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Research Article

SUPREME COURT AND THE ISSUE OF DELAYED DELIVERY OF CRIMINAL JUSTICE IN INDIA: A CRITICAL ANALYSIS

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ABSTRACT

The criminal law in India is based on the principle of presumption of innocence of the accused till, there is a proof to establish the guilt beyond reasonable doubt. Meaning thereby, there should not be any wrongful conviction of an innocent person. Hence, the accused is given multiple opportunities to defend themselves. The statutes such as Code of Criminal procedure, Constitution of India, Supreme Court rules, are duty bound to defend the accused and prevent the infringement of fundamental right of Art.21 (right to life and personal liberty) as stated in the constitution of India. These constitutional and statutory mandate takes long and lengthy procedure in criminal trial. And sometimes it amounts to inordinate delay in justice delivery system, thereby hampering the due process of law. In view of this backdrop, this article critically analyse the the Issue of Delayed Delivery of Criminal Justice in India by quoting various guidelines of the Supreme court and High Courts regarding speedy disposal of pending cases.

Keywords: Criminal Justice, Speedy Trial, Constitution, Criminal Procedure Code, Supreme Court etc.

INTRODUCTION

The goal and principal objective of any criminal justice system is the effective and efficient delivery of justice. The courts, police, prosecution, and other players in the justice delivery system must be guided by the cardinal maxim that justice must manifestly be "seen to be done" at all times.[1] No trial can be allowed to prolong indefinitely due to the lethargy of the prosecuting agency or the State machinery and that is the *raison d'etre* in prescribing the time frame" for conclusion of the trial[2]. Quick and prompt trial of criminal offences is the need of the hour to repose faith of the people in judiciary. For this purpose the several constitutional guarantees in the form of protection from the intrusion of the "police powers" of the state,[3] broadly understood as the fundamental ability of the government to enact laws to coerce the citizens for 'public good' have been provided for in the Constitution of India. There are several well recognised principles of quality justice delivery and speedy disposal of justice especially in criminal matters is a desired goal of the justice delivery mechanism in India. This has been identified and highlighted by the Supreme Court in several of its judgments. The right to speedy trial is implicit in Article 21 of the constitution of India, therefore, through a number of decisions, the Indian judiciary too has reiterated that right to public and speedy trial is fundamental to the administration of justice. This article is divided in two sections. Part I of the article encapsulates the persisting issue of quality and speedy justice delivery and within the legal framework of India. Part II shall carry an examination of the role of the Supreme Court of India in addressing this issue.

Part I: Speedy Trial- A Necessary Ingredient of Fair Trial

A popular saying goes "Justice delayed is justice denied". Justice Krishna Iyer while dealing with bail petition in the case of *Babu Singh* v. State of U.P.[4] remarked that our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings. In the case of Sheela Barse v. Union of India[5] court reaffirmed that speedy trial to be fundamental right. Right to speedy trial is a concept gaining recognition and importance by each passing day. The 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. The Hon'ble Apex Court in the case of Hussainara Khatoon (I) v. Home Secretary, State of Bihar[6], has held that no procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of Article21. 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. The Constitution Bench of the Apex court in A.R.Antulay v. R.S.Nayak[7] has held that the right to a speedy trial was a part of fair, just and reasonable procedure implicit in Article 21 of the Constitution of India. In the case of State of U.P. v. Ram Veer Singh and Another[8], the apex court has held that the golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilt of the accused and the other to his innocence, the view which is favorable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent. Therefore, it is needless to say that the right to speedy trial can be

[1]This dictum was laid down by Lord Hewart(then Lord Chief Justice of England)in the case of *Rex* v. *Sussex* Justices[1924]1 KB 256
[2](2012) 9 SCC 408
[3]See *Berman* v. *Parker* 348 U.S. 26 (1954)

[4]1978 AIR 527
[5]1986 SCALE (2)230
[6]1979 SCR (3) 532
[7]1988 AIR 1531
[8]Appeal (crl.) 448 of 2001in Supreme Court of India

regarded as reasonable, fair and just. The right to speedy trial has been endorsed in almost all relevant international charters and conventions, most notably the International Covenant on Civil and Political Rights (ICCPR), which India ratified on 10 April 1979. The ICCPR provides explicitly for the right to speedy trial. Article 9(1) declares that everyone has the right to liberty and security of person [and that] no one shall be subject to arbitrary arrest or detention. Article 9(3) declares further that any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that the persons awaiting trial shall be detained in custody but release may be subject to guarantees to appear for trial at any stage of the judicial proceedings and, should occasion arise, for execution of the judgment. The enforceability of international conventions has come up before the Supreme Court of India. The Supreme Court in *People's Union for Civil Liberties* v. *Union of India*[9], has observed that the provisions of the covenant, which elucidate and go to effectuate the fundamental rights guaranteed by our Constitution, can certainly be relied upon by courts as facets of those fundamental rights and hence, enforceable as such.

In the case of *Vishaka and Others v. State of Rajasthan and Others*[10], the Supreme Court observed that the international conventions and norms are to be read into them in the absence of enacted domestic law occupying the fields when there is no inconsistency between them. It is now an accepted rule of judicial construction that regard must be had to international conventions and norms for construing domestic law when there is no inconsistency between them and there is a void in the domestic law. In India, neither the Constitution nor any existing laws or statutes specifically confer the right to speedy trial on the accused. Supreme Court of course, discussed hereinbefore has expounded on this aspect and has held it to be an integral constituent of Article 21 of the Constitution of India, 1950. Procedural law, i.e. The Code of Criminal Procedure, 1973 provides a statutory time limit to complete an investigation. Section 167 of the Code further provides that a failure to complete investigation within the statutory timeframe shall lead to release of the accused in custody on bail. Problem of delay and arrears in courts has been commented upon by jurists and legal commentators on numerous occasions. It continues to bedevil contemporary legal discussions and debate. Seventy-Seventh report of the Law Commission of India makes an important observation that the trial judge is a key player in speedy dispensation of justice. The report minced no words in calling him the lynchpin of justice system. The right to free legal service is therefore, clearly an essential ingredient of *'reasonable, fair and just'* procedure for a person accused of, an offence and it must be held implicit in the guarantee of Art. 21. Court had earlier pointed out in *M. H. Hoskot* v. *State of Maharashtra*[11] that judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power for steering the wheels of equal justice under the law. Free legal services to the poor and the needy are an essential element of any 'reasonable, fair and just' procedure. The seventy seventh Law Commission Report also recommended introduction of All India Judicial Service on the lines of All India Civil Services for the executive. The fourteenth report of the first Law Commission under M.C. Setalvad too had recommended on similar lines. It said that one reason why meritorious young men or young practitioners of some standing keep away from the judicial service is the comparative inferiority of the status of district judicial officers *vis a vis* concern of the district executive. It is to be noted that Malimath Committee[12] has recommended fivefold increase in intake of judicial officers in a phased manner. The Committee in fact, almost reiterates the observation of the 77th Law Commission Report by expressing concern on the deteriorating quality of the judicial officers. It is submitted that recommendations to deal effectively with problem of delays and arrears in courts in the past sixty years or so have been on similar thought pattern. Reforms nonetheless are not still in sight. The Criminal Procedure Code, 1973 as it stands, incorporates a few provisions to which resort can be had for protecting the interest of the accused and saving him from unreasonable prolixity at the trial. Section 309 for example, deals with power to postpone or adjourn proceedings and provides generally for every inquiry or trial, being proceeded with as expeditiously as possible, It stipulates that when the examination of witnesses has once begun, the same shall continue from day to day until all the witnesses in attendance have been examined and unless the court finds the adjournment of the same beyond the following day to be necessary for reasons to be recorded. It may be noted that with the passage of the Amendment Act 5 of 2009 in The Code of Criminal Procedure, 1973 a proviso has been added which stipulates that in case of sex offences under sections 376 to 376D the inquiry or trial shall be as far as possible be completed within a period of two months from the date of examination of the witnesses. This particular amendment is timely and should aid in expediting cases of the category mentioned. Explanation-2 to Section 309 of the Code confers power on the Court to impose costs to be paid by the prosecution or the accused, in appropriate cases, and putting the parties on terms while granting an adjournment or postponing of proceedings. This power to impose costs is rarely exercised by the Courts. In appropriate cases, inherent power of the High Court, under Section 482 can also be invoked to make such orders, as may be necessary, to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings. In appropriate cases, the High Courts have exercised their jurisdiction under Section 482 of the code for quashing of first information report and terminating criminal proceedings if the case of abuse of process of law was clearly made out. Such power can certainly be exercised on a case being made out of breach of fundamental right conferred by Article 21 of the Constitution. The object of the whole process inevitably is to secure justice. Criminal courts should exercise powers available to them, such as those under Sections 309, 311 and 258 of Code to effectuate the right to speedy trial. The Malimath Committee notices that section 173(8) of the Code is rarely put to use for discovering the truth. Under the relevant section a Magistrate can direct further investigation in a case. The report gives example of the case of *Kashmiri Devi* v. *Delhi Administration*[13], where Supreme Court gave direction for fresh investigation as prima facie it came to the conclusion that police failed to act in a forth right manner. A watchful and diligent trial judge can put these provisions to test. In appropriate cases, jurisdiction of High Court under Section 482 of Criminal Procedure Code and Articles 226 and 227 of the Constitution can be invoked seeking appropriate relief or suitable directions.

[9]AIR 1997 SC 568
[10]AIR 1997 SC 3011
[11]1978 AIR 1548

[12]Committee on Reforms of Criminal Justice System, Ministry of Home Affairs, Government of India(2003)
[13]1988 AIR 1323

ROLE OF PUBLIC PROSECUTOR

The Code does not specifically mention the spirit in which a public prosecutor has to discharge his duties. He should be personally indifferent to the result of the case. The Malimath Committee has observed that for success of the prosecution it is vital that proper co-ordination exists between the prosecutors and the police without affecting the independence of the prosecutors. The idea appears to separate them from the control of the police. It may be recalled here that prior to amendment of Code in 1973 the prosecution appearing for the court of the magistrates were functioning under the control of the police department. In *S.B.Shahane* v. *State of Maharashtra*[14], Supreme Court directed the government of Maharashtra to constitute a separate prosecution department having a cadre of assistant public prosecutors and making this department directly responsible to the state government for administrative and functional purposes; thereby totally severing the relationship between the police department and prosecution wing.

Part II: Role of Supreme Court in ensuring 'Speedy Justice'

The Supreme Court of India issued following guidelines on the importance of fair and speedy trial in the case of *A.R Antulay* v. *Avadesh Kumar*[15]:

1. Fair, just and reasonable procedure as under 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 of innocence of the accused is determined as quickly as possible in the circumstances.
2. Right to speedy trial flowing from Article 21 encompasses all the stages, namely, the stage of investigation, inquiry and trial, appeal, revision and retrial. While determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendance circumstances including nature of offence, number of accused and witnesses, the workload of the Court concerned prevailing local conditions and what is called the systematic delays. It is true that it is the obligation of the State to ensure speedy trial and State includes judiciary as well but a realistic and practical approach should be adopted in such matters instead of a pedantic one.
3. Each and every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when the prosecution become persecution does again depends upon the facts of a given case.
4. We cannot recognize or give effect to what is called the "demand" rule. An accused cannot try himself, he is tried by the Court at the behest of the prosecution. Hence, an accused plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. If in a given case, he did make such a demand and yet was not tried speedily it would be plus point in his favor but the mere non-asking for a speedy trial cannot be put against the accused.
5. Ultimately the Court has to balance and weigh the several relevant factors "balancing test" or "balancing process" and determine in each case whether the right to speedy trial has been denied in a given case.
6. When the court finds that the right of an accused to have speedy and fair trial is breached, the possibility is that the allegations in the form of charges are quashed. However, the court may go for an alternate remedy. If the court is of the view that quashing the charges are not the right option or in the interest of justice, the court may exercise any other possible remedy available in the case.
7. It is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution to justify and explain the delay. At the same time, it is duty of the Court to weigh all the circumstance of the given case before pronouncing upon the complaint.
8. An objection based on denial of right to speedy trial and for relief on that account should first be addressed to the High Court. Even if the High Court entertains such a plea ordinarily it should not stay the proceedings except in case of grave and exceptional nature. Such proceedings in High Court must however be disposed of on a priority basis.

In order find a solution to the problem of delay, The Law Commission was directed to make recommendation for measures to be adopted by way of creation of additional courts and the like matters. The Law Commission made its recommendations in its 245th Report which was examined by the National Court Management Systems Committee (NCMSC) to determine additional number of courts required. Based on these reports, the Supreme Court has considered the recommendations in the case of *Hussain and Anr* v. *Union of India*[16] and *Aasu* v. *State of Rajasthan*[17]. In the first case, the appellants have been in the custody since 4th August, 2013 on the allegation of having committed offence under Section 21(c) of the Narcotics Drugs and Psychotropic Substances Act, 1985. Their bail application, pending trial, has been dismissed. In the second case, the appellant was in custody since 11th January, 2009. He has been convicted by the trial court under Section 302 IPC and sentenced to undergo life imprisonment. His bail application has been dismissed by the High Court pending appeal. The appellants contend that, having regard to the long period of custody, they are entitled to bail as speedy trial is their fundamental right under Article 21 of the Constitution[18]. The Court referred to its own guidelines issued in the case of *A.R Antulay* v. *B.S Nayak*[19] and observed that in spite of the previous guidelines, these issues are raised frequently and thus further consideration has become necessary in the interest of justice. Thus, the court observed that[20]:

- 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.
- While there can be no doubt that trials of those accused of crimes should be disposed of as early as possible, general orders in regard to judge strength of subordinate judiciary in each State

[14] 1995 Suppl. (3) SCC 37
[15] AIR 1992 SC 1701
[16] Criminal Appeal No. 509 OF 2017 (SC), decided on March 9, 2017
[17] 2000 CriLJ 207 (SC)
[18] Ibid
[19] 1988 AIR 1531
[20] 1988 AIR SC 1531

must be attended to, and its functioning overseen, by the High Court of the State concerned.

- Deprivation of personal liberty without ensuring speedy trial is not consistent with Article 21. While deprivation of personal liberty for some period may not be avoidable, period of deprivation pending trial/appeal cannot be unduly long. The Court has held that while a person in custody for a grave offence may not be released if trial is delayed, trial has to be expedited or bail has to be granted in such cases.
- Timely delivery of justice is a part of human rights. Denial of speedy justice is a threat to public confidence in the administration of justice.

The Supreme Court has also given the following periodical directions underlining the importance of speedy trial:

i. Liberal adjournments must be avoided and witnesses once produced must be examined on consecutive dates. Directions were also issued for setting up of sufficient laboratories, for disposal of seized narcotics drugs and for providing charge-sheets and other documents in electronic form in addition to hard copies of same to avoid delay[21].

ii. Long delay has the effect of blatant violation of rule of law and adverse impact on access to justice which is a fundamental right. Denial of this right undermines public confidence in justice delivery[22].

iii. The above observations have been reiterated in the Constitution Bench judgment in Anita Kushwaha etc. v. Pushap Sudan[23] etc. In the said judgment it was noticed that providing effective adjudicatory mechanism, reasonably accessible and speedy, was part of access to justice.

iv. Central government must take steps in consultation with the state governments in fast tracking all types of criminal cases so that criminal justice is delivered timely and expeditiously. It was noted by the Court that more than 50% of the prisoners in various jails are under-trial prisoners. In spite of incorporation of Section 436-A in Cr PC, under-trial prisoners continue to remain in prisons in violation of the mandate of the said section.

v. Timeline for disposal of bail applications ought to be fixed by the High Court. As far as possible, bail applications in subordinate courts should ordinarily be decided within one week and in High Courts within two-three weeks. Posting of suitable officers in key leadership positions of Session Judges and Chief Judicial Magistrates may perhaps go a long way in dealing with the situation. Non-performers/dead word must be weeded out as per rules, as public interest is above individual interest[24].

vi. In case of absconding under trials, the court should not indefinitely postpone the trial. Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.

vii. Judicial service as well as legal service is not like any other services. They are missions for serving the society. The mission is not achieved if the litigant who is waiting in the queue does not get his turn for a long time. Chief Justices and Chief Ministers have resolved that all cases must be disposed of within five years which by any standard is quite a long time for a case to be decided in the first court. Decision of cases of under-trials in custody is one of the priority areas[25].

In Chief Justices' Conference held in April, 2016 under Item No. 8 *inter alia* the following resolution was passed[26]:

- The High Court's shall deal with the cases pending over a period of five years on priority basis.
- In cases of arrears pending for more than five years, immediate measures should be taken to dispose them on mission mode.
- A target should be set by the High Courts for disposal of cases which are pending for more than four years.
- In the case of cases pending in the district courts additional incentives should be considered for disposing of cases which are pending for more than five years; and efforts be made for strengthening case-flow management rules.

IMPACT OF THE SUPREME COURT GUIDELINES

The above guidelines have started having their impact and many High Courts have started disposing pending cases on war footing. For Example[27]:

It appears that annual action plans have been prepared by some High Courts with reference to the subject of discussion in the Chief Justices' Conference. Reference to action plan of the Punjab and Haryana High Court for the year 2011-2012 shows that under trials who were in custody for more than two years as on 1st April, 2011 in Session trial cases and those in custody for more than six months in Magisterial trial cases were targeted for disposal, apart from five-year-old cases and other priority cases.

> Similar targets were fixed for subsequent years and result reflected in the pendency figures shows improvement in disposal of five-year-old cases and cases of under-trials in custody beyond two years in Session trial cases and six months in Magisterial trial cases in subordinate courts in the jurisdiction of Punjab & Haryana High Court. Reportedly, success is on account of monitoring inter alia by holding quarterly meetings of District Judges with Senior High Court Judges as well as constant monitoring by concerned Administrative Judges. Presumably, there is similar improvement as a result of planned efforts elsewhere. In view of successful implementation of plan to dispose of cases of under trials in custody in two years in Session trial cases and six months in Magisterial trials, the supreme court observed that, we do not see any reason why this target should not be set uniformly.

The Supreme Court finally concluded the above case with the following guidelines for future[28]:

- The High Courts may issue directions to subordinate courts that -
  - Bail applications be disposed of normally within one week;
  - Magisterial trials, where accused are in custody, be normally concluded within six months and sessions trials where accused are in custody be normally concluded within two years;
  - Efforts be made to dispose of all cases which are five years old by the end of the year;

[21] *Thana Singh* v. *Central Bureau of Narcotics* ,2014 AIR SC 856
[22] *Imtiaz Ahmed* v. *State of Uttar Pradesh* , (2012) 2 SCC 688
[23] (2016) 8 SCC 509
[24] *Bhim Singh* v. *Union of India*, (2010) 5 SCC 538
[25] *Hussain* v. *Union of India*, (2017) 5 SCC 702
[26] Ibid
[27] Ibid
[28] Ibid

- As a supplement to Section 436-A(CrPc), but consistent with the spirit thereof, if an under-trial has completed period of custody in excess of the sentence likely to be awarded if conviction is recorded such under-trial must be released on personal bond. Such an assessment must be made by the concerned trial courts from time to time;
- The above timelines may be the touchstone for assessment of judicial performance in annual confidential reports.

- The High Courts are requested to ensure that bail applications filed before them are decided as far as possible within one month and criminal appeals where accused are in custody for more than five years are concluded at the earliest;
- The High Courts may prepare, issue and monitor appropriate action plans for the subordinate courts;
- The High Courts may monitor steps for speedy investigation and trials on administrative and judicial side from time to time;
- The High Courts may take such stringent measures as may be found necessary.

CONCLUSION

Poignantly, the right to a fair trial is at the heart of the Indian criminal justice system. It encompasses several other rights including the right to be presumed innocent until proven guilty, the right not to be compelled to be a witness against oneself, the right to a public trial, the right to legal representation, the right to speedy trial, the right to be present during trial and examine witnesses, etc. In *Zahira Habibullah Sheikh* v. *State of Gujarat*[29], the Supreme Court explained that a fair trial would obviously mean a trial before an impartial Judge, a fair prosecutor and atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses, or the cause which is being tried is eliminated.

Sensational news reporting is striking at the core of fair trial concept. Media is increasingly swaying public opinion to such an extent that an accused is held guilty even before the trial has begun in a court of law. This is a dangerous trend. The fundamental principle of open courtrooms and public justice raises several questions about the court's attitude to the constitutional guarantee of freedom of expression, which includes the freedom to listen to contending arguments in a courtroom. In N.S. Mirajkar's case[30], a nine-member Bench of the Supreme Court had held that courts must generally hear cases in the open and must permit free access to the courtroom. In a majority judgment (with a solitary dissent), the Bench had observed that public trial in open court is undoubtedly essential for the healthy, objective and fair administration of justice. Trial held subject to the public scrutiny and gaze naturally acts as a check against judicial caprice or vagaries and serves as a powerful instrument for creating confidence of the public in the fairness, objectivity and impartiality of the administration of justice.

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[29](2006) 3 SCC 374

[30]1966 SCR (3) 744