

Right of Speedy Trial in A Criminal Case is A Fundamental Right

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Abstract

There is a genuine case with respect to sickness of the lawful and legal framework which is in charge of this gross forswearing of equity to the under preliminary detainees in India which is exclusively in charge of famous deferral in transfer of cases. Speedy Trial is of the quintessence of criminal equity and there can be no uncertainty that postponement in preliminary without anyone else's input establishes disavowal of equity. Any sorts of deferral in a framework prompts the disappointment of the equity conveyance framework and India is positively a gross unfortunate casualty to this issue. Inability to take remedial measures with energetic willingness will positively undermine the very establishment of Criminal trial Jurisprudence. Justice as it's been said must not exclusively be done, however it should likewise appear to have been finished.

Keywords: Speedy Trial, Criminal Trial, equity, accused, fundamental right.

1. INTRODUCTION

*“Liberty is to the collective body
What health is to every individual body.
Without health no pleasure can be tested by man,
Without liberty no happiness can be enjoyed by society”.*

... Bolingbroke

Liberty is the precious possession of the human soul. No one would barter if for all the tea in China. Not for nothing Patrick Henry Thundred :

“Is life so dear, or peace so sweet, as to be purchased at the price of chains and slavery?

*Forbid it, Almighty God! I know what course others may take,
but as for me, give me liberty, or give me death!”*

The above quotes find place in the Supreme Court Judgement –Criminal Appeal No. 751/2012 titled as Rashmi Rekha Thatoi and Anr. Vs. State of Orrisa & Others.¹

The liberty of an individual in precious and every effort should be made by all concerned i.e. by the law courts to protect touch Liberty of every individual. But it is also pertinent to mention here that such protection is not absolute and it is qualified depending upon the exigencies of the situation.² Recently, The Supreme Court ordered the immediate release of journalist Prasant Kannoja, who was arrested for

¹ Criminal Appeal No. 751/2012 arising out of SLP (Criminal No. 7286/2011 decided on 4.5.2012.

² Ram Govind Upadhyay Vs. Sudarshan Singh AIR 2002 SC 1475

allegedly posting objectionable material against Uttar Pradesh Chief Minister Yogi Aditya Nath on social media. The Supreme Court bench of Justices Indira Banerjee and Ajay Rastogi observed as under :

“We don’t appreciate tweets. But what are bothered about is why was arrested. Proceed in accordance with law... But can he be put behind bars for that? Sometimes social media is just, sometimes it is unjust, but we have to exercise our powers. The Supreme Court further observed that When our powerful rulers use the police to impose their private will, what gets trampled is not just an individual’s rights, but a society’s rule or law. A ‘man of God’, that too in power, ought to exhibit greater generosity and be doubly forgiving.”³

The Indian judiciary play a key role in protecting the rights of its citizens. Further, the constitution of India provided certain rights to its citizens which are necessary for the proper upliftment of human being the fundamental rights are provided in chapter III of the constitution and the law courts by interpreting Article 21 of the Constitution such also include right to fair trial, right to speedy trial within the ambit of the constitution fundamental rights are not expressly provided in the constitution.

Dr. Tejwinder Singh, District and Session Judge Pathankot provided relief to the little soul aged 8 years who was gang raped and murdered and she belonged to nomadic bakarwal community in Kathua. The incident was took place in January, 2018 and it is travesty of justice that those who should have been preventing it were themselves involved in the crime. The matter was investigated by Crime Branch of J&K and they were attempted to restrained for filing of charge sheet by the lawyers in Kathua. On the directions of Hon’ble Supreme Court the trial was shifted to Pathankot. In the protest in favor of the accused persons to BJP Ministers also took part in the protest and its sparked an outrage and embarrassed the coalition government which the BJP had formed with the PDP. The trial held in the special court at Pathankot on day to day basis in the first week of 2018. The Hon’ble Court had also imposed a fine of Rs. 1 Lakh each to 3 accused who had awarded life imprisonment. Justice delivered is the greatest salve for injured minds and bodies. The Hon’ble Judge while awarding judgement observed :

“The perpetrators of the crime have acted in such a manner as if a law of the jungle prevailed. Heaven and hell are not geographical locations. Our thoughts, actions and character create a situation of heaven or hell for us ... The guilty need to be brought under the sword of justice.”⁴

The Hon’ble SC in Iqbal Lomail Sodawala Vs. State of Maharashtra⁵ held :

“The purpose of the code of criminal procedure is to be designed further ends of justice and not to frustrate them by introduction of endless technicalities.

The SC again in Common causes Vs. Union of India⁶ Observe that justice must not only be done, but it must also appear to have been done, similarly must not only be fair but must appear to have been conducted in a fair manner.

The rule of processor must be designed to smooth place of justice stop the rules of processor never played justification by becoming instrument for delay or create hurdles in the way of administration of Justice⁷.

The Indian Constitution is modern, equality egalitarian arrangement place in the rule of law in it, which guarantees not mainly, proclaims, but also protect their right. The founding fathers of the constitution placed “Justice” at the highest pedestal and the Preamble of the Constitution significantly noticed justice higher than the other principles i.e. Liberty, equality and fraternity. The social and economic justice has

³ The Tribune : Liberty of citizens is non-negotiable : SC, June 12, 2019

⁴ The Tribune dated 11.06.2019 : 3 Kathua accused get life term

⁵ 1975(3) SCC 140, See also R.V. Kelkar’s-Criminal Procedure, 4th Ed., 2004, Eastern Book Company, Lucknow P.831.

⁶ Dr. Parmjit Jaswal & Dr. (Mrs) Nisha Jaswal, Right to Speedy Trial, Punjab University Law Review, 1992, p.98

⁷ R.V. Kelsner’s Criminal Procedure, 4th Ed. 2004, Eastern Book Company, Lucknow, p.831

upper hand over political justice and clearly demonstrates in the Preamble of the constitution. Further, state being the Guardian of fundamental rights of its citizens are bound to ensure speedy and fair trial without any unreasonable delay especially in criminal trials, otherwise it would be miscarriage of Justice. The Supreme Court in pre emergency period has not developed the juries procedure, so extensive in the field of basic human rights as it developed in the post emergency period. The supreme court has evolved a new regime of fundamental rights which were not expressly provided in the Constitution i.e. right to speedy trial has emerged as an independent fundamental right⁸.

The Hon'ble S.C. in *Maneka Gandhi Vs. Union of India*⁹ held that the procedure establishment by law enshrined in Article 21 of the Constitution must be fair, just and reasonable.

Article 21 of the constitution lays down :

“No person shall be deprived of his life or personal liberty except according to procedure establishment by law.”

Thus from the above judgment “Speedy Trial” which meant “reasonable expeditious trial as an integral part of fundamental right to life and personal liberty as enshrined in article 21 of the constitution.

The expeditious justice is one of the big achievement of the justice system. It can't be achieved by the judiciary alone until all the stakeholders give a push to the justice system¹⁰.

The Hon'ble Supreme Court in *OP Sharma Vs. High Court of Punjab and Haryana*¹¹, held that: “a court, be that of a magistrate or Supreme Court is sacrosanct. The integrity and sanctity of an institution which has bestowed upon itself, the responsibility of dispensing justice is ought to be maintain. All the functionaries, be it advocates and rest of the staff ought to act in accordance with moral and ethics.”

2. Sprit of Speedy Trial and enshrined in the Constitution

After the India gained Independence from the Britishers, the concept of “access of justice” has undergone a change. The constitution of India, came into force on 26th January, 1950, by which a new form of power arrangement has been prescribed for India by which certain goals have been provided which are to be achieved through new power of arrangement.” Article 39-A of the constitution directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.¹² Thus, the administration of justice involves protection of the innocent, punishment to the guilty and satisfactory solutions of the disputes. Article 22(1) in the Constitution provides that No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice, Article 22(2) in the Constitution states that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

Legal aid strives to ensure that the constitutional goal is achieved in its letter and sprit, if equal justice is made available to the poor, lower strata of the society.

⁸ Dr. Dharmender Kumar Journal of Legal Studies and Research Vol.II Issue 5 p.72

⁹ AIR 1978 SC 597

¹⁰ Anand Kumar Tripathi, National Journal & Criminal Law, Vol. 5, Issue I, July 2018 Vaishali (Ghaziabad)

¹¹ AIR 2011 SC 2011 AV p.2111

¹² <http://pib.nic.in/newsite/mbErel.aspx?relid-118011>

Section 304 of Code of Criminal Procedure provides legal aid to be provided to the accused person at state expenses in certain cases.¹³

The Delhi High Court in case of *Matloob Vs. State (Delhi Administration)*¹⁴ held that entitlement to free legal aid is not dependent on the accused making an application to the effect and the court is obliged to inform the right of accused to obtain free legal aid.

The Indian Legal System is very much complex in its structure as well as in operation. Such system is always unfairly weighed against poor and marginalized sections of the society. In pre-colonial era the above state position was true regarding the application of Indian Legal System, but in the post colonial era, the Indian Legal system has shown a sea change as many new rules and regulations came into force by which the access of justice under the Indian Constitution attained a great significance.

The access of Justice has two basic purposes which are to be served by providing access of justice :

- a. To ensure that every person is able to invoke the legal process for redressal, irrespective of social or economic status or other incapacity; and
- b. That every person should receive a just and fair treatment within the legal system.

After the widening the scope of spoke of Article 21 of the constitution, so that dreams of the people may come into reality. A shocking and disappointing picture was brought before the Supreme Court in *Hussainara Khatoon Vs. State of Bihar*¹⁵ and the supreme court observed :

“It is a crying shame on the judicial system which permits, incarceration of men and women for such long periods of time without trial. We are shouting from house tops about the protection and enforcement of human rights. But, are we not denying human rights to these nameless persons who are languishing in jails for years for offences which perhaps they might ultimately be found not to have committed.”¹⁶

The Supreme Court felt ashamed and the prisoners who were put behind the bars without any trials for years and they were no more remains human beings. The Supreme Court while evoking reasonable, fairness and justness under Article 21 of the Constitution held that the procedure established by law for depriving a man of his liberty could not be reasonable, fair and just unless that procedure ensured a speedy trial for determination of the guilt of such person.

In *Hussainara Khatoon Vs. State of Bihar*¹⁷, the court asked the Government of Bihar whether the undertrial were produced before magistrates under section 167(2) of the Code of Criminal Procedure, which required the permission of a magistrate every 15 days for the detention of a person. The court also inquired whether the investigation in offences triable as summon cases was completed within six months, as required under section 167(5) of the Code of Criminal Procedure. Under Section 468 of the Code, no court could take cognizance of an offence if a charge-sheet was filed after the period of limitation. And the Court held the detention of person covered by section 468 was against Article 21 of the Constitution. Therefore, the court ordered there release¹⁸.

In *Hussainara Khatoon Vs. State of Bihar*¹⁹, the court again directed to release the undertrials as continuance of their detention was violative of their fundamental rights. The court held that it was the obligation of the state to devise such a procedure as would ensure speedy trial to the accused and refused

¹³ Section 304 Cr. P.C. provides so.

¹⁴ 1997 (3) Crimes 989

¹⁵ AIR 1979 S.C. 1360

¹⁶ Id. At 1361

¹⁷ AIR 1979 SC 1367

¹⁸ Id at 1368-69

¹⁹ AIR 1979 SC 1369

to permit the state to deny the constitutional right of speedy trial to the accused on the ground that the state had no adequate financial resources to incur necessary expenditure needed for improving “the administrative and judicial apparatus” in order to ensure speedy trial.²⁰

The judicial decisions in Hussainara Khatoon cases proved to be a Magna Carta to the 1,20,000 under trials languishing in jails for years without trial. These are thunderbolt of judicial condemnation of the indifferent attitude of the judiciary and the lethargic and indolent behavior of the government. The court became an angel for these under trials, whose cup of miseries was full. It further enlarged the scope of Article 21 so as to include right of speedy trial in its ambit.

Shri Ravi Shankar Prasad, Union Law Minister came across a unique situation in the State of Bihar where a Muslim namely Mohd. Mian was detained in Hazari Bagh Jail for last 49 years without trial. This matter reported in various newspapers. Shri Ravi Shankar Prasad decided to takeup his case in the Patna High Court as Mohd. Mian was arrested in 1920 on suspicious of a murder, but had not attend a hearing in the court. Shri Ravi Shankar Prasad got freed him from the jail and also earned a handsome compensation for him. After releasing from jail Mohd. Mian visited to the Prasad as he had an hope to the old soul. After meeting with Mohd. Mian Prasad stated :

“Destiny has been kind to me. I found my professional calling in Law, and a flourishing practice in the high court of Patna. I found reasonable success in the Supreme Court. I became a senior advocate at a young age and a Member of Parliament also at a young age. Since 2001, I have been allocated important portfolio whenever my party has been in power. I have climbed the political ladder, rung by rung, and worked assiduously to get where I am. I have served to maintain an image of probity in public life and I am grateful to God for giving me these opportunities. But in spite of all this, the faint smile on the face of Mohammuddin Mian, when he came to greet me after forty-nine years in jail, remains one of the biggest trophies of my life. I mean it sincerely.”²¹

The above factors led the court to hold that putting a person behind the bars and thereafter forget about his personhood. Thus, depriving a person of his personal liberty for an arbitrary period without monitoring as per authority prescribed in them by law and keeping a person behind the bars without reasonable cause is unjust and unfair. Such acts on the part of state as well as courts shake the faith in the rule of law and such action is against the spirit of part III of the Constitution, the mandate of Article 21 of the constitution as well as and section 167(2) of code of Criminal Procedure. These provision had become a dead letters for the petitioners, the S.C. being the end of their parties, ordered for released them on their own bands and without surities²².

Article 22 of the Constitution also imposes restriction on the detention of any person by the police beyond 24 hours without the authority of a Magistrate. It also provides that every such persons should be produced before the nearest Judicial Magistrate with in a period of 24 hours of arrest, excluding the time necessary for the Journey from the place of arrest to the court of Magistrate and no such person shall be detained in custody beyond the period of 24 hours without the authority of a Magistrate²³.

²⁰ Id at 1376

²¹ Shweta Bansal, *Courting politics*, EBC, Ed. 2017, P.351

²² *Mantoo majumdar Vs State of Bihar*, AIR 1980 SC 847 at p. 848-849.

²³ Article 22(2) of the Constitution, P.N. Bakshi, *The constitution of India 5th Ed. 1977*, Law Publishers (India) Pvt. Ltd. Allahabad P.35

3. Provisions of Speedy Trial enshrined in the Code of Criminal Procedure

The Criminal Trials in India are regulated by code of Criminal Procedure as well as Indian Panel Code and some other special laws passed by the parliament from time to time as per the exigencies of the situation so demands. In the code of Criminal Procedure there are many provisions which aimed are reducing the delay in the investigation and trial of offences. The constitutional guarantee of right of speedy trial provided with in the ambit of Article 21 of the Constitution reflected in the various provisions of code of criminal procedure.

The Indian social fabric has give a utmost importance to the rights of personal liberty of individual during investigation as well as of trial. The speedy disposal of the case in pre trial proceeding adopted by the state must be reasonable and quick. A duty is cost upon the arresting authority to communicate such person full particulars of the offence and also grounds of arrest²⁴, so that such person can approach the proper court for bail or to make expeditious arrangements for his defence.

A police officer making arrest without warrant shall, without unnecessary delay and subject to the provisions of bail, take or send such person before a magistrate having jurisdiction in the case or before the in charge of a police station²⁵, but the police officers or other person executing a warrant of arrest shall, subject to the provisions of section 71 of code of criminal procedure without unnecessary delay bring the person arrested before the court in which he required to produce as per law, but such delay shall not exceed 24 hours excluding the time necessary for the Journey from the place of arrest to the court of Magistrate concerned²⁶.

No police officer shall detain a person in custody without warrant for a longer period than, under all the circumstances of the case is reasonable and such period shall not in the absence of a special order of a Magistrate under section 167 of code of criminal procedure exceed 24 hours excluding the time of journey from the place of arrest to the court of magistrate²⁷. The officer-in-charge of a police station will sent the repair immediately for the commission of an offence to the concerned magistrate²⁸.

When a person is arrested and detained in custody, appears that the investigation cannot be completed within a period of 24 hours as fixed by section 57 of the code of criminal procedure and there are ground for believing that the acceleration or the information is well founded, the officer-in-charge or the investigating officer (nor below the rank of sub-inspector) shall forthwith transmit to the nearest judicial magistrate, a copy of the entries made in his diary relating to the case and shall be at the same time forward such person to the magistrate²⁹. If such magistrate who have jurisdiction to try or not to try the case or commit it for trial, may authorize the detention of such person for a period not exceeding 15 days as a whole, and of such magistrate has no jurisdiction to by or commit the case, then such magistrate may order the accused be procedure before the Magistrate having Jurisdiction, of the feel that further detention of such person is required / necessary³⁰. The Magistrate having the jurisdiction may authorize the detention of such person beyond the period of 15 days, if he is satisfied that adequate grounds exists, but even the magistrate cannot authorize the detention of such person in custody for a total period exceeding :

²⁴ Section 50 of code of criminal procedure, the code of criminal procedure, 1973 as amended by the criminal law (Amnd.) Act, 2018 universal's Lexis Nexis Press, Gurugram 2019, p.37

²⁵ Section 56 code of criminal procedure

²⁶ Section 76 code of criminal procedure

²⁷ Section 57 of code of criminal procedure

²⁸ Section 157 of code of criminal procedure

²⁹ Section 167(1) of code of criminal procedure

³⁰ Section 167(2) of code of criminal procedure

- (i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years,
- (ii) Sixty days, where the investigation relates to any other offence³¹.

If in a case triable by magistrate as a summons case, the investigation is not concluded within six months from the date on which the accused person was arrested, the magistrate is required to stop further investigation into the offence. The investigation is allowed to go on beyond six months only if the investigating officer satisfies the magistrate that for special reasons and in the interest of justice, the continuation of investigation is necessary³².

The police officer is required to complete the investigation “without unnecessary delay” and forward the report to the Magistrate “as soon as the investigation is completed.”³³ Further, Justice Mahabir Singh Sandhu of Punjab & Haryana High Court observed that :

“It is very unfortunate that since September 5, 2015, the matter is pending with the investigating agency and till date, (final investigation) report under Section 173 Cr. P.C. has not been submitted. Thus the same is quite distressing”³⁴. Section 207 of code of criminal procedure requires that a copy of documents like FIR, statements recorded under section 161 of code of criminal procedure. Confessions and statements under section 164 of code of criminal procedure or any other documents or relevant extract thereof be given free of cost to the accused “without delay”³⁵. In a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under section 204 of code of criminal procedure, the offence is triable by the court of session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of statements and confession of any, recorded under section 200, 202, 161, 164 of code of criminal procedure or any other documents produced before the Magistrate upon which the prosecution propose to rely³⁶.

All the above provisions as mentioned pertained to the stage of investigation of an offence. These provisions besides laying down the broad terms, but certain limitations are also imposed by which the investigation is to be carried out, also put limitation upon the detention of a person during investigation. A time limit for completion of investigation is provided as thereafter it bars the courts from taking cognizance of certain offences which are minor in nature³⁷. The period of limitation shall commence from date of offence, or where the commission of offence was not known to the person aggrieved or to any police officer, the first day on which the offence comes to knowledge of aggrieved person or to any police officer whichever is earlier, or where it is not known by whom the offence was committed, the first day on which the identity of the offender is known to the aggrieved by the offence or to the officer of police making the investigation into the offence whichever is earlier³⁸.

Section 309 of code of Criminal Procedure mandates expeditious conduct of a trial. It requires that when the examination of witnesses has once begun, the same shall be continued from day-to-day until all the witnesses the attendance have been examined, unless the court finds the adjournment of the proceedings beyond the following day to be necessary for the reasons to be recorded. The code of

³¹ Ibid

³² Section 167(5) of code of criminal procedure

³³ Section 173 of code of criminal procedure

³⁴ HC “raps cops for delay in probe into appointment of teachers” : The Tribune, 1st March, 2019

³⁵ Section 207 of code of criminal procedure

³⁶ Section 208 of code of criminal procedure

³⁷ Section 468 of code of criminal procedure

³⁸ Section 469 of code of criminal procedure

criminal procedure also authorize the court to adjourn the proceedings from time to time after the cognizance of the offences is taken or after the commencement of the trial and reasons to be recorded for doing so, when the witnesses are present in the court, no adjournment or postponement shall be granted, without examining them, except for special reasons to be recorded in writing³⁹. No adjournment shall be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed upon him. An adjournment or postponement of the proceedings may be granted on certain terms, in appointment cases, the payment of costs in such cases are to be made by the party to opposite party who sought adjournment⁴⁰.

After the close of the evidences the concerned party is authorized to address concise oral arguments, prior to concludes of his oral arguments, any, submit a memorandum to the court set forth concisely the arguments in support of his case⁴¹. The court can inclined to adjourned the matter/proceedings for the purpose of filing written arguments, unless the court feel it necessary for adjournment of the proceedings, the reasons to be recorded in writing⁴².

The trial of an accused is non-bailable is not concluded within a period of sixty days from the date fixed for taking evidence, for taking evidence, if such person is in custody, he should be immediately enlarged on bail⁴³.

The judgement shall be pronounced by the presiding officer in the open court as early as after the terminal of the trial or same subsequent time of which notice shall be given to the parties or their pleader. The judgement to be pronounced immediately after competition of the trial, as there should be no delay in the pronouncement of the judgement⁴⁴.

A perusal of the above provisions of the code of criminal procedure indicates that the code has given due importance to the speedy completion of criminal trials, so that the constitutional guarantee providing speedy justice to the people can be achieved in its realistic sense.

4. JUDICIAL DECISIONS ON RIGHT TO SPEEDY TRIAL IN INDIA :

In a democratic set up, every individual wants freedom and has also granted such freedom to every person of the country by providing the same in the constitution and violation thereof can be enforced by a court of law. The freedom has been given a constitutional status to any citizen of the country. Freedom and liberties are available only to the living beings. Article 21 of the constitution guarantees right to life and personal liberty to every person, citizen or non-citizen. A person can be deprived of his life and personal liberty, if two conditions are satisfied :

- (i) There must be a law;
- (ii) There must be procedure prescribed by the law, provided that such procedure is just, fair and reasonable.

The creativity of the Indian Judicial system has been at its best whenever it was called to interpret Article 21 of the Constitution, after the emergency era, when the Hon'ble Supreme Court turned active and militant for developing Jurisprudence in deputing in the field of basic human rights. The Supreme Court

³⁹ Section 309(1) of code of criminal procedure

⁴⁰ Section 309(2) of code of criminal procedure

⁴¹ Section 314(1) of code of criminal procedure

⁴² Section 314(2) of code of criminal procedure

⁴³ Section 437(2) of code of criminal procedure

⁴⁴ Section 353(1) of code of criminal procedure

given dimensions to Article 21 and given a constitutional status to a right to speedy trial as well as right to fair trial. These rights were not expressly provided in the constitution⁴⁵.

Indian Judiciary plays a pivot role in protecting the rights of people and gave certain rights like right to speedy trial, right to fair trial etc. a constitutional status by including all these rights within the parameters of Article 21 of the constitution. The Judiciary also plays a dynamic role in the dispensation of justice to the people of the country by providing free and fair trial. There are catena of judgments decided by the Indian Supreme judiciary i.e. Apex Court as well as various High Courts on the subject of trial where in the delay caused in trial has been questioned by the courts and discharged the accused if the delay has not been sufficiently explained⁴⁶.

The most glaring malady which has afflicted the judicial concern is the tardy process and inordinate delay which takes place, in disposal of cases. The delays of today shall lead to criminalization of society tomorrow and this monster shall rise to gulp future governments⁴⁷. The piling arrears and accumulated workload of different courts present a frightening scenario. The whole Indian legal system is cumbering down under the weight of pending cases which go on increasing every day.

Justice V.R. Krishna Iyer and P.N. Bhagwati who were the champions of Judicial activism and brought right speedy as well as right to fair trial by interpreting Article 21 of the constitution. No doubt, the Judicial delays in India are endemic. No one can hope to get fair justice in a reasonable time. The proceedings in criminal cases go for years, sometimes decades, in spite of legal position strongly favoring speedy trial. The court is also have great concern about the delay problem and the same is reflected in various decisions.

The Hon'ble Supreme Court in *Machender V/s State of Hyderabad*⁴⁸ the Supreme Court refused to remand the case back to the trial court for fresh trial because of delay of five years between the commission of the offence and the final judgment of the Supreme Court. The Supreme Court has categorically observed: "We are not prepared to keep persons on trial for their lives and under indefinite suspense because trial judges omit to do their duty. We have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that the guilty do not escape, it is even more necessary to see that the person accused of crimes are not indefinitely harassed While every reasonable latitude must be given to those concerned 'with the detection of crime and entrusted with administration of justice, but limits must be placed on the lengths to which they may go.'"

In *Charles Sobharaj v. Suptd, Central Jail, Tihar*⁴⁹, Krishna Iyer observed:

"Whenever Fundamental rights are flouted or Legislative protection ignored, to any prisoner's prejudice, this court's writ will run, breaking through stone walls and iron walls, to right the wrong and restore the rule of law. Then the parrot cry of discipline will not deter security, will not scare discretion, and will not dissuade the judicial process."

In *State of Bihar v. Uma Shankar Ketriwal*⁵⁰ the High Court quashed the proceedings on the ground that the prosecution which commenced 16 years ago and still in progress, is an abuse of the process of the Court and should not be allowed to go farther. Refusing to interfere with the decision of the High Court

⁴⁵ Dr. Dharmender Kumar Journal of Legal Studies and Research Vol.II Issue 5 p.73

⁴⁶ Dr. Dharmender Kumar Journal of Legal Studies and Research Vol.II Issue 5 p.73

⁴⁷ Article by K.S. Grewal J. of P&H High Court, from Crime to punishment – A road to nowhere. Downloaded from site of P&H High Court, Chandigarh on 11.06.2019.

⁴⁸ AIR 1955 SC792

⁴⁹ (1979)1.S.C.R514-515

⁵⁰ (1981)3 sec 610.

in the appeal, the Supreme Court said with regard to the delay that such protraction itself means considerable harassment to the accused and that there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. The Court further observed that “We cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by, such protection itself means considerably harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in Court, apart from anxiety. It may be said that the respondents themselves were responsible in a large manner for the slow pace of the case in as much as quite a few orders made by the trial Magistrate were challenged in higher Courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage.”

In **Kadra Pahadiya v. State of Bihar**,⁵¹ P.N. Bhagwati, J. observed :

“8 more years have passed, but they are still rotting in jail, not knowing what is happening to their case. They have perhaps reconciled to their fate, living in a small world of their own cribbed, cabined and confined within the four walls of the prison. The outside world just does not exist for them. The Constitution of India has no meaning and significance, and human rights no relevance for them. It is a crying shame upon our adjudicatory system which keeps man in jail for years on end without a trial.” The Court further observed that: “ any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this court in discharge of its constitutional obligation has the power to give necessary directions to the state governments and other appropriate authorities for securing this right to the accused.”

Mantoo Majumdar v. State of Bihar⁵² is another case on under trials. In this case Justice Krishna Iyer found that two petitioners had spent seven years in jail without trial. He found further that the Government of Bihar was unwilling to furnish the facts sought by the Court and was insensitive to the plight of the under trials rotting in jails for long years. He found that even Magistrates “have bidden farewell to their primary obligation, perhaps fatigued by over work and uninterested in freedom of other.” He said that under Section 167 Criminal Procedure Code: “The Magistrate concerned have been mechanically authorizing repeated detentions, unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention.” He drew the attention to the failure of the police to investigate promptly and the prison staff to find out how long these under trials should languish in jail. In the fact of this failure of the limbs of law and justice, the judge wondered like any of us. ‘If the salt hath lost its savour, wherewith shall it be salted’? He ordered the release of the two petitioners on their own bonds and without sureties.

In **Raghubir Singh v. State of Bihar**⁵³ a Bench of two judges of the Supreme Court held that the right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. The question whether the right to speedy trial has been infringed depends upon various factors. A host of question may arise for consideration: Was there delay? Was the delay inevitable having regard to the nature of the case? Was the delay unreasonable? Was the delay caused by the tactics of the defence? There may be other questions as well. But ultimately the question of infringement of the right to speedy justice is one of fairness in the administration of criminal justice even as ‘acting fairly’ is the essence of the principle of natural justice and “a fair and reasonable procedure” is what is contemplated by the expression “procedure established by law” in Article 21.

⁵¹ (1983)2 sec 104

⁵² AIR 1980 SC 847

⁵³ AIR 1987 SC 149.

The Supreme Court in **Sheela Barse v. Union of India**⁵⁴ addressed the question left unanswered in Hussainara Khatoon 's case and dealt specifically with the procedure to be followed in matters where accused was less than 16 years of age. The Court held that where a juvenile is accused of an offence punishable with imprisonment of 7 years or less, investigation was to be completed within 3 months of the filing of F.I.R. or else the case was to be closed. Further, all proceedings in respect of the matter had to be completed within further six months of filing of the charge-sheet. The apex Court observed: "The right to speedy trial is a right implicit in Article 21 of the Constitution and the consequence of violation of this right could be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right. "

Supreme Court in **Abdul Rahman Antulay v. R.S. Nayak**⁵⁵, gave a landmark decision and finally adjudicated upon the questions left open in **Hussainara khatoon's** case, like the scope of the right, the circumstances in which it could be invoked, its consequences and limits etc. The salient features of the decision are as follows:

- a) Right to speedy trial flowing from Article 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.
- b) In every case, where right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interests, as perceived by them, cannot be taken as delaying tactic nor can the time taken in pursuing such proceedings be counted towards delay.
- c) While determining whether undue delay has occurred one must have regard to all the circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on.
- d) Each and every delay does not necessarily prejudice the accused. However, inordinately long delay may be taken as presumptive proof of prejudice. Prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, depends upon the facts of a given case.
- e) Accused's plea of denial of speedy trial cannot be defeated by saying that the accused didn't demand a speedy trial.
- f) The Court has to balance and weigh the several relevant factors- 'balancing test' and 'balancing processes - and determine in each case whether the right to speedy trial has been denied in a given case.
- g) Charge or conviction is to be quashed if the Court comes to the conclusion that right to speedy trial of an accused has been infringed. But this is not the only course open; 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 the sentence where the trial has concluded, as may be deemed just and equitable in the circumstances of the case.
- h) It is neither advisable nor practicable to fix any time limit for trial of offences because time required to complete trial of a case depends on the nature of the case.
- i) 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

⁵⁴ (1986) 3 sec 632.

⁵⁵ (1992) 1 sec 225.

stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must be disposed of on a priority basis.

The Hon'ble Supreme Court in "common cause" a registered society through its Director Vs. Union of India⁵⁶ - issued certain directions to be followed including to acquit or discharge the accused person where in an offence is punishable with imprisonment for a certain period, the trial has not begun even after a lapse of whole or two third of the period of sentence.

In **All India Judges' Association v. Union of India**,⁵⁷ the apex Court held that it is a constitutional obligation of this Court to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, it appears that the time has come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase in the judges strength from the existing ratio of judge-population ratio.

The Supreme Court on August 13, 2008 came down heavily on the delay in the disposal of the **Uphaar Fire Tragedy Case**⁵⁸. In this case, 59 persons were charred to death in a fire in Uphaar Cinema Hall during the screening of a Hindi Film 'Border' on the fateful night of June 13, 1997. A District Court in Delhi took 10 long years in Concluding the trial and thereafter the victims approached the Delhi High Court for speedy conclusion of the trial. On Nov 20, 2007, the District Court convicted all 12 accused including Theatre owner Sushil and Gopal Ansal, who were given sentences varying from 2 to 7 years. Then the accused filed an appeal in Delhi High Court against the Conviction. On August 13, 2008, the victims again approached the Supreme Court for speedy disposal of the appeal. The Counsels of the victims pointed out to a Bench of Justice B.N. Agarwal and Justice G.S. Singhvi that while the trial concluded after 10 years following a lot of delay, there are now active attempts on the part of the accused to delay the disposal of the appeal before the High Court. The Bench not to miss an opportunity to call a spade said: "The trial of the case took 10 years. It cannot be treated as an ordinary case. There is a clear evidence of criminal negligence."

In the famous **BMW Case** titled as State through **S.H.O. P.S. Lodhi Colony, New Delhi Vs. Sanjeev Nanda**⁵⁹ which has been decided in September 2008 one BMW car mowed down six people in the early morning hours. The accused in this case was 22 years old, Sanjeev Nanda, grandson of former Naval Chief S.M. Nanda. **The two key prosecution** witnesses subsequently changed **their** version and said **that** they saw a truck, and not a BMW hitting the victims. But the Supreme Court finally sentenced the accused to five years imprisonment.

The Hon'ble Supreme Court consisted of Judges A.K. Goel and U.U. Lalit issued directions to be followed by the subordinate judiciary on speedy trial of cases "Speedy trial is a part of reasonable, fair and just procedure guaranteed under Article 21. This Constitutional right cannot be denied even on the plea of non-availability of financial resources. The court is entitled to issue directions to augment and strengthen investigating machinery, setting-up of new courts, building new court houses, providing more staff and equipment to the courts, appointment of additional judges and other measures as are necessary for speedy trial".

The above list of cases decided by the Hon'ble Supreme Court is only illustrative and not exhaustive.

⁵⁶ 1996 (4) SCC 33

⁵⁷ (2002)4 SCC247.

⁵⁸ *Sushil Ansal V. State Through CBI, 2002 Cri. LJ 1369.*

⁵⁹ Cr. Appl. No. 1168/2012 arising out of SLP (Cr.) No. 3292/2010 decided on 03.08.2012

5. Conclusion

It is always said, that Justice delayed, Justice denied. Undue long has an adverse impact on common man's access to justice⁶⁰. In order to achieve speedy Justice, following suggestions are made :

1. Time bound vacancies every year needs to be adhered to reduce the delay problem as more number of judges would mean quickly disposal of cases⁶¹.
2. One the witnesses start deposition till his cross-examination is over, should be complied with so that no adjournment is taken on frivolous grounds by lawyers at crucial stage of criminal proceedings⁶².
3. The police do not file charge sheet in time and also not execute summons to witnesses timely. A separate wing of investigation should be created in every police station for effectively investigating the crime. The S.C. come heavily upon the executive for deploying the Police force security personnel to dignitaries instead of providing police for the investigation purposes, it not only demoralize police for the investigation purposes, it not only demoralize but also disincentivizing⁶³.
4. The populating A.D.R. mechanism should reduce the pendency of cross. The attitude must be changed from 'see you in court' to see you outside the court.
5. Specialized Judges should be allotted the work in special benches as specialization provide consistency, certainty, speedy and quality judgments⁶⁴.
6. India want entire court system work fastly, speedily and effectively not only fast track courts. We are living in 21st Century in era 4G our courts working speed is of 18th Century in the era of telegram.
7. Govt. of India, Ministry of law and Justice has limited the fast track courts to the session courts cases only.
8. The appointment of sub ornate judiciary be made through UPSC at National Level, so that intelligent law graduates can appoint as judges.
9. As the priority of Shri Ravi Shankar Prasad, Union Law Minister regarding launching of 'Nigaya Mitra Scheme' allowing for hiring of retired Judicial Officers in District Courts for deciding the pending cases. The court in India must be modernized with all latest equipment's.
10. The party must mention all the rulings upon which he wanted to rely upon in the concluding paragraph of his petition/counter affidavit, so that the judge as well as the opposite party's counsel should come prepared with the case law.
11. Must read briefs at home, so as to save time in knowing the facts and law points involved and the judge directly came to the point and the case swiftly.
12. There is need to enact a comprehensive law on the speedy trial of cases. Criminal laws should be suitably amended to achieve the object of speedy trial of offences.
13. Delay cannot be avoided only by the change of role of judges but lawyers as well as all the stakeholders in the administration of Justice system should work in accordance with morals and ethics⁶⁵, the behavior of the litigants be also changed in general public interest.

⁶⁰ Intiyaz Ahmad Vs. State of U.p., 2012 SCC P.688

⁶¹ Mazhar Sultan Vs. U.P. Public Service Commission 2008 SCC p.703

⁶² Vinod Kumar Vs. State of Punjab AIR 2015 SC p. 1206

⁶³ Prakash Singh Vs. Union of India 2006 SCC P.I. See also

⁶⁴ Deepak Singh : The Long Road to Justice – Decoding factors responsible for delay in courts, FIMT Law Journal Vol. I Issue Nos. 1-2, 2018 p.115

⁶⁵ O.P. Sharma Vs. High Court of P&H, AIR 2011 SC 2101