

RIGHT TO SPEEDY JUSTICE IN INDIA BY MS.ANMOL JAIN*

Introduction

The basic Human Right is, to seek Speedy Justice is a direct derivation from the Cardinal principle of Criminal Justice System such as:

JUSTICE DELAYED IS JUSTICE DENIED, JUSTICE WITHELD IS JUSTICE WITHDRAWN, and

JUSTICE SHOULD NOT ONLY BE DONE BUT SHOULD ALSO APPEAR TO HAVE BEEN DONE.

The dispensation of justice has little meaning if it is not delivered in a reasonably short time, strictly speaking a delayed justice, frustrating the cause thereof, is no justice at all. A good legal system should not only yield proper and just solutions but also these solutions must be had quickly had as infallibility as human agency can guarantee. Delay is a great reproach, and the cry for speedy justice is heard from all quarters, slow justice would be futile, over speedy justice is undesirable, because the hurried justice implies buried justice, speedy disposal of cases should not be constructed to mean that cases should be disposed of quickly to the detriment of justice. While emphasizing the need for speedy justice, Justice Anand has rightly observed that¹

“People want justice, pure, unpolluted, quick and inexpensive and they have every right to receive the same”. But in reality there are deplorably long delay in the Dispensation of Justice, the need for the speedy justice cannot be gained because as said, “If Justice is not executed speedily men persuade themselves that there is no such thing as justice.”²

Concept of Justice

To better appreciate the need of “Speedy Justice” one has to first understand the concept of justice because the need is for the “Speedy Justice” not hurried disposal of cases. The term ‘Justice’ is of imponderable import³ having varying meanings such as truth, morality, righteousness, equality, fairness, impartiality, law etc. It is difficult to define ‘Justice’ in absolute terms; rather it is a relative, changing and ever growing concept. According to Lord Wright..... “The justice is what appears just and fair to a reasonable man”⁴ is the most satisfying definition of the term Justice. To be just and fair, justice must be delivered quickly because justice fails to convey any meaning in the right sense of its concept if it’s not delivered to the person concerned with in a reasonable speed.

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¹Dr V.P. Ramiah, Customary Clogs In Justice Delivery System” AIR 2003 Journal, p - 336

² James Antony, “Short Studies on great Subject”, (1818 – 94) “Calvinism” 1871

³ S.N. Dhayani “Fundamental of Jurisprudence”, 2002 ed. p - 192

⁴ Keeton ‘Elementary Principles of Jurisprudence’, 1954 p 105

Concept of Personal Liberty

Moreover the need for “Speedy Justice” is also reflected by the claim of an individual with respect to his Right to Life (inviolability of his person) and his Right to Dignity. The Concept “Right to Speedy Justice” is deep rooted and grounded in one of the fundamental instincts of humanity i.e. “Personal Liberty”. Personal Liberty is one of the most cherished goals of every civilized society because ‘liberty’ is one of the greatest heritage of a man, without liberty life is lifeless and worthless to live, to renounce liberty is to renounce being a human to surrender right of humanity⁵, life bereft of liberty would be without honour and dignity and it would lose all significance and meaning, that is why liberty is called the very quintessence of a civilized and decent existence. ⁶‘Personal Liberty’ under Article 21 of Indian Constitution is a compendious term. In *Meneka Gandhi V Union of India*⁷, The Hon’ble Supreme Court of India expand the horizons of expression “Personal Liberty” and gave it the widest possible meaning the court held that,

“The expression of “Personal Liberty” in Article 21 is of widest amplitude and it covers a variety of rights which go to constitute personal liberty of a man”⁸

Concept of Administration Of Criminal Justice System

Keeping in view the importance of Speedy Justice the provisions of law and the mechanism provided for Administration of Justice aims to achieve the twin objectives of Delivery of Justice and its Speedy Reach. The Administration of Justice is based on a prescribed legal system and a good legal system should yield proper, just and Speedy Solutions.

Criminal Justice System is as old as the mankind is. There has never been a society without crimes and criminals thus no society can avoid the necessity of coping with crime on a continuing basis, the method of dealing with a crime is known as Criminal Justice System, which can be defined as “a corroborated body of methods or a complex scheme plan of procedure, a penal system.” It is an integrated apparatus concerned with the apprehension, prosecution, conclusion, sentencing and correcting of malfactors⁹. Therefore Criminal Justice System includes several agencies of the State like the police the courts, the prosecution, the defence lawyers, the prison staff etc., which are created to achieve the common goal of Speedy Justice and Crime Control.

Speedy Justice has always been considered the “sine qua non” of an effective and efficient Criminal Justice System as basic premise of a Criminal Justice System is that the punishment must follow the judgment of guilty and should not precede it.

Another basic precept of the Criminal Justice System is that accused is presumed to be innocent until proven guilty beyond all reasonable doubt by the prosecution.

Speedy Justice is also essential in order to gain the confidence of the public in Criminal Justice System. So the good approach towards crime prevention and control demands that the guilty should be punished while the events are still fresh in the public mind. The need for

⁵Eugen Ehrlich, “ The Fundamental Principal of Sociology of Law”

⁶ H.R. Khanna, “Inagural address All India Seminar on Personal Liberty” 1978 KIJ Vol 4, p -1

⁷ AIR 1978 SC 597

⁸ Ibid

⁹Coffery, AR, “Administration of Criminal Justice a managements system approach” p – 5

Speedy Justice cannot be gainsaid in Criminal Justice System to achieve the objectives of Punishment and Correctional Programs.¹⁰

The Right to Speedy Justice is not only the very essence of an effective Criminal Justice System but is also consistent with the concept of fair and impartial trial.

Concept of Fair Trial

A Criminal trial which does not ensure the “Right to Speedy Justice” is cannot be regarded as a fair trial. The concept of fair trial is a broad concept¹¹ and includes the Accused Right to seek Speedy trial. The Concept of Fair Trial has four main dimensions as to Speedy Justice:

1. The investigation or enquiry officer shall attain promptness in investigations.
2. The adjudicating authority should receive all relevant materials which the individual wishes to produce against his opponent.
3. The judiciary should give an opportunity to the accused to rebut these material and information.
4. The judiciary should conclude its determination of guilt or innocence and the passing of the appropriate sentence with promptitude.

These objectives of Speedy and Fair trial have been further given due recognition by the various agencies, which are involved in the Development of law such as the Legislature, the Judiciary and the Law Commission etc. The basic precepts of Code of Criminal Procedure, 1973 are¹²:

1. An accused person should get a Fair Trial in accordance with the accepted principles of natural justice.
2. Every effort should be made to avoid delay in investigating and trial which is harmful not only to the individual’s interest but also to the interest of entire society.
3. The procedure should not be complicated and to the outmost extent possible, ensure fair deal to the Poorer Sections of the Community.

Thus the main object of CrPC, 1973 is to simplify and shorten the proceedings as to ensure the speedy and fair trial. The just and fair trial embraces in its scope the Right to Speedy Trial.

Concept to Speedy Trial

Speedy Trial means a reasonable expeditiously trial which comply with all essentials of a trial.¹³ It is a trial where the prosecution with reasonable diligence begins promptly and conducts expeditiously.¹⁴ The Right to Speedy Justice includes all the stages of criminal justice system, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. In short, everything commencing with an accusation and expiring with a final verdict – the two

¹⁰ Edelstein CD, “An Introduction to Criminal Justice” 1977, p-13

¹¹ Attributes of a Fair Trial both positive and negative.

¹² Statement of Objects and reasons Cr PC, 1973, para 3.

¹³ Essentials of a trial are :-

(NOTICE, OPPORTUNITY OF BEING HEARD, AN IMPARTIAL TRIBUNAL, AN ORDERLY COURSE OF PROCEDURE) Villis “Constitutional Law” 1936, p – 622.

¹⁴ Black’s Law Dictionary

being respectively the terminus a quo and terminus and quem – of the journey which an accused must necessarily undertake once faced with an implication. It is almost a quarter of century ago, the Apex Court bestowed the status of ‘Fundamental Right’ on the Right to Speedy Trial. Yet, this right is a mere chimera and cliché for millions of litigants in India.¹⁵ Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a Right in accused to be tried speedily, the concern for the, right of speedy trial from the point of view of the accused are -

- The period of remand and pre conviction and detention should be as short as possible.
- The worry, anxiety, expenses and disturbances to this vocation and peace resulting from and unduly prolonged investigation, enquiry and trial should be minimal.
- Undue delay results in Impairment of the Ability of the Accused to defend him.

In general “Speedy Trial” means the disposal of a case within a “Reasonable Time” but it cannot be taken to mean the “Khomeini Trial” where proceedings are held in a camera and trial is over within no time, followed by an immediate execution without any Right of Appeal¹⁶. If JUSTICE DELAYED IS JUSTICE DENIED then JUSTICE HURRIED IS JUSTICE BURRIED, slow justice is bad but speedy injustice is no substitute. Therefore while stressing on the need of Speedy Trial in the Disposal of Cases, we must also be cautious against undue speed or haste because this would be substituting one evil from another¹⁷.

Right to Speedy Justice: In Reality

But in reality the right to Speedy Justice is one of the most neglected aspects of Criminal Justice System. The need for speedy justice has been realized in all the societies and during all the phases of their growth and development, the delayed justice has been considered in all civilized systems as most “biting evil” of human society, the problem of delays in law is not a new one – it is as old as the law itself. It had “plagued” every judicial system be it Roman, Greek, English or American.¹⁸ The philosophy of “Right to Speedy Justice” has its roots in the natural rights and which was further recognized and developed by: Magna Carta in 1215AD, which provides “To no man will we deny, to no man will we sell, or delay, Justice or Rights.”

There from this concept was incorporated in various National Constitutions and “Bill of Rights” like the Petition of Rights (1627), Bill of Rights (1689), Massachusetts (1780), and of France (1789) etc. The Sixth Amendment of United States Constitution emphatically declared that “In all Criminal Prosecution the accused shall enjoy the Right to Speedy and Public Trial, this concept has been given a more concrete and universal texture by various International and Regional Declaration and Convention.

The denial of Right to Speedy Justice i.e. delays express out as one of the major reasons for this negative opinion about our Judicial System. However the problem of delays continues and it assumed gigantic proportions. Delay culminates a sense of injustice; long periods of denials emanates uncertainty, the problem of judicial delays seemed of have reached such a

¹⁵ Dr. Sangita Bhalla “Judicial Bars of Limitation in Criminal Trials; validity dilemma resolved”; CriLJ 2003 Journal, p – 89.

¹⁶ K.K. Mathews, “Laws Delays” 2 Kochin ULP(1978),

p -353

¹⁷ H.R. Khanna, “Judicial Reforms”, 3 SSC 1979 (J) p – 25.

¹⁸ Biswanath Bajpayee, “Law’s Delay” The Journal of the Bar Council of India – Vol I, 1978, p - 70

climax of notoriety that no one can escape from its vice.¹⁹ The mourning arrears in the courts inordinate delays in the administration of justice and the high cost of litigation have today undermined people's faith in the judiciary and threatened the very survival of the system.

The Parliamentary Standing Committee on Home Affairs found that, the position of Subordinate Courts is more alarming, as there is a backlog of over 2 crore cases pending. Some of them are pending for as long as 25 to 30 years, of these, there are, 1.32 crore criminal cases pending for trial.²⁰

The above explanation of the factual situation makes it quite clear that despite many efforts by the Legislature, the Executive and the Judiciary, the pendency of cases in the courts is piling up with every passing day. The problem of judicial delays has become an unceasing, unaffected and unsolvable problem though several intellectuals have done their level best to suggest suitable solutions, but are in vain.

Historical Development

Dispensing of "Justice" has little meaning, if it is not delivered in a reasonably short time strictly speaking a delayed justice, frustrating the cause thereof, is no justice at all. It is for this reason that the provisions of law and the mechanism provided for "administration of justice" aims to achieve following two objectives;

1. Delivery of Justice,
2. Its speedy reach.

India claims pride in being the 'largest democracy' in the world, where the "rule of law" prevails²¹. It is a vast country, with more than one hundred crore population, being the 'largest and the most ancient civilization' in the world, this sovereign, socialist, secular, democratic republic of India has by the very preamble of its constitution, secured to all its citizens²²: JUSTICE; Social, Economical and Political.

The need for 'speedy justice' has been realized during all the times, in all the societies and during all the phases of their growth and development. The delayed justice has been considered in all civilized systems as the most 'being evil' of human society. During Shakespeare's time in England, it was considered the most 'unfortunate' soliloquies as he says:

"For who would bear the whips and scorns of time, The oppressor's wrong the proud man's contumely, the pangs of despised love the love's delay"²³

Ancient India

The concept has evolved over the years and has been used from the start of the civilization. Though the basic idea has been the same, it has been in usage by various orders in

¹⁹ KL Bhatia and Gurdeep Singh, 'Delay: A riddle wrapped in a mystery inside an enigma' Journal of the Indian Law Institute – Vol. 37(1), 1995, p – 42.

²⁰ J Venkatesan : Penal Concern Over Backlog in Courts, in : The Hindu, New Delhi, 10th March 2002, p - 7

²¹ Dr. Sobha Saxena, "Ailing Judicial System" CriLJ 2000 Journal, p - 33

²² DC Mukherjee, "Legal education for the services to the poor" AIR 1982 Journal, p - 65

²³ Shakespeare's Hamlet Act Three: Scene 1

accordance to their convenience, or what is best for their people, which may range from brutality to more subtle concepts, whichever may be the choice or idea.

“Dharma” is the concept which has ruled the Indian civilization, from the ancient India to the Muslim regime, and the concept suddenly blown away, by the British Raj. The word’s combination literally translating to uphold, sustain and nourish. Tatriya Upanishad combines ‘satya’ and ‘dharma’, and expects what is to speak truth.

Sacred law [dharma], evidence [vyavhara], history [charitra], and edicts of kings [rajasasana] and delivered on basis of the various decree. The code of “Manu” is the main basis of administration of justice. According to ‘Brishaspati Samiti’, their existed a hierarchy, starting from family court to king.

“Brahaspati” – a noted jurist of the smriti period refers to ‘four’ kinds of courts established as means for ‘Speedy Delivery’ of justice.²⁴

1. “The “Classical Literature” – Ramayana, Mahabharata, Dharamsasatra, Nitisasatra, Arihasatra, Smritis, Rig-Veda, seem to have had warned that culpable delay in dispensation of justice was in itself an act of injustice.²⁵

Medieval Period

The efforts for making administration of justice speedier continued in an uninterrupted way. The efforts during Mughal Period are also noteworthy.

It was dominated by the large Muslim dynasties, which also followed the same system as in the ancient India. The only difference in delivery of justice is that it is much more severe in how justice was delivered, and often based on what is known is religious intolerance but unfazed from outside influence. It was quick; it was brutal but does confer to the final result.

Getting deep in the heart of Mughal era, the role given to each and every person and if we look it closely was defined. The many officers appointed had been for multitudes of affairs, though it was centrally controlled and under powers of king. The various posts assigned were clearly defined as discussed. The chief departments of the State were:

- (a) The Imperial House-hold under the Khan-i-saman,
- (b) The Exchequer under the Deccan
- (c) The Military Pay & Accounts office under the Mir Bakshi
- (d) The Judiciary under the Chief Qazi,
- (e) Religious Endowments and charities under the Chief Sadr or Sadr-us-Sudur, and

²⁴Brahaspati – 1, by Aparacka, p –600.
Brahaspati gives,

1. Prathistita” (Established in a fixed place such as a town).
2. “Apratisthita” (not fixed in one place, but moving from place as on a circuit).
3. “Mudrita” (the court of a judge appointed by the king who is authorized to use the royal seal).
4. “Sasita” (the court in which the king himself presides).

²⁵ The works of P.V. Kane, Vol – 3, p – 243,28

(f) The Censorship of Public Morals under the Muhtasib.

British Period

With the advent of 'British Rule' the "common law" got imported in India, slowly and gradually inasmuch as the establishments by the East India Company became "the nurseries of the English Law in India" which in course of time brought over tremendous influences over the laws and the system of administration of justice in the whole of this subcontinent.²⁶ In England, even as early as in the year 1934 a 'Royal Commission' was appointed to examine the problem of delays and to recommend effective measure to ensure 'Speedy Disposal' of cases at Common Law.²⁷ The Introduction of the Indian Penal Code, The Evidence Law and The Criminal Procedure Code, bore the influence of Common Law solely of purposes of "administrative expediency" as well as to "prolong the duration of judicial proceedings".²⁸

The British enactments undoubtedly contributed to the Indian Jurisprudence but too much 'emphasis' on the procedure resulted in the litigation getting delayed in the courts of law therefore, fresh efforts were required to be made for cutting down the procedural lapses and the corrupt practices that having grown in our legal system during the British Period.

Post – Independence Period

India after attaining independence, consciously opted to retain the 'British system' of law and government and some of the leading principles of western political and legal thoughts having found a place in its fundamental law, which includes the 'supremacy of law', notions of 'equality and liberty' as well as the system of 'checks and balances' to ensure separation of functions of three organs of government i.e. Legislature, Executive and Judiciary.²⁹

The need for speedy disposal of trials wasn't the main focus of our judicial system for the initial years.

The Constitution of India

The Constitutional Law, being the "basic and Fundamental law" of the land is a subject of paramount importance: The ultimate goal of every organ of the state is to serve in the people of India upholding the "letter of Spirit" of the Constitution. The Constitution of India has defined and declared the 'common goal' for all its instrumentalities, as to secure to all the citizens of India, Justice: Social, Economical and Political; Liberty; Equality and fraternity. The 'eternal value' of constitutionalism is the 'rule of law' which has three facets i.e. 'rule of law', 'rule under law', and 'rule according to law'.^{30,31}

²⁶ M.C. Seetavad, "The Common Law in India" (1965) at p - 2

²⁷ CL Aggarwal, "Laws Delay and Accumulation of arrears in the high court's" The Journal in the Bar Council of India – Vol. 7(1) :1978, p - 41

²⁸ S.K. Mukherjee and A.K. Gupta 'Delay in the administration of criminal justice' (1978) at p – 6, 7, 8.

²⁹ Smt. Meneka Gandhi V Raj Narain – AIR 1975 SC 2299, at p - 2317

³⁰ PP Rao, "National Judicial Service Commission" Indian Bar Review, Vol. 15(1&2), 198, p – 2

³¹ Wade and Philips – "Constitutional Law" 1965, p – 1., says "Constitution" is not a collection of abstract theories nor does it operate in a vacuum, it reflects a 'way of life' and it is the obligation of all instrumentalities

As mentioned before, the Constitution of India does not explicitly or separately enshrine the right to speedy justice, yet it recognizes as an objective of the system.³²

Article 14 Strikes at Arbitrariness

14. Equality before law.—“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

This article 14 uses two expressions, namely “equality before law” and “equal protection of law”.

Equality before Law

This guarantees fundamental rights. It is said to be a negative concept in the sense that no person is privileged before law by reason of his/her birth, sex, religion, etc. All subjects are equal before law.

Equal Protection of Law

It is said to be a positive concept. It guarantees equality in treatment in equal circumstances.

Article 14 strikes at arbitrariness. It ensures that the process of delivering justice goes on at equal pace for any two people facing equal situation, for example, facing the same charge. It, being a fundamental right of every citizen, cannot be curtailed.

Right to Life and Personal Liberty

21. Protection of life and personal liberty— “No person shall be deprived of his life or personal liberty except according to procedure established by law.”

So, if a person is detained, there must be fair application of the law providing for arrest and detention. The fair application is one which is just and reasonable. Further, the trial should be fairly conducted.³³

Procedure Established By Law

Article 21, provides that no person can be deprived of his life or personal liberty, except according to “Procedure Established by Law”

of the constitution to ensure that way of life. Similarly in practice the ‘judicial system’ does not operate in a vacuum. It is the part of the social and economic system and judiciary wields the judicial power of that system.³¹

³² S.K. Sharma, “Right to Speedy Trial ; An imperative procedural piece of criminal justice” The Commercial law gazette, Apr; 10(1980), p – 15 says, The Constitution of India does not specifically guarantee to an accused person the right to speedy trial, yet the speedy disposal of cases is desired as an objective of rule of law in India. The ethics of distributive system also necessitate it. The very spirit and soul of Article 21 in conjunction with Article 14, 19, 38, 39 and 39 – A make it necessary concomitant of distributive Justice promised in the preamble of Constitution of India. Right to Speedy Trial being an internationally recognized ‘human right’ is thus a part of our national grundnorm by virtue of Article 51” of the Constitution.

³³ For jurisdiction of Article-21, see Videocon Industries Ltd. V. Union of India and Anr. SCC16371 of 2008.

The expression of “Procedural Established by Law” came to be interpreted by the Hon’ble Supreme Court of India in AK Gopalan V State of Madras.³⁴

Protection against Arrest and Detention

22(1).Protection against arrest and detention in certain cases.—(1) No person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

Equal Justice and Free Legal Aid

39A. Equal justice and free legal aid.—“The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

This article forms part of Part IV of the Constitution of India, which contains the Directive Principles of State Policy. Though not enforceable in the court of law, this article is indicative of the principles which are to be kept in mind by the State and the parliament while framing laws.

By “equal opportunity”, it gives even a person arrested right to consult his/her counsel, and upholds it as a principle in addition to being a right of the citizens as per Article 22(1).

The arrested/accused person has a right to decide in other matters relating to his life. It only curtails the arrested person’s right to personal liberty.

Article 39A enshrining the concept of free legal aid.

The article particularly highlights the responsibility of the State to provide ‘free legal aid’ to its citizens. It further indicates that the ways in which this can be done are not exclusive of statute.

When Article 39A is supported by Article 21, it ensures free legal aid to the accused, and no discrimination on the basis of him being the accused.

This article directs the State to ensure that no person is deprived of justice because of his/her economic and social condition or status. Those who need legal aid for free belong to the most downtrodden strata of the society; the weaker sections; without resources to bear expenses, and ignorant of their rights due to illiteracy.

Expanding Horizons

Article.21The Constitution makers did not explicitly mention the defendant’s right to speedy proceedings. The first two decades of independence saw no special attention being paid

³⁴ AIR 1950 SC27

towards the issue of the length of time in prison for the under trial.³⁵ The focus was elsewhere.

However, in the post-Emergency era, this scenario changed with **Hussainara Khatoun v. Home Ministry**,³⁶ in which Justice Bhagwati established that the defendant had under Article 21 of the Indian Constitution, the defendant had the fundamental right to speedy trial.

The above case and the Maneka Gandhi case³⁷ led the apex court to conclude that the due process of trial is a fundamental aspect of personal liberty, and thus a fundamental right under Article- 21.

Overtime, this right of personal liberty has increased its scope. It now includes right against hand-cuffing.³⁸

In **Unni Krishnan v. State of A.P.**, the SC itself listed the expanded aspects of Article-21.³⁹

- (1) The right to go abroad.
- (2) The right to privacy.
- (3) The right against solitary confinement.
- (4) The right against hand cuffing.
- (5) The right against delayed execution.
- (6) The right to shelter.
- (7) The right against custodial death.
- (8) The right against public hanging.
- (9) Doctors assistance.

Recently, the court has interpreted that the rights guaranteed under Article-21 apply to all citizens, even foreign nationals. This guarantees all citizens, irrespective of their nationality to get a fair process in the court of law.

These expanding definitions of Article-21 are important as the article, being part of fundamental rights, is basic to the very constitutional structure and thus not open to arbitrariness of the regime. The Directive Principles, under which Article-39A comes, are not enforceable on the other hand. Thus, Art-21 gives real power to the citizens.

Right To Speedy Justice and Indian Judiciary

³⁵ Krishnan J. K. and Kumar C. R., Delay in process, denial of justice: the Indian Jurisprudence and emperics of speedy trial in comparative perspective, 2011, pp. 12.

³⁶(1979)3S.C.R.169

³⁷SeeManekaGandhiv. Union of India, (1978)2S.C.R.621.

³⁸Shuklav.DelhiAdmin.,(1980)3S.C.R.855

³⁹Unnikrishnan P. J. And Others VsState of A. P. And Others, 1993-(004)-SCC-0111-SC

“There is no a better test of excellence of a government, than the efficiency of its judicial system, for nothing more merely touches the welfare and security of average citizen than his sense that he can rely on the certain and prompt administration of justice.”.....Lord James Bryce.⁴⁰

Faith in judicial system is determined by its ability to provide accessible, speedy and cost effective justice to all equally. Speedy justice should be creating a sense of security among the citizens by assuring them that the one who does the wrong or goes against the laws of the country will be punished and all their just grievances will be redressed so that they may not be tempted to resort to violent self-help and take law in their own hands. The feeling of security is vital for the maintenance of public order and tranquillity without which a society cannot progress.

Although justice is meant to be “simple, speedy, cheap, effected and substantial”, yet it remains elusive to Indians and one of the major reasons are the delays in the dispersion of justice. The problem of delay in disposal of cases is not a new problem for the Indian judicial system and has been in existence since a long time. However, it has now acquired terrifying proportions.

On one hand, it has put the judicial system under pressure and on the other it has shaken the confidence of the citizens over the Indian judicial system also.

Even the law commission of India in its seventy-seventh report has observed and recognized the backlog of cases as a major concern.

The recurrent conflict of interest between the delayed trial and speedy trial has baffled the legal policies planners, legislators, researchers and the courts. The courts are mere spectators.⁴¹

Criminal Cases: slower disposal

The problem of speedy disposal of cases is much more acute in criminal cases as compared to civil cases. Speedy trial of a criminal case considered to be an essential future of right of a fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be said to be just, fair and reasonable. Right to speedy trial is the essence of criminal justice and there is no doubt that justice delayed is justice denied. As long as there are tears and sufferings, their work will not be over.⁴²

Speedy trial of offences has been one of the primary objectives of criminal justice delivery system. It is a desirable goal as long as inordinate delay may defeat the ends of justice. The common proverb ‘Justice hurried is Justice buried’ and ‘justice delayed is justice denied’⁴³. Hence, the object of speedy justice should not be at the cost of legal justice. Thus, it is important as well as necessary to maintain a reasonable balance between the considerations of speed and justice. Speedy trial of cases is in favour of both the prosecution and the accused. It is in favour of the prosecution as it does not face the problem of disappearance of witness, evidence, etc. And it is in favour of the accused because if he is innocent he will not suffer for a longer period. Thus the right to speedy justice for the above reasons acquires peculiar nature and is different from other constitutional rights of the accused.

⁴⁰ Lord James Bryce (In Modern Democracies)

⁴¹ Delhi Judicial Service Association V State of Gujarat AIR 1991 SC 2176

⁴² Arun Madan J. , “Judicial System and Reforms” AIR 2000, Journal, p - 105

⁴³ R. Kolluru, “Justice Delayed is Justice Denied” AIR 1999 Journal, p – 201

The constitution of India, 1950 does not specifically guarantee the right to speedy justice, however it is extended in article 21 i.e. right to life of the constitution to provide speedy justice to the citizens. This extending is purely a judicial effort.

There have been many cases where the judges have made emphasis on the right to speedy justice:-

1] STATE OF MAHARASHTRA V. CHAMPA LAL⁴⁴:

The court held that if the accused himself is responsible for the delay, he could not take advantage of this right. The court said that a delayed trial is not necessarily an unfair trial.

2] SUNIL BATRA V. DELHI ADMINISTRATION:⁴⁵

The court held that the practice of keeping undertrials with convicts in jails offended the test of reasonableness in article 19 and fairness in article 21. Justice Krishna Iyer giving a major decision held that integrity of physical person and his mental personality is an important right of the prisoner and must be protected from all kinds of atrocities.

3] VAKIL PRASAD SINGH V. STATE OF BIHAR:⁴⁶

The court has emphasized the need for speedy investigation and trial of constitutional protection enshrined in article 21 of the constitution.

4] MOTI LAL SARAF V. STATE OF JAMMU AND KASHMIR⁴⁷:

In order to make the administration of criminal justice effective, vibrant and meaningful, the union of India, the state government, and all concerned authorities must take necessary steps immediately so that the important constitutional right of the accused of a speedy trial does not remain only on papers or is a mere formality.

5] SANTOSH DE V. ARCHANA GUHA:⁴⁸

Prosecution was pending against the accused for the last 14 years. Since the accused was not responsible for the delay, the proceedings were quashed. Also in the second appeal, there was an unexplained delay for 8 years and the court held that it infringed the right to speedy trial.

6] RAGHUBIR SINGH V. STATE OF BIHAR:⁴⁹

The court held that the infringement of right to speedy trial could not be inferred merely from delay in police investigation. The court pointed out that the delay was due to the nature of the case and general situation prevailing in the country.

7] MAHENDRA LAL DAS V. STATE OF BIHAR:⁵⁰

⁴⁴ 1981 AIR 1675, 1982 SCR(1) 299

⁴⁵ 1980 AIR 1579, 1980 SCR (2) 557

⁴⁶ Criminal Appeal No. 138 of 2009

⁴⁷ Criminal Appeal 774 of 2002

⁴⁸ 1994 SCR(1) 549, 1994 SCC(2) 420

⁴⁹ 1987 AIR 149, 1986 SCR(3) 802

⁵⁰ Criminal Appeal No. 1038 of 2001

The prosecution merely failed to explain the delay of more than 13 years. Thus, the court quashed the proceedings keeping in view the peculiar facts and circumstances of the case.

8/ **P. RAMACHANDRA RAO V. STATE OF KARNATAKA**⁵¹:

The seven judge constitutional bench observed that,

“The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21.”

The Pre-Maneka Era:

It took years for our Indian judicial system to realize the importance of ‘the right to speedy justice’. This concept had to be introduced now or later as in our justice system the slow motion syndrome of carrying out the proceedings of a case were becoming a burden for the Indian legal system and was hindering the functioning of our Indian judiciary. Through many cases the Supreme Court of India realized the importance of the ‘the right to speedy justice’ concept.

About 50 years ago, the Supreme Court of India realized the importance of speedy trial and investigation, through the case of **Machander v. state of Haryana**:⁵²

“While it is incumbent for the court to see that no guilty person escapes, it is still more of its duty to see that justice is not delayed.....Limits must be placed on the lengths to which they must go”.⁵³

The honourable court further observed that:

“The scales must be held between the prostitution and the accused. In the given facts of this case the court refused to order a re-trial on account of the time already spent and other relevant circumstances of that case.”⁵⁴

Similarly in **Chajju Ram V. Radhey Shyam**⁵⁵,

The honourable Supreme Court refused to direct a re-trial after a period of ten years having regards in the facts and circumstances of the case and in interest of the Justice.

However in the case of **A.K Gopalan V. State of Madras**, the validity of Preventive Detention Act 1950 was challenged.⁵⁶ In this case the procedure established by law was first questioned and interpreted by the apex court of India. The majority in this case held that the word law in article 21 could not be read as meaning rules of natural justice. These rules were vague and indefinite and the constitution could not be read as laying down a vague standard. Thus the expression *procedure established by law* would therefore mean the procedure as laid

⁵¹ Criminal Appeal No. 535 of 2000

⁵² 1955 (2) SCR 524, AIR 1955 SC 792

⁵³ Ibid at p - 793

⁵⁴ Ibid at p – 794

⁵⁵ AIR 1971 SC 1367

⁵⁶ In this case, the appellant on its behalf tried an attempt to persuade the Supreme Court to hold that the courts can adjudicate upon the reasonableness of the Preventive Detention Act 1950, or for that matter any law depriving the person his personal liberty. Since Article 21 lays down that no person shall be deprived of his life and personal liberty except according to procedure established by law.

down in an enacted law. This view of the Supreme Court was highly criticized as this interpretation would lead to the delay in natural justice depriving a person his personal liberty.

Also in **Bombay Port v. Premier Automobiles**⁵⁷, 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 structure and procedure; there are some delays which are avoidable in the existing court procedure which must be avoided.

In **Nimeon Sangma V. Home Secretary**⁵⁸, Govt. of Meghalaya Hon'ble justice Krishna Iyer expressed his strong displeasure at the chaotic state of delays in investigation and trial in the following words,

“Criminal justice breaks down at a point when expeditious trial is not attempted while the affected parties are languishing in prison..... It is unfortunate indeed sympathetic that there should have been such considerable delays in investigation..... the accused has been deprived of his personal liberty on the ground that he is accused of the offence. We do not approve of this course and breach of the rule of law and express my strong displeasure at the chaotic state of affairs emerging in the whole scale. Breach of human rights guaranteed under the constitution of India especially under article 21 as interpreted by this court.”

The Right to Speedy Justice: A March from Maneka Era

The landmark case of the post emergency period i.e. **Maneka Gandhi v. Union of India**⁵⁹, shows how liberal tendencies have influenced the Supreme Court in interpreting the fundamental rights especially article 21. The Maneka Gandhi case made a multidimensional impact on the development of the constitution of India. The court has re-interpreted article 21 and practically overruled the Gopalan case. In this particular case the Supreme Court has given article 21 a much of a broader and broader interpretation so as to imply many more fundamental rights. According to Bhagwati J. article 21 embodies a constitutional value of supreme importance in a democratic society.

As the article 21 has been revolutionized by the Hon'ble Supreme Court and the concept of life and personal liberty has been widened but the subordinate judiciary and executive could not be revolutionized. Another horizon that attracted the notice of Hon'ble Supreme Court was the condition of the person under arrest on the suspicion of having committed an offense. The Supreme Court of India as the guardian of fundamental rights of the people has obligations as well as powers of wider amplitude to ensure a speedy trial for the accused, and as such while adopting an activist approach in **Hussainara Khatoon V State of Bihar**⁶⁰

In the Maneka Gandhi case, Bhagwati J. held that the procedure contemplated in article 21 could not be unfair and unreasonableness which was as essential element of equality or non-arbitrariness, pervaded article 14 like a brooding omnipresence and procedure contemplated in article 21 must answer the test of reasonableness in order to be in conformity with article 14.

The case of Maneka Gandhi has improved the administration of criminal justice and prison administration and also environment protection.

⁵⁷ AIR 1974 SC 2122

⁵⁸ AIR 1979 SC 1518

⁵⁹ AIR 1978 SC597

⁶⁰ Supra Note 31 at p - 598

The court held that the position of article 14, 19 and 21 are mutually inclusive. It meant that the law prescribing a procedure for depriving a person of his personal liberty has to meet the requirement of article 19 and also answer the requirement of article 14 in the Indian constitution. The court held that the procedure depriving a person his personal liberty must satisfy the requirement of natural justice and must be just, fair and reasonable. Also article 21 extends to all those person-persons accused of offences or under trial prisoners.

Right to life, as we all know, has got a much widened view in modern world. The Supreme Court in *Shantisar Builders V. Narayanan Khimalal Totame*, the Supreme Court held that right to life would include right to food, clothing, decent environment and reasonable accommodation to live in.

Also in *Olga Telis case*, the Supreme Court has emphasized that the procedure established bylaw for the deprivation of rights conferred by article 21 must be fair, just and reasonable. It must conform to the norms of justice and fair play. What faith can these lost souls have in the judicial system which denies them even a bare trial for so many years and keeps them behind bars...?⁶¹

Another important case in the post-Maneka era is **Hussainara Khatoon V. State of Bihar**.⁶²

In this case the apex court held that continued detention of undertrial prisoners could not be justified as they had already been in jail for a period longer than what they would have been sentenced to suffer if convicted.⁶³

⁶⁴Thus, the apex court directed to release the undertrials as continuance of their detention was violative of their fundamental right to speedy trials under article 21 of the Indian constitution. Also in *Kedrapadhiya v. State of Bihar*, several trials had been languishing in jail for 8 years without their trial having made any progress. The court pointed out that the right to speedy trial had remained a paper promise and was grossly violated. Emphasizing that speedy trial is a fundamental right of an accused implicit in article 21 of the constitution the court directed the concerned session judge to complete the trial expeditiously.

Also in **Mantoo Majumdar V. State of Bihar**⁶⁵, the apex court admonishing the State of Bihar, directed the release of two undertrial prisoners who had been in jail for seven years keeping in mind the right to speedy justice which both the prisoners were denied off.

Thus, speedy trial is in the interest of the society which must be respected as it will only improve the functioning of our Indian legal system and will improve the pace with which justice can be granted to the innocents.

The right to speedy justice: A.R. Antulay's case

⁶¹ Ibid at p – 1362

⁶² AIR 1979 SC 1367

⁶³

In this case Hon'ble justice Bhagwati observed that,
"These disclosed a shocking state of affairs and betray completed lack of concern for human values. It exposes the callousness of our legal and judicial system which can remain unattended by such enormous misery and suffering resulting from totally unjustified deprivation of personal liberty."

The Supreme Court with utmost concern held that an accused should not be imprisoned for a period longer than the sentence pronounced by the apex court. An imprisonment for a longer period of time means deprivation of a prisoner's right to life and liberty as under article 21.

⁶⁵ AIR 1980 SC 847

As seen in the above paragraphs that the right to speedy trial started getting the recognition as a fundamental right and an important aspect to give meaning to article 21 of the Indian constitution. The realization of importance of this right started after the main and important case of Maneka Gandhi V. Union of India.

Now another predominant case which contributed towards the recognition of this right was the case of **Abdul Rehman Antulay V. R.S. Nayak**⁶⁶.

However the case of Maneka Gandhi had a profound and beneficial impact on the administration of criminal justice, the case of Antulay also plays a significant role as it laid down the detailed guidelines for speedy trial of an accused in criminal cases but it did not agree to fix any time limit for trial of offences.

In areas of speedy trial, Antulay's case is of utmost importance as it held that a fair, just and reasonable procedure implicit in article 21 created a right for the accused to be tried speedily, the court held that the right was available to the accused at all stages i.e. investigation, inquiry, trial, appeal, revision or retrial.⁶⁷

In this particular case a seven judge bench was constituted for the purpose of providing the right to speedy justice. The above constituted bench also held that, "The constituted bench judgment in A.R. Antulay case holds that 'it is neither advisable nor feasible to draw or prescribe an outer-time limit for conclusion of all criminal proceedings'." The bench also said that "the time-limits or bars of limitations prescribed in the several directions made in earlier cases, namely, Common Cause (1996) and Raj Deo Sharma (1996 and 1999) could not have been so prescribed or drawn and are not good law." Thus, the guidelines in Antulay's case adequately take care of right to speedy trial.

Conclusion

Justice, in its literal as well as abstract form, remains the very purpose of law, and the very motive of the legal system. Justice is a universal and fundamental principle of law. It is inseparable from law, as much as that law and justice seem synonymous. So, it becomes the responsibility of the legal system to provide its seekers justice, in letter and in spirit, and that the delivery of justice should be reasonable, just.

The just delivery of justice should essentially be a timely one. This is also a universally accepted principle. However, a concept such skeletal is not on ground. The principle so fundamental is hindered by problems so complex that the immediate solutions are hard to find. It is sad that the edifice of the legal system still stands on soft sand, as its foundation remains incomplete.

⁶⁶ AIR 1992 SC 1701

⁶⁷ The SC held that,

"...the fact that a speedy trial is also in public interest or that it also serves the social interest, does not make it any 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.

Right to speedy trial flowing from article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision, and retrial. That is how, this court has understood this right and there is no reason to take a restricted view."

LAW MANTRA THINK BEYOND OTHERS
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People all over the world have been raising their voices to achieve speedier justice for themselves, their people, and the masses. Many seminars, conferences and workshops are held on this topic but are far from achievement. Reforms are being undertaken by the legal systems around the globe to achieve speedier justice. What is evident is that this goal can only be achieved collectively, and requires creative and result-oriented thinking on part of the legislature, judiciary, executive, media, bar, society and the nation as a whole.

Delay in the dispensation of justice is not good for any society. It leads to distress, damage, and resentment. It leads to people taking law in their own hands. It can ultimately lead to anarchy and chaos. So justice in general and speedy justice in particular, is essential for the system to survive and run.

When we focus on India, we find a grave situation of pending status of cases in Indian courts. The largest democracy has, not surprisingly, dismal record in speedy delivery of justice. The causes for this are deep-rooted and vague. Though there have been many measures undertaken, little success has been met considering the sheer volume of pending cases. This mission of providing speedier justice will not be complete until the last person gets justice on time.

For most seekers of justice, approaching court is a process of pain and anguish in their hearts. They suffer physically, psychologically, and monetarily. These are not the people who will take law in their hands. They seek justice with both hands unarmed, tired of the process; their eyes wrinkled from regular visits to the court, but still filled with hope and belief. It is this belief which makes an obligation for the courts to deliver quick and inexpensive justice to these people. However, quick justice should not affect the quality of justice. Justice should be timely, but never without quality.

When we say Quality of Justice, we mean Equality. Equality is the chief attribute of Justice. Justice without equality is no justice. It is equality in delivering justice which makes justice worth seeking. Therefore, this element can never be compromised.

The causes which hinder speedy delivering of justice in India, as mentioned before, are complex and deep-rooted. Sometimes, these reasons are more personal and particular than general. The delaying tactics of the advocates, the fault of the parties, and the provision of unlimited appeals are all responsible for it. The limitations of the measures taken to correct the system are also responsible. Many times the executive ineffectiveness is at fault, other times the force of popular politics. There are faults within the judiciary, especially at the lower level. These causes are several and deep-rooted, and require courage of self-criticism and resolve to identify them and eradicate them. This needs to be done by everyone, the bench, the bar, the government, the lawmakers, the people, and the society as a whole.