

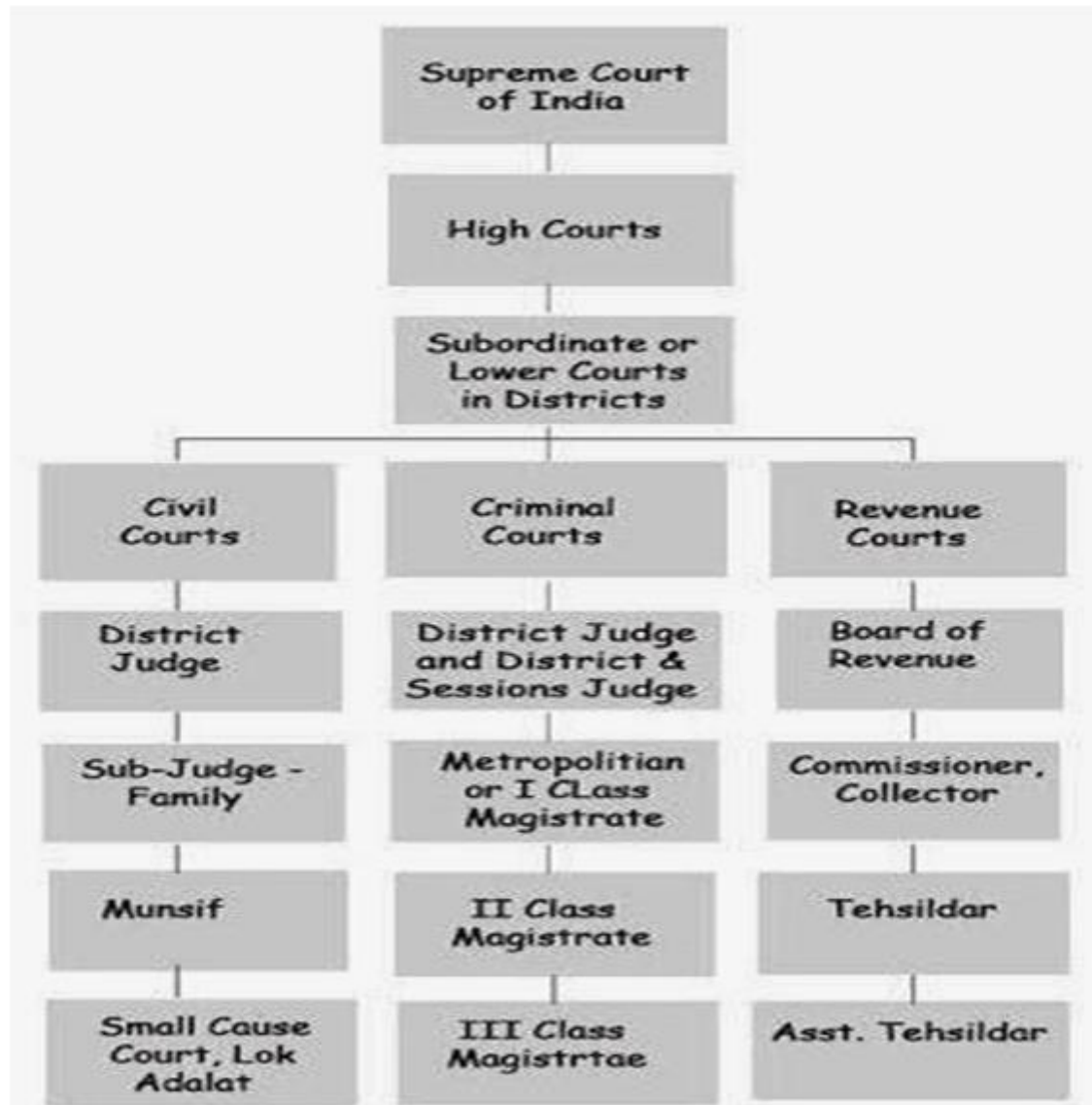
JUSTICE DELIVERY SYSTEM



WHY JUSTICE DELIVERY SYSTEM NEEDED?

- Administration of justice is the most essential function of the state.
- The preamble to the Constitution of India secures to its citizen, social, economic and political justice.
- Power is exercised by the state through judiciary to enforce rights and punish wrongs.
- Various levels of judiciary in India – different types of courts, each with varying powers depending on the tier and jurisdiction bestowed upon them. Its an Integrated judicial system with **broadly three - tier divisions**. They form a strict hierarchy of importance, with the **Supreme Court of India** at the top, followed by **High courts** of respective states with district judges sitting in **District courts** and at the bottom.

HIERARCHY OF COURTS



Jurisdiction of the Supreme Court

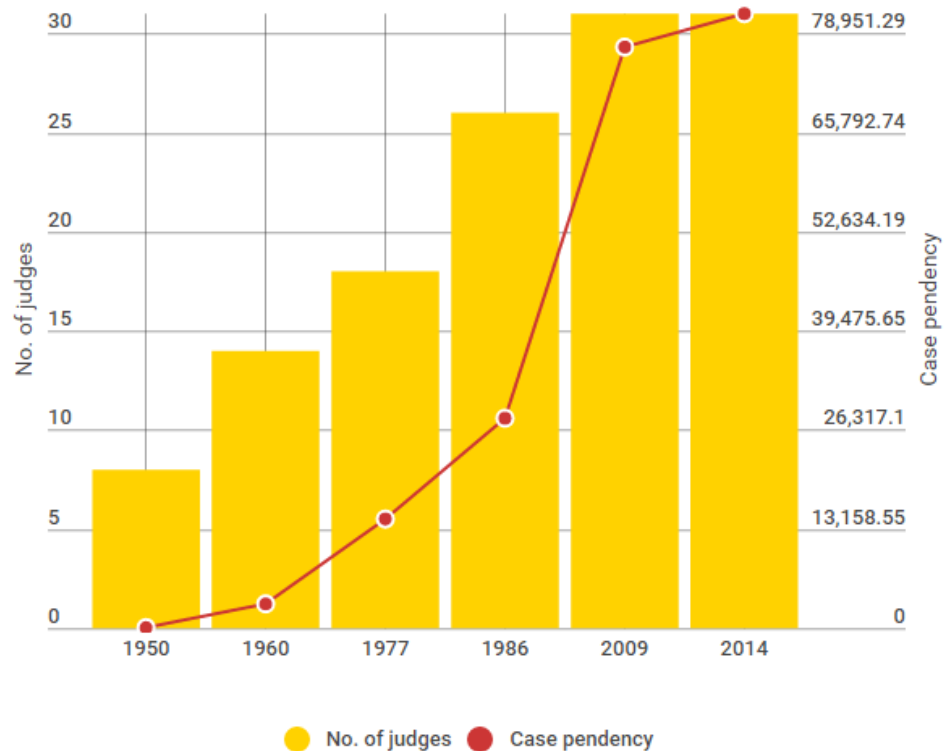
- **Court of Record. Has power to punish for contempt. (A.129)**
- **Original Jurisdiction. (A.131)**
- **Highest Court of Appeal in the country. (A.132,133,134 & 136)**
- **Writ jurisdiction.(A.32)**
- **Advisory Jurisdiction.(A.143)**
- **Law declared by the Supreme Court binding on all Courts in India.(A.141)**

PENDENCY IN LITIGATION

- The total number of pending cases in the Supreme Court as on November 30, 2014, was 78,951.

Supreme Court's pendency in cases.

The 'impossible burden' of Indian judiciary



PENDENCY IN LITIGATION

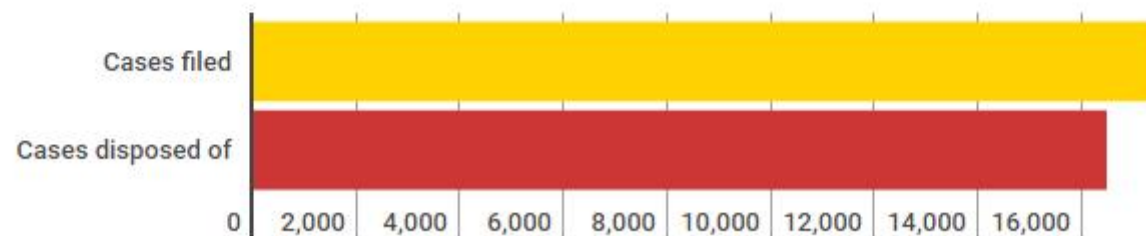
”

If litigation has grown phenomenally like this at the apex level, you can just appreciate what is happening at the trial courts...

Chief Justice Tirath Singh Thakur



Cases filed in the SC in the past four months



PENDENCY IN LITIGATION



10

Judges in India for every million of its population



50

The recommended number of judges per every million of the population.



40,000

The number of judges recommended by the Law Commission of India in 1987 to tide over the problem of pendency.



25 crore

Population increase between 1987 and 2016



2061

The average number of cases disposed of by any Judge, right from a Munsiff court to the Supreme Court

- Damini

FACTORS FOR DELAY IN JUDICIAL PROCEEDINGS

- The problem of delays is not a new one – it is as old as the law itself.
- There are around 21.3 million cases currently pending in various courts in India including the **Supreme Court**.
- If the nation's judges attacked their backlog non-stop without any break for sleeping or eating and closed 100 cases an hour, then also it would take more than 35 years to catch up.

THE FACTORS RESPONSIBLE:

- Very poor judge: population ratio (lowest in the world)

Country	No of judges/million
Australia	41
Canada	75
England	51
USA	107
India	13

- Under resourced and over burdened system

court	Vacant posts for judges
Supreme Court	00
High Court	284
District Court	3393

- A judge has 30+ cases to handle in comparison to his human capacity of handling 15 cases a day.

- Frequent adjournments due to inexplicable reasons.
 - Two major amendments to the Code of Civil Procedure in 1999 and 2002- specified time frames vis-à-vis completion of various processual steps in civil proceedings.
 - The amendment in 1999 fixed an upper limit of 3 adjournments during the hearing of a suit.
 - Some judges are very liberal in granting adjournments.

- Ineffective / unethical lawyers.
 - They indulge in lengthy oral arguments just to impress their clients.
 - Known to take adjournments trivial reasons also.
 - Take more cases in hand than they can handle.
 - Often resort to strikes.

- Uncalled for litigation
 - 90% of courts time and resources are consumed in attending to uncalled for litigation.
- Poor infrastructure
 - absence of computerised records.
 - need for a data base
 - delay in the clerical proceedings of the court.
 - no fixed period for disposal by any Act or Code.

- Delay on part of investigating agencies.
 - Witness hostile
 - Poor scientific infrastructure for investigation
 - Delay in receiving of chargesheet.

- Incompetent judges.
 - Lack of punctuality, laxity and control over case files and court proceedings.
 - Some judges come to court without even reading the case files.

CHANDIGARH LEADS IN AVG DISPOSAL

State	Judges Per Million Population	Avg Disposal/ Judge/Year	Cases Pending*
Delhi	47.3	1,250	32,200
Gujarat	32.1	934.7	35,500
Chandigarh	28.4	4,866	34,400
Kerala	13.7	3,028	40,300
UP	10.5	1,813	28,000
West Bengal	10.4	1,222	28,700

Source: Law ministry

*Per million population

84% OF CASES PENDING

Duration of incarceration before undertrials get bail

0-3 months	1,05,457 (37.9%)
3-6 months	59,344 (21.3%)
6-12 months	49,155 (17.6%)
1-5 years	61,500 (22.1%)
Over 5 years	3,047 (1.1%)

➤ Over **84%** criminal cases are pending trial in courts

Source: NCRB

➤ Over **60%** of cases take more than a year for trial to be completed

➤ **1.7 lakh** cases take from five to 10 years for the trial to be completed

ALTERNATIVE DISPUTE RESOLUTION (ADR)



Think of a dispute that you have been involved in.....

How was that dispute solved.....



- Alternative Dispute Resolutions (ADR) is out of court settlements which are informal in nature.

- Its not something new to us. Do we remember.....

Panchayats in rural India??

- **Not Khap Panchayats!!**

Alternate Dispute Resolution

- ADR is more effective as it is an amicable solution and both parties are **in win – win position** and brings about harmonious relationship between both the parties unlike in the conventional courts, *thus it is permanent solution to any dispute.*
- Lok Adalats, Family Courts, Gram Nyayalayas etc.
- **Constitutional basis of Articles 14 and 21**
- To achieve **the Directive Principle of State Policy** relating to **Equal justice and Free Legal Aid** as laid down under **Article 39-A** of the Constitution.
- **Alternative Dispute Resolution are Arbitration and Conciliation Act, 1996 , Legal Services Authorities Act, 1987 and Sec 89 of CPC, 1908.**

ALTERNATIVE DISPUTE RESOLUTION (ADR) METHODS



Negotiation

Negotiation involves two parties discussing and compromising to obtain an agreed solution

Negotiation is usually carried out without legal representatives, but each party can take their own legal representation to assist



Negotiation is not binding

Mediation

Mediation involves an impartial third party who listens and directs discussion but does not suggest outcomes.

Mediation is voluntary

All parties
have their say

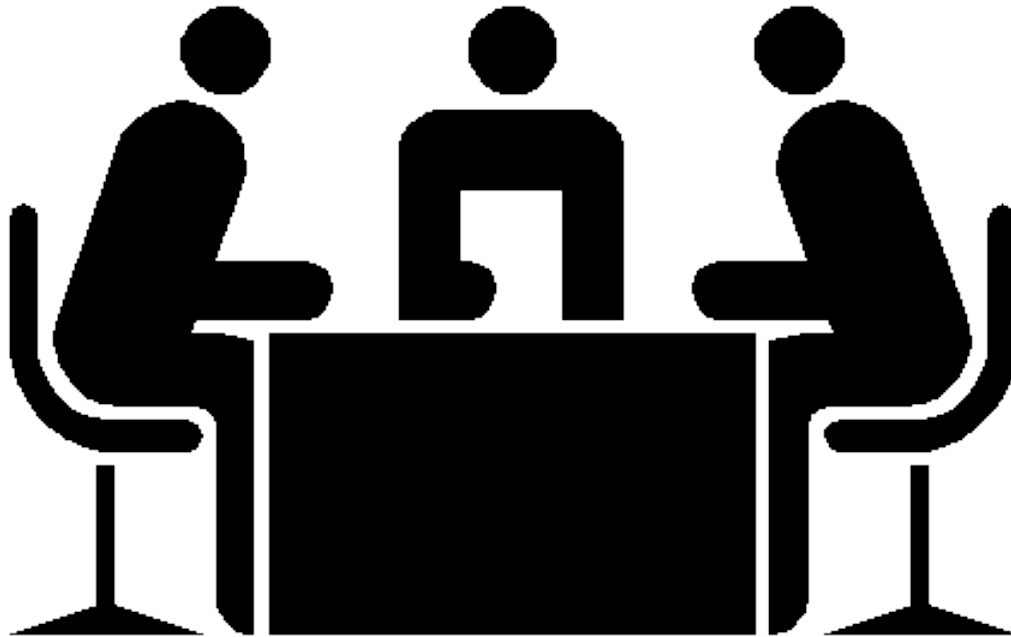


Atmosphere is
informal

Mediation is not binding

Conciliation

Conciliation involves a third part, who may make suggestions to the parties.



The decisions are not binding

Arbitration

Arbitration involves an independent third party who actually makes suggestions and actually imposes a decision on the parties.



Arbitration is binding

Advantages of ADR

Often takes less time than court

Generally cheaper than litigation

Less formal than courts

Confidential, unlike a court, which is usually open to the public

Both parties can come away from the process feeling as if they have won

Held at more suitable venues

Limitations of ADR

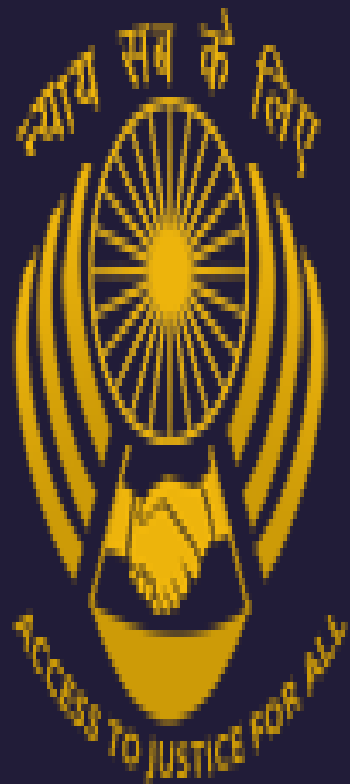
- **Not suitable for all disputes** [eg: disputes where there is evidence of a gross imbalance of power]
- **Decisions are not legally binding (except Arbitration)**
- **Dispute may still end up in Court**
- **Need both parties to voluntarily participate**

ADR: Hurdles to Overcome

- **Attitude**:- The spirit of ADR mechanisms is to create a WIN-WIN situation, but the attitude to people is changing it into a WIN-LOSE situation, which is not very different from a litigation.
- **Lawyer's Interests**: Lawyers and clients often have divergent attitudes and interests concerning settlement. [attorney who is paid on an hourly basis stands to profit handsomely from a trial, and maybe less interested in settlement than the client].
 - ✓ **Remember Gandhiji !!**
- **Legal Education**: Law schools train their students more for conflict and litigation, than for the arts of reconciliation and accommodation and therefore serve the profession poorly.
 - ✓ Legal education and law schools should focus on the arts of conciliation and negotiation and not merely on litigation.

ADR: Hurdles to Overcome

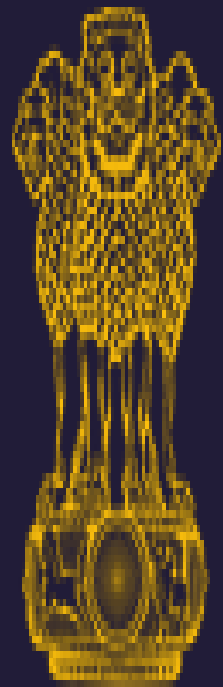
- **Corruption:** ADR mechanisms have a very great risk of being ridden by corruption. For instance, in cases of negotiation between a rich educated person and poor illiterate man over a land dispute, chances of the negotiator being bribed by the rich person is very high.
- **Ignorance:-** ADR provisions are well known only in the big business circles. Most of the educated elite are also unaware of the availability and possibility of such mechanisms in India, let alone the rural sector.
 -
 - ✓ The urban sector which has a higher literacy rate could be reached by inserting slides in movie theatres, having advertisements in television channels and newspapers, conducting periodical seminars and having a dedicated helpline.
 - ✓ Gram Sabha, NGOs, cultural festivals etc in rural areas.



NALSA

National Legal Services Authority

राष्ट्रीय विधिक सेवा प्राधिकरण



सत्यमेव जयते

The particulars of organizations, functions and duties

- To provide **free Legal Services** to the weaker sections of the society and to **organize Lok Adalats** for settlement of disputes.
- At State level, **State Legal Services Authority** has been constituted to give effects to the policies and directions of the NALSA and to give free legal services to the people and conduct Lok Adalat in every State.
- At district level, **District Legal Services Authority** has been constituted to implement legal services programmes at district.
- NALSA is **headed by the Chief Justice of India**. Similar mechanism at state and district level.

Free Legal Services

- Payment of court fee, process fees and all other charges payable or incurred in connection with any legal proceedings;
- Providing Advocate in legal proceedings;
- Obtaining and supply of certified copies of orders and other documents in legal proceedings;
- Preparation of appeal, paper book including printing and translation of documents in legal proceedings etc.
- Prelitigation settlement by mediation/conciliation.

Eligible persons for getting free legal services

- Women and children
- Members of SC/ST
- Industrial Workmen
- Victims of trafficking in human beings or beggars
- Victims of mass disaster, violence, flood, earthquake, industrial disaster etc.
- Disabled persons
- Persons whose annual income does not exceed Rs.50,000/-.

Free Legal Services can be availed from:

- Supreme Court Legal Services Committee.
- State Legal Services Authority constituted in all the States of the country
- High Court Legal Services Committee at High Court Complex in every state.
- District Legal Services Authority at District Courts Complex in every District of the country.



NYAYA DEEP

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LOK ADALAT (PEOPLE' COURT)

Introduction

- ▣ Lok Adalat is a system of alternative dispute resolution developed in India vide legal services authorities act,1987.
- ▣ Lok Adalats settle dispute through conciliation and compromise.
- ▣ Known as “People’s Court”
- ▣ First time held at junagarh(gujarat) in october 1982.
- ▣ Lok adalat accepts the cases pending in the regular courts within their jurisdiction.

Constitution and Functioning

- ▣ Presided over by a sitting or retired judicial officer as the chairman.
- ▣ Two other members, usually a lawyer and a social worker.
- ▣ **No Court Fee**: If the case is already filed in the regular court, the fee paid will be refunded if the dispute is settled at the Lok Adalat.
- ▣ No appeal lies against the order of the Lok Adalat.
- ▣ Main condition for referring a case to the Lok Adalat is that **both parties in dispute should agree for settlement.**

Focus

- ▣ Focus is on **Compromise**.
- ▣ When no compromise is reached, the matter goes back to the court.
- ▣ If a compromise is reached, an award is made and is binding on the parties.
- ▣ The award is final and cannot be appealed because it is a judgment by consent.

Nature of Cases

- Money Dispute.
- Partition Suits.
- Cases seeking damages.
- Matrimonial Cases.



Powers of Lok Adalat

Same powers as that of a civil court.

- The summoning and enforcing the attendance of any witness and examining him on oath.
- The discovery and production of any document;
- the reception of evidence on affidavits;
- The requisitioning of any public record or document or copy of such record or document from any court or office.

Advantages of Lok Adalats

- ▣ No Court Fee.
- ▣ No strict application of the procedural laws and the Evidence Act.
- ▣ Disputes can be brought before the Lok Adalat directly.
- ▣ Award is final without any appeal.
- ▣ Faster and inexpensive remedy with legal status.

ROLE OF INVESTIGATION AND PROSECUTION AGENCIES

THE ROLE OF THE PROSECUTION

- Any crime committed is not merely against the victim, but against the social order – Philosophy of Prosecution
- In India, we have a public prosecutor who acts in accordance with the directions of the judge. Normally, the control of entire trial is in the hands of the trial judge.
- The performance of the prosecutorial wing has a direct bearing on the pace as well as quality of justice being rendered by courts.
- Often referred to 'ministers of justice' and 'gatekeepers of the criminal justice process' ([197th report](#)), public prosecutors (PPs) represent the interests of the state before the courts

- Under Indian law, the prosecutor's role comes into play after completion of the investigation and once the matter has been admitted before the court- unlike in the US
- The responsibilities of PPs and their duty to act in an impartial, truthful and fair manner.
- They do not work for conviction. They work to represent the state.
- But these expectations need to be weighed against the ground realities in which the prosecution system operates.
- Problems in the selection and training of PPs, their poor service conditions and lack of independence and supervision- the weakest link?

RECENT IMPROVEMENTS IN PROSECUTION

- Recent developments include the introduction of an e-Prosecution system in Madhya Pradesh to streamline and manage the workflow of PPs in the state
- A slew of changes announced by Maharashtra to boost their conviction rates.
- Securing greater independence for the Directorate of Prosecution (DoP)
- Evolving a court monitoring system
- A suggestion of allowing the police to have a direct say in the appointment of PPs- Goes against the well established principle of independence of the prosecution from police control.

- The Code of Criminal Procedure (CrPC) speaks of four categories of prosecutors –
 - PPs
 - Additional PPs
 - Assistant PPs for magisterial courts
 - Special PPs -appointed under exceptional circumstances.
- Appointment of PPs and additional PPs at the district level can be done in two ways –
- 1) On tenure basis from a panel prepared by the district magistrate in consultation with the sessions judge
 - 2) From a regular cadre of prosecutors maintained by the state
- Both methods have pros and cons
 - The proposal for exclusive cadre appointments, however, turned out to be a non starter.

- The guiding policy in Maharashtra is "*To secure maximum conviction in criminal cases in all courts*", which explains the nature of changes being adopted by the state.
- Practices also differ on where the DoP is placed - under the home department or the law department; who heads it - judicial officer, bureaucrat (Haryana), prosecutor (Delhi) or police officer (Tamil Nadu) and the scope of the DoP's powers.
- In a feeble effort to streamline these systems, the CrPC was amended in 2005 to say that the state governments *may* establish a DoP to be headed by an experienced advocate who should function under the administrative control of the state's home department.
- The benign wording of the provision, and the concurrent nature of the subject, have ensured that states continue to exercise their discretion on whether or not to have a DoP and what form it should take.

- The role of the Prosecutor is not to single-mindedly seek a conviction regardless of the evidence but his/her fundamental duty is to ensure that justice is delivered . The Indian judiciary interpreted role, responsibilities and duties of prosecution as follows:
- The ideal Public Prosecutor is not concerned with securing convictions, or with satisfying departments of the State Governments with which she/he has been in contact. He must consider herself/himself as an agent of justice
- The only aim of a Public Prosecutor should be to aid the court in discovering truth. A Public Prosecutor should avoid any proceedings likely to intimidate or unduly influence witnesses on either side.
- Political appointments have been a great hindrance in this direction
 - **Section 24 of Cr.P.C deals with ‘ Public Prosecutors’:**
Section 24 of the CrPC says as to appointment of public prosecutors in the High Courts and the district by the central government or state government.

INVESTIGATION

- Investigation is the prerogative of the police. However, it is generally believed that traditional right of *nolle prosequi* (meaning "be unwilling to pursue") is available to the prosecutor.
- Can be made by a prosecutor in a criminal case either before or during trial, resulting in the prosecutor declining to further pursue the case against the defendant. Courts seldom challenge applications for *nolle prosequi*.
- The declaration may be made because the charges cannot be proved due to evidence too weak to carry the burden of proof, because the evidence is fatally flawed in light of the claims brought

ROLE OF POLICE DURING THE TRIAL

- Serving of summons- Difficulties in tracking and a lot of pendency
- Briefing of witnesses
- False cases and witnesses compromising and turning hostile

INVESTIGATION

- Examination of witnesses
- Collection of evidence
- Arresting accused if prima facie of their involvement in crime is established
- Filing of chargesheet
- The role of police, however, does not end with the filing of chargesheet.
- It also has to deliver summons to witnesses, send relevant case files to the prosecutor on time and to ensure that witnesses are not intimidated or bribed during the trial.

POLICE

Failure to submit charge sheets in time

One Police force and lots of duties and responsibilities

Unable to prevent intimidation, bribery

FSL

Only 25 FSL with 60 experts functioning for the whole country as on March 2014

Lack of appropriate training to handle a crime scene without compromise

Lot of time taken and lack of appropriate ways to protect the evidence

Police Perspective – the Malimath Committee Report

- Excessive workload
- Non cooperative attitude of public at large
- Inadequacy of logistical and forensic backup support
- Interrupting investigation by being withdrawn for
- L&O work during investigation (NPC
- Recommendation)
- Lack of coordination with prosecution

- Movie references:
 - PINK
 - Talwaar

- There is a pressing need for better coordination between the investigation and prosecution wings.
- Basic delineation between Investigation and Law and Order will reduce a lot of burden from the Police
- The DOPs can manage this interface with the police through a formal coordination mechanism that will enable the police to seek legal advice from the prosecution prior to the framing of charges even though they are not statutorily bound to do so

Code of Civil Procedure, 1908

- The **Code of Civil Procedure, 1908** is a Procedural Law related to administration of Indian civil procedure.
- The CPC is composed of two parts
 - First part: Dividend into 158 Sections. Can be amended by the legislature only.
 - Second Part: Divided into 51 Orders and Rules. Can be amended by High Courts.
- The Orders and Rules are to be read along with the Sections. When there is ambiguity in interpretation between the two, the version of the Sections prevails.
- Aim: It consolidates & amends all the procedures to be followed by civil courts in civil Litigation.

THE CIVIL PROCEDURE CODE (AMENDMENT) ACT 2002

- The 2002 amendment to the Civil procedure Code, 1908 (“CPC” in common usage), is the Parliamentary effort at making litigation in the country more effective and speedy
- The Amendment of 2002 comes in the wake of the Amendment act of 1999, which was enacted to reduce the delays, experienced by litigants at various levels.

PRE-TRIAL PROCEEDINGS

- Institution of plaint, along with documents relied on
- Service of summons to the opposite party (defendant) to submit their written statement
- Filing of Defendants written statement

TRIAL PROCEEDINGS

- Hearings in Court ADJOURNMENTS !
 - Presentation of oral arguments
 - Examination in chief cross – examination by the other side. of both parties witnesses.
- Pronouncement of Judgment and Decree/Order
- Revision of Lower courts Order
- Appeal

CrPC

AMENDMENTS

Section 41(a)

**YOU ARE NOT UNDER
ARREST**

- IF THE CONDITIONS IN SECTION 41 ARE NOT METO APPER THEN POLICE OFFICER WILL GIVE NOTICE TO THE PERSON AGAINST WHOM A PARTICULAR COMPLAINT HAS BEEN MADE TO APPEAR B4 HIM AT FIXED TIME AND PLACE....IF THE PERSON DOESN'T COMPLY ,PO CAN ARREST HIM.

41 (B)

PROCEDURE ARREST OF ARREST AND DUTIES OF OFFICER
MAKING ARREST

VIA CRPC ANMENDMENT ACT 2008

AMENDMENT TO SEC 164

- 164 (A) CAME THROUGH CRPC AMENDMENT ACT 2005
- IT GIVES PROCEDURE FOR MEDICAL EXAMINATION OF A RAPE VICTIM
- A RAPE VICTIM SHALL BE EXAMINED BY THE MEDICAL EXPERT WITHIN **24 HOURS WITH HER CONSENT**

- MEDICAL EXPERT WILL GIVE REPORT TO THE IO AND THIS REPORT WILL BE SENT TO THE COURT UNDER SECTION 173

195(a)IPC AND 195(a) CRPC

- 195 (A) IPC STATES THAT THREATENING AND INDUCING A PERSON IS A PUNISHABLE OFFENCE
- 195(A) CRPC AMENDMENT BY ACT OF 2008 PROVIDES PROCEDURE FOR THE WITNESS IN CASE HE/SHE IS THREATENED.

SECTION 198(a)

- PROSECUTION OF OFFENCES UNDER SEC 498(a)
- No court shall take cognizance of offence u/S498(a) except on the basis of a police report or made by the victim herself or by her mother ,father ,brother ,sister etc

PLEA BARGAINING

- Chapter xxiA was added by criminal amendment of act 2005
- Section 265 (a) deals with application of plea bargaining
- It applies when report has been forwarded by SHO u/s 173 alleging an offence u/s which are punishable by death, or imprisonment upto 7 years or more

Where plea bargaining not applied

Affecting socio economic condition of the

Country

Crime against women

Crime against child of <14 year

- 265 (B) talks about application for plea bargaining.....
- Put to court ,court will ask PP and complainant to appear b4 it,examines accused separately in camera and asks both parties to to arrive at a mutual satisfactory disposition
- 265 ©provides for guidelines for mutually satisfactory disposition

Section 357(a)

- Victim compensation scheme
- Inserted by act of 2008
- Formation of district legal service authority or state legal service authority

Modifications in grant of bail to accused

Chapter 33- CrPC- Provisions as to Bail & Bonds

- Sec 436- In what cases bail to be taken
- Sec 436A- Maximum Period for which an under trial prisoner can be detained
- Sec 437 – When bail may be taken in case of non-bailable offence
- Sec 437A-Bail to require accused to appear before next appellate
- Sec 438-Direction for grant of bail to person apprehending arrest
- Sec 439-Special powers of High Court or Court of Sessions regarding bail

Default / Breach of Bail Bond conditions: Procedure to recover

- Sec 440
- Sec 441
- Sec 442
- Sec 443
- Sec 444
- Sec 445
- Sec 446
- Sec 447
- Sec 448
- Sec 449
- Sec 450

Sec 436 : Bail in case of bailable offence

- Any person arrested for bailable offence when arrested without warrant, appears before a court for bail, shall be released on bail provided he is indigent on executing personal bond:
- CrPC (Amendment) Act, 2005 made the following changes:

- (a) for the words "**may, instead of taking bail**",



were substituted
by

"may, and shall, if such person is indigent and is unable to furnish surety, instead of taking bail"

- (b) in addition to this, following **Explanation** was also inserted:
"Where a person is unable to give bail within a week of the date of his arrest, it shall be a sufficient ground for the officer or the Court to presume that he is an indigent person for the purposes of this proviso."

Sec 436A- Maximum Period for which an **under trial prisoner** can be detained

- Where a person, during the period of investigation, inquiry or trial under this Code of an **offence under any law** (not an offence punishable with death as one of the punishments under that law)

has been detained for a period extending **up to one-half of the maximum period of imprisonment specified for that offence** under that law, **he shall be released by the Court on his personal bond with or without sureties.**

- Further, that **no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.**

Sec 437-When bail may be taken in case of non-bailable offence

- In 1(a) the words

"a cognizable offence punishable with imprisonment for three years or more but not less than seven years"



substituted by

"a non-bailable and cognizable offence"

- (b)a new proviso was inserted

"Provided also that no person shall, if the offence alleged to have been committed by him is punishable with death, imprisonment for life, or imprisonment for seven years or more, be released on bail by the Court under this sub-section without giving an opportunity of hearing to the Public Prosecutor";

Sec 438: Anticipatory Bail

CrPC(Amendment) Act, 2005 made the following changes to 438:

- 1) 438(1) :Where any **person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence**, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he **(MAY) → SHALL** be released on bail;

2) Court to take into consideration, inter alia, the following factors:

- the nature and gravity of the accusation
- the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence
- possibility of the applicant to flee from justice
- where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail
- **where the High Court or Court of Session:**
 - has not passed any interim order or
 - has rejected the application for grant of anticipatory bail

CrPC(Amendment) Act, 2005 **inserted** the following sub section

- 438(1A): Where the Court sends a show cause a notice (not less than seven days notice) with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with **a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.**
- 438(1B) : **presence of the applicant** seeking anticipatory bail **shall be obligatory at the time of final hearing of the application** and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary **in the interest of justice."**

CaseLaw: Sanjay Chandra vs CBI, 2011 (2G Scam)

- Sanjay Chandra – Co accused of A. Raja
- Speaks out the **Object of Bail**
 - to **secure the appearance of the accused** person
 - **neither punitive nor preventative**
- Explicitly speaks out :
 - the principle **that punishment begins after conviction**
 - that **every man is deemed to be innocent until duly tried and duly found guilty**
- **Bail is a norm, denial of bail is exception**

- 437 and 439 –
 - **Prejudices may be avoided** in deciding bail matters
 - Public scams, scandals and heinous offences – **Popular pressure and public sentiments not to affect justice delivery and curtailing the liberty of individual**
 - Bail not to be denied **to teach lesson to a person** whose **offence is yet to be proved**
 - **Conditional bail** : solution

Considerations made in the case

- `the seriousness of the charge`
- offences alleged → economic offences
- resulted in huge loss to the State exchequer
- contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation
- other factors also to be taken note of → the punishment that could be imposed after trial and conviction,
- if only the gravity of offence is the test, → we would not be balancing the Constitutional Rights
- Provisions of CrPC confer **discretionary jurisdiction on Criminal Courts** to grant bail
 - since the jurisdiction is discretionary, it has to be exercised with great care and caution
 - by balancing valuable right of liberty of an individual and the interest of the society in general

- “In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system.”
- It ignores the requirement :- “a man shall be considered innocent until he is found guilty”
- If such power is recognized, then it may lead to chaotic situation
- and jeopardize the personal liberty of an individual - A 21 Constitution

THANK YOU