11-9-82

Delay in the Disposal of Criminal Cases In the Sessions and Lower Courts in Delhi

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ACKNOWLEDGMENTS

Being an empirical study in criminal justice administration, perhaps the first one of its kind, the present work has been heavily dependent on cooperation from several quarters, particularly the members of the judiciary. We feel happy to record that from conceptualization to the implementation of the study we have received inspiration and help without which the study would not have been possible.

We are beholden to Shri Justice V R Krishna Iyer and Shri Justice Murtaza Fazal Ali, Judges of the Supreme Court for the encouragement given to us to undertake the present exercise. The former and present Chief Justices of the Delhi High Court viz Sarvashri D S Deshpande and Prakash Narayan, respectively, have taken a keen interest in the work.

Shri Jagdish Chandra, District and Sessions Judge, Delhi, and his officers gave us every assistance in collecting official statistics and in making court files of completed criminal cases available to us.

The present study has been carried out at the behest of the Ministry of Home Affairs, Government of India, and funded by them.

A large number of academicians, administrators, journalists and lawyers have responded to our request and given valuable information and response to an opinionnaire mailed to them.

We gratefully acknowledge our debt of gratitude to all of them who have cooperated with us. The responsibility for the opinions expressed and shortcomings, if any, are entirely our own.

V N R
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EXECUTIVE SUMMARY

1. In order to get at the formal and informal possibilities through which court working could be made more expeditious, the court organisation and procedures have been looked into.

2. Towards this, attention has been focused on the sessions and lower courts in the Union Territory in Delhi. It is estimated that Delhi, in terms of delay in the disposal of criminal cases, occupies a middle position : while it certainly is better off in the disposal of cases than some States and Union Territories, it does not favourably compare with some others. Further, in terms of pendency of cases in magisterial courts, it ranks third among 32 States/Union Territories.

3. For the purposes of the study, information was collected from three different data sources. Unannounced observation for 25 working days in (a) Sessions and Additional Sessions Judges courts, (b) Chief Metropolitan and Additional Chief Metropolitan Magistrates courts, and (c) Metropolitan Magistrates courts was conducted. Secondly, 111 files of decided court cases were scanned. Lastly the opinion of the large number of distinguished academicians, judicial officers, administrators and others was ascertained.

4. It is found that courts are located in four different places in Delhi. leaving apart Tis Hazari, the court buildings in Kashmere Gate, Shahdara and Patiala House are far from being functional. Even courts in Tis Hazari, housing more than two-thirds of the courts, are very congested.

5. Scant attention appears to have been paid to the provision of facilities for the visiting public. Magisterial court rooms have inadequate space (40 per cent) and inadequate seating facility (65 per cent). This is hardly in keeping either with the democratic ideals or the dignity of the courts.

6. Magistrates courts are organised police station-wise. Courts, particularly magistrates courts have excessive caseloads. Presiding officers

in Courts are less than punctual ; 68 percent were found coming late in the morning and 62 percent, after lunch.

7. Court officials including Reader, Stenographer, Ahalmad, peon/orderly, etc. appear to be punctual and devoted. However, their proclivity to corruption and malpractices is an open question.

8. Almost in each court, one public prosecutor is attached. There are courts to which two prosecutors are attached. Their manner of working were observed to be casual ; and only 11 percent of them were found to utilise their entire working time.

9. It is difficult to specify as to how many defence lawyers are there in Delhi. They are far too many. At the same time, where there are lawyers who have an insignificant number of briefs with them, there are in contrast those having far too large numbers of briefs for them to do justice to their work. This has direct implications on the rate of case disposal in courts. Surprisingly, the Bar Council Act lays down few norms on the amount of work a lawyer should handle.

10. It has been observed that criminal cases are often disposed of in a very mechanical manner. At times, as many as three cases were observed being processed simultaneously. This may somewhat speed up disposal but that it has adverse effects on judicial administration is not difficult to make out.

11. There are several legal aspects having a bearing on case disposal. For example, many cases may be dealt with by executive departments, by Nyaya Panchayats or by tribunals-leaving courts free to concentrate on cases of serious nature. CrPC provisions relating to revision and appeal also deserve a second look.

12. Adjournments and delays in the processing of criminal cases represent a cumulative process. The amount of time involved in the completion of criminal investigation is often characterised by inordinate delays. Once a case is before the court it passes through different stages-institution, first appearance, pre-charge evidence, charge/notice, prosecution evidence, statement of the accused, defence evidence, final argument and judgement/order. Few of these stages are free from delays. Nonetheless, prosecution evidence stage is notably time-consuming. Often defence lawyers cross-examine each and every witness at length. CrPC provisions relating to cross-examinations need to be

made specific so as to keep off vexatious cross-examination.

13. Section 309 of the CrPC lays down that a court must record reasons while adjourning a case. Apparently, this provision is not followed vigorously. In quite a few cases, reasons have not been specified and in most cases they are hazy. Perhaps inspection and supervision procedures in judicial administration need to be streamlined. In seeking adjournment, prosecutors hardly compare with defence counsel. In barely 2 per cent of the cases adjourned have prosecutors asked for adjournment. Further, according to the existing practice, prosecutors supply copies of documents to the accused, although they themselves do not have adequate office, library and stationery facilities.

14. In quite a few instances, cases were adjourned because of the failure of the accused to appear. In most of such cases, the accused were on bail.

15. Adjournments on account of defence lawyers are seen to be frequent. They turn up late after a case is called and seek adjournment on the slightest pretext, quite often pleading that they have not prepared the case.

16. Yet another important reason for adjournment is the reluctance of the witnesses both formal and material witnesses to appear. The inadequacy of facilities for the public has already been referred to. Public witnesses are required to attend court almost throughout the day and often their evidence is not recorded on the day they are called, requiring their attendance on next dates of hearing. To many public witnesses, their cross-examination is little short of harassment. Furthermore, travel allowance and 'diet money' admissible to the public witnesses is far from being adequate. Several concurrent measures need to be initiated to improve the extent and quality of public cooperation.

17. Attention has to be paid to court management, including manpower and material management. Assignment of work to judicial officers and their mode of working need to be reviewed. Still greater attention needs to be paid to secretarial and court officials. Strangely enough, the strength of the court officials is more than sanctioned owing to certain procedural vagaries. Nonetheless, a few key secretarial posts have been lying vacant for quite some time. The sooner modern management techniques are introduced particularly in record rooms/copying agencies, the better.

18. Taking an overall view, it may be underlined that a separate criminal investigation wing/department deserves to be organised. This would not only introduce professionalism in the investigation of criminal cases but also greatly facilitate the progress of cases in courts.

19. Appropriate executive and legislative measures may be taken to enlist public cooperation in judicial administration. Likewise, voluntary effort may be encouraged to provide public witness services.

20. Workload of courts both in terms of live case files and the quantum of disposal may be assessed; and accordingly the number of courts may be increased. Administratively speaking, it will be a step in the right direction for the criminal justice services to be brought under "Plan Expenditure".

21. Based on empirical data, a 'court calendar' has to be developed. For their disposal, cases would take the time which is likely to vary with the nature of offence and with the type of court. Nevertheless, a few norms prescribing time-limits have to be evolved. At an appropriate point of time, these norms may be consolidated further, perhaps in a legislative measure along the lines of the Speedy Trials Act in the United States.

Chapter I

INTRODUCTION

There has never been a civilized society that did not find itself continuously "coping with crime" (Coffey 1974). In this relentless struggle against crime, the significance of justice as a social value has seldom been questioned (Duffee, et al. 1978). As a matter of fact, free and fair justice has always been a hallmark of every civilized community. According to the philosopher Ginsberg, there are in the main three ingredients which make for justice : (i) the exclusion of arbitrariness, more particularly of arbitrary power, whether exercised by individuals on each other or by society on its members; (ii) principles governing the distribution of the conditions of well-being; and (iii) provisions to ensure remedies or compensation for losses or injuries (1965). Seen in the light of these considerations, delay in the disposal of criminal cases is disquieting feature.

In a criminal case, where the victim has a grievance and the life and personal liberty of the accused is at stake, the noble purpose of justice seems to get defeated in the case of delayed disposal of the case. Owing to the prolonged pendency of a case, individuals may suffer in many and different ways. Though the accused may be innocent, he is subjected to psychological anxiety, social stigma and probable economic impairment till proved innocent. Even if he is guilty, delay shakes his confidence in the system of criminal justice and makes him cynical. The impact of this drama does not confine itself to the accused but extends to his dependants who may be subjected to undue suffering. Worse is the effect of delay on the complainant/victim to whose traumatic suffering the system appears and is heartless (Ghosh 1976).

Given that justice is the highest function of society, delay in the disposal of cases casts avoidable doubts. Undue delay is as inconsistent with the

goals of the criminal justice system as a hasty process in which decisions are made without an opportunity for deliberation. They belie arbitrary powers of the state and discretionary functioning of the criminal justice administration. What is worse, delays diminish the deterrent effect of the criminal justice system (Task Force Report : the Courts 1967). When overburdened with the mounting backlog of cases, it becomes difficult for the courts, the pivot on which the crimial justice system turns, to maintain a proper balance between effectiveness and fairness. Pande and Bagga have observed that "in the wake of increased volume of work in the criminal courts the dispensation of justice is (a) perfunctory affair.... A criminal case is disposed of mostly in a random way" (1973). In certain situations, the delays and the consequent backlog precipitate a situation in which courts may often give an impression of being a 'non-system' (Coffey 1974). Undue delay in the disposal of criminal cases is incompatible with a democratic and free society (Gajendragadkar 1976). These may tend to shake the confidence of the common man in the criminal justice system and in the political process itself. On the whole, the delay in the disposal of criminal cases amounts to indifference as much to law as to human values (Germann et al. 1972).

It is hardly necessary to add that the delay in the disposal of criminal cases is also incompatible with the democratic ideals enshrined in our Constitution. Article 124 lays down that in the Country there will be a free, fair and public trial of criminal cases. Delays tend to raise doubts in respect of free and fair disposition of criminal cases.

Extent : In the United Kingdom the disposal of criminal case is reported to be quite expeditious. A criminal case rarely takes more than four months from arrest to final appeal. In Scotland a case ordinarily takes about 110 days in its final disposal, (Kilbrandon 1966). The situation in the US is, however, a little different. On the average, this pariod may be about 18 months—in New Orleans the period may go up even to 24 months (Task Force Report : the Courts 1967).

The position obtaining in India differs from State to State. In one North Indian State it is nothing unusual to find Sessions cases pending for several years; the position is much worse in Magistrate's courts. In the States of Southern India disposals are much quicker. In fact, the pendency of cases in criminal courts has become a major problem. In the State of Bihar, it may take, reportedly, months before the case is taken up for hearing by a Magistrate's or even a Sessions Court (Narsimham, undated).

Table 1.01 : Pendency of criminal cases in courts in India

Year	Pending at the beginning of the year	Received during the year	Compounded or withdrawn	Completed/ disposed of	Pending trial at the end of the year
IPC 1971*	421386	943394	66981	301869	574544
Local and Spl.	—	3436274	20618	2840553	575103
IPC 1972*	2006209	2580753	170686	657344	1752723
Local and Spl.	2586804	3161907	33889	2289111	838807
IPC 1973	—	1147318	66751	330688	749879
Local and Spl.	—	3133928	20428	2318370	795130
IPC 1974	558054	1307933	75532	363565	868836
Local and Spl.	2452880	3248010	22897	2315571	909542
IPC 1975	587945	1456731	81280	395867	979632
Local and Spl.	3095119	4004661	29720	2983542	991399

SOURCE : Crime in India, BPR&D, New Delhi

* Number of persons.

A glance at Table 1.01 would readily show that the pendency of criminal cases is going up at an alarming rate. During 1973-75, a period of only three years, the pendency of IPC and other cases rose by more than 23%. Presumably, it continues to show an upward trend. These and similar situations have led certain penologists to think that there prevails a kind of **laissez faire** in the administration of criminal justice or that 'justice is in chains'. In any case, "it would be tragic if the law were so putrefied as to be unable to respond to the unending challenge of evolutionary or revolutionary changes in society" (Friedman 1959); or it is not in a position to rise to the challenge of mounting pendency of cases.

Etiological considerations : Indeed, there are available few clear-cut definitions as to what amounts to 'delay'. Nevertheless, it is often taken to

mean the time taken in disposing of cases more than required by the due process of law. Most delays can be traced to the fact that the "rights and duties of States are very imperfectly defined" (Ginsberg 1965). Consequently, the courts are in a position to adjourn or delay a case using their discretionary powers. For this, the US Presidential Commission on Law Enforcement and Administration of justice (1967) identifies, in the main three causes : (a) lack of resources, (b) insufficient management, and (c) an increasing number of cases. Often the staffing position relating to judicial officers may be inadequate (Narasimham, undated). The court personnel may be insufficient both quantitatively and qualitatively. Modern management practices which have revolutionised administrative practices in many sectors have not found their way in court-working in any significant manner. At the same time, with the onset of modernity the number of cases coming up for judicial processing may be rising tremendously. In the Indian judicial context, a few other factors may well be kept in view. Publicmen as well as officials serving as witnesses may not be appearing in court on the assigned day on one pretext or another. Likewise, directly or indirectly, the bar contribute to the delays. Lawyers may make it their business to challenge all or parts of a case (Cicourel 1968). What is worse, they have a vested interest in the adjournment of cases (Narasimham, undated). The fact of the matter is that the delay in the disposal of criminal cases is a multiplex problem which calls for an examination from several angles.

LITERATURE SURVEY

Factors underlying the problem of delay are varied and many. These factors are interwoven to such an extent that any attempt to attack this problem from one angle is unlikely to be satisfactory. Besides, problem is deep rooted in the history of administration of justice. In English literature, a passing reference to the problem is found even in Shakespeare (Ziesel, et al. 1959). In the Indian context also, the problem existed during the days of Cornwallis and even earlier (Mann 1979).

Although the problem of delay has been persisting since centuries, but it is surprising to note that scientific work on the problem, available in West, is at the best limited and in India, it amounts to nullity. However, some impressionistic references in newspaper, lectures, bulletins, reports of commissions and some books are available, visualizing the problem of delay from discrete angles.

Proceeding mainly on the basis of experience or impression, a number

of jurists, journalists and social scientists have attempted to analyse the problem of delay in terms of the administration of the criminal justice system as a whole, or court working or caseloads. Some have expressed that common law system itself is responsible for delays and still others have discussed the immediate or ostensible causes of delay.

Since ancient times the administration of justice has been an important function of the State. In modern times its importance is expected to be much more in view of the concept of the welfare state. Further, the working of the criminal justice system has often come in for criticism (Task Force Report 1967; Wright & Lewis 1978; Burger 1967; Macklin 1974). Some have gone to the extent of calling it a "non-system", (Coffey 1974; Forst 1977).

Undoubtedly, courts of law are the pivot on which criminal justice rotates (Task Force Report 1967). By virtue of their position, the courts have attracted attention from many writers. Keeping in view the conditions under which the courts are working (in the west), various foreign and Indian writers (Task Force Report 1967; Macklin 1974; Jenning 1971; Barkai 1978) have recommended measures to be taken to improve the functioning of lower courts.

Conditions under which the lower courts in India are working are an eye-opener. Not even the bare minimum physical facilities have been provided to them. Reportedly, in some States, they are working even without proper housing facilities. In Delhi, the Nation's Capital, some courts are housed in ramshackle buildings which are not fit for the purpose (vide details discussed in chapter II). To quote Shri Justice V R Krishna Iyer"...our courts are untouched by technology and live in slow age....." (1972).

Yet another perspective in which the problem of delay has been discussed and debated is the legal system. In almost all the non-socialist countries of the wold either the Common law system, i.e., the adversary system or the Continental system, i.e. the inquisitorial system, is prevailing. The issue, 'which system provides more safeguards to the innocent?', is still unsettled (Langbein and Weinreb 1978). In India also, the jurists and judges have been sceptical about the Continental system. Be that as it may,whether in the West (Burger 1967; Mitchell 1971; Macklin 1974) or in India (Krishna Iyer 1972; Mann 1979), the common opinion is that there are inbuilt delays in the common law system. To protect the innocent, the common law system has put checks and over-checks which are taken advantage of by the guilty who are obviously interested in delaying the proceedings.

The problem of delay is complex. Its causes are multiple and varied. No single factor can satisfactorily explain delays. Except for variations in degree, many causes have been commonly identified by foreign and Indian writers. However, such views rarely have any empirical foundation. The inefficient and hapazard functioning of courts and lack of scientific management in the CJS (Task Force Report 1967; Zeisel et. al. 1959; Forst 1977; Indian Law Commission's Report 1978; Ghosh 1976) have been agreed upon as major causes of delay. Attention has also been diverted towards the caseloads (Task Force Report 1967; Nardulli 1979; Bazelon 1971) on the courts. As discussed elsewhere in this section, the situation in India is even worse (Pande and Bagga 1973; Singhvi 1976; Narasimham, undated). With the mounting crime rate, more and more cases are being registered every day in the courts, but the number of courts (and also time at their disposal) has remained almost static. This has created an ever increasing backlog of cases and for the present, it has virtually chocked the existing courts. According to one estimate (Singhvi 1976), by any miracle if the time for disposal of a case is reduced to half, keeping other things constant, it will perhaps take hundred years to clear off the backlog of cases pending in various High Courts in the Country.

The Complexity of Laws (Mitchell 1971; Mann 1979; Krishna Iyer 1972; Khosla 1949); and role of bar members (Cicourel 1968; Macklin 1974 ; Dienes 1972; Krishna Iyer 1972; Khosla 1949) are considered as causative factors of delay. The excess proceduralism, archaic formalism, lengthy process of trial, liberal and multiple provisions for appeals, revisions and reviews, and some of the characteristics of common law system, can and do provide fertile pasture to the advocates to resort to delaying tactics. Perhaps, we need a more responsible and conscientious bar in the country to deal with the endemic problem, delay in the disposal of cases in criminal courts.

To talk about delay without facts is like, discussing budget without using figures (Zeisel et. al. 1959). A glance at the literature surveys reveals, that most of the views are either based on impressions or on personal experiences. Except for two (Zeisel et. al. 1959 in the American context, and Mukherjee and Gupta 1978, in the Indian context) empirical researches, there is hardly any dependable work on the problem. Looking at the historicity and magnitude of the problem, such an indifference on the part of social and legal researchers is really deplorable. Remedial Methodology requires exploratory research with sociological insight and judicial activism (Krishna Iyer 1978). It is with this end in view that the present study has attempted to abridge the research gap.

PRESENT WORK

It can hardly be gainsaid that the problem of delay of criminal cases in courts in the country is severe and widespread. While the administration of justice in a few States like Bihar may be groaning under its pressure, no State can claim that it is altogether free from the malady. This calls for a comprehensive research programme to take stock of the administration of criminal justice in the Country in the context of pendency of cases. However owing to several constraints, the present study is limited and in the nature than exploratory work (The courts, their organisation and of their functioning are complex—much of it is owing to the constitutional position). It would be ambitious to presume that a solitary or single research effort would be in a position to analyse all these dimensions comprehensively and effectively. For the present, attention has been paid to the courts of Session and subordinate courts deciding criminal cases. Thus, limited in scope, the present study in the main, has three objectives:

(i) to look into the court organisation and procedures which facilitate fair and speedy justice,

(ii) to analyse the role of court-personnel, bar-members and public-man in the judicial process; and

(iii) to delve into the formal possibilities through which court working may be rendered more expeditious and efficient.

Table 1.02 : Pendency of criminal cases at the Magistrial Courts in Delhi : Total of Police Challan cases and complaint cases.

Year	Pending at the beginning of the year	Received during the year	Compounded or withdrawal of police challan cases	Disposal during the year	Pending at the end of the year
1976	218,960	451,126	689	409,632	260,454
1977	260,454	442,241	1402	434,734	267,961
1978	267,961	562,248	815	461,080	369,129

Source : Offical statistics,
Department of Justice, GOI, New Delhi.

Table 1.03 : Pendency of criminal cases at the Sessions Courts in Delhi.

Year	Pending at the beginning of the year			Institution during the year			Disposal during the year			Pending at the end of the year		
	Origi-nal	Revi-sion	App-eals	Origi-nal	Revi-sion	App-eals	Origi-nal	Revi-sion	App-eals	Origi-nal	Revi-sion	App-eals
1976	1175	314	851	977	881	2245	1295	989	2175	857	206	921
1977	857	206	921	922	502	1609	1116	505	1830	663	203	700
1978	663	203	700	900	646	1328	857	539	1313	706	310	715

Source : Offical Statistics,
Department of Justice, GOI, New Delhi.

The study is confined to the Union Territory of Delhi (area : 1,485 sq. km; population : 6096000). The focus is on the Sessions and lower courts. While looking into the criminal justice system, it is advisable to examine the grass-roots. More often than not. what goes on at this level may not be entirely satisfactory. There may be 'little in the process which is likely to instil respect for the system of criminal justice in defendants, witnesses or observers'. With these considerations in view, the present study has addressed itself to the task of looking into the court working and the pendency of cases in the Courts of Session and below. Tables 1.02 and 1.03 give an idea of the pendency in Delhi. During the period 1976-78 the pendency in the Magistrate's courts has increased by 40 per cent. As is well known, a Magistrate's court is also a trial/court. For the present purposes, attention has been paid to the courts of (i) District and Sessions Judge and Additional Sessions Judges (2) Chief and Addl. Chief Metropolitan Magistrates, and (3) Metropolitan Magistrates.

Sampling : In all, there are forty Magistrates' courts, five Chief and Addl. Chief Metropoltian Magistrates' courts and thirty District and Sessions and Addl. District and Sessions Judges' courts. These courts are situated in 4 different areas of the city (Table 1.04). To study the court functioning and their general physical conditions, in all 25 courts (Table 1.05) were selected by weighted random sampling after classifying them into three strata,

Table 1.04 : Judicial officers in Delhi

Judicial Officer	Location				
	Tis Hazari	Patiala House	Shahdara	Kashmiri Gate	Total
District and Sessions Judge	1	—	—	—	1
Additional D & S Judge	25	2	2	—	29
Chief Metropolitan Magistrate	1	—	—	—	1
Additional CMM	2	1	1	—	4
Metropolitan Magistrates	21	10	3	4	40*

Source : Office of the D & S Judge, Delhi,

*Including one each at N D Railway Station and with the DTC (Mobile).

Table 1.05 : Study Sample—Observation

Court Level	Total Noumber of Courts	Targeted	Completed	Sample Fraction
Sessions*	16	7	7	100%
Chief and Addl. Chief Metropolitan Magistrate	5	2	2	100%
Metropolitan Magistrate	40	16	16	100%
Total	61	25	25	100%

Source : Office of the D & S Judge, New Delhi

*Only those courts dealing with criminal cases have been considered.

i.e., Metropolitan, Chief Metropolitan and Sessions courts. To fulfil the objectives of the study an estimate of the time taken for cases to be disposed of, and for different stages in the progress of the case to be completed. Towards this, a stratified random sample of 200 case files (Tabls 1.06) out of the cases decided (and contested only) by the courts of session and below during the months of October and November 1980 was drawn. Additionally, attempt has been made to collect the informed opinion from practising laywers (N=72), journalists (N=62) and prosecutors (N=70).

Table 1.06 : Study Sample—Case Record

Court	Cases*	Cases × Weight	Targeted	Completed	Sample Fraction
Sessions	406*	406×2	56	38	67.86
Chief & Addl. Chief Metropolitan Magistrate	241	241×2	34	15	44.12
Metropolitan Magistrate	1594	1594×1	110	58	52.73
Total	2241	2888	200	111	55.50

Sources : Office of the D & S Judge, New Delhi.

Tools and Materials : In the light of research problem, the objectives of the study and samples, suitable tools and materials were developed. To study court functioning, the observation method was the obvious choice. Despite its limitations, no other method could have given such fruitful & lively information. To study the stage-by-stage progress of the case record (court files) were relied upon as they are the only source from which such information could be gathered. For secondary data, the office of the Sessions Judge was approached. With these considerations in view the following tools and materials were developed :

1. Secondary Data Proforma (SDP) : In order to collect secondary data a number of Secondary Data Proforma were developed which incorporated such dimensions as : (a) Location of criminal courts (Sessions and below) in the Union Territory of Delhi, their number, name and designation of the Presiding Officer, (b) Staffing of these courts and associated offices, strength of the staff (sanctioned and actual) and their salaries. (c) Pendency and disposal of cases in the courts of Sessions and below by the end of the year 1980. (d) Separate SDP for the selection of the case files for study which was designed to bring out such information as, case no, FIR/DD No., offence charged or complained of, name of the accused/complainant/appellant, date of decision, 'Goshwara' number and court of decision, on the contested cases decided by the sessions and lower courts during the months of October and November, 1980.

2. Observation Sheet : To study the court functioning and disposal of the cases, two separate observation sheets were developed. In this connection three courts, one each from three strata i.e. MM, CMM and Session were observed and notes prepared on the spot. Also a number of practicing lawyers were consulted. Based on these observations, notes and consultation, observation-sheet was drafted and extensively discussed by the project staff. The items of the observation sheets were not precoded so as to allow full scope observation. Further, the observation-sheet had such court-related dimensions like : location, level and type of the court, availability of physical facilities, observance of court timings by the court officials, prosecutor and naib court and their activities before the cases are called ; and case-related dimensions like the time of call, the time after which the prosecutor and the advocate arrived, brief case description, activities of court officals, prosecutor, naib court, advocate and his clerk or assistant and others, and time taken by the court in disposing of the case. Following the preliminary consultation and editing the observation-sheet was, again, pretested on a limited sample. To facilitate on the spot recording, symbols were evolved. The research officer familiarised himself with the observation sheet and symbols and rehearsed to record on the spot, with the help of a log book.

3. File Data Sheet : To collect information from the case records a file data sheet (FDS) was developed. In this connection, again a number of practicing lawyers and some magistrates were consulted. Subsequently, a 'file data sheet' was drafted and critically evaluated by the project staff. In keeping with the exploratory design of the study, the FDS was not precoded. This incorporated the following dimensions : court of trial or appeal, offence charged or complained of, nature of proceedings adopted, details about the accused involved, information about witnesses, stage-by-stage progress of the case, and the case decision, etc. Following the preliminary consultation and editing, the FDS was pretested on a limited sample (case records).

4. Opinionnaire : To collect informed opinion from judicial officers, prosecutors, lawyers and journalists, an opinionnaire was prepared which raises issues relating to court working, role of defense counsel and prosecutors, workload on judiciary and ways and means overcoming the problem of delay. In the final shape, the opinionnaire consisted of seventeen items.

Data Collection : Data collection is primary as well as the mostimportant aspect of research. The outcome of any research hinges on the facts

collected in the study. Keeping in view the nature of problem under study and the type of information to be collected, the method of unannounced non-participant observation was used to study the working of the sampled courts. One by one, the observation of the 25 sampled courts was done through the working day : starting with half an hour before the opening hour of the court till 5 p.m. To observe the court working in the normal course, the research officer would merged with the general public to the extent possible, without announcing his identity or purpose. During this process, important happenings were recorded in a log book using symbols. After the court hours, this information was transferred from the log book to the observation sheets. This procedure, however, was not wholly free from limitations. At times, the court dais was so much crowded that it was extremely difficult to make out who was related to which case or what proceedings were taking place. Besides, in many cases the research officer was either turned out from the court-room along with general public so as to lessen congestion or his presence was questioned by the peon of the court.

For the collection of information from the case records, the permission of the High Court of Delhi was sought and graciously given. The District and Sessions Judge sent out instructions to Ahalmads of all the concerned courts to furnish preliminary information about the contested cases decided during the months of October and November, 1980, on the secondary data proforma. As mentioned earlier, from the details of these cases, 200 files were selected for detailed study. A list of these files was submitted to the High Court of Delhi for its permission. On getting the clearance from the High Court, the office of the District and Sessions Judge forwarded the lists to the respective record rooms. In the light of the objectives of the study, the case files were carefully studied and information was called and transferred on the file data sheets. It may be added the District and Sessions Judge, his staff including those in the record rooms fully cooperated in the study.

Besides, the office of the Sessions Judge extended all help in the collection of secondary data. The secondary data performae were completed without much difficulty. They were checked and their figures rearranged, tabulated and analysed.

It may be reiterated that the informed opinion of judicial officers, lawyers, prosecutors and journalists was sought. Although, the mailed opinionnaire method suffers from several limitations and has low probability of return, its advantages particularly in an exploratory research outweigh its disadvantages. It is difficult to approach all persons of eminence personally. Besides, they may need more time to think over the problem before expressing their opinion. Keeping this in view, it was considered proper to approach

them through opinionnaire. Towards this, the opinionnaire was mailed to them. A covering letter and self addressed envelope were also enclosed.

Analysis of data : The analysis-plan worked out earlier at the planning stage of the study was updated during the progress of data collection, and implemented accordingly. The data collected from secondary source (mainly from Office of the District and Sessions Judge, Delhi) involved only classification, tabulation and some computation. With the observation and file data the process was different. All the completed sheets were arranged, checked and edited for omissions and ambiguities. These sheet containing information from observation and file records were rearranged and each was divided into two sub-samples viz : File data-Trial cases ; File data-Appeal cases; Observation data-courts and Observation data-cases. With the help of code book separately for all the samples information was coded. Codes were cross-checked and transferred on the code sheets and were cross-checked again. All the classification and tabulation was done manually.

The analysis of observation data mainly concerns with the estimation of physical facilities, time factor in the court working, activities of the court officials and case disposal. For file data, the main concern of the analysis is estimation of time in case disposal, stage-by-stage progress of the cases, adjournments and their reasons and some case characteristics. Towards these, simple statistical techniques like percentages and averages were used.

Incorporating the data and the analyses, the report is spread over five chapters including Introduction. The organisation and functioning are discussed in Chapter II. Chapter III focuses on the cases and their disposal. Bottlenecks in the disposal of cases are delineated in Chapter IV. The last chapter deals with remedial strategies which could be adopted to cope with the problem of delays. In order to facilitate the task of interfacing the work with the policy-making progess, an executive summary has also been prepared and placed at the beginning of the report. It is expected that the work will provoke thinking among judges and magistrates, policy-makers and planners, academicians, administrators, members of the bar, prosecutors, police officers, jurists, criminologists and researchers.

Chapter II

COURTS IN DELHI

There is no denying the fact that the problem of delay in the disposal of cases is too complex to pinpoint the responsibility of a single functionary or component. Often times, courts or to be specific judicial officers are criticised for the pendency of cases. Doubtless, courts are the system which is responsible for implementing the intent of criminal process under the governance of law (Wright and Lavis 1978). It is they who sift innocents from the guilty. Delays or inordinate delays may shape popular confidence not only in the judicial system but also in the entire system of governance. However, officers alone cannot be held responsible for delays. They do preside over the courts. But there are many other ingredients which go in the making of a court.

Courts exist under a given set of Constitutional and legal provisions. Their jurisdiction, power and working are based on statutes. These aspects have a tactical bearing on case disposal.

In any systematic appraisal of court working attention needs to be paid to physical aspects like location, building, furniture, office equipment and so forth. These physical aspects are directly related to the efficiency in the working of all those involved in judicial administration and thus it may be indirectly linked with the nature of disposal of cases. Apart from the judicial officers, there is associated support staff of Court who may have a critical though invisible role in the court functioning.

That the police, prosecution and defense counsel, together with the judicial officers make for the court, can hardly be disputed. As a matter of fact the judicial officer only orchestrates their actions in adjudicating cases. It follows that their role in case disposal is important. These are some of the aspects which is proposed to be focalised in the present section.

CONSTITUTIONAL AND LEGAL ASPECTS

The Constitution of India is the basic document from which all executive, legislative and judicial and judicial procedures derive sanction. Articles relevant to the administration of criminal justice are Articles 20, 21 and 22.

Article 20 : (1) No Person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of commission of the offence.

(2) No Person shall be prosecuted for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.

Article 21 : No Person shall be deprived of his life or personal liberty except according to procedure established by law.

Article 22 : (1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall be denied the right to consult and to be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

In keeping with constitutional provisions substantive and procedural laws have been enacted or ratified to deal with crime and crime-doers. As is known the Indian Penal code defines offences and provides for their punishment. Then there are special and local laws; the Arms Act, Suppression of Immoral Traffic (in Women and Girls) Act, Children Act, Prevention of Food Adulteration Act and the like. Besides, States have enacted many local laws.

The procedural laws have been codified in the form of Code of Criminal Procedure, Evidence Act, and many others. The Evidence Act is applicable to both criminal trials and civil suits. The law which is much relevant to criminal trials is the Code of Criminal Procedure. The Code lays down procedure from investigation upto the appeal or revision stage. Along with

this, it also makes room for constitution of courts of session and below ; and defines some minor crimes. On the procedural aspect, for courts of session and lower courts, there are High Court's and Superme Court's directives issued from time to time.

LEGAL BASIS OF COURTS

One of the notable feature of Indian Constitution is the distribution of power between the States and the Centre. Article 246 read with Seventh Schedule deals with the distribution of legislative power. The police, the administration of justice, prison and the like have been placed in the State List; criminal law and criminal procedure are on the Concurrent List; and the constitution and organisation of the Supreme Court and High Courts have been placed in the Central List. In furtherance of Constitutional intent, Supreme Court at the Centre and High Courts at the State level have been constituted. Sections 9 and 10 of Code of Criminal procedure provide for the constitution of Courts of Session. Also sections 11, 12, 13 and 16, 17, 18 incorporate provision for constitution of judicial magistrates and metropolitan magistrates, respectively. Again, Nyaya Panchayat have been established by some State governments to dispose of the petty cases at the village level (Fig. 2.1).

Powers of the Courts : Under the new Code of Criminal procedure the powers of the courts (Sec 28 and 29) are as follows :

Sec 28 (i)	High Court	: Any sentence authorized by law.
Sec 28 (ii)	Session and Additional Session Judges	: Any sentence authorized by law except that a death sentence shall be subject to confirmation by the High Court.
Sec 28 (iii)	Assistant Session Judges	: Any sentence authorized by law except sentence of death or imprisonment for life or of imprisonment for a term exceeding ten years.
Sec 29 (i)	Chief Judicial/ Metropolitan Magistrate	: Any sentence authorized by law except a sentence of death, or of imprisonment for life, or of imprisonment for a term exceeding seven years.
Sec 29 (ii)	Magistrate of the First Class	: Sentence of imprisonment not exceeding three years, or of time not exceeding five thousand rupees, or both.

Sec 29 (iii) Magistrate of the second Class	: Sentence of imprisonment not exceeding one Year, or fine not exceeding one thousand rupees, or both.

A perusal of the organisational set- up of the courts, would show that arrangement appears to be satisfactory. In order to assess delay in the disposal of cases a deeper probe into the working of court and the constraints under which they are working is needed.

THE COURTS

There is a growing concern regarding the pendency of criminal cases in the courts of session and below. In the current study the position obtaining in the Union Territory of Delhi has been focalised. Delhi has about 1.5% of the total number of courts of sessions and magisterial courts in the country (Table 2.01). According to the published,

Table 2.01 : Effective strength of Courts of Sessoin and Magisterial Courts as on 30.6.1980

	All India	Delhi	
		DOJ *	OSJ *
Courts of Sessions	794.75	13	16
Magisterial Courts	3246.75	44	45
Total	4041.50	57	61

Source : Quarterly Report, Deptt. of Justice, Ministry of Law, Justice and Company Affairs, Govt, of India, New Delhi.

* DOJ= Dept. of Justice
OSJ= Office of Session Judge.

pendency figures, on criminal cases (Table 2.02) situation in Courts of Session in Delhi is not disquieting compared to conditions elsewhere in the Country. However, the pendency of case in magisterial courts certainly needs scrutiny. Delhi ranks third in the list of States and Union territories with heaviest pendency in magisterial courts coming behind West Bengal and Gujarat. This raises certain issues relating to working conditions of the courts, work-load vis-a-vis the strength of the staff, cooperation from investigation, prosecution, defence and others.

The Setting : It is an undisputed fact that the human efficiency to a great deal depends upon the setting and other associated conditions in which an individual is working. These factors have been focused upon in the present study. As mentioned earlier, out of a total of 61 courts dealing with criminal cases 25 were randomly selected and observed. The discussion which follows is based on this observational data.

Courts of session and magisterial courts in Delhi are located in four different areas, viz : Tis Hazari (new courts) Delhi; Patiala House, New Delhi; Kashmere Gate (old courts), Delhi, and Shahdara, Trans-Yamuna, Delhi. Such a distribution has been done, perhaps, for the convenience of the public. However, most of the courts (66.6%) are in the Tis Hazari building. Although, the building is centrally located and is accessible from all parts of Delhi by bus routes, the question remains whether it can handle the number of people visiting the courts. During observation, on a number of days the building was jam-packed. As a matter of fact, the building is cccupied not only by the courts but also by many other offices of the Delhi Admn. and the Delhi police. During peak hours, overcrowding is such that one cannot pass through the corridors (especially on the ground floor) without rubbing shoulders with others.

For this sprawling three storeyed building, just four lifts have been provided meant only for going up. Most of the time two lifts are out of order. The location of lavatories and food stalls is also not convenient. Most of the lavatories are just in front of court rooms. They may be good from the security point of view but are certainly oddly placed. At some places the corridors adjacent to the court rooms are occupied by the stall vendors with no screen between them and the courts.

Table 2.02 : Pendency of Criminal Cases in Courts of Session and Magisterial Courts as on 30.6.1980

a. Courts of Session

	Original	Revision	Appeal	Total
All India	77661	29004	46452	153117
Delhi	844	326	740	1910

b. Magisterial Courts

	Police Challans	Complaint Cases	Total
All India	3822406	1851045	5673451
Delhi	648907	110279	759186

Source : Quarterly Report, Deptt. of Justice, Ministry of Law, Justice and Company Affairs, Govt. of India, New Delhi.

According to one estimate, there are about two thousand advocates practicing law in Tis Hazari Courts. None of them has a chamber. They have occupied either the corridors of the building, scooter stands or the open space in and around the building with "Chappars" (thatched huts).

Old Courts at Kashmere Gate, as they are called, stand upto their name. Dealing with cases under local and special laws, these courts are housed in a dilapidated building. Though the building is comparatively in an isolated place but occasional disturbance cannot be ruled out because of the NCC office, hardly 50 metres away, where cadets are observed marching.

The location and physical conditions are found to be least satisfactory at the courts at Shahdara. They are housed in an old railway station building. On the one side of the court is a very busy road from main bazar and on the other side one narrow lane which separates it from the Shahdara railway station. What to say of facilities for advocates, even a few of judicial officers do not have attached chamber facilities. No witness boxes have been provided in the courts. On the whole, the court setting appears to be makeshift. Conditions at Patiala house are a shade better: spacious rooms with chamber facilities for advocates.

Space and Seating Facilities : It is observed that in the majority of the cases (60%) the court rooms are large and functional. Of the remaining 70%, except for one court of session and one of Additional Chief Metropolitan Magistrate (ACMM) at Shahdara housed in small rooms, all courts mostly of Metropolitan Magistrates (MMs) are housed in small rooms.

Logically (Table 2.03) the physical space provided at a public office should be determined on the basis of the number of members of public visit-

Table 2.03 : Size of the Court-room and seating facilities.

	Physical Space and Seating facilities		
	Small/improvised/ inadequate	Large/Functional/ Adequate	Total
Court Room			
Number	10	15	25
Percentage	40	60	100
Seating Facilities			
Number	9	16	15
Percentage	36	64	100

ing the office. However, a contrary situation is observed in the present case: Courts of sessions usually have lesser number of visitors (perhaps linked with lesser number of cases listed for hearing) but they are housed in larger and spacious rooms. On the other hand, the number of visitors to MM's courts is larger (linked with the long list of cases for hearing). Yet they are housed in small rooms. These rooms are highly inadequate to accommodate visitors especially during the pre-lunch session. The allocation of space appears to have been done on the basis of status or level of the courts rather than of on functional requirements of space and the convenience to the public.

Closely linked with the availability of space is the provision of seating facilities. Civility demands that a visitor should be provided a chair to sit. Especially, Court visitors also include a number of respectable people appearing as witnesses despite of all personal inconvenience. If a seat is not provided no cooperation can be expected from them in future. However, about two-thirds of the courts (Table 2.03) have inadequate seating facilities for the visitors. The number of court visitors ranges between 10 to 50 during on most days. Comparing this with number of seats available inside the court room, only 32% of the courts (Table 2.04) have an arrangement of 16 seats or more; and 56% have 1-10 seats. Surprisingly, 8% of the courts had no seating arrangement, whatsoever. The courts having 16 and more seats are mostly courts of Sessions.

Table 2.04 : Seating facilities for public (number of chairs provided)

	Number of chairs					Total
	Five & less	6-10	11-15	16 and above	None	
Number	7	7	1	8	2	25
Percentage	28	28	4	32	8	100

Invariably, a pair of benches which can accommodate 1-10 persons, are provided outside each court, but it does not ease the crowding. Over-crowding of the court premises by impatient and curious court visitors is the general rule. On many occasions the Presiding Officer has to order the peon to turn those visitors out, who are not connected with the cases being heard. (The researcher himself was turned out from a number of courts which he was observing).

The shortage of space and seating facility inside the court room may even cause the tampering with prosecution witnesses. This, perhaps, is one of the factors responsible for low level of cooperation by public witnesses. The observation is also partly supported by a large majority of opinionnaire respondents that public witnesses do not appear or hesitate to appear in courts.

Ventilation, Illumination and General Cleanliness : The other determinants of physical conditions in court rooms are ventilation, air-circulation, illumination and general cleanliness. Table 2.05 shows that all these three facilities are found to be, by and large, adequate or satisfactory (92%, 80% and 92%, respectively).

Table 2.05 : Provision of Ventilation/Illumination/ General Cleanliness in the Courts

	Provision		Total
	Proper/Adequate	Improper/Inadequate	
Ventilation			
Number	23	2	25
Percentage	92	8	100
Illumination			
Number	20	5	25
Percentage	80	20	100
Cleanliness			
Number	23	2	25
Percentage	92	8	100

Availability of file Almirahs/cabinets : The smoothness and efficiency of any system depends much upon how its records are maintained .Without going into the details about the maintenance of records in courts at this stage, the availability of file almirahs/cabinets may be considered (Table 2.06). Of the courts observed, 48% have 3 or more almirahs and the remaining have

either one or two. However, this assessment does not include the almirahs available to ahalmads who at times have separate rooms. In a few courts this facility is so inadequate that files are stacked either in a corner of the court-room or on a bench (probably meant for visitors).

Table 2.06 : Availability of file almirahs/cabinets

	Number of almirahs / cabinets					
	None	Only one	Two	Three	More than 3	Total
Number	0	1	12	6	6	25
Percentage	0	4	48	24	24	100

The insufficiency of space and other physical facilities, as observed and outlined above is further supported by the informed opinion. About 38% of those who cared to reply to our opinionnaire have rated space and other material facilities in courts of Delhi as highly inadequate.

COURT STAFFING

While discussing any organisation, its staffing pattern, its hierarchy and work distribution become as important as the organisation itself. This is what is proposed to be discussed in the present section.

As ascertained from the office of the District and Session Judge each court of session in Delhi apart from having a Judicial/Presiding officer, has one Reader, one Stenographer, one Ahalmad, one Assistant Ahalmad, one orderly and one peon. In addition there is a process-server. On the staff list of each magisterial court (including the courts of CMM and ACMM), there are a Presiding officer, a Reader, a Stenographer, an Ahalmad and one Peon/ Orderly.

Judicial/Presiding Officer : The position and role of a Judicial/ Presiding Officer (JO/PO) hardly needs elaboration. He represents the hub of the judicial administration. In Delhi, the area jurisdictions (apart from case dealing powers) of the courts of sessions and magistrates (including CMM and ACMMs) are police districtwise and police stationwise, respectively. However, there are some courts which have more than one police district or station covered in their jurisdiction. Also, some courts have been constituted to try

cases under special or local laws. In the capital all the Metropolitan Magistrates are Ist class Magistrates and there are no courts of Assistant Session Judges.

The role of JOs discussed in relation to the problem of delay calls for the consideration of the total working hours at his disposal, adherence to time norms and their optimal utilisation.

Table 2.07 : Time of arrival of Presiding Officer (Morning Session)

	Timings						
	In time (at 10 AM)	10.01 AM to 10.30 AM	10.31 AM to 11.00 AM	11.01 AM to 11.30 AM	After lunch	Didnt' at all	Total
Number	4	13	—	2	2	4	25
Percentage	16	52	—	8	8	16	100

The court hours are from 10.00 am to 5.00 pm on all working days with half an hour lunch break from 1.30 pm to 2.00 pm. Some time has to be allowed for preparing the cases and dictating Judgments that limit the hearing time to 4.00 pm. During observation, the adherence to time norms was found to be the exception rather than the rule : 68% of JOs arrived late. Of these, while 8% turned up only after lunch, 52% arrived late but joined the court during the first half an hour and 8% turned up after 11.00 am. On the other hand, 16% arrived in time but an equal proportion were absent (Table 2.08). A less serious violation of time of arrival by JOs was observed in the session after lunch. A little over 19% turned up in time. About 62% arrived late but within the first half an hour of the post-lunch session. One JO who was present in the morning session did not turn up for the session after lunch. (Table 2.08).

Table 2.08 : Time of arrival of Presiding Officer (Lunch Session).

	Timings							
	In time	15 min. late	16 to 30 min. late	31-45 min. late	46-60 min. late	More than 1 hr. late	Did'nt turn up	Total
Frequency	4	9	4	1	1	1	1*	21
Percentage	19	43	19	5	5	5	5	100

* Present for morning session.

A more or less same situation was observed with respect to timings of concluding pre and post-lunch sessions. 53% adjourned the pre-lunch session before time and 57% concluded the post-lunch session before time (Table 2.09 and 2.10).

Table 2.09 : Time Presiding Officer concluded pre-lunch session.

	Timings				
	Between 12.30 to 1.00 PM	Between 1.01 to 1.30 PM	Intime (at 1.30)	Late (after 1.30)	Total
Frequency	5	5	6	3	19
Percentage	26	26	32	16	100

Table 2.10 : Time Presiding Officer concluded post-lunch session

	Timings						
	Before lunch	2.30 to 3.00 PM	3.01 to 3.30 PM	3.31 to 4.00 PM	Intime at 4 PM	Late (after 4 PM)	Total
Frequency	1	1	5	5	3	6	21
Percentage	5	5	24	24	14	28	100

For whatever period the Judicial Officer were in the court, they were preoccupied with their work. It is evident from the finding that in 95% of the cases, as soon as the JO joined the court cases were called (Table 2.11).

Table 2.11 : Main activity of Presiding Officer before the case are called.

	Activities		
	Examining Files/ documents	Cases Called immediately	Total
Frequency	1	18	19
Percentage	5	95	100

Reader : While among the subordinate staff in a court, the importance of one cannot be properly compared with the other, the Reader occupies a key position. Reader can be equated to a court assistant. His duties range from dealing with the public to giving dates in the cases in the absence of the JO. In some courts, it was observed, he was actively participating in case proceedings. Further, Readers were found to be extraordinarily devoted and dedicated to their work : 72% of them arrived before time in court for pre-lunch session and 48% were found to be busy even during lunch hour (Table 2.12 and 2.13). Even when no cases were called the Readers were

Table 2.12 : Time of arrival of the Reader

	Timings			
	Before time	In time	Late but before lunch	Total
Frequency	18	3	4	25
Percentage	72	12	16	100

Table 2.13 : Time Reader left for the lunch

	Timings			
	Before time	In time	Late	Total
Frequency	5	8	12	25
Percentage	20	32	48	100

found to be busy with their work. During the absence of the JO some of their main activities included writing work (20%), public dealing (20%) and miscellaneous court work (28%).

Table 2.14 : Main activity of the Reader before the cases are called.

	Activity									
	Examining/ Arranging case files/ documents	Writing work	Receiving and Talking to court visitors	Receiving visitors and leaving the court	Preparing file slips	Joined in but not present in court room	Disposing of the cases	Cases immediately called	Misc. work	Total
Number	3	5	5	1	1	1	1	1	7	25
Percentage	12	20	20	4	4	4	4	4	28	100

The devotion to work notwithstanding in some courts Readers were seen openly accepting illegal gratification. For instance, in one of the courts of session, an advocate was seen telling his client that the Reader was asking for money but he could not give it as he was not paid fully and that he could not pay from his own pocket. In another court of a Magistrate, where the JO was absent at the pre-lunch session the Reader was observed calling the cases out of turn and giving dates after collecting Rs 2 from each party.

Steno : Steno is an important functionary of the court. His role consists of typing statements, orders, or judgements dictated by the JO. Invariably, in Magistrate's courts, Stenos were seen taking dictation from prosecutors and/or defence lawyers. He is not punctual. In the sample observed, only 17% of stenos spent their full working time in the court. 42% spent one hour less at their work table (Table 2.15). Probably owing to the nature of their work, only 24% of the stenos were found to be typing or handling miscellaneous court work; or with the JO in the chamber. Otherwise, in the rest

Table 2.15 : Total time spent (in hours) by Stenographer in the court.

	Time (in hours)					
	Full time (7 hrs and above)	6-7	5-6	4-5	1-2	Total
Frequency	4	10	6	3	1	24
Percentage	17	42	25	12	4	100

of the cases either they were observed talking to visitors or sittting idle or absent from the court (Table 2.16). Although they are comparatively less in public contact, they too were observed indulging in corrupt practices—either accepting bribe or typing some private paid work. In one court, one lawyer was observed directing his client to pay the steno for the copies he had supplied.

Table 2.16 : Main activity of Stenographer before the cases are called.

	Talking to other court officials	Typing	Talking to visitors	Left with visitors	Sitting idle	Absent before lunch	Absent through out the day	Joined in but not present in court	Cases immediately called	Misc. court work	Others	Total
Number	2	4	1	2	7	1	1	1	3	2	1	25
Percentage	8	16	4	8	28	4	4	4	12	8	4	100

Ahalmad : The next official of the court is Ahalmad. He is a clerk of the court. He is the custodian of case files. Maintenance of record, and preparation of summons and warrants, supplying the court records to higher courts and copies of documents to the parties are part of his responsibilities. By virtue of his position, he plays an important role in the expeditious disposal of cases. This will be discussed later in Chapter IV.

Table 2.17 : Total time (in hours) spent by Ahalmad in the Court

	Time (in hours)			
	Full time (7 hrs & above)	6-7	5-6	Total
Frequency	6	5	2	13
Percentage	46	38	15	100

In the sample study, Ahalmads could be observed only in 13 courts; in the remaining courts, they were sitting in rooms other than the court-room. Such an arrangement has probably been made because of want of space. Apparently, Ahalmads are an unpunctual lot : 51% were late or did not spent their whole working time in the court (Table 2.17).

Peon/orderly : Orderlies are attached only to the courts of sessions but peons are there in all the courts. But their functions are similar. The duties of the peons range from calling cases to attending the JO in his chamber. They also regulate the entry of visitors to the court to avoid overcrowding. In respect of only 23 courts the activities of the peon could be observed : 52% spent full working time in the courts, another 35% spent 1-2 hours less (Table 2.18). Also observed was the fact that peons disappeared from the courts, intermittently. In the absence of peons, Naib Courts were observed taking over their duties, like controlling the public at the gate or giving calls in the cases.

Table 2.18 : Total time spent by Peon in the Court

	Time in hours						
	Full time (7 hrs & above)	6-7	5-6	4-5	3-4	2-3	Total
Frequency	12	5	3	1	1	1	23
Percentage	52	22	13	4	4	4	100

Though peons are at the lowest rung of the court hierarchy they seem to be quite important in a different way. Almost in all the courts peons were observed to be the most corrupt. When other court officials were busy with the case proceedings this functionary was observed to be active outside the court room striking deals with litigants. These peons apparently are sharp observers. Though many visitors generally are seen around till late hours of the day, these peons are able to make out who is connected with which case and who is just a visitor. In lower courts invariably the observer's presence was questioned by the peons and he was asked to stand outside the court room. In one instance when the presence of the observer was questioned by the peon, he passed over a two rupee note to the peon which won him over at once.

POLICE, PROSECUTION, DEFENCE, ETC.

As mentioned earlier, delay is not a unidimensional problem. It is a multivariate problem involving the police, the prosecution, the defence, witnesses and the accused, besides the court. At the trial stage many often opposing forces interplay. The court is a fitting place to study their force in action and to assess their respective share in the delay in the disposal of cases. With this in view, some data on the police, prosecution, defence and others (accused +witnesses+court visitors) have been collected and analysed.

No criminal case can be thought of without the involvement of the police. At every step in the processing of a criminal case, the police are represented by one official or the other. Lower criminal courts in the capital have been found to have a number of police clerks sitting inside the court-room. In courts of session only one representative of police was observed. The active representative of the police who liaises with court is called 'Naib Court'. In a criminal case, to represent the state there is a prosecutor. Advocates appear for the defence were observed. In some cases observed an advocate's Junior or his clerk was seen representing the advocate. Still in some other cases, the accused himself was found handling his case.

Police-Naib Court : The police or investigation officer is represented by 'Naib Court'. A police head-constable, his role is to liaise between investigation and trial. Naib Courts in lower as well as in sessions courts were found to be busy and dedicated persons: 60% of them spent full time i.e. 7 hours or more in the court, 36%, about 6 hours; only 4% were found spending less than 6 hours.

The main functions of the Naib Court are to pass on the orders of the court to the investigation machinery, arranging the service and appearance of prosecution witnesses and the accused. Another important function of the Naib

Court is to supply investigation reports to the court. It was observed that most of the time during the court hours he was busy talking to court officials, accused, witnesses, prosecution and others appearing in the cases. Before and after court hours he devoted most of his time in writing work. On many occasions he was found performing duties of the peon of the court like calling cases or controlling the crowd. In one court, where Naib Court arrived earlier than the peon, he was seen dusting the presiding officer's table.

Table 2.19 : Total time spent by Naib Court in the Court

	Time (in hours)			
	Full time (7 hours & above)	6-7	5-6	Total
Frequency	15	9	1	25
Percentage	60	36	4	100

Table 2.20 : Total time (in hours) spent by Prosecutor in the Court.

	Time (in hours)									
	Full time (6 hrs. and above	5.5 to 6.0	5.0 to 5.5	4.5 to 5.0	4.0 to 4.5	3.5 to 4.0	3.0 to 3.5	2.5 to 3.0	1.0 to 1.5	Total
Frequency	2	6	1	1	2	3	1	1	2	19
Percentage	10	32	5	5	10	16	5	5	10	100

Table 2.21 : Early visitors

	Not Present/visiting	Present or visiting	Total
Number	4	21	25
Percentage	16	84	100

Yet he is not above graft and malpractices. His modus operandi, as observed, was very special. If the accused was appearing for the first time and was being presented by police constables, he would approach him through police constables and extract some money—the constables mediating and also getting a share. Alternatively, if the accused was appearing a second or third time he would ask directly for money either from the accused or his relatives. To illustrate the point a case so observed may be mentioned. In a Metropolitan Magistrate's Court an accused in police custody was presented. Outside the court, a woman, presumably the wife of one of the four accused was introduced to the Naib Court by an intermediary. Seemingly this intermediary who was friendly with Naib Court, tried to convince the wife of the accused that the naib court was a reasonable man and that he would help on reasonable payment. Outside the court-room the naib court whispered something in the ears of one of the constables and then asked the four accused whether they would contest the case. The accused replied that whatever he thought proper would be acceptable to them. Though no money charged hand on the spot, it was clear that there was some deal between the police constable, the Naib Court and the accused.

Prosecutor : It is at the trial stage of a criminal case that the representative of the State i. e. the prosecutor, appears on the scene. To almost every court of Sessions and Magistrate, one prosecutor is attached. In one of the Magisterial courts in the sample, however, two prosecutors have been found attached. This court was concerned with cases from two police-stations. Also, one of the court dealing with motor-vehicle challan cases had no regular prosecutor. This may be attributed to the fact that most of the motor-vehicle challan cases are guilty plea cases.

In the court, the posecutors are provided with one table and one chair. The decision in a case very much depends upon the efforts of the prosecutor. But the spirit with which the public prosecutors were dealing with the cases is some what disappointing. They participated in a casual manner. It appeared as if the prosecutor were just meeting a formality associated with the case. In framing of charges and recording of evidence they would take some interest, but they would hardly argue a case with the zest often found in a defence lawyer.

A prosecutor is supposed to be in the court from 10.00 am to 4.00 pm. But the observation data indicate a different state of affairs. Only 11% of the prosecutors were observed spending 6 hours in Court. About 37% of them spent about 5 hours while the rest (52%) were observed to be more serious defaulters (Table 2.20). Such want of punctuality and perfunctory handling

of cases by the prosecutors has to be viewed in the context of the problems they face. It has been reported that a prosecutor is handling about 700 case files at a time. The case load is staggering. Besides, no office or library facilities have been provided for the prosecutors.

Defence : In a systematic discussion of administration of justice the role of defence is important. Although a systematic study of defence lawyers visiting the court has not been possible an effort has been made to collect some preliminary information. The accused are represented by the defence advocates; in some instances his junior or even his clerk was observed appearing in the court to take the adjournment. Defence advocates take pain to study, prepare and defend their clients; but quite often it was observed (especially in Magisterial courts) that the advocate concerned was not present when the case was called. Usually, the court peon would instruct the party to run and call their advocate. At times, these advocates deliberately avoid appearance in the court. For example, in one of the courts the case was called and the advocate was standing outside the court and talking to some other client. He instructed his client to tell the Magistrate that he had gone to the High Court and would be available only in the afternoon.

Again, advocates have no compunction asking for adjournments, and Judicial officers are seen usually unwilling to disoblige them. In one of the Courts of Sessions, one advocate had already availed two adjournments in a case and asked for a third adjournment on the pretext that he had not prepared the case. The Presiding Officer, however, was not prepared to accept the plea and so, the advocate submitted a written apology which was accepted and an adjournment was granted. This is a procedure unimaginable in any Sessions Court in South India or Maharashtra. It would be no exaggeration to state that defence advocates are the principal agency responsible for delay in the disposal of cases.

Others : During observation, it was difficult to focus upon the accused, the witnesses, and the large number of other court visitors since there were so many of them crowding in the court room check by jowl. Yet useful information has been collected and will be discussed a little later.

It has been seen that in 84% of the cases the early visitors (including the accused, the witnesses and other court visitors) started gathering outside court-rooms even before the court proceedings started (Table 2.21). Such a behaviour on the part of the visitors was really admirable. But invariably they had to wait for long hours before their cases were called and seating arrangements were poor in most of the MM Courts. A majority of these visitors were

relatives and friends of the accused and witnesses—not really associated with the case. It is easy to guess the amount of cooperation these people would offer were they on a future date summoned by the court.

Side by side, court visitors were also observed obstructing the functioning of the court by crowding around the dais out of curiosity. The heavy crowding outside courts notwithstanding, it was observed that absenttee-rate amongst the accused and witnesses was considerable. In other words, those whose presence was required were not there and those whose presence was not required were very much there.

Case Disposal : At this stage, a brief account of how cases are disposed of by the court may keep the issues in perspective. Formally speaking, the court working goes along the cause-list prepared daily and put on the notice board. In 88% of the cases cause list was put up in the early minutes of the court (Table 2.22). The cause list is not, however, always exhaustive or comprehensive. For example, in two courts the cause-list was not notified : in one of them, the presiding officer was absent throughout the day and in the other one, it was prepared (the peon of the court had it in his hand) but not notified. The last case shown under the category Not Applicable (Table 2.22) was that of a motor-vehicle challan Court. Perhaps in that court it was not needed, because the cases were disposed of as and when they came.

Table 2.22 : Notification of cause list

	Notification			
	Notified	Not notified	N.A.	Total
N=25	22	2	1	25
Percentage	88	8	4	100

A criminal case after its institution in the court passes through different stages i.e. appearance, charge, evidence, argument and order. The cases in the cause list are usually listed and disposed of accordingly. To this practice, there are some exceptions. Both in the courts of sessions and those of magistrates the cases of police remand and bail are presented at after lunch session and no order or sequence is followed. Appeal cases are shown separately in the cause list. Except for cases for arguments on appeal, the appeal cases are disposed of in the first hours of the court.

In courts of sessions, the Judicial officers take active interest in the case irrespective of its stage. In magisterial courts, however, their interest at the charge and prosecution evidence stage is mostly nominal. It was observed that at one and the same time three cases were being dealt : On one side, the judicial officer was observed dealing with one case ; on another side, the prosecutor and an advocate were busy with another case and on a third side, the court reader was engaged in another case. Although, to some extent, this kind of assembly line procedure in court-working might mitigate the problem of delay, to what extent it is in keeping with dignity and decorum is debatable. Further, Witness being asked to take the oath before deposing was a rare occurance. Besides, their statements were recorded in English and were never read out to them.

Finally, the disposal of cases in the absence of judicial officers was also observed. In courts where the judicial officers were absent throughout the day or during the pre-lunch session, the cause-lists were put up and the readers concerned adjourned cases. The manner in which the readers disposed of the cases was arbitrary. No order was followed in calling the cases. It was seen that those who greased the palm of the readers and peons were able to get adjournments readily while others waited outside the court helplessly. To those who were unwilling to part with money, these court officials were not prepared even ready to tell whether the presiding officer would come and the cases would be heared or not.

While detailed discussion in the section that follows would cover this aspect, here it may be tentatively remarked that the case disposal would do with a little streamlining towards a more efficient court system.

Offices of the Court : There is no denying the fact that courts do not function in isolation. There are a number of associated offices e.g. record rooms, judicial branch, administrative branch, Nazarat office and like. These offices laterally work presumably in close liaison with courts. In the light of secondary and observational data, these offices and their role are discussed. It is found that in these offices the sanctioned strength of the staff is less than the actual strength. This shows mismanagement prevailing in the offices of the courts in Delhi. Directly or indirectly it can be yet another source of delay.

The problem of delay in the disposal of cases is serious but not grave in Delhi, Court location and physical conditions though not deplorable are unsatisfactory. Court staff and its functioning certainly call for the induction of discipline. The role of prosecution, defence and others need to be given more weight while considering case disposal. A streamlining of courts, associated offices and scientific management, would go a long way to improve case disposal.

Chapter III

CASES AND THEIR DISPOSAL

More often than not, law lags behind social thinking and social change. Concerning the Indian situation often a less than serious remark is made that laws of today are meant for tomorrow. Despite repeated assertions by jurists and thinkers that law should reflect social conditions, it often does not. A variety of factors like political, judicial and others may be recounted in this regard.

Considering law as a dynamic concept, it would be tragic if laws are so pertified as to be unable to respond to the unending challenge of evolutionary or revolutionary changes in society (Friedman 1959). Not only does delay occur in the enactment of laws but even after that often times considerable amount of time elapses before they are enforced. One striking example is the law relating to mental illness. Although the concept of lunacy or menial abnormality has changed the fate of hundreds is decided by the century-old lunacy Act. The story of delayed milestones in laws does not end here but is experienced at enforcement and implementation stages too. This is not the case with every law but this is true of almost all social legislation.

With criminal law, the position is a little different. The nature of crime has remained the same, though its forms and modus operandi have considerably changed. But criminal law, both substantive and procedural, have remained unchanged except for few amendments or new legislative pieces to deal with special crime situations. Consequently, inordinate delays are experienced at every stage of their implementation. This raises certain issues as to the causal factors of delays. Is the criminal justice system itself responsible for such delays ? Or is there something wrong with the organisation and working of law enforcement agencies ? Or else, is the whole criminal justice procedure faulty ? To answer these questions satisfactorily an all-pervasive study needs to be conducted. However, the present study is limited and attempts to shed light on the dynamics of the problem of delay, The discussion

and analysis in the present chapter may provide a basis for assessing the role played by legal system in the delayed disposal of cases. The substantive concern here is with the quantum of delay at various stages of a case in the courts of session and lower courts in Delhi. Towards this, attention may be focused on background aspects, trials, disposals and appeals.

RETROSPECT

India like many former British colonies inherited the common law system. This system positively provides greater safeguards for the innocent and is rather inclined towards perfection (Burger 1967). Despite its numerous merits, the common law system has come under criticism and has been held responsible for delays (Khosla 1949 ; Krishna Iyer 1972 ; Macklin 1974 ; Mann 1979). Even the supporters of the system seem to agree that too many checks and over-checks along with intricate procedures are the characteristics of the system. In the experience of many, these provisions meant for a good are often exploited by the accused and others. This in turn causes delays. As an alternative to the system, some have advocated the 'continental' or 'inquisitorial' legal system, adopted in France, Italy and in many other countries. However, many thinkers on the subject seem to be skeptical about the continental system. In such a situation, the prudent course open to us is to carry on with the present system till an acceptable alternative emerges.

The spirit of the common law system relating to procedure governing trials of most of the criminal cases has been embodied in the Code of Criminal Procedure of 1973. Except when provided otherwise, the code governs all the procedures relating to criminal cases. The code comprising 484 sections is divided into thirtyseven chapters; also appended are two schedules. Comprehending the powers of the police officers, the code makes provisions for investigation of cases and arrest of persons. While the code envisages the constitution of courts of criminal adjudication, it also prescribe the powers and jurisdictions of the courts. The Code allows certain types of trials and also lay down their detail procedure along with proivsions for appeals, revisions and reviews. For the smooth processing of the cases provision for processes to compel appearance of person have been made. In consonance with the principles of common law that, 'an accused person is innocent till proved guilty' the provision relating to bail procedures for certain categories of crimes have been laid down in the code.

The code is not only procedural but also makes provision for security for keeping the peace and for good behaviour. It also has the provision for the maintenance of public order and tranquility. The new code is supplemented with two schedules. The first schedule describes crimes

under Indian Penal Codes, punishment for them, classification of cognizable and non-cognizable offences, bailable and non-bailable cases and also the courts which have the powers to try the different crimes. The second schedule contains certain formats for different types of warrants, summons and bail bonds, etc. Since the report is dealing with the problem of delays in courts, some of the provisions of the code relating to processing of the cases may be discussed in depth in the present chapter.

Type of cases : For the purpose of highlighting figures on the institution, disposal and pendency of criminal cases often a strict pattern of classification has been observed. This classification for courts of session and magisterial courts is different. For courts of session and classification is as follows :

(i) **Oringinal Cases or Sessions Cases :** These cases include the cases for which the courts of session have original jurisdiction or in other words these cases can be understood in terms of sessions trials. Chapter XVII of Code of Criminal Procedure deals with Sessions Trials. Normally Sessions cases do not directly go to the courts of session. Instead they are filed in a magistrate's court which has the jurisdiction of the police station in the area of which the crime is committed. The magistrate after going through the evidence on record and the list of prosecution witnesses assess it to be a fit case for trial by session, commits the case to the court of session. These proceedings in the magisterial court are called committal proceedings. It is worthwhile to note that according to the old CrPC the magistrate could have committed the case to sessions only after recording of prosecution evidence which used to be recorded all over again by court of session. To dispense with this duplication of work, the new code has done away with the recording of evidence by the committing magistrate. To some extent, this has reduced the delay in sessions trials and certainly has lessened the workload in magisterial courts.

(ii) **Revision :** Chapter XXX of the code of Criminal Procedure deals with Revision of Criminal cases by courts of Sessions and High Courts. Unlike appeal cases where the parties can go in appeal, for revision even a court can apply to a High Court to seek its opinion (Sec 395). Unlike the appeals where some case can be heard by Chief Judicial/Metropolitan Magistrate, the powers of revision are exclusively vested in the Courts of Session and High Courts. Also, where the option for appeal is open and no appeal is brought by the party, no proceedings by

way of revision shall be entertained at the instance of the party who could have appealed (Sec.401 (4)).

(iii) **Appeals :** The common law system is famous for its checks and balances in the decision of one authority. The right to appeal signifies that spirit. Chapter XXIX of the Code of Criminal Procedure has very carefully laid down the procedures relating to appeals. The broad spectrum of the provision of appeals is reflected by Sec 383, under which a person in jail can also apply for appeal through the officer incharge of the jail. Section 384 provides ample opportunity of being heard in appeal. This is contradistinction to revision cases where opportunity of being heard is at the option of the court.

Table 3.01 : Position of Institution, Disposal and Pendency of cases in Criminal Courts during 1976, 1977 and 1978

a. Institution :	1.1.76 to 30.6.76	1.1.76 to 31.12.76	1.1.76 to 30.6.77	1.1.76 to 31.12.77	1.1.78 to 30.12.78.
Sessions Courts					
Original	31267	62920	36791	92763	53250
Revision	19470	37401	16343	36848	21210
Appeals	33878	70853	34750	71990	34082
Total	84615	171174	87884	201601	100550
Magisterial Courts					
Police Challans	2896670	5896900	2554903	4955288	2431578
Complaint Cases	1318638	2700166	1161536	2356947	1119001
Total	4215308	8597066	3716439	7312235	3550579
b. Disposal :	1.1.76 to 30.6.76	1.1.76 to 30.6.77	1.1.77 to 30.6.77	1.1.77 to 30.6.78	1.1.78 to 30.6.79
Sessions Courts					
Original	25769	53955	34899	89838	52338
Revision	18542	35553	17272	35920	19938
Appeal	30377	64436	34960	71741	32996
Total	74688	153944	87131	197499	105272

Magisterial Courts					
Police Challans	2685136	5689229	2621523	5083161	2246893
Complaint Cases	1253847	2505190	1164839	2297253	1111522
Total	3938983	8194419	3786362	7380414	3358415
c. Pendency :	1.1.76 to 30.6.76	1.1.76 to 31.12.76	1.1.77 to 20.12.77	1.1.77 to 20.12.77	1.1.78 to 30.6.78
Session Courts					
Original	60264	64548	66716	67992	68975
Revision	19552	19239	18035	19841	21104
Appeal	38035	42098	41620	42103	43184
Total	117851	125885	126371	129936	133263
Magisterial Courts					
Police Challans	2614391	2732279	2640119	2575815	2757897
Complaint Cases	1609226	1739866	1708739	1778975	1786328
Total	4223617	4472145	4348858	4354790	4544225

Source : Law Commission of India, 79th Report

The cases in magisterial courts are broadly classified under the following categories :

(a) **Police Challans :** Often, when a crime is committed, the police is the first agency of the state which comes into action. After the completion of the investigation in the case, it is handed over to a second agency of the state, namely, prosecution. It is the prosecution which files the case in the competent court. The case coming in the magisterial courts through this channel are called police challans cases.

(b) **Complaint Cases :** In some cases, the police fails to take the cognizance of the crime committed or aggrieved party prefers file a case directly in the court. Such cases filed in the court directly are classified as complaint cases. Chapter XV of the Code of Criminal Procedure lays down the procedure for complaints to Magistrates.

From Table 3.01, an idea as to the figures on institution, disposal and pendency of the cases in foregoing classification can be had.

TRIALS

Depending upon the nature of a crime and its gravity different trial procedures have been provided in the Code of Criminal Procedure. These trials procedures range from very simple summary trials upto more formal warrant trials of sessions cases. One of the advantages of providing for different trial procedures to reduce the life of certain trials and there by keeping down the pendency list. These trials procedures have been discussed in the paragraphs that follow.

Summary Trial : Chapter XXI of the Code of Criminal Procedure lays down the provision relating to summary trials. Under this chapter any Chief Judicial/Metropolitan Magistrate or First Class Magistrate (especially empowered in this behalf by High Court can summarily by all or any of the following offences :

(i) Offences not punishable with death sentence or life imprisonment or imprisonment for a term exceeding two years.

(ii) Offences under Sec 379; 380 or 381; 411 or 414 of Indian Penal Code where the value of suit property does not exceed Rs 200.

(iii) Offences under sections 454 and 456 of the IPC.

(iv) Offences under sections 504 and 506 of the IPC.

(v) Abetment of any of the foregoing offences.

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

(vii) Any offence constituted by an act in respect of which complaint may be made under section 20 of the Cattle-Trespass Act, 1871.

Under Sec 261 a Second Class Magistrate can also be empowered to adopt summary procedures of certain trials.

It is important to note that procedures of summary trials are same as for summons cases except for the provisions made under Sec 263 for record of summary trials. These procedures will be discussed a little later; but at this point it is important to note that if summary procedure are encouraged for trials the problem of delay, to a good deal, can be solved.

Summons trials : Some of the less serious offences can be disposed of by magisterial courts by way of summons trial procedure under Chapter XX of the Code of Criminal Procedure. Noncognizable crimes are not registered by the police in the FIR, instead are recorded in Daily Diary. In such cases the accused is presented before the court along with a police report. No formal investigation report or challan as required in warrant trials is submitted. On receiving the report the Magistrate can either by him by way of summary procedure or may adopt summons case procedures. In a summons case the offence of which the person is accused is mentioned and he is asked either to plead guilty or to offer defence. But it is not necessary to frame a formal charge. Instead the accused is served with a notice.

Also, the evidence against the accused is recorded in substance. After recording of evidence the magistrate may either acquit or convict the accused as the case may be. It has been observed that summons cases take relatively less time to get decided, but not warrant cases.

Warrant Trials : Warrant trials are a little more complicated than summary trials or summons trials. Chapter XIX of the Code of Criminal Procedure deals with warrant cases by magistrates. In warrant case after police investigation a challan is prepared and presented to the court under section 173. It is checked, registered with the court and accused summoned. On the day of first appearance of the accused before the court, he is supplied with copies of the police report, FIR and statements of witnesses recorded under section 161 in compliance with the provisions of Sec 207 CrPC. After compliance with provisions of Sec 207, the magistrate, if considered necessary, can give both the accused and the prosecution an opportunity of being heard and if he feels that charge against the accused is groundless, he can discharge the accused. Otherwise, he may proceed to frame charges. Once the charges are framed the accused is asked to plead guilty or to defend himself. If the accused pleads guilty to the charge he is convicted, otherwise, next stage in the case i.e. recording of prosecution evidence follows. When the recording of prosecution evidence is concluded, again, the statement of the accused is recorded if he has to say something regarding prosecution evidence or if he wants to produce evidence in his defence. If the accused wishes to present evidence in his defence, the witnesses are (or other evidence is) summoned at his request and deposition recorded. Thereupon, the final arguments are heard from both prosecution and defence and judgment is pronounced. Normally in cases of conviction, the arguments on the point of sentence are heard. Finally, in such cases the orders of sentence are passed in open court.

In passing, some comments may be made about the trial of complaint cases. The trial of a complaint does not differ much from that of a case filed by the police. The only major difference is that after receiving the complaint, if the presiding officer thinks fit may record some evidence to substantiate the complaint before taking any other step. Such evidence in common parlance is called pre-charge evidence. This is applicable to a warrant trial or to a summons case, also. As already mentioned elsewhere, the difference between a session trial and trial by magistrate's court is that of committal proceedings.

PROGRESS AND DISPOSAL OF CASES

The processing of a criminal case has much in common with manufacturing process. The commission of a crime gives rise to a need for corrective action. Like a manufacturer arranging the raw material, the police through the process of investigation collect bits and pieces of evidence against the accused. After marshalling the evidence, the police feed the material to the court for processing. In the court itself, a case passes through different stages like appearance of accused (along with the scrutiny of documents, supply of copies to the accused, etc.), framing of charges or service of notice; recording of prosecution evidence, statement of the accused and defence evidence; final arguments and judgments. The story does not end there. Either the accused or the prosecution can prefer an appeal or revision against the court decision. This sets in motion a number of activities. After the filing of appeal or revision, it is considered by the court and, if admitted, a notice to the defendent is issued and lower court record is summoned. Once the lower court record is supplied the arguments are heard on the application (this provision is discretionary for revision cases) and finally orders are passed. The whole process is time-consuming.

The following paragraphs attempt a detailed analysis of the stagewise development of a criminal case. Since the present study is focused on delays, the time factor assumes pointed significance. It therefore becomes important to clarify some time related terms used here, before going into details.

(i) Unit of measurement used in a calendar day, (ii) the day on which any step has been taken towards the progress of the case is regarded as **Servicing time,** (iii) the time between two consecutive hearings is taken as **Waiting time**. Further, if no step is taken towards the progress of the case a schedule day of hearing, it is also computed as waiting time, (iv) Servicing time added to waiting time gives the **total time** taken by a case to be decided, (v) if action relating to two different but consecutive stages of the case is taken on the same day, then, for the purpose of computation of servicing

time, the servicing time is reckoned as two days. Defence evidence and arguments concluding on the same day exemplify the situation.

Table 3.02 : Nature of Case Trials

Sample	Case Trials		
	Warrant trial	Summon trial	Complaint Case
Sessions (N=17)	17	—	—
CMM/ACMM (N=15)	12	2	1
MM (N=58)	45	7	6
Total Number	74	9	7
Percentage	82	10	8

As already mentioned, attention was focused in the study on criminal cases contested and decided by the courts of sessions and below during the months of October and November, 1980. On the premise that time factor involved in the disposal of cases may vary with the court level, a stratified random sample was drawn. Subsequently, 17 cases from the Courts of Session, 15 from Chief and Additional Chief Metropolitan Magistrates and 58 of Metropolitan Magistrates were analysed. Of these 90 cases, 82% were identified as warrant trials, 10% as summons case proceedings, and only 8% as complaint cases (Table 3.02).

Case institution : The outcome of criminal case depends much upon the investigation. The argument that undue delay or lethargy on the part of the investigation machinery adversely affects a case cannot be overemphasised. No time limits have been laid down in the CrPC within which investigation in a criminal case should be completed. In any case, once the investigation is over, a report under Sec. 173 CrPC is prepared and a challan is presented to the court. Complaint cases by their nature are filed directly in the court, depending on the urgency and interest shown by the complainant. In summons trial, it appears that a report is expected to be presented either on the very next day after a crime is reported or within a short period. For the purposes of analysis the time period between the reporting of crime and filing of challan has been computed as time required for investigation. In relation to sessions cases, since the dates of filing challans were not available, only the date on which a case was committed to sessions has been taken into consideration.

Table 3.03 : Servicing time during the First Appearance Stage.

	Sample	Servicing time (in days) One	Two	Three	Four	Five	Six	NA
	Sessions (N=0)	0	0	0	0	—	0	17
	CMM/ACMM (N=15)	12	1	1	1	—	0	0
	MM (N=58)	51	2	2	2	—	1	—
Total	Number	63	3	3	3	—	1	—
	Percentage	86	4	4	4	—	1	—

The data reveal that of the 90 cases, 50 cases (55%) took 1-200 days after the reporting of crime to reach the court. Only two case were filed on the same day (both cases related to summons case trial). Out of 12 cases which took a long time to reach the court 8 were sessions cases--a fact which in part explains the long peried.

First Appearance : When a case is instituted in the court, after being registered, the accused is summoned through warrant or summons issued under section 204 CrPC. He is supplied with copies of necessary documents (Sec 207 CrPC). Out of a total of 73 cases (excluding sessions cases, since no record was available), 63 cases took, as would be expected, only one day to reach and cross this stage. However, exceptional cases were also there. In one case involving more than one accused, it took as many as six days to complete this stage (Table 3.03).

Table 3.04 : Waiting time during the First Appearance stage.

	Sample	Waiting time (in days) Nil	1-50	51-100	101-150	151-200	201-250	251 & above	NA
	Sessions Court (N=0)	0	0	0	0	0	0	0	17
	CMM/ACMM (N=15)	3	3	5	2	0	2	0	0
	MM (N=58)	14	14	12	3	6	2	7	0
Total	Number	17	17	17	5	6	4	7	17
	Percentage	23	23	23	7	8	5	10	—

Starting from the day of institution of the case the time distribution was computed. It is interesting to note that in 17 cases no waiting time was involved; in other words, they were serviced on the day of institution itself. Barring these 17 cases, 34 cases involved a waiting period ranging between 1-100 days and, notably enough, another set of 22 cases had to wait for more than 100 days to pass through this stage (Table 3.04).

Pre-charge evidence : As is known, this stage is specific to only complaint cases. When a complaint is made to a competent court (Sec 200 CrPC), the presiding officer is empowered to examine the complainant and the witnesses present, if any, on oath; and the substance of such examination has to be reduced in writing. This part of the proceedings is usually called pre-charge evidence. If after such examination reasonable grounds are made out, the complaint is processed further like any other trial. Perhaps, this provision is made with a two-fold objective in view : first of all, people may not be harassed by frivolous complaints and secondly, the courts' time may not be wasted in processing false complaints.

Table 3.05 : Servicing time during the stage.

	Sample	Servicing time (in days) One	Two	Three
	Sessions Court (N=0)	—	—	—
	CMM/ACMM (N=1)	1	—	—
	MM (N=6)	3	2	1
Total	Number	4	2	1
	Percentage	57	29	14

It would be generally assumed that the complainant is likely to show more promptness in the prosecution of the accused than the state prosecution. But the findings of the study are not very encouraging. It has been observed that in a sample of 7 complaint cases pre-charge evidence was recorded in one day only in 4 cases and servicing time for the rest ranged between 2-3 days (Table 3.05). As against this an idea about waiting time can be had from the total time required in completion of this stage (Table 3.06). Only in one case the stage was completed in less than 25 days ; whereas, two cases passed through the stage in 26-75 days, while four cases consumed more than 75 days to get through it. At the same time, it is difficult to hold only the complainant responsible for these time lags; court's busy schedule has also to be kept in view (Table 3.06).

Table 3.06 : Total time during the pre-charge evidence stage.

	Sample	Total time (in days)				
		Nil	1-25	26-50	51-75	76 and above
	Sessions Court (N=0)	—	—	—	—	—
	CMM/ACMM (N=101)	—	—	—	—	1
	MM (N=86)	—	1	1	1	3
Total	Number	—	1	1	1	4
	Percentage	—	14	14	14	57

Charge/Notice : In a police report or complaint, an accused is merely reported to have committed or attempted certain offences, it is only in the court that definite charges are made against him. Chapter XVII of the Code of Criminal Procedure deals with charge exclusively. In summons cases, instead of charge, a notice is served on the accused. Although similar to a charge in substance, a notice in effect differs from a charge. Based on the evidence on record, arguments on charge are heard from both sides and charges are framed. After framing charges, the accused is asked either to plead guilty, in which case he is convicted or to defend himself in which case the prosecution evidence is recorded. In some cases, if, after hearing arguments and going through the evidence on record, no reasonable grounds are made out to proceed against the accused when he is discharged.

Table 3.07 : Servicing time during the stage.

	Sample	Servicing time (in days)			
		One	Two	Three	Four
	Sessions Court (N=17)	8	5	3	1
	CMM/ACMM (N=15)	14	0	1	0
	MM (N=58)	53	2	1	2
Total	Number	75	7	5	3
	Percentage	83	8	6	3

Table 3.08 : Waiting time during the charge/notice stage

	Sample	Waiting time (in days)					
		Nil	1-50	51-100	101-150	151-200	200 and above
	Sessions Court (N=17)	1	8	6	0	1	1
	CMM/ACMM (N=15)	3	10	1	—	1	—
	MM (N=58)	2	43	8	4	—	1
Total	Number	6	61	15	4	2	2
	Percentage	7	68	17	4	2	2

Normally this stage is not very time-consuming. It has been observed that in 83% of the cases servicing time was only one day while in the remaining 17% it stretched over to 2-4 days (Table 3.07). It is surprising that even at this stage a long period of waiting was involved : In 15% of the cases the waiting period ranged from 1 to 100 days; in 6% between 101 and 200 days and in two cases, more than 200 days. Only in 7% of the cases no waiting time was involved (Table 3.08).

Prosecution Evidence : It is well known that successful prosecution in criminal cases depends much upon the corroboration of facts as shown in the statements of witnesses. Since human memory fades away with time, undue delay in the recording of prosecution evidence may greatly undermine its value.

Table 3.09 : Servicing time during the Prosecution Evidence stage.

	Sample	Servicing time (in days)					
		1-5	6-10	11-15	16-20	21 and above	NA
	Sessions Court (N=12)	9	3	—	—	—	5
	CMM/ACMM (N=15)	12	1	1	1	—	—
	MM (N=56)	48	8	—	—	—	2
Total	Number	69	12	1	1	—	7
	Percentage (N=83)	83	14	1	1	—	—

Table 3.10 : Waiting time during the Prosecution Evidence stage.

	Sample	Waiting time (in days)							
		Nil	001-200	201-400	401-600	601-800	801-1000	1001- and above	NA
	Sessions Court (N=12)	—	9	2	1	—	—	—	—
	CMM/ACMM (N=15)	—	6	1	4	2	0	2	—
	MM (N=56)	—	21	12	7	7	2	7	2
Total	Number	—	36	15	12	9	2	9	7
	Percentage (N=83)	—	43	18	14	11	2	11	—

It is this stage of the case which gets unduly prolonged. Few other stages in a case involve as many adjournments as this stage (See table 3.09). In 83% of the cases studied, service time was 1-5 days, and in 14% of the cases, 6-10 days. As against this small range of 6-10 days of servicing time, in a majority of the cases the range of waiting time was exceptionally long (see Table 3.10). In 75% of the cases the waiting period stretched from 1 to 600 days. The position was more or less the same as regard the present stage for the cases from three different strata. There is not a single case passing through this stage without applicable waiting time.

Statement of the accused : The stage which follows prosecution evidence is the recording of the statement of the accused. Usually this statement is recorded to know the opinion of the accused if he has to say anything

Table 3.11 : Servicing time during the Statement of Accused stage.

	Sample	Servicing time (in days)		
		One	Two	NA
	Sessions Court (N=6)	5	—	12
	CMM/ACMM (N=9)	8	1	6
	MM (N=36)	34	2	22
Total	Number	47	3	40
	Percentage	94	6	—

about the prosecution evidence and if he wants to produce any evidence in his defence. From the case records it appeared that recording of statement of accused was more or less a mechanical process which could easily be recorded on the day the prosecution evidence was closed. But what was observed was a little different. This stage also involved waiting time. Out of fifty cases which reached this stage, the statement of the accused was

Table 3.12 : Waiting time during the Statement of Accused stage.

	Sample	Waiting time (in days)						
		Nil	1-20	21-40	41-60	61-80	81 and above	NA
	Sessions Court (N=5)	3	—	2	—	—	—	12
	CMM/ACMM (N=9)	—	5	2	1	1	—	6
	MM (N=36)	9	18	9	—	—	—	22
Total	Number	12	23	13	1	1	—	40
	Percentage	24	46	26	2	2	—	—

recorded on a single day in 47 cases while in respect of the rest, the service time took two days (Table 3.11). Turning attention towards waiting time, only 12 cases were there in which no waiting time was involved. On the other hand, in 72% of the cases waiting time ranged between 1-40 days, 2 cases had to wait for more than 40 days to get through to the stageTable (3.12).

Defence Evidence : In criminal cases, unlike in civil cases, the practice of producing evidence in defence does not seem to be popular. Out of a total of 90 cases, only in 24 cases the accused expressed their desire to

Table 3.13 : Servicing time during the Defence Evidence stage.

	Sample	Servicing time (in days)			
		One	Two	Three	NA
	Sessions Court (N=3)	2	1	—	14
	CMM/ACMM (N=6)	5	1	—	9
	MM (N=15)	12	1	2	43
Total	Number	19	3	2	66
	Percentage (N=24)	79	12	8	—

Table 3.14 : Total time during the Defence Evidence Stage.

	Sample	Total time (in days)							
		Nil	1-15	16-30	31-45	46-60	61-75	76 and above	NA
	Sessions Court (N=3)	—	2	—	—	—	—	1	14
	CMM/ACMM (N=6)	—	3	1	1	—	—	1	9
	MM (N=15)	—	6	3	—	2	1	3	43
Total	F	—	11	4	1	2	1	5	66
	Percentage (N=24)	—	46	17	4	8	4	21	—

produce evidence in their defence. Even among these, some of them never produced any evidence for reasons known only to themselves. The defence evidence which an accused prefers to produce would be ordinarily expected to be prompt. But here again waiting time was seen bedevilling progress. While in 79% of the cases service time involved was just one day (Table 3.13) Surprisingly, 58% cases had to wait for periods ranging from 1 day to 1 month, while the rest had to wait for more than one month to pass through the stage (Table 3.14).

Final Arguments : The argument stage is perhaps the most crucial stage in a criminal case before the delivery of judgment. During this stage, the evidence perhaps recorded in a fragmented manner is corroborated and evaluated in an integrated manner both by the prosecution and the defence.

Table 3.15 : Servicing time during the Agreement stage.

	Sample	Servicing time (in days)				
		One	Two	Three	Four	NA
	Sessions Court (N=5)	1	3	1	—	12
	CMM/ACMM (N=8)	5	2	1	—	7
	MM (N=30)	24	4	1	1	28
Total	F	30	9	3	1	47
	Percentage (N=1)	70	21	7	2	—

What has been observed from the case records is that arguments are usually done orally. Yet another fact observed was that during this stage defence lawyers were more prompt in requesting for adjournments on the grounds

Table 3.16 : Waiting time during the Agreement stage.

	Sample	Waiting time (in days)								
		Nil	1-10	11-20	21-30	31-40	41-50	51-60	61 & above	NA
	Sessions Court (N=5)	1	1	1	1	1	—	—	—	12
	CMM/ACMM (N=8)	1	3	2	1	—	1	—	—	7
	MM (N=30)	7	12	4	3	—	—	—	4	28
Total	F	9	16	7	5	1	1	—	4	47
	Percentage	21	37	16	12	2	2	2	9	—

that they were not "prepared" to proceed with the case. In 70% of the cases the arguments were summed up only on one day while in the remaining 30% cases, they consumed more than one day (Table 3.15). Besides, in 21% of the cases, waiting period was involved. While in 65% the waiting time was 1-30 days, in the ost the pendency was of a month or more (Table 3.16).

Judgment/Order : It is the judgment of the court in a case which decides guilt or innocence. Section 353 CrPC lays down that judgment should be passed immediately after the termination of trial proceedings or at some subsequent time of which notice shall be given to parties or to their

Table 3.17 : Servicing time during Judgment/Order stage.

	Sample	Servicing time (in days)		
		One	Two	Three
	Sessions Court (N=17)	16	—	1
	CMM/ACMM (N=15)	14	1	—
	MM (N=58)	51	6	1
Total	F	81	7	2
	Percentage (N=90)	90	8	2

pleaders. At this stage a reasonable promptitude in keeping with the spirit of provisions of the CrPC was seen in most of the cases studied. In 90% of the cases, judgment was delivered in a single day; however, in the remaining 10% it took more than one day. This delay may be attributed to the fact that in

Table 3.18 : Waiting time during Judgment/Order Stage.

Sample	Waiting time (in days)			
	Nil	1-10	11-20	21-30
Sessions Court (N=17)	14	1	2	—
CMM/ACMM (N=15)	8	6	—	1
MM (N=58)	35	15	8	1
Total F	57	22	9	2
Percentage (N=90)	63	24	10	2

some cases of conviction after the delivery of judgment the orders on sentences were passed at a later date (Table 3.17). Besides, the waiting time during the stage was somewhat less than in other stages. In nearly two-thirds of the case no waiting time was involved. In 24% of the cases judgment was delivered within 10 days, while in 12% of the cases it was done after 10 days from termination of trial proceedings (Table 3.18)

APPEALS/REVISION

Appeals or revision are the remedies available to the parties who are not satisfied with the order of the lower court. Chapters XXIX and XXX CrPC deal with procedures in appeals and revisions. Generally, appeals against the orders of Magistrates are heard by a Sessions or Additional Sessions Judge; but in cases where order or judgment of the lower court has been passed by a Second Class Magistrate, the appeal or revision may lie to the court of the Chief Judicial Magistrate or an Assistant Session Judge. But such is not the case with the Union Territory of Delhi.

The procedure for filing the appeal or revision is quite simple. The party going in appeal or his pleader has to draft a petition. This petition accompanied by a copy of order or judgment of the lower court is filed in the court of District and Sessions Judge (in the State of Delhi). From there the

petition is routed to the proper court having the territorial jurisdiction. In the competent court the petition is heard and admitted or rejected. Once the petition is entertained, notice to the other party is issued and, if necessary, the lower court's records are summoned. Then, with prior notice, arguments from both sides are heard and the petition is disposed of. In other words, unlike trials, appeals or revisions do not entail many steps for their processing. One would also expect the process to be less time-consuming. Nonetheless, this aspect may be looked into a little more closely.

Filing of Appeal : After the pronouncement of judgment by a lower court, it takes some time to prepare a petition for going in appeal. To meet this contingency a reasonable period is allowed within which a petition in appeal can be moved. Out of a total sample of 21 cases, in 57% of the cases appeals

Table 3.19 : Time taken for filing the Appeal from the date of order passed by Lower court.

Sample	Time period (in days)					
	1-30	31-60	61-90	91-120	121 & above	NA
Appeal cases F (N=21)	12	6	1	—	1	1
Percentage	57	28	5	5	5	—

were filed within a period of 30 days, 28% between 31 and 60 days, while in two cases, it took as long as 60 days (Table 3.19).

First Hearing and Notice of Appeal : It is observed that usually the appeal is heard on the issue of admissibility and notice of appeal is issued on the same day. With this view, for purposes of analysis, they have been

Table 3.20 : Servicing time for First Hearing in Appeal

Sample	Servicing time (in days)	
	One	Two
Appeal cases F (N=21)	20	1
Percentage	95	5

Table 3.21 : Waiting time for First Hearing stage.

Sample	Waiting time (in days)				
	Nil	1-5	6-10	11-15	16 and above
Appeal cases F (N=21)	17	3	—	—	1
Percentage	81	14	—	—	5

considered as one stage. The findings of the study show that in 20 out of 21 cases, it took just one day to service the case for the present stage (Table 3.20). Analysing the waiting time during this stage, 81% of the cases showed no waiting time while 14% had to wait between 1 and 5 days to pass through the stage (Table 3.21).

Summons and Scrutiny of Lower Court Record : Although pendency is almost a regular feature, this stage seems to contribute most to it. The records show that staff of the lower court take their own time in supplying records. No one feels any sense of urgency. The information gathered is revealing. In 94% of the cases (where a need was felt to summon the lower court records) the court of appeal took just one day to scrutinize the lower court record (Table 3.22).

Table 3.22 : Servicing time for Summon and Scrutinising of Lower Court Record stage.

Sample	Servicing time (in days)			
	One	Two	Three	NA
Appeal cases F (N=17)	16	—	1	4
Percentage	94	—	6	—

Table 3.23 : Waiting time for summon and scrutinising of lower court record stage.

Sample	Waiting time (in days)							
	Nil	1-30	31-60	61-90	91-120	120-150	150 & above	NA
Appeal cases F (N=17)	1	4	5	1	3	1	2	4
Percentage	6	23	29	6	18	6	12	—

As against this there was just one case in which no waiting period was involved. Only 23% of the cases waiting ranged between 1 and 30 days, while in 71% of the cases, the court had to wait for more than 30 days (in two cases it was more than 5 months) for want of lower court records (Table 3.23).

Arguments on Appeal : An appeal except under certain conditions cannot be dismissed or disposed of summarily without an opportunity of being heard. Hearing of arguments are, however, not mandatory in case of revision. But it has been gathered from the records that parties were heard irrespective

Table 3. 24 : Servicing time for Argument on Appeal Stage.

Sample	Servicing time (in days)				
	One	Two	Three	More than three	NA
Appeal cases F (N=17)	7	5	4	1	4
Percentage	41	29	23	6	—

Table 3.25 : Waiting time for Arguments on Appeal stages.

Sample	Waiting time (in days)					
	Nil	1-30	31-60	61-90	151 and above	NA
Appeal cases F (N=17)	1	4	4	4	4	4
Percentage	6	23	23	23	23	—

of the nature of their petition (appeal or revision). In 41% of the cases. arguments were concluded in one day, while in 53% they extended to over two to three days. In one exceptional case arguments were heard in instalments spread over eight days (Table 3.24). As regards waiting time, a similar picture was obtained as that of the previous stage. (Table 3.25)

Judgment/Order : Judgment/order in appeal is as crucial as in trials. Therefore no separate provisions have been made in the Code of Criminal Procedure regarding judgments or orders in appeals. Out of a total of 21 cases, judgment was pronounced on one day in 20 cases and only in one case it took the court to pronounce judgment on two separate days (Table 3.26). Besides, 57% of the cases had no waiting period before judgment. In 19% of the cases, the parties had to wait for 1 to 5 days after arguments for the judgment, while in another 24% of the cases, judgment was pronounced after a waiting period of more than 5 days with the upper limit not exceeding 15 days (Table 3.27).

Table 3.26 : Servicing time for Order stage.

Sample	Servicing time (in days)	
	One	Two
Appeal cases F (N=21)	20	1
Percentage	95	5

Table 3.27 : Waiting time for Order stage.

Sample	Waiting time (in days)			
	Nil	1-5	6-10	11-15
Appeal cases F (N+21)	12	4	3	2
Percentage	57	19	14	10

The findings thus show that irrespective of the nature of the case or the level of a court, waiting period before any hearing is a permanent feature. Whatever may be the reasons for this kind of lingering of cases in courts, the time purposefully spent in the processing of a case is found to be clearly less, far less, than the time spent purposelessly. "The trouble", observes Shri Justice V R Krishna Iyer, "is not that more men go to court or are taken to court but much more time and money are wasted by men in the court than is reasonable in a tolerably efficient system" (1972).

Chapter IV

BOTTLENECKS IN DISPOSAL

To an average litigant, the court working may not be as smooth as indicated in law books. He is likely to find it to be tedious and cumbersome. At times the accused involved in a petty criminal case may have to wait for several months or even years before the question of his innocence is decided. Reportedly, in some states, a few undertrials spent more time in jails than the maximum term of imprisonment provided for the offence. This kind of disturbing situation has not gone unnoticed. The mass media and superior judiciary have come out with critical observations in respect of those cases which came to light. However, the possibility cannot be ruled out that hundreds of cases may be facing unwarranted pendency. Further, delay in the disposal of criminal cases is a cumulative process. At every stage of the trial and appeal (especially in lower courts) a number of unavoidable and avoidable hurdles come up prolonging cases and indirectly encroaching upon rule of law as a social value.

Those who are familiar with judicial procedure would most often manage to prolong the process of the case. Non-appearance of parties or witnesses, unpreparedness of the defence advocate or prosecutor, non-availability of time of the court, non-availability of lower court records or copies of documents (generally prepared by prosecution or copying agency) and the like are the common grounds on which adjournments are often sought and granted. While discussing bottlenecks in the speedy disposal of cases, shortage of staff (clerical and others); outdated and inadequate physical facilities, case-load on courts, lack of incentives for increased output and above all our scientific management of courts and their offices are also the aspects which may have a bearing on the problem of delay. In the present section an attempt is made to look into some of these bottlenecks in the disposal of criminal cases.

CASELOAD

In any system, the consideration of optimum level is as much applicable to output as it is to input. If the input is increased unduly, it creates system-overload and bottlenecks. This results in decreased efficiency and output; and sometimes the system may even face a breakdown. This is equally applicable to the court system.

A study of caseload is often called for while studying the functioning of the courts (Task Force Report 1967; Pande and Bagga 1973; Singhvi 1976; Krishna Iyer 1972; Mukherjee and Gupta 1978; Narsimhan, Undated). Often a hue and cry is raised when figures of pendency in courts are published but little attention is paid to the issue, whether the existing number of courts have necessary resources to cope with the ever increasing caseload.

An analysis of the published figures on disposal (Table 4.01) as proportion of institution indicates that the courts have not been able to process even freshly instituted cases (leaving aside the backlog). A glance at figures of Year 1979 and 1980 as regards the disposal as percentage of institution in Sessions and Magisterial courts of the country readily shows that every year a number of cases are being added to the backlog. On this, the position of lower courts in Delhi is not much different from the national scene.

This point has been pursued further. The position reflected in Table 4.02 speaks for itself. The pendency of criminal cases in the first half of 1980 in the country as compared with the corresponding period in the preceding year has shown an upward trend. When the pendency in Delhi is seen in the national context, the position compares favourably as far as courts of Session are concerned. But in Magisterial courts, the conditions appear to be disquieting. Pendency of cases in Magisterial courts of Delhi increased by 55.8% in the year 1980 over the year 1979.

Table 4.01. Disposal as percentage of Institution.

Court		As on 30.6.79	As on 30.6.80
Sessions	India	91.8	89.7
	Delhi	96.7	87.8
Magisterial	All India	98.2	90.5
	Delhi	56.9	57.6

Source : Quarterly Report, Deptt. of Justice, Govt. of India, New Delhi

A closer examination of caseloads is more revealing. On an average, a magisterial court in Delhi is reportedly handling between 1000 and 1500 case files at a time; whereas, the judicial officers justifiably feel that optimum load should not exceed three hundred case files.

During observation, it was found that in most of the magisterial courts the cause list for the day had cases ranging between 30 and 50 case. In one exceptional case, more than 100 cases were listed for the day, out of which in 40 prosecution evidence was due to be taken. It is humanly impossible to dispose of such a large number of cases in the course of a single working day. It is evident that courts Calendering their work in such a manner have no serious intention to hear even a fraction of them and the Calendering is meant only for statistical purposes.

Table 4.02 : Percentage increase in pendency during the first half of the year 1980 over the corresponding period of 1979.

Court		Percentage increase
Sessions	India	+ 9.1
	Delhi	+ 7.0
Magisterial	India	+14.9
	Delhi	+55.8

Source : Quarterly Report, Deptt. of Justice, Govt. of India, New Delhi.

The problem of caseload is not only with the courts, but also with the prosecution and defence. It has been reported that a prosecutor attached to a magisterial court in Delhi, handles a minimum number of 700 case files at a time. This fact is also supported by a large majority of respondents to the opinonnaire that prosecutors in Delhi are overburdened. In a number of adjournments as observed from case records the reason was that the case could not be heard as the defence lawyer was busy in some other court. This voluntary overburdening works to the advantage of the practising lawyers and to the detriment of court work.

ADJOURNMENTS AND REASONS

As mentioned earlier in the report the problem of delay is the outcome of the interaction of a number of factors. These include prosecution, defence, accused, witnesses, investigation, court management and so on. Each of these factors bears analysis and examination.

Section 309 of Code of Criminal Procedure empowers any court to adjourn proceedings if it feels that grounds are reasonable. It further lays down that for every adjournment the reasons have to be recorded (in 4% of the adjournments, no reasons were mentioned), For this, in every case file, an order-sheet is attached on which the record of proceedings and reasons for adjournment are recorded along with the dates of hearing.

With every adjournment granted, a case gets delayed. So the length of adjournment also assumes importance.

Table 4.03 : Adjournments and their reasons in trial cases.

Reasons for adjournment	Frequency			
	Sessions	CMM/ ACMM	MM	Total
Non-appearance of the accused	171	40	11	222
Non-production of the accused from judicial custody (Jail)	33	4	1	38
Copies of the documents not ready/not supplied	18	3	0	21
Non-appearance of the witnesses after service	152	37	27	216
Witnesses not served/summons not issued or not returned by police station	57	18	5	80
Non-production of case property	24	0	2	26
Non-availability of the defence counsel	9	6	11	26
Non-preparedness of the defence counsel	24	9	15	48
Non-appearance of the prosecutor	3	0	5	8
Non-preparedness of the prosecutor	10	1	5	16
Presiding Officer on leave	48	13	21	82
No time left/ court busy with other case	26	4	4	34
The day of hearing declared a holiday	4	0	5	9
Judgment/order not ready	4	3	1	8
Stage completed (hence adjourned for next stage)	249	69	40	358
Listed for miscellaneous work, therefore adjourned	78	23	28	129
Others	21	5	2	28
Information not available	31	13	11	55
Total	962	248	194	1404

Table 4.04 : Adjournments and their reasons in appeal/revision cases.

Reasons for Adjournments	Frequency	Percentage
Non-appearance of the petitioner	23	12
Non-appearance of the defendant	1	0.5
Presiding Officer on leave/official duty	20	11
Awaiting order of transfer	5	3
Non-supply of record by lower court	30	16
Non-preparedness of the counsel for petitioner	17	9
Adjourned for next stage	42	23
No time left/court busy with other case	6	3
Listed for miscellaneous work, therefore, adjourned	21	11
Judgment/order not ready	6	3
Others	3	2
Information not available	10	5
Total	184	100

The scanning of court files has brought out the fact that in a sample of 90 trial cases a total of 1404 adjournments were granted and in 21 appeals there were 184 adjournments (Table 4.03 and 4.04). The grounds for adjournment are examined in the succeeding paragraphs.

Adjournment and the Presecution : The prosecutor represents the State in the court. It is observed that in 91% of the cases regular prosecutors appeared in the concerned courts to represent the State. However, in 5 complaint cases filed by the State controlled organisations, like public sector undertakings, specially appointed prosecutor on an ad hoc basis appeared on behalf of the State, while in 3 private complaint cases, the complainants engaged their own lawyers (Table 4.05). An attempt is made in the study to provide a fair idea as to what extent prosecutors and special prosecutors may be responsible for the problem.

Table 4.05 : Type of Prosecutor engaged in criminal cases.

Prosecutor	Frequency			
	Sessions	CMM/ ACMM	MM	Total
Regular Prosecutor of the court	17	14	51	82
Private counsel engaged by complainant	—	1	2	3
Special Prosecutor engaged by State bodies	—	—	5	5
Total	17	15	58	90

Though prosecutors do not appear to be serious defaulters in attending to their cases, still they are not wholly above blame in this regard. From Table 4.03 it is evident that 2% of the adjournments were granted either because of the non-appearance of the prosecutors or their unpreparedness. In another one per cent of the adjournments, the courts have to be held responsible since it is a failure to supply copies of the documents to the accused i.e. the cause of such adjournments. Under the revised CrPC (1973) the responsibility for supplying copies of documents to accused persons rests with the courts. But since even now, seven years after the revised CrPC came into operation, most courts are not in a position to supply copies of documents since they do not have the infrastructural facilities like additional staff, copying machines, stationery and so on. And so by an informal arrangement officers in charge of many police stations agree to supply the copies of documents to the accused. But this informal arrangement seldom work. Further, it is worth noting (Table 4.04) that in appeal cases prosecutors were not responsible even for a single adjournment.

While looking into the role of the prosecutors, their working conditions may also be kept in view. It has been reported (and supported by the respondents of the opinionnaire) that prosecutors in Delhi have neither a library nor office facilities where they can sit and prepare their cases. Some of the respondents have pointed out that for the prosecutors even the stationery for writing work is always in short supply.

Adjournment and the Accused : According to the existing legal system and approach, an accused is considered to be innocent till proved guilty. Therefore,wherever possible, during investigation or trial, the facility of release on bail and personal surety is provided to the accused. It has been

observed that in 61% of cases (single or many accused) the accused were on bail throughout the trial. In other cases in which there were only single accused, the accused were throughout under custody in 13% of the cases and partly on bail and partly under custody in 21% of the cases. There were only two case involving more than two accused where the accused were partly under custody or partly on bail (Table 4.06).

Table 4.06 : Status of the accused during rhe pendency of trial

Status	Frequency			
	Sessions	CMM/ ACMM	MM	Total
Throughout on bail-single accused case	7	8	33	48
Throughout under custody-single accused case	1	2	9	12
Partly on bail, partly under custody-single accused case	8	5	6	19
All throughout on bail-Multi-accused case	—	—	7	7
Mixed case-of partly under custody and partly on bail (Multi-accused)	1	—	1	2
Others	—	—	1	1
IWA/NA	—	—	1	1
Total	17	15	58	90

Does the status of the accused (in custody or on bail) during the trial affect the pendency of the cases ? The study has not attempted to establish a relation (if there is any). In any case, the non-appearance of the accused has been identified as one of the causes of delay (Mukherjee and Gupta 1978). This is what has been focalised in the present study as well. 16 per cent of the adjournments took place because of the non-appearance of the accused (expectedly on bail) on the day of hearing, for one reason or the other. The problem was not only in the case where accused were on bail. Even in cases where the accused were under custody, 3% of the adjournment were granted for the reason that accused was not brought to the court from jail. Apart from the non-appearance of the accused, a few related aspects have also to be discussed. 9% of the adjournments could be attributed to the accused, as, for instance, when accused is absent at one hearing, the next hearing is scheduled only for his appearance after which the cases is adjourned again for

trial proceedings (Table 4.03). Even in appeal cases 12% of the adjournments were granted because of the non-appearance of the accused who figures as petitioner. (Table 4.04).

To a great extent, adjournments are associated with the interests of the accused on trial. Since the presence of accused is necesssary during the trial proceedings, drastic efforts are called for to secure his presence, so that the number of adjournments and delay may be cut down.

Adjournments and the defence advocate : It is observed in the sample study that in 77% of the cases the accused had engaged advocates and only in 22% of the cases they had not. In one case no indication could be had from the file of the presence or otherwise of an advocate in the case. Whenever advocates appeared for the defence, they were engaged by the accused themselves. In the solitary exception of an adolescent offender, the defence was provided by the court (Table 4.07). In appeal cases, since most of the appeals were against the State and State-Controlled undertakings petitions were opposed by regular prosecutors and defence lawyer especially engaged (Table 4.08).

Table 4.07 : Defence counsel appearing in a case

Sample		Defence counsel		
		Engaged	Non engaged	NA
Sessions		17	—	—
CMM/ACMM		14	1	—
MM		51	2	5
Total	Frequency	82	3	5
	Percentage	96	4	—

Table 4.08 : Counsel appearing for defendant in Appeal/Revision cases

Counsel	Frequency	Percentage
Regular prosecutor of the court as counsel	5	33
Special counsel engaged by state bodies	3	20
Private counsel engaged by a defendant	1	7
Non-appearing to defend	6	40
INA/NA	6	—
Total	21	100

Does the association of a defence lawyer with a criminal case prolong the pendency of a case ? The question cannot be answered with certainty, as the sample study, cases in which no advocate was engaged were too small in number to bear fair comparison. Unconscionable delaying tactics like side tracking the issues (Macklin. 1974) challenging all or parts of the cases (Cicouvel 1968); asking for frequent and long adjournments (Mukherjee and Gupta 1978) have often been imputed to the defence lawyers. An attempt is made here to highlight the number of instances in which adjournments were granted because of the omissions or commissions on the part of defence lawyers. In trial cases 5% of the adjournments were granted either because of non-appearance or unpreparedness of defence lawyers (Table 4.03). Further, during the observation it was found that defence lawyers appeared promptly only in a handful of cases. In a majority of the cases a delay of 5-30 minutes was usual for the defence lawyer to appear in the court. There were a sizeable number of cases where they never appeared or if they appeared, expressed their helplessness to participate in the proceedings. Again, an overwhelming majority of opinionnaire respondents agreed that defence lawyers too frequently ask for adjournments to delay the cases deliberately.

It appears from the foregoing analysis that the role of defence lawyers should be closely examined and the grounds for seeking adjournments should be scrutinized by the court. At present, the courts clearly appear to be lenient in granting adjournments to defence lawyers. For example, out of 1404 adjournments granted in trial cases and 184 in appeal cases; only in respect of one adjournment the court took a firm stand on the defence plea and allowed a cost of rupees twenty to the expert witness who appeared on the day.

Adjournments and witnesses : Since it is unthinkable to re-enact a crime scene at time of the trial, the evidence gathered originally at the scene of crime and subsequently during investigation is used to prove or disprove the nexus between the accused and his commission of the crime. In a fair trial the cooperation of the witnesses is crucial.

Witnesses are generally classified under two heads (i) Formal witnesses include those whose knowledge is related only to the formal aspects of the cases like duty officer who registered the case in police station, or a record clerk of some office who produces a certificate or like to corroborate the evidence (ii) Material witnesses include those whose knowledge relates to the actual commission of crime or to a link in the chain of facts of the commission of the crime. Further, based on the status of these witnesses, they can be identified as public witnesses, official witnesses and expert witnesses.

It is observed that, from list of prosecution witnesses cited, not all witnesses were examined in a majority of the cases. Although the reasons for such dropout were not explored specifically, it appears from the record of summons returned to the court that a number of public witnesses were not traceable at the time of the trial. This can either be attributed to the lapse on the part of process serving machinery or non-cooperative attitude of the public. The impression gained from the record is more towards the latter cause. For example, in one case the summons were returned with a note that witnesses refused to sign them but have agreed to appear on the day of hearing in the first instance; but they never appeared. Surprisingly, when the summons were issued a second time they were returned with a note that witnesses are untraceable as they have changed their residence.

The problem in respect of official witnesses is different. By the time a case reaches the evidence stage, in a number of cases witnesses are either transferred or they superannuate. Even the police witnesses, in some cases are not examined though for different reasons. The common reasons reported are : either they are on leave or engaged in emergency duties or transferrered to some other police office. In one particular case under study, a DSP was cited as a prosecution witness, but despite repeated efforts he could not even be traced. The longer a case gets adjourned, the more serious this problem becomes. It is not for nothing that in pre-1947 there used to be a convention that no officer would be transferred for 3 Years from a station unless there were exceptionally serious reasons to disturb him. The establishment of separate investigation machinery to go into the details will be beyond the scope of the present study.

Table 4.09 : Outcome of criminal cases

Case ending in	Frequency			
	Sessions	CMM/ACMM	MM	Total
Acquittal	9	9	35	53
Conviction	4	5	16	25
Case remanded back to lower Court	4	—	—	4
Conviction on confession	—	1	2	3
Others	—	—	5	5
Total	17	15	58	90

Table 4.10 : Reasons for Acquittal in trial cases

Reasons	Frequency			
	Sessions	CMM/ACMM	MM	Total
Benefit of doubt-where full PE was recorded	2	2	11	15
Benefit of doubt where prosecution failed to produce full evidence	2	2	8	12
Benefit of doubt-where no independent/public witness included	—	1	3	4
case property could not be produced	—	—	1	1
Application of compounding the offence filed/case withdrawn	2	3	5	10
Acquittal on merit	3	1	2	6
Others	—	1	6	7
Total	9	10	36	55

Non-cooperation of the witnesses can seriously affect the outcome of cases. A glance at Table 4.09 will show that 59% resulted in acquittal. Though no correlation analysis has been seen to link acquittal with witness dropout rate, the record of many cases showed (Table 4.10) that the accused were acquitted mostly because of the failure of the prosecution to produce evidence (for details of causes of acquittal, see Thangaraj 1977).

Has the cooperation of witnesses any effect on the pendency of a case ? The answer is, 'yes''. It is clear from the Table 4.03 that 15% of the total number of adjournments were granted because of non-appearance of the witnesses.

It is evident from the facts cited above that non-cooperative behaviour of witnesses may have a direct bearing on the pendency of a case. However, a mixed opinion was expressed by the respondents of opinionnaire about the behaviour of the police and other official witnesses. Yet a majority of them were of the opinion that public witnesses in most of the cases were serious defaulters and would seldom appear on due dates. In other words, the citizens' involvement in the criminal justice system.

The relation between the pendency of a case and behaviour of the witnesses is not unidirectional. The pendency of a case has a reverse reaction on the behaviour of the witnesses and ultimately on the outcome of the case. There is no denying the fact that human memory is notoriously short and

events are difficult to recall with a degree of precision after a lapse of time (Motiwal 1979). It is clear from Table 4.10, that in some cases (17%) even where the full prosecution evidence was recorded, accused were acquitted on grounds of benefit of the doubt. Such an outcome in criminal cases can be attributed to the inadequacies in testimonies of the witnesses reproduced after some lapse of time. Defence lawyers have no compunction about exploiting this weakness.

Finally, attention may be turned to factors responsible for such indifferent cooperation on the part of the witnesses. Harassment of witnesses and low allowance (see Mukherjee and Gupta 1978 ; the 77th Report of the Law Commission 1978) are the two main factors. They have already been discussed in some detail in Chapter Two.

In passing, it may be added that quite a few adjournments (2%) are seen granted because of non-production of the case property either by the police officials or by those who secured the possession on **supardari** (trusteeship). In one particular case involving the theft of a car, which remained pending over period of seven years, the accused were acquitted merely on the ground that complainant never appeared before the court after taking the possession of the car on **supardari**.

Adjournments and Process/Summons Serving Agency :

Process/Summons Serving agency, doubtless, plays a crucial role in the pendency of cases. Reportedly, at present the process servers handle their job somewhat mechanically. A little amount of understanding effort on their part is likely to go on long to improve the response of the public and their willingness to cooperate in the administration of justice. It is observed that 6% of the adjournments (Table 4.03) were granted either because of the non-service of the summons, or non-issue of summons by Ahalmad or non-return of summons by the police station.

Other adjournments : Apart from the adjournments discussed earlier, there were a number of adjournments which deserve attention. There were a number of adjournments granted on the grounds of the (i) presiding officer being on leave or on official duty at some other place, (ii) no time being left with the court or its being busy with other cases and (iii) the day of hearing being declared a holiday. Although these grounds seem to be reasonable, they could have been avoided, had the court prepared a logical time calender. Some adjournments were granted as the judgment or orders were not ready.

One frequent ground for adjournment which hardly seems to be plausible is that after the completion of one stage in the case, the court adjourned for the next stage. Although this practice may be a logical and legal necessity, it has to be pointed out that adjourning cases ritually and for prolonged periods on this account serves little on no judicial purpose.

COURT MANAGEMENT

The science of management and the induction of time-saving devices have altogether revolutionised the working of many organisations. Have our courts in this respect been able to keep pace with these developments ? The answer is a clear "No".

The lack of proper management of the courts (Task Force Report 1967; Zeisel et al, 1959 ; Coffey 1974 ; Forst 1977 ; Nagel 1978 ; Krishna Iyer 1972 ; Ghosh 1976; Pande and Bagga 1973) and its offices have contributed much to the problem of delay. This aspect may be explored a little more in depth.

Courts : Generally speaking, management techniques focus on aspects including manpower planning down to the provision of minor physical facilities, like availability of furniture and file almirahs. Because of the limited scope of the current study, manpower planning aspect has not been touched upon. The provision of physical facilities, geographical location of the courts and general conditions of working, as discussed earlier (see Chapter II), bring out that there is great need for improvement as far as the systematic management of the courts is concerned. Even to this day the fossilised methods of handling court files are prevalent. Likewise, the accused and witnesses are called for the cases by the peon in the same traditional manner, while the use of small loud speakers could serve the purpose effectively.

Offices of the Court : There are a number of offices which work in close liaison with the court. In all, there are 16 offices partly or wholly associated with the criminal courts with a total strength 141 functional ministerial staff (Table 4.11). It is surprising to note that sanctioned strength of the staff is less than the functional staff. Besides, out of three sanctioned posts of Superintendent two were lying vacant. This shows gross mismanagement in the offices of the court. It has been reported that extra staff has been provided from the quota recruited for additional courts, which are not yet functioning. Looking at the pendency figures of cases and consequent workload involved, the strength of the staff certainly needs a close scrutiny. Further, it has been ascertained that no formal training is given to the staff after their recruitment. The only training they receive is in the form of on-the-job training. This matter of training of the officials in courts deserves attention on a priority basis, since it is essential to streamline court working and is bound to have a salutory effect on the disposal rate.

Table 4.11 : Ministerial staff of the office of District & Session Judge, Delhi.

Office	Gazetted Staff				Non-Gazetted Staff				Remarks
	Post	Sanc-tio-ned	Actual	Pay Scale	Post	Sanc-tio-ned	Actual	Pay Scale	
Administrative Branch	Superin-tendent	1	1	Grade 550-900	UDC	3	3	330-560	**Note :**
R & I Branch	—	—	—	—	LDC	7	7	260-500	
Judicial Branch	Supdt	1	Vacant	550-900	LDC	5	5	260-400	The extra staff in various offi-ces in addition to the sanctio-ned strength, has been provi-ded from the staff recruited for the 26 Newly constituted cou-rts because only 16 courts out of these 26 are fun-ctioning presen-tly.
					UDC	2	2	330-560	
					LDC	10	10	260-400	
Section Writer	—	—	—	—	Asstt Supdt	1	1	425-700	
					LDC	8	8	260-400	
General Branch	Supdt	1	Vacant	550-900	UDC	3	3	330-560	
					LDC	4	4	260-400	
Copying Agency (Criminal)	—	—	—	—	Branch Incharge	1	1	425-600	
					UDC	1	1	330-560	
					LDC	11	11	260-400	
Copying Agency (Session)	—	—	—	—	Head Copying agency	1	1	425-600	
					LDC	27	30	260-400	
Store Keeper	—	—	—	—	LDC	Nil	4	260-400	
A/c Branch	—	—	—	—	SSA				

					Accts	1	1	425-600	Cashier gets a cash allowance of Rs. 40 p.m. in addition to scale
					UDC	3	3	330-560	
					LDC	20	20	260-400	
					Cashier	1	1	330-560	
Nazarat Branch	—	—	—	—	UDC	1	1	330-560	
					LDC	1	1	260-400	
Old Record Room	—	—	—	—	UDC	1	1	425-600	
					LDC	1	1	260-400	
Office of the Administrate Sub-Judge	—	—	—	—	UDC	1	1	330-560	2 Extra UDC have been provided to deal with work-load
					LDC	4	4	260-400	
					Trans-lator (UDC)	1	3	330-560	
Care Taker's Office	—	—	—	—	Caretaker (UDC)	1	1	380-640	2 LDC have been provided extra than sanctioned posts
					LDC	1	3	260-400	
Office of the AD & S Judge New Delhi	—	—	—	—	UDC	Nil	4	330-560	
					LDC	Nil	1	260-400	
Office of the AD & S Judge Shahdara	—	—	—	—	LDC	Nil	1	260-400	
Office of CMM	—	—	—	—	UDC	Nil	1	330-560	
					LDC	Nil	1	260-400	
Total	—	3	1	—		121	140		

Source : Office of the District & Sessions Judge, Delhi

Record Room/copying agency : With underestimating the role of other offices allied to courts, it may be remarked that record room and copying agency are most important. In the present context, they are directly related to the problem of delay. Normally, after the lapse of a certain period after pronouncement of judgment, a case file is sent to the record room where it is filed and preserved. The preservation period varies according to the nature of the case. Should the need arise to get the copies of a case record, an application is made to the officer-in-charge of the copying agency who is normally a judicial officer. After the approval of the incharge, application is submitted to the copying agency along with the prescribed fee. From there, the requisition is sent to the record room where case file and copies are prepared from the case file.

It is seen that the copying agencies are still using the time-consuming method of typing for the preparation of copies. Only on a limited scale are the facilities of xeroxing or cyclostyiing available in the lower courts in Delhi. Delay in the supply of copies and consequently in cases can be reduced substantially by using time-saving office machinery, Though the initial cost in installing these machines may be sizeable, in long run the investment is certainly worthwhile.

During the data collection it was observed that record rooms are far from being well-kept and well-managed. The traditional method of maintaining records as observed in sessions and magisterial courts is there with record room as well. For every sessions case a 'goshwara' (Serial) number is allotted along with the prefix and for appeal or revision cases separate goshwara numbers are allotted along with the symbol F. In magisterial courts, records are arranged police stationwise.

After giving Goshwara markings, these files are tied year wise into a cloth (bundle called 'Busta'). . is looks primitive when contrasted with modern filing system. Inordinate delays in record retrieval are inevitable under the existing dispensation. Our Research Officer experienced it during data collection. In a number of cases, the records could not be traced despite repeated efforts including crosss-checking of goshwara numbers with the Ahalmad.

Further, both the record rooms in terms of space are near-saturation stage. Bundles of case files are stacked neck by jowl in nooks and corners of the record room for want of space. To trace out an old file under such conditions is cumbersome and arduous. Theoretically, every file has a life period after which it is to be destroyed, but reportedly facilities for destroying these case-files do not exist. Consequently, the files which should have been destroyed long ago continue to clutter the record rooms, consuming much valuable space. Again, to sit and work in the record rooms is a hazardous venture. There is hardly any place in the record rooms for seating the record clerks. Their table and chairs are seen adjusted between the racks which are often covered with layers of dust. During working hours, at times, even breathing becomes a problem.

It may be finally stated that at every stage of a case, there are hurdles and bottlenecks in one shape or the other. Day by day the pendency is increasing but the number of courts and hours of working have remained more or less constant. Although provisions are there in the CrPC for day to day hearing adjournments are frequently sought on one pretext or the other. Witnesses, accused, defence lawyers or prosecutors may have their own reasons for seeking adjournments, but their contribution in effect to the problem of delay cannot be ignored. Process serving agency may take shelter behind the argument of duty constraints but its share in delay in the disposal of criminal cases is considerable. The existing state of affairs in the management of courts and its offices has its own contribution to the problem of delay. These are some of the pertinent aspects which need to be tackled while taking concerted action to attack the problem.

Chapter V

REMEDIAL STRATEGIES

Law's delays have been the leitmotif of tragedies and comedies in many lands and throughout the history. (Ziesel, et al, 1959). Nonetheless, the developed countries with their abundant resources have made considerable headway in overcoming the problem. In the US 'Speedy Trial' has been made a constitutional right by the Sixth Amendment. The result is the Speedy Trial Act 1974. In India, the problem has not attracted the concern of planners, administrators and researchers to the extent it deserves, though of late there has been some awareness of it.

This study pertains to the delays in the Union Territory of Delhi only and it is confined to the lower courts. An overall picture of the state of delay in the administration of criminal justice can be had only if an integrated study is undertaken of the causes of delay in reporting, the reasons for delay in investigation by the police, the circumstances which cause delay on the part of medical, scientific and other technical experts in furnishing their opinion to the courts and delays in process service. But such a comprehensive analysis is outside the scope of the present study. The problem in Delhi need not necessarily typify the problems elsewhere in the country. On the one hand, there may be States where trials may take place speedily and other States where the progress of trial may be tardy. Delhi represents somewhat a middle position. As such, the assessment of the problem and its etiology as analysed in the preceding sections provide, reasonable pointers to work out remedial strategies here.

The problem has no easy or instant solutions. A concerted strategy, including reduction in caseloads, scientific management of courts, simplification of trial procedures, limiting the number of adjournments, mustering of public support, toning up of the investigation machinery, strengthening of prosecution, streamlining process service and activising the conscience of the legal profession, needs to be evolved.

DISTRIBUTION OF WORKLOAD

The problem of delay is essentially a problem of supply and demand. As mentioned elsewhere, the optimum number of cases per magisterial court as prescribed by the Delhi High Court is 300, while at the moment the rough estimates of workload range between 1000 and 3000 cases. Although the situation in courts of session is not that much acute, they certainly connot be ignored. Reduction in workload will relieve pendency. It naturally calls for a substantial increase in the number of courts both magisterial and sessions.

A majority of the respondents who have replied to our opinionnaire (63%) have expressed views in favour of nyaya panchayats being given powers to share the workload of the courts. The role of nyaya panchayats in sharing such workload has been explored and recommended by some authorities, with an element of caution (GOI 1978 ; Singhvi 1976). It is seen from the reports on Panchayati Raj functioning (in Rajasthan 1973, Maharashtra 1971, Punjab 1969 and Orissa 1958) that with their existing form and structure they suffer from certain disabilities. First of all, they are elected bodies and hence prone to political partisanship. Secondly, panchayat members do not have any legal training. Thirdly, there is no supervision over their functioning by the higher courts. The second and third disabilities can be overcome with a certain effort in a reasonable time but it is difficult to overlook the first point. So if Nyaya Panchayats are to be vested with more powers, it has to be done with great caution and adequate safeguards.

OVERHAULING OF THE PRESENT MACHINERY

Courts do not form part of "Plan Departments" of Government. Ipso facto means that expenditure on courts does not get the priority that "plan" expenditure does. Shortage of space, furniture, filing almirahs, copying facilities, record rooms, staff and the like bedevil the functioning of courts in Delhi. Augmentation of these facilities several-fold is urgently called for. Pari passu the introduction of modern management techniques, (Task Force Report 1967 ; Coffey 1974 ; Forst 1977 ; Krishna Iyer 1972 ; Law Commission's Report 1978) with well defined policies in the present setup and strength of the court is bound to relieve the problem. A desirable line of approach will be to have a small Committee with a Judge of the Delhi High Court, an Administrative Policy framer from the Delhi Administration, preferably the Home Secretary, and a Representative of the ICFS and to leave to this Committee the responsibility for the working out of details of the infrastructure required.

DEVELOPMENT OF A COURT CALENDAR

Utilising scientific management techniques, courts in many western countries have developed court calendars, wherein the movement of each case

is prescribed, dates of hearing in each case are predetermined and total servicing time for a case, depending upon its nature, is laid down.

Table 5.01 : Servicing time in trial case (in days).

	Court	1-5	6-10	11-15	16-20	21-25	Total
	Sessions	6	8	1	2	—	17
	CMM/ACMM	1	8	4	—	2	15
	MM	6	33	14	5	—	58
Total	Number	13	49	19	7	2	90
	Percentage	14	54	21	8	2	100

The situation prevailing in the courts in India hardly bears a favourable comparison. A glance at Table 5.01 shows that in 69 per cent of the cases servicing time involved was 1-10 days (servicing of a case has been computed in days, although it can be done in smaller time-units).

Table 5.02. Total time taken by the trial case (in days).

Court	1 to 200	201 to 400	401 to 600	601 to 800	801 to 1000	1001 to 1200	1201 to 1400	1401 and above	Total
Sessions	11	4	1	1	—	—	—	1	17
CMM/ACMM	5	2	—	3	2	1	—	2	15
MM	9	16	10	4	6	3	5	5	58
Total Number	25	22	11	8	8	4	5	7	90
Percentage	28	24	12	9	9	4	6	8	100

As against this, the total pendency period for a case ranged anywhere from 1 day to 5 years (Table 5.02). In appeal/revision cases, also, situation is not much different (Tables 5.03 and 5.04). Apart from the colossal waste of time, the imaginable uncertainties about the dates of hearing are too apparent to need recapitulation. Hence the development of a court calendar is recommended. It can help reduce the number of adjournments.

Table 5.03. Servicing time in appeal cases (in days).

	Three	Four	Five	Six	More than Six	Total
Number	4	—	6	5	6	21
Percentage	19	—	29	24	29	100

Table 5.04 : Total time in appeal cases (in days).

	1-50	51-100	101-150	151-200	More than 200	Total
Number	6	3	2	3	7	21
Percentage	29	14	5	14	33	100

SIMPLIFICATION OF PROCEDURAL LAWS

Various authorities have opined (Mann 1979 ; Krishna Iyer 1972; Khosla 1949) that procedural laws in India need simplifications to cut short the delays. In this respect, the opinionnaire respondents are highly critical of maintaining the illusory distinction between summons trials and warrant trials and uncertainty of interpretation of 'interlocutory orders'. They are of the view that distinction between summons trial and warrant trial should be abolished, as it creates avoidable confusion and court time is wasted on this issue. Also the controversy about the 'interlocutory orders' should be set at rest because a lot of time of the court in revision cases is consumed in hearing the arguments on the nature of the order.

MUSTERING SUPPORT OF PUBLIC WITNESSES

It is needless to re-emphasize the role of public-witnesses in the progress of criminal cases. The general unwillingness on the part of members of the public to co-operate with the law enforcement agencies is neither anything new nor something special to India. It is a drawback which the modern criminal justice system has been facing for a long time.

"It is very difficult to induce witnesses to appear in court and give testimony. In certain cases of a serious nature, terrorism may be involved. One of the important reasons for the difficulty of convicting gangsters, who have committed serious crimes is that witnesses are afraid to testify. In other types of cases, witnesses are reluctant to go to court because of the great inconvenience involved. They may be required to go to court again, at great financial loss to themselves. Defence attorneys often attempt to obtain as many adjournments as possible, so that witnesses for the prosecution including victims, eventually will grow tired of the inconvenience of attending the court. Consequently, many witnesses do not disclose to anyone the fact that they have important evidence and many crimes go not reported to the police" (Sutherland and Cressey 1968).

The observation by the Police Commision made in 1902 even now holds good : "The people are not generally active on the side of the law and order

unless they are sufferers from the offence, their attitude is at the very best one of silent neutrality and they are not inclined actively to assist the officers of the law" (the Police Commission, 1902). Everybody wants to remain uncommitted, neutral and detached, particularly about unpleasant criminal occurrences. Even educated people who are supposed to have a developed sense of civic responsibility, are often reluctant to get entangled as witnesses. Fear of reprisal in these cases where the accused are rowdies or gangsters is yet another consideration. The inconvenience the witnesses have to undergo in police stations and in courts are legion. The witness has to make himself available for interrogation at times, to many officers. If he had witnessed a grave crime, then right from a head Constable to a Senior Officer are likely to visit the scene and he has to wait for them. Further, even now many witnesses are summoned to police stations for interrogation. Whether avoidable or unavoidable, such occasions mean a loss of several days' wages to witnesses. For those belonging to economically poor section it may be unbearable.

More often than not, witnesses are not examined in the court on the day of their first appearance. Cases are generally adjourned many times, yet on all such days witnesses are required to appear. They are not even assured of their reasonable travelling expenses and diet-money. When a witness is summoned and is not examined, he is not paid his diet-money-as if it is his fault. Occasions are not rare when the the signature or thumb impression of a witness is taken on a voucher by a court clerk or peon and the amount is pocketted by them. Besides, witnesses are required to wait from morning till evening either in the court verandahs or outside. In many States, even elementary conveniences to persons appearing as witnesses are reportedly lacking. Finally when they are examined in courts, they are subjected to a gruelling cross-examination. According to the Law Commission "the manner of their cross-examination by the opposing counsel not unoften borders on the Insulting and offensive" (XIV Report). The Law Commission has further observed about the general discourtesy shown to the witnesses; "Not infrequently a witness is treated with scant respect not only by the cross-examining lawyer, but even by the Presiding Officer. There is a natural tendency on the part of witnesses to avoid the ordeal of a lengthy and sometimes unpleasant and undignified cross-examination which is so frequent a characteristic of the subordinate courts. Unnecessary rebukes, unfavourable comments upon his demeanour and ridicule in open court if the witness is sometimes driven to give an unintelligible answer, are not uncommon. In our view, this is one of the principal reasons why witnesses shun the court of law and avoid having to give evidence" (XIV Report, p. 326).

The response of public witnesses and the treatment they get in the court have been discussed earlier. Against that backdrop, a number of steps

may be recommended. The brunt of the work of process service has necessarily to remain with the police. If summons are served and warrants are executed promptly, it will contribute a great deal towards reducing pendency and delay of criminal cases in court. Since the role of the police in this respect does not form part of the scope of this study, an empirical assessment of the failure in this regard has not been possible. Nevertheless the following suggestions are made with a view to streamlining the process service by the police.

First of all, the practice of entrusting summons and warrants to individual police constables and permitting them to keep them for long periods should be dispensed with. When such work is entrusted, at the end of each day the station house officer should debrief the constable and ascertain if he has made any sincere attempt to locate the summonee or warrantee and to serve the summons or execute the warrant. The failure of such an effort should form the subject of disciplinary action. Besides, both station house officers and their superiors inspecting police stations should test-check a good percentage of cases which involved inordinate delay. Secondly, in simple cases (like assault, simple hurt, petty theft, etc.) there is no harm in serving summons by registered post directly from the court. It is a measure worthwhile being tried. Thirdly, the association of willing members of the public or voluntary organisations in a selective manner the process service work when constabulary strength is exiguous may be tried. Finally, the principle of quinquennial average of crime incidence needs to be adhered to more rigorously than has been hitherto the case for determining the manpower requirements of police stations. Every five years, the police stations which are short of manpower should have their strength augmented. This yardstick, among other things, would be able to take care of process service work as well.

A humane and dignified treatment of public witnesses visiting the courts, the provision of reception centres on the court premises, adequate seating facilities in the court-room and better attention from the court-staff towards witnesses are likely to go a long way towards removing their indifference and unwillingness to go to court. Existing provisions relating to diet-money and travel expense admissible to public witnesses do not appear to be realistic and call for a revision. Although it would not compensate a witness for the loss of his/her day's earnings, it may provide a better motivation. Besides, probable hours at which a witness is likely to be examined may be indicated in the summons, so that the chance for indefinite waiting after arriving at the court premises is avoided.

Lastly, the witnesses should be protected from humiliation and the risk of physical injury by the accused. This may be provided by instituting a victim compensation scheme on the lines of social security or social insurance.

CREATION OF A SEPARATE INVESTIGATION MACHINERY

The discussion in the preceding sections has brought out that some adjournments are caused by non-appearance of police investigating officers as prosecution witness during hearings. The reasons for such absence are either these police officials are busy on law and order duty, on leave or have been transferred. This further strengthens the case for the creation of a separate investigation cell free from law and order duties. This will not only cut short delays but will also help induct professionalism in investigation. This is a major administrative reform called for in the criminal justice machinery. Details are not dealt with here since it is outside the scope of the present study.

Nevertheless in view of the link between speedy investigation of criminal cases and their speedy disposal in courts, the former may be highlighted. It is essential that investigation of offences should be made the responsibility of special squads in each district and they should work under the control of an additional SP, answerable to the Superintendent of Police at the district level and to the DIG (Crimes) at the State level. They should have expertise and thorough knowledge of habitual offenders involved not merely in areas but in adjoining areas where they have their habitats. Such expertise can be acquired only by intense application over a period of time. If officers are transferred at frequent intervals, it naturally prevents the acquisition of such expertise. Scientific investigation is a fine art and it is not that every police officer has the aptitude for it. Once a person with aptitude is selected and posted and his integrity is proved, he should be permitted a tenure for a few years. Indeed, this is linked with the wider aspects of personnel policy. Once such special squad personnel are selected and posted, there should be no question of their being transferred.

STRENGTHENING OF PROSECUTION CELL

It appears that in Delhi the part played by prosecutors in delaying proceedings of the courts is only marginal. Yet there is scope for reducing their workload by increasing their number. Besides, the provision of a library and office facilities would go a long way towards improving the quality of their work. It is observed in this connection that courts have hardly any time to look into it. The Director of Prosecution who is responsible for

supervising their work and the Secretary to the Delhi Administration in the Department of Law exercises scant control. This is a major drawback in the system and one that brings about incalculable damage to the quality of work. Serious attention needs to be paid to streamline procedures in this regard. Emolument wise the prosecutors in Delhi do not suffer from any serious disability.

MORE RESPONSIBLE BAR

It can be seen from the preceding sections that defence advocates have a marked responsibility in causing delay in the disposal of criminal cases. A large majority of the opinionnaire respondents feel that defence advocates indulge in lengthy and frivolous cross-examination and arguments, suborn prosecution witnesses and too often seek adjournments, which can be avoided without jeopardising the interests of their clients. The observation by the researchers and the examination of case records abundantly support this. Reasons adduced by them for seeking adjournments are either that they are busy in some other court, or out of station, or are in bad health or have not prepared the case. Without doubting the genuineness of grounds, it has to be inferred that these advocates take on many more cases than they can properly handle. With due regard for the efforts usually made by defence advocates to protect the interests of their clients, it has to be appreciated that law and the criminal justice system have a social responsibility. While looking after the interests of their individual clients (and incidentally, their own), lawyers have to be made aware of their responsibility to the criminal justice system in ensuring speedy justice and societal interests. One of the ways in which this can be ensured under the existing dispensation is for presiding officers in courts to be firm when unjustifiable requests for adjournments come from lawyers.

To deal with this situation. professional organisations like the Bar Council and Bar Associations can also play a meaningful role. They may well prescribe some limits on cases to be taken on by an advocate at a given time. Secondly, these organisations could serve as centralized exchange through which the defence advocates may be engaged. The Government can also play an important role in this respect by creating a pool of paid defence advocates. At any rate, defence advocates would do well either to limit the number of cases they take or alternatively to have a sufficient number of juniors to assist them.

COPYING AND RECORD KEEPING FACILITIES

The earlier discussion on existing copying facilities and conditions of record rooms goes to make a strong case for reorganising these important

components of the court-system. With regard to copying facilities, there is no alternative except the use of modern time-saving machines. For the record room, the training of record clerks in techniques of modern record keeping is urgently called for along with a corresponding support of material facilities for storage and retrieval of records.

DISCIPLINE AMONG COURT STAFF

Among the court staff the presiding officers and stenos were found (Chapter II) to be relatively unpunctual. But the behaviour of other court staff cannot be termed as disciplined. Surprise inspections and other steps like forming vigilance cells need to be taken by the judicial administrators to instil a sense of integrity, punctuality and discipline among the court staff.

PAY SCALES

During the observation, quite a few of the subordinate court officials were found accepting illegal gratification. It is generally agreed (though there are exceptions) that an adequately paid person feels more secure and satisfied and is less corruptible. Therefore, there is need for an urgent upward revision of the emoluments they are drawing. This has a direct bearing on the problem of delay. For instance, 'grease money' can either lead to swift progress of a case or can be utilized to get the case prolonged. In any case, it goes to affect a large number of cases. Besides, the housing problem of court officials needs immediate attention (Law Commission's Report 1978).

PRESENCE OF THE ACCUSED

The absence of the accused has been identified as one of the main reasons for delay in a number of cases. This factor needs serious consideration. At present, the presence of the accused is essential (unless dispensed with by the court) for the case proceedings. It is felt that in a number of instances it can be dispensed with, especially where an advocate is engaged in the case. This is a point on which the judicial officers should be able to work out an appropriate strategy.

BAR AND JUDICIARY

One of the items in the opinionnaire was, "Why in your opinion should the judicial officers go along with defence advocates in granting adjournments ?" It is interesting to note that a number of respondents replied that the judicial officers generally do not go along with advocates out of their own volition but at times they **have to**. The unanimous reason adduced for this

is the reluctance to displease the senior members of the bar because of their connections with higher-ups in the judicial hierarchy and the possibility of these senior advocates being appointed as judges of the High Court. It has been reported that when they appear in lower courts senior advocates directly or indirectly convey their connections. It is common to hear remarks like "The other day I was talking to Justice so and so at a tea-party and he was of the opinion...'. These facts in judicial goings-on need consideration at the highest level in view of the importance attached in this Country to the independence of the judiciary.

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