

Vol 5 Issue 4 Oct 2015

ISSN No :2231-5063

---

# International Multidisciplinary Research Journal

## *Golden Research Thoughts*

Chief Editor  
Dr.Tukaram Narayan Shinde

---

Publisher  
Mrs.Laxmi Ashok Yakkaldevi

Associate Editor  
Dr.Rajani Dalvi

Honorary  
Mr.Ashok Yakkaldevi

## Welcome to GRT

**RNI MAHMUL/2011/38595**

**ISSN No.2231-5063**

Golden Research Thoughts Journal is a multidisciplinary research journal, published monthly in English, Hindi & Marathi Language. All research papers submitted to the journal will be double - blind peer reviewed referred by members of the editorial board. Readers will include investigator in universities, research institutes government and industry with research interest in the general subjects.

### **International Advisory Board**

Flávio de São Pedro Filho Federal University of Rondonia, Brazil	Mohammad Hailat Dept. of Mathematical Sciences, University of South Carolina Aiken	Hasan Baktir English Language and Literature Department, Kayseri
Kamani Perera Regional Center For Strategic Studies, Sri Lanka	Abdullah Sabbagh Engineering Studies, Sydney	Ghayoor Abbas Chotana Dept of Chemistry, Lahore University of Management Sciences[PK]
Janaki Sinnasamy Librarian, University of Malaya	Ecaterina Patrascu Spiru Haret University, Bucharest	Anna Maria Constantinovici AL. I. Cuza University, Romania
Romona Mihaila Spiru Haret University, Romania	Loredana Bosca Spiru Haret University, Romania	Ilie Pintea, Spiru Haret University, Romania
Delia Serbescu Spiru Haret University, Bucharest, Romania	Fabricio Moraes de Almeida Federal University of Rondonia, Brazil	Xiaohua Yang PhD, USA
Anurag Misra DBS College, Kanpur	George - Calin SERITAN Faculty of Philosophy and Socio-Political Sciences AL. I. Cuza University, Iasi	.....More
Titus PopPhD, Partium Christian University, Oradea,Romania		

### **Editorial Board**

Pratap Vyamktrao Naikwade ASP College Devrukh,Ratnagiri,MS India	Iresh Swami Ex - VC. Solapur University, Solapur	Rajendra Shendge Director, B.C.U.D. Solapur University, Solapur
R. R. Patil Head Geology Department Solapur University,Solapur	N.S. Dhaygude Ex. Prin. Dayanand College, Solapur	R. R. Yaliker Director Managment Institute, Solapur
Rama Bhosale Prin. and Jt. Director Higher Education, Panvel	Narendra Kadu Jt. Director Higher Education, Pune	Umesh Rajderkar Head Humanities & Social Science YCMOU,Nashik
Salve R. N. Department of Sociology, Shivaji University,Kolhapur	K. M. Bhandarkar Praful Patel College of Education, Gondia	S. R. Pandya Head Education Dept. Mumbai University, Mumbai
Govind P. Shinde Bharati Vidyapeeth School of Distance Education Center, Navi Mumbai	Sonal Singh Vikram University, Ujjain	Alka Darshan Shrivastava Shaskiya Snatkottar Mahavidyalaya, Dhar
Chakane Sanjay Dnyaneshwar Arts, Science & Commerce College, Indapur, Pune	G. P. Patankar S. D. M. Degree College, Honavar, Karnataka	Rahul Shriram Sudke Devi Ahilya Vishwavidyalaya, Indore
Awadhesh Kumar Shirotriya Secretary,Play India Play,Meerut(U.P.)	Maj. S. Bakhtiar Choudhary Director,Hyderabad AP India.	S.KANNAN Annamalai University,TN
	S.Parvathi Devi Ph.D.-University of Allahabad	Satish Kumar Kalhotra Maulana Azad National Urdu University
	Sonal Singh, Vikram University, Ujjain	

**Address:-Ashok Yakkaldevi 258/34, Raviwar Peth, Solapur - 413 005 Maharashtra, India**  
**Cell : 9595 359 435, Ph No: 02172372010 Email: ayisrj@yahoo.in Website: www.aygrt.isrj.org**



RIGHT OF SPEEDY TRIAL IN BOOKS AND IN PRACTICE:  
AN OVERVIEW



Aneeda Jan

BSc, LL.M, JRF/NET/ SLET.

Assistant Professor {law} , DDE, University of Kashmir.



**ABSTRACT**

It is well settled that an unreasonable delay in the administration of justice constitutes an unconscionable denial of justice. Prolonged trial and delay in justice infringes right to life. Delay in the trial of criminal cases affects not only the accused, victim but society as a whole. Delay in the trial of criminal cases might involve destruction of liberty and annoyance to the occupation of the accused and puts him to undue harassment. On the other hand it results in the failure of criminal justice



system to control the retributive tendencies and generally leads to dismay and delusion of the victim and encourages him and the society to take law in to his own hands and thereby recourse to unlawful means to settle scores with the perpetrators of the crime themselves. If the problem of delay and arrears, and pendency in criminal process is not properly addressed the people would lose faith in the ability of process to dispense justice endangering the very existence of the system. The legal system has to necessarily provide for the speedy trial and speedy justice in order to achieve the objectives of penal laws. The present paper focuses on this right of speedy trial and its availability at national and international level, role of courts in carving out the uncarved right of speedy trial within article 21 of the constitution, causes that result in the delay and the measures that can be taken to address the problem is also highlighted in this paper.

**KEYWORDS** :Adjournment, Code of Criminal Procedure, Constitution, Fundamental right, Investigation, Prosecution, Recidivism, Speedy Trial.

**INTRODUCTION :**

Speedy trial and timely justice is the essence of criminal justice system. There can be no doubt that justice delayed is justice denied. India is said to possess one of the fairest legal systems in the world. This assertion is partly true when viewed in the light of judgements handed down. Yet promptness and efficiency in access to justice are *sin-quo-non* for the assertion. One of the judges of United States of America, justice Brenn stated that, nothing rankles more in a human heart than a brooding sense of injustice. *History is witness to many revolutions which were the result of injustice* being done to a common man. Timely justice is also very essential for the maintenance of rule of law. Speedy trial has assumed the status of fundamental rights under article 21 of the constitution of India

as was observed in the case of *-Ali Mohammad vs. State*. However a thorough assessment reveals that delay in seeking justice has become a common norm in Indian legal scenario. The problem of delay in the disposal of cases pending in the courts of law is not a recent phenomenon. Delay in getting the timely justice has shaken the faith and confidence of the people in the capability and capacity of the courts to redress the grievances and to grant adequate and timely relief. Inordinate delay in the disposal of criminal cases is a blot on the justice system. The objective of the penal laws and the social interest in setting the criminal law in motion against the offenders with reasonable expeditious trial is thereby frustrated. The adverse effects of delay on the society at large is immeasurable and hence irreparable. Speedy trial is a right guaranteed at the international and national spheres.

#### **Right of Speedy Trial at the Global Level- An Overview**

The theoretical justification of right to speedy trial is found in Magna Carta which provides, that *justice or right will neither be sold nor denied or deferred to any man*. Coke has also said that, *prolonged detention without trial will be contrary to the law and delay in trial by itself would be an improper denial of justice*. The Virginia Declaration of Rights incorporated the concept of speedy trial under Article 8 of the Declaration for the first time. Thus the right to speedy trial is recognized as common law right flowing from the Magna Carta. The right of speedy trial is guaranteed by various international covenants and regional conventions. For instance: International Covenant on Civil and Political Rights, 1966, provides that, in the determination of any criminal charge against the accused everyone shall be entitled .....to be tried without undue delay, which India ratified on 10th April 1979. Also, European Convention on Human Rights and fundamental freedoms (1950) provides that, everyone arrested or detained... shall be entitled to trial within a reasonable time or to release pending trial. India along with other countries is a signatory and has ratified the convention.

#### **Guarantee of Expeditious Trial in United States of America**

In United States of America the right to speedy and reasonable trial finds the place in the Sixth Amendment to the American Constitution. It provides, *in all criminal prosecutions, the accused shall enjoy right to a speedy and public trial, by an impartial jury*. In pursuance of this constitutional guarantee, Speedy Trial Act was enacted in 1974. The objective of Act is to assist in reducing crime and the danger of recidivism by requiring speedy trials and by strengthening the supervision over persons released pending trial and for other purpose. The primary focus of the Act was not concretisation of right to speedy trial provided in the Constitution, but reduction in crimes committed by the defendants. The Speedy Trial Act divides the pre-trial proceedings into three intervals and there are different time limits for each interval. Speedy Trial Act was implemented in a phased manner. The Act initially imposed a time limit of 180 days for the first year. In second year this was reduced to 120 days and from third year onwards the limit is 100 days.

However there might be certain circumstance or the situations where the delay cannot be avoided, those "unavoidable" delay are excludable: other proceedings concerning the defendant; deferred prosecution; absence or unavailability of the defendant or an essential witness; periods of mental incompetency; physical inability to stand trial, treatment under the Narcotic Addiction Rehabilitation Act; delay between the dropping of charges by the government and refiling of the same charges, and a "reasonable period of delay" caused by slower processing of a co-defendant.

#### **Judicial Response on speedy trial in United States of America**

The scope of the right to speedy trial and consequences thereof has been considered by the

Supreme Court of America in a number of cases. In **Barker v. Wingo** the court laid down what came to be known as the balancing test. The court observed that the balancing test requires the conduct of both the prosecution and the defendant to be weighed. The court identified some of the factors which they should assess in determining whether a particular defendant has been deprived of his/her right or not. The four factors so identified are as follows: length of delay, the reason for the delay, the defendant's assertion of his right and the prejudice to the defendant. In **Strunk v. United States** it was held that an accused's right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial.

#### **Guarantee of right to Speedy Trial in United Kingdom**

In England, the right of accused to prompt trial found its first expression in the Habeas Corpus Act, 1679. Section 6 of the Act provided for release on bail or discharge of persons detained on accusation of high treason or felony in the courts of Assizes or Sessions, if indictment could not take place in the second term after committal. Assizes Act, 1889 and Magistrate's Court's Act, 1952 limit pre-conviction custody of accused. Crown Court Rules and Indictment Rules, which are statutory regulations, issued in 1982 and 1983 were passed in order to regulate and limit the actual duration of the prosecution process. Under these rules, the bill of indictment is to be prepared within 28 days of committal and the trial is to commence within 8 weeks of committal. Both these limits may be extended by the court.

The Prosecution of Offences Act, 1985 grades a step forward in this regard. Section 22 of the Act enables the Secretary of State to prescribe custodial and overall time limits, in respect of preliminary stages of trial. "Preliminary stage" means, in Crown Court, proceedings prior to arraignment, and in summary trials, proceedings prior to taking of evidence for the prosecution. The actual time limit has to be prescribed by the Secretary of State through delegated legislation. The consequence of non-adherence to custodial time limits is bail. Consequence of non-adherence to overall time limits is acquittal. According to the provisions now in force, the maximum period of custody between the accused's first appearance and the commencement of the summary trial is 56 days. While in case of offences triable on indictment exclusively, the maximum period of custody between the accused's first appearance and the time when the court decides whether or not to commit the accused to the Crown Court for trial is 70 days. The Act provides certain degree of flexibility in the application of the time limits prescribed by it. The appropriate court has the power before the expiry of a time limit so imposed, to extend that limit if it is satisfied that there is good and sufficient cause for doing so and that the prosecution has acted with all due expedition. These orders are appealable in the Crown Court.

#### **Expeditious trial in Indian Context: An Overview**

The right to fair and speedy justice find its expression in various constitutional provision and procedural laws.

#### **Speedy Trial- Constitutional Mandate**

Dispensation of timely Justice is an implied constitutional and fundamental right of the citizens of India. This assertion is totally justified from the opening words of the constitution itself that is the preamble and also from other provisions of the constitution. The preamble declares that the state shall strive and secure social, economic and the political justice for all of its citizens. The right to speedy justice flows from articles 14, and 21, of the constitution of India. The Constitution of India imposes restriction on the detention of any person by the police beyond 24 hours without the authority of a

Magistrate. Article 22(2) which also impose such restriction, thus seek to prevent illegal detention of people and ensure a prompt action on the part of police. Timely dispensation of justice is also a constitutional obligation of the Indian states in the light of directive principles of the state policy articulated in article 38(1), while interpreting article 38 of Indian constitution the court in the case of Babu vs. Raghunathji, held that the social justice would mean legal justice which means that system of administration of justice must provide a cheap, expeditious and effective instrument for realisation of justice by all sections of the people. Article 39A of the constitution of India and on account of India's international legal obligation give practical wings to the concept of timely justice.

#### Relevant Provisions of speedy trial in Code of Criminal Procedure

The procedure for criminal trial as provided in the Code of Criminal Procedure lays down a number of provisions aimed at curtailing the delay in the investigation and trial of offences. Section 157(1) of Code of Criminal Procedure, requires the officer-in-charge of a police station to send forthwith the report of the commission of an offence to the concerned Magistrate. Perusal of Section 167(1) Code of Criminal Procedure indicates that the investigation is expected to be completed within 24 hours of arrest of the accused. In case it appears that the investigation cannot be completed within 24 hours and the allegation against the accused is well founded, the investigation officer has to forward the diary entries along with the accused to the Magistrate in order to seek further custody of the accused. At this stage the Magistrate can extend the period of detention of the accused by 15 days, which can further be extended from time to time up to a limit of 60 or 90 days depending upon the gravity of offence. The accused becomes entitled to be released on bail on the expiry of the period of 60 or 90 days as the case may be. In *Devender Kumar vs. State of Haryana*, the Supreme Court ruled that a person arrested could be given in police remand for some days but after 15 days of arrest, he cannot be remanded to police custody.

If in case triable by a Magistrate as a summons case, the investigation is not concluded within six months from the date on which the accused was arrested the magistrate is required to stop further investigation into the offence. The investigation is allowed to go on beyond six months only if the investigating officer satisfies the magistrate that for special reasons and in the interest of justice the continuation of investigation is necessary. Section 173(1) of Code of Criminal Procedure (CrPC) requires the police officer to complete the investigation "without unnecessary delay" and forward the report to the Magistrate as soon as it is completed. Further Section 207 requires that a copy of documents like the police report, F.I.R. statements recorded under Section 161 (3) except those portions for which request for exclusion is made, confessions and statements under Section 164 etc. is to be given free of cost to the accused without delay. These provisions in CrPC pertain to the stage of investigation into an offence. These provisions, besides laying down in broad terms, certain limits subject to which investigation is to be carried out, also put limits upon detention pending investigation. The CrPC Amendment Act, 2005 inserted section 436A, which provides that maximum period for which an under trial prisoner can be detained is half of the maximum period of imprisonment specified for that offence under the law.

Section 309 of CrPC mandates expeditious conduct of trial. In particular it requires that when the examination of witness has once begun, the same shall be continued from day-to-day until all the witnesses in attendance have been examined, unless the court finds the adjournment of the proceeding beyond the following day to be necessary for reasons to be recorded. Though the Code recognises the power of the court to adjourn the proceedings from time to time after the cognizance of the offence is taken or after commencement of the trial after recording reasons for doing so, yet it

provides that when witnesses are in attendance, no adjournment or postponement shall be granted, without recorded in writing. No adjournment is to be granted for the purpose only of enabling the accused person to show cause against the sentence proposed to be imposed on him. Further the terms on which an adjournment or postponement may be granted include, in appropriate cases, the payment of costs by the prosecution or the accused. Section 437(6) of the code provides that if the trial of a person accused of a non bailable offence is not concluded within a period of sixty days from the date fixed for taking evidence, such person is to be released on bail if he is in custody. In addition to this provision which directly provides for expeditious conduct of trial there is another provision which aims at achieving the same end for example Section 353(1) clearly requires the judgment to be pronounced soon after the completion of the trial.

Rules also have been made under sections 7 and 12 of the Police Act, 1961, the committal proceedings in respect of sessions trial have been virtually abolished in the code of criminal procedure, 1973. In any case, it has been simplified greatly. It has been done in order to avoid delay involved in preliminary inquiry before the commencement of trial of offences. Under the old code of 1898, the offence, for which the maximum punishment was six months, were to be tried summarily but under new code of 1973, the offences punishable with imprisonment exceeding two years are now triable summarily. The perusal of these provisions enshrined in code of criminal procedure thus indicates that the Code does impose certain checks on the time that is taken by the investigating authority to complete investigation and also contains directions for the purpose of speedy completion of criminal trials.

Section 468 CrPC lays down the periods of limitation within which any prosecution must start. The Supreme Court has emphasized that any prosecution must abide by the period of limitation as prescribed in this section. The object is to bar the parties from filing cases after a long time when material evidence may have disappeared. Limitation is also necessary to prevent the abuse of court process by filing vexatious and belated prosecutions long after the date of the offence. The object subserves the concept of fairness of trial as enshrined in article 21 of the constitution. The above provisions of CrPC provide certain time limit for certain aspects, however no time frame have been setup for overall conduct of the trial, except in cases covered under sections 376 to 376D, which should as far as possible, be completed within 2 months from the date of commencement of examination of witness.

It is interesting to note down that the supreme in the case of **Bhabubhai vs. Gujarat**, categorically observed that, not only the fair trial but the fair investigation is also part of constitutional rights guaranteed under article 20 and 21 of the Constitution of India. Therefore investigation must be fair, transparent, and judicious as it is the minimum requirement of law. In the case of **Salem Advocate Bar Association vs. Union of India** laid down that CrPC provisions must be strictly adhered to in order to ensure the effective and timely disposal of cases.

#### **Role of Indian Judiciary in Protecting the Right of Speedy Trial.**

As observed above the Constitution of India guarantees right to speedy trial. Besides imposing this restriction at the stage when an accused, for the first time, comes in contact with the criminal justice system, it does not explicitly provide for expeditious conduct of subsequent proceedings. However this requirement has been read as implicit in Article 21 of the Constitution. Article 21 of the Constitution provides as follows.

*No person shall be deprived of his life or personal liberty except according to procedure established by law.*

The right to speedy trial is recognised as implicit in Article 21 of the Constitution. In 1978 the Supreme Court adjudicated upon a habeas corpus petition filed on behalf of men and women 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. Article 21 confers a fundamental right on every individual not to be deprived of his life or personal liberty except according to procedure established by law. The Court in **Maneka Gandhi v. Union of India**, held that such “procedure” as required under Article 21 has to be fair, just and reasonable and not ‘arbitrary, fanciful or oppressive. Taking this interpretation to its logical end, Bhagwati J, in Hussainara’s case observed

*‘...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 flows from article 21 and by speedy trial we mean reasonably expeditious trial, as 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 apparatus 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.

Thereafter in **Machander v. State of Hyderabad** 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 Supreme Court. In its judgment the court observed:

*“We are not prepared to keep persons who are on trial for their lives 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 persons accused of crimes are not indefinitely harassed’.*

The Court in **Sheela Barse vs. Union of India**, addressed the question left unanswered in Hussainara’s case and observed;

The right to speedy trial is a right implicit in Article 21 of the Constitution and the consequence of violation of this right would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.”

A landmark decision of Supreme Court in **Abdul Rehman Antulay vs. R.S. Nayak** laid down certain principles relate to speedy trial some of which are as follows:

- + Right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial.
- + While determining, undue delay, must have regard to all the attending circumstances, including nature of offence, number of accused and witnesses, the workload of the court concerned, prevailing local conditions, Proceedings taken by either party in good faith, to vindicate their rights and interest, as perceived by them, cannot be taken as delaying tactics nor can the time taken in



## RIGHT OF SPEEDY TRIAL IN BOOKS AND IN PRACTICE: AN OVERVIEW

---

pursuing such proceedings be counted towards delay.

- + 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.
- + Accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial.
- + 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 reducing the sentence where the trial has concluded- as may be deemed just and equitable in the circumstances of the case.
- + It is neither advisable nor practicable to fix any time limit for trial of offences.

The guidelines laid down in Antulay's case were adhered to in a number of cases. However in the case of **Raj Deo Sharma v. State of Bihar**, the court directed closure of prosecution evidence on completion of two years in cases of offences punishable with imprisonment for period not exceeding 7 years and on completion of 3 years in cases of offences punishable with imprisonment for period exceeding 7 years. But again the effect of this judgment was whittled down in the subsequent clarification order. In the clarification order it was laid down that the following periods could be excluded from the limit prescribed for completion of prosecution evidence, like, Period of pendency of appeal or revision, against interim orders, if any, preferred by the accused to protract the trial; Period of absence of Presiding officer in the trial court; Period of three months in case the office of public prosecutor falls vacant (for any reason other than expiry of tenure).

Perusal of the judicial pronouncements reveals that the judiciary did take a lead firstly in carving out the uncarved right to speedy trial as part of Article 21 of the Constitution and thereafter in concretising the right and providing remedy in case of violation of the right.

However, a rather sad note has been struck by the Apex Court in its decision dated 16th April 2002 in **P. Ramachandra Rao v. State of Karnataka**. The court observed that it is neither advisable, nor feasible nor judicially permissible to draw or prescribe any outer limit for conclusion of all criminal proceedings. A 37 year old criminal case pending trial before a Delhi High Court drew attention of nation towards inordinate delay with the accused approaching the Supreme Court seeking a quietus to the protracted trial. The court scullted an attempt by the accused facing trial for murder of then railway minister L.N. Mishra in 1975 to take advantage and claim the violation of right to speedy trial if the delay is caused due to the administrative factors such as overcrowded court dockets, strike by the lawyers, delay in the notification of the trial judge and pendency of the matter before the higher court. Such delays or delay cannot be violative of accused right to a speedy trial and needs to be excluded while deciding whether there is unreasonable and unexplained delay.

The scope of the right has thus been limited to an accused pointing to the faults on the part of the prosecution for the inordinate delay caused due to the factors such as lack of infrastructure, pendency, administrative inefficiency etc. Besides, this interpretation is against the very basis on which right to speedy trial was read into article 21 according to which a person can be deprived of his liberty only in accordance with a legal procedure which is fair, just and reasonable. The preposition in the judgement delivered on 17-08-2013 is also in conflict with a number of judgements which consolidated right to speedy trial propounded in the Hussain Ara khatoons case. The court has held in several

judgements that the state cannot shy away from its constitutional obligation to provide speedy trial by pleading financial or administrative inability. This decision needs a fresh look by the Hon'ble Supreme Court. Recently the Supreme Court in the case of **Motilal Saraf vs. State of Jammu and Kashmir**, the Supreme Court declared that speedy trial is inherent right in article 21. The present case was one in which during 26 years of its pendency not even a single witness was examined the court reiterated the availability of this right thus; the concept of speedy trial is read into article 21 as an essential part of right to life and liberty guaranteed and preserved under our constitution. The right to speedy trial begins with actual restraint imposed by arrest and consequent incarceration and continues at all stages, namely the stage of investigation,

#### CAUSES OF DELAY AND ARREARS

Various committees and Law Commission of India in many of its reports have dwelled on the issue of delay and arrears in courts. A perusal of some of the observations made in the aforesaid reports gives and insight into the causes that have been recognised as responsible for delay and mounting arrears. In 1949 a High Court Arrears Committee was set up by Government of India under the chairmanship of Justice S.R. Das for enquiring and reporting as to the advisability of curtailing the right of appeals and revisions, the method and other measures which may be adopted to reduce the accumulation of arrears. The committee enumerated various causes of accumulation of arrears. Law Commission of India in its fourteenth Report on Reform of Judicial Administration also recognised various causes of delay. In its seventy-seventh report pointed out that the police quite often deliberately refrains from producing all material witnesses on one day, the object being to clear up the lacunae in the prosecution evidence after the defence case becomes manifest by cross-examination and added that this practice is unfair and not warranted by the CrPC and results in prolongation of the trial. The Law Commission in its seventy-ninth report focussed on delay in High Courts and other Appellate courts and held that increase in the fresh institution of cases in High Courts and delay in making of proper appointment of judges has contributed to delay and accumulation of arrears in a major way.

Law Commission in its one hundred-twentieth report on Manpower Planning in Judiciary – A Blueprint, revealed that India has only 10.5 judges per million populations which is grossly inadequate. Other countries like Australia has 41.6 judges per million, Canada has 75.2 judges per million, England has 50.9 judges per million and United States has 107 judges per million. In addition to above there are certain reasons for delay in seeking the justice from the court these are;

- + Absence of witnesses; absence of counsels, adjournments; failure to examine witnesses though present; Dilatory procedure; Absence of a system of day to day hearing; Delay in delivery of judgments; Slow action on judicial appointments;
- + Non availability of lawyers; Increase in the number of fresh institution of cases; Vague, ambiguous and poor drafting of statutes;

These committees and law Commissions have made certain recommendations to address the problem of delay and arrears. Law commission of India in its fourteenth Report on Reform of Judicial Administration recommended certain measures to address the problem of delay and arrears: In its seventy-seventh report dealing with delay and arrears in trial, the Law Commission of India recommended that a criminal case should be disposed of within six months. It pointed out that in criminal cases it is particularly necessary that delay be eliminated since the decision depends upon oral

rather than documentary evidence and with the passage of time the memory of the witness fades.

Law Commission in its one hundred-twentieth report on Manpower Planning in Judiciary – A Blueprint The Commission recommended that the strength should be immediately increased from 10.5 judges per one million of Indian population to at least 50 judges per million. But even after one and a half decades from the year of submission of the report the ratio of judges still remains at the same level.

In its one hundred twenty fourth report on High Court Arrears, the Law Commission recommended that if the retiring judge is allowed to remain in position till his successor comes in the High Courts and Supreme Court will always be manned by full strength of judges. Further if the services of the retired judges are enlisted to clear the backlog of arrears and oral arguments can be curtailed then High Courts would be able to manage both its arrears and its inflow of work. It added that streamlining of staffing pattern and introduction of management experts and new technology will ensure that courts will be able to carry out their functions more efficiently.

Law Commission in its one hundred fifty-fourth report, devoted a separate chapter on the issue titled “Speedy Justice” and suggested measures in this regard, a few of which are mentioned below:

- + Proper coordination between investigating and prosecuting agency; Directorate of prosecution in each state;
- + Priority to trial of old cases.

**In 2003 Malimath Committee recommended following measures to address the issue of delay and arrears :**

Apart from these recommendations various judges of Supreme Court have recommended following measures to address delays in the criminal justice system. Apart from these recommendations various judges of Supreme Court have recommended following measures to address delays in the criminal justice system:

- + Need for the use of plea bargaining in cases of minor offences.
- + Prosecuting agency should be given sufficient facilities for the court to conduct the cases.
- + Need to allocate sufficient funds to the court for the payment of salaries of staff members of the courts and for the day-to-day expenses for running the courts.

**CONCLUSION**

Speedy trial is in fact an inherent human right without which a dignified life cannot be claimed. The speedy trial right is actually guaranteed in statutes but in practice, the observance of such right is almost negligible. Delayed justice has become a common feature of Indian legal system. A number of committees have been constituted in order to address the problem but still the problem continues. If we want to sustain the objectives enshrined in the constitution of India we have make sure the observance of speedy qualitative justice in real and practical terms. There are vast evil effects of delayed justice especially in criminal cases. Right to speedy trial is not only beneficial for alleged accused but the society at large has its own legitimate interests in the prompt resolution of criminal accusations. Many defendants especially guilty defendants might prefer to delay their trials, perhaps with this hope that prosecutorial evidence would become stale, making it more difficult for the state to carry its ultimate burden beyond reasonable doubt. If the delayed justice in criminal process is not properly addressed the people would lose faith in the ability of process to dispense justice endangering the very existence of the system. Delay in the trial of criminal cases affects not only the accused, victim

but society as a whole. Delay in the trial of criminal cases might involve destruction of liberty and annoyance to the occupation of the accused and puts him to undue harassment. On the other hand it results in the failure of the system of criminal justice to control the retributive tendencies and generally leads to dismay and delusion of the victim and encourages him and the society to take law in to his own hands and thereby recourse to unlawful means to settle scores with the perpetrators of the crime themselves. Keeping into view of the timely justice is an important facet to access to justice simultaneously qualitative component of justice must not be lowered or compromised. Despite the constitutional guarantee of right of speedy trial it remains a fact that the right to speedy trial is treated among one of the most fragile right.

With these words I conclude the research paper:

Nothing is fairly, justly, reasonably and rightly settled if it is not settled within a reasonable time period.

---

1. Khawja Abdul Muntaqim; Protection of Human Rights; National and International Perspective 2010 at p 345 .
  2. Article 21 of the constitution of India provides that, No person shall be deprived of right to life and personal liberty except according to the procedure established by law.
  3. 1992(2) Crimes at pp.186.
  4. The declaration was adopted unanimously by the fifth Virginia Convention at Williamsburg on June 12, 1776.
  5. Article 14(3)(C), International Covenant on Civil and Political Rights, 1966.
  6. Article 3 European Convention for protection of human rights and fundamental freedoms (1950).
  7. Encyclopaedia of Crime and Justice at pp 1495.
  8. Bridges G. S. "The Speedy Trial Act of 1974: Effects of Delays in Federal Criminal Litigation", (1982) at pp. 50.
  9. Indictment or information (police report u/s 173 in Indian context) is to be filed by the prosecution within 30 days of arrest of the accused. In the event the accused is not arrested, this period begins to run from the time accused is summoned. The second interval that is from filing of the indictment till arraignment (framing and reading over the charges in the Indian context) the limit is ten days. From arraignment till commencement of trial, further sixty days are provided. Thus an accused arrested prior to indictment has an effective time limit of 100 days from arrest or summons to trial, while accused arrested or summoned after indictment has an overall limit is 70 days. The Act also provides that the action is to be dismissed when the action exceeds the time limits associated with the intervals. If the delay occurs in the first two stages that is between arrest and arraignment, the termination of the prosecution is automatic. Once the accused is arraigned the prosecution can be dismissed at the discretion of the court--Section 3161 (b). The Speedy Trial Act of 1974, U.C.L.R. 1976, Vol. 43 no. 4, p. 670.
  10. Id., p. 672
  11. Sections 3161 (h) (1) to section 3161 (h) (7), Richard S. Frase, "The Speedy Trial Act of 1974," U.C.L.R. 1976, vol. 43 no. 4, p. 671.
  12. U.S. (1972)407.
  13. 37 L Ed 2d 56.
  14. Mahesh T. Pai, "Delay in Criminal Justice System: Common Cause Evaluated", 1996 (Sept – Dec): 20 C.U.L.R, 9. 400.
-

15. Id., p. 401.
16. Ibid.
17. Halsbury's Laws of England (2008), IV ed. Reissue, vol. 11(2), para 851.
18. Prosecution of Offences Act, 1985, Section 22 (11).
19. Id., Section 22 (1), 22 (2).
20. Halsbury's Laws of England (2005), IV ed. Reissue, vol. 11 (2), para 855.
21. Prosecution of Offences Act, 1985, Section 22 (4).
22. Halsbury's Laws of England (2008), IV ed. Reissue, vol. 11(2), para 852.
23. Id., para 851.
24. AIR 1976SC, 1734.
25. The Code of Criminal Procedure, 1973, Section 167(2).
26. (2010) 6 SCC, 1397
27. Section 167 (5) Code of Criminal Procedure 1973.
28. First Information Report.
29. This section excludes those offences for which the death Penalty is provided.
30. The Code of Criminal Procedure, 1973, Section 309 (2).
31. Ibid. Section 309(2), proviso, Para. 2.
32. Ibid. Section 309(2), Para 3.
33. Id., Section 309 Explanation 2.
34. Ahmad Siddiqui: Criminology; Problems and Perspectives, 4th edition, 1997.
35. Section 260 Of Code of Criminal Procedure, 1973.
36. 2011(1) SCC (Cri.)336.
37. (2005) 6 SCC at pp.344.
38. HussainaraKhaton (I) vs. Home Secretary, State of Bihar (1980) 1 SCC 81.
39. Ibid, at pp. 84.
40. (1978) 1 SCC 248.
41. (1980) 1 SCC 81.
42. HussainaraKhaton (IV) v. Home Secretary, State of Bihar (1980) 1 SCC 107.
43. A.I.R. 1955 SC 792.
44. (1986) 3 SCC 632.
45. (1980) 1 SCC 81.
46. (1992) 1 SCC 225.
47. (1992) 1 SCC 225.
48. A.I.R. 1998 SC 3281.
49. (1999) 7 SCC 604.
50. A.I.R. 2002 SC 1856.
51. India Today: Supreme Court jolt for Right to Speedy Trial;29-08 2013.
52. (2007)1 SCC (Cri.)180.
53. Inadequacy of judges; Delay in filling up vacancies; Lack of court accommodation; Diversion of serving judges to other duties such as commission of inquiries etc. without providing replacement in the High Courts, As quoted in Law Commission of India, Seventy Ninth Report, at p. 4
54. Absence of witnesses, absence of counsel, adjournments on adequate grounds or otherwise, crowded lists and failure to examine witnesses though present, absence of a system of day to day hearing and delay in delivery of judgments.
55. P. 767, par 2.

56. P. 41, par 12.8.
57. P.1.
58. P. 2-3, para 8.
59. UpendraBaxi (1982) *The Crisis of Indian Legal System*, p.65.
60. Id., p. 75.
61. BiswanathBajpayee, "laws Delays," *Journal of Bar Council of India*, 1978, vol. 7 (1), p. 71.
62. Ibid.
63. Vol. 2, p. 788, para 29. Separation of judiciary from executive, Revising the rates of batta and travelling allowance of the witnesses attending the criminal courts, Increase in the strength of magistracy, Supported the idea of separation of investigating agency.
64. At pp. 3, para 1.10.
65. P. 41, para 12.1.
66. P. 26, para 6.2.
67. P. 36, para 3.6 & 3.24.
68. As quoted by M.L. Sharma, "Towards Speedy Justice," 1999 C.B.I. Bulletin, vol. 4, p. 15.
69. Reforms of the Criminal Justice System; Malimath Committee Report, 2003 at pp. 158.
70. Increase in the number of offences that can be compounded, All cases in which punishment is three years and below should be tried summarily, There should be an arrears eradication scheme based on the lines of fast track courts so as to cut down backlog. Persons with considerable experience in criminal cases should be selected so as to ensure rapid disposal of cases. A large number of petty cases may be posted exclusively before one judge so as to ensure expeditious disposal of cases. Creation of special benches in Supreme Court and High Courts for clearing the arrears while current cases ought to be disposed by the regular benches. Government must provide sufficient funds for the successful implementation of the scheme.
71. Compilation of the recommendations from various speeches of Judges circulated in National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays, 24th-25th Oct' 2009, VigyanBhavan, New Delhi. Need for the use of plea bargaining in cases of minor offences, Prosecuting agency should be given sufficient facilities for the court to conduct the cases, Need to allocate sufficient funds to the court for the payment of salaries of staff members of the courts and for the day-to-day expenses for running the courts.
72. Compilation of the recommendations from various speeches of Judges circulated in National Consultation for Strengthening the Judiciary towards Reducing Pendency and Delays, 24th-25th Oct' 2009, VigyanBhavan, New Delhi.

## Publish Research Article International Level Multidisciplinary Research Journal For All Subjects

Dear Sir/Mam,

We invite unpublished Research Paper, Summary of Research Project, Theses, Books and Book Review for publication, you will be pleased to know that our journals are

### Associated and Indexed, India

- \* International Scientific Journal Consortium
- \* OPEN J-GATE

### Associated and Indexed, USA

- EBSCO
- Index Copernicus
- Publication Index
- Academic Journal Database
- Contemporary Research Index
- Academic Paper Database
- Digital Journals Database
- Current Index to Scholarly Journals
- Elite Scientific Journal Archive
- Directory Of Academic Resources
- Scholar Journal Index
- Recent Science Index
- Scientific Resources Database
- Directory Of Research Journal Indexing

Golden Research Thoughts  
258/34 Raviwar Peth Solapur-413005, Maharashtra  
Contact-9595359435  
E-Mail-ayisrj@yahoo.in/ayisrj2011@gmail.com  
Website : www.aygrt.isrj.org