

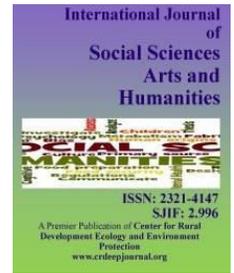
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Review Paper

Speedy Justice in India in View of Delays- An Analytical Study

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ABSTRACT

Case backlog and consequent delay in the disposition of disputes is a problem familiar to legal professionals the world over. The individual hardships occasioned by inordinate delay in the resolution of cases, and the resultant diminution of popular confidence in the judiciary, are frequent themes in professional journals and the popular press. In India the magnitudes of delays are significant and immediate action to address them is required by all levels and branches of government. Although the delays associated with the Indian judicial system is attributable to several factors such as the complexities of cases, the nature of evidence required to prove a claim, and lawyers are also believed to be contributors to these delays. This paper determines the fittingness of the regular courts for speedy justice in India in view of delays, and the cost of legal services before the ordinary courts. Speedy delivery of Justice is the key trepidation of society in flourishing state like India. Strengthening the timely delivery of justice is an important development challenge, for without justice other public goods and services cannot be provided or accessed. Further our Constitution which mandates that the state shall secure that the operation of the legal system shall promote justice, on a basis of equal opportunity and shall ensure that opportunities for securing justice should not be denied to any citizen.

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“Justice delayed is justice denied, justice withheld is justice withdrawn, and justice should not only be done but should also appear to have been done”.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, 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

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

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

any meaning in the right sense of its concept if it's not delivered to the person concerned with in a reasonable speed.

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

⁵ Eugen 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

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

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 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" 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

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 :-

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 being respectively the terminus a quo and terminus ad quem – of the journey which an accused must necessarily undertake once faced with an implication. It is almost a quarter of a 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 buried*, 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

(Notice, opportunity of being heard, an impartial tribunal, an orderly course Of procedure) Willis “Constitutional Law” 1936, p – 622.

¹⁴ Black’s Law Dictionary

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

(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 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.

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*’.^{21,22}

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

²² Wade and Phillips – “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 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.²²

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.²³

Right To Speedy Justice and Indian Judiciary

“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.²⁴

Faith in judicial system is determined by its ability to provide accessible, speedy and costeffective 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 tranquility 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.²⁵

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 feature of right of fair trial has remained a distant reality. A procedure which does not provide trial and disposal within a reasonable period cannot be

²³ 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 grund norm by virtue of Article 51” of the Constitution.

²⁴ Lord James Bryce (In Modern Democracies)

²⁵ Delhi Judicial Service Association V State of Gujarat AIR 1991 SC 2176

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.²⁶

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’²⁷. 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 favor of both the prosecution and the accused. It is in favor of the prosecution as it does not face the problem of disappearance of witness, evidence, etc. And it is in favor 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.

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 Lal²⁸:

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 Administration²⁹:

The court held that the practice of keeping under trials 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 Bihar³⁰:

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 Kashmir³¹:

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

²⁶ Arun Madan J. , “Judicial System and Reforms” AIR 2000, Journal, p - 105

²⁷ R. Kolluru, “Justice Delayed is Justice Denied” AIR 1999 Journal, p – 201

²⁸ 1981 AIR 1675, 1982 SCR(1) 299

²⁹ 1980 AIR 1579, 1980 SCR (2) 557

³⁰ Criminal Appeal No. 138 of 2009

³¹ Criminal Appeal 774 Of 2002

accused of a speedy trial does not remain only on papers or is a mere formality.

5] **Santosh DE V. Archana Guha:**³²

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:**³³

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**³⁴

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**³⁵:

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."*

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.

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.

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Tools Applied

1. Statutory Materials: The Companies Act, 2013, Stock Exchange Board of India Act, 1992.
2. Decided Cases: Use of Supreme Court, High Court and National Company Law Tribunal Cases reported in various Law Reports like A.I.R., S.C.C., S.C.R., and S.C.J., and Company law journals.
3. Periodical Writings: Use of Indian and Foreign Law Journals on the point.
4. Reports of Committees etc.: Use of reports of various committees like The Kumarmangalam Birla Committee, Report of Stock Exchange Board of India, Naresh Chandra Committee, N.R. Narayana Murthy Committee etc.

³² 1994 SCR(1) 549, 1994 SCC(2) 420

³³ 1987 AIR 149, 1986 SCR(3) 802

³⁴ Criminal Appeal No. 1038 of 2001

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