

Speedy Trial and Judicial Activism

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Today 3.5 crore cases are pending in our country. only in Rajasthan 10 lakh cases are pending in civil and criminal courts. Among all Indian prisoners 75% of 3 lakh means 2.25 lakh prisoners are in prison without trail. Speedy means expeditious disposal of litigation. It is one of the distressing features of our criminal Justice System that an accused person, may quite conveniently and comfortably, if he can afford the cost involved, delay the trail by filling different applications and journeying from first court to superior Courts on petty matters. Delay is a known as defense tactic.

LEGAL DEFINITION OF SPEEDY TRIAL :

In criminal prosecutions, a defendant has a right to demand a trial within a short time under the Sixth Amendment of the U.S. Constitution. The Sixth Amendment states “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed to the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.”¹

Each state has a statute or constitutional provision limiting the time and accused person may be held before trial, which varies by state. Charges must be dismissed and the defendant released if the period expires without trial. However defendants often waive the right to a speedy trial in order to prepare a stronger defense, and if the accused is free on bail he/she will not be hurt by the waiver. Speedy trials laws serve :

- (1) to effectuate the right of the accused to a speedy trial;
- (2) to further the interests of the public, including victims and witnesses, in the fair, accurate, and timely resolution of criminal cases; and
- (3) to ensure the effective utilization of resources.

The passage of time alone may lead to the loss of witnesses through death or other reasons and the blurring of memories of available witnesses. There are also societal interests at stake. Persons in jail must be supported at considerable public expense and often families must be assisted as well. Persons released back into the community may commit other crimes, may be tempted over a lengthening period of time of “jump” bail, and may be able to use the backlog of cases to engage in please bargaining for charges or sentences which are not in society is best interest.

The Sixth Amendment provides in part that “In all criminal cases the accused shall enjoy the right..., to a speedy trial.” It was one of several provisions included in the Bill of Rights to reject explicitly earlier English practice that had permitted the accused to languish in prison for extended periods of time prior to indictment and the commencement of trial.

The right to a speedy trial does not apply to every stage of a criminal case. It arises only after a person has been arrested, indicted, or otherwise formally accused of a crime by the government. Before the point of formal accusation, the government is under no Sixth Amendment obligation to investigate, accuse, or prosecute a defendant within a specific amount, of time.

JUDICIAL DELAY: A CRYING SHAME :

The administration of justice does not deal with the punishment of the guilty alone; it also means acquittal of the innocent. Fairness and speed are equally important in the administration of justice. Speed serves the best interests of the accused, the survivors and the society at large.

However, judicial delays in India are endemic. No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. Civil cases are delayed even longer. This is despite the legal position strongly favoring speedy trial.

In the case of *Puran Singh v. State of Uttaranchal*,ⁱⁱ the Supreme Court acquitted appellant Puran Singh of murder in a case that had run for the last 29 years. At the time of judgment he was in jail. It is significant that the court heard his appeal out of turn. But for this, the case would have lingered on much longer.

The case pertained to a murder committed on 3 August 1979 near Akhori Village, Patwari Barab Circle, Ukhimath Tehsil, Chamoli District (Uttarakhand). The sessions Judge, Chamoli (Uttarakhand) acquitted the accused on February 6, 1981. However, the government appeal was allowed by the high court on 25 October 2005. The court convicted the accused person and ordered him to undergo imprisonment for life.

Puran Singh filed a Special Leave Petition before the Supreme Court of India. He also applied for bail as he was taken into custody after his conviction in October 2005. He remained in custody for around one-and-a-half years at this time, in addition to from August 1979 to February 1981.

On 10 April 2006, the Supreme Court of India admitted the appeal and issued notice on prayer for bail. On 24 November 2006, when the matter was called out, the court fixed final hearing of the appeal and observed that in view of that order, it was not necessary to deal with the bail application. Finally the appeal came up for out of turn hearing and the accused was acquitted.

The Supreme Court held in *Kadra Pehadiya v. State of Bihar*,ⁱⁱⁱ that “it is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial.” The Court in a compassionate expression observed no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a session trial ... we fail to understand why our justice system has become so dehumanized that lawyers and judges do not feel a sense of revolt at caging people in jail for years without trial.”

REASONS FOR DELAY IN TRIAL

- 1) The main reasons for delay in trial is the insensitivity of judges to provide justice.
- 2) Another reason for delay in trial is the big number of cases and litigations before various courts.

- 3) Corruption among lawyers, judges and other judicial officers is also a reason for delay in trial.
 - 4) The number of courts is less as regard to the number of disputes and cases.
 - 5) There are so many crimes developing in our country which also reasonable to increase the number of cases.
 - 6) Sometimes accused himself is responsible for the delay in his trial. In case of State of Maharashtra V. ChampalaI shah (AIR 1981 SC 1675) accused himself was responsible for a substantial delay.
 - 7) An accused person can conveniently and comfortably delay his trial if he can afford to do so. Through his sources he can file different application on petty matters and take them from first court to superior court on one ground or the other. Delay is a known defense tactic.
 - 8) The another reason is the various formalities in courts which has take so much time and money.
- Due to above reasons there is so much delay in the trial. Litigation take much time.

RIGHT TO SPEEDY TRIAL IN INDIA :-

Article 21 of the Constitution of India declares in a mandatory tone that no person shall deprived of his life or his personal liberty except according to procedure established by law. Life and liberty, the words employed in shaping Article 21, by the basic structure of the Constitution, are not be read narrowly in the sense drearily dictated by dictionaries; the organic terms to be construed meaningfully.

Speedy Trial not mentioned as fundamental right in the constitution. But in the case of Hussainara Khatoon^{iv} the Supreme Court observed : *"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 A. R. Antuley v. R.S. Nayak,^v the Supreme Court has laid down detailed guidelines for speedy trial of an accused in a criminal case but it declined to fix and time limit for trial of offences. The burden lies on the prosecution to justify and explain the delay. The Court held that the right to speedy trial following from Article 21 is available to accused at all stage namely the stage of investigation, inquiry, trial, appeal and revision. Regarding the right to speedy trial, the Court has laid down the following propositions as guidelines, in this case without seeking to be exhaustive, as "it is difficult to foresee all situations:

1. Fair, just and reasonable procedure :implicit in Article 21 of the Constitution creates a right in 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 that it serves the societal interest also does not make it any-the-less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

2. Right to speedy trial flowing from Art. 21 encompasses all the stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial.
3. The concerns underlying the right to speedy trial from the point of view of the accused are:
 - (a) the period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction;
 - (b) the worry, anxiety, expense and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, enquiry or trial should be minimal; and
 - (c) undue delay may well result in impairment of the ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

In *Kartar Singh v. State of Punjab*,^{vi} five judges bench of the Supreme Court has observed that *"the concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our Constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averred"*.

In *Hussainara (II)*,^{vii} the Supreme Court has emphasized that financial constraints and priorities in expenditure would not enable the Government to avoid its duty to ensure speedy trial to the accused. In *Moti Lal Saraf v. State of Jammu and Kashmir & Anr.*^{viii} the Supreme Court held that the speedy trial is implicit in the spectrum of Article 21 of the Constitution.

In *Moses Wilson & Ors. v. Kasturba Ors.*,^{ix} two judges bench of the Supreme Court of A.K. MATHUR & MARKANDEY KATJU JJ. held that *many people have started thinking that justice will not be done to the Courts due to the delays in Court proceedings. This is indeed an alarming state of affairs. The Court requested the concerned authorities to do the needful in the matter urgently before the situation goes totally out of control.*

REMEDIES TO PROVIDE SPEEDY TRIAL :

- (1) The most common solution appear to be an increase in the strength of Judges to dispose the pending and fresh cases.
- (2) ICT (Information and Communication Technology) deployment in Indian Judicial system is a key element to face challenges and to improve significantly the administration of civil and criminal Justice. ICT support to civil and criminal Justice opens new possibilities for supporting investigations, prosecution activities, national and international cooperation, trials and management of judicial cases etc. it not only ensures respecting the right to speedy trial but also results in an earlier disposal of cases. ICT can solve the backlog problem by establishing e-court in India effective use of ICT in Judicial System of India.

Nothing concrete and constructive has been done in this regard and e-courts in India are still a dream and not reality, Even though we have formally declared the National E-Governance plan (NEGP) that includes e-court as a mission made project yet we are far from establishing e-courts in India

- (3) Online Dispute Resolution : The ADR (Alternative dispute resolution) mechanism can be effectively used to settle online disputes by Modifying it as per the need. It can also overcome the geographical hurdles. The use of ADR Mechanisms for resolving online disputes is increasing day by day. A number of websites provided for some type of online disputes resolution method like arbitration, negotiation, mediation etc and also certain conflict management services
- (4) To provide speedy trial Government should make those enactments which purpose to provide speedy trial by their provisions like consumer protection Act, 1986.
- (5) The lack of coordination between the investigating and the prosecuting agencies should be rectified. In cases of offences compoundable by the agreement of parties the proceeding may be terminated by recording the compromise may be terminated by recording the compromise and the accused be released. The CRPC should empower the investigating officer to compound offences which are compoundable.
- (6) The concept of plea bargaining should be applied in offences which impose punishment of imprisonment of less than seven years and or fine including the offence covered by sections 320 of CRPC.
- (7) The need to fill up vacancies of judges is essential and the Judgment is significant in another aspect namely the reiteration that appeal is a statutory right and that the trial court 25 verdict is not final during the pendency of appeal. Appeal is rehearing and therefore the accused trial is deemed to be continuing. This will set at rest many controversies being raised by rival political leaders.

CONCLUSION

There is a saying that '*Delayed Justice is not Justice*'.

Delay in justice is injustice to the both parties of a litigation. Article 21 of the constitution of India related to speedy trial. Today speedy trial is essential because crimes are increasing day by day, so cases are also increased, to provide a security and protection to citizens speedy trial is necessary. Government of India took many steps from time to time to provide speedy trial but still now absolute speedy trial is a dream not reality. There is a long way to go to get the aim of speedy trial in all civil and criminal matters. The effective implementation of the skims, coordination between the investigating and the prosecuting agencies should be rectified. Government of India should take effective steps so that people can get justice without any delay in trial.

ENDNOTES:

- i The Sixth Amendment of the U.S. Constitution
- ii Appeal (Crl.) 437 of 2006.
- iii AIR 1981 SC 939.
- iv Hussainara Khatoon v. Home Secretary, State of Bihar (I) AIR 1979 SC 1360.
- v AIR 1992 SC 1630.
- vi (1994) 3 SCC 569.
- vii AIR 1979 SC 1369.
- viii AIR 2006 SC 56.
- ix AIR 2008 SC 379.

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