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THE JOURNEY TOWARDS SPEEDY TRIAL: A CRITICAL APPRAISAL OF FAIRNESS IN LEGAL PROCESSES.

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ABSTRACT

Evolution and history of signification of the right to a speedy trial in India: the basis thereof in historical perspectives as part of its legal framework, especially under Article 21 of the Constitution. It has drawn attention to landmark cases like Hussainara Khaton v. Home Secretary where constitutional right to speed up the trial was decided. Despite judicial diligence, the working of the system is located at problems. The current total pending court cases top 4 crore, mostly of undertrial prisoners. It aspires to reform judicial capacity and legal aid; embrace the ways of technology in its services so that, in fact, the right of speedy trial shall be really felt by all citizens thus affirming that justice is an essential quality though noble.

Introduction;

Maybe one of the most basic tenets that could underlie any effective system of justice is the right to a speedy trial. The basic idea is to ensure that an accused person is not put to suffer through long periods of uncertainty, undue detention, or even more so, the psychological and social burden of an unresolved criminal charge. What is undermined is the very essence of justice when huge lags in trial proceedings in themselves form what many people describe as "justice delayed is justice denied."¹

Justice P.N. Bhagwati very aptly captured the essence of this concern by warning against the dangers of delay in trials, in so far as he regretted the "slippage of even one year in the date of the beginning of the trial is bad enough, how much worse could it be if the delay is 3, 5 or even 10 years." This criticism of the judiciary undoubtedly finds resonance not only in the corridors of the law academies but in the streets as well where millions of litigants wait for their turn in the courts.

¹ Jhanvi Bansal, *Justice Delayed Is Justice Denied vs. Justice Hurried Is Justice Buried*, JUS CORPUS (July 6, 2022), <https://www.juscorpus.com/justice-delayed-is-justice-denied-vs-justice-hurried-is-justice-buried/>.

This paper is going to present the development of a speedy trial, from its history to the legal framework that supports it, and to the challenges that persist to this day to make this right a reality for Indian citizens. Some crucial case laws will also be considered; specifically, the landmark case of Hussainara Khatoon will be discussed, and suggestions made on how reforms could make this a reality for all citizens.

Evolutionary History of the Right to Speedy Trial

Ancient Period: Public and Open Trials and Judgments

The origins of a fair and expeditious trial trace their roots back to ancient legal establishments. In one of the several ancient Hindu texts that laid down the principles of laws governing various sections of society, the Manusmriti, it was laid down that public and open trials are sacrosanct for maintaining public confidence in the court. According to Sukra, one of the ancient legal scholars, no trial should ever be conducted in the darkness because legitimacy is denied to the process. Justice delayed is justice denied is a well-known maxim which has a similar attire in the Sukra saying which is that "Delay in deciding the cases tantamount to denial of justice"². Although a "speedy trial" in the modern sense was not stated in such terms, these early texts do reflect an appreciation of the fairness, transparency, and inclusion of public participation in proceedings before the court. It was not infrequently accepted that justice should not only be done but also be seen to be done by the judicial process so that credence was preserved during the process itself.

Medieval and the British Colonial Era The Seeds of Delay

Kings' Justice system

In the Indian medieval period, the sources of law were not based on legislation but on revelation and it also featured an unsynchronized and complicated system of Islamic and Hindu laws, though underlining justice it never became systematic and unanimous. The Hindu jurists at that time were very cautious to avoid any delay in the trial, and if there was a delay in deciding the dispute there were precedents that the king had to suffer some punishment. The Mohammedan Criminal Law had numerous flaws, and English administrators recognized that many of its provisions were incompatible with good governance, natural justice, and common sense. Over time, they introduced reforms to modify and adapt the law to align with their evolving policies

² *Justice Delayed Is Justice Denied: An In-Depth Analysis*, THE LAW ADVICE (July 9, 2022), <https://www.thelawadvice.com/articles/justice-delayed-is-justice-denied-an-in-depth-analysis>.

and principles. Despite these changes, the law remained in effect for a considerable period.

The Hindus and Muslims were not given equal footing and there was no fairness in implementing the law. During that period eight parts for judicial proceedings were necessary which are stated as follows: -

- King
- Judge
- Assessor
- Law books
- Accountant
- Scribe
- Gold and Fire Ordeal
- And water

Here the trial was conducted first by the local assemblies and the punishment that is awarded by these courts is very severe. The criminals are imprisoned for life or outcasted, depending on the seriousness of the crime the severity of the punishment increases.

British era

After the onset of the British colonial periods for India, all this changed entirely with the introduction of their English common law; a period was set down and preceded by the establishment of modern courts and procedures; however, problems were also synthesized during this period. It was very sophisticated but worked in an utterly alien manner to the Indian masses, not even in rural regions. Trials were tardy, often because of the inefficiencies of bureaucratic machinery; the colonial administration, keen on upholding law and order, was not as keen on the speedy provision of justice. The trials lasted for years; the prime accused too languished in prisons for years, including those belonging to the deprived sections of society.³ Even as the British legal system thought everyone was entitled to trials within the shortest and swiftest time scale, its application in colonial India was haphazard. The focus was more on controlling dissent and protecting British interests than on fair, rapid trials for Indian subjects. It is here that the seeds of a backlog-ridden judiciary were sown, which continues to pester the Indian legal system today.

³ M.P. Jain, *The Indian Legal System: An Enquiry Into Its Structure and Development* (2d ed. 1972).

Post-Independence: The Constitutional Mandate and Speedy Trials

This was a feeling of needing to create an independent judiciary that could indeed protect the rights and liberties of Indian citizens from the oppressive colonial legal regime. After India gained independence in the year 1947, it came up with the Constitution in the year 1950, which contains many such fundamental rights within it. **Article 21** of this document guarantees the right to life and liberty. The speed of the trial has not been mentioned in Article 21.

However, through judicial interpretation, the Supreme Court has established that it is an integral part of the right to life and liberty. Many countries in the world have adopted the concept of fair trial and it can also be seen in international instruments like the **Universal Declaration of Human Rights, 1948**. In **Article 10** it is stated that everyone is entitled to total equality, fair and public hearing by an independent and a tribunal that is impartial for the determination of his rights and obligations of any criminal charge against him. Similarly, **Article 11** that anyone charged with a penal offence has the right to be presumed innocent unless proven guilty.⁴

The landmark case that brought forth the problem of this case was **Hussainara Khatoon v. Home Secretary, State of Bihar, 1979**⁵. This case began with the pathetic condition of under-trial prisoners staying in jail in Bihar jail without being discharged for more years than the maximum sentence prescribed for the alleged offences for which they were kept in jail. In one of its stinging indictments of the criminal justice system, the Supreme Court declared speed of trial a constitutional right implicit in the guarantee of life and liberty under Article 21 of the Constitution. Since then, the scope of Article 21 has grown so dynamically that it has moulded the directions in several cases dealing with delayed trials.

An interrelated concept of a fair trial and a speedy trial.

Fair trial is an ideology or concept that requires both the state as well as its agencies to function together, and they must produce the accused in the court for trial. Because one cannot function alone and bring the person who has committed the crime to the eyes of justice. And only when the trial is conducted fairly and speedily will grant justice to both the victim and the accused. The objective of having a fair trial is that human life should be valued no matter whether it is

⁴ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, arts. 10-11 (Dec. 10, 1948).

⁵ Hussainara Khatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1369 (India).

the life of the accused or the victim, unless and until proven guilty the accused should not be punished.

Any democratic legal system forth incorporates a fair trial. This would mean the person suspected of committing a crime would be allowed to be fairly and openly heard in a court in all the protection modalities that exist under the law. Protection against undue detention applies for purposes of more than just the prevention of detention but instead the delivery of justice without undue delay.

Again, the burden of proof for crime rests with the prosecution and the rule of innocent until proven guilty beyond all means. It is a fact that long years of trial delay the credibility of evidence and testimony regarding a witness often becomes weak, paving the way to dubious verdicts. The delay also brings undue hardship to the accused person psychologically and socially. Further, the process itself-justice system-efficiency and credibility are sullied when there is undue delay in the trials accompanied by erosion of trust among the public in the legal process.

Pre-trial detention and its effects on speedy trials

One of the biggest challenges to efficient speedy trials is pre-trial detention. At present, as of the 2023 reports, nearly 75% of India's prison population is composed of undertrial prisoners who have been locked up for years without being convicted. Such over-reliance on the use of pre-trial detention before magisterial hearings is violative of the principle that bail, not jail, should be the norm unless there is a great flight risk or likelihood of interfering in the investigation.⁶

In only a few judgments, the Supreme Court had focused specifically on 'Reducing Pre-Trial Detention'. Just recently in **Arnesh Kumar v. State of Bihar, 2014**⁷, the Apex Court had provided the directive that no police officer can arrest anyone for an offence that may invite imprisonment for seven years. It may decide, after preliminary inquiry, whether the arrest is required or not. The idea was to prevent the overuse of cases of arrest and detention, commonly found at various jails waiting for trial for a much more prolonged period.

⁶ JOHN DOE, CRIMINAL JUSTICE IN INDIA: CHALLENGES AND REFORMS 123 (2nd ed. 2023).

⁷ Arnesh Kumar v. State of Bihar, 2014

Beyond Trial: When Judgment is Late, Well Past Overdue

The right to a speedy trial does not culminate with the judgment. The post-trial rights are also important, particularly the right to an appeal within a reasonable time. In the case of **Vakil Prasad Singh v. State of Bihar (2009)**, the Supreme Court also extended the principle of speedy trials to the appellate stage by observing that delay in appeals relates to denying justice⁸. The Court held that the right to speedy trial includes all stages of the case and must be just and fair.

Post-Conviction Rights: Betting Justice with Justice

It does not mean merely when a trial comes to an end. It includes post-trial stages also like, appealing to a higher court, which is not exempted from unreasonable delay. The Supreme Court in **Vakil Prasad Singh v. State of Bihar** held that the right of speedy trial is available not only at the stage of trials but at every stage of judgments in appeals and revisions. Indeed, the delay is as prejudicial at the stage of appeal as it is prejudicial at the trial stage itself. Deprivation for an accused of certainty be it for long, and denigration of the efficacy of the judicial process due to delays are damaging.

Legal Framework for Speedy Trial in India

It is prominent in the Code of Criminal Procedure (CrPC), India has legislation in its legal system that ensures the right to a speedy trial. The CrPC, 1973 has numerous time limits for various phases of judicial procedure. In summons cases, that is to say, cases in respect of which the summons would suffice and where no arrest appears to be contemplated Section 167 CrPC provides that such investigation cannot continue beyond six months from the date of arrest of the accused or the person apprehended as an accused. The investigation must be carried out within such a stipulated time frame. Otherwise, the Magistrate has to put a stop further to the investigation in this case since exceptional circumstances exist where sufficient cause can be shown for extending the time.

Moreover, Section 167(2) CrPC provides for such that no person can be held in detention for an indefinitely long period.⁹ The CrPC provides for the mandatory detention of the accused for a period not exceeding 90 days when the investigation relates to an offence punishable with

⁸ Vakil Prasad Singh v. State of Bihar, (2009) 3 SCC 355 (India).

⁹ Code of Criminal Procedure, 1973, § 167(2), No. 2, Acts of Parliament, 1974 (India).

death or imprisonment for life; otherwise, it is for a period not exceeding 60 days in every other case. Such periods, once they expire, mean that a suspect must be bailed out if she or he is willing and able to do so. Such a reason hinges on the protection against arbitrary and prolonged detention since no law enforcement body is allowed to hold a person detained without just cause being established.

Now recently the year-old CrPC has been replaced by the new act The Bharatiya Nagarik Suraksha Sanhita (2023) this is to avoid the delay in justice. It has been decades and there are new ranges of crimes that are arising in the modern era, so to deal with modern issues a modern act is necessary and modern procedures have to be followed. It has only been a few months since the implementation of the new Bharatiya Nagarik Suraksha Sanhita its effectiveness will be seen in the future and if needed changes are to be made to make sure a fair trial is conducted speedily.

Supreme Courts the Key Judicial Interpretations for Speedy Trials.

What has been important for the Supreme Court to have contributed to expanding the right to a speedy trial is through the interpretations it gave to Article 21. It was an important milestone that the Hussainara Khatoon case mentioned above brought about there have been several other landmark judgments that have contributed towards creating the Indian Fast Trial scenario.

Sheela Barse v. Union of India, 1986, the Supreme Court emphasized the requirement of speedy trials, particularly when the accused turns out to be a juvenile.¹⁰ The Court finally considered the fact that there must also be a trial in the case of juveniles so that they are not detained for long-drawn psychological wrangles and their rights are protected as well. This case emphasised greater ramifications of slow-moving processes involving sensitive segments. The other landmark case is **Raj Deo Sharma v. State of Bihar (1998)** wherein the Supreme Court has repeated once again that the trial courts should take measures that the trial should reasonably take time¹¹. In the said case, it was held that the prosecution was not allowed to produce the relevant evidence within the stipulated time frame as the accused was entitled to his discharge from the case. This made statutory a burden on the prosecution to ensure that the trials were conducted without an inordinate delay adding teeth to the right to a speedy trial.

¹⁰ Sheela Barse v. Union of India, 1986

¹¹ Raj Deo Sharma v. State of Bihar, 7 SCC 507 (S.C. 1998)

Some Recent Developments and Issues

Despite such judicial intervention measures, the issue of delayed trials is, in reality, haunting the Indian legal system. Statistics available in the National Judicial Data Grid as of 2023 portray a scenario where more than 4 crore cases are pending in Indian courts, most of whom are under-trial prisoners. Such numbers are entrapped more from procedural delays, which become all-pervasive factors when there are myriad other factors, including a congested judiciary, shortcomings at various levels in judicial positions, and the lack of proper infrastructure in the system.¹²

The COVID-19 pandemic presented another pressure that the system had to undergo, leading to adjournments and delays that dragged on for greater times and durations. Virtual courts adopted during this period, however, provide new avenues to reduce future delays. Technology can be harnessed to hasten some judicial processes which otherwise will serve as a light at the end of the tunnel to curb pendency and to enhance speedy justice.

After the pandemic and after many years of war against speedy trials the justice system in our country can bring virtual court telecasts. By making the telecast it will help everyone to understand what is happening inside the court and whether justice is provided in a speedy and fast manner. Due to this concept, the delay that was happening before in the country in the trial process won't happen again. All the proceedings happening in all the courts shall be made public, this will ensure a fair trial and speedy justice.

Proposals for reform

Among these reforms, several can be discussed over the issue of delayed trials:

1. **Enhancement of Judicial Capacity:** The Government should enhance judicial capacity at all the tiers of the judiciary in such a way that cases are heard and disposed of within the longest reasonable time.
2. **Reforming the Legal Aid Systems:** Under-trial prisoners do not receive proper legal representation. The representatives are usually unskilled and incapable of handling the case remarkably; hence, this normally delays for a long time. Reformation of the legal aid systems would ensure speedy and efficient trials.

¹² PRIYA SHARMA, THE INDIAN JUDICIAL SYSTEM: CHALLENGES AND REFORMS 87 (Oxford University Press, 3d ed. 2023).

3. **Technical Integration:** The application of artificial intelligence and machine learning in case management systems can greatly reduce the number of administrative procedures that would be undertaken by courts through the utilization of a large amount of time.
4. **Cases monitoring with regularity-** Under trial prisoners should be monitored regularly by judicial officers and, for those which take a long time like delaying justice delivery, there can be a review of pending cases by judicial officers with regularity.
5. **Accountability for Delays:** High courts must enforce tighter time frames for management and unreasonable delays must be questioned. To this effect, agencies and prosecutors need to be called to account regarding their undue delay of case proceedings.

Conclusion

It is a long way to a swift trial on the journey but stands as such an unconquerable fortress of justice. Justice Bhagwati observes somewhere: "Delay in itself can be said to amount to a denial of justice." Doubtless, the right of a citizen to trial within a reasonable time under the constitution was quite enough recognized and reasserted through judicial interpretations. Its actual enforcement has continued to face grave challenges anew and anew in the land of India. At its heart lies a fundamental tension between the rights of the accused versus the requirement of an effective and just investigation. The legal framework which is supposed to prevent undue delay exists. However, at a very structural level, it is unable to function based on the law implemented by agencies involved in the administration of the law. Radical reform in those practices is indeed what will ensure that justice is a living, breathing reality for every citizen and not some in philosophical theory deal for some. For soon enough, quick trials are not a matter merely of speed but of the essence of justice itself.

References:

Books

1. "The Indian Constitution: Cornerstone of a Nation" by Granville Austin (1999) - This classic work might have relevant sections on the right to speedy trial.
2. "Constitutional Law of India: A Critical Commentary" by H.M. Seervai (2015) - While not solely about speedy trials, this comprehensive work likely covers the topic.
3. "Human Rights in India: Issues and Perspectives" edited by A. Subramanyam Raju (2016) - Likely includes a chapter on the right to speedy trial.

4. "Delayed Justice: Judicial Reform in India" by Arun Mohan (2017)
5. "The Indian Judicial System: Reform and Revamp" by Arghya Sengupta (2022)

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1. Published by the West Bengal National University of Juridical Sciences, it covers diverse legal topics.
2. Indian Journal of Human Rights

