

## ISSUES AND CHALLENGES BEFORE ACCESS TO CRIMINAL JUSTICE

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### ABSTRACT

*The notorious delay in disposal of case is an infirmity of the legal and judicial system which is responsible for the gross denial of justice to the under-trial prisoners. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough: how much worse could it be when the delay is as long as 3 or 5, 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice.<sup>1</sup>*

### INTRODUCTION

Though speedy trial is not specifically enumerated as a fundamental right in the Constitution of India. It is implicit in the broad sweep and content of Article 21, as interpreted by the Supreme Court<sup>2</sup>, wherein it was held that Article 21 confers a fundamental right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of that Article that some semblance of a procedure should be prescribed by law, but that the procedure should be “reasonable, fair and just”. If a person is deprived of his liberty under a procedure which is not “reasonable, fair or just”, such deprivation would be violation of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release. Obviously procedure prescribed by law for depriving a person of his liberty cannot be “reasonable, fair or just” unless that procedure ensures a speedy trial for

determination of the guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as “reasonable, fair or just” and it would fall foul of Article 21. There can, therefore, be no doubt that speedy trial, and by speedy trial is meant reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution.<sup>3</sup>

### RESEARCH METHODOLOGY

- For the purpose of this research paper, we proposed to adopt doctrinal research methodology.
- The work is carried out by devising necessary and appropriate research tools to collect data from various law sources

What 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 Art 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 convincing him after such trial would constitute violation of his fundamental right under Article 21 of the Constitution? Leaving this question, to be decided on the adjourned date, the Supreme Court observed in Hussainara Khatoon (I)<sup>4</sup> as under:

“But one thing is certain and we cannot impress it too strongly on the State Government that it is high time that the State Government realized its responsibility to the people in the matter of administration of justice and set up more courts for the trial of cases. We may point out that it would not be enough merely to establish more courts but the State Government would also have to man them by competent Judges and whatever is necessary for the purpose of recruiting competent Judges, such as improving their conditions of service, would have to be done by the State Government, if they want to improve the system of administration of justice and make it an effective instrument for reaching justice to the large masses of people for whom justice is today a meaningless and empty word.”

The right to a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21 of the Constitution. Several questions arise for consideration for deciding whether this right has been infringed in a particular case. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the willfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defense? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused being prejudiced in his defense? Irrespective of any likelihood of prejudice in the conduct of his defense? Was the

very length of the delay sufficiently prejudicial to the accused? A host of other questions may arise which one may not be able to readily visualize just now. The question whether the right to a speedy trial which forms part of the fundamental right to life and liberty guaranteed by Article 21 has been infringed is ultimately a question of fairness in the administration of criminal justice even as ‘acting fairly’ is of the essence of the principles of natural justice and a ‘fair and reasonable procedure’ is what is contemplated by the expression procedure established by law in Article 21.<sup>5</sup>

In the case of R.D. Upadhyay<sup>6</sup>, the Supreme Court yet again held that a speedy trial is guaranteed as a fundamental right under Article 21 of the Constitution of India. In this case, on noticing that a large number of about 1930 under-trials were languishing in the Central Jail, Tihar, Delhi, for a period ranging from one year to eleven years, the Supreme Court, while observing that a speedy trial is guaranteed as a fundamental right under Article 21 of the Constitution of India, directed that for die 880 under-trials facing murder cases, ten Additional District Judges be nominated to take up exclusively the trial of these cases, to dispose of these cases preferably within a period of six months or so. For the attempt to murder cases pending for more than 2 years, the under-trials were directed to be released on bail.

About two years after issuing the aforesaid directions for release of various under trial prisoners in the aforesaid case of R.D. Upadhyay, the Supreme Court directed the Commissioner of Police, Delhi, in the case reported with a similar case title in R.D. Upadhyay to submit a report indicating the impact of the aforesaid order on the general law and order situation, along with the details as to whether any of the persons who had been released in pursuance of the said directions had reported the offence after his release.

To have speedy justice is a fundamental right which flows from Article 21 of the Constitution. Prolonged delay in disposal of the trials and thereafter appeals in criminal cases, for no fault of the accused, confers a right upon him to apply for

bail. The Supreme Court, has time and again, reminded the executive of their obligation to appoint requisite number of judges to cope with the ever increasing pressure on the existing judicial apparatus.<sup>7</sup>

Appeal being a statutory right, the trial Court's verdict does not attain finality during pendency of the appeal and for that purpose his trial is deemed to be continuing despite convictions. It is unfortunate that even from the existing strength of the High Courts' huge vacancies are not being filled up with the result that the accused in criminal cases are languishing in the jails for no fault of theirs. In the absence of prompt action under the Constitution to fill up the vacancies, it is incumbent upon the High Courts to find ways and means by taking steps to ensure the disposal of criminal appeals, particularly such appeals where the accused are in jails, that the matters are disposed of within the specified period not exceeding 5 years in any case. Regular benches to deal with the criminal cases can be set up where such appeals be listed for final disposal. If an appeal is not disposed of within the aforesaid period of 5 years, for no fault of the convicts may be released on bail on such conditions as may be deemed fit and proper by the Court. In computing the period of 5 years, the delay for any period, which is requisite in preparation of the record and the delay attributable to the convict or his counsel can be deducted. There may be cases where even after the lapse of 5 years the convicts may, under the special circumstances of the case, be held not entitled to bail pending the disposal of the appeals filed by them. Observing thus, the Supreme Court requested the Chief Justices of the High Courts, where the criminal cases were pending for more than 5 years to take immediate effective steps for their disposal by constituting regular and special benches for that purposes.<sup>8</sup>

Noting that there was a time lag of more than eighteen years from the date of incident and nearly fifteen years from the date of acquittal and its hearing, in *Ajaib Singh*<sup>9</sup>, the Supreme Court observed that by any standard it was shocking. Highlighting the need for more number of courts or for some other mechanism to reduce pendency in courts, the

Supreme Court further observed as under "Speedy trial, early hearing and quick disposal are sine qua non of criminal jurisprudence. In some countries like England days are fixed statutorily for trial of cases. Keeping an accused in custody for a day more than it is necessary, is constitutionally impermissible and violative of human dignity, freedom of life and liberty.

Right to speedy trial is the fundamental right and if the trial is delayed it would amount to the denial of justice and entitle an accused to be admitted to bail. But, a significant question, the cause of delay whether attributable to the prosecution or to the accused, has to be borne in mind at the time of exercise of judicial discretion for grant of bail. Irrefragably, the delay in trial is an important factor to be taken note of at the time of consideration of application for bail and no Court can take a myopic view in this regard but simultaneously it cannot be magnified to ostracize the role played by the accused in causing the delay. The age old principle that he who seeks discretion must conduct himself cannot be given a decent burial to confer the concession of bail to an accused that has made a deliberate attempt to cause delay with ultimate intention to gain advantage of such delay. In a case where directions were issued by Court for disposal of case within a prescribed period but subsequently a counter criminal case was clubbed together at the instance of the accused when almost all witnesses had been examined. It was held that the prosecution was not responsible for the delay caused due to the clubbing together of the said case and the accused was not entitled to be enlarged on bail on the ground of delay in trial.<sup>10</sup>

Indubitably, Article 21 of the Constitution contemplates early end of criminal proceedings through a speedy trial. It encompasses all the stages, namely, stage of investigation, enquiry, trial, appeal, revision and retrial. Delay in each case has to be determined on its own facts and having regard to all attending circumstances including nature of offence, number of accused and witnesses, the work load of the Court concerned, prevailing local conditions, etc. But delay alone cannot by itself be the ground for

grant of bail. All other surrounding circumstances should be taken into consideration along with it. If ever a time shall come when the prisoners have to wait indefinitely, at the mercy of the State, until a golden key unlocks the doors of the prisons to the courtrooms, the seeds of revolution be sown. Better, such probable calamities or complications are avoided. Something must be done urgently.

## CONCLUSION

Under-trial prisoners or those held in State custody on remand constitute the single largest group of a considerable majority of person in prisons. The pretrial detention period too is unduly long, particularly for poor persons. The right to bail is many a time unjustly denied or not exercised owing it poverty. This proportion of the prison population axiomatically enjoys the presumption of innocence until proven guilty. The existing system of bail in India is inadequate and inefficient to accomplish its purpose. Grotesque crime involving extreme violence is on the rise throughout the country. The number of crimes on account of murder, rape, kidnapping and abduction has been increased manifold since, 1953. In the backdrop of increasing crime rates, insufficient infrastructure, lack of modernization of investigative machinery and various other challenges, bail system cannot be fashioned into a panacea to ensure a responsive criminal justice system in India. It is indeed a small step in the direction to re-calibrate the bail provisions in the Cr.P.C to make them more befitting the times and situations the Society face today and are likely to face in near future.

The present report is a modest attempt to highlight the varied inconsistencies in the standards of bail by providing principles and suggesting amendments in exercising the powers to grant or deny bail. It is possible to find agreement on a few core principles relevant to bail practices, namely:

- The practices must be fair and evidence based. Decisions about custody or release should not be influenced to the detriment of the person accused of

an offence by factors such as gender, race, ethnicity, financial conditions or social status.

- The practices should address two key goals:

- (1) Protecting against the risk that the accused fails to appear on the scheduled date;

- (2) Protecting against risks to the safety of specific person/s or the community.

- Unnecessary pre-trial confinement should be minimized. Confinement is detrimental to the person accused of an offence that a number of persons kept in custody, imposes unproductive burden on the State, and can have an adverse impact on future criminal behavior, and its reformatory perspectives will stand diminished.

It is clear that an unnecessary prolonged detention in prison of under-trials before being brought to trial is an affront to all civilized norms of human liberty and any meaningful concept of individual liberty which norms the bedrock of a civilized legal system must view critically the long periods of imprisonment before persons awaiting trial can receive the attention of the administration of justice.

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i Ram Govind Upadhyaya v. Sudarshan Singh AIR 2002 SC.1475

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

3 Hussainara Khatoon (IV) v. Home Secy. State of Bihar, (1980) 1 SCC 98.

4 Hussainara Khatoon (I) v. Home Secretary, State of Bihar ( 1980) 1 SCC 89

5 Raghbir Singh v. State of Bihar, AIR 1987 SC 149

6 R. D. Upadhyay v. State of A.P. 1999 SC 2183.

7 Akhtari Bi v. State of M.P., AIR 2001 SC 1528.

8 ibid

9 Ajaib Singh v. State of Punjab AIR 1995 SC 975.

10 Gokul Singh v. State of M. P. 1999 Cri L J 3455