2. STEPS REQUIRED TO BE TAKEN FOR REDUCTION/ELIMINATION OF ARREARS AND ENSURE SPEEDY TRIAL WITHIN A REASONABLE PERIOD.

13. INCREASE IN THE STRENGTH OF JUDGES OF THE HIGH COURTS AND SUBORDINATE COURTS.

These items are inter-connected and can be conveniently discussed together.

Constitution of India reflects the quest and aspiration of the people for justice when its preamble speaks of justice in all its forms: social, economic and political. Those who have suffered physically, mentally or economically, approach the Courts, with great hope, for redressal of their grievances. They refrain from taking law into their own hands, as they believe that one day or the other sooner or later they would get justice from the Courts. Justice Delivery System, therefore, is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartiality. Indian Courts are held in high esteem not only by the developing but by developed countries as well. There is wide-spread praise for the quality of the judgments delivered, and the hard-work put in by Indian Judiciary. We, the citizens of India, can legitimately feel proud of this recognition. However, there is growing criticism, sometimes from uninformed or ill-informed quarters, about the alleged inability of our Courts to effectively deal with and wipe out the huge backlog of cases.

Long delay has also the effect of defeating justice in quite a number of cases. As a result of such delay, the possibility cannot be ruled out of loss of important evidence, because of fading of memory or death of witnesses. The consequences thus would be that a party with even a strong case may lose it, not because of any fault of its own, but because of the tardy judicial process, entailing disillusionment to all those who at one time, set high hopes in courts. The delay in the disposal of cases has affected not only the ordinary type of cases but also those which by their very nature, crave for early relief. The problem of delay and huge arrears stares us all and unless we do something about it, the whole system would get crushed under its own weight. We must guard against the system getting discredited and people losing faith in it and taking recourse to extra legal remedies with all the sinister potentialities.

The problem is much more acute in criminal cases, as compared to civil cases. Speedy trial of a criminal case considered to be an essential feature of right of a fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable. If the accused is acquitted after such long delay one can imagine the unnecessary suffering he was subjected to. Many a time such inordinate delay contributes to acquittal of guilty persons either because the evidence is lost or because of lapse of time, or the witnesses not remembering all the details or their not coming forward to give true evidence due to threats, inducement or sympathy. Whatever may be the reason, it is justice that becomes the casualty. We must realize

that the very existence of an orderly society depends upon a sound and efficient functioning of criminal justice system.

The Courts do not possess a magic wand by which they can wave to wipe out the huge pendency of cases nor can they afford to ignore the instances of injustices and illegalities only because of the huge arrears of the cases already pending with them. If the courts start doing that, it would be endangering the credibility of the Courts and the tremendous confidence reposed in them by the common man. However, the heartening factor is that people's faith in our judicial system continues to remain firm in spite of huge backlogs and delays. It is high time we make a scientific and rational analysis of the factors behind accumulation of arrears and devise specific plan to at least bring them within acceptable limit, within a reasonable timeframe. Time has now come for us to put our heads together and find out ways and means to deal with the problem, so as to retain the confidence of our people in the credibility and ability of the system.

Institution, disposal and pendency of civil and criminal cases in the High Courts during the last seven years is as under:

CIVIL CASES			
YEAR	**INSTITUTION**	**DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	**932186**	**842646**	**2554963**
2003	**988449**	**982580**	**2560832**
2004	**1016420**	**863286**	**2811382**
2005	**1082492**	**934987**	**2870037**
2006	**1082667**	**979275**	**2968662**
2007	**1064925**	**1001775**	**3030549**
2008	**1099152**	**1028248**	**3103352**

CRIMINAL CASES			
2002	**402016**	**343900**	**532085**
2003	**396869**	**367143**	**561811**
2004	**432306**	**375917**	**613077**
2005	**460398**	**403258**	**651246**
2006	**507312**	**471327**	**686191**
2007	**525891**	**503298**	**712511**
2008	**548098**	**489051**	**770738**

Total institution, disposal and pendency of civil and criminal cases in the High Courts during the last seven years is as under:

	TOTAL INSTITUTION	**TOTAL DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	**1334202**	**1186546**	**3087048**
2003	**1385318**	**1349723**	**3122643**
2004	**1448726**	**1239203**	**3424459**
2005	**1542890**	**1338245**	**3521283**
2006	**1589979**	**1450602**	**3654853**
2007	**1590816**	**1505073**	**3743060**
2008	**1647250**	**1517299**	**3874090**

Institution and disposal and pendency of Civil and Criminal cases in Subordinate Courts during the last seven years is as under:

CIVIL CASES			
YEAR	**INSTITUTION**	**DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	**3385715**	**3342653**	**7254871**
2003	**3170048**	**3121978**	**7302941**
2004	**3697242**	**3726970**	**7042245**
2005	**4069073**	**3866926**	**7254145**
2006	**4013165**	**4019383**	**7237496**
2007	**3777348**	**3757403**	**7280737**
2008	**4049733**	**3855719**	**7539848**

CRIMINAL CASES			
YEAR	**INSTITUTION**	**DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	**11159996**	**10177254**	**15185505**
2003	**11635833**	**10874673**	**15946665**
2004	**11888475**	**10857643**	**17624765**
2005	**13194289**	**12442981**	**18400106**
2006	**11809666**	**11975308**	**17842122**
2007	**11322073**	**11040103**	**18052011**
2008	**12305802**	**11577091**	**18869163**

Total institution and disposal and pendency of Civil and Criminal cases in Subordinate Courts during the last seven years is as under:

YEAR	TOTAL INSTITUTION	TOTAL DISPOSAL	PENDENCY AT THE END OF THE YEAR
2002	**14545711**	**13519907**	**22440376**
2003	**14805881**	**13996651**	**23249606**
2004	**15585717**	**14584613**	**24667010**
2005	**17263362**	**16309907**	**25654251**
2006	**15822831**	**15994691**	**25079618**
2007	**15099421**	**14797506**	**25332748**
2008	**16355535**	**15432810**	**26409011**

The above figures would show that arrears are increasing almost every year on account of institution almost every year being more than the disposal.

Among the High Courts maximum pendency is in the Allahabad High Court with a total pendency of 9,11,858 cases as on 31.12.2008. Similarly among the District and Subordinate Courts, the highest pendency is in the State of Uttar Pradesh with a total pendency of 51,60,174 cases as on 31.12.2008.

Sanctioned strength of the High Court Judges was 886 and working strength was 606 as on 1st of January, 2009 leaving 280 vacancies. Sanctioned strength of Subordinate Judges was

16685 and working strength was 13556 leaving 3129 vacancies as on 31st December, 2008.

The average disposal per Judge comes to 2504 cases in High Courts and 1138 cases in subordinate Courts, if calculated on the basis of disposal in the year 2008 and working strength of Judges as on 31st December, 2008. Applying this average, we require 1547 High Court Judges and 23207 subordinate Court Judges, only to clear backlog in one year. The requirement would come down to 774 High Court Judges and 11604 Subordinate Judges if the arrears alone have to be cleared in the next two years. The existing strength being inadequate even to dispose of the fresh institution, the backlog cannot be reduced without additional strength, particularly, when the institution of cases is likely to increase in coming years.

The Governments should not allow their financial constraints to come in the way of increase in the strength of judges. As per the information collected by First National Judicial Pay Commission, every state except Delhi has been providing less than 1% of the budget for subordinate judiciary whereas the figure is 1.03% in case of Delhi. In terms of G.N.P., the expenditure on judiciary in our country is hardly 0.2 per cent, whereas it is 1.2 per cent in Singapore, 1.4 per cent in United States of America and 4.3 per cent in United Kingdom. Such meager allocations are grossly inadequate to meet the requirements of judiciary. Unlike in other departments of the Government, more than half of the amount which is spent on

Indian judiciary is raised from the judiciary itself through collection of court-fees, stamp duty and miscellaneous matters. Therefore, the Governments have to allocate more funds for creation of additional courts at all levels.

Several statutes like Indian Penal Code, Code of Civil Procedure, Code of Criminal Procedure, Transfer of Property Act, Contract Act, Sale of Goods Act, Negotiable Instruments Act etc., which contribute to more than 50% to 60% of the litigation in the trial Courts are Central enactments, referable to List I or List III and these laws are administered by the Courts established by the State Governments. The number of Central laws which create rights and offences to be adjudicated in the subordinate Courts are about 340. It is obvious that the Central Government must establish Courts at the trial level and appellate level and make budgetary allocation to the States to establish these courts to cut down backlog of cases arising out of these central statutes. The Central Government must estimate and pay for their recurring and non-recurring expenditure of the State Courts to the extent the Courts spend time to adjudicate disputes arising out of central statutes. **Article 247 of the Constitution enables Union Government to establish additional courts for better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union List. This Article is specially intended to establish courts to enable parliamentary laws to be adjudicated upon by subordinate courts but has not been resorted to so far.**

As many as 3129 posts of Judicial Officers were vacant in Subordinate Courts as on 31st December, 2008. Sincere attempts should be made to fill up these vacancies at the earliest possible. Time schedule stipulated by this Court in *Malik Mazhar Sultan & Anr. v. Uttar Pradesh Public Service Commission and Ors. 2006 (3) SCR 689* for appointment of subordinate Court Judges should be strictly adhered to. Wherever the vacancies are to be filled up by way of promotion, it should be done within three months from the date of vacancy so that the Court does not remain vacant for a long period.

Malimath Committee has recommended working out of an Arrears Eradication Scheme, for tackling cases which are pending for more than two years. The scheme envisages identification of cases which can be summarily disposed of under Section 262 of the Code, as also the petty cases under Section 206 as well as the cases which can be compounded. It has been recommended that all the compoundable cases be sent to Legal Services Authority for settling through Lok Adalat. The Courts constituted under the scheme will take-up hearing on day-to-day basis and only such number of cases shall be posted for hearing as can be conveniently disposed of everyday. Once the case is posted for hearing, it shall not be adjourned except under special circumstances, and on payment of costs and expenses of witnesses. A retired High Court Judge may be deputed as incharge of the scheme. He shall estimate the number of additional Courts required for eradication of arrears and move the concerned authorities to create them along with the required staff, Public Prosecutors and necessary infrastructure. The

recommendation is pending for last more than four years. The scheme should be formulated and implemented without further loss of time.

In this regard, the Chief Justices Conference held on March 9-10, 2006 resolved as under:

"That

(i) The Chief Justices will impress upon the governments, at the highest level, to increase the strength of subordinate Judges in terms of the recommendations made by the Law Commission in its 120th Report, endorsed by the Standing Committee of Parliament headed by Shri Pranab Mukherji, in its 85th Report and the directions given by the Hon'ble Supreme Court vide Judgment dated 21st March, 2002 in Writ Petition (Civil) No. 1022 of 1989.
(ii) Examinations and interviews to fill-up the vacancies of Judicial Officers at all levels will be conducted at least once a year and a panel of suitable Officers be prepared to fill-up the vacancies arising till next examination.
(iii) Chief Justices will make recommendations for appointments to High Courts at least six months before the occurrence of vacancy.
(iv) High Courts will earmark separate Courts for disposal of old cases.
(v) High Courts will make all possible efforts for reducing arrears of cases by using techniques such as Case Flow Management, grouping and bunching, application of IT tools and optimum utilization of the available resources.
(vi) Whenever a new legislation likely to increase workload of the Courts is enacted, High Courts shall impress upon the State Governments to suitably increase the strength of Judges.

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

"That

(a) The High Court will take immediate steps for filling-up of the vacancies of Judicial Officers in their respective jurisdictions and will adhere to the schedule laid down by the Hon'ble Supreme Court in ***Malik Mazhar Sultan & Anr. V. Uttar Pradesh Public Service Commission and Ors.***, for appointment of Subordinate Judges.

(b) The High Courts will make efforts to set-up at least one Family Court in each district, besides additional Family Courts wherever required.

(c) The High Courts will make efforts to set-up additional Courts of Special Judges, exclusively for trial of corruption cases investigated by Central Bureau of Investigation under Prevention of Corruption Act.

(d) The High Courts will make efforts for setting-up of additional Courts of Subordinate Judges so as to expedite disposal and reduce arrears of cases."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 inter alia decided the following in this regard :

"(1) All possible steps be taken to reduce arrears of cases and ensure speedy trial within a reasonable time period.

(4) States, in coordination with Central Government, will take steps to set-up at least one Family Court in each district, for the urban areas comprised in the district.

(5) Additional Courts of Special Judges will be set-up by the States, exclusively for trial of corruption cases investigated by State Machinery."

There must be "judicial impact assessment" as done in United States, whenever any legislation is introduced either in Parliament or in the State Legislatures. The financial memorandum attached to each Bill must estimate not only the budgetary requirement of other staff but also the budgetary requirement for meeting the expenses of

the additional cases that may arise out of the new Bill when it is passed by the Legislature. The said budget must mention the number of civil and criminal cases likely to be generated by the new Act, how many courts are necessary, how many Judges and staff are necessary and what is the infrastructure necessary. It is necessary to impress upon the Governments to take steps in the above directions.

3. AUGMENTING THE INFRASTRUCTURE OF SUBORDINATE COURTS.

Increase in the number of Judicial Officers will have to be taken up with proportionate increase in the number of court rooms. The existing court buildings are grossly inadequate to meet even the existing requirements and their condition particularly in small towns and moffusils is pathetic. A visit to any one of these Courts would reveal the space constraints being faced by them, over-crowding of lawyers and litigants, lack of basic amenities such as regular water and electric supply and the unhygienic and insanitary conditions prevailing therein.

The National Commission to review the working of the Constitution has observed that judicial administration in the country suffers from deficiencies due to lack of proper, planned, and adequate financial support for establishing more Courts and providing them with adequate infrastructure. It is, therefore, necessary to phase out the old and out-dated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes. In order to ensure that the new buildings meet all the requirements of the courts and their officers, it is desirable to prepare standard building plans and construct buildings accordingly. In order to provide information to the litigants it is necessary to have facilitation centres in each court complex which should be manned by competent court officers and should be linked to the computer network.

In the Ninth Plan (1997-2000), the Centre released Rs.385 crores for priority demands of judiciary which amounted to 0.071 per cent of the total expenditure of Rs.5,41,207 crores. During Tenth Plan (2002-2007), the allocation was Rs.700 crores, which is 0.078 per cent of the total plan outlay of Rs.8,93,183 crores. Such meagre allocations are grossly inadequate to meet the requirements of judiciary. Unlike in other departments of the Government, more than half of the amount which is spent on Indian Judiciary is raised from the Judiciary itself through collection of court fees, stamp duty and miscellaneous matters.

The Governments should provide adequate funds at the disposal of the High Courts for augmenting the infrastructure. National Judicial Academy has prepared ***National Judicial Infrastructure Plan*** which provides for upgrading and augmenting judicial infrastructure such as buildings, equipment, software, knowledge, resources, human resources, facilities and systems, so as to make it capable of providing access to justice to all the sections, particularly those belonging to lower strata of the society. The programme envisages establishment of at least one well-equipped functional Court, per one lakh of population, at a place accessible to the common man. It proposes to develop new initiatives such as Mobile Courts, Fast Track Courts and second shift in the existing courts, and evolve suitable techniques and uniform practices and procedures, aimed at reduction of delays and overcrowding of courts.

The States are yet to accept and implement this plan. High Courts should take it up with their respective State

Governments, after making such changes, if any, as may be deemed appropriate, taking local and special requirements into consideration.

In this regard, the Chief Justices Conference held on 6th and 7th April, 2007 resolved as under:

> "That
>
> (a) The National Judicial Infrastructure Plan prepared by the National Judicial Academy be approved and adopted as far as it is applicable to local conditions and with such modifications as may be found necessary."
> (b) If there are more than 2000 cases in a subordinate court, additional court(s) be set-up to deal with the excess cases.
> (c) Courts of civil Judges (Junior Division) and Judicial Magistrate be set-up at Taluka level as also for a block of 3-4 villages, provided that enough litigation is generated at that level."

The Joint Conference of Chief Ministers of States and Chief Justices of the High Courts held on 8th April, 2007 decided the following in this regard:

> **"(a)** Consistent with the resources available to them, the States will provide adequate funds, as required by the High Court, for upgrading and augmenting the infrastructure of subordinate courts by replacing the dilapidated buildings with new buildings, upgrading the existing court complexes and constructing new court complexes and residential quarters for judicial officers."

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

Item No.4

> "That the High Courts shall request their respective State Governments to provide funds for upgrading and augmenting the infrastructure of Subordinate Courts by replacing the dilapidated buildings with new buildings, upgrading the existing court complexes and constructing new court complexes and residential quarters for judicial officers."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 reiterated the decision on this subject taken in the Conference of Chief Ministers of States and the Chief Justices of High Courts on April 8, 2007.

4. PROGRESS IN SETTING UP AND FUNCTIONING OF EVENING/MORNING COURTS IN SUBORDINATE COURTS.

Establishment of additional courts at any level involves enormous expenditure – capital as well as recurring. Appointment of wholetime staff – judicial and administrative for new courts involves considerable recurring expenditure. On the other hand, if the existing courts could be made to function in two shifts, with the same infrastructure, utilizing the services of retired Judges and Judicial Officers, reputed for their integrity and ability, who are physically and mentally fit, it would ease the situation considerably and provide immense relief to the litigants. The accumulated arrears can be liquidated quickly and smoothly.

The existing court buildings, furniture, library and other infrastructure and equipment could be used for the second shift, without the need for additional expenditure. Re-employment of retired judges, Judicial Officers and administrative staff would be far less burdensome to the exchequer, as they would be paid only the difference between the salaries and emoluments payable to serving judges and officers of the same rank and their pension. The induction of experienced judicial personnel who enjoy high reputation for their integrity and ability will add to the credibility of the judicial system as a whole. With their rich experience they will be able to dispose of cases quickly and clear the arrears fast.

Also, the prospect of re-employment after retirement of the upright and efficient judges and judicial officers will act as an incentive to serving judges and judicial officers to remain honest and discharge their duties to the satisfaction of all concerned. The reservoir of judicial experience readily available in the shape of retired judges and judicial officers is a precious human resource which we can hardly afford to waste.

The Chief Justices Conference held on 6th and 7th April, 2007 resolved as under:

> "That
> evening/morning courts, to be presided over either by serving or retired Judicial Officers, assisted either by serving or retired court staff, be set-up, wherever found feasible and various earmarked cases including those involving petty offences also be transferred to such courts."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on 8th April, 2007 decided as under:

> "Evening/morning courts to be set-up, wherever found feasible, and appropriate cases including those involving petty offences be transferred to such courts. Either retired Judicial Officers be re-employed or serving Judicial Officers be given suitable incentive, to preside over these Courts."

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

> "That Evening/Morning Courts be set-up, wherever found feasible, and cases involving petty offences be transferred to such Courts.

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 inter alia decided the following in this regard :

"3. Either Evening/Morning Courts be set-up or Special Judicial Magistrates/Special Metropolitan Magistrates be appointed, to deal with cases involving petty offences, including traffic and municipal offences."

The ***'Morning Courts'*** have started functioning in the State of Andhra Pradesh and they function from 7.30 A.M. to 10.30 A.M. five days a week. ***'Evening Courts'*** are functional in the States of Gujarat, Delhi and Tamil Nadu also. Other States are yet to start Evening/Morning Courts.

5. STRENGTHENING OF VIGILANCE CELLS IN THE HIGH COURTS AND PROGRESS MADE IN SETTING-UP OF VIGILANCE CELLS IN EACH DISTRICT.

Article 235 of the Constitution of India vests control over District Courts and subordinate courts thereto, in the High Court. In exercise of this supervisory power, the High Courts are required to keep vigilance on subordinate Judicial Officers so as to have a check on misadventures by an errant officer. Inspection of subordinate courts is one of the most important functions which the High Court performs for control over the subordinate courts. The object of such inspection is assessment of the work performed by a subordinate Judge, his capability, integrity and competency. It also provides an opportunity to the Inspecting Judge to point out the mistakes and deficiencies committed by the Judicial Officer, so that he may improve his working. Remarks recorded by the Inspecting Judge are normally endorsed by the Full Court in High Courts such as Delhi and by a Committee of Judges in some other High Courts and become part of Annual Confidential Report and are foundations on which the career of a Judicial Officer is made or marred. Inspection, therefore, has to be both effective and productive. It should not be a one-day or one-hour or few months' routine but round the year monitoring of the work of Judicial Officers by the Inspecting Judge is required. If used properly, this mechanism can be an effective tool in the hands of the High Court, to keep a check on Judicial Officers, and for regular assessment of their performance.

Though vigilance cells have been constituted in every High Court, it is felt that the process adopted and the methodology used by them does not yield quick and effective results. These cells have not been able to achieve the desired deterrent effect and earn confidence of the litigating public. Inquiries conducted by these cells do not proceed expeditiously and are not monitored regularly. They seem to be satisfied with processing the complaints received by the High Court, which many a time may be motivated and mala fide. There is an imperative need to galvanize the working of these cells in order to achieve the desired results. It is also necessary that these cells are headed by Senior Judicial Officers of proven merit and integrity, who work under direct control of the Hon'ble Chief Justice of the High Court.

The Joint Conference of Registrar Generals of High Courts and Law Secretaries of the States held on 23rd December, 2006 recommended that- 'there should always be a Vigilance Cell in each District, to be headed by a senior Judicial Officer. The Vigilance Cell shall keep effective control on the staff of the Courts and regularly monitor their activities so that the image of the Courts is not tarnished in the eyes of general public. The dates in the cases should invariably be given only by the Presiding Officer and the practices and procedures should be streamlined so as to minimize the contact of the litigants with the members of the staff.'

In this regard, the Chief Justices Conference held on April 6-7, 2007, resolved as under:

"That
(a) The Vigilance Cells constituted in every High Court should be headed by a Senior District Judge of impeccable integrity and should be under the direct control of the Chief Justice of the High Court.
(b) To monitor and watch the members of the Ministerial staff of subordinate courts in the States, the High Courts will setup the separate Vigilance Cells in High Court. It should be manned by an officer of the rank of Senior District Judge and should have enough subordinate staff to assist him in the discharge of his duties, especially looking into the fact that the ambit of its application shall cover all the subordinate courts in the State."

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

"That

(a) Vigilance cells in the High Courts be strengthened, wherever required.
(b) Vigilance cells, headed by a senior District Judge with adequate supporting staff, be set-up for each region, to monitor and watch the activities of ministerial staff of Subordinate Courts."

As per the information received by the Supreme Court Registry, Vigilance Cells are working in most of the High Courts which are headed by an officer of the rank of a District Judge to monitor the activities of ministerial staff of Subordinate Courts and to look into the complaints against them. The High Courts where such Vigilance Cells have not been set up so far, need to set up the same at an early date.

6. PROGRESS MADE IN SETTING-UP OF FAST TRACK COURTS OF MAGISTRATES AND FAST TRACK CIVIL COURTS.

On the recommendations of the 11th Finance Commission, 1734 Fast Track Courts were sanctioned by Government of India for disposal of long pending sessions and other cases. The term of 1562 Fast Track Courts was extended for another five years on expiry of initial term of Fast Track Courts on 31st March, 2005. These Courts have been quite successful in reducing the arrears. However, most of the criminal cases in subordinate Courts are pending at the level of Magistrates. Keeping in view the performance of Fast Track Courts of Sessions Judges and the contribution made by them towards clearing the backlog of cases, it is necessary to formulate a similar scheme for setting-up of Fast Track Courts of Magistrates in each State/Territory. Cases from regular Courts can be transferred to these Fast Track Courts.

The pendency of Civil Cases in subordinate Courts, though, not as of criminal, is quite huge. The institution, disposal and pendency of civil and criminal cases in subordinate Courts during the last seven years are as under:

CIVIL CASES			
YEAR	**INSTITUTION**	**DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	3385715	3342653	7254871
2003	3170048	3121978	7302941
2004	3697242	3726970	7042245
2005	4069073	3866926	7254145
2006	4013165	4019383	7237496
2007	3777348	3757403	7280737
2008	4049733	3855719	7539848

CRIMINAL CASES			
YEAR	**INSTITUTION**	**DISPOSAL**	**PENDENCY AT THE END OF THE YEAR**
2002	**11159996**	**10177254**	**15185505**
2003	**11635833**	**10874673**	**15946665**
2004	**11888475**	**10857643**	**17624765**
2005	**13194289**	**12442981**	**18400106**
2006	**11809666**	**11975308**	**17842122**
2007	**11322073**	**11040103**	**18052011**
2008	**12305802**	**11577091**	**18869163**

It is common knowledge that a large number of civil cases are very old. Huge arrears of civil cases cannot be wiped out by regular courts. It is, therefore, necessary that at least part of the pending civil cases are transferred to Fast Track Courts for disposal so that regular Civil Courts can deal with remaining cases and fresh institutions, and decide them expeditiously.

Government of India should take initiative in the matter and devise a scheme for setting-up of Fast Track Courts of Magistrates as well as Fast Track Civil Courts in all the States and Union Territories, fully funded by Government of India.

This subject was discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

> "That wherever feasible, the High Courts will take steps to set-up Courts of Special Metropolitan Magistrates/special Judicial Magistrates presided by retired government servants and court servants, possessing a professional degree in Law, for trial of petty offences, including traffic cases and cases under Local Municipal Acts. Such Special Magistrates/Special Judicial Magistrates shall work under the control and superintendence of a senior Judicial Officer."

7. ESTABLISHMENT OF GRAM NYAYALAYAS

Law Commission of India, in its 114th Report on Gram Nyayalayas, suggested establishment of Gram Nyayalays so as to provide speedy, inexpensive and substantial justice to a common man. Based broadly on the recommendations of the Law Commission, Gram Nyayalayas Bill was introduced in Rajya Sabha and passed on 17th December, 2008. Lok Sabha passed the Bill on 22nd December, 2008. President of India gave assent to the Bill on 07th January, 2009. It extends to the whole of India except to the States of Jammu & Kashmir, Nagaland, Arunchal Pradesh and Sikkim.

The Gram Nyayalays Act, 2008 provides for the establishment of Gram Nyayalays at the grass roots level for the purposes of providing assess to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities and for matters connected therewith or incidental thereto.

The salient features of the Act are contained in the following Sections of the Act which are reproduced below :

"3. (1) For the purpose of exercising the jurisdiction and powers conferred on a Gram Nyayalaya by this Act, the State Government, after consultation with the High Court, may, by notification, establish one or more Gram Nyayalayas for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no panchayat at intermediate level in any State, for a group of contiguous Gram Panchayats.

(2) The State Government shall, after consultation with the High Court, specify, by notification, the local limits of the area to which the jurisdiction of a Gram Nyayalaya shall extend and may, at any time, increase, reduce or alter such limits.

(3) The Gram Nyayalayas established under sub-section(I) shall be in addition to the Courts established under any other law for the time being in force.

4. The headquarters of every Gram Nyayalaya shall be located at the headquarters of the intermediate Panchayat in which the Gram Nyayalaya is established or such other place as may be notified by the State Government.

5. The State Government shall, in consultation with the High Court, appoint a Nyayadhikari for every Gram Nyayalaya.

6. (1) A person shall not be qualified to be appointed as a Nyayadhikari unless he is eligible to be appointed as a Judicial Magistrate of the first class.

(2) While appointing a Nyayadhikari, representation shall be given to the members of the Schedule Caste, the Schedule Tribes, women and such other classes or communities as may be specified by notification by the State Government from time to time.

11. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or the Code of Civil Procedure, 1908 or any other law for the time being in force, the Gram Nyayalaya shall exercise both civil and criminal jurisdiction in the manner and to the extent provided under this Act.

12. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law for the time being in force, the Gram Nyayalaya may take cognizance of any offence on a complain or on a police report and shall –

(a) try all offences specified in Part-I of the First Schedule viz;

(i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;

(ii) theft, under section 379, section 380 or section 381 of the Indian Penal Code (45 of 1860), where the value of the property stolen does not exceed rupees twenty thousand;

(iii) receiving or retaining stolen property, under section 411 of the Indian Penal Code (45 of 1860), where the value of the property does not exceed rupees twenty thousand;

(iv) assisting in the concealment or disposal of stolen property under section 414 of the Indian Penal Code (45 of 1860), where the value of such property does not exceed rupees twenty thousand;

(v) offences under sections 454 and 456 of the Indian Penal Code (45 of 1860);

(vi) insult with intent to provoke a breach of the peace under section 504, and criminal intimidation punishable with imprisonment for a term which may extend to two years or with fine or with both under section 506 of the Indian Penal Code (45 of 1860);

(vii) abetment of any of the foregoing offences;

(viii) an attempt to commit any of the foregoing offences, when such attempt is an offence.

(b) try all offences and grant relief, if any,specified under the enactments included in Part II of that Schedule viz;

(i) any offence constituted by an act in respect of which a complaint may be made under section 20 of the Cattle-trespass Act, 1871 (1 of 1871);

(ii) the payment of Wages Act, 1936 (4 of 1936);

(iii) the Minimum Wages Act, 1948 (11 of 1948);

(iv) the Protection of Civil Rights Act, 1955 (22 of 1955);

(v) order for maintenance of wives, children and parents under Chapter IX of the Code of Criminal Procedure 1973 (2 of 1974);

(vi) the Bonded Labour System (Abolition) Act, 1976 (19 of 1976);

(vii) the Equal Remuneration Act, 1976 (25 of 1976);

(viii) the Protection of Women from Domestic Violence Act, 2005 (43 of 2005)

(2) Without prejudice to the provisions of sub-section (I), the Gram Nyayalaya shall also try all such offences or grant such relief under the States Act which may be notified by the State Government under sub-section (3) of section 14.

13. (1) Notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other law for the time being in force, and subject to sub-section (2), the Gram Nyayalaya shall have jurisdiction to –

(a) try all suits or proceedings of a civil nature falling under the classes of disputes specified in Part-I of the Second Schedule;

(b) try all classes of claims and disputes which may be notified by the Central Government under sub-section (1) of

section 14 and by the State Government under sub-section (3) of the said section.

(2) The pecuniary limits of the Gram Nyayalaya shall be such as may be specified by the High Courts, in consultation with the State Government, by notification, from time to time.

14. (1) Where the Central Government is satisfied that it is necessary or expedient so to do , it may, by notification, add to or omit any item in Part I or Part II of the First Schedule or Part II of the Second Schedule, as the case may be, and it shall be deemed to have been amended accordingly.

(2) Every notification issued under sub-section (1) shall be laid before each House of Parliament.

(3) If the State Government is satisfied that it is necessary or expedient so to do, it may, in consultation with High Court, by notification, add to any item in Part III of the First Schedule or Part III of the Second Schedule or omit from it any item in respect of which the State Legislature is competent to make laws and thereupon the First Schedule or the Second Schedule, as the case may be, shall be deem to have been amended accordingly.

(4) Every notification issued under sub-section (3) shall be laid before the State Legislature.

15. (1) The provisions of Limitation Act, 1963 shall be applicable to the suits triable by the Gram Nyayalaya.

(2) The provision of Chapter XXXVI of the Code of Criminal Procedure, 1973 shall be applicable in respect of the offences triable by the Gram Nyayalaya.

16. (1) The District Court or the Court of Session, as the case may be, with effect from such date as may be notified by the High Court, may transfer all the civil or criminal cases,

pending before the courts subordinate to it, to the Gram Nyayalaya competent to try or dispose of such cases.

(2) The Gram Nyayalaya, may, in its discretion, either retry the cases or proceed from the stage at which it was transferred to it.

18. The provisions of this Act, shall have effect notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any other law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceeding before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a Court of Judicial Magistrate of the first class.

23. The provisions of this Act shall have effect notwithstanding anything contained in the Code of Civil Procedure, 1908 or any other Law, but save as expressly provided in this Act, the provisions of the Code shall, in so far as they are not inconsistent with the provisions of this Act, apply to the proceedings before a Gram Nyayalaya; and for the purpose of the said provisions of the Code, the Gram Nyayalaya shall be deemed to be a civil court.

26. (1) In every suit or proceeding, endeavour shall be made by the Gram Nyayalaya in the first instance, where it is possible to do so, consistent with the nature and circumstances of the case, to assist, persuade and conciliate the parties in arriving at a settlement in respect of the subject matter of the suit, claim or dispute and for this purpose, a Gram Nyayalaya shall follow such procedure as may be prescribed by the High Court.

(2) Where in any suit or proceeding, it appears to the Gram Nyayalaya at any stage that there is a reasonable possibility of a settlement between the parties, the Gram Nyayalaya may adjourn the proceeding for such period as it thinks fit

to enable them to make attempts to effect such a settlement.

(3) Where any proceeding is adjourned under sub-section (2), the Gram Nyayalaya may, in its discretion, refer the matter to one or more Conciliators for effecting a settlement between the parties.

(4) The power conferred by sub-section (2) shall be in addition to, and not in derogation of, any other power of the Gram Nyayalaya to adjourn the proceeding."

In Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 decided as under:

> "States will take steps for setting-up of Gram Nyayalays as and when Gram Nyayalaya Bill is passed by Parliament and is notified."

Now that the Act has been notified, the State Governments may take necessary steps for setting up of Gram Nyayalayas. Since in almost all the matters consultation with the High Court is insisted upon, the High Courts could take adequate care for the effective implementation of the provisions of the Act. Thus, both the State Government and the High Courts may well help in providing access to justice to the citizens at their doorsteps.

8. PROGRESS MADE IN MODERNIZATION AND COMPUTERIZATION OF JUSTICE DELIVERY SYSTEM, ESTABLISHMENT OF E-COURTS AND VIDEO CONFERENCING FACILITIES.

In this era of globalization and rapid technological developments, which is affecting almost all economies and presenting new challenges and opportunities, judiciary cannot afford to lag behind and has to be fully prepared to meet the challenge of the age. Inter-court and Intra-court communication facilities, developed through use of Internet not only save time but also increase speed and efficiency. Day-to-Day management of Courts at all levels can be simplified and improved through use of Technology including availability of Case Law and administrative requirements.

By using various IT tools it is possible to carry out bunching/grouping of the cases involving same question of law. If this is done, all such cases can be assigned to the same Court, which can dispose them of by a common Order. If point of law involved in the matter is identified in each case, it is possible to allocate subsequent cases involving the same question of law to the same Court, for being heard along with the previously instituted case.

E-Mail: As of now the Courts communicate with the Advocates/litigants through the process serving agency or the conventional postal system. It is possible to generate notices, summons etc. on computer and serve them through the use of electronic communications such as E-Mail. Addresses of advocates and the litigants can be entered in computer for the purpose of communication. Faster communication will lead to faster progress of the case and eventually help in reducing arrears.

E-filing:- E-filing has been introduced in Supreme Court on 2nd October, 2006. It is now possible for any Advocate-on-Record or petitioner-in-person to file his matter through internet, sitting anywhere in the world. A user friendly program with interactive features has been prepared by N.I.C. for this purpose. Detailed step by step guidelines for E-filing have been made available on the website of Supreme Court of India. The prescribed court fee and printing charges @Rs.1.50 per page can be paid through any Visa/master credit/debit card. No additional court fee or processing fee would be required for E-filing. Every Advocate-on-Record will be given a password by the Registry. It is possible for him to change the password by accessing the website. Petitioner-in-person has, however, to submit proof of his identity such as Ration Card/PAN Card/Identity Card/Driving Licence/Voter I. Card by scanning the document. The text can be typed on the computer whereas documents including affidavits and vakalatnamas can be submitted by scanning them. Counter/rejoinder/fresh applications/caveat additional documents can also be filed through internet either by Advocate-on-Record or by petitioner-in-person. It is possible to make any modification/changes before the matter is finally submitted to the Court. A matter has to be in conformity with Supreme Court Rules and free from filing defects before it is registered through computer. The defects found by the Registry are communicated to the petitioner-in-person/Advocate-on-Record, as the case may be, through E-mail and it is possible for him to remove the defects by accessing his matter through internet, using the reference No. given to him by the system. The notices/communications to the parties shall be sent through E-Mail wherever E-Mail I.D. is provided.

E-Court: An E-Court is supposed to be a paperless Court, where the case file is displayed on the monitor, orders are passed by the Hon'ble Judges using dictation software and are digitally signed and then delivered through E-mail.

One E-Court has been set up in the Supreme Court premises, which apart from facility of E-filing, also has facility for multimedia presentation facility, is ready for loading of dictation software and can also enable remote arguing as and when video conferencing is made available.

Though at present concept of E-Court may appear to be a futuristic plan, the High Courts should explore the possibility of having E-Courts initially on experimental basis and the Governments should provide necessary funds for the purpose.

Digitisation/scanning of records : Digitisation/scanning of records to be kept permanently must be undertaken by all the High Courts and Subordinate Courts so that the same may be put up on the website and everybody may have easy access to the same.

Video Conferencing: It is not uncommon for the criminal cases getting adjourned on account of inability of the police or jail authorities to produce the accused in the Court. Sometimes the witnesses are residing at far off places or even abroad. It is not convenient for them to attend the Court at the cost of considerable time and expense.

Video conferencing is a convenient, secure and less expensive option, for recording evidence of the witnesses who are not local residents or who are afraid of giving evidence in open court,

particularly in trial of gangsters and hardened criminals, besides savings of time and expenses of traveling. Recently, Code of Criminal Procedure has been amended in some States to allow use of Video Conferencing for the purpose of giving remand of accused persons thereby eliminating need for their physical presence before the Magistrate. This has reduced the burden on the police force as they do not have to ferry prisoners to and from jails, besides ruling out the incidents of skirmishes in lockups and jails, possibilities of attack on under-trails while being produced in court as also of smuggling of unpermitted articles into jail.

Video conferencing can be of immense use to National Judicial Academy and State Judicial Academies, if there is video linkage between National Judicial Academy and all the State Judicial Academies as well as inter-se amongst State Judicial Academies, it will be possible to give training without physical presence of the participants in the premises of the Academy which is conducting the training programme. Resources available in one academy can be used to train all the participants, including those present in other academies. The interaction amongst the participants would be more convenient and even remote participants will get much of the face to face familiarity that normally comes with physical presence including element of facial expression, body language and eye contact. National Judicial Academy has decided to establish video linkage between Supreme Court, NJA and State Judicial Academies and steps are being taken to implement the decision.

It is not possible to promote usage of ICT in courts, unless proper training at all levels is imparted to judicial officers as well as

subordinate staff. Regular training programmes need to be organized for Judges as well as court officials. While on work in house training can also be given to them.

In this regard, the Chief Justices Conference held on April 6-7. 2007, resolved as under:

> "That
> the process of modernization and computerization of justice delivery system at all levels of Indian Judiciary and establishment of E-courts as well as provision of video conferencing facilities be expedited and steps be taken to examine the existing infrastructure facilities relating thereto so as to obtain the maximum and optimum levels. Digitisation/scanning of record be taken-up, subject to rules of the High Court."
>
> As far as E-filing is concerned, the individual High Courts may examine the feasibility of introducing this at the High Court and local levels."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 8, 2007, decided as under in this regard:

> "Adequate steps be taken for modernization and computerization of courts and enhancing the use of various IT tools including video conferencing, internet usage, E-mail based communication, electronic dissemination of information and use of digital signatures, particularly at the level of subordinate courts."

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

> "That adequate steps be taken for modernization and computerization of Courts and enhancing the use of various IT tools including video conferencing, internet usage, E-mail based communication, electronic dissemination of information and use of digital signatures, particularly at the level of subordinate courts."

9. STRENGTHENING OF A.D.R. SYSTEM INCLUDING MEDIATION AND CONCILIATION.

Whenever a person has civil dispute with someone, immediately he would go to a lawyer and the lawyer would advise him to file a case in a Court of law for redressal of his grievance. If he receives a legal notice, the advice of lawyer would be either not to respond or send a reply through him. But this is not the position in other countries, such as USA where a person going to lawyer, is advised to go for negotiation with the other party. Both the parties, generally represented by lawyers, would discuss and try to resolve the dispute by negotiations and the success rate is very high.

Litigation through the Courts and Tribunals established by the State is one way of resolving the disputes. The Courts and Tribunals adjudicate and resolve the dispute through adversarial method of dispute resolution. Litigation as a method of dispute resolution leads to a win-lose situation. Associated with this win-lose situation is growth of animosity between the parties, which is not congenial for a peaceful society. One party wins and other party is a loser in litigation, whereas in Alternative Dispute Resolution, we try to achieve a win-win situation for both the parties. Nobody is the loser and both parties feel satisfied at the end of the day. If the ADR method is successful, it brings about a satisfactory solution to the dispute and the parties will not only be satisfied, the ill-will that would have existed between them will also end. ADR methods especially Mediation and Conciliation not only address the dispute, they also address the emotions underlying the dispute. In fact, for

ADR to be successful, first the emotions and ego existing between the parties will have to be addressed. Once the emotions and ego are effectively addressed, resolving the dispute becomes very easy. This requires wisdom and skill of counselling on the part of the Mediator or Conciliator.

The alternative modes of disputes resolution include arbitration, negotiation, mediation and conciliation. The ADR system by nature of its process is totally different from Lok Adalat. In Lok Adalat, parties are encouraged to come to compromise and settlement on their own, whereas in the mediation and conciliation system, the parties have before them many alternatives to solve their difference or disputes. Instead of obtaining a judgment or decision, the parties through ADR might agree for a totally new arrangement, not initially agreed or documented.

Negotiation as the term implies, signifies resolving disputes by dialogue. In fact, we negotiate everyday willingly or unwillingly – even when there is no dispute. We go to shop to buy– we negotiate with shopkeeper; we have to buy property, we negotiate through a dealer. When there are disputes between management and workers, union would send charter of demand to the management which would be followed by negotiations, which take place across the table between representatives of the workers and the management.

The mediator has a diverse role to play. He will act as a link between the two contesting parties. He will ascertain the

nature of real dispute and narrow-down the areas of controversy. He will guide the parties in which direction they can arrive at a compromise or settlement. He can, if necessary, prepare documents suggesting arrangements for resolving their disputes. In U.S.A. there are private mediation firms which employ full time mediators and possess infrastructural facilities to hold a large number of mediations. More people go to such firms rather than wait in Courts. Also, there are Court Annexed Mediation Centres, running on funds made available by the Government. There are thousands of lawyers practising exclusively as mediators. Retired Judges also act as mediators. There are mediators who specialize in various branches such as intellectual property, accident, commercial cases etc. and more than 90% of the cases do not go to trial.

Sections 61 to 81 of the Arbitration and Conciliation Act, 1996 contain the detailed scheme of conciliation. Section 67 of the Act also contemplates that the role of the conciliator is the same as the role of the mediator in the American legal system. In fact, conciliation and mediation are generally interchangeable.

The main problem being faced in this regard in our Country is that there are not many trained mediators and conciliators. Also, there are very few trained personnel to impart training in Alternative Disputes Resolution methods and pre-trial settlement of cases to prospective mediators and conciliators including Judicial Officers and members of the Bar. Judicial Officers are already overburdened and find no time to adopt these modes of Alternative Disputes Resolution. Senior Judicial Officers having

aptitude for ADR methods should be trained in mediation, conciliation etc. and made incharge of mediation and conciliation centres. They can also be asked to provide training to prospective mediators and conciliators who can then undertake the task of settlement of disputes by way of mediation/conciliation. However, ultimately the responsibility of mediation has to be on the shoulders of members of Bar.

Code of Civil Procedure has recently been amended by incorporating Section 89 with a view to bring alternative systems into the mainstream. However , we are yet to develop a cadre of persons who will be able to use these ADR methods in dispensing justice. Lawyers by and large still believe that litigation is the only way of resolving disputes. Litigants are also advised accordingly. The challenge that we are facing today is bringing about awareness among the people about the utility of ADR and simultaneously developing personnel who will be able to use ADR methods effectively with integrity.

We have to identify the target groups. It could be retired judges, senior advocates etc. on whom litigating parties can have faith. A section of lawyers will have to be trained for functioning as mediators and conciliators. This job requires not only knowledge of law but tact, skill and capacity to bring parties to terms. This is a new challenge before the legal profession. They will now have to develop expertise to act successfully as mediators and conciliators.

It is also necessary to provide adequate infrastructure for conciliation/mediation centers by giving them adequate space

and manpower and other facilities. In Salem Advocates Case [2005 (6) SCC 344], Supreme Court has appreciated the suggestion that expenditure of compulsory conciliation/mediation envisaged in Section 89 of CPC should be borne by the Government since it may encourage parties to come forward and make attempts at conciliation/mediation. Central Government was directed to examine the suggestion and if agreed request the Planning Commission and Finance Commission to make specific allocation for Judiciary for incurring the expenses for mediation/conciliation under Section 89 of Code of Civil Procedure.

Government is the biggest litigant and if Government is to be involved in this ADR system in negotiation and mediations etc. its officers would have to take lead in this cause.

National Judicial Academy prepared a National Plan for Mediation which envisages systemizing and institutionalizing mediation, training of mediators, preparation of training material, organizing awareness programmes and setting up Mediation Centres, in three phases, spread over for a period of five years, for resolution of disputes through settlement. This will not only provide speedy and inexpensive justice and reduce litigation, but will also bring peace and harmony in the society.

The number of Mediation Centres set up in the States are given hereunder : -

Sl. NO.	State	No. of Mediation Centre set up
1.	Andhra Pradesh	11
2.	Arunchal Pradesh	1
3.	Assam	Nil
4.	Bihar	1
5.	Chhattisgarh	10
6.	Gujrat	5
7.	Haryana	10
8.	Himachal Pradesh	1
9.	Jammu & Kashmir	3
10.	Jharkhand	10
11.	Karnataka	10
12.	Kerala	10
13.	Madhya Pradesh	12
14.	Maharashtra	4
15.	Orissa	10
16.	Punjab	8
17.	Rajasthan	10
18.	Tamilnadu	16
19.	Uttar Pradesh	13
20.	Uttrakhand	1
21.	West Bengal	1

In this regard, the Chief Justices' Conference held on April 6-7, 2007, resolved as under:

"That

(a) Consistent with the rules framed by the High Court, and with such modifications as may be deemed appropriate by it, National Plan for Mediation,

prepared by the National Judicial Academy, be adopted by each High Court.

(b) If otherwise feasible, engagement of serving Judicial Officers as mediators or conciliators, be avoided."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 inter alia decided the following in this regard :

"(1) More Mediation Centres be set-up so as to have at least one such centre in each district and necessary infrastructure and funding be provided to them.

(2) State Legal Services Authorities be strengthened and be encouraged to hold more Lok Adalats and Mediation Camps so as to bring about a peaceful settlement to the disputes."

It is necessary for the High Courts to adopt and implement the National Plan for Mediation without any further delay so as to strengthen mediation and reduce the burden on regular courts.

10. STRENGTHENING LEGAL AID SYSTEMS

Article 39A of the Constitution mandates the State to secure that the operation of the legal system promotes justice on the basis of equal opportunity. The State is required to provide legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. The impact of Article 39A read with Article 21 of the Constitution has been to reinforce the right of a person involved in a criminal proceeding to legal aid. This Article has been thus used to interpret the right conferred by section 304 Cr.P.C. (**Suk Das & Anr.** **v.** **Union Territory of Arunachal Pradesh)** (AIR 1986 SC 991).

The right of equality before law and equal protection of laws, granted to our citizens, irrespective of their social and economic status will remain illusory unless and until every citizen including those who are from economically and socially backward classes are able to have access to the Justice Delivery System by engaging an efficient and competent Advocate, who can effectively place their case before the Courts and seek justice for them. A large majority of our people still live below the poverty line and are hardly able to afford two square meals and a shelter over their head. It would be unrealistic to expect them to afford the services of a competent advocate. Therefore, it becomes necessary for the State to have a strong legal aid system in place, which is capable of providing free legal aid to the poor and downtrodden, by engaging competent advocates who are motivated enough and have a zeal for legal aid work.

Efforts have been made by governments from time to time to address the issue of granting legal aid to the poor but, enough has not

been done and the system requires further augmentation and strengthening. The following steps if implemented in right earnest can substantially strengthen the legal aid system in our country:-

(1) Legal literacy: Most of the people belonging to lower strata of the Society are still unaware of their legal right to receive legal aid and the State mechanisms already in place for grant of such aids. Social welfare legislations have not been able to achieve their intended purpose on account of ignorance on the part of the target citizens about the availability of various welfare schemes initiated by the Governments from time to time. Legal literacy will make the citizens aware of their legal rights and obligations, including their right to receive legal aid from the State.

(2) Legal Aid Counsel: Unless the advocates provided by legal services are competent and hard working, no useful purpose is served by making their services available to the poor litigants. Legal Service Authorities have to take suitable steps to ensure that they empanel and provide only reputed counsel of proven ability and integrity, in whom the poor litigants may repose trust. There is reluctance on the part of senior counsel to come forward, to provide legal aid to the needy persons. They have to be persuaded to acknowledge their social obligations to the society in this regard and provide their service to the weaker sections, without expecting any remuneration either from them or from the Legal Service Authorities.

(3) **Legal Aid Camps:** Legal aid camps are an effective tool for spreading legal literacy, encouraging people to resolve their disputes amicably and availing the benefit of legal aid, wherever required by them. Legal Service Authorities have been organizing such camps from time to time but there is need to organize more such camps so that maximum number of people can derive benefit from them.

(4) **Law students:** The services of law students can be effectively utilized to strengthen the legal aid system. They can be particularly helpful in spreading legal literacy and facilitating negotiated settlement of disputes.

(5) **Role of Non-governmental organizations:** Non-Governmental organizations can render substantial help in promoting legal aid services including spreading of legal literacy and resolution of disputes by establishing contact with the target citizens and making their services available to them.

(6) **Judicial Officers:** It is the duty of every judge to ensure that no litigant suffers injustice on account of his inability to avail the services of an advocate. It is, therefore, necessary to sensitise judicial officers about the need to inform the litigants of their right to get legal aid at State expense in case they are unable to engage a counsel on account of indigency and to advise them to approach the nearby Legal Service Authority for making available the services of a competent lawyer to them. It is also necessary to comply with the mandatory provisions of Section 304 Cr.P.C.

(7) **Panchayats:** Village Panchayats form a strong pillar of our Public Administration System. Members of Panchayats can play a very useful role in spreading legal literacy, guiding the villagers and persuading them to come to a negotiated settlement to resolve their disputes particularly in civil matters and in cases of petty offences.

In this regard, the Chief Justices Conference held on April 6-7, 2007, resolved as under:

> "That
> the following steps may be taken in right earnest for substantially strengthening the legal aid movement in the country:

(a) Spread of legal literacy and holding of legal literacy at all levels.

(b) Appointment of legal aid counsel to provide free legal aid to the needy persons.

(c) For setting up legal aid clinics/camps. Services of NGOs and law students may be utilized for holding such legal aid clinics/camps.

(d) To take steps to strengthen the legal aid services offered in the prison to the under-trials as well as convicted prisoners."

This subject was again discussed in Chief Justices Conference held on April 17-18, 2008 and it was resolved as follows:

"That only competent and motivated lawyers be engaged by Legal Service Authorities."

11. FINANCIAL AUTONOMY TO THE HIGH COURTS.

Judiciary is always held responsible for mounting arrears of Court Cases. But it does not control the resources of funds and has no powers to create additional Courts, appoint adequate Court staff and augment the infrastructure required for the Courts. The High Courts have power of superintendence over the Subordinate judiciary but do not have financial power to create even post of one Subordinate Judge or subordinate staff or to acquire land or purchase building for setting up Courts or for their modernization.

The National Commission to review the working of the Constitution noted that neither had any provision for funds for the judiciary been made under the Five years Plan for several decades nor the Finance Commission made any provision to serve the financial needs of the Courts.

Judiciary has consistently been demanding financial autonomy with regard to the creation of posts, allocation of project costs and incurring of expenditure. It has also been asking for allocation of adequate funds for judiciary and expenditure on judiciary coming from the plan funds. Chief Justices' Conference held on 9th and 10th March, 2006 resolved as under:

> "That Chief Justices will take-up with the Government the issue of granting financial autonomy to the Chief Justices and will also impress upon them to:
>
> (a) meet the budgetary demands made by the High Courts;

(b) grant power of appropriation and reappropriation of funds to the Chief Justices within the overall budgetary limits;

(c) substantially increase the allocation of funds for judiciary."

The above resolution was reiterated in the Chief Justices' Conference held on 6th and 7th April, 2007.

Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on 11th March, 2006 decided as under:

(i) Chief Justice of the High Court be delegated full power to appropriate and reappropriate the funds within the budget allocated by the State Government for the judiciary in the State;

(ii) Consistent with their financial resources, State Governments shall provide adequate budgetary allocation for judiciary.

The above resolution was reiterated in the Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on 8th April, 2007.

This subject was again discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was inter alia resolved as follows:

"That

(a) Wherever required, Chief Justices of the High Courts be delegated full powers to appropriate and re-appropriate the funds, within the budget allocated by the State Government for the judiciary in the State.

(b) The High Courts will impress upon the State Government to suitably increase the allocation of funds so as to meet the budgetary demands of the High Courts and Subordinate Courts."

It is absolutely necessary that the State Governments should provide adequate budgetary allocation for judiciary and give financial autonomy to the High Courts.

12. HOLDING OF COURTS IN JAIL BY EVERY CHIEF METROPOLITAN MAGISTRATE OR THE CHIEF JUDICIAL MAGISTRATE OR METROPOLITAN MAGISTRATE/JUDICIAL MAGISTRATE OF THE AREA IN WHICH A DISTRICT JAIL FALLS, ON REGULAR BASIS TO TAKE UP THE CASES OF THOSE UNDERTRIAL PRISONERS WHO ARE INVOLVED IN PETTY OFFENCES PUNISHABLE UPTO THREE YEARS OR ARE KEEN TO CONFESS THEIR GUILT

It is really a matter of great concern when one comes to know of the plight of the undertrials prisoners, languishing in jails for petty offences, who are even keen to confess their offences. This is mainly because of over-crowding of and congestion in jails compared to their built-in-capacity and that is so because of slow progress of cases in Courts and operation of the system of bail to the disadvantage of the poor and illiterate prisoners.

The poor, illiterate and weaker sections in our country suffer day in and day out in their struggle for survival and look to those who have promised them equality-social, political and economic. Those responsible for upholding the Rule of Law in the country, may not be in a position to solve all their problems but can certainly contribute their might to nourish and safeguard the Constitutional goal of 'equal justice for all' to the extent possible. In India a very large number of under-trial prisoners suffer prolonged incarceration even in petty criminal matters merely for the reason that they are not in a position, even in bailable offences, to furnish bail bonds and get released on bail.

Many of them during such confinements only develop criminal traits and come out fully trained criminals.

According to one survey, out of total jail population in the country, under-trial prisoners constitute 73%, many of whom are involved in petty offences and are ready and willing to confess their guilt but cannot do so unless a Police report is filed against them in a Court of law. Most of such prisoners are not likely to get severe punishments for the reason that the offences in which they are involved are petty or that they being first offenders may be entitled to the benefit of probation or may be let-off by the Courts on payment of fine only. It is neither just nor fair that persons involved in petty offences should suffer incarceration much beyond the ultimate punishment merely on account of the fact that they happen to be poor and under-privileged.

The Chief Metropolitan Magistrate or the Chief Judicial Magistrate or Metropolitan Magistrate/Judicial Magistrate of the area, in which a District jail falls, may hold his Court on regular basis in jail to take up the cases of those under-trial prisoners who are involved in petty offences punishable upto three years or are keen to confess their guilt. "Legal Aid Counsel" may be deputed in jails to help such prisoners and move applications on their behalf on the basis of which the Chief Metropolitan Magistrate or the Chief Judicial Magistrate or Metropolitan Magistrate/Judicial Magistrate may direct the investigating agency to expedite the filing of the Police report. Thereafter, if the prisoner voluntarily pleads guilty, he may be awarded

appropriate punishment in accordance with law. There may be some cases in which the under-trial prisoners after moving such applications may change their mind and decide to contest the cases. Such cases may be transferred to the concerned Courts for trial in accordance with law. This exercise can go a long way in providing speedy justice to the poor under-trial prisoners and also reduce the jail population which is becoming a cause of concern.

The prisoner population reported as 3,71,147 on 30th June, 2007 shows an increase of 21.76% over the prison population as on 30th June, 2006. The overall jail capacity during the period has increased from 2,57,348 to 2,71,338 i.e. just 5.44%. Whereas there has been a significant rise in the overcrowding in jails in the country as a whole.

In this regard the Chief Justices Conference held on October 10-12,2003 passed the following resolution: -

"That the respective High Courts should take up the matter with the State Governments to establish the Court of the Magistrate (First Class)/Metropolitan Magistrate in the jail premises to dispose of the cases involving petty offences and those of under-trials who are languishing in jail for a period longer than the period of their sentence or who are willing to confess their guilt."

The information regarding the number of under-trial prisoners (district-wise) who are involved in petty offences punishable upto three years or are keen to confess their guilt received from the States/Union Territories upto 31st July, 2009 is furnished in proforma 'A' annexed herewith.

Proforma - 'A'

Number of under-trial prisoners involved in petty offences punishable upto three years or are keen to confess their guilt

CHHATTISGARH

Sl. No.	District	Number
1	Bastar	Nil
2	Bilaspur	29
3	Dhamtari	Nil
4	Dakshin Bastar, Dantewada	2
5	Durg	95
6	Jashpur	5
7	Janjgir - Champa	25
8	Kabeer Dham (Kawardha)	4
9	Korba	Nil
10	Koria	Nil
11	Mahasamund	30
12	Raigarh	4
13	Rajnandgaon	10
14	Raipur	10
15	Sarguja at Ambikapur	36
16	Uttar Bastar, Kanker	7
	Total	257

KARNATAKA

Sl. No.	District	Number
1	Bangalore	3503
2	Bagalkote	127
3	Belgaum	505
4	Bellary	427
5	Bidar	183
6	Bijapur	238
7	Chamarajanagar	107
8	Chickmaglur	191

9	Davangere	138
10	Dharwad	325
11	Gadag	55
12	Gulbarga	566
13	Hassan	397
14	Haveri	53
15	North Canara	105
16	Kolar	283
17	Kodagu	175
18	South Canara	210
19	Mysore	549
20	Raichur	158
21	Koppal	31
22	Shimoga	300
23	Tumkur	384
24	Chitradurga	211
25	Udupi	64
26	Mandya	383
27	Ramanagar	233
28	Chickballapur	76
	Total	9977

MANIPUR

Sl. No.	District	Number
1	Imphal West	24
2	Imphal East	21
3	Thoubal	1
4	Bishnupur	3
5	Tamenglong	0
6	Ukhrul	0
7	Senapati	1
8	Churachandpur	5
9	Chandel	0
	Total	55

TAMIL NADU

Sl. No.	District	Number
1	Chennai	49
2	Tiruvallur	30
3	Kancheepuram	45
4	Coimbatore	10
5	Tiruppur	3
6	Erode	3
7	The Nilgris	2
8	Nagapattinam	4
9	Pudukottal	4
10	Ramanathapuram	1
	Total	151

UTTAR PRADESH

Sl. No.	District	Number
1	Uttar Pradesh	3570
	Total	3570

U.T. OF ANDAMAN AND NICOBAR

Sl. No.	District	Number
1	U.T. of Andaman and Nicobar	92
	Total	92

U.T. OF CHANDIGARH

Sl. No.	District	Number
1	Chandigarh	77
	Total	77

NATIONAL CAPITAL TERRITORY OF DELHI

Sl. No.	District	Number
1	Delhi	312
	Total	312

U.T. OF LAKSHADWEEP

Sl. No.	District	Number
1	U.T. Lakshadweep	Nil

14. PROGRESS MADE IN SETTING-UP OF PERMANENT MECHANISM FOR IMPLEMENTATION OF RESOLUTIONS PASSED BY THE CHIEF JUSTICES' CONFERENCES AND DECISIONS TAKEN AT THE JOINT CONFERENCES OF CHIEF MINISTERS AND CHIEF JUSTICES.

Chief Justices' Conferences are convened periodically by Hon'ble the Chief Justice of India. Heads of Judiciary in the States meet and deliberate under the Chairmanship of Hon'ble the Chief Justice of India, in the presence of two seniormost Judges of the Apex Court and take policy decisions on the matters, which are vital to and materially affect the functioning of Judicial Administration. It has, however, been found that the decisions taken in the Conference, when sent to the Government, wherever required for implementing them do not receive consideration at desired level. Quite often, the decisions taken at the Conference are rejected on the grounds such as financially not feasible/not agreed.

The decisions taken by the Heads of Judiciary should not be dealt with in casual manner and needs to be considered at highest level. It has also been experienced that even if the decisions taken in the Conference are accepted by the Government it takes unreasonably long time to implement them and requires constant pursuing by the High Courts.

It is, therefore, necessary to evolve a permanent mechanism for implementation of the resolutions passed at Chief Justices' Conferences and at the Joint Conferences of Chief

Justices' and Chief Ministers. The proposed mechanism can be a two-tier mechanism, one at the level of Central Government and other at the level of State Government concerned. The decisions taken by the Central Committee shall be binding on all the departments, offices and institutions of Central Government, whereas, the decisions taken by the State Committees shall be binding on all departments, offices and institutions of the State Government concerned.

In the Conference of Chief Ministers of States and Chief Justices of High Courts, held on 11th March, 2006, all the States agreed that a permanent mechanism needs to be evolved to ensure implementation of the decisions taken at Chief Justices' Conference and at the Joint Conference of Chief Ministers and Chief Justices, so as to achieve the objective of convening such Conferences. There was consensus in favour of setting-up Monitoring Committees at the level of Centre as well as at the level of States. The Joint Conference decided as under:

"(i) A Committee consisting of Hon'ble the Chief Justice of India, Union Minister for Finance and Union Minister for Law & Justice be set-up at national level for ensuring timely implementation of the decisions taken at Chief Justices' Conference and Joint Conference of Chief Ministers and Chief Justices. Wherever deemed appropriate, Hon'ble Prime Minister of India be invited to the meeting of the Committee.

(ii) Monitoring Committees at two levels be set-up in each State for timely implementation of the decisions taken at Chief Justices' Conference and Joint Conference of Chief Ministers and Chief Justices. The first level Committee should consist of Chief Secretary, Registrar General of the High Court and Law Secretary of the State, whereas the second level

Committee should consist of Chief Minister, Chief Justice and Law Minister of the State."

The above resolution was reiterated in the Chief Justices' Conference held on April 6-7, 2007 and the issue of constitution of Committees at appropriate level was left to the individual Chief Justices of the respective High Courts.

The above-referred resolution adopted on 11th March, 2006, was also reiterated by the Joint Conference of Chief Ministers of State and Chief Justices of High Courts held on April 8, 2007.

This subject was again discussed in the Chief Justices' Conference held on April 17-18, 2008 and it was resolved as follows:

> "That Monitoring Committees, in terms of the resolution passed in Joint Conferences of Chief Ministers of States and Chief Justices of the High Courts held on 11th March, 2006 and 8th April, 2007, be set-up, wherever already not set-up. The Finance Secretary of the State be included in the First Level Committee and the Finance Minister be included in the Second Level Committee."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 decided the following in this regard :

"(1) A Committee, consisting of Hon'ble the Chief Justice of India, Union Minister for Finance and Union Minister for Law & Justice, be set-up and notified at national level for ensuring timely implementation of the decisions taken at Chief Justices' Conference and Joint Conference of Chief Ministers and Chief Justices, as decided in the Joint Conference of Chief Ministers of States and Chief Justices of the High Courts held on 11th March, 2006 and 8th April, 2007.

(2) As decided in the Joint Conference of Chief Ministers of States and Chief Justices of the High Courts held on 11th March, 2006 and 8th April, 2007, Monitoring Committees at two levels be set-up in each State for timely implementation of the decisions taken at Chief Justices' Conference and Joint Conference of Chief Ministers and Chief Justices, wherever such Committees have already not been set-up. The first level Committee should consist of Chief Secretary, Registrar General of the High Court and Law Secretary of the State, whereas, the second level Committee should consist of Chief Minister, Chief Justice and Law Minister of the State. Constitution of such Committees be duly notified, wherever already not notified.

Wherever such Committees have already not been set-up, immediate steps should be taken for constituting them at the earliest.

15. STRENGTHENING OF TRAINING OF JUDICIAL OFFICERS.

Regular training and orientation sharpens the adjudicatory skills of Judicial Officers. A good training programme serves the futuristic needs of the system by improving the potential to optimum level. If judgments at the level of trial courts are of a high quality, the number of revisions and appeals may also get reduced. The training needs to include Court and Case Management besides methods to improve their skills in hearing cases, taking decisions and writing judgments. It is also necessary to train Judicial Officers in the new legislations and the expanding field of trade and commerce so as to keep them well informed and enable them to handle new and complicated legal issues in an efficient manner.

National Judicial Academy was set up in Bhopal on 17th August, 1993, and it is imparting comprehensive training to Judicial Officers at various levels. The courses and training modules designed by National Judicial Academy have won appreciation not only from the participants but also from the foreign visitors.

National Judicial Education Strategy, prepared by National Judicial Academy, seeks to enhance the performance of Judges by equipping them with better knowledge, tools and techniques, including court management processes and arrears reduction methodologies.

Eighteen State Judicial Academies have been set up for States. Training in State Judicial Academies is imparted mainly by senior Judicial Officers and High Court Judges. They have their independent curricula, induction training as well as inservice education. There is an urgent need to augment the capacity of these institutes by providing dedicated faculty and necessary tools and equipments including study material and technology required for imparting the training. Computer operations and management skills also need to be imparted through appropriate modules. First National Judicial Pay Commission in Chapter 13 of its Report stressed the imperative need for organized programme of judicial education and training not only at the time of selection and appointment, but on a continuing basis. The Central and State Governments should allocate sufficient funds for the purpose.

Carrying out of judicial reforms and implementation of new initiatives such as modernization and computerization of Courts and use of Alternative Dispute Resolution methods require participation of and concerted efforts from not only Judges but also from Court personnel, who manage the system. Therefore, extensive training including training while on work, needs to be given to Court staff as well so as to harness and enhance their knowledge and skills and also to motivate and gear them up, for the task assigned to them. Trained Court staff can be of immense help in categorization of cases, grouping and bunching of the matters involving similar questions of law and / or facts, preparation of cause list, listing of matters, maintenance of old record including its digitization, proper maintenance and upkeep

of infrastructure, including Court libraries, application of Information and Communication Technology in Justice Delivery System and proper management and utilization of the resources available to Judicial Institutions.

National Judicial Academy and State Judicial Academies can play an important role in appropriate training of Court Administrators and Staff. Training modules and programmes designed by one Academy can be utilized by State Academies as well, to train the Officers and officials of the Courts within their respective States.

In this regard, the Chief Justices Conference held on April 6-7, 2007, resolved as under:

"That
(a) National Judicial Education Strategy, prepared by the National Judicial Academy, be adopted by the High Courts with such modifications as may be found necessary in view of the local requirements.
(b) National Judicial Academy be requested to consider audio/video recording the lectures/presentations given to the participants attending various courses organized by it and send these to the State Judicial Academies, for the benefit of Judicial Officers of the State."

This subject was again discussed in the Chief Justices' Conference held on April 17-18, 2008 and it was resolved as follows:

"That the training of Judicial Officers be strengthened."

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 inter alia decided the following in this regard :

> "The Training of Judicial Officers be strengthened and adequate infrastructure and funds be provided to State Judicial Academies."

It is necessary for the High Courts to adopt and operationalise the National Judicial Education Strategy prepared by National Judicial Academy at the earliest. National Judicial Academy is already in the process of audio/video recording the lectures/presentations given to the participants and sending them to State Judicial Academies.

It is also necessary to impress upon all the Judicial Officers to have a proper Court management training to get the desired result.

16. INCREASE IN THE RATIO OF APPOINTMENTS TO HIGH COURTS FROM AMONGST JUDICIAL OFFICERS TO FIFTY PER CENT OF THE JUDGES' STRENGTH OF THE CONCERNED HIGH COURT INSTEAD OF THE PRESENT ONE-THIRD.

In the matter of appointment of Judges to the High Courts the Judicial Officers are at present being given one-third of the total number of vacancies. It has been the persistent demand of the Judicial Officers to enhance their representation to one-half of the total vacancy. The Conference of the Registrar Generals of the High Courts and Law Secretaries of the States/Union Territories held on December 23, 2006 vide Resolution No. 1(14), resolved that the appointments to High Courts from amongst Judicial Officers should be at least fifty per cent of the Judges' strength of the High Court concerned.

On the basis of information received from nineteen High Courts upto 31.7.2009, the approximate average disposal of cases by the (i) Hon'ble Judges appointed from the Subordinate Judiciary and (ii) Hon'ble Judges appointed from the Bar in the High Courts during the period 1.1.2008 to 31.12.2008 is furnished in proforma 'B' annexed herewith.

Proforma - 'B'

The approximate average disposal of cases by the (i) Hon'ble Judges appointed from the Subordinate Judiciary and (ii) Hon'ble Judges appointed from the Bar in various High Courts during the period 1.1.2008 to 31.12.2008

S. No.	Name of the High Court	Approximate average disposal of cases by the Hon'ble Judges appointed from the Subordinate Judiciary	Approximate average disposal of cases by the Hon'ble Judges appointed from the Bar
1.	Allahabad	1097.84	2791.38
2.	Andhra Pradesh	1691.40	1730.25
3.	Bombay	2249.31	3220.42
4.	Calcutta	2047.53	1632.00
5.	Chhattisgarh	2111.16	6549.83
6.	Delhi	1489.23	892.62
7.	Gujarat	2251.66	2285.83
8.	Himachal Pradesh	1181.33	2129.00
9.	Jammu & Kashmir	2270.20	1318.00
10.	Jharkhand	2638.50	2019.50
11.	Karnataka	1182.25	2680.40
12.	Kerala	3370.66	3367.13
13.	Madhya Pradesh	1920.28	2906.04
14.	Madras	2111.31	6968.66
15.	Orissa	2602.33	5648.09
16.	Patna	2781.27	3402.38
17.	Punjab & Haryana	2292.50	1948.70
18.	Rajasthan	2216.75	2764.95
19.	Uttaranchal	1798.00	1517.66

17. PROGRESS MADE IN SETTING UP OF JUVENILE JUSTICE BOARDS.

India can boast of almost 19 per cent of world's children. More than one third of the population, viz. around 440 million children are below 18 years. 40 per cent of these children are in need of care and protection is a pointer which highlights the problem.

Theory of reformation through punishment is based on the most exalted philosophy that every man is born good but circumstances convert him into a criminal. A true and tested philosophy concerning human life is that "if every saint has a past every sinner has a future". Reformation should hence be the dominant objective of a punishment and during incarceration every effort should be made to recreate the goodman out of convicted person.

The system of a reformatory prison comprises treatment of prisoners, the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

The Supreme Court in its historical judgment in the case of ***Sheela Barse*** *vs.* ***Union of India*** AIR 1986 SC 1773 called upon the State Governments to bring into force and to implement vigorously the provisions of the Children's Act prevailing in various States throughout the country. It suggested that instead of each State, having its own

Children Act, different in procedure and content from the Children's Act in other States, it would be desirable if the Central Government initiates Parliamentary legislation on the subject, so that there is a complete uniformity in regard to the various provisions of the Act relating to children in the entire territory of the country. It is further suggested that the Children's Act which may be enacted by Parliament should contain not only provisions for investigation and trial of offences against children below the age of 16 years but should also contain mandatory provisions for ensuring social, economic and psychological rehabilitation of the children who are either accused of offences or are abandoned or destitute or lost. It is not enough merely to have legislation on the subject, but it is equally, if not more important, to ensure that such legislation is implemented in all earnestness and mere lip sympathy is not paid to such legislation and justification for non-implementation is not pleaded on ground of lack of finances on the part of the State Governments.

In compliance with the directions of the Apex Court in ***Sheela Barse's*** *case (Supra)*, the Government of India enacted the Juvenile Justice Act, 1986 (Act No. 53 of 1986). The Act came into force on October 2, 1987 in all States to which it extends throughout India and repealed all corresponding Acts enforced in any State prior to commencement of this Act.

Parliament has redrafted and re-enacted the Juvenile Justice Act which repealed the existing Juvenile Justice Act, 1986 (Act No. 53 of 1986) and new Juvenile Justice (Care and Protection of Children) Act, 2000 (Act No. 56 of 2000) came into existence and was enforced on

April 1, 2001 in consideration of United Nations Standard Minimum Rules for the Administration of Juvenile Justice Act, 1985 (the Beijing Rules), the United Nations Rules for the Protection of Juveniles deprived of their Liberty (1990) and all other relevant international instruments and in conformity with the Conventions on the Rights of Child held by General Assembly of United Nations on November 20, 1989 and which was ratified by the Government of India on December 11, 1992 to achieve the objectives underlined therein.

The object of this Act appears to be to provide a framework for advocacy on behalf of children and for enhancing an awareness of the special ends of justice on the part of the decision makers. The justice system as available for adults was considered not suitable for being applied to juveniles and greater attention was certainly required to be given to children who may be found in situations of social maladjustment, delinquency or neglect. The Act, therefore, provides for care, protection, treatment and rehabilitation of neglected or delinquent juveniles.

"Board" means a Juvenile Justice Board constituted under Section 4 of this Act which lays down that notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974), the State Government may by notification in the Official Gazette, constitute for a district or a group of districts specified in the notification one or more Juvenile Justice Boards for exercising the powers and discharging the duties conferred or imposed on such Boards in relation to juveniles in conflict with law.

Various State Governments have constituted Juvenile Justice Boards. The States which have not so far constituted such Boards may be required to take necessary steps to set up the Juvenile Justice Boards and oversee their proper working, ways and means of improving the working of all the Juvenile Justice Boards.

In this regard the Chief Justices' Conference held on March 9-10, 2006 resolved as under:-

> "That High Courts will impress upon the State Governments to set up Juvenile Justice Boards, wherever not set-up. The Chief Justices may nominate a High Court Judge to oversee the condition and functioning of the remand/observation homes established under Juvenile Justice (Care and Protection of Children) Act, 2000."

The information regarding the setting up of Juvenile Justice Boards (district wise) received from the States/Union Territories upto 31st July, 2009 is furnished in proforma 'C' annexed herewith.

Proforma –C

Number of Juvenile Justice Boards set up

CHHATTISGARH

Sl. No.	District	Number
1	Raipur	1
2	Bilaspur	1
3	Rajnandgaon	1
4	Bastar	1
5	Raigarh	1
6	Durg	1
7	Sarguja	1
8	Kanker	1
9	Jashpur	1
10	Kabirdham	1
11	Korba	1
12	Dhamtari	1
13	Dantewada	1
14	Koria	1
	Total	14

JHARKHAND

Sl. No.	District	Number
1	Ranchi	1
2	Gumla	1
3	Lohardaga	1
4	East Singhbhum (Jamshedpur)	1
5	West Singhbhum (Chaibasa)	1
6	Hazaribagh	1
7	Dhanbad	1
8	Dumka	1
9	Bokaro	1
10	Palamu	1
11	Chatra	1
12	Giridih	1
13	Sahebgunj	1
14	Jamtara	1
15	Garhwa	1
16	Godda	1
17	Pakur	1

18	Koderma	1
19	Saraikela-Kharsawan	1
20	Simdega	1
21	Deoghar	1
	Total	21

Kerala

Sl. No.	District	Number
1	Thiruvananthapuram	1
2	Kollam	1
3	Pathanamthitta	1
4	Alappuzha	1
5	Kottayam	1
6	Idukki	1
7	Ernakulam	1
8	Thrissur	1
9	Palakkad	1
10	Malappuram	1
11	Kazhikode	1
12	Wayanad	1
13	Kannur	1
14	Kasargod	1
	Total	14

MANIPUR

Sl. No.	District	Number
1	Imphal West	1
2	Imphal East	1
3	Thoubal	1
4	Bishnupur	1
5	Tamenglong	1
6	Ukhrul	1
7	Senapati	1
8	Churachandpur	1
9	Chandel	1
	Total	9

ORISSA

Sl. No.	District	Number
1	Gajapati	1
2	Nowrangpur	1
3	Rayagada	1
4	Deogarh	1
5	Kalahandi	1
6	Malkangiri	1
7	Keonjhar	1
8	Sambalpur	1
9	Kendrapara	1
10	Sundargarh	1
11	Jharsuguda	1
12	Jajpur	1
13	Jagatsinghpur	1
14	Mayurbhanj	1
15	Angul	1
16	Dhenkanal	1
17	Nayagarh	1
18	Kandhamal	1
19	Bargarh	1
20	Balasore	1
21	Bhadrak	1
22	Bolangir	1
23	Boudh	1
24	Cuttack	1
25	Ganjam	1
26	Koraput	1
27	Nupada	1
28	Puri	1
29	Sonpur	1
30	Khurda	1
	Total	30

U.T. OF ANDOMAN & NIKOBAR

Sl. No.	District	Number
1	Andoman & Nikobar	1
	Total	1

U.T. OF CHANDIGARH

Sl. No.	District	Number
1	Chandigarh	2
	Total	2

NATIONAL CAPITAL TERRITORY OF DELHI

Sl. No.	District	Number
1	Delhi	2
	Total	2

U.T. OF LAKSHADWEEP

Sl. No.	District	Number
1	U.T. Lakshadweep	1
	Total	1

18. STRENGTHENING OF LOK ADALAT SYSTEM

The emergence of the concept of Lok Adalat as a new system of dispensation of justice is a result of social philosophy of judges, jurists and eminent scholars who are always engrossed in the thought to provide a new forum to grapple with the problem of giving cheap and speedy justice to the people. They see in this system a strong ray of hope and visualize it not as substitute for the present judicial system but as supplementary to it so that the mounting arrears are reduced and the consumers of justice have a sigh of relief. The basic philosophy behind the Lok Adalat is to resolve the people's disputes by discussions, counseling, persuasion and conciliation so that it gives speedy and cheap justice with the mutual and free consent of the parties.

The mounting arrears of cases has compelled the members of Law Commission to deliberate on the revival of indigenous legal system and recommended its restructuring to provide a new model or mechanism for resolving disputes on the principles of participatory justice. A need has been felt for decentralisation of the system of administration of justice to reduce the volume of a work. The most glaring malady which has really afflicted the justice system is the tardy process and the inordinate delay that takes place in the disposal of cases.

The modalities of the working of Lok Adalats are based on the guidelines given by the Committee for Implementing Legal Aid Schemes. The Lok Adalats are generally organized by State Legal Aid and Advice Boards or the District Legal Aid Committees. The date and

place of holding a Lok Adalat are fixed about a month in advance by the Legal Aid Board. The date so fixed is, generally, a Saturday or Sunday or some other holiday with the objective that the work of regular Court may not suffer due to the holding of Lok Adalats. Once the cases are identified, parties to the disputes are motivated by the judges of the Lok Adalats to settle their cases through Lok Adalats.

Lok Adalats find statutory recognition in Legal Services Authorities Act enacted pursuant to the constitutional mandate of Article 39A of the Constitution of India. Lok Adalat is no more an experiment and has already become an effective and efficient alternative mode of dispute settlement which is widely recognized as a viable, economic, efficient and expeditious form for resolution of disputes. The award made by Lok Adalat is deemed to be decree of Civil Court which is final and binding on all parties without providing for any appeal. Presently, Lok Adalats are being held by State Legal Services Authorities for resolution of disputes of the following nature:

1. Motor accident claim cases;
2. Matrimonial/family disputes;
3. Compoundable offence cases;
4. Land acquisition cases;
5. Labour disputes;
6. Workmen’s compensation;
7. Bank recovery cases (Nationalised, Multinational & Private Banks);
8. Pension cases;
9. Housing Board and slum clearance cases and Housing finance cases;
10. Consumer grievance cases;
11. Electricity matters;

12. Telephone bills disputes;
13. Municipal matters including House Tax cases;
14. Disputes with Cellular Companies.

Chapter VI-A of Legal Services Authorities Act provides for establishment of permanent Lok Adalats for the following public utility services:

1. Transport services for the carriage of passengers or goods by air, road or water;

2. Postal, Telegraph or Telephone service;
3. Supply of power, light or water to the public by any establishment;

4. System of public conservancy or sanitation;
5. Service in hospital or dispensary;
6. Insurance service etc.

Till date permanent Lok Adalats for public utility services have not been established in all States. Those State Governments which have not so far established should be persuaded to establish permanent Lok Adalats for public utility services without any further delay.

The Lok Adalat method is quite inexpensive. It discards the unnecessarily imposed financial burden on the disputants. It assists the poor people to get prompt and speedy justice at the local level and affords opportunity to have easy access to the Lok Adalat.

The Lok Adalats conducted in various States have become phenomenal success. In Supreme Court also Lok Adalats have been conducted and the response has been encouraging. It is the experience of everyone connected with Lok Adalat that normally compensation matters in Motor Accident cases, insurance claims as also matrimonial disputes are matters which are of interest to the litigants since such matters are settled expeditiously and to the satisfaction of both the parties. Thus Lok Adalats serve the society in socio-legal matters, without much waiting and with less or no expenses. And lastly, without the procedural wrangles or the dependence on Advocates, the matters are settled amicably.

With the success in various States, Lok Adalats have come to stay for the benefit of the economically weaker sections of the Society as a boon of the Alternative Disputes Redressal. However, there is a need to hold more Lok Adalats and bring disputes of other appropriate nature within their purview.

Till 31st December, 2008, more than 7.02 lacs Lok Adalats have been organized in the country in which about 2.63 lacs cases have been settled at pre-litigative stage and compensation to the tune of Rs.7434.78 crores have been paid in about 16.66 lacs MACT case.

In this regard the Chief Justices' Conference held on March 9-10, 2006 inter alia passed the following resolution:-

"(vi) Chief Justices will impress upon the State Governments, at the highest level, to establish permanent Lok Adalats in terms of the Chapter VI(A) of Legal Services Authorities Act;"

19. STEPS TO BE TAKEN FOR FILLING UP OF VACANCIES IN THE HIGH COURTS AND SUBORDINATE COURTS

As many as 280 posts of High Court Judges and 3129 posts of Judicial Officers were vacant in Subordinate Courts as on 31st December, 2008. Sincere attempts should be made to fill up these vacancies at the earliest. In case of normal vacancies in the High Court, the initiative for filling up the vacancy should be taken by the Chief Justice of the High Court at least six months before the expected date of the vacancy in order to obviate the possibility of the vacancy remaining unfilled for a long time after the retirement of the incumbent.

Time schedule stipulated by this Court in ***Malik Mazhar Sultan & Anr.*** ***v.*** ***Uttar Pradesh Public Service Commission and Ors.*** *2006 (3) SCR 689* for appointment of subordinate Court Judges should be strictly adhered to. Wherever the vacancies are to be filled up by way of promotion, it should be done within three months from the date of vacancy so that the Court does not remain vacant for a long period.

The Joint Conference of Chief Ministers of States and Chief Justices of High Courts held on April 19, 2008 inter alia decided the following in this regard :

"(2) All the vacancies in High Courts as well as in Subordinate Courts be filled-up on an urgent basis."

20. FORMATION OF ALL INDIA JUDICIAL SERVICE.

Article 312 of the Constitution, after its amendment with effect from 3rd January, 1977, to the extent it is relevant, provides as under:

312. All India Services –

(1) Notwithstanding anything in [Chapter VI or Part VI or Part XI], if the Council of States has declared by resolution supported by not less than two-thirds of the members present and voting that it is necessary or expedient in the national interest so to do, Parliament may by law provide for the creation of one or more all-India services [including an all-India] Judicial service] common to the Union and the States, and, subject to the other provisions of this Chapter, regulate the recruitment, and the conditions of service of persons appointed, to any such service.

(2) The services known at the commencement of this Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article.

(3) The all-India judicial service referred to in clause (1) shall not include any post inferior to that of a district judge as defined in article 236.

(4) The law providing for the creation of the all-India judicial service aforesaid may contain such provisions for the amendment of Chapter VI of Part VI as may be necessary for giving effect to the provisions of that law and no such law shall be deemed to be an

amendment of this Constitution for the purposes of article 368.

Law Commission in its 14th Report (Volume 1, Chapter 9, para 59, page 184) recommended constitution of an All India Judicial Service in the interest of efficiency of the subordinate judiciary. The matter was discussed a number of times by Chief Justices' Conferences and different views were expressed. In 1961 the Conference by a majority was in favour of creation of an All India Judicial Service and 1/3rd strength of the superior Judicial Service in each State being filled by competition on all India basis. In 1962, 1963 and 1965 the Conferences was of the opinion that creation of such a Service is essential in the interest of integration of the country and efficiency and independence of judiciary. However, the Conferences held in 1983, October 1985 and 1988 did not favour creation of Judicial Service. A number of reasons were given by the Conference in 1988 for not constituting an All India Judicial Service.

In its 116th Report, Law Commission, after detailed examination of the matter and considering the views of the State Governments and High Courts, felt that the benefits flowing from the constitution of judicial service on all India basis would far out-weigh, some minor adjustments that may have to be made and was of the firm view that judicial service within the parameters of Article 312(3) i.e. at the level of district judges must be organized on all India basis and styled as Indian Judicial Service. The Commission made a number of recommendations comprising preliminary steps for constitution of the service,

initial constitution of service, future recruitment, direct recruitment, recruitment by promotion, infrastructure for holding examination, scales of pay, initial posting, seniority, probation, training and Apex Body to be in charge of judicial services. The Commission recommended setting up of a National Judicial Commission comprising of a recently retired Chief Justice of India, one or two retired Judges of Supreme Court, three to five retired Chief Justices of the High Court, one/two retired Judges of the High Court, two outstanding members of the Bar, President of Bar Council of India and two or three outstanding legal academics, to be constituted by the President of India.

In ***All India Judges Association v. Union of India & Ors*** [1992 (1) SCC 119] this Hon'ble Court observed as under in paras 11 and 12:

" **XX XX XX**

11. ... We are of the view that the Law Commission's recommendation should not have been dropped lightly. There is considerable force and merit in the view expressed by the Law Commission. An All India Judicial Service essentially for manning the higher services in the subordinate judiciary is very much necessary. The reasons advanced by the Law Commission for recommending the setting-up of an All India Judicial Service appeal to us.

12. ... Since the setting-up of such a service might require amendment of the relevant articles of the Constitution and might even require alteration of the Service Rules operating in the different States and Union Territories, we do not intend to give any particular direction on this score particularly when the point was not seriously pressed but we would commend to the Union of India to undertake

> appropriate exercise quickly so that the feasibility of implementation of the recommendations of the Law Commission may be examined expeditiously and implemented as early as possible. It is in the interest of the health of the judiciary throughout the country that this should be done."

In para 63 of the Judgment Hon'ble Supreme Court briefly indicated the directions given in the judgment regarding All India Judicial Service as follows:-

> " (i) An All India Judicial Service should be set-up and the Union of India should take appropriate steps in this regard."

In the above matter when Review Petition came-up, further orders were passed on 24th August, 1993 [1993 (4) SCC 288] in Para 17 of this Judgment reference was made to the directions regarding All India Judicial Service and considering the objections raised at the time of Review, Hon'ble Supreme Court reiterated the requirement to form such All India Judicial Service.

Again when the matter came-up before the Hon'ble Court on 10th April, 1995 [1998 (9) SCC 245] this Hon'ble Court impressed upon the Union of India to take immediate measures for the implementation of the directions to achieve the objective of setting-up of an All India Judicial Service.

The proposal was considered in detail by First National Judicial Pay Commission. The Commission obtained the Status

Report from Government of India on this issue and was informed as under:

> "In the light of the recommendation of the Law Commission of India, direction of the Supreme Court and views/comments of the State Governments/High Courts, the question of setting-up All India Judicial Service through a resolution of the Rajya Sabha and an enactment of Parliament under Article 312 of the Constitution is under consideration"

The Commission also ascertained the views of High Courts and State Governments and recommended as under:

(i) The AIJS could be constituted only in the cadre of District Judges as per the provisions of Article 312(3) of the Constitution . The District Judges directly recruited and promoted should constitute the AIJS.

(ii) The selection for direct recruitment should be by National Judicial Commission / UPSC and promotees by the respective High Courts.

(iii) The qualification for direct recruitment to AIJS should be in conformity with that prescribed under Article 232 (2) of the Constitution – i.e., Advocate / Pleader who has got not less than 7 years Bar practice.

(iv) Service Judges also should be allowed to compete for recruitment to AIJS, by appropriately amending Article 233 (2) of the Constitution (See V.II, Chapter 11).

(v) Not exceeding 25% of the posts in the cadre of District Judges in every State should be earmarked for direct recruitment.

(vi) The age limit for recruitment to AIJS should be between 35 and 45 years.

(vii) The procedure for selection shall be by written examination followed by viva voce.

(See: V.11, Chapter 10)

(viii) Appointment: The National Judicial Commission / UPSC, after selecting the candidates for direct recruitment to the cadre of District Judges, must allocate to the States/UTs, the candidates equal to the vacancies that are surrendered by them. The High Court thereupon will recommend those names to the Governor for appointment as per Article 233 of the Constitution.

(ix) Training: The prescribed training is only after appointment.

(x) Seniority: All India Seniority is as per the ranking in the select list.

(xi) Inter se Seniority in the State / UT: The inter se seniority between the direct recruits and promotees shall be determined according to the date of allotment and date of promotion.

(xii) Such direct recruits must thus be annexed to the respective State Judicial Service within the three-tier system.

(xiii) Court Language: The recording of the deposition in all Courts should be in two languages – (i) Regional language (to be recorded by the Court Officer); and (ii) English (by the Presiding Officer)

Hon'ble Supreme Court in the case of *All India Judges Association*, vide Order dated 21st March, 2002 noted the recommendations of First National Judicial Pay Commission for establishment of All India Judicial Service. The Hon'ble Court directed that subject to various modifications outlined in the

judgment, all other recommendations of Shetty Commission were accepted. No more discussion was made by the Hon'ble Court on the recommendations of the Commission for constitution of All India Judicial Service.

Government of India, has, however not taken any steps for implementing the recommendations of First National Judicial Pay Commission, accepted by this Court in All India Judges Case. However, the National Commission to Review the Working of the Constitution issued a Consultation Paper on All India Judicial Service and after considering the responses, recommended as under:

> "**7.16** **All India Judicial Service**
>
> *The Commission had circulated a Consultation Paper on All India Judicial Service' for eliciting public opinion. After examining the responses received and after detailed deliberations, the Commission decided that the formation of All India Judicial Service would not be a better alternative to the present system. The Commission did not therefore, favour deletion of clause (3) of Article 312."*

This subject was discussed in the Chief Justices Conference held on 17-18, April, 2008 and it was resolved as follows:

> "That the High Courts will consider entrusting recruitment upto 25% posts in Higher Judicial Service, required to be filled-up by direct recruitment, to a National Commission, on all India basis and send their respective views to Hon'ble the Chief Justice of India, within eight weeks."

The High Courts of Sikkim and Himachal Pradesh have agreed to the above resolution while Orissa High Court has agreed to the

resolution subject to the condition that the officers promoted to the Higher Judicial Service in the State shall also be included in the same cadre (All India Judicial Service).

The High Courts of Andhra Pradesh, Madhya Pradesh, Chhatisgarh, Gauhati, Gujarat, Allahabad, Uttaranchal, Delhi, Karnataka, Punjab & Haryana, Madras, Patna and Kerala have not agreed to above resolution.

The above resolution is still under consideration of the High Courts of Bombay, Jharkhand and Rajasthan while the High Courts of Calcutta and Jammu & Kashmir have not sent any reply.

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