

Right to Speedy Trial

The philosophy of Right to Speedy trial has grown in age but its goals are yet unforeseen. Right to Speedy Trial is a concept which deals with disposal of cases as soon as possible so as to make the Judiciary more efficient and trustworthy. The main aim of Right to Speedy trial is to inculcate Justice in the society. It is the human life that necessitates human rights. Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. The very basic purpose for which every state machinery sets up the court system is to award justice to the victims of crimes. The constitution of India imposes heavy duty on the judicial system for providing legal mechanism to deal with problem relating to imparting justice. The setting up an independent judicial system, inclusion of fundamental rights and directive principles of state policies further shows the commitment of our constitution makers in making the judicial system an effective organ of state machinery on which people can rely with trust and hope of justice.

The right to a speedy trial is first mentioned in that landmark document of **English law, the Magna Carta**. **Article 21** declares that **"no person shall be deprived of his life or personal liberty except according to the procedure laid by law."** Justice Krishna Iyer while dealing with the bail petition in **Babu Singh v. State of UP¹**, remarked, **"Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings."** Right to speedy trial is a concept gaining recognition and importance day by day.

Speedy trial is a fundamental right implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution and any accused who is denied this right of speedy trial is entitled to approach Supreme Court under Article 32 for the purpose of enforcing such right. and this Court in discharge of its constitutional obligation has the power to give necessary directions to the State Governments and other appropriate authorities for securing this right to the accused.

¹ Babu Singh v. State of UP, 1978 AIR 527, 1978 SCC (1) 579

Factors For Pendency Of The Cases:

Delay in cases can be of two types:

1. Court system delay:

The delay from the time the case is admitted to the time it is taken up in trial.

2. Delay due to lawyers/ advocates and others:

The delay which takes place due to the actions of lawyers/ advocates such as adjournments given etc.

However, the chief reasons for delays can be enumerated as follows:

1. ***The first and the biggest problem is of the delay in disposition of cases.*** Due to huge pendency, the cases take years for its final disposal, which would normally take few months time. The arrears cause delay and delay means negating the accessibility of justice in true terms to the common man.
2. ***The judge – population ratio*** – presently taking into consideration the population of the country and pendency of the cases the no. of judges available are very less.
3. ***The infrastructure of the lower courts is very disappointing.*** Though, the Supreme Court and High Courts are having good infrastructure but this is not the same position with lower courts. The Courts have no convenient building or physical facilities due to which it takes more time to dispose off a case. Good library, requisite furniture, sufficient staff and reasonable space are the need of the qualitative justice and most of these facilities are not available in lower courts.
4. ***Due to the Independence of Judiciary,*** some Judges think that they are not accountable to any one due to which many a times this factor could drive judges toward comfort, ignorance etc. ultimately results in delay of the cases.

5. ***Provision for adjournment:*** The main reason for the delay in the cases is the adjournment granted by the court on unreasonable grounds.
6. ***Vacation of the court:*** The reason with providing courts with a vacation period also leads to further delay of the cases especially in country such as India where there are tremendous amount of pending cases. In most of the countries like U.S. and France there is no such provision.
7. ***Investigative agencies generally delay:*** The Investigation agencies such as Police also play a role in Delay of cases. Many a times Investigation agencies take time to file up charge sheet in the court due to which delay occurs.

Take into consideration **Bhopal Gas Leak Tragedy** involving lives of more than 15000 people. 26 years had passed for that incident and still people suffered a lot to get the compensation and no action still has not been taken against the main victim of the incidence. One of the recent example of the Delay would be the Babri Masjid case. Of the five title suits filed in the Ayodhya matter — the first was filed sixty years ago by Gopal Singh Visharad, seeking permission for Pooja at the disputed site. A Division Bench of 3 Judges of the Allahabad High Court will pronounce this verdict on 24th September, 2010.

Delay Leads To Mental Anguish:

In **Hussainara Khatoon v. State of Bihar**¹ which formed the basis 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 convicted, their detention in jail is totally unjustified and in violation to fundamental rights under article 21. Inordinate delays violates article 21 of the constitution: for more than 11 yrs the trial is pending without any progress for no faults of the accused-petitioner. Expeditious rights is a basic right to everybody and cannot be trampled upon unless any of the parties can be accused of the delay. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose off the case within 6months from today. No adjournments to be granted until and unless circumstances are beyond the control of judiciary. It is the responsibility of the judiciary to keep a check on under trial prisoners and bring them to trial. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person.

¹ Hussainara Khatoon v. State of Bihar, 1979 AIR 1360, 1980 SCC (1) 81

Article 21 Of The Constitution:

This right is implicit in article 14, 19(1) (a) and 21 of the constitution as well as the CPC. It is the constitutional obligation of the government to devise such procedures as would ensure and implement speedy trial. Supreme Court being majestic authority has to act as guardian of fundamental rights of citizens

Purpose of Criminal Justice:

The main purpose of speedy trial is to safeguard the innocent from undue punishments but due to huge amount of cases pending in the courts cases are delayed unintentionally which creates mental and economic pressure on litigants.

Right To Speedy Trial in Criminal Cases:

Fundamental rights are not teasing illusions but are meant to be enforced effectively. Thus in many cases, now the court has decided to quash the proceedings so as to achieve justice, not just individual justice but also social justice.

In the case **Katar Singh v. State of Punjab**¹ it was declared that right to speedy trial is an essential part of fundamental right to life and liberty. In the case **Abdul Rahman Antulay v. R.S. Nayak**², the bench declared certain aspects and guidelines regarding the speedy trial and quashing of cases should depend upon nature of the case.

Hence it can be concluded that: Right to speedy trial is right of the accused and it encompasses all the stages namely, investigation, inquiry, trial, appeal, revision and retrial.

The concerns from the view point of accused are:

- Period or remand should be justified and should be as short as possible
- Worry, anxiety, expense and disturbance in conducting the trial should be minimal
- Undue delay may well result in impairment of the ability of the accused to defend himself.

¹Katar Singh v. State of Punjab, 1994 SCC (3) 569, JT 1994 (2) 423, 1994 SCALE 1

² Abdul Rahman Antulay v. R.S. Nayak, 1988 AIR 1531, 1988 SCR Supl. (1)1

Reformative Measures:

The capacity and efficiency of a Judicial System is judged by the time taken for the disposal of a case. In an efficient Judicial system a case is judged and disposed off very quickly. Though this is not an easy job, but to achieve proper social justice it is necessary. Independent India celebrated its 63rd birthday recently, but still most of the sectors in India are not free from the atrocious holds of corruption, which also plays a lead role in the delay of cases. Though the Judicial System in India is independent but still it takes years for a case to dispose off. The Fast Track Courts were made for the sole purpose of disposing of cases as soon as possible but it also hasn't been successful in achieving its goal. **Harshad Mehta Scam** is a very famous case rooted in Indian History. Harshad Mehta was an Indian stockbroker caught in a scandal beginning in 1992. He died of a massive heart attack in 2001, while the legal issues were still being litigated.

Harshad Mehta scam took about 6 years for the pronouncement of the decision when he already died while at the same time a scandal in Singapore Nick Leeson of barring company which was decided in 2 years. This shows how the delay in justice providing system works in the favor of judicial system.

Some measures which could prevent Delay could be:

- **Effective management of the courts:**

Time scheduling should be done so that there is effective management of time leading to effective management of judicial system.

- **Steps for Judges**

Judges should be provided with proper training and vocations on a regular basis to improve their drafting, hearing and writing skills along with the skill of taking correct and fast judgment.

- Moreover, the **ratio of judges to population should be increased** which will help in disposal of cases very fast.
- Cases must be assigned according to **specialized area of judges**.

Cases must be assigned according to specialized area of judges. This means that a Judge who has a good experience/ knowledge of Criminal law should try criminal cases, a Judge who has deep knowledge of Labor law should try Labor law cases . So is the case with other cases

- **Arbitration** should be done wherever possible and in particular small and petty cases arbitration should be made compulsory. It will save precious time o the courts.
- **Nyaya Panchayats** should be authorized to dispose off small and petty cases. However. Lok Adalats were established for the speedy disposal of cases at lower level.
- **The procedure of Adjournment** should be modified in a way so as it is reduced to a limit and fine should be imposed on the person who files application for an adjournment on flimsy grounds.
- **Technological Courts and Speedy Justice**

The technological development made by the human being in the field of science can be highly useful in realization of this objective. In last two decades, Information technology has brought many beneficial changes into our lives. And this tool of information technology can be equally useful in imparting justice.

In "**M/S SIL Import, USA v M/S Exim Aides Silk Exporters**"¹ the words "notice in writing", in Section 138 of the Negotiable Instruments Act, were construed to include a notice by fax. The Supreme Court observed: "A notice envisaged u/s 138 can be sent by fax. Nowhere it is said that such notice must be sent by registered post or that it should be despatched through a messenger. Chapter XVII of the Act, containing Sections 138 to 142, was inserted in the Act as per Banking Public Financial Institution and Negotiable Instruments Laws (Amendment) Act, 1988. When the legislature contemplated that notice in writing should be given to the drawer of the cheque, the legislature must be presumed to have been aware of the modern devices and equipment already in vogue and also in store for future. Technological advancement like Facsimile, Internet, E-mail etc. were on swift progress even before the Bill for the Amendment Act was discussed by the Parliament. So when Parliament contemplated notice in writing

¹ M/S SIL Import, USA v M/S Exim Aides Silk Exporters AIR 1999 SC 1609.

to be given we cannot overlook the fact that Parliament was aware of modern devices and equipment already in vogue. If the court were to interpret the words "giving notice in writing" in the section as restricted to the customary mode of sending notice through postal service or even by personal delivery, the interpretative process will fail to cope up with the change of time. So if the notice envisaged in clause (b) of the proviso to section 138 was transmitted by Fax, it would be compliance with the legal requirement".

In "**State of Maharashtra v Dr.Praful.B.Desai**"¹ the Supreme Court observed: "The evidence can be both oral and documentary and electronic records can be produced as evidence. This means that evidence, even in criminal matters, can also be by way of electronic records. This would include video conferencing. Video conferencing is an advancement in science and technology which permits one to see, hear and talk with someone far away, with the same facility and ease as if he is present before you i.e. in your presence. Thus, it is clear that so long as the accused and/or his pleader are present when evidence is recorded by video conferencing that evidence is recorded in the "presence" of the accused and would thus fully meet the requirements of section 273, Criminal Procedure Code. Recording of such evidence would be as per "procedure established by law". The advancement of science and technology is such that now it is possible to set up video conferencing equipments in the court itself. In that case evidence would be recorded by the magistrate or under his dictation in the open court. To this method there is however a drawback. As the witness is not in the court there may be difficulties if commits contempt of court or perjures himself. Therefore as a matter of prudence evidence by video conferencing in open court should be only if the witness is in a country which has an extradition treaty with India and under whose laws contempt of court and perjury are also punishable".

Reformation is necessary so as to make the implementation of the right in the right manner which is the need of the hour.

¹ State of Maharashtra v Dr.Praful.B.Desai 2003 (3) SCALE 554.

Conclusion

"Justice delayed is justice denied" is a legal maxim meaning that if legal redress is available for a party that has suffered some injury, but is not forthcoming in a timely fashion, it is effectively the same as having no redress at all. This principle is the basis for the right to a speedy trial and similar rights which are meant to expedite the legal system, because it is unfair for the injured party to have to sustain the injury with little hope for resolution.

The judiciary is part of our democracy and all its implications must be imported into the judicial process. Once we accept the proposition that in a democratic society the court system plays a crucial role in seeing that neither licence nor absolutism becomes dominant, the difficult tasks of the court vividly stare us in the face. As **Chief Justice Burger** has noted: **"A sense of confidence in the courts is essential to maintain the fabric of ordered liberty for a free people and three things could destroy that confidence and do incalculable damage to society: that people come to believe that inefficiency and delay will drain even a just judgment of its value; that people who have long been exploited in the smaller transactions of daily life come to believe that courts cannot vindicate their legal rights from fraud and over-reaching; that people come to believe the law - in the larger sense - cannot fulfill its primary function to protect them and their families in their homes, at their work, and on the public streets"**¹

A judicial system that cares only about evidences and facts shouldn't worry about taming the souls of the plaintiff and the defendant with time rather give justice as quick as it can, this delay/denial of justice leads to increasing "Out of Court settlements" which are cheaper and quicker thereby leading to the loss of trust in our Judicial System.

The right to speedy trial is not a fact or fiction but a "Constitutional reality" and it has to be given its due respect. The courts and the legislature have already accepted it as one of the medium of reducing the increasing workloads on the courts.

Though there are no specific provisions for speedy trial, by judicial interpretation, the Supreme Court has held article 21 of the constitution confers the right on the accused. It is in the interest of all the concerned that the case is disposed off quickly and justice is seem to occur. In **Abdul Rehman v. R.S Nayak**² the SC observed that the ultimately it's the court which decides whether right to speedy trial has been denied or not. Every time when proceedings cannot be quashed as it might not be in interest of the society.

According to B.P.Singh J the situation today is so grim that if a poor is able to reach to the stage of a high court, it should be considered as an achievement.

¹Dr.Gene Nelson at <http://legaltimes.typepad.com/blt/2010/01/kevin-rings-lawyers-ask-to-delay-retrial-.html?cid=6a00d83451d94869e20120a814102d970b#comment-6a00d83451d94869e20120a814102d970b>

²**Abdul Rehman v. R.S Nayak**, 1988 AIR 1531, 1988 SCR Supl. (1)1