CHAPTER V

CONCLUSION

Our constitution and legal system is greatly influenced by the philosophy of Anglo-Saxon jurisprudence and the parliamentary democracy which we have imbibed is largely built on the edifice of Westminster model. So, the Constitution does not treat the individual as a coy or a cog in the mighty and all powerful machine of the State but the founding fathers of the constitution have placed the individual at the centre stage of the constitutional scheme and have focused the fullest development of his personality. However, all these provisions would be meaningless and ineffectual unless there is rule of law to invest them with life and force.¹

Protection and preservation of the rights of the individual and his free access to justice are indispensable constituents of the march of a civilized society. Its emphasis is more in a democratic set up, based on the rule of law where safeguarding human rights and assuring dignity of the individual is the responsibility of the State.²

The extent to which human rights are protected within the context of its criminal proceedings is an important measure of society’s civilization. There is always some delay in disposal of the criminal cases, for one reason or the other due to which the accused persons have to languish in jail for a number of years, thus causing great harassment to them. A large number of people in Indian prisons are not convicts but people awaiting trial. At any given point of time the percentage of under-trials has always exceeded that of convicts. Most of the accused in India are poor and ignorant and they are either unaware of the bail procedure or are unable to furnish monetary bail as a result of which they remain
in the prison prior to conviction. Sometimes the accused are forced to remain in prison awaiting trial for periods longer than the sentence that would have been passed in case of a conviction. Long pre-trial incarceration jeopardizes the personal liberty of the accused. And the procedure which denies an accused person his right to be at liberty is not a fair, just and reasonable procedure. After long period of turmoil in the prison, if an accused is acquitted, there is no provision to compensate him. The lost years could not be equated with or compensated in terms of money.

There are several factors which contribute for the delay in disposal of criminal cases. Everybody concerned with the investigation and trial of criminal cases, be it the Investigating agencies or the judiciary seem to be reeling under heavy pressure of work and thus arrears are mounting up. Arrears cause delay and delay means negating accessibility of justice to the common man.

Neither the Constitution of India nor the criminal laws provide in express terms for speedy disposal of criminal cases though there are certain provisions which aid in expeditious trial. Perhaps this was the reason for absence of any litigation in this regard by the under-trials for a long time though they were languishing in various jails of the country awaiting trial which would never commence.

During the post emergency period, liberal tendencies have influenced the higher judiciary in interpreting the fundamental rights of individuals and liberty of the individual was placed on a higher pedestal. With Maneka Gandhi’s case\(^3\) Article 21 was given a new meaning and interpretation and it acquired a new force and vitality. The Supreme Court has found a potent tool to improve matters in the area of criminal justice. The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which, coupled with delay,
may result in impairing the capability or ability of the accused to defend himself
have persuaded the constitutional courts of the country in holding the right to
speedy trial a manifestation for fair, just and reasonable procedure enshrined in
Article 21. Thus for the first time in *Hussainara Khatoon's* case it was held that
the ‘right to speedy trial is implicit in the broad sweep of Article 21.’

Speedy trial would encompass within its sweep all its stages including
investigation, inquiry, trial, appeal, revision and re-trial – in short everything
commencing with an accusation and expiring with the final verdict. The courts
have extended the right even to the post-conviction stages where delay in
execution of capital sentence was held to be violative of the right to speedy trial.
The right to speedy trial would be available in all sorts of offences irrespective of
whether the offence is a petty one or a capital offence.

After recognizing for the first time in *Hussainara Khatoon v. State of Bihar* that there existed a right to speedy trial, the judicial approach was not
consistent as regards what would constitute delay, the consequences of infraction
of the right to speedy trial and also fixing of a time limit beyond which trial should
not be allowed to go. For Sandhawalia, C.J., of the Patna High Court, lapse of time
*ipso facto* violated the right, as long as the accused was not responsible for the
Reddy, J., each case has to be approached on its own facts keeping in view the
systemic delays. The courts did not prescribe authoritatively how long is too long
or when the prosecution would become a persecution. Judicial opinion is divided
on the matter whether an outer limit could be fixed within which a trial should be
concluded.

Denial of the right to speedy trial to accused persons on account of failure
on the part of the prosecuting agencies and the executive have persuaded the
Supreme Court in devising solutions which go to the extent of almost enacting by judicial verdict bars of limitation beyond which the trial shall not proceed.\textsuperscript{10} Prescribing periods of limitation at the end of which the trial court would be obliged to acquit or discharge the accused, amounted to legislation which is not permissible. This is encroaching upon the area earmarked for legislature. The bars of limitation were deleted in \textit{P. Ramachandra Rao}\textsuperscript{11} on the twin grounds of impermissible legislation and the bars of limitation run counter to the law laid down by Constitution Bench in \textit{A.R. Antulay}\textsuperscript{12} and run counter to the doctrine of precedents and their binding efficacy. So the question of what would be the remedy in cases of delayed trial is still unanswered.

The constitutional philosophy propounded as right to speedy trial has though grown in age by almost three decades, the goal sought to be achieved is still elusive. Speedy trial is the essence of criminal justice system and there can be no doubt that delay in trial itself constitutes denial of justice. The biggest hurdle in administering justice is delay. Delay in justice administration is the biggest operational obstacle which has to be tackled on a war footing.\textsuperscript{13} Delay defeats justice. This right of speedy trial would remain as a mere pious wish or a teasing mirage if no effective implementation is given. The right has to be given teeth and further strengthened. In order to remove delays in the justice delivery system, the legal and judicial system has to be revamped and restructured.

The following reforms are suggested to minimize delay to a considerable extent:

1. Judicial appointments: Huge pendency of cases and poor rate of convictions are the twin problems of the judiciary. The situation could be improved by providing adequate number of judges. Vacant posts of judges should be filled up without delay. The required number of 100 judges per million of Indian population should be achieved in a phased manner.
2. Quality of Judges: Though induction of more judges may help in reducing the arrears it is the competence and proficiency of the judges that contributes to better quality of justice. The present practice is to appoint members of bar who have a particular period of standing to the bench. In addition to this, fresh graduates/Post-graduates with outstanding academic record may also be considered for appointment to judicial services, at the subordinate level, by imparting requisite training. It is a myth that only an experienced advocate can become an efficient judge. All India Judicial Services may also be constituted for selection to higher judiciary on par with IAS and IPS. Appointment of the outstanding jurists to the higher judiciary may also be considered. Judicial academies have been set up in almost all states and these need to be revitalized. Training of judges at the grass root level is extremely important and if judgments at the district level are of a high quality, the number of revisions and appeals may be reduced.

Supervision by High Courts: The High Courts are responsible to the administration of justice in the states of their jurisdiction and have unbounded power to supervise and ensure the quality of justice in the subordinate courts. However, in actual practice beyond routine inspection, seldom anything spectacular is done in this direction. If in every High Court a judge is earmarked by rotation and entrusted with the sole responsibility of carrying out intensive monthly inspection of the subordinate courts without any prior notice at least 50 per cent of the delay in disposal of cases by lower courts can be curbed by picking up case files at random, analyzing them for the speedy disposal and communicating the results to the judges concerned. Good results are bound to ensue if such inspections are backed with ruthless administrative action to shake the subordinate judiciary out of the smugness of judicial protection.14
4. Evidence of Witnesses: In criminal cases evidence of formal witnesses should be by way of affidavits. Reports of post-mortem and handwriting experts should be allowed to be exhibited in examination-in-chief of expert witnesses. The present practice of bringing the entire reports verbatim into the evidence is time consuming and mere repetition as expert witnesses just read them out to the stenographer typing the evidence.¹⁵

5. Appeals: In criminal cases, an appeal or a revision by a private party against acquittal should be heard by the appellate court on merits as done in State appeals. In case the appellate court finds strong grounds in accordance with law to interfere with the acquittal and pass an order of conviction, it should be able to do so. The present practice of setting aside the acquittal and sending the case back for re-trial does not serve any purpose except examination of the same witnesses again which is time consuming.¹⁶

6. Shift System: For disposing more number of cases in a particular day, shift system in the courts may be considered. The courts could work in two shifts, the first shift from 7 a.m., to 1.30 p.m., and the second shift from 2 to 8.30 p.m.. This way the number of buildings that are required would be less and the amount of work that would be turned out would be double.

7. Time Limitation clause: Judges act with unfettered discretion while granting adjournments. Adjournments may be granted in exceptional circumstances. There must be a determination that all cases must be decided within a specified time limit. There has to be statutory mandate for disposal of all the cases within the stipulated time limit. Consequently judges will be quite strict in granting adjournments.¹⁷ Members of bar as responsible officers of the court should desist from seeking frequent
adjournments on frivolous grounds and extend all the support needed for speedy disposal of cases.

Introducing Management practices: The present practice of posting a number of cases on a particular day should be avoided. For this, the judicial officers are needed to be trained in management practices. As number of cases are posted on a particular day, lot of time is being wasted for calling these cases at the trial courts. The present practice of calling the cases may be done with and a cause list exhibited at the court every day. By doing so at least one and a half hours of the time is saved.

Use of Emerging technologies: It is not enough to provide computers. The persons using them must also know how to use the computers effectively and efficiently. There needs to be a systematic training of court staff and also the judges in the use of computers.

Video conferencing: Video conferencing has been talked about for quite some time but it is not being implemented. It is one way of reducing costs, particularly in matter pertaining to under-trials. The amount of time and energy that is expended in bringing the under-trials to the court is quite phenomenal. If video conferencing facility is established, the costs can be recovered at an early date. Recently, Visakhapatnam District Court used this technique to examine *Abdul Kareem Telgi* who is involved in Stamp scam.

Plea Bargaining: Malimath Committee has given its recommendations for introducing the concept of ‘plea bargaining’ as one of the measures to bring reforms in the criminal justice system which would go a long way for early settlement of criminal cases and reduce the pendency substantially. The
Law Commission of India in its 154th Report has come out with this concept to lessen the burden of piling arrears.

To reduce the delay in the disposal of criminal trials and appeals as also to alleviate the suffering of under-trial prisoners, as recommended by the Law Commission and Malimath Committee, the concept of plea-bargaining was introduced with the Criminal Law (Amendment) Act, 2005 (No.2 of 2006) and a new Chapter 21 (A) was added to the Code of Criminal Procedure. Now, the concept of “plea bargaining” has become a reality and part of our criminal jurisprudence. Plea bargaining means pre-trial negotiations between defendant and prosecution during which the accused agrees to plead guilty in exchange for certain concessions by the prosecutor.

Plea bargaining would not apply to serious offences and to offences affecting socio-economic conditions of the country, offences committed against women and offences committed against children below the age of 14. Two interesting features of this provision are providing compensation to the victim and finality of the judgment. Plea bargaining is an alternative method to deal with huge arrears of criminal cases. However, all the care should be taken to see that this provision is not misused.

Selective prosecution: Today the prosecutors in India are over burdened with too many cases of widely varying degree of seriousness with too few assistants and inadequate financial resources. The result, however, has been the long delay in courts with individual misery and serious hardships. With slight improvement in the management of prosecution, the prosecutors can play a significant role in the administration of criminal justice by prosecuting only those who should be prosecuted and releasing or directing
the use of non-punitive methods of treatment of those whose cases would best be prosecuted outside the courts.

In selective prosecution, special attention is being given to the career criminals, worst offenders and to all those who commit crime against women and children. Efforts should be made to improve the management of prosecution in order to increase the certainty of conviction and punishment for most serious offenders and repeaters. For the better administration of criminal justice, recidivists, career criminals and violent offenders need to be prosecuted expeditiously, in a selective manner, because these offenders pose a serious threat to the society. For selective prosecution, cases may be classified in terms of a) the seriousness of the offence based primarily on the extent of actual harm done to the victim rather than the legal definition of the crime, b) the past criminal records of the accused and c) the assessment of the evidentiary strength and the probability of the conviction.20

13. Holidays: Vacation for the courts is a legacy of colonial rulers. However, during Colonial rule, it was mandatory for a Judge who is proceeding on vacation to complete all the cases before him before he proceeds on vacation. A judge was also required to submit monthly reports on cases pending before him for more than two months. Two months vacation was given during summer in order to enable the English judges to undertake their voyage by sea to and fro their home land. The colonial practice of vacation is continued even after independence without any justification. Malimath Committee has recommended on reduction of vacation.
Access to justice and speedy trial being precious rights of the citizens, the courts have to remain open all through the year without any vacation whatever.

Andhra Pradesh High Court issued directions that the courts should work 24 hours a day in order to take up the bail applications. These directions were issued keeping in view the inconvenience and hardship caused to a person arrested on a day preceding holidays and could not be produced before the court within 24 hours though he has a right to be produced before the court within 24 hours and he is forced to remain in the prison till he is produced before a magistrate and secure bail. This was exactly what happened in the case of Kanchi Sakaracharya Jayendra Saraswati.

14. Strike by members of bar: The members of bar must desist from indulging in strikes. They should realize their responsibility as officers of the court and co-operate with the court for speedy disposal of cases. They have to realize and remind themselves of their obligation - legal and ethical, that having accepted a brief, they have no justification to decline or avoid appearing at the trial.

15. Commissions: In civil cases Advocates are often appointed as Commissioners to examine witnesses. The same practice may be tried with trial of criminal cases also. Junior Advocates may be appointed as commissioners to examine the under-trials at the jail itself. This is beneficial in many ways. The costs involved in bringing the under-trial prisoners to the court which are quite phenomenal could be curtailed. The practice of seeking adjournments on the ground of inadequacy of police personnel to bring the under-trials from prison to the court for trial could
be put an end to. Working hours of the police personnel who have to bring
the under-trials to the court could be saved. Junior advocates could be
provided with some work. As a result, trial could be done expeditiously.

Other measures: Complicated procedural laws and the legal system which
permits too many appeals and revisions have in no less measure contributed
to the congestion in the court calendar and the consequent delays. Lot of
improvements have been suggested by law commissions. There should be
screening of the outdated laws, which should be scrapped. Detailed exercise
should be done for modification of provisions of the laws, which delay and
cause abuse of process of law. Courts must be computerized for expeditious
disposal of cases. Arguments can be had by teleconference method to avoid
delay and expense when technology is so advanced.²¹

Inserting of S.436A in the Code of Criminal Procedure by the Criminal
Law (Amendment) Act, 2005 (No.2 of 2006) is a welcome feature. An under-trial
prisoner can be released by court if he spends in jail one half of maximum period
of imprisonment specified in that offence. At last some steps are taken by the
legislature towards improving the conditions of the under-trials and assuring them
of some relief. This provision initially would pave the way for setting about fifty
thousand under-trials free. Effective implementation should be given to this
provision and any probable misuse of this provision should be curbed.

The goal of speedy justice can be achieved by a combined and result-
oriented collective thinking and action on the part of the legislature, the judiciary,
the executive and members of the Bar.

Let India reinvent its legal system with determination to give “Speedy
Justice” which will set an example for other developing countries to follow.
NOTES

1. Hhrudaya Ballav Das, Special Judge, CBI, Bhubaneswar, Orissa, Human Rights-A Dicta of A Civilized Society, Not A Mere Constitutional Guarantee, AIR 2004 Jour.60

2. Ibid

3. Maneka Gandhi v. Union of India AIR 1978 SC 597


5. Supra N.4


12. AIR 1992 SC 1701


14. D. N. Gupta, The Quality of Justice AIR 1984 Jour.65 para 2 at p.66

15. D.R. Khanna, Retired Judge, High Court of Delhi – Reforms to Remove Law’s Delays AIR Jour.1987 p.65 para 17 at p.68
16.  *Ibid* para 25 at p.69

17.  J. C. Seth, Justice in time inventing effective measures AIR 2004 Jour.289 at p.290


19.  *Ibid* at p.197-98

20.  *Ibid* at p.198

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