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RIGHT TO SPEEDY TRIAL

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Abstract

The 6th amendment of the U.S. Constitution and the Speedy Trial Act of 1974 secure a criminal respondent's entitlement to an expedient preliminary. The 6th amendment commands, to a limited extent, that "in every criminal arraignment, the denounced should appreciate the privilege to a fast and open preliminary." The Speedy Trial Act of 1974 determines time limits intended to secure a respondent's quick preliminary right. To decide if there has been a rapid preliminary right infringement, a court must audit four related elements: length of postponement, purpose behind deferral, respondent's endeavors to encourage a fast preliminary, and bias to the litigant. The last factor relates to the anticipation of onerous detainment, decrease in the charged's tension and worry for the case result, and a constraint on the hindrance of litigant's capacity to put on a barrier. The main technique to cure an infringement of the rapid preliminary right is to expel the case. Since this cure is so extreme, courts are reluctant to find that an established infringement has happened. The Speedy Trial Act of 1974 determines a 30-day time constrain for prosecution and a 70-day time confine for conveying a litigant to preliminary. Excludable times of deferral are in four general classes: delays caused by pretrial movements and interlocutory interests, defers identifying with respondents, delays caused by the inaccessibility of witnesses or litigants, and defers identifying with continuations. In deciding if to expel a case with or without partiality, the demonstration's cure arrangement expresses that a locale court must consider three factors: the reality of the offense, the certainties and conditions of the case that prompted the expulsion, and the effect of a reprosecution on the demonstration and the organization of equity.

Keywords

Speedy trial, Fundamental right, Justice, Equality, Constitution.

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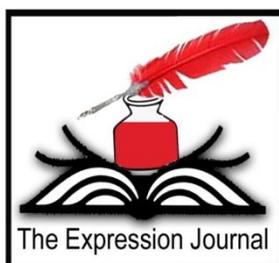
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"The constitutional guarantee of speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself" The constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far - off peak. It a concept which deals with speedy disposal of cases to make the judiciary more effective and to impart justice as fast as possible. Article 21 declares that "no person shall be deprived of his life or personal liberty except according to the procedure laid by law."¹ Justice Krishna Iyer while dealing with the bail petition in *Babu Singh v. State of UP*, 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. In the case of *Kadra Pahadiya v. State of Bihar* (AIR 1981 SC 939) the Supreme Court said, "It is a shame upon adjudicatory system which keep man in jail for years without a trial."

In the case of *Hussain Ara Khatun* the court observed that 'Procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair of just' and it would fall foul of Article 21. There can, therefore be no doubt that speedy trial, and by speedy trial we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.² The question which would be the consequence if a person accused of an offence is denied speedy trial and is sought to be deprived of his liberty by imprisonment as a result of a long delayed trial in violation of his fundamental right under Article 21. Would he be entitled to be released unconditionally freed from the charge leveled against him on the ground that trying him after an unduly long period of time and convicting him after such trial would constitute violation of his fundamental right under Article 21.1

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In the case of R.S. Nayak v/s A.R. Antuley AIR 1992 SC 1630 the Supreme Court lay down guidelines for speedy trial. The court said that speedy trial is a right which is available at the stage of investigation, trial, appeal and revision.

1 - AIR 1979 SC 1369

In Kartar Singh v/s State of Punjab, the SC held:-

"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, enquiry, 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 averted³ of course, no length of time is per se too long to pass scrutiny under this principle nor the accused is called upon to show the actual prejudice by delay of disposal of cases. On the other hand, the Court has to adopt a balancing approach by taking note of the possible prejudices and disadvantages to be suffered by the accused by avoidable delay and to determine whether the accused in a criminal proceeding has been deprived of his right of having speedy trial with unreasonable delay which could be identified by the factors : (1) length of delay is the justification for the delay, (2) the accused's assertion of his right to speedy trial and (4) prejudice caused to the accused by such delay. However, the fact of the delay dependent on the circumstances of each case because reasons of delay will vary, such as delay in investigation on account of the widespread ramification of crimes and its designed network either nationally or internationally, the deliberate absence of witness or witnesses, crowded dockets on the file of the Court etc."

The full Bench of Patna High Court, in Madheswaradhari Singh v. State of Bihar, laid down the following guidelines:- (1) that the right to a speedy trial extends to all criminal prosecutions for all offences generally, (2) it applies to both trial and investigation as per the Code of Criminal Procedure, 1973; (3) it extends to all criminal proceedings inclusive of the stage of trial and appellate stage; (4) Delay of 7 years or more in trial and investigation other than capital punishment violates Article 21 of the Constitution.

In the case of Sheela Barse v. State of Maharashtra, the Court has observed: "It is an essential ingredient of reasonable, fair and just procedure to a prisoner who is to seek his liberation through the court's process that he should have legal services available to him." Providing free legal service to the poor and the needy is an essential element of any reasonable fair and just procedure.⁴

The Supreme Court need in Raghubir Singh v. State of Bihar, that the right

1- 1994 (3) SCC 569

2 - AIR 1986 Pa : 324

3 - AIR 1998 SC 378

4 - AIR 1987 SC 149

of speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Articles 21 of the Constitution.

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In *Nimeon Sangma v. Home Secretary, Govt. of Meghalaya* Justice Krishna Iyer observed:

"... considerable delay in investigation by the police in utter disregard of the fact that a citizen has been deprived of his freedom on the ground that he is accused of an offence, verges on the wholesale breach of Human Rights guaranteed under the Constitution especially under Article 21 ... criminal justice breaks down at a point when expeditious trial is not attempted while the affected parties are languishing in jail".

In *Anil Rao v. State of Bihar* the Supreme Court laid down certain guidelines regarding the pronouncement of judgments, which shall be followed by all concerned, being the mandate of Supreme Court. These are as under:

(1) The Chief Justices of the High Courts may issue appropriate directions to the Registry that in a case where the judgment is reserved and is pronounced later, column be added in the judgment where, on the first page, after the cause-title, date of reserving the judgment and date of pronouncing it be separately mentioned by the Court Officer concerned⁵

(2) That Chief Justices of the High Courts, on their administrative side, should direct the Court Officers / Readers of the various Benches in the High Courts to furnish every month the list of cases in the matters where the judgments reserved are not pronounced within the period of one month.

(3) On noticing that after conclusion of the arguments the judgment is not pronounced within a period of two months, the Chief Justice concerned to the pending matter.⁶ The Chief Justice may also see the desirability of circulating the statement of such cases in which the judgments have not been pronounced within a period of six weeks from the date of conclusion of the arguments amongst the Judges of the High Court for their information. Such communication be conveyed as confidential and in a sealed cover.

(4) Where a judgment is not pronounced within three months from the date of reserving it, any of the parties in the case is permitted to file an application in the High Court with a prayer for early judgment. Such application, as and when filed, shall be listed before the Bench concerned within two days excluding the intervening holidays.⁷

(5) If the judgment, for any reason, is not pronounced within a period of six months, any of the parties of the said list shall be entitled to move an application before the Chief Justice of the High Court with a prayer to withdraw the said case and to make it over to any other Bench for

1- AIR 1979 SC 1518

2- AIR 2001 SC 3173

fresh arguments. It is open to the Chief Justice to grant the said prayer or to pass any other order as he deems fit in the circumstances.

The court held *Arun Kumar Ghosh v. State of West Bengal*, "Administration of justice requires that the accused is entitled to have such protection as the prosecution is entitled to. Waste of time affects the defence case and the witnesses which the accused may choose to examine may be suffering from physical inability during the trial. In the event of the trial being dragged on for years together the judicial view is in favour of dropping the proceeding

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irrespective of the nature of the case.⁸ The mental torture and anxiety suffered by an accused for a long length of time is to be treated as sufficient punishment inflicted on 1991 CCR LR (Cal) 365 (Cal)

In Mohanlal Khandelwal v. State, a Single Bench of the Calcutta High Court held:

"While the accused persons were produced in Court on January, 1976, not even one witness has been examined in full and that, too, in spite of a direction given by this Court in 1982 to end the trial expeditiously on taking the evidence.⁹ The situation has not improved in spite of the said direction and the matter remains in the same condition although ten years have elapsed. Prejudice is inherent in such delay and it must be held that the accused petitioner's right to speedy trial has been infringed by such delay requiring quashing of the proceedings." (1993) 1 Cal LT 59

A Division Bench of the Calcutta High Court in the case of Amarendra Nath Dutta v. State of West Bengal, had held, "Right to speedy trial has not been expressly concerned as a fundamental right in our Constitution. But it has now been settled beyond doubt by a series of decisions of our Apex Court that the same right is fully covered by and comprised in Article 21 of the Constitution guaranteeing non-deprivation of life and liberty save according of procedure established by law¹⁰ ... It is not the number of years that matters, what really matters is the principle and rationale behind the delay. No prosecution should be allowed to drag on for years to the prejudice of the accused unless the prosecuting agency satisfies the Court that there were compelling reasons for such delay which could be helped."¹¹ (1992) 2 Cal LT 295

The Supreme Court yet again in Srinivas Pal v. Union Territory of Arunachal Pradesh, observed:

"Quick justice is a sine qua non of Article 21 of the Constitution. Keeping a person in suspended animation for 9-1/2 years without any cause at all and none was indicated before the learned Magistrate or before the High Court or before us, cannot be with the spirit of procedure established by law. In the

1- 1991 CCR LR (Cal) 365 (Cal)

2- (1993) 1 Cal LT 59

3- (1992) 2 Cal LT 295

4- AIR 1988 SC 1729

view of the matter, it is just and fair and in accordance with equity to direct that the trial or prosecution of the appellant to proceed no further."

In the case of Raj Deo Sharma v. The State of Bihar, the question before the court was whether on the facts and circumstances of the case, the prosecution against the petitioner is to be quashed on the ground of delay in the conduct of trial. The petitioner has never suffered incarceration. His application for bail was ordered on the day he appeared before the court and presented the same. Allowing the appeal Supreme Court gave the following directions:

1- In case where the trial is for an offence punishable with imprisonment for a period not exceeding seven years, whether the accused is in jail or not, the court shall close the prosecution evidence on completion of a period of two years from the date of recording

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the plea of the accused on the charges framed whether the prosecution has examined all the witnesses or not, within the said period and the court can proceed to the next step provided by law for the trial of the case.¹²

2- In such cases as mentioned above, if the accused has been in jail for a period of not less than one half of the maximum period of punishment prescribed for the offence, the trial court shall release the accused on bail forthwith on such conditions as it deems fit.

3- If the offence under trial is punishable with imprisonment for a period exceeding 7 years. Whether the accused is in jail or not, the court shall close the prosecution evidence on completion of three years from the date of recording the plea of the accused on the charge framed, whether the prosecution has examined all the witnesses or not within the said period and the court can proceed to the next step provided by law for the trial of the case.¹³

Justice Delayed Is Justice Denied

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. The right to a speedy trial, and its resulting impact on both the defendant and society as a whole, makes this Sixth Amendment guarantee a crucial portion of the Bill of Rights - and another important part of our legal heritage. Repeated delays and continuances in the criminal justice process prevent victims from ever reaching emotional, physical, and financial closure to the trauma suffered as a result of the crime (s) perpetrated against them. Such delays in prosecution can also limit the ability of victims to receive justice when their memories, or those of other witnesses, fade with the passage of time or when the victim's health deteriorates.

Thought 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.¹⁴ In *Abdul Rehman v. R.S. Nayak* the SC observed that the ultimately it's the court which decides whether right to speedy trial has been denied or not. Everytime when proceeding cannot be quashed as it might not be in interest of the society. In the case *Madheshwaridhari Singh v. State of Bihar* it was held that all criminal prosecutions are now inalienable fundamental rights to citizens. Moreover, in the case *Arun Kumar Ghosh v. State of Bengal* it was held that mental torture and anxiety suffered by an accused for a long length of time is to be treated as punishment inflicted on him.

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. Finally, to conclude with the words of Lord Hewet as it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.¹⁵

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