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CRIMINAL JUSTICE SYSTEM

Introduction

The civil and criminal justice system in Pakistan is confronted today with serious crises of abnormal delays. Delay in litigation of civil and criminal cases has become chronic and proverbial. The phenomenon is not restricted to Pakistan, it is rather historical and universal. It is inherent in every judicial system which meticulously guards against any injustice being done to an individual, in a civil dispute or criminal prosecution. A paramount principle of the criminal justice system is that an accused is punished only after his guilt is proved beyond a shadow of doubt. Similarly, justice demands that in the trial of a civil case, the dispute must be decided strictly in accordance with the law and on the principles of equity, justice and fair play. Such universally recognised and time-tested principles are in accordance with the injunctions of Islam as the Holy Quran ordains that Muslims must eschew injustice, coercion, and suppression.

In our country, a serious drawback of the administration of justice is delay. Delays invariably occur in the disposal of civil and criminal cases. It is normal for an ordinary civil suit to linger on for as long as two decades, and on the completion of the trial, perhaps another half a decade is required to ensure the execution of decree. In criminal cases also, the situation is quite dismal. Unusual delays occur in the disposal of cases by the courts. An example of unusual delays is manifested by the fact that, according to a rough figure, currently, more than 2/3rd of the jail inmates comprise of under-trial prisoners. Such phenomenon erodes people's trust and confidence in the administration of justice.

Delays in the settlement of civil disputes, besides causing frustration to the litigant public, also hamper the socio-economic development of the society. It serves as a disincentive to foreign investment in our economy and affects our trade relations with foreign governments/multi-national companies.

The causes of backlog and delays are diverse and profound, arising due to factors both inside and outside courts, and legal/procedural gaps/lacunae. Justice delayed is, undoubtedly, justice denied. Consequently, it has always been the primary concern of civilised societies to address the issue of laws delays with a view to find ways and means of removing defects/deficiencies in the system of administration of justice.

It would be wrong to assume that the problem of backlog/delays has been totally neglected in the past. It has received government attention from time to time. Various Law Reform Commissions and Committees were constituted with a view to examine/analyse the causes of delays and suggest appropriate measures for reform. Such Commissions/Committees carried out an exhaustive examination of the procedural laws and rules and suggested appropriate measures for reform thereof. Some such recommendations were accepted by the Government and implemented through

amendments in laws/rules. The Supreme Court and High Courts have always been reviewing their respective rules of procedure so as to ensure quick and inexpensive disposal of civil and criminal cases. From time to time, the High Courts issued administrative instructions to the subordinate courts for expeditious disposal of cases.

The reform of procedural law, however, has been a constant and continuous process. Laws need to be reviewed and reformed in keeping with the changing times so as to cope with the emerging realities. The expeditious disposal of cases is undoubtedly a laudable objective. However, it is not an end in itself, it is merely a means of an end, the end being the provision of prompt and inexpensive justice. It is indeed not delay per se which is objectionable but an unreasonable and unjustifiable delay which need to be checked. The requirements of justice demand that sufficient time and adequate opportunities should be made available to the litigant parties and accused persons to state their cases and put across their defence before the court of law. In the process delays may occur but it should be tolerated and condoned if it is in the interest of just and fair disposal of case. On the contrary, the tendency to haste and quick disposal of cases must be checked if it is likely to result in an unjust, unfair or arbitrary order or decision.

Earlier Reports

As mentioned earlier, the issue of backlog and delays in the civil and criminal administration of justice has been addressed in the past. For this purpose various Commissions/Committees were constituted which formulated comprehensive recommendations for reform.

S.A.Rehman Law Reform Commission 1958

This Commission examined the causes of delays in civil and criminal litigation and recommended appropriate amendments in the relevant laws. The Commission, however, chose not to suggest any radical change in the existing judicial system. The Government accepted its recommendations partly through appropriate amendments in the Civil Procedure Code 1908. Some such amendments, however, were later on withdrawn as they did not receive the approval of the members of the bench, bar and the general public.

Justice Hamoodur Rehman Law Reform Commission Report 1967-70

This Commission submitted a fairly comprehensive report on the subject of law delays in civil and criminal litigation. By and large, the Commission did not find any major fault with the existing legal system, hence refrained from suggesting any major overhaul or radical alteration of the system. The Commission listed its recommendations under 3 categories namely, recommendations for legislative action, strict application of existing laws/rules and administrative action involving financial expenditure on recruitment of the required additional judicial officers, ministerial staff and equipment such as typewriter to the court. Its recommendations pertaining to reform of the civil and criminal law, were duly accepted and implemented by the Government. No action, however, was

taken with regard to its recommendation pertaining to increase in the number of judicial officers and provision of proper facilities in court rooms.

High Powered Law Reform Committee Report 1974

This High Powered Law Reform Committee was headed by the then Law Minister and included the Attorney General, a Judge of the Supreme Court, Chief Justices of the High Courts and the Law Secretary. This Committee gave recommendations with respect to increase in the number of judges, provision of adequate number of court rooms and proper accommodation to judicial officers and improvement in the working of investigation and prosecution agencies.

Law Committee for Recommending Measures for Speedy Disposal of Civil Litigation 1978

This Committee, constituted under the Chairmanship of Mr Justice S.Anwarul Haq, the Chief Justice of Pakistan, included the Attorney General and the 4 Chief Justices of the High Courts as members. This Committee also suggested recommendations for speedy disposal of litigation. It recommended, inter alia, increase in the number of judicial officers, provision of adequate number of court rooms and accommodation for judges, provision of adequate ministerial staff and stationary to courts and facilities for the training of judicial officers. Its recommendations requiring legislative action were accepted and implemented through an Ordinance (i.e. Ordinance X of 1980). However, its recommendations with regard to increase in number of judicial officers, provision of court rooms and accommodation for judicial officers, etc were ignored.

Committee on Islamisation of Laws and Establishment of Qazi Courts 1980

This Committee headed by Justice Salahuddin Ahmed, suggested various proposals for reform of civil justice system. It emphasised on the need for the training of judges and the provision of due facilities to judicial officers. The Committee also suggested some structural changes to the system of administration of justice. Its recommendations were as follows:

- (a) The present adversary system should be replaced by Amicus Curiae System;
- (b) Discretion of courts in the matter of frequent adjournments and of remand should be curtailed;
- (c) Persons avoiding service of notice and process should be penalised;
- (d) The procedure should not be regarded as an end in itself. The courts should not be a slave to it, but should be inspired to do justice;
- (e) In civil cases, the courts should, from the very beginning, use its good offices to bring about a compromise between the parties;
- (f) The appellate and revisional courts should not remand the cases in routine;

- (g) Backlog of cases should be cleared by appointment of sufficient number of retired Judicial Officers;
- (h) Judgment should immediately follow the completion of the hearing of a case. The judgment should be brief and to the point;
- (i) Defects in pleadings to be immediately rectified without any formality.

These recommendations, however, remained un-implemented.

Commission on Reform of Civil Law 1993

This Commission was headed by the Chief Justice of Pakistan and comprised of the 4 Chief Justices of the High Courts. It was assigned the task of recommending provision for reform of the civil litigation. This Commission also, more or less, reiterated the views expressed by the earlier Commissions/Committees and stated that the existing procedural laws/rules are generally sound and needed no major surgery. The Commission blamed the successive governments for the apathy and neglect of the judiciary, and lack of adequate resources for improving the system of judicial administration in the country. The Commission, however, did point out certain defects/shortcomings in laws/rules/procedure and suggested appropriate measures for reform thereof. The Commission, accordingly, recommended measures for reform of the CPC including thorough scrutiny of pleadings, alternative means of service processing, reducing the period for submission of written statement, the system of continuous hearing, reduction in number of appeals and enhancement in the jurisdiction of small causes courts. Most of its recommendations were accepted and incorporated through an Ordinance (Ordinance XXXIII) of 1993 which was later on enacted into an Act of Parliament (Act XIV of 1994). The Commission's recommendations with regard to the creation of a Federal Judicial System, increase in number of judicial officers and provision of proper facilities to them, however, were not implemented.

It would appear that procedural laws/rules in the country have been reviewed from time to time, and appropriate recommendations suggested to the Government for inexpensive and expeditious disposal of civil and criminal cases. It is obvious that the successive governments were somewhat reluctant to accept and honour the recommendations in entirety. Recommendations pertaining to reform of procedural laws/rules were generally accepted, however, hardly any step was taken with regard to the provision of financial resources required for increase in number of judicial officers, provision of adequate number of court rooms and allied facilities e.g. ministerial staff, typewriters, stationary, provision of accommodation and transport facilities to judicial officers, provision of library facility, etc etc.

Future Outlook

It is an in-controvertible fact that the expansion of the judicial system in the country has not kept pace with the enormous increase in population and rate of litigation. A number of factors are responsible for increase in litigation which include, rise in literacy rate, general awareness among the people of their rights, criticism of human rights violations, complaints of excesses committed by public officials which oblige the superior courts to take action and issue appropriate directions, in respect of the enforcement of fundamental rights and maintenance of rule of law in the society.

Unfortunately, the administration of justice has not been a priority issue with the successive governments. At best, the provision of justice is regarded as a welfare service rather than a social responsibility. As a result, adequate resources are not provided and the courts, particularly, the subordinate courts have to operate in extremely dismal conditions. There is a chronic shortage of judges at all level of judicial hierarchy. There is a problem of lack of adequate court rooms and residential accommodation for judges. The courts do not get adequate equipment and stationary. They do not have access to library facilities. There is no adequate arrangement for training of judicial officers and ministerial staff. The existing training facilities are not being fully utilised. Such problems may not be resolved unless there is an active support from the Government. In the absence of such support, the administration of justice may not improve.

Having said so, however, let it also be emphasised that the institution of judiciary certainly could do more. There is a problem of slack supervision over the functioning of subordinate judiciary. There is also the problem of adjournments being given in routine. All this require an internal assessment/evaluation by the respective High Court so as to pinpoint defects/shortcomings in the system of administration of justice and plug the gaps. The judiciary ought to safeguard and protect its newly acquired freedom and independence through improved performance and better functioning so as to continue to enjoy public trust and confidence in the system of administration of justice in the country.

The Government is confronted today with a serious problem of law and order. Crime graph is steadily rising. There is an increasing insecurity among the people. Armed robberies and dacoities, particularly in the urban cities, are on the increase. Similarly, political and sectarian conflicts have led to an open warfare among armed groups/supporters. Innocent citizens are also caught in the fire. There are reports of extra-judicial killing by the law enforcement agencies. It is increasingly becoming difficult for honest, dedicated and committed public servants, be they in the judiciary or administration, to perform their duties fully and effectively. Even defence counsels became the victim of sectarian conflicts. This trend has to be checked and reversed through legal measures and by remaining within the ambit of the Constitution. The expeditious and quick disposal of cases and provision of inexpensive justice would certainly have an impact in arresting the spiral of violence and lawlessness in the society.

Following a meeting between Mian Nawaz Sharif, Prime Minister of Pakistan and Justice Sajjad Ali Shah, Chief Justice of Pakistan/Chairman, Pakistan Law Commission, in which the Prime Minister expressed his anxiety over delays in trials, and desired that inexpensive and expeditious justice should be provided at the door-step, the Chairman directed the Secretariat of the Commission to initiate a study of the present civil and criminal justice system with a view to suggest to the Government appropriate recommendations for reform. The Secretariat examined the issue and completed a draft report for consideration by the Commission.

The Commission met on July 22, 1997 at Islamabad and discussed the draft on reform of criminal

justice system. After thorough discussions and deliberations, the Commission unanimously adopted the draft, with appropriate changes/modifications/additions thereto. The report, as approved by the Commission, follows:

Recommendations

1. Strengthening the Judicial System

The present judicial system in the country has a fairly long history of evolution and development. It has been in vogue for almost one and a half century. It is time-tested and has been generally sound. Due to its practice for a long period of time, the system is fully understood by the people and generally approved of. It indeed enjoys the trust and confidence of the people.

All the previous Law Reform Commissions/Committees invariably suggested appropriate changes to the system but refrained from, rather warned against, any drastic transformation of it.

For a system of law to be effective, it must keep pace with changing times. Our society is in a transition. Major and fundamental changes are occurring, both in the economic and social fields. In the economic field, we are in the process of change from public to private and regulated to free market economy. This phenomenon has consequences in the shape of a large number of employees becoming redundant. There is the problem of inflation and price spiral. A large number of young persons, educated and otherwise, are facing the problem of unemployment. This has led to social unrest/tension and increase in crime rate.

The country is situated in a volatile region. On the one side, there is a protracted civil war in Afghanistan, and on the other, the valiant freedom struggle of the Kashmiri Muslim fighters, goes unabated. The country is not immune to the effects of such conflicts, the kilashankov culture and the use of and trafficking in narcotics, are directly attributable to it. Internally also, the country is faced with political, ethnic and sectarian conflict which goes on unchecked.

With a view to tackle this situation, appropriate strategies must be devised and reforms introduced at the political, economic and social level. It would be wrong to assume that the current spiral of violence is entirely attributable to any defect in the judicial system. Non-resolution of disputes and prolonged delays in the administration of justice, however, are a source of tension in the society. To be able to live peacefully and in a tranquil atmosphere, it would be essential that the criminal justice system is reformed so as to be able to promptly punish the criminals and serve as deterrent to would-be criminals. Such reform measures, however, should aim at improving and strengthening the system rather than substituting it with another. There is a scope within the system for special procedure so as to put an end to acts of violence and terrorists activities. Such measures, however, should be within the ambit of the Constitution, because to do otherwise, would be illegal. In suggesting any reform to the judicial system, one should be conscious of the principles prescribed by the Constitution, such as the trichotomy of powers, separation of judiciary from the executive and

the independence of the judiciary. Care must be taken of the fundamental rights of citizens which are guaranteed by the Constitution and enforceable through the courts.

Keeping in view the above scenario, it would be difficult to reconcile to the idea of creating a parallel judicial system or a dual system of administration of justice in the country. Such an idea should not be explored, for the reason that this country has had, in the past, pretty bad experiences of this nature. Special courts created outside the regular judicial system, are generally abhorred and detested by the people, and rightly so, as in the past, they were used as instruments of victimisation against opponents. Examples abound when miscarriage of justice took place. Common sense demands that we learn from past mistakes and refrain from repeating it. It is, therefore, recommended that appropriate reforms and changes should be introduced within the prevailing judicial system for improving its efficiency and performance. In this respect, the Government may consider introducing appropriate reforms of the law, procedure and take administrative measures for effectively tackling the problem of violence and terrorists acts in the society. Some such reforms and measures are indicated in this report.

2. Increase in Number of Judicial Officers

There is a chronic and pervasive shortage of judicial officers and ministerial staff in the courts. The strength of judicial officers is not in consonance with the workload of courts. Mostly, due to financial constraints, new vacancies are not being created and the existing one are not being timely filled. It also takes a long time for filling judicial posts as the Public Service Commission takes quite a long before the recruitment process is completed.

As per information received from the High Courts, currently, there are a large number of pending cases under the Suppression of Terrorists Activities (Special Courts) Act 1975, in various provinces. The High Courts have asked for additional posts of Additional District & Sessions Judges in order to expeditiously dispose of such pending cases. The number of pending cases and the posts required are as follows:

	<u>Pending Cases</u>	<u>Posts Required</u>
Punjab	4672	63
Peshawar (NWFP)	3848	5
Sindh	9427	37
Quetta (Baluchistan)	678	16

The Secretariat of the Pakistan Law Commission also collected data from various courts with regard to pendency of civil and criminal cases. It shows the number of cases pending before the Supreme Court, Federal Shariat Court, High Courts and subordinate courts. Such data may be seen at Annex

III.

The data reveals that there is a huge backlog of pendency of civil and criminal cases, at all levels of courts hierarchy. To clear such backlog, it would be essential that besides other measures, the Government also provides necessary funds for increase in the strength of judges in the superior and subordinate courts. The Government may, therefore, in keeping with the workload of various courts, increase the number of judges and judicial officers and provide appropriate funds for the purpose. The requisite number of judges/judicial magistrates should be appointed in accordance with the prescribed law/rules.

3. Increase in Retirement Age

One way of tackling the backlog and ensuring expeditious disposal of cases would be to retain the services of serving judges beyond the prescribed age of superannuation. This would be possible by enhancing the retirement age of judges. An obvious advantage of this recommendation is that the nation will avail the services of qualified and experienced judges with proven competence and integrity, without having to incur heavy financial expenditure. The Government may, therefore, consider this option, and if agreed to, take appropriate steps for its implementation.

4. Provision of Court Rooms and Allied Facilities

The successive reports of various Law Reform Commissions/Committees have pointed out the non-availability of adequate number of court rooms and allied facilities, such as sufficient number of ministerial staff and the requisite equipment, such as typewriter and stationary, etc. This issue must also be addressed and resolved through construction of adequate number of court rooms and provision of the allied facilities.

5. Training

Delays in the disposal of cases occur also due to the fact that no adequate arrangements exist for the training/orientation of judicial officers. Currently, training facilities exist in the provinces of Sindh and the Punjab. There is also a Federal Judicial Academy in Islamabad. No such arrangements, however, exist in the provinces of NWFP and Baluchistan. This issue must be addressed and appropriate training facilities provided, both for pre-service and in-service training of the judicial officers and the ministerial staff. Courts must also have properly equipped libraries and judicial officers should have access to information. Access to information is essential in the modern age, particularly for the judicial officers to have information such as rulings of the superior courts and information of up-to-date laws/rules. For this purpose, the Government may provide funds for purchasing computers for courts. Funds must also be provided for setting up libraries. In this respect, the Government may explore the possibility of getting funds from international institutions who donate funds or provide technical assistance for strengthening the legal and judicial institutions.

6. Conditions of Service of Judicial Officers

With a view to attract capable, competent and qualified persons as judicial officers, it would be necessary that the terms and conditions of service of such officers are improved. They should be given appropriate incentives. The problem of lack of accommodation and transport facilities should also be addressed.

7. Process Serving

The system of process serving, in respect of criminal and civil cases both, is defective. Abnormal delays occur in the process serving because of which trial is delayed. It is, therefore, recommended that the court which issues the process must keep a vigilant check on the performance of process servers.

In criminal cases the police personnel serve summons and notices on persons. The process is however defective. Due to such factor delays occur in trial. It is recommended that the task of process serving should be performed by separate agency under the control of the High Court and District Courts. Such agency should be used for process serving both in civil and criminal cases.

In civil cases, the performance of process servers continues to be a problem of concern, as such processes are usually delayed. In this connection, the Commission on Reform of Civil Law 1993, suggested the institution of "substituted service" by using additional modes of service, such as the beat of drum, fax, courier and publication through the press. The problem, however, lingers on. Process server, allegedly also resort to corrupt practices because of inadequate emoluments and non-provision of transport facilities. It is, therefore, suggested that the Government may review the terms and conditions of service of process servers with a view to bringing about some improvement in the salary structure and other terms and conditions of service. They should be provided motor cycles for quick service. They should also be given incentives in the shape of emoluments for exemplary performance and should be held responsible and accountable for deliberate default/delay or inefficient performance. The Presiding Officer should also ensure that the system of "substituted service" is fully and strictly enforced.

8. Submission of Challan

Justice Hamoodur Rehman Commission Report (1967-70) deals with the issue fairly comprehensively. Some of its recommendations were duly accepted and incorporated through amendments in the law. The reasons for delay in investigation are stated to be inefficiency, lack of integrity on the part of investigating staff, inadequate number of investigating officers and their engagement in other miscellaneous police duties, delay in obtaining expert opinion, particularly of the medical/forensic experts, lack of proper supervision by the superior police officials and lack of public cooperation, etc etc. These issues should be properly addressed and appropriate remedies suggested to overcome the problem. It may be desirable that the investigating branch of the police is solely deputed to the task of completing the investigation. The investigation branch should be strengthened. The number of forensic science laboratories should be increased. It should be made incumbent upon the medical expert to promptly submit his report in medico-legal cases. This may be

achieved by the trial court taking a strict view of negligence or undue delay/default on the part of investigating agency or medical expert. The courts should not hesitate to make use of section 167 of Pakistan Penal Code 1860 which provides for the punishment of a public servant who deliberately frames or prepares an incorrect document or statement.

The maximum period for the submission of challan is 14 days, which should be strictly adhered to. In appropriate cases, contempt proceedings may be initiated against the investigating officer who deliberately or negligently causes delay in submitting challan or deliberately distorts investigation with a view to favour or disfavour someone. Again, in appropriate cases, with a view to prevent delay in trial, challan may be submitted even if the report of medico-legal, forensic or ballistic expert is awaited. Such reports may be submitted later in point of time.

In cases, triable by the Court of Sessions, the challan rather than being submitted to the magistrate u/s 190(3) of the Cr.PC, should be sent directly to the Court of Sessions.

9. Non-Attendance of Witnesses

The non-attendance of witnesses also cause delay in the disposal of criminal cases. It is stated that witnesses generally tend to avoid attendance in the court. This is due to factors such as waiting for long hours outside the court, non-provision of adequate travelling allowance and diet money, no proper arrangements for their seating, lack of courtesy being shown to them, etc. The defence counsels also frequently resort to dilatory tactics and seek adjournment on flimsy grounds.

It is, therefore, recommended that proper seating arrangements be made in court premises for witnesses and litigants. The scales of daily allowance and travelling allowance should be enhanced, in keeping with the prevailing costs, and this should be promptly paid by the respective Presiding Officer. The parties to the trial and witnesses must be assured protection so as to be able to make appearance before the court and state the truth. In respect of government officials, neglecting summons, the court should communicate the fact to the head of the department for appropriate disciplinary action. The Government should issue instructions to the heads of departments to ensure compliance with the processes of the court and for any default appropriate disciplinary action must be taken against the defaulting official. In appropriate cases, rather than recommending disciplinary action, the court should invoke Section 174 of the PPC 1860 which provides for punishment to a person who intentionally omits to make appearance as witness before a court of law. The court must also conduct the hearing regularly and on day-to-day basis, as required under the High Court Rules/instructions, in criminal cases.

A major cause of delays in criminal litigation is due to the non-production of under-trial prisoners before the court. This happens for variety of reasons e.g. non-provision of security arrangements for bringing the prisoners from jail to courts, non-availability of transport, etc. It is also reported that sometimes the accused, in connivance with the prison authorities, deliberately avoid appearance in the court, so as to get the benefit of section of the 497 of the Cr.PC. It is, therefore, recommended

that the government should provide security arrangements and provide transport to under-trial prisoners for the expeditious disposal of their trial.

10. Liberalising the Provision Relating to Bail

The primary object of the Code of Criminal Procedure, 1898 is to ensure a fair trial of the accused on the touch stone of the well settled principle of law, that every accused is presumed innocent till proven guilty. In order to maintain a proper balance between the rights of the accused and responsibility of the State to punish the guilty, it is necessary that the trial is just, fair and expeditious. In case of abnormal delay, the accused is entitled to some relief. This is possible by releasing him on bail. The concept of bail is to release the under-trial prisoner from the agonies and hardships of jail life. Bail is granted when the court is assured that the accused will continue to attend his trial and would not escape/disappear. In case of any such apprehension, the court can always cancel the bail. The Government may also approach the court for cancellation of bail. Some of our jails are packed with the under-trial prisoners waiting for conclusion of their trial. Inordinate delay in disposal of criminal proceedings are one of the main causes of overcrowding in jails. There are reports that, at times, under-trial prisoners are kept in detention for a period, longer than the actual punishment prescribed for the alleged offence.

To provide some relief to the convicted prisoners, whose appeals are pending before the court, the Law Reform Ordinance (XII) 1972 provided some relief. Section 426 says:-

"S.426 (I-A) Criminal Procedure Code. An Appellate Court shall, unless for reasons to be recorded in writing it otherwise directs, order a convicted person to be release on bail who has been sentenced --

(a) to imprisonment for a period not exceeding three years and whose appeal has not been decided within a period of six months of his conviction;

(b) to imprisonment for a period exceeding three years but not exceeding seven years and whose appeal has not been decided within a period of one year of his conviction;

(c) to imprisonment for life or imprisonment exceeding seven years and whose appeal has not been decided within a period of two years of his conviction.

Likewise, a third proviso was added to Section 497 of the Criminal Procedure Code which provides similar relief to the under trial prisoners. The proviso to Sec.497 says :-

"Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail:-

(a) who, being accused of any offence not punishable with death, has been detained for such offence for a continuous period exceeding one year and whose trial for such offence has not concluded; or

(b) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding two years and whose trial for such offence has not concluded.

In view of the fact that there is enormous overcrowding in jails, and with a view to further liberalize the law relating to bail of under-trial prisoners, it is recommended that clause (a) of the proviso of Section 497 of the Cr.P.C. may be amended, creating therein two categories of offences, one, for which the prescribed penalty does not exceed 3 years, and two, which is not punishable with death. For the first category, bail may be given in case the trial does not commence within 6 months, and for the second category, bail should be granted when the trial does not start within one year. The amended proviso would read as follows:

"Provided further that the Court shall, except where it is of opinion that the delay in the trial of the accused has been occasioned by an act or omission of the accused or any other person acting on his behalf, direct that any person shall be released on bail:-

(a) who, being accused of an offence punishable for a period not exceeding 3 years, has been detained for such offence for a continuous period exceeding 6 months and whose trial for such offence has not concluded; or

(b) who, being accused of an offence exceeding 3 years but not punishable with death, has been detained for such offence for a continuous period exceeding 1 year and whose trial for such offence has not concluded; or

(c) who, being accused of an offence punishable with death, has been detained for such offence for a continuous period exceeding 2 years and whose trial for such offence has not concluded.

11. Adjournments

The court should check frequent adjournment of cases at the request of the counsel or party. In cases of adjournment at the request of the counsel due to appearance in a higher court, adjournment should be allowed only on an application along with a copy of the cause list.

12. Separating the Functions of District & Sessions Judge

For quick and expeditious disposal of cases, it is essential that qualified and experienced judges are deputed to conduct trial in criminal cases. Presently, the District & Sessions Judge exercises dual jurisdiction in civil and criminal matters. This way, he is unable to concentrate on the trial of

criminal cases. It is, therefore, recommended that the High Courts should examine the possibility of bifurcating the civil and criminal functions of a District & Sessions Judge, so that such judges are assigned responsibilities exclusively for the trial of civil and criminal cases. This way, they would be able to gain experience in the relevant field which would help them in the prompt disposal of cases.

13. Strict Supervision

It would be wrong to assume that the entire blame for the backlog of cases and delays in trial is solely attributable to defects in procedural laws/rules or the agencies responsible for completion of investigation, submission of challans or due to non-appearance of witnesses, etc. A factor responsible for delays is also, slack supervision and lack of adequate monitoring mechanism on the part of superior courts. There is no organised and methodical arrangements of supervision over the subordinate courts, because of which inefficiency and in-proficiency, among the judicial officers, are on the increase. This tendency can be arrested, if the supervisory machinery is properly organised. There are complaints that most of the executive magistrates do not regularly attend the courts which cause inconvenience to the litigant parties, witnesses and advocates. This happens due to the administrative functions assigned to such executive magistrate. Therefore, there is a need for stringent supervision by the superior officers, in respect of the executive magistrate. The District Magistrate should carry out strict supervision over the performance of the executive magistrate.

In respect of the performance of judges/judicial magistrates, the District and Sessions Judge must be vigilant in supervising the functioning of the subordinate courts. The respective High Court should be equally vigilant. This should be done by regular visits of the Chief Justice and judges of the High Courts as well as the Member Inspection Team to lower courts. Cases of corruption and inefficiency should be taken up promptly and appropriate punishment awarded. There should be a system of reward and incentives in respect of those judicial officers whose performance is exemplary. Such awards may be in the shape of special increment, preference in promotion or choice of posting.

Summary of Recommendations

1. Rather than creating a parallel judicial system the Government should strengthen the existing system of administration of justice which is time-tested and enjoys the confidence of the people. Given due facilities, this system has the capacity and strength to ensure the expeditious disposal of cases.
2. With a view to resolve the problem of backlog and ensure quick disposal of cases, the Government should increase the number of judges and judicial officers.
3. The problem of delays may also be tackled through enhancing the retirement age of judges. The Government may, therefore, also consider this option.
4. The Government should provide necessary funds for construction of proper court rooms, provision of adequate ministerial staff, typewriters and stationary, etc to courts.
5. Arrangement should be made for the pre and in-service training of judicial officers. Libraries should be established and adequate books and other material made available to judges. Funds may also be provided for installing computers in courts.
6. With a view to attract capable, competent and qualified persons as judges/judicial officers, their terms and conditions of service should be improved. In particular, the problem of accommodation and transport should be resolved.
7. The system of process serving should be improved. The task of process serving in criminal justice system should be assigned to a separate agency under the control of High Courts and District courts. Such agency should be utilised for process serving both in civil and criminal cases. The courts should make full use of the system of "substituted service."
8. For timely submission of challan, the investigating branch of the police should be strengthened, the number of forensic science laboratories increased and the courts should take serious notice of negligence or undue delay/default in the timely submission of challan.
9. Better seating arrangements be made for litigants and witnesses and the amount payable to witnesses as travelling allowance and diet money should be rationalised. Witnesses and litigants should also be given due protection. The courts should take serious view of situations when witnesses deliberately avoid/evade appearance in courts. Arrangements should be made for transporting under-trial prisoners to courts. The High Courts should issue instructions to courts to conduct hearing regularly and on day-to-day basis.

10. With a view to overcome the problem of congestion in jails, and so as to liberalise the law relating to bail, Section 497 of the Cr.PC be amended, creating therein three categories of bail; first, when offence is punishable for a period not exceeding 3 years and accused detained for a period exceeding 6 months but trial has not yet concluded; second, when offence is punishable for a period exceeding 3 years but not punishable with death and accused detained for a period exceeding one year but trial has not yet concluded; and third, when offence is punishable with death and accused detained for a period exceeding 2 years but trial has not yet concluded.

11. Frequent adjournments of cases should not be allowed. In cases of adjournment at the request of the counsel due to appearance in a higher court, it should be allowed only on an application along with a copy of the cause list.

12. With a view to achieve the goal of expeditious trial, the High Courts should examine the possibility of bifurcating the civil and criminal functions of District & Sessions Judge so that they are assigned responsibilities exclusively for the trial of civil and criminal cases.

13. There is a need for organised and methodical arrangements of supervision and control by the High Courts over the functioning of subordinate courts. The cases of corruption, inefficiency and in-proficiency must be taken notice of and appropriate punishments awarded. Strict control must also be exercised by the District Magistrate over the functioning of executive magistrates under his control. There should also be a system of reward and incentives in the shape of giving special increments, preference in promotion or choice of posting for judges/magistrates whose performance is exemplary.