

## **JUSTICE DELAYED IS JUSTICE DENIAL: WITH SPECIAL REFERENCE TO JUDICIAL PRONOUNCEMENTS IN INDIA**

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### **ABSTRACT**

*Now it is established fact that justice delayed is justice denial. Right to quick redressal is now recognized as a fundamental right by way of several judicial pronouncements. Other side it is also established that justice hurried is justice buried. Quick trial and fast disposal of cases never indicate to by pass the procedure that is prescribed in C.P.C., Cr.P.C., evidence Act or any other relevant procedure law. The courts should do their best within the legal frames. Several committees have discussed on the problem. Law commissions of India have expressed their great concerned about the huge backlog and institution of cases. Judiciary has also been trying to resolve the issue with its limited sources. Hence, this problem of delay in disposal of matters can only be resolved by the joint efforts of govt. and judiciary. The aim should be to make available expedite and fair judicial disposal of cases.*

**Keywords:** *Justice Delayed, Quick Redressal, Judicial Pronouncements, C.P.C., Cr.P.C.*

### **Introduction**

“Justice delayed is justice denial” is a legal proverb, which means that if a party that suffered harm but do not arrive for redressal on time, it is effectively equivalent to taking no remedy at all. This principle is the basis of the power of speedy judgment and similar rights intended to speed up the judicial system, because the injured party has to bear the damage, and there is little hope of resolution, which is unfair. This sentence has become a call to law reformers who believe that the current judicial system is too complicated and overburdened, and therefore government and courts are too slow to resolve legal problems.

Western media believes that India’s judicial institutions are the best and independent. It’s innovative judgments and fair path have been appreciated by all. But the only criticism of this is that it is very slow, recognizing the party’s rights even after the parties death.

Sometimes disposal of case takes years and years which is the most important weak point of the whole judicial system. It is ultimately failure of social justice, when a father files suits and after his death his grandson gets the relief, due to such kind of delay in justice, the real ends of justice become frustrate. If timely justice is not provided, then the Justice loses its importance and violates the concept of social justice. When a person comes to the court to seek justice for his lawful rights, then the court and law are required to grant timely protection of his rights, otherwise delay in such protection causes injustice itself.

The main cause of delay in civil litigation is the complex procedure of the Civil Procedure Code, 1908 and overabundance of cases for which the present Judge’s strength is totally deficient. The number of pending cases in India is growing at an alarming rate every day and the litigants face weak prospects of their cases being deferred rapidly.

### **Dangers of Delay**

The most important purpose of the judiciary is to ensure the protection of the innocent. Delay invites a lot of problems and prolongs pendency of cases causes serious repercussions on the public. An effective, fair and expedient trial is the fundamental right of every citizen. The Supreme Court in recent years by invoking Article 21 have tried to give some relief to people in this regard. Some of the dangers which could be caused as a result of the delay in litigation is discussed below:

- **Faith of the Common People in Judiciary Loses**

When a judgment arrives too late, it contributes to a negative model of the judiciary in the eyes of the common man. Common people's faith in the judicial system is lost and they find it difficult to inspire confidence again which leads to a serious implication on the justice system of the country.

- **Non-appearance of the Witnesses**

Many times the witnesses do not come to the Court because they realize that the procedure of the Court is complex, slow, lengthy and time-consuming. In many cases, the witnesses are not available due to death, address not known, transfer, etc.

- **Wrongdoer gets the Chance to Avoid Litigation**

Delayed justice encourages the culprit to evade the law to the prejudice of the opponent. In the majority of cases, the culprit escapes liability taking advantage of the situation. Sometimes it might also happen that the opponent agrees to the terms of the wrongdoer or loses the case altogether.

- **Mental and Physical Agony to the Party to the Suit**

Sometimes, when a case is stretched for a long time it cause mental and physical suffering to the party of the suit.

### **Judicial Pronouncements in Favour of Early Disposal of Cases**

There are a large number of verdicts of hon'ble Supreme Court and various High Courts in favour of early redressal of cases.

In **state of West Bengal V. Anwar Ali Sarkar**,<sup>1</sup> Hon'ble S.C. declared that, "the necessity of a speedy trial is too vague and uncertain to form the basis of valid and reasonable classification. It is too indefinite as there can hardly be any definite objective test to determine it. It is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subjected to the special procedure prescribed by the Act."

In **Machander V. State of Hyderabad**,<sup>2</sup> the S.C. denied sending back the matter to the original court for re-trial for five years of delay in conclusion of trial. The S.C. proclaimed that, "We are not prepared to keep persons on trial for their live and under indefinite suspense because trial judges omit to do their duty----- We have to draw a nice balance between conflicting rights and duties ----- While it is incumbent on us to see that the guilty do not escape, it is even more necessary to see that the person accused of crimes are not indefinitely harassed----- While every reasonable latitude must be given to those concerned with the detection of crime and entrusted with administration of justice, but limits must be placed on the lengths to which they may go."

In another case of **Chajoo Ram V. Radhey Shayam**,<sup>3</sup> Hon'ble S.C. found that, "delay in trial was one of the factors on the basis of which the Supreme Court dropped the further proceedings."

In **State of Uttar Pradesh V. Kapil Deo Shukla**,<sup>4</sup> the Court declared that, "the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years."

The S.C. Court in **Maneka Gandhi V. Union of India**<sup>5</sup> declared that, "Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal liberty except according to procedure established by law and Such procedure as required under Article 21 has to be **Fair, just and reasonable** and not **arbitrary, Fanciful or oppressive**. If a person is deprived of his Liberty under a procedure which is not **reasonable. Fair or Just**, such deprivation would be violative of his Fundamental right under Article 21 and he would be entitled to enforce such fundamental right and secure his release."

The S.C.'s judgment, **Hussainara Khatoun (iv) V. Home Secretary, State of Bihar**<sup>6</sup>, is a land mark in the development of fast redressal jurisprudence. The facts of this case were that, "A writ of habeas corpus was 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."

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<sup>1</sup> AIR 1952 SC 75.

<sup>2</sup> AIR 1955 SC 792.

<sup>3</sup> AIR 1971 SC 1367.

<sup>4</sup> (1972) 3 SCC 504.

<sup>5</sup> (1978) 1 SCC 248.

<sup>6</sup> (1980) 1 SCC 81.

**Hon'ble P.N. Bhagwati J.**, in this case said, "..... Procedure prescribed by law for depriving a person of his liberty cannot be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person. The court further observed that, "it is also the constitutional obligation of this Court as the guardian of the Fundamental rights of the people, as sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing necessary directions to the state which may include taking of positive action, such as augmenting and strengthening the investigative machinery, setting up new courts, building new court houses, providing more staff and equipment to the Courts, appointment of additional judges and other measure calculated to ensure speedy trial."

The principle of **Hussainara Khatoon's case** was followed in a lot of verdicts of the Supreme Court. In **State Of Bihar V. Uma Shankar Ketrival**,<sup>1</sup> the facts of the case were that, "the High Court quashed the proceedings on the ground that the prosecution which commenced 16 years ago and still in progress, is an abuse of the process of the Court and should not be allowed to go further."

In this case the S.C. declared that, "Such protraction itself means considerable harassment to the accused and that there has to be limit to the period for which criminal litigation is allowed to go on at the trial stage. We cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by, such protraction itself means considerably harassment to the accused not only monetarily but also by way of constant attention to the case and repeated appearances in Court, apart from anxiety.

In the case of **Maharashtra v. Champalal Punjaji Shah**<sup>2</sup> the court declared that, "While deciding the question whether there has been a denial of the right to a speedy trial, the court is entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the court's docket or under-staffing of the prosecutors and whether the accused contributed a fair part to the time taken."

This decision was criticized by **Prof. Upendra Bakshi**,<sup>3</sup> who commented that, "Even if the accused prefers interlocutory appeals it cannot be inferred that he contributed to delay, as by doing so he merely avails the opportunity-structure provided by the law of the land. Moreover, legal strategies are determined by the accused person's counsel and not by the accused himself as he cannot be expected to understand subtleties of law and its procedures. Delay caused by failure on the part of the courts to assign priority to the organization of day to day work cannot be said to be unintentional."

In **Kadra Pahadiya v. State of Bihar**,<sup>4</sup> P.N. Bhagwati, J. proclaimed that, "8 more years have passed, but they are still rotting in jail, not knowing what is happening to their case. They have perhaps reconciled to their fate, living in a small world of their won cribbed, cabined and confined within the four walls of the prison.

The Court Further stated that, "..... any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this court in discharge of its constitutional obligation has the power to give necessary directions to the state governments and other appropriate authorities for securing this right to the accused."

In **Mantoo Majumdar v. State of Bihar**<sup>5</sup> the facts of the case were that, "Two petitioners had spent seven years in jail without trial. The Government of Bihar was unwilling to furnish the facts sought by the Court and was insensitive to the plight of the under trials rotting in jails for long years."

The court decided that, "Under section 167 Criminal Procedure Code, The Magistrate concerned have been mechanically authorizing repeated detentions, unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention."

In **Raghubir Singh v. State of Bihar**,<sup>6</sup> Supreme Court proclaimed that, "The right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. The question whether the right to speedy trial has been infringed depends upon various factors. A host of question may arise for consideration: Was there delay? Was the delay inevitable having regard to the nature of the case? Was the delay unreasonable? Was the delay caused by the tactics of the defence? There may be other questions as well. But ultimately the question of infringement of the right to speedy

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<sup>1</sup> (1981) 1 SCC 85.

<sup>2</sup> (1981) 3 SCC 610.

<sup>3</sup> Upendra Bakshi; Right to speedy trial: Geese, Gender And Judicial Sauce; 2nd ed. 1986; P. 243

<sup>4</sup> (1983)2 SCC 104.

<sup>5</sup> AIR 1980 SC 847.

<sup>6</sup> AIR 1987 SC 149.

justice is one of fairness in the administration of criminal justice even as **acting fairly** is the essence of the principle of natural justice and **a fair and reasonable procedure** is what is contemplated by the expression **procedure established by law** in Article 21.”

In **Madhu Mehta v. Unuon of India**,<sup>1</sup> the S.C. decided that, “Article 21 is relevant in all stages. Speedy trial in criminal cases, though may not be a fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one’s fundamental right to life and personal liberty.”

In **Sheela Barse v. Union of India**<sup>2</sup> the S.C. proclaimed that, “Where a juvenile is accused of an offence punishable with imprisonment of 7 years or less, investigation was to be completed within 3 months of the filing of F.I.R. or else the case was to be closed. Further, all proceedings in respect of the matter had to be completed within further six months of filing of the charge-sheet. The right to speedy trial is a right implicit in Article 21 of the Constitution and the consequence of violation of this right could be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right.”

In **Mihir Kuma v. Stat of West Bengal**,<sup>3</sup> where a criminal matter had been undecided for fifteen years, the S.C. decided that, “It amounted to violation of the constitutional right to speedy trial of a ‘fair, just and reasonable’ procedure, hence the accused was entitled to be set free.”

Thus there are several judicial pronouncements which recognised the right of speedy trial to defeat the justice delayed.

### Conclusion

Speedy Justice is a fundamental right and has also been reiterated by the Apex Court in a number of cases. Inordinate delay is unjustified and violates the fundamental right guaranteed under Article 21 the Constitution of India. The Supreme Court in **Hussainara Khatoon V. State of Bihar, Abdul Rahman Antulay Vs. R. S. Nayak**, held that the procedure which does not provide for speedy trial cannot be regarded as just, fair and reasonable.

It is both in the interest of the accused as well as the society that a criminal case is disposed soon. Long pending criminal cases, money suits, matrimonial matters require quick and timely disposal. Delay in these cases is torture and denial of justice. In accident claims delay causes great suffering to the dependents of the deceased.

If timely justice is not provided to the sufferer, it loses its importance. If rain falls after destruction of the crops, it is of no use. In the legal meaning if a victim of violence or an innocent person does not get relief in proper time, he is bound to finish.

In this age of time, it is must to resolve the problem of judicial delay, to maintain the public faith in the judicial institution. Justice is not only be provided to the sufferer but also it must be on time. Timeliness of justice is an essential element of fair justice. This is the time to recognize and analyse the judicial delay and find out the mechanism to fight with the same. New methods, techniques and procedures are required to be recognized to defeat the justice delayed. We have to avoid the situation of justice denial by way of Justice delayed.

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<sup>1</sup> (1989) 4 SCC 62 : AIR 1989 SC 2299: 1989 SCC (Cri)705.

<sup>2</sup> (1986) 3 SCC 632.

<sup>3</sup> 1990 Cr. L.J. 26 (Cal).