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Right to Speedy Trial is Inalienable Human Right for both Victim and Accused: An overview

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ABSTRACT

Right to speedy trial is a notion which deals with disposal of cases as soon as possible so as to make the judiciary more effective and responsible. The main object to right to speedy trial is to inculcate Justice in the society. The very basic purpose for which every state machinery sets up the court system is to award justice to the victims of crime. Speedy trial is a fundamental right inherent in the guarantee of life and personal liberty protected in Article 21 of the Constitution and any accused who is denied this right of speedy trial is enabled to approach Supreme Court under Article 32 for the purpose of applying such right. If a person is deprived of his freedom under a process which is not 'reasonable fair and just', such deprivation would be violative of his Fundamental Right under Article 21 and he would be entitled to implement such Fundamental Right and protected his release. In this paper is discussed about the right to speedy trial remedy for accused and victim.

Keywords: Speedy trial, Accused, Fundamental Right, Justice, Human Right.

I. INTRODUCTION

Right to Speedy Trial is a thought which deals with disposal of cases as soon as possible so as to make the judiciary more efficient and responsible. The main aim of Right to Speedy Trial is to inculcate Justice in the society. It is the human life that requires human rights. One of the main aims for the right to a speedy trial is to avoid a defendant from being held in custody for a long time, only to eventually be found innocent. If the defendant is denied bail or cannot pay the bail amount, they will keep on in jail till their trial date. Both Accused and victim have the basic the fundamental human right for speedy trial. In India most of the reasons are there for delayed Justice. Such reasons are:

(A) Reasons for pendency of the cases

1. Court structure delay which accounts for the period of entering the cause till it's taken

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up for trial.

2. Non availability of counsel
3. Non availability of parties
4. Belated service of summons and warrants on the accused/witnesses
5. Non production of under trial prisoners in the court
6. Presiding judges proceeding on leave, though cases are fixed for trial
7. Counsel engaged by the accused declining to appear or seeking an adjournment

Like this various reasons case trials and judgment delivery is delayed.

If the trial is delayed against the accused, the accused need to keep in the jail till judgment delivered. Accused are not allowed to go out by bail even Indian Laws is permit in some cases. They are in a under trial prison. They are not accused only on the basis of they are arrested and they are in Jail. Final Judgment only decided whether they are accused or not. They are losses his/her individual respect/dignity in the society, they loses educational or Job opportunity and his/her future life is affected because of this delayed justice. It is violate the Indian Citizens Fundamental Right which is provided in the Indian Constitution.

The concept of speedy trial is read into Article 21 as an essential part of the fundamental right to life and liberty guaranteed and preserved under our constitution. The right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely, the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted. The constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.²

Article 21 of the Indian Constitution, “No person shall be deprived of his life or personal liberty except according to procedure established by law”

Thus Article 21 requires the following conditions to be fulfilled before a person is deprived of the property:-

1. There must be a valid law
2. The law must provide a procedure
3. The procedure must be just, fair and reasonable.³

The protection of Article 21 is available even to convicts in jails. The prisoners are not by mere

² Kartar Singh Vs. State of Punjab, 1994

³ Dr.J.N.Pandey – Constitutional Law, 2012 Edition

reason of their conviction deprived of all the fundamental rights which they otherwise possess. Following the conviction of a convict is put into the jail he may be deprived of fundamental freedoms like the right to move freely throughout the territory of India or the right to “practise” a profession.

The Right to Life and Personal Liberty of citizen not only from the Executive action but from the Legislative action also. A person can be deprived of his life and personal liberty of two conditions are complied with,

1. There must be a law
2. There must be a procedure prescribed by that law, provided that the procedure is just, fair and reasonable.⁴

(B) Right to Live With Human Dignity

The right to ‘live’ is not merely confined to physical existence but it includes within its ambit the right to live with human dignity⁵. The right to live is not restricted to mere animal existence. It means something more than just physical survival. The right to ‘live’ is not confined to the protection of any faculty or limb through which life is enjoyed or the soul communities with the outside world but it also includes “the right to live with human dignity”, and all that goes along with it, namely, the bare necessities of such as, adequate nutrition, clothing and shelter and facilities for reading, writing and expressing ourselves in diverse forms, freely moving about and mixing and commingling with fellow human being.⁶

The preamble of the Indian Constitution enjoins the State to secure social, economic and political justice to all its citizens.

Article 38(1) provides Social order based on Justice. The Concept of ‘Social Justice’ consists of diverse principles essential for the orderly growth and development of personality of every citizen. “Social justice” is then an integral part of justice in the generic sense.⁷ The Supreme Court held that “Social Justice” would include “legal justice” which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realisation of justice by all sections of people irrespective of their social or economic position or their financial resources.⁸

Article 39-A Equal justice and free legal aid to economically backward classes. The state

⁴ Maneka Gandhi Vs. Union of India.

⁵ Maneka Gandhi Vs. Union of India, AIR 1981 SC 746.

⁶ Francis Coralie Vs. Union Territory of Delhi, AIR 1978 SC 597.

⁷ Air India Statutory Corporation Vs. United Labour Union, AIR 1997 SC 645.

⁸ L.Babu Ram Vs. Raghunathji Maharaj

to ensure that the operation of the legal system promote justice, on a basis of equal opportunities 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.

‘Legal aid’ and ‘speedy trial’ have now been held to be fundamental rights under Articles 21 of the Constitution available to all prisoners and enforceable by the courts. The state is under a duty to provide lawyer to a poor person and it must pay to the lawyer his fee as fixed by the Court.⁹ In order to achieve the objectives in Article 39-A, the State must encourage and support the participation of voluntary organisations or social action groups in operating the legal aid programme. The legal aid programme which is meant to bring social justice to the people cannot remain confined to the traditional or litigation oriented programme but it must take into account the socio-economic conditions prevailing in the country and adopt a more dynamic approach. The voluntary organizations must be involved and supported for implementing legal aid programme and they should be free from Government control.¹⁰

II. RIGHT TO SPEEDY TRIAL

A petition for a writ of habeas corpus was filed by number of under trial prisoners who were in jails in the State of Bihar for years awaiting their trial. The Supreme Court held that “*right to a speedy trial*” a fundamental right is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of the criminal justice.¹¹ In ***Kartar Singh v. State of Punjab***, the Supreme Court held that the concept of speedy trial is an essential part of Article 21 of our Constitution. This right to speedy trial begins with the arrest of the accused and consequent incarceration and continues at all the stages of investigation, enquiry, trial, appeal and revision so that prejudice caused by the impermissible and avoidable delay can be averted.

The Supreme Court expressed concern in delay in disposal of cases and directed the concerned authorities to do needful in the matter urgently before the situation goes totally out of control. In this case, a suit was filed in 1947 for a sum of Rs.7000/- and continued for 60 years. Thus the court expressed deep concern at the delay in disposing of cases in our courts. Because of delay in disposal of cases people in this country are fast losing faith in the Judiciary. The situation should be set right as soon as possible the court directed concerned authorities to do

⁹ H.M.Hoskot Vs. State of Maharashtra AIR 1978 SC 1548

¹⁰ Centre of Legal Research Vs. State of Kerala, AIR 1986 SC 1322

¹¹ Husainara Khatoun Vs. Home Secretary, State of Bihar, AIR 1979 SC 1360

needful in the matter¹²

The right to a speedy trial is an extension of the right to liberty and right against arbitrary detention. The Hon'ble Supreme Court in *Rattiram Vs. State of M.P., (2012) 4 SCC 516*, while reiterating the importance of a speedy trial for both the accused and the victim has as , we would like to refer to two other concepts, namely, speedy trial and treatment of a victim in criminal jurisprudence based on the constitution paradigm and principle. The entitlement of the accused to speedy trial has been repeatedly emphasised by this court. It has been recognised as an inherent and implicit aspect in the spectrum of Article 21 of the Constitution. The whole purpose of speedy trial is intended to avoid oppression and prevent delay. It is sacrosanct obligation of all concerned with the justice dispensation system to see that the administration of criminal justice becomes effective, vibrant and meaningful.

III. SPEEDY TRIAL RIGHT FOR VICTIM

Speedy trial is the fundamental right of not only the accused, but also the victim who is the complainant in a case. Give crime victims the right to “a speedy trial” or “disposition of the case free from unreasonable delay”.

The appellant contended that the appellants are facing criminal trial for the last 14 years and if the committal proceedings are initiated by the trying Magistrate pursuant to the directions of the High Court, it would impede speedy trial and the same would be violation of Article 21 of the Constitution. And court held that no doubt, quick justice is sine-qua-non of Article 21 of the Constitution but, when grave miscarriage of justice is committed by the Police Officer, the ground of delay of disposal of cases or otherwise would not scuttle the miscarriage of justice. Similarly, court were of the view that in the given facts and circumstances of this case, the accused themselves would be liable to be blamed for the delay, if any.¹³

The Supreme Court has held that the court has power to award monetary compensation in appropriate cases where there has been violation of the constitutional right of citizens. In the present case the Supreme Court directed Bihar Government to pay “compensation” of Rs.30,000 to Rudul Shah who had to remain in the jail for 14 years because of the irresponsible behaviour of the State Government Officers even after his acquittal. He was acquitted by the Sessions Court on June 30, 1968 but was released from jail only on Oct.16, 1982 when the Court intervened. Describing this state of affairs as “sordid and disturbing” the Court asked the Patna High Court to find out if there were any other detenues suffering a fate similar a fate

¹² Moses Wilson Vs. Karturba, AIR 2008 SC 379.

¹³ Lallan Chaudhary Vs. State of Bihar, AIR 2006 SC 3376

similar to Rudul Shah. Thus it is clear from this ruling that the Court can order payment of *compensation to victims of State violence*¹⁴.

The court laid down certain guidelines and held that the powers conferred under sections 309, 311 and 258 of the code of Criminal Procedure shall be exercised by the criminal courts to effectuate the Right to Speedy Trial. To seek appropriate relief and directions, the jurisdictions of the High Court under Section 482 of Cr.P.C and Articles 226 and 227 of the Constitution can be invoked.¹⁵

IV. PROVISIONS UNDER CR.P.C

- **Section 157(1)** of Cr.P.C imposes a duty upon the police officer, who on receiving information of commission of an offence, has to immediately send a report of the same to the magistrate and to proceed to the spot to investigate.
- **Section 173(1)** of Cr.P.C provides a mandatory provision to complete all the investigations without unnecessary delay.
- **Section 207** of Cr.P.C provides supply to the accused of copy of police report and other documents.

Section 167(2) (a) of Cr.P.C. deals with the Magistrate may authorise the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days; if he is satisfied that adequate grounds exist for doing so, but no Magistrate shall authorise the detention of the accused person in custody under this paragraph for a total period exceeding,-

- i) ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;
- ii) sixty days, where the investigation relates to any other offence, and, on the expiry of the said period of ninety days, or sixty days, as the case may be, the accused person shall be released on bail

Right to speedy trial as a constitutional mandate is the case of **Supreme Court Legal Aid Committee Representing Under trial Prisoners Vs. Union of India**, The Supreme Court laid down certain conditions for release of under trial prisoners on bail where trial was not completed within a specified period of time.

V. MALIMATH COMMITTEE REPORT

The Law Commission of India and the Malimath Committee recommended that the system of

¹⁴ Rudul Shah Vs. State of Bihar, (1983) 4 SCC 141

¹⁵ P.Ramachandra Rao Vs. State of Karnataka

plea bargaining should be introduced in Indian Criminal Justice System to facilitate the speedy disposal of criminal cases and to reduce the burden of the courts. Accordingly, the Criminal Law (Amendment) Bill, 2003 was introduced in the Parliament and the Supreme Court of India referred and supported this Amendment Bill, 2003 and observed that “it is true that the idea of plea bargaining in India was not permissible, but in view of the changed circumstances and present state of affairs of the criminal justice system in our country. The system of plea bargaining should be introduced, as a part of the process of decriminalisation”. The provisions were thus finally incorporated in Cr.P.C as Chapter XXI – A through the Criminal Law (Amendment) Act, 2005 which is applicable only in respect of those offences for which punishment of imprisonment is prescribed up to a period of seven years and it does not apply where such offences affect the socio-economic conditions of the country or have been committed against women and children below the age of fourteen years.¹⁶

VI. CONCLUSION AND SUGGESTIONS

Both accused and victim have the right to speedy trial. In view of the victim side, if there is no speedy trial, victim have the trouble for getting remedies/compensation in his/her case. For the purpose of compensation is rehabilitating the victim’s life. If the trial is delayed in many years, the victim cannot claim on the proper time. Accused also affect in the delayed trial. By the Apex courts various judgments speedy trial is an inalienable right under Article 21 of the Constitution. However, the court at several periods refused to fix a time limit under which a trial has to be settled. After making so many provisions and by many legislations to ensure speedy justice the people of India are still not getting speedy justice in the true sense.

VII. SUGGESTIONS

1. Government need to establish more courts.
2. Parliament/ Legislature reduce the trial procedure.
3. Parties may approach the Alternative Dispute Resolutions.
4. Government need to arrange more Legal Aid programme.
5. Court may release the accused by bail if the law permits till the judgment delivered.

¹⁶ LatestLaws.Com