

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**

[ISSN 2581-5369]

Volume 4 | Issue 4

2021

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Speedy Trial: A Constitutional Point of View

GAURI GUPTA¹

ABSTRACT

There is a serious case concerning the legal and judicial system's defective condition which is solely responsible for the notorious delay in disposing of cases due to this gross refusal to give justice to under-trial prisoners in India. This paper examines past judgments by the Supreme Court of Indian Affairs and attempts to analyse how the American judiciary has been able to deal with the problem in order to speed up the proceedings. Speedy trials are the essence of criminal justice and there can be no doubt that delay is a denial of justice by itself. Any delay in a system of every kind leads to the failure of the justice system and this problem is certainly a gross victim of India. The very foundation of the Jurisprudence Criminal Proceedings would certainly be undermined if corrections are not taken with alacrity. Justice must be done, as they say, as well as appearing to have taken place.

When the rights of any person are infringed, he mainly pronounces a sentence "I'm going to see you in court." It shows faith in the judicial system by individuals. However, one of the main problems of the judicial administration is the problem of delay in the disposal of cases pending in the Court, even though this has been with us for a long time. In some states, it is reported that a few sub-proceedings spent more time in prisons than was provided for the maximum prison term. This sort of troubling situation hasn't been overlooked. Critical observation has been made by the mass media and the high judiciary regarding cases which have come to light. The provisions on speedy justice referred to in the Indian Constitution are discussed here.

I. INTRODUCTION

The backbone and object of every society and nation civilised is Justice. Justice detection was an ideal where humanity has been hopeful for generations. Justice is a constitutional mandate for the administration of both legal and social institutions. In its Preamble, the Indian Constitution defined and declared the common objective for its citizens, "to secure justice - social, economic and political for every citizen of India." Article 14 guarantees all the citizens of that country equal equality before the law and equal protection of the law. Article 39 A of the Constitution mandates the State to ensure that, on the basis of equal opportunities, the

¹ Author is a student at Law College Dehradun, Uttarakhand University, India.

operation of a juridical system promotes and diffuses justice, and ensures that this is not denied to any citizen due to economic or other inability. Everyone has equal rights, but the problem, Courts, is that, but the judicial procedure is very complex, expensive and lenient, bringing the poor to a squad. It is a welfare State's primary duty to provide judicial and non-judicial dispute settlement mechanisms so that all citizens have equal access to their legal disputes and to the execution under the constitution of their basic and legal rights [1]

The preamble which speaks of justice, article 38, directs the state to promote a just social order and Part 3 which guarantees a humanist egalite, not as a petrified or pedantic formula of legal pundits but as a project for abolition of inequalities and promotion of equalization through the law, constitute the spiritual essence of the constitution [2].

II. RIGHT TO SPEEDY JUSTICE

The Indian Constitution requires the State to guarantee social, economic and political justice, and makes Article 14 inevitable for the constitutional mandate of speedy justice. It ensures equality without discrimination on grounds and equal protection of laws before the law. It is compulsory for the State to ensure the workings of the legal system in such a way that Article 39 A of the Constitution promotes justice on an equal basis and makes it clear that the same is not the case.

Any citizen denied or restricted. Further equal opportunities for access to justice must be afforded due to economic or other disabilities. as It is not enough for the law to treat all people equally regardless of common inequalities, but for the law to function or prevail, despite economic differences, all people must be able to have access to justice. "Access to justice" focused on two fundamental reasons for the legal system: The following:

1. The system must provide access to all the people presented before it.
2. It should lead to results which are fast, fair and economically viable and free from ambiguity [4].

A Famous Jurist late Nani A. Palkhivala has observed that: *"If I were asked to mention the greatest draw back of the administration of justice in India today, I would say that it is delay. There are inordinate delays in the disposal of cases. We, as a nation, have some fine qualities, but a sense of the value of time is not one of them. Perhaps there are historical reasons for our relaxed attitude to time. Ancient India had evolved the concepts of eternity and infinity. So, what do thirty years, wasted in litigation, matter against the backdrop of eternity? Further, we believe in reincarnation, what does it matter if you waste this life? You will have many*

more lives in which to make good". The India Constitution reflects humanity's acknowledgement and aspiration for justice. The justice system is obliged to provide its consumers or the people before it with prompt and cost-effective justice. The way in which justice or the equality, equality and impartiality elements are compromised are laid down under different provisions. As it can be understood, the quality of justice is not only affected by the punishment and the release of an innocent person, but also when the decision is enormously delayed. The parties are suffering. "Justice delayed is denied," it is rightly stated. The Speedy trial shall be a right of the accused, as held in so many cases by the Supreme Court, to flow from Article 21 of the Constitution. Clearly, there are no express provisions in India's Constitution as regards the right to speedy justice. But Article 21 of the Constitution expresses the same thing. A legal procedure for the deprivation of a person's fundamental rights, unless a speedy trial to determine the guilt of the person accused and brought to justice is guaranteed. No procedure that does not guarantee a reasonable quick and fair trial shall be considered "reasonable, fair and just" and shall contravene Article 21 of the Constitution. Rapid proceedings and quick justice are interconnected and constitute the fundamental rights of the individual. Direct denial of justice is a denial of speedy justice [5].

III. ARTICLE 21 OF THE CONSTITUTION

Article 21 of the Constitution deals with the fundamental rights, to personal liberty. These fundamental rights are those rights that cannot be violated by any authority. Concept of speedy justice under Indian constitution indirectly concern with the right to life or personal liberty that mentioned in art 21. Furthermore, the requirement of 'quick justice' reflects an individual's demand for his right to life and his right to dignity. The concept Of Right to Speedy Justice has its roots in one of humanity's fundamental organisations, which it calls 'Personal Liberty.' Personal freedom is one of each civilised society's most esteemed goals. For liberty is one of a man's greatest heritage, so we can say life is worthless and lifeless to live without liberty. To give up freedom means to give up a person's human right, which is why freedom is called the core of a civilised society. It is a question of giving up freedom. Because every life being is the right to life first and foremost. Almost all other rights depend on that right, since there can be no other right without life. The right to life under this Article has been distinguished in our Constitution framers. In Article 19, the freedoms were delivered. The sole distinction between Article 19 and 20 is that Article 19 contains a complete list of 6 liberties, whereas Article 21 has nothing to do with the subject. However, this small article leaves this constitution as broadly as possible to be interpreted as any other Article [8].

Unless under certain circumstances, the Article prohibits any impairment of life or personal rights under the procedure established by law. It is consistent with the Fifth and Fourteenth U.S. Constitution Amendments, which read, in relevant parts: "Nor be deprived of life, freedom, or possession without due process of law and 'Nor shall any state deprive anyone, without due process of law, of life, liberty, or property.'" Protection provided under Article 21 is granted, but in accordance with the legal law, to all persons whether they are citizens or foreigners, free or equally arrested or detained. In the course of the interpretation procedure, the Supreme Court set out the broadest extent to protect the lives and freedom of all free and detained persons in Article 21[9]. The Supreme Court

INTERPRETATION OF PROCEDURE ESTABLISHED BY LAW

The standard that Article 21 provides for protection of personal freedom is the legal procedure [10]. The nature and extent of Article 21's protection of personal freedom depend on the meaning and extent of the standard of procedure laid down by the law which, with the help of the judicial procedure, would ultimately depend on the interpretation of the term of expression.

The Supreme Court in Gopalan's Case [11] made the correct explanation of this term "procedure established by law." In this case, the petitioner challenged the validity of the Preventive Detention Act in which he was detained on the ground that inter-alia arose from a violation of the constitutional protection provided for in that Article and that the Act passed by the Parliament did not meet the standard of the 'law established procedure.' On the other hand, the Attorney General contended that the words "law-based procedure" means just any proceedings established, or prescribed by the State under the law. On the other hand, the petitioner argued that "law-based procedures" should, in a wider sense, be interpreted as "procedural due process"[12].

CHIEF JUSTICE KANIA OBSERVED

Chief Justice Kania observed that, according to my view, "no different aid is obligatory to interpret Article 21's words. When we read it in simple words, the term should mean the procedure prescribed by the law of the State without thinking about other constitutions. There was nothing to prevent the assembly from adopting the phrase when the Indian Constitution wanted to intercede on each person with the protection conferred by an adequate process clause of the American constitution, or if they wanted to limit it only to procedure, but only to adopt the word procedure, which was pre-fixed with 'law.' But what is the right conferred under Article 21, the appropriate question? The only right is not to deprive a person of his life or his personal liberty except in accordance with the law-making procedure. One may want that right

to be extended, but to give such a right is not the Court's precondition, it is the COnstitution's prerogative [13].

IV. SPEEDY TRIAL AS A CONSTITUTIONAL RIGHT

Speedy justice in every case requires quick and fair trial. In the context of the broad scope and contents of Article 21 of the Constitution of India, Indian Judiciales has delved deeper into the philosophy of fundamental rights to our Constitution and the right to speedy trial.

He said that there is no country in the world where there is a sufficient period of litigation as in India. Our cases stretch for a long time, making the aeon easy to understand. While the law may or may not be a burden, it is definitely a snail in India, and in the snail's community our cases go at a speed considered unreasonably slow. He said finally that Justice had to be blind, but I didn't check why it had to be lame, it just hobbles, it just can't go there [6].

The bright glorious name of the judiciary cannot be allowed to be made ugly or untrustworthy because of a fault of some people. Underlying law, there is a policy that has been developed and implemented to ensure speedy, uncontaminated and unpolished justice, and efforts are obligatory in order to meet the expectations of society [7].

This found approved by the Supreme Court in the landmark cases of *M.H. Hoskot V. State of Maharashtra* [14] and *Hussainara Khatoon V. State of Bihar* [15] in which the Supreme Court observed that, "speedy trial, and by speedy trial means, reasonably expeditious trial who is an essential part of fundamental right to life and liberty as asserted in Article 21 of the Indian Constitution. In other leading cases of *A.R.Antulay V. R.S.Nayak* [16] and *Sheela Barse V. Union of India* [17], The Suprem Court observed that, Right to speedy trial is inherent in Article 21 of the Constitution and due to the violation of this right the consequences be that the prosecution itself liable to be sweep away on the ground that it is a breach of a fundamental right. The Significance of speedy justice is not only emphasized in Municipal law or state laws but also in International Covenants. The haziness of the Constitutional standards, to achieve speedy justice, the legislatures in recent years has shown deep interest. The best known for all and most comprehensive which includes so many other parts, such effort is the Speedy trial Act of 1974 (Amended in 1979). The Federal Speedy Trial Act of 1974 is a best example of effective legislation to fast criminal trials. The right to speedy trial is not expressly asserted as one of the fundamental rights in the Constitution of India. It inter alia declares that concerning all criminal matters the prosecution enjoy the right to speedy trial. For the first time, the Supreme Court of India in the *Hussainara Khatoon* case [18] declared that the right to speedy trial was implicit in the broad sweep and content of Article 21. The right to speedy trial was a

fair and reasonable procedure that is guaranteed by Article 21. It could not be arbitrary, national or oppressive. The core of speedy trial was considered as a protection against immure.

Right to speedy trial is the extract of justice as justice delayed is justice denied. Speedy trial is not mentioned as a particular Fundamental Right in the Constitution, even in criminal procedure code, it does not specifically guaranteed, nor there is any specific provision which prescribing the maximum period for which a magistrate can keep an under trial in jail without holding trial. The right to speedy trial has said to have its roots at the foundation of criminal proceedings, and the US Supreme Court has traced its roots back to the 12th century [19].

Stages covered by right to speedy trial

Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right of the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is also in public interest or by its serves the social interest also, does not make it any- the-less right of the accused. Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial [20].

This is how the courts shall understand this right and have gone to the extent of disaffirming the prosecution after such inordinate delay in concluding the trial of an accused keeping in view the facts and circumstances of the case. Keeping a person in suspended animation for 8 years or more without any case at all cannot according to the spirit of the procedure established by law. It is correct that although minimum sentence to be imposed upon convicted person is prescribed by the statute yet keeping in view the provisions of Art. 21 of the Constitution of India and the interpretation there of qua the right of an accused to a speedy trial, judicial benevolence can play a important role and a convicted person can be compensated for the mental anguish. Which he undergoes on account of protracted trial due to the fault of the prosecution by this Court in the exercise of its extra- ordinary jurisdiction [21].

Investigation

The system adopted by police for investigating into the case has now become obsolete. As earlier due to old techniques of investigation the police was not able to collect evidences effectively and quickly resulting into delayed investigation and ultimate result was delayed disposal of the case. At present due to technological development, criminals committing a crime in a very planned manner by using scientifically developed measures. Such type of criminal activity may be checked and guilty person can be identified if investigating agencies are well trained in doing scientific investigation [22].

Effect of omission, irregularities and illegalities in investigation

Their Lordships of the Supreme Court observed that a defect or illegality in investigation however serious has no direct bearing effect on the competence or the procedure relating to cognizance or trial. If cognizance is in fact taken, on a police report debauch by the breach of a mandatory provisions relating to investigation. So There can be no doubt due to the result of the trial which follows it cannot be set aside unless the illegality in the investigation can be shown to have brought about a discomfiture of justice [23].

Delay in execution of sentence

In 1975, the appellant was sentenced to death and was charged of committing wicked and diabolic murders and since then he was in solitary confinement. Before conviction he had been a 'prisoner under remand' for 2 years. The Supreme Court held that 2 years delay in execution of the sentence after the pronouncement of judgment of the trial court will entitle the condemned prisoner to ask for commutation of his sentence of death to imprisonment for life. It is observed: —

Sentence of death is one thing, sentence of death followed by lengthy imprisonment prior to execution is another. A period distress and suffering from pain is an inevitable consequence of sentence of death, but a respite of it beyond the time necessary for appeal and consideration of retrieve is not” [24].

V. APPEAL

On the apex stands the Supreme Court and under it the High Courts. He is the supreme interpreter of the Constitution and the guardian of the fundamental rights of the people. The Court of Appeal is the ultimate interpreter of the law of the land in all civil and criminal matters. The strength of pending cases and courts covered by a lot of burden rises due to the filing number of appeals. The Supreme Court's original competence with regards to the enforcement of fundamental rights is provided for in Art. 32 of the Constitution. The Supreme Court shall, in the event of a violation of its provisions, file a case under the concept of speedy justice, which is provided under Article 21 as the fundamental right.

A high court's competence in appeal may, in the case of civil and criminal cases involving significant legal questions as regards its interpretation, be sought with a certificate issued by the High Court in accordance with Article 132(1), 133(1) or 134 of the Constitution in respect of any judgement, decree or final order of any High Court. The Supreme Court also has a broad jurisdiction for appeals

For all courts and courts in India to the fullest extent possible, the Commission granted special leave in its direction to appeal any judgement, decree, decision, judgement and order in the context of a case passed or issued by any court or court in the territory of India p pursuant to Article 136 of the Constitution [25].

VI. JUDICIAL PRONOUNCEMENTS ON SPEEDY TRIAL IN INDIA

Each person wants freedom. No one can spend his life as a country's free citizen without freedom. Freedom and freedom are only for the purpose of living or surviving. The right to life and personal freedom for each person is guaranteed by Article 21 of the Indian Constitution. If two conditions are observed, a person can be deprived of life and personal liberty. Firstly, law must exist and secondly, a procedure prescribed by this Law must be established that the procedure is fair, fair and reasonable. When Art. 21 is interpreted, the creativity of the Indian judicial system has emerged. Article 21 is a light to all lovers of freedom who promise, where necessary, to advance further rights and guarantee minimum equity throughout the system. By means of liberal right, the activist approach of the Supreme Court has granted life and personal liberty a new dimension. In the case of an offence, the Court does not remain silent but offers compensation for the corrective relief. The Indian judiciary is an important player in protecting people's rights and has sought to grant certain rights such as the right to prompt trial and the right to fair proceedings. A constitutional status through the inclusion of all such rights under our Constitution, Article 21. In the justice regime, the judiciary in India played a dapper role by providing all its people with a fair and fair trial. The judgements of the Supreme Court and of the High Courts on the matter of proceedings are related to the fact that the Court has challenged the delays and acquitted the defendant. The most apparent disease that has been affecting the judicial concern is the detection and excessive delay in the disposal of cases. A surprising scenario is the collection of accumulated workloads from different courts. Indeed, under the weight of pending cases, the whole system falls apart and grows daily. All these distempers were known to Justice V.R. KrishnaIyer and Justice P.N. Bhagwati. In India, however, judicial delays affect the entire body and system. Nobody can hope to get justice in a reasonable person. Criminal cases have been proceedings for years, even sometimes over decades. Civil cases are for individuals or for cases to be covered by the special procedure laid down in the Act."

The Supreme Court refused to bring the case back to the trial Court for further process in the Machander v. State of Hyderabad [26] case due to a delay of 5 years between the commission and the Supreme Court's final judgement. The Supreme Court has observed: "*We are not able*

to keep persons on trial for their live and under uncertain suspense because trial judges omit to do their duty. We have to show an effective balance between conflicting rights and duties. While it is mandatory on us to see, the guilty person do not escape, it is more necessary to see the accused person of crimes are not indefinitely suffered. While every reasonable expansion must be given to those concerned with the detection of crime and assigned with administration of justice, but limits must be placed on the lengths to which they may go."

In another case of *Citajoo Rant v. Radhey Shayam* ^[27] "delay in trial was one of the factors on the basis of which the Supreme Court dropped the further proceedings."

In *State of Uttar Pradesh v. Kapil Deo Shukla* ^[28] "though the court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of twenty years."

The Supreme Court in *Maneka Gandhi v. Union of India* has stated that Art.21 of the Constitution of India gives every individual the fundamental right, except under the procedure laid down by law and as required pursuant to Article 21, not to be deprived of his/her personal life or freedom, to be fair and fair and reasonable and not to be arbitrary. Moreover, the court said, "If a person is deprived of his freedom under a proceeding that deprivation is in violation of his fundamental right in accordance with Article 21 and he has the right to exercise that fundamental right and guarantee his release. The apex Court has noted that the right to a quick trial is implicit in the broad sweep and content of Article 21.

Charles Sobharaj v. Suptd, Tihar, Tihar [29] Justice Krishna Iyer observed that "if Fundamental rights are ignored or if Legislative protection is ignored, the court will act against any inmate. The cries of discipline by the parrots will not dissuade security, fear discretion and prevent the judicial proceedings.'

The Hussainara Court v. Home Secretary of State in Bihar[30] observed that this is a landmark in prompt trial case development. In this case, a document was submitted by Habeas Corpus for men and women in prison in the State of Bihar who are awaiting trial. Some of them were in prison long beyond what they were going to spend on the offence of which they were accused had a maximum sentence imposed on them. The Supreme Court has continued to give the Constitutional Jurisprudence a new system, alarmed by the shocking revelations of the Writ request and worried about the refusal of those victims of legal and judicial disorder to fundamental human rights. In its earlier case in which the Court gave a very step-by-step interpretation of Article 21 of the Constitution, the Court relied heavily on its decision are also delayed longer. This is affecting the legal position in strong manner. In *State of West*

Bengal v. Anwar all Sarkar ^[31], “A Bench of 7 judges of the Supreme Court held that, 'The necessity of a speedy trial is too vague and uncertain to form the basis of valid and reasonable distribution. It is too improper as there can hardly be any definite objective test to sort it. It has no classification regarding at all in the real sense of the term.

VII. CONSEQUENCES OF INFRINGEMENT OF RIGHT TO SPEEDY TRIAL

In criminal law during proceedings, some delays are considered systematic delays, which are neither within the control of prosecutor nor accused. These are following:

- a) Delay wholly due to pile of the court calendar, non- availability of Judges, or other circumstances out of the control of the prosecutor.
- b) Delay caused by the accused himself not even seeking adjournments but also by legal devices, which the prosecutor has to counter.
- c) Delay caused by orders, whether induced by accused or not, of the court, necessitating appeals or revisions or other concerned actions or proceedings.
- d) Delay caused by legitimate actions of the prosecutor like getting a key witness who is out of the way or otherwise avoids process or appearance or tracing a key document or securing evidence from foreign [32].

It is observed that If the accused is not brought to trial under the specified period the case, is dismissed. American jurisdiction quite different however, on whether dismissal on these grounds constitutes a bar to subsequent prosecution for the same offence [33]. 10 states provide that the cases were dismissed if the time limits are exceeded. Due to this it is resulted that:

- a) A guilty person (defendant) going free because of an administrative problem.
- b) It can also allow the prosecutor to latency deliberately because there is too little evidence for conviction.
- c) Blame the judge and judicial administration when the case is dismissed.
- d) Faith on the judiciary also effected, sometime people started to take law in their own hands.

The Speedy trial always considered a reasonable, fair and just but a delayed trial may not always be an unfair trial. The Supreme Court in State of Maharashtra v. Champalal Punjaji Shah [34] observed that, “*while a speedy trial is an implied ingredient of a fair and reasonable trial, the inverse is not compulsory to be true. A delayed trial is not necessarily an unfair trial. The delay may be at some time by the tactics or conduct of the accused itself. The delay may*

have caused no discrimination whatsoever to the accused. The question whether a conviction should be disaffirming on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused found to have been favouritism in the conduct of his defence and it would be said that the accused had thus been denied of a sufficient opportunity to defend himself, the conviction would certainly have to give. But if there is nothing for shown and there are no situation entitling the court to raise a presumption regarding the accused that he had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.”

In another case [35], Justice Krishna Iyer suggested that systematic slow motion in dispensation of Justice must claim the nation's immediate attention towards basic reformation of the traditional structures and procedure, and therefore. Justice Krishna Iyer made the following recommendation:

“Commercial cases should at which extent may be possible, be adjusted by non-litigative mechanisms of dispute resolution, since forensic processes, muffled and contentious hamper of the flow of trade and harm both sides whosoever wins or lose.” “The necessity for the simplification of procedural laws is to understand the intention behind law enactment. The simplified procedure will reduce the pendency of cases before the courts and renders the justice needed according time. In *Hussainara Khatoon vs. Home Secretary, State of Bihar* [36], the Supreme Court observed that the litigants have a fundamental right to speedy justice. In India, some of the major procedural laws which invariably invite simplification are: Code of Criminal Procedure, 1973 and Indian Evidence Act, 1872 and substantive law, The Indian Penal Code, 1860, by enacting a new major act called The Information Technology Act, 2000

VIII. CONCLUSION

Moreover, we cannot give effect to demand rule as justice cannot denied or suspended on the grounds that the litigants did not ask for speedy trials. So, the court has to apply various balance tests and find out that whether the right has been violated or not. It is not possible to fix a period of trial because it will bound and restrict the judiciary and there will be a burden of swift disposal of cases which may contort the quality of justice. The right to a speedy trial has been known, on occasion, to work to the harm of the defend as when sufficient time is not allowed for preparation of an adequate defense and the higher courts have found it necessary to keep a close his eyes regarding concerned matter. There are some other options for settlement of disputes like, mediation, conciliation or settlement through Lok Adalat which helps in disposing off the cases fast” [37].

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