

FUNDAMENTAL RIGHT OF PRISONERS OF SPEEDY TRIAL

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Abstract:

Article 21 of the Constitution, Right to speedy trial is a right to life and personal liberty of a prisoner. which ensures fair, just and reasonable procedure. The Supreme Court of India has been very vigilant and caring against encroachments upon the Fundamental Rights of the prisoners by giving a comprehensive and liberal meaning to life and personal liberty. The prisoners who are facing trial in any court of India, unable to furnish surety bond due to financial problem, and have no access to legal aids, are kept in prison for many years together, because of one reason or another which amounts to gross violation of their fundamental and human rights. The ratio of Under trial prisoners in Numerous Courts of India constituted 61.24% of the total population in the Nation.

Key Words: Speedy, Trial, Liberty, Guaranteed, Fair, Reasonable, Liberal, Encroachment, Surety.

1. Introduction

A prison is considered as a place in which accused when convicted by court are physically kept and are deprived of any kind of personal freedom to a certain extent. Prison is an important organ of the criminal justice system of any Nation. Prisons may be meant exclusively for children, women, adults, etc. The motive of imprisonment may vary from Nation to another Nation. It may be: a) rehabilitative b) reformative c) deterrence or d) punitive etc. The main purpose of conviction is to protect society against criminals and crime. Reformative methods of treatment of prisoners alone cannot achieve the main goal of reformation of prisoners.¹ 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 the criminal cases.[^] As in every democratic civilized study, our Criminal Justice System is also expected to provide the maximum sense of security to the people at large and thus dealing with crimes and criminals effectively, quickly and legally. The entire existence of the orderly society depends upon sound and efficient functioning of the Criminal Justice System. A prolonged trial causes untold harassment to victims, accused, and witnesses. Various strategies and tools have been used in various jurisdictions to lessen the burden of trials, and ensure speedy disposal of cases. Speedy justice demands speedy and reasonably expeditious trial of a case. Indian Judicial hatchet dug up deep into the philosophy of fundamental Rights of our Constitution and read the right to "speedy trial" implicit in the broad sweep and contents of Article 21 of the Constitution of India. This found approval with the Supreme Court in the landmark cases of *M.H. Hoskot vs. State of Maharashtra*² and *Hussainara Khatoon vs. State of Bihar*,³ where the Supreme Court observed that, "speedy trial,

¹ Sudhir Kumar, *Fundamental Rights* 67 (B.R. Publishing Corporation, New Delhi, 2nd edn., 1993).

² AIR 2007 SC 1342.

³ AIR 2012 SC 1867.

and by speedy trial we mean, reasonably expeditious trial is an integral and essential part of fundamental right to life and liberty as enshrined in Article 21⁴ of the Constitution". In other landmark cases of Court held that, "Right to speedy trial is implicit in Article 21 of the Constitution and the Consequence of violation of this right would be that the prosecution itself liable to be quashed on the ground that it is a breach of a fundamental right." Significance of speedy justice is not only emphasized in Municipal law but also in International Covenants, namely: The Covenant on Civil and Political Rights, 1966 recognizes the right of a person to be tried without undue delay. India having ratified the covenant has taken upon itself the legal obligation to enforce it. Although the Sixth Amendment of the United States Constitution guaranteed the right to a speedy trial. The U.S. Supreme Court has refused to settle any precise time frame for the trial likewise, thirty five state Constitutions have speedy trial guarantees, but these provisions apply when the delay has been extensive.⁵

The vagueness of the Constitutional standards, to achieve the speedy dispensation of justice, in recent years the legislatures has shown considerable interest in putting some teeth into the guarantee of a speedy trial.

The best and most comprehensive effort is the The Federal Speedy Trial Act of 1974 (Amended in 1979). The Speedy Trial Act of 1974 is an good example of effective legislation to expedite the trials which are of criminal nature. In Constitution of India, The right to speedy trial is not expressly enumerated as one of the fundamental rights unlike the Seventh Amendment of the United States Constitution, which expressly and clearly recognises this right in the United States. It declares that in all prosecutions which are of criminal nature accused shall enjoy the right to a fair, public and speedy trial. This is in addition to the Fourth US Amendment of the Constitution, which declares that, "no person shall be deprived of life, liberty or property without the process of law." This amendment corresponds broadly to Article 31 and also to the deleted clause-II of Article 21 of the Constitution of India. Article 21 declares that, "No person shall he deprived of his life or personal liberty except according to procedure established by law."

The Supreme Court of India, for the first time, in the case of *Shobha Mittal vs. Home Secretary, State of Bihar*, declared that the right to fair and speedy trial was implicit in the broad sweep. The right to fair and speedy public trial was a facet of reasonable and fair procedure guaranteed by Article 21. It could not be oppressive, arbitrary or fanciful. The core of 'speedy trial' was considered as a protection against incarceration.

2. Concept and Meaning of Speedy Trial

The speedy justice in criminal jurisprudence is always been the sine qua non (necessary element). It is very important safeguard to prevent oppressive and undue

⁴ Article 21 enjoins, "Protection of life and personal liberty : No person shall be deprived of his life or personal liberty except according to procedure established by law."

⁵ Manzoor Laskar, History of Speedy Justice, available at: <http://indiaholic.blogspot.in>. (Visited on March 26, 2019).

incarceration. It minimizes concern and anxiety accompanying the accusation. It also limits to great extent, the possibility of impairing the ability of an accused concerned to defend himself. There also remains a very keen societal interest in providing speedy and fair justice. The speedy trial justice right has been actuated in the recent past. The courts of India also, in numerous decisions, have opened new vistas of fundamental rights of Constitution.

The Virginia Declaration of Rights of 1776, incorporated into it the concept of speedy trial for the first time. This concept travelled from there into the seventh Amendment to the Constitution of the USA to bring it into effect that in all criminal matters, the accused must enjoy the right to fair, speedy and public trial. It is worth mentioning fact in this connection that there is a Federal Act of 1974 in the United States of America, which is called Speedy Trial Act. This Act clearly mentions a time limits for carrying out the major events, e.g., indictment, information, arraignment in prosecution of criminal matters. The Similar provisions also exist in Canadian Laws. The right to speedy and fair trial is also recognized as a common right of law, flowing from the Magna Carta⁶. This is the view in New Zealand, Canada, United Kingdom, and United States of America which is not accepted in Germany. However, this particular right under the common law does not provide an absolute and proper relief to be given under numerous guidelines evolved in the various judicial decisions. Further, under Article 16 of the International Convention on Civil, Economic and Political rights 1976, the right to a fair and speedy trial is provided. Similarly, according to the Article 9 of the European Convention of Human Rights, Speedy means that an accused can't be locked up and held in prison for many years without a fair trial. In this Convention, Speedy Trial has been defined as it is the right of the defendant to have a prompt trial.

The Indian Constitution provides that the accused shall enjoy the right to fair and speedy trial but the basic requirements vary among jurisdictions. Then every defendant of the criminal case is entitled to a speedy trial. Therefore, justice means grant of inexpensive and expeditious relief to the persons who approach the court with various legal problems. Delay in providing justice has been interpreted as denial of justice because prolonged litigation causes numerous problems such as mental torture and financial burden to the litigants besides eroding their utmost faith in judiciary. Delay in the disposal of cases is the largest drawback of administration of justice in India.

The right to speedy trial is a essential and integral part of the fundamental right to life and liberty enshrined in Article 21 of the Indian Constitution. The Apex Court, while delivering its Constitutional bench Judgement in the case of *Aslam Rahman vs. Ram Nayak*,⁷ declared that right to speedy trial is implicit in Article 21 of the Constitution of India, and observed that, "Now obviously procedure prescribed by law for depriving, a person of his liberty cannot be reasonable; fair or just unless that

⁶ Part III of the Indian Constitution is known as the Magna Carta. Fundamental Rights are enshrined in the Part III of the Indian Constitution. It constitutes articles from 12 to 35. The reason Fundamental Rights include the term Fundamental is because they are guaranteed and protected by the Constitution, which happens to be the fundamental law of the land.

⁷ AIR 1995 SC 9876.

procedure ensures a speedy trial for determination of the guilt of such person. No procedure, which does not ensure a reasonably quick trial, can be regarded as fair, reasonable or just. Therefore there can be no doubt that speedy trial means reasonably expeditious trial, is an essential and important part of the fundamental right to life and liberty enshrined in Article 21." The right of the speedy trial shall begin without delay of unnecessary means and within the time limits established by law. These time limits must be pushed back by valid postponements for a numerous and variety of reasons. It applies only after a person becomes an 'accused' that is to say, after he has been charged with a crime or detained for the purpose of answering a criminal charge. Once arrested, a person is deemed an accused and is entitled for a speedy trial even though he is released later in the court. In a number of Indian Courts compliances have come at the price of delaying criminal cases, criminal trials are temporarily suspended in an effort to keep pace with courts criminal case load. The number of potential difficulties also arise at great extent because not all cases easily fit into the mandated prescribed time frames such as major murder case or a complex drug conspiracy trial. Therefore Indian state laws generally give wide discretion power to judges in deciding that the time frames can be waived in the interest of impartial Justice.⁸

3. Nature of Delay and Time - Frame

In criminal proceedings, the delays which are considered systematic delays and which are neither within the control of accused or prosecutor.

- a) Non-availability of Judges, Delay wholly due to congestion of the court calendar, or other circumstances beyond the control of the prosecutor.
- b) The accused caused himself delay not merely by seeking short adjournments but also by different legal devices, which the prosecutor has to counter.
- c) Delay caused by such orders, whether induced by accused or not, of the court, necessitating revisions, appeals or other appropriate proceedings or actions.
- d) Delay caused by legitimate actions of the prosecutor for e.g. getting a key witness who is kept out of the way or otherwise avoids process or appearance or tracing a key document or securing evidence from abroad. The above delays are not considered delays affecting the right to speedy justice. The delays being questioned are the deliberate delays resulting in protracting of proceedings either by the prosecutor or by accused. The accused may like to delay the proceedings as defence tactics and the prosecutor may like to prolong it because it has a case to victimize or it wants to harass the accused.

The violation of the right to a speedy trial is not established by delay alone. Rather, the determination of whether a case must be dismissed for lack of a speedy trial requires a balancing test, in which the conduct of both the prosecution and the defence are weighed and the following factors are considered:⁹

⁸ R. Malhotra, *Right of Speedy Justice* 28 (Regal Publishers, New Delhi, 2nd edn., 2001).

⁹ A.K. Banerjee, *Plight of Children in India* 17 (Janta Publications, New Delhi, 4th edn., 1991).

- (a) Reason for delay: A deliberate attempt by the prosecution to delay the trial weighs heavily towards a violation of the right to a speedy trial. On the other hand, a valid reason such as missing witness normally will justify the delay in the absence of prejudice to the accused
- (b) Length of delay: The length of delay alone does not establish a violation of the right to a speedy trial. However, a delay of months in a case, which depend upon eyewitness testimony, has been presumed to be prejudicial to the accused.
- (c) If the delay is attributed to wilful tactics by the accused. He will be deemed to waive his right to a speedy trial.
- (d) The mere fact that the accused is serving in Jail sentence in another state does not justify a delay of his trial on the pending charge. The prosecution must attempt to have the other state temporarily give up custody for purposes of trial or the pending charge.¹⁰

4. Numerous Human Rights Approaches

Legislations as well as judiciary have facilitated a major change in the approaches of criminal justice system. The United Nations has also mention certain guidelines and directives for the treatment of prisoners. The Nations are under legal duty and obligation for protecting its subjects and for the compliance of which citizens are provided with certain basic privileges recognized by the Indian Constitution and other legislations. However, the enhancement of Fundamental rights of the convicted prisoners raises a major question as to what extent it is viable under Article 21 of the Constitution of India to incorporate within its ambit, the access to conjugal rights to the convicted prisoners within the jail premises.¹¹ Moreover, what about the Fundamental rights of the victims upon whom they had committed the crime and to what extent the arena of rights of the convicted person can be enhanced in the garb of human rights so as not to violate the human rights of the victims who were the main sufferers of the crime committed upon them. The major human right issue of under trials is delay in their trial of cases. Right to speedy trial is a Fundamental right to life and personal liberty of a prisoner guaranteed under Article 21 of the Fundamental Rights of the Indian Constitution, which ensures fair, just, and reasonable procedure. However, 70% present prisoners are under trials, and some of them are not released even after granting regular bail as they are unable to furnish surety bonds of court due to financial problem or verification of addresses, as some prisoners don't have accommodation. "The speedy trial of offenders is one of the main objective of the criminal justice delivery system. Once the court take cognizance of the accusation then the fair trial has to be conducted expeditiously so as to punish the culprit and to absolve the person who is innocent. There is a famous quote, "Everyone is presumed to be innocent until the guilty is proved." So, the innocence of the accused has to be determined as quickly as possible because it is hard to live in the society with accusation. It is therefore, incumbent on the judicial court to check that no guilty

¹⁰ J.K. Sharma, *Fundamental Rights of Prisoners* 78 (Today Publishers, New Delhi , 5th edn., 2009).

¹¹ A. Selva Kumar, *Prisoners in India* 16 (Atma Ram & Sons, New Delhi, 3rd edn., 2005).

person is acquitted and second duty is to see that justice is not delayed and the accused persons are not continuously and indefinitely harassed. It is pertinent to say that delay in trial by itself constitutes denial of justice which is said to be justice delayed is justice denied. It is absolutely important that the culprit of offences should be speedily tried so that in cases where the bail is refused by the court, the person accused have not to spend jail longer than is absolutely necessary. The right to speedy trial has become one of the universally recognized human rights.¹²

5. Issues Pertaining To Violation Of Prisoners' Rights

Numerous international instruments have been formulated for the convicted prisoners by the Countries of the World. In India also, apart from the Indian Constitution that specifies a number of fundamental rights upon its citizens, various enactments dealing with rights of prisoners have also been adopted. In spite of having so many laws, Numerous issues enlisted below pertain to the violation of prisoners' rights :

1. Insufficient medical aid provisions to prisoners.
2. Insensitive jail authorities attitude.
3. Punishment carried out by concerned jail authorities not coherent with punishment given by court.
4. Convicted person harsh mental and physical torture.
5. Indigent prisoners unable to pay high amount of surety bond ordered by courts.
6. Rejection of surety due to financial problems or verification of addresses, as indigent prisoners don't have accommodation.

6. Judicial Concept on Speedy Trial Of Prisoners

The Indian freedom struggle played a major role in initiating the process of recognizing certain fundamental rights for the prisoners. After independence, the Constitution of our Country conferred a number of fundamental rights upon the people. Article 21, guarantees the right of personal liberty and thereby prohibits and avoid any degrading, inhuman, cruel treatment to any individual whether he is Indian or foreigner. Article 21 of the Constitution states, "No person shall be deprived of his life or personal liberty except according to procedure established by law". The Supreme Court, through interpretation of Article 21 has developed human rights jurisprudence for the protection and preservation of prisoners rights for the maintenance of human welfare and dignity. Deprivation of life and liberty is justifiable according to procedure established by law but the procedure cannot be unfair, arbitrary and unreasonable.¹³

In *Minakshi Dutta v. Union of India*,¹⁴ the Supreme Court laid down that the procedure cannot be unfair, arbitrary or unreasonable. Further added that when the court held that Article 21, requires that no person shall be deprived of his life or personal liberty except by procedure established by law and this procedure must be fair, reasonable, and just and not arbitrary, or fanciful. The judiciary of India has

¹² Nanjil Nadan, *Prisoners and Right to Speedy Justice* 41 (Progress Publishers, Chennai, 2nd edn., 2003).

¹³ Raj Kumar Sen, *Problems of Prisoners in India* 24 (Kanishka Publishing House, New Delhi, 5th edn., 2001).

¹⁴ AIR 1999 SC 1234.

been very vigilant, caring and active in protecting the human rights of the convicted accused. The various rights of the prisoners recognized by the Constitution of India are mentioned below:

a) Compensation

A prisoner or an under trial or a detainee can approach the High Court under Article 226 and Supreme Court under Article 32 and demand for compensation for the violation of his rights while in custody. In *Sultan Mohammad vs. State of Bihar and Others*,¹⁵ the accused was released from jail after 12 years on the excuse of insanity after he was acquitted. The Court observed that no data of any kind was shown that the authorities of prison had a basis for either declaring the prisoner insane or for detaining him on that account. No strong measures were taken to cure him medically. The Court further observed that if a prisoner was at all insane, it must be caused by the jail conditions itself. The Court granted compensation of Rs 65000 to the petitioner and specifically mentioned that a suit for compensation over and above this amount would be filed in an appropriate Court. Article 21 will be denuded of its significant content if the powers of the Court were limited to passing orders merely of release. *Mohan Lal case*¹⁶ was a habeas corpus petition. Mohan Lal was a Naga Priest who was a principal of a school. His school was visited by the army. It was alleged that the army had engaged in atrocities and took away certain persons including the petitioner. He was last seen alive in a camp of army. An application for habeas corpus was filed, but the State refused to follow the directives of court.. The Court asked, “What is the appropriate mode of enforcing obedience to a writ of habeas corpus?” After that the Court ordered that the State has to pay Rs 2 lakh each to the legal heirs of the missing persons. The compensation of Rs 70000 was awarded for imprisonment with mischievous or malicious intent. In *Janak Ram case*¹⁷ an MLA was imprisoned in police custody and remand orders were obtained without his production before a concerned magistrate. The Apex Court in *Nilabati Modi case*¹⁸ expressed the dire need of the courts to evolve new tools and techniques to give major relief in public legislations by moulding it accordingly to the condition and situation with a view to protect and preserve the rule of law. In *Shalendra Chaturvedi vs. State of Uttar Pradesh*,¹⁹ the Supreme Court enhanced the amount of compensation from Rs 20000 to Rs 40000 to be paid to forty one persons belonging to general classes who died in indiscriminate custody by the police while not obeying the court orders. The Court further held that payment of such amount does not absolve the liability of the wrong-doers but such compensation is being paid as a working principle and for convenience and with a view to rehabilitating the legal heirs of the deceased.

b) Fair Procedure

¹⁵ (1996) 1 SCC 109.

¹⁶ (1992) 1 SCC 221.

¹⁷ AIR 2008 SC 1218.

¹⁸ AIR 2009 SC 7654.

¹⁹ AIR 2017 SC 5346.

The Indian Constitution recognizes principles of natural and fair justice and they have been incorporated in Part III of the Constitution. In *Abdul Khan vs. State of Madhya Pradesh*,²⁰ High Court held that in cases where the accused denies to take legal aid and is not represented by a lawyer, the Court ought to, in the interest of justice, either question the witness himself, or provide a competent counsel to assist the Court. The Court remitted the matter for retrial in accordance with its directions. In *Shivappa Swami vs. State of Kerala*,²¹ the Supreme Court held that the Magistrate recording confessional statements of accused should strictly follows with the rules and ensure that the custody is with proper procedure of law and there is no delay by the police for speedy trial.

c) Human Sentencing

It is the major and sacred duty of judiciary to look and recognize at every aspect of the case and to award proportionate quantum of sentence depending upon the severity of the offence. In this case, the Supreme Court issued certain directives as to the basis on which a convict can be released pre-maturely:

- 1). Whether the crime is an individual act of offence without affecting the whole society ?
- 2). Whether the convicted person has lost his potentiality in committing crime?
- 3). Whether there is any chance of recurrence in future of committing crime?

In *Akhtar Hussein and Others vs. State of West Bengal*,²² the Supreme Court observed that the conduct and behaviour of the petitioners while in custody in jail is an integral factor to be considered as to whether they have lost their potentiality in committing crime due to long period of detention or not.

d) Parole

In *Sunil Manchanda vs. Union of India*,²³ the Constitutional Bench of the Apex Court observed that parole is a release in temporary form from custody, which does not suspend the period of detention, but provides few days conditional release from custody in jail and changes the mode of undergoing the sentence.

Parole is granted and governed by the following conditions:

- (a) The prisoner is seriously ill; or
- (b) The marriage of the prisoner, his daughter, son, grandson, granddaughter etc.

7. International Obligations And Requirements

Among the main grounds for the foundation of State Government and establishment of Government of India; safeguarding security and peace and respecting law and

²⁰ (2001) 1 SCC 2134.

²¹ (2006) 1 SCC 3214.

²² AIR 2015 SC 2876.

²³ AIR 2014 SC 8976.

order come to the forefront. The idea of social contract theory, says that people of the Nation agreed for the foundation of a Country and respective Government for the sake of better protection and security and have forfeited some of their rights for its effectiveness. So, the obligation of securing law and order and giving punishments to the offenders during violations of the law remain in the hands of the Nation. Hence, administration of criminal justice is the main power of the Country. Likewise, the practice of how Nation treats its citizens or subjects was exclusive power of the individual state concerned. This includes Human rights, fundamental rights and treatment of prisoners. However, later on issues of human rights of speedy trial and treatment of prisoners by Countries in particular draw the attention of many social and political activists and was included in the regional and international human rights documents. Similar to the fact in the research project, addressing prisoners' rights in the United Nations and regional human rights treaties is a result of the shift of public power of the 1960s. In addition to this, the United Nations and the other regional human rights systems have established adjudicating bodies which are empowered to settle disputes on the interpretation and application of the treaties concerned. Human rights committees, such as the general comments of the IESCR and ICCPR committees on the numerous rights of prisoners is one of the sources to be consulted in my research. ²⁴

Conclusion:

An Individual does not lose his human rights merely due to he has committed some crime as he also has some respect and dignity which must be protected by Country. However, at the same time conferring conjugal rights to the convicted person in jail requires re-consideration of a bench of the High Court or the Supreme Court as far as the concept of human rights of speedy trial is concerned. By giving more weightage by the Nation, the time will come that the prisoners, the balance of criminal justice system may get disturbed and a situation would arise when one day jails would become resting centres. Therefore speedy trial is must for prisoners. In addition to this, the United Nations and the other regional human rights systems have established adjudicating bodies which are empowered to settle disputes on the interpretation and application of the treaties concerned.

²⁴ Available at: www.fundamentalrightsofprisoners.org/india/P04.html. (Visited on March 6, 2018).