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**LAW
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OF
INDIA**

**Fast Track Magisterial Courts for
Dishonoured Cheque Cases**

Report No. 213

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**LAW COMMISSION OF INDIA
(REPORT NO. 213)**

**Fast Track Magisterial Courts for
Dishonoured Cheque Cases**

**Forwarded to Dr. H. R. Bhardwaj, Union Minister
for Law and Justice, Ministry of Law and Justice,
Government of India by Dr. Justice AR.
Lakshmanan, Chairman, Law Commission of India,
on the 24th day of November, 2008.**

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November 24, 2008

Dear Dr. Bhardwaj ji,

**Subject: Fast Track Magisterial Courts for
Dishonoured Cheque Cases**

I am forwarding herewith the 213th Report of the Law Commission of India on the above subject.

Section 138 of the Negotiable Instruments Act, 1881 (“Act”) deals with the offence pertaining to dishonour of cheque for insufficiency, etc., of funds in the drawer’s account on which the cheque is drawn for the discharge of any legally enforceable debt or other liability. The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 inserted in the Act, new Chapter XVII comprising sections 138 to 142 with effect from 1 April, 1989. These provisions were incorporated in the Act with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument.

As sections 138 to 142 of the Act were found deficient in dealing with dishonour of cheques, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, besides other amendments, amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the Act aimed, *inter alia*, at speedy disposal of cases relating to dishonour of cheque through their summary trial as well as making them compoundable. Punishment provided under section 138 too was enhanced from one year to two years. These amendments were brought into force on 6 February, 2003.

Due to large number of pendency of dishonoured cheque cases (over 38 lacs), the entire credibility of the business within and outside

the country is suffering a serious setback. Dishonour of cheque by a Bank causes incalculable loss, injury and inconvenience to the payee and the credibility of issuance of cheque is also being eroded to a large extent. The very purpose of the above amendments made in the Act for speedy disposal of dishonoured cheque cases is being lost.

The Law Commission undertook this subject *suo motu* in view of the above circumstances and in pursuance of one of its terms of reference “to suggest suitable measures for quick redressal of citizens grievances, in the field of law”. The Commission examined the subject thoroughly along with the right to speedy trial. The study indicates that there is an urgent need to ensure restoration of the credibility of the instrument/trade/business/commerce and, of course, fundamental right to speedy trial, to ensure that genuine and honest citizens/commercial community is not harassed or put to inconvenience. Hence, we recommend setting up of Fast Track Courts at Magisterial level to deal with the huge pendency of dishonoured cheque cases.

We hope that the recommendations made in this report will serve the purpose and object of section 138 of the Act.

With warm regards,

Yours sincerely,

(AR. Lakshmanan)

Dr. H.R. Bhardwaj,
Union Minister for Law and Justice,
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LAW COMMISSION OF INDIA

FAST TRACK MAGISTERIAL COURTS FOR DISHONOURED CHEQUE CASES

TABLE OF CONTENTS

1.	INTRODUCTION	9
2.	(a) SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT 1881	12
	(b) ALLIED PROVISIONS	16
	(i) MODE OF TRIAL: SUMMARY PROCEDURE	
	(ii) COMPOUNDING OF OFFENCE	
	(c) OBJECT OF SECTION 138	18
	(d) PROBLEM OF DELAY IN DISPOSAL OF CASES	22
3.	EASY ACCESS TO JUSTICE	24
4.	RIGHT TO FAIR AND SPEEDY TRIAL	33
5.	FAST TRACK COURTS	35
6.	CONCLUSIONS AND RECOMMENDATIONS	38

1. INTRODUCTION

1.1 The law relating to negotiable instruments is not the law of one country or of one nation; it is the law of the commercial world in general, for, it consists of “certain principles of equity and usages of trade which general convenience and common sense of justice had established to regulate the dealings of merchants and mariners in all the commercial countries of the civilized world”. Even now the laws of several countries in Europe are, at least so far as general principles are concerned, similar in many respects. Of course, on questions of detail, different countries have solved the various problems in different ways, but the essentials are the same, and this similarity of law is a pre-requisite for the vast international transactions that are carried on among the different countries.¹

1.2 A cheque is an acknowledged bill of exchange that is readily accepted in lieu of payment of money and it is negotiable. However, by the fall in moral standards, even these negotiable instruments like cheques issued, started losing their creditability by not being honoured on presentment. It was found that an action in the civil court for collection of the proceeds of a negotiable instrument like a cheque tarried, thus defeating the very purpose of recognizing a negotiable instrument as a speedy vehicle of commerce. It was in that context that Chapter XVII was inserted in the Negotiable Instruments Act.²

¹ Bhashyam & Adiga’s *The Negotiable Instruments Act*, rev. Justice Ranganath Misra, Bharat Law House, New Delhi, 18th edn. (2008), p.1.

² Ibid. at 734.

1.3 Over the years there have been many important changes in the way cheques are issued/bounced/dealt with. Commercial globalization has resulted in giving big boost to our country. With the rapid increase in commerce and trade use of cheque also increased and so the cheque bouncing disputes.

1.4 Inclusion of additional forms of crime, for example, section 138 cases under the Negotiable Instruments Act or section 498A cases under the Indian Penal Code, contributed a large number of cases in the criminal courts. To deal with these types of cases we do not have additional number of courts, we do not have additional infrastructure. In many States sufficient budgetary provisions are not made for improving the infrastructure of the subordinate courts, including additional improvement of existing courts, court complexes.³

1.5 Over 38 lac cheque bouncing cases are pending in various courts in the country.⁴ There are 7,66,974 cases pending in criminal courts in Delhi at the Magisterial level as on 1st June, 2008. Out of this huge workload, a substantial portion is of cases under section 138 of the Negotiable Instruments Act which alone count for 5,14,433 cases (cheque bouncing).⁵ According to Gujarat High Court sources, there are approximately two lac cheque bouncing cases all over the State, with the majority of them (84,000

³ Presidential address by Hon'ble Mr. Justice K. G. Balakrishnan, CJI , at National Seminar on Delay in Administration of Criminal Justice System, 17.03.2007, Vigyan Bhavan, New Delhi [<http://supremecourtofindia.nic.in/speeches-2007>].

⁴ The Hindustan Times, New Delhi, 14.10.2008.

⁵ Speech delivered by Hon'ble Mr. Justice Ajit Prakash Shah, Chief Justice, Delhi High Court, at the inaugural of Dwarka Courts Complex, on 6th September, 2008.

cases) in Ahmedabad, followed by Surat, Vadodara and Rajkot.⁶ 73,000 cases were filed under section 138 of the Negotiable Instruments Act (cheque bouncing) on a single day by a private telecom company before a Bangalore court, informed the Chief Justice of India, K. G. Balakrishnan, urging the Government to appoint more judges to deal with 1.8 crore pending cases in the country.⁷ The number of complaints which are pending in Bombay Courts seriously cast shadow on the credibility of our trade, commerce and business. Immediate steps have to be taken by all concerned to ensure restoration of the credibility of trade, commerce and business.⁸

1.6 Very recently, while allowing the appeal of an accused in a cheque bouncing case, the Supreme Court has ruled that speedy trial is a fundamental right of an accused.⁹

1.7 The purpose of this Report is to recommend setting up of Fast Track Courts at Magisterial level with high-tech facilities. Huge backlog of cheque bouncing or dishonoured cheque cases need to be speedily disposed of through this measure, lest the litigants lose faith in the judicial system. Unless there is sufficient number of courts for resolving cheque bouncing disputes speedily and efficiently, the problem will continue to be alarming. Commercial circles in India and abroad must be assured a fast and efficient judicial system in India.

⁶ <http://www.indianexpress.com>, visited 26.09.2008.

⁷ <http://www.deccanherald.com> and <http://www.aol.in>, visited 29.09.2008.

⁸ *KSL & Industries Ltd. v. Mannalal Khandelwal* 2005 Cri.L.J. 1201 (Bom.), 1204.

⁹ *S. Rama Krishna v. S. Rami Reddy* AIR 2008 SC 2066.

2. (a) SECTION 138 OF THE NEGOTIABLE INSTRUMENTS ACT 1881

2.1 In India, there is reason to believe that instruments of exchange were in use from early times and we find that papers representing money were introduced into the country by one of the Muhammadan sovereigns of Delhi in the early part of the fourteenth century, the idea having been borrowed from China; and it is the accepted theory of the western savants, that in China a complete system of paper-currency and banking had been developed as early as the tenth century and it is not improbable that such an idea filtered into India sometime later.¹⁰

2.2 Before the passing of the Act, the law of negotiable instruments as prevalent in England was applied by the courts in India when any question relating to such instruments arose between Europeans.¹¹

2.3 Though the Negotiable Instruments Act had been passed into law in 1881, Chapter XVII comprising sections 138 to 142 was inserted by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988).

2.4 The value of a cheque, which was reduced to merely a piece of paper, particularly amongst the business community, has been greatly enhanced since the introduction of this new Chapter XVII relating to penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts. The implementation of these provisions for nearly 14 years revealed certain

¹⁰ *Supra* note 1, p. 5.

¹¹ *Ibid.*

shortcomings which have been endeavoured to be plugged by the Negotiable Instruments (Amendment & Miscellaneous Provisions) Act, 2002 (55 of 2002). The Act 55 of 2002 has, besides other amendments, amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the Act (section 143 - summary trial; section 144 - service of summons; section 145 - evidence on affidavit; section 146 - Bank's slip *prima facie* evidence; section 147 - offences to be compoundable).

2.5 Section 138 reads as under:

'Dishonour of cheque for insufficiency, etc., of funds in the account.

- Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and
- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation.- For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.’

2.6 To constitute an offence under section 138 of the Negotiable Instruments Act the following ingredients need to be fulfilled:

- (i) Cheque should have been issued for the discharge, in whole or part, of any debt or other liability;
- (ii) The cheque should have been presented within the period of six months or within the period of its validity, whichever is earlier;

Note: The cheque may be presented any number of times for collection within its validity.

- (iii) The payee or the holder in due course should have issued a notice in writing to the drawer within thirty (fifteen prior to

2002 amendments) days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

- (iv) After the receipt of the said notice by the payee or the holder in due course, the drawer should have failed to pay the cheque amount within fifteen days of the receipt of the said notice;

Note: Notice of dishonour is unnecessary when the party entitled to notice cannot after due search be found (see section 98(d) of the Act).

- (v) On non-payment of the amount due to the dishonoured cheque within fifteen days of the receipt of the notice by the drawer, the complaint should have been filed within one month from the date of expiry of the grace time of fifteen days, before a Metropolitan Magistrate or a Judicial Magistrate of the first class. The cognizance of a complaint may be taken by the Court after the prescribed period, if the complaint satisfies the Court that he had sufficient cause for not making a complaint within such period.
- (vi) The offence under this Act is compoundable (see section 147 of the Act, inserted in 2002).¹²

2.7 Under law, when a person has tendered the amount payable by him he must be deemed to have discharged his obligation and the creditor is bound to accept the tender. Where on dishonour of cheque issued by the accused, he disclaimed the liability to pay the cheque but on receiving notice tendered payment of the whole amount twice in front of the court but the complainant refused to accept it both the times, the accused could not be said to be guilty of non-payment of the amount.¹³

¹² *Supra* note 1, p. 743.

¹³ *Ibid.*

2.8 The Supreme Court again spelt out necessary ingredients of section 138 in *Kusum Ingots & Alloys Ltd. v. Pennar Peterson Securities Ltd.*¹⁴, reiterated by the Apex Court in *K. R. Indira v. Dr. G. Adinarayana*¹⁵. What follows therefrom is that the last ingredient to complete an offence under section 138 of the Act is failure of the accused to make payment within 15 days after service of notice. If payment is made within the said period, no offence is committed, but in case of failure, the offence gets completed. Even if the payment is made on the 16th day the same is not sufficient to come out of the rigours of section 138 of the Act. In criminal law, commission of offence is one thing and prosecution is quite another. Commission of offence is governed by section 138 of the Act. Prosecution is governed by section 142 of the Act.¹⁶

(b) ALLIED PROVISIONS

(i) MODE OF TRIAL: SUMMARY PROCEDURE

2.9 Provisions of section 143, as inserted in the Act in 2002, state that offences under section 138 of the Act shall be tried in a summary manner. Though it begins with a *non obstante* clause carving out an exception to the provisions of the Criminal Procedure Code, sub-section (1) thereof clearly provides that the provisions of sections 262 and 265 of the Code, as far as may be, apply to such trials. It empowers the Magistrate to pass a sentence of imprisonment for a term up to one year and an amount of fine exceeding five thousand rupees. It also provides that if it appears to the Magistrate that

¹⁴ AIR 2000 SC 954.

¹⁵ AIR 2003 SC 4689.

¹⁶ *Supra* note 1, p. 744.

the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed, he can do so after hearing the parties and recalling any witness who may have been examined. Under this provision, so far as practicable, the Magistrate is expected to conduct the trial on a day-to-day basis until its conclusion and conclude the trial within six months from the date of filing of the complaint.

2.10 Chapter XXI of the Criminal Procedure Code, consisting of sections 260 to 265, deals with the procedure to be followed when a case is being tried summarily. In every case tried summarily in which the accused does not plead guilty, the Magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding.

(ii) COMPOUNDING OF OFFENCE

2.11 By inserting section 147 in the Act in 2002, offence punishable under section 138 of the Act has been made compoundable and it does not provide for any other or further qualification or embargo like sub-section (2) of section 320 of the Criminal Procedure Code. The parties can compound the offence as if the offence is otherwise compoundable. Thus, the offence is made straightway compoundable like the case described under sub-section (1) of section 320. No formal permission to compound the offence is required to be sought for.¹⁷

2.12 Even prior to section 147, the opinions expressed by different High Courts and also the Apex Court appear to be in favour of approving such

¹⁷ *Rameshbhai Somabhai Patel v. Dineshbhai Achalanand Rathi* 2005 Cri. L. J. 431 (Gujarat).

compounding and settlement between the parties, taking into consideration the aim and object of the provisions of the Act. If the matter in relation to which the cheque had been issued has been settled between the parties, such settlement be given effect to keeping in mind the object of introducing the relevant provisions of the Act; the court can note the same and record the settlement between the parties.¹⁸

(c) OBJECT OF SECTION 138

2.13 The object of bringing section 138 on the statute is to inculcate faith in the efficacy of banking operations and credibility in transacting business on negotiable instruments. It is to enhance the acceptability of cheque in settlement of liabilities by making the drawer liable for penalties in case of bouncing of cheques due to insufficient arrangements made by the drawer, with adequate safeguards to prevent harassment of honest drawers. If the cheque is dishonoured for insufficiency of funds in the drawer's account or if it exceeds the amount arranged to be paid from that account, the drawer is to be punished with imprisonment for a term which may extend to two years, or with fine which may extend to twice the amount of the cheque, or with both.

2.14 In *KSL & Industries Ltd. V. Mannalal Khandelwal*¹⁹, the Bombay High Court observed:

¹⁸ *Employees' State Insurance Corporation v. A. P. Heavy Machinery and Engg. Ltd.* 2005 Cri. L. J. 1080 (A. P.).

¹⁹ 2005 Cri. L. J. 1201 (Bombay).

“Section 138, in fact, has been introduced to prevent dishonesty on the part of the drawer of negotiable instrument to draw a cheque without sufficient funds in the account maintained by him in bank and induce the payee or holder-in-due-course to act upon it. In other words, these provisions have been introduced to give greater credibility to our trade, business, commerce and industry, which is absolutely imperative in view of the growing international trade and business. The constitutional validity of these provisions has been upheld by the Supreme Court.”

2.15 The Statement of Objects and Reasons appended to the Bill which became the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, *inter alia*, states:

“These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.... A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country.... The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of

cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the Negotiable Instruments Act, 1881.”

2.16 The Bombay High Court in *KSL & Industries Ltd.*²⁰ deemed it appropriate, in order to accomplish the underlying object of the Act, to pass the following directions:

- (a) Experience reveals that enormous time is spent at the stage of summoning/serving the accused. The court must adopt pragmatic methods and must serve them by all possible means of service, including e-mail.... The Court must ensure that the accused are not permitted to abuse the system.
- (b) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be concluded within three months of assigning the case....
- (c) Complaints must be disposed of as expeditiously as possible, and in any event, within six months from the date when the presence of the accused has been secured....²¹

2.17 In *Goa Plast (P) Ltd. v. Chico Ursula D'Souza*²², the Supreme Court, while considering the object and the ingredients of sections 138 and 139 of the Act, observed as under:

“The object and the ingredients under the provisions, in particular, sections 138 and 139 of the Act cannot be ignored. Proper and

²⁰ Ibid.

²¹ Ibid. at 1208.

²² JT 2003 (9) SC 451.

smooth functioning of all business transactions, particularly, of cheques as instruments, primarily depends upon the integrity and honesty of the parties. In our country, in a large number of commercial transactions, it was noted that the cheques were issued even merely as a device not only to stall but even to defraud the creditors. The sanctity and credibility of issuance of cheques in commercial transactions was eroded to a large extent. Undoubtedly, dishonour of a cheque by the bank causes incalculable loss, injury and inconvenience to the payee and the entire credibility of the business transactions within and outside the country suffers a serious setback. The Parliament, in order to restore the credibility of cheques as a trustworthy substitute for cash payment enacted the aforesaid provisions. The remedy available in a civil court is a long drawn matter and an unscrupulous drawer normally takes various pleas to defeat the genuine claim of the payee.²³

(d) PROBLEM OF DELAY IN DISPOSAL OF CASES

2.18 Over 38 lac cheque bouncing cases are pending in various courts in the country. There are 5,14,433 cases under section 138 of the Negotiable Instruments Act, 1881 (cheque bouncing disputes) pending in criminal courts in Delhi at the Magisterial level as on 1st June, 2008. Similarly, in Gujarat 84,000 and in Mumbai 1,51,759 cases are pending. As reported in a

²³ Ibid. at 463.

newspaper, 73,000 cases were filed under section 138 of the Negotiable Instruments Act before a court in Bangalore. Such large number of cases would take long time for their disposal under the present set-up of the courts. These disputes are not merely criminal trials but they involve the interests of commercial circles/economy of the globe.

2.19 In the age of international trade and globalization, it is even more important that people must have implicit faith in the credibility and honesty of the system. Unfortunately, sanctity and credibility of cheques in commercial transactions have been eroded to a large extent.²⁴

2.20 Several central statutes including the Negotiable Instruments Act have contributed more than 50% to 60% of the litigation in the trial courts. These enactments are referable to List I or List III of the Seventh Schedule of the Constitution of India. Article 247 of the Constitution enables the Union Government to establish additional courts for better administration of laws made by Parliament or existing laws with respect to a matter enumerated in the Union List.

2.21 Mr. Justice R. C. Lahoti, ex-CJI, (on the 'Law Day' November 26, 2004) on the matter of pendency of cases quoted the following from the speech of late Dr. L. M. Singhvi, Senior Advocate and the then President, Supreme Court Bar Association:

“Increasing institution of cases, mounting arrears, accumulating congestion in courts and inevitable law’s delays have given rise not to

²⁴ *Supra* note 19.

a body of scientific and rational blueprints in terms of institutional organization and procedural methods or in terms of assessments of judicial manpower requirements, but to a spate of alarm signals and dire shibboleths. If there are more and more cases in courts, that is because we have a population explosion, we have a more complex and friction-prone society, our dispute resolution and conciliation system are bereft of efficacy, we have increasingly greater awareness of rights, and perhaps because we have more injustice and more arbitrariness in our midst. The Governments are under an obligation to provide an adequate machinery for justice, to appoint more judges and to give them better emoluments and facilities, to build more courthouses, to enact better laws, to devise better dispute resolution procedures, and to administer more effectively and equitably, rather than to blame lawyers and judges for the increase and proliferation of litigation. Courts in India cannot apply a mechanical-statistical razor-blade or wave a magic wand to wipe out the enormous pendency of arrears. Nor can the courts afford to turn a blind eye or a deaf ear to the rank injustices and incongruities of administration merely because they have already too much on their hands. If the courts begin to do that systematically, they might endanger the confidence and credibility they have come to enjoy.”²⁵

3. EASY ACCESS TO JUSTICE

²⁵ 2004 (10) SCALE J-22, J-26 - J-27.

3.1 Hon'ble Dr. Justice AR. Lakshmanan, Chairman of the Law Commission of India, has very beautifully explained the subject in his book 'Voice of Justice'. Some of the relevant paragraphs are reproduced as under:

“The Constitution of India guarantees to all its citizens right to life and personal liberty, right to equality, right to freedom etc. Apart from these public rights, there are various private rights arising from torts and contracts and also the various social welfare legislations such as Contract Labour (Regulation and Abolition) Act, 1976, Equal Remuneration Act, Minimum Wages Act and so on. But these rights are of no avail if an individual has no means to get them enforced. Rule of law envisages that all men are equal before law. All have equal rights but unfortunately all cannot enjoy the rights equally. The enforcement of the rights has to be through the courts, but judicial procedure is very complex, costly and dilatory putting the poor persons at a distance.

The Constitution of India through Article 14 guarantees equality before law and equal protection of laws. It follows from this that equal opportunity must also be afforded for access to justice. It is not sufficient that law treats all persons equally, irrespective of the prevalent inequalities. But law must function in such a way that all the people have access to justice in spite of the economic disparities. The words 'access to justice' focus on two basic purposes of the legal system.

1. the system must be equally accessible to all
2. it must lead to results that are individually and socially just.

Traditional concept of "access to justice" as understood by common man is access to courts of law. For a common man, a court is the place where justice is meted out. But the courts have become inaccessible due to various barriers such as poverty, social and political backwardness, illiteracy and ignorance etc.

To get justice through courts, one must go through the complex and costly procedures of litigation. One has to bear the costs of litigation including court fee, stamp duties etc. and also the lawyers' fees. Apart from these, the litigant loses much more in financial terms such as loss of income arising from attending the court hearings. A poor litigant who is barely able to feed himself will never be able to get justice or obtain redress for a wrong done to him through courts. Further, a large part of the population in India is illiterate and live in abject poverty. Therefore, they are totally ignorant about the court procedures and will be terrified and confused when faced with the judicial machinery. Thus most of the citizens of India are not in a position to enforce their rights, constitutional or legal, which in effect generates inequality contrary to the guarantees of Part III of the constitution.

...

Large population, more litigation and lack of adequate infrastructure are the major factors that hamper our justice system. Regular adjudication procedures through the constant efforts of Legal Services Authorities will act as catalysts in curing these maladies of our system.

...

Time has come to think of providing a forum for the poor and needy people who approached the law courts to redress their grievance speedily. However, the delay in disposal of cases in law court, for whatever reason it may be, has really defeated the purpose for which the people approach the courts for their redressal. Justice delayed is justice denied and at the same time justice hurried is justice buried. So, one has to find out a via media between these two to render social justice to the poor and needy who want to seek their grievance redressed through Law Courts.

...

The Constitutional promise of securing to all its citizens justice - social, economic and political as promised in the Preamble of the Constitution cannot be realised unless the three organs of the State i.e. legislature, executive and judiciary join together to find ways and means for providing to the Indian poor equal access to its justice system.

The judiciary has tried to do this through Public Interest Litigation movement, but this movement has now lost much of its momentum. The executive is balking at enforcing the courts' orders in Public Interest Litigation cases. The persons undertaking PIL cases are misusing the opportunity provided or they are not able to fully utilise the opportunity.

....infrastructure for the Fast Track Courts is to be provided by the State Government and the selection of the Judges is to be made by the High Court. The scheme includes construction of new court rooms, appointment of *ad hoc* judges, Public Prosecutors and supporting staff and arrangement for quick processors. It would be appropriate to have, our in-service Judicial Officers to be appointed in these Courts, after giving them promotions on purely temporary *ad hoc* basis initially for two years, extendable by another two years or till they are promoted on regular basis. These appointments shall be made as far as possible in Fast Track Courts. Their future regular promotion shall depend on their performance in these Courts. Those Officers who are not found fit to travel on fast track, shall be off-loaded and sent back to their regular cadre. It is a joint venture of the Central Government, State Government and the High Court to tackle the problem on war footing. It is needless to say that realization of real justice needs co-operation of all the three wings of the Government with one single aim to reach out justice to individuals and thus, maintain rule of law. Interaction between the three wings of the Government is necessary to improve the justice delivery system and such co-operation should be seen in day-to-day dispensation of justice. Sessions trials in several Courts in the country are held up because of unwanted adjournments on just asking either by the defence counsel or Public Prosecutor, not examining the witnesses within the scheduled time and the non-co-operation of the prosecuting agency. There is a general complaint that the Police has no sufficient time or force, to serve in time the summons on the witnesses and keep the undertrial prisoners present in the Court, at the time of trial. There are instances coming to light that

the offenders are sentenced but sentences imposed, are not executed because the convicts had already jumped bail and the police has no will and time to search them out.

...

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

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

...

The Indian Judicial system is constantly exposed to new challenges, new dimensions and new signals and has to survive in a world in which perhaps the only real certainty is that the circumstances of tomorrow will not be the same as those of today.

The need of the hour is to correct misconception about the Judiciary by making it more accessible and more explicit, by utilizing the resources available to improve the service to the public, by reducing delays and making courts more efficient and less daunting.”²⁶

3.2 At the National Seminar on ‘Delay in Administration of Criminal Justice System’ held at New Delhi on 17 March, 2007, Hon’ble Mr. Justice K. G. Balakrishnan, Chief Justice of India, in his Presidential Address observed:

“The criminal justice system in the country is designed to protect the citizens of this country from the onslaught of criminal activities of a section of the community which indulges in such acts. The outcome of any criminal justice system must be to inspire confidence and create an attitude of respect for the rule of law. An efficient criminal justice system is one of the cornerstones of good governance. When we think of criminal justice system it consists of the police, prosecuting agency, various courts, the jail and the host of other institutions connected with the system. The State as a guardian of fundamental rights of its citizens is duty-bound to ensure speedy trial

²⁶ Dr. Justice AR. Lakshmanan, *Voice of Justice*, Universal Law Publishing Co. Pvt. Ltd., Delhi, (2006), pages 231-233, 236, 239, 245-247, 250.

and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. But, unfortunately, there are a large number of cases pending in various courts.... Various factors contribute to large pendency of criminal cases in the subordinate courts. Speedy trial of criminal cases should be recognized as an urgent need of the present judicial system in order to decide the fate of lakhs of litigants. It will help enhance the faith of general public in the present judicial system. In order to have a strong socio-economic system, it is important that each and every state of trial of an accused should move at reasonably fast pace.... Speedy trial ensures that a society is free of such vices.... The new system of plea bargaining incorporated in the Criminal Procedure Code shall be available to the under-trial prisoners and the court and the prosecuting agency and the lawyers should make them aware of the benefits of the benevolent provision incorporated in our statute.

The challenges before the criminal justice system are to balance the rights of the accused while dispensing speedy and effective justice. The criminal justice system machinery must also meet the challenge of effectively dealing with the emerging forms of crime and behaviour of the criminals.

On many occasions, delay in the process of trial is caused by the accused themselves. The accused know that any delay in trial would

only help him as the memory of the witnesses is likely to be blurred by the passage of time. ...

In the trial of criminal cases a Judge should be a little more active and he can contribute to a great extent in preventing the delay in the administration of justice. On many occasions the Sessions Judges adjourn the cases for long period and the delay is thus caused and many witnesses who would have supported the prosecution case lose interest in the case and often forget the ethical duty cast on them.

In most of the cases, the blame for delay in administration of criminal justice system is put at the door of the courts. Courts are over congested with petty cases and many legislations are being enacted which result in filing of large number of cases before the courts. Inclusion of additional forms of crime, for example, Section 138 cases under the Negotiable Instruments Act or Section 498A in the Indian Penal Code, contributed a large number of cases in the criminal courts. Some of the new legislations like, Domestic Violence (Prevention) Act, have come up which contribute some more cases to the criminal courts. To deal with these types of cases we do not have additional number of courts, we do not have additional infrastructure. In many States sufficient budgetary provisions are not made for improving the infrastructure of the subordinate courts, including additional improvement of existing courts, court complexes.

We require modernization and computerization of our criminal justice system. In many States courts are functioning from rented places. The

building which was constructed for the purpose of residence is being used to house courts. There should be sufficient sitting arrangement for the witnesses or the clients. There should be suitable building for the proper functioning of the courts. The prosecuting agency should be given sufficient facilities for the court to conduct the cases. The accused and the witnesses should have resting rooms if the trial has become lengthy. All this could be provided only if there are courts with modern facilities. The States should gradually improve the infrastructure and there must be sufficient budgetary allocation in each year. Now the courts are provided only with budgetary allocation for the payment of salaries of staff members of the courts and for day-to-day expenses for running the courts. This situation could be changed, if sufficient funds are allocated every year for starting new courts and also to improve the conditions of the existing courts. The starting of Fast Track Courts have helped to a great extent in disposing of the pending Sessions cases and that, by itself, has proved that it is because of lack of large number of courts that the pendency of criminal cases is on the rise.”²⁷

4. RIGHT TO FAIR AND SPEEDY TRIAL

4.1 A fair trial implies a speedy trial.²⁸ While the Sixth Amendment to the US Constitution expressly states that “in all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”, our Constitution does not expressly declare this as a fundamental right. The right to a speedy

²⁷ *Supra* note 3.

²⁸ *State of Maharashtra v. Champalal Punjaji Shah* AIR 1981 SC 1675.

trial was first recognized in the first *Hussainara Khatoon* case²⁹. In *Surinder Singh v. State of Panjab*³⁰, the Supreme Court held that a speedy trial is implicit in the broad sweep and content of Article 21 of the Constitution. In *Hussainara Khatoon* case³¹, the Supreme Court directed that all undertrial prisoners against whom charge-sheets had not been filed within the limitation-period should be released. The Court observed in the second *Hussainara Khatoon* case³² that the State can not avoid its constitutional obligation to provide for a speedy trial by pleading financial or administrative inability. Directions were issued for taking positive action, like setting up new courts, providing more staff and equipment to courts, appointment of additional judges and other measures calculated to ensure speedy trial.

4.2 Subsequently, the Supreme Court has repeatedly emphasized the importance of speedy trial in many cases. *State of Bihar v. Uma Shankar Kotriwal*³³; *Kadra Pahadiya v. State of Bihar*³⁴; *State of Maharashtra v. Champalal Punjaji Shah*³⁵; *S. Guin V. Grindlays Bank*³⁶; *Sheela Barse v. Union of India*³⁷; *Raghubir Singh v. State of Bihar*³⁸; *Rakesh Saxena v. State*³⁹; *Srinivas Pal v. Union Territory of Arunachal Pradesh*⁴⁰; *State of*

²⁹ AIR 1979 SC 1360.

³⁰ (2005) 7 SCC 387.

³¹ *Supra* note 29.

³² AIR 1979 SC 1369.

³³ AIR 1981 SC 641.

³⁴ AIR 1982 SC 1167.

³⁵ *Supra* note 28.

³⁶ AIR 1986 SC 289.

³⁷ AIR 1986 SC 1773.

³⁸ (1986) 4 SCC 481.

³⁹ (1987) 1 SCR 173.

⁴⁰ AIR 1988 SC 1729.

*Andhra Pradesh v. P. V. Pavithran*⁴¹. In *Abdul Rehman Antulay v. R.S. Nayak*⁴², the Supreme Court summarized 11 principles as guidelines applicable to a speedy trial. These guidelines are only illustrative and not exhaustive. They are not intended to operate as hard and fast rules or be applied as a straitjacket formula. This decision was held to be correct in *P. Ramachandra Rao v. State of Karnataka*⁴³.

4.3 The speedy trial is guaranteed under Article 21 of the Constitution of India. Any delay in expeditious disposal of criminal trial infringes the right to life and liberty guaranteed under Article 21 of the Constitution of India. The debate on judicial arrears has thrown up number of ideas on how the judiciary can set its own house in order. Alarmed by the inordinate delay in disposal of the backlog of cases, it has been decided to introduce Fast Track Courts. Thus, Fast Track Courts are to tackle the cases of undertrials first, as the graph of such persons in jail has gone high. It is high time to restore the confidence of people in this country in judiciary by providing speedy justice.⁴⁴

4.4 Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated. Failure to accord fair hearing either to the

⁴¹ AIR 1990 SC 1266.

⁴² AIR 1992 SC 1701.

⁴³ (2002) 4 SCC 578.

⁴⁴ *Supra* note 26, p. 245.

accused or the prosecution violates even minimum standards of due process of law.⁴⁵

5. FAST TRACK COURTS

5.1 The Eleventh Finance Commission recommended a scheme for creation of 1734 Fast Track Courts in the country for disposal of long pending Sessions and other cases. The Ministry of Finance, Government of India sanctioned an amount of Rs. 502.90 crores as “special problem and upgradation grant” for judicial administration. The scheme was for a period of 5 years. Out of 18.46 lakh cases transferred to them, 10.66 lakh cases were disposed of by these courts at the end of the said scheme on 31.03.2005. Keeping in view the performance of Fast Track Courts and contribution made by them towards clearing the backlog, the scheme has been extended till 31.03.2010 with a provision of Rs. 509 crores as 100 percent central assistance.⁴⁶

5.2 In his address⁴⁷ at a Joint Conference of Chief Ministers and Chief Justices, at Vigyan Bhawan, New Delhi on 08.04.2007, Hon’ble Mr. Justice K. G. Balakrishnan, CJI, expressed the view that these courts have been quite successful in reducing the arrears. 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 Session Judges, the Government of

⁴⁵ *Zahira Habibulla H. Sheikh v. State of Gujarat* (2004) 4 SCC 158 (*Best Bakery case*).

⁴⁶ Annual Report 2006-2007, Ministry of Law and Justice, Government of India, New Delhi, p.45.

⁴⁷ (2007) 4 SCC J-13.

India should formulate a similar scheme for setting up Fast Track Courts of Magistrates in each State, as recommended by the previous Conference of Chief Ministers and Chief Justices held on 11.03.2006. Similar views were expressed by Hon'ble Mr. Justice B. N. Agrawal, Judge, Supreme Court of India, on 01.08.2007 at the Lecture Series organized by the Supreme Court Bar Association.⁴⁸ Recently speaking at a function, the Chief Justice of India suggested setting up of separate courts to deal with dishonour of cheque case under section 138 of the Negotiable Instruments Act to improve liquidity.⁴⁹

5.3 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 challenges of the age. It is heartening to note that use of information and communication technology in judiciary is growing despite various constraints. Day-to-day management of courts at all levels can be simplified and improved through use of technology including availability of case-law and meeting administrative requirements. Congestion in court complex can also be substantially reduced through electronic dissemination of information. The objectives that can be achieved through use of technology include transparency of information, streamlining of judicial administration and reduction of cost.⁵⁰

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

⁴⁸ (2007) 6 SCC J-1.

⁴⁹ *Supra* note 4.

⁵⁰ *Supra* note 47.

requirements and their condition particularly in small towns and *moffusils* is pathetic. A visit to one of these courts would reveal the space constraints being faced by them, overcrowding 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 noted 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 outdated court buildings, replace them by standardized modern court buildings coupled with addition of more court rooms to the existing buildings and more court complexes.⁵¹

5.5 Litigation through the courts is just one way of resolving the disputes. Litigation as a method of dispute resolution leads to a win-lose situation leading to growth of animosity between the parties, which is not congenial for a peaceful society. We should, therefore, resort to alternative dispute resolution mechanisms such as negotiations, conciliation and mediation, in which nobody is a loser and all the parties feel satisfied at the end of the day. The main problem being faced in this regard is that there are not many trained mediators and conciliators. We need to impart training in mediation and conciliation not only to judicial officers but also to the lawyers. They will have to develop expertise to act as successful mediators and conciliators. We also need to provide adequate infrastructure for conciliation and mediation centres by giving them adequate space, manpower and other

⁵¹ Ibid.

facilities. The Government being the biggest litigant needs to be fully involved in the process and its officers need to take lead in this cause.⁵²

6. CONCLUSIONS AND RECOMMENDATIONS

6.1 Issuing a cheque which is dishonoured is crime in India. But we hardly see any people being punished for bouncing of cheques. People are dissuaded to trust bank cheques. This all because courts in India are awfully overburdened with dishonoured cheque cases.

6.2 Legal experts are unanimous in their opinion that the present system of criminal jurisprudence is destined to fail if the backlog of cases is not substantially reduced. Recently, the Law Commission of India mooted the concept of “plea-bargaining” – pre-trial negotiations between the accused and the prosecution in which if the accused agrees to plead guilty for the charges leveled against him he would get in exchange certain concessions as a **quid pro quo**, by taking a lenient view by the courts, particularly in cases of lesser gravity. Actually, the courts have been practically following such a practice, for several years, now.

6.3 A speedy trial is not only required to give quick justice but it is also an integral part of the fundamental right of life and liberty, as envisaged in Article 21 of the Constitution of India.

6.4 The Law Commission of India is of the firm opinion that considering the alarming situation of the pendency of cases and the constitutional rights

⁵² Ibid.

of a litigant for a speedy and fair trial, the Government of India should direct the State authorities for setting up of Fast Track Courts in the country, which alone, in the opinion of the Law Commission, will solve the perennial problem of pendency of cases, which are even summary in nature.

6.5 The Law Commission is of the view that the backlog of cheque bouncing cases need to be speedily disposed of through this measure lest litigants may lose faith in the judicial system. The commercial circles should have confidence that we have quite faster judicial system.

6.6 We, accordingly, recommend as under:

- (a) Fast Track Courts of Magistrates should be created to dispose of the dishonoured cheque cases under section 138 of the Negotiable Instruments Act, 1881;
- (b) The Central Government and State Governments must provide necessary funds to meet the expenditure involved in the creation of Fast Track Courts, supporting staff and other infrastructure.

(Dr Justice AR. Lakshmanan)
Chairman

(Prof. Dr Tahir Mahmood)
Member

(Dr Brahm A. Agrawal)
Member-Secretary

