Writ Petition (Civil) No. 122 of 2008

IN THE SUPREME COURT OF INDIA

(EXTRAORDINARY CIVIL JURISDICTION)

WRIT PETITION (CIVIL) NO. 122 OF 2008

IN THE MATTER OF:

Janhit Manch, A Society for Good Governance,
(A Registered Society and Trust)
Through Its President, Mr. Bhagwanji Raiyani
Kuber Bhavan, Bajaj Road
Vile Parle (West)
Mumbai – 400 056 …Petitioner 1

Common Cause
(A Registered Society)
Throughi its Chief Executive, Mr. Kamal Kant Jaswal
5, Institutional Area, Nelson Mandela Road
Vasant Kunj, New Delhi – 110070 …Petitioner 2

Ravi Goenka, FCA
Goenka House, A-58 Shanti Path,
Tilak Nagar, Jaipur 302 004 … Petitioner 3

Lok Sevak Sangh
Through Its Working Chairman, Mr. S.D. Sharma
Lajpat Bhawan, Lajpat Nagar IV
New Delhi – 110024 …Petitioner 4

VERSUS

Union of India
Through the Secretary, Department of Justice,
Ministry of Law & Justice,
4th Floor A Wing, Shastri Bhavan
New Delhi – 110001 …Respondent

WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF INDIA TO ENSURE FUNDAMENTAL RIGHT TO SPEEDY DISPENSATION OF JUSTICE

To
The Hon'ble Chief Justice and His Companion Justices of the Supreme Court of India, New Delhi

1. The present writ petition has been filed under Article 32 to seek time-bound and effective implementation of various judicial directions and laws in order to give effect to the fundamental and constitutional right to speedy dispensation of justice guaranteed to the citizens of India under Articles 21, 14, 19, and the Preamble of the Constitution of India, and, to enforce the Constitutional obligations of State under Article 39A of the Constitution of India.

2. Petitioner 1, Janhit Manch, is a non-political forum, established as a society in 2001, and registered as a society and trust in 2002. It has espoused the cause of 'good governance' and has launched a project 'Save Judiciary - Save Nation', specifically to address the problems of judicial delays and to campaign and advocate strengthening of the judiciary in this light. It is a prominent Non Governmental Organization in Maharashtra and has filed several public interest litigations. Petitioner 2, 'Common Cause', is a registered society, that was founded in 1980 by the late Mr. H. D. Shourie for the express purpose of ventilating common problems of the people and securing their resolution. It has brought before this court various constitutional issues and has established its reputation as a bona fide public interest organization for taking up matters of general public importance. Petitioner 3, Ravi Goenka is a citizen of India, who, a Chartered Accountant by qualification and training and while holding a license to practice in the U.K., has today, leveraged his international experience along with his local experience and understanding, to become an education-provider in Jaipur. He has relocated to India, to contribute his skills in this country. Petitioner 4, Lok Sevak Sangh is a voluntary organization of non-party workers sponsored by 'Servants of the People Society founded by Lala Lajpat Rai in 1921 and inspired by Mahatma Gandhi, was founded in 1975-1976 in Delhi, and is now a sister organization of Transparency International. Petitioner 4 stands for a democratic and secular State and has subscribed to the ideals and objectives in the Preamble to the Constitution of India viz. – Justice, Liberty, Equality and Fraternity for all its citizens. Its objective is to resist injustice and exploitation, and for defending, at all cost, democracy, based on rule of law, independence of judiciary, freedom of press, free and fair elections and above all, the freedom and dignity of the individual and the civil liberties of the people of India, without seeking any political office or power. *Profiles of Petitioners 1-4 annexed as* ***Annexure 1, Colly.***

3. The Petitioners' grievance is that there are inordinate delays in the dispensation of justice in this country today, and these delays deny litigants of their fundamental right to justice and its speedy dispensation.

4. The Petitioners' grievance is also that the impact of these delays and the denial of justice - is the cumulative loss of public confidence in the judiciary, and a resort to lawlessness

and violent crime as a method of negotiating disputes. Even judges of this very Court have attributed the deteriorating law and order situation in this country to the failure in the effective and timely delivery of justice, rendering citizens with little alternative but to take the law into their own hands. *Copies of articles on judicial delays and violent crime with comments from Supreme Court benches, and the Chief Justice of India, as well as by retired judges from the Supreme Court annexed as* ***Annexure 2, Colly.***

5. Aggrieved at the constant violation of fundamental and constitutional rights and at the growing loss of public confidence in the judiciary accompanied by violence and lawlessness, the Petitioners have come before this Court in a writ petition under Article 32 of the Constitution of India.

6. Although directions have been passed by this Court to increase judge strength and commensurate infrastructure, and although several laws have been enacted to cut down the misuse of procedure - in terms of dilatory tactics such as endless adjournments of matters, lengthy arguments and tardy judgments, many of these still await effective implementation.

7. Today, the Petitioners merely seek orders/directions for implementation of past directions by this Court and of laws that have already been enacted by Parliament.

Facts

The material facts that are being brought before this Court are:

Delays, Pendency

8. That justice today, is shut out to most in India. Most citizens, especially the disadvantaged sections, have limited access to justice, due to unclear laws and high costs that act as effective barriers. Unfortunately, those who do venture forth are also, often denied of their right to justice. One of the major causes for this is known to be 'delays in the dispensation of justice'.

9. That "*Justice delayed is justice denied*", as repeatedly held by this very Court, yet 'delays' continue in matters before the judiciary resulting in huge 'arrears/backlogs/pendency' and repeated violation of fundamental rights of citizens of India.

10. That by 2004, there were about 2.35 crore cases of arrears/backlogs/pendency, and by 2006-07, there were a staggering backlog of 3.00 crore cases across all courts taken together in this country (the lower courts, high courts and the apex court), indicating a rise in pendency in these two years. The work-load far exceeds the existing capacity of the courts. *Data on pendency, from the website of the Department of Justice, Ministry of Law and Justice, under the RTI, Act, 2005, annexed as* ***Annexure 3, Colly****.*

A Bird's Eye View of Pendency, Disposal, Filing & Total caseload in the Year 2004			
Number of	Number of cases	Number of cases	Total load

backlogs (pendency)	disposed of (existing capacity)	filed	
2.35 crore	1.50 crore cases	Exceeds the number of cases disposed of	= 2.35 + 1.50 = 3.85 crore cases

(Data Source: website of Dept of Justice, Min of Law & Justice)

11. That delays, according to the Law Commission of India, arise when disputes are prolonged and not resolved within reasonable time periods. The recommended period of disposal for criminal matters is about 6 months, for civil matters about 1 year and for appeals in different categories, 6 months to 2 years, as recommended by the 77th and 79th Law Commission Reports in 1978 and 1979, respectively. That however, data show that nearly 30% of cases fell into the '3-10 year old' period and 'over 10 year old' period in Delhi and Bihar in 1989. That the 10 oldest cases pending in the Delhi Courts are reported to have languished in pendency for about 40-47 years. *Relevant pages of the 77th (1978) and 79th (1979) Law Commission Reports, with data compiled by Janhit Manch for different states by age of case for the year 1989, along with TOI newsreport dated 28.12.2006 on 10 oldest cases pending in Delhi's lowest courts, annexed as* ***Annexure 4, Colly.***

12. That although the underlying principle of establishing the Law Commission in 1954, was: *"to realize that justice is simple, speedy, cheap, effective and substantial"*, yet despite repeated identification of the problems and clear cut recommendations by the Law Commission over the past 50 odd years, the twin problems of pendency and delays, remains unacceptably large even today.

13. That delays, pendency, sources of delay and recommendations to reduce/eliminate delays have been identified several times over the last 50 odd years, by various legally constituted/ government authorities such as the Law Commission of India, Parliamentary Standing Committees, and other government appointed Committees. That the judiciary has also taken cognizance of the problem - this Court has passed orders and directions to take effective measures to cut down delays, various judges of this Court have identified delays as a serious problem and various Bar Associations have taken serious note of the matter and filed petitions seeking appropriate relief. In spite of this, the delays and pendency continue.

<u>Reasons for Delays, Pendency</u>

14. That some of the reasons identified by the Law Commission are:

a. *Delays in implementation of these recommendations (the Parliamentary Standing Committee on Home Affairs in 2001, in its 85th Report on 'Law's Delays: Arrears in Courts', has recorded that almost 50% of the reports of the Commission are not being implemented),*

b. *Lack of effective will across the board, to institute these reforms including those relating to judicial manpower,*

c. *Reorganization proposals to do with manpower planning being patchwork, ad hoc and unsystematic solutions to the problem,*

d. *Absence of hard technical information and analysis of manpower planning, reinforcing tacit indifference to the situation by all concerned including the judicial administration. Relevant pages from the 120th Law Commission Report (1987) annexed as* ***Annexure 5, Colly.***

15. That there has been a delay in implementing specific directions of this Court in 'All India Judge's Association Vs. Union Of India' (2002) 4 SCC 247 to increase judge strength fivefold and fill up vacancies in a five year period, i.e. by 2007. These directions in turn are based on recommendations by the Law Commission in its 120th Report in 1987, and subsequently, by a Parliamentary Standing Committee on Home Affairs in 2001, in its 85th Report. *Relevant pages from 'All India Judges' Association' judgment & Parliamentary Standing Committee Report, annexed as* ***Annexure 6, Colly****.*

16. That the following are specific sources of delays and pendency, and this court's orders and specific laws with regard to them, if implemented in true letter and spirit, can bring down delays considerably:

a. <u>Inadequate number of judges and commensurate infrastructure, including electronic connectivity</u>

i. <u>Inadequate judge strength</u> – That this Court had directed an increase in judge strength from an inadequate 10.5 or 13 per 10 lakh population to 50 judges per 10 lakh population, by 2007, in a phased manner to be determined and directed by the Union Ministry of Law, but this target is yet to be achieved. *('All India Judges' Association', para 25).*

ii. <u>Delay in filling up vacancies</u> – That this Court had directed that all existing vacancies in the subordinate courts at all levels should be filled up if possible by March 31, 2003 in all the States, however, even this direction is yet to be complied with. *('All India Judges' Association', para 25).*

iii. <u>Lack of commensurate infrastructure</u> – That this Court had directed that in order to have additional Judges, not only will the posts have to be created, but infrastructure required in the form of additional courtrooms, buildings, staff etc., would also have to be made available. *('All India Judges' Association', para 25).*

iv. <u>Inadequate electronic connectivity and use of Information Technology</u> – That while a comprehensive five year project for 'Information and Communication Technology (ICT) enablement of Indian judiciary' estimated at Rs. 854 crore was launched by the Government of India, on 5th October 2005, in due recognition to the problem identified by the 124th Report by the Law Commission (1988), and the project worked on by the Indian Institute of Management Bangalore pursuant to a reference made by the First National Judicial Pay Commission, the Asian Development Bank on India Administration of Justice Project 2004, etc., yet some of the Phase 1 deliverables have not yet been completed. That it is therefore, necessary to review whether this project is being implemented as per the proposed 3 phases

of the plan. During the first phase of two years ending October 2007, the following was to be achieved - awareness and introduction of ICT and computer based environment in the judicial system; video conferencing between court and prison at 100 locations, a fully developed and highly informative website www.indianjudiciary.com, creation of Committees to monitor and guide the ICT implementation of Wi-Fi at Supreme Court and High Court premises and creation of Computer room at court complexes. Yet today, even court-orders are frequently not available on the 'courtnic' website or are put up after several weeks of delay, cause-lists are incomplete/erroneous, and are often put up only outside the Court just before the Court commences its proceedings, etc.. The 188th Law Commission Report, 2003 too, recommends use of technological aids such as video conferencing, obtaining digitally signed orders and judgments on the internet, etc. to cut down the need to come to the courts and thus reduce litigation inconvenience and delay. *Copy of relevant pages of 124th & 188th Law Commission Reports and short note on the project along with relevant pages of report by 'E-Committee' on the 'Information and Communication Technology (ICT) enablement of Indian judiciary', annexed as* ***Annexure 7, Colly*****.**

v. Lack of adequate importance given by the Government reflected in poor budgetary support
That paucity of funds has often been stated as a reason for non-implementation of reform. But, lack of resources cannot be a reason for denying justice / any other fundamental right. That the 120th Report of the Law Commission calculated the expenditure incurred in 1984-1985 in its appendices and the expenditure incurred is approximately Rs. 150 crore only. By 2000, the budget estimate by the ministry of Law and Justice was a paltry 215 crores against a gross national product of Rs. 19,02,682 crores, which amounts to approximately 0.01% of the GNP showing the government's apathy towards administration of justice. That during the 10th Plan (2002-2007), the allocation to the judiciary was Rs. 700 crores, which is .078 % of the total plan outlay of Rs. 8,93,183 crores. Such meager allocations are grossly inadequate to meet the requirements of the judiciary. While the expenditure on the judiciary by our country is so low, in Korea it is more than 0.2%, in Singapore it is 1.2%, in the U.K. it is 4.3% and in the U.S. it is 1.4%. That the National Commission to Review the Working of the Constitution has noted that neither had any provision for funds for the judiciary been made under the Five Year Plans for several decades nor had the Finance Commission made any provision to serve the financial needs of the Courts, and that judicial administration in the country suffers from deficiencies due to lack of proper, planned and adequate financial support for establishing more courts and providing them with adequate infrastructure. Yet, according to the 120th Law Commission Report (1987) it costs the nation far more to maintain the present ratio of judges to its population than to plan a quantitative expansion, in the following manner:

i. "The total costs to the exchequer by stay orders or public revenue measure in each decade,
ii. The human rights and dignity costs to people in custody assessed notionally in terms of the right to compensation for unauthorized detention at Rs. 50,000 per unit,
iii. The costs of litigation both to State and private parties
iv. The overall costs of maintenance of law and order
v. All declining respect for the rule of law"

Further, infrastructure could be used in double-shifts and with fast track courts to optimize resource expenditure and allocation.

Relevant pages of annexures from the 120th Law Commission Report, Indian budget in year 2000, budget estimate by Law Ministry, along with relevant pages of speech of Y.K. Sabharwal, former CJI, and article in Human Rights Features of the Asia Pacific Human Rights Network, News articles relating to courts working in double shifts, dated 21.1.2001 & 30.7.2006, annexed as ***Annexure 8, Colly.***

vi. Lack of financial autonomy of the judiciary – That the judiciary has no financial autonomy in allocation of funds. A speech delivered by the former Chief Justice of India in 2006, on 'Delayed Justice' reveals that:

"The expense on the administration of justice in the States is incurred by respective States. Though the judiciary has been held responsible for mounting arrears of court cases, it does not control the resources of funds and has no powers to create additional courts, appoint adequate court staff and augment the infrastructure required for the courts. The High Courts have power of superintendence over the State judiciary but do not have financial power to create posts of subordinate judges of even subordinate staff or to acquire land or purchase buildings for setting up courts or for their modernization… Ideally, the judiciary should have autonomy with regard to these matters. For this, the Government should allocate adequate percentage of its funds for judiciary and all the expenditure on judiciary should come from planned funds….However, the Government has been reluctant to grant even limited financial autonomy to the High Courts. A recently concluded conference of Chief Justices passed a resolution recommending that:

(i) Budgetary demands made by the High Courts which are generally bare necessities need to be accepted ordinarily and allocation made by way of planned expenditure;
(ii) Within the overall budgetary limit the Chief Justice of the High Court should have power to appropriate and reappropriate the funds. Speech of former CJI, Y K Sabharwal annexed as Annexure 9.

b.**Lack of adherence to basic procedures and principles of case-management and disposal**: That the 77th Law Commission Report (1978) had detailed out various sources of delay at various stages in civil and criminal cases respectively, yet many of them are still not implemented *Relevant pages of 77th Law Commission Report annexed as* ***Annexure 10:***

i. Improper management of court diary - That the matter of controlling the court diary and in fixing cases for each working day, is often left to readers, who are not in a position to carefully plan the number of cases pertaining to miscellaneous cases, issue-based cases, and evidence and argument. That the prevailing practice of fixing too many cases where there is no reasonable chance of their being taken up for hearing and the considerable time spent in calling out cases with a view to adjourn them to a future date, are both enormous time-wasters. Referring to the practice of courts fixing more work than they could complete on the ground that if work just sufficient for the day were fixed, some cases might collapse and the presiding officer might thus be left without full occupation, the Rankin Committee as far back as in 1925 observed *"In any case, the principle is*

vicious. It appears to be based upon the idea that the courts may safely ignore the convenience of the public, in order to enable them show a tale of work, which they suppose will be considered satisfactory by the higher authorities. It must be impressed and impressed very clearly that the first consideration should be the convenience of the public and that all other considerations should give way to that". The Law Commission's recommendation in this regard is for the presiding officer to fix the cases for a particular date and while doing so, to ensure that the number is reasonable and such that can be disposed on that date, allowing at the same time a margin for the collapse of one or two cases because of unforeseen circumstances.

ii. Lack of accountability of the court registry and court staff in getting service effected – That delays in service are known to be another major cause of delays, and yet, the court registry is not held accountable for delays in service, and the inefficiency and lack of integrity of the clerical and the process serving staff of the court continue with impunity. For this, the 77th Report has recommended that the Court can readily make use of the provisions of Order 5, Rule 20, CPC for substituted service and suitable administrative supervision of the work of process servers, with a system of both incentives in getting personal service effected as well as stringent and prompt action against process servers making false reports by examining the serving officer on oath and making such enquiry as the court deems fit, under Order 5, Rule 19, CPC.

iii. Absence of strict compliance with provisions of the CPC to ensure narrowing and focusing the area of controversy – That the Law Commission has recommended proper use of the provisions of Order 10, CPC relating to examination of parties before framing issues, and reading of the pleadings of both parties by the trial judge prior to framing of issues to cut down delays by narrowing the area of controversy. That laxity in enforcing the provisions of Order 8, R 1, CPC through allowing repeated adjournments is also a reason for delays in filing written statements by the defendant by the first date of hearing. That Order 11 (discovery and inspection of documents), Order 12 (admissions) along with Order 10 (examination of parties), if adhered to, are sufficient to narrow down the area of controversy and cut down the volume of evidence, and thus bring down delays considerably.

iv. Misuse of processes of the court with impunity – That the dilatory tactics of litigants and lawyers, seeking frequent adjournments and delaying in filing documents, delays in serving, evading service, etc., prolong matters considerably. That although Order 17, Rule 1, CPC does not allow more than 3 adjournments and is to be read with the proviso to Order 17, Rule 2 where Clause (b) stipulates that no adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party however, in practice, adjournments are sought and obtained at the asking and other delays are being allowed with impunity or at very nominal costs, if any. That this is the situation prevailing in spite of this Court having held in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344, that *"…grant of any adjournment let alone the first, second or third adjournment is not a right of a party. The grant of adjournment by a court has to be on a party showing special and extraordinary*

circumstance. It cannot be routine. While considering prayer for adjournment, it is necessary to keep in mind the legislative intent to restrict grant of adjournments."

v. Government as a party delays matters - That the government is known to be a huge contributor to delays, in matters where it is a party – at various stages – from evading notices, replying to notices and replying without application of mind, unnecessarily appealing even when the laws are clearly in favour of the other side, etc. In Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344, paras 38, 39 this Court has observed and directed "… *Wherever the statutory provision requires service of notice as a condition precedent for filing of suit and prescribed period therefore, it is not only necessary for the Governments or departments or other statutory bodies to send a reply to such a notice but it is further necessary to properly deal with all material points and issues raised in the notice. The Governments, government departments or statutory authorities are defendants in a large number of suits pending in various courts in the country. Judicial notice can be taken of the fact that in a large number of cases either the notice is not replied to or in the few cases where a reply is sent, it is generally vague and evasive. The result is that the object underlying Section 80 of the Code and similar provisions gets defeated. It not only gives rise to avoidable litigation but also results in heavy expenses and costs to the exchequer as well. A proper reply can result in reduction of litigation between the State and the citizens. In case a proper reply is sent, either the claim in the notice may be admitted or the area of controversy curtailed, or the citizen may be satisfied on knowing the stand of the State. There is no accountability in the Government, Central or State or the statutory authorities in violating the spirit and object of Section 80… These provisions cast an implied duty on all Governments and States and statutory authorities concerned to send appropriate reply to such notices. Having regard to the existing state of affairs, we direct all Governments, Central or State or other authorities concerned, whenever any statute requires service of notice as a condition precedent for filing of suit or other proceedings against it, to nominate, within a period of three months, an officer who shall be made responsible to ensure that replies to notices under Section 80 or similar provisions are sent within the period stipulated in a particular legislation. The replies shall be sent after due application of mind. Despite such nomination, if the court finds that either the notice has not been replied to or the reply is evasive and vague and has been sent without proper application of mind, the court shall ordinarily award heavy costs against the Government and direct it to take appropriate action against the officer concerned including recovery of costs from him.*". Yet the Government continues to drag its feet on most matters and often file its responses with total inapplication of mind, with impunity.

vi. Unduly lengthy / prolix examination and cross examination of witnesses – That according to both the 14th and 77th Law Commission Reports, there is a tendency to over-prove allegations in India, and unessential ones at that. That both the Bench and the Bar should be alerted to this, and while the Bar must play a proactive role in being organized with their questions / line of inquiry, the Bench can take a lead role in actively encouraging this and curtailing prolix and repetitive questioning.

vii. Prolix arguments – That in many cases, arguments are unduly prolix. That there can be a system of timing arguments, such as in the U.S., where a maximum period is given to each side to argue their case. That there are two benefits – firstly, counsels come well prepared, and secondly, all cases scheduled in the diary then get heard. The 79th Law Commission Report (1979) on delays and arrears in the High Courts has recommended that a concise written statement setting out briefly the facts giving rise to the dispute, the points at issue, the propositions of law or fact to be canvassed and the authorities relied upon for each proposition and the relief claimed, may be made mandatory. That these statements must be exchanged between the advocates well in advance of the hearing and the judges need not ordinarily permit the advocate to travel outside such a statement or to cite authorities, not included therein, and this in itself would curtail time of the court hearing. The Law Commission Report also cautions that for this to work, the judge concerned must read the said note beforehand.

viii. Arguments, judgment and decree – That the 77th Law Commission Report has recommended that arguments should be heard soon after the close of evidence, as they take much less time than arguments advanced after a long interval, and recommended that the court must insist on the lawyers appearing in the case immediately presenting their arguments upon the conclusion of evidence. That unduly lengthy arguments may be avoided in judgments, and needlessly large number of authorities and lengthy passages from judgments may be avoided. That trial courts judgments should deal with questions of fact by appraising the evidence, relevant statutory provisions and such authorities that have direct bearing on the case. That judgments should be brief and not a show of learning, and yet should also deal with inconvenient contentions and crucial arguments. That Order 20, Rule 1, CPC should be complied with as to the 30 day time period within which the judgment should be pronounced. That Order 20, Rule 6A in preparation of the decree within 15 days should be complied with. Yet many of these recommendations and provisions in the CPC are not complied with on a routine basis. That though the 2002 Code of Civil Procedure (Amendment Act) 2002, Act No. 22 sought to bring a change in the procedure in suits and civil proceedings by way of reducing delays and compressing them into a year's time from institution of suit till disposal and delivery of judgment, yet the revised procedures are not strictly adhered to, with the result that the time taken in cases still runs into years.

ix. Importance of eliminating delays in criminal cases – It is accepted that the importance of eliminating delays is even more in criminal cases, since the decision depends upon oral rather than documentary evidence, and with the passage of time, the memory of witness fades. With the passage of time, apart from the fading of memory, people lose interest in trials that drag on, and the evidence and witnesses are no longer available so that a fair trial is just not possible. Ultimately, if a person who is known to be a criminal goes unpunished even if guilty, it no longer has the required deterrent effect and the result is rampant lawlessness and crime rather than peaceful dignified means of dispute resolution. The crime graph in our country continues to rise. According to the 189th Law Commission Report 2004, today more than 70% of those who are detained in our jails are undertrials whose guilt is yet to be declared. The 189th Report also made the observation that there is a need to fast track criminal cases as *"over two crore cases are pending in*

about 13000 district subordinate courts. About two-third of these cases are criminal cases. And about a million are sessions cases which involve heinous offences such as murder, rape, dacoity, etc. About 30 per cent of sessions cases have been pending for three years or more. When trial gets delayed, witnesses lose interest. They often get coerced and justice becomes a casualty. The conviction rate in offences under the IPC fell from 65 per cent in 1970s to about 40 per cent in 2000. Justice delayed is justice denied. One of the main reasons for delay in administering justice is that the courts have to deal with more cases than their capacity. Result is that courts have no options but to give adjournments. Expeditious trial of cases requires more courts." Relevant pages of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344 annexed as **Annexure 11**.

x. Lack of implementation of specific provisions in the Cr.P.C. to eliminate delays in criminal cases – That although a constitutional bench ruling by this Court specifically points to some provisions in the Cr PC that empower criminal courts and the High Courts to cut down delays, yet these provisions are not complied with to ensure speedy trials in the interest of justice. In *P. Ramachandra Rao v. State of Karnataka,(2002) 4 SCC 578* , this Court has observed that the provisions in the Cr PC that are meant for a speedy criminal trial may be resorted to and can help in saving the accused from prolixity amounting to oppression. These provisions are S 309 (proceedings to be held as expeditiously as possible in any trial and in particular when the examination of witnesses has begun), Explanation 2 to Section 309 (power of the court to impose costs to be paid by the prosecution or the accused in case of adjournment), S 311 (power of Court to summon witness or examine person present at any stage), S 258 (power to stop proceedings in certain cases and pronounce a judgment of acquittal / release the accused). This Court has observed that Explanation 2 to Section 309 and S 258, CrPC are almost never exercised. This Court has indicated that to effectuate speedy trial, powers conferred to the criminal courts u/S 309, 311 and 258 be exercised and that the HC may invoke its power u/s 482 Cr PC to give effect to any order or to prevent abuse of the process of any Court or otherwise to secure the ends of justice, to take care of inordinate or undue delays in criminal matters. The provisions against adjournments under Section 309, Cr PC are in fact, mandatory as held by this Court in State of UP v Shambhu Nath Singh (2001) 4 SCC 667. When witnesses are in court, they have to be examined, except for special reasons. Inconvenience of the advocate cannot be taken as a special reason. Yet these provisions are mostly not adhered to. *Relevant pages of judgments of P. Ramachandra Rao v. State of Karnataka,(2002) 4 SCC 578 & State of UP v Shambhu Nath Singh (2001) 4 SCC 667 annexed as* ***Annexure 12.***

xi. Lack of implementation of this Court's directions and specific provisions in the Cr PC whereby an accused / undertrial may not be detained for longer than specified periods – That although this Court has passed directions in 1980 1 SCC 93 - Hussainara Khatoon v State of Bihar to strictly implement S 167(2) Cr PC and S 167(5) Cr PC whereby an accused may not be detained for longer than 15 days and if the investigation is not concluded in 6 months, then the Magistrate shall order stopping further investigations, unless the officer satisfies the Magistrate that continuation of the investigation beyond 6 months is necessary, these provisions are seldom, if at all, followed. Further, although

the Cr PC Amendment Act, 2005, has enacted S 436 A which stipulates that the maximum period for which undertrial prisoners can be detained is one-half of the maximum period of imprisonment specified for that offence under that law (excluding offences for which the punishment of death has been specified as one of the punishments under that law), yet most undertrials languish in jail for years today. *Relevant pages of judgment in 1980 1 SCC 93 & 1980 1 SCC 98 - Hussainara Khatoon v State of Bihar and S 436A of the Cr PC Amendment Act, 2005 and News article dated September 4, 2007 and Data regarding number of undertrials languishing in jail without trial, obtained from Snapshot 2003, Prison Statistics India, annexed as* ***Annexure 13, Colly.***

xii. Non-implementation of laws on perjury That according to various authorities, lawyers and litigants known to blatantly misrepresent facts, and get away with impunity, and this results in delays as justice is neither done nor seen to be done. Section 193, IPC (punishment for perjury and fabrication of false evidence) provides for both imprisonment and fine, and yet, is seldom invoked. This is quite unlike the situation in the U.S., where the consequences of perjury are serious and where it was a count on which President Clinton was almost impeached and was one of the counts on which President Richard Nixon was impeached, and in the U.K. where well known author and parliamentarian Jeffrey Archer served a long jail sentence for perjury. That it is only recently, in 2005, that this Court convicted a witness Zahira Sheikh for perjury in the Best Bakery case, but this too was an exception and that too, after the witness had changed her statement many times. That most people still get away with inconsistent statements and obvious lies in court, without any consequence at all, with the result that justice is neither done nor seen to be done. *Copies of news articles, write-ups and speech by leading authorities on perjury as a source of delay titled - National Conference on Legal & Judicial Reforms: The Bird's Eyeview on Balance Sheets & Projections, dated September 6, 2002, 'What Did You Say?' dated Mar 12, 2006, 'Perjury in India – Nobody is in the same quiver as Archer', 'Flip-flops may attract perjury charges' dated 9 March 2006, 'Zahira Sheikh's case stresses on enforcing perjury law', dated 24 December 2004, annexed as* ***Annexure 14, Colly.***

xiii. A series of problems resulting from absence of, or delays in presence of various parties That this Court has pointed out some of the major causes of delay in criminal proceedings getting heard in *P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578*, as the following: (*i*) the deliberate absence of witness or witnesses, (*ii*) absence of, or belated service of summons and warrants on the accused/witnesses; (*iii*) absence of, or delay in appointment of, Public Prosecutors proportionate with the number of courts/cases; (*iv*) non-production of undertrial prisoners in the court; (*v*) presiding Judges proceeding on leave, though the cases are fixed for trial; (*vi*) strikes by members of the Bar; and (*vii*) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. This Court has observed that shortage of police personnel and police people being busy in VIP duties or law and order duties which are the usual reasons assigned are for non-service of summons/orders and non-production of undertrial prisoners can hardly be valid reasons. This Court has also lamented the bypassing of merit-based recommendations of, or process of consultation with, District and Sessions Judges in appointments of Public

Prosecutors, etc. and reminded the members of the Bar of their professional obligation – legal and ethical duty to appear in court having accepted a brief for an accused. This Court has stated that *"All these factors demonstrate that the goal of speedy justice can be achieved by a combined and result-oriented collective thinking and action on the part of the legislature, the judiciary, the executive and representative bodies of members of the Bar."* That there are express provisions in the Cr.P.C. granting criminal courts the power to require attendance (S 267, Cr.P.C.), S 270 (officer in charge of prison shall cause the person requiring attendance u/S 267 to be present in court) and S 271 (power to issue commission for examination of witness in prison), etc.. S 284-287 empower the courts to summon witnesses or issue commissions for the examination of witnesses. S61-S69, Cr.P.C. provide for service of summons and S62 (3) requires signature of receipt by the person whom summons are served, S 69(2) for declaring that summons have been duly served on witnesses refusing to take delivery of the summons. These provisions, if complied with, along with a combined will of all parties concerned, would solve the problems of non-attendance/absence. The Law Commission has recommended that chamber/administrative work is to be avoided by judges during court timings, as that affects quantum of disposal and sets a precedent for fellow judges. Chamber work may be attended to outside of court hours.

xiv. The sudden disbandment of specially constituted benches without making alternative arrangements – The Law Commission has pointed while benches are constituted to ensure optimum utilization of judge strength, they are disbanded abruptly without making arrangement for hearing of cases of the same type already on the daily list in the order of their dates of institution. As a result such cases are suddenly taken out of the list altogether, and suddenly, after months or years, suddenly resurface. This results in uncertainty, delay, inconvenience and the cases getting 'older'.

c. **Other sources of delay that have been repeated in P Ramachandra Rao and by other authorities stem from poor resource allocation to the judiciary coupled with the lack of will to institute reform** That other sources of delay pointed out by this court in various judgments include (1) Absence of effective steps towards radical simplification and streamlining of criminal procedure and procedural complexity in general; (2) multitier appeals / revision applications and diversion to disposal of interlocutory matters; and (3) judiciary, starved by executive by neglect of basic necessities and amenities, to enable smooth functioning.

1) Enormous procedural complexity in criminal and civil cases That there is a strong need for rationalizing and streamlining procedures in both civil and criminal cases, so as to cut down the delays, yet it has not been done.

2) Endless appeals – That disposal of cases without deciding the real issue stemming from problems of framing of issues without application of mind, perjury, etcetera result in dissatisfaction with dispute resolution and is one of the causes for endless appeals. That lawyers are also paid per court appearance and therefore, have little incentive to resolve cases. That a detailed study on the institutional impediments obstructing social policy groups from feeling confident enough to turn to the legal process to redress their concerns analyses the problem thus. *"Procedural laws allow lawyers of clients who opposed resolving cases to submit endless*

interlocutory appeals. Because these opposition lawyers are paid per court appearance they have little incentive to resolve cases. These "delay lawyers have become the masters of perpetuation and manipulate the civil and criminal codes to force cases to remain in the system for decades." Relevant pages from the American Asian Review, (2003) annexed as ***Annexure 15.***

d. **Need to use of alternate modes of dispute redressal, pre-litigation measures and plea bargaining**

1. Alternate modes of dispute redressal - That S 89, CPC provides for ADRs (Alternate dispute redressal mechanism) to refer disputes after framing of issues to appropriate ADRs and ADR rules have been formulated in 2005 6 SCC 344, Salem Advocates Bar Assn. V UOI, and that these may be complied with to reduce delay.

2. Plea bargaining - That the provision for plea bargaining may be complied with – where plea bargaining (Chapter 21 A Cr PC) provides for pre-emption of trial on petty offences punishable with imprisonment upto 7 years, through a mutually satisfactory disposition where the court will direct the accused to pay the agreed compensation to the victim and may either release the accused on probation or sentence the accused to up to half the minimum punishment prescribed for the offence in question. Plea bargaining has been rarely used in local courts. Its misuse may be prevented, as, as a precaution, offences affecting the socio-economic condition of the country and those committed against a woman or a child below the age of fourteen, are excluded.

3. Pre-litigation counseling - These are steps taken to refer parties for counseling prior to commencing litigation, especially when there is scope for settlement. These are also particularly relevant for cases arising between government departments, which could be settled outside courts, and would cut down on avoidable litigation.

e.**Filing and admission of frivolous litigation without imposition of costs** – That the 192nd Report by the Law Commission, 2005, has recommended with certain exceptions, the concept of a vexatious litigant and the court declaring a person as such. The Report has concluded its recommendations in the form of a draft bill, The Vexatious Litigation Prevention Bill, 2005, enacted in some states so far. That this Court has directed that reasonable costs be imposed on parties engaging in frivolous litigation, yet costs are not imposed and frivolous litigations continue at the expense of serious matters languishing in the courts. In *Salem Advocate Bar Assn. v. Union of India, (2005) 6 SCC 344* this Court has observed as follows:

"Para 36. Section 35 of the Code deals with the award of costs and Section 35-A with the award of compensatory costs in respect of false or vexatious claims or defences. Section 95 deals with grant of compensation for obtaining arrest, attachment or injunction on insufficient grounds. These three sections deal with three different aspects of the award of costs and compensation. Under Section 95 costs can be awarded up to Rs 50,000 and under Section 35-A, the costs awardable are up to Rs 3000. Section 35-B provides for the award of costs for causing delay where a party fails to take the step which he was required by or under the Code to take or obtains an adjournment for taking such step or for producing evidence or on any other ground. In the circumstances mentioned in Section 35-B an order may be made requiring the defaulting

party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of the suit or the defence. Section 35 postulates that the costs shall follow the event and if not, reasons thereof shall be stated. The award of the costs of the suit is in the discretion of the court. In Sections 35 and 35-B, there is no upper limit of amount of costs awardable.

Para 37. Judicial notice can be taken of the fact that many unscrupulous parties take advantage of the fact that either the costs are not awarded or nominal costs are awarded against the unsuccessful party. Unfortunately, it has become a practice to direct parties to bear their own costs. In a large number of cases, such an order is passed despite Section 35(2) of the Code. Such a practice also encourages the filing of frivolous suits. It also leads to the taking up of frivolous defences. Further, wherever costs are awarded, ordinarily the same are not realistic and are nominal. When Section 35(2) provides for cost to follow the event, it is implicit that the costs have to be those which are reasonably incurred by a successful party except in those cases where the court in its discretion may direct otherwise by recording reasons thereof. The costs have to be actual reasonable costs including the cost of the time spent by the successful party, the transportation and lodging, if any, or any other incidental costs besides the payment of the court fee, lawyer's fee, typing and other costs in relation to the litigation. It is for the High Courts to examine these aspects and wherever necessary make requisite rules, regulations or practice direction so as to provide appropriate guidelines for the subordinate courts to follow."

Yet inane cases against celebrities such as those against actor Khushboo for making a public statement on extra marital sex, Shilpa Shetty for a public embrace with an American actor and against Mandira Bedi for wearing a sari with flags of different nations, etc., continue to be entertained with impunity and with overzealous judicial officers admitting these and then even directing arrests in certain cases. *Copy of relevant pages of Salem Advocate Bar Assn. v. Union of India, (2005) 6 SCC 344, 192nd Report by the Law Commission, 2005, copies of press articles dated May 2007, Jan 2008, April 2007 annexed as Annexure 16, Colly.*

f.**Lack of adequate training and appropriate orientation among judicial officers / judges and lawyers** – That in its 117th Report (1986), on training of judicial officers, the Law Commission begins with these observations: *"Any organization – service-oriented in character – can be appraised in terms of (a) effectiveness in the achievement of its objectives-goals – results, and (b) promotion of internal 'efficiency' in order to achieve the results. What are the goals of objects to achieve which justice delivery system was devised? The Indian Judicial System is admittedly colonial in origin and imported in structure. Without even a semblance of change in the last four decades since independence, in its mode, method of work, designations, language, approach, method of resolving disputes, it has all the trappings of the system established by the foreign rulers."* That India is still trying to operate courts with the same procedures and machinery that were not good enough even in 1906. That both internal efficiency and external effectiveness have been emphasized in the report. The nature and degree of knowledge, skills, ethics and attitude of people have been given importance as well as clarity, appreciation of and commitment to objectives have been emphasized while recommending training to judges and judicial officers by the Commission. That the narrow concept of training a judge to equip day to

day cases and effectively manage his office needs to change to a fresh approach of pre-service and in-service training entailing intensive training entailing procedural familiarity, including recording statements, framing of issues, art of writing orders, art of how to dispose of matters at various stages, etc.. *"The basic aim is to equip them not only with tools to execute their work, but to endow them with vision as to what is expected of the system which they serve. What is meant by justice? What is the decision making process? What are the goals of the Constitution? What is the direction in which the law must move? What does the dictum justice according to law imply? …"* The Commission has encapsulated the minimum requirements to render justice as follows: "*Rendering justice is an art in itself and acquiring rudiments of art needs training. The minimum equipment to render justice requires a keen intellect to sift grain from the chaff, to perceive falsehood, to appraise relative claims, to evaluate evidence, a fair and balanced approach, needs of society, the constitutional goals and above all a keen desire to do justice. None of these aspects are dealt with in the syllabus prescribed at law colleges. If training is imparted to an impressionable mind, not contaminated by some of the prevailing undesirable practices in vogue in the present day Bar, amongst others by judges who have mastered the art of rendering justice, the same an be acquired. "* (Page 17). As far as the syllabus was concerned, to draw up the syllabus, the office of judgeship was described as a multidisciplinary office and accordingly it was recommended that the topics should address the following aspects of judgeship. "*To be a judge worthy of office, the incumbent must know sociology, economics, humanities, constitutional culture, unbiased approach, psychology to understand the litigant and witnesses, decision-making process, modern management techniques and above all, social orientation of rural society, problems of poverty and the problems of the neglected sections of society, such as members of the scheduled tribes, castes and the underdog."* That in view of the facts stated in this petition (supra), it is necessary today to review the syllabi of both in-service and pre-service training to evaluate whether these objectives are being fulfilled. The National Commission to Review the Working of the Constitution (also referred to as the Constitution Commission or NCRWC also recommended in its report in 2002 (i) Intensive training and orientation programmes for the members of the judiciary at all levels at the time of entry, (ii) refresher courses for upgradation of training and orientation programmes at regular intervals during the service for judicial officers from the lowest to the highest courts, (iii) training camps for lawyers for improving their professional skills and responsibilities. *Relevant pages from 117th Law Commission Report (1986) annexed along with* ***NCRCW*** *report of a High Court judge passing orders to send a sessions judge back to the Delhi Judicial Academy to gain basic knowledge of law and its procedures as* ***Annexure 17, Colly.***

g. **Lack of proper tracking of cases and pendency** – That cases are not tracked effectively using established time-planning and tracking techniques and by setting up standards of pendency. That there is a need for dealing with pendency through computerizing and classifying cases by date of institution of the case, and adopting the rule of priority of hearing the oldest case first. That the Woolf Reforms 1996 (U.K.) address the issue of 'Access to Justice' and within that framework, of cutting down on delays by adoption of Information Technology. Three major features of the solution to eliminate pendency through Information Technology may be summarized as below:

a. The case load of every court must be computerized,
b. Similar cases should be bunched and heard together,

c. The rule of priority, viz. of hearing the oldest case first must be applied.

Lack of proper prioritization of cases - Cases requiring urgent attention / priority may be identified, given their urgency (where orders have been passed whereby other proceedings have been stayed, those involving the death sentence, against orders of remands, habeas corpus petitions, or of senior citizens) or their peculiar nature (affecting custody of children, motor vehicle accidents, eviction for bona fide reasons, election matters, etc.) and dealt with on priority basis. *Overview of Woolf Reforms, along with Chapter 21. on Information Technology, annexed as* ***Annexure 18.***

h. **Lack of accountability and transparency in the system** – There is no accountability for delays and there is no recourse/system of redressal either. There is no provision for litigants or lawyers to lodge complaints against delays (or any other grievance) except to file 'early hearing applications', etc. before the very judges who themselves might be partly contributing to the delay.

The petitioners, having researched the matter in great detail, have created a list of various measures that if implemented, would go a long way in solving the twin problem of delays and pendency in civil and criminal cases, and would hugely contribute in the effective and timely dispensation of justice. This list of measures is by no means exhaustive, and may be used as a starting-point while looking at solutions. *List of suggested measures to solve the twin problems of delays and pendency in civil and criminal cases, annexed as* ***Annexure 19.***

Grounds

A. Because justice, and specifically speedy dispensation of justice, is a constitutional and fundamental right of the citizens of India meant to be guaranteed by State under Articles 21, 14, 19, 32, 226, and the Preamble of the Constitution of India, and is a constitutional obligation of State under 39A,
B. Because 'justice delayed is justice denied' as repeatedly held by this Court, and reaffirmed in a constitution bench judgment and neither poverty nor administrative inability can allow the State to deny the citizens of their constitutional and fundamental rights.

Quoted from 2002 4 SCC 578, P Ramachandra Rao v State of Karnataka, what this Court had maintained in Hussainara Khatoon, that:

" It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court in Hussainara Khatoon (IV) 9:

The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure

needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial constraints and its priorities in expenditure, but, 'the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty', or administrative inability. (para 10)"

C. Because timely justice is not delivered in this country, as reflected in about 3.80 crore pendencies/arrears/backlogs today and cases are dragged on for years together, preventing many citizens from ever receiving justice and constantly violating their fundamental rights.

D. Because India is bound by international covenants and declarations adopted and ratified by it, that require delivery of justice to its citizens, yet these are simply not adhered to.

- The Universal Declaration of Human Rights (Preamble, Article 7, 8, 9, 10, 11) and The International Covenant on Civil and Political Rights (Preamble, Articles 2 (2), (3), Art 14) – bind the country to ensure equal rights of men and women, universal respect for and observance of human rights and fundamental freedoms, equality before the law and entitlement to equal protection of the law, right to effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or the law, that no one shall be subject to arbitrary arrest, detention or exile, that no-one shall be imposed with a heavier penalty than the one applicable at the time the penal offence was committed, and to ensure effective remedies to persons whose rights or freedoms recognized have been violated, through determination of such rights by competent judicial, legislative and administrative authorities, and to ensure that competent authorities enforce such remedies when such remedies are granted. *Relevant pages of the UNDHR 1948 and ICCPR* (International Covenant on Civil and Political Rights) *1976 annexed as* ***Annexure 20, Colly****.*

E. Because the citizens of the country are losing faith in the judiciary and resort to lawless, violent and criminal means of dispute resolution,

F. Because this Court has the power and duty under Articles 141, 142, 144 and 145 (1)(c) to pass directions to render justice and enforce fundamental rights, and the Union is obliged to ensure compliance of such orders under Article 256 of the Constitution of India,

G. Because the Petitioners have not filed any other similar petition in this court or in any other court.

Prayer

This Court may therefore be pleased to issue appropriate writs under Article 32,

<u>By directing / ordering the Respondent:</u>

A. To implement the specific directions in the judgment in 'All India Judges Association' (2002) 4 SCC 247:

a. By increasing the strength of the judges from 10.5 per 10 lakh population to 50 judges per 10 lakh population in 5 years,
b. By filling up all existing vacancies in the subordinate courts at all levels in all the States in 1 year, and
c. By appointing as many ad hoc judges as may be necessary to clear the backlog of cases;
d. By putting in place / making available the required infrastructure in order to accommodate all these judges,

B. To review and ensure phasewise implementation of the 5 year scheme for 'Information and Communication Technology (ICT) Enablement of Indian judiciary' launched by the Government of India, on October 5, 2005,

C. To set up a time-bound mechanism to rationalize and streamline court procedure with a view to expediting disposal in both civil and criminal cases and further, and to direct the High Courts to monitor compliance of all the procedural norms for effective and timely dispensation of justice:

a. Such as, ensuring (in civil cases), strict compliance of S 80 CPC, O 5 - R 20 & 19 CPC, O 10 & 8-R1, O 11 & O12, CPC, O 17 R 1 & R2, S 193, IPC, realistic and proper management of cases and court diary, instituting and adhering to timing of examination & cross-examination of witnesses, timing of arguments, and implementing the order passed in Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), (2005) 6 SCC 344, etcetera, and
b. Such as, ensuring (in criminal cases), strict compliance of S 309, 311, S258, Cr PC, and this Court's directions in P.Ramachandra Rao (2002) 4 SCC 578 and Shambhu Nath (2001) 4 SCC 667, and S267, 270, 284-287, Cr PC, S 61-69, Cr PC, and S 167(2) & (5) Cr PC, as per Hussainara Khatoon, 1980 1 SCC 93, and S 436A, CrPC, Chapter 21-A, CrPC, S95 CPC, etcetera.

D. To set up an effective system of prioritization and tracking of cases requiring urgent attention, given their peculiar nature or circumstance, such as matters involving entitlements of senior citizens, custody of children, habeas corpus, death sentence, interim maintenance for women and children, etc.

E. To ensure greater transparency and accountability by setting up a complaints / grievance redressal cell at every court and monitoring and publishing their reports periodically,

F. To review and modify training needs and programmes of judges, judicial officers and lawyers in light of the 117th Law Commission Report and the NCRCW – in terms of internal efficiency and external effectiveness, as well as moving from a narrow approach of day-to-day case handling to one of a vision to render justice based on social needs, constitutional goals and a fair and balanced approach,

G. By passing any other order or direction deemed fit and proper.

Drawn by:

Indira Unninayar, Advocate

Through
Prashant Bhushan,
Advocate
COUNSEL FOR PETITIONERS

Date: .03.2008
Place: New Delhi