CASE NO.:
Appeal (crl.) 535 of 2000

PETITIONER:
P. RAMACHANDRA RAO

Vs.

RESPONDENT:
STATE OF KARNATAKA

DATE OF JUDGMENT: 16/04/2002

BENCH:
CJI, R.C. Lahoti, N. Santosh Hegde, Ruma Pal & Arijit Pasayat

JUDGMENT:

WITH
Crl.Appeal Nos. 536/2000, 537/2000, 538/2000, 539/2000, 540/2000, 541/2000 & 542/2000.

J U D G M E N T

R.C. Lahoti, J.

No person shall be deprived of his life or his personal liberty except according to procedure established by law declares Article 21 of the Constitution. Life and liberty, the words employed in shaping Article 21, by the Founding Fathers of the Constitution, are not to be read narrowly in the sense drearily dictated by dictionaries; they are organic terms to be construed meaningfully. Embarking upon the interpretation thereof, feeling the heart-throb of the Preamble, deriving strength from the Directive Principles of State Policy and alive to their constitutional obligation, the Courts have allowed Article 21 to stretch its arms as wide as it legitimately can. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21. Speedy trial, again, would encompass within its sweep all its stages including investigation, inquiry, trial, appeal, revision and re-trial in short everything commencing with an accusation and expiring with the final verdict the two being respectively the terminus a quo and terminus ad quem __ of the journey which an accused must necessarily undertake once faced with an implication. The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. Myriad fact-situations bearing testimony to denial of such fundamental right to the accused persons, on account of failure on the part of prosecuting agencies and executive to act, and their turning an almost blind eye at securing expeditious and speedy trial so as to satisfy the mandate of Article 21 of the Constitution have persuaded this Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed and the arm of law shall lose its hold. In its zeal to protect the right to speedy trial of an accused, can the Court

devise and almost enact such bars of limitation though the Legislature and the Statutes have not chosen to do so __ is a question of far-reaching implications which has led to the constitution of this Bench of seven-Judge strength.

In Criminal Appeal No.535/2000 the appellant was working as an Electrical Superintendent in the Mangalore City Corporation. For the check period 1.5.1961 to 25.8.1987 he was found to have amassed assets disproportionate to his known sources of income. Charge-sheet accusing him of offences under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 was filed on 15.3.1994. The accused appeared before the Special Court and was enlarged on bail on 6.6.1994. Charges were framed on 10.8.1994 and the case proceeded for trial on 8.11.1994. However, the trial did not commence. On 23.2.1999 the learned Special Judge who was seized of the trial directed the accused to be acquitted as the trial had not commenced till then and the period of two years had elapsed which obliged him to acquit the accused in terms of the directions of this court in Raj Deo Sharma Vs. State of Bihar (1998) 7 SCC 507 (hereinafter, Raj Deo Sharma-I). The State of Karnataka through the D.S.P. Lokayukta, Mangalore preferred an appeal before the High Court putting in issue the acquittal of the accused. The learned Single Judge of the High Court, vide the impugned order, allowed the appeal, set aside the order of acquittal and remanded the case to the Trial Court, forming an opinion that a case charging an accused with corruption was an exception to the directions made in Raj Deo Sharma-I as clarified by this Court in Raj Deo Sharma (II) Vs. State of Bihar (1999) 7 SCC 604. Strangely enough the High Court not only condoned a delay of 55 days in filing the appeal against acquittal by the State but also allowed the appeal itself __ both without even issuing notice to the accused. The aggrieved accused has filed this appeal by special leave. Similar are the facts in all the other appeals. Shorn of details, suffice it to say that in all the appeals the accused persons who were facing corruption charges, were acquitted by the Special Courts for failure of commencement of trial in spite of lapse of two years from the date of framing of the charges and all the State appeals were allowed by the High Court without noticing the respective accused persons.

The appeals came up for hearing before a Bench of three learned Judges who noticed the common ground that the appeals in the High Court were allowed by the learned Judge thereat without issuing notice to the accused and upon this ground alone, of want of notice, the appeals hereat could be allowed and the appeals before the High Court restored to file for fresh disposal after notice to the accused but it was felt that a question arose in these appeals which was likely to arise in many more and therefore the appeals should be heard on their merits. In the order dated September 19, 2000, the Bench of three learned Judges stated:

"The question is whether the earlier judgments of this court, principally, in Common Cause Vs. Union of India (1996 (4) SCC 33), Common Cause Vs. Union of India (1996(6) SCC 775), Raj Deo Sharma Vs. State of Bihar (1998(7) SCC 507) and Raj Deo Sharma (II) Vs. State of Bihar 1999 (7) SCC 604), would apply to prosecutions under the Prevention of Corruption Act and other economic offences.

Having perused the judgments afore-mentioned, we are of the view that these appeals should be heard by a Constitution Bench. We take this view because we think that it may be necessary to sythesise the various guidelines and

directions issued in these judgments. We are also of the view that a Constitution Bench should consider whether time limits of the nature mentioned in some of these judgments can, under the law, be laid down".

On 25th April, 2001 the appeals were heard by the Constitution Bench and during the course of hearing attention of the Constitution Bench was invited to the decision of an earlier Constitution Bench in Abdul Rehman Antulay and Ors.Vs. R.S. Nayak & Anr. (1992) 1 SCC 225 and the four judgments referred to in the order of reference dated 19th September, 2000 by the Bench of three learned Judges. It appears that the learned Judges of the Constitution Bench were of the opinion that the directions made in the two Common Cause cases and the two Raj Deo Sharma's cases ran counter to the Constitution Bench directions in Abdul Rehman Antulay's case, the latter being five-Judge Bench decision, the appeals deserved to be heard by a Bench of seven learned Judges. The relevant part of the order dated 26th April, 2001 reads as under:-

"The Constitution Bench judgement in A.R. Antulay's case holds that "it is neither advisable nor feasible to draw or prescribe an outer time limit for conclusion of all criminal proceedings". Even so, the four judgements afore-mentioned lay down such time limits. Two of them also lay down to which class of criminal proceedings such time limits should apply and to which class they should not.

We think, in these circumstances, that a Bench of seven learned Judges should consider whether the dictum afore-mentioned in A.R. Antulay's case still holds the field; if not, whether the general directions of the kind given in these judgements are permissible in law and should be upheld.

Having regard to what is to be considered by the Bench of seven learned Judges, notice shall issue to the Attorney General and to the Advocates General of the States.

The papers shall be placed before the Hon'ble the Chief Justice for appropriate directions. Having regard to the importance of the matter, the Bench may be constituted at an early date".

On 20.2.2002 the Court directed, "Common Cause", the petitioner in the two Common Cause cases which arose out of writ-petitions under Article 32 of the Constitution, heard and decided by this Court as public interest litigations, to be noticed. "Common Cause" has responded and made appearance through counsel.

We have heard Shri Harish Salve, the learned Solicitor General appearing for Attorney General for India, Mr. Ranjit Kumar, Senior Advocate assisted by Ms. Binu Tamta, Advocate for the appellants, Mr. Sanjay R. Hegde and Mr. Satya Mitra, Advocates for the respondents, Mr. S. Murlidhar, Advocate for "Common Cause" and such other Advocates General and Standing Counsel who have chosen to appear for the States.

We shall briefly refer to the five decisions cited in the order of

reference as also to a few earlier decisions so as to highlight the issue posed before us.

The width of vision cast on Article 21, so as to perceive its broad sweep and content, by seven-Judge Bench of this Court in Mrs. Maneka Gandhi Vs. Union of India & Anr., (1978) 1 SCC 248, inspired a declaration of law, made on February 12, 1979 in Hussainara Khatoon and Ors. (I) Vs. Home Secretary, State of Bihar (1980) 1 SCC 81, that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty, except according to procedure established by law; that such procedure is not some semblance of a procedure but the procedure should be "reasonable, fair and just"; and therefrom flows, without doubt, the right to speedy trial. The Court said __ "No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21." Many accused persons tormented by unduly lengthy trial or criminal proceedings, in any forum whatsoever were enabled, by Hussainara Khatoon(I) statement of law, in successfully maintaining petitions for quashing of charges, criminal proceedings and/or conviction, on making out a case of violation of Article 21 of the Constitution. Right to speedy trial and fair procedure has passed through several milestones on the path of constitutional jurisprudence. In Maneka Gandhi (supra), this Court held that the several fundamental rights guaranteed by Part III required to be read as components of one integral whole and not as separate channels. The reasonableness of law and procedure, to withstand the test of Articles 21, 19 and 14, must be right and just and fair and not arbitrary, fanciful or oppressive, meaning thereby that speedy trial must be reasonably expeditious trial as an integral and essential part of the fundamental right of life and liberty under Article 21. Several cases marking the trend and development of law applying Maneka Gandhi and Hussainara Khatoon(I) principles to myriad situations came up for the consideration of this Court by a Constitution Bench in Abdul Rehman Antulay and Ors. Vs. R.S. Nayan and Ors. (1992) 1 SCC 225, (A.R. Antulay, for short). The proponents of right to speedy trial strongly urged before this Court for taking one step forward in the direction and prescribing time limits beyond which no criminal proceeding should be allowed to go on, advocating that unless this was done, Maneka Gandhi and Hussainara Khatoon(I) exposition of Article 21 would remain a mere illusion and a platitude. Invoking of the constitutional jurisdiction of this Court so as to judicially forge two termini and lay down periods of limitation applicable like a mathematical formula, beyond which a trial or criminal proceeding shall not proceed, was resisted by the opponents submitting that the right to speedy trial was an amorphous one something less than other fundamental rights guaranteed by the Constitution. The submissions made by proponents included that the right to speedy trial flowing from Article 21 to be meaningful, enforceable and effective ought to be accompanied by an outer limit beyond which continuance of the proceedings will be violative of Article 21. It was submitted that Section 468 of the Code of Criminal Procedure applied only to minor offences but the Court should extend the same principle to major offences as well. It was also urged that a period of 10 years calculated from the date of registration of crime should be placed as an outer limit wherein shall be counted the time taken by the investigation.

The Constitution Bench, in A.R. Antulay's case, heard elaborate arguments. The Court, it its pronouncement, formulated certain propositions, 11 in number, meant to serve as guidelines. It is not necessary for our purpose to reproduce all those propositions. Suffice it to state that in the opinion of the Constitution Bench (i) fair,

just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily; (ii) right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial; (iii) who is responsible for the delay and what factors have contributed towards delay are relevant factors. Attendant circumstances, including nature of the offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on what is called the systemic delays must be kept in view; (iv) each and every delay does not necessarily prejudice the accused as some delays indeed work to his advantage. Guidelines 8, 9, 10 and 11 are relevant for our purpose and hence are extracted and reproduced hereunder:-

"(8) Ultimately, the court has to balance and weigh the several relevant factors 'balancing test' or 'balancing process' and determine in each case whether the right to speedy trial has been denied in a given case.

(9) Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded as may be deemed just and equitable in the circumstances of the case.

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

(11) An objection based on denial of right to speedy trial and for relief on that account, should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must, however, be disposed of on a priority basis."

During the course of its judgment also the Constitution Bench made certain observations which need to be extracted and reproduced:-

"But then speedy trial or other expressions

conveying the said concept are necessarily relative in nature. One may ask speedy means, how speedy? How long a delay is too long? We do not think it is possible to lay down any time schedules for conclusion of criminal proceedings. The nature of offence, the number of accused, the number of witnesses, the workload in the particular court, means of communication and several other circumstances have to be kept in mind". (para 83).

".it is neither advisable nor feasible to draw or prescribe an outer time-limit for conclusion of all criminal proceedings. It is not necessary to do so for effectuating the right to speedy trial. We are also not satisfied that without such an outer limit, the right becomes illusory". (para 83)

"even apart from Article 21 courts in this country have been cognizant of undue delays in criminal matters and wherever there was inordinate delay or where the proceedings were pending for too long and any further proceedings were deemed to be oppressive and unwarranted, they were put an end to by making appropriate orders". (para 65)

[emphasis supplied]

In 1986, "Common Cause"__ a Registered Society, espousing public causes, preferred a petition under Article 32 of the Constitution of India seeking certain directions. By a brief order ("Common Cause" A Registered Society through its Director Vs. Union of India & Ors. (1996) 4 SCC 32, hereinafter Common Cause (I)), a two-Judge Bench of this Court issued two sets of directions: one, regarding bail, and the other, regarding quashing of trial. Depending on the quantum of imprisonment provided for several offences under the Indian Penal Code and the period of time which the accused have already spent in jail, the undertrial accused confined in jails were directed to be released on bail or on personal bond subject to such conditions as the Court may deem fit to impose in the light of Section 437 of Cr.P.C.. The other set of directions directed the trial in pending cases to be terminated and the accused to be discharged or acquitted depending on the nature of offence by reference to (i) the maximum sentence inflictable whether fine only or imprisonment, and if imprisonment, then the maximum set out in the law, and (ii) the period for which the case has remained pending in the criminal court.

A perusal of the directions made by the Division Bench shows the cases having been divided into two categories: (i) traffic offences, and (ii) cases under IPC or any other law for the time being in force. The Court directed the trial Courts to close such cases on the occurrence of following event and the period of delay:-
Category (i) : Traffic Offences:

The Court directed the cases to be closed and the accused to be discharged on lapse of more than two years on account of non-serving of summons to the accused or for any other reason whatsoever.
Category (ii) : Cases under IPC or any other law for the time being in force :

The Court directed that in the following sub-categories if the

trial has not commenced and the period noted against each sub-category has elapsed then the case shall be closed and the accused shall be discharged or acquitted __

Nature of the cases	Period of delay i.e. trial not commenced for
Cases compoundable with the permission of the Court	More than two years
Cases pertaining to offences which are non-cognizable and bailable	More than two years
Cases in connection with offences punishable with fine only and are not of recurring nature	More than one year
Cases punishable with imprisonment upto one year, with or without fine	More than one year
Cases pertaining to offences punishable with imprisonment upto three years with or without fine	More than two years

The period of pendency was directed to be calculated from the date the accused are summoned to appear in Court. The Division Bench, vide direction 4, specified certain categories of cases to which its directions would not be applicable. Vide direction 5, this court directed the offences covered by direction 4 to be tried on priority basis and observance of this direction being monitored by the High Courts. All the directions were made applicable not only to the cases pending on the day but also to cases which may be instituted thereafter.

Abovesaid directions in Common Cause-I were made on May 1, 1996. Not even a period of 6 months had elapsed, on 15.10.1996, Shri Sheo Raj Purohit __ a public-spirited advocate addressed a Letter Petition to this Court, inviting its attention to certain consequences flowing from the directions made by this Court in Common Cause (I) and which were likely to cause injustice to the serious detriment of the society and could result in encouraging dilatory tactics adopted by the accused. A two-Judge Bench of this court, which was the same as had issued directions in Common Cause (I), made three directions which had the effect of clarifying/modifying the directions in Common Cause (I). The first direction clarified that the time spent in criminal proceedings, wholly or partly, attributable to the dilatory tactics or prolonging of trial by action of the accused, or on account of stay of criminal proceedings secured by such accused from higher courts shall be excluded in counting the time-limit regarding pendency of criminal proceedings. Second direction defined the terminus a quo, i.e. what would be the point of commencement of trial while working out 'pendency of trials' in Sessions Court, warrant cases and summons cases. In the third direction, the list of cases, by reference to nature of offence to which directions in Common Cause (I) would not apply, was expanded.

In Raj Deo Sharma (I), an accused charged with offences under Sections 5(2) & 5 (1) (e) of the Prevention of Corruption Act, 1947 came up to this Court, having failed in High Court, seeking quashing of prosecution against him on the ground of violation of right to speedy trial. Against him the offence was registered in 1982

and chargesheet was submitted in 1985. The accused appeared on 24.4.1987 before the Special Judge. Charges were framed on 4.3.1993. Until 1.6.1995 only 3 out of 40 witnesses were examined. The three-Judge Bench of this Court, which heard the case, set aside the order passed by the High Court and sent the matter back to the Special Judge for passing appropriate orders in the light of its judgment. Vide para 17, the three-Judge Bench issued five further directions purporting to be supplemental to the propositions laid down in A.R. Antulay. The directions need not be reproduced and suffice it to observe that by dividing the offence into two categories those punishable with imprisonment for a period not exceeding 7 years and those punishable with imprisonment for a period exceeding 7 years, the Court laid down periods of limitation by reference to which either the prosecution evidence shall be closed or the accused shall be released on bail. So far as the trial for offences is concerned, for the purpose of making directions, the Court categorized the offences and the nature and period of delay into two, which may be set out in a tabular form as under:-

Nature of offence	Nature and period of delay
Offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not	Completion of two years from the date of recording the plea of the accused on the charges framed, whether the prosecution has examined all the witnesses or not within the said period of two years
Offence punishable with imprisonment for a period exceeding seven years, whether the accused is in jail or not	Completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period

The consequence which would follow on completion of two or three years, as abovesaid, is, the Court directed, that the trial Court shall close the prosecution evidence and can proceed to the next step of trial. In respect of the second category, the Court added a rider by way of exception stating __ "Unless for very exceptional reasons to be recorded and in the interest of justice, the Court considers it necessary to grant further time to the prosecution to adduce evidence beyond the aforesaid time limit" (of three years). The period of inability for completing prosecution evidence attributable to conduct of accused in protracting the trial and the period during which trial remained stayed by orders of the court or by operation of law was directed to be excluded from calculating the period at the end of which the prosecution evidence shall be closed. Further, the Court said that the directions made by it shall be in addition to and without prejudice to the directions issued in Common Cause (I) as modified in Common Cause (II).

Raj Deo Sharma (I) came up once again for consideration of this Court in Raj Deo Sharma Vs. State of Bihar (1999) 7 SCC 604, hereinafter Raj Deo Sharma (II). This was on an application filed by Central Bureau of Investigation (CBI) for clarification (and also for some modification) in the directions issued. The three-Judge

Bench which heard the matter consisted of K.T. Thomas, J. and M. Srinivasan, J. who were also on the Bench issuing directions in Raj Deo Sharma (I) and M.B. Shah, J. who was not on the Bench in Raj Deo Sharma (I). In the submission of CBI the directions of the Court made in Raj Deo Sharma (I) ran counter to A.R. Antulay and did not take into account the time taken by the Court on account of its inability to carry on day to day trial due to pressure of work. The CBI also pleaded for the directions in Raj Deo Sharma (I) being made prospective only, i.e., period prior to the date of directions in Raj Deo Sharma (I) being excluded from consideration. All the three learned Judges wrote separate judgments. K.T. Thomas, J. by his judgment, to avert 'possibility of miscarriage of justice', added a rider to the directions made in Raj Deo Sharma (I) that an additional period of one year can be claimed by the prosecution in respect of prosecutions which were pending on the date of judgment in Raj Deo Sharma (I) and the Court concerned would be free to grant such extension if it considered it necessary in the interest of administration of criminal justice. M. Srinivasan, J. in his separate judgment, assigning his own reasons, expressed concurrence with the opinion expressed and the only clarification ordered to be made by K.T. Thomas, J. and placed on record his express disagreement with the opinion recorded by M.B. Shah, J.

M.B. Shah, J. in his dissenting judgment noted the most usual causes for delay in delivery of criminal justice as discernible from several reported cases travelling upto this Court and held that the remedy for the causes of delay in disposal of criminal cases lies in effective steps being taken by the Judiciary, the Legislature and the State Governments, all the three. The dangers behind constructing time-limit barriers by judicial dictum beyond which a criminal trial or proceedings could not proceed, in the opinion of M.B. Shah, J., are (i) it would affect the smooth functioning of the society in accordance with law and finally the Constitution. The victims left without any remedy would resort to taking revenge by unlawful means resulting in further increase in the crimes and criminals. People at large in the society would also feel unsafe and insecure and their confidence in the judicial system would be shaken. Law would lose its deterrent effect on criminals; (ii) with the present strength of Judges and infrastructure available with criminal courts it would be almost impossible for the available criminal courts to dispose of the cases within the prescribed time-limit; (iii) prescribing such time-limits may run counter to the law specifically laid down by Constitution Bench in Antulay's case. In the fore-quoted thinking of M.B. Shah, J. we hear the echo of what Constitution Bench spoke in Kartar Singh Vs. State of Punjab (1994) 3 SCC 569, vide para 351, "No doubt, liberty of a citizen must be zealously safeguarded by the courts; nonetheless the courts while dispensing justice in cases like the one under the TADA Act, should keep in mind not only the liberty of the accused but also the interest of the victim and their near and dear and above all the collective interest of the community and the safety of the nation so that the public may not lose faith in the system of judicial administration and indulge in private retribution."

At the end M.B. Shah, J. opined that order dated 8.10.1998 made in Raj Deo Sharma (I) requires to be held in abeyance and the State Government and Registrars of the High Courts ought to be directed to come up with specific plans for the setting up of additional courts/special courts (permanent/ad hoc) to cope up with the pending workload on the basis of available figures of pending cases also by taking into consideration the criteria for disposal of criminal cases prescribed by various High Courts. In conclusion, the Court directed the application filed by the CBI to be disposed of in terms of the majority opinion.

A perception of the causes for delay at the trial and in

conclusion of criminal proceedings is necessary so as to appreciate whether setting up bars of limitation entailing termination of trial or proceedings can be justified. The root cause for delay in dispensation of justice in our country is poor judge-population-ratio. Law Commission of India in its 120th Report on Manpower Planning in Judiciary (July 1987), based on its survey, regretted that in spite of Article 39A added as a major Directive Principle in the Constitution by 42nd Amendment (1976), obliging the State to secure such operation of legal system as promotes justice and to ensure that opportunities for securing justice are not denied to any citizen several reorganisation proposals in the field of administration of justice in India have been basically patch work, ad hoc and unsystematic solutions to the problem. The judge-population-ratio in India (based on 1971 census) was only 10.5 judges per million population while such ratio was 41.6 in Australia, 50.9 in England, 75.2 in Canada and 107 in United States. The Law Commission suggested that India required 107 judges per million of Indian population; however to begin with the judge strength needed to be raised to five-fold, i.e., 50 judges per million population in a period of five years but in any case not going beyond ten years. Touch of sad sarcasm is difficult to hide when the Law Commission observed (in its 120th Report, ibid) that adequate reorganisation of the Indian judiciary is at the one and at the same time everybody's concern and, therefore, nobody's concern. There are other factors contributing to the delay at the trial. In A.R. Antulay's case, vide para 83, the Constitution Bench has noted that in spite of having proposed to go on with the trial of a case, five days a week and week after week, it may not be possible to conclude the trial for reasons, viz. (1) non-availability of the counsel, (2) non-availability of the accused, (3) interlocutory proceedings, and (4) other systemic delays. In addition, the Court noted that in certain cases there may be a large number of witnesses and in some offences, by their very nature, the evidence may be lengthy. In Kartar Singh Vs. State of Punjab (1994) 3 SCC 569 another Constitution Bench opined that the delay is dependent on the circumstances of each case because reasons for delay will vary, such as (i) delay in investigation on account of the widespread ramifications of crimes and its designed network either nationally or internationally, (ii) the deliberate absence of witness or witnesses, (iii) crowded dockets on the file of the court etc. In Raj Deo Sharma (II), in the dissenting opinion of M.B. Shah, J., the reasons for delay have been summarized as, (1) Dilatory proceedings; (2) Absence of effective steps towards radical simplification and streamlining of criminal procedure; (3) Multi-tier appeals/revision applications and diversion to disposal of interlocutory matters; (4) Heavy dockets; mounting arrears; delayed service of process; and (5) Judiciary, starved by executive by neglect of basic necessities and amenities, enabling smooth functioning.

Several cases coming to our notice while hearing appeals, petitions and miscellaneous petitions (such as for bail and quashing of proceedings) reveal, apart from inadequate judge strength, other factors contributing to the delay at the trial. Generally speaking, these are: (i) absence of, or delay in appointment of, public prosecutors proportionate with the number of courts/cases; (ii) absence of or belated service of summons and warrants on the accused/witnesses; (iii) non-production of undertrial prisoners in the Court; (iv) presiding Judges proceeding on leave, though the cases are fixed for trial; (v) strikes by members of Bar; and (vi) counsel engaged by the accused suddenly declining to appear or seeking an adjournment for personal reasons or personal inconvenience. It is common knowledge that appointments of public prosecutors are politicized. By convention, government advocates and public prosecutors were appointed by the executive on the recommendation of or in consultation with the head of judicial administration at the relevant level but gradually the executive has started bypassing the merit based recommendations of, or process of consultation with, District and Sessions Judges. For non-

service of summons/orders and non-production of undertrial prisoners, the usual reasons assigned are shortage of police personnel and police people being busy in VIP duties or law and order duties. These can hardly be valid reasons for not making the requisite police personnel available for assisting the Courts in expediting the trial. The members of the Bar shall also have to realize and remind themselves of their professional obligation __ legal and ethical, that having accepted a brief for an accused they have no justification to decline or avoid appearing at the trial when the case is taken up for hearing by the Court. 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 Bar.

Is it at all necessary to have limitation bars terminating trials and proceedings? Is there no effective mechanisms available for achieving the same end? The Criminal Procedure Code, as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity or laxity at the trial amounting to oppression. Section 309, dealing with power to postpone or adjourn proceedings, provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, and in particular, when the examination of witnesses has once begun, the same to be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. Explanation-2 to Section 309 confers power on the Court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the Courts. Section 258, in Chapter XX of Cr.P.C., on Trial of Summons-cases, empowers the Magistrate trying summons cases instituted otherwise than upon complaint, for reasons to be recorded by him, to stop the proceedings at any stage without pronouncing any judgment and where such stoppage of proceedings is made after the evidence of the principal witnesses has been recorded, to pronounce a judgment of acquittal, and in any other case, release the accused, having effect of discharge. This provision is almost never used by the Courts. In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any Court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 of Cr.P.C. for quashing of first information report and investigation, and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The Constitution Bench in A.R. Antulay's case referred to such power, vesting in the High Court (vide paras 62 and 65 of its judgment) and held that it was clear that even apart from Article 21, the Courts can take care of undue or inordinate delays in criminal matters or proceedings if they remain pending for too long and putting to an end, by making appropriate orders, to further proceedings when they are found to be oppressive and unwarranted.

Legislation is that source of law which consists in the declaration of legal rules by a competent authority. When judges by judicial decisions lay down a new principle of general application of

the nature specifically reserved for legislature they may be said to have legislated, and not merely declared the law. Salmond on Principles of Jurisprudence (12th Edition) goes on to say "we must distinguish law-making by legislators from law-making by the courts. Legislators can lay down rules purely for the future and without reference to any actual dispute; the courts, insofar as they create law, can do so only in application to the cases before them and only insofar as is necessary for their solution. Judicial law-making is incidental to the solving of legal disputes; legislative law-making is the central function of the legislator" (page 115). It is not difficult to perceive the dividing line between permissible legislation by judicial directives and enacting law the field exclusively reserved for legislature. We are concerned here to determine whether in prescribing various periods of limitation, adverted to above, the Court transgressed the limit of judicial legislation.

Bars of limitation, judicially engrafted, are, no doubt, meant to provide a solution to the aforementioned problems. But a solution of this nature gives rise to greater problems like scuttling a trial without adjudication, stultifying access to justice and giving easy exit from the portals of justice. Such general remedial measures cannot be said to be apt solutions. For two reasons we hold such bars of limitation uncalled for and impermissible : first, because it tantamounts to impermissible legislation an activity beyond the power which the Constitution confers on judiciary, and secondly, because such bars of limitation fly in the face of law laid down by Constitution Bench in A.R. Antulay's case and, therefore, run counter to the doctrine of precedents and their binding efficacy.

In a monograph "Judicial Activism and Constitutional Democracy in India", commended by Professor Sir William Wade, Q.C. as a "small book devoted to a big subject", the learned author, while recording appreciation of judicial activism, sounds a note of caution "it is plain that the judiciary is the least competent to function as a legislative or the administrative agency. For one thing, courts lack the facilities to gather detailed data or to make probing enquiries. Reliance on advocates who appear before them for data is likely to give them partisan or inadequate information. On the other hand if courts have to rely on their own knowledge or research it is bound to be selective and subjective. Courts also have no means for effectively supervising and implementing the aftermath of their orders, schemes and mandates. Moreover, since courts mandate for isolated cases, their decrees make no allowance for the differing and varying situations which administrators will encounter in applying the mandates to other cases. Courts have also no method to reverse their orders if they are found unworkable or requiring modification". Highlighting the difficulties which the courts are likely to encounter if embarking in the fields of legislation or administration, the learned author advises " the Supreme Court could have well left the decision-making to the other branches of government after directing their attention to the problems rather than itself entering the remedial field".

The primary function of judiciary is to interpret the law. It may lay down principles, guidelines and exhibit creativity in the field left open and unoccupied by Legislation. Patrick Devlin in 'The Judge' (1979) refers to the role of the Judge as lawmaker and states that there is no doubt that historically judges did make law, at least in the sense of formulating it. Even now when they are against innovation, they have never formally abrogated their powers; their attitude is: 'We could if we would but we think it better not.' But as a matter of history did the English judges of the golden age make law? They decided cases which worked up into principles. The judges, as Lord Wright once put it in an unexpectedly picturesque phrase, proceeded 'from case to case, like the ancient Mediterranean mariners, hugging

the coast from point to point and avoiding the dangers of the open sea of system and science'. The golden age judges were not rationalisers and, except in the devising of procedures, they were not innovators. They did not design a new machine capable of speeding ahead; they struggled with the aid of fictions and bits of procedural string to keep the machine on the road.

Professor S.P. Sathe, in his recent work (Year 2002) "Judicial Activism in India Transgressing Borders and Enforcing Limits", touches the topic "Directions : A New Form of Judicial Legislation". Evaluating legitimacy of judicial activism, the learned author has cautioned against Court "legislating" exactly in the way in which a Legislature legislates and he observes by reference to a few cases that the guidelines laid down by court, at times, cross the border of judicial law making in the realist sense and trench upon legislating like a Legislature. "Directions are either issued to fill in the gaps in the legislation or to provide for matters that have not been provided by any legislation. The Court has taken over the legislative function not in the traditional interstitial sense but in an overt manner and has justified it as being an essential component of its role as a constitutional court." (p.242). "In a strict sense these are instances of judicial excessivism that fly in the face of the doctrine of separation of powers. The doctrine of separation of powers envisages that the legislature should make law, the executive should execute it, and the judiciary should settle disputes in accordance with the existing law. In reality such watertight separation exists nowhere and is impracticable. Broadly, it means that one organ of the State should not perform a function that essentially belongs to another organ. While law-making through interpretation and expansion of the meanings of open-textured expressions such as 'due process of law', 'equal protection of law', or 'freedom of speech and expression' is a legitimate judicial function, the making of an entirely new law..through directionsis not a legitimate judicial function." (p.250).

Prescribing periods of limitation at the end of which the trial court would be obliged to terminate the proceedings and necessarily acquit or discharge the accused, and further, making such directions applicable to all the cases in the present and for the future amounts to legislation, which, in our opinion, cannot be done by judicial directives and within the arena of the judicial law-making power available to constitutional courts, howsoever liberally we may interpret Articles 32, 21, 141 and 142 of the Constitution. The dividing line is fine but perceptible. Courts can declare the law, they can interpret the law, they can remove obvious lacunae and fill the gaps but they cannot entrench upon in the field of legislation properly meant for the legislature. Binding directions can be issued for enforcing the law and appropriate directions may issue, including laying down of time limits or chalking out a calendar for proceedings to follow, to redeem the injustice done or for taking care of rights violated, in a given case or set of cases, depending on facts brought to the notice of Court. This is permissible for judiciary to do. But it may not, like legislature, enact a provision akin to or on the lines of Chapter XXXVI of the Code of Criminal Procedure, 1973.

The other reason why the bars of limitation enacted in Common Cause (I), Common Cause (II) and Raj Deo Sharma (I) and Raj Deo Sharma (II) cannot be sustained is that these decisions though two or three-judge Bench decisions run counter to that extent to the dictum of Constitution Bench in A.R. Antulay's case and therefore cannot be said to be good law to the extent they are in breach of the doctrine of precedents. The well settled principle of precedents which has crystalised into a rule of law is that a bench of lesser strength is bound by the view expressed by a bench of larger strength and cannot take a view in departure or in conflict therefrom. We have in the earlier part

of this judgment extracted and reproduced passages from A.R. Antulay's case. The Constitution Bench turned down the fervent plea of proponents of right to speedy trial for laying down time-limits as bar beyond which a criminal proceeding or trial shall not proceed and expressly ruled that it was neither advisable nor practicable (and hence not judicially feasible) to fix any time-limit for trial of offences. Having placed on record the exposition of law as to right to speedy trial flowing from Article 21 of the Constitution this Court held that it was necessary to leave the rule as elastic and not to fix it in the frame of defined and rigid rules. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case if the quantum of time consumed upto a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test is whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted, as suggested in A.R. Antulay. In Kartar Singh's case (supra) the Constitution Bench while recognising the principle that the denial of an accused's right of speedy trial may result in a decision to dismiss the indictment or in reversing of a conviction, went on to state, "Of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors (1) length of delay, (2) the justification for the delay, (3) the accused's assertion of his right to speedy trial, and (4) prejudice caused to the accused by such delay." (para 92).

For all the foregoing reasons, we are of the opinion that in Common Cause case (I) (as modified in Common Cause (II)) and Raj Deo Sharma (I) and (II), the Court could not have prescribed periods of limitation beyond which the trial of a criminal case or a criminal proceeding cannot continue and must mandatorily be closed followed by an order acquitting or discharging the accused. In conclusion we hold:-

(1) The dictum in A.R. Antulay's case is correct and still holds the field.

(2) The propositions emerging from Article 21 of the Constitution and expounding the right to speedy trial laid down as guidelines in A.R. Antulay's case, adequately take care of right to speedy trial. We uphold and re-affirm the said propositions.

(3) The guidelines laid down in A.R. Antulay's case are not exhaustive but only illustrative. They are not intended to operate as hard and fast rules or to be applied like a strait-jacket formula. Their applicability would depend on the fact-situation of each case. It is difficult to foresee all situations and no generalization can be made.

(4) It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceedings. The time-limits or bars of limitation prescribed in the several directions made in Common Cause (I), Raj Deo Sharma (I) and Raj Deo Sharma (II) could not have been so prescribed or drawn and are not good law. The criminal courts are not obliged to terminate trial or criminal proceedings merely on account of lapse of time, as prescribed by the directions made in Common Cause Case (I), Raj Deo Sharma case (I)

and (II). At the most the periods of time prescribed in those decisions can be taken by the courts seized of the trial or proceedings to act as reminders when they may be persuaded to apply their judicial mind to the facts and circumstances of the case before them and determine by taking into consideration the several relevant factors as pointed out in A.R. Antulay's case and decide whether the trial or proceedings have become so inordinately delayed as to be called oppressive and unwarranted. Such time-limits cannot and will not by themselves be treated by any Court as a bar to further continuance of the trial or proceedings and as mandatorily obliging the court to terminate the same and acquit or discharge the accused.

(5) The Criminal Courts should exercise their available powers, such as those under Sections 309, 311 and 258 of Code of Criminal Procedure to effectuate the right to speedy trial. A watchful and diligent trial judge can prove to be better protector of such right than any guidelines. In appropriate cases jurisdiction of High Court under Section 482 of Cr.P.C. and Articles 226 and 227 of Constitution can be invoked seeking appropriate relief or suitable directions.

(6) This is an appropriate occasion to remind the Union of India and the State Governments of their constitutional obligation to strengthen the judiciary-quantitatively and qualitatively by providing requisite funds, manpower and infrastructure. We hope and trust that the Governments shall act.

We answer the questions posed in the orders of reference dated September 19, 2000 and April 26, 2001 in the abovesaid terms.

The appeals are allowed. The impugned judgments of the High Court are set aside. As the High Court could not have condoned the delay in filing of the appeals and then allowed the appeals without noticing the respective accused-respondents before the High Court, now the High Court shall hear and decide the appeals afresh after noticing the accused-respondent before it in each of the appeals and consistently with the principles of law laid down hereinabove.

Before we may part, we would like to make certain observations ex abundanti cautela :

Firstly, we have dealt with the directions made by this Court in Common Cause Case-I and II and Raj Deo Sharma Case I and II regarding trial of cases. The directions made in those cases regarding enlargement of accused persons on bail are not subject matter of this reference or these appeals and we have consciously abstained from dealing with legality, propriety or otherwise of directions in regard to bail. This is because different considerations arise before the criminal courts while dealing with termination of a trial or proceedings and while dealing with right of accused to be enlarged on bail.

Secondly, though we are deleting the directions made respectively by two and three-Judge Benches of this Court in the cases under reference, for reasons which we have already stated, we should not, even for a moment, be considered as having made a departure from the law as to speedy trial and speedy conclusion of criminal proceedings of whatever nature and at whichever stage before any authority or the court. 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) 1980 (1) SCC 98, "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."

Thirdly, we are deleting the bars of limitation on the twin grounds that it amounts to judicial legislation, which is not permissible, and because they run counter to the doctrine of binding precedents. The larger question of powers of this court to pass orders and issue directions in public interest or in social action litigations, specially by reference to Articles 32, 141, 142 and 144 of the Constitution, is not the subject matter of reference before us and this judgment should not be read as an interpretation of those Articles of the Constitution and laying down, defining or limiting the scope of the powers exercisable thereunder by this Court.

And lastly, it is clarified that this decision shall not be a ground for re-opening a case or proceeding by setting aside any such acquittal or discharge as is based on the authority of 'Common Cause' and 'Raj Deo Sharma' cases and which has already achieved finality and re-open the trial against the accused therein.

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(Syed Shah Mohammed Quadri)

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(R.C. Lahoti)

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(N. Santosh Hegde)

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(Ruma Pal)

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(Arijit Pasayat)

April 16, 2002.