



Constitutional Prespective of speedy Justice in India

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Abstract

When any person's rights are violated, he mostly pronounce one sentence, "I will see you in the Court". It shows individuals faith toward judicial system. But the problem of delay in the disposal of cases pending in trial Court is currently one of the major problems of judicial administration, although it has been with us since a long time. Reportedly, in some states, a few under-trials spent more time in jails than the maximum term of imprisonment provided for the offence'. This kind of disturbing situation has not gone unnoticed. The mass media and superior judiciary have come out with critical observation in respect of those cases which came to light. here the provisions regarding speedy justice are discussed that are mentioned under the Indian Constitution.

Keywords: provisions, constitution, superior, mentioned

Introduction

Justice is the backbone and object of any civilized society and nation. The detection for justice has been an ideal in which mankind has been hopeful for generations down the line. Justice is a constitutional mandate for running a legal as well as social institutions. In Indian Constitution, in its Preamble; defined and declared the common goal for its citizens as, "to secure to all the citizens of India, Justice-social, economic and political." Article 14 guarantees equality before the law and the equal protection of the laws to all the citizens of the country. Article 39A of the Constitution mandates the State to secure that the operation of the legal system promotes and spread justice on the basis of equal opportunity and make sure that the same is not denied to any citizen by reason of economic or other disabilities. All persons have equal rights, but the problem is that, courts, but the judicial procedure is very complex, costly and sluggish, putting the poor persons at a squad. It is one of prior duty of a welfare state to provide judicial and non-judicial dispute-resolution mechanisms, so that all citizens have equal access for resolution of their legal disputes and enforcement of their fundamental and legal rights under the constitution ^[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].

Right to speedy justice

The Indian Constitution enjoins the state to secure social, economic and political justice, making the constitutional mandate for speedy justice inescapable through article 14. It guarantees equality before the law without any discrimination on mentions grounds and the equal protection of the laws. Article 39A of the Constitution make it compulsory to the State to secure the operation of the legal system in such a way so that it promotes justice on a basis of equal opportunity and to make it clear that the same is not

denied or restrained to any citizen. By reason of economic or other disabilities it may be social, political etc. further equal opportunity must be afforded for access to justice. as Its not enough that the law treats all persons equally, irrespective of the prevalent inequalities but the law must function or can be prevailed in such a way that all the people have access to justice in spite of economic disparities. The expression "Access to justice" concentrated on the following two basic reasons of the legal system:

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].

The Constitution of India reflects the reconnoiter and aspiration of the mankind for justice. The justice delivery system is under an obligation to deliver prompt and inexpensive justice to its Consumers, or the persons presented before it. The manner compromising on the quality of justice or the elements of fairness, equality and impartially is prescribed under the various provisions. As it can be understand that the Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding cases. The parties suffer. It is a rightly said that "Justice delayed is Justice Denied". Speedy trial is a right of the accused that flows from Article 21 of the Constitution as held by the Supreme Court in so many cases. It is clear that the Constitution of India does not contain any express provision regarding the right to speedy justice. But the same is expressed under Article 21 of the Constitution. A procedure prescribed by law for depriving a person of his fundamental rights unless it ensures a speedy trial for determination of guilt of the accused and delivered the justice. No procedure which does not ensure a reasonable quick and fair trial be regarded as 'reasonable, fair and just' and will be in contravention of Article 21 of the Constitution. Speedy trial and speedy justice are co- linked with each other and are the fundamental rights of the person. A denial from speedy justice is directly denial of justice ^[5].

A Famous Jurist late Nani A. Palkhivala has observed that: *"If I were asked to mention the greatest drawback 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"*. He said there is not any country in the world where litigation takes enough time period as in India. our cases stretch over a length of time, which makes aeon intelligible. The law may or may not be a burden but in India it is certainly, a snail and our cases proceed at a pace, which would be regarded as unduly slow in a community of snails. At last he said, Justice has to be blind but I failed to examine reason why it should also be lame, here it just hobbles along, barely able to walk ^[6].

For the fault of some peoples, the bright glorious name of the judiciary cannot be permitted to be made ugly and untrustable. It is the policy framed and purpose observed behind of law, to have speedy justice for which efforts are mandatory to be made to come to the expectation of the society of ensuring speedy, untainted and unpolluted justice ^[7].

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 can not be violate 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. Moreover the need for 'Speedy Justice' is also reflected by the demand of an individual with respect to his Right to Life and his Right to Dignity. The Concept Of Right to Speedy Justice is deep rooted and grounded in one of the fundamental institution of humanity as called it "Personal Liberty". Personal Liberty is one of the most esteemed goal of every civilized society. Because liberty is one of the greatest patrimony of a man, so that we can say without liberty life is lifeless and worthless to live. To renounce from liberty is to renounce being a human to surrender right of humanity, that is why liberty is called the core of a civilized society. Because the first and the foremost right, any living being is the right to life. All other rights are almost depend on this right because without life there can be no other right. our Constitution framers have distinguishably placed personal liberty with right to life under this article. Freedoms have been delivered in Article 19. The exclusive distinction between Articles 19 and 20 is that Article 19 provides exhaustive list of 6 freedoms, while Article 21 does not show any thing regarding concerned matter. But leaves to widest interpretation as well as possible to this small Article than any other Articles of the whole Constitution ^[8].

The Article prohibits impairment of life or personal liberty except under certain circumstances according to procedure established by law. It corresponds to the Fifth and Fourteenth Amendments to the U.S. Constitution, the relevant portions of which read: Nor be deprived of life, liberty or property without due process of law and "Nor shall any state deprive any person of life, liberty, or

property, without due process of law". Protection under article 21 is delivered to all persons whether citizens or foreigners or free or arrested or detained equally, but under the due process of law. Supreme Court by the process of interpretation gave lay down the widest scope of Article 21 for protection of life and liberty of all individuals free as well as arrested and detained ^[9].

Interpretation of procedure established by law

The standard that Article 21 bestow as a protection for personal liberty is the procedure established by law ^[10]. Nature and extent Of the protection of personal liberty in Article 21 depends upon the meaning and scope of the standard of procedure established by law, which in turn would ultimately depend on the interpretation of the expression with the help of judicial process.

The proper explanation regarding this expression "procedure established by law" was made by the Supreme Court in Gopalan's ^[11] Case. In this case the petitioner challenged the validity of the Preventive Detention Act under which he was detained on the ground of interalia that the Act passed by Parliament did not conform to the standard of 'procedure established by law' as laid down in Article 21 and so it violate the constitutional protection that is provided under this Article. on the other hand it was contended by the Attorney General that the words this expression means, simply any procedure established or prescribed by a State made law, on the other hand it was argued by the petitioner that the expression "procedure established by law" should be interpreted in a wider sense as meaning what was understood in American constitutional law as "procedural due process" ^[12].

Chief Justice Kania observed

"No defferent aid is compulsory to interpret the words of Article 21, according to my opinion, are not unclear. When we read it im simple words, and without thinking of other Constitutions, the expression must mean procedure prescribed by the law of the State. If the Indian Constitution wanted to intercede to every person the protection given by the due process clause of the American Constitution there was nothing to prevent the Assembly from adopting the phrase or if they wanted to limit the same to procedure only, to adopt this expression with only single the word 'procedure' prefixed to 'law'. However, the suitable question is what is the right given under Article21? The only right is that no person shall be deprived of his life or personal liberty except according to procedure established by law. one may like that right to cover a larger area, but to give such a right is not the perquisite of the Court, it is the prerogative of the COnstitution ^[13].

Speedy trial as a constitutional right

Speedy justice demands speedy and reasonably prompt trial in every case. Indian Judicial hatchet dug up deep into the philosophy of fundamental Rights of our Constitution and right to speedy trial, inherent in the broad girth and contents of Article 21 of the Constitution of India. 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 Supreme 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 swept 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 extraordinary 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].

Appeal

The Supreme Court standing at the apex and the High Courts below it. It is the supreme interpreter of the constitution and the guardian of the peoples fundamental rights. It is the ultimate court of appeal in all civil and criminal matters and the final interpreter of the law of the land. Due to filing number of appeals the strength of cases pending cases increase and courts covered with lots of burden. Art-32 of the constitution provides a extensive original jurisdiction to the Supreme Court in regard to enforcement of fundamental right. Under the concept of speedy justice the that is provided under ast 21 as the fundamental right, the appeal is filed to the Supreme court in case of violation of its provisions.

The appellate jurisdiction of the supreme court can be entreat by a certificate granted by the High court concerned under article 132(1), 133(1) or 134 of the constitution in respect of any judgment, decree, or final order of a High court in both civil and criminal cases involving substantial question of law as to the interpretation of the Constitution. The supreme court has also a wide appellate jurisdiction

regarding all courts and tribunals in India in as much as it may, in its direction grant special leave to appeal under Article-136 of the constitution from any judgment, decree, determination, sentence or order in any cause of matter passed or made by any court or tribunal in the territory of India ^[25].

Judicial pronouncements on speedy trial in india

Every individual wants freedom. Without freedom no individual can spend his life as a free citizen of a country. Freedom and liberties are only for the living or surviving purpose. Article 21 of the Indian Constitution guarantees right to life and personal liberty to every person. A person can be deprived of his life and personal liberty if two conditions are observed with it. First is, there must be Law and second, there must be a procedure prescribed by that law, that the procedure is just, fair and reasonable. The creativity of the Indian judicial system has been emerged when the Art. 21 is interpreted. Article 21 stands out as the beacon light for all freedom lovers promising the progress of more rights when necessary and ensuring a minimum degree of fairness in all legal system. The activist approach of the Supreme Court through liberal interpretations have given new magnitude to the right to life and personal liberty. In case of infraction, now the Court does not remain silent looker but provides remedial relief by way of compensation. The Indian judiciary plays a significant role in protecting the rights of the people and it has tried to give some rights like right to speedy trial, right to fair trial. A constitutional status by including all these rights within the purview of Article 21 of our Constitution. The judiciary in India has played a dapper role in the regime of justice by providing fair and just trial to all its citizens. There are relation of pronouncement of the Supreme Court and High Courts judgments on the subject of trial where in the Courts have questioned the delays and discharged the accused. The most apparent malady which has infested the judicial concern is the pointing process and inordinate delay that takes place in the disposal of cases. The collection of accumulated workload of different Courts present a startle scenario. As a matter of fact, the whole system is crumbling down under the weight of pending cases that is increasing every day. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were aware of all these distemper. However, judicial delays in India effect whole body and system. No person can even hope to get justice in a fairly reasonable manner. Proceedings in Criminal cases go on for years, also sometime cross decades. Civil cases ar to persons or to cases which are to be subjected to the special procedure prescribed by the Act."

In Machander V. State of Hyderabad ^[26] case The Supreme Court refused to take the case back to the trial court for fresh trial because of delay of 5 years between the commission and the final Judgment of the Supreme Court. 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 a 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

^[28], Has held that art. 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 prescribed under law and such procedure as required under Article 21 has to be fair, just and reasonable and not arbitrary. The court has further said that, "If a person is deprived of his Liberty under a procedure 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 apex Court has observed that in the broad sweep and content of art. 21 right to speedy trial is implicit.

In Charles Sobharaj v. Suptd, Central Jail, Tihar ^[29] Justice Krishna Iyer observed that, "Whenever Fundamental rights are neglected or Legislative protection ignored, towards any prisoner's impairment, then concern court's writ will run. The parrot cry of discipline will not deter security, will not scare discretion, and will not deter the judicial process."

The apex Court in Hussainara Khatoun v. Home Secretary, State of Bihar ^[30] case observed that it is a land mark in the development of speedy trial jurisprudence. In this case, a writ of Habeas Corpus was filed on behalf of men and women languishing in jail of 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 refusal of the basic human rights to those victims of callousness of the legal and judicial system, the Supreme Court went on to give a new directions to the Constitutional Jurisprudence. During prevailing with all, the 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.

are also delayed longer. This is effect 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 have no classification regarding at all in the real sense of the term.

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:

- Delay wholly due to pile of the court calendar, non-availability of Judges, or other circumstances out of the control of the prosecutor.
- 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 quit 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 disaffirm on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused found to have been favoritism in the conduct of his defence and it would be said that the accused had thus been denied of an sufficient opportunity to defend himself, the conviction would certainly have to given. 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

Conclusion

Moreover, we cannot give effect to 'demand rule' as justice can not 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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