A STUDY

ON

'MAJOR BOTTLENECKS IN PROCEDURAL LAWS AFFECTING EXPEDITIOUS CONCLUSION OF CRIMINAL TRIALS AND MEASURES NEEDED TO REMOVE SUCH BOTTLENECKS'

Research Project

of

Judicial Academy Jharkhand

Sponsored

by

सत्यमेव जयते

Ministry of Law & Justice
Government of India

RESEARCH TEAM

Dr.M.R.Sreenivasa Murthy
Assistant Professor (SG)
National University of Study and Research in Law (NUSRL), Ranchi

Dr.K.Syamala
Assistant Professor (SG)
National University of Study and Research in Law (NUSRL), Ranchi

Mr.Abhinav Prakash
Research Assistant

2015-16

A STUDY

ON

'MAJOR BOTTLENECKS IN PROCEDURAL LAWS AFFECTING EXPEDITIOUS CONCLUSION OF CRIMINAL TRIALS AND MEASURES NEEDED TO REMOVE SUCH BOTTLENECKS'

Research Project
of

Judicial Academy Jharkhand, Ranchi

Sponsored
by

Ministry of Law & Justice

Government of India

RESEARCH TEAM

Dr.M.R.Sreenivasa Murthy
Assistant Professor (SG)
National University of Study and Research in Law (NUSRL), Ranchi

Dr.K.Syamala
Assistant Professor (SG)
National University of Study and Research in Law (NUSRL), Ranchi

Mr.Abhinav Prakash
Research Assistant

2015-16

Printed with permission of the Department of Justice, Government of India--Communicated vide File no-9/20/2014-NM dated 07.04.2016 of Deputy Secretary to the Government of India for circulation to the National and State Judicial Academies and Law Schools only for educational purposes.

This permission has been granted by the Department of Justice as an exception to Confidentiality and Data Clause of the agreement entered between the Department of Justice, Government of India and the Judicial Academy Ranchi by which the final report and all other material collected and developed in connection with the assignment has been declared to be the property of the Department of Justice, Government of India.

Director

Jharkhand Judicial Academy

EXECUTIVE SUMMARY

1. The huge pendency of criminal cases reflects the logjams in criminal adjudication process. The study seeks to identify the major bottlenecks in procedural laws affecting expeditious conclusion of criminal trials and measures needed to remove such bottlenecks.

2. The study has been conducted in two stages.

   Firstly, the data collection by empirical method, which involved four steps:

   I. Distribution, collection and analysis of Form1, Form 2, Form 3 and Form 4 to study the life cycle of all pending criminal cases in State of Jharkhand.
   II. Physical verification of court records by visiting all the Judgeships in State of Jharkhand.
   III. Inviting the inputs through questionnaires from the main functionaries of the Criminal Justice System i.e., the presiding judges of different criminal courts, the Public Prosecutors, the Superintendents of Police and the Deputy Commissioners.

   Secondly, analysis of the above data and findings in the light of the provisions of the Criminal Procedure Code, domestic precedents and comparative analysis of legislative frameworks and judicial precedents of other countries to find an answer to the existing bottleneck.

3. The Introduction examines the problem of delay in criminal adjudication, Constitutional mandate for speedy trial, object of procedural laws, objectives of the study, limitations of the study and methodology.

4. Chapter 2 provides the detailed analysis of the data collected through the four stages mentioned in step one, that is, through Form 1, Form 2, Form 3, Form 4 and Questionnaires. The preliminary conclusion on the analysis of Form 1 demonstrates that out of 13,0736 criminal cases pending in State of Jharkhand, 47,210 cases were awaiting appearance of accused and 58,893 cases are pending for prosecution evidence; 63,164 magisterial cases and 15,486 sessions cases were delayed at the stage of framing of charges for more than six months; 13,045 cases were delayed at the stage of commitment for more than six months.

5. The preliminary conclusion on the analysis of Form 2, Form 3 and Form 4 shows that out of 13,0736 police cases and 55,025 complaint cases, 34,045 police cases and 14,585 compliant cases respectively are such, where charge sheet had been submitted and case is pending for appearance of accused for more than six months; 11,000 police cases and 3,876 complaint cases were such where trial has been delayed for more than six months due to misuse of bail; 4,997 police cases and 1,408 compliant cases are such where accused has been declared absconder under Sec. 299 Cr.P.C and was pending for evidence in the absence of accused; and even at the pre-trial stage, the analysis of form 4 provided that 17,369 cases were pending for institution of FIR under Section 156(3) Cr.P.C for more than six months.

6. The preliminary conclusion of sample study of life cycle of pending and disposed of cases on physical verification of records shows that out 1,650 pending cases and 1,650 disposed off cases, 967 pending cases and 983 disposed of cases were delayed at the stage of investigation; 1,013 pending cases and 1,098 disposed of cases were awaiting appearance of the accused at the stage of charge and 960 pending cases and 1,035 disposed of cases were awaiting appearance of accused at the stage of examination of prosecution evidence; it was also found that there was considerable delay at the stage of production of prosecution evidence.

7. The preliminary conclusion of analysis inputs received through questionnaires from the functionaries are: deliberate non-appearance of the accused to evade trial at different stages and non-execution of court processes issued under section 82 and 83 of Cr.P.C.

8. Chapter 3 examines the major bottlenecks that emerged out of data analysis was non-appearance of the accused at different stages of trial; delay at the stage of prosecution evidence, delay in completing investigation especially, the non-appearance of the accused at different stages of trial. It brought into the focus the effectiveness of Sec.299 Cr.P.C in dealing with cases of absconding accused; delay at the stage of commitment of cases to the court of sessions. The delay at the stage of prosecution evidence reflected the lack of co-ordination between police and prosecution; and finally the delay at the stage of investigation highlighted the need for fixing of time frame for conclusion of investigation.

9. Chapter 4 has been dedicated to address the issue, how long the wheels of justice shall hold on for the appearance of the accused? Relying upon the ratio of *Jayendra Vishnu Thakur v. State of Maharastra and Anr* (2009) 7 SCC 104, that is right to confront witness is only a statutory right, the need of 'Trial in Absentia' has been analyzed, in the light of comparative view of criminal jurisprudence, as a solution to the problem of abscondance.

10. Chapter 5 reflects on the larger question of institutional responsibility of investigation and prosecution of crime. The varied reflections of the functionaries to the question, 'on which agency of the State rests the responsibility of investigating a crime and bringing to justice the offender?', raised the issue, 'whose case is it any way? Police, prosecution or the victim?' To understand the depth of the issue, the objective behind bifurcation of police and prosecution wings in Criminal Procedure Code, 1973 and the practical spin-off of bifurcation of police and prosecution and the system of prosecution worldwide has been analyzed to find the solution to the problem.

11. Chapter 6 examines the need for fixation of time frame for completing the investigation. Absence of time limit for completing investigation gives too wide a power to the police to complete or not to complete the investigation. Courts cannot interfere in investigation and at best can release an accused from custody or close such case under the provisions of the code. But, if the police collude with the accused and do not conclude investigation, courts can perhaps do little. The data reveal that large numbers of cases are delayed at the stage of investigation. Once the criminal law is set into motion it should reach its logical conclusion. While reflecting upon the delay at the stage of investigation, the apex court, time and again has reiterated that the right to speedy trial guaranteed under Art.21 includes pre-trial stage also. The chapter mainly focused on the study of relevant judicial precedents and comparative criminal jurisprudence to redress the issue.

12. Finally, in Chapter 7, the recommendations in the form of proposed amendments to Sec. 299, 209, 173 and 25 of Cr.P.C have been suggested as part of the measures needed to remove the identified major bottlenecks affecting the expeditious conclusion of criminal trial.

Table of Contents

(Nominal)

CONTENTS		Page No.
Chapter 1.	Introduction	**1-16**
Chapter 2.	Data Analysis	**17-89**
Chapter 3:	Major findings	**90-117**
Chapter 4:	How long the Wheels of Justice shall hold on for appearance of the accused?	**118-144**
Chapter 5:	Whose case is it in any way? Police, Prosecution or the Victim	**145-166**
Chapter 6	Can there be a time frame for completing Investigation?	**167-175**
Chapter 7	Recommendations	**176-182**

Table of Contents

(Detailed)

Chapter No.	CONTENTS	Page No.
	List of Abbreviations	**vii**
	List of Cases	**viii - x**
	List of Tables	**xi**
Chapter 1	**INTRODUCTION**	**1-16**
	A. What amounts to delay?	7-13
	B. Objectives of the Study	14
	C. Limitations of the Study	14
	D. Methodology	14-16
Chapter 2	**DATA ANALYSIS**	**17-89**
	A. Stage I: Analysis of Form 1	17-29
	B. State II: Analysis of Form 2, 3 and 4	30-40
	C. Stage III: Sample Study of life cycle of pending and disposed of cases	41-49
	D. Stage IV: Questionnaires	50-89
Chapter 3	**MAJOR FINDINGS**	**90-117**
	A. Non-appearance of the accused at different stages of Trial	90-95
	B. Fall out of absconding on criminal	95-98

	adjudication	
	C. Procedural and penal safeguards to check and deal with non-appearance of the accused	98-102
	D. How far Sec.299 Cr.P.C been effective?	102-107
	E. Avoidable delays at the stage of commitment of cases to the court of sessions	107-111
	F. Delay at the stage of Prosecution Evidence	111-116
	G. Delay at the Stage of Investigation	116-117
	H. Conclusion	117
Chapter 4	**HOW LONG THE WHEELS OF JUSTICE SHALL HOLD ON FOR APPEARANCE OF ACCUSED?**	**118-144**
	A. Right to fair trial vis-à-vis Right to defense	119-120
	B. Whether there is a right of the accused to confront the witness of the Prosecution?	120
	C. Whether right to confront witness covered under Fundamental Rights?	121-123
	D. Identification of accused in Absentia	123

	Trials	
	E. Deliberate Non-appearance v. Right to Defense: Doctrine of 'Trial in Absentia'	123-125
	F. Doctrine of 'Trial in Absentia' – Rationale	125-126
	G. Doctrine of 'Trial in Absentia' – Comparative view of Criminal Jurisprudence	126-143
	a. English Law	126-132
	b. Trial in Absentia – Canadian Perspective	132-134
	c. 'Trial in Absentia' in Australia	134
	d. American Jurisprudence vis-à-vis Trial in Absentia	134-140
	e. Position in New Zealand	140-141
	f. Position in Bangladesh	141-143
	H. Trial in Absentia: International Scenario	143-144
	I. Conclusion	144
Chapter 5	**WHOSE CASE IS IT IN ANY WAY? POLICE, PROSECUTION OR THE VICTIM**	**145-166**
	A. Present prosecution structure in	149-150

	India	
	B. Objective behind bifurcation of police and prosecution wings	150-151
	C. Practical spin-off of bifurcation on police and prosecution	152-154
	D. Production of evidence during trial	154-155
	E. Reason for failure of bifurcation	155-157
	F. System of prosecution world wide	157-163
	a. Germany	158
	b. Japan	158-159
	c. Kenya	160
	d. Pakistan	160
	e. England and Wales	160-162
	f. Korea	162
	g. America	163
	G. Conclusion	163-166
Chapter 6	**CAN THERE BE A TIME FRAME FOR COMPLETING INVESTIGATION?**	**167-175**
	A. Relevant judicial pronouncements: India	168-172
	o *State of Andhra Pradesh v. P.V.Pavitharan* [1990] AIR SC 1266	168-170
	o *Vineet Narain v. Union of India*	170

	1996 SCC (2) 199	
	o *Niranjan Hemchandra Shashittal v. State of Maharashtra* 2013 (4) SCC 642	171-172
	o *Pankaj Kumar v. State of Maharashtra* AIR 2008 (SC) 3077	172
	B. Comparative Study: Vietnam Criminal Procedure Code	173-175
	C. Conclusion	175
Chapter 7	**RECOMMENDATIONS**	**176-182**
	Bibliography	
	Annexure I	**i- vi**
	Annexure II	**vii-xiii**
	Annexure III	**xiv-xx**
	Annexure IV	**xxi-xxv**
	Annexure V	**xxvi-xxvii**

LIST OF ABBREVIATIONS

AIR	All India Reporter
All E R	All England Reports
Art.	Article
Cr.P.C	Criminal Procedure Code
Cri	Criminal
EHRR	European Human Rights Report
FF	Final Form
G.R	General Register
Jhr	Jharkhand
MANU	Manupatra
NCMS	National Court Management Systems
NJDG	National Judicial Data Grid
NSWCCA	New South Wales Court of Criminal Appeal
NSWLR	New South Wales Law Reports
Para.	paragraph
PIL	Public Interest Litigation
QB	Queen's Bench
S.T	Sessions Trial
SASC	Supreme Court of South Australia
SC	Supreme Court
SCALE	Supreme Court Almanac
SCC	Supreme Court Cases
Sec.	Section
Supp	Supplementary
U.N.	United Nations
U.S.	United States
u/s	Under Section
VLR	Victorian Law Reports
w.e.f	With effect from
W.P	Writ Petition

LIST OF CASES

	Name of the Case	Page No.
	A	
1.	*Abdul Rehman Antulay v. R.S.Nayak* AIR 1992 SC 1701	8
2.	*AG Vs Shiv Kumar Yadav* [2015] 4 Crimes (SC) 1	3
3.	*Appabhai Vs State of Gujarat* 1988 Supp SCC 241	105
	C	
4.	*Cf Crosby v. U.S.*, 506 U.S. 255, 262 (1993)	136, 137, 138, 139
5.	*Citizens' Cause Vs. The State of Jharkhand and Ors.* (W.P.(PIL) 858 of 2009),	109
	D	
6.	*Diaz v. United States* 223 U.S. 442 (1912)	124, 140
	F	
7.	*Falk v. United States* 181 U.S. 618 (1901)	124
	G	
8.	*Gagan Thakur Vs State of Jharkhand* 2004 CriLJ 1910(1912) (jhr).	108
	H	
9.	*Haider Ali & Anr. V. DPO Chakwal & others*, Civil Petition No.1282 of 2014	160
10.	*Hopt v. Utah*, 110 US 574, 28 L Ed 262, 4 S Ct 202 (1884),	135
	I	
11.	In *R v Williams* (10 September 2004) HC AK CRI 2003-404-025445	140, 141
	J	
12.	James G. Starkey (1979), *Trial in Absentia,* 53 (4) St. Jhon's Law Review 1979	124
13.	*Jayendra Vishnu Thakur Vs State of Maharastra* and another (2009) 7 SCC 104	121
	L	
14.	*Lala v. Netherlands* [1994] 18 EHRR 586, at p.597, para 33	129
	M	
15.	*Maneka Gandhi v. Union of India,* (AIR 1978 SC 597	2, 4
16.	*Mbenge v. Zaire*, U.N. Doc. CCPR/C/OP/2 (Mar. 25, 1983)	143
	N	
17.	Niranjan Hemchandra Shashittal v. State of Maharashtra 2013 (4) SCC 642	171
18.	*Nirmal Singh Vs State of Haryana* AIR 2000 SC 1416	102, 105
	P	
19.	Pankaj Kumar v. State of Maharashtra AIR 2008	172

	(SC) 3077	
20.	*Pelladoah v. Netherlands* [1994] 19 EHRR 81, at p.94, para 40	129
21.	*Poitrimol v. France* (1993) 18 EHRR 130 (ECHR) at [31]	143
	R	
22.	*R v Dunn* (4 June 2008) HC AK CRI 2008-404-000076;	140, 141
23.	*R v Guo and Hui* (22 February 2006) HC AK CRI 2004-004-18566	140
24.	*R v McFall* (7 April 2005) HC HN CRI 2004-019-20514,	140, 141
25.	*R v Williams* (10 September 2004) HC AK CRI 2003-404-025445	140, 141
26.	*R v. Abrahams* [1895] 21 VLR 343 at 347	128
27.	*R v. Dunn* (4 June 2008) HC AK CRI 2008-404-000076	140, 141
28.	*R v. Howson,* [1981] 74 Cr.App.R 172	128
29.	*R v. Jones* 1972 2 All ER 731	125, 126, 127, 129, 130, 140
30.	*R v. Jones* [1998] SASC 7021;	134
31.	*R v. Jones, Planter and Pengelly* [1991] CrimLR 856	128
32.	*R v. McHardie* [1983] 2 NSWLR 733;	134
33.	*R v. Parakau* [2002] DCR 699	140
34.	*R v. Serrano (ruling No.5)* [2007] VSC 209,	134
35.	*R v. Sthmer,* (17 June 2003) HC WN T064/01;	140
36.	*R v.van Yzendoorn* [2002] 3 NZLR 758 (CA)	140
37.	R Vs Hayward [2001] Q.B.862	132
38.	*R Vs. Governor of Brixton Prison, exp Caborn-Waterfield* 1960 (2) QB 498 at 508-509	126
39.	*R Vs. Jones {Rew}{2}1972 2 All E R 731*	127
40.	*R. Vs. Cornwell* (1972) NSWLR I (NSWCCA)	127
41.	*Raj Deo Sharma v. State of Bihar (I)* MANU/SC/0640/1998	9
42.	*Raj Deo Sharma v. State of Bihar(II)* MANU/SC/1655/1999	10
43.	*Rasiklala v. Kishore Khanchand Wadhwani* (AIR 2009 SC 1341)	91
	S	
44.	*S.K. Shukla Vs State of U.P.* AIR 2006 SC 413	157
45.	*Sanjay Jumar Singh Vs State of Jharkhand* W.P.(Cr) No.46 of 2010	103
46.	Santoro v. United States, 409 U.S. 1063, 93 S.Ct. 554, 34 L.Ed.2d 516 (1972)	138
47.	*Satyajeet Banerjee vs. State of West Bengal* [2005] 1 SCC 115	171

48.	*State of Andhra Pradesh vs P.V. Pavitharan* [1990] AIR(SC) 1266	168
49.	*State of Gujarat v Kishan Bhai* (2014) 5 SCC 108	152, 154, 155, 156
50.	*State v. Whitley*, 85 P.3d 116 (2004) (Depublished Opinion), Arizona Court of Appeals (based on Arizona Rules of Criminal Procedure)	139
	T	
51.	*Tailor Vs. US*, Mass, 94 S.Ct. 194	135
	U	
52.	*U.S. Illinios Vs. Allen*, III, 90 S.Ct.1057	122
53.	*U.S. v. Tortoro* 464 F.2d 1202 (2nd Cir.),	125
54.	*United States v. Peterson,* 524 F.2d 167 (4th Cir. 1975), cert. denied, 423 U.S. 1088, 96 S.Ct.881, 47 L.Ed.2d 99 (1976),	137
55.	*United States v. Sanchez*, 790 F.2d 245 (2d Cir.), cert. denied, 479 U.S. 989, 107 S.Ct. 584, 93 L.Ed.2d 587 (1986),	138, 149
	V	
56.	*Vineet Narain Vs Union Of India* 1996 SCC(2) 199	170
	W	
57.	*William Slaney vs. State of M.P* [1956] AIR (SC) 116	2
	Z	
58.	*Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others* 2004 (4) SCC 158	165
59.	*Zahira Habibullah Sheikh Vs. State of Gujarat* (2006) 3 SCC 374,“	3

LIST OF TABLES

TABLE NO.	TITLE OF THE TABLE	PAGE NO.
1.	Reasons for delay in pending criminal cases as given by the courts	19-20
2.	Reasons for delay in pending criminal cases as given by the special courts (Nature-wise)	21
3.	The Stage wise pendency given below has been worked out on the basis of present status of cases as given by the Presiding Officers of the court shown in Column X of Form 1	22-23
4.	The Nature wise pendency given below has been worked out on the basis of present status of cases as given by the Presiding Officers of the Special Courts shown in Column X of Form 1	24
5.	Time Span Stage wise of Magisterial Cases	25-26
6.	Time Span Stage wise of Sessions Cases	27-28
7.	Analysis of Form 2	30-31
8.	Statistical Data of the Analysis of Form 3 for Compliant cases	34-35
9.	Analysis of Form 4	38-39
10.	Analysis of Life Cycle Forms: Pending Cases	45-46
11.	Analysis of Life Cycle Forms: Disposed of Cases	47-48

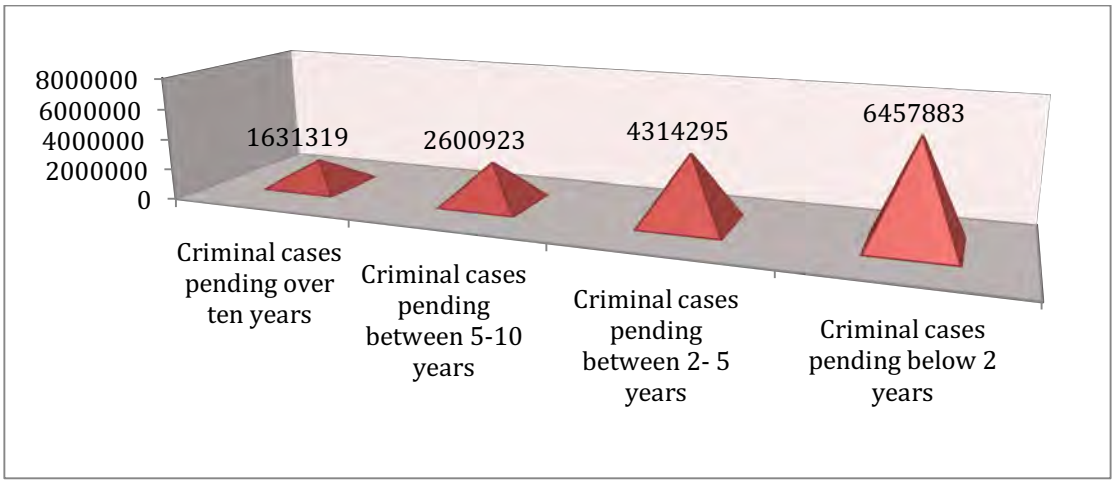
CHAPTER – 1

INTRODUCTION

It will be a tragedy if the law is so petrified as to be unable to respond to the unending challenges of evolutionary and revolutionary changes.

---- **Friedman**

1.1 A total of 14883185 criminal cases are pending in different courts in India out of which 1631319 (10.96%) criminal cases are pending over ten years; 2600923 (17.47%) criminal cases are pending between 5-10 years; 4314295 (28.98%) criminal cases are pending between 2-5 years; 6457883 (43.39%) criminal cases are pending below 2 years. (According to National Judicial Data Grid, as on date 17 Aug 2016). Statistical analysis has its own limitations and while dealing particularly in human affairs it cannot portray the pangs and pains a litigant has to suffer in the tortuously long process of criminal adjudication. Statistical analysis is however internationally accepted tool of empirical studies to get a trend, a pattern on which objective findings can be based. The above figures do reflect and show what is generally accepted about the pace of criminal adjudication process.



1.2 According to the above statistics, 17.47% of criminal cases are pending for over 5 years awaiting conclusion of trial. The huge

pendency of criminal trials reflects the logjams in criminal adjudication process. It is manifest from the above statistics that large number of criminal cases is stuck at some stage or other. The causes may be many but the consequences are staggering. It strikes at the foundation of rule of law in a constitutional democracy.

1.3 The objective of the Criminal Procedure Code is to lay down speedy procedure for the prosecution of an accused by bringing him/her to punishment if proved guilty. Procedural laws in the codified form are the product of certain principles such as justness, fairness and reasonableness, the origin of which can be traced to the Common Law. The converging point of these principles are to further the ends of justice in its comprehensive sense, which includes fair and speedy trial to the accused.

1.4 Any procedure is to be just, fair and reasonable and it cannot defeat or undermine the principles on which it stands or be so pedantic so as to frustrate the object of furthering the ends of justice. What is the range and limits of procedural fairness is no longer *res integra* and has been settled by a long line of judicial pronouncements on this point (***Maneka Gandhi v. Union of India,*** **(AIR 1978 SC 597**). In Criminal trial, a procedural irregularity is not regarded as fatal, unless it has occasioned in prejudice to the accused in his defense. Law is settled on the point that if there is substantial compliance with the procedure and the accused is not prejudiced and has got a fair opportunity to defend himself, the trial is not vitiated unless the accused can show substantial non-compliance leading to prejudice to his defense.

1.5 The law as laid down by the Apex Court in ***William Slaney vs. State of M.P*** **[1956] AIR (SC) 116,** has been consistently followed and is a *locus classic* on the point. It held, **"*The Criminal Procedure Code is a Code of procedure, and like all procedural laws, is***

designed to further the ends of justice and not to frustrate them by endless technicalities. The object of the code is to ensure that an accused person gets a full and fair trial along certain well established and well – understood lines that accord with our notions of natural justice. *If it does, if it is tried by a competent court, if he is told certainly and clearly understands the nature of the offence for which he is being tried, if the case against him is fully / fairly explained to him and he is afforded a full and fair opportunity, of defending himself, then, provided there is substantial compliance with outward forms of the law, mere mistakes in procedures, mere inconsequential errors and omissions in the trial are regarded as venal the code and the trial is not vitiated unless the accused can show substantial prejudice".*

1.6 There is a long line of judicial precedents, which support this line of jurisprudential thought. It has been held by the apex court in ***Zahira Habibullah Sheikh Vs. State of Gujarat*** **(2006) 3 SCC 374,***"A criminal trial is a judicial examination of the issues in the case and its purpose is to arrive at a judgment on an issue as to a fact of relevant facts which may lead to the discovery of the fact in issue and obtain proof of such facts at which the prosecution and the accused have arrived by their pleadings; the controlling question being the guilt or innocence of the accused. Since the object is to meet out justice and to convict the guilty and protect the innocent,* ***the trial should be a search for the truth and not a bout over technicalities*** *and must be conducted under such rules as will protect the innocent and punish the guilty".*

1.7 In ***AG Vs Shiv Kumar Yadav*** **[2015] 4 Crimes (SC) 1** the Apex Court observed: *"It can hardly be gainsaid that fair trial is a part of guarantee under Article 21 of the Constitution of India. Its content has primarily to be determined by the statutory provision for conduct of trial though in some matters, where statutory provision may be silent, the*

*court may evolve a principle of law to meet a situation, which has not been provided for. It is also true that the principle of fair trial has to be kept in mind for interpreting the statutory provisions**. It is further well settled that fairness of trial has to be seen not only from the point of view of the accused, but also from the point of view of the victim and the society."***

1.8 The same analogy will apply with equal force to the *vires* of procedural law and any such Code which lays down procedures to further the ends of speedy justice without compromising the fair trial principles which do not prejudice the accused, can be regarded as just, fair and reasonable which is a constitutional requirement of any procedure under Article 21 of the Constitution of India post ***Maneka Gandhi verdict*** **(AIR 1978 SC 597).**

1.9 The old adage goes ***'justice delayed is justice denied'***. In 1925 itself, while appreciating the importance of speedy trial, **Clause 40 of Magna Carta**, provided that ***"To no one will we sell, to no one will we refuse or delay, right or justice."*** Timely justice is the very corner stone of rule of law and it has been a subject of lingering concern for the citizenry, as well as the members of legislature, executive and judiciary. It is indisputable that speedy justice is a constitutional mandate and there is catena of judgments of the Apex Court of India, which holds it as an essential attribute of the Fundamental Right to Life guaranteed under Art.21.

1.10 The Law Commission in its 77th Report on delays and arrears in trial court (noted at Para 1.4 Page 77.5 Chapter 1, Public Confidence in Courts) '*For efficient discharge of the responsibilities of the courts, it is essential that the broad confidence which the people have in the system, the high prestige and the great respect they have enjoyed should be maintained and not be subject to any eclipse. The community has a tremendous stake in the preservation of image of the courts as dispensers of justice. Weakening of the judicial system in the long run*

has necessarily the effect of undermining the foundations of the democratic structure. Any institution and more so a judicial system is rooted in the society and its success to a large extent depends on the confidence it enjoys of the people who are the principal stakeholders of it. Erosion of public confidence in it can undermine the foundations of the criminal justice system and may turn people to extra legal means'.

1.11 Quality of product to a large extent depends on the sanctity of process adopted in a particular circumstance. Process and product have a symbiotic relationship. Quality includes timeliness. Any serious effort to improve the product needs to start from a re-look at the process. Practically, it may not be feasible to bring any qualitative change in the product without touching the process. There is however, a school of thought, which regards process to be sacrosanct and beyond reproach. Law both substantive and adjective is product of human experiences gathered in its collective functioning at societal and institutional level. Legal methods and procedures are no exception and are product of time and they need fine tuning with change in circumstances based on experiences of its actual working. An honest search for reform is to be based on past experiences and cannot be tied to the rigidity of ideological moorings.

1.12 **Justice Benjamin N. Cardozo** in his book **The Growth of The Law** says, *"We must learn that* ***all methods are to viewed not as idols but as tools.*** *We must test one of them by the others, supplementing and re-enforcing where there is weakness, so that what is strong and best in each will be at our service in the hour need".* According to the famous quote of **Oliver Wendell Holmes, Jr.,** *'the Life of the law has not been logic. It has been experience. Any procedure to be efficient and effective has not only to answer the test of logic and principles but also the experience of its actual working in the crucible of investigation, inquiry and trials'.*

1.13 Law Commission of India in several of its reports identified various aspects related to huge backlog of criminal cases and suggested measured to expedite the criminal trial. Apart from Law Commission of India, several other research organizations, NGOs studied the reasons delaying speedy disposal of criminal trials and suggested various measures. The continuing backlog despite amendments in the Criminal Procedure Code has become a matter of concern not only for executive and judiciary but also for common man of the country who has a stake in criminal adjudication.

1.14 The Ministry of Law & Justice in its efforts to find the root cause for huge backlog of cases has sponsored the present research project on the topic, '***A Study on Major Bottlenecks in Procedural Laws Affecting Expeditious Conclusion of Criminal Trials and Measures Needed to Remove such Bottlenecks'.*** The present research aims to address delays in criminal trial from procedural perspective.

1.15 Human and material resource can be one factor, but dilatory procedures can equally be a causative factor for delays in criminal adjudication. Unless the procedural bottlenecks are identified and cleared, merely augmenting the human and material resources cannot usher in the constitutional vision of speedy justice. Hence, the research focused on identification of major procedural bottlenecks affecting the speedy conclusion of criminal trial. In order to achieve the said objective, the searchlight therefore in this research project is turned on to the identification of major procedural stages in the life of a criminal case, which is hindering the progress of a criminal trial towards its conclusion.

1.16 The present work thus is a modest effort to study the actual progress of criminal cases through its journey from institution to its

conclusion. The methodology of research is focused on identification of procedural bottlenecks affecting the speedy disposal of a criminal trial and it also suggests related measures to remove such bottlenecks. Efforts have been made to look into every stage of the criminal trial through empirical method and physical scrutiny of records to understand what amounts to delay and at what stage the cases have been stuck.

A. WHAT AMOUNTS TO DELAY

1.17 According to Art. 14(3) of the International Covenant on Civil & Political Rights, 1966, '*everyone shall be entitled.....to be tried without undue delay*'. According to the Law Commission of India Report No. 245, delay is defined as '*A case that has been in the Court/Judicial system for longer than the normal time that it should take for a case of that type to be disposed of*'. Unnecessary delays are considered to be recurring source of inefficiency and are symptomatic of miscarriage of justice. Hence, defining the *'normal time'* for a criminal trial becomes essential step in conducting a research on 'identifications of reasons for delay in criminal justice administration'.

1.18 According to Art.11 of the *Canadian Charter of Rights and Freedoms,* 'any person charged with an offence has the right: (b) *To be tried within a reasonable time.* Article 6(1) of the European Convention on Human Rights provides that, '*criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of*

justice.'

1.19 The Law Commission of India in its 77th Report on '**Delays and Arrears in Trial courts'** (para 1.9), raised the question, '*what should be the criterion to determine as to when a judicial case can be treated as an old case in the trial court?'* As a response to the question, the Commission observed that the average life span of a criminal case is mentioned to be four to six months. While dealing with the method of computation of delay, the commission opined that '*the time would be calculated from the date of filing of charge sheet or complaint till the date of pronouncement of final judgment. In case of sessions trials, above period should also include the time during which proceedings remained pending before the committing magistrate'.* (Para 1.10)

1.20 In 2012, National Court Management Systems (NCMS) introduced by Hon'ble Supreme Court of India, for enhancing timely justice, dwelt upon the '*five plus free'* policy i.e., free of cases more than five years old. The urgent need to shorten the average life cycle of all cases, not only time spent within each court, but also total time in the judicial system as a whole, to bring the average to no more than about one year in each court. Malimath Committee recommended the use of a two-year time frame as the norm by which delay and arrears in the system should be measured. (para 13.3, Report of the Committee on Reforms of the Criminal Justice System)

1.21 As per the current practice in Indian courts, the cases pending for more than 10 years are considered to be the old cases, 5-10 years' life span of a case is considered to be unacceptable delay, below 5 years is the acceptable delay and below 2 years is the ideal life span of a criminal case.

1.22 In ***Abdul Rehman Antulay v. R.S.Nayak*** **AIR 1992 SC 1701,** the Apex Court held that it is sufficient to say that constitutional

guarantee of speedy trial emanating from Art.21 is properly reflected in the provisions of the Criminal Procedure Code, but the relative question for consideration is *'how long a delay is too long?'* After considering the various cases for delay, the Court held "*it is neither advisable nor feasible to draw or prescribe any outer time-limit for conclusion of all criminal proceedings*".

1.23 The Apex Court further observed that, *'It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given case before pronouncing upon the complaint. The Supreme Court of USA too has repeatedly refused to fix any such outer time limit inspite of the Sixth Amendment. Nor do we think that not fixing any such outer limit in effectuates the guarantee of right to speedy trial'.*

1.24 In ***Raj Deo Sharma v. State of Bihar (I)*** MANU/SC/0640/1998, the Hon'ble Supreme Court of India attempted to define a time frame for the disposal of a criminal case. In that process, the following directions were issued by apex court:

I. In cases where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the Court shall close prosecution evidence on completion of a period of two years from the date of recording the plea of the accused on the charges framed whether prosecution has examined all the witnesses or not, within the said period and the Court can proceed to the next step provided by law for the trial of the case.

II. If the offence under trial is punishable with imprisonment for a period exceeding 7 years, whether the accused is in jail or not, the Court shall close prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the Court can proceed to the next step provided by law for the trial of the case, unless for very exceptional reasons to be recorded and in the interest of justice the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit.

1.25 Though, the Hon'ble apex court reversed its judgment in the subsequent case, ***Raj Deo Sharma v. State of Bihar(II)*** MANU/SC/1655/1999, the following questions have been raised among the academia and researchers in defining delay: (1) What can be the yardstick to measure delay is a subject on which there can be sharp cleavage of views? (2) Different committees established in different jurisdictions attempted without much success to come to an unanimous conclusion as to when a criminal case can be termed to have suffered delay.

1.26 In ***Raj Deo Sharma (II)***, M.B. Shah, J., observed that '*It is true that ideal situation may be where criminal cases are tried within six months from the date of institution, and appeals are disposed of within a period of one year from the date of filing. For achieving misideal situation, if there is lack of infrastructure and procedural delays for various reasons, then what is required to be done? In such a situation would it be justifiable to acquit the accused after lapse of a particular time if prosecution has failed to examine all witnesses? And, whether the appeal could be dismissed if the appellate authority fails to decide the same within a particular time? To do so, in my view, would not be just and fair for the society and the victims affected by the crimes.'*

1.27 The Criminal Procedure Code lays down elaborate stages of investigation, inquiry and trial, since after institution of the F.I.R or filing of the complaint till its conclusion by delivery of judgment by the trial court. The Code normally does not prescribe time limits for different stages. There is no specific time limit for investigation, inquiries or trial, save to a limited extent for sexual offence cases provided by 2013 amendment.

1.28 In some cases, the consequences of delay at a particular stage have been provided as under section 167 Cr.P.C, which makes provision for statutory bail if the investigation is not completed within the prescribed time frame. Section 436A Cr.P.C lays down the maximum period for which and under-trial prisoner can be detained during the period of investigation, inquiry or trial under this Code for any offence not punishable with death. Similarly, under Section 437(6) Cr.P.C if the trial is not concluded within 60 days from the first days of taking evidence and the person accused of the non-bailable offence is in custody throughout the period such period shall be released on bail. Section 468 Cr.P.C lays down bar to taking of cognizance after the lapse of,

1. Six months if the offence is punishable with fine only;
2. One year with the offence is punishable with imprisonment for a term not exceeding one year;
3. Three years, if the offence is punishable with imprisonment for a terms exceeding one year but not exceeding three years.

1.29 Although time frame has not been laid down in the code for completing the investigation, inquiry or trial, but it cannot be said that the code is completely bereft of any such guideline. A conjoint reading of the above provision with Section 309 Cr.P.C makes it abundantly clear that though the scheme of the Code does not contemplate a rigid time frame, but it is expected that offences with minor punishment should be concluded within short period. For

instance, offences punishable for sentences under three years of imprisonment should be concluded within that period.

Section 309: Power to postpone or adjourn proceedings -

1. In every inquiry or trial the proceedings shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded:

Provided that when the inquiry or trial relates to an offence under section 376, section 376A, section 376B, section 376C or section 376D of the Indian Penal Code (45 of 1860), the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.]

2. If the Court after taking cognizance of an offence, or commencement of trial, finds if necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, and may by a warrant remand the accused if in custody:

Provided that no Magistrate shall remand an accused person to custody under this section for a term exceeding fifteen days at a time:

Provided further that when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except on special reasons to be recorded in writing:

Provided also that no adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him.

Provided also that:-(a) no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that

party; (b) the fact that the pleader of a party is engaged in another Court, shall not be a ground for adjournment; (c) Where a witness is present in Court but a party or his pleader is not present or the party or his pleader though present in court, is not ready to examine or cross-examine the witness, the Court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be.

Explanation 1- If sufficient evidence has been obtained to raise a suspicion that the accused may have committed an offense, and it appears likely that further evidence may be obtained by a remand, this is a reasonable cause for a remand.

Explanation 2 – The terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused.

[The code in cases of sexual offences, by 2013 amendment has come up with time limit of completing the inquiry or trial within two months from the filing of the Charge sheet.]

1.30 From the above it will be manifest that prompt examination of witness is the overriding concern and the Code brooks no adjournment at this stage. It provides for day-to-day hearing of the case at the stage of evidence and when witnesses are in attendance, no adjournment or postponement shall be granted, without examining them, except for special reason to be recorded in writing. It even further provides that when a witness is present in court but a party or his pleader is not present or the party or the pleader though present in the court is not ready to examine or cross examine the witness, the court may if think fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination in chief or cross examination of the witness, as the case may be. It perforce follows from it that if the examination of the witnesses is delayed at

the stage of trial due to omissions or commissions of the prosecution or defense, the same may be termed as unacceptable delay in violation of the mandate of the Code.

B. OBJECTIVES OF THE STUDY

- **To identify factors causing delay at the stage of investigation, inquiry and trial in criminal cases.**
- **To identify the procedural provisions connected with the factors causing delay.**
- **To identify the measures to remove the procedural bottlenecks affecting the expeditious conclusion of criminal trials**

C. LIMITATIONS OF THE STUDY

- **The statistical database of this study is confined to the State of Jharkhand.**
- **The study is limited only to identification of '*major procedural bottlenecks*' affecting speedy disposal of criminal trial.**
- **The study is also limited only to suggesting procedural changes relevant to the identified major procedural bottlenecks, which affects the expeditious conclusion of criminal trial.**

D. METHODOLOGY

1.31 The present work is unique and perhaps first of its kind in the country, in the sense that it has not confined its analysis to the statistics of pendency figures of different cases in the State of Jharkhand, but a broad stage wise life cycle of each and every case was drawn in Form I and all the presiding officers of the courts exercising criminal powers were called for to report about the stage of

trial and the reasons for the delay of each and every case. It was an effort at institutional level to consult the voice of the judges presiding over different courts to get the stage of each case and their opinion as to the specific cause for the delay if any. Aim of this exercise was that the finding should be based on actual state of affairs as prevailing at the operational level of the procedural laws at the trial stage. The conclusions are therefore based in the present research on what the statistical analysis say, and what the principal functionaries of the criminal justice system at the trial court level have to say about the cause for delay.

1.32 The methodology adopted to identify the major procedural bottlenecks includes empirical and doctrinal method. The data collection through empirical study has been distributed into four stages:

- **Stage 1:** Called for inputs from 241 different criminal courts situated in all the 24 Judgeships of State of Jharkhand in FORM 1 (as on July, 2015).
- **Stage 2:** For further micro level analysis, pendency figures with respect to G.R Cases and Complaint cases were separately called for through FORM 2 and FORM 3 from different criminal courts situated in all 24 Judgeships of State of Jharkhand. Form 4 is regarding pendency figures of cases awaiting institution of FIR U/S 156(3) and awaiting police report for more than six months.
- **Stage 3:** Study of life cycle of sample cases by physical verification of case records.
    - **Sample Size:** 50 cases (pending) & 50 cases (disposed of) in Judgeships where the total no. of G.R. cases pending are below 5,000 in number; 100 cases (pending) & 100 cases (disposed of) in Judgeships where the total no. of G.R. cases pending are above

5,000 in number.

- **Method of identification of sample size:** Random sampling method is applied with a limitation that the average life span of the case should be above five years so that the delay can be better studied.
- **Method of collection of data:** physical verification of court records of each case by visiting all 24 judgeships of State of Jharkhand.

- **Stage 4:** In order to consider the views and opinions of the main functionaries related to criminal investigation and trial, questionnaires were prepared and circulated on the basis of the preliminary finding from form 1to4 to the following:
  - The Sessions and Additional Sessions Judges working as presiding officers of different courts and other judicial officers with minimum of ten years working experience
  - The Public Prosecutors including Additional Public Prosecutors and Assistant Public Prosecutors with minimum of ten years working experience
  - The Deputy Commissioners of all 24 Districts of State of Jharkhand
  - The Superintendents of Police of all 24 Districts of State of Jharkhand
  - The accused/convict

***

CHAPTER – 2

DATA ANALYSIS

A. STAGE 1: FORM 1

2.1 Form 1 has been designed for all the criminal courts of the State (Annexure V) and the Presiding Officers were called for to submit requisite information along with their own remark with respect to reason for delay of each individual police cases under their signature in the requisite form. A quick look at this form will reflect that it captures almost all-important stages of a case. The main stage in the life of a police case is as follows:

1. The time taken in investigation**:** The time between institution of FIR and the submission of Police Report is the time taken in investigation. If the investigation culminates in submission of charge sheet then the stage immediately thereafter is that of cognizance. Normally there is no delay at the stage of cognizance, unless sanction is a condition precedent for taking of cognizance under a particular statute. It is for this reason that the date of institution of FIR and date of cognizance has been specifically mentioned to study the period elapsed at this stage.
2. Time elapsed between cognizance and commitment is the next stage in the life span of session's trial cases. The difference between column V and VI is to study this time gap.
3. Is the case stuck up at the stage of framing of charge/substance of accusation to be explained? This stage arrives after taking of cognizance in magisterial triable cases and after commitment in sessions trial cases. The difference in dates between column V, VI and VII is intended to study this part of case journey.
4. After framing of charge, the cases are posted for prosecution evidence and to understand the phenomenon of delays, it is

necessary to study the delay at this stage. The time taken at this stage can be computed by reference to column VII to VIII of the table i.e., between the time when the case is posted for prosecution evidence (column VIII) and the date when the case is posted for defense evidence (column IX)

5. After the defense evidence, the case is posted for argument followed by judgment. To elicit information regarding this stage column X has been designed.
6. Last column is about reason for delay where the presiding officers were asked to record the reasons with respect to delay of each and every case. Apart from the suggested reasons, the officers were given an option to give any other reason for delay with regard to the delay.

Altogether 241 responses have been received from the different criminal courts.

FORM 1: STATISTICS WITH RESPECT TO ALL PENDING CRIMINAL CASES INCLUDING DATA RELATING TO SPECIAL COURTS

Sl.No	G.R.Case No./S.T. Case No.	Penal Provisions	Dt. of institution of FIR	Dt. of Cognizance	Dt. of Commitment (in Session cases)	Dt. of Framing of Charges	Dt. of Conclusion of Prosecution Evidence	Dt. of Conclusion of Defense Evidence	Present status	Reasons for Delay (Only one major reason to be specified by (√) mark and specify in writing if any other reason/ remark)				
										Non-appearance of Accused	Non-production of prosecution witnesses	Any Stay order	Long Adjournments	Any other reason/remark
I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV

ANALYSIS OF FORM 1

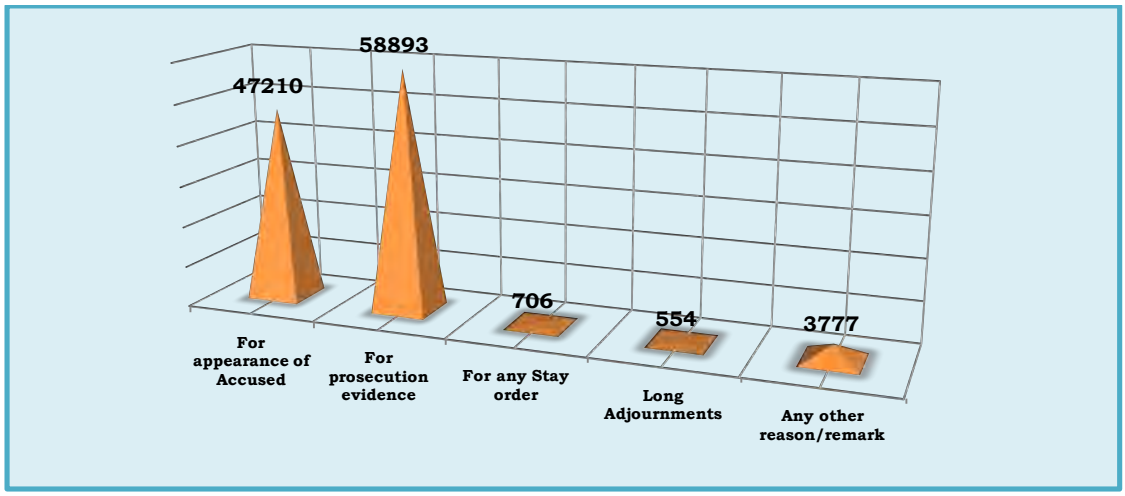
2.2 The analysis of Form 1 has been made on the following parameters:

- Total number of cases
- The stage of pendency of cases viz.,
  - For appearance of the accused
  - For Prosecution evidence
  - For any stay order
  - For long adjournments
  - For any other reason

TABLE NO. 1 REASONS FOR DELAY IN PENDING CRIMINAL CASES AS GIVEN BY THE COURTS

Judgeship	Total No. of pending cases	For appearance of Accused	For prosecution evidence	For any Stay order	Long Adjournments	Any other reason/remark
(1)	(2)	(3)	(4)	(5)	(6)	(7)
BOKARO	10069	3538	5649	63	21	90
CHATRA	3359	4	1403	33	1	1774
DEOGARH	8039	2221	4285	87	62	257
DHANBAD	15434	5590	7484	45	2	43
DUMKA	3971	657	2045	2	0	42
EAST SINGHBUM	12503	4537	927	22	209	20
GARHWA	9652	3696	4947	10	20	0
GIRIDIH	8141	2107	418	9	195	9
GODDA	5514	1224	2884	60	0	123
GUMLA	4190	1736	2334	21	7	14
HAZARIBHAGH	11312	6937	7157	35	0	393
JAMTARA	2595	798	1432	4	1	57
KHUNTI	611	285	685	3	0	9
KODERMA	3450	1492	1998	7	1	190
LATEHAR	2755	1086	1484	5	5	91

LOHARDAGA	1633	340	908	6	0	118
PAKUR	2387	942	1321	11	11	7
PALAMU	6983	2653	3311	172	2	117
RANCHI	8708	3791	4330	65	0	62
SAHEBGANJ	2453	995	1525	17	13	2
SARAIKELA KHARASAWAN	1255	1521	13	-	2	261
SIMDEGA	1137	275	714	6	2	23
WEST SINGHBUM	4585	785	1639	23	0	75
TOTAL	**130736**	**47210**	**58893**	**706**	**554**	**3777**

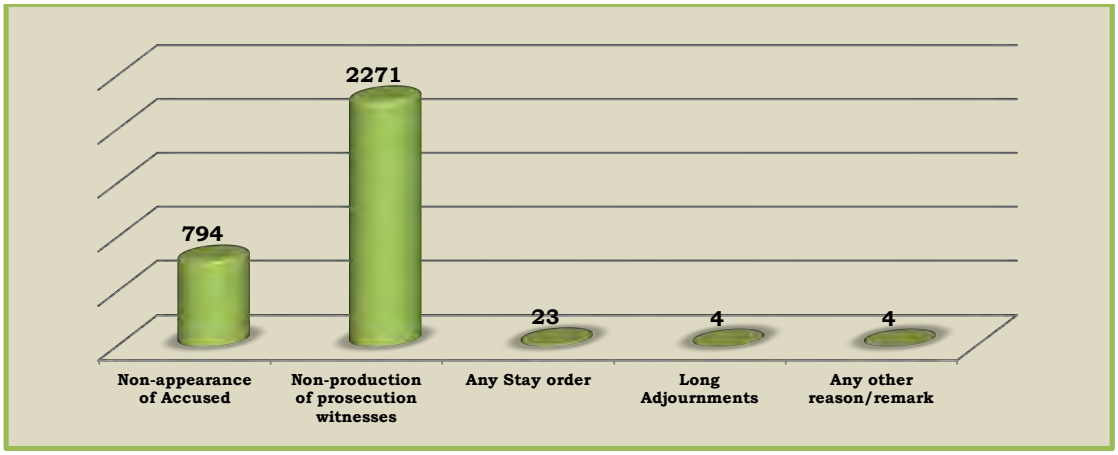


OBSERVATIONS

2.3 Based on the analysis of the inputs given under **column XI to XV** i.e., reasons for delay, it has been found that out of **1,30,736 (column 2 of Table No.1)** total number of pending G.R. cases (both magisterial and sessions triable) in the State of Jharkhand, **47,210 (column no.3 of Table No.1)** cases were delayed for appearance of the accused and **58,893 (column no.4 of Table no.1)** cases were at the stage of prosecution evidence. Analysis of Form 1 brought into sharp focus two stages where the cases were found to be pending. The first being cases which were found to be pending for prosecution evidence and the second being for the appearance of the accused.

TABLE NO. 2 REASONS FOR DELAY IN PENDING CRIMINAL CASES AS GIVEN BY THE SPECIAL COURTS (NATURE-WISE)

Nature of Cases	Total No. of pending G.R. cases	Non-appearance of Accused	Non-production of prosecution witnesses	Any Stay order	Long Adjournments	Any other reason/remark
(1)	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
CBI CASES	826	122	335	10	1	0
CRIME AGAINST WOMEN	1649	267	1109	2	0	0
ECONOMIC OFFENCES	138	80	25	0	0	0
ELECTRICITY CASES	528	0	7	0	0	0
NDPS CASES	487	187	248	2	3	4
PC CASES	159	18	117	5	0	0
POTA CASES	25	21	2	0	0	0
NI ACT	1	0	1	0	0	0
SC/ST CASES	668	95	416	4	0	0
VIGILENCE CASES	41	4	11	0	0	0
TOTAL	**4522**	**794**	**2271**	**23**	**4**	**4**



OBSERVATIONS

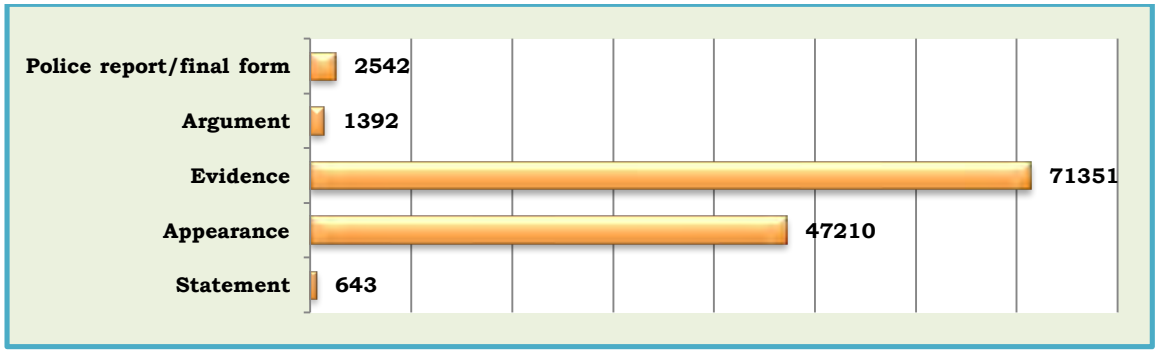
2.4 Based on the nature-wise analysis of the inputs given under **column XI to XV** i.e., reasons for delay, it has been found that out of **4,522 (Column no.2 of Table No.2)** total number of pending cases in

the Special courts of State of Jharkhand, **794 (Column no.3 of Table No.2)** cases were delayed for appearance of the accused and **2,271 (Column no.4 of Table No.2)** cases were at the stage of prosecution evidence. The above findings are very much in line with the general findings with respect to the different stages of delay in other criminal cases.

TABLE NO. 3: The stage wise pendency given below has been worked out on the basis of Present Status of cases as given by the Presiding officers of the Court shown in column X of form I

Judgeship	Total No. of pending G.R. cases	Statement	Appearance	Evidence	Argument	Police report
(1)	(2)	(3)	(4)	(5)	(6)	(7)
BOKARO	10069	49	3137	5679	150	284
CHATRA	3359	7	1625	1595	10	50
DEOGARH	8039	55	3174	4557	125	48
DHANBAD	15434	32	6259	8174	62	291
DUMKA	3971	8	1976	1887	36	0
EAST SINGHBUM	12503	64	4575	7043	97	254
GARHWA	9652	33	3025	5585	50	358
GIRIDIH	8141	54	3274	4258	113	120
GODDA	5514	44	1991	3017	127	173
GUMLA	4190	13	1505	2511	23	125
HAZARIBHA	11312	52	4338	5698	130	176
JAMTARA	2595	10	1078	1436	30	31
KHUNTI	611	1	240	278	2	64
KODERMA	3450	6	1223	1946	3	49
LATEHAR	2755	19	1314	1337	17	21
LOHARDAG	1633	7	515	965	17	110
PAKUR	2387	7	1024	1254	34	10

PALAMU	6983	39	2529	3692	74	285
RANCHI	8708	52	3147	4798	132	254
SAHEBGAN	2453	62	765	1437	138	23
SARAIKELA KHARASAWAN	1255	56	469	602	98	10
SIMDEGA	1137	9	387	657	13	38
WEST SINGHBUM (CHAIBASA)	4585	28	1512	2945	8	22
TOTAL	**130736**	**643**	**47210**	**71351**	**1392**	**2542**

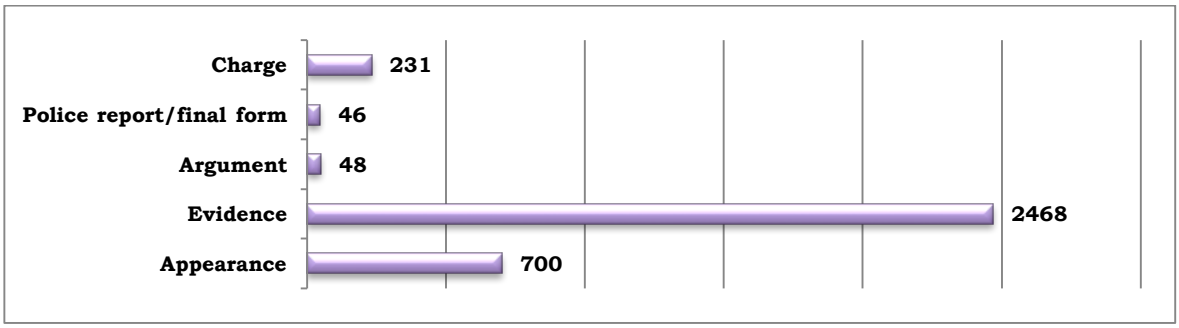


OBSERVATIONS

2.5 Based on the analysis of the inputs given under **column X of Form 1**, it has been found that out of **130736 (column no.2 of Table no.3)** total number of pending G.R. cases (both magisterial and sessions triable) in State of Jharkhand, the **present status of 47210 (column no.4 of Table no.3)** awaiting appearance of accused, and **71351 (column no.5 of Table no.3)** cases were at the stage of evidence. Pendency at other stages are considerably less and therefore do not require a close scrutiny.

TABLE NO.4: The nature-wise pendency given below has been worked out on the basis of Present Status of cases as given by the Presiding officers of the Special Courts shown in column X of form I

Nature of Cases	Total No. of pending G.R. cases	Appearance	Evidence	Argument	Police report	Charge
(1)	(2)	(3)	(4)	(5)	(6)	(7)
CBI CASES	826	43	136	4	17	11
CRIMES AGAINST WOMEN	1649	294	1061	14	0	132
ECIR CASES	138	20	55	0	3	3
ELECTRICITY CASES	528	117	376	0	0	2
NDPS CASES	487	114	252	4	21	28
NI ACT CASES	1	1				
PC ACT CASES	159	14	95	5	5	7
POTA ACT CASES	25	20	2	1		1
SC/ST ACT CASES	668	74	481	15	0	42
VIGILANCE ACT CASES	41	3	10	5	0	5
TOTAL	**4522**	**700**	**2468**	**48**	**46**	**231**



OBSERVATIONS

2.6 Based on the nature-wise analysis of the inputs given under **column X of Form 1**, it has been found that out of **4,522 (column no.2 of Table no.4)** total number of pending criminal cases in different special courts of State of Jharkhand, the **present status of 700 (column no.3 of Table no.4) cases were** awaiting appearance of

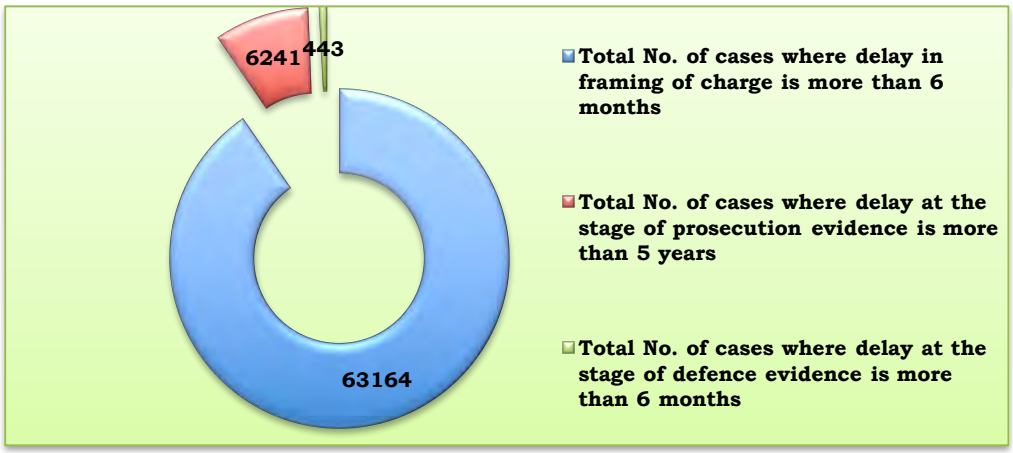
accused, and **2,468 (column no.4 of Table no.4)** cases were at the stage of evidence. Pendency at other stages are considerably less and therefore do not require a close scrutiny.

TABLE NO.5: Time Span stage wise of Magisterial cases

2.7 **Column IV to Column IX of Form 1** is the respective dates for each stage in a criminal case. The analysis made in the below mentioned table has been worked out by finding the time gap between each stage.

Judgeship	Total No. of cases where delay in framing of charge is more than 6 months	Total No. of cases where delay at the stage of prosecution evidence is more than 5 years	Total No. of cases where delay at the stage of defence evidence is more than 6 months
	(VII – V)	(VIII – VII)	(IX – VIII)
(1)	**(2)**	**(3)**	**(4)**
BOKARO	8223	682	67
CHATRA	2705	391	1
DEOGARH	4273	851	33
DHANBAD	8667	800	30
DUMKA	1802	371	3
EAST SINGHBUM	4864	782	65
GARHWA	5441	261	4
GIRIDIH	2468	154	9
GODDA	1428	92	8
GUMLA	1405	68	12
HAZARIBHAGH	5781	792	78
JAMTARA	1203	87	4
KHUNTI	346	14	0
KODERMA	789	32	4
LATEHAR	957	35	0
LOHARDAGA	358	16	0
PAKUR	416	22	1
PALAMU	3416	260	47
RANCHI	6835	440	41

SAHEBGANJ	734	28	15
SARAIKELA KHARASAWAN	208	23	3
SIMDEGA	280	8	6
WEST SINGHBUM	565	32	12
TOTAL	**63164**	**6241**	**443**



2.8 Delay at the stage of commencement of trial has serious consequences not only for the prosecution but also for the accused who may be in custody. The purpose of taking six months as the time line for computing delay at the stage of framing of charge is that pendency beyond this period can certainly be said to be unreasonable and unacceptable delay at this stage. A period of 5 years has been given for prosecution evidence as any delay beyond this period can be said to be inordinate and unacceptable in any case. Normally from the data analysis, it is evident that the cases at the stage of defense evidence is not delayed, hence a six months time line for it.

OBSERVATIONS

2.9 Based on the difference between the dates given under **column VII (Date of framing of charges) and Column V (Date of cognizance) of Form 1**, it has been found that in **63,164 cases**

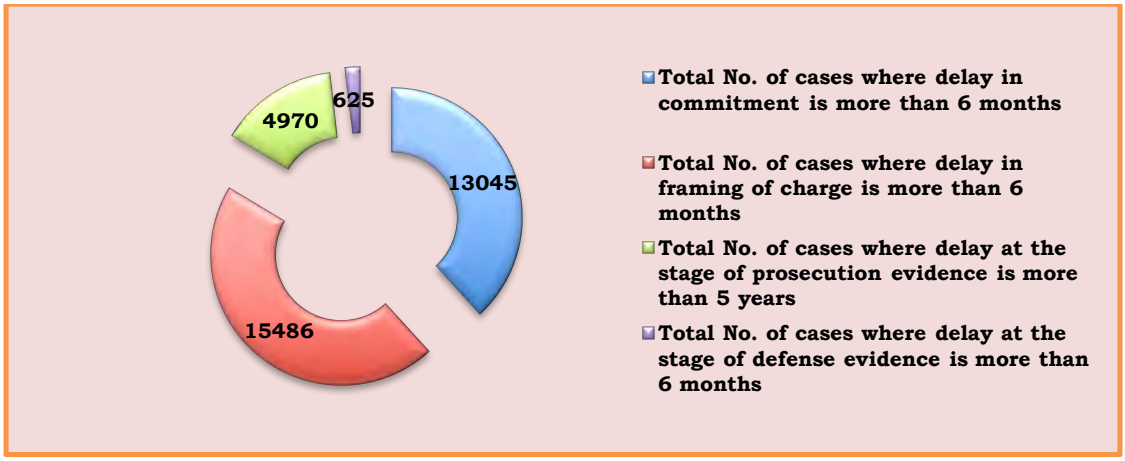
(column no.2 of Table no.5), the framing of charge is delayed for more than six months.

2.10 Based on the difference between the dates given under **column VIII (Date of conclusion of prosecution evidence) and column VII (Date of framing of charges),** it has been found that in **6241 cases (column no. 3 of Table no.5)**, the delay at the stage of prosecution evidence is more than **five years**.

TABLE NO. 6: Time Span stage wise of Sessions Cases

Judgeship	Total No. of cases where delay in commitment is more than 6 months	Total No. of cases where delay in framing of charge is more than 6 months	Total No. of cases where delay at the stage of prosecution evidence is more than 5 years	Total No. of cases where delay at the stage of defense evidence is more than 6 months
	(VI – V)	(VII – VI)	(VIII – VII)	(IX – VIII)
(1)	(2)	(3)	(4)	(5)
BOKARO	626	932	326	35
CHATRA	722	714	472	71
DEOGARH	526	702	235	84
DHANBAD	1498	1982	545	4
DUMKA	262	169	149	0
EAST SINGHBUM (JAMSHEDPUR)	1023	1254	427	87
GARHWA	1252	1086	482	8
GIRIDIH	503	732	256	85
GODDA	739	805	164	78
GUMLA	395	1110	164	0
HAZARIBHAGH	1974	1847	782	89
JAMTARA	77	26	24	3
KHUNTI	250	508	71	3
KODERMA	246	254	123	8
LATEHAR	432	558	86	6

LOHARDAGA	118	165	57	4
PAKUR	217	179	72	8
PALAMU	1055	1247	179	12
RANCHI	348	471	208	5
SAHEBGANJ	314	211	32	18
SARAIKELA KHARASAWAN	98	123	27	7
SIMDEGA	96	157	51	1
WEST SINGHBUM (CHAIBASA)	274	254	38	9
TOTAL	**13045**	**15486**	**4970**	**625**



2.11 After submission of charge sheet and cognizance, the next stage before the court of Magistrate is for supply to the accused of copy of police report and other documents under Section 207, before the commitment of case to the court of Sessions under Section 209 of the Cr.P.C., This is a stage of formal nature therefore a time line of six months has been taken for this stage, and any pendency beyond this can be termed as unreasonable. Similarly delay of cases beyond six months for framing of charge will also come in the area of unacceptable delay. A period of 5 years has been given for prosecution evidence as any delay beyond this period can be said to be inordinate and unacceptable in any case. Normally from the data

analysis it is evident that the cases at the stage of defense evidence is not delayed, hence a six months time line for it.

OBSERVATIONS

2.12 Based on the difference between the dates given under **Column VI (Date of commitment) and Column V (Date of cognizance) of Form 1**, it has been found that in **13045** cases **(column 2 of Table no.6)**, the commitment is delayed for more than six months.

2.13 Based on the difference between the dates given under **Column VII (Date of framing of charges) and Column VI (Date of commitment) of Form 1**, it has been found that in **15486** cases **(column no.3 of Table no.6)**, the framing of charge is delayed for more than six months.

2.14 Based on the difference between the date given under **Column VIII (Date of conclusion of prosecution evidence) and (Date of framing of charges) of Form 1**, it has been found that in **4970** cases **(column no.4 of Table no.6)**, the delay at the stage of prosecution evidence is more than five years.

PRELIMINARY CONCLUSION ON THE ANALYSIS OF FORM I

- **Awaiting appearance of accused and prosecution evidence;**
- **Delay at the stage of framing of charges for more than six months;**
- **Delay at the stage of commitment for more than six months.**

B. STAGE II: FORM 2, 3 AND 4

Form 2: Statistics with respect to all G.R/S.T pending cases in different courts in all 24 Judgeships of State of Jharkhand

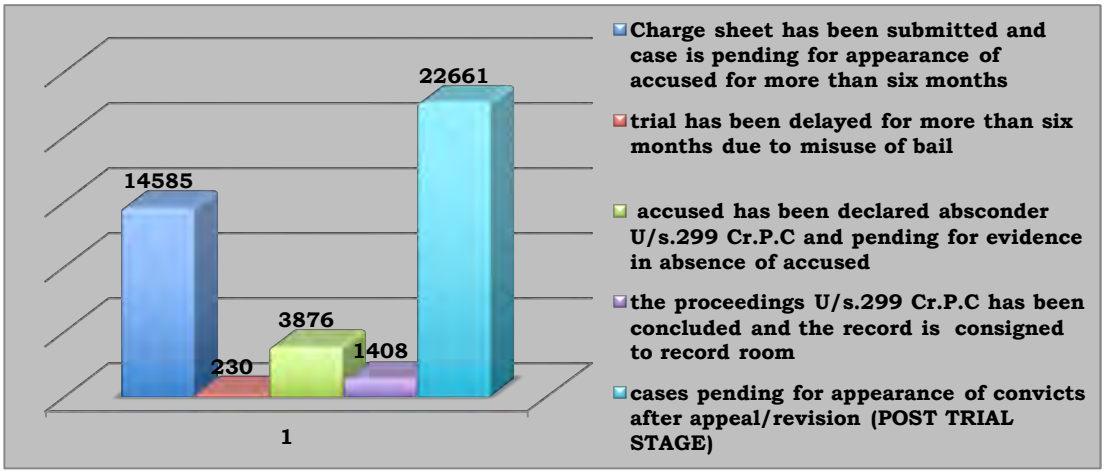
2.15 Taking a cue from the preliminary findings on analysis of FORM 1, it was found that one of the major reasons for delay of criminal cases was non-appearance of the accused. Out of total 130736 cases **(column no.2 of Table no.1, column no.2 of Table no.3)**, 47210 cases **(column no.4 of Table no.3)** i.e., 36% of the total cases were pending for the appearance of the accused. To analyze the delay occasioned due to non-appearance of the accused at a micro level in G.R. Cases/S.T. Cases, FORM 2 has been prepared.

Total No. of pending G.R. cases	Total No. of G.R cases in which Charge sheet has been submitted and case is pending for appearance of accused for more than six months either before or after charge/substance of accusations	Total No. of G.R. cases in which trial has been delayed for more than six months due to misuse of bail	Total No. of G.R cases in which accused has been declared absconder U/s.299 Cr.P.C and pending for evidence in absence of accused	Total No. of G.R cases where the proceedings U/s.299 Cr.P.C has been concluded and the record is consigned to record room	Total No. of G.R cases pending for appearance of convicts after appeal/revision
I	II	III	IV	V	VI

TABLE NO.7: Analysis of FORM 2

Name of the Judgeship	Total No. of G.R. Cases Pending	Charge sheet has been submitted and case is pending for appearance of accused for more than six months	Trial has been delayed for more than six months due to misuse of bail	Accused has been declared absconder U/s.299 Cr.P.C and pending for evidence in absence of accused	the proceedings U/s.299 Cr.P.C has been concluded and the record is consigned to record room	cases pending for appearance of convicts after appeal/revision (POST TRIAL STAGE)
(1)	(2)	(3)	(4)	(5)	(6)	(7)
BOKARO	10069	2151	1171	54	356	18
CHATRA	3359	1245	115	5	5	2

DEOGARH	8039	1138	519	5	348	23
DHANBAD	15434	3877	920	21	359	26
DUMKA	3971	397	160	0	13	0
EAST SINGHBUM	12503	4537	927	22	209	20
GARHWA	9652	2244	179	10	0	4
GIRIDIH	8141	2107	418	9	195	9
GODDA	5514	2003	626	3	677	
GUMLA	4190	1161	147	6	665	13
HAZARIBHAGH	11312	4563	962	4	120	7
JAMTARA	2595	220	64	2	16	4
KHUNTI	611	28	17	0	0	0
KODERMA	3450	1116	161	1	61	8
LATEHAR	2755	555	258	8	424	12
LOHARDAGA	1633	231	124	4	252	14
PAKUR	2387	942	1321	11	11	7
PALAMU	6983	1686	568	18	306	53
RANCHI	8708	1959	538	25	301	96
SAHEBGANJ	2453	398	87	2	185	7
SARAIKELA KHARASAWAN	1255	434	29	54	398	5
SIMDEGA	1137	86	13	10	0	2
WEST SINGHBUM	4585	967	1676	24	96	81
TOTAL	**130736**	**34045**	**11000**	**298**	**4997**	**411**



OBSERVATIONS

2.16 It was necessary to understand the magnitude of delay occasioned by non-appearance of the accused. To that end column II of Form 2 has been designed to get the figures of pending case for more than six months before or after charge or substance of accusation. The object was to exclude such cases which were pending for a short period for the appearance of the accused. The inputs received from the criminal courts in State of Jharkhand, shows **34045** cases **(column 3 of Table no.7)** out of **130736 police cases (column 2 of Table no.7)** were pending for appearance of accused for more than **six months,** where charge sheet had been submitted. It thus shows that more than **26% of cases** in the criminal courts were delayed for more than six months on account of non-appearance of the accused.

2.17 **Column III of Form 2** has been designed for the figures of the delay for a period more than six months for non-appearance due to misuse of bail. The figures that have been furnished by the courts show a rampant misuse of bail. **11000 cases (column no.4 of Table no.7)** out of **130736 police cases (column 2 of Table no.7)** were pending for appearance of accused for more than six months who after grant of bail did not appear in the court.

2.18 **Column IV and V** have been designed to get the figures of such cases where the proceeding u/s 299 has been drawn and was pending for evidence and also such figures where after recording of the evidence u/s 299, the records have been consigned to the record room.

2.19 The consignment of cases to record room after recording of evidence under section 299 Cr.P.C indicates the closure of the case, but it does not indicate the dispensation of justice in that particular

case. Although **34045 cases (column no.3 of Table no.7)** were pending for the appearance of the accused, but only in **298 cases (column no.5 of Table no.7)** proceeding u/s 299 has been drawn. This is a huge gap and one of the practical reasons that have come up in questionnaire is that the execution reports are not being received from the police. Unless the processes are exhausted against the accused, they cannot be declared as an absconder or habitual offender as the case may be. U/s 82 Cr.P.C, **4997 cases (column 6 of Table no.7)** are such cases where after recording the prosecution evidence u/s 299, the case records have been deposited in the record room. It means that in these cases by avoiding appearance, the accused were successful in avoiding trial for the offence.

2.20 **Column VI of Form 2** do not exactly relate to the stage of trial as it is with regards to the figures where the cases were pending for execution of conviction warrant after the case attained its finality in trial and appeal. This column has only been added to understand the magnitude of the problem of absconding. As per the figures furnished by the trial courts, there were 411 **(column 7 of Table no.7)** such cases, which were pending for the appearance/execution of processes issues against convicts after the trial/appeal/revision attained its finality. It only reflects that the entire process of trial and appeal was ultimately frustrated in these cases, as the sentence imposed could not be served because of absconding of the convict.

FORM 3: STATISTICS WITH RESPECT TO ALL PENDING COMPLAINT CASES

2.21 A complete and comprehensive understanding of the delays in criminal trial could not have been complete without an analysis of the trends and figures of the complaint cases particularly when in the State of Jharkhand **55025 complaint cases (column no.2 of Table no.8)** were pending.

2.22 As discussed above, the certain preliminary findings were recorded on the basis of analysis of Form 1 and to verify those findings, Form 3 was designed exclusively for complaint cases.

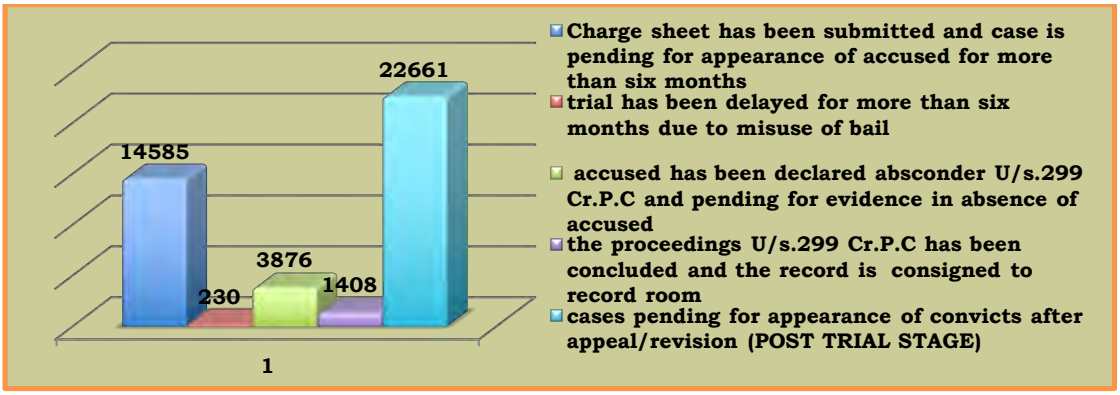
Total No. of complaint cases pending	Total No. of complaint cases pending for the appearance of accused for more than six months after issuance of summoning order	Total No. of complaint cases in which accused has been declared absconder, the procedure U/s.299 Cr.P.C has been drawn and the case is posted for evidence in absence of accused	Total No. of complaint cases in which trial has been delayed for more than six months due to misuse of bail	Total No. of complaint cases where the proceedings U/s. 299 Cr.P.C., has been concluded after recording of evidence and consigned to record room	Total No. of complaint cases pending for appearance of convicts after appeal/revision	Total No. of complaint cases in which the trial has been delayed for more than one year
I	II	III	IV	V	VI	VII

2.23 A quick look of the pendency figures given below will show that the problem of delay at different stages due to non-appearance of the accused was even more acute in complaint cases.

TABLE NO.8: Statistical Data of the analysis of Form 3 for complaint cases:

Name of the Judgeship	Total No. of Comp. Cases Pending	No. of cases pending for the appearance of accused for more than six months after issuance of summoning order	cases in which accused has been declared absconder, the proceeding u/s.299 Cr.P.C has been drawn and the case is posted for evidence in absence of accused	cases in which trial has been delayed for more than six months due to misuse of bail	cases where the proceedings U/s. 299 Cr.P.C., has been concluded after recording of evidence and consigned to record room	cases in which the trial has been delayed for more than one year	cases pending for appearance of convicts after appeal/revision (POST TRIAL STAGE)
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
BOKARO	3807	674	7	332	129	699	9
CHATRA	9889	33	0	8	0	104	0
DEOGARH	7122	383	0	170	53	1321	9
DHANBAD	2030	2550	23	1319	335	4586	19
DUMKA	2044	171	0	96	7	587	88

EAST SINGHBUM	927	180	0	12	71	233	0
GARHWA	3815	452	0	47	0	807	2
GIRIDIH	2243	1324	0	167	20	864	0
GODDA	53	693	91	111	223	676	0
GUMLA	3763	82	0	19	99	187	0
HAZARIBHAGH	1649	1317	39	327	55	1500	105
JAMTARA	3420	20	1	35	6	379	0
KHUNTI	1984	5	0	0	0	0	0
KODERMA	7176	472	0	70	13	932	2
LATEHAR	2423	316	0	93	84	663	1
LOHARDAGA	392	96	6	19	27	79	2
PAKUR	400	70	0	0	21	132	0
PALAMU	138	788	12	165	79	1212	13
RANCHI	28	2316	33	376	82	2210	57
SAHEBGANJ	641	204	4	188	64	1236	6
SARAIKELA KHARASAWAN	238	102	7	6	6	127	0
SIMDEGA	648	10	0	0	0	18	0
WEST SINGHBUM	195	2327	7	316	34	4109	33
TOTAL	**55025**	**14585**	**230**	**3876**	**1408**	**22661**	**346**



OBSERVATIONS

2.24 **Column II of Form 3** is provided to know the figures relating to the complaint cases pending for the appearance of accused for more than **six months** after issuance of summoning order. Out of 55025 **(Column no.2 of Table no.8)** complaint cases pending in the State of Jharkhand, **14585 (Column no.3 of Table No.8)** were such cases,

which were pending for appearance of accused for more than six months after issuance of summoning order, which is above **26%** of the total figure. This shows that **26%** of the complaint cases have been delayed due to non-appearance even before commencement of trial.

2.25 **Column III of Form 3** has been designed to get the figures of such complaint cases where the proceeding u/s 299 has been drawn. Although 14585 **(Column no.3 of Table No.8)** complaint cases are pending for the appearance of the accused, but only in 230 **(Column no. 4 of Table no.8)** complaint cases proceeding u/s 299 has been drawn. This is a huge gap and one of the practical reasons that have come up in questionnaire is that the execution reports are not being received from the police. Unless the processes are exhausted against the accused, they cannot be declared as an absconder or habitual offender as the case may be. These statistics in a way support the practical difficulty stated by the judges in drawing a proceeding u/s 299 Cr.P.C.

2.26 **Column IV of Form 3** has been designed to get the figures of non-appearance on account of misuse of bail for more than six months. The figures that have been furnished by the courts shows **3876 (column no.5 of Table no.8) complaint cases** out of 55025 **(column no. 2 of Table no.8)** where trial has been delayed for more than six months on account of misuse of bail. This shows a high incidence of misuse of bail.

2.27 **Column V of Form 3** is designed to get statistics relating to complaint cases pending for evidence and also such figures where after recording of the evidence u/s 299, the records have been consigned to the record room. The consignment of cases to record room indicates the closure of the case, but it does not indicate the dispensation of justice in that particular case. **1408 complaint cases**

(column no. 6 of Table no.8) are such cases where after recording the prosecution evidence u/s 299, the case record have been deposited in the record room. It means that in these cases by avoiding appearance, the accused were successful in avoiding trial for the offence.

2.28 **Column VI of Form 3** does not exactly relates to the stage of trial as it is with regards to the figures where the complaint cases were pending for execution of conviction warrant after the case attained its finality in trial and appeal. This column has been added to understand the magnitude of the problem of abscondance in post-trial stage. As per the figures furnished by the trial courts, there were **346** such complaint cases **(column no. 8 of Table no.8),** which were pending for the appearance/execution of processes issues against convicts after the trial/appeal/revision attained its finality. It only reflects that the entire process of trial and appeal was ultimately frustrated, as the sentence imposed could not be served because of abscondance of the convict.

2.29 Out of the total pending complaint cases of 55025 **(column no. 2 of Table no.8)**, as stated above **14585 (column no. 3 of Table no.8)** are such cases where cases are pending for the appearance of the accused after issuance of process u/s 204 Cr.P.C. **1408 (column no. 6 of Table no.8)** cases are pending for the appearance of accused after grant of bail and subsequent of non-appearance by misuse of it. Therefore, the total number of cases which have suffered delay on account of non-appearance of the accused at different stages is **14585 (column no.3 of Table no.8)+1408 (column no.6 of Table no.8) = 15993,** which is **29%** of the total pending complaint cases.

Form 4: Statistics with respect to delay in institution and investigation of police cases

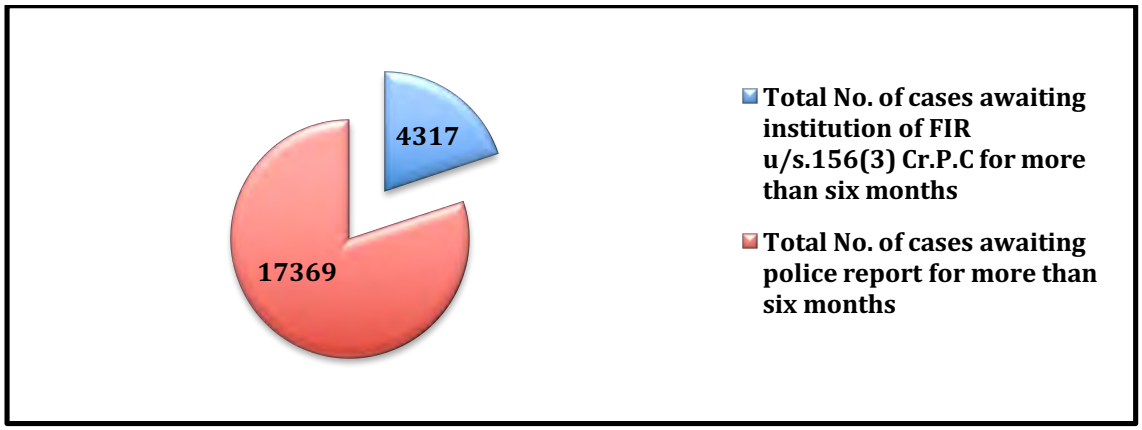
2.30 Form 4 deals with the pre-trial stage of a case. The column I of this form has been designed to get the figure of such complaints which were forwarded u/s 156(3) Cr.P.C by the court for institution of FIR. The column II of Form 4 is relating to the figure of cases awaiting police report after conclusion of the investigation for more than six months.

No. of cases awaiting institution of FIR u/s.156(3) Cr.P.C for more than six months	**No. of cases awaiting police report for more than six months**
I	II

TABLE NO.9: ANALYSIS OF FORM 4

Name of the Judgeship	Total No. of cases awaiting institution of FIR u/s.156(3) Cr.P.C for more than six months	Total No. of cases awaiting police report for more than six months
(1)	**(2)**	**(3)**
BOKARO	214	1291
CHATRA	29	132
DEOGARH	162	840
DHANBAD	296	2877
DUMKA	8	407
EAST SINGHBHUM	353	628
GARHWA	634	1072
GIRIDIH	385	2270
GODDA	252	495
GUMLA	136	661
HAZARIBHAGH	751	2338
JAMTARA	6	480
KHUNTI	1	2
KODERMA	329	676

LATEHAR	33	115
LOHARDAGA	5	11
PAKUR	-	-
PALAMU	153	75
RANCHI	247	844
SAHEBGANJ	315	1024
SARAIKELA KHARASAWAN	1	541
SIMDEGA	-	7
WEST SINGHBHUM	7	583
GRAND TOTAL	**4317**	**17369**



OBSERVATIONS

2.31 According to the inputs received under **column I of form 4**, it is found that **4317 cases (column 2 of Table no.9)** are pending for institution of FIR u/s 156(3) Cr.P.C for more than six months.

2.32 The inputs received from different criminal courts in State of Jharkhand, **17369 cases (column 3 of Table no.9)** have been found to be awaiting police report for more than six months. There is no time frame as such for completing investigation of any case. Sec.167(3) and Sec.468 Cr.P.C lays down the consequences of investigation being not concluded within a fixed span of time. But any time cap for completing investigation has not been laid down in the

Cr.P.C. So where the accused is on bail, police can sit indefinitely on the investigation without completing it. The large figures reflect this state of affair. Hon'ble Patna High Court wide letter No.952-79, Dated 27.01.1983 (at enclosure) issued direction for closing such cases which had become time-barred by limitation u/s 468 Cr.P.C and were pending for submission of police report. Following this letter, a large number of cases were closed and their numbers do not figure here where the cases had to be closed because the investigation was not concluded within the period of limitation. This goes to show that the figure **17369 (column 3 of Table no.9)** is only the proverbial tip of ice berg as it does not show those cases which have already been closed for delay in conclusion of investigation.

PRELIMINARY CONCLUSION ON THE ANALYSIS OF FORM 2, 3 and 4

- **Charge sheet has been submitted and case is pending for appearance of accused for more than six months**
- **Trial has been delayed for more than six months due to misuse of bail**
- **Accused has been declared absconder U/s.299 Cr.P.C and pending for evidence in absence of accused**
- **Awaiting police report for more than six months**

C. STAGE III: SAMPLE STUDY OF LIFE CYCLE OF PENDING AND DISPOSED OF CASES ON PHYSICAL VERIFICATION OF RECORDS

OBJECTIVE

2.33 Apart from study of delay on the basis of inputs received from the Presiding Officer of different criminal courts, it was felt necessary that the research team accompanied by law students should personally visit the civil courts and study the criminal court records on random basis to understand the phenomena of delay. In order to focus on the life cycle of cases, a form was designed keeping in mind the different stages in the life of the criminal case.

LIFE CYCLE FORM CONTAINED THE FOLLOWING COLUMNS TO BE FILLED

- **Date of FIR:**
- **Date of Charge Sheet**:
  Reasons for delay
  - Investigation
  - Want of sanction order
  - Want of expert's report
  - Arrest of accused
- **Date of Cognizance:**
- **Date of Charge/Explanation of Accused:**
  Reasons for delay
  - Want of expert's report
  - Want of sanction for prosecution
  - Appearance of accused
  - Stay by the High Courts
- **Time taken for prosecution evidence:**
  Reasons for delay
  - Non-appearance of material witness

- Non-appearance of Doctor/Expert
- Non-appearance of accused/all
- Non-appearance of IO

- **Time taken for statement recording u/s 313 Cr.P.C:**

  Reasons for delay
  - Non-appearance of accused physically
  - Due to large number of documents
  - Due to large number of accused persons
- **Time taken for Defense evidence:**

  Reasons for delay
  - Non-appearance of defense witnesses
  - Delay by prosecution
  - Delay by defense
  - Lying in vacant court
- **Time taken for submission of arguments from first date to last date:**

  Reasons for delay
  - Delay by prosecution
  - Delay by defense
- **Date of Judgment:**
  - Reasons if any

SAMPLE SIZE:

- 50 cases (pending) & 50 cases (disposed of) in Judgeships where the total no. of G.R. cases pending were below 5,000 in number.
- 100 cases (pending) & 100 cases (disposed of) in Judgeships where the total no. of G.R. cases pending were above 5,000 in number.

METHOD OF IDENTIFICATION OF SAMPLE SIZE:

- Random sampling method is applied with a limitation that the

average life span of the case should be above five years.

METHOD OF COLLECTION OF DATA:

- Physical verification of case records of each case by visiting the all 24 judgeships of State of Jharkhand

FORM FOR COLLECTION OF DATA: LIFE CYCLE OF PENDING AND DISPOSED OFF CASES

SL. No.		**G.R.Case No.**		**Provisions:**
		P.S.Case No.		
Judgeship:				**Category: Sessions Trial**
DATE OF FIR:		**DATE OF CHARGE SHEET:_____ (Specify the time gap between FIR & filing of Charge Sheet in Count)**		
Reasons for Delay if any:		**(√)**	**Remarks**	
1. Investigation				
2. Want of sanction order				
3. Want of expert's report etc.,				
4. Arrest of accused				
5. Any other				
DATE OF COMMITMENT			**DATE OF CHARGE/EXPLANATION OF ACCUSED**	
Reasons for Delay if any:		**(√)**	**Remarks**	
1. Want of expert's report				
2. Want of Sanction for prosecution				
3. Appearance of accused				
4. Stay by the Higher Courts				
5. Any other				
TIME TAKEN FOR PROSECUTION EVIDENCE: (Specify in count)				
Reasons for Delay if any:		**(√)**	**Remarks**	
1. Non-appearance of material witness				
2. Non-appearance of Doctor/Expert				
3. Non-appearance of accused/all				
4.Non-appearance of IO				

5. Any other		
TIME TAKEN FOR STATEMENT RECORDING U/s.313 Cr.P.C _____ (Specify in count)		
Reasons for Delay if any:	**(√)**	**Remarks**
1. Non-appearance of accused physically		
2. Due to large number of documents		
3. Due to large number of accused persons		
5. Any other		
TIME TAKEN FOR DEFENSE EVIDENCE: _____ (Specify in count)		
Reasons for Delay if any:	**(√)**	**Remarks**
1. Non-appearance of defense witnesses		
2. Delay by prosecution		
3. Delay by defense		
4. Lying in vacant court		
5. Any other		
TIME TAKEN FOR SUBMISSIION OF ARGUMENTS FROM FIRST DATE TO LAST DATE _____		
Reasons for Delay if any:	**(√)**	**Remarks**
1. Delay by prosecution		
2. Delay by defense		
3. any other reasons		
DATE OF JUDGEMENT:		
Reasons for Delay if any:	**(√)**	**Remarks**
FINAL REMARKS:		

2.34 The random sample study method has by its very nature some limitations because it can only give a trend, which may corroborate or contradict the empirical findings of the inputs received directly from the Presiding officers of courts concerned. The findings recorded by this method concur and corroborate the major preliminary findings recorded on empirical analysis as given at para 2.15 and para 2.34.

TABLE NO.10: ANALYSIS OF LIFE CYCLE FORMS: PENDING CASES

Judgeship	sample size	REASONS FOR DELAY																				
		FIR – Chargesheet				Cognizance – Charge				Prosecution Evidence				Recording of Statement U/s.313 Cr.P.C			Defense evidence				Submission of Arguments		Judgment
		Investigation	Want of sanction order	Want of expert's report etc.,	Arrest of accused	Want of expert's report	Want of Sanction for prosecution	Appearance of accused	Stay by the Higher Courts	Non-appearance of material witness	Non-appearance of Doctor/Expert	Non-appearance of accused/all	Non-appearance of IO	Non-appearance of accused physically	Due to large no. of documents	Due to large number of accused persons	Non-appearance of defense witness	Delay by Prosecution	Delay by defense	Lying in vacant court	Delay by prosecution	Delay by defense	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
Bokaro	100	64	0	0	10	1	0	56	2	56	2	62	0	3	1	2	0	0	2	0	0	4	0
Chatra	100	69	1	3	54	1	2	78	7	30	14	23	14	5	0	0	0	0	0	0	0	0	0
Deogarh	100	42	3	3	15	5	9	54	4	47	5	41	0	0	0	0	0	0	0	0	0	4	0
Dhanbad	100	68	0	0	10	1	0	63	4	62	2	72	0	3	1	2	0	0	2	0	0	4	0
Dumka	50	35	0	0	10	0	0	42	1	28	1	43	0	0	1	0	0	0	0	0	0	2	0
East	100	68	3	3	13	3	3	47	3	51	5	72	3	3	5	3	3	3	3	3	3	8	3
Garwah	100	59	1	0	72	0	1	68	2	69	29	57	39	0	0	0	0	0	0	0	0	0	0
Giridih	50	30	2	1	13	4	3	28	3	30	4	29	2	1	1	1	1	1	1	1	1	4	0
Godda	100	55	11	1	12	1	4	43	4	60	4	52	2	0	0	0	0	0	0	0	0	4	0
Gumla	50	31	0	0	21	0	0	46	1	26	0	32	0	6	0	0	0	0	0	0	0	1	0
Hazaribhagh	50	27	0	0	17	1	0	35	2	35	1	25	0	0	0	0	0	0	0	0	0	3	0
Jamtara	50	28	1	3	14	3	2	31	1	30	1	30	0	0	0	0	0	0	0	0	0	3	0
Khunti	50	29	0	0	10	1	0	31	0	23	0	33	0	1	1	0	0	0	0	0	0	2	0
Koderma	50	21	3	8	14	4	3	30	3	31	2	29	1	1	1	1	1	1	1	1	1	4	0
Latehar	50	29	0	0	36	0	0	43	1	41	38	42	36	3	0	8	7	0	0	0	0	0	0
Lohardaga	50	35	0	0	10	0	0	42	1	28	1	43	0	0	1	0	0	0	0	0	0	2	0
Pakur	50	25	1	1	15	4	3	30	0	28	2	31	0	0	0	0	0	0	0	0	0	3	0
Palamua	100	76	0	0	72	0	0	72	1	58	20	64	53	4	0	0	0	0	0	0	0	3	1
Ramgarh	50	27	0	2	13	4	1	29	1	34	1	22	0	0	0	0	0	0	0	0	0	3	0
Ranchi	100	47	3	1	12	6	3	44	4	55	3	53	2	0	0	0	0	0	0	0	0	4	0
Sahebganj	50	26	0	0	20	0	0	28	3	29	0	30	0	2	0	1	0	0	2	0	0	3	0
Saraikela	50	28	0	0	15	4	0	29	3	28	1	31	1	0	0	0	0	0	0	0	0	3	0

Simdega	50	25	1	2	46	2	0	43	1	39	18	44	20	29	0	0	3	2	3	1	1	0	2
West	50	23	1	2	14	1	30	1	22	1	31	0	5	0	0	0	0	0	0	0	3	3	0
Total	1650	967	31	30	538	46	64	1013	74	919	185	960	178	61	12	18	15	7	14	6	9	67	6

DELAY ON ACCOUNT OF NON-APPEARANCE OF ACCUSED PERSONS: PENDING CASES

2.35 A close look at the figures projected at the table above will show that on random basis, the research team on physical verification of record found that delay had occurred at the stage of investigation in **967 pending cases (column 3 of Table no.10)** out of the total state-wise sample of **1650 (column 3 of Table no.10)** At the stage of framing of charge, the team found that **1013 cases (column 9 of Table no.10)** had been delayed during their life cycle for appearance of accused. At the stage of prosecution evidence, the research team has attributed the delay on account of non-appearance of accused to be **960 (column 13 of Table no.10)** and the delay suffered due to non-appearance of material witnesses to be **919 (column 11 of Table no.10)**.

2.36 The above analysis independently corroborate the findings recorded on analysis of Form 1, 2 and 3 (as specified in para 2.15 and 2.34) i.e, the major reasons for delay as: non-appearance of the accused and delay at the stage of prosecution evidence.

TABLE NO.11 ANALYSIS OF LIFE CYCLE FORMS: DISPOSED OF CASES

Judgehip		REASONS FOR DELAY																					
		FIR – Chargesheet				Cognizance - Charge				Prosecution Evidence				Recording of Statement U/s.313 Cr.P.C			Defense evidence				Arguments from		Judgment
	Sample size	Investigation	Want of sanction order	Want of expert's report etc.,	Arrest of accused	Want of expert's report	Want of Sanction for prosecution	Appearance of accused	Stay by the Higher Courts	Non-appearance of material witness	Non-appearance of Doctor/Expert	Non-appearance of accused/all	Non-appearance of IO	Non-appearance of accused physically	Due to large no. of documents	Due to large number of accused persons	Non-appearance of defense witness	Delay by Prosecution	Delay by defense	Lying in vacant court	Delay by prosecution	Delay by defense	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)
Bokaro	100	64	4	5	54	14	3	65	8	70	14	35	46	10	5	18	5	0	40	2	2	39	0
Chatra	100	49	0	3	78	3	0	54	2	40	17	59	69	30	0	2	16	0	0	17	0	5	0
Deogarh	100	42	3	15	58	5	3	54	4	47	5	41	9	15	5	5	18	2	35	5	0	15	1
Dhanbad	100	70	2	2	68	12	2	59	6	70	10	45	38	14	20	14	13	2	50	4	10	28	3
Dumka	50	35	0	10	40	5	0	42	1	35	5	43	8	5	1	8	25	0	26	5	0	2	0
East Singhbhum	100	56	6	16	54	4	4	50	7	73	5	56	11	45	10	19	20	1	40	2	16	45	3
Garwah	100	65	0	0	69	2	0	62	2	60	29	71	39	59	0	2	57	1	15	18	0	17	1
Giridih	50	35	2	1	28	4	1	45	1	40	19	28	10	32	1	20	5	1	20	4	4	25	1
Godda	100	69	3	13	69	9	4	63	4	60	8	78	20	28	0	6	38	0	55	1	0	4	5
Gumla	50	38	1	1	79	15	2	51	3	39	18	42	9	32	8	23	29	1	45	8	2	15	7
Hazaribagh	50	25	2	2	28	5	0	40	2	35	15	25	5	25	2	30	10	0	15	5	5	35	0
Jamtara	50	28	1	3	25	6	0	31	1	40	8	30	5	8	1	15	14	0	20	5	1	20	2
Khunti	50	29	0	0	40	1	0	45	0	48	30	33	10	34	5	5	5	2	38	4	5	15	3
Koderma	50	28	1	2	30	8	1	30	3	37	18	29	8	28	3	15	8	0	18	11	4	30	2
Latehar	50	29	0	0	36	0	0	43	1	41	38	42	36	29	0	23	27	2	13	3	0	11	0
Lohardaga	50	35	2	4	50	5	0	42	1	38	12	40	15	15	1	25	2	2	29	5	2	8	1
Pakur	50	25	1	6	35	4	3	30	0	45	9	31	15	6	0	12	14	0	35	2	0	3	0
Palamu	100	68	0	2	76	1	0	64	3	63	30	75	40	55	0	29	28	0	12	2	0	20	1
Ramgar	50	40	0	12	36	4	1	29	1	34	8	22	5	5	0	18	0	0	1	4	0	3	0
Ranchi	100	47	3	1	48	6	3	54	4	55	3	53	18	5	13	4	12	5	18	0	5	28	0
Sahebganj	50	35	2	8	30	5	5	30	2	34	6	38	16	31	2	14	27	1	5	16	27	1	2
Saraikel	50	28	1	1	25	5	5	25	4	48	12	39	5	32	7	22	30	1	1	10	10	25	3
Simdega	50	20	1	2	44	2	0	45	1	38	18	43	20	29	0	0	3	2	3	1	1	10	2
West Singhb	50	23	1	4	40	3	1	45	1	45	19	37	6	25	1	2	5	0	5	6	4	16	4

hum																							
Total	1650	983	36	113	1140	128	38	1098	62	1135	356	1035	463	597	85	331	411	23	539	140	98	420	41

DELAY ON ACCOUNT OF NON-APPEARANCE OF ACCUSED PERSONS: DISPOSED OF CASES

2.37 A close look at the figures projected at the table above will show that on random basis, the research team on physical verification of record found that delay had occurred at the stage of investigation in 258 disposed of cases out of the total state-wise sample of **1650 (column 2 of Table no.11)**. At the stage of framing of charge, the team found that **1098 cases (column 9 of Table no.11)** had been delayed during their life cycle for appearance of accused. At the stage of prosecution evidence, the research team has attributed the delay on account of non-appearance of accused to be **1035 (column 13 of Table no.11)** and the delay suffered due to non-appearance of material witnesses to be **1135 (column 11 of Table no.11).**

2.38 In the life cycle form, **column no. 15, 16 and 17 of Table no.11** have been incorporated to know whether there had been any delay at the stage of recording of statement u/s 313 Cr.P.C. The research team found that out of 1650 disposed of cases, **1,013 cases (column nos. 15+16+17 of Table no.11)** were delayed at the stage of recording of statement u/s 313 on account of different reasons including non-appearance of accused.

2.39 The above analysis independently corroborate the findings recorded on analysis of Form 1, 2 and 3 (as specified in para 2.15 and 2.34) i.e, the major reasons for delay as: non-appearance of the accused and delay at the stage of prosecution evidence.

PRELIMINARY CONCLUSION ON THE ANALYSIS OF SAMPLE STUDY OF LIFE CYCLE OF PENDING AND DISPOSED OF CASES:

- **Delay at the stage of investigation**
- **Awaiting appearance of the accused at the stage of Charge and at the stage of examination of prosecution evidence**
- **Delay in production of prosecution evidence**

D. STAGE IV: QUESTIONNAIRES

2.40 The major findings recorded at Stage I, II and III by the research team and from inputs of the judicial officers, on statistical analysis of pending cases and physical verification of records of pending and disposed of cases, raised some basic questions. The two main causes, which emerged from the preceding analysis, are as follows:

- Non-appearance of the accused at different stages of investigation, enquiry and trial.
- Inordinate long time taken by the prosecution to adduce its evidence.

2.41 Both these issues threw up a host of fundamental questions, which the functionaries intimately associated with it, were under an obligation to answer. For instance,

1. Why the police failed to secure the appearance of the accused?
2. Why the provision of bail-bond and sureties had failed to ensure the attendance after accused was enlarged on bail?
3. What were the practical difficulties in drawing a proceeding u/s 299 Cr.P.C., and how far it had been affected?
4. How far the amended provision of Sec.174A and 229A of IPC proved to be a deterrent to the absconding accused?
5. Who after all was accountable for producing witnesses in the court or it was nobody's baby after the submission of charge sheet?
6. Whether the delay at the stage of prosecution evidence was the result of structural defects in prosecution system?
7. Whether no single agency of the State has been vested with the responsibility of investigation of crime by properly collecting evidence and prosecuting the accused by production of evidence before the court?

These basic questions were addressed to the functionaries mentioned above in the form of questionnaires.

- **Distribution of questionnaires (containing open-ended and close-ended questions) to:**
  - A. The Sessions and Additional Sessions Judges working as presiding officers of different courts and other judicial officers with minimum of ten years working experience
  - B. The Public Prosecutors including Additional Public Prosecutors and Assistant Public Prosecutors having a minimum of ten years working experience
  - C. The Deputy Commissioners in all 24 districts of State of Jharkhand
  - D. The Superintendents of Police in all 24 districts of State of Jharkhand
  - E. The accused/convicts
  - F. The witnesses

2.42 The questionnaires have been responded by **181** number of Presiding Officers of different criminal courts, all the **24** Superintendents of Police also submitted the questionnaires duly filled up and **41** responses from Prosecuting Officers were received. What was distressing was that despite reminders through proper channel only **8 out 24** Deputy Commissioners responded to the questionnaire? Being the head of Prosecution in the District, it was expected from the Deputy Commissioners that a lead would be taken to participate in the research and throw light on problems afflicting the prosecution agencies, on the contrary, not even the questionnaires were not responded, which reflects their apathy to criminal justice system.

QUESTION NO: 1

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending for the 'appearance of the accused'. What in your opinion can be the reason for intermittent non-appearance of the accused persons? (close-ended as well as open-ended question)

Note: This question was directed to the Judicial Officers, Superintendents of Police, Deputy Commissioner and Public Prosecutors.

RESPONSE:

Functionary	Total responses	Deliberate non-appearance by the accused to evade trial	Ignorance about the pending case
Judicial Officers	181	154	77
Superintendents of Police	24	20	7
Deputy Commissioners	8	7	6
Public Prosecutors	41	35	7
Total	**254**	**216**	**97**

Out of the total 254 responses received from different functionaries, 216 were of the view that non-appearance of the accused was deliberate and 97 were of the view that it was due to ignorance. It may be pointed out at this juncture that in some of the above responses, both of the above reasons were marked for non-appearance.

OTHER REASONS AS SPECIFIED:

1. Non-execution of warrant by police due to non-availability of residential address of the accused, inaction of police in serving the summons;
2. Misuse of bail;
3. Lack of stipulated time frame for conclusion of criminal trial;
4. Lack of technological and scientific methods in recording the details of the accused etc.,
5. It is also highlighted that non-execution of processes by the prosecuting agency effectively (Letter No.06/law-03/2014-1364 Dt.07/03/2014 of Home Dept., issued by Principal Secretary, Govt., of Jharkhand is not being followed etc.,)
6. The migration of accused belonging low income group to other States for livelihood, illiteracy;
7. Lack of information about the court process;

QUESTION NO: 2

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases have been delayed for misuse of bail. What in your opinion can be the reason for misuse of bail? (Open-ended question)

Note: This question was not relevant for Superintendent of Police and Deputy Commissioners; therefore it was not targeted to them.

RESPONSE:

JUDICIAL OFFICERS:

The majority of the Presiding Officers opined that:

1. The intention to evade trial is the main reason for misuse of bail;
2. The inordinate delay in disposal of cases;
3. Lack of time frame for criminal trial;

4. Non-execution of court processes, long and protracted trial due to non-appearance of witnesses;
5. The use of professional bailors by the counsels; fake sureties; lack of effective verification process of sureties; lenient approach of the trial courts in forfeiting the amount of bail-bond; non-resort to the provisions contained u/s 446 Cr.P.C for taking legal recourse against the sureties in most of the cases has been highlighted as some other important reasons for misuse of bail.

PUBLIC PROSECUTORS:

The major reasons for misuse of bail are provided as:

1. To delay the initiation of trial intentionally by deliberate non-appearance;
2. To tamper with evidences and influence the witnesses;
3. Lack of effective punitive measures for misuse of bail; lack of fear about cancellation of bail-bond due to the meager value of bail-bonds; use of fake property documents; lack of effective mechanism to check the validity of the property documents used in bail-bonds.

QUESTION NO.3

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of complaint cases are pending in magisterial court in which the trial has been delayed for more than one year. Specify the reasons? (open-ended question)

Note: This question was directed only to the Judicial Officers.

RESPONSE:

JUDICIAL OFFICERS:

Reason for delay of trial for more than one year in complaint cases has been attributed to:

1. Lack of time frame for production and examination of witnesses by the complainant, non-production of witnesses by the complainant;
2. Non-appearance of accused;
3. False complaint cases;
4. Revision against order of cognizance and framing of charge;
5. Non-utilization of Sec.246 (4), (5) and (6) of Cr.P.C by trial court, i.e., the trial courts keep on waiting for appearance of those partly cross examined witnesses at the wish of complainant and granting of unnecessary adjournments;
6. Non-utilization of Sec.249 Cr.P.C in cases where the complainant is absent.

QUESTION NO.4

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending in which there is inordinate delay between the institution of FIR and date on which cognizance is taken after submission of charge sheet. Please specify any reason for such delay? (open-ended question)

Note: This question was targeted only to the judicial officers.

RESPONSE:

JUDICIAL OFFICERS:

1. Lack of control of judges over the court staff;
2. Negligence and laxity of Investigating Officer during investigation, Lack of punitive actions against the late submission of charge sheet by Investigating Officer, frequent transfer of Investigating Officers; submission of incomplete charge sheet;

3. Delay due to want of sanction to be obtained from authorities in corruption cases where public servants are involved;
4. Inordinate delay in submission of charge sheet;
5. Lack of time frame for duration of investigation;
6. Non-submission of sanction order under Arms Act and Explosive Substances Act etc., by prosecution in time;
7. It has been pointed out that the grant of bail also delays the investigation, as Investigation Officer is found to be more attentive in completion of investigation when the accused is in custody in view of the provision for statutory bail u/s 167(2).

The above reasons have been highlighted as cause for delay of the case between the institution of FIR and date on which cognizance is taken after submission of charge sheet.

PUBLIC PROSECUTORS:

1. The law is that as soon as the police report is submitted, the cognizance is taken and the delay in taking cognizance after submission of charge sheet is not frequent.
2. At present there is no delay at the stage of cognizance after submission of charge sheet after the decentralization of cognizance taking court. Before decentralization of cognizance, the court of Chief Judicial Magistrate was overburdened therefore there were many instances of delay at the stage of cognizance.
3. Due to lack of sanction

QUESTON NO.5

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a large number of sessions cases are pending in which there is inordinate delay between the date of cognizance and date of

commitment. Please specify any reason for such delay? (open-ended question)

Note: This question was targeted to the Judicial Officers and Public Prosecutors only

RESPONSE:

JUDICIAL OFFICERS:

1. Non-appearance of accused is referred to as the major reason for inordinate delay between the date of cognizance and date of commitment;
2. The non-execution of processes of court issued for securing the attendance of accused persons to comply with the provisions of delay in supply of police paper u/s.207/208 Cr.P.C; (One of the judicial officer has stated that the copy of appropriate number of police papers as per the direction of Hon'ble High court in W.P.(Cr.) No.01 of 2012 and W.P. (PIL-858 of 2009) are not supplied without reminders);
3. Filing of various supplementary charge sheets by police; difficulty in supplying of police paper when accused is on bail; pendency of supplementary investigation against other co-accused persons have been highlighted as other reasons for inordinate delay between the date of cognizance and date of commitment.

PUBLIC PROSECUTORS:

1. Delay due to deliberate non-appearance of accused at the time of commitment;
2. Abnormal delay in supply of police papers;
3. Defense lawyers avoid supply of police papers to delay the court process;
4. Filing of revision petition after taking cognizance

QUESTION NO.6

Whether the date of appearance of the accused before the session's court is provided while passing an order of commitment in your court? (For the court of magistrates) (open-ended question)

Note: This question was targeted to the Judicial Officers only.

RESPONSE:

Functionary	Total responses	Yes	No
Judicial officers	**181**	**123**	**9**

QUESTION NO.7

What is the reason that the provisions of bail-bond and sureties have failed to secure appearance of the accused persons after their enlargement on bail? (close-ended as well as open-ended question)

Note: This question has been directed to the Judicial Officers and Prosecution Officers.

RESPONSE:

Functionary	Total responses	The amount of bail bond is usually low	The identity of the sureties and the papers filed with the bond are not properly verified	Stringent actions are not taken against the fictitious bailers and their identifiers	It is not effective against persons without fixed assets/immovable property
Judicial officers	181	59	76	108	72
Public Prosecutors	41	17	29	31	14
Total	**222**	**76**	**105**	**139**	**86**

OTHER REASONS AS SPECIFIED:

JUDICIAL OFFICERS:

1. The processes issued against bailors are taken casually by executing agency and issuance of distress warrant is not strictly followed;
2. Lack of effective machinery to forfeit the amount of bail bond;
3. Non-compliance of Sec.441-A Cr.P.C (Declaration by Sureties) and Sec.446 Cr.P.C (procedure when bond has been forfeited);
4. Amount of bail bonds are low; lack of machinery to check fictitious bailors.

PUBLIC PROSECUTORS:

1. Lack of action by the court to forfeit the bail bond sureties of bailors;
2. In sessions cases as far as practicable only close relatives having interest in the immovable property be made the bailors;
3. Increasing the securities in terms of cash amount are some of the other reasons specified for failure of bail-bonds and sureties in procuring the appearance of accused.

QUESTON NO.8

In case of non-execution of warrant, what can be the means to secure the appearance of the absconding accused during investigation or trial having no movable/immovable property in his name? (open-ended question)

Note: This question was directed to the judicial officers and Superintendents of Police only

RESPONSE:

The following have been suggested as the various measures to secure the appearance of the absconding accused during investigation or trial having no movable/immovable property in his name:

JUDICIAL OFFICERS:

1. Publication in newspapers and social media; tracking of mobile numbers;
2. Continuous watch over close relatives; proceeding against the bailors;
3. Forfeiture of bail-bond in cases where accused does not appear before the court after granting bail; restricting the bank transactions of accused;
4. Recording of Aadhar card number of the accused;
5. Issuing of permanent warrant of arrest; collection of information about bank account, credit card details, ATM debit card details, e-mail address of the accused;
6. Taking action u/s 174A of IPC and lodge a separate case against accused.

SUPERINTENDENTS OF POLICE:

1. In cases of vagabond accused whose arrest is a very difficulty task, either he shall be denied the bail or trial shall be completed before he is enlarged on bail;
2. Gram Pradhan should be taken into loop in securing the absconding accused;
3. Publication of the photo of accused in newspapers, social media etc., temporary cancellation of ID cards like Aadhar cards, Voter ID cards, driving license etc., is essential to compel him to appear in the court.

PUBLIC PROSECUTORS:

1. Stringent punitive action against bailors (in cases where accused absconded after granting of bail);
2. Lack of action to forfeit the bail-bond or sureties by the court;
3. Imposing mandatory requirement to furnish the photograph of the accused in the charge sheet by the police;
4. Use of social media and newspapers.

QUESTION NO.9

Whether service report of summons and execution report of other processes issued against the absconding accused, is received in the court or not? (open-ended question)

Note: This question was directed to the judicial officers only

RESPONSE:

Functionary	Total responses	Yes	No	Few Times
Judicial Officers	181	16	8	144

As per the response of the Presiding Officers, the service report of summons, execution report of warrant and other processes issued against the absconding accused, is generally not received in the court except in very few cases. Due to peculiar situation prevailing in State of Jharkhand, particularly in more than twenty districts, the rural background and control of left wing extremist group, affected the civil administration. Police have been referred to be helpless despite the presence of armed forces like CRPF; Indian Reserve Police are posted in those areas for holding State dominance.

The suggestions received are: 1. The court should monitor the receipt of such report on the last Saturday of each month and should send the list of cases where service report is not received to be submitted before the Monitoring Committee for further action; 2. State Government should be directed to establish para-military forces in those areas to serve the summons and warrants and process issued u/s 82 and 83 of Cr.P.C.

QUESTION NO.10

During trial of the police case, on which agency rests the statutory responsibility of production of prosecution witness? (close-ended question)

Note: This question was posed to the Presiding Officers, Superintendents of police, Deputy Commissioners and Public Prosecutors.

RESPONSE:

Functionary	Total responses	Prosecution	Police	Both
Judicial Officers	181	41	15	152
Superintendents of Police	24	0	4	18
Deputy Commissioners	8	6	0	1
Public Prosecutors	41	0	30	9
TOTAL	**254**	**47**	**49**	**180**

QUESTION NO.11

Is there any one agency on which, a statutory liability can be fixed for failure of police case generally? (open-ended question)

Note: This question was addressed to the Judicial Officers, Superintendents of Police, Deputy Commissioners and Public Prosecutors

RESPONSE:

Functionary	Total responses	Police	Prosecution	Both	All other stake holders
Judicial Officers	181	60	28	72	0
Superintendents of Police	24	1	4	9	7
Deputy Commissioners	8	5	1	0	1
Public Prosecutors	41	13	0	1	23
TOTAL	**254**	**79**	**33**	**82**	**31**

The following is the descriptive response of the functionaries:

JUDICIAL OFFICERS:

1. In case of failure of police case, the maximum number of responses pointed out that police and prosecution are statutorily responsible;
2. While referring to Rule 32 of Criminal Court Rules framed by Hon'ble High Court of Jharkhand where Public Prosecutors are required within a fortnight of the commitment order to file a list of witnesses whom he wants to summon in that case and the list shall be sent to Superintendents of Police along with the date of trial for production of witnesses, highlighted the lack of adherence.

SUPERINTENDENTS OF POLICE:

1. Witnesses turning hostile; failure of prosecution in presenting the case;
2. Lack of co-ordination between police and prosecution;
3. Lack of knowledge or experience in Public Prosecutors regarding criminal trials have been provided as other reasons for failure of police case;

4. Establishing a single judicial dispensation system including courts, prosecution, police and other related agencies can develop better co-ordination;
5. Public Prosecutors should be appointed as per Sec.24 of Cr.P.C from Bar;
6. Command and control over prosecution should be handed over to Superintendents of police.

DEPUTY COMMISSIONERS:

1. The responses received do not directly address the question and all the deputy commissioners have refrained from giving a direct answer on this point.
2. Instead of writing about the institutional responsibility, the cause for failure of cases have been given as follows: non-appearance of witness; witnesses turning hostile; lack of punitive measures against witnesses turning hostile; lack of co-ordination between police and prosecution are specified.

PUBLIC PROSECUTORS:

1. None of the public prosecutors in their response have stated that it was the responsibility of the prosecution in cases of failure of a police case generally.
2. Faulty investigation; lack of co-ordination between police and prosecution have been mentioned as other reasons for failure of police case.

QUESTION NO.12

How many cases are pending before your court for offences under Sec. 174 A, 182, Sec. 191 to 200, 211 and 229 A IPC? (For Presiding Officers of Magisterial courts only)

Note: This question was directed to Judicial Officers only.

RESPONSE:

COURT NAME OR JUDGESHIP/JUDGENAME	NO. OF CASES
Mr.Sanjay kr Singh, CJM, Dhanbad	8 (182/211 IPC)
Mr. Jagannath Singh, ACJM, Dhanbad	2 (1. Jharia PS 461/2014; 2. CP-1705/2015)
Mr.Kumar Pawan, SDJM, Dhanbad	12
Mr.Sanjeev Jhaa, SDJM cum Judge INcharge Sub-Divisional Judicial Magistrate, BERMO at tenughar	11
Mr.Vijay Kr Srivastava, SDJM, Chatra	3
Mr.Dinesh Rai, CJM, Bokaro	5
Mr.Amit Shekar, ACJM, Bokaro	3
Mr.Manish Ranjan, Civil Judge (Sr.Division)	14
Ms.Neerja Ashri, Munsif-cum-J.M. Berno at Tenughat	2
Mr.Vijay Kr Srivastava, SDJM, Chatra	3
Mr.Rajesh Kr Singh, SDJM, SPl Magistrate, CBI, Ranchi	2
Mr.Raj kumar Mishra, sub-judge cum judicial magistrate 1st class, ranchi	2
Mr.Ajit Kr Singh, Civil Judge (SD)-cum-CJM, Jamshedpur	21
Mr.Pawan Kumar, Civil Judge (Sr.Div-I-Cum-ACJM-Cum-Assistant Sessions Judge-III, Jamshedpur	2
Mr.Prafulla Kumar, SDJM, Gumla	4
Mr.S.K.Dubey, Judicial Magistrate & P.M.J.J.B, Dumka	Sec.182/211 IPC – 1, Sec.211 IPC – 1

Mr.S.N.Misra, Sr civil judge – I-cum-asst sessions judge-cum-ACJM, Dumka	3
Mr. S.Birua, SDJM, Dumka	2
Mr.Syed Salim Fatmi, CJM, Jamtara	3
Mr.Choudhary Asan Moiz, Sub-divisional Judicial Magistrate, Jamtara	2
Mr.Sanjay Pratap, CJM, Godda	17 U/s.182, 211 IPC
Mr.Sanjiv Kr Verma, SDJM-cum-Judge incharge, Godda	8, 182/211 IPC
Mr.Subhash, CJM cum sr. civil judge-I, Sahibganj	1 Sec.182/211 IPC
Mr.Ajay Kr Srivastava, SDJM, Sahibganj	2
Mr.Abhas Verma, Judge-in-charge-cum-JMFC-cum_PMJJ Board, Sahibganj	5
Mr.Kamal Kr Srivastava, CJM-cum-CJ (SD)-III-cum-Asst Sessions Judge-1, Giridih	27
Mr.Sanjeeta Srivastava, ACJM, Giridih	6
Mr.Asif Equbal, JM-cum-Addl Civil Judge-cum-PM, Giridih	2
Mr.Uttam Anand, ACJM, Palamu at Daltonganj	5
Mr.Madhuresh Kr Verma, Palamu at Daltonganj	5
Mr.Bimlesh Kr Sahay, SDJM, Palamu at Daltonganj	21
Total	**208**

This question has been designed to understand how far the penal provisions in the IPC have been successfully applied to check the menace of abscondance at different stages. Sec.174A (Non-appearance in response to a proclamation under Sec.82 of IPC); Sec.182 (False information with intent to cause public servant to use his lawful power to the injury of another person); Sec.191-200 (of false evidence and offences against public justice); Sec.229A (Failure by person released on bail or bond to appear in court) are some of the offences listed in IPC. These are the offences related to non-appearance; giving false evidence and misuse of bail. According to the responses received, only 208 cases in total are pending in State of

Jharkhand before the magisterial courts presided over by the Magistrates having ten years or more experience as presiding officer.

QUESTION NO.13

What is the reason for the high incidence of witnesses turning hostile? (close-ended question)

Note: This question was targeted to the Judicial Officers and Superintendents of Police only.

RESPONSE:

Functionary	Total responses	Inaccurate recording of statement of the witness u/s 161 Cr.P.C	Out of fear and insecurity in witnesses	Delay in trial	All the above
Judicial Officers	181	43	39	18	136
Superintendents of Police	24	3	5	7	14
TOTAL	**205**	**46**	**44**	**25**	**150**

QUESTION NO.14

What can be the procedural reform to ensure that the witnesses do not turn hostile *enmasse* during trial?

Note: This question was posed to Judicial Officers, Deputy Commissioners, Superintendents of Police and Public Prosecutors.

Functionary	Total Responses	Statement of the witnesses*	Religious scriptures to be mandatorily used for taking of oath for giving evidence before the court	Witness to be produced in serious cases under police protection	Trial and recording of evidence to be not delayed because of the abscondance of the accused	All the above

Judicial Officers	181	76	5	65	50	82
Deputy Commissioners	8	3	-	3	5	4
Superintendents of Police	24	13	1	9	11	6
Public Prosecutors	41	18	1	16	14	17
TOTAL	**254**	**110**	**7**	**93**	**80**	**109**

*in serious offences like in sessions cases, to be recorded u/s 164 Cr.P.C in place of sec. 161 Cr.P.C and be treated as a substantive evidence. During trial, examination – in - chief to a limited extent can be permitted for identification of accused and exhibiting the documents followed by cross-examination of the witnesses in terms of the statements already recorded u/s. 164 Cr.P.C

QUESTION NO.15

Whether the investigating officer of the case, appear in the court with the charge-sheeted witnesses during trial in a sessions case? (only for Sessions Judge) (open-ended question)

Note: This question was posed to the Judicial Officers, Superintendents of Police, Deputy Commissioner and Public Prosecutors.

RESPONSE:

Functionary	Total responses	Yes	No	Few Times
Judicial officers	181	2	104	0
Superintendents of police	24	7	10	2
Deputy Commissioners	8	0	7	0
Public Prosecutors	41	1	34	0
TOTAL	**254**	**10**	**155**	**2**

Note: Though it is a open-ended question, many functionaries responded by only as **'yes, no or few times'**, some gave a descriptive explanation and some did not respond. The research team counted the number of **'yes, no or few times'** in the above given table and the descriptive explanation is as follows:

JUDICIAL OFFICERS:

The response to this question is largely negative indicating that the Investigating Officer of the case generally does not appear in the court with the Charge-sheeted witnesses during trial in a Sessions case.
The reasons referred to are:

1. Transfer of Investigating Officer from one place to another by the time the cases are posted for evidence; it is also stated that only charge-sheeted witnesses appears alone in the court;
2. Especially in serious offences like Sec.302, 304B, 307 of IPC, the repeated communication by the Presiding Officer to the SP and even to DGP of the case turns futile.

SUPERINTENDENTS OF POLICE:

1. An impression is created in the minds of the Investigating Officers that they are not wanted during trials;
2. The transfer of Investigating Officer from the district by the time of start of the trial in a given case are mentioned as reasons for non-appearance of Investigating Officer with the charge sheeted witnesses during the trial in a sessions court.

DEPUTY COMMISSIONERS:

Transfer of Investigating Officer; laxity on part of Investigating Officer are highlighted as major reasons for non-appearance of the Investigating officer along with the charge-sheeted witnesses during the trial.

PUBLIC PROSECUTORS:

Due to excessive workload relating to law and order, VIP duty etc., on the Investigating Officer (other than investigation work); frequent transfer of Investigating Officers; lack of mandatory statutory obligation on the Investigating Officer have been given as reasons for the non-appearance of Investigating Officer with the charge sheeted witnesses.

QUESTION NO.16

Whether the responsibilities of police should end with the conclusion of investigation or it should extend to production of witness before the trial court? (close-ended question)

Note: This question was directed to the Judicial Officers, Superintendents of Police, Deputy Commissioners and Public Prosecutors.

RESPONSE:

Functionary	Total responses	It should be limited to submission of charge sheet and prosecution should thereafter take responsibility separately	The responsibility of the police should not end with submission of charge sheet, but it should extend to production of witness through its prosecuting agency
Judicial officers	181	7	174
Superintendents of Police	24	4	20
Deputy Commissioners	8	0	8
Public Prosecutors	41	0	36
TOTAL	**254**	**11**	**238**

QUESTION NO.17

Whether the bi-furcation of the police from prosecution, in your opinion, has served the ends of justice? Please substantiate your response with reason? (open-ended question)

Note: This question was directed to Judicial Officers, Superintendents of Police, Deputy Commissioners and Public Prosecutors.

RESPONSE:

Functionaries	Total responses	Yes	No
Judicial Officers	181	64	87
Superintendents of Police	24	17	4
Deputy Commissioners	8	5	2
Public Prosecutors	41	32	9
TOTAL	**254**	**118**	**102**

JUDICIAL OFFICERS:

A mixed response is received from the Presiding Officers with regard to the question whether the bifurcation of the police from prosecution served the ends of justice. Majority of the judicial officers are of the view that bifurcation of police from the prosecution has not served the ends of justice.

SUPERINTENDENTS OF POLICE:

Police Officers have highlighted operational difficulty in the present setup of separation of police and prosecution.

1. Lack of accountability;

2. Lack of common hierarchy resulting in ego clash due to equality of positions between Deputy Superintendent of Police and Public Prosecutors; direct refusal by Public Prosecutors to attend Superintendent of Police's meetings relating to court work; lack of co-ordination from the side of Public Prosecutors.

Suggestions: Common hierarchy is required if not at Superintendent of Police level, then at DIG level at least to improve the accountability;

PUBLIC PROSECUTORS:

1. Lack of communication between police and prosecution during investigation and trial;
2. Misunderstanding of the Investigating Officer regarding their role in trial (i.e., the Investigating Officer believes that his role is only limited till submission of FF/ Charge sheet and his presence is not required during trial) has been stated as major reason for lack of co-ordination between police and prosecution.

QUESTION NO.18

What are the practical difficulties in execution of processes issued by the court to secure the appearance of the accused? (Open-ended question)

Note: This question was posed only to the Superintendents of Police.

RESPONSE:

SUPERINTENDENTS OF POLICE:

1. Majority of the times, the criminal trial starts after 4-5 years of incident. The long gap between the initiation of trial and the date of incidence,
2. Major changes such as change of address by the accused;

3. Disposal or transfer of movable and immovable property to the relatives;
4. Misuse of bail; shortage of police personnel; seasonal migration in rural areas;
5. Lack of adequate number of police constables; overburdening the police with law and order, VIP escort, Mela Bandobast etc., due to which the change of priorities occur;
6. In case of inter-state migration of accused, the service of court processes becomes difficult;
7. Difficulty in securing the appearance of absconding accused who is not having any immovable or movable property in his name;
8. Lack of direct communication about the notice or warrant from the court to the SP office; misuse of the situation of lack of direct communication between the court and SP office by middle men who intentionally delays the trial by misplacing the process paper etc.;
9. Difficulty in securing the witnesses in the instances of proclamation due to lack of effective witness protection mechanism; in cases of attachment of movable property such as cattle etc., situated in rural areas, difficulty of transportation and non-cooperation of localities to keep in custody of such property are the other reasons specified relevant to the practical difficulties in execution of processes issued by the court.

QUESTION NO.19

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that number of cases are pending awaiting institution of FIR u/s.156(3) Cr.P.C for more than six months. Please specify the reasons for delay? (open-ended question)

Note: This question was directed to Superintendents of Police only.

RESPONSE:

SUPERINTENDENTS OF POLICE

1. Lack of sufficient number of Investigating Officers to investigate the case;
2. Lack of regular monitoring due to the non-availability/non-communication of monthly pending report from the court, and even available, the delayed communication;
3. SHO's reluctance to register the case due to the increasing number of reported cases than the disposal against his name; in situations of flood of complaint cases in one month, the SHO's approach to register only few cases in every month;
4. Lack of time frame to register a case have been provided as the reasons for delay in institution of FIR u/s 156(3) Cr.P.C for more than six months.

Suggestions:

The fixation of number of Investigating Officers per number of cases is required; in the cases relating to Witch craft, matrimonial cases, 498(A) of IPC, Sec.156 (3) Cr.P.C process must be kept at the court level to ensure the integrity of the process, as majority of such cases are either exaggerated or false.

QUESTION NO.20

In the Civil Court within your jurisdiction, whether Court *Malkhana* is functional and the Court exhibits are properly kept there? (Open-ended question)

Note: This question was directed to Superintendents of Police and Public Prosecutors only.

RESPONSE:

Functionary	Total responses	Yes	No	Partial
Superintendents of Police	24	12	10	1
Public Prosecutors	41	8	31	-
TOTAL	**65**	**20**	**41**	**1**

Without effective functioning of court *Malkhana*'s it is very difficult to produce exhibits which further leads to the delay of trial.

QUESTION NO.21

On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a number of cases are awaiting police report for more than six months. What in your opinion is the reason for such delay? (open-ended question)

Note: This question was directed only to Superintendents of Police

RESPONSE:

1. Lack of competent Investigating Officers;
2. Lack of fund to investigate in cases where the accused is hiding in other States or other Districts;
3. Lack of regular training;
4. Separating Investigating Officers from law and order duty, VIP duty etc.,
5. Delay is also caused awaiting expert report;
6. Due to Hon'ble High Court's orders restricting coercive action, IO waits for further orders;
7. Lack of time frame;
8. Delayed sanction by Government.

The above points have been mentioned as some of the reasons for pendency of large number of cases awaiting police report for more than six months.

QUESTION NO.22

What in your opinion is the reason for delay in conclusion of investigation? (Open-ended question)

Note: Directed only to Superintendents of Police and Public Prosecutors

RESPONSE:

SUPERINTENDENTS OF POLICE:

1. Lack of statutory identification of number of cases vis-à-vis number of Investigating Officers;
2. Absence of separate investigating agency free from VIP duty, Law and Order etc.,
3. Acute shortage of police personnel in PS;
4. Delay due to procurement of expert reports; lack of efficiency/competency in applying various scientific/technological investigating techniques by Investigating Officers belonging to Assistant Sub-Inspector category (who are promoted constables);

PUBLIC PROSECUTORS:

1. Delay in seeking expert opinion;
2. Engaging the Investigating Officers in other administrative duties apart from investigation; lack of reasonable ratio between number of cases per police officers;
3. Lack of co-ordination between police, prosecution and judiciary;
4. Transfer of Investigating Officers;

5. Lack of competency/commitment in Investigating Officers;
6. Lack of infrastructural facility to apply scientific investigation techniques;
7. Absconding of accused,
8. Shortage of Investigating Officers;
9. Delay in issuing of arrest warrant, warrant for attachment of property of the proclaimed offenders;
10. Lack of time frame for completion of investigation has been suggested as major reasons for delay in conclusion of investigation.

QUESTION: 23

What is the reason for lack of co-ordination between Police and Prosecution?

Note: This question was directed only to Superintendents of Police, Deputy Commissioner and Public Prosecutors.

RESPONSE:

SUPERINTENDENTS OF POLICE:

1. Separation of police and prosecution post 1973 Criminal Procedure Code Amendment, lack of supervision for proper coordination between police and prosecution;
2. Lack of inter-departmental communication and regular meetings;
3. Lack of legal advise during investigation and submission of FF/Charge sheet;
4. Shifting Public Prosecutors under the control of Deputy Commissioners, who do not take much interest in regulating or checking the working of Public Prosecutors;
5. Superintendents lacks control over Public Prosecutors; distance between the police stations and the court (where Public

Prosecutors can be accessible); self-interest of the nodal officer of police stations towards specific cases only;

6. Lack of communication between police and Public Prosecutor during investigation/ submission of FF/ Charge sheet.

DEPUTY COMMISSIONERS:

1. Lack of common hierarchy to establish co-ordination between police and prosecution;
2. Distance between the geographical location between the place of inquiry and place of filing of charge sheet;
3. Prosecution is not consulted before the submission of Final Form/Charge sheet or even during the investigation for legal advice – are the some of the reasons provided for lack of co-ordination between police and prosecution.

PUBLIC PROSECUTORS:

1. Lack of communication means between police and prosecution during investigation and trial;
2. Misunderstanding of the Investigating Officer regarding their role in trial (i.e., the Investigating Officer believes that his role is only limited till submission of FF/ Charge sheet and his presence is not required during trial) has been stated as major reason for lack of co-ordination between police and prosecution.

QUESTION: 24

Whether the public prosecutors including Assistant Public Prosecutors and Additional Public Prosecutors are consulted during investigation or at the time of submitting the charge sheet/final form? If not, whether they should be so consulted at these stages? (open-ended question)

Note: This question was directed to Superintendents of Police, Deputy Commissioners and Public Prosecutors.

RESPONSE:

Respondents	Total responses	Yes	No	Few times
Superintendents of Police	24	8	8	7
Deputy Commissioners	**8**	3	4	-
Public Prosecutors	41	5	32	-
TOTAL	**73**	**16**	**44**	7

DEPUTY COMMISSIONERS:

It is provided that lack of procedural mandate to consult the Public Prosecutor by the Investigating Officer during the investigation or before filing of Final Form/Charge Sheet as the major reason.

PUBLIC PROSECUTORS:

1. According to the opinion expressed by majority of Public Prosecutors, lack of legal advise at the stage of investigation/submission of charge sheet leads to failure of case.
2. A special Additional/Assistant Public Prosecutor should be posted at the office of Superintendent of Police for consultation of the Investigating Officers during investigation. This method will ensure better co-ordination between police and prosecution.

QUESTION: 25

Whether any monthly meeting is held on regular basis involving the public prosecutors in your office?

Note: This question was directed to Superintendents of Police and Deputy Commissioners only.

RESPONSE:

Respondents	Total responses	Yes	No
Superintendents of Police	24	18	4
Deputy Commissioners	8	6	2
TOTAL	**32**	**24**	**6**

QUESTION NO.26

In your district whether any action has ever been initiated on administrative side on any police officer for failure of any police case? If yes, please enclose the specific details? (open-ended question)

Note: This question was directed only to Superintendents of Police only.

RESPONSE:

Respondents	Total responses	Yes	No
Superintendents of Police	**24**	9	10

No details have been provided though out of 24 total responses, 9 SPs responded positive to the question seeking specific details of the action initiated on administrative side on any police officer for failure of a police case.

QUESTION NO.27

Whether good police officers are being rewarded? If so, what is the scale of reward? (Open-ended question)

Note: This question has been directed only to Superintendents of police

RESPONSE:

Respondents	Total responses	Yes	No
Superintendents of Police	**24**	24	0

A reward of Rs.500/- or good service remark are provided at SP level. Some other rewards are available at District or State level also. (Details are not provided)

QUESTION NO 28

Can there be greater accountability in investigation and prosecution of police cases if the Superintendents of Police is made the Head of the Prosecution at the district level?

Note: This question was directed to Superintendents of Police, Deputy Commissioners and Public Prosecutors only

RESPONSE:

Respondents	Total responses	Yes	No
Superintendents of Police	24	20	2
Deputy Commissioners	8	0	7
Public Prosecutors	41	3	35
TOTAL	**73**	**23**	**44**

Possibility of loss of independence of Public Prosecutors has been pointed out for negating the idea of making Superintendents of Police as the head of the prosecution to improve greater accountability in investigation and prosecution. It has also been mentioned by all the Deputy Commissioners that the principles of natural justice will be violated in brining the Public Prosecutors under Superintendents of Police's control.

QUESTION NO.29

What is the reason for poor quality of investigation in majority of cases? (open-ended question)

Note: This question was directed to the Superintendents of Police only

RESPONSE:

1. Lack of competent Investigating Officers;
2. Vacancy in the ranks of Sub-Inspectors/Inspectors;
3. Over-burdening the Investigating Officers with law and order, VIP duty etc., leading to availability of less time for investigation;
4. Lack of proper training and knowledge about scientific investigation;
5. Lack of higher education qualification of Investigating Officers (ASIs majorly are just Tenth Class pass candidates who are only promoted constables);

QUESTION NO.30

Whether any monthly meeting is held in your office involving the senior police officers and investigating officers? (open-ended question)

Note: This question was directed to Deputy Commissioners only

RESPONSE:

Functionary	Total Responses	Yes	No
Deputy commissioner	8	6	2

QUESTION NO.31

In your district whether any action has ever been initiated on administrative side on any police officer/prosecutor for failure of any police case? If yes, please enclose the specific details? (open-ended question)

Note: This question was directed to Deputy Commissioners only

RESPONSE:

Functionary	Total Responses	Yes	No
Deputy commissioners	8	0	7

QUESTION NO.32

Whether any monthly meeting is held on regular basis involving the public prosecutors, Asst. Public Prosecutor, Addl. Public Prosecutor with the Superintendents of Police/District Magistrate? (open-ended question)

Note: This question was directed to Public Prosecutors only.

RESPONSE:

Functionary	Total responses	Yes	No
Public prosecutors	**41**	**21**	**18**

QUESTION NO.33

In your district, whether any action has ever been initiated on administrative side on any public prosecutor (including Asst. PP and Addl.PP) for failure of any police case? If yes, please enclose the specific details? (open-ended question)

Note: This question was directed to Public Prosecutors only

RESPONSE:

Functionary	Total responses	Yes	No
Public prosecutors	41	-	30

- Public Prosecutors are not personally liable for police case
- Details can be obtained from Home Department

QUESTION NO.34

In your opinion, what are the major procedural bottlenecks in the criminal justice system? Suggest procedural changes if any? Please mention the specific provisions.

Note: This question has been directed to judicial officers, Superintendents of police, deputy commissioners and public prosecutors.

RESPONSE:

JUDICIAL OFFICERS:

Following **suggestions** have been provided by the Presiding Officers to remove the major procedural bottlenecks has been pointed out:

- Exemption of accused u/s. 205 and 317 of Cr.P.C should be allowed only in exceptional circumstances;

- Sec.161 Cr.P.C should be amended to include the recording of Statement of the accused through video or to record the evidence u/s 164 Cr.P.C treating the same as public document or examination-in-chief; prosecution shall be allowed to use the Statements recorded u/s 161 Cr.P.C to corroborate the facts;
- Written Statement of the accused recorded u/s 313 of Cr.P.C should be taken on affidavit;
- In cases where witnesses turn hostile after recording of statement u/s 164 Cr.P.C, the same should be treated as substantive evidence;
- The charge under Sec.320 of IPC read with Sec.498A IPC must be treated compoundable and the very offence should be made bailable under Cr.P.C;
- Introducing time frame for conclusion of investigation; prescribing 3-5 years as the maximum time limit for conclusion of trial in police cases and 1-3 years for complaint cases and in cases of extension of trial beyond prescribed limitation, the Presiding Officers should be required to assign reasons for so in writing; time frame for disposal of appeal, revision etc., should also be fixed;
- Sec.25 of the Indian Evidence Act, 1970 shall be amended to include a confession admissible in evidence made before the Superintendents of Police;
- Sec.163(3) of Cr.P.C should be amended in such a way requiring the Investigating Officer to mandatorily reduce into writing the Statement made to him by the accused or witnesses in the narrative of Question and Answer form; in cases where punishment is for more than seven years of imprisonment, audio-video recording should be mandated;
- Police custody of first fifteen days should be extended to further thirty days with the permission of the court u/s 167(2) of Cr.P.C;

- Summary procedure prescribed u/s 262 to 264 of Cr.P.C to be exercised effectively and Sec.260 (1) © (i) be amended as the cases in which punishment is three years and below should be tried summarily; Sec.260 (1) © (ii), (iii) and (iv) be amended by increasing the amount prescribed to Rs.10,000/-;
- Power to seek such further evidences by the court granted u/s 245 and 255 of Cr.P.C be extended to warrant and sessions trial cases;
- The sub-ordinate courts be directed to mandatorily exercise the power granted u/s 173(8) of Cr.P.C to regulate the investigation;
- Sec.54 Evidence Act be substituted by inserting a new provision to the effect that the evidence of bad character and antecedent is relevant evidence for criminal cases;
- Standard of proof beyond all reasonable doubt be relaxed;
- Investigating Officers be mandated to produce the witnesses in Sessions courts on date fixed for evidence;
- A separate individual investigating agency, free from police control be established;
- Video-recording of examination-in-chief and cross-examination be made mandatory;
- In the absence of accused, charge be framed; if accused does not appear on the date fixed for recording of his statement u/s 313 Cr.P.C, then it should be presumed that he waived his right for recording of statement u/s 313 Cr.P.C and court should be permitted to go ahead with the trial in the absence of accused;
- For cases u/s 498A of IPC, 138 of NI Act, matrimonial cases, special fast track courts shall be established;
- Chapter VI Section 62 of Cr.P.C be amended as: 'The summons shall, if practicable, be served personally on the person summoned, by delivering on tendering to him one of the duplicates of the summons or scan copy of the summons, sent

if this rule is amended in the manner suggested then the summons will be sent through the e-mail';

- Criminal trial to have a fix time frame;

SUPERINTENDENTS OF POLICE:

Major Procedural Bottlenecks:

1. Separation of prosecution and police without establishing any common supervising agency;
2. Absence of role of police in a criminal trial beyond submission of charge sheet;
3. Lack of time frame for criminal trial;
4. Lack of electronic database to track and monitor case flow management;
5. Lack of effective witness protection mechanism; lack of effective case management system both at the Public Prosecutors level and court;
6. Lack of skilled Investigating Officers has been highlighted as bottlenecks in the criminal justice administration.

DEPUTY COMMISSIONERS:

Major Procedural Bottlenecks:

1. Lack of time frame for investigation and conclusion of trial; witnesses turning hostile;
2. Non-service of processes issued by court to the accused/witness;
3. Incompetence of public prosecutor;
4. Lack of co-ordination between prosecution and police;

Suggestions:

1. Fixation of time frame to conclude criminal trial;
2. Imposing punitive measures in cases of non-appearance of accused and witnesses turning hostile;

3. Establishment of separate investigating agency free from the burden of maintenance of law and order and VIP security;
4. Establishing forensic science laboratory in every district headquarters.

PUBLIC PROSECUTORS:

Major Procedural bottlenecks:

1. Lack of independent investigating agency free from other administrative workload;
2. Misuse of Sec.317 of Cr.P.C by the accused;
3. Delay due to investigation and filing of charge sheet;
4. Awaiting appearance of accused for supply of police papers for commitment of the case to the court of sessions;

Suggestions:

1. Injury report, post-mortem report, arms examination report be treated as public documents or conclusive proof u/s 74 of the Indian Evidence Act and experts be exempted from giving oral testimony;
2. Fixing a time frame for conclusion of trial in serious offences; deliberate and intentional non-appearance of accused;
3. Execution reports of processes issued by court concerned must reach the court within 30 days; bailors security papers must be stamped with details of case so that it is not reused in another trial; strict verification of security papers.
4. Statement of witnesses should be made mandatory u/s 164 Cr.P.C in cases of ten or more years of punishment;
5. Number of courts be increased;
6. Strict action against the accused for Non-appearance.

QUESTIONNAIRE TO ACCUSED:

The response of the accused did not reveal any bottlenecks, hence the same has not been included in the present report.

The complainants/witnesses were also consulted during informal interaction of the research team during the court visits. As such, they did not complain about non-examination after their appearance in the court. The study of records by the research team on random basis also did not reflect repeated adjournments for examination of witnesses/complainants after their appearance. Against this background, there were three major reasons for not seeking formal responses through questionnaires from complainant/witnesses.

Firstly, the research was focused on **procedural bottlenecks** affecting expeditious conclusion of criminal trials and when in this context, the research team, during their visit to civil courts, informally interacted with the complainant/witnesses, it transpired that they were not conversant with the court procedures and were therefore not in a position to give any concrete reason for the delay. It would not be out of place to mention here that majority of the litigants in Jharkhand come from poor and marginalized section of the society. It was therefore felt that, to put lengthy questionnaires to them, could be an exercise in futility.

Secondly, the research team while studying the life cycle of the actual records on random basis, did not find the cases being adjourned for evidence despite the appearance of the witness on a particular date **(Table No.10 & 11 at page no.45-48).**

Thirdly, as discussed earlier, the major reason for the delay was the non-appearance of the accused and in such cases, the record is posted for appearance of the accused, not for evidence.

PRELIMINARY CONCLUSION ON THE ANALYSIS OF QUESTIONNAIRES:

- **Deliberate non-appearance of the accused to evade trial at different stages**
- **Non-execution of court processes**

***

CHAPTER – 3
MAJOR FINDINGS

3.1 The analysis of inputs received in Chapter 2 by three methods irresistibly lead to the conclusion about delays in criminal cases at the following stages:

1. **Non-appearance of the accused at different stages of trial**
2. **Delay at the stage of prosecution evidence**
3. **Delay in completing investigation**

A. NON-APPEARANCE OF THE ACCUSED AT DIFFERENT STAGES OF TRIAL

3.2 From the empirical findings on the basis of statistical analysis of inputs received in Forms 1, 2 and 3, the non-appearance of the accused at different stages has emerged as one of the major reason for delay. The findings can be summed up as follows:

1. Out of the total pendency of **1,30,736 police cases** (**Table no.1, column 2, page no.19-20**), **47,210 cases (Table No.3, Column 4, at page no. 23-24)** i.e., **36%** were pending awaiting appearance of the accused and the Presiding officers of the courts have attributed delay of the same number of cases to the non-appearance of the accused. (**Table No.1, Column 3, page no. 19-20**)
2. Out of total pendency of **4522 cases (Table No.4, Column 2, page no.24)** in special courts, **700 cases** (**Table No.4, Column 3**, **page no. 24**) i.e., **17.5%** were pending awaiting appearance of the accused and the Presiding officers of the courts have attributed delay of **794 cases** to the non-appearance of the accused (**Table No.2, Column 3, page no. 21**).

3. The data analysis at **Table No.5, Column 2**, **page no. 25-26** shows that a delay in **63,164 cases** of more than six months had resulted at the stage of framing of charge.
4. Data analysis at **Table No.6, Column 2**, **page no. 27–28** shows that a delay of more than 6 months has resulted at the stage of **commitment** in **sessions cases** in **13045 cases.** Before a case is committed to the Court of Session the police paper is supplied to the accused in terms of section 207 of the Cr.P.C. Hon'ble the High Court of Jharkhand in W.P.(Cr.) No. 01 of 2012 and W.P. (PIL) No. 858 of 2009 issued directions that police paper be filed along with police report for avoiding delay at this stage. In pursuance to this order copies of police paper are now normally annexed with the charge sheet and therefore non-availability of it cannot be regarded as cause for its delay.
5. Data analysis at **Table No. 6, Column 3**, **page no. 27-28** further points that a delay of more than 6 months has resulted at the stage of **framing of charge** in **15486** cases.
6. Analysis of data received in Form 2 at **Table No.7, Column 3**, **page no. 30-31** further reveals that even after **six months of submission of Charge sheet 34045** cases were pending for the appearance of the accused in the state.
7. **Misuse of Bail:** Bail is the rule and jails an exception. No one should be condemned to prison before the accusation is proved against him or her. Individual liberty is a precious fundamental right, which cannot be lightly trifled in a Constitutional Democracy. The right to claim bail granted by Sec.436 and Cr.P.C in a bailable offence is an absolute and indefeasible right. As laid down in ***Rasiklala v. Kishore Khanchand Wadhwani*** (AIR 2009 SC 1341), in bailable offences there is no question of discretion in granting bail, as the words of section 436 Cr.P.C are imperative. Section 436 A lays down the maximum period for which and under-trial prisoner can be kept in prison. The law of bail with respect to Non-bailable cases under Section 437 of the

Cr.P.C has been given liberal interpretation. There is provision of statutory bail under Section 167 (3) Cr.P.C where the investigation is not completed within the stipulated period. Unfortunately there is a very high incidence of this misuse of this valuable right. According to the analysis of **Column 3 of Form 2** provided at **Table No.7, Column 4, page no. 30-31** reflects a high incidence of **misuse of bail** and the total figure is **11,000** where the trial had been delayed for more than six months on account of misuse of bail.

8. The figures above do not include **4997** cases where the proceedings under section 299 were drawn and the cases were closed thereafter **(Table No.7, Column 6, page no. 30-31).** The non-appearance of the convicts after the conclusion of the trial and the appeal / revision arising out of it which is post trial stage shows pendency figure of **411** for execution of conviction warrant against such absconding convicts (**Table No.7, Column 7, page no. 30-31**).
9. The analysis of **Form 3 at Table No.8**, **page no.34-35**, which is exclusively for the complaint case shows that such cases have been delayed at different stage on account of non-appearance of the accused. The complaint cases suffer delay from its very inception, i.e., after the issuance of process under Section 204 Cr.P.C against the accused persons. Out of total **55025 complaint cases**, more than **14585** (**Table No.8, Column 3, page no. 34-35**) i.e., **26%** of cases were pending for the appearance of the accused for more than six months after issuance of summons. The cases in which the proceedings were drawn under section 299 Cr.P.C are also considerably higher, being **3786 cases** (**Table No.8, Column 5, page no. 34-35**). **1408 complaint cases** were closed and record was consigned to the record room (**Table No.8, Column 6, page no. 34-35**). Even at the post-trial stage after conviction **346 cases** were pending

for execution of conviction warrant against absconding accused persons (**Table No.8, Column 8, page no. 34-35**).

3.3 All these figures cumulatively point to non-appearance of the accused at different stages of the criminal case, whether it was a Complaint case, Magisterial Cases or Sessions trial case, to be the major reason for the delay in disposal of criminal cases. When the empirical findings of data analysis of the inputs received from the different courts is collated with the conclusions arrived on sample study of life cycle of pending and disposed of cases, the empirical findings of delay caused by non-appearance of the accused is further substantiated. The research team, which physically verified the case records of pending cases on random basis found **1013 cases (Table No.10, column 9, page no. 45-46)** to have been delayed at the stage of charge due to non-appearance of the accused out of the sample of **1650 cases (Table No.10, column 2, page no. 45-46)** and at the stage of prosecution evidence delay in **960 cases** (**Table No.10, Column 13, page no.45-46**) has been attributed to non-appearance of accused. The research team, which physically verified the case records of disposed of cases on random basis, found **1098 cases (Table No.11, Column 9, page no.47-48)** to have been delayed at the stage of charge due to non-appearance of the accused out of the sample of **1650 (Table No.11, Column 2, page no.47-48)** and at the stage of prosecution evidence delay in **1135 cases** has been attributed to non-appearance of accused (**Table No.11, Column 13, at page no.47-48**).

WHAT THE FUNCTIONARIES SAY

3.4 It was against the backdrop of these findings that **questionnaires** were prepared for the principal functionaries of criminal adjudication. The Judicial Officers with ten years working experience, Deputy Commissioner, Superintendents of police and Public Prosecutors with ten years working experience were asked about the reason for

intermittent non-appearance of the accused persons. The responses can be summarized as follows:

1. The question that naturally arose as to what was the cause for the non-appearance of the accused and it was posed to the above functionaries (**Question No.1, page no.52**). Out of the **254 responses** received **216** i.e. **85.03%** were of the opinion that non-appearance was deliberate in nature. Other factors that were cited included ignorance of the pending case, migration of accused from one state to another for livelihood, non-execution of warrant etc.
2. **Question no. 5 (page no.56-57)** was put to the Judicial Officers and the Public Prosecutors to get the cause for delay at the stage of commitment. Major reason for the delay at this stage has been attributed to the non-appearance of the accused.
3. The question of high incidence of misuse of bail figured as **Question No.2 (page no.53-54)** to the Judicial Officers and Public Prosecutors. The categorical answer to this question was stated to be intention to evade trial and deliberate non-appearance as the major reason along with the use of professional bailors, fake security etc.
4. Respondents answered in detail to the question, why the provision of bail bond and security has failed to secure the attendance of the accused persons on bail after they were bailed out. (**Question No.7, page no.58-59)**. Various reasons have been assigned which includes use of fake bailors, absence of proper verification procedure of bail bonds the amount of surety being low etc.,
5. Why the police fails to execute the processes against the accused person in such large number of cases, and what were the practical difficulties in execution of processes was a question that only police had to answer. The Superintendents of police has given practical difficulties in it, which have been

summarized at the response to **Question No.18 (page no.72-73)**. The reasons given include difficulty in executing the process of attachment against an absconding accused without any movable or immovable property.

B. FALL OUT OF ABCONDING ON CRIMINAL ADJUDICATION

3.5 The research on the basis of the above analysis of the inputs received through the methodologies of statistical analysis, study of life cycle of cases by physical verification of records and questionnaires, came to a definite finding that non-appearance of the accused persons at different stages was the principal major reason for delay of criminal cases. The magnitude of this problem is amply demonstrated by the large number of cases pending at the stage of appearance in ratio to the total pendency, pending at different stages for appearance of the accused. Perhaps there is no stage in the life cycle of a criminal case which is unaffected by non-appearance of the accused. It starts from the stage of investigation in police cases and issuance of process in complaint cases. Whether it is the stage of commitment or framing of charge or at the stage of evidence or judgment or even thereafter at the time of execution of conviction warrant. All the stages are plagued by the intermittent non-appearance of the accused. Although these statistics and research is Jharkhand specific, but it will be naive to conclude that the problem does not exist in other parts of the country.

3.6 A few high profile cases in the country where the prime accused in important cases have deliberately absconded to avoid criminal trial will indicate the width and depth of this malaise. Vijay Mallaya (bank loan frauds), Lalit Modi (BCCI financial irregularity), Ravi Sankaran (Navy War room leak case), Tiger Hanif (1993 bomb blast in Gujarat), Nadim Saifi (Gulshan Kumar murder case), Raymond Varley (UK citizen child abuse case in Goa) are some twigs which show the direction in which the wind is blowing. The population of our country,

its demography, geographical size gives lawbreaker, who wants to avoid the heat of criminal trial, opportunity to quietly change address and melt away in the teeming millions in any other part of the country. To just blame the police for their inability to execute the warrant of arrest and secure the attendance of the accused will not be a solution to this vexed problem. As discussed above, in majority of such cases there is a purpose and a design to abscond and that is to scuttle the trial. Even if the accused makes an appearance or is arrested after a prolonged period, may be after a decade or so, the delay by that time results in loss of vital piece of evidence or the witnesses are too demotivated and criminal adjudication is given a mortal blow at its infancy.

3.7 The principle of speedy trial as laid down under Section 309 Cr.P.C is one of the casualties of delay occasioned due to intermittent non-appearance of the accused. The overriding concern of this provision is that examination of witnesses should be done without any delay and the cases should not be adjourned at the stage of evidence and if the witness is in attendance adjournment should not be lightly allowed. A bare look at this provision will reveal the urgency that is attached to the examination of witnesses.

Section 309 - In every inquiry or trial the proceeding shall be continued from day to day basis until all the witnesses in attendance have been examined, unless for reasons to be recorded.

Provided that when it relates to an offence under Section 376 to Section 376D, the inquiry or trial shall, as far as possible be completed within a period of two months from the date of filing of the charge sheet.

Sub-Section (2) If the Court after taking Cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of, or adjourn, any inquiry or trial it may do so and may by warrant remand the accused if in custody.

Provided further that when witnesses are in attendance, no adjournment shall be granted without recording in writing the special reason for the same the fact that the pleader of a party is engaged in another court, shall not be a ground for adjournment.

Where witness is present in court but the party or his pleader is not present or if present is not ready to examine or cross-examine the witness, the court may, if thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination as the case may be.

Explanation 1 In case of sufficient evidence being obtained against the accused raising a suspicion that the accused may have committed an offence and it appears likely that further evidence may be obtained by remand, this is a reasonable cause for remand

Explanation 2 Cost may be imposed while granting adjournment

3.8 Despite these salutary provisions a hassle free examination of witnesses become a distant dream if the trial is frequently disrupted by the non-examination of witnesses on account of non-appearance of the accused.

3.9 As discussed earlier, one of the result of abscondance in cases with multiple accused is that one incidence gives rise to multiplicity of cases against accused and absconding co-accused, which results in delay in final adjudication.

3.10 Another question is about the after-math status of a case where the proceedings u/s 299 Cr.P.C is initiated, evidences were recorded and the record is assigned to record room. Such cases though on accounts is shown to be disposed of, it can be re-opened even after thirty years, once the accused appears/apprehended. All the witnesses, including victim who is witness in a criminal trial, if alive are to be re-examined at the choice of the accused. In the name of fair trial and right to guarantee defense, is it that the criminal procedure code is facilitating the accused to play with the justice system?

C. PROCEDURAL AND PENAL SAFEGUARDS TO CHECK AND DEAL WITH NON-APPEARANCE OF THE ACCUSED

3.11 As discussed earlier there are cases where the accused abscond during investigation at pre-arrest stage and then there are accused who abscond after they are arrested and are enlarged on bail. It is not that there is no provision in the Code to deal with it or that lawmakers are quite oblivious to this problem. Provisions of Proclamation and attachment (Section 82 and 83 Cr.P.C) are meant to ensure the appearance of the accused who are evading warrant of arrest. As discussed earlier, the process of attachment is not effective against a person who does not have any property in his name. In order to give some teeth to the law to secure the appearance of the accused for trial, two significant penal provisions Section 174 A and Section 229 A were added in the IPC vide 2005 amendments w.e.f. 23.6.2006 to make the cases of deliberate non-appearance either after issuance of bail or after grant of bail a penal offence.

Section 174 A IPC Non-appearance in response to proclamation under Section 82 of the Act 2 of 1974-

Whoever fails to appear at the specified place and the specified time required by a proclamation published under sub-section (1) of section 82 of the Cr.P.C. shall be punished with imprisonment

for a term which may extend to three years or with fine or with both, and where a declaration has been made under Sub-section (4) of that section pronouncing a proclaimed offender, he shall be punished with imprisonment for a term which may extend to seven years and shall also be liable to fine.

Section 229 A. Failure of person released on bail or bond to appear in court-- Whoever, having been charged with an offence and released on bail or on bond without sureties, fail without sufficient cause (the burden of proving which shall lie upon him), to appear in Court in accordance with the terms of the bail or bond, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine or with both.

Explanation – The punishment under this section is –-

(a) in addition to the punishment to which the offender would be liable on a conviction for the offence with which he has been charged; and

(b) without prejudice to the power of the court to order forfeiture of the bond.

3.12 Both these provisions, as discussed earlier, have failed to check the tide of non-appearance, this is why even after large number of cases being delayed due to non-appearance, only in very few cases as shown at **Table No.7 & 8** action has been taken under the newly amended penal provisions. The problem with Section 174 A IPC is that the courts concerned have to take recourse to Section 195 Cr.P.C read with Section 340 Cr.P.C. A proper complaint needs to be filed in such cases before a cognizance taking court and this adds up to another case in the already loaded docket of the Court. Perhaps a better and simpler procedure would have been to empower the court where the main case was pending to frame additional charge under Section 174

A in cases of deliberate non-appearance after proclamation instead of the present procedure of having recourse to Section 340 of the Cr.P.C.

3.13 The order of proclamation is basically an order of the Court directing attendance before the Court and non-appearance is violation of the court order. Similarly, where the accused is granted bail and in violation of the term of the Bond, the accused do not appear before the Court, it is also a violation of the court order. The procedural requirement to send the cases arising out of violation of such order to another court for cognizance and separate trial not only increases the number of pendency but also dilutes the penal provision arising on account of non-compliance to the court order.

3.14 Theoretically it can be said that power to hold trial of an offence should not be invested in a court whose order has been violated. But, there are statutes where such powers have been vested in courts to prosecute persons offending its order. **Under Section 31(1) of the Protection of Women from Domestic Violence Act 2005,** a breach of protection order, by the offender shall be punishable with imprisonment of either description of a term which may extend to one year, or with fine which may extend to Rs. 20,000 or with both. **Under Section 31(2) of this Act the offence under Sub-section (1) shall as far as practicable be tried by the Magistrate who had passed the order, the breach of which has been alleged to have been caused by the accused.** In proceedings under Section 125 of the Cr.P.C also, the same court passing maintenance order has power to enforce it by adopting coercive measures. In the same way, the court in dealing with the matter should have the right to inquire and proceed against absconding accused when court orders under Section 82 of the Cr.P.C is violated or those who misuse the bail after grant of it.

3.15 The main provision for dealing with cases where the accused has absconded and there is no prospect of his arrest is Section 299 of the

Cr.P.C. It provides the procedure to record evidence in absentia of the accused and lays down the condition under which it can be used against the absconding accused after his arrest or appearance before court.

Section 299 - ***Sub-Section (1) provides for Record of Prosecution Evidence in the absence of accused*** **-- If it is proved that the accused is absconding and there is no immediate prospect of arresting him, the Court competent to try or commit for trial such person for the offence complained of may in his absence, examine the witnesses**

When an offence punishable with death imprisonment for life or death committed and the offender is known or unknown, the High Court or the Court of Sessions may direct any Magistrate of the First Class shall hold an inquiry and examine any witnesses:

- ***Use of deposition as evidence in subsequent trial on arrest of the accused under the following conditions:***
    1. **Witnesses whose depositions are recorded are dead or incapable of giving evidence or**
    2. **Witness cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience, which, under the circumstances of the case, would be unreasonable.**

3.16 **Absconding Meaning of:** It means (1) leaving the place where the accused ordinarily resides (2) Intentionally making himself in-accessible to the process of court. The word "absconder" is not defined in the Code. It occurs in other provisions of criminal law, e.g. S 172 of the IPC. From the context and object of these provisions an absconder may be said to be one who intentionally makes himself inaccessible to the processes of law. Hence, it is not enough if it is shown that it was not possible to trace him soon after the occurrence. It has also to be

established that he was available at or about the commission of the alleged offence, before he can be treated as an absconder. Similarly, it has to be established that there is no immediate prospect to arrest the accused. Section 299 Cr.P.C like Sections 32 and 33 of the Evidence Act,1872 are exception to Section 273 of the Cr.P.C, which require the evidence to be recorded in the presence of the accused.

3.17 Evidence given in trial of the other co-accused who are in appearance is covered by Section 299 Cr.P.C only against an absconder only if the court has recorded a finding of absconding. Before an accused is declared as an absconder, it is necessary that the execution report of the processes issued against the absconding accused has been received by the court so that it can come to a subjective finding about the factum of absconding. It has been held by the Apex court in ***Nirmal Singh Vs State of Haryana*** **AIR 2000 SC 1416** that *it is clear from the language of the Section that the Court which records proceedings under it must first of all record an order that in its opinion it has been proved that the accused has absconded and that there is no immediate prospect of his arrest.*

3.18 The object of this section is not to protect an accused from being proceeded against by way of trial or inquiry because of his being absconding, but are on the contrary to protect the evidence against the accused, which is available at the time of proceeding under this Section, becoming unavailable at a later stage after the absconding accused is secured. The statements recorded under this Section bear the presumption of genuineness under Section 80 of the Evidence Act,1872**.**

D. HOW FAR SECTION 299 Cr.P.C. BEEN EFFECTIVE?

3.19 In the scenario of a very high incidence of abscondance, the question that confronts us is how far Section 299 been successful to

further the ends of speedy and effective Justice. A close scrutiny of this provision is called for since it is the only provision that gives some room to the Court to proceed against an absconding accused. Conditions under which evidence can be recorded in the absence of the accused under Section 299 are only if it is proved –

1. That the accused has absconded
2. That there is not immediate prospect of arresting him.

3.20 The mandate of law, before an accused is declared an absconder and a proceeding under Section 299 Cr.P.C is drawn is that the all the processes issued against the accused should have been exhausted. Therefore, only after the receipt of the execution report of warrant and the processes under Section 82 and 83 Cr.P.C, the court can arrive at a finding that the accused has absconded. There is a consistent line of judicial precedents that if the accused has been declared an absconder without receipt of the execution reports issued against him, the order declaring the accused an absconder is liable to be set aside. Hon'ble The Jharkhand High Court in ***Sanjay Jumar Singh Vs State of Jharkhand*** **W.P.(Cr) No.46 of 2010** set aside the order declaring the accused an absconder and proceeding under Section 299, where the execution reports where not received before making such a declaration.

3.21 Once one of the co-accused absconds in a case, where more than one have been arrayed as accused, the court need to cancel the bail of the absconding accused from the rest of the accused in appearance and the case of the absconding accused will have to be separated in terms of Section 317(2) of the Cr.P.C. After the warrants are issued against the absconding accused and after proper receipt of the execution reports of different processes having been received, absconding accused can be declared an absconder or a proclaimed offender as the case may be, and a proceeding under Section 299 can

be drawn. These steps even in ideal conditions will take time and in the mean time the main trial against the other accused cannot be stalled. The resultant fall out can be:

1. The trial of the absconding accused be separated and the trial may proceed against the other accused in attendance and evidence can be recorded in the main trial against them but this evidence can not be read into evidence against the absconding accused.
2. Once absconding accused is declared an absconder after getting the execution reports of the processes, the same witness examined in the main case will have to be re-summoned for testifying in the proceeding under Section 299.
3. If more than one accused absconds in a particular case at different stages, proceeding under Section 299 will have to be drawn against them successively and separately after exhausting all processes. So if one absconds in a case in 2015 and another in 2016, proceedings under Section 299 shall naturally be drawn against them at different times and then the witnesses be summoned for evidence in the absence of accused. This can and does practically lead to repeated examination of same witness in one case. Firstly, in the main case where the accused is in appearance and then any number of times in the supplementary cases as and when the proceeding under Section 299 Cr.P.C is drawn against the absconding accused persons.
4. In response to **Question no.9 (page no.61-62)** out of total **181 Presiding officers** of the Courts only **16 i.e., only 8.83%** have answered that execution reports are being received. It has been stated by **144 i.e., 79.55%** that it was being received only few times. It explains why despite high incidence of non-appearance of the accused at different

stages, only in 298 cases (**Table No.7, Column5**, **page no.30-31**) proceedings under section 299 of Cr.P.C were drawn.

5. What is ironical that even after observing procedural requirements for drawing a proceeding under section 299 of Cr.P.C the evidence recorded therein cannot be read into evidence against the accused after his arrest or appearance, unless and until the prosecution proves that deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of delay, expense or inconvenience which, under the circumstances of the case would be unreasonable. Apex Court held in ***Nirmal Singh Vs state of Haryana*** **(2000) 4 SCC41** *that the precondition for utilizing statements made in a Section 299 proceeding, it must be proved that either deponent is dead or incapable of giving evidence or can not be found or his presence can not be procured without an amount of delay, expense or inconvenience which, under the circumstance would be unreasonable.*
6. Consequently, on arrest or appearance of the absconding accused the witness or the victim whose statement has been recorded under Section 299 Cr.P.C will have to again step into the witness box for cross examination before his / her earlier statement can be read into evidence. Now being summoned as a witness for testifying before a court is not altogether a happy experience. Hon'ble Apex Court observed in ***Appabhai Vs State of Gujarat*** **1988 Supp SCC 241,** ***"****Experience reminds us that the civilized people are generally insensitive when a crime is committed even in their presence. They withdraw both from the victim and from the vigilante. They keep themselves away from the court unless it is inevitable. They think that crime like civil dispute is between two individuals or parties and they should not involve*

themselves. This kind of apathy of the general public is indeed unfortunate, but it is there everywhere whether in village life, town or cities. One can not ignore this handicap with which the investigating agency is to discharge his duties."

3.22 If the procedural requirements compel a person to come again and again in one case for evidence that will be travesty of justice, it can be hardly said to be fair to the victim. Let us take the example of gang rape cases where to stand and be grilled in cross-examination even once is an ordeal in itself. In such cases it can well be imagined, what can be the trauma of a victim if she has to revisit her mental agony and traumatized by going through the process of examination in chief and cross examination repeatedly against accused and absconding accused persons. The plight of victim and witnesses of other offences can be no better in other cases of serious nature U/S 302, 307 IPC, Bank fraud cases and in cases of embezzlement of Public fund. The witnesses have to testify before the courts against several odds in the hope of justice, sometimes to the extent of threat to his/her family member's life. In cases of organized crime the element of threat increases and it will be unrealistic to expect that witnesses can depose smoothly in one single case as many times the absconding accused is rearrested or appears before the Court.

3.23 There are two components of Section 299 Cr.P.C. The first is when a proceeding under Section 299 Cr.P.C can be drawn and the evidence in the absence of the accused can be recorded. The Second is when the evidence so recorded can be read into evidence against an absconding accused after his re-arrest or appearance before the court. The problem lies more so with the second component where the evidence recorded cannot be used unless the said witness is dead etc., The requirement to re-summon the witness for cross-examination is onerous and reduces the entire exercise for recording evidence under Section 299 Cr.P.C to a nullity. Where it has been established that the

accused has deliberately absconded before or after being granted bail, and the evidence is recorded in his absence, the provision to re-summon the witness after the appearance or arrest of the absconding accused appears to be harsh and devoid of reason. The result is that abscondance becomes good ploy to abscond and evade trial till the case looses all its momentum or the evidence is lost or gained over. It makes Section 299 Cr.P.C. an unworkable provision.

E. AVOIDABLE DELAYS AT THE STAGE OF COMMITMENT OF CASES TO THE COURT OF SESSIONS

3.24 The delay at the stage of commitment is intriguing as the committal court has a very limited role at this stage and after cognizance he is to commit the case to session complying with Section 207Cr.P.C in sessions triable cases.

3.25 In actual practice after submission of charge sheet and cognizance the case record is put up for appearance of the accused in cases where the accused is on bail since investigation. Only after the appearance of the accused is complete, the copy of police papers are supplied and the case becomes fit for commitment to the court of sessions. Now if the sole accused absconds at this stage his case cannot be committed to the court of sessions until the processes issued against him are exhausted, service report and execution reports are received and he has been declared an absconder. After having been declared as absconder then his case can be committed enclosing the police paper. Even in cases where the accused on bail do not abscond it may take several adjournments before his appearance is complete, the police paper are supplied and the case is committed. The problem multiplies many-fold if in case of multiple accused some abscond and some are in appearance/custody. Declaring absconder and then drawing a proceeding under Section 299 Cr.P.C takes time and the cases get delayed on account of this. If the trial of other

accused moves forward after splitting up of the case then Court is confronted with a situation of multiplicity of Criminal Cases arising out of the same incidence with its attendant anomalies and hazards.

3.26 As far as the stage of commitment is concerned, Hon'ble Jharkhand High Court considering practical difficulties in splitting, has ruled that when there are some absconding accused and some in attendance, the entire case should be committed to the Sessions. This is in tune with the 1973 Code, which speaks about commitment of cases and not of accused.

3.27 How the trial is vitiated is poignantly reflected in ***Gagan Thakur Vs State of Jharkhand*** **2004 Cri.L.J 1910 (1912) (jhr).** In this case, the Hon'ble High Court of Jharkhand held that **Section 209** *does not envisage splitting up of cases of absconders and appearing accused in the event of commitment of one accused, the other absconding accused can use the prosecution papers during trial. If all accused are absconding, committing magistrate can record evidence in their absence. But if one accused has been committed then evidence against him will be recorded by competent trial court at same time against remaining absconding accused. According to Secs. 358, 209 (Remand), absconding accused can be remanded to judicial custody when he appears before Court. The question is whether the absconders who evade the process and those accused who have readily made themselves amenable to process of their appearance are at par? Though no law is there to infer such distinction, but Section 299,Cr.P.C gives some cue. Section 299 is in derogation to Section 273 Cr.P.C but its justification lies in accused's default to take part in trial. The law does not encourage abscondance, neither does it encourage multiplicity of proceeding arising out of the same offence. The splitting up of the cases leaves scope for many splitting's, depending on the number and will of absconders. This is, thus, a misuse of process of Court manipulated by absconders and can tend to failure of justice or its miscarriage.*

To illustrate, it is found that in Cr. Appeal No, 1431/ 03 the main case was split up. The informant appeared at trial and said that he identified two dacoits and took their names (one of the two was absconder and the one was facing trial) and when the case of absconding accused was committed and he was put on trial, the same witness said he had identified none. Such are likely to be the ill effect of splitting up.

3.28 The above case in fact mirrors the reality of Criminal cases that proceed piecemeal after one or more accused absconds and the case is split up.

3.29 In order to probe further into the reason for delay **Question no. 5 (page no.56-57)** was formulated and circulated among he Judicial Officers and Public Prosecutors. The major reason for delay at this stage has been described to be non-appearance of the accused.

3.30 Although a few responses have been received citing non-availability of the police paper as one of the reasons for delay. However, it needs to be pointed out that following the Judicial order passed in ***Citizens' Cause Vs. The State of Jharkhand and Ors.* (W.P.(PIL) 858 of 2009),** the copies of police paper are enclosed with charge sheet and delay is not on the non-availability of police paper. The Hon'ble Court in this case gave the following direction: "*In view of the above we direct the Director General of Police of the State of Jharkhand to see that Sections 172, 173, 207 and 208 of Cr.P.C. be complied with strictly and whenever the challan is filed in the court of Magistrate that must be filed with the documents as referred under section 173 of Cr.P.C. which have already been referred to above, at the time of filing of the challan. The copy of police report and other documents as referred under sections 207/208, be provided to the accused, free of cost. In case of non-compliance of Sections 173, 207*

and 208 of Cr.P.C., the trial court will be free to refuse to accept the challan with note on the police report or in order sheet that the documents are not complete and in that situation, the Investigating Officer and the State Government shall be responsible for serious consequences, which may occur. All police officer making an investigation shall maintain case diary separately as is required under section 172 of Cr.P.C."

3.31 The delay at this stage is therefore on account of non-appearance or delayed appearance of the accused who are on bail, to receive the police paper. The supply of police paper to the accused at the committal stage is basically a remnant of committal enquiry in the pre 1973 Cr.P.C. and it does not serve any fruitful purpose now. If this stage is dispensed with and immediately after cognizance, Sessions triable cases are committed to the session along with the police paper for being served to the accused after their appearance and before framing of charge, it will reduce one stage of securing the appearance of the accused in the committal court which is again repeated before framing of charge in the sessions court before framing of charge. At the stage of commencement of trial any delay gives a critical blow to the entire case. A procedure of direct commitment will not only reduce avoidable delay at the stage of commitment but will also save the accused from harassment to appear before the committal court only for receiving the police paper which can be received in the sessions trial after commitment before framing of charge.

3.32 It may be pointed out that in NDPS cases, it is the special courts of Additional Sessions Judges where charge sheet is directly received and after cognizance, police papers are supplied to the accused before framing of charge. Further, similar procedure is followed in Prevention of atrocities against S.C./S.T cases. The same procedure is followed in cases under the Electricity Act, 2003 and POSCO where charge sheet is filed directly before the special courts, presided by Sessions Judge.

Therefore, there is no legal impediment to the cases being committed to the court of sessions immediately after cognizance by the committal courts.

3.33 On the basis of data analysis, inputs received from the Judicial Officers and the Public Prosecutors with regard to the delay at the stage of commitment we are of the view that suitable amendments are required in section 209 of the Cr.P.C, so that, cases are not delayed at the stage of commitment and are committed immediately after cognizance and the supply of police paper under Section 207 can be made by the sessions court after the first appearance of the accused before framing of charge.

F. DELAY AT THE STAGE OF PROSECUTION EVIDENCE

3.34 From the empirical findings on the basis of statistical analysis of inputs received in forms 1, 2 and 3 the non-appearance of the accused at different stages, has emerged as one of the major reason for delay. The findings can be summed up as follows:

- Out of the total pendency of **1,30,736 G.R/S.T cases (Table No.3, Column 2, page no.22-23), 71,351 cases** (**Table No.3, Column 5**, **page no.22-23**) i.e., **54.57%** were pending for production of prosecution evidence and the Presiding officers of the courts have attributed delay of **58,893 cases** (**Table No.1, Column 4**, **page no.19-20**) to the production of prosecution witness.
- Out of total pendency of **4522 cases** in special courts, **2,468 cases** (**Table No.4, Column 4**, **page no.24**) i.e., **54.57%** were pending for production of prosecution evidence and the Presiding officers of the courts have attributed delay of **2,271 cases** (**Table No.2, Column 4**, **page no.21**) to the non-appearance of the accused.

- The data analysis at **Table No.5, Column 3**, **page no. 25-26**) shows that a delay in **6,241 magisterial cases** of more than five years had resulted at the stage of production of prosecution witness.
- The data analysis at **Table No.6, Column 4**, **page no.27-28** shows that a delay in **4,970 sessions cases** of more than five years had resulted at the stage of production of prosecution witness.

3.35 All these figures cumulatively points out to delay in production of prosecution witness, whether it was a Complaint case, Magisterial Cases or sessions trial case, to be the major reason for the delay in disposal of criminal cases. When the empirical findings of data analysis of the inputs received from the different courts is collated with the conclusions arrived on sample study of life cycle of pending and disposed of cases, the empirical findings of delay caused by non-appearance of the accused is further substantiated. The research team, which physically verified the case records of **pending cases** on random basis found **919 cases** to have been delayed at the stage of charge due to non-appearance of the accused out of the sample of 1650 (**Table No.10, Column 11, page no.45-46**). At the stage of prosecution evidence delay in **960 cases (Table No.10, Column 13, page no.45-46)** has been attributed to non-appearance of accused. The research team, which physically verified the case records of **disposed of cases** on random basis found **1135 cases (Table No.11, Column 13, page no.47-48)** to have been delayed at the stage of charge due to non-appearance of the accused out of the sample of **1650** cases (**Table No.11, Column 11, page no.47-48**).

WHAT THE FUNCTIONARIES SAY

3.36 It was against the backdrop of these findings that **questionnaires** were prepared for the principal functionaries of criminal adjudication.

The Judicial Officers with ten years working experience, Deputy Commissioner, Superintendents of police and Public Prosecutors with ten years working experience were asked about the reason for intermittent non-appearance of the accused persons. The responses can be summarized as follows:

- The question that naturally arise is, *'during trial of the police case, on which agency rests the statutory responsibility of production of prosecution witness*?' (**Question No.10, page no.62**), out of 254 total responses, (received from presiding officers, public prosecutors, Superintendents of police and deputy commissioners) **180** i.e., **71.42%** were of the opinion that both police and prosecution together are responsible for production of prosecution witness.
- When the functionaries were questioned (**Question No.16, page no.70)** about the extent of responsibility of police beyond conclusion of investigation to the production of prosecution witness before the trial court, out of **total 254 responses** received, **238 i.e., 93.7%** were of the opinion that the responsibility of the police should not end with submission of charge sheet, but it should extent to production of witness through its prosecuting agency.
- **Question No.15, page no.68-70** has been posed to scrutinize the current practice in sessions cases regarding accompanying of investigating officer with the charge-sheeted witnesses during the trial, out of **254 responses** received, **155 i.e., 61.02%** said, no.
- When the functionaries were confronted with **Question No.11**, **page no.62-24** i.e., *'Is there any one agency on which, a statutory liability can be fixed for failure of police case generally?',* out of total 254 responses received, **82 i.e., 32.28%** were of the opinion that both police and prosecution are statutorily liable for failure of police case generally and **77 i.e., 30.31%** responses were for fixation of liability upon police.

The major reason projected was the lack of co-ordination between police & prosecution.

- When Public prosecutors were asked to respond to **Question No.34, page no.84-85**, i.e., whether any action has ever been initiated on administrative side on any public prosecutor (including assistant public prosecutors and additional public prosecutors) for failure of police case in their district, out of **41 responses** received, **30 i.e., 73.17%** said no.
- When the functionaries were questioned about the reason for lack of co-ordination between police and prosecution (**Question No.23, page no.77-78**), the functionaries expressed that lack of common hierarchy to establish co-ordination between police and prosecution and lack of inter-departmental communication or regular meeting are the reasons.
- To understand the regularity of inter-departmental communication or regular meetings between the functionaries, **Question No.25, page no.79-80** has been posed to the Superintendents of Police and Deputy Commissioners that whether any monthly meeting is held on regular basis involving the public prosecutors in their office, out of **24 responses** received from Superintendents of police, **18 i.e., 75%** said yes and out of **8 responses** received from deputy commissioners **6 i.e., 75%** said yes. The public prosecutors in response to **Question No.32, page no.83** whether any monthly meeting is held on regular basis involving the public prosecutors, asst. public prosecutor, addl. Public prosecutor with the Superintendents of police/district magistrate, out of **41 responses**, **21 i.e., 51.21%** said yes and **18 i.e., 43.9%** said no. (Mixed response). **Question No.30, page no.82-83** has been posed to deputy commissioners to see whether any monthly meeting is held in their office involving the senior police officers and investigating officers, out of **8 Deputy Commissioners**, **6 i.e., 75%** said yes.

- Further to understand the status of inter-departmental communication, **Question No.24, page no.78-79** has been posed to the Superintendents of police, deputy commissioners and public prosecutors i.e., whether the public prosecutors including assistant public prosecutors and additional public prosecutors are consulted during investigation or at the time of submission of charge sheet/final form. Out of total **73 responses, 44 i.e., 60.27%** said no and **7 (only Superintendents of police) i.e., 5.47%** said few times.
- Keeping in view the bi-furcation structure introduced into the Criminal Procedure Code in 1973, the opinion of the functionaries has been sought through **Question No.17, page no.71-72** whether the bi-furcation of the police from prosecution has served the ends of justice, out of **254 total responses, 102 i.e., 40.15%** were of the opinion, that it has not served the purpose.
- When the functionaries i.e., Superintendents of police, deputy commissioners and public prosecutors were asked to express their opinion to **Question No. 28, page no.81-82** i.e., can there be greater accountability in investigation and prosecution of police cases if the Superintendents of police is made the head of prosecution at the district level, the responses were interesting. Out of 41 responses received from public prosecutors, **35 i.e., 85.36%** said no. Out of **8 responses** received from deputy commissioners **7 i.e., 87.5%** said no. Where as, out of 24 responses received from the Superintendents of police, **20 i.e., 83.33%** said yes. The possibility of loss of independence has been highlighted as the reason by the public prosecutors while negating the idea of making Superintendents of police as head of prosecution, where as the Superintendents of police expressed the possibility of better co-ordination.
- **Question No.29, page no. 82** has been posed to the Superintendents of police to understand the reason for poor

quality of investigation in majority of cases. The respondents highlighted that lack of competency of the investigating officers due to their low educational qualification, lack of proper training and knowledge about scientific investigation as the reasons.

G. DELAY AT THE STAGE OF INVESTIGATION

3.37 From the empirical findings on the basis of statistical analysis of inputs received in Forms 4 and sample study the delay at the stage of investigation has emerged as one of the major reason for delay in speedy disposal of a criminal trial. The findings can be summed up as follows:

- According to the analysis of **Form 4 at Table 9, page no. 38-39**, it has been found that **17,369 cases** are awaiting police report for more than six months in State of Jharkhand (**Table 9, Column 3, page no.38-39**)
- Further, it has been found from the scrutiny of life cycle of sample cases, that out of **1650 (Table No.10, Column 2, page no.45-46)** pending cases, **967** (**Table No.10, Column 3, page no.45-46**) i.e. **58.6%** were found to be delayed at the stage of investigation and out of **1650 (Table No.11, Column 2, page no.47-48)** disposed of cases, **983** (**Table No.11, Column 3, page no.47-48**) i.e., **59.57%** were found to be delayed at the stage of investigation.

WHAT FUNCTIONARIES SAY

3.38 Based on the above statistics, the **Question No.21**, **page no.75-76** has been prepared to find out the opinion of the Superintendents of police about the reasons for delay in submission of police papers. In response, the Superintendents of police highlighted that lack of

competent investigating officers, lack of training and delayed sanction by the government as the reasons.

3.39 **Question No.22, page no.76-77** has been framed to find out the reason for delay in conclusion of investigation from Superintendents of police and public prosecutors. Two important points have been figured out i.e., lack of competence of investigating officers and absence of definite time frame for conclusion of investigation.

H. CONCLUSION

3.40 The above detailed analysis of the major findings, i.e., Non-appearance of the accused at different stages of trial, delay at the stage of prosecution evidence, delay in completing investigation leads to the following questions:

- **How long the wheels of justice shall be on hold for the appearance of accused who deliberately avoiding the trial? Why the criminal case is awaiting for the appearance of accused after recording evidence u/s 299 Cr.P.C rather reaching the stage of delivery of judgment?**
- **Who shall be held responsible for failure of a criminal case? Police or prosecution? Whose case is it any way? Whether lack of co-ordination between these two functionaries is leading to failure of justice? What means shall be adopted to ensure better co-ordination between police and prosecution?**
- **What is the reason for delay at the stage of investigation? Whether fixation of time frame reduces the delay in conclusion of investigation?**

***

CHAPTER - 4

HOW LONG THE WHEELS OF JUSTICE SHALL HOLD ON FOR THE APPEARANCE OF THE ACCUSED?

4.1 The discussions in Chapter III amply demonstrate that non-appearance in large number of cases was deliberate to evade trial leading to delay of criminal adjudication, causing multiplicity of different cases arising out of one incidence against different absconding accused. Section 299 of the Cr.P.C which is the sole provision to meet the exigency of abscondance is ineffective in its present form, it is dilatory in its procedure of declaring absconder, it is non-productive since even after the recording the evidence in absentia the same can not be used unless giving a right of cross-examination to the accused, if the witness is alive etc., it puts a premium to abscond and scuttle the trial and plead for the right to confront the witnesses already examined in his absence, whenever the accused is arrested.

4.2 In a situation of deliberate non-appearance of the accused either at pre-charge stage or post-charge stage to evade the trial, not only the victim, the State also suffers a huge loss in serving court processes to procure the attendance of the accused for continuing the trial. After all criminal justice system including the Court are run by public fund and the accused or the prosecution cannot on any pretext delay and consume valuable court hours. The years long wait for justice by the victims and requirement of repeated testimony of the witnesses is stumbling the faith of the people.

ISSUES

- **How to end this never-ending process?**
- **What means and methods should be adopted to curb this menace of deliberate non-appearance?**

- **Whether right to defense should be guaranteed, even in the absence of duty on the part of the accused to co-operate with the system?**

4.3 The present research focuses on two concrete points in this regard; first to see the possible ways to treat the evidence recorded against the absconding accused as final, on the premise that the accused who abscond do so at his peril and forfeits the statutory right to confront the witness. The second is with regard to the possibility of establishment of a procedure in which the accused is declared an absconder need to be simplified.

In the light of the above-mentioned points, the question, which may naturally arise would be, ***will it not violate the right of fair trial to the accused?***

A. EXTENT OF RIGHT TO FAIR DEFENSE:

4.4 Right to fair trial essentially includes right to defense. In the criminal trial the accused's right to defense is protected by requirement of Section 273 that the evidence is to be recorded in the presence of the accused. The presence of accused at the stage of commitment (in case of session triable offences), examination of witnesses, delivery of judgment ensures fairness in the trial. The Criminal Procedure Code mandates the presence of accused at all the stages of trial. The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably is a valuable right. The instances of deliberate non-appearance of the accused can be termed as misuse of the valuable right to be present during the trial.

RELEVANT PROVISIONS

Relevant portion of Section 273 reads as follows: Evidence to be taken in presence of the accused-- Except as otherwise expressly provided, all evidence taken in the course of the trial or other proceeding shall be taken in the presence of the accused, or, when his personal appearance is dispensed with, in presence of his pleader.

Explanation:- In this section, "accused" includes a person in relation to whom any proceeding under Chapter VIII has been commenced under this Code.

The general provision of this Section does not apply to cases where there is an express provision for taking evidence in the absence of the accused. Thus Sections 284, 291, 292, 293 and 299 are exception to the mandate of this provision.

B. WHETHER THERE IS A RIGHT OF THE ACCUSED TO CONFRONT THE WITNESS OF THE PROSECUTION?

4.5 Right to confront a witness by cross-examination is a statutory right guaranteed to the accused under various provisions of the Cr.P.C e.g., Sections 231, 242-243, 254 read with Sections 137-138 of the Evidence Act. Section 273 of the Cr.P.C further provides that the evidence in a case is to be taken in the presence of the accused. Section 22 (3) of the Prevention of Corruption Act, 1988 provides that the Judge may, if he thinks fit and for reason to be recorded by him, proceed with inquiry or trial in the absence of the accused or his pleader and record the evidence of any witness subject to the right of the accused to recall the witness for cross-examination. No right including a Fundamental Right is absolute and it is subject to reasonable restrictions.

C. WHETHER RIGHT TO CONFRONT WITNESS COVERED UNDER FUNDAMENTAL RIGHTS

4.6 In ***Jayendra Vishnu Thakur Vs State of Maharastra* and another (2009) 7 SCC 104**, whether the right to confront witness is a fundamental right or not, has not directly been answered but the observations of the Apex Court are relevant to understand the range and limitation of this right. The Apex Court observed, ***"The right of an accused to watch the prosecution witnesses deposing before a court of law indisputably in a valuable right. The Sixth Amendment of the United States Constitution explicitly provides therefore, which reads as follows: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defense."***

We may, however, notice that such a right has not yet been accepted as a fundamental right within the meaning of Article 21 of the Constitution of India by the Indian courts. In the absence of such an express provision in our constitution, we have to proceed on a premise that such a right is only a statutory one. ……..

In the context of our constitutional scheme, fundamental rights are not absolute being subject to reasonable restrictions. There lies a distinction between Bill of Rights contained in the Constitution of the United States and the fundamental rights provided for in the Indian Constitution. ……..

***We may, however, notice that even in the United States of America, the accused's right under the Sixth Amendment is not absolute. The right of confrontment of an accused is subject to just exceptions, including an orderly behaviour in the courtroom. In case of disruptive behaviour an accused can be asked to got outside the courtroom so long he does not undertake to behave in an orderly manner. [Illinois v. Allen.* 397 US 337]**

An accused is, however, always entitled to a fair trial. He is also entitled to a speedy trial but then he cannot interfere with the governmental priority to proceed with the trial, which would be defeated by conduct of the accused that prevents it from going forward. In such an event several options are open to courts. What, however, is necessary is to maintain judicial dignity and decorum. The question, which arises for consideration, is whether the same will take within its umbrage the said principle. We will examine the said question a little later. We will proceed on the premise that for invocation of the provisions of Section 299 of the Code of principle of natural justice is inbuilt in the right of an accused.

A right to cross-examine a witness, apart from being a natural right is a statutory right. Section 137 of the Evidence Act provides for examination-in-chief, cross-examination and re-examination. Section 138 of the Evidence At confers a right on the adverse party to cross-examine a witness who had been examined in chief, subject of course to expression of his desire to the said effect. But indisputably such an opportunity is to be granted. An accused has not only a valuable right to represent himself, he has also the right to be informed thereabout. If an exception is to be carved out, the statute must say so expressly or the same must be capable of being inferred by necessary

***implication. There are statutes like the Extradition Act, 1962 which excludes taking of evidence vis-a-vis opinion. (See Sarabjit Rick Singh V Union of India* 2007 (14) SCALE 263)".....**

4.7 From the above discussion it can be said that there is no unfettered right to confront a witness and right to be present at the time of examination of witness or at any other stage is not an absolute right. The Code itself makes exceptions to the above rule and even Judgment can be pronounced in the absence of the accused in terms of Section 353(6) of the Cr.P.C. A brief survey of the law and practice world over on this point will reveal that nowhere the trial comes to a stand still on non-appearance of the accused. As a matter of fact the trial proceeds unaffected by the abscondance of the accused and even the Judgment of convictions are pronounced in absentia without violating the canons of fair trial principles to the accused.

D. IDENTIFICATION OF ACCUSED IN ABSENTIA TRIALS

4.8 In normal trial where the accused is represented by a lawyer and is not attending the court and is being represented by his counsel under Section 205 or 317 of the Cr.P.C his identification is dispensed with. By the same analogy the identification can be dispensed when the accused absconds and the trial proceeds in absentia.

E. DELIBERATE NON-APPEARANCE vs. RIGHT TO DEFENSE: DOCTRINE OF 'TRIAL IN ABSENTIA'

4.9 In general, the anglo-american criminal jurisprudence holds that the accused shall be present in his own trial to defend himself. According to the principles of fair trial, every stage of criminal trial demands the presence of accused to provide him the right to fair defense. But the study of various case-laws of different times ranging

from 18th century till date, shows that the right to defense has been used by the accused for wrong motives to delay the trial. The study of the following cases shows how the courts in the beginning of the nineteenth century itself applied the concept of 'trial in absentia' to regulate the wrong usage of the 'right to defense' by the accused by way of deliberate non-appearance.

4.10 In 1912 itself, the U.S. Supreme Court while dealing with 'trial in absentia' in ***Diaz v. United States*** 223 U.S. 442 (1912), held that, ***'where the offence is not capital and the accused is not in custody, the prevailing rule has been that if, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of trial, but, on the contrary, operates as a waiver of his right to be present and leaves the court free to proceed with the trial in like manner and with like effect as if he were present'.***

4.11 The ***Falk v. United States*** 181 U.S. 618 (1901), is a classic example of misuse of bail. The defendant in this case, though present at the stage of commencement of the trial, after grant of bail, the absconded. The court affirming the commencement of trial in his absence, held that, ***'it does not seem... consonant with the dictates of common sense that an accused person, being at large upon bail, should be at liberty, whenever he pleases, to withdraw himself from the courts of his country and to break up a trial already commenced'***. [James G. Starkey (1979), *Trial in Absentia,* 53 (4) St. Jhon's Law Review 1979].

4.12 Sec. 287 of Model Code of Criminal Procedure, 1930 proposed by American Law Institute is one of the oldest document which talks about the 'trial in absentia'. Sec. 287 which deals with presence of defendant under prosecution for felony, provides that, *if the defendant*

is voluntarily absent,…….. may be heard in his absence if the court so orders.

4.13 In ***U.S. v. Tortoro*** 464 F.2d 1202 (2nd Cir.), the court noted that the following factors to be considered in deciding whether to hold trial in absentia: (1) the likelihood that the trial could soon take place with the defendant present; (2) the difficulty in rescheduling, particularly in multiple defendant trials; and (3) the burden on the prosecution in having to undertake two trials, again particularly in multiple defendant trials where the evidence against the defendants is often overlapping and more than one trial might keep the prosecution's witnesses in substantial jeopardy. It can be understood that the trials were frustrated even in good olden days by the accused by way of deliberate non-appearance. The lawmakers after taking cognizance of the same also found the way out in the name of *'trial in absentia'*.

4.14 **European courts** also hold Trial in Absentia in cases of willful abscondance of the accused. The ***R v. Jones*** 1972 2 All E R 731, provides that the English courts are intact in adopting the doctrine of 'trial in absentia' in conditions where the accused deliberately attempts to evade trial by way of abscondance. Not only English courts, the countries such as Canada, Australia and New Zealand also appreciated the problem of deliberate non-appearance by way of adoption of doctrine of trial in absentia. Bangladesh legislation is a classic example of the dynamic approach needed for criminal legislations to avoid a situation of control of defendant over the criminal trial.

F. DOCTRINE OF 'TRIAL IN ABSENTIA' - RATIONALE

- **It prevents the defendant from dictating when the case against them will proceed;**
- **It reduces the stress on victims by ensuring the trial**

proceeds on the scheduled date and that the cases are disposed in a timely manner;

- **Reduce inconvenience to victims, witnesses and judges;**

Avoid problems with multi-accused trials when one of the accused fails to appear and the other defendants are ready to proceed.

G. DOCTRINE OF '*TRIAL IN ABSENTIA*' - COMPARATIVE VIEW OF CRIMINAL JURISPRUDENCE

4.15 The challenge of bringing to justice an offender who has absconded is not peculiar to our country and the Courts world over is grappling with it. The magnitude of the problem in our country is greater and is further exacerbated by its size and population.

4.16 Certain countries like US, England, Canada Australia, New Zealand, Bangladesh and other nations now do not recognize an absolute right of the accused to confront the witness and it can be deemed to be waived in the event of their willful absconding. Bangladesh came out with a solution to the problem of deliberate non-appearance of the accused and delay in criminal trials, by amending its Criminal Procedure Code. As an exception to general rule, New Zealand courts, since the mid-1980s, accepted that a trial might also continue where the accused has voluntarily absented him/her-self from proceedings.

a. THE ENGLISH LAW

4.17 **Presence of accused –** In general an accused has a right to be present at his trial, but the proceedings may continue in his absence if he waives that right **[*R Vs. Jones*]** and where there is good cause [***R Vs. Governor of Brixton Prison, exp Caborn-Waterfield*** 1960 (2) QB 498 at 508-509]. The trial Judge may, if he considers that the

sight of the accused in the dock may intimidate a witness, remove the accused from the presence of the witness though not it seems out of hearing; and in an appropriate case a screen may be erected in the court room to prevent very young children giving evidence or being seeing the accused in the dock.

4.18 An accused must be present at the time of sentence if he is in custody and does not waive that right [***R. Vs. Cornwell*** (1972) NSWLR I (NSWCCA)]. It has been held in ***R Vs. Jones {Rew}{2}1972 2 All E R 731 that if the accused during the trial absents himself from court voluntarily, however, as, for example, by escaping from custody or failing to consider or failing to surrender to custody whilst on bail , the court, in his discretion may allow the trial to continue; and, if the accused is convicted, the Judge may sentence him in his absence.*** **[Para 945, Page 803 Halsbury's Law of England 4th Edition Reissue 11(2)]**

4.19 In ***R v. Jones***, the case, first of its kind, in which the House of Lords dealt with the question, ***'Can the Crown Court conduct a trial in the absence, from its commencement, of the defendant?'*** The facts of the case are as follows: On 18 August 1997, Mr.Jones allegedly robbed a post office in Liverpool and stolen 87,000 pounds. He and his co-accused were charged for the offence and granted bail. In January 1998, the plea of innocence was presented by both the accused before the trial court and the trial date was fixed on 1 June 1998. On the date of trial, both the accused avoiding the surrender to the Crown court for trial and warrants were issued for their arrest. Both the accused absconded to evade the trial and the trial was relisted again and again for the appearance of the accused. The legal representative of both the accused withdrew from the proceedings in the light of the failure of accused to surrender before the court. The court records clearly showed the initial reaction of the trial court judge, that the trial could not begin due to the absence of accused,

whatever the reason for his absence. Though the judge was reluctant to proceed with the trial in the absence of accused, the large body of witnesses who suffered utmost traumatic experience in the incidence impressed it upon him, by quoting various precedents that trial should commence. Taking the view that the accused had deliberately frustrated the trial by causing enormous delay, the judge convicted both the accused. At the end of December 1999, i.e., fourteen months later, both the accused were arrested and produced before the court. The court further charged them for non-appearance and imposed twelve months imprisonment for their failure to surrender to custody, concurrently with the previous sentence imposed upon them.

4.20 The convicts preferred appeal to the Court of Appeal, which dismissed the appeal. The Court of Appeal relied on ***R v. Abrahams*** [1895] 21 VLR 343 at 347, quoting William J, ***that if an accused person failed to appear at trial and was found, when the trial came on, to have absconded, he had clearly waived his right to be present and the prosecution might elect to go on with the trial in his absence, and in such event, the judge shall exercise his discretion whether to allow the trial to continue, paying particular attention to whether the defendant was represented (Obiter dicta).***

4.21 Further, quoting, ***R v. Jones, Planter and Pengelly*** [1991] CrimLR 856,wherein the appellate court affirmed the trial judge order stating that the trial should begin against the absent defendants as well as the defendant who was present, in the present case, the House of Lords held that there is a discretion in the judge to order a trial to continue, or indeed to start, not only where a person had voluntarily absented himself, but also where he had been involuntarily absent. ***(R v. Howson,*** [1981] 74 Cr.App.R 172).

4.22 In ordinary terms, the ratio of the judgment holds that, where an accused, is neither a minor nor lunatic, having sound mind, when

opting out to evade the trial voluntarily as an absconder, shall be construed as waiving his right to be present at the trial. Rights and duties are considered to be jural co-relatives to each other. It is the duty of the accused to co-operate with the system for the smooth functioning of criminal justice administration. His conduct as absconder is an evidence of his non-performance of obligation, hence shall be considered as forfeit the right to fair trial.

4.23 **But the House of Lords contrary to the directions of the Court of Human Rights Commission, which regards the appearance of a criminal defendant at his trial as a matter of capital importance. *(Pelladoah v. Netherlands* [1994] 19 EHRR 81, at p.94, para 40; *Lala v. Netherlands* [1994] 18 EHRR 586, at p.597, para 33), dismissed the appeal by expressing the requirement of cautious-approach in application of the principle.**

4.24 In ***R v. Jones***, the Court articulated ten non-exhaustive factors that courts should take into account when exercising the discretion to commence or continue in the accused's absence. These factors were:

- ***The nature and circumstances of the defendant's behaviour in absenting himself from the trial or disrupting it, as the case may be, and in particular, whether his behaviour was deliberate, voluntary and such as plainly waived his right to appear;***
- ***Whether an adjournment might result in the defendant being caught or attending voluntarily and/or not disrupting the proceedings;***
- ***The likely length of such an adjournment;***
- ***Whether the defendant, though absent, is, or wishes to be, legally represented at the trial or has, by his conduct, waived his right to representation;***
- ***Whether an absent defendant's legal representatives are able to receive instructions from him during the trial and***

the extent to which they are able to represent his defense;

- ***The extent of the disadvantage to the defendant in not being able to give his [or her] account of events, having regard to the nature of the evidence against him;***
- ***The risk of the jury reaching an improper conclusion about the absence of the defendant;***
- ***The seriousness of the offence, which affects defendant, victim and public;***
- ***The general public interest and the particular interest of victims and witnesses that a trial should take place within a reasonable time of the events to which it relates;***
- ***The effect of delay on the memories of witnesses;***
- ***Where there is more than one defendant and not all have absconded, the undesirability of separate trials, and the prospects of a fair trial for the defendants who are present.***

4.27 The ratio of *R v. Jones* is exhaustive in term of check-list to see whether the balance between right to defense and deliberate non-appearance is maintained or not. The Court of Appeal stressed that the discretion to commence a trial in the absence of a defendant should be exercised with the utmost care and caution. The main concern of the judges in applying the present principle will be to ensure that the trial, if conducted in the absence of the accused, will be as fair as circumstances permit and lead to a just outcome. The other important factor to be taken into consideration is the proof of voluntary abscondance of the accused to frustrate the trial.

4.25 ***R v. Jones*** is a classic example of deliberate non-appearance of the accused with an intention to evade trial proceedings. Though the ratio was laid down with a limitation of caution-approach, **the House of Lords did not consider there to be any reason in principle why a trial should not proceed in the defendant's absence. Lord**

Bingham in Para 10 of his judgment stated that, '*if a criminal defendant of full age and sound mind, with full knowledge of a forthcoming trial, voluntarily absents himself, there is no reason in principle why his decision to violate his obligation to appear and not to exercise his right to appear should have the automatic effect of suspending the criminal proceedings against him until such time, if ever, as he chooses to surrender himself or is apprehended'.*

4.26 Specifically quoting the cases where there are large number of accused, Lord Birgham observed that, *'...it is only necessary to consider the hypothesis of a multi-defendant prosecution in which the return of a just verdict in relation to any and all defendants is dependent on their being jointly indicted and tried. On the eve of the commencement of the trial, one defendant absconds. If the court has no discretion to begin the trial against that defendant in his absence, it faces an acute dilemma: either the whole trial must be delayed until the absent defendant is apprehended, an event which may cause real anguish to witnesses and victims; or the trial must be commenced against the defendants who appear and not the defendant who has absconded. This may confer a wholly unjustified advantage on that defendant. Happily, cases of this kind are very rare. But a system of criminal justice should not be open to manipulation in such a way."*

4.27 He further highlighted that ***"...one who voluntarily chooses not to exercise a right cannot be heard to complain that he has lost the benefits which he might have expected to enjoy had he exercised it.*** *If a defendant rejects an offer of legal aid and insists on defending himself, he cannot impugn the fairness of his trial on the ground that he was defended with less skill than a professional lawyer would have shown...****If he voluntarily chooses not to exercise his right to appear, he cannot impugn the fairness of the trial on the ground that it followed a course different from that which it would have followed had he been present and represented."***

4.28 In **R Vs Hayward** [2001] Q.B.862 Lordships took into account the avenues for appeal open to the defendant and the considerable **inconvenience in postponing a trial for which 25 witnesses had attended court. On balance the trial had been fair.** Their Lordships emphasized that this discretion is to be exercised sparingly and approved the court of Appeal's checklist of matters (save one) relevant to the exercise of discretion. ***'Once the Judge has been arraigned and put in charge of the jury, the judge has discretion to allow the trial to continue in the defendant's absence. That discretion must be exercised with a view rather to the administration of justice than to the convenience or comfort of anyone. It may be exercised with the consent of the defendant or if he has voluntarily absented himself, e.g. by absconding from his bail.***

In all probability, however, the Judge would refuse to continue the trial in the absence of a defendant unrepresented by counsel even with his consent, unless the Judge was satisfied that he had voluntarily absented himself through caprice or malice or for the purpose of embarrassing the trial or frustrating his own prosecution.

A magistrate's court may consider mode of trial and proceed with a summary trial in the absence of a represented defendant with defendant's consent, if satisfied that there is good reason for doing so. They may proceed with a summary trial if the defendant fails to attend.

b. TRIAL IN ABSENTIA – CANADIAN PERSPECTIVE

4.29 In Canada, the accused is entitled to be present during the trial as a general principle. In case the judge is the opinion that the presence of accused disrupts the proceedings, he may exempt the appearance of the accused at any stage. But Sec.544 of the Canadian

Criminal Procedure provides for the procedure to be followed in cases where accused absconding during investigation.

Sec.544 (1): Accused absconding during inquiry: Notwithstanding any other provision of this Act, where an accused, whether or not he is charged jointly with another, absconds during the course of a preliminary inquiry into an offence with which he is charged,

(a) he shall be deemed to have waived his right to be present at the inquiry, and

(b) the justice –

(i) may continue the inquiry and, when all the evidence has been taken, shall dispose of the inquiry in accordance with section 548, or

(ii) if a warrant is issued for the arrest of the accused, may adjourn the inquiry to await his appearance, but where the inquiry is adjourned pursuant to subparagraph (b)(ii), the justice may continue it at any time pursuant to subparagraph (b)(i) if he is satisfied that it would no longer be in the interests of justice to await the appearance of the accused.

(2) Adverse inference: Where the justice continues a preliminary inquiry pursuant to subsection (1), he may draw an inference adverse to the accused from the fact that he has absconded.

(3) Accused not entitled to re-opening: Where an accused reappears at a preliminary inquiry that is continuing pursuant to subsection (1), he is not entitled to have any part of the proceedings that was conducted in his absence re-opened unless the justice is satisfied that because of exceptional circumstances it is in the interests of justice to re-open the inquiry.

(4) Counsel for accused may continue to act Where an accused has absconded during the course of a preliminary inquiry and the justice continues the inquiry, counsel for the accused is not

thereby deprived of any authority he may have to continue to act for the accused in the proceedings.

(5) Accused calling witnesses: Where, at the conclusion of the evidence on the part of the prosecution at a preliminary inquiry that has been continued pursuant to subsection (1), the accused is absent but counsel for the accused is present, he or she shall be given an opportunity to call witnesses on behalf of the accused and subsection 541(5) applies with such modifications as the circumstances require.

c. TRIAL IN ABSENTIA IN AUSTRALIA

4.30 Australian common law recognizes that an accused has the right to be present during the course of his or her trial, but that right can be waived. The Sec. 22(2) (d) of the Human Rights Act, 2004 and Sec.25 (2) (d) of Charter of Human Rights and Responsibilities Act, 2006 (VIC), in the Australian Capital Territory and Victoria also guarantee the right to be tried in person, and to defend oneself personally or through legal assistance.

4.31 In ***R v. McHardie*** [1983] 2 NSWLR 733; *R v. Jones* [1998] SASC 7021; *R v. Serrano (ruling No.5)* [2007] VSC 209, established that the judge has discretion as to whether to continue a trial where an accused has voluntarily absented himself or herself by escaping. Such situation has been dealt by the courts in Australia as waiver rather than non-exercise of right.

d. AMERICAN JURISPRUDENCE VIS-À-VIS TRIAL IN ABSENTIA

4.32 **Disruptive Conduct –** A defendant can waive or lose his right to be present at trial, if after he has been warned by a Judge that he will be removed if he continues his disruptive behaviour, he never the less insist on conducting himself in a manner so disorderly, disruptive, and disrespectful of the court that his trial cannot be carried on with

him in the court room-***U.S. Illinios Vs. Allen*****,** III, 90 S.Ct.1057. It has been further held in this case that the right to be present lost by misconduct can be reclaimed as soon as defendant is willing to conduct himself consistently with decorum and respect inherent in the concept of Judicial proceedings and if he is removed for such disruptive conduct the court must offer defendant the opportunity to reclaim the right of presence.

4.33 **Voluntary Absence –** It has been held in some instances under rules of statutory provisions, that the right may be waived by accused's absconding or voluntarily absenting himself from the trial – ***Tailor Vs. US*****, Mass, 94 S.Ct. 194**

4.34 The accused absents himself after the trial has already commenced the waiver is effecting even without a demonstration that the accused knew had been expressly warned by the court as to his right to be present and that trial would continue in his absence - ***Tailor Vs. US,*** Mass, 94 S.Ct. 194.

4.35 However, in order to proceed without accused where he absents himself before the trial begins, the Judge must find that accused has had adequate notice of the charges and proceedings against him of his right to be present of the consequence of his failure to appear and the time when the proceedings where to commenced. **[Page 1166 Criminal Law Corpus Juris Secundum 23A]**

4.36 In America, right to appear in person at their trial is guaranteed to the defendant as a matter of due process, protected under the 5th, 6th and 14th Amendments. In ***Hopt v. Utah***, 110 US 574, 28 L Ed 262, 4 S Ct 202 (1884), the US Supreme Court held that, the accused shall be guaranteed right to personally present at every stage of trial when his substantial rights may be affected by the proceedings against him.

4.37 Later, American courts allowed for trial in absentia, but only in cases similar to Gbao's in Sierra Leone, where the defendant can have been thought of as have had notice and explicitly waiving their right to appear.

4.38 In ***Cf Crosby v. U.S***., 506 U.S. 255, 262 (1993), the Federal District Court permitted the proceedings to go forward in his absence, and he was convicted and subsequently arrested and sentenced. In this case, Crosby failed to appear at the beginning of his criminal trial, though he attended various preliminary proceedings. Crosby appealed to the Court of Appeal challenging the verdict delivered by the Federal District Court. In affirming his convictions, the Court of Appeals rejected his argument that his trial was prohibited by Federal Rule of Criminal Procedure 43, which provides that a defendant must be present at every stage of trial, 'except as otherwise provided' by the Rule and which lists situations in which a right to be present may be waived, including when a defendant, initially present, 'is voluntarily absent after the trial has commenced'.

4.39 Federal Rule of Criminal Procedure 43 (c) deals with waiving continued presence – (1) in general – A defendant who was initially present at trial, or who had pleaded guilty or nolo contendere, waives the right to be present under the following circumstances: (A) when the defendant is voluntarily absent after the trial has begun, regardless of whether the court informed the defendant of an obligation to remain during trial; (B) in a non-capital case, when the defendant is voluntarily absent during sentencing; or (C) when the court warns the defendant that it will remove the defendant from the courtroom for disruptive behavior, but the defendant persists in conduct that justifies removal from the courtroom. (2) *Waiver's Effect.* If the defendant waives the right to be present, the trial may proceed to completion, including the verdict's return and sentencing, during the defendant's absence.

4.40 In ***Cf Crosby v. U.S***, 917 F.2d 362, the Court of Appeal held that, ***'Rule 43 prohibits the trial in absentia of a defendant who is not present at the beginning of trial. The Rule's express use of the limiting phrase "except as otherwise provided" clearly indicates that the list of situations in which the trial may proceed without the defendant is exclusive. Moreover, the Rule is a restatement of the law that existed at the time it was adopted in 1944. Its distinction between flight before and during trial also is rational, as it marks a point at which the costs of delaying a trial are likely to increase; helps to assure that any waiver is knowing and voluntary; and deprives the defendant of the option of terminating the trial if it seems that the verdict will go against him. Because Rule 43 is dis-positive, Crosby's claim that the Constitution also prohibited his trial in absentia is not reached***. The Court of Appeal while dealing with *Cf Crosby,* referred to the following cases wherein the trial in absentia is permitted on the ground of deliberate non-appearance of accused.

4.41 ***United States v. Peterson,*** 524 F.2d 167 (4th Cir. 1975), cert. denied, 423 U.S. 1088, 96 S.Ct.881, 47 L.Ed.2d 99 (1976), wherein the Fourth Circuit concluded that a defendant's voluntary absence at the commencement of trial was a waiver under Rule 43 just as if the defendant had attended the beginning of a trial and then later absconded. In this case, the court reasoned that, ***'to permit a defendant, free on bail, to obstruct the course of justice by absconding without a compelling reason, after having received actual notice of the time and place of trial, is as inconsistent with the purposes of the rule as to permit a defendant to abscond after the trial has commenced. We therefore hold that a defendant may waive his right to be present at the commencement of his trial just as effectively as he can waive his right to be present at later stages of the proceedings'.***

4.42 The Second Circuit in ***United States v. Tortora***, 464 F.2d 1202, 1208 (2d Cir.), cert. denied, ***Santoro v. United States,*** 409 U.S. 1063, 93 S.Ct. 554, 34 L.Ed.2d 516 (1972), reached a similar conclusion, stating: ***'Waiver of a constitutional right must be both "knowing" and "voluntary." A defendant who deliberately fails to appear in court does so voluntarily, and thus the important question is whether his absence can be considered a "knowing" waiver. We hold that it can. The deliberate absence of a defendant who knows that he stands accused in a criminal case and that the trial will begin on a day certain indicates nothing less than an intention to obstruct the orderly processes of justice. No defendant has a unilateral right to set the time or circumstances under which he will be tried'***. The Court did not hold that the district court should proceed in absentia in every case in which the defendant voluntarily absented himself, but that the decision of whether to proceed is "within the discretion of the trial judge, to be exercised only when the public interest outweighs that of the voluntarily absent defendant."

4.43 In ***United States v. Sanchez***, 790 F.2d 245 (2d Cir.), cert. denied, 479 U.S. 989, 107 S.Ct. 584, 93 L.Ed.2d 587 (1986), the Second Circuit gave further guidance on the parameters of the district court's discretion to try a defendant in absentia. The Sanchez court wrote: District judges must have broad discretion in determining whether to proceed with a trial in absentia....

4.44 While deciding *Cf Crosby,* the Court of Appeal held that, ***'in the present case, it is enough that, in a case with more than one defendant, Sanchez waived his right to be present by failing to appear without explanation and while on bail; that some reasonable steps, including a one-day continuation with notification to his attorney and the issuance of a bench warrant, were taken unsuccessfully in response to his non-appearance; that there was no reason to believe that the trial could likely***

soon be held with Sanchez present; and that severance would impose on the Government the burden of prosecuting two separate trials that would involve substantially the same evidence'.

4.45 The Court of Appeal in *Crosby* held that the district court carefully considered each of these factors before deciding to commence the trial without Crosby. The Court of Appeal observed that, the District Court delayed the trial five days, trying to obtain Crosby's presence, before finally concluding that it would be unable to secure Crosby. Rescheduling of this case would have greatly disrupted the court's schedule and imposed a burden on the witnesses by requiring many of them to appear a second time. Some of the witnesses were elderly with attendant problems of memory loss and the possibility that they might die before the trial could be rescheduled. In light of these conditions, holding two separate trials, one for three defendants and the other if and when Crosby was found, presented the court and jurors with significant inconvenience. Following the analysis suggested by the Second and Fourth Circuits, we have no difficulty satisfying ourselves that Crosby waived his right to be present at trial and that the district court acted within its discretion in trying Crosby in absentia together with the other three defendants who appeared at trial.

4.46 In ***State v. Whitley,*** 85 P.3d 116 (2004) (Depublished Opinion), Arizona Court of Appeals (based on Arizona Rules of Criminal Procedure), held **that *'A voluntary waiver of the right to be present requires true freedom of choice. A trial court may infer that a defendant's absence from trial is voluntary and constitutes a waiver if a defendant had personal knowledge of the time of the proceeding, the right to be present, and had received a warning that the proceeding would take place in their absence if they failed to appear. The courts indulge every***

reasonable presumption against the waiver of fundamental constitutional rights'.

4.47 The ***Crossby*** case reiterated ***Diaz v. United States,*** 223 U.S. at 455 [1912], the 80-year-old precedent that, ***'where the offense is not capital and the accused is not in custody,.... If, after the trial has begun in his presence, he voluntarily absents himself, this does not nullify what has been done or prevent the completion of the trial, but, on the contrary, operates as a waiver of his right to be present and leaves the court free to proceed with the trial in like manner and with like effects as if he were present'.***

e. POSITION IN NEW ZEALAND

4.48 Sec.25(e) of the Bill of Rights Act 1990 specifically recognizes the right of charged to be present during the trial, and to present a denfese. The New Zealand courts relied upon *R v. Jones,* while deciding whether to commence or continue a trial in the accused's absence. In series of cases, New Zealand courts applied the principle laid down in *R v. Jones.* (***R v. Parakau*** [2002] DCR 699; ***R v. Sthmer***, (17 June 2003) HC WN T064/01; ***R v Williams*** (10 September 2004) HC AK CRI 2003-404-025445; ***R v McFall*** (7 April 2005) HC HN CRI 2004-019-20514; ***R v Guo and Hui*** (22 February 2006) HC AK CRI 2004-004-18566; ***R v Dunn*** (4 June 2008) HC AK CRI 2008-404-000076)

4.49 In ***R v.van Yzendoorn*** [2002] 3 NZLR 758 (CA), the New Zealand Court of Appeal followed *R v. Jones,* with a caution that the Judge should not commence or continue the trial if there was a real risk that a fair trial would not result.

4.50 In ***R v. Parakau*** [2002] DCR 699, while applying the rationale laid down in *R v. Jones,* the court held that, *'it was in the interests of everyone, including the witnesses, co-accused, Crown, court and jurors,*

that the case was resolved. In a suitable case, the court system must work around a foolish, negligent or willful accused'.

4.51 **In *R v Williams*** (10 September 2004) HC AK CRI 2003-404-025445, one of the accused among fourteen, facing charges in a criminal trial, failed to appear for the start of his trial. By concluding the case against the absence of accused in the trial proceedings as willful, the court proceeded against the trial in absentia.

4.52 In ***R v. Dunn*** (4 June 2008) HC AK CRI 2008-404-000076, Andrews J, decided to continue the trial in absentia, even the accused's absence due to his illness, i.e., absence is involuntary, by quoting that it was in the public interest of the trial to continue and to be completed in a reasonable time.

4.53 In ***R v McFall*** (7 April 2005) HC HN CRI 2004-019-20514, Priestley J noted that, *'it is not fantasy to assume a situation, whereby a number of accused jointly facing charges, could devise a plan of rolling absconding, thus delaying a trial indefinitely if the court were prepared to countenance the situation that every absconding accused would be entitled to force the court to adjourn the trial to another date'.* In this case, the court held that the presence of any one accused is sufficient to continue the trial in the absence of the remaining accused who voluntarily chose to evade the trial.

f. POSITION IN BANGLADESH

4.54 The Bangladesh Criminal Procedure Code, 1958 amended its legislation to incorporate the provisions relating to trial in absentia.

Sec.339B of the Act, 1958 provides that:

(1) Where after the compliance with the requirements of

section 87 and section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation], direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.]

(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.

4.55 According to Sec.339B, in spite of issuing all processes, if accused do not appear or cannot be arrested, the Court can take steps to hold trial in absentia in complaint and police cases. But before applying the procedure laid down in Sec.339B, complying with Sec.89 (restoration of attached property u/s 88), Sec. 88 (attachment of property of person absconding) and Sec. 339B is imperative. Once the court has reason to believe that there is no immediate prospect of arresting the accused or he is deliberately avoiding the trial by absconding, after giving public notification in at least two national Bangla dailies, can move on to take cognizance and conduct trial in the absence of accused.

4.56 Recently in Chittagong arms haul case trial (2004), in which ULFA commander-in-chief Paresh Barua is the prime accused, Baruah has been tried in absentia. It is a case of interest in North-

east India also, wherein a total 265 persons were made witnesses and charges were framed against 11 high-profile suspects including present and former Government high officials. In 2014, the Special Court in Chittagong awarded death penalty to Barua in his absentia.

H. TRIAL IN ABSENTIA: INTERNATIONAL SCENARIO

4.57 According to Art. 14(3)(b) of International Covenant on Civil and Political Rights, *'in the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality… (d) to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it.* In ***Mbenge v. Zaire*** U.N. Human Rights Comm., U.N. Doc. CCPR/C/OP/2 (Mar. 25, 1983) while dealing the trial in absentia, stated that, *'everyone is entitled to be tried in his presence and to defend himself in person or through legal assistance…. Indeed, proceedings in absentia are in some circumstances permissible in the interest of proper administration of justice'.*

4.58 The European Court of Human Rights in ***Poitrimol v. France*** (1993) 18 EHRR 130 (ECHR) at [31], confirmed that a trial in the absence of the defendant is not necessarily incompatible with the equivalent article 6 of the European Convention on Human Right. In this case, the court stated that, *'proceedings held in an accused's absence are not in principle incompatible with the Convention if the person concerned can subsequently obtain from a court which has heard him a fresh determination of the merits of the charge, in respect of both law and fact. It is open to question whether this latter requirement applies when the accused has waived his right to appear and to defend himself, but at all events such a waiver must, if it is to be*

effective for Convention purposes, be established in an unequivocal manner and be attended by minimum safeguards commensurate to its importance'.

I. CONCLUSION

4.59 On micro-level analysis of each and every pending criminal case in State of Jharkhand, the deliberate non-appearance of accused to evade the trial emerges as the major reason for delay in disposal of case. It affects the progress of the case at every stage from investigation, inquiry, and trial and even after conclusion of trial for execution of warrant of conviction. The response to the questions related to reason for non-appearance by the functionaries of the criminal justice administration system highlights the issue of 'deliberate non-appearance'.

4.60 The wheels of trial are found to be moving at the choice of accused creating hardships to the victims, witnesses and also to the functionaries of the judicial system. The accused when re-appears or is arrested, even after several years, the court is obligated to re-open the case, examine the witnesses who can be procured in that case for his cross-examination.

4.61 Contemporary Judicial practice world over is for trial of the accused in absentia where the accused voluntarily absents from the trial by deliberates non-appearances.

4.62 **We recommend suitable amendment in the Code of Criminal Procedure particularly in Sec.299, so that inquiry or trial can proceed and conclude in the event of deliberate non-appearance of the accused.**

***

CHAPTER – 5

WHOSE CASE IS IT ANY WAY? POLICE, PROSECUTION OR THE VICTIM

5.1 Crime affects not only the individual victim but also the society at large. The "State" being the protector of individual and social interest represents victim in any criminal prosecution of an offence instituted on police report. "State" is however an abstract entity and it functions through its instrumentalities and therefore responsibility of investigation of crime and its prosecution has to be fixed on definite agency. This is how the criminal justice system has evolved world over, from private prosecution to public prosecution. In our country after institution of FIR, the police are supposed to complete the investigation in a just and fair manner within a reasonable time frame. Investigation is collection of evidence, which is produced in the court during trial at the stage of evidence. It is the duty of the police to conclude the investigation and thereafter production of evidence before the court is the responsibility of the prosecution. Practically both these functions are entwined and investigation will suffer if it proceeds without any proper legal assistance and the prosecution will suffer if at the stage of production of evidence police do not produce witnesses promptly.

5.2 As discussed in data analysis in Chapter II it has been found that out **1,30,736 G.R/S.T cases (Table No.1, column 2, page no.19-20)** pending in the state of Jharkhand the presiding officers have attributed the reason for delay in **58,893 cases** to the stage of prosecution evidence (**Table No.1**, **column 4, page no.19-20**). It has also come from the analysis of pendency figures with regard to the status of pending cases as projected in **Column X of Form I**, total **71351 cases** were pending for the evidence (**Table No.3**, **column no.5, page no.22-23**). Further data analysis given in **Table no.5, column 4 (page no.25-26)** shows that only **443 cases** were pending

for more than six months for the defense evidence. Defense evidence is therefore not the stage were the cases are delayed. These findings of Form I is further substantiated in the study of life cycle of cases on physical verification of the records. Out of the total sample study of **1650 cases (Table No.10, column 2, page no.45-46 and Table No.11, column 2, page no.47-48),** only in very few cases the delay has been attributed at the stage of defense evidence.

5.3 It was therefore felt necessary to investigate as to why the cases are getting stuck up at the stage of prosecution evidence despite the clear mandate of Section 309 Cr.P.C. for examination of witnesses to be continued from day to day until all the witnesses in attendance have been examined. Proviso II and IV (c) of this Section are very emphatic for not granting adjournment when the witnesses are in attendance. The prosecution appears to lose direction and pace at the stage of evidence and there is interminable delay at this stage. One of the obvious reasons can be the docket to be too overloaded to permit a day-to-day examination of witness. But this cannot be reason for languishing of the case for years together at the stage of prosecution evidence.

5.4 From the responses to the questionnaire it appears that breakdown is more at the level of administrative structure as there is no one agency on which the responsibility on investigation and prosecution is vested.

5.5 Ideally the agency that collects evidence should take the responsibility of producing it before the Court. But, bifurcation of police and prosecution post 1973 Cr.P.C has brought an amount of disconnect between the two wings and there has surfaced a tendency of shifting responsibility on each other. The resultant fall out is that there is no one agency of the State on which the responsibility of crime detection and prosecution is clearly said.

5.6 It was against this background that the Presiding officers of the court, Superintendents of Police and the Public Prosecutors were asked **Question no.10 (page no.62)**, i.e., **in trial of police cases on which of the agency rests the statutory responsibility of production of prosecution witness?** The responses received reflect an interesting pattern with all the public prosecutors, **41 in number** have responded that the statutory responsibility was not cast on them. Out of **8 responses** from Deputy Commissioners **6** have stated that it was the responsibility of the prosecution and 1 has put it on both the sides viz., police and prosecution. Out of **24** Superintendents of Police, **18** have stated it to be on both sides that police and prosecution and four had stated it on the police. Out of **181** Judicial Officers, **152** were of the view that it was the responsibility of both, **41** held it to be of prosecution and **15** that of police.

5.7 The responses indicate that Public Prosecutors have completely abnegated and washed off their hand from producing witnesses in the court. **The mixed responses from the other functionaries reflect a complete confusion on this vital question as to whose job it was?** It proves the dictum that everyone's responsibility is no one's responsibility.

5.8 THE LARGER QUESTION IS ON WHICH AGENCY OF THE STATE RESTS THE RESPONSIBILITY OF INVESTIGATING A CRIME AND BRINGING TO JUSTICE THE OFFENDER?

5.9 **Question no. 11 (page no.62-64) that *in case of failure of police case on which the statutory liability is fixed for failure of police case*?** The answers received are also on the same line as that of **Question no. 10 (page no.62)**. Only thing is to be noted that all the Public Prosecutors have stated that the statutory liability cannot be fixed on the prosecution for failure of such cases.

5.10 The responses indicate that when a criminal case reaches court after investigation, it is practically nobody's baby. Prosecution in all its conviction says that it is not their responsibility and other functionaries are not sure whose case is it any way. The result of this asymmetry is not far to seek with delay in adducing prosecution evidence at the trial stage. To go a little further in response to **Question no. 15 (page no.68-70)** out of **181** Judicial Officers **104** have said that the investigating officers do not appear in the court with charge-sheeted witnesses during trial in a sessions case.

5.11 Lack of co-ordination is reflected by responses to **Question no 24 (page no.79-80)**, whether the P.P./A.P.P are consulted during investigation or at the time of submission of Charge-sheet/final form **32** out **41** P.P/A.P.P have said that there was no such consultation. Others have given a mixed response in the matter. The response of P.P/A.P.P appears to be more close to reality in the absence of any provision for consultation.

5.12 Further, to **Questions 25 (page no.79-80) and 30 (page no.82-83)**, whether monthly DM or SP convenes a monthly meeting on regular basis of with the PP, the responses have been mixed. Out of **24** responses received from Superintendents of Police, **18** said yes and **4** said no. Out of **8** Deputy commissioners, **6** responses were positive and **2** were negative. Out of **41** Public Prosecutors, **21** said yes and **18** said no. Entire system appears to be an *adhoc* arrangement of conglomeration working without uniform practice.

5.13 The above responses reflect a complete disconnect between agency conducting investigation and that which is producing it before the court. The role does not appear to be clearly defined. This confusion is in-spite of the fact that under section 225 Cr.P.C in a trial before a court of session the trial is to be conducted by a Public Prosecutor and under section 230 Cr.P.C on the application of the

prosecution the Judge shall fix the date of examination of witnesses. The provision for magisterial trial is to the same effect under section 242 of the Cr.P.C.

A. PRESENT PROSECUTION STRUCTURE IN INDIA

5.14 There are three main provisions of the Criminal Procedure Code with regard to appointment of Public Prosecutors, Additional Public Prosecutors, Assistant Public Prosecutors and the creation of the Directorate of Prosecution. Section 24 is with regard to the appointment of Public Prosecutors, Additional Public Prosecutors for the High Court and the Sessions Court and special public prosecutor. Section 25 is with respect to Assistant Public Prosecutors for the court of Magistrates. Under Section 24 (4) there is provision for appointment of Public Prosecutors and Additional Public Prosecutors from the panel of names prepared by the District Magistrate in consultation with the Sessions Judge. There is further provision that where there is regular cadre of Prosecuting Officers the State Government shall appoint Public Prosecutors or Additional Public Prosecutors only from among the persons constituting such cadre. A Directorate of Prosecution has been created by inserting section 25A vide 2005 amendment w.e.f. 23/6/2006 under which a Directorate of prosecution headed by the Director and Deputy Director has been created. The entire administrative control of the prosecution cadre has been vested in the Directorate of Prosecution, who shall be working under the Home Department.

5.15 The present amendment does not address itself to the larger question of dysfunctional state of prosecutorial function since its bifurcation. The functional need and challenges appear to have been missed altogether in the solitary pursuit of bifurcation of the police from the prosecution, without considering its resultant fall out. The magnitude and challenge of law enforcement has increased manifolds

in the complexities of the present world. Ghastly crime of all hues is making headlines with frightening pace. All the functionaries of the state within their own defined field have to work to strengthen the rule of law. To think that crime control is the only responsibility of police will perhaps be too narrow a viewpoint. The present Cr.P.C while bringing a welcome change by creating a cadre of prosecutors and by creating a Directorate of Prosecution, has missed envisioning a larger picture where Prosecution and Police can co-ordinate and co-operate as one unit for greater efficiency and accountability in criminal adjudication.

5.16 Presently, Head of Prosecution in a district is not the Superintendents of Police or the D.I.G. but it is the District Magistrate or Deputy Commissioner as the case may be. Police, which is the primary agency invested with the responsibility of investigation of crime and control of law and order has practically no control over prosecution, which conducts the trial. With a number of welfare schemes at hand and being departmental head of various other departments, D.M/D.C have almost their hand full and pre-occupied to keep track of criminal cases. This dichotomy and asymmetry between principal agencies crucially affects investigation and prosecution of criminal cases in different ways including delays at the stage of prosecution evidence.

B. OBJECTIVE BEHIND BIFURCATION OF POLICE & PROSECUTION WINGS

5.17 The Law Commission of India in its 154th Report recommended for separation of investigating agency from the law and order i.e., police. The rationale mentioned behind such recommendation is as follows:

1. **It will bring the investigating agencies under the protection of judiciary and greatly reduce the possibility of political or extraneous influences;**
2. **Efficient investigation of cases will reduce the possibility of unjustified and unwarranted prosecutions;**
3. **It will result in speedier investigation which would entail speedier disposal of cases;**
4. **Separation will increase the expertise of the investigating officers;**
5. **The investigating police would be plain clothes men and they would be able to develop good rapport with the public;**
6. **Not having been involved in law and order duties entailing the use of force, they would not provoke public anger and hatred which stand in the way of public police cooperation in tracking down crime and criminals and getting information, assistance and intelligence from the public. (154th Law Commission report, p.93).**

5.18 Accordingly the Criminal Procedure Code 1973 bifurcated the prosecution and police agencies into two different compartments independent of each other.

5.19 The main argument in support of bifurcation of police and prosecution is that prosecution should operate independently and should not become an instrument of persecution. An independent prosecution enables the Public Prosecutor or the Assistant Public Prosecutor to differ with the findings of the investigative agency after the submission of the police report. He can exercise his own discretion under section 321 Cr.P.C. when the state decides to withdraw a criminal case.

C. PRACTICAL SPIN-OFF OF BIFURCATION OF POLICE AND PROSECUTION

5.20 The purpose of the criminal justice system is to realize the rule of law, which is one of the most fundamental conditions for the sustainable development of societies. For this purpose, justice has to be given to those who have broken the law while protecting due process of law. Accordingly, the police are empowered to conduct investigations to give justice to suspects, whereas prosecutors are empowered to facilitate the investigation conducted by the police and to dispose the case for the prosecution, following the due process of law.

5.21 The practical side of the problem is that the prosecution having been completely bifurcated from the police after 1973 Cr.P.C. Police has lost touch with the progress of case at the trial court level, save and except serving and executing process issued against the witnesses by the court. In all fairness to the prosecution, it has to pursue a case in the trial court in which it is not involved at the stage of investigation. The resultant predicament is that we have two very important wings of investigation and prosecution working in silos grouping their way forward.

5.22 The apex court in ***State of Gujarat v Kishan Bhai*** **(2014) 5 SCC 108** opined that, ***'on the culmination of a criminal case in acquittal, the concerned investigating/prosecuting official(s) responsible for such acquittal must necessarily be identified. A finding needs to be recorded in each case, whether the lapse was innocent or blameworthy. Each erring officer must suffer the consequences of his lapse, by appropriate departmental action, whenever called for. Taking into consideration the seriousness of the matter, the concerned official may be withdrawn from investigative responsibilities, permanently or***

temporarily, depending purely on his culpability. We also feel compelled to require the adoption of some indispensable measures, which may reduce the malady suffered by parties on both sides of criminal litigation. Accordingly we direct the Home Department of every State to formulate a procedure for taking action against all erring investigating/prosecuting officials/officers. All such erring officials/officers identified, as responsible for failure of a prosecution case, on account of sheer negligence or because of culpable lapses, must suffer departmental action. The above mechanism formulated would infuse seriousness in the performance of investigating and prosecuting duties, and would ensure that investigation and prosecution are purposeful and decisive.

5.23 When the Superintendents of Police were asked in questionnaire (**Question No.26**, **page no. 80**), '**in your district, whether any action has ever been initiated on administrative side on any police officer for failure of any police case? If yes, please enclose the specific details?' To this question the SP's have responded in the affirmative but not specific detail has been furnished of any such action being taken.**

5.24 The Deputy Commissioners in answer to **Question no.31** (**page no.83)**, '**in your district, whether any action has ever been initiated on administrative side on any police officer/prosecutor for failure of any police case? If yes, please enclose the specific details?' have said that there is not such record of any action having been taken**.

5.25 The above analysis gives some insight into the functional disarray of investigation and prosecution where there is no accountability for functions, there is no responsibility about the role and responsibility of each agency. Post 1973 there is lack of system

to investigate and fix individual responsibility upon investigating officers and public prosecutors for failure of a police cases. Despite the apex court directions in ***Kishan Bhai* (2014) 5 SCC 108** case, from the above responses, it is evident that actions initiated to investigate and fix the responsibility of failure of prosecution case is a distant project.

D. PRODUCTION OF EVIDENCE DURING TRIAL

5.26 Production of evidence during trial is a culmination of investigation where the evidences are collected. One of the results of bifurcation is break down of coordination between these two wings, which is evidenced by the negative response of the public prosecutors regarding their role in production of witnesses and responsibility in case of failure of police cases. In real life situation Public Prosecutor simply petition before the court for issuing of processes against the witnesses with whom they have no live link and except for the police they do not have any other agency by which they can secure the appearance of the witnesses.

5.27 It is for this reason that there is a near unanimity in the responses of functionaries that the responsibilities of police should not end with conclusion of investigation and it should extend to production of witnesses before the trial court. In response to **Question no. 16 (page no.70)**, out of **181** responses from Judicial Officers **174** have given their responses in favour of the extension of the role of investigating officer to the production of witnesses. **36** out of **41** Public Prosecutors have also opined the same. The Deputy Commissioners and Superintendents Police response are also in the same line.

5.28 These predominant responses take the pragmatic view that the agency, which investigates an offence, cannot be shut out at the stage

of trial when the evidence is being produced. Once we admit that investigating agency has to be involved at the stage of prosecution for practical purposes, it shall logically follow that at the institutional level there should be unity of command between the two agencies for the efficient functioning of the criminal justice system. An investigation without legal counsel and prosecution without police support in serious offences can surely be a doomed enterprise.

F. REASON FOR FAILURE OF BIFURCATION

5.29 Before scrutinizing the role of prosecutors in the trial of criminal cases it needs to be underlined that prosecutors are part of the executives and there is no constitutional mandate under Article 50 of the constitution for its separation from the executive as it is in case of Judiciary.

5.30 With due regard to 154th Law Commission report in favour of bifurcation, the dynamics of experience of last 40 years of working 1973 Cr.P.C has belied the high and noble hopes that it will usher in positive change in the Criminal Justice administration. How far the bifurcation has improved the quality of investigation of cases is beyond comprehension, when in a very large number of cases investigation has been found to be defective. On the contrary, the Central Agency (C.B.I) itself has a cadre of public prosecutors is to assist its investigation. Without any outer time limit to investigation how can bifurcation bring speed to investigation is not understandable.

5.31 In ***State of Gujarat v Kishan Bhai*** **(2014) 5 SCC 108**, the Hon'ble Supreme Court of India, while pointing out the issue of lack of co-ordination between police and prosecution, opined that the every acquittal in prosecution case should be scrutinized for identification of reasons and persons behind failure of the case. ***The Hon'ble***

Supreme Court of India in this case pointed out that the investigating officials and the prosecutors involved in presenting the case, miserably failed in discharging their duties, resulting into acquittal of the accused. In this case, the apex court observed that every acquittal is an evidence of failure of criminal justice system.

5.32 According to National Crime Records Bureau data, there is a drastic decline of conviction rate in crimes committed under IPC. In the light of ***Kishan Bhai* (2014) 5 SCC 108** case, it can be found that the low conviction rate is an example of failure of police and prosecution in proving their case. According to National Crime Records Bureau data, from **62.7%** in 1972, conviction rate dropped to **38.5%** in 2012. In 2012, **84.6%** of a total of **93,28,085 cases** had not gone to trial.

5.33 According to the 239th Law Commission Report, lack of co-ordination between police and prosecution has been stated as one of the principal causes for low rate of conviction in India. Hon'ble the Apex Court has directed in **Kishan Bhai case (2014) 5 SCC 108 —** ***"We accordingly direct in, that on the completion of investigation in a criminal case, the prosecuting agency should apply its independent mind, and require all shortcomings to be rectified."***

5.34 If the observation of the Hon'ble Courts on the quality of investigation is considered there can be little doubt that instead of improving it has in fact deteriorated.

5.35 Practically even after the said independence of prosecution after bifurcation, it has little room to exercise its discretion contrary to the findings of the investigation. After the submission of charge sheet, the court on the basis of materials on record takes cognizance and it can

arrive at an independent finding different from the I.O. with regard to the offence that is made out on the basis of materials collected during investigation. The court frames charge against the accused after hearing both the parties. At this stage also, the discretion lies with the court and that discretion is to be exercised on sound judicial principles on the basis of materials available on record. Accused has every right to file a discharge petition under Section 227 in case of Sessions trial, under Section 239 in a warrant trial in case of Magistrate and under Section 245 in cases instituted otherwise than a police report. The discretion at this stage is to be exercised by the Court on the basis of materials on record and the opinion of the public prosecutor really does not matter. The Public Prosecutor has discretion to examine a particular charge-sheeted witness or not but here at this stage also the court can exercise its discretion to examine any witness for the ends of justice.

5.36 In ***S.K. Shukla Vs State of U.P.*** **AIR 2006 SC 413** it has been held by the Apex Court that, ***'under section 321, Public Prosecutor can not act on the dictates of State Government. He has to act objectively as he is also an officer of the Court. Besides the court are also free to assess whether prima facie case is made out or not.***

5.37 So practically the said independence of prosecution is more in theory and practically it has no bearing at any stage of the trial. There is no theoretical or practical justification for such an artificial bifurcation, which critically affects the functioning of Criminal Justice system.

G. SYSTEM OF PROSECUTION WORLD WIDE

5.38 At functional level investigation and prosecution are so closely interwoven that it is difficult to separate them at institutional level. World over nowhere it has worked in silos. A brief survey of the

investigation and prosecutorial functions world over will show that in majority of the nations, such a separation is non-existent and even in U.K where under common law bifurcation if any has been considerably diluted.

5.39 The prosecutors in every country play some important role in criminal investigation despite the differences in basic legal principles. In some countries, prosecutors have an overall responsibility over investigation, while in others they have a limited role in carrying out investigation.

a. GERMANY

5.40 **In Germany**, prosecutors are by law responsible for leading investigations by themselves and the police are only an investigatory body of the public prosecution office, whereas in reality it is the police who are actually leading investigations in most cases. According to Sec.161(1) of the Code of Criminal Procedure of Germany, ***'... the public prosecution office shall be entitled to request information from all authorities and to make investigations of any kind, either itself or through the authorities and officials in the police force provided there are no statutory provisions specifically regulating their powers. The authorities and officials in the police force shall be obliged to comply with the request or order of the public prosecution office, and they shall be entitled to this case to request information from all authorities'.*** In Germany, the public prosecution office is rightly referred to as the leader of the investigation proceedings.

b. JAPAN

5.41 **In Japan,** prosecutors are also empowered to carry out investigations, but at the same time, the Code of Criminal Procedure

states that the primary responsibility of investigation lies with the police. The prosecution and investigation system in Japan can be termed to be *co-operative relationship*. The task of police officers is to maintain social security, but in the case of an investigation, they are the primary investigative authority as judicial police officers, and are the main power. The role of public prosecutor is to receive the cases referred by the police and to institute the same in the court. However, the prosecutor if deems necessary can conduct additional investigations. In Japan, police officers and public prosecutors are mutually independent authorities, not hierarchically related, who handle such investigations in cooperation. The prosecutors are vested with the power to advise or instruct to police if necessary. According to Art.198(1) of the Code of Criminal Procedure, *a public prosecutor, a secretary of the public prosecutor's office or a police man may, when it is necessary for conducting an investigation of an offence, call upon the suspect to appear and examine him…'.* According to Art.39(3) of the Code, *'a public prosecutor, a secretary of the public prosecutor's office or a police man may, in cases where it is necessary for the investigation, designate the date, place and time concerning an interview with the suspect…'.* According to Art.218 of the Code, *'a public prosecutor, a secretary of the public prosecutor's office, or a police- man may, when it is necessary with respect to the investigation of an offense, make a seizure, search, or inspection under a warrant issued by a judge'.* It can be understood that prosecutors in japan are fully authorized to conduct criminal investigations, and supplement police investigation by directly interviewing the witnesses and suspects. Prosecutors may also initiate their own investigation in delicate and complicated cases without any police involvement.

5.42 On the contrary, in other countries with common law traditions such as **Kenya, Pakistan, Papua New Guinea, Tanzania and the United Kingdom,** prosecutors play a limited role in investigation as such, but do exercise their advisory or supervisory authority to guide

the police investigation in such ways as advising or instructing the police to carry out their investigation to certain direction.

c. KENYA

5.43 In Kenya, the Attorney-General, as the Director of public prosecutions, has the power to instruct the Commissioner of Police to investigate into any matter relates to any offense or suspected offence. (Sec.26(4) of the Constitution of Kenya). The Commissioner of Police is constitutionally obligated to report to the Attorney General after completion of investigation. The CID section of the police is charged with the responsibility of investigation in serious offences.

d. PAKISTAN

5.44 In 1985, the prosecution and police have been bifurcated and separate independent wings were established. District Attorneys and Inspectors were established. The prosecution *in toto* has been rested upon the District Attorneys, who are the heads of the District Prosecution Agencies. The strict separation of two important wings of judicial dispensation system in Pakistan triggered the decline of conviction rate and controversies. In ***Haider Ali & Anr. v. DPO Chakwal & others,*** Civil Petition No.1282 of 2014, Pakistan High Court observed that *'there appears to be no standardized SOPs which guide the relationship between prosecutors and police officers and allow them to aid each other in the fair and timely investigation of the case'.* The Supreme Court directed the Attorney General and the respective Advocate Generals of each province to develop the guidelines/SOPs to foster coordination between the prosecution and police within three months of the date of the issuance of the order in this case.

e. ENGLAND AND WALES

5.45 **The Duties of the Director of Public Prosecution in England** have been laid down in Para 646 Page 479 **Halsbury's Law of England** Fourth edition as follows:

- **To take over the conduct of all Criminal Proceedings, other than special Proceedings, instituted on behalf of a police force, whether by a member of that force or by any other person;**
- **To institute and have the conduct of criminal proceedings, in any case where it appears to him that (a) the importance or difficulty of the case makes it appropriate that it should be instituted by him; or (b) otherwise appropriate for proceeding to be instituted by him;**
- **To take over the conduct of all binding over proceeding instituted on behalf of a police force, whether by the member of that force or by any other person;**
- **To take over the conduct of all proceedings instituted on behalf of police force, whether by a member of that force or by any other person;**
- **To give to such an extent as he considers appropriate, advice to police forces on all matters relating to criminal offences;**
- **To appear for prosecution, when directed by the court to do so, on any appeal under the Administration of Justice Act 1960, the Criminal Appeal Act 1968 or the Magistrate's Court Act 1980; and**
- **To discharge such other functions as may from time to time be assigned to him by the Attorney General.**

5.46 It is worth noting that, even in the jurisdiction of England and Wales of the United Kingdom where the principles of separating the responsibility for investigation and prosecution was applied in 1986 on the creation of the Crown Prosecution Service, such principles were swiftly jettisoned in relation to serious fraud offences. The Serious Fraud Office, which is staffed by lawyers, accountants and others with relevant experience, was created in 1988. It is a unified organization properly resourced with statutory powers of investigation. Working closely with the police, this Office controls investigation and prosecution.

5.47 There is no rigid bifurcation in the function of investigation and prosecution in the Untied Kingdom shall be evident from the functions of the **Director of Serious Fraud Office** described in para 652 Page 649 Halsbury Law of England. His functions include investigation of any suspected offence, which appears to him on reasonable grounds to involve serious or complex fraud. He is further empowered to institute and have the conduct of any criminal proceedings, which appear to him to relate to such fraud and to take over the conduct of criminal proceeding at any stage.

f. KOREA

5.48 In **Korea,** prosecutors play a leading role in criminal investigation. A prosecutor in Korea conducts direct investigation and also gives instructions, supervises and controls the police. The relationship between police and prosecution in Korea is order-obeyance. In general crimes, the police officers belonging to the National Police Agency conduct the criminal investigation. In special offenses such as corruption by public servants, tax evasion, high economic offences, the Central Investigation Department established under Supreme Public Prosecutor's Office and Special Investigation Department established under District Public Prosecutor's Office

should be investigating. According to the Korean Criminal Procedure Code, the power of initiation and the conclusion of criminal investigation solely in the public prosecutors.

g. AMERICA

5.49 In **America,** the Attorney system has been established through the Judiciary Act of 1789. According to the Act, 1789, the role of U.S. Attorney is, *'to prosecute and conduct all suits within the Supreme Court of the United States in which the United States might be concerned'.* The U.S. Attorneys have no authority to investigate the crimes. The U.S. Attorneys are the nation's principal federal litigators, under the Attorney General. Their appointment is by the President and confirmed by the Senate. Each U.S. Attorney shall serve in each of 93 judicial districts. The District Attorneys in America have their own investigation officers. According Standard 3-3.1 (Investigative Function of Prosecutor under PART III of Criminal Justice Standards published by American Bar Association: (a) A prosecutor ordinarily relies on police and other investigative agencies for investigation of alleged criminal acts, but the prosecutor has an affirmative responsibility to investigate suspected illegal activity when it is not adequately dealt with by other agencies.

H. CONCLUSION

5.50 From the above, it can be fairly summed up that world over there is no separation of investigating agency and Prosecuting agency. In some common law countries there is some element of separation, but nowhere it has been applied with absolute rigidity. Even in India, Central Bureaus of Investigation has a cadre of public prosecutors under it, which not only guides investigation but also work as prosecutor in cases investigated by the C.B.I. There are logical and

practical reasons for it. From inputs in research we have found that there has been an in-ordinate delay at the stage of Prosecution evidence. As stated earlier, involvement of prosecutor at the stage of investigation not only facilitates a more technically sound investigation, but also the close co-ordination between the two wing helps in timely production of witnesses at the stage of trial. Another aspect of the matter is that it will usher in a more legally informed investigation. Once the prosecution is involved in the investigation, accountability can be fixed on one agency for prompt investigation and prosecution of the case much to the relief from the present scenario where although a criminal case is investigated and prosecuted in the name of the state, but there is no one agency, which can be held responsible for it.

5.51 The question that can be asked as to why in the present dispensation the above objectives have not been accomplished? At present the Public Prosecutors are under the administrative control of the District Magistrate and there is no statutory obligation on their part to co-operate with the Police. The focus of District Magistrate is more on different development schemes of the Government and practically and the progress of investigation is not monitored by him. The result is that the Superintendents of police, who is entirely involved with it, has no grip over the prosecution, and the District Magistrate has little time for it. There is a difference between independence from interference and independence from responsibility. The present bifurcation has resulted in a situation where no one agency is responsible for discharging the responsibility of the state in enforcing rule of law and to bring to justice offenders. What we see as delays at the stage of trial in production of evidence has roots in the wide fissures at the institutional level between police and prosecution. In order to strengthen the criminal justice system we cannot afford to allow such gaps and confusion about roles of functionaries working at operational level at the cost of Justice dispensation. In real life

situation the plight of witnesses particularly in serious offences is a perilous one. They have to depose before the court against all odds, many times at the risk of threat to their life and that of their family members. Role of police at the stage of production of witnesses in the court is of critical importance and it cannot be limited to service of process and execution of processes issued against the witnesses on the application of the prosecution. Police cannot abnegate its responsibility by just filing the Charge sheet and leave "the eyes and ears of the court" to fend for themselves.

5.52 **Hon'ble Supreme Court made in *Zahira Habibulla H. Sheikh and another Vs. State of Gujarat and others* 2004 (4) SCC 158,** has pithily presented the real state of affair in its following observation *"If the witness himself is incapacitated from acting as eyes and ears of justice, the trial gets putrefied and paralyzed, and it no longer can constitute a fair trial. The incapacitation may be due to several factors like the witness being not in a position for reasons beyond control to speak the truths in the court or due to negligence or ignorance or some corrupt collusion. Time has become right to act on account of numerous experiences faced by courts on account of frequent turning of witnesses hostile, either due to threats, coercion, lures and monetary considerations at the instance of those in power, their henchmen and hirelings, political clouts and patronage and innumerable corrupt practices ingeniously adopted to smoother and stifle truths and realities coming out to surface rendering truth and justice to become ultimate casualties. Broader public and societal interest require that the victims of the crime who are not ordinarily to parties to prosecution and the interests of state represented by their prosecuting agencies do not suffer in slow process but irreversibly and irretrievably, which if allowed would undermine and destroy public confidence in the administration of justice, which may ultimately pave way for anarchy, oppression and injustice resulting in complete breakdown and collapse*

of the edifice of rule of law, enshrined and jealously and guarded and protected by the constitution".

5.53 The above observation outlines the reality at the trial court level and if the witnesses are abandoned by the investigating and prosecuting agency on some abstract notions of bifurcation, justice can be the first casualty. It is for this reason that world over, as discussed in preceding paragraphs, at the institutional level there is no rigid bifurcation between the investigating and prosecuting agency. On the contrary it is the Prosecution in many countries that leads investigation. Bifurcation in our context has proved to be counter productive leading to confusion and uncertainty in the role of respective agency and in the process prompt production of witnesses suffers. After the case reaches the trial court level it is virtually no one's baby.

5.54 For the reasons above stated the integration of the prosecution in the police department can bring a higher degree of accountability and coordination between the two wings at the stages of investigation and trial for the effective dispensation of justice in criminal cases.

5.55 **In order to rectify the present asymmetry and lack of co-ordination, it is recommended to bring the Public prosecutor, Additional Public prosecutors and Assistant Public prosecutors working in the courts of Sessions and in the courts of Magistrates under the direct administrative control of Superintendents of Police of the District.**

***

CHAPTER – 6

CAN THERE BE A TIME FRAME FOR COMPLETING INVESTIGATION?

6.1 Form No. IV was designed to get the number of cases pending for more than one year for institution of FIR under section 156(3) Cr.P.C and the cases which were awaiting police report for more than six months. The figures with respect to cases awaiting police report have been received and tabulated at **Table No.9, page no.38-39** from which it is evident that **17,393 cases** were pending in the state for **more than six months awaiting police report.**

6.2 These figures are indicative of a pattern of delay starting from its inception. The reason for it is the absence of any time limit for concluding investigation. Although some checks have been provided in the code in the form of consequences for not completing investigation within stipulated time, but no time cap for completing investigation has been provided. Under Section 167(2) Cr.P.C. if the investigation is not concluded within 60 days and 90 days it will entail statutory grant of bail. Similarly, u/s 167 (5) the Magistrate has a power in summon cases to stop investigation, which is not concluded within six months.

6.3 Section 436(A) also lays down the consequences of non-completion of investigation, enquiry or trial with respect to an under-trial prisoner by grant of bail. Under section 468 Cr.P.C. if the investigation is not completed within stipulated period for offenses punishable less than three years, the cognizance is barred. A tentative beginning has been made to provide time limit for concluding investigation under section 173(1A) Cr.P.C (2013 amendment) in relation to rape of a child may be completed within **three months** from the date on which the Officer-in-Charge of a Police Station recorded the information.

6.4 But with respect to other serious offences if the accused is on bail the I.O. can sit over investigation as long as he pleases. This has resulted in delay in submission of police report and it gives a free hand to the police to linger the case at the stage of investigation itself.

6.5 Let us for instance take a case of embezzlement under Section 409 of the IPC where the accused is on bail. In the absence of any time frame for completing the investigation police can holdup the investigation on extraneous considerations. A few cases shall illustrate the point further.

RELEVANT JUDICIAL PRONOUNCEMENTS: INDIA

A. State of Andhra Pradesh vs P.V. Pavitharan [1990] AIR(SC) 1266

6.6 A case was instituted under Section 5(2) read with Section 5(1)(e) of the Prevention of Corruption Act on 8-3-1984. The Anti-Corruption Bureau submitted its report on 22.4.1987 to its Director General who in turn sent it to the Govt. on 17.9.1987 The Government accorded sanction for prosecution on 16.9.1988.

6.7 Now taking advantage of the delay the respondent moved the Hon'ble Court for quashing further proceedings on the ground that there had been lull in the investigation for fairly long spell causing inordinate delay and that the prosecution had not filed its report contemplated under Section 173 Cr.P.C till he filed the petition for quashing the proceedings in November 1987 though the case was registered in March 1984. Consequently, the Hon'ble Court on July 29. 1988 quashed the FIR and the subsequent proceedings on the ground of inordinate delay in the investigation. Thereafter, the Government accorded sanction for prosecution of the respondent only on September 16, 1988 i.e. after nearly 50 days of the quashing of the

FIR. Dismissing the appeal of the State on the peculiar facts the Apex Court recorded its concern in the following observation: ***In view of the facts and circumstances and the various events following the suspension of the respondent culminating in his being allowed to retire on attaining the age of superannuation, it is not a fit case for interference. However, no general and wide proposition of law can be formulated that wherever there is any inordinate delay on the part of the investigating 'agency in completing the investigation such delay is a ground to quash the FIR. It is not possible to formulate inflexible guidelines or rigid principles uniform application for, speedy investigation or to stipulate any arbitrary period of limitation within which investigation in a criminal case should be completed. The determination of the question whether the accused has been deprived of a fair trial on account of delayed or protracted investigation would also depend on various factors 'including whether such delay was unreasonably long or caused deliberately or intentionally to hamper the defense of the accused, or Whether such delay was inevitable in the nature of things or whether it was due to the dilatory tactics adopted by the accused. The court, in addition, has to consider whether such delay on the part of the investigating agency has caused grave prejudice or disadvantage to the accused; It is imperative that if investigation of a criminal proceeding staggers on with tardy pace due to the indolence or inefficiency of the investigating agency causing unreasonable and substantial delay resulting in grave prejudice or disadvantage to the accused, the court as the protector of the right and personal liberty of the citizen will step in and resort to the drastic remedy of quashing further proceedings in such investigation. While so there are offences of grave magnitude such as diabolical' crimes of conspiracy or clandestine crimes committed by members of the underworld with their tentacles spread over***

various parts of the country or even abroad. The very nature of such offences would necessarily involve considerable time for unearthing the crimes.

6.8 Two important points have been made in this case, one is that it can be caused due to the indolence of the investigating agency and another is the dilatory tactics of the accused himself. Both the situation results in miscarriage of Justice. This is an area, which offers gaping holes in the legal framework, which can be exploited by interested parties to impair a criminal case at its very takeoff stage.

B. Vineet Narain Vs Union Of India 1996 SCC(2) 199

6.9 This case pertains to inertia of CBI in matters where the accusation was made against high dignitaries. The Apex Court noted that it was not the only matter of its kind during the recent past. The brief facts of this case were that on 25th March 1991, one Ashfak Hussain Lone, alleged to be an official of the terrorist organization Hizbul Mujahideen, was arrested in Delhi and on his disclosure raids were conducted by the CBI on the premises of Surender Kumar Jain, his brothers, relations and businesses. They contained detailed accounts of vast payments made to persons identified only by initials. When nothing was done against the Jains, the writ was filed on 4th October 1993. The Hon'ble Court in this case referred to Vohra Committee, which was constituted by the Government of India to take stock of all available information about the activities of crime syndicate/mafia organization, which had developed links with and were being protected by Government functionaries. This Committee *interalia* recommended that the **Directorate to lay down a clearly spelt time frame for completion of investigation, launching of prosecution and completion of adjudication proceeding.**

C. Niranjan Hemchandra Shashittal v. State of Maharashtra 2013 (4) SCC 642

6.10 In this case, FIR registered on 26.6.1956 by Anti-corruption Beaureau against Deputy Commissioner in the department of Prohibition and Excise under Sec. 5(2) of the Prevention of Corruption Act, 1947 for amassing assets worth Rs.33.44 lakhs, which were in access of his known source of income. Sanction accorded on 22.01.1993 and charge sheet was lodged against on 04.03.1993. As there was delay in conducting the investigation and filing of charge sheet against the Deputy Commissioners and two other ladies and disposal of certain interlocutory applications, the High court of Bombay was moved on 15.04.1997 for quashing of the criminal proceedings. The criminal case in respect of old ladies was delinked and quashed by the apex court. The charges were finally framed on 15.12.2007.

6.11 While dismissing the quashing petition on account of delay, the apex court observed that, '*it is perceivable that delay has occurred due to dilatory tactics adopted by the accused, laxity on the part of the prosecution and faults on the parts of the system'.* The observation of the apex court in ***Satyajeet Banerjee vs. State of West Bengal* [2005] 1 SCC 115** as quoted – ***'A speedy trial'* and *fair trial to a person accused of crime are integral part of Art.21. There is, however, qualitative difference between right to speedy trial and the accused's right of fair trial. Unlike the accused's right of fair trial, deprivation of the right to speedy trial does not per say prejudice the accused in defending himself. The right to speedy trial is in its very nature relative. It depends upon diverse circumstances. Each case of delay in conclusion of a criminal trial has to be seen in the facts and circumstances of such case. Mere lapse of several years since the commencement of prosecution by itself may not justify the discontinuance of***

prosecution or dismissal of indictment... speedy trial secures rights to an accused but it does not preclude the rights of public justice'.

D. Pankaj Kumar v. State of Maharashtra AIR 2008 (SC) 3077

6.12 This is yet another case where the FIR was lodged on 12.5.1988 and the investigation dragged on for over three years and ultimately on 22.02.1991, after three years, a charge sheet was filed against twelve persons for offences punishable u/s 120 B, 409, 420, 465, 468, 471, 477(A), 101 and 34 of the IPC and Sec. 5(1)(c)(d) of Prevention of Corruption Act, 1947. The apex court while hearing the appeal against the final judgment and order of the High Court of Bombay by which the petition for quashing under Art.227 read with Sec.482 Cr.P.C was dismissed, observed that, ***'Time and again this Court has emphasized the need for speedy investigations and trial as both are mandated by the letter and spirit of the provisions of the CrPC.'*** **Further the apex court observed that *right to speedy trial flowing from Art.21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. In every case where the speedy trial* is alleged to have been infringed, the first question to be put and answered is -- who is responsible for the delay?** The apex court further held that, *'it is well settled that the right to speedy trial in all criminal persecutions is an inalienable right under Art.21 of the Constitution. This right is applicable not only to the actual proceedings in court but also includes within its sweep the preceding police investigations as well'.*

6.13 No time frame for investigation was as such laid down in this case, but it illustrates the potential of abuse of unfettered power of investigation without any time limit.

TIME FRAME FOR INVESTIGATION UNDER SC/ST (PREVENTION OF ATROCITIES) ACT, 1989

Criminal law is however moving forward for greater accountability and time frames have now been provided for completing investigation in some of the new enactments.

- Sec.4(2) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 dealing with punishment for neglect of duties, provides that the duties of public servant referred to in Sub-section (1) include- …(e) to conduct the investigation and file charge sheet in the Special Court or the Exclusive Special Court within a period of sixty days, and to explain the delay if any, in writing;
- By criminal law amendment 2009 vide section 173(1A) Cr.P.C for investigation in child rape cases, time frame of three months has been provided for completing investigation.

E. COMPARATIVE STUDY: VIETNAM CRIMINAL PROCEDURE CODE

6.14 While studying the criminal justice system of Asian countries as a part of comparative study, Vietnam was the natural choice on account of contextual similarities. It attained independence from France in 1945 and became a Socialist, Democratic, Republic and Secular country like India. Article 119 of the Vietnam Criminal Procedure Code, 2003 lays down as follows:

1. *The time limits for investigating criminal cases shall not exceed two months for less serious offences, not exceed three months for serious offenses, not exceed four months for very serious offences and especially serious offences, counting from the time of institution of criminal cases to the time of termination of investigation.*
2. *In case of necessity to prolong investigation due to the complexity of the cases, at least ten days before the expiry of the investigation*

time limit, the investigating bodies must request in writing the procuracies to extend the investigation time limit. The extension of investigation time limits is prescribed as follows: a/ For less serious offenses, the investigation time limit may be extended once for no more than two months; b/ For serious offenses, the investigation time limit may be extended twice, for no more than three months for the first time and no more than two months for the second time; c/ For very serious offenses, the investigation time limit may be extended twice, for no more than four months each; d/ For especially serious offenses, the investigation time limit may be extended three times, for no more than four months each.

3. *The competence of procuracies to extend investigation time limits is prescribed as follows: a/ For less serious offenses, the district-level people's procuracies or regional Military Procuracies shall extend investigation time limits. Where the cases are received for investigation 47 at the provincial or military-zone level, the provincial-level people's procuracies or military zone level military procuracies shall extend investigation time limits; b/ For serious offenses, the district-level people's procuracies or regional military procuracies shall extend investigation time limits for the first time and the second time. Where the cases are received for investigation at the provincial or military-zone level, the provincial-level people's procuracies or military zone level military procuracies shall extend investigation time limits for the first time and the second time; c/ For very serious offenses, the district-level people's procuracies or regional military procuracies shall extend investigation time limits for the first time; the provincial-level people's procuracies or the military zone-level military procuracies shall extend investigation time limits for the second time. Where the cases are received for investigation at the provincial or military zone level, the provincial-level people's procuracies or military zone-level military procuracies shall extend investigation time limits for the first time and the second time. d/ For especially serious offenses, the provincial-level people's procuracies or military zone level military*

procuracies shall extend investigation time limits for the first time and the second time; the Supreme People's Procuracy or the central Military Procuracy shall extend investigation time limits for the third time.

4. *Where the cases are received for investigation at the central level, the extension of investigation time limits shall fall under the competence of the Supreme People's Procuracy or the central Military Procuracy.*

5. *For especially serious offenses for which the extended investigation time limit has expired but due to the very complicated nature of the cases, the investigation cannot be completed; the Chairman of the Supreme People's Procuracy may extend the investigation time limit once for no more than four months. For the offenses of infringing upon national security, the Chairman of the Supreme People's Procuracy shall have the right to extend the investigation time limit once more for no more than four months.*

6. *Upon the expiry of the extended investigation time limit but it is impossible to prove the accused to have committed the offenses, the investigating bodies must issue decisions to cease the investigation.*

F. CONCLUSION

6.15 It is therefore felt that logically there should be a time frame for concluding an investigation beyond which the police should be answerable to the court for not completing it. Even after investigation is concluded and further materials are discovered, police have an option u/s 173 (8) for further investigation. The police have a public duty to investigate a crime within a reasonable span of time; absence of any time frame is open to abuse.

6.16 **To bring some element of accountability with respect to cases pending for investigation, a definite time frame for completing investigation by the police for all offences is recommended.**

CHAPTER – 7

RECOMMENDATIONS

"We can not allow the dead hands of the past to stifle the growth of the living present. Law can not stand still; it must change with changing social concept and values . If the bark that protects the tree fails to grow and expand along with the tree, it will either choke the tree or if it is a living tree ,it will shed that bark and grow a new living bark for itself. Similarly, if the law fails to respond to the needs of changing society, then it will either stifle the growth of the society and choke its progress or if the society is vigorous enough, it will cast away the law which stands in the way of its growth. Law must therefore constantly be on the move adapting itself to the fast changing society and not lag behind."

Justice P.N.Bhagwati
(*National Textil Workers Union Vrs. P.P.Ram Krishanan* 1983 (1) SCC 228)

7.1 Law and its institution have to answer the test of time as to how far in its actual working it has succeeded to achieve its object. Adjective criminal law is no exception and its sanctity lies in its success to achieve the rights and enforce the liabilities as laid down by the substantive law of the land. With mounting delays in criminal adjudication and resultant disenchantment with the criminal justice system, required a close scrutiny of the actual working of the Criminal Procedure Code 1973. It was against this background that the present topic of research has been selected by the Judicial Academy Jharkhand to study the major bottleneck in criminal adjudication.

7.2 The study was unique since it was perhaps first of its kind when the sample size of research went down to include each and every criminal cases pending in the State where the Presiding officers were asked to give different stages of pending cases along with their reasons for delay of that particular case. The research team also made

physical verification of case records on random basis. On the basis of the findings questionnaires were sent to the main functionaries involved at the operational level. On the basis of detailed analysis and reasons stated in preceding chapters, present research has identified three major bottleneck areas in criminal adjudication and accordingly suggests certain amendments in the relevant provisions for speedy justice.

I. NON-APPEARANCE OF THE ACCUSED AT DIFFERENT STAGES OF INQUIRY AND TRIAL

We propose the following amendment in ***Section 299 Sub-Section (1) by substituting the existing provision as:***

PROPOSED AMENDMENT BY WAY OF SUBSTITUTION OF THE EXISTING PROVISION:

299. Inquiry and Trial in absence of accused:-

Sub-Section (1) Nowithstanding anything contained in the code, if it is proved that an accused person has absconded, and there is no immediate prospect of arresting him, the trial of the case shall proceed in absentia in the Court of competent jurisdiction for the offence complained of and the Court shall not be bound to recall or rehear any witness, whose evidence has already been recorded, or to re-open proceedings already held, but may act on the evidence already produced or recorded and continue the trial from the stage which the case has reached and pronounce Judgment at the conclusion of the trial.

Object: It has been found that a very large number of cases are delayed on account of non-appearance of the accused persons at different stages of criminal proceeding. It has also been found that in

most of the cases non-appearance is deliberate. Section 299 Cr.P.C in its present form suffers from several infirmities and is unable to meet the challenges posed by abscondance.

In the absence of accused, criminal proceeding can not proceed and the evidence recorded under Section 299 Cr.P.C can not be used on the arrest against the accused unless the witness is dead or can not be found etc. Mere examination of witness in absentia does not dispose the case but, it leads to multiplicity of trial, with the one proceeding against the accused in attendance or custody and the others against those who have been declared as an absconder and evidence is being recorded under Section 299 Cr.P.C. Thus under the garb of fair trial and right to defend, the accused is able to avoid trial and dictate the date of his trial. This is not in sync with the contemporary world practice where the criminal proceedings and trial do not suffer on account of abscondance of the accused. **(Discussed in Chapter 3 and 4)**

PROPOSED AMENDMENT BY WAY OF INSERTION IN THE EXISTING PROVISION:

Section 299(1)A - ***Notwithstanding anything contained in the code, Where a person accused of an offence and released on bail or on bond without sureties, fails to appear in Court without any sufficient cause in accordance with the terms of the bail or bond, the Court may after service of summon to the accused and proceed with the inquiry or trial in his absence and the Court shall not be bound to recall or rehear any witness, whose evidence has already been recorded, or to re-open proceedings already held, but may act on the evidence already produced or recorded and continue the trial from the stage which the case has reached and pronounce Judgment at the conclusion of trial.***

Object: The case of accused persons who are on bail and do not appear by misusing the bail frustrating the progress of inquiry or trial are a separate class altogether. Their case stands on a different footing vis-à-vis those who abscond before arrest. Accused on bail cannot feign ignorance about the pending criminal proceeding and therefore mere service of summon on such accused should be sufficient for proceeding further by the court concerned. It also leads to multiplicity of cases. **(Discussed in Chapter 3 and 4)**

AMENDMENT BY WAY OF SUBSTITUTION OF THE EXISTING PROVISION:

The following amendment is recommended in Section 209 of the Cr.P.C.

Section 209- ***Commitment of Case to Court of Session when offence is triable exclusively by it***

(1) The magistrate after taking cognizance in a sessions triable case instituted on police report commit the case to the Court of Sessions enclosing the police paper to be supplied to the accused under Section 207, which will be supplied by the sessions court to the accused before framing of charge, and subject to the provisions of this Code relating to bail, remand the accused in custody until such commitment has been made.

(2) When in a case instituted otherwise, the accused appears or is brought before the Magistrate and it appears to the Magistrate that the offence is triable exclusively by the Court of session, the Magistrate shall commit after complying with the provision of Section 208, the case to the Court of Session, and subject to the provisions of this Code relating to bail, remand the accused to custody until such commitment has been made.

Object: The provision of supply of police paper to the accused under Section 207 Cr.P.C by the Court of Magistrate before commitment in any case instituted on police report, is a stage which causes avoidable delay at the time of commitment. After submission of charge sheet and cognizance in sessions triable case, the cases are not committed but are posted for the appearance of the accused who are on bail after issuance of summons for supply of police paper to the accused. Once the committal inquiry has been dispensed with under the 1973 code, there is no point in retaining this stage for the committal court, because even after commitment, the police papers can be furnished to the accused before framing of charge after the appearance of the accused is complete in the sessions court. It is therefore proposed that the sessions triable cases be immediately committed to the court of sessions after cognizance, and thereafter the police paper be furnished to the accused in the Sessions Court before framing of charge.

In complaint cases, after appearance of the accused in inquiry, evidence before charge is recorded. A case cannot be committed without appearance is complete and evidence before charge is recorded. Therefore, the existing procedure of commitment after inquiry in Complaint case is proposed to be retained**. (Discussed in Chapter 3, para 3.24 to 3.33)**

II. TIME FRAME FOR COMPLETING INVESTIGATION

The following amendment is recommended in Section 173 of the Cr.P.C:

PROPOSED AMENDMENT BY WAY OF INSERTION IN THE EXISTING PROVISION:

Section 173: Report of police officer on completion of investigation - ***(1) Every investigation under this chapter shall be completed without unnecessary delay and when the***

investigation is in relation to offences punishable up to imprisonment of seven years shall be completed within six months and for offences punishable for more than seven years imprisonment to be completed within 12 months from the date on which the information was recorded by the officer-in-charge of the police station.

Object: The Criminal Procedure Code does not prescribe any outer time limit for completing investigation except under Section 167(5) and recently added Section 173 (1-A) Cr.P.C, as a result there are inordinate delays in completing investigation particularly where the accused persons have already been enlarged on bail during investigation and resultantly the rigors of Section 167 does not apply. The period of limitation for taking cognizance under section 468 Cr.P.C can be exercised with respect to offences punishable for a term not exceeding three years, but here too it is not obligatory for the police to complete investigation. This is an area where the courts cannot interfere and consequently investigation can be delayed and even allowed to remain incomplete. It is therefore necessary to prescribe some outer limit for completing investigation and on discovery of fresh evidence the option of further investigation will still be open to the Police under Section 173(8). **(Discussed in Chapter 3 and 6)**

III. SYNERGY IN POLICE AND PROSECUTION

The following amendment is recommended in Section 25A by way of substitution in the Cr.P.C.

PROPOSED AMENDMENT BY WAY OF INSERTION IN THE EXISITING PROVISION:

Section 25 A

(2) ***Director of prosecution or Deputy Director of prosecution shall be either from the Indian Police Service or from the prosecution cadre of the State.***

(3) *The head of the Directorate of prosecution shall be the Director of Prosecution, who shall function under the administrative control of the* ***Director General of police of the state.***

(6) *Every Public Prosecutor, Additional Public Prosecutor and Special Public Prosecutor appointed by the State Government under Sub-section (3), or as the case may be, sub-section (8), of Section 24 to conduct cases in District Courts and every Assistant Public Prosecutor appointed under Sub-Section (1) Section 25 shall be subordinate to the* ***Superintendents of police of the District.***

Object: Existing disconnect between investigation and prosecution is critically affecting both the quality of investigation and timely production of prosecution witnesses with security of witnesses. To bring greater co-ordination, accountability in criminal investigation and prosecution it is felt that there should ultimately be one agency of the state on which responsibility of proper investigation and prosecution can be fixed. Police being the primary investigating agency with onerous responsibility to produce evidence at the stage of trial should logically and practically be accountable for lapses committed at the stage of investigation or production of evidence. In order to make police liable for the same it will be necessary to bring the prosecution under its wing so that the two organs can function in tandem. **(Discussed in Chapter 3 and 5)**

***

BIBILIOGRAPHY

BOOKS

1. Sean Doran and John Jackson (ed) (2000), *The Judicial Role in Criminal Proceedings,* Hart Publishing, UK.

2. Stephanos Bibas (2012), *The Machinery of Criminal Justice,* Oxford University Press, Oxford.

3. Wing-Cheong Chan, Barry Wright and Stanley Yeo (ed) (2011), *Codification, Macauly and the Indian Penal Code - The Legacies and Modern challenges of Criminal Law Reform,* 10th Ed., Ashgate Publishing.

4. Richard J. Terrill (2013), *World Criminal Justice Systems – A Comparative Study,* 8th Edition, Anderson Publishing,UK.

5. Aya Gruber, Vicente de Palacios, Piet Hein van Kempen (2012), *Practical Global Criminal Procedure: United States, Argentina, and the Netherlands,* Carolina Academic Press,US.

6. Delmas-Marty, Mireille & Spencer, J.R. (2005), *European Criminal Procedures*, Cambridge University Press, Cambridge.

7. Henry Arthur Deuteros Phillips (2012), *Comparative Criminal Jurisprudence,: Criminal Procedure, the Indian Code of Criminal Procedure,* Forgotten Books, London.

8. Ronald Jay Allen, William J. Stuntz, Joseph L. Hoffman & Debra A. Livingston (2001), *Comprehensive Criminal Procedure,* 3rd Edition, Aspen Law & Business, Germany.

9. Craig M. Bradley (2007), *Criminal Procedure: A World Wide Study,* 2nd Edition, Carolina Academic Press, North Carolina.

10. Charu WaliKhanna and Jyotika Kalra (2016), *Sex & Harassment: The Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 and Inquiry as per Central Civil Services (Conduct) Rules, 1964 & other useful appendices,* Kamal Publishers, New Delhi.

11. Sujender Pal Singh and Rajinder Pal Singh (2015), *Practice & Procedure of CBI Investigation & Trial',* 3rd Edition, Kamal Publishers, New Delhi.

12. Donald Venes (2009), *Taber's Cyclopedic Medical Dictionary,* 21st Edition, F.A.Davis Company, USA.

13. Mehanathan MC (2015), *Law on Control of Narcotic Drugs and Psychotropic Substances in India,* 3rd Edition, Lexis Nexis, NewDelhi.

14. Ganguly.D.K. (2016), *Ganguly's Commentary on The Juvenile Justice (Care & Protection of Children) Act, 2015,* 2nd Edition, Dwivedi Law Agency, New Delhi.

15. Hatcher J.S., Frank J. Jury and Jac Weller, revised by Anoopam Modak (2016), *Firearms Investigation,* 5th Edition, Universal Law Publishing, New Delhi.

16. Gokulesh Sharma and Hemant Kumar Pandey, *A Manual on Criminal Procedure,* (2016), Thomson Reuters, India.

17. Dasgupta.M., (2016), *Cyber Crime in India: A Comparative Study,* Eastern Law House, Kolkata.

18. Govind Goel, (2016), *Statement of Indian Law: Supreme Court of India through its Constitution Bench Decisions Since 1950, Vol.I and II,* 1st Edition, Thomson Requters, India.

19. Sukumar Ray, (2014), *Saha.A.N's Criminal Reference,* 7thEdition, Eastern Law House, New Delhi.

20. Thakker Takwani.C.K, and Thakker M.C., (2015), *Takwani Criminal Procedure,* 4th Edition, Lexis Nexis, New Delhi.

21. Sarkar.P.C., (2015), *Sarkar's Criminal Major Acts: A Complete Handbook,* 8th Edition, Lexis Nexis, New Delhi.

22. *Halsbury's Laws of India* 10, *Criminal Law – I,* (2016), 2nd Edition, Lexis Nexis, New Delhi.

23. *Halsbury's Laws of India* 11, *Criminal Law – II,* (2016), 2nd Edition, Lexis Nexis, New Delhi.

24. *Halsbury's Laws of India* 12(2), *Criminal Law – I,* (2016), 2nd

Edition, Lexis Nexis, New Delhi.

25. Bag.R.K., (2014), *Law of Medical Negligence and Compensation,* 2nd Edition, Eastern Law House, New Delhi.

26. Gaur.K.D., (2013), *Criminal Law: Cases and Materials,* 7th Edition, Lexis Nexis, New Delhi.

27. Vibhute.K.I, (2016), *PSA Pillai's Criminal Law,* 12th Edition, Lexis Nexis, New Delhi.

28. Bhaskar Prosad Banerjee (2016), *Judicial Control of Administrative Action,* 3rd Edition, Lexis Nexis, New Delhi.

29. Ram jethmalani and Chopra D.S, (2016), *Jethmalani & Chopra's The Law of Evidence: Commentary on Evidence Act, 1872,* Vol.I & II, 2nd Edition, Thomson Reuters, New Delhi.

30. Sharma.B.R (2016), *Forensic Science in Criminal Investigation & Trials,* 5th Edition, Universal Law Publishing, New Delhi.

31. Bridges.B.C, August Vollmer and Monir.M (CJ), revised by Anoopam Modak (2016), *Scientific Techniques in Criminal Investigation,* 3rd Edition, Universal Law Publishing, New Delhi.

32. Monir.M (CJ) (2016), *Law of Evidence,* Vol I & II, 17th Edition, Universal Law Publishing, New Delhi.

33. Tyagi.S.P., (2015), *Session's Trial,* Vinod Publications (P) Ltd., New Delhi.

34. Thomas.K.T (J) and Rashid.M.A (2016), *The Indian Penal Code,* 33rd Edition, Lexis Nexis, New Delhi.

35. Mitra.B.B.,(2015), *Code of Criminal Procedure, 1973,* 22nd Edition, Kamal Law House, Kolkata.

REPORTS

1. Justice Malimath.V.S., (2003), 'Committee on Reforms of Criminal Justice System', available at http://www.mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/criminal_justice_system.pdf

2. 77th Law Commission Report on Delay and Arrears in trial

courts, available at
http://lawcommissionofindia.nic.in/reports/Report_No.245.pdf

3. Discussion document: Proceeding in the absence of the defendant (Non-Governmental Policy) (May, 2009), Ministry of Justice, Tahu O te Ture and Law Commission, Te-Aka-Matua-o-te-Ture

4. Report of the Committee on Draft National Policy on Criminal Justice (July, 2007), Ministry of Home Affairs, Government of India, available at
http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/DraftPolicyPaperAug.pdf

5. Criminal Proceedings Bench Book (2015), Volume 1, Michigan Judicial Institute, available at
https://mjieducation.mi.gov/documents/20-crimv2

6. Report of the Attorney-General under the New Zealand Bill of Rights Act, 1990 on the Criminal Procedure (Reform and Modernization) Bill (2010), available at
https://www.parliament.nz/resource/en-NZ/49DBHOH_PAP20778_1/85b575cc5d12d8e7f14584792b833f9dca85def2

7. Ranjan V N, Khan M Z (1982), Delay in the Disposal of Criminal Cases in the Sessions and Lower Courts in Delhi, Institute of Criminology and Forensic Science, New Delhi, available at
https://www.ncjrs.gov/pdffiles1/Digitization/84627NCJRS.pdf

8. Judicial Impact Assessment: An Approach Paper (2008), India Development Foundation, available at
doj.gov.in/sites/default/files/**judicialimpactassessment**reportvol2_0.pdf

9. National Mission for Delivery of Justice and Legal Reforms: A Blueprint for Judicial Reforms – Strategic Initiatives, 2009-2012, Government of India, available at
lawmin.nic.in/doj/**justice**/**National_Legal_Mission**-7NOV2009.pdf

10. National Court Management Systems (NCMS): Policy and Action Plan (2012), Supreme Court of India, available at supreme**court**ofindia.nic.in/**ncms**2709**2012**.pdf

11. Report of the Joint Committee on Criminal Justice (2014), New Jersey Criminal Administrative System, available at https://www.judiciary.state.nj.us/pressrel/**2014**/Final**Report**_3_20_**2014**.pdf

12. Avoidable Delay: A Thematic Inspection of Delay in the Processing of Criminal Cases in Northern Ireland (2006), Criminal Justice Inspection, Northen Ireland, available at http://www.cjini.org/CJNI/files/ed/ed9d97d7-a15f-4fa5-90d1-3e3867124c21.pdf

13. Afeef,J., Bostwick, L., Kim, S., & Reichert, J. (2012), 'Policies and Procedures of the Illinois Criminal Justice System, Chicago, IL: Illinois Criminal Justice Information Authority, available at http://www.icjia.state.il.us/assets/pdf/ResearchReports/Policies_and_Procedures_of_the_Illinois_Criminal_Justice_System_Aug2012.pdf

14. Priti Patel (ed.,) (2013), Prioritising Victims of Crime in the Criminal Justice System, available at http://www.roadpeace.org/resources/REBALANCING_THE_SCALES.pdf

15. Sir Brian Leveson, President of the Queen's Bench Division, (2015), Review of Efficiency in Criminal Proceedings, Judiciary of England and Wales, available at https://www.judiciary.gov.uk/wp-content/uploads/2015/01/review-of-efficiency-in-criminal-proceedings-20151.pdf

16. Speedy Trial and Timely Resolution of Criminal Cases (2006), ABA Standards for Criminal Justice, American Bar Association, available at http://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/speedy_trial.authcheckdam.pdf

17. Issues Concerning Prosecution in Relation to Conviction, Speedy Trial and Sentencing, 107th International Training Course Report, available at http://www.unafei.or.jp/english/pdf/RS_No53/No53_31RC_Group3.pdf

18. Marc Molins Raich (2001), The issue of time in the administration of Criminal Justice, Scotland Law Society Journal, available at http://www.sccjr.ac.uk/wp-content/uploads/2015/10/SCCJR-Scottish-criminal-justice-system.pdf

ARTICLES

1. Jason Payne, (2007) 'Criminal trial delays in Australia: trial listing outcomes', Research and Public Policy Series No.74, Australian Institute of Criminology, available at http://www.aic.gov.au

2. Kelvin tilley, David Eby (ed) (2012), 'Justice Denied: The Causes of B.C.'s Criminal Justice System Crisis, B.C. Civil Liberties Association, available at http://www.bcgeu.ca/sites/default/files/Justice%20Denied.pdf

3. Phyllis Goldfarb (1st Ed) and Arthur Leavens (this revision) (2013), 'Speedy Trial and Related Issues', Chapter 23, available at http://www.suffolk.edu/documents/LawMCP/Ch23SpeedyTrialandRelatedIssues.pdf

4. Don Paterson (2008), 'Delays in the Criminal Justice System of Vanuatu', 12 (2) Journal of South Pacific Law 34-38

5. Barry Walsh (2008), 'Judicial Productivity in India', 1 International Journal for Court Administration 23-30

6. Prof.Madhav Menon.N.R., 'Law and Justice: A Look at the Role and Performance of Indian Judiciary', available at http://southasia.berkeley.edu/indian-democracy-

series/docs/Menon-LawANDJustice-ALook%20.pdf

7. Jospeh A. Trotter, Jr. and Caroline S. Cooper (1982), 'State Trial Court Delay: Efforts at Reform', 31 The American University Law Review, 213-236, available at http://www.aulawreview.org/pdfs/31/31-2/trotter.pdf

8. Elizabeth Herath (2014), 'Trials in Absentia: Jurisprudence and Commentary on the Judgment in Chief Prosecutor v. Abul Kalam Azad in the Bangladesh International Crimes Tribunal', 55(6) Harvard Law Journal 1-12.

ANNEXURE – I

QUESTIONNAIRE FOR THE SESSIONS AND ADDITIONAL SESSIONS JUDGES WORKING AS PRESIDING OFFICERS OF DIFFERENT COURTS AND OTHER JUDICIAL OFFICERS WITH MINIMUM 10 YEARS WORKING EXPERIENCE

Name and Designation of the officer :

Name of the court :

Name of the Judgeship :

1. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending for the 'appearance of the accused'. What in your opinion can be the reason for intermittent non-appearance of the accused persons?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Deliberate non-appearance by the accused to evade trial	( )
b.	Ignorance about the pending case	( )
c.	Any other reason (please specify)	

2. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases have been delayed for misuse of bail. What in your opinion can be the reason for misuse of bail?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

3. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of complaint cases are pending in magisterial court in which the trial has been delayed for more than one year. Specify the reasons?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

4. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending in which there is a inordinate delay between the institution of FIR and date on which cognizance is taken after submission of charge sheet. Please specify any reason for such delay?

Response: (Please provide your response in the below given box

(if necessary, please attach additional sheet)

5. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a large number of sessions cases are pending in which there is inordinate delay between the date of cognizance and date of commitment. Please specify any reason for such delay?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

6. Whether the date of appearance of the accused before the sessions court is provided while passing an order of commitment in your court? (For the court of magistrates)

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

7. What is the reason that the provisions of bail-bond and sureties have failed to secure appearance of the accused persons after their enlargement on bail?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	The amount of bail bond is usually low	( )
b.	The identity of the sureties and the papers filed with the bond are not properly verified	( )
c.	Stringent actions are not taken against the fictitious bailers and their identifiers	( )
d.	It is not effective against persons without fixed assets/immovable property	( )
e.	Any other reason (Please specify)	

8. In case of non-execution of warrant, what can be the means to secure the appearance of the absconding accused during investigation or trial having no movable/immovable property in his name?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

9. Whether service report of summons and execution report of other processes issued against the absconding accused, is received in the court or not?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

10. During trial of the police case, on which agency rests the statutory responsibility

of production of prosecution witness?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Prosecution	( )
b.	Police	( )
c.	Both	( )
d.	None of the Above	( )

11. Is there any one agency on which, a statutory liability can be fixed for failure of police case generally?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

12. How many cases are pending before your court for offences under Sec. 174 A, 182, Sec. 191 to 200, 211 and 229 A IPC? (for Presiding Officers of Magisterial courts only) _____ (Please provide the number)
13. What is the reason for the high incidence of witnesses turning hostile?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Inaccurate recording of statement of the witness u/s 161 Cr.P.C	( )
b.	Out of fear and insecurity in witnesses	( )
c.	Delay in trial	( )
d.	All the above	( )

14. What can be the procedural reform to ensure that the witnesses do not turn hostile *enmasse* during trial?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Statement of the witnesses in serious offences like in sessions cases, to be recorded u/s 164 Cr.P.C in place of sec. 161 Cr.P.C and be treated as a substantive evidence. During trial, examination – in - chief to a limited extent can be permitted for identification of accused and exhibiting the documents followed by cross-examination of the witnesses in terms of the statements already recorded u/s. 164 Cr.P.C	( )
b.	Religious scriptures to be mandatorily used for taking of oath	( )

	for giving evidence before the court	
c.	Witness to be produced in serious cases under police protection	( )
d.	Trial and recording of evidence to be not delayed because of the abscondance of the accused	( )
e.	All the above	( )
f.	Any other reason (Please specify)	

15. Whether the investigating officer of the case, appears in the court with the charge-sheeted witnesses during trial in a sessions case? (only for Sessions Judge)

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

16. Whether the responsibilities of police should end with the conclusion of investigation or it should extend to production of witness before the trial court?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	It should be limited to submission of charge sheet and prosecution should thereafter take responsibility separately	( )
b.	The responsibility of the police should not end with submission of charge sheet, but it should extend to production of witness through its prosecuting agency	( )

17. Whether the bi-furcation of the police from prosecution, in your opinion, has served the ends of justice? Please substantiate your response with reason?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

18. In your opinion, what are the major **procedural** bottlenecks in the criminal justice system? Suggest procedural change if any? Please mention the specific provisions.

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

(Signature)

Date:

ANNEXURE – II

QUESTIONNAIRE FOR PUBLIC PROSECUTORS

(with a minimum of 10 years of experience)

Name and Designation of the Officer :

Name of the District :

1. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending for the '*appearance of the accused*'. What in your opinion can be the reason for intermittent non-appearance of the accused persons?

   Response: (Please specify the reason by (✓) mark in the below given table)

a.	The deliberate non-appearance by the accused to evade trial	( )
b.	Ignorance about the pending case	( )
c.	Any other reason (specify)	( )

2. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases have been delayed for misuse of bail. What in your opinion can be the reason for misuse of bail?

   Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

3. What in your opinion is the reason for delay in conclusion of investigation?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

4. What in your opinion is the reason for delay at the stage of cognizance after submission of charge sheet?

   Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

5. What is the reason for delay in commitment to the court of sessions after cognizance of the case?

   Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

6. What is the reason that the provisions of bail-bond and sureties have failed to secure appearance of the accused persons after their enlargement on bail?

   Response: (Please specify the reason by (✓) mark in the below given table)

a.	The amount of bail bond is usually low	( )
b.	The identity of the sureties and the papers filed with the bond are not properly verified	( )
c.	Stringent actions are not taken against the fictitious dealers and their identifiers	( )
d.	It is not effective against persons without fixed assets/immovable property	( )
e.	Any other reason (specify)	

7. What can be the means to secure the appearance of the absconding accused during investigation ortrial having no movable/immovable property in his name?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

8. During trial of the police case, on which agency rests the statutory responsibility of production of prosecution witness?

   Response: (Please specify the reason by (✓) mark in the below given table)

a.	Prosecution	( )
b.	Police	( )
c.	Both	( )
d.	None of the Above	( )

9. Is there any one agency on which, a statutory liability generally can be fixed for failure of police case?

   Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

10. In the Civil Court within your jurisdiction, whether Court *Malkhana* is functional and the Court exhibits are properly kept there?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

11. What is the reason for lack of co-ordination between Police and Prosecution?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

12. Whether the public prosecutors including Assistant Public Prosecutors and Additional Public Prosecutors are consulted during investigation or at the time of submitting the charge sheet/final form? If not, whether they should be so consulted at these stages?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

13. Whether any monthly meeting is held on regular basis involving the public prosecutors, Asst. Public Prosecutor, Addl. Public Prosecutor with the Superintendent of Police/Deputy Magistrate?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

14. The responsibility of failure of police case rests on which of the following agencies?

    Response: (Please specify the reason by (✓) mark in the below given table)

a.	Prosecution	( )
b.	Police	( )
c.	None of the Above	( )

15. In your district, whether any action has ever been initiated on administrative side on any public prosecutor (including Asst. PP and Addl.PP) for failure of any police case? If yes, please enclose the specific details?

    Response: (Please provide your response in the below given box)

16. What is the reason for the high incidence of witnesses turning hostile?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Inaccurate recording of statement of the witness u/s 161 Cr.P.C	( )
b.	Out of fear and insecurity in witnesses	( )
c.	Delay in trial	( )
d.	All the above	( )

17. What can be the procedural reform to ensure that the witnesses do not turn hostile *enmasse* during trial?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Statement of the witnesses in serious offences like in sessions cases, to be recorded u/s 164 Cr.P.C in place of sec. 161 Cr.P.Cand be treated as a substantive evidence. During trial, examination – in - chief to a limited extent can be permitted for identification of accused and exhibiting the documents followed by cross-examination of the witnesses in terms of the statements already recorded u/s. 164 Cr.P.C	( )
b.	Religious scriptures to be mandatorily used for taking of oath for giving evidence before the court	( )
c.	Witness to be produced in serious cases under police protection	( )
d.	Trial and recording of evidence to be not delayed because of the abscondance of the accused	( )
e.	All the above	( )
f.	Any other reason (Please specify)	

18. Whether the investigating officer of the case appears in the court with the charge-sheeted witnesses during trial in a sessions case? If not, please give thereasons for the same?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

19. Whether the responsibilities of police should end with the conclusion of investigation or it should extend to production of witness before the trial court?

    Response: (Please specify the reason by (✓) mark in the below given table)

a.	It should be limited to submission of charge sheet and prosecution should thereafter take responsibility separately	( )
b.	The responsibility of the police should not end with submission of charge sheet, but it should extend to production of witness through its prosecuting agency	( )

20. Whether the bi-furcation of the police from prosecution, in your opinion, has served the ends of justice? Please substantiate your response with reason?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

21. Can there be greater accountability in investigation and prosecution of police cases if the Superintendent of Police is made the head of the prosecution at the district level?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

22. In your opinion, what are the major **procedural**bottlenecks in the criminal justice system? Suggest procedural change if any? Please mention the specific provisions.
Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

(Signature)

Date:

ANNEXURE – III

QUESTIONNAIRE FOR THE SUPERINTENDENT OF THE POLICE

Name and Designation of the Officer :

Name of the District :

1. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending for the 'appearance of the accused'. What in your opinion can be the reason for intermittent non-appearance of the accused persons?

   Response:(Please specify the reason by (✓) mark in the below given table)

a.	The deliberate non-appearance by the accused to evade trial	( )
b.	Ignorance about the pending case	( )
c.	Any other reason (specify)	

2. What are the practical difficulties in execution of processes issued by the court to secure the appearance of the accused?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

3. What can be the means to secure the appearance of the absconding accused during investigation or trial having no movable/immovable property in his name?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

4. Is there any one agency on which, a statutory liability generally can be fixed for failure of police case?

   Response:(Please specify the reason by (✓) mark in the below given table)

a.	Police	( )
b.	Prosecution	( )
c.	None of the above	( )
d.	Any other (Please Specify)	

5. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that number of cases are pending awaiting institution of FIR u/s.156(3) Cr.P.C for more than six months. Please specify the reasons for delay?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

6. In the Civil Court within your jurisdiction, whether Court *Malkhana* is functional and the Court exhibits are properly kept there?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

7. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a number of cases are awaiting police report for more than six months. What in your opinion is the reason for such delay?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

8. What in your opinion is the reason for delay in conclusion of investigation?

   Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

9. What is the reason for lack of co-ordination between Police and Prosecution?

   Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

10. Whether the public prosecutors including Assistant Public Prosecutors and Additional Public Prosecutors are consulted during investigation or at the time of submitting the charge sheet/final form? If not, whether they should be so consulted at these stages?

    Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

11. Whether any monthly meeting is held on regular basis involving the public prosecutors in your office?

    Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

12. During trial of the police case, on which agency rests the statutory responsibility of production of prosecution witness?

    Response:(Please specify the reason by (✓) mark in the below given table)

a.	Prosecution	( )
b.	Police	( )
c.	Both	( )
d.	None of the Above	( )

13. Whether the investigating officer of the case appears in the court with the charge-sheeted witnesses during trial in a sessions case? If not, please specify the reasons for the same?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

14. In your district, whether any action has ever been initiated on administrative side on any police officer for failure of any police case? If yes, please enclose the specific details?

Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

15. Whether good police officers are being rewarded? If so, what is the scale of reward?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

16. What is the reason for the high incidence of witnesses turning hostile?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Inaccurate recording of statement of the witness u/s 161 Cr.P.C	( )
b.	Out of fear and insecurity in witnesses	( )
c.	Delay in trial	( )
d.	All the above	( )

17. What can be the procedural reform to ensure that the witnesses do not turn hostile *enmasse* during trial?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Statement of the witnesses in serious offences like in sessions cases, to be recorded u/s 164 Cr.P.C in place of sec. 161 Cr.P.Cand be treated as a substantive evidence. During trial,	( )

	examination – in - chief to a limited extent can be permitted for identification of accused and exhibiting the documents followed by cross-examination of the witnesses in terms of the statements already recorded u/s. 164 Cr.P.C	
b.	Religious scriptures to be mandatorily used for taking of oath for giving evidence before the court	( )
c.	Witness to be produced in serious cases under police protection	( )
d.	Trial and recording of evidence to be not delayed because of the abscondance of the accused	( )
e.	All the above	( )
f.	Any other reason (Please specify) *(if necessary, please attach additional sheet)*	

15. Whether the responsibilities of police should end with the conclusion of investigation or it should extend to production of witnessbefore the trial court?

    Response: (Please specify the reason by (✓) mark in the below given table)

a.	It should be limited to submission of charge sheet and prosecution should thereafter take responsibility separately	( )
b.	The responsibility of the police should not end with submission of charge sheet, but it should extend to production of witness through its prosecuting agency	( )

16. Can there be greater accountability in investigation and prosecution of police cases if the Superintendent of Police is made the Head of the Prosecution at the district level?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

18. Whether the bi-furcation of the police from prosecution, in your opinion, has served the ends of justice? Please substantiate your response with reason?
    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

17. What is the reason for poor quality of investigation in majority of cases?
    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

18. In your opinion, what are the major **procedural** bottlenecks in the criminal justice system? Suggest procedural change if any? Please mention the specific provisions.
    Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

(Signature)

Date:

ANNEXURE – IV

QUESTIONNAIRE FOR THE DEPUTY COMMISSIONER

Name and Designation of the Officer :

Name of the District :

19. On the basis of data analysis from the inputs received from 24 Judgeships of the State of Jharkhand, it has been found that a very large number of cases are pending for the 'appearance of the accused'. What in your opinion can be the reason for intermittent non-appearance of the accused persons?

    Response: (Please specify the reason by (✓) mark in the below given table)

a.	The deliberate non-appearance by the accused to evade trial	( )
b.	Ignorance about the pending case	( )
c.	Any other reason (specify)	

20. Is there any one agency on which, a statutory liability generally can be fixed for failure of police case?

    Response: (Please specify the reason by (✓) mark in the below given table)

a.	Police	( )
b.	Prosecution	( )
c.	None of the above	( )
d.	Any other (Please specify)	

21. What is the reason for lack of co-ordination between Police and Prosecution?

    Response:(Please provide your response in the below given box)

(if necessary, please attach additional sheet)

22. Whether the public prosecutors including Assistant Public Prosecutors and Additional Public Prosecutors are consulted during investigation or at the time of submitting the charge sheet/final form? If not, whether they should be so consulted at these stages?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

23. Whether any monthly meeting is held on regular basis involving the public prosecutors in your office?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

24. Whether any monthly meeting is held in your office involving the senior police officers and investigating officers?

    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

25. During trial of the police case, on which agency rests the statutory responsibility of production of prosecution witnesses?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Prosecution	( )
b.	Police	( )
c.	Both	( )
d.	None of the Above	( )

26. In your district, whether any action has ever been initiated on administrative side on any police officer/prosecutor for failure of any police case? If yes, please enclose the specific details?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

27. Can there be greater accountability in investigation and prosecution of police cases, if the Superintendent of Police is made the head of the prosecution at the district level?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

28. What can be the procedural reform to ensure that the witnesses do not turn hostile *enmasse* during trial?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	Statement of the witnesses in serious offences like in sessions cases, to be recorded u/s 164 Cr.P.C in place of sec. 161 Cr.P.C and be treated as a substantive evidence. During trial, examination – in - chief to a limited extent can be permitted for identification of accused and exhibiting the documents followed by cross-examination of the witnesses in terms of the statements already recorded u/s. 164 Cr.P.C	( )
b.	Religious scriptures to be mandatorily used for taking of oath for giving evidence before the court	( )
c.	Witness to be produced in serious cases under police protection	( )
d.	Trial and recording of evidence to be not delayed because of the abscondance of the accused	( )
e.	All the above	( )
f.	Any other reason (Please specify)	

29. Whether the investigating officer of the case appears in the court with the charge-sheeted witnesses during trial in a sessions case? If not, please specify the reasons for the same?

Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

30. Whether the responsibilities of police should end with the conclusion of investigation or it should extend to production of witness before the trial court?

Response: (Please specify the reason by (✓) mark in the below given table)

a.	It should be limited to submission of charge sheet and prosecution should thereafter take responsibility separately	( )
b.	The responsibility of the police should not end with submission	( )

	of charge sheet, but it should extend to production of witness through its prosecuting agency	

15. Whether the bi-furcation of the police from prosecution, in your opinion, has served the ends of justice? Please substantiate your response with reason?
    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

16. In your opinion, what are the major **procedural** bottlenecks in the criminal justice system? Suggest procedural change if any? Please mention the specific provisions.
    Response: (Please provide your response in the below given box)

(if necessary, please attach additional sheet)

(Signature)

Date:

ANNEXURE – V

BRIEF OVERVIEW OF JUDICIAL SET UP OF DISTRICT COURTS OF JHARKHAND

There are 24 district civil courts in all the 24 districts of the State of Jharkhand. In addition, there are sub-divisional courts in four sub-divisions viz., Ghatshila (Dist., East Singhbhum), Bermo at Tenughat (Dist., Bokaro), Madhupur (Dist., Deoghar) and Rajmahal (Dist., Sahibganj).

The criminal courts at district level are setup as per the Criminal Procedure Code.

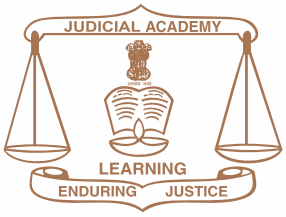
The Judicial Magistrate First Class, as per the Criminal Procedure Code has the power to sentence up to three years and impose fine up to Rs. 10,000/-. As the Sub-Divisional Judicial Magistrate (SDJM) is the senior most judicial magistrate having equal powers regarding sentence and fine. In the District Courts, the Chief Judicial Magistrate (CJM) is the head of the magistracy who may also have the powers of Asst., Sessions Judge and could sentence up to seven years and fine up to Rs. 10,000/. While exercising sessions power, fine amount is unlimited. The Additional Chief Judicial Magistrate (ACJM) exercising similar powers as that of CJM is there in all the districts.

The Sessions Court having powers to impose all the sentences including life imprisonment and death sentence (subject to confirmation by the High Court) and to impose unlimited fine, is supplemented by the Courts of Additional Sessions Judges exercising similar powers.

In addition, there are four Courts presided by Addl. Sessions Judges to try cases arising out of State Vigilance (Anti-Corruption Bureau) one each at Ranchi, Dhanbad, Hazaribagh, Chaibasa & Dumka. Similarly, there are Special Courts presided over by the Addl. Session Judges to try cases investigated by CBI (Central Bauru of Investigation) at (Ranchi & Dhanbad exercising jurisdiction for twelve districts each). In addition, there are four CBI Courts specially to try AHD/Fodder Scam cases (Animal Husbandry Scam Cases) situated all at Ranchi under Prevention of Corruption Act, 1988.

The power to try NDPS (Narcotic Drugs and Psychopathic Substances) Act, 1985 is vested in all the Sessions Courts. The Court of First Addl. Sessions Judge also acts as a Special Court to try offences under SC & ST (Prevention of Atrocities) Act 1989, Electricity Act 2003, and Protection of Children from Sexual Offences Act 2012, apart from functioning at the children's court under Juvenile Justice Act. The High court has notified certain Additional Sessions Judges as FastTrack Courts for offences against women in different districts.

The family Courts presided by Principle District Judge rank officer who under the Family Courts Act,1984 also tries Sec.125 Cr.P.C matters regarding maintenance.



Judicial Academy Jharkhand
Near Dhurwa Dam, Dhurwa, Ranchi
Phone : 0651-2772103, 2772002, 2772020, 2772001, Fax : 0651-2772008
Email : judicialacademyjharkhand@yahoo.co.in,
Website : www.jajharkhand.in