

Legal Declarations On Rapid Trial In India: An Analysis

Mr. Ujjawal Kumar Singh

(Associate Professor in Law College Dehradun Uttarakhand University, India)

Co-Author: Manish Kumar

(B.B.A.L.L.B (Hon) 5th Year in Law College Dehradun, Uttarakhand University, Uttarakhand, India.)

Abstract:

The aim and object of speedy trial is enshrined under Article 21 of constitution of India. Every accused facing criminal charges therefore has the fundamental and legal right of speedy trial. The interest of Justice means Justice to both sides. If it is necessary that accused guilty of an offence should not escape punishment, then it is also more necessary that the accused persons should not be harassed indefinitely. The right of speedy trial encompasses all stages namely exploration, injury, trial, appeal revision and retrial. The fair, just and reasonable procedure is concerned in Article 21 of Constitution and it creates a right in favour of accused to be tried speedy. The delay in disposal of criminal cases is one of the most serious problems of criminal justice supervision. An accused in judicial custody is entitled to be released unreservedly in case of inordinate delay in trial. The tactical devices adopted by the lawyers for longer monetary benefits, accused's own efforts, delay in execution of processes issued by the courts, recalibration of judicial magistrate etc. are the main reasons of delay of trial. Juvenile's cases are also pending for several years although these cases require the conclusion of investigation and trial within three and six months respectively. material efforts are therefore necessary to ensure speedy and fair trials.

Keywords: Trial, Speedy, Fair, Judicial Decisions

I. Introduction:

The Indian legal assumes a critical part in securing the privileges of the general population and it has attempted to give certain rights like ideal to fast trial, ideal to reasonable trial and so forth a sacred status by including every one of these rights inside the domain of Article 21 of our Constitution. The legal in India has assumed a dynamic part in the regulation of equity by giving reasonable and only trial to every one of its subjects. There are catena of proclamations of the Preeminent Court and High Courts regarding the matter of trial wherein the Courts have scrutinized the deferrals and released the charged.

The pre-crisis Incomparable Court has not built up any broad law in the field of fundamental human rights. Be that as it may, the post- Crisis Incomparable Court handed dynamic and aggressor over this field. It has advanced another administration of Crucial Rights which are not explicitly show in the Indian Constitution, e.g., appropriate to expedient trial developed as autonomous principal right.

In one of the finest hours of judicial activism when Article 21 of the Constitution was truly interpreted in *Maneka Gandhi v. Union of India*,¹ the Supreme Court in *Hussainara Khatoon*² proceeded further ahead to hold that no procedure which does not ensure a reasonable quick trial can be regarded as reasonable fair or just and it would fall out of Article 21. There can, therefore, be no doubt that speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The State as a guardian of the fundamental rights of its people is duty-bound to ensure speedy trial and avoid any excessive delay in trial of criminal cases that could result in grave miscarriage of justice. Speedy trial is in public interest as it serves societal interest also. It is in the interest of all concerned that the guilt or innocence of the accused is determined as early as possible.³

Once a denounced individual can build up that this essential and principal directly under Article 21 has been disregarded, it is up to the State to legitimize that this encroachment of central right has not occurred, that the confinements or arrangements of law are sensible and that the method followed for the situation isn't subjective however is simply, reasonable, immediately, quick and sensible.

II. Hypotheses:

1. Criminal equity framework is experiencing a few noxious imperfections, for example, postponed transfer of cases and gigantic pendency.
2. Dinky trial is the substance of criminal equity framework and there can be no uncertainty the postponement in trial without anyone else's input constitutes foreswearing of equity.

¹ AIR 1978 SC 597.

² AIR 1979 SC 1369.

³ *Ibid.*

3. The stress, uneasiness, cost and unsettling influence to detainee's occupation and peace coming about because of an unduly drawn out examination, request and trial ought to be negligible.
4. Another law is advancing the world over especially with the assistance of legal choices, whereby detainees are dealt with as individuals and quick trial as their human right.
5. The state is under an Established command to guarantee rapid trial and whatever is important for this reason must be finished by the state.
6. The majority of the arrangements of the Procedural Laws are dubious and profoundly specialized making it hard to authorize them towards the finish of expedient equity.
7. The state can't evade its Protected commitment to give quick trial to the denounced people by arguing budgetary and regulatory failure.
8. Compelling case administration framework should be set up for developing number of new cases and the courts should reach to the general population through neighborhood scene hearing.
9. There shows up a dire need to bring discipline for departing suddenly witnesses and strict requirement of due date for term of trial and length of contention.
10. Solid strides to actualize the proposals of different boards of trustees on changes in criminal equity framework should be taken, in the event that we are to accomplish the valuable ideal to fast trial.

III. JUDICIAL PRONOUNCEMENTS ON SPEEDY TRIAL IN INDIA:

Each person in a majority rule set up needs opportunity. Without flexibility no individual can lead an existence as a free native of a nation. Flexibility and freedoms are just for the living. Article 21 of the Constitution of India ensures appropriate to life and individual freedom to each individual, resident or non-national. A man can be denied of his life and individual freedom if two conditions are agreed to, to start with, there must be a law and besides, there must be technique endorsed by that law, gave that the methodology is simply, reasonable and sensible. The inventiveness of the Indian legal framework has been taking care of business at whatever point it was called to translate Article 21, with the exception of maybe amid the short – interregnum of the crisis run the show. Article 21 emerges as the guide light for all flexibility darlings promising the advancement of more rights when required and guaranteeing a base level of decency in every lawful continuing.

The Indian legal assumes a noteworthy part in ensuring the privileges of the general population and it has attempted to give certain rights like appropriate to quick trial, ideal to reasonable trial and so forth a protected status by including every one of these rights inside the domain of Article 21 of our Constitution. The legal in India has assumed a dynamic part in the administration of equity by giving reasonable and only trial to every one of its nationals. There are catena of declarations of the Supreme Court and High Courts regarding the matter of trial wherein the Courts have scrutinized the postponements and released the denounced. The most glaring disease which has tormented the legal concern is the late procedure and extreme defer that happens in the transfer of cases. The heaping back payments and collected workload of various Courts display an unnerving situation. In actuality, the entire framework is disintegrating down under the heaviness of pending cases which continue expanding each day. Equity V.R. Krishna Iyer and Justice P.N. Bhagwati knew about every one of these ailments. In any case, legal deferrals in India are endemic. No individual can want to get equity in a genuinely sensible period. Procedures in criminal cases continue for a considerable length of time, at times decades. Common cases are postponed significantly more. This is despite the legal position strongly favouring speedy trial. The Court's concern about problem of delay in trial finds reflection in the following judgments:-

In *Machander v. State of Hyderabad*,⁴ the Supreme Court refused to remand the case back to the trial court for fresh trial because of delay of five years between the commission of the offence and the final judgment of the Supreme Court. The Supreme Court has categorically observed: *"We are not prepared to keep persons on trial for their live and under indefinite suspense because trial judges omit to do their duty We have to draw a nice balance between conflicting rights and duties While it is incumbent on us to see that the guilty do not escape, it is even more necessary to see that the person accused of crimes are not indefinitely harassed While every reasonable latitude must be given to those concerned 'with the detection of crime and entrusted with administration of justice, but limits must be placed on the lengths to which they may go."*

In another case of *Chajoo Ram v. Radhey Shayam*⁵ delay in trial was one of the factors on the basis of which the Supreme Court dropped the further proceedings.

The Supreme Court in *Maneka Gandhi v. Union of India*⁶ has stated clearly held that Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal liberty except according to procedure established by law and such procedure as required under Article 21 has to be "fair, just and reasonable" and not "arbitrary, fanciful or oppressive". The court has further stated that "If a person is deprived of his Liberty under a procedure which is not 'reasonable', 'fair' or 'just', such deprivation would be violative of his fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release." The apex Court has observed that in the broad sweep and content of Article 21 right to speedy trial is implicit.

The apex Court's decision in *Hussainara Khatoon(iv) v. Home Secretary, State of Bihar*⁷ is a land mark in the development of speedy trial jurisprudence. In the instant case, a writ of habeas corpus was filed on behalf of men and women

⁴ AIR 1955 SC 792.

⁵ AIR 1971 SC 1367.

⁶ (1978) 1 SCC 248.

⁷ (1980) 1 SCC 81.

languishing in jails in the State of Bihar awaiting trial. Some of them had been in jail for a period much beyond what they would have spent had maximum sentence been imposed on them for the offence of which they were accused. Alarmed by the shocking revelations made in the writ petition and concerned about the denial of the basic human rights to those “victims of callousness of the legal and judicial system”, Supreme Court went on to give a new direction to the Constitutional jurisprudence. In doing so, the Court heavily relied on its decision in an earlier case in which the Court gave a very progressive interpretation to Article 21 of the Constitution. Taking this interpretation to its logical end, P.N. Bhagwati J., in *Hussainara khatoon’s case* said: “...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 we mean reasonably expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.”

Bhagwati, J. also added that the State cannot be permitted to deny the constitutional right to speedy trial on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial machinery with a view to ensuring speedy trial. As far as the question of consequences of violation of the right to speedy trial is concerned, it was raised but left unanswered by the Court. The decision in this case proved to be the plinth of right to speedy trial in India. The Court Categorically stated that “it is also the constitutional obligation of this Court as the guardian of the fundamental rights of the people, as sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the state which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the Courts, appointment of additional judges and other measures calculated to ensure speedy trial.”

The law laid down in *Hussainara Khatoon’s case* was followed in a number of subsequent decisions of the Supreme Court. In *State of Bihar v. Uma Shankar Ketriwal*,⁸ the High Court quashed the proceedings on the ground that the prosecution which commenced 16 years ago and still in progress, is an abuse of the process of the Court and should not be allowed to go further. Refusing to interfere with the decision of the High Court in the appeal, the Supreme Court said with regard to the delay that such protraction itself means considerable harassment to the accused and that there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. The Court further observed that “We cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by, such protection itself means considerably harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in Court, apart from anxiety. It may be said that the respondents themselves were responsible in a large manner for the slow pace of the case in as much as quite a few orders made by the trial Magistrate were challenged in higher Courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage.”

The Court again considered the applicability of the right to speedy trial in *State of Maharashtra v. Champalal Punjaji Shah*⁹ and observed that while deciding the question whether there has been a denial of the right to a speedy trial, the Court is entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the court’s docket or understaffing of the prosecutors and whether the accused contributed a fair part to the time taken. This decision was severely criticized by *Prof. Upendra Bakshi*,¹⁰ who said that even if the accused prefers interlocutory appeals it cannot be inferred that he contributed to delay, as by doing so he merely avails the opportunity-structure provided by the law of the land. Moreover, legal strategies are determined by the accused person’s counsel and not by the accused himself as he cannot be expected to understand subtleties of law and its procedures. He further added that delay caused by failure on the part of the courts to assign priority to the organization of day to day work cannot be said to be unintentional.

The Supreme Court in *Sheela Barse v. Union of India*¹¹ addressed the question left unanswered in *Hussainara Khatoon’s case* and dealt specifically with the procedure to be followed in matters where accused was less than 16 years of age. The Court held that where a juvenile is accused of an offence punishable with imprisonment of 7 years or less, investigation was to be completed within 3 months of the filing of F.I.R. or else the case was to be closed. Further, all proceedings in respect of the matter had to be completed within further six months of filing of the charge-sheet. The apex Court observed: “The right to speedy trial is a right implicit in Article 21 of the Constitution and the consequence of violation of this right could be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.”

The Supreme Court in *Abdul Rahman Antulay v. R.S. Nayak*,¹² gave a landmark decision and finally adjudicated upon the questions left open in *Hussainara khatoon’s case*, like the scope of the right, the circumstances in which it could be invoked, its consequences and limits etc. The salient features of the decision are as follows:

- (a) Right to speedy trial flowing from Article 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.
- (b) In every case, where right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interests, as perceived by them, cannot be taken as delaying tactic nor can the time taken in pursuing such proceedings be counted towards delay.

⁸ (1981) 1 SCC 85.

⁹ (1981) 3 SCC 610.

¹⁰ Upendra Bakshi; “Right to Speedy Trial: Geese, Gender And Judicial Sauce”; 2nd ed.1986; p. 243.

¹¹ (1986) 3 SCC 632.

¹² (1992) 1 SCC 225.

- (c) While determining whether undue delay has occurred one must have regard to all the circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on.
- (d) Each and every delay does not necessarily prejudice the accused. However, inordinately long delay may be taken as presumptive proof of prejudice. Prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, depends upon the facts of a given case.
- (e) Accused's plea of denial of speedy trial cannot be defeated by saying that the accused didn't demand a speedy trial.
- (f) The Court has to balance and weigh the several relevant factors - 'balancing test' and 'balancing processes' – and determine in each case whether the right to speedy trial has been denied in a given case.
- (g) Charge or conviction is to be quashed if the Court comes to the conclusion that right to speedy trial of an accused has been infringed. But this is not the only course open; it is open to the Court to make such other appropriate order – including an order to conclude the trial within a fixed time where the trial is not concluded or the sentence where the trial has concluded, as may be deemed just and equitable in the circumstances of the case.
- (h) It is neither advisable nor practicable to fix any time limit for trial of offences because time required to complete trial of a case depends on the nature of the case.
- (i) An objection based on denial of right to speedy trial and for relief on that account should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must be disposed of on a priority basis.

In *All India Judges' Association v. Union of India*,¹³ the apex Court held that it is a constitutional obligation of this Court to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, it appears that the time has come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase in the judges strength from the existing ratio of judge-population ratio.

In *Moti Lal Saraf v. State of Jammu and Kashmir*,¹⁴ the court has clearly stated that no general guidelines could be fixed. Each case must be examined on its facts and circumstances. During the criminal prosecution, no single witness was examined in last 26 years without there being any lapse on part of accused. Its continuation further would be total abuse of process of law, was liable to be quashed.

The Supreme Court in *Rang Bahadur Singh v. State of U.P.*¹⁵ has held as follows: "The time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilty of the accused beyond reasonable doubt a conviction cannot be passed on the accused.

In *Rajiv Gupta v. State of Himachal Pradesh*,¹⁶ the apex Court held that if the trial of a case for an offence which is punishable with imprisonment up to three years has been pending for more than two years and if the trial is not commenced, then the criminal court is required to discharge and acquit the accused.

In another case of *Vakil Prasad Singh v. State of Bihar*,¹⁷ the appellant an Assistant Engineer in BSEB was alleged to have demanded illegal gratification for release of payment for civil work executed by a civil contractor. Investigation conducted by an officer having no jurisdiction to do so, were successfully challenged by the appellant. Further, the prosecution was found to have slept over the matter for almost 17 years, without any explanation. The stated delay was held to be a clear violation of constitutional guarantee of a speedy investigation and trial under Article 21. Any further continuance of criminal proceedings was said to be unwarranted. Despite the fact that allegations against him were quite serious, the apex Court referring to their earlier decisions quashed the proceedings pending against the appellant.

IV. CONCLUSION:

To finish up all the legal professions identified with Ideal to expedient trial one thing ought to be noticed that individuals of India not getting quick equity. Over the top deferral has turned into a typical element of Indian legitimate framework. Various Judgments given by legal for disposal of postponement and various Advances have been figured by State however the question of rapid trial remains a legend and has not, so far, converted into reality.

There is have to order another extensive law on the fast trial of cases. Criminal laws ought to be reasonably changed to accomplish the question of quick trial of offenses. There ought to be mindfulness crusade for expedient trial of offenses.

It is uncovered that in spite of the fact that the Constitution of India does not straightforwardly discussion of the privilege to fast trial yet the same has been given a status of crucial appropriate by method for understanding of Article 21 of the Constitution of India. Other than the Constitution of India, the Code of Criminal System additionally ensures the privilege to fast trial in its different arrangements. The legal which is instrumental in giving this privilege the status of principal.

No individual can would like to get equity in a genuinely sensible period. Procedures in criminal cases continue for quite a long time, in some cases decades. This is regardless of the legitimate position emphatically supporting expedient trial.

¹³ (2002)4 SCC 247.

¹⁴ 2006 Cr. LJ 4765 (SC).

¹⁵ AIR 2000 SC 1209.

¹⁶ (2000) 10 SCC 68.

¹⁷ AIR 2009 SC 1822.