

## **JURISPRUDENTIAL ASPECT OF SPEEDY JUSTICE AND PENDENCY OF CASES IN INDIA**

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### **Introduction**

Indian Courts are held in high esteem not only by developing but by developed countries as well. There is wide-spread praise for the quality of the judgments delivered, and the hard-work being done by Indian Judiciary. Only last month, Lord Chief Justice of England & Wales in his farewell speech delivered at the conclusion of Indo British Legal Forum meet in Edinburgh, publicly appreciated the enormous work done by Supreme Court of India in developing the concept of rule of law and due process of law enshrined in Article 21 of our Constitution and enlarging its scope to the extent of encompassing the right to live in a healthy environment. We, the citizens of India, can legitimately feel proud of this recognition. However, there is growing criticism, sometimes from uninformed or ill-informed quarters about the inability of our Courts to effectively deal with and wipe out the huge backlog of cases.

### **THE INDIAN SPEEDY TRIAL LANDSCAPE**

“Indian judiciary has played a glorious role in national development and in upholding the ideals of the Indian Constitution. As per the Indian Constitution, the State is enjoined with a duty to secure to its citizens a social order, in which the legal system of the nation promotes justice on the basis of equal opportunity. The State is also required to ensure that opportunities for securing justice are not denied to any citizen by reasons of caste, creed, and sex or by reasons of economic or other disabilities.

Currently, we are a country with a population of nearly 1.2 billion. For a country of such a large population, the judicial institutions have the unenviable task of delivering timely, affordable and quality justice to all its citizens, regardless of whether they approach the courts for enforcing their civil rights or proving their innocence against charges of criminal misconduct. It has to ensure that those who are on the wrong side of the law are dealt with swiftly and effectively to maintain the social order if the confidence and faith of the people of India in the judiciary has to be maintained.

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## **THE JURISPRUDENCE**

One of the main functions of law in society is maintenance of law and order and the administration of criminal justice. As the nature of state has changed from police to welfare, in ultra modern welfare state the role of law in society, as a means of social control, has assumed tremendous importance. Since State performs numerous and multifarious activities, the zone of legally prohibited activities is constantly and continuously increasing day by day. It has been observed by the Law commission of India that Criminal law is an instrument for the protection of society and criminal procedure is its chief means. Criminal Courts are the main agencies for its administration.<sup>3</sup>

The dual role of law in society as an instrument of social change as well as a means of social control has created confusion about the actual effectiveness of law in society. Law, as an instrument of social change, has not been able to precipitate desirable social changes in social change, has not been able to precipitate desirable social changes in society effectively. On the other hand, modern society is also growing rapidly due to heavy influence of ultra modern scientific, technological and biological developments. The negative consequences of these developments have caused serious problem of law and order in society in various ways. There has been phenomenal increase in rate of crimes in society; the natures of crime, means and methods of committing crimes have also considerably changed. All this has posed a number of problems to law enforcement officers.

In order to tackle the problem of law and order and crimes, state has made laws-substantive as well as procedural. However, the powerful battery of lawyers, which defends criminals, exploits legal point and loopholes to their advantage to the maximum possible extent. One of the off-shoots of this notorious development is inordinate delay in disposal of cases; a development which is seriously jeopardizing administration of criminal justice. Delay in disposal of cases is a normal feature in the country and a number of efforts have been made to counter this evil practice but it seems that it will stay in the society. It has become a shield for those who have a weak claim but want to maintain the status quo.<sup>4</sup> Every year statistics are published showing the arrears of cases in different court. Needless to say, it points increase from preceding year.

The recurrent conflict of interest between 'delayed trial' and 'speedy trial' has baffled the legal policy planners, legislators, researcher and the Courts. This paper tries to notice the efforts made for speedy trial of cases with special reference to fundamental right to speedy trial and inordinate delay.

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<sup>3</sup> 37th Report, Law Commission of India, 1967, 1.

<sup>4</sup> S.N. Sharma, Personal Liberty Under Indian Constitution, 1991, 152.

## **CONCEPTUAL PERSPECTIVE**

The problem of delay in disposal of cases is not a new problem 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 strain and on the other hand, it has shaken the confidence of the people also. Even the Law Commission of India in its Seventy - Seventh Report has observed :

Long delay in the disposal of cases has resulted in huge arrears and a heavy backlog of pending file in various courts in the country. A bare glance at the statements of the various types of cases pending in different courts and of the duration for which those cases have been pending is enough to show the enormity of the problem.<sup>5</sup>

The Commission further noticed that no reform may prove useful if the existing courts remained burdened with heavy backlog of pending cases. In this connection, it referred to the following observation of Rankin Committee, 1925:

Improvement in methods is of vital importance, we can suggest improvements, but we are convinced that where the arrears are unmanageable, improvement in methods can only palliate.<sup>6</sup>

The speedy trial of offences has been the prime objective of the criminal justice delivery system. It is a desirable goal as long and inordinate delay may defeat the ends of justice. There are common proverbs - 'delay defeats justice' and 'justice hurried is justice burried'. Hence, the object of speedy justice should not be at the cost of legal justice. Thus, it is necessary to strike a reasonable balance between the considerations of speed and justice.<sup>7</sup>

### **THE CONSTITUTIONAL MANDATE FOR TIMELY JUSTICE**

The constitutional mandate for the timely dispensation of justice is undeniable. Justice, including the timely dispensation of justice, is a constitutional and fundamental right of the citizens of India that is meant to be guaranteed by the Indian State under Articles 14, 19, 21, 32, 226, and the Preamble of the Constitution of India. The timely dispensation of justice is also a constitutional obligation of the Indian State in light of the Directive Principles of State Policy articulated in Articles 38(1), 39 and 39A of the Constitution of India and on account of India's international legal obligations to guarantee timely justice delivery.

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<sup>5</sup> Seventy Seventh Report, the Law Commission of India, 1978, 1.

<sup>6</sup> *Id* at 2.

<sup>7</sup> S.N. Sharma, Fundamental Right to Speedy Trial : Judicial Experimentation 38 *ILLI* (1996) 236.

The Preamble of the Constitution enjoins the state to secure social, economic and political justice to all its citizens. The Directive Principles of State Policy declare that the state should strive for a social order in which such justice shall inform all the institutions of national life (Article 38 (1)). While interpreting this provision

“Judges must deliver judgments within a reasonable time and in that matter, the guidelines given by the apex court in the case of **Anil Rai v. State of Bihar, (2001) 7 SCC 318** must be scrupulously observed, **both in civil and criminal cases.**”

in **Babu v. Raghunathji**<sup>8</sup> the Supreme Court has held that “social justice would include ‘legal justice’ which means that the system of administration of justice must provide a cheap, expeditious and effective instrument for realization of justice by all section of the people irrespective of their social or economic position or their financial resources.”

Article 39 mandates the State to provide legal aid. The constitutional mandate for justice is strengthened by Article 39A which states that “the State shall secure that the operation of the legal system promotes justice to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

The constitutional pre-commitment to speedy justice flowing from the composite code of Articles 14, 19, and 21 of the Constitution of India is well established in Indian constitutional jurisprudence, and has been powerfully articulated by a Constitution Bench of the Supreme Court of India in

**P. Ramachandra Rao v. State of Karnataka**<sup>9</sup> where the court states: “It is the constitutional obligation of the State to dispense speedy justice, more so in the field of criminal law, and paucity of funds or resources is no defence to denial of right to justice emanating from Articles 21, 19 and 14 and the preamble of the Constitution as also from the directive principles of State policy. It is high time that the Union of India and the various States realize their constitutional obligation and do something concrete in the direction of strengthening the justice delivery system. We need to remind all concerned of what was said by this Court **Hussainara Khatoun & Ors vs Home Secretary, State Of Bihar**.<sup>10</sup> “The State cannot be permitted to deny the constitutional right of speedy trial to the accused on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial apparatus with a view to ensuring speedy trial. The State may have its financial

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<sup>8</sup> (AIR 1976 SC 1734),

<sup>9</sup> [(2002) 4 SCC 578]

<sup>10</sup> AIR 1979 S.C.

constraints and its priorities in expenditure, but, ‘the law does not permit any Government to deprive its citizens of constitutional rights on a plea of poverty’, or administrative inability.”

## **CONCLUSION**

Indian judiciary system, which encompasses laws and rules governing the social and fundamental scenario of the country, is largely influenced by the English common legislature owing to the prolonged influence of British colonial culture. Although the judiciary system is based on the core values, morale and cultural traditions of Indian society; it has a number of loopholes which often triggers various crime and illegal endeavors.

Speedy trial is guaranteed under article 21 of the Constitution of India. Any delay in expeditious disposal of criminal trial infringes the right to life and personal liberty guaranteed under article 21 of the Constitution. The debate on judicial arrears has thrown up number of ideas on how the judiciary can set its own house in order. Alarmed by the backlog of inordinate delay in disposal of cases, Fast Track Courts or Special Courts have to be constituted. Thus, Fast Track Courts are to tackle the section 138 Negotiable Instruments Act cases as the graph of such pendency is very high and alarming. It is high time to restore the confidence of people in the judiciary by providing speedy justice.

Speedy justice is the right of every litigating person. There is no denying the fact that delay frustrates justice. In the present set-up it often takes 10 – 20 – 30 or even more years before a matter is finally decided. In the recent past, litigation has increased immensely. The population growth, improved financial conditions, lack of tolerance and materialistic way of life may be some of the causes. But the delay in dispensation of justice has to be eliminated by taking effective steps otherwise the day is not far when the whole system will collapse. Recently, one Hon’ble Judge of Delhi High Court calculated that 464 years will be required to clear the arrears with the present strength of the judges in that High Court. The position may not be that gloomy but is still alarming

Many cases are filed on similar points and one judgment can decide a large number of cases. Such cases should be clubbed with the help of technology and used to dispose other such cases on a priority basis; this will substantially reduce the arrears. Similarly, old cases, many of which have become infructuous, can be separated and listed for hearing and their disposal normally will not take much time. Same is true for many interlocutory applications filed even after the main cases are disposed of. Such cases can be traced with the help of technology and disposed of very quickly.

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