

THE REQUIREMENT OF SPEEDY TRIAL IN CRIMINAL JUSTICE DELIVERY SYSTEM IN INDIA

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ABSTRACT

Justice in one sense means grant of expeditious and inexpensive relief to persons who approach the court with legal problems. Delay in providing justice has been interpreted as denial of justice. The Constitution of India reflects the quest and aspiration of the humankind for justice when its preamble speaks of justice in all its forms - social/ economic and political. The principle of natural justice is that 'justice should not only be done but it should seem to have been done' which means that those who receive justice must feel it has been done with them. There is an old adage that 'justice delayed is justice denied; which means that justice should be dispensed with within a reasonable period of time. However, another doctrine associated with the disposal of cases is that 'justice hurried is justice buried', meaning thereby that the hasty trials entail injustice and consequently affect the quality of justice. The Supreme Court of India as the guardian of fundamental rights of the people, has obligations as well as powers of wide amplitude to ensure a speedy trial for the accused. The principle of speedy trial propounded in Maneka Gandhi's case, nurtured in Hoskot's case, and came of the age in Hussainara's case with a judicial bang. The legislature of India through Section 309, 258, 468 and other provisions of the criminal procedure Code, 1973 and also the Supreme Court of India by way of interpretation of Article 21 of the Constitution of India have recognized speedy trial as the essence of criminal justice system. Many cases in India take up to 10 years for disposal and usually take for longer than stipulated 6 month or 2 years for trials, resulting in enormous pendency. Prolonged litigation causes financial burden and mental torture to the litigants besides eroding their faith in judiciary. It is important to mention that the causes leading to delays, in disposal of cases are not related only to the judiciary as is generally believed but they owe their origin to, the legislative, the executive, the judiciary, the legal profession, the court procedure and the litigants. In the present criminal justice system, the poor and indigent persons are suffering and being harassed by the police and prison authorities whereas the persons who have sufficient means and influence make full use of the legal loopholes. Delay in the disposal of cases is the greatest drawback of the administration of justice in India.

Keywords: expeditious, administration, legislative, executive, judiciary, indigent, litigants, prolonged, fundamental, injustice, interpreted.

Introduction:

By maintaining certain orders the King can conserve what he already had, acquire new possession, augment his wealth and power, and share the benefits of improvement with those worthy of such gifts. The progress

of this world depends on the maintenance of order and the proper functioning of the Government.¹

This Kautilyan dictum, given two-and-a-half millennia ago, is as true today as it was in his times. It is not punishment of the convicts alone, but the speed with which justice is administered that is equally important. Speedy justice is, in fact, the sine qua non of criminal jurisprudence. It serves the best interests of both the accused and the prosecution that a trial runs through its course expeditiously. Speedy trial is equally necessary from the point of view of prosecution. Given the increasing ascendancy of criminal elements in our public life, these imperatives are made very urgent as a result of the risk of witnesses being tortured, intimidated or bribed to rescind from the real happenings version of events.

The administration of justice – punishing the wicked and rewarding the virtuous – is, according to Kautilya, one of the primary duties of the King. A King prevails only with the help of danda (punishment). Danda is the real ruler and the King merely an instrument for its execution. Referring to the aims of punishment, Kautilya observed that punishment is not an end in itself but only a means to an end. This end is the maintenance of society and the protection of all creatures. Punishment achieves this objective in many ways: by deterring potential offenders from committing crimes and deviating from the path of duty; reforming evil doers; providing consolation to the victims; purifying the offender and ridding the society of criminals.²

1.1 Concept of speedy trial :

Speedy trial is a fundamental right of every person. Though it is not specifically mentioned in Article 21 enshrining the right to life and liberty, it is implied in it. No procedure which does not ensure a reasonably quick trial can be regarded as ‘reasonable, fair or just’ and it would violate Article 21.³

There can be no suspicion that speedy trial, we mean a reasonable fast trial-is an integral and essential part of fundamental right to life and liberty enshrined in Article 21

To counter this problem the government introduced the Fast Track Courts meant to expedite trial and facilitate quicker dispensation of justice. . The 11th Finance Commission had given a grant of Rs 509 crores for setting up of the 1,734 Fast Track Courts, which were to continue till March 31, 2005. The non-allocation of funds beyond March 31st 2005 by the 12th Finance Commission had raised doubt over it which was cleared by Supreme Court by directing Central Government to continue it till April 30th 2005. The Supreme Court in its judgment had observed that fast-track courts should be continued as joint venture between Centre and States and Centre should provide funds. The Cabinet Committee on Economic Affairs

¹ Kautilya, Arthashastra, Translation: K. N. Rangarajan, Pg. 108

² Aggarwal, K.M., Kautilya on Crime and Punishment, pg. 16-18.

³ Maneka Gandhi v. Union of India AIR 1978 SC 597.

(CCEA) on April 27, 2005 approved continuation of the 1562 fast-track courts for the next five years. The fast-track courts would continue to function under the present arrangement and would entail an outgo of Rs 509 crores over five years beginning from April 1, 2005.⁴

In Best Bakery Case⁵ relating to murder of fourteen Muslims in communal violence in Vadodara on March 1, 2002 the verdict of the Fast Track Court of H.U. Mahida acquitting all 21 accused was challenged by National Human Right Commission and the appeal was allowed by Hon'ble Supreme Court. The Fast Track Court decided the matter within four month from beginning of trial acquitting all the accused without taking shelter of power conferred by section 309 & 311 of Cr.P.C. which goes to qualify the saying 'justice hurried is justice worried'. It goes to show that unless systematic changes are brought to eradicate the delay, it may amount to miscarriage of justice. There is no bar even under the present system to expedite the hearing of urgent cases by evolving formal court procedures rather than leaving it to chance or fast track courts. In the existing process decisions on applications for early hearing are routinely disposed of without considering the intimation of any delay for poor litigants. It is highly probable that in the absence of a rational and sensible procedure to facilitate the fast disposal of cases, the fast track courts would make no difference to the huge backlog of cases.

The genesis of this right lies in the Supreme Court judgment in Hussainara Khatoon v. State of Bihar⁶ which formed the of the concept of the Speedy Trial, it was held that where under trial prisoners have been in jail for duration longer than prescribed, if accused, their detention in jail is totally unjustified and in violation to fundamental rights under article 21.

In the case Katar Singh v. State of Punjab it was proclaimed that right to speedy trial is an essential part of fundamental right to life and liberty. The position of this right to speedy trial was reiterated by a Constitution Bench of the Supreme Court in Abdul Rehman Antulay v. R.S. Naik ⁷, and Sheela Barse v. Union of India⁸, etc.

1.2 Meaning of Justice:

The founding fathers of our Indian constitution placed the word "justice" at the highest pedestal and the Preamble to our constitution significantly noticed justice higher than the other principles, i.e. liberty, equality and fraternity. Again, the Preamble specifically states that the precedence to social and economic justice over political justice. People turn to the judiciary in pursuit of justice. The constitution lays down the structure and states the delimits and demarcates the role and certain other function of every organ of the

⁴ news.indiainfo.com/2005/04/27/2704fast-track-court.html

⁵ Zahira H. Sheikh v. State of Gujarat 2004 (4) SCC 158

⁶ Hussainara Khatoon (I) v Home secretary, State of Bihar AIR 1979 SC 1360

⁷ Abdul Rehman Antulay v. R.S. Naik [\(1986\) SC 222](#); [\(1987\) 1 SCR 91](#); [AIR 1987 SC 1140](#)

⁸ Sheela Barse v Union of India AIR 1986 SC 1773

State including the judiciary and establishes norms for their interrelationships, checks and balances. Independence of judiciary is essential to the rule of law.

When justice is denied by any society, including a socialist, secular and democratic one as in India, expectations darken into depression. Then that depression turns into apprehension, apprehension transforms itself into despair and despair evolves into explosive terrorism. State violence as an instrument to suppress terrorism is in vain after a time the bitterness and revengefulness that is generated will seek to overthrow those very forces that control state power-call it fascism, naxalism, Maoism or whatever. This

dangerous deterioration of democracy into bedlam terrorism is hastened when access to justice ceases to be a reality and the only alternative is violence.

When we talk of delay in the subject of justice it denotes the time consumed in the disposal of case, in excess of the time within which a case can be reasonably expected to be decided by the Court. An expected life span of a case is an inherent part of

the system. No one await a case to be decided overnight. However, difficulty arises when the actual time taken for disposal of the case far exceeds its expected life span and that is when we say there is delay in order of justice. Delay in disposal of cases not only creates dissatisfaction amongst the litigants, but also weakens the very capability of the system to impart justice in a systematic and productive manner. Long delay also has the effect of defeating justice in a bit number of cases⁹. The litigant has only one life but litigation has several lives to see its end. Judgments typically take years to pronounce and some judges do not pronounce any judgment at all. They would seem to be unaccountable since, there is no Performance Commission in operation¹⁰.

The main importance of a well functioning judicial system for realizing the goal of justice –social, economic and political peace and stability, growth and development as well as for upholding the rule of law is by now well identified. Global development experience shows how effective justice delivery systems are essential for good governance. Excessive and frivolous litigation overwhelms the judicial system's capacity to administer speedy and efficient justice, leads to higher costs for litigants and society at large, and even hinders India's competitive position in the global economy. The Law Commission in 1987 had recommended 50 judges per million of population instead of 10.5. The recommendation has remained buried in the Report follow-up action.¹¹

⁹ Justice K.G.Balakrishnan, Delay in Administration of Criminal Justice System, Vigyan Bhawan

8th April, 2007

¹⁰ V.R.Krishna Iyer, 'The syndrome of judicial arrears' The Hindu (New Delhi 2nd December 2009) Editorial 10.

¹¹ Law Commission of India, 'Manpower planning in Judiciary' (Report no. 120, 1987).

This inadequate judge strength is a major cause for the delay in disposal of cases. It is not merely the raising of strength of the judges in the subordinate courts and High Courts which is the need of the day –greater need is of making the right appointments. An unoccupied vacancy may not cause that much harm as a wrongly occupied vacancy. To an extent delay in the disposal of cases is also "judge made". Lack of punctuality, laxity and lack of control over the case file and the court proceedings contributes in no small measure to the delay in disposal of cases. Unless the judges have a complete control over the file, they cannot control the proceedings resulting in loss of time. The "inspection" of subordinate courts by District Judges and the High Court judges should be real and not "routine". The grant of unnecessary adjournments on the mere asking or on account of "strike call" adds to the problem. The Bar and Bench have to resolve to remedy these ills.

1.3 Justice served handicapped:

The Judiciary is compelled to shape the processes of the law to actualize the constitutional resolve to secure equal justice to all. A people who are not literate by and large, indigent in small measure, feudal in their own way of life, and other tribal and backward in large numbers, need an unconventional cadre of jurists and judges, if equivalent justice under the law is to be a reality. If there is breach, judicial power must provide effective shelter.

This has been so explicitly made in the Article 39-A of the Constitution that directs the State - to secure equal justice and free legal aid for all the citizens. But the experiences of last 57 years reveals that the State has failed on addressing some very basic issues quick and less expensive justice and thereby protecting the rights of poor and the vulnerable. The system of delivering justice is on the verge of collapse with more than 30 million cases which are pending in the system.

In the Uphaar case it was so shocking that it took almost six years to establish that the 59 people died because of criminal negligence on the part of the cinema hall management and the government of delhi. It was so clear from day one that nobody would have died in the cinema hall if followed safety rules but because the wheels of Indian judiciary move at the pace of our national vehicle - the bullock cart - it took almost six years for justice to be delivered. And, if the Ansal family and the guilty officials had decided to make an appeal it could be many more years before justice would really be delivered.

Mr. Justice K.G.Balakrishnan, the Chief Justice of India pointed out at National Seminar on Delay in Administration of Criminal Justice System, the State as a guardian of fundamental rights of its citizens is duty-bound to ensure speedy trial and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of

Justice. It is in the regard of all concerned that the guilt or innocence of the accused is determined as quickly as possible. There are a large number of under trial prisoners in this country. In many cases, the accused is the head of a family and is the only breadwinner; his responsibility is also towards the large family left behind him. It is not only the accused but also other members of his family who suffer because of delay in trial. Speedy trial ensures that a society is free of such misconducts. In many cases, large

number of persons are arrested and kept in custody. It is said that large percentage of jail population is of under trial prisoners.”¹²

Conclusion and Suggestions

Contains a summary of the findings and offers suggestions as to how an effective system can be established to achieve the idea of speedy trial in criminal justice system. The present study although limited in scope, also endeavors to ascertain the material facts that has paralyzed the criminal justice system. For instance, the study reveals that justice today is shut out to most in India. Most citizens, especially the disadvantaged sections, have limited access to justice, due to unclear laws and high costs that act as effective barriers. Unfortunately, those who do venture forth are also, often denied of their right to justice. One of the major causes for this is known to be 'delays in the dispensation of justice.' That "justice delayed is justice denied" as repeatedly held by Apex Court, yet 'delays continue in matters before the judiciary resulting in huge arrears/backlogs/pendency' and repeated violation of fundamental rights of citizens of India. It is, therefore evident that the old adage "justice delayed is justice denied" is found present in about all part of our country, causing frustration and anxiety not only amongst the under trial prisoners but also amongst their family members, neighbors, scholars dealing with criminal justice system, jurists, judges and a number of other people. The urgent need, therefore, is to find out solutions for delays in disposal of cases in general and criminal cases in particular. Hence the researcher offers the following suggestions.

1. The first and foremost step is to increase the strength of judges at all levels. The present strength is inadequate in the sense that there are only 10.5 judges per 10 lack of population which is highly dissatisfactory. The present strength of judges should be raised to 50 per 10 lack of population at the earliest otherwise the huge pendency of cases will go on increasing in future.
2. The existing infrastructure of the courts in most part of the country is grossly dissatisfactory in the height of technological advanced atmosphere. It is not only necessary that the posts of judges and other court staff are to be created but the old and ineffective infrastructure such as court rooms, building, manner of keeping court records should all be changed be replaced with the modern techniques and latest gadgets.
3. There is urgent need to have in place judicial machinery, which is easily accessible and dispenses affordable, incorruptible, and speedy justice to the people.
4. There is urgent need to improve the present legal aid support system and legal aid lawyers given better and prompt remuneration.
5. It is need of the hour to have our legal procedures simple, rational, easily understandable and the amendments of procedure have to be made carefully so as to ensure quick justice while safeguarding that fair play, equity and good conscience does not become a casualty. Speedy but faulty justice is no justice at all.
6. Steps need to be taken to make use of alternative disputes resolution mechanism to decide the cases pending in different court involving petty offences. Such minor cases may easily resolve through mediation and compromise.

¹² Justice, K.G. Balakrishnan at national seminar on delay in administration of criminal justice system, "Administration of criminal justice system", 17th March, 2007, Vigyan Bhawan, New Delhi

7. The role of advocates in speedy trial is also very crucial because they are equal partners with the judges in the administration of justice. Separate steps need delivery system. The Bar should also refrain from boycotting the courts and approach concerned authority for redressal of their grievances. Members of the Bar should avoid unnecessary adjournments. Members of the Bar should also stat following strictly the principles of professional ethics and abandon their narrow parochial interest.

8. There must be an effective computer training program me for not only the judges of subordinate courts in different parts of the country but also for the entire staff of the subordinate courts so as to make justice delivery system at the base level speedier and timely.

9. There is an urgent need on the part of the Union Government and as well as state governments to change their mindset and stop politicising fundamental issues such as judicial reforms, rather the government should take effective steps at all levels that no inaction on the part of any government agency becomes an obstacles in the speedy dispensation of justice.

10. There is a need for effective case management system so as to control the rising number of new cases for this purpose Fast Track Courts should be extended to the level of Magistrates and all existing vacancies in courts across the country should be filled up on top priority.

11. Gram Nyayalay system dealing with petty disputes at the village level should resolve the cases amicably and such courts should not be allowed to reach the complicated legal stages and procedural delays are avoided.

12. The concept of pre-trial meeting to restrict issues and admissible evidence should also be taken to meet out the long and complicated procedural hurdles of the evidentiary law.

13. There is an urgent need to create deterrent effect on the witnesses who do not turn up in the courts of law for evidence. Punishment for absconding witnesses should be imposed and there should be strict enforcement deadlines and restrictions on the length of arguments so as to ensue speedy trial in criminal justice system.

The criminal justice system machinery must also meet the challenge of effectively dealing with the emerging forms of crime and behavior of criminals. On many instance delay in the process of trial is caused by the accused themselves.