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## Right of 'Speedy' and 'Fair' Trial of accused: An overview

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### 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 investigation, inquiry, trial, appeal revision and retrial. The fair, just and reasonable procedure is implicated 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 administration. An accused in judicial custody is entitled to be released unconditionally 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. Concrete efforts are therefore necessary to ensure speedy and fair trials.

**Keywords:** Trial, Speedy, Fair

### 1. Introduction

The intention and aim of legislature in India to ensure a speedy and fair trial, both in civil and criminal cases, is still a dream for all concern. The amendments made in Civil Procedure Code, 1908 and Criminal Procedure Code, 1973 followed by several pronouncements of Hon'ble Apex Court of India, which is claimed to be binding on all subordinate Courts in view of Article 141 of the constitution of India have failed to produce any positive effect and hence trials are dragging out from year to year and even upto a decade. The aims and object of speedy trial as enshrined under Article 21 of constitution as well Criminal Procedure Code, 1973 is defected by the tactical devices of the lawyers who usually desire to somehow prolong the trial, as the more the trial will be delayed the more money they will get from the clients. The negligence and lack of will of Magistrates further contribute to the delay of trials. The Hon'ble Apex Court has categorically warned against this situation and ruled in '*Machender -V- State of Hyderabad*,<sup>[1]</sup> and held, "we are not prepared to keep person who are on trial for their lives under indefinite suspense because trial judges omit to do their duty. Justice is not one sided. It has many facets and we have to draw a nice balance between conflicting rights and duties. While it is incumbent on us to see that guilty don not escape it is even more necessary to see that the persons accused of crime are not indefinite harassed." It is thus obvious that no trial can be said to be reasonable and fair unless or until it conclude speedily within six months or a year. The Apex Court has rightly expressed its anguish in '*Hussainara Khatoon -V- State of Bihar*,<sup>[2]</sup> and held, "even a delay of one years in the commencement of trial is bad enough; how much worse could it be when the delay is a long as 3 or 5 or 7 years or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubts that delay in trial by itself constitute denial of justice."

Even a time frame fixed by Full Bench of Hon'ble Patna High Court for disposal of pending cases has failed to evoke a positive result in the courts of State of Bihar, though such judicial pronouncement is claimed to be binding on all the subordinate courts. The full bench in '*Madeshwari Singh & others -V- State of Bihar*'<sup>[3]</sup> has laid down a time frame of seven years for disposed of the inordinately delayed cases and ruled, "a callous and inordinate

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*prolonged delay of seven years or more in investigation and original trial for offences other than the capital ones would primarily violate the constitutional guarantee of speedy trial under Article 21. Both on principle and precedent the fundamentals right to speedy trial extends to all criminal prosecutions for all offences gerrically, irrespective of their nature. It is not confined or restricted to either saviour or capital offences only.”* The Apex Court has also ruled in ‘A.R. Antulay Case,<sup>[3]</sup> that Article 21 encompasses all the stages namely the stage of investigation, inquiry, trial, appeal, revision and retrial. Although laws on speedy trial is now well settled but we have not heard about any Magistrate dropping the case on the ground of inordinate delay.

### **Concept of ‘Fair Trial’**

The fair, just and reasonable procedure implicit is Article 21 of Constitution and creates a right in favour of the accused to be tried speedily. The right to speedy trial, flowing from Article 21 of Constitution, includes within its ambit all the stages namely the stage of investigation, inquiry, trial, appeal, revision and even retrial and hence an accused may demand closure of his case in case there is inordinate delay at any stage. Full bench of Hon’ble Patna High Court has rightly held in ‘The State of Bihar –V- Ramdas Ahir’,<sup>[4]</sup> than an accused is entitled to be released unconditionally in case of inordinate trial and held, “*once the Constitutional guarantee to a speedy trial to a fair, and reasonable procedure has been violated then accused is entitled to an unconditional release and the charge levelled against him would fall to the ground.*”

Apex Court was also of the same view in ‘Hussainara Khatoon’<sup>[5]</sup> and hence ruled that “*now obviously procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensure a speedy trial for determination of the guilt of such person. No procedure which does not ensure a reasonable quick trial can be regarded as ‘reasonable, fair or just’ unless that procedure ensure a speedy trial for determination of the guilt of such a person. No procedure which does not ensure a reasonably a 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 reasonable expeditious trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.*”

Every accused, unable to engage a competent lawyer due to poverty, has right to get free legal service and deprivation or denial shall result into unfairness of trial.<sup>[6]</sup> The detention of accused in jail for period longer than the maximum prescribed punishable sentence also violates Articles 21.<sup>[7]</sup>

### **Usual Reasons of Delay of Trial**

The delay in disposal of criminal is one of the most serious problems of administration of criminal justice system. There are various reasons of delay of trial of cases pending before Magistrate and Session Judges. Sometime the accused persons endeavour to delay the trial expecting that situation and witness may change in the course of time. The lawyers also attempt to somehow to delay the trial so that they may continue to get more and more money from their clients. Magistrates are responsible for delay as they allow unnecessary adjournments on flimsy grounds shown by the conducting lawyers. The delays in execution of processes issued by the court by police and non-production of

witnesses during trial by the prosecution altogether are also the major reasons for delayed in disposal of cases.

It is well known that ‘*interest of justice*’ means ‘*justice to both sides*’. The interest of justice requires speedy trial and hence the court loose right to prosecute the accused for such a wrong having been extinguished by the lapse of time<sup>[8]</sup>.

The burden of production of witness and execution of process is not of the court but of prosecuting agency. The court has only to issue process, i.e. summon, warrants of arrest (bailable or non-bailable), for compelling the attendance of witness and now it is for the police agency to execute them. In such a situation, Hon’ble Patna High Court in ‘B.S.S. Industrial Corporation –V- State of Bihar’<sup>[9]</sup>, rightly held that if inspite of issuance of compulsive process, if the prosecution fails to produce the witness over a prolonged period of time, court is perfectly justified in acquitting the accused for want of evidence to prove the prosecution case because after all an accused cannot be kept waiting indefinitely merely because of negligence or recalcitrance of prosecuting agency to secure attendance of the witness even after the ultimate aid of warrant of arrest. In a recent pronouncement, the Hon’ble Single Bench of Patna High Court expressed its serious concern on non-production of witness by the prosecuting agency and has suggested the court to impose heavy cost on prosecution if fails to produce witness on the date fixed for such production and such cost should be recovered from the pocket of officer incharge of concerned police stations who are responsible for production of witness. The Hon’ble Court has deprecated the present practise of sending the letters and reminders by the Magistrate to the Superintendent of Police in this regards in order to ensure the production of witness.

In another significant judgement in ‘State of Bihar –V- Rajendra Singh’<sup>[10]</sup>, the Hon’ble Patna High Court has upheld the order of Magistrate who (has passed orders to close the prosecution evidence as the material exhibits) and other witness were not produced despite two weeks adjournment were allowed in favour of the prosecution. The court observed, that “*the learned court below rightly closed the prosecution case in the interest of justice because it is different for court to keep accused running and giving adjournment to satisfy the whims of the prosecution for a such a long time.*”

Similar situation prevails in the cases of juveniles also. Although law requires that the investigation and trial in juvenile cases should be concluded within ‘three months’ and ‘six months’ respectively yet trial remains pending upto several years. Several thousands of young boys and girls facing criminal cases could not go for their higher studies outside the State (as the availability of quality education in the State of Bihar is poor) for the reason that their trials are pending and their non-appearance may result into cancellation of bail bond. Apex Court has ruled in ‘Sheela Barsee’ case<sup>[11]</sup> that trial of juvenile cases must concludes within one year’s otherwise all the charges should fall in the ground but this pronouncement could not ensure speedy trial of juvenile case. The Hon’ble Division Bench of Patna High Court has also ruled in ‘Dr. Pramod Kumar Singh –V- State of Bihar’<sup>[12]</sup>, that the trial of juvenile case must conclude, as far as possible within six months, and no unnecessary adjournments should be allowed in favour of prosecution for production of witness and material evidences but of no avail. The trial of juvenile cases still continues upto several years.

### Consequences of Delay of Trial

In case of inordinate delay in completion of trial, if delay is not occasioned to the fault of the accused, the case against the accused is liable to be closed and the accused, if he is in the jail, is entitled to be released unconditionally. If prosecution is unable to produce witness inspite of repeated opportunity, the magistrate has power to close the criminal proceeding against the accused<sup>[13]</sup>. In case there was delay of seven years in investigation and trial and there was no reasonable explanation a for delay in the part of prosecution, then such criminal prosecution is liable to be quashed to save public time and money besiding saving accused from harassment<sup>[14]</sup>.

Another Full Bench of Hon'ble Patna High Court in '*Madheswardhari Singh -V- State of Bihar*'<sup>[15]</sup>, has ruled that a collous and inordinately prolonged delay of 7 years or more, which does not arise from the default of the accused or occasioned by extraordinary reasons, in investigation and original trial for offences other than capital ones would violate the constitutional guarantee of a speedy public trial under Article 21. But this, held further, does not mean that every a delay of less than 7 years would not amount to prejudice.

If the delay and default in conclusion of investigation and trial is occasioned by conduct of the accused himself then he must be deemed to have lost his right to a speedy public trial in that case<sup>[16]</sup>.

When trial was delayed due to non-production of records by the trail court, the direction was issued to conclude the trial within four weeks from the appearance of the accused<sup>[17]</sup>.

The Hon'ble Apex Court in "*Common Cause -V- Union of India*".[18] has laid down a time-frame for competition of trial but this judgement was overruled by the larger bench in '*Ram Chandra Rao -V- State of Karnataka*'<sup>[19]</sup> on the technical ground that this pronouncement is in conflict with the judgement of larger bench in '*A.R. Antulay Case*' and the bar of limitation regarding trial as ruled in '*Rajdeo Sharma Case*' and '*Common Cause Case*' diluted on the point of trial but not on the point of bail.

The court should dispose of the criminal prosecution as early as possible, in any case within 5 years, under the mandate of speedy trial failing which held Apex Court, the benefit of bail should be given to the accused by the High Court<sup>[20]</sup>. In another case, the Hon'ble Apex Court in '*Abdul Baskar Laskar -V- State of West Bengal*'<sup>[21]</sup>. has ruled that bail may be granted on the ground of delay of trial and the accused was in jail for 'three years'. An accused has indefeasible right to be released on bail if charge sheet is not filled within 90 days as per mandate of section 197, Cr.P.C.

### Conclusion

"Justice delayed is justice denied" is well know saying and therefore, it is high time that some concrete and effective measures should be adopted by the legislature as well as courts of laws to ensure speedy trial. A time frame should be enacted by amendment in the code of Criminal Procedure to limit the number of adjournments taken on behalf of prosecution for production of witnesses. If the bail bond of an accused is cancelled by the court if he fails to appears before the court during the trial for more then 3-5 dates, then it is equally important that similar steps should be taken against the prosecution in case it fails to produce the witnesses and material evidences, on the date fixed by the court for the purpose. The urgent need of speedy trial was

explained by Hon'ble Apex Court in '*Rajendra Singh (deed) -V- Prem Mal*'<sup>[22]</sup> in the following words- "*11. People in India are simply disgusted with the state of affairs, and are fact losing faith in the judiciary because of the inordinate delay in disposal of cases. We request the concerned authorities to do the needful if the people faith the judiciary is to remain*".

### End Notes

1. Manchender -V- Hyderabad State; AIR 1955 SC 792;
2. Madeshwari Singh -V- State of Bihar ; 1986 BBCJ 624 (Full Bench);
3. A.R. Antulay -V- R.S. Nayan; AIR 1992 SC 1701;
4. The State of Bihar -V- Ramadhar Ahir; 1984 BBCJ 749;
5. Hussainara Khatoon (Supra); -V- State of Bihar' AIR 1979 SC 1369;
6. Ibid;
7. Ibid;
8. Jaiswal Bus Services -V- State of Bihar; 1980 BBCJ 603;
9. B.S.S. Industries Corporation -V- State of Bihar; 1985 PLJR 871; Tutu Jaiswal -V- State of Bihar; 1993 (2) PLJR 86;
10. The State of Bihar -V- Rajendra Singh; 1988 PLJR 354;
11. Sheela Barse -V- Union of India; AIR 1986 SC 1973;
12. Pramod Kumar Singh -V- State of Bihar; 2002 (2) Crimes 631;
13. Rajdeo Sharma -V- State of Bihar; 1998 (3) PLJR (SC) 57;
14. Brij Kishore Jaiswal -V- State of Bihar; 1995 (2) PLR 596; Baidnath Prasad -V- State of Bihar; 1998 (3) PLJR 77;
15. Madheshwari Singh -V- State of Bihar; 1986 PLJR 767 (Full Bench)
16. Arjun Das -V- State of Bihar; 1987 PLJR 62;
17. Chandra Ketu Singh -V- State of Bihar; 2002 (2) PLJR 511;
18. Common Cause -V- Union of India; 1996 (2) PLJR (SC) 122;
19. Ram Chandra Rao -V- State of Karnataka; 2002 (3) PLJR (sc) 299;
20. Akhtar Bi -V- State of M.P.; 2001 (2) Crimes 65 (SC)
21. Abdul Baskar Laskar -V- State of W.B.; 2005 (2) Crimes 169;
22. Rajendra Singh (deed) -V- Prem Mal; 2007 (4) PLJR 128 (SC).

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5. Tyagi SP. Law of Evidence; (Delhi, Vinod Publication Delhi), 2006.
6. Kathuri RP. Law of Crimes and Criminology; (Delhi, Vinod Publication Delhi), 2006.