, the trial court, disbelieving both the eyewitnesses, acquitted the accused persons. The eyewitnesses made representation to the Delhi state government to appeal against the acquittal. The state government informed them that it would appeal against the judgment and that the file had been sent to the concerned sub-divisional magistrate for filing in the Delhi High Court. However, no appeal was ever filed. Ultimately both the eyewitnesses were forced to file a criminal revision petition against the judgment, in February 1998, which remained pending for more than nine years before the Delhi High Court. The court in its judgment dated 13 July 2007 refused to interfere with the acquittal and dismissed the petition. Both the eyewitnesses have now preferred a Special Leave Petition before the Supreme Court of India, which at time of writing had issued notice on the petition.

Date registered: 25 October 1992
PS: Tughlaq Road, New Delhi
FIR: 248/92
U/S: 302/307/34 IPC
Accused: Sri Chand, Jai Prakash, Samir, Dharambir a.k.a. Veere
Decided by: ADJ S C Mittal, Patiala House, New Delhi
Date decided: 29 August 1997; appeal pending before Supreme Court

Briefly, the facts relating to this case are that the accused persons' and the victim's families were neighbours, living in quarter numbers 63 and 62 respectively, located on the first floor of the New Delhi Municipal Committee (NDMC) Quarters, Khan Market, New Delhi. The NDMC quarters are housed in a double storied structure. Each quarter consists of one room measuring around three by three metres, and has some additional covered space in the rear. The roof of these quarters is a common area, without any demarcation and is accessible by a general staircase situated in the block. However, the accused Sri Chand had illegally constructed a room on the portion of the roof above his quarter and had let it out to another accused person, Dharambir a.k.a. Veere.

Originally, the quarters only had common latrines, with one latrine being shared by four quarters. These latrines were situated on the landing between the ground and the first floor. As immediate neighbours, the victims and the accused shared one such latrine. Subsequently, the NDMC also constructed individual latrines attached to each quarter. After these latrines were built, the accused persons put their lock on the common latrine. Though this was illegal the other residents had refrained from joining issue with them for the sake of maintaining good relations; however, when the maternal grandfather of deceased Rajinder and injured Baleshwar came to visit them, Baleshwar and Rajinder asked the accused persons to unlock the common toilet for his use. The accused persons refused to comply with this request, which resulted in an altercation. Thereafter, Baleshwar and Rajinder broke open the lock and the accused persons Sri Chand, his son Samir and brother Jai Prakash threatened Baleshwar and Rajinder that they would take revenge.

On 25 October 1992 around 9pm, Baleshwar; Rajinder, his wife Usha and their two-year-old son went to the roof of their residence to let off crackers for the Deewali festival. Baleshwar stood on the corner of the said roof, above quarter number 64, watching the fireworks. Around 9:30pm, Dharambir was joined by the three other accused. Thereupon Sri Chand and Dharambir passed some lewd remarks to Usha and Rajender rebuked them. Upon this, all the accused pounced upon him, attacking him with fists and feet. Baleshwar went to his brother's rescue. However, accused Dharambir prevented him from doing so by grabbing hold of him.

On seeing the quarrel Usha rushed downstairs to seek help. In the meantime Samir went inside Dharambir's room and came out with a knife. He exhorted his father and uncle, "Catch hold of them. We shall finish off both brothers today itself." ("Tum inhe pakro aaj hee dono bhaiyon ka kaam tamaam kar dete hain.") Sri Chand and Jai Prakash caught hold of the deceased and Samir allegedly stabbed him three to four times in his chest and abdomen. Immediately after that he allegedly made three or four attempts upon Baleshwar, who avoided all except one, which resulted in a cut on the left side of his abdomen.

Sri Prakash, father of Baleshwar and Rajinder, rushed to the terrace immediate upon being told of the quarrel by his daughter-in-law, along with two neighbours, Chander Pal and Brajesh. Sri Prakash says that he saw Samir come out of the room with the knife and that he saw him inflict the wounds upon Rajinder and Baleshwar.

Thereafter, all the accused persons fled. Rajinder was taken to Safdarjung Hospital, Delhi. Shortly thereafter, the injured eyewitness Baleshwar was also taken to Safdarjung Hospital. Rajinder was declared dead on arrival at 10pm.

Upon receiving information, police from Tughlaq Road Police Station reached the spot. One policeman was left to guard the scene of the crime while the investigating officer and another left for Safdarjung Hospital where they met Baleshwar. He moved an application to the duty doctor seeking permission to record his statement. The doctor declared him fit for making a statement, which was duly recorded and sent to the police station for registration of the FIR, which was done at 11:35pm.

On 26 October 1992, the investigating officer raided Sri Chand's house and finding him and Jai Prakash inside arrested them. He also seized bloodstained clothes belonging to the two. The other two accused Samir and Dharambir subsequently surrendered in court.

With investigations completed, the charge sheet was filed, charges were framed against all the four accused persons and they were tried for the offences of murder and attempted murder.

Giving benefit of the doubt, the trial court on 29 August 1997 acquitted all the accused. Its judgment holds that the accused persons had the necessary motive for the crime and that the presence of the accused at the place and time of incident is also not disputed and that the accused had run from the scene. However, it acquitted them on the ground that the presence of the two eyewitnesses to the murderous assault, one of whom was injured in the same incident, had not been established.

On 9 September 1997, Baleshwar moved a representation to the lieutenant governor of Delhi praying that the state file an appeal against the judgment acquitting the accused. On November 5, Baleshwar again moved a representation to the home secretary of the NCT Delhi government reminding about his earlier representation, and reiterating his request that the state should appeal.

On 26 November 1997, the home department consultant of the Delhi Administration informed Baleshwar that the state has decided to file an appeal against the acquittal of the accused persons. The letter further stated that the file had been sent to the concerned sub-divisional magistrate for the necessary steps.

Yet, no appeal was in fact filed. Therefore, on 19 February 1998, Baleshwar and Sri Prakash filed a criminal revision petition before the Delhi High Court. More than nine years after issuing

notice on the petition, the court dismissed the petition on 13 July 2007 holding that its power under the revisionary jurisdiction is "very limited". Baleshwar and Sri Prakash then approached the Supreme Court of India by filing a special leave petition. The Supreme Court issued notice to the accused persons on 23 November 2007 and at time of writing the matter is pending there.

9. State versus Jitender a.k.a. Khanna

In this case, the prosecutrix was married to one Parminder and was residing at her matrimonial home. A son was born to her out of the wedlock. However, on 13 March 2002 she went missing and her mother lodged a report with the police against her in-laws alleging harassment for dowry. She subsequently alleged that the prosecutrix had been kidnapped. The prosecutrix and accused were apprehended and the accused charged. Criminal proceedings continued for more than five years. The prosecution examined 14 witnesses; the accused did not examine any witness. The matter was listed for recording of prosecution evidence on 19 dates spanning around two years. The accused was present on all these occasions. Prior to committal before the additional sessions judge, the case was listed for various purposes before metropolitan magistrate on 20 dates. The accused also had to remain in jail for some days during investigation before being acquitted.

Date registered: 20 March 2002
PS: Inderpuri, Delhi
FIR: 52/02
U/S: 498A/406/365/366/376 IPC
Accused: Jitender a.k.a. Khanna
Decided by: ADJ S P Garg, Patiala House, New Delhi
Date decided: 15 November 2007

On 13 March 2002 prosecutrix 'X' went missing and her mother Shanti lodged a report with the police against her in-laws alleging harassment for dowry. The police registered a case on the same day. On March 20, she alleged that her daughter had been kidnapped and the police registered a case for kidnapping.

According to the prosecution, the police found during investigation that the accused Jitender a.k.a. Khanna had kidnapped the prosecutrix 'X' and had taken her to a village in Ludhiana District of Punjab.

On 21 August 2002, police reached at Hamra village and found both the prosecutrix and accused Jitender residing there at the house of one Nek Singh. Both of them were apprehended. Police recorded a statement of the prosecutrix in which she alleged that she had been raped by the accused. The police added section 363/376 of the Indian Penal Code to the FIR, alleging rape. The statement of the prosecutrix was recorded before a metropolitan magistrate in Delhi and she was medically examined. Interestingly, in her statement recorded on oath she did not level any allegations of kidnapping or rape against the accused. On the contrary, she specifically stated that she was residing with the accused for about six months with free consent and was pregnant. She gave reason for staying with the accused as that her in-laws used to harass her and her mother was reluctant to keep her at their house.

The investigating officer sent the exhibits for analysis and subsequently collected a forensic report, recorded the statements of concerned witnesses at different stages of investigation and after completion of the investigation, filed a challan on 12 December 2002 against Jitender; Parminder, the husband of the prosecutrix; Maya, the mother-in-law, and Babita, the sister-in-law.

Thereafter, the case remained pending before the metropolitan magistrate till 17 March 2004. During this period, the offences pertaining to alleged dowry harassments were compounded. The prosecutrix and her husband were divorced by mutual consent and the high court quashed proceedings against the husband and in-laws of the prosecutrix in an order dated 12 November 2003.

The magistrate committed a charge sheet pertaining to Jitender for trial on 30 March 2004. After around nine months of committal, the additional sessions judge on 25 October 2004 framed charges for kidnapping for the purpose of illicit intercourse and rape against the accused. The accused pleaded not guilty and claimed trial.

The court fixed the matter for recording of prosecution evidence on 14 and 18 January 2005 but recording started on March 18 and three prosecution witnesses were examined. It was found that report of the Forensic Science Laboratory had not been filed before the court. The court issued notice to the station house officer to file the same on or before February 28 and adjourned the matter for remaining prosecution evidence on March 19 and 23. However, on March 19 no witness was examined as the judge had gone to attend a seminar at the Judicial Academy in Karkardooma, Delhi. On March 23 one witness appeared who was examined and the matter was adjourned to May 30 when three witnesses were present but only one was examined, as the judge was to record the statement of the accused in some other case. On August 1 no prosecution witness appeared and the case was adjourned to September 29 and October 4. On the first date the prosecutrix and her mother were examined, while on the second no witnesses except the investigating officer were present. The case was adjourned to November 19 with the direction to present all the prosecution witnesses; however, on this date too no witness appeared before the court and the matter was adjourned again.

On 23 and 27 February 2006 as the judge was on leave no evidence could be recorded, and the case was further adjourned to April 25 when two witnesses appeared and were examined. The case was again adjourned for recording remaining prosecution evidence to July 25. On that day two witnesses appeared and were examined. The court specifically issued directions to present witnesses on September 28 and 29 but again no witness was present. It was found that one witness, a police constable, had not appeared despite service of summons. The court issued bailable warrants against him. On September 29, one witness was examined while another witness, a police sub-inspector, had likewise not appeared despite service of summons. The court issued bailable warrants against him. The court again directed that all the remaining prosecution witnesses be summoned for 5 December 2006; however, on this date the judge was on leave and the matter was once again adjourned.

On 20 February 2007, one witness appeared but he was given up by the prosecution and evidence was recorded. The court again directed that all the remaining prosecution witnesses be summoned for May 1 when another witness was examined and the prosecution evidence was closed. The case was adjourned to May 24 for recording the statement of the accused. Thereafter the case was fixed for final arguments on July 9; however, on that date the accused engaged a new counsel who sought adjournment and subsequently again August 18 and October 6.

On 5 November 2007, final arguments were heard and on November 15 the court acquitted the accused. In the judgment, the court said that:

> No complaint whatsoever was ever lodged by the prosecutrix or her mother against the accused prior to the incident regarding his objectionable conduct and behavior. There is nothing on record to show if prior to the incident, the accused had ever threatened the prosecutrix or had outraged her modesty. It has come on record that on the date of incident, the prosecutrix had accompanied the accused to a long distance at Hamra, District Ludhiana in a bus. At no stage the prosecutrix raised alarm alleging her forcible kidnapping. The prosecutrix remained with the accused for about more than five months and had sexual relations with him there. It has further come on record that at the time of apprehension, the prosecutrix was pregnant and had delivered a child which was found dead. At no stage, the prosecutrix who was already a married lady bothered to inform her parents or her in-laws about her stay with the accused. She did not complain to anyone in the neighborhood regarding kidnapping or forcible rape. No injuries on the person of the prosecutrix were found showing forcible rape on her person by the accused. Prosecutrix has admitted that the accused had kept her for some days at the residence of his bua. Even at that place, the prosecutrix did not bother to raise any alarm. The prosecutrix remained peacefully with the accused for about more than five months and was apprehended on 21/8/02 by the police.
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> 15. Her statement U/s 164 CrPC was recorded. In her statement U/s 164 CrPC, the prosecutrix did not level any allegations of kidnapping or rape against the accused. Rather she specifically stated that she was residing with the accused for the last about six months with her free consent and was pregnant. She gave reason for staying with the accused as her in-laws used to harass her and her mother was reluctant to keep her at her house. There is nothing to disbelieve the statement of the prosecutrix made at the first instance before the ld. MM. Only in her deposition before the court the prosecutrix has come up with a new plea that the said statement was made by her under threat from the accused.
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> It has come on record that accused himself was in judicial custody at that time. There was no occasion for him to extend any such threat to the prosecutrix. The prosecutrix was accompanied by the IO and her mother at the time of making statement U/s 164 CrPC. So there was nothing to influence the mind of the prosecutrix to favour the accused at that time.
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> 16. The prosecutrix has concocted a new story that the accused used to remain armed with a gun and extend threats to her. No weapon whatsoever was recovered from the possession of the accused at the time of his arrest. The accused is not expected to retain the weapon in his possession all the times to create real apprehension in the mind of the prosecutrix not to get herself freed.

17. The prosecutrix did not explain in her deposition before the court as to how and under what circumstances she was enticed by the accused to accompany him. Only in the cross examination, the prosecutrix stated that the accused had falsely misrepresented her that her father was ill and she had accompanied in a hurry with him. Statement of her mother PW 7 Shanti is entirely contrary to that. In her statement, PW 7 Shanti disclosed that the prosecutrix had visited her on 9/3/02 and on the next date she had happily returned along with her husband to her matrimonial home. On 13/3/02 she received a telephone call from her in-laws house that the prosecutrix had not reached there. It shows that the prosecutrix and the accused had gone without informing the in-laws and the parents of the prosecutrix prior to 13/3/02. Prosecutrix has failed to explain as to why she did not reach at the house of her husband on 10/3/02.

18. Prosecution has examined PW 8 Harnek Singh at whose residence both the accused and the prosecutrix had stayed prior to their apprehension. In his deposition before the court, PW 8 did not state if the accused had ever extended any threat to the prosecutrix. In the cross examination, the witness rather stated that both the accused and the prosecutrix were residing in his premises as husband and wife. No quarrel took place between the two in his presence. They had stayed there only for two days in his premises. Both of them were earlier residing in the premises of someone else. Prosecution did not examine any such person from the village at whose residence both of them has stayed prior to their shifting at the house of PW 8 Harnek Singh.

19. All the facts and circumstances discussed above reveal that the prosecutrix was a consenting party throughout. She had voluntarily accompanied the accused with her free consent and had stayed with him. The sexual relations, if any, were the result of that free consent.

10. State versus Vijay a.k.a. Pappu

In this case, trial continued for more than three years. All the six witnesses were policemen. The accused remained in jail for one month and three days. The trial was held on nine dates, and the accused was present on every date of hearing. The court fixed seven dates for recording of prosecution evidence but only three out of six witnesses were examined. The prosecution did not examine one material witness who had investigated the case and filed the charge sheet before the court. The court acquitted the accused.

Date registered: 9 September 2004
PS: Railway Sarai Rohilla, Delhi
FIR: 48/04
U/S: 25/54/59 Arms Act
Accused: Vijay a.k.a. Pappu
Decided by: Magistrate S K Gautam, Tis Hazari, New Delhi
Date decided: 3 November 2007

According to the prosecution, on 9 September 2004 at about 8:30pm Head Constable Brij Pal Singh and Constable Ranvir received information that the accused was sitting at the eastern side of platform no. 4/5 of the Sarai Rohilla Railway Station in Delhi with a button-operated knife and that he might commit some offence. On this information, they reportedly requested four to five passengers to join them as witnesses but none of them obliged.

They allegedly reached the spot and apprehended the accused. They searched him and allegedly recovered the button-operated knife from his right pants' pocket. The knife was measured and a sketch was prepared. It was sealed in a packet and was taken into police possession. The information was sent for registration of an FIR whereupon Head Constable Narsi Ram took over the investigation.

The accused was arrested and was sent for trial. Copies of the charge sheet and other documents were supplied to the accused and charges framed under the Arms Act. The accused pleaded not guilty and claimed trial.

The accused Vijay was granted bail on 20 September 2004 on the condition that he would execute a personal bond for 10,000 rupees along with one surety of the same amount. As he could not find a surety his counsel moved an application for reduction of the bail amount on September 30 before the additional sessions judge, who reduced the amount to 5000 rupees.

Meanwhile, the trial commenced on 24 September 2004. Copy of the charge sheet was supplied to the accused, and the case was adjourned to October 8, when the court framed charges under sections 25/54/59 of the Arms Act, 1959 for illegal possession of a knife. On this date, as the accused still had not found any surety for the bail bond the judge further reduced the amount to 3000 rupees. The case was adjourned to November 4 for recording of prosecution evidence. That day the judge was on leave and the case was adjourned to the next year. On October 12 the accused was released on bail after finding surety for the reduced amount.

On 4 May 2005, the accused applied for exemption from personal appearance, which was allowed. The matter was adjourned to November 7, when one witness was examined. No other witness was present. The court issued bailable warrants against Constable Ranvir as he had not appeared despite service of summons. The matter was adjourned and date was fixed for around ten months later, on 6 September 2006. On that date two witnesses were examined and the matter was adjourned to December 12 for recording remaining prosecution evidence, but no prosecution witness appeared and the case was again adjourned to the following year.

On the next date, 21 September 2007, no prosecution witness again appeared. The judge ordered closure of prosecution evidence and adjourned to October 16 for recording statement of the accused, whereupon final arguments were made. On November 3, the court pronounced the judgment and acquitted the accused.

Subversion of fair trial in India: A critique of the Code of Criminal Procedure (Amendment) Bill, 2006

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The Code of Criminal Procedure (Amendment) Bill, 2006 (the Bill), is pending before the parliament of India. The stated object of the bill is "to ensure fair and speedy justice and to tone up the criminal justice system". The bill seeks to amend various provisions of law pertaining to witnesses, trial procedures, investigation of offences, arrest, etc.

This is the 10th time that the Code of Criminal Procedure (CrPC), 1973 is to be amended. It was already amended in 1978, 1980, 1983, 1988, 1990, 1991, 1993, 2001 and 2005. The enactment itself grew from a comprehensive review of the old CrPC of 1898, from 1961 to 1969, issued in five reports of the Law Commission of India (the 32nd, 33rd, 35th, 36th and 41st).

Some of the provisions of the Bill are welcome, including those providing for participation of victims in prosecution, the formulation of a victim compensation scheme, revision of trial procedures for accused incapable of making a defence due to unsoundness of mind, and on the requiring of an accused to execute a bail bond when appearing before the appellate court. Provisions in the 2006 Bill relating to investigation and prosecution of offences against women (clauses 4, 11, 18, 20, 28 and 31) are also a step in the right direction. However, such provisions can be effective only in a wider policy framework aiming at a socially-inclusive and pluralist judiciary.

Many provisions of the Bill are either deficient or entirely incompatible with settled principles of criminal jurisprudence. Such provisions should either be suitably amended or dropped altogether before passage through parliament. The provisions seeking to amend procedure relating to arrest are deficient. They do not incorporate all the requirements laid down by the Supreme Court in the D K Basu Case. Further, the absence of enforcement mechanism and consequences of non-compliance of the procedure are glaring omissions that need to be addressed.

> **"Law reform must not be dictated by administrative expedients but must aim towards achieving a system that is just, fair, efficient, transparent and accountable"**

Provisions ostensibly aimed at preventing witnesses turning hostile during trial, deletion of summons procedure of trial, use of video conferencing for recording of evidence and extending remand of the accused are obnoxious and severely hit at established principles of criminal jurisprudence. They sacrifice fairness of investigation and trial in favour of speed and administrative expediencies. The government must drop such provisions completely.

It is relevant that some of the provisions contained in the present Bill were also part of the Criminal Law (Amendment) Bill, 2003 that were dropped at the time of its passage. That bill was based upon the 142nd, 154th and 178th reports of the Law Commission, the Malimath Committee Report on Reforms of the Criminal Justice System, and the Twenty-Eighth Report (1996) of the Committee on Home Affairs on the Criminal Law (Amendment) Bill, 1994.

The 2003 Bill sought to amend the Indian Penal Code, 1860 (IPC), the CrPC 1973 and the Indian Evidence Act, 1892. Its stated object was "to improve upon the existing criminal justice system in the country, which is besieged by huge pendency of criminal cases and inordinate delay in their disposal on the one hand and very low rate of conviction in cases involving serious crimes on the other". It introduced plea-bargaining for the first time in the criminal justice system of India.

The 2003 Bill sought to amend the IPC for protection of witness against threat and inducement by prescribing punishment with imprisonment that may extend to seven years or with a fine or both (clause 2, regarding IPC section 195A; the provision is now a part of the IPC). It also proposed that statements of witnesses recorded by police during investigation, if reduced in writing and in cases where punishment is less than seven years could be signed, acknowledged and quickly transmitted to the magistrate. It proposed that during investigation only of offences punishable with death or imprisonment for seven years or more that a magistrate should record evidence of all material witnesses. Moreover, it provided for summary trial for perjury and enhancement of punishment for the same. It also proposed consequential amendment in the Indian Evidence Act 1872. All these provisions were dropped at the time of its passage through parliament.

The present Bill includes the above provisions and in its statement of objects purports to be aimed at "preventing the growing tendency of witnesses being induced or threatened to turn hostile by the accused parties who are influential, rich and powerful". Notably, no fresh reason has been provided for their re-inclusion when such provisions were dropped from the 2003 Bill after the Parliamentary Standing Committee on Home Affairs objected to them in its 111th report.

Law reform must not be dictated by administrative expedients but must aim towards achieving a system that is just, fair, efficient, transparent and accountable. It is axiomatic that

fairness of the process cannot be sacrificed in favour of speed and administrative expediencies. The proposals based upon such approaches, whether contained in the Justice Malimath Committee report, some Law Commission reports or in any other committee report, must be rejected.

> "At present a statement made to the police during investigation may be recorded in writing but is not treated as substantive evidence"

A dubious approach to preventing witnesses from turning hostile

At present under the CrPC 1973 a statement made to the police during investigation of a cognizable offence may be recorded in writing. A person is bound under section 161 to answer all questions asked by the police officer except those that tend to expose the person to a criminal charge or to a penalty or forfeiture. Such a statement is not treated as substantive evidence. A statement made to the police can be used at the trial of the offence for a limited purpose of contradicting a person who is actually examined as a prosecution witness. The CrPC further provides in section 162 that no statement recorded by any person during the investigation of an offence shall be signed. The courts have repeatedly held that the intention behind this provision is to protect the accused from being prejudicially affected by any dishonest or questionable methods adopted by an overzealous police officer, who may be inclined to misrecord the statements or bring pressure or influence on the witnesses, and also from persons who may be inclined to tell untruths to the police in order to settle scores.

Sections 340 and 344 of the existing CrPC contain provisions relating to perjury. There is an option before the court of sessions or first class magistrate to initiate prosecution for perjury. Under section 340, the court is required to make an inquiry in respect of perjury and file a complaint before the magistrate for prosecution. The offences of perjury are punishable under the provisions of the IPC. The punishment for perjury tried summarily under section 344 of the CrPC is for a term that may extend to three months or a fine up to 500 rupees or both. In case of prosecution under section 340, the punishment is awarded as per provisions of the IPC, which may be up to life imprisonment, depending upon the punishment prescribed for the offence in the trial where such false evidence was tendered.

Proposed amendments

The proposed amendments to the CrPC are based upon the recommendations of the 154th and 178th reports of the Law Commission. In the first it recommended (under the chairmanship of Justice K Jayachandra Reddy) that judicial magistrates record the statements of material witnesses taken during investigation in all cases. Taking the physical and economic constraints in appointment of more magistrates into account, the latter report (under chairmanship of Justice B P Jeevan Reddy) recommended confining such a procedure to cases where punishment was more than 10 years. The Malimath Committee has also recommended such a procedure.

"The proposed amendments presume that police record statements truly and honestly"

The criterion of a sentence of 10 years or more has been incorporated into the present Bill (clause 15) for the purpose of a judicial magistrate recording a statement. Significantly, the 2003 Bill had proposed a middle path by providing for such a course to offences punishable by a sentence of seven years or more.

Clause 12 of the Bill seeks to add three provisos to CrPC section 161(3). The first would provide for police recording of witness statements with electronic audio-video means. The second would provide that in respect of offences entailing punishment of more than ten years or death, the material witnesses be forwarded to the nearest magistrate for recording statements and that the investigating officer not reduce these witnesses' statements to writing. The third would provide that where a magistrate has recorded any statement the investigating officer must enclose a copy in his diary.

It also seeks in clause 13 to replace section 162 to provide that any person making a statement to a police officer in the course of an investigation shall, if the statement is reduced into writing, sign it.

The proposed amendments presume that police record statements during investigations truly and honestly. Going by the reputation of the police in India, such a presumption is not justified. Further, no thoughts have been spared for the witnesses who may need protection to be able to testify truthfully and without fear in court.

Clause 14 of the Bill amends the law pertaining to recording of confessions and statements of an accused by a judicial magistrate. It provides that any such confession or statement may also be recorded by audio-video means, i.e. by video conferencing, in the presence of the advocate for the accused person.

A new section (164B) is sought to be inserted requiring the recording of material witnesses' statements during the investigation of any offence punishable with death or imprisonment for ten years or more by the nearest metropolitan or judicial magistrate (clause 15).

The Bill also seeks through clause 19 to insert a new provision to allow for a witness or any other person on the witness's behalf to file complaints for threatening or inducing a witness to give false evidence, punishable under IPC section 195A, which was added to the code by the Criminal Law Amendment Act, 2005.

The provisions of law pertaining to trial for perjury are also to be changed via an amendment to section 344 of the CrPC and the inserting of a new section (344A) to provide for summary trial and enhancement of punishment for deposing contrary to the statement recorded by a judicial magistrate (clauses 35 & 36). The amendment provides that punishment for perjury shall not be less than three months but may extend to two years and shall also be liable to a fine.

Critique of amendments

The proposed amendments are based upon half-baked ideas. They tend to put onus on the witnesses alone and ignore the problems in the police. The National Police Commission in its third report said that "fabricating false evidence during investigation of cases and implicating innocent persons or leaving out the guilty persons on *mala fide* considerations" is one of the major sources of corruption. Yet, the proposed amendments concentrate only on ensuring punishment to the witnesses who deviate from the statements recorded during investigation by a magistrate. Chapter XI of the IPC already deals with offences pertaining to false evidence and offences against public justice. Under this chapter a person may be sentenced up to life imprisonment. The presence of such provisions against public justice has not deterred witnesses from turning hostile.

"The problem of witnesses turning hostile during trial is a result of many faults in India's collapsing criminal justice system and cannot be addressed by provisions targeting only the witnesses"

In reality, the problem of witnesses turning hostile during trial is a result of many faults in India's collapsing criminal justice system. It thus cannot be addressed by enacting provisions targeting only the witnesses. It must instead ensure that witnesses are provided adequate protection against depredation and inducement held out by powerful accused, and finally, in the case of perjury, that there follows swift and certain punishment without compromising established principles of criminal jurisprudence.

The government has claimed that the amendments are based upon the recommendations contained in the 178th report of the Law Commission of India, though, in reality, the present Bill applies them selectively. It is relevant here to recall the rationale given by the Law Commission for proposing the amendments:

> Certain recent happenings, widely reported in the Press, call for introducing measures to ensure that a criminal trial does not end in a fiasco on account of the eye-witnesses or the material witnesses, as the case may be, turning hostile at the trial. At the same time, it is equally imperative that a fair investigation is assured and room for manipulation at the stage of investigation should be eliminated as far as possible. The experience shows that where the accused happens to be rich and/or influential persons or members of mafia gangs, the witnesses very often turn hostile either because of the inducements offered to them or because of the threats given to them or may be on account of promises that may be made to them. To protect public interest and to safeguard the interests of society, measures need to be devised to eliminate, as far as possible, scope for such happenings.

It is clear from the scheme of amendments in the present Bill that it completely omits the recommendations that aim at securing fairness of investigation by putting certain obligations on the investigating officers and take only those portions of the that put a certain onus on the witnesses. In this respect it is relevant to again recall the text of the Law Commission's 178th report:

> **"The scheme gives an impression that witnesses in criminal trials are not dependable"**

Sec.162 Statement to police to be signed: Transmission to Magistrate: Use of statement in evidence:

(1) The statement made by any person to a police officer in the course of an investigation under this chapter shall, if reduced to writing, be signed by the person making it if the person who has given the statement is literate and in case the person is not literate, his thumb impression shall be obtained and in every case, a true copy of the statement shall be furnished to the person who gave the statement, immediately under acknowledgement.

(1A) Every such statement recorded under section 161 shall contain the date and time as to when the statement was recorded and the place where it was recorded, and shall be forthwith forwarded to the Magistrate.

(1B) Any such statement or record thereof or any part of such statement or record whether in a police diary or otherwise, shall not be used for any purpose, save as hereafter provided, at any inquiry or trial in respect of any offence under investigation at the time when such statement was made,

Provided that when any witness is called for the prosecution in such inquiry or trial whose statement has been reduced into writing as aforesaid, any part of his statement, if duly proved, may be used by the accused, and with the permission of the Court, by the prosecution, to contradict such witness in the manner provided by section 145 of the Indian Evidence Act, 1872; and when any part of such statement is so used, any part thereof may also be used in the re-examination of such witness, but for the purpose of explaining any matter referred to in his cross-examination.

By contrast to the Law Commission's balanced recommendations, the Bill's whole approach seems intended to empower the police and to treat witnesses as potential suspects who are likely to depart from their statements. Thus the Department Related Standing Committee on Home Affairs in its 111th and 128th reports opposed these provisions.

Some of the major objections to the amendments pertaining to prevention of witnesses turning hostile during trial are as follows:

1. The whole scheme seems to be based upon the assumption that police conduct investigations fairly. It also gives an impression that witnesses in criminal trials are not dependable, they need to be shown a stick to restrain them from departing from their statements as recorded by the police. It completely ignores the fact that police may have padded statements, if not completely fabricated them. It also does not take into account the risks faced by witnesses at the hands of powerful people. There is a complete absence of a credible witness protection programme. The only consolation provided by law to a witness is that threat and inducement have been made a punishable offence. This is completely meaningless in view of the deplorable state of criminal justice in India where rich and powerful people are seldom punished.

2. The provision to make a witness sign the statement made to police is likely to be misused. Police in India enjoy enormous power, both legal and extralegal, which they misuse. There may

be times when police officers force witnesses to sign on blank papers. While the Bill contains this amendment, an important safeguard recommended in the 178th report of the Law Commission has been completely ignored. The report had not only considered the issue of witnesses turning hostile; it was also anxious about manipulation of investigation. Therefore, it had suggested that every statement recorded by the police during the course of investigation should contain a date, time and place of recording, but this safeguard has not been included in the proposed amendment.

3. The provision to provide a copy of the statement to the witness who makes it, under acknowledgement, and forward the same to the magistrate empowered to take cognizance is not likely to help. No timeframe has been provided for this purpose. Further, making the witness sign the statement recorded by a police officer during investigation does not add to its evidentiary value. Therefore, no useful purpose is served by making a witness sign such a statement.

4. These proposals expose already vulnerable witnesses to more risks. Using threat of punishment to deter a witness from changing a statement made during investigation without providing adequate protection is dangerous, especially when a case concerns a powerful accused. It is significant that during discussions on the 2003 Bill, the then home secretary in his deposition before the Parliamentary Standing Committee had stated that that prosecution of cases falls through because of false evidence given by the witness, either out of fear or allurement. He admitted that a witness often turns hostile where the accused person is influential or a member of a criminal gang. According to him, the 2003 Bill was aimed at checking "the propensity amongst influential people/criminals/ gangsters to influence the witness to change his statement". After considering these arguments, the Standing Committee on Home Affairs in its 111th report had recommended formulation of a scheme of witness protection. Despite this recommendation, and experiences worldwide, no scheme for witness protection has been formulated and the same provisions are being pushed through again in the present Bill, which does not go far enough in addressing these concerns with the mere provision of complaint against a person threatening or inducing any witness to commit perjury.

5. The amendment providing for punishment to any witness whose statement was recorded before a judicial magistrate and who deviates from the statement during trial is completely misconceived. Firstly, it lacks the criminal intent required for punishment. Secondly, it does not consider which of the two inconsistent statements may have in fact been the result of threat or allurement.

6. There is no yardstick for judging who is a "material" witness and who is not. The amendments will allow police wide discretion in deciding who is and who is not, for the purpose of forwarding

"Providing for punishment to any witness who deviates from their statement during trial does not consider which of the two statements may have been the result of threat or allurement"

or not forwarding witnesses to judicial magistrates for mandatory recording of statements in cases with a punishment of ten years or more. Such discretion shall further increase corruption.

"Magistrates' mandatory recording of witness statements in cases involving sentences of ten years or more will exacerbate judicial delays"

7. The proposals detailed in the Bill do nothing to deal with the possibility of police tampering with investigations such as by planting false witnesses, forging statements, and forcing or inducing witnesses to make false statements during investigations.

8. Investigation of serious offences requires secrecy. The mandatory recording of "material" witnesses in such cases may frustrate investigation and help criminals to flee from justice.

9. No thought has been spared for the magistrates, who are already overburdened. Mandatory recording of "material" witness statements in cases involving sentences of ten years or more will increase their burden and thereby exacerbate judicial delays. On 11 March 2006, the then Chief Justice of India, Justice Y K Sabharwal, succinctly put his opinion on this issue in the following words at the inauguration of the joint conference of chief justices and chief ministers:

> In the wake of recent outcry in media over what has been perceived in certain circles as 'failure of primary justice', there are talks of accepting suggestions for criminal law reforms respecting the malaise of hostile witnesses, which were trashed some time ago. There is talk of compulsory recording of statements on oath before magistrates, during investigation, under section 164 CrPC. This will mean a quantum jump in the work of judicial magistracy, which is already overburdened. Any such extra task has to be given with corresponding addition to the manpower.

No significant movement towards providing sufficient judicial officers is visible right now.

10. Provision for recording of statements of witnesses and confessions by the accused with audio-visual means may prejudice the accused. Video conferencing can be manipulated and misused. The provision is also flawed because it does not make clear whether the defence advocate must be present with the accused at the place where he is kept by the police or shall be in the court that records the statement.

11. The provision that a lawyer be present also is bound to be misused as most accused persons in India are poor and not in a position to afford timely legal assistance. The police may put up pliable lawyers for these accused to fulfill the legal requirement.

Will deleting summons procedure of trial and restricting adjournments result in speedy trial or speedy conviction?

Chapter XX of the CrPC 1973 contains a procedure relating to the trial of summons cases. Under this procedure, the magistrate states the particulars of the offence to the accused at the beginning of trial and asks him whether he pleads guilty or claims trial. No formal charge is framed until the magistrate informs the accused of the accusation made against him (section 251). The criterion for determining whether a case is a

summons case or a warrant case is the punishment provided for an offence. Presently offences entailing punishment up to two years imprisonment are tried as per summons procedure.

Trial in a summons case begins with the reading out of the accusation to the accused, who is asked to enter a plea. If pleading guilty, the magistrate records the plea as nearly as possible in the words of the accused and can then decide whether or not to convict him (section 252). If the accused either does not plead guilty or the magistrate does not convict him despite such a plea, the accused is bound to hear the prosecution and all the evidence adduced by it (sections 253 & 254). After considering all the evidence, the magistrate pronounces judgment (section 255).

"Under a proposed revision the court shall not adjourn unless the circumstances are beyond control of the party seeking adjournment"

Proposed Amendments

Under its clause 22 the Bill seeks to delete summons procedure of trial. It provides that all summons cases shall be tried in a summary manner. Its clause 23 takes away the discretion of the court. The procedure for summary trial too is to be amended, and the requirement for maintaining records pertaining to certain offences omitted (clauses 24 & 25). Clause 25 further proposes to modify the definition of summons and warrants cases so that offences with imprisonment of a term of more than three years will be warrant cases; and if a summons case cannot be tried summarily, the court has to record reasons and try it as a warrant case. Clause 24(9) of the Bill provides that no sentence of imprisonment for a term exceeding six months or fine up to 3000 rupees or both shall be passed in case of any conviction under summary trial procedure.

The only positive change suggested in the Bill on these matters is in its clause 21 relating to trial procedure pertains to evidence for prosecution, which provides that the magistrate shall supply to the accused all the statements of witnesses recorded during investigations by the police.

The CrPC has permitted summary trial procedure in certain cases. In a case tried summarily, no sentence of imprisonment for a term exceeding three months can be passed. The summary trial procedure is same as the summons case procedure except that in every case tried summarily in which the accused does not plead guilty, the magistrate records the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. As such, the record of a summary trial case is very brief (section 263).

Another significant change in law being proposed pertains to the power to postpone or adjourn proceedings. The Bill provides that inquiries or trials in rape cases shall, as far as possible, be completed within a period of two months from the date that the examination of witnesses is commenced.

Under a proposed revision of section 309(2), the court shall not adjourn unless the circumstances are beyond the control of the party seeking adjournment. It further provides that engagement of a lawyer in another court shall not be a ground

for adjournment. According to the proposed amendment, where a lawyer is ill or unable to conduct the case for any reason other than being engaged in another court the court shall not grant an adjournment unless satisfied that the party requesting it could not have engaged another pleader in time.

"Deleting summons case procedure and subjecting accused persons to summary trial in offences with punishment up to three years is a serious attack on the fairness of trial"

The amendment further seeks through clause 28 to confer express power on the court that in a situation where a witness is present in court but a party or his pleader is not present or though present is not ready to examine or cross-examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Critique of amendments

Deleting summons case procedure and subjecting accused persons to summary trial in offences entailing punishment up to three years is a serious attack on the fairness of trial. The proposal has been piloted in the Bill without giving serious thought to the consequences both for the rights of the accused as well as for the society. In fact, the reason the home ministry has cited for such a drastic change in the CrPC clearly shows that fairness of criminal trial is being sacrificed for the sake of reducing pendency in courts. The Parliamentary Standing Committee of Home Affairs in its 128th report enquired after the ministry as to the rationale behind such a drastic proposal. In response, the ministry referred to the following portion of the 154th report of the Law Commission:

> A perusal of the two procedures would show that they are somewhat alike in many respects. To ensure speedy trial, the procedure must be simplified so that the bulk of cases which are being handled by the Magistrates can be disposed of more expeditiously. In all the workshops conducted, it was unanimously voiced that the summary procedure is not being adopted and that is one of the reasons for heavy pendency and delay. It is also suggested that all the summons cases and the other offences mentioned under section 260 should be made compulsorily triable by way of summary trial. The survey conducted also shows that there is unanimity about the suggestion to convert all offences carrying punishment up to three years' imprisonment into summons cases and to make it mandatory that all such offences should be tried summarily.

Unfortunately the government has chosen to adopt this single-dimensional approach to address the complex issue of judicial delays and pendency. It has completely ignored the various recommendations of the Law Commission to increase the judge to population ratio. In fact, it has not seriously addressed even the issue of existing vacancies in judiciary. The Parliamentary Standing Committee on Home Affairs has also indicated this shortcoming in its report on the Bill. The report notes with surprise that the government was trying to alter the basic tenets of criminal jurisprudence, and was not addressing the primary issue of filling up of a large number of vacancies existing in various courts. Currently the number of vacancies against the sanctioned strength in the high courts of India is 111 while in the lower judiciary it is around 2800. In a country of more than a

billion people, the total number of judges in high courts is according to the Parliamentary Standing Committee of Home Affairs' 128th report only 610, while in lower judiciary it is 11,840.

Overall, some of the important objections to these amendments are as follows:

1. Dispensing with summons procedure for the purpose of quick disposal of cases goes against the basic tenets of criminal jurisprudence. It deprives the accused of the benefits and protection of summons procedure trials.

2. Currently there are 153 offences under the IPC that carry a sentence of up to two years' imprisonment while 58 entail a sentence of up to three years. Since the definition of a summons case in the present Bill has been changed, the number of offences likely to be tried summarily will increase to 211. This change puts many serious offences, including extortion, theft, criminal breach of trust and marital cruelty under summary trial procedure, which would seriously prejudice the interests of society as well as those of the accused persons.

3. Adoption of a summary procedure in the trial of offences entailing punishment up to three years' imprisonment is not in the interests of justice. The interests of the accused in particular would be seriously jeopardized, as it would be difficult for appellate courts to evaluate appeals against judgments since the evidence recorded under the summary procedure is scanty.

4. The restriction on granting of adjournments is too harsh and goes against the interests of the accused. It would work only in a situation where a sufficient number of judicial officers have been appointed to hold trial day-to-day and conclude a trial within a short time. Currently trial may continue for several years, due to various factors, not only the requests for adjournment of the accused. In India, where the majority of accused are poor, it is too much to expect the accused to engage a new advocate in the event of non-availability of the usual lawyer on the date of hearing. Engaging a single advocate at all is itself a tall order for accused persons. The problem is compounded by the fact that the majority of criminal lawyers work on a large number of small-fee cases simultaneously. Such lawyers have to appear in court for years while receiving only modest intermittent payments.

5. The single most important factor responsible for judicial delays is the lack of sufficient numbers of judicial officers. Therefore, the government must appoint sufficient number of judicial officers before forcing restricting the right of the accused to seek adjournment.

"In India, it is too much to expect the accused to engage a new advocate on the date of hearing; engaging a single advocate is itself a tall order"

Using technology to sacrifice justice for administrative expediency

Presently the law requires that a person, whether an accused or a witness, must appear before a judicial magistrate if a statement is to be recorded. Similarly, an accused must be produced before the magistrate for extension of his remand in judicial custody.

Proposed amendments

"Where an audio-video link is used the authorities may manipulate it so that signs of ill treatment may not be manifest to the judge"

The Bill seeks to amend section 167 of the CrPC relating to procedure when investigation cannot be completed in 24 hours. It amends subsection 2 to provide that a magistrate may extend detention of the accused in judicial custody through video linkage, except for the first time, where the accused must be produced in person. The reason cited for this amendment in clause 16 is to keep police free for other duties.

Another amendment aimed at the use of technology pertains to section 164, which deals with recording of statements or confessions by a judicial magistrate. According to this amendment, in clause 14, the magistrate is empowered to record confessions and statements by video conferencing, and under clause 27 an amendment is also proposed to section 275 to provide for recording of witness statements during trial by the same means.

Critique of amendments

The amendments seriously hit at the rights of the accused in the name of administrative expediency. Use of video linkage to extend remand of the accused in judicial custody and record the statements of witnesses are not a workable proposition in India. Extension of remand via video linkage would promote torture and corruption in jails, as production of accused persons before judicial officers is the best available guarantee against abuse inside India's jails.

Where an audio-video link is used the authorities may manipulate the medium so that even visible signs of ill treatment on the accused may not be manifest to the judge. Similarly, it may also be manipulated to prevent the accused from communicating with the judge freely. Any person may stand behind the camera and threaten the witness or accused during recording of a statement or confession. Going by the reputation of police in India, this is entirely possible.

Recording of confession of an accused by a judicial magistrate during investigation through video conferencing is entirely inconsistent with the basic principles of criminal jurisprudence in India. Before any confession is recorded, the accused must be produced before the judicial magistrate so that the voluntary nature of the confession is ensured. Thus these amendments must be deleted.

A deficient approach to the making of arrest

The fundamental rights guaranteed under the Constitution of India are applicable to arrest and detention as they pertain to the life and liberty of an individual. Article 21 provides that no person shall be deprived of his life or personal liberty except according to procedure established by law. Article 22 guarantees protection against arrest and detention in certain cases. Its subsection 1 provides that no person who is arrested shall be detained in custody without being informed of the grounds of arrest, and shall not be denied the right to consult a legal

practitioner of his choice and make a defence. Its subsection 2 guarantees that every person who is arrested and detained in custody shall be produced before the nearest magistrate within twenty-four hours of arrest, excluding the time necessary for the journey from the place of arrest to the court. It further provides that no such person shall be detained in custody beyond this period without the authority of a magistrate.

"The fundamental rights guaranteed under the constitution are applicable to arrest and detention"

In tune with these guarantees, provisions have been incorporated in the statutes authorizing arrest and detention, including through section 41 of the CrPC, which broadly categorizes arrests into two categories: arrest under warrant from a court and arrest without warrant. A person can be arrested without warrant where the person:

i. Has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of the person's having been so concerned;

ii. Is in possession, without lawful excuse, of any implement of housebreaking;

iii. Has been proclaimed as an offender;

iv. Is in possession of suspected stolen property;

v. Obstructs a police officer in the execution of duty, or who has escaped, or attempts to escape, from lawful custody;

vi. Is reasonably suspected of being a deserter from any of the armed forces;

vii. Has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists of having been concerned in any act committed at any place outside of India which, if committed in India, would have been punishable as an offence, and for which the person is, under any law relating to extradition or otherwise, liable to be apprehended or detained in custody in India;

viii. Being a released convict, commits a breach of any rule relating to address of residence, etc; or a requisition for his arrest has been received from another police officer; or,

ix. Conceals himself in order to commit a cognizable offence or who is a habitual offender.

The CrPC also provides in its section 42 that a police officer may arrest a person who refuses to give any name and address or is suspected to have provided a false name and address if such a person commits an offence in his presence for which he cannot be arrested without a warrant from a court. Under this section, even a private citizen can arrest any person who commits a non-bailable and cognizable offence, or who is a proclaimed offender; thereafter the arrested person is required to be handed over to a police officer.

"In *D K Basu* the Supreme Court laid down eleven requirements in all cases of arrest or detention"

It has been provided that the police officer or other person making the arrest shall actually touch or confine the body of person to be arrested. If the person forcibly resists the arrest or attempts to evade arrest, all means necessary to make the arrest can be used. However, under section 46 the person making the arrest cannot cause death if the person is not accused of an offence punishable with death or life imprisonment. Under section 49 the police officer making the arrest is not permitted to use more restraint than is necessary to prevent the escape of the arrested person. And under section 50 a person arrested without warrant is entitled to know the full particulars of the offence for which the arrest is being made, and the grounds for such arrest. If an arrest for a bailable offence, the police officer is bound to inform the person arrested that there is an entitlement to release on bail and sureties may be arranged for the purpose (sections 56 & 57).

In *D K Basu and Another versus State of West Bengal and Others* [1997 AIR (SC) 610, 1997 (103) CRLJ 743, 1997 (1) SCC 416] the Supreme Court of India laid down eleven requirements that are to be followed in all cases of arrest or detention till legal provisions are made in that respect:

(1) 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 must be recorded in a register.

(2) That the police officer carrying out the arrest of the arrestee shall prepare a memo of arrest at the time of arrest and such memo shall be attested by at least one witness, who may either be 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 countersigned by the arrestee and shall contain the time and date of arrest.

(3) A person who has been arrested or detained and is being held in custody in a police station or interrogation center 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.

(4) 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 Aid Organisation in the District and the police station of the area concerned telegraphically within a period of 8 to 12 hours after the arrest.

(5) The person arrested must be made aware of this right to have someone informed of his arrest or detention as soon as he is put under arrest or is detained.

(6) An entry must be made in the diary at the place of detention regarding the arrest of the person which shall also disclose the name of the next friend of the person who has been informed of the arrest and the names and particulars of the police officials in whose custody the arrestee is.

(7) The arrestee should, where he so requests, be also examined 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 "Inspection Memo" must be signed both by the arrestee and the police officer effecting the arrest and its copy provided to the arrestee.

(8) The arrestee should be subjected to medical examination by a trained doctor every 48 hours during his detention in custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the State or Union Territory concerned. Director, Health Services should prepare such a panel for all tehsils and districts as well.

(9) Copies of all the documents including the memo of arrest, refereed to above, should be sent to the Illaqa (area) Magistrate for his record.

(10) The arrestee may be permitted to meet his lawyer during interrogation, though not throughout the interrogation.

(11) 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.

"Nowhere in India has a punishment for violation of these requirements been reported since their pronouncement in 1996"

The D K Basu judgment further specifies that failure to comply with the above requirements shall not only render the concerned official liable for departmental action but shall also render the official liable to be punished for contempt of court and the proceedings for contempt of court may be instituted in the high court having jurisdiction over the matter. The court made it clear in the judgment that these "requirements are in addition to the constitutional and statutory safeguards and do not detract from various other directions given by the court from time to time in connection with the safeguarding of the rights and dignity of the arrestee".

The record of compliance with the above guidelines has not been satisfactory. It is an open secret that police routinely flout these requirements, resort to illegal detentions, subject the suspects to torture both as (the only) method of investigation, and also for other purposes including extortion. It is regrettable that no credible monitoring mechanism has been devised for enforcement of compliance to these requirements. It is also relevant to mention that nowhere in India has a punishment for violation of these requirements been reported since their pronouncement in 1996.

Proposed amendments

The Bill seeks to amend the provisions relating to the power of police to arrest without warrant in a cognizable offence, that is, an offence in which a person may be arrested without a warrant from a court. It amends section 41(1)(a) of the CrPC to provide that a person may be arrested if a person commits a cognizable offence in the presence of a police officer. It amends subsection (b) to provide that in cases involving cognizable offences entailing punishment up to seven years imprisonment, a person may be arrested wherever a police officer,

i. Has received credible information and has reason to believe that the person has committed a cognizable offence; or

ii. Is satisfied that such arrest is necessary,

a. To prevent the person from committing any further offence;

b. For proper investigation of the offence;

c. In the interests of safety of the person;

d. To prevent the person from tampering with the evidence;

e. To prevent the person from make threats or inducements to witnesses; or,

f. Because the person's presence in the court cannot be ensured without arrest.

"The amendments providing for notice procedure in place of arrest in offences with punishment up to seven years imprisonment are welcome"

The amendment provides that the police officer is required to state the reasons for arrest in writing when making the arrest.

In addition, the amendment seeks to add another clause (ba) to section 41 empowering a police officer to arrest a person against whom credible information has been received that the person has committed a cognizable offence entailing punishment of more than seven years or death.

Under clause 5 an amendment is also made in section 41(2) so as to provide that subject to the provisions of section 42 relating to arrest on refusal to give name and residence, no person shall be arrested in a non-cognizable offence except under a warrant or order of a magistrate.

The Bill seeks in its clause 6 to insert new sections 41A, 41B, 41C and 41D. The proposed section 41A provides that in offences involving sentences up to seven years the police officer may, instead of arresting the person concerned, issue a notice requiring the person to appear before the police officer. Where such a notice is issued to any person, it shall be his duty to comply with the terms of the notice. The person shall not be arrested while he continues to comply with the terms of the notice but can be arrested only if the police officer is of the opinion that it is necessary, for reasons to be recorded in writing.

The duties of the police officer making the arrest are laid down in the proposed section 41B. This amendment provides that every police officer while making an arrest shall bear an accurate, visible and clear identification of name to facilitate easy identification. The officer shall prepare a memorandum of arrest to be attested by at least one witness, who is either a member of the family of the person arrested or a respectable member of the locality where the arrest is made, and the person arrested shall countersign the memorandum. The amendment further provides that where arrest is made in the absence of such a witness, the officer shall inform the arrested person that he has a right to have a relative or friend informed of his arrest.

The proposed Section 41C provides for the state governments to establish a police control room in every district where the names and addresses of the persons arrested, and names and

designations of the arresting officers are to be displayed on a notice board. The amendment further provides for establishment of a control room at state police headquarters to collect details about the persons arrested and nature of offences with which they have been charged, and maintain a database for information of the general public.

"The discretion given to police for making arrests in appropriate cases is also necessary"

The proposed section 41D provides for the right of the arrested person to meet an advocate of choice during interrogation, though not throughout interrogation.

The Bill further seeks to amend the procedure of arrest by adding a proviso to section 46 of the CrPC that where a woman is to be arrested, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the woman (clause 7). It makes it obligatory for the arrested person to be examined by a registered medical practitioner soon after the arrest is made. It also provides that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female registered medical practitioner (clause 8). A new provision, section 55A, would also make it obligatory for the custodian of the accused to take reasonable care of the health and safety of the accused (clause 9).

Finally, a section is to be added through clause 10 to prohibit arrest except in accordance with the CrPC or any other law in force at the time.

Critique of amendments

Abuse of power to arrest is a major problem in India. The National Police Commission in its third report mentioned that

> [The] major portion of the arrests were connected with very minor prosecutions and cannot, therefore, be regarded as quite necessary from the point of view of crime prevention. Continued detention in jail of the persons so arrested has also meant avoidable expenditure on their maintenance. In the above period it was estimated that 43.2 per cent of the expenditure in the connected jails was over such prisoners only who in the ultimate analysis need not have been arrested at all.

In light of the experience of police behaviour in India, the amendments providing for notice procedure in place of arrest in the offences entailing punishment up to seven years imprisonment are welcome. It is hoped that such a provision shall help reduce unnecessary judicial work in dealing with anticipatory bail and regular bail applications. The discretion given to the police for making arrests in appropriate cases is also necessary for effective investigation and prosecution.

However, there are certain deficiencies here that need to be corrected before passage of the Bill. The provision allowing detention of a person in custody in the interest of the person's own safety should be dropped. In fact, the government has through the 128th Report of the Department-related Parliamentary Standing Committee on Home Affairs already undertaken to delete this provision.

"The government must specify the consequences of making an arrest in violation of the provisions of law"

Another major deficiency relates to the non-incorporation of certain requirements specified by the Supreme Court in the D K Basu judgment, specifically the

1. Recording of the particulars of all police personnel who handle interrogation of the arrestee in a register;

2. Time limit of 8-12 hours for communicating the arrest of a person and place of detention, along with the name of the custodian officer;

3. Subjecting of the arrestee to a medical examination every 48 hours during detention in custody, by a doctor on the panel of approved doctors appointed by the director of health services of the state or union territory concerned. (The Bill specifies that any registered medical practitioner can perform the examination.)

4. Sending all the documents, including the memo of arrest, to the area magistrate for keeping on record.

5. Absence of a 12-hour time limit for displaying at control rooms at all district and state headquarters the information regarding the arrest and place of custody of arrestees.

The government must consider incorporation of the above provisions in the appropriate clauses of the Bill. It also must consider and incorporate provisions on the consequences of non-compliance with the terms governing arrest. The government must specify the consequences of making an arrest in violation of the provisions of law: both for the accused and the police officer making the arrest.

A step in the right direction for victims' rights

The legal rights of a victim under the prevailing law in India are very limited, especially in cases of cognizable offences, where the criminal case is instituted on a police report and prosecuted by the state. At trial, the public prosecutor represents the state and there are no express provisions in the CrPC at present to provide for the victim's participation in the trial. In the investigation and prosecution of such cases, the status of the victim is that of witness. The victim has no right to participate or intervene in the trial; not even the right to oppose a bail application moved by an accused. The victim can move for cancellation of bail granted to an accused; however, the principles governing the cancellation of bail are entirely different from those considered for granting of bail.

In cases instituted on a police report, the only substantive right granted to a victim under the existing criminal justice system is the right to compound certain offences under section 320 of the CrPC. The Section provides two lists of offences: one of offences compoundable without the permission of the court, the other of offences compoundable with its permission.

Victims also have no right to appeal adverse judgments by trial courts in cases instituted on police reports; they can only move for revision. Revision under the existing law in India is very

limited in nature. A court exercising revisionary jurisdiction has no power to reappraise the evidence and convert a finding of acquittal into conviction. Such a court can merely order a retrial if it finds that there are material irregularities in the order or judgment.

> "Providing the victim with right of appeal against any order of the court is an important advance"

Victims' compensation is little more than a token gesture rather than substantial relief. However, under section 357 the court may order that the whole or part of the fine imposed on a convicted party to be paid to the victim. In non-cognizable cases, the court may also order a convicted party to pay the complainant all or part of the cost incurred by him in the prosecution, in addition to the penalty imposed upon him. Where the convicted party defaults on the payment the court may, under section 359, order the convicted to suffer simple imprisonment for a period not exceeding thirty days.

Proposed amendments

The amending Bill seeks to insert through its clause 2 a new provision defining a victim as "a person who has suffered any loss or injury caused by reason of the act or omission for which the accused person has been charged and the expression 'victim' includes his or her guardian or legal heir".

Clause 3 provides for the court to permit the victim to engage an advocate of choice "to co-ordinate with the prosecution" in consultation with the concerned government. This is proposed as a proviso to section 24 of the CrPC, which relates to appointment of public prosecutors.

The law relating to appeals is also to be amended by providing in clause 38 that "the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the order of conviction of such Court".

Critique of amendments

These amendments are likely to have a positive effect on the criminal justice system. Providing the victim with right of appeal against any order of the court is an important advance. However, the amendment with regard to a victim's participation in trial by engaging an advocate of choice is not very clear. It does not specify the role of such an advocate except to "co-ordinate with the public prosecutor". Further, the requirement for consultation by the court with the concerned government before allowing the victim to engage an advocate is unnecessary and burdensome. It needs to be deleted.

The provision in clause 37 for preparation of a victim compensation scheme for the purpose of compensating the victim or dependants who have suffered loss or injury as a result of the crime is also welcome. Such a scheme, if formulated and implemented properly, will address a longstanding lacuna in

India's criminal justice system. However, the scheme's contours are not very clear, and its formulation and implementation is still to be seen.

"Many provisions of the Bill will only hasten the collapse of India's criminal justice system; however, since others are welcome, the entire Bill does not deserve scrapping"

Recommendations

In light of the foregoing discussion, it may be concluded that many provisions of the Code of Criminal Procedure (Amendment) Bill, 2006, severely affect settled principles of criminal jurisprudence. These provisions will only hasten the collapse of India's already collapsing criminal justice system. However, since others are both desirable and welcome, the entire Bill does not deserve scrapping. Instead, the government must consider the following:

1. The provisions contained in clause 2 amending the definition of a "summons-case" and "warrant-case" must be deleted as it makes all the summons cases triable summarily.

2. Clause 3 should be amended to remove the requirement of consultation with the concerned government before permitting a victim to engage an advocate of choice to coordinate with the prosecution.

3. Clause 5 should be amended to drop the provision empowering a police officer to arrest a person for the person's own safety.

4. The Bill should be suitably amended to include the omitted requirements laid down in the D K Basu judgment as outlined above, and so that it specify the consequences of making an arrest in violation of the provisions of law.

5. The provisions ostensibly aimed at dealing with the problem of witnesses turning hostile in clauses 12, 13, 14, and 15 must be deleted. Accordingly, clauses 35 and 36 seeking to amend section 344 relating to summary procedure for trial of witnesses deviating from the statement recorded during investigation before a magistrate must be deleted. The government must formulate a credible witness protection programme before bringing such a drastic provision onto the statute book.

6. The provision enabling a judicial magistrate to extend remand of an accused in judicial custody through the medium of video linkage contained in clause 16 must be deleted.

7. Clause 22 seeking to delete the summons procedure of trial must be dropped. Accordingly, clause 23 providing that all summons cases shall be tried summarily as also clauses 24, 25 and 26 laying procedure and requirements in a summary trial must be deleted.

8. Clause 27 providing for recording of evidence during trial by a magistrate in a warrant case by electronic audio-video means, i.e. by video conferencing, must be deleted.

9. The provisions specifying the circumstances in which the court shall not grant adjournment as contained in clause 28 must be deleted.

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