

RIGHT TO SPEEDY TRIAL: A STUDY OF SOME CASE LAWS IN REFERENCE TO CRIMINAL LAWS IN INDIA

Dr Rahul Tripathi
Associate Professor
Amity University Rajasthan
India

Abstract

A fair trial implies speedy trial and it is implicit in the broad sweep and content of Art.21 of the Constitution. No procedure can be reasonable, fair and just unless the procedure ensures a speedy trial for determination of the guilt of such person. Long pre-trial detention of an individual in prison jeopardizes his personal liberty as such speedy trial is an integral and essential part of the fundamental right of life and liberty as enshrined in Art.21 of the Constitution. The paper highlights the various case laws related to Right to Speedy Trial.

Keywords: *Criminal, trial, prisoners, unfair detention*

Introduction

A fair trial implies speedy trial and it is implicit in the broad sweep and content of Art.21 of the Constitution. No procedure can be reasonable, fair and just unless the procedure ensures a speedy trial for determination of the guilt of such person. Long pre-trial detention of an individual in prison jeopardizes his personal liberty as such speedy trial is an integral and essential part of the fundamental right of life and liberty as enshrined in Art.21 of the Constitution. Quick justice is the *sine qua non* of Art.21 of the Constitution. Keeping a person in suspended animation for nine and half years without any cause at all cannot be the spirit of procedure established by law. (**Srinivas Pal v. Union Territory of Arunachal Pradesh**¹).

Analysis of some Case Laws

¹AIR 1988 SC 1729

It is crying shame upon the adjudicatory system of our country which keeps a man in jail for years together without trial. The Hon'ble Supreme Court in **Hussainara Khatoun v. State of Bihar**², pointed out that the speedy trial is a fundamental right of an accused person implicit in Art. 21 of the Constitution. An accused who is denied this right is entitled to approach Hon'ble Supreme Court for enforcing such right, **Kadra Pahadiya v. State of Bihar**³. A procedure prescribed by law is reasonable, fair and just if a person is deprived of his life and personal liberty under the procedure which is not just, fair and reasonable, then such deprivation would be violative of Art.21 of the Constitution. A procedure which doesn't provide for speedy trial for the determination of the guilty of the accused cannot be termed as reasonable, fair and just,

The Hon'ble Supreme Court in **Kadra Pahadiya v. State of Bihar**⁴ held that speedy trial is an integral and essential part of Art. 21 enshrined in the Constitution, the Court was cautious in observing that delayed trial is not necessarily an unfair trial and the trial cannot be quashed on the ground of delay. In this case, several under trial prisoners moved the Hon'ble Supreme Court for justice and they asserted that they have been detained for eight long years without trial. The Court held that speedy trial is a fundamental right of an accused implicit in Art. 21 of the Constitution and the Court directed the Sessions Judge to complete the trial expeditiously. An accused who is denied of his right of speedy trial to approach the court for the purposes of enforcing his right and the Court can issue necessary directions to the State for securing the rights of the accused.

The scope of Art.21 does not stop at the prison gates and the umbrella of the speedy trial rule which is an integral part of Art. 21 is equally available to the accused during investigation, trial and even the post-trial field of capital offences punishable with death. It was held in *Surya Narayan Singh v. State*⁵; from the stage of police investigation of the case the rule is applicable. Thus, the rule of speedy trial is applicable from the stage of police investigation and an inordinate delay in police investigation itself may equally attract the rule of speedy trial.

It was further held that the callous and inordinately prolonged delay of five years or more(which does not arise from the default of the accused) in investigation and in original trials of pending cases for capital offences punishable with death without plainly violate the constitutional guarantee of speedy trial under Art.21 of the Constitution.

The question whether the right to speedy trial which form the part of the fundamental right to life and personal liberty guaranteed by Art. 21 has been infringed is ultimately a question of fairness in the administration of criminal justice, whether the delay in investigation is fatal for the prosecution would depend on the facts and

²Supra 11

³AIR 1982 SC 1167

⁴ibid

⁵ AIR 1987 Pat 219 (FB)

circumstances of each case. In **Raghubir Singh v. State of Bihar**⁶, five Sikhs from different part of the country were moving in a jeep towards Indo-Nepal Border to cross the national frontier and the police arrested them on suspicion and the investigation took a long time to be completed. The Court held that investigation had to be carried in different parts of the country and also considering the extraordinary law and order situation in the country and placing of great additional burden on the police., was not wanton and it was the outcome of the nature of the case and the peculiarity of the situation prevailing in the country which resulted in delay. Lulls in investigation for fairly long spells could not be considered to be sinister.

In the popularly known “**Common Cause v. Union of India**”⁷ case the Hon’ble Supreme Court issued directions to the Courts in India and the Registrars of the High Courts were directed to communicate the copies of the order to all the Criminal Courts under the control and superintendence of the respective High Courts with the direction to send the compliance report to the High Courts within three months from the date of receipt of communication.

The right to speedy trial in a criminal case is a fundamental right under Art. 21 of the constitution Following the principles in **A.R. Antulay v. R.S. Nayak**⁸, it was held in **Santosh De v. Archana Guha**⁹, the delay in conducting the case for 8 years due to the prosecution and for the last 14 years no progress has been made in the trial of the case and not a single witness has been examined. The Hon’ble Supreme Court observed that the delay as entirely due to the prosecution which defeats the right of the accused to speedy trial. The Hon’ble Supreme Court declined to interfere with the order quashing the proceedings as the delay defeats the accused right to speedy trial.

The Hon’ble Supreme Court in **Sunil Batra v. Delhi Administration**¹⁰ expressed the view that Art. 21 continue to be applicable even to the prisoners after all the court’s proceedings have terminated by affirmance of their conviction.

Arts. 14, 19 and 21 are not mutually exclusive and they sustain, strengthen and nourish each other and are available to the prisoners as well as the free men. Prison walls do not keep out fundamental rights and a person under sentence of death may also claim fundamental rights.

In **Hussainara Khatoon v. State of Bihar**¹¹, the Hon’ble Supreme Court observed that the right to speedy trial is a fundamental right implicit in Art. 21 of the constitution. The consequence of the violation of the fundamental right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of fundamental right.

⁶AIR 1987 SC 149

⁷ (1996) 6 SCC 530

⁸ AIR 1988 SC 1531

⁹AIR 1994 SC 1231

¹⁰ AIR 1978 SC 1675

¹¹ Supra 11

Speedy trial is sine-qua-non of Article 21 of the Constitution but, when grave miscarriage of justice, is committed by the Police, the ground of delay of disposal of cases or otherwise would not scuttle the miscarriage of justice. Similarly, the accused themselves would be liable to be blamed for the delay, if any. (**Lallan Chaudhary v. State of Bihar**¹²)

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 accused of a speedy trial does not remain only on papers or is a mere formality. (**Moti Lal Saraf v. State of Jammu and Kashmir**¹³) This is some indication by the legislature that reformation and rehabilitation of offenders and not mere deterrence, are now among the foremost objects of the administration of criminal justice in our country. (**Bablu v. State of Rajasthan**¹⁴)

In **Hussainara Khatoon v. State of Bihar**¹⁵ the supreme Court said that even under our Constitution speedy trial was not specifically enumerated as a fundamental right it was implicit in the broad sweep and content of Article 21 as interpreted by the Court in **Maneka Gandhi v. Union of India**¹⁶.

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 we mean reasonably expeditious trial, is an integral and essential right to life and liberty enshrined in Article 21.

Now 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 result of 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 Court did not answer these questions but heard the cases on merit.

It is the constitutional obligation of the State to devise such a procedure as would ensure speedy trial to the accused. The State cannot avoid its constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The State is under a constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the State. It is also the constitutional obligation of the

¹² AIR 2006 SC 3376

¹³ AIR 2007 SC 56

¹⁴ AIR 2007 SC 69

¹⁵ supra

¹⁶ supra

Supreme Court, as the guardian of the fundamental right of the people, as a sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing the necessary directions to the State which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new Courts, appointment of additional Judges and other measures calculated to ensure speedy trial.

Fundamental right of speedy trial.- The principal of openness of judicial proceedings acts as a check against caprice or vagaries and builds up confidence of the public in judicial administration. The right to speedy trial implicit in Articles 14, 19 (1) (a) and 21 of the Constitution as well as the Criminal Procedure Code.

In **Kartar Singh v. State of Punjab**¹⁷, the Constitution Bench observed thus:

“The concept of speedy trial is read into Article 21 as an essential part of 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 averred. In this context, It may be noted that the constitutional guarantee of speedy trial is properly reflected in Section 309 of the Code of Criminal Procedure.

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 of 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 ;
- (2) the justification for the delay ;
- (3) the accused 's assertion of his right to speedy trial; and
- (4) prejudice caused to the accused by such delay.

However, the face to delay is dependent on the circumstances of each case because reason for 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.”

¹⁷ AIR 1961 SC1787

In **Abdul Rahman Autulay v. R.S. Nayak**,¹⁸ the Constitution Bench of the Apex Court dealt with this aspect of the matter and laid down certain guidelines. The relevant passage in the judgment are as follows:

“Another question seriously canvassed before us related to the consequence flowing from an infringement of right to speedy trial. Counsel for accused argued on the basis of the observations in **Sheela Barse’s** case and **Strunk’s** case,³ that the only consequence is quashing of charges and/ or conviction, as the case may be. Normally, it may be so. But we do not think that is the only order open to court. In a given case the facts-including the nature of offence may be such that quashing of charges may not be in the interest of justice. After all, every offence- more so economic offences, those relating to public officials and food adulteration- is an offence against society. It is really the society- the State- that prosecutes the offender. In view of the above discussions, the following propositions meant to serve as guidelines. These propositions are:

(1) Fair, just and reasonable procedure implicit in Article 21 of the Constitution Creates a right in the accused to be tried speedily. Right In speedy trial is the right of the accused. The fact that a speedy trial also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. It is in the interest of concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

(2) Right to speedy trial flowing from Article 21, encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial. That is how, this Court has understood this right and there is no reason to take a restricted view.

(3) The concerns underlying the right to speedy trial from the point of view of the accused are,—

(a) The period of remand and pre-conviction detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or long incarceration prior to his Conviction.

(b) the worry, anxiety, expense and disturbance to his vocation and place, resulting from an unduly prolonged investigation, inquiry or trial should be minimal; and

(c) undue delay may well result in impairment of the accused of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise.

The same idea has been stated by Whittle, J. in *U.S. v. E Well*, in the following words:

“The Sixth Amendment Right to a Speedy Trial is necessarily relative, is consistent with delays, and has orderly expedition, rather than mere speed, as its essential ingredients, and whether delay in completing a prosecution amounts to an unconstitutional deprivation of rights depends upon all the circumstances.”

¹⁸ AIR 2005 SC 3669

Justice delayed is justice denied. Though there are no specific provisions for a speedy trial in the Indian Constitution, by judicial interpretation, the Supreme Court has held that Article 21 of the Constitution confers this right on the accused. The Criminal Procedure Code contains many provisions to ensure speedy trial.

Fair, just and reasonable procedure implicit in Article 21 of the Constitution creates a right in the accused to be tried speedily. Right to speedy trial is the right of the accused. The fact that a speedy trial is so in public interest or that it serves the societal interest also does not make it any the less the right of the accused. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances.

In a Full Bench decision of the Patna High Court in **Madheshwardhari Singh v. State of Bihar**¹⁹, it was held that in all criminal prosecutions the right to a speedy trial is now an inalienable fundamental right of the citizen under Article 21 of the Constitution, that right to speedy public trial is available. all criminal prosecutions irrespective of the nature of the offence involved.

A Division Bench of the Calcutta High Court in the case of **Amarendra Nath Dutta v. State of West Bengal**,²⁰ 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 to procedure established by law. 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.’

The Supreme Court in **Hussainara Khatoun v. Home Secretary, State of Bihar**,²¹ held as follows :

“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 of life and liberty enshrined in Article 21.”

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

¹⁹ AIR 1979 SC 1819

²⁰ AIR 1973 Cal 128.

²¹ supra

is implicit in the guarantee of life and personal liberty enshrined in Article 21 of the Constitution. Speedy trial is the essence of criminal justice. In united States speedy trial is one of the constitutionally guaranteed right under the sixth amendment. Bhagwati, J., (as he then was) held that although , unlike the American Constitution speedy trial is not specifically enumerated as a fundamental right it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi's case No procedure which does not ensure a reasonable quick trial can be regarded as reasonable fair of just. For this reason the Court ordered the Bihar Government to release forthwith the under trial prisoners on their personal bonds. In Husainara Khatoon (No.2)²² and Husainara Khatoon (No.3)²³ cases the court reiterated the same view.

A very pertinent observation was made by the constitution Bench of the Supreme Court in **Kartar Singh v. State of Punjab**,²⁴ which is as under :

“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 averted of course, no length of loin 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 depended 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.”

In **Raghubir Singh v. State of Bihar**²⁵ the accused persons who were being tried for waging war against the State filed writ petitions under Article 136 before the Supreme Court for quashing the proceedings before the Special Judge on the ground of violation of their right to speedy trial under Article 21 of the Constitution. The

²² AIR 1979 SC 1369

²³ AIR 1979 SC 1377

²⁴ supra

²⁵ (1986) 4 SCC 481

Court held that there was no delay in investigating and trial of their cases warranting the quashing of proceeding against them. The Court held that the right of a speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21.

Conclusion

Right to speedy trial flowing from Article 21 encompasses all stages, namely the state of investigation inquiry, trial, appeal, revision and re-trial. It is true that every person accused of an offence is entitled to the fundamental right enshrined in Article 21 of the Constitution and the right to speedy justice may be read as part and parcel of that fundamental right. At the same time, it is also true that penal laws not only prescribe punishment for acts charged as offences, tile penal laws create tile offences and by implication pose legal duties to be performed by the citizens. Penal laws, therefore, by creating legal duties create corresponding rights in favour of the citizens and the only manner in which those rights can be enforced is by prosecuting and punishing the offenders. The rights created by the penal laws, by implication, cannot be enforced in any other manner than by prosecution of the offender. The courts have explained the enforcement of penal provisions. In view of this, balance has to be stuck between the fundamental rights of the accused persons and the right of those who are victims of offences. Justice has to be conceptualized as a balance between the rival interests. Justice can never be one sided. In order that a certain act may be just, it should be just not only for the accused, it should also be just for the prosecution.

