CHAPTER-4
RIGHT TO SPEEDY TRIAL AS A PART OF FUNDAMENTAL HUMAN RIGHTS IN INDIA

I. Introduction

The right to speedy trial is not a fact or fiction but a "Constitutional reality" and it has to be given its due respect. Rule of Law is a doctrine of wide import, not only does it connote equal treatment before law but also the supremacy of the power of law over the powers of individuals. The Indian Constitution is a modern, egalitarian arrangement embodying the rule of law, which guarantees, and not merely proclaims, that rights of all individuals are equally protected. The Founding fathers of our Constitution placed "Justice" at the highest pedestal and Preamble to our Constitution significantly noticed justice higher than the other principles that is liberty, equality and fraternity. Again, the Preamble clearly demonstrates the precedence to social and economic justice over political justice. The State as a guardian of fundamental rights of its Citizens is duty-bound to ensure speedy trial and avoid excessively long delays in trial of criminal cases that could result in grave miscarriage of justice. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible.

II. Philosophy of Speedy Trial under the Constitution of India

The concept of access to justice has undergone an important change after the British rule ended in India. With the coming of the Constitution of India on 26 January 1950 there emerged a new form of power arrangement in the State. There is an institutionalization of power within the Constitution which is the fundamental law of Superior obligations. The Constitution also lays down the goals in its Preamble which this new power ordering aspires to achieve.
Frankly admitting Justice is the foundation of any civilized society. Preamble to the Constitution of India includes as a Constitutional goal ‘Justice- social, economic and political’. Article 39-A of the Constitution provides for ensuring equal access to justice. Administration of justice involves protection of the innocent, punishment of the guilty and satisfactory resolution of disputes. It has been rightly said that “An effective judicial system requires not only that just results be reached but that they be reached swiftly.”

Article 39A of the Constitution of India provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability. Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and a legal system which promotes justice on a basis of equal opportunity to all. Legal aid strives to ensure that constitutional pledge is fulfilled in its letter and spirit and equal justice is made available to the poor, downtrodden and weaker sections of the society. Section 304, Criminal Procedure Code lays down that the Constitutional duty to provide legal aid arises from the time the accused is produced before the Magistrate for the first time and continues whenever he is produced for remand.

The words “access to justice” cannot be not easily defined, but they serve to focus on two basic principles of the legal system- the system by which people may vindicate their rights and/or resolve their disputes under the auspices of the state. First, the system must be equally accessible to all and second it must lead to results that are individually and socially just. Social justice, as sought by our modern societies, presupposes effective access to justice for all.

The Indian legal system is a complex system which in its structure and operation is unfairly weighed against the poor and the marginalized. There are many vast areas of continuity from the colonial system into the post colonial era right from
the criminal justice system to the various laws and regulations which have remained in place in the post-colonial era. In this context access to justice under the Indian legal system attains great significance.

Right of access to justice essentially means the aggrieved individual's formal right to litigate or defend a claim. In the modern Welfare State where reforms have increasingly sought to arm individuals with substantive rights in their capacities as consumers, tenants, employees etc, it is not surprising that right of effective access to justice has gained particular attention. The right of access to justice is increasingly recognized as being of paramount importance among the new individual and social rights, since the possession of rights is meaningless without mechanisms for their effective vindication. Effective access to justice can thus be seen as the most basic requirement - the most basic "human right"- of a modern, egalitarian legal system which purports to guarantee, and not merely proclaim, the legal rights of all.¹

Access to justice inheres in the notion of justice. Two basic purposes which are intended to be served by providing access to justice are:

a) To ensure that every person is able to invoke the legal processes for redressal, irrespective of social or economic status or other incapacity; and

b) That every person should receive a just and fair treatment within the legal system.²

However, in modern societies, access to justice is denied to the aggrieved in almost all instances. There are many factors contributing to this denial.

From the very ancient onwards, perennial attitude of Indian culture has been that justice and righteousness among men are microcosmic reflections of the natural order and harmony of the microcosmic universe. The cosmos is instinct with an inherent structure and functional pattern in which men at there best willingly

² S. Muralidhar, ‘Law, Poverty and Legal Aid-Access to Criminal Justice.'
participate. Justice then in the Indian context, is human expression of the wider universal principal of nature and if men were entirely true to nature his action will be spontaneously just.³

The ‘justice’ in the sense of distributive equality, is experienced by men in three major guises; as moral justice, social justice and legal justice. If one will take from the broadest to narrowest conception then all human institutions of justice – the state, law etc. participate as a whole. In India through centuries it has been the belief that nature itself is the ultimate and final arbiter of justice.

The Constitution of India reflects the quest and aspiration of the mankind for justice and the justice delivery system is under an obligation to deliver prompt and inexpensive justice to its consumers, without in any manner compromising on the quality of justice or the elements of fairness, equality and impartially. Quality of justice suffers not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding cases. It is a right saying that “Justice delayed is Justice Denied” speedy trial is a right of the accused that flows from Article 21 of the Constitution as held by the Supreme Court in a catena of cases. It is crystal clear that the Constitution of India does not contain any express provision regarding the right to speedy trials. But the same is implied under Article 21 of the Constitution. The most important terms in this provision are ‘procedure established by law.’ A procedure prescribed by law for depriving a person of his liberty cannot be termed as ‘reasonable, fair and just’ unless it ensures a speedy trial for determination of guilt of the accused. No procedure which does not ensure a reasonable quick trial be regarded as ‘reasonable, fair and just’ and will be in contravention of Article 21 of the Constitution and hence is not valid under law.⁴ Breach of this fundamental right has the potential of making the entire prosecution liable to be quashed and closed and the accused in all such cases will have to be declared innocent and set free. Speedy

⁴ Hussainara Khatoon (IV) v. Home secretary, State of Bihar, AIR 1979 SC 1369.
trial is, hence, the essence of criminal trial and there can be no doubt that a delay in trial *per se* constitutes denial of justice.

The pre-emergency Supreme Court has not developed any extensive jurisprudence in the field of basic human rights. But the post-Emergency Supreme Court turned active and militant in this field. It has evolved a new regime of Fundamental Rights which are not expressly present in the Indian Constitution, e.g., right to speedy trial emerged as independent fundamental right. In one of the finest hours of judicial activism when Article 21 of the Constitution was truly interpreted in *Manka Gandi v. Union of India*, the Supreme Court in *Hussainara Khatoon* proceeded further ahead to hold that no procedure which does not ensure a reasonable quick trial can be regarded as reasonable fair or just and it would fall out of Article 21. There can, therefore, be no doubt that speedy trial, (and by speedy trial the researcher mean reasonably expeditious trial) is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

Life and liberty of a citizen guaranteed under Article 21 includes life with dignity and liberty with dignity. Liberty must mean freedom from humiliation and indignities at the hands of whom the custody of a person may pass temporarily or otherwise, under the law of the land. Individual liberty is a cherished right and perhaps one of the most valuable fundamental rights guaranteed by our Constitution. If this right is violated or invaded upon, except strictly in accordance with law, the victim is entitled to apply to the Courts for immediate relief. The interest of society can be served only if the constitutional provisions are implemented in its strict sense and the individual liberty of every person is harmonized with the social interest of the society. The liberty of a person cannot be dealt with in any other manner by any of the state authorities. Such approaches do not advance true social interest. Continued indifference to such right is bound to erode the structures of our democratic society.

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5 AIR 1978 SC 597.  
6 AIR 1979 SC 1369.  
The State as a guardian of the fundamental rights of its people is duty-bound to ensure speedy trial and avoid any excessive delay in trial of criminal cases that could result in grave miscarriage of justice. Speedy trial is in public interest as it serves societal interest also. It is in the interest of all concerned that the guilt or innocence of the accused is determined as early as possible. Once an accused person is able to establish that this basic and fundamental right under Article 21 has been violated, it is up to the State to justify that this infringement of fundamental right has not taken place, that the restrictions or provisions of law are reasonable and that the procedure followed in the case is not arbitrary but is just, fair, without delay, expeditious and reasonable.

In case, the State fails to do so, the case made out against the accused person should be dropped and closed. In case of pre-trial confinement, sometimes the time which an accused person spends in jail is much more than even the maximum sentence, which can be awarded to him on conviction for the offence of which he is accused. Thus, our prisons are over-crowded which is causing heavy loss to our State exchequers. Crores of rupees can be saved by speedy disposal of cases of such under-trials. Many poor people are not able to provide financial securities as well as sureties and thus have to remain in jail even if the trial is delayed and prolonged. It is the bounded duty of the trial Courts to ascertain that the cases are disposed of speedily at least of the under-trials who are languishing in jail, yet the judiciary is unable to enforce this for want of adequate number of courts and judges.

Further, the Constitution of India under Article 22 imposes restriction on the detention of any person by the police beyond 24 hours without the authority of a magistrate. It provides that every person who is arrested and detained should be produced before the nearest judicial magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the

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8 Ibid.
9 Supra n. 2 at 78.
said period without the authority of a magistrate. This article thus seeks to prevent illegal detention of people and ensure a prompt action on the part of the police.

III. Speedy Trial under Code of Criminal Procedure, 1973

The regime of criminal trial in India is regulated by the Code of Criminal Procedure and the Indian Penal Code (IPC). The procedure for criminal trial as provided in the Code of Criminal Procedure lays down a number of provisions aimed at reducing the delay in the investigation and trial of offences. The constitutional guarantee of speedy trial emanating from Article 21 is well reflected in the various provisions of the Code.

Personal liberty being the corner-stone of our social structure, the provisions pertaining to trial of a person accused of an offence has special significance and importance. So for ensuring speedy disposal of a case, the pre-trial procedure should be reasonably fast. So every police officer or other person arresting any person without warrant shall forthwith communicate to him full particulars of the offence for which he is arrested or other grounds for such arrest. Timely information of the grounds of arrest enables him to move proper Courts for bail or to make expeditious arrangements for his defence.

Section 56 of Code of Criminal Procedure provides that a police officer making an arrest without warrant shall, without unnecessary delay and subject to the provisions regarding bail, take or send the person arrested before a Magistrate having jurisdiction in the case or before the officer in charge of a police station, but the police officer or other person executing a warrant of arrest shall (subject to the provisions of Section 71 as to security) without unnecessary delay bring the person arrested before the court in which he is required by law to produce such person, provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

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10 Article 22(2), The Constitution of India.
According to Section 57 of Code of Criminal Procedure, no police officer shall detain in custody a person arrested without warrant for a longer period than, under all circumstances of the case is reasonable and such period shall not, in the absence of a special order of a Magistrate under Section 167, exceed twenty-four hours excluding the time necessary for the journey from the place of arrest to the court of the magistrate. Section 157 of the 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.

Section 167 of Code of Criminal Procedure provides that whenever any person is arrested and detained in custody and it appears that the investigation cannot be completed within the period of twenty-four hours fixed by Section 57 and there are grounds for believing that the accusation or the information is well-founded, the officer in charge of the police station or the police officer making the investigation (not below the rank of the Sub-Inspector), shall forthwith transmit to the nearest Judicial Magistrate a copy of the entries made in his diary relating to the case and shall at the same time forward the accused to such magistrate. Such magistrate, whether he has or has not the jurisdiction to try the case, from time to time, may authorize the detention of the accused in such custody for a term not exceeding fifteen days as a whole; and if he has no jurisdiction to try the case or commit it for trial and considers further detention as unnecessary, he may order the accused to be forwarded to a Magistrate having jurisdiction. The Magistrate, who has jurisdiction to try the case, may authorize the detention of the accused person, otherwise than in the custody of the police, beyond the period of fifteen days if he is satisfied that adequate grounds exits for doing so but even the Magistrate cannot authorize the detention of the accused person in custody for a total period exceeding:

(i) Ninety days, where the investigation relates to an offence punishable with death, imprisonment for life or imprisonment for a term of not less than ten years;

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14 Section 167(2); Ibid.
(ii) Sixty days, where the investigation relates to any other offence.\textsuperscript{15}

If in a case triable by a Magistrate as a summons case, the investigation is not concluded within six months from the date on which the accused person 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 the investigation is necessary.\textsuperscript{16}

Section 173 (1) of Code of Criminal Procedure requires the police officer to complete the investigation "without unnecessary delay" and forward the report to the Magistrate "as soon as the investigation is completed". Further Section 207 requires that a copy of documents like the Police Report, First Information 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 or any other documents or relevant extract thereof is to be given free of cost to the accused "without delay."\textsuperscript{17} Section 208 requires that where, in a case instituted otherwise than on a police report, it appears to the Magistrate issuing process under Section 204 that the offence is triable by the Court of Session, the Magistrate shall without delay furnish to the accused, free of cost, a copy of statements and confession, if any, recorded under Sections 200, 202, 161,164 or any documents produced before the Magistrate on which the prosecution proposes to rely.

All the above mentioned provisions of Code of Criminal Procedure pertain to the stage of investigation into an offence. These provisions, besides laying down in broad

\textsuperscript{15} Proviso to Section\textsuperscript{167}(2); \textit{Ibid.}

\textsuperscript{16} Section 167(5); \textit{Ibid.}

\textsuperscript{17} Section 207 of the Code of Criminal Procedure provides that in any case where the proceeding has been instituted on a police report, the Magistrate shall without delay furnish to the accused, free of cost, a copy of each of the following:

(i) the police report;
(ii) the first information report recorded under S.154;
(iii) the statement recorded under S.161(3) of all persons whom the prosecution proposes to examine as its witnesses, excluding the circumstances mentioned in S173(6);
(iv) the confessions and statements, if any, recorded under S.164;
(v) any other document or relevant extract thereof forwarded to the Magistrate with the police report under S.173(5).
terms certain limits subject to which investigation is to be carried out, also put limits upon detention pending investigation. Section 468 of the Code also in a way impose a time limit for completion of investigation as it debars courts from taking cognizance of certain minor offences after the expiry of certain period of limitation. Section 469 marks that the period of limitation commences from the date of the offence; or where the commission of the offence was not known to the person aggrieved by the offence or to any police officer, the first day on which such offence comes to the knowledge of aggrieved person or to any police officer, whichever is earlier; or where it not known by whom the offence was committed, the first day on which the identity of the offender is known to the person aggrieved by the offence or to the police officer making the investigation into the offence, whichever is earlier.

Section 309 of the Code of Criminal Procedure mandates expeditious conduct of trial. In particular, it requires that when the examination of witnesses 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 recognizes 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 reason for doing so, yet it provides that when the witnesses are present in the court, no adjournment or postponement shall be granted, without examining them, except for special reasons to be 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

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18 Section 468 of the Code of Criminal Procedure provides that except as otherwise provided in this Code, no Court shall, after the expiry of the period of limitation, take cognizance of an offence which shall be-

(a) six months, if the offence is punishable with fine only;
(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;
(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three year.


20 Section 309(1); Ibid.
imposed on him. Further the terms on which an adjournment or postponement may be
granted included, in appropriate cases, the payment of costs by the prosecution or the
accused.\(^\text{21}\)

Any party to a proceeding may, as soon as may be, after the close of his evidence,
address concise oral arguments, and may, before he concludes the oral arguments, if any,
submit a memorandum to the court setting forth concisely the arguments in support of
his case.\(^\text{22}\) No adjournment of the proceeding shall be granted for the purpose of filing the
written arguments unless the court, for reasons to be recorded in writing, considers it
necessary to grant such adjournments.\(^\text{23}\) The court may, if it is of the opinion that the oral
arguments are not concise or relevant, regulate such arguments.

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 these provisions, there is another provision which aims at
achieving the same end of expeditious conduct of trial which is Section 353. This
Section provides that the judgment shall be pronounced in open court by the presiding
officer immediately after the termination of the trial or at some subsequent time of
which notice shall be given to the parties or their pleaders.\(^\text{24}\) Thus the provision
clearly requires the judgment to be pronounced soon after the completion of the trial
so that there is no delay in the pronouncement of the same.

The perusal of these provisions enshrined in the Code of Criminal Procedure
thus indicates that the code has given due importance to the speedy completion of

\(^\text{21}\) Section 309(2), Proviso; \textit{Ibid.}
\(^\text{22}\) Section 314(1); \textit{Ibid.}
\(^\text{23}\) Section 314(2); \textit{Ibid.}
\(^\text{24}\) Section 353(1) of \textit{The Code of Criminal Procedure} provides that the judgment in every trial in any
Criminal Court of original jurisdiction shall be pronounced in open Court by the presiding officer
immediately after the termination of the trial or at some subsequent time of which notice shall be
given to the parties or their pleaders-
(a) by delivering the whole of the judgment; or
(b) by reading out the whole of the judgment; or
(c) by reading out the operative part of the judgment and explaining the substance of the
judgment in a language which is understood by the accused or his pleader.
criminal trials so that the constitutional guarantee of providing speedy justice to the people can be achieved in its realistic sense.

IV. Speedy Trial under Civil Procedure Code

The Code of Civil Procedure is the basic Code of Procedure governing civil actions in our country. There are many provisions in the Code of Civil Procedure dealing with speedy disposal of cases. These provisions are as follows:

Order XVII of the Code of Civil Procedure provides that the Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them and may, from time to time adjourn the hearing of the suit for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the suits.\(^{25}\)

In every such case, the court shall fix a day for further hearing of the suit and shall make such orders as to costs occasioned by the adjournment or such higher costs as the court deems fit.\(^{26}\)

Provided that –

(a) When the hearing of the suit has commenced, it shall be continued from day to day until all the witnesses in attendance have been examined, unless the court finds that for exceptional reasons to be recorded by it, the adjournment of the hearing beyond the following day is necessary.

(b) No adjournment shall be granted at the request of a party, except where the circumstances are beyond the control of that party.

(c) The fact that pleader of a party is engaged in another court, shall not be a ground for adjournment;

\(^{25}\) Order XVII, Rule 1; The Code of Civil Procedure.

\(^{26}\) Order XVII, Rule 2; \textit{Ibid.}
(d) Where the illness of a pleader or his inability to conduct the case for any reason, other than his being engaged in another court, is put forward as a ground for adjournment, the court shall not grant adjournment unless it is satisfied that the party applying for adjournment couldn’t have engaged another pleader in time.

(e) Where a witness is present in court but a party or his pleader is not present or the party or his pleader, though present in court, is not ready to examine or cross examine the witness, the court may, if it thinks fit, record the statement of the witness and pass such orders as it thinks fit dispensing with the examination-in-chief or cross-examination of the witness, as the case may be, by the party or his pleader not present or not ready as aforesaid.

Besides this, there is Section 89 of the Code of Civil Procedure which deals with settlement of disputes outside the Court. Section 89 (1) provides that where it appears to the Court that there exist elements of a settlement which may be acceptable to the parties, the Court shall formulate the terms of settlement and give them to the parties for their observations and on receiving the observations of the parties, the Court may formulate the terms of possible settlement and refer the same for –

(a) arbitration;
(b) conciliation;
(c) judicial settlement including settlement through Lok Adalat;
(d) mediation.

Where a dispute has been referred –

(a) for arbitration or conciliation, the provisions of the Arbitration and Conciliation Act, 1996 shall apply as if the proceedings for arbitration or conciliation were referred for settlement under the provisions of that Act;

(b) to Lok Adalat, the Court shall refer the same to the Lok Adalat in accordance with the provisions of Section 20(1) of the Legal Services Authorities Act, 1987

and all other provisions of that Act shall apply in respect of the dispute referred to the Lok Adalat;

(c) for judicial settlement, the Court shall refer the same to a suitable institution or person and such institution or person shall be deemed to be a Lok Adalat and all the provisions of the Legal Services Authorities Act, 1987 shall apply as if the dispute were referred to a Lok Adalat under the provisions of that Act;

(d) for mediation, the Court shall effect a compromise between the parties and shall follow such procedure as may be prescribed.  

Order XX, Rule 1 of the Civil Procedure Code provides that the Court, after the case has been heard, shall pronounce the judgment in open court, either at once or as soon thereafter as may be practicable and when the judgment is to be pronounced on some future day, the court shall fix a day for that purpose, of which due notice shall be given to the parties or their pleaders.

When the judgment is not pronounced at once, every endeavour shall be made by the court to pronounce the judgment within thirty days from the date on which the hearing of the case was concluded but whereby it is not practicable so to do on the ground of the exceptional and extraordinary circumstances of the case, the court shall fix a future day for the pronouncement of the judgment and such day shall not ordinarily be a day beyond sixty days from the date on which the hearing of the case was concluded and due notice of the day so fixed shall be given to the parties or their pleaders. Before the Amendment Act of 1976, no time limit was provided between the hearing of the arguments and the delivery of the judgment. There was a persistent demand all over the country for imposing a time limit for the delivery of a judgment after the conclusion of hearing of a case. Even the Supreme Court had to observe in the case of *R.C. Sharma v. Union of India*:

"The Civil Procedure Code doesn’t provide a time limit for the period between the hearing of the arguments and the

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29 Order XX, Rule 1, Proviso The Code of Civil Procedure (added by the Amendment Act of 1976).
30 1976 AIR 2037.
Nevertheless, we think that an unreasonable delay between the hearing of the arguments and the delivery of a judgment, unless explained by exceptional or extraordinary circumstances, is highly undesirable even when written arguments are submitted. It is not unlikely that some points which the litigant considers important may have escaped notice. But, what is more important is that litigants must have complete confidence in the results of litigation. This confidence tends to be shaken if there is excessive delay between the hearing of the arguments and the delivery of a judgment. *Justice, as we have often observed, must not only be done but must manifestly appear to be done.*

There is a provision in the Code of Civil Procedure under Order VI having in some way the object of reducing delay in the trial of a case. It provides that the court may at any stage of the proceedings allow either party to alter or amend his pleadings in such manner and on such terms as may be just or all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties. By way of amendment, a rider has been imposed on the amendment of pleadings which provides that no application for amendment shall be allowed after the trial has commenced, unless the court comes to the conclusion that in spite of diligence, the party could not have raised the matter before the commencement of trial. So, now the parties cannot apply for amendment of their pleadings after the commencement of trial which is very important for expeditious proceedings of a case. The object of the provision *inter alia* is to reduce delay in the final disposal of cases.

Order XVIII, Rule (3 A) of the Code of Civil Procedure provides that any party may address oral arguments in a case, and shall, before he concludes the oral arguments, if any, submit if the Court so permits concisely and under distinct headings written arguments in support of his case to the Court and such written arguments shall form part of the record. A copy of such written arguments shall be

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32 Rule 17, Proviso(added by the Amendment of The Code of Civil Procedure in 2002).
simultaneously furnished to the opposite party. No adjournment shall be granted for the purpose of filing the written arguments unless the Court, for reasons to be recorded in writing, considers it necessary to grants such adjournment. The Court shall fix such time-limit for the oral arguments by either of the parties in a case, as it thinks fit.

Order VIII of the Code of Civil Procedure also provides a provision for speedy progress of trial by way of giving a time-limit for filing written statement. It provides that the defendant shall, within 30 days from the date of service of summons on him, present a written statement of his defence:

Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons. Under this Rule, there is a legislative mandate that written statement of defence is to be filed within 30 days. However, if there is a failure to file such written statement within stipulated time, the court can at the most extend further period of 60 days and no more. Under the Act, the legislative intent is not to give 90 days of time but only maximum 30 days for filing the version by the opposite party. Therefore, the aforesaid mandate is required to be strictly adhered to.

Section 35B of the Code of Civil Procedure provides that if, on any date fixed for the hearing of a suit or for taking any step therein, a party to the suit fails to take the step which he was required by or under this code to take on that date, or obtains an adjournment for taking such step or for producing evidence or on any other ground, the court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the opinion of the court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred.

by him in attending the court on that date payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of—

(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs,

(b) the defence by the defendant, where the defendant was ordered to pay such costs.\(^{36}\) The very object behind this provision is to ensure the attendance of the plaintiff or the defendant, as the case may be, on the scheduled date and to make them punctual regarding other schedule of the case on the fear of being penalised, so that the case may be decided within a reasonable time. Therefore, this provision is inserted to put a check upon the delaying tactics of litigating parties.

It is, therefore, crystal clear from the above provisions of the Civil Procedure Code, one can safely be make out that provisions of the Code are clear enough to indicate that there should not be undue delay in the disposal of cases.

V. Judicial Pronouncements on Speedy Trial in India

Every individual in a democratic set up wants freedom. Without freedom no individual can lead a life as a free citizen of a country. Freedom and liberties are only for the living. Article 21 of the Constitution of India guarantees right to life and personal liberty to every person, citizen or non-citizen. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be procedure prescribed by that law, provided that the procedure is just, fair and reasonable. The creativity of the Indian judicial system has been at its best whenever it was called to interpret Article 21, except perhaps during the short – interregnum of the emergency rule. Article 21 stands out as the beacon light for all freedom lovers promising the development of more rights when needed and ensuring a minimum degree of fairness in all legal proceedings. The activist

\(^{36}\) Sub section (1), Section 35B, The Code of Civil Procedure.
approach of the supreme court through liberal interpretations have given new dimensions to the right to life and personal liberty. In case of infraction, now the Court does not remain silent spectator but provides remedial relief by way of compensation.

The Indian judiciary plays a significant role in protecting the rights of the people and it has tried to give certain rights like right to speedy trial, right to fair trial etc. a constitutional status by including all these rights within the purview of Article 21 of our Constitution. The judiciary in India has played a dynamic role in the dispensation of justice by providing fair and just trial to all its citizens. There are catena of pronouncements of the Supreme Court and High Courts on the subject of trial wherein the Courts have questioned the delays and discharged the accused. The most glaring malady which has afflicted the judicial concern is the tardy process and inordinate delay that takes place in the disposal of cases. The piling arrears and accumulated workload of different Courts present a frightening scenario. As a matter of fact, the whole system is crumbling down under the weight of pending cases which go on increasing every day. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were aware of all these maladies. However, judicial delays in India are endemic. No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. Civil cases are delayed even longer. This is despite the legal position strongly favouring speedy trial. The Court’s concern about problem of delay in trial finds reflection in the following judgments.

In State of West Bengal v. Anwar Ali Sarkar,\(^{37}\) a Bench of seven judges of the Supreme Court held 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

\(^{37}\) AIR 1952 SC 75.
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, 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 the Supreme Court. The Supreme Court has categorically observed: “We are not prepared to keep persons on trial for their life 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, 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, though the Court found the acquittal of the accused unsustainable, it refused to order a remand or direct a trial after a lapse of 20 years.

The Supreme Court in Maneka Gandhi v. Union of India has stated clearly held 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”. The court has further stated that “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 apex Court has observed that in the broad sweep and content of Article 21 right to speedy trial is implicit.

In Charles Sobharaj v. Suptd, Central Jail, Tihar,42 Krishna Iyer observed: *Whenever Fundamental rights are flouted or Legislative protection ignored, to any prisoner’s prejudice, this court’s writ will run, breaking through stone walls and iron walls, to right the wrong and restore the rule of law. Then the parrot cry of discipline will not deter security, will not scare discretion, and will not dissuade the judicial process."

The apex Court's decision in Hussainara Khatoon(iv) v. Home Secretary, State of Bihar 43 is a landmark in the development of speedy trial jurisprudence. In the instant case, 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. 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. Taking this interpretation to its logical end, P.N. Bhagwati J., in Hussainara khatoon’s 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. 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, and by speedy trial we mean reasonably expeditious trial, is 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 machinery 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. The decision in this case proved to be the plinth of right to speedy trial in India. The Court Categorically stated 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 measures calculated to ensure speedy trial.”

The law laid down in Hussainara Khatoon’s case was followed in a number of subsequent decisions of the Supreme Court. In State of Bihar v. Uma Shankar Ketriwal,44 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. Refusing to interfere with the decision of the High Court in the appeal, the Supreme Court said with regard to the delay that such protraction itself means considerable harassment to the accused and that there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. The Court further observed that “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 protection 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. It may be said that the respondents themselves were responsible in a large manner for the slow pace of the case in as much as quite a few orders made by the trial Magistrate were

44 (1981) 1 SCC 85.
challenged in higher Courts, but then there has to be a limit to the period for which
criminal litigation is allowed to go on at the trial stage.”

The Court again considered the applicability of the right to speedy trial in *State of
Maharashtra v. Champalal Punjaji Shah*\(^45\) and observed 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 severely criticized by Prof.
Upendra Bakshi,\(^46\) who said 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. He further added that
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*.\(^47\) P.N. Bhagwati, J. observed “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
own cribbed, cabined and confined within the four walls of the prison. The outside
world just does not exist for them. The Constitution of India has no meaning and
significance, and human rights no relevance for them. It is a crying shame upon our
adjudicatory system which keeps man in jail for years on end without a trial.”

The Court further observed 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

\(^45\) (1981) 3 SCC 610.
\(^46\) Upendra Bakshi; “Right to Speedy Trial: Geese , Gender And Judicial Sauce”; 2nd ed.1986; p. 243.
\(^47\) (1983)2 SCC 104.
necessary directions to the state governments and other appropriate authorities for securing this right to the accused."

_Mantoo Majumdar v. State of Bihar_\(^{48}\) is another case on under trials. In this case Justice Krishna Iyer found that two petitioners had spent seven years in jail without trial. He found further that 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. He found that even Magistrates “have bidden farewell to their primary obligation, perhaps fatigued by over work and uninterested in freedom of other.” He said 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.” He drew the attention to the failure of the police to investigate promptly and the prison staff to find out how long these under trials should languish in jail. In the fact of this failure of the limbs of law and justice, the judge wondered like any of us. ‘If the salt hath lost its savour, wherewith shall it be salted’? He ordered the release of the two petitioners on their own bonds and without sureties.

_Salim Khan v. State of Uttar Pradesh_\(^{49}\) shows that in Uttar Pradesh too, under trials face similar trials and tribulations. The Court found in this case that the respondent was in jail since November, 1978 awaiting trial. The counsel for the respondent alleged that there were serious charges against the petitioner, but when directed by the court to produce a single case in which charge sheet was submitted against the petitioner, he was unable to do so. On the contrary the counsel informed the Court that in some cases the petitioners had been tried and acquitted. The Court, therefore, ordered his release on a personal bond of Rs. 500 deploring the government’s cavalier attitude towards the petitioner’s freedom.

\(^{48}\) AIR 1980 SC 847.
\(^{49}\) (1983) 2 SCC 347.
In *Veena Sethi v. State of Bihar*, a letter written to justice P.N. Bhagwati by the Free Legal Aid Committee, Hazaribagh brought to light facts too shocking for words. Out of 16 prisoners, who were of unsound mind at the time when they were admitted into prison, 14 were there for two to three decades. Some of them had regained sanity but not freedom. Six of the prisoners, who had not regained sanity, were in prison for over 25 years as the only mental hospital in Bihar was overcrowded. Court disapproved the practice of keeping mentally sick persons in jail as jail was not the place for treating the mentally sick. Out of two persons released from jail, one had spent 35 years and the other 29 years in jail. The cases of remaining eight are also tragic. One of them had spent in all 37 years in jail before court ordered his release, quashing the charge that had attempted to commit suicide in a fit of insanity. He had regained sanity but not freedom in 1966. Another prisoner had become sane in 1961 but he too was in prison till 1982.

In *Raghubir Singh v. State of Bihar*, a Bench of two judges of the Supreme Court held 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 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. Union of India*, the Supreme Court held that “Article 21 is relevant in all stages. Speedy trial in criminal cases, though may not be a

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51 AIR 1987 SC 149.
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 T.V. Vatheevaran v. State Tamil Nadu, the Court again reiterated the significance of the right to speedy trial. In this case, the accused persons were acquitted by the trial court whereupon an appeal was filed before the High Court which allowed it after a period of six years and remanded the case for retrial. Reversing the decision of the High Court, the Supreme Court held that the pendency of criminal appeal for six years before the High Court is itself a regrettable feature of this case and a fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process.

The Supreme Court in Sheela Barse v. Union of India addressed the question left unanswered in Hussainara Khatoon’s case and dealt specifically with the procedure to be followed in matters where accused was less than 16 years of age. The Court held 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 apex Court observed: “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 Rakesh Saxena v. State through C.B.I., the Court quashed the proceedings on the ground that any further continuance of the prosecution after lapse of more than six years is uncalled for.

In Srinivas Pal v. Union Territory of Arunachal Pradesh, the Court quashed the proceedings against the accused on the ground of delay in

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53 (1983) 2 SCC 68.
54 (1986) 3 SCC 632.
55 (1986) 3 SCC 505.
investigation and commencement of trial. In this case, the investigation commenced in November 1976 and the case was registered on completion of the investigation in September 1977. Cognizance was taken by the Court in March 1986. These facts were held sufficient to quash the proceedings particularly when the offence charged was a minor one namely, Section 304A read with Section 338 of Indian Penal Code.

In Madhav Rao Jivaji Rao Scindia v. Sambhaji Rao Chandroji Rao, the Supreme Court observed that the Court cannot be utilized for any oblique purposes and where in the opinion of the Court, chances of an ultimate conviction are bleak and therefore, no useful purpose is likely to be served by allowing criminal prosecution to continue, the Court may quash the proceedings.

In T.J. Stephen v. Parle Bottling Co. (P) Ltd, the Court disallowed recommencement of the prosecution after a lapse of twenty years on the ground that it would not be in the interest of justice.

The Supreme Court in Diwan Naubat Rai v. State through Delhi Administration refused to quash the proceedings as it found that the accused himself was mainly responsible for delay of which he was complaining.

In State of A.P. v. R.V. Pavithran, the Supreme Court upheld the decision of the High Court in quashing the F.I.R. on the ground of inordinate delay in completing the investigation. The Court further observed that while examining the plea of delay in completing the investigation, the Court should have regard to all the relevant circumstances and that it is not possible to formulate any inflexible guidelines or rigid principles of uniform application for speedy investigation nor is it possible to stipulate any arbitrary period of limitation for completing the investigation.

57 AIR 1988 SC 709.
59 (1989) 1 SCC 297.
60 (1990) 2 SCC 3440.
In *Mihir Kumar v. State of West Bengal*,\(^{61}\) where a criminal proceeding had been pending for 15 years from the date of the offence, the Supreme Court held 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.

The Supreme Court in *Abdul Rahman Antulay v. R.S. Nayak*,\(^{62}\) gave a landmark decision and finally adjudicated upon the questions left open in *Hussainara khatoon’s case*, like the scope of the right, the circumstances in which it could be invoked, its consequences and limits etc. The salient features of the decision are as follows:

(a) Right to speedy trial flowing from Article 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.

(b) In every case, where right to speedy trial is alleged to have been infringed, the first question to be put and answered is who is responsible for the delay? Proceedings taken by either party in good faith, to vindicate their rights and interests, as perceived by them, cannot be taken as delaying tactic nor can the time taken in pursuing such proceedings be counted towards delay.

(c) While determining whether undue delay has occurred one must have regard to all the circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on.

(d) 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.

(e) Accused’s plea of denial of speedy trial cannot be defeated by saying that the accused didn’t demand a speedy trial.

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\(^{61}\) 1990 Cr. LJ 26 (Cal).

\(^{62}\) (1992) 1 SCC 225.
(f) The Court has to balance and weigh the several relevant factors—‘balancing test’ and ‘balancing processes’—and determine in each case whether the right to speedy trial has been denied in a given case.

(g) 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 the sentence where the trial has concluded, as may be deemed just and equitable in the circumstances of the case.

(h) It is neither advisable nor practicable to fix any time limit for trial of offences because time required to complete trial of a case depends on the nature of the case.

(i) An objection based on denial of right to speedy trial and for relief on that account should first be addressed to the High Court. Even if the High Court entertains such a plea, ordinarily it should not stay the proceedings, except in a case of grave and exceptional nature. Such proceedings in High Court must be disposed of on a priority basis.

After the decision of *Abdul Rehman Antulay v. R.S. Naik* there is no need to elaborate on this aspect of personal liberty, the Constitution Bench speaking through Jeevan Reddy, J., has traversed the entire ground. The judgment is illuminating and exhaustive. All the aspects of the matter which have any relevance to speedy trial were canvassed before the Court and the Bench did full justice to the submissions. The petitioners A.R. Antulay and Ranjan submitted before the Court that the right to speedy trial be made meaningful, enforceable and effective and there ought to be an outer limit beyond which continuance of proceedings would be violative of Article 21. In this connection, it was submitted that having regard to the prevailing circumstances, a delay of more than 7 years ought to be considered as unreasonable and unfair—this period of 7 years must be

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counted from the registration of the crime till the conduct of the trial; retrial ought not to be ordered beyond this period and the proceeding should be quashed.

The counter arguments which were advanced in the case of Ranjan on the State of Bihar coming on appeal against the Full Bench Judgment of the Patna High Court have been noted in paragraph 21, wherein Jethmalani first stated that despite our Constitution-makers being aware of the VIth Amendment to the Constitution of the United States specifically providing for the right of speedy trial, did not incorporate the same in our Constitution, and so no proceeding should ever be quashed because of the delay in trial. Indian Courts have, therefore, to reconcile justice and fairness with many other interests which are compelling and paramount. It was contented that Article 21 cannot be construed as to make mockery of Directive Principles and another even more fundamental right, i.e., the right to equality in Article 14. It was further urged that the Court must respect legislative policy and statute of limitation may not be applied to serious offences and economic offence. It was contended that there may be some kinds of delay which would deserve to be totally ignored in giving effect to the plea of speedy trial. It was also urged that the delay is usually welcomed by the accused and an accused cannot raise this plea if he has never taken steps to demand a speedy trial. The final submission was that possibility of prejudice is not enough in this regard; actual prejudice has to be proved.

The Supreme Court has emphasized the above propositions again and again. In *Kartar Singh v. State of Punjab* 64 the Supreme Court has observed: “The concept of speedy trial is read into Article 21 as essential part of the Fundamental Right to Life and Liberty guaranteed and preserved in our Constitution. This right to speedy trial begins with the actual restraint imposed by arrest and consequent incarceration and continues at all the stages of investigation, enquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averred.”

64 (1994) 3 SCC 569; 1994 SCC (Cri) 899.
In *Santosh De v. Arachana Guha*, the Supreme Court quashed the prosecution on the ground of inordinate delay as the trial for corruption of a government servant was kept pending for 14 years.

In *Union of India v. Ashok K. Mehta*, there was delay in trial but it was not attributable only to the prosecution and the respondent himself had contributed to the delay. Refusing to quash the prosecution in the instant case, the Court observed that the respondent could not be allowed to take advantage of his own wrong and take shelter under speedy trial to escape from prosecution.

The guidelines laid down in *Antulay's case* were adhered to in a number of cases which came to be considered by the Court subsequently. But a different note was struck in *"Common Cause" a Registered Society through its Director v. Union of India*. In this case, the Court directed release of under-trials on bail if the trial is going on for a certain period and the accused has been in prison for a certain period of time.

The Supreme Court has stated in *Common Cause Case* that even persons accused of minor offences have to wait for their trials for long periods. If they are poor and helpless, they languish in jails as there is no one to bail them out. The very pendency of criminal proceedings for long periods by itself operates as an engine of oppression. Accordingly, to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21, the Court issued certain general directions for releasing the under-trials on bail or personal bonds where trials had been pending for one year or more.

These directions are as follows:

(i) Where the offence under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with

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65 AIR 1994 SC 1229.
67 Supra n. 62.
69 Ibid.
imprisonment not exceeding three years with or without fine and if the trial for such offences are pending for one year or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused on such conditions as may be found necessary.

(ii) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding five years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be found necessary.

(iii) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding seven years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be suitable in the light of Section 437, of Code of Criminal Procedure.

(iv) Where criminal proceedings are pending regarding traffic offences in any criminal Court for more than two years on account of non-serving of Summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close the case.

(v) Where the cases pending in Criminal courts for more than two years under Indian Penal Code or any other law for the time being in force are compoundable with the permission of the Court and if in such a case trials have still not commenced, the Criminal Court shall, after hearing the public
Prosecutor and other parties or their representatives before it, discharge or acquit the accused, as the case may be, and close the case.

It also directed acquittal or discharge of an accused where for an offence punishable with imprisonment for a certain period, the trial had not begun even after a lapse of the whole or 2/3\textsuperscript{rd} of the period. But the Court excluded certain economic and other offences from the application of these guidelines. In a subsequent case, the Supreme Court clarified its order in *Common Cause Case*\textsuperscript{70} and excluded from its application those cases where the pendency of criminal proceedings was wholly or partly attributable to the dilatory tactics adopted by the accused or on account of any other action on the part of the accused which resulted in prolonging the trial. The Court also explained the expressions, “pendency of trial” and “non commencement of trial”

In *R.D. Upadhyay v. State of Andhra Pradesh*,\textsuperscript{71} the Court gave directions with respect to the under-trials languishing in Tihar jail. Directions were given for nomination of special judges for disposing of the cases of murder. These cases were directed to be disposed of within a period of six months. The Court also gave directions for release of under-trials on bail.

In *M.V Chauhan v. State of Gujrat*,\textsuperscript{72} the facts of the case were that a government employee was prosecuted and convicted on certain charges of corruption. The incident was of 1983 and the prosecution started in 1985. In an appeal against the conviction in 1997, the Supreme Court found that the sanction given by the government for this prosecution was invalid. The Court barred initiation of fresh prosecution against the appellant. The apex Court observed: “Normally when the sanction order is held to be bad, the case is remitted back to the authority for reconsideration of the matter and to pass a fresh order of sanction in accordance with law. But, in the instant case, the incident is of 1983 and, therefore, after a lapse of fourteen years, it will not, in our opinion, be fair and just to direct that the proceedings may again be initiated from the

\textsuperscript{70} Ibid.
\textsuperscript{71} (1996) 3 SCC 422.
\textsuperscript{72} AIR 1997 SC 3400.
stage of sanction so as to expose the appellant to another innings of litigation and keep him on trial for an indefinitely long period contrary to the mandate of Article 21 of the Constitution which, as part of Right to Life, philosophizes early end of criminal proceedings through a speedy trial."

The Supreme Court in *Shaheen Welfare Association v. Union of India*\(^{73}\) granted relief to under-trial prisoners held under the Terrorist and Disruptive Activities (Prevention) (TADA) Act, 1987, due to delays in their trials. The Court divided the TADA under-trial prisoners into four classes for the purpose of granting bail, specifically, those

i. Whose release would prejudice the prosecution case and whose liberty may prove to be a menace to society in general and to the complainant and prosecution witnesses in particular, and who cannot therefore receive liberal treatment;

ii. Whose overt acts or involvement directly attracts Section 3 or 4 of the TADA Act, who can be released on bail if they have been in prison for five years or more and whose trial is not likely to be completed within the next six months, unless the court comes to the conclusion that their antecedents are such that releasing them may be harmful to the lives of the complainant, the family members of the complainant, or witnesses.

iii. On trial not because of any activity directly attracting Sections 3 and 4, but by virtue of Section 120B or 147 of the Indian Penal Code, who can be dealt with leniently and can be released if they have been in jail for three years; and,

iv. Found possessing incriminating articles in notified areas booked under Section 5 of the TADA Act, who can be dealt with leniently and can be released if they have been in jail for two years.

\(^{73}\) 1996 (2) SCC 616.
Another attempt was made to concretize the right to speedy trial in *Raj Deo Sharma v. State of Bihar.* In this case, the Court issued certain directions for effective enforcement of the right to speedy trial as recognized in Antulay case and prescribed time limits for completion 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 in *Raj Deo Sharma's case*:

(a) Period of pendency of appeal or revision against interim orders, if any, preferred by the accused to protract the trial;

(b) Period of absence of presiding officer in the trial court;

(c) Period of three months, in case the office of public prosecutor falls vacant (for any reason other than expiry of tenure).

The Supreme Court in *Rang Bahadur Singh v. State of U.P.* has held as follows: “The time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilty of the accused beyond reasonable doubt a conviction cannot be passed on the accused.

A criminal court cannot afford to deprive liberty of the appellants, lifelong liberty, without having at least a reasonable level of certainty that the appellants were the real culprits.”

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74 AIR 1998 SC 3281.
76 AIR 2000 SC 1209.
In *Rajiv Gupta v. State of Himachal Pradesh*, the apex Court held that if the trial of a case for an offence which is punishable with imprisonment up to three years has been pending for more than two years and if the trial is not commenced, then the criminal court is required to discharge and acquit the accused.

In *Anil Rai v. State of Bihar*, the Supreme Court observed that the justice should not only be done but should also appear to have been done. Similarly, whereas justice delayed is justice denied, justice withheld is even worse than that.

In *Akhtari Bi v. State of Madhya Pradesh*, the Court held that if an appeal is not disposed of within a period of five years, for no fault of the convicts, such convicts may be released on bail on such conditions as may be deemed fit and proper by the Court.

In *All India Judges’ Association v. Union of India*, the apex Court held that it is a constitutional obligation of this Court to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases. Apart from the steps which may be necessary for increasing the efficiency of the judicial officers, it appears that the time has come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase in the judges strength from the existing ratio of judge-population ratio.

In *N.S Sahni v. Union of India*, the Supreme Court held that the right of an accused to have a speedy trial is now recognized as a right under Article 21. The procedural fairness required by Article 21 including the right to speedy trial has, therefore, to be observed throughout and to be born in mind.

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77 (2000) 10 SCC 68.
In *Usha Mahajan w/o Roshan Lal v. State*, the petitioner was in jail for the last four and half years. The Court held that the case of an accused in the judicial custody is not in the same pedestals as those enlarged on bail. Keeping accused in jail without trial not augur well for criminal justice delivery system. Therefore, the Court gave direction for the day-to-day basis trial of the case.

In *Ahmad Itahi v. State*, it was held that in view of the lingering and procrastinated proceedings it is directed that the learned trial court shall record the remaining evidence on day-to-day basis and decide the question of framing of charges positively within one month, failing which the proceeding against the petitioner shall stand quashed as no Court can be taken for a ride.

In *Durga Datta Sharma v. State*, the prosecution under the Prevention of Corruption Act has not commenced after a period of 25 years. No charges had been framed and chances of commencing and concluding the trial in near future were not strong. Observing that the accused persons had already suffered a lot both mentally and physically during the last 25 years, the Court dropped all charges against the accused.

In *Moti Lal Saraf v. State of Jammu and Kashmir*, the court has clearly stated that no general guidelines could be fixed. Each case must be examined on its facts and circumstances. During the criminal prosecution, no single witness was examined in last 26 years without there being any lapse on part of accused. Its continuation further would be total abuse of process of law, was liable to be quashed.

In *Radhey Shyam Sharma v. State of Bihar*, the case was lingering on for 22 years. The court held that expeditious disposal did not mean that evidence whether of prosecution or defence, should be cut short and judgment be pronounced without examining material witness. Procedural law is required to be adhered to. Impuned

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82 (08/09/2003), 2003(6) AD(Del) 486.
83 (08/09/2003), 2003(6) AD(Del) 591.
84 2004(1) Crimes 171.
85 2006 Cr. LJ 4765 (SC).
86 2007 Cr. LJ 1257 (Pat).
order refusing issuance of summons was set aside. Magistrate was directed to issue summons to witness concerned at new and correct address.

In *Sambhaji Hindurao Deshmukh v. State of Maharashtra*, the Supreme Court on January 17, 2008 acquitted five persons accused of a murder that occurred on 18 may 1988 in village of Satara District, Maharashtra. In the instant case, the proceedings continued for around 20 years. There were six accused in the case, but one died during trial. They had been acquitted in trial court on 30 January, 1995. The State Government filed an appeal before the Bombay High Court, which set aside their acquittal in March, 2005 and convicted all of them for murder. The accused filed appeal before the Supreme Court, which restored the judgment of the trial court.

In *Puran Singh v. State of Uttaranchal*, the apex Court acquitted Puran Singh in a murder case that had run for 29 years. The most important is that the court heard his appeal out of turn. But for this, the case would have lingered on much longer.

The Supreme Court on August 13, 2008 came down heavily on the delay in the disposal of the *Uphaar Fire Tragedy Case*. In this case, 59 persons were charred to death in a fire in Uphaar Cinema Hall during the screening of a Hindi Film ‘Border’ on the fateful night of June 13, 1997. A District Court in Delhi took 10 long years in Concluding the trial and thereafter the victims approached the Delhi High Court for speedy conclusion of the trial. On Nov 20, 2007, the District Court convicted all 12 accused including Theatre owner Sushil and Gopal Ansal, who were given sentences varying from 2 to 7 years. Then the accused filed an appeal in Delhi High Court against the Conviction. On August 13, 2008, the victims again approached the Supreme Court for speedy disposal of the appeal. The Counsels of the victims pointed out to a Bench of Justice B.N. Agarwal and Justice G.S. Singhvi that while the trial concluded after 10 years following a lot of delay, there are now active attempts on the part of the accused to

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87 Appeal (Crl.) 1097 of 2005.
88 Appeal (Crl.) 437 of 2006.
delay the disposal of the appeal before the High Court. The Bench not to miss an opportunity to call a spade said: “The trial of the case took 10 years. It cannot be treated as an ordinary case. There is a clear evidence of criminal negligence.”

In the famous BMW Case which has been decided in September 2008 one BMW car mowed down six people in the early morning hours. The accused in this case was 22 years old, Sanjeev Nanda, grandson of former Naval Chief S.M. Nanda. The two key prosecution witnesses subsequently changed their version and said that they saw a truck, and not a BMW hitting the victims. But the Supreme Court finally sentenced the accused to five years imprisonment.

In yet another decision in State of U.P v. Ram Veer Singh and another, the apex Court has held as follows: “The golden thread which runs through the web of administration of justice in criminal cases is that if two views are possible on the evidence adduced in the case, one pointing to the guilty of the accused and the other to his innocence, the view which is favourable to the accused should be adopted. The paramount consideration of the Court is to ensure that miscarriage of justice is prevented. A miscarriage of justice which may arise from acquittal of the guilty is no less than from the conviction of an innocent.”

Hence, it is needless to say that the right to speedy trial can be regarded as reasonable, fair and just.

In Moses Wilson and others v. Kasturiba and others, the media news of lynching of suspected thieves in Bihar’s Vaishali District, the gunning down of an under-trial prisoner outside Patna City Civil Court, and other incidents where people have taken the law into their own hands, the apex Court has directed the concerned authorities to do the needful in the matter urgently before the situation goes out of control.

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90 2007 (6) SC 164.
91 AIR 2008 SC 379.
In *Pankaj Kumar v. State of Maharastra and others*, the Court came to the conclusion that the right to speedy trial of the accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other elegant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial. Tested on the touchstone of the broad principles enumerated we are of the opinion that in the instant case, appellant’s ground that the first information report was recorded on 12th May, 1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations involving financial irregularities, the charge sheet for which was submitted.

In another case of *Vakil Prasad Singh v. State of Bihar*, the appellant an Assistant Engineer in BSEB was alleged to have demanded illegal gratification for release of payment for civil work executed by a civil contractor. Investigation conducted by an officer having no jurisdiction to do so, were successfully challenged by the appellant. Further, the prosecution was found to have slept over the matter for almost 17 years, without any explanation. The stated delay was held to be a clear violation of constitutional guarantee of a speedy investigation and trial under Article 21. Any further continuance of criminal proceedings was said to be unwarranted. Despite the fact that allegations against him were quite serious, the apex Court referring to their earlier decisions quashed the proceedings pending against the appellant.

In *Karambir Singh v. C.B.I.*, the learned counsel appearing for the petitioners has submitted that the petitioner already have undergone the agony of trial for six years was again to made to face the same trial without any faults of his. He submitted that the delay has seriously prejudiced him in as much as he would be deprived of his defence which would have been presented. He submitted that he has been deprived of his right to speedy trial and has been ultimately made to suffer

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92 Decided on July 2008.
93 AIR 2009 SC 1822.
94 Decided on 1 November, 2011.
because of the acts of omissions and commissions of the respondent CBI. On the other hand, the CBI has submitted that there was no time limit prescribed for filing of charge-sheet or taking cognizance of the offence under the Act. The prosecution has miserably failed to explain the delay of more than 13 years. The court has allowed the petition and the impugned order and all proceedings arising therefrom are hereby quashed. Surety bond and bail bond of the petitioner would stand discharged.

In the case of Bhawna Karir v. the State and Anr.\textsuperscript{95} where the right to speedy trial was alleged to have been infringed, the first question to be put and answered was that the person to liable for the delay. Proceedings taken by either party in good faith, to indicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated as proceedings taken in good faith. The mere fact that an application / petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex parte representation. The prosecution should not be allowed to become a persecution. Hence, an accuser's pleas of denial of speedy trial cannot be defeated by saying that the accused has delayed the proceedings.

In another case of Subhash Mandal @ Subhash Yadav v. State of Bihar\textsuperscript{96} the prayer for trial was rejected. Then the trial court was directed to send a list of the witnesses fixing specific dates for their examination along with a copy of this order to the Superintendent of Police, Gaya to ensure the service to the witnesses.

In a recent case,\textsuperscript{97} the Supreme Court has said that it was apprehensive about fixing a time limit for completion of a criminal trial as it could be misused by intelligent criminals. A Division Bench consisting of Justices H.L. Dattu and C. K. Prasad during the hearing on a petition by advocate Ranjan Dwivedi, who has sought

\textsuperscript{95} Decided on 20 March, 2012.
\textsuperscript{96} Cr. Misc. No 16139 of 2012 (3) dt. 01.08.2012.
quashing of the trial proceedings against him in the L.N. Mishra murder case on the ground of inordinate delay of 37 years – long trial has blighted him personally, physically and socially. The apex Court has declared that right to speedy trial was a requirement under Article 21 guaranteeing right to life. But, the trial has dragged on for 37 years. In 1992, the Supreme Court had directed day-to-day trial in this case for speedy conclusion. Two decades later, we are no where near the end. The bench said there was no denying that delay had been frequent in the judicial system in India. “Delay will continue to happen given the system we have. Delay definitely effects the trial but can the Supreme Court fix a time limit for completion of a criminal trial. The Supreme Court had earlier in a judgment specifically struck down fixation of a time limit for completion of trial,” it said.

The Court further stated that “it is a unique case. But if we quash the proceedings, we may be sending a wrong signal, which may be used by an intelligent accused at a later date. We do not want this to happen because of our order.” The bench said since the trial has reached the fag end after dragging for nearly four decades, it could ask the trial court to complete it in the next three months by holding proceedings on a day-to-day basis refusing adjournment on any ground to the accused and prosecution.

VI. Sum Up

It is revealed from the foregoing study that although the Constitution of India does not directly talk of the right to speedy trial but the same has been given a status of fundamental right by way of interpretation of Article 21 of the Constitution of India. Besides the Constitution of India, the Code of Criminal Procedure also guarantee the right to speedy trial in its various provisions. The researcher find that it is the judiciary which is instrumental in giving this right the status of fundamental right.