

# The Philosophical Aspect and the Role of Speedy Justice Under Indian Law

**Khalid Ali Khan Afridi<sup>1</sup>, Dr. Praveen Kumar Mall<sup>2</sup>**

<sup>1</sup>Advocate & Postgraduate Student, LL.M., Faculty of Juridical Sciences, Rama University, Kanpur

<sup>2</sup>Dean. F.J.S., Rama University, Faculty of Juridical Sciences, Rama University, Kanpur

## ABSTRACT

Justice in one sense means grant of expeditious and inexpensive relief to person who approached the court with legal problems, if such persons do not get justice on time that could be interpreted as injustice or denial of justice to them. Prolonged proceedings cause not only financial burden but also mental torture to the litigants, consequently eroding their faith in the system of administration of justice. Delay in the disposal of the cases is the most prominent drawback of the administration of justice in India. In present time, the biggest challenge which the Indian legal system is facing is nowadays is the ever-mounting arrear of cases right from Honourable District Courts to the Honourable Supreme Court and that is inclusive of both civil and criminal cases. In criminal cases, there are provisions in the Indian Constitution like Article 21<sup>3</sup> which contain within its domain the 'Right To Speedy Trial' as has been observed by the Honourable Apex Court in its various pronouncements that this right is basic fundamental right of every citizen within the ambit of Right to Life contained in Article 21 of the Constitution of India. But, in spite of such importance given to this fundamental right the factual position in the country is quiet contrary, there are thousands of under trial prisoners languishing in jails throughout India and in many cases the trials have even not started for years. According to statistics as reported in Prison Statistics India-2013<sup>4</sup> there are 2, 78, 503 under trial prisoners in India. This particular situation in the rest of the country is disheartening and need better solutions via having availability of more Trial Courts and related infrastructure.

**KEYWORDS:** Speedy Justice, Constitution, Right, Justice.

## INTRODUCTION

The right to speedy justice is not a fact or fiction but a "constitutional reality" and it has to be given its due respect. The courts and the legislature have already accepted it as one of the mediums of reducing the increasing workloads on the courts. The right to speedy trial and its resulting impact on the accused, victim and society as a whole needs to be considered and is crucial to serve justice. The repeated delays and continuances in the criminal justice process prevent victims from ever reaching emotional, physical and financial closure to the trauma suffered as a result of the crimes perpetrated against them. Such

---

<sup>1</sup>Advocate and Postgraduate Student, LL.M. (Constitutional and Administrative Law), Faculty of Juridical Sciences, Rama University, Kanpur.

<sup>2</sup> Dean, Faculty of Juridical Sciences, Rama University, Kanpur.

<sup>3</sup> INDIA CONST. art. 21.

<sup>4</sup> National Crime Records Bureau, Prison Statistics India 2013, (2014).

delays in prosecution can also limit the ability of victims to receive justice when their memories, or those of other witnesses, fade with the passage of time or when the victim's health deteriorates.

The Honourable Apex Court on several occasions has expressed its concern in respect of delay caused in Courts and has also gone to the extent of saying that speedy trial is not only the right of the accused but of the victims of the crime also. With the increase in rate of pending cases and declination of pronouncement of justice, society now considers 'justice delayed is justice denied'.

The judiciary day by day, due to its delayed process losing faith of people to whom it is obliged to provide justice. The Honourable Supreme Court by its decision confirmed that the speedy trial is deemed as fundamental right included in Article 21<sup>5</sup> of the Constitution of India. In spite of this, the condition is static and unchanged. Many Committees and Boards set up by the governments from time to time had come up with the approach of reformatations and solutions of the rendering justice effectively. However, the implementation of these recommendations has not been considered and yet to be put in practice.

### **PRESENT STRUCTURE OF JUDICIAL ADMINISTRATION IN INDIA**

The concept of justice is neatly interwoven in the Indian society. Ours has been a democratic republic since time immemorial and we have glorious past of functional accomplishments and admirable social purpose which form the justice administration in India. Our courts have a solid structural framework with well established laws and justice has been an outcome of a symbolic relationship. Various types of courts and quasi-judicial bodies function under the vast canopy of Indian judicial system of the country. Here it would be worthwhile mentioning that the Honourable Supreme Court of India and Law Commission of India are the custodian and the patron of the system respectively.

The present administration of criminal justice system in India is essentially a legacy of British rule but this statement does not imply that we had never been a good judicial set up in our country. As per the records in the annals of Indian legal history, we have had a well flourished and organized criminal justice system. The Dharmashastras and the Arthashastra enumerate a full-fledged and well-developed system of criminal adjudication. The Neetishastra mentions King as a fountain of justice and it was his sacred duty to punish the wrong doers and if he flinched from discharging this study, he was bond to go to hell.<sup>6</sup>

Kautilya's Arthashastra is a monumental treatise on the judicial administrative system and it seems that this system was almost established. However, we must accept this bare truth that the regular hierarchy of criminal courts was yet to fully evolve in the indigenous Hindu Kingdoms.

During the medieval period in the Mughal's era, Nawabs and Nazims were in charge of criminal justice administration and they could even decide cases punishable with capital punishment. Criminal courts were known as Sadar Faujdari Adalats. Mohammedan Criminal Laws were expounded by Hidaya and Fatwa. Hidaya contained the general principles of Muslim Criminal Law whereas Fatwa-e-Alamgiri was a collection of case laws for the guidance of criminal law courts.

Then came the era of British rule in India and the criminal justice system introduced by the Britisher's was a queer mixture of Anglo-Saxon judicial principles and ancient and medieval norms of criminal jurisprudence as well as the available traditions and practices of indigenous people. This criminal justice system was an outcome and admixture of a churning off process, of all three aforementioned judicial

---

<sup>5</sup> INDIA CONST. art. 21.

<sup>6</sup> Varadachariar, S, The Hindu Judicial System, 93 (1946).

systems, which resulted in such a fine structural system, which had been adopted by independent India with some minor changes in its superstructures. Presently, our system contains best of the both eras.

### **1.1 PHILOSOPHY OF SPEEDY TRIAL UNDER THE CONSTITUTION OF INDIA:**

The concept of access to justice has undergone an important change after the British rule ended in India. With the complete enforcement of the Constitution of India on 26 January 1950 there emerged a new form of power arrangement in the State. There is an institutionalization of power within the Constitution which is the fundamental law of superior obligations.

The Constitution also lays down the goals in its Preamble which this new power ordering aspires to achieve. Frankly admitting Justice is the foundation of any civilized society. Preamble to the Constitution of India includes as a Constitutional goal 'Justice- social, economic and political'. Article 39-A<sup>7</sup> of the Constitution provides for ensuring equal access to justice. Administration of justice involves protection of the innocent, punishment of the guilty and satisfactory resolution of disputes. It has been rightly said that an effective judicial system requires not only that just results be reached but that they be reached swiftly.

Article 39A<sup>8</sup> of the Constitution of India provides that State shall secure 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 disability.

Articles 14<sup>9</sup> and 22<sup>10</sup> also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. The legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Section 304<sup>11</sup>, Criminal Procedure Code lays down that the constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand. The words "access to justice" cannot be not easily defined, but they serve to focus on two basic principles of the legal system- the system by which people may vindicate their rights and/or resolve their disputes under the auspices of the state. First, the system must be equally accessible to all and second, it must lead to results that are individually and socially just. Social justice, as sought by our modern societies, presupposes effective access to justice for all.<sup>12</sup>

### **1.2 RIGHT TO SPEEDY TRIAL: INDIAN PERSPECTIVE:**

A 'speedy trial' does not only mean that the accused is tried for the alleged crimes within a reasonable time. But, a speedy trial truly means that the accused is tried for the alleged crimes within a reasonable time after being arrested by giving suitable time to the accused and to the victim to defend himself and to prosecute the accused respectively. Although most States in United States of America have laws that set forth the time in which a trial must take place after charges are filed, often the issue of whether or not a trial is in fact 'speedy' enough comes down to the circumstances of the case itself, and the reasons for

<sup>7</sup> INDIA CONST. art. 39 A.

<sup>8</sup> INDIA CONST. art. 39 A.

<sup>9</sup> INDIA CONST. art. 14.

<sup>10</sup> INDIA CONST. art. 22.

<sup>11</sup> The Code of Criminal Procedure, 1973, S. 304.

<sup>12</sup> Arora, B.L., Law of Speedy Trial in India, (1<sup>st</sup> ed. 2006), Universal Publishing Co., New Delhi

any delays. In the most extreme situations, when a court determines that the delay between arrest and trial was unreasonable and prejudicial to the defendant, the court dismisses the case altogether.

This means that a criminal defendant must be brought to trial for his or her alleged crimes within a reasonably short time after arrest. While the Amendment to the United States Constitution expressly states that “in all criminal prosecution, the accused shall enjoy the right to a speedy and public trial”<sup>13</sup>, our Constitution<sup>14</sup> does not expressly declare this as a fundamental right. It is a truism that the State is the guardian of fundamental right of its citizens and is duty bound to ensure speedy trial and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible. Speedy trial is recognized as one of the essential principles of administration of justice in the modern democratic world and more particularly in the developed democracies.<sup>15</sup>

Further, the judiciary in India is known for its impartiality, independence and justice-oriented approach. However, the capabilities and ways of functioning of Indian Judiciary were under challenge as a feeling of disillusionment and frustration was witnessed among the people of this country. The biggest challenge being faced by the justice delivery system in India is that of delay in the dispensation of justice. Heavy back-log of cases in the Honourable Courts and inevitable delay in the dispensation of justice has been to such an extent that it is shaking public trust and confidence in the legal system and it is tending to erode the quality of social justice.

Therefore, it is necessary to have speedy trial or speedy disposal of cases. By judicial interpretation and extension of the concept of personal liberty, the ‘Right to Speedy Trial’ has been incorporated under Article 21<sup>16</sup>. But, it would be wrong to say that it is only by way of wide judicial interpretation of Article 21 that the concept of speedy trial has been included under Article 21 of our Constitution, rather in its true sense, it is well-embedded in the term ‘personal liberty’. By speedy trial we mean disposal of cases within a reasonable period of time. A procedure prescribed by law for depriving a person of his liberty cannot be termed as ‘reasonable, fair and just’ unless it ensures a speedy trial for determination of the guilt of the accused.

The right to speedy trial was recognized by the Honourable Supreme Court in the case of **Hussainara Khatoon versus Home Secretary, State of Bihar**<sup>17</sup> and observed that “no procedure, which doesn’t ensure a reasonably quick trial, be regarded as ‘reasonable, fair and just’ and it will be violative of Article 21 and hence is not valid under law. Breach of this fundamental right has the potential of making the entire prosecution liable to be quashed and closed. And the accused in all such cases will have to be declared innocent and set at large.”<sup>18</sup>

### 1.3 RIGHT TO SPEEDY TRIAL IN INDIA, A RETROSPECTION:

The philosophy of right to speedy trial has grown in age. Nature is guided by principles which become translated into ethical terms and so called laws in the form of various ancient religious sources including

---

<sup>13</sup> U.S. CONST., amend. VI.

<sup>14</sup> INDIA CONST.

<sup>15</sup> Paul B. Weston and Kenneth M. Wells, *The Administration of Justice* (3<sup>rd</sup> ed.), Prentice Hall, Englewood Cliffs, New Jersey, (1997).

<sup>16</sup> INDIA CONST. art. 21.

<sup>17</sup> *Hussainara Khatoon versus Home Secretary, State of Bihar* (1980) 1 SCC 115.

<sup>18</sup> *Bhatia G.P., Application of Right to Speedy Public Trial* (2005).

Vedas, Smritis, etc. as well as in the lives of men. Whatever laws, i.e. dharma under ancient Indian context were developed have a sole purpose of investing justice because unjust law is no law.

Administration of justice when institutionalized in ancient India had sole purpose to regulate the values prevailing and to uphold Dharma. Ancient India had an extremely advanced administrative structure wherein social ordering matured into legal ordering and where concept of controlled power had become a well recognized norm.

In ancient Indian civilization, great importance was placed to Dharma and there exists a democratic multi-dimensional system based on “Rajdharmā”. In true sense, at that time administration of justice was not the function of the king but the people themselves in their various Kulas, Srenis, Gana, Guilds, etc. Though one of the predominant purposes of institution of kingship was administration of justice, the legal system in ancient India was primarily governed by five kinds of legal literature on priority basis: Vedas, Shrutis, Dharmashastras, and Smritis, Mimams Nibandhas or commentaries and digests. Administration of justice was to be regulated by these texts and treatises. Customs and sadacharas were also applied. The most important thing about all these legal sources to uphold ‘dharma’ was that they were ‘ethically sound’ with certain exceptions and took care and divided power in whole among society at equal basis.

On the other hand, the unique feature of ancient India was its homogeneity as to the system of governance and law, even though the vast area of India was never ruled by a single ruler. In contrast, Europe was divided into only a handful of countries and yet the system of governance and law differed greatly for each European king had made its own laws in exercise of its sovereign power.<sup>19</sup>

#### **1.4 SPEEDY TRIAL UNDER CODE OF CRIMINAL PROCEDURE, 1973:**

The regime of criminal trial in India is regulated by the Code of Criminal Procedure and the general law of offences and their punishments is the Indian Penal Code. The procedure for criminal trial as provided in the Code of Criminal Procedure lays down a number of provisions aimed at reducing the delay in the investigation and trial of offences. The constitutional guarantee of speedy trial emanating from Article 21<sup>20</sup> is well reflected in the various provisions of the Code. Personal liberty being the corner-stone of our social structure, the provisions pertaining to trial of a person accused of an offence has special significance and importance. So for ensuring speedy disposal of a case, the pre – trial procedure should be reasonably fast.

There are provisions in the Code which state that every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Timely information of the grounds of arrest enables him to move proper Courts for bail or to make expeditious arrangements for his defence.

The section 56<sup>21</sup> of Code of Criminal Procedure provides that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions regarding bail, take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a police station, but the police officer or other person executing a warrant of arrest shall, subject to the provisions of Section 71<sup>22</sup> as to security, without unnecessary delay bring the person arrested before the

<sup>19</sup> Jain, M.P., *Outlines of Indian Legal and Constitutional History*, (7<sup>th</sup> ed. 2014).

<sup>20</sup> INDIA CONST. art. 21.

<sup>21</sup> The Code of Criminal Procedure, 1973, S. 56.

<sup>22</sup> The Code of Criminal Procedure, 1973, S. 71.

court in which he is required by law to produce such person, provided that such delay shall not, in any case, exceed twenty – four hours exclusive of the time necessary for the journey from the place of arrest to the Court of the Magistrate.<sup>23</sup>

### 1.5 JUDICIAL PRONOUNCEMENTS ON SPEEDY TRIAL IN INDIA:

The Supreme Court in the case of **Maneka Gandhi versus Union of India**,<sup>24</sup> has stated clearly held that Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal liberty except according to procedure established by law and such procedure as required under Article 21 has to be “fair, just and reasonable” and not “arbitrary, fanciful or oppressive”. The court has further stated that, “If a person is deprived of his liberty under a procedure which is not ‘reasonable’, ‘fair’ or ‘just’, such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release.” The Honourable Apex Court has observed that in the broad sweep and content of Article 21, right to speedy trial is implicit.

The Honourable Apex Court’s decision in **Hussainara Khatoon versus Home Secretary, State of Bihar**<sup>25</sup> is a land mark case in the development of speedy trial jurisprudence. In the instant case, a writ of habeas corpus was filed on behalf of men and women languishing in jails in the State of Bihar awaiting trial. Some of them had been in jail for a period much beyond what they would have spent had maximum sentence been imposed on them for the offence of which they were accused. Alarmed by the shocking revelations made in the writ petition and concerned about the denial of the basic human rights to those victims of callousness of the legal and judicial system, the Honourable Supreme Court went on to give a new direction to the constitutional jurisprudence. In doing so, the Honourable Court heavily relied on its decision in an earlier case in which the Court gave a very progressive interpretation to Article 21 of the Constitution. Taking this interpretation to its logical end, Honourable Justice P.N. Bhagwati, in Hussainara Khatoon’s case said: “Procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. 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.”

In the case of **Bhawna Karir versus the State and Another**<sup>26</sup>, the right to speedy trial was alleged to have been infringed, the first question to be put and answered was that the person to be liable for the delay. Proceedings taken by either party in good faith, to indicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact in the case that an application petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not frivolous. Very often these stays obtained on ex – parte representation. The prosecution should not be allowed to become a persecution. Hence, an accuser’s

<sup>23</sup> Jain M.P., Indian Constitutional Law, (8<sup>th</sup> ed., revised by Lexis Nexis, 2016).

<sup>24</sup> Maneka Gandhi versus Union of India, AIR 1978 SC 597.

<sup>25</sup> Hussainara Khatoon versus Home Secretary, State of Bihar (1980) 1 SCC 115.

<sup>26</sup> Bhawna Karir versus State and Another, CRL.M.C. 2592/2011 (Del. H.C.).

pleas of denial of speedy trial cannot be defeated by saying that the accused has delayed the proceedings.<sup>27</sup>

### **1.6 RIGHT TO SPEEDY TRIAL UNDER UNIVERSAL DECLARATION OF HUMAN RIGHTS, 1948:**

Article 8 of Universal Declaration of Human Rights, 1948<sup>28</sup> lays down that ‘everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law.’ Article 10 of the Universal Declaration of Human Rights<sup>29</sup> is associated with the right to speedy trial and provides that ‘everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.’

### **1.7 RIGHT TO SPEEDY TRIAL UNDER EUROPEAN CONVENTION ON HUMAN RIGHTS, 1950:**

The right to be tried within a reasonable time is guaranteed under Article 5 (3)<sup>30</sup> and 6 (1)<sup>31</sup> of the European Convention while Article 5 (3) deals with the pre-trial stage, Article 6 (1) relates to the trial on a criminal charge.

Article 5 (3) of the European Convention on Human Rights 1950 provide: ‘Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release pending trial.’

Article 6 of the European Convention on Human Rights is a provision of the European Convention which protects the right to a fair trial in criminal cases and cases to determine civil rights. It protects the right to a public hearing before an independent and impartial tribunal within reasonable time and allows presumption of innocence and other minimum rights for those charged in a criminal case including adequate time and facilities to prepare their defence, access to legal representation, right to examine witnesses against them or have them examined, right to the free assistance of an interpreter.<sup>32</sup>

## **CONCLUSION**

The prime objective of the judiciary or the judicial institution is to ensure fair and speedy trial within shortest possible time so that people seeking justice can get justice expeditiously. The judicial process must possess the genius to do social justice and the judiciary cannot be oblivious of the constitutional norm. Only just and speedy decision can prevent unjust cause and restore people’s faith in the justice delivery system. And the norms of fair and speedy trial are the condition precedents.

It is not only the duty of the Honourable Courts to provide a fair and speedy justice to the accused, but also the other instruments of criminal justice system viz., police, public prosecutors and defence counsel. At the same time, it is also the duty of the public to extend its utmost cooperation to the police and the

<sup>27</sup> Sharma D.P., Speedy Justice and Indian Criminal Justice System, 45 (3), Indian J. Pub. Admin. (1999).

<sup>28</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948), art. 8.

<sup>29</sup> Universal Declaration of Human Rights, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (Dec. 10, 1948), art. 10.

<sup>30</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 5 (3), Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>31</sup> Convention for the Protection of Human Rights and Fundamental Freedoms art. 6 (1), Nov. 4, 1950, 213 U.N.T.S. 221.

<sup>32</sup> Sharma, Kanahaiyala, Reconstruction of the Constitution of India, Deep & Deep Publications (2002).

courts to complete investigations and trial speedily. Without public co-operation, no agency can discharge its duties successfully.

Therefore, in order to provide speedy justice to the victim and speedy trial of the accused to prove his guilt or innocence, the aforesaid instrument must work collectively. The executive has a central role to play in the process of expediting the criminal justice delivery system. The executive should protect witnesses and victims, conduct the prosecution efficiently and avoid political influence. The investigating agencies must be well equipped to analyse the organisation and planning of crimes involving equipment. The legislature's immediate concerns are also required in certain areas which need to be addressed. Since access to justice is an integral part of social justice.

## REFERENCES

1. Dholakia, H.C. (1980), Right to Freedom of Speech and Expression in India (1980), University Publications Sales Unit, Baroda, Gujarat.
2. Enzensberger, H.M., Constituents of a Theory of the Media", In Raids and Reconstructions: Essays on Politics, Crime and Culture (1976), Pluto Press, London, England.
3. Gopal, Jayal Niraja, Democracy in India (2001), Oxford University Press, Great Clarendon Street, Oxford, England.