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SPEEDY JUSTICE: THE PARAMOUNT GOAL

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Peace is not the absence of war but the presence of justice. - Harrison Ford

Abstract

Justice: The concept of "Justice" being a comprehensive theory in its nature. Majorly deals with the idea of how people are treated. Justice is the basis of any established state and means rendering *every man his due*. According to Lord Wright, *"Justice is what appears to be Just and Fair to a reasonable man."* Delivery of Justice and speedy reach is the mainstream aim of the Justice. The great profounder of *"A Theory of Justice, 1971"- John Rawls,* attempts at describing the concept of Justice as *"the first virtue of social institutions."*Justinian explains it to be a matter of rightful claim from the justice dispensing agencies, whether a person or institutions of the state. The contrasting idea of justice is that, "we demand justice, but we beg for charity or forgiveness", thereby justice, a right of a person has to be delivered by the justice dispensing agents. Justice becomes a matter of obligation for the agents dispensing it. And when the concerned agent wrongs the recipient, the latter is denied what is due to her.

Introduction

This work is an effort to examine the diverse aspects of speedy justice with a comparative study of concepts of speedy justice in USA, U.K and India. It identifies the idea of Right to Speedy Justice and some Court Rulings to understand the relevance of Speedy Trial in the Indian Judicial system.

Many decades had passed that our Indian Judicial System, had realized that the legal and judicial system has to be revamped and restructured so that the injustices against helpless and despairing victims of callousness of the legal system, do not occur and disfigure the fair and otherwise luminous face of our nascent democracy.

Justice is a constitutional mandate[1] and the mankind had been aspiring for the quest for the ideal justice for generations down the line. Eventually the concept of Justice of has become a foundational essence and object of any organized and civilized society. Although there is no provision in the Constitution of India which specifically states the concept of Justice, however Article 14 guarantees equality before law and the equal protection of law and Article 21 includes speedy trial as an integral and essential part of the Fundamental Right to Life and Liberty to every citizen of the nation.[2]Article 39A of the Constitution of India also mandates the State to secure the operation of the legal system and promotes justice on the basis of equal opportunity and ensures that the same is not denied to any citizen by reason of economic or other disabilities.

Beside these provisions, the reason why our legal and judicial system continually fails at dispensing the timely justice is because of the complex, expensive and tardy judicial structure,

[1] J. B.S. Sinha, Judicial Reform in Justice Delivery System

[2]HussainaraKhatoon v. Home Secretary, State of Bihar, AIR 1979 SC 1360: 1979 Cr LJ 1306: (1980) 1 SCC 81

which devoids not only the poor but every individual of his due share of justice. Being entitled to rights makes no sense when citizens cannot enjoy those rights equally.

"People want justice, pure, unpolluted, quick and inexpensive and the have every right to receive the same." But in reality there are deplorably long delays in the Dispensation of Justice, the need for the speedy justice cannot be gained because as said, "If Justice is not executed speedily men persuade themselves that there is no such thing as justice".[3]

Speedy Justice is the cardinal principle of Criminal Justice System. And according to Lord James Bryce, *"There is no better test of excellence of a government, than the efficiency of its judicial system, for nothing more merely touches the welfare and security of an average citizen than his sense that he can rely on the certain and prompt administration of Justice."*

History of Concept of Speedy Justice

(i) Ancient Period

The quest for the justice has been aspired by the mankind for ages. Our society which comprises of the human beings is not untouched from the individual aspirations, ego and greed. The individual instinct of human beings has always been guided by the evils, namely: Karma, Krodha, Moh, Maya, Lobh, Matsar and Ahankar.All these evils can be found well placed in the modern definitions of 'crime' and 'offences'. In ancient Bharat, the king was not the law maker, but was responsible to administer justice to the people. It was vested upon the king 'thou shall punish those who deserve punishment, and if you fail to do so, the stronger would roast the

[3] James Antony, "Short Studies on great subjects" (1818-94) 'Calvinism' 1871

weaker, like a fish on the spit.'[4]In the ancient times, the Hindus inhabited the majority of the Indian Sub-continent and formed a homogenous society. In those times the ultimate power as well as the absolute power of the State always remained with the King, who used to administer law with the aid and advice of learned Brahmins and ministers. The law was applied on the basis of ancient religious texts and the societal practices.Kautilya's "Arthashastra, Manusmriti", and other texts were well filled with knowledge and wisdom were considered the guiding force."[5]In Sanskrit language, the synonym of law is 'dharma'. Manu defined dharma in Manusmritiin the second verse as what is just and customary.[6] However, other than the legal aspect, dharma includes all the moral, religious, legal, ethical and social principles which guide the conduct of man and society.[7]Dharma was closely related to the duty of the King and the King was entrusted with a fundamental obligation to protect the people, to give them the security in life, property and to maintain social stability in order to enable the prosperity in the State.[8]There were many schools of Dharma Shastras namely; Manu, Brahaspati, Prasar and other Shastras. Also when the Kings did not follow the religious texts and practices and who did not deliver justice to their subjects were condemned with contempt. So, the Kings also appointed Judges to administer law and maintain order amongst the subjects.[9] Some ideas of speedy justice by some great Hindu philosophers are mentioned below;

- Yajnavalkaya's Rule

[4]Hari Om Maratha, Law of Speedy Trial "Justice Delayed is Justice Denied" 5(2008)
[5] B.L Arora, Law of Speedy Trial pg2 (2006)
[6] S.D. Sharma, Administration of Justice in Ancient India 35 (Harman Publishing House, Delhi, 1st Edn., 1988)
[7]Anjali Kaul, Administration of Law and Justice in Ancient India 1 (Sarup and Sons, Delhi, 1st Edn.,1993)
[8] H. V. Sreenivasa Murthy, History of India Part-I 192 (Eastern Book Company, Lucknow, 2000)
[9] B.L Arora, Law of Speedy Trial pg2 (2006)

Yajnavalkaya's rule is considered to have laid down that in accusation of Sahasa (crimes with violence like murder, robbery, etc) theft, defamation and abuse, hurt and assault and cow (killing) in accusation of the major suits character of women, these types of cases should be disposed expeditiously. However, in other cases, the court could grant delay at its own discretion.Also in the cases of accusation of Pataka like killing of Brahman, or drinking of wine etc., it was considered as serious type of defamation when a Brahman is falsely accused of having drunk wine, for instance, unless the court takes prompt action by calling the accuser to prove his case, the Brahman's reputation is at stake. These cases were the basis for the speedy justice aspect as the mere accusation of offence would hamper the life of the accused.

- Narada's Rule

Narada had stated that, 'In matters relating to cows, land, gold, women, theft, parusya (defamation, insult, hurt, assault, etc.) Sahasa (murder, rape, etc.) accusation of pataka(like killing of Brahman, drinking wines) are the urgent matters, these types of cases must be disposed of immediately (as speedily as possible)'.

- Katyayana's Rule

Katyayana had stated that, 'In matters relating to cows and bullocks, land, women, child birth, and also in the matters relating to rape and sexual offences with an unmarried girl, in theft, in quarrels, in violent crimes, in dispute over treasure troves, matters causing fear and false evidence, these types of cases should be tried with immediate effect.[10]When the disputes over such matters came up before the courts, they required speedy disposal. When in cases a person was accused of giving false evidence, it was necessary that the accused should not be granted

[10]Katyayana quoted in KatyayanaSmriti c. III-I, 94

delay, because with the passing of time, the exact words used might be forgotten and he might be encouraged to be a false witness in such cases.

(ii) Medieval Period

The Muslim kings generally used to follow the rules that were stated in the Quran, but a number of Muslim kings did not find those rules practicable. During the medieval period the sources of law were not wholly in form of legislations, rather they were in the form of revelations.[11]During this period the Islamic Govt. used to classify law under two sources as the Shariat and the Urfi law. The trial of every case during this period was governed by these two laws only. The Shariat law was based on the principles of the Quran only,it has three components namely- the Quran, Hadis and Ijma. The law considered next to Quran is Hadis and the Hadisprovided the best interpretation of law and contributed majorly in the development of the Shariat law. In the case of Ijma and Qiyas, it developed in the later time of the century. On the other hand Urfi law was based on justice and fair play and mainly related to trade, property, war, taxation, etc. The judges were vested with the powers to exercise discretion to interpret whatever which is not provided for in the Shariat law, as Quran does not contain the legal principles in precise language.

Also in this period there were different laws for governing Muslims and Non- Muslims. The Shariat law was applicable only on those who believed in Islamic religion and consequently whole of Muslim law was not applicable on Non- Muslims.[12]The purely religious portions of law were applicable on Muslims only and the secular portions of law applied to Muslims and Non-

[11] B.S. Jain, Administration of Justice in Seventeenth Century India 12 (Metropolitan Book Co. Private Ltd., Delhi, 1st Edn., 1970)
[12] Baillie: "Digest of Muhammadan Law," pg. 174

Muslims alike. Hindus, Buddhists and other non-Muslim subjects were governed by their own respective religious and personal laws. When the tribunal happened to be the court of the Qazi, or the court of the sovereign the suits involving the points of personal law of the Hindus, were used to be adjudicated with the aid of the learned Pandits and Brahmans, in the case of the other races, with the aid of their learned men.[13]

In Medieval Period under different rulers there was difference in legal practices.In this period only it was the duty of Sultan to appoint a Qazi, the chief Qazi was known as Qazi-ul-Quzatwho had the powers to appoint and dismiss subordinate Qazis. He was the highest judicial officer of the country.

Some ruler followed Shariat law absolutely and some followed secular approach.

- Pre Mughal Period

Initially the Mughal system for administration of justice moved at a slow pace, the judicial machinery was set up gradually and was modified and improved from time to time in this period.It was in this period only when tribunals were established, court houses were built, judicial officers appointed and rules of procedure were prescribed. At the time of QutbuddinAibak, the chief Judge {Qazi-ul-Quzat) was first appointed to supervise the work of the subordinate Qazis.The practice of the Muslim sovereigns was to administer justice in person. Almost all the Muslim rulers of this period used to set up court and hear suits and appeals. Al-Badayuni pointed out that Sultan Muhammad Tughlaq constituted himself to be "the Supreme Court of appeal", and used to revise the decisions of Qazis for meeting the ends of justice.[14]

[13]Fatawa-i-Alamgiri, Vol. II pg. 3
[14]Muntakhab-i-Tawarikh, pg. 311 (translated by G.I. RanKing)

- Mughal Period

During the Mughal Period the influx of cases was meagre or because of some other reasons there were no specific provisions of speedy trial. The literature concerning the criminal justice system, initially for the Mughal period in India in brief recognizes that it was endeavoured to dispose off the cases as quickly as possible so that neither the evidence of witnesses decayed nor the sequence of events were destroyed by lapse of time. The Mughal rulers used to hold there court everyday where ordinary cases were decided. Like, Akbar held his court after prayers and administered justice there.[15]While embarking on the Bengal expedition, Akbar held his court in the boat and decided cases there.[16] On the other hand a special day was reserved for the administration of justice, the Mughal rulers used to hear cases in the Diwan-i-Aam also on almost all the days of the sitting of the court. When the petitions of the aggrieved parties concerning different matters were presented, the persons involved were ordered to present themselves before the ruler who heard their complaints and delivered judgement usually on the spot. In certain cases there were full investigation ordered, sent for detailed report and then decision was given.

The rulers were supposed to dispose of a large number of cases at a court of first instance and as the highest court of appeal. From the above finding one thing is clear that the trials in Mughal India by the Kings were 'Speedy' and so the punishments, which boosted the concept of speedy justice.

(iii) Modern Period

- Under British

[15]Akbar Nama, III, pg. 717, Bev. Ill, pg. 373
[16]Akbar Nama, III, 88; Bev. II, pg. 12

The first few institutions introduced by the British to the system of judiciary in India during the 17th century were the Mayor's Courts at Bombay, Madras and Calcutta. The result was that "common law" got imported in India, slowly and gradually inasmuch as the establishments by the East India Company became "the basis of the English Law in India" which in course of time brought over tremendous influences over the laws and the system of administration of justice in the whole of this subcontinent.[17]Introduction of the Indian Penal Code, Evidence law, and Criminal Procedure Code initiated the influence of common law solely for the purposes of the administrative expediency as well as to prolong the duration of Judicial Proceedings.[18]Lord Cornwallis introduced the plan of having a civil and criminal court at every 10 kilometres, and Lord William Bentick planned the establishment of intermediary courts of appeal so that the litigants do not have to travel a long distance for appeals. The judicial business of the Privy Council was minimized by enlarging the jurisdiction of the appellate courts. Yet there was delay in the disposal of cases. One reason for this problem was that the judicial officers were mostly Europeans who availed vacations twice in a year. Thus the work remainedunattended for months together.The inconvenient procedures brought from England as part of the common law were yet another factor responsible for the problem of delay. The major concern of Government regarding delay in judicial process centred around the questions of allowing reference, revision and appeal in various matters at various stages of the legal process. The British had also introduced, as per the likes of their own system of administration, quasi-judicial institutions like the tribunals and vesting them with a part of normal powers to decide disputes. British also encouraged the system of arbitration, mediation and conciliation so that the delay in disposal of cases was minimized. Several committees and commissions were appointed to examine the problems arising from the

[17] M.C. Seetalvad, "The Common Law in India" (1965) at pg. 2
[18] S.K. Mukherjee and A.K. Gupta, 'Delay in the administration of criminal justice' (1978) at pg. 6, 7, 8

application of laws and the functioning of the legal institutions. Prominent development of them was the law commission of India, which from 1850's onwards took upon itself the task of suggesting reforms of the judicial system and a revision of the substantive and procedural laws. Based on the recommendations of the law commission changes were made in the rules of law and the organization of judicial institutions. The Indian Penal Code, 1860 and the Criminal Procedure Code, 1861 are the most significant contributions during the British Regime towards building a system of criminal justice.The British enactments had undoubtedly contributed to the Indian Jurisprudence but too much 'emphasis' on the procedures resulted in the litigation getting delayed in the court of law therefore, efforts were required to be made for cutting down the procedural lapses and the corrupt practices that had grown in our legal system during the British Period.

- Post-Independence

Our nation has a glorious past of functional accomplishments and admirable social purpose which forms the justice administration in India. The present administration of criminal justice system in India is undoubtedly a legacy of British rule but this statement does not imply that we never had a good judicial set up in our country. As per the records of Indian Legal History, we have had a well flourished and organized criminal justice system, which has been already stated earlier in this article. India after attaining independence from British rule, consciously opted to retain the 'British system' of law and government and some of the leading principles of western political and legal thoughts found a place in its fundamental law, which includes the 'supremacy of law', notions of 'equality and liberty' as well as the system of 'checks and balances' to ensure separation of functions of three organs of government i.e. Legislature, Executive and

Judiciary.[19]The need for speedy justice wasn't the main focus of our judicial system for the initial years after the independence, its need was only felt after we progressed as a nation.The Post-Independence judicial system and how need for speedy justicewas felt will be discussed further in this article.

Concept of Speedy Justice in World(International Instruments and Countries)

I. International Instruments:

Several international instruments have shown concern towards the aspect of speedy trial and an effort is made to identify some of those instruments as stated below:

- Right to Speedy Trial under European Convention on Human Rights, 1950

Articles 5(3) and 6(1) of the European convention guarantee the right to be tried within a reasonable time. While Article 5(3) deals with the pre-trial stage, Article 6(1) relates to the trial on a criminal charge.[20]

- Right to Speedy Trial under International Covenant on Civil and Political Rights, 1966

Under Article 9(3) it is stated that any person arrested or detained on a criminal charge shall be brought promptly before a judge or other official authorized by law and shall be entitled to trial within reasonable time or to release. The right to a fair trial is protected under the Article 14 which recognizes and protects the right to justice and a fair trialand Article 16 requires states to recognize everyone as a person before the law, these are some provisions of the ICCPR which

[19] Smt. Maneka Gandhi V. Raj Narain – AIR 1975 SC 2299, at pg.2317
[20] European Convention on Human Rights 1950 Article 5,6

has over one hundred and seventy State signatories and includes a promise to afford defendants the right to a speedy trial.[21]

- Right to Speedy Trial under Universal Declaration of Human Rights, 1948

As per Article 8 ofUDHR, 1948 it states that "everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the Constitution or by law."Also Article 10 of the UDHR is associated with the right to speedy trial and provides that"everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[22]

- Convention on the Rights of the Child, 1989

According to Article 40(2) (b) of the Convention on the Rights of the Child, provides: "Every child alleged as or accused of having infringed the penal law has at least the following guarantee: Article 40(2)(b)(iii) - to have the matter determined without delay by a competent, independent and impartial authority or judicial body."[23]

- ICC Statute, 1998

Under Article 64(2) of the ICC Statute 1998 it is provided that: "The Trial Chamber shall ensure that the trial is fair and expeditious." Article 64(3) provides: "Upon assignment of a case for trial in accordance with this Statute, the Trial Chamber assigned to deal with the case shall ... confer with the parties and adopt such procedures as are necessary to facilitate the fair and expeditious

[21] International Covenant on Civil and Political Rights, 1966 (Aug.20, 2020, 10:04 AM), https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx
[22] Universal Declaration of Human Rights, 1948 (Aug.20, 2020, 12:14 PM), https://www.un.org/en/documents/udhr/
[23] Convention on the Rights of the Child, 1989 (Aug.21, 2020, 11:50 AM), https://www.ohchr.org/en/professionalinterest/pages/crc.aspx

conduct of the proceedings. Article 67(1)(c) of the ICC Statute provides' that the accused shall be entitled "to be tried without undue delay."[24]

II. Countries:

(i) Speedy Justice in USA

Right to speedy justice has been recognised by the laws of many countries. It is evident from the fact that it found place in the Virginia Declaration of Rights of 1776 and after that into the Sixth Amendment of the Constitution of United States of America which states that, "In all criminal prosecutions, the accused shall enjoy the right to speedy and public trial". USA also has the Federal Act of 1974, Speedy Trial Act that establishes a set of time limits for all major events in the prosecution of criminal cases, including information, condemnation and allegation.The Sixth Amendment in detail provides that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state and district wherein the crime shall be committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation to be confronted with witnesses against him; to have compulsory process for obtaining witnesses in his favour and to have the assistance of counsel for his defense."[25] Also USA is the only country which has enacted a legislation to implement the constitutional guarantee of speedy trial to all the accused persons. The Act is known as the Speedy Trial Act which was passed in 1974. The Act prescribes a set of time limit for carrying out major events in criminal proceedings. The Act requires the trial of a defendant should commence within 70 days from the date of filing of the indictment or from the date on which the

[24] ICC Statute, 1998 (Aug.21, 2020, 12:30 PM), https://www.icc-cpi.int/resource library/documents/rs-eng.pdf

[25]Overview of Criminal Justice System, pg.138, (Aug.22, 2020, 09:20 AM), https://www.lexis.eom/lawschool/study/texts/pdf/CriminalProcedureThePostlnvestigativeProcess.doc

defendant appears before a judicial officer of the Court, whichever is later. The indictment must be filed within 30 days from the date of arrest or service of summons. If a violation of the provisions of Speedy Trial Act occurs, the indictment against the defendant must be dismissed. The District Court, however, retains the discretion to dismiss the indictment either with or without prejudice. In order to ensure that accused persons are not rushed to trial without an adequate opportunity to prepare their cases, the Congress amended the Act in 1979 to provide a minimum time period during which trial must commence. The Amended Act provides that trial may not begin less than 30 days from the date the defendant first appears in Court, unless the defendant agrees in writing to an earlier date. In USA in the case of Baker v. Wingo[26], the Apex Court discussed various aspects of the Speedy trial, certain observations were made by Justice Powell which are mentioned below:-

(a) The right to a speedy trial is a vague and generically different concept than other constitutional rights guaranteed to accused persons and cannot be quantified into a specific number of days or months, and it is impossible to pinpoint a precise time in the judicial process when the right must be asserted or considered waived;

(b) A defendant's assertion or non-assertion of his right to a speedy trial is one of the factors to be considered in an inquiry in to the deprivation of such right, the primary burden remains on the courts and prosecutors to assure that cases are speedily brought to trial;

(c) Claim that a defendant has been denied his right to a speedy trial is subject to balancing test, in which the conduct of the both the prosecution and the defendant are weighed, and courts should consider such factors as length of the delay, reason for the delay, the defendant's assertion or non-assertion of his right, and prejudice to the defendant

[26] 407 US 514 (1972)

resulting from the delay, in determining whether a defendant's right to a speedy trial has been denied;

(d) The petitioner's case, involving as it did such extra ordinary delay, was a close one, the facts that prejudice to him was minimal and that the petitioner himself did not want a speedy trial outweighed the deficiencies attributable to the state's failure to try the petitioner sooner; and

(e) Petitioner was not denied his right to a speedy trial.

"USA by way of its constitutional provision and Speedy Trial Act, 1974 has shown its commitment towards the concept of speedy justice. By Sixth Amendment and the Speedy Trial Act, USA has emphasised on the need of speedy trial which is initiated with the ultimate aim of speedy justice.

(ii) Speedy Justice in U.K

Speedy trial is a right that can be traced back to the reign of Henry II (1154-1189), time when the English Crown was referred as the Assize of Claredon, a legal Code which comprised of 22 articles, and one of which promised speedy justice to all litigants. There were references to speedy trial which dated back to the twelfth century and the Assize of Claredon, followed by its presence in the Magna Carta of 1215, as well as in the famous Times of Sir Edward Coke.Also the English criminal Justice system recognizes accused's right which can be traced as far back to 1679 in the Habeas Corpus Act.[27]Section 6 of the Habeas Corpus 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

[27] Mahesh T. Pai, "Delay in Criminal Justice System; Common Cause Evaluated" 1996 (Sept.-Dec.) 20 C.U.L.R. pg.400

committal.[28]Further, Assizes Relief Act 1889, Section 3 provides for release on bail of persons committed for trial to courts of sessions if they are not tried in the next sessions.Also in the Criminal Justice Act, 1925, Section 14 (5) which was replaced by Section 10 (3) of Magistrates Courts Act 1952 also provided for release on bail of persons who could not be tried at the next Quarter sessions.[29] The English had Crown Court Rules and Indictment Rules whichprovided steps to regulate and limit the actual duration of the prosecution process, these were statutory regulations issued in 1982 and 1983. According to these rules, the bill of indictment had to be prepared within 28 days of committal and the trial had to commence within 8 weeks of committal.[30] Both these limits provided by the rules maybe extended at the discretion of the court. The English legal system has one of the Act similar to the Act relating to speedy trial in USA, The Prosecution Offenders Act, 1985 under Section 22 enables the Secretary of State to prescribe custodial and overall time limit in respect of preliminary stages of trial. The preliminary stage here means,in Crown Court proceedings prior to arrangement and in summary trials as proceedings prior to taking up of evidence for the prosecution.[31]The result of non-adherence with the custodial time limit is bail and the consequence of non-adherence with overall time limits is acquittal.[32]Now as per the provisions in force, the custodial limits vary between 58 to 112 days depending on whether the offence is triable summarily or indictable and other factors like place of trial. The courts have been vested with the power to extend time limits on case-to-case basis and also depending on factors like – 'good cause', where prosecution has 'acted with all due expedition', etc and in case where the accused escapes or jumps bail, such orders are appealable, except in case when the accused is convicted.

[28]Halsbury's Statutes, IInd Ed. VS. 6, pg. 89
[29] Now referred as, Bails Act, 1976
[30]Halsbury's Laws of England, Ed.4, Reissue VS. II(2) para 916
[31]Prosecution of Offenders Act, 1985 S. 22(11)
[32] Prosecution of Offenders Act, 1985 S. 22(4)

(iii) Speedy Justice in India

"Justice must have a human face"[33],having said that, the citizens of our country rely solely on the Indian Judicial system for justice. With certain constitutional provisions[34], they have been bestowed with the Right to Speedy Justice. The concept of Right to Speedy Trial which becomes the means to achieve speedy justice conveys the speedy and quality dispensation of cases to make the judiciary more efficient and trustworthy.Right to Speedy trial majorly focuses on inculcating the faith of people in Justice Delivery System, but there had been several challenges like lack of infrastructure, huge pendency of cases, judge-population ratio, investigative delays, provision of adjournments and long vacations of the courts, there had been constant delay in by the Judicial Institutions in the goals of Right to Speedy trial. An organized and civilized society, enhanced with law and order is essential to ensure a dignified and reasonable life to every citizen of this democratic nation. Right to Speedy Justice having mentioned foremost in the landmark document of the English Law, The Great Charter "Magna Carta" in 1215.[35]While, the Article 21[36] declares that, "no person shall be deprived of his life or personal liberty except according to the procedure of law". With the hope of delivering justice in the society the constitution makers have efficiently focused on setting up of an independent judicial institution, inclusion of Fundamental Rights and Directive Principles of the State Policies. Alongside the phrase "WE THE PEOPLE OF INDIA" further shows the commitment of the drafting committee in considering the Indian Citizens as the most essential factor of the Sovereign Republic of India.Justice Krishna Iyer while dealing with the bail petition in Babu Singh v. State of

[33] Farewell speech by CJI, Deepak Mishra
[34]Constitution of India Article 14, 21, 39A

[35]Blakesley, Christopher L., "Speedy Trial and the Congested Trial Calendar" (1972), Scholarly Works, Paper 843,(Aug.29, 2020, 10:50 AM), http://scholars.law.unlv.edu/facpub/843
[36] Constitution of India, 1950

UP[37]remarked, "Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever be the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings." Right to speedy trial is a concept gaining recognition and importance day by day.

Speedy Trial is implicitly guaranteed as a fundamental right of life and personal liberty as stated in Article 21 of the Constitution of India, and anyone being denied of this respective right is entitled to approach Supreme Court or High Court under Article 32 and Article 226 respectively, for the enforcement of the same. The harsh reality is that the Speedy Justice is one of the most neglected aspects of the Criminal Justice System. Every society during the phase of the its growth and evolution realized the need for quick justice delivery system. And simultaneously the delayed justice is supposedly considered to be the biting evil for the human society, hampering the growth of its people.

Constitutional and Other Procedural Norms for Speedy Justice

The Constitution of India confers upon every individual certain fundamental rights to ensure their ‘due share’.

1. Article 14 provides right to equality

[37] 1978 AIR 527, 1978 SCR (2) 777

Article 14 establishes that the state shall not deny to any individual the equality before the law or the equal protection of law.

The two aspects of the abovementioned provisions are:

- Equality before law:

Although it guarantees fundamental right, it is considered to be a non-affirmative or negative concept which focuses on not giving an individual any privilege before the law on any reason being his/her birth, sex, religion etc.

All subjects of the state are equal before law.

- Equal Protection of law:

An equal protection before law guarantees equality in treatment in equal circumstances. It is thus said to be an affirmative concept.

Article 14 strikes the State Anarchy and Chaos

"Article 14 of the Constitution of India ensures that the process of Justice Delivery System would be at equal pace for individuals facing the same situation.

2. Right to Life and Personal Liberty

Under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21 as interpreted in Maneka Gandhi v. Union of India[38] It was held in that case that Article 21 confers a fundamental right on every person not to be deprived of his or her liberty except in accordance with the procedure prescribed

[38] AIR 1978 SC 597

by law and it is not enough to constitute compliance with the requirement of that article that some semblance of a procedure should be prescribed by law, but that the procedure should be 'reasonable, just and fair'. If a person is deprived of his liberty under a procedure which is not 'reasonable, just and fair', 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. 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. It was in HussainaraKhatoon v. Home Secretary, State of Bihar[39] that the apex court considered the ideal of speedy justice as an integral and essential part of the fundamental right to life and liberty enshrined in Article 21 of the Constitution of India.

3. Article 22(1) in The Constitution of India, 1949

(1) No person who is arrested shall be detained in custody without being informed, as soon as maybe, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

The landmark case of D.K v. State of West Bengal[40] enumerates 11 guidelines and requirements for the arrest and detention provided by the Supreme Court, which are an addition to constitutional and statutory safeguards for the protection of the detainees rights.
Simultaneously Section 50 of Criminal Procedure Code, 1973, imposes a legal obligation on the concerned police officer or any other person authorized to let the arrested person know the grounds of arrest immediately. Non-compliance of this provision renders the arrest illegal.

[39] AIR 1979 SC 1360
[40] AIR 1997 1 SCC 416

It was held in the case of Joginder Kumar v. State of U.P[41] that a detained person should know the cause of his detention and is entitled to let any third person know the location of his detention.

4. Article 39A- Obligation of the state to ensure Equal justice and Free Legal Aid

Article 39A of the Constitution of India, which was inserted by the Constitution (Forty-Second Amendment) Act, 1976, establishes that the state shall promote legal justice on the basis of equal opportunity to all its citizens and shall provide free legal aid, by suitable legislations or schemes or in any other way ensuring that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.

In the words of Justice P.N. Bhagwati, *"Legal Aid means providing an arrangement in the society so that the mission of administration of justice becomes easily accessible and is not out of reach of those who have to resort to it for enforcement…the poor and illiterate should be able to approach the courts, and their ignorance and poverty should not be an impediment in the way of their obtaining justice from the courts. Legal aid should be available to the poor and illiterate, who don't have access to courts. One need not be a litigant to seek aid by means of free legal aid."*

5. Chapter XXXVI Criminal Procedure Code, 1973- Limitation for taking Cognizance

The Chapter XXXVI of the code comprising of Sections 467 to 473 prescribes distinct limitation periods for taking cognizance of various offences, depending upon the gravity of those offences interlinked with the punishments, respectively. The jurisprudence behind the taking the limitation period in consideration of any crime is that with the lapse of time, the witnesses and

[41] 1994 AIR 1349, 1994 SCC (4) 260

the evidences become weaker and consequently the chances of errors in the judgement increases. The entire purpose of the punishment would be then defeated if the offender has not been punished before the consequences and the trauma of the offence gets faded away from the heads of the aggrieved person or those affected by it.

The statement of the Joint Committee of the Parliament while introducing the limitation period as stated below, clearly establishes the object of the Legislature:

"These are new clauses prescribing periods of limitation on a graded scale for launching a criminal prosecution in certain cases. At present there is no period of limitation for criminal prosecution and a court cannot throw out a complaint or a police report solely on the ground of delay although inordinate delay may be a ground for entertaining doubts about the truth of the prosecution story. Periods of limitation have been prescribed for the criminal prosecution in the laws of many countries and the Committee feels that it will be desirable to prescribe such periods in the Code as recommended by the Law Commission."

Section 468 of the Code of Criminal Procedure states the period of limitation for taking the cognizance of an offence. This section establishes the limitation period for offences that are punishable with fine, imprisonment term not exceeding one year and imprisonment term for exceeding three years with the limitation period of six months, one year and three years respectively. However, no time limit is mentioned in this section for the offences having punishment for three years or more.

Thus, section 473 of the Code of Criminal Procedure enables the Court to take cognizance of an offence after the expiry of the period of limitation, if it is satisfied in the facts and in the circumstances of the case that the delay has been properly explained or this it is necessary to do

so in the interests of justice.The limitation period for the taking the cognizance puts a pressure on the criminal prosecution and the concerned institutional system as to convict the offender within the time frame and the accused be punished quickly to ensure speedy justice.

Present Scenario in India

Most exploitation in speedy justice is done at the stage of mercy petitions for death row convicts. In this case the reality is that, when a person has already received punishment as per the procedure established by law, then the mercy petition stage delays defeat the very purpose of speedy justice. This delay in justice was recently experienced in the Nirbhaya case, where the accused even after receiving the death penalty were able to delay the justice by way of mercy petitions.The apex court in the case of T.V. Vatheeswaran v. State of Tamil Nadu[42] stated that were the appellant was sentenced to death but punishment was not executed for eight years and appellant was in solitary confinement in all this period. As Article 21 provides right to life and liberty and this right only curtailed by just fair and reasonable procedure established by law and it also include Right to Speedy Trial. It was accepted by the court that prolonged detention to await execution of death sentence is unfair, unjust and unreasonable procedure to deprive a person from his right to life and liberty. Court held that delay of two years or more in execution of death sentence liable to quashing of death sentence and in this case death sentence was substituted by life imprisonment.However, in the case of Sher Singh v. State of Punjab[43], the court overruled T.V. Vatheeswaran Case and observed that there cannot be an absolute or unqualified rule that in every case in which there is long delay in execution of death sentence the,

[42] AIR 1983 SC 361
[43] AIR 1983 SC 465

sentence must be substituted by sentence of life imprisonment. Convict has right to pursue all remedies lawfully open to him to get rid of sentence of death imposed upon him. And court held that sentence of death cannot be vacated merely for reason that there has been long delay in execution of death sentence. Further this was supported in the case of Devender Pal Singh Bhullar v. State of N.C.T. of Delh[44] where the Petitioner filed mercy petition to President under Article 72 of Constitution and prayed for commutation of death sentence wherein President rejected his petition. Court observed that while imposing punishment for murder and similar type of offences, Court was duty bound to take into consideration nature of crime, motive for commission of crime, magnitude of crime and its impact on society, nature of weapon used for commission of crime, etc. Court further observed that if murder was committed in an extremely brutal or dastardly manner, which gave rise to intense and extreme indignation in community, Court would be fully justified in awarding death penalty, if enormity of crime was such that a large number of innocent people were killed without rhyme or reason, award of extreme penalty of death would be justified. However, all these factors had to be taken into consideration by President or Governor, while deciding mercy petition. Thus, exercise of power by President or Governor, not to entertain prayer for mercy in such cases could not be characterized as arbitrary or unreasonable.

Also many other steps have been taken to speed up the disposal of pending cases by way of Specialized Tribunals which have been established to take over the workload of the courts. The Constitution (42nd Amendment) Act 1976 inserted Part XIV-A to the Constitution of India consisting of Articles 323A and 323B. Article 323A provides for the establishment of Administrative Tribunals for adjudication or trial of disputes and complaints with respect to

[44] AIR 2013 SC 1975

recruitment, conditions of service of persons appointed to public services and other allied matters. Article 323B makes provision for the creation of Tribunals for adjudication or trial of disputes, complaints or offences connected with tax, foreign exchange, industrial and labour disputes, land reforms, ceiling on urban property, election to Parliament and State Legislatures, etc. Redressal mechanism is provided for better protection of the consumers, thus providing for the establishment of the District Consumer Disputes Redressal Forum at District level, State Consumer Disputes Redressal Commission at the State Level and National Consumer Disputes Redressal Commission at the National Level to adjudicate the Consumer Disputes/cases under the Consumer Protection Act, 1986. The Income-tax Appellate Tribunals are empowered to hear appeals under Section 253 of the Income Tax Act, 1961, Central Excise and Gold Appellate Tribunal (now known as Central Excise and Service Tax Appellate Tribunal) is empowered to hear appeals under Section 35(b) of the Central Excise and Salt Act, 1944. The Debt Recovery Tribunals set up under the provisions of the Recovery of Debts due to Banks and Financial Institutions Act 1993 has been empowered to adjudicate cases relating to debts /loans of Commercial Banks and Financial Institutions. The tribunal system was evolved to provide an alternative to the regular courts. The tribunals are presided over by the experts of the respective fields and the adjudication mechanism is cost effective, thus less costly in comparison to the regular courts and they are effectively resolving the disputes by taking much less time in comparison to the regular courts. The Gram Nyayalayas Act 2008 has been enacted to provide for the establishment of Gram Nyayalayas at the grass-root level for the purpose of providing access to justice to the citizens at their door steps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities.Also the setting up of ADR Centres in each judicial district, the State Governments may set up ADR

Centres as per actual requirement subject to the condition that the State has full ADR mechanism coverage. The State Governments may decide to set up more than one ADR centre in a judicial district or none on the basis of requirement, keeping in view full ADR mechanism coverage.[45]Family disputes are dealt in specific Courts for family disputes under the Family Courts Act of 1984. Under Family Courts Act, 1984 it is the duty of family court to make efforts for settlement between the parties. The speedy justice mechanism is evolving rapidly and matter specific courts and tribunals are being set up to provide various channels for justice rather than the conventional channels.

Conclusion

The concept of speedy justice has come a long way from the ancient times to the present times. When we consider India the measures which have been taken for achieving speedy justice have proved to be successful, but with the increasing number of cases and the loopholes in the legal procedures these measures tend to become obsolete very quickly. There is a need for long term measures to achieve the goal of speedy justice. The establishment of the tribunals and redressal commissions has decreased the burden of the main courts, however, this has somehow increased the pendency of cases as the number of institution of cases has gone up. The judge-population ratio is the biggest hurdle in the means to achieve speedy justice, as the number of judges in an area is very minimal as compared to the population of that area. As it is rightly said that 'difficult times bring out the best', this is what has happened unexpectedly during this covid pandemic times and resulted in online functioning of the courts. This online functioning of courts has

[45] http://doj.gov.in/sites/default/files/userfiles/TFCflxi(1).pdf, (Aug29, 2020, 03:35 PM).

increased the efficiency of the courts, as per an article in the newspaper Times of India on 4th May 2020, Hon'ble Supreme Court of India disposed of 14 times more cases than the US Supreme Court[46]. The SCI disposed 347 cases and delivered 57 judgments during the period of March 25 to May 1. Also on the other hand the District courts during this pandemic have shown extremely quick disposal as stated byJustice D Y Chandrachudthat District courts had managed to dispose of over 12 lakh cases out of over 28 lakh registered between March 24 and August 28.[47]This pandemic situation has opened a new dimension for the speedy justice by the judiciary by way of online courts. It can be concluded that online functioning of courts will be the best and quick remedy as the means to achieve the long pending objective of speedy justice.

[46]DhananjayMahapatra, India's SC decides 14 times more cases than US' SC during lockdown, T.O.I, May 4, 2020,http://timesofindia.indiatimes.com/articleshow/75526648.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

[47]Express News Service, District courts disposed of 12 lakh cases since lockdown: Justice D Y Chandrachud, Indian Express, Aug 30, 2020, https://indianexpress.com/article/india/district-courts-disposed-of-12-lakh-cases-since-lockdown-justice-d-y-chandrachud/