Chapter - IV

SPEEDY TRIAL: A CONSTITUTIONAL MANDATE
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A. An Overview

Justice is the natural urge of all human beings. The Constitution of India in its Preamble contains 'Justice' at the highest pedestal and significantly noticed justice higher than the other principles i.e. liberty, equality and fraternity. Again, the Preamble clearly demonstrates the precedence to social and economic justice over political justice. But, in reality even after 58 years of the adoption of Constitution, we find crores of cases rotting in courts in India, some of which are pending for several years/decades. Some people die fighting their cases but do not get justice during their lifetime, while thousands of under-trials languish and die in jails without conviction. It is well known “Justice delayed is Justice denied”.

The biggest challenge being faced by the Indian justice delivery system is that of delay in the dispensation of justice. Heavy backlog of cases in the courts and inevitable delay in dispensing the justice has been to such an extent that it is shaking public trust and confidence in the legal system and it is tending to erode the quality of social justice and hampering the socio-economic development of the country.¹ The Hon’ble Supreme Court in Hussain Ara Khatoon vs. State of Bihar² taking note of the problem of delay observed:

"There is also one other infirmity of the legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a sad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is

² AIR, 1979, SC, 1360
of the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice."

Famous Jurist late Nani A. Palkhivala has gone on record to say:

"If I were asked to mention the greatest draw back of the administration of justice in India today, I would say that it is delay. There are inordinate delays in the disposal of cases. We, as a nation, have some fine qualities, but a sense of the value of time is not one of them. Perhaps there are historical reasons for our relaxed attitude to time. Ancient India had evolved the concepts of eternity and infinity. So what do thirty years, wasted in litigation, matter against the backdrop of eternity? Further, we believe in reincarnation, what does it matter if you waste this life? You will have many more lives in which to make good".

I am not aware of any country in the world where litigation goes on for as long a period as in India. Our cases drag over a length of time, which makes eternity intelligible. The law may or may not be an ass but in India it is certainly, a snail and our cases proceed at a pace, which would be regarded as unduly slow in a community of snails. Justice has to be blind but I see no reason why it should also be lame, here it just hobbles along, barely able to walk.³

It is a paramount importance to reform the problem of delay at the earliest and provide justice to citizens of this country in a reasonable time. It is imperative so that the faith of the society in the justice delivery system can be maintained. In a country like ours where people consider, the judges only second to God, efforts should be made to strengthen that belief of common man. Delay in disposal of the cases facilitates the people to raise eyebrows some time genuinely, which, if not checked, may shake the confidence of the people in the judicial system. A time has come when the judiciary itself has to assert for preserving its stature, respect and regards for attainment of the rule of law.

For the fault, of a few, the glorious and glittering name of the judiciary cannot be permitted to be made ugly. It is the policy and purpose of law, to have speedy justice for which efforts are required to be made to come to the expectation of the society of ensuring speedy, untainted and unpolluted justice.\(^4\)

One of the reasons for the huge backlog indicted by the 120\(^{th}\) Law Commission Report being inadequate strength of judges compared to the population of the country. The appointment of Judicial Officers in the lower courts and the Judges in the High Courts should keep pace with the volume of institution of cases. The strength of the Judges and Judicial Officers has not been proportionately increased either with the growth of population or with augmentation of litigation.

The report of the Commission to review the working of the Constitution\(^5\) has raised certain pertinent questions and issues:

About half a century of the Constitution at work has tossed up many issues of the working of the judiciary, from the difficult problems of appointments to the superior judiciary to the problems of the court clogging and judicial delays, a wide variety of issues have arisen. Who should appoint the judges? Should they be 'Judges' or 'people's judges? Should the composition of the judiciary reflect the pluralism of the society? Particularly disturbing has been the chronic and recurrent theme of the near collapse of the judicial trial system, its delays and the mounting costs. The glorious uncertainties of the law have frustrated the aspirations for an equal, predictable and affordable justice.

One may remind oneself that the Indian Judiciary is held in high esteem in many of the developing and developed countries of the world. The judgments delivered by our courts, particularly the Supreme Court,


are oft-quoted by jurists and judges around the world, who are appreciative of the quality of the judgements. However, these are all about the content and quality of justice. The concerns are more about delays, costs, transparency, probity and accountability.⁶

According to Justice R.C. Lahoti, former Chief Justice of India, criticism is often from uninformed or misinformed quarters that the Indian Judiciary is unable to clear the backlogs of the cases. According to him, at times, question marks have been placed on the credibility of the judiciary on account of some aberrations which are not the product of system, but are individual in nature and are isolated cases. These actors have a tendency of bringing a bad name to the entire system. He, after setting out the figures and statistics showing satisfactory disposals by the Supreme Court, High Courts and Subordinate Courts, posed a pertinent question, “whether the judiciary is solely responsible for the backlogs?”⁷

B. Constitutional Provisions for Speedy Trial

The Constitutional law is the fundamental law of the land. It establishes the various branches of government conferring powers on them for various purposes. At the same time, it imposes limitations on the authority of the state. As far as the Constitution of India is concerned, stating with the Preamble, there are a large number of provisions in this important instrument, which contain the essential principles as to the organization, and functioning of the institutions having the responsibility of administering justice to the people. For example, the principle of Federalism is followed in regard to the distribution of legislative, executive and administrative powers between the union and the states in various matters including the matters affecting the system of criminal justice. Part III of the Constitution contains the principles of equality to which the state

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⁷ Ibid.
shall not deny to any person equality before the law or equal protection of
the law.

Then there are certain other principles also in the form of safeguards
guaranteed to the individuals under Article 20 of the Constitution. The
first safeguard guaranteed in this Article is that no person shall be
convicted of an offence if the act charged against him was not an offence
under the law in force at the time of the commission of the offence. The
Principle of Double Jeopardy incorporated in clause (2) of Article 20
requires that no person shall be prosecuted and punished for the same
offence more than once.

Protection against compulsory testimony is incorporated in clause
(3) of Article 20, which declares that no person accused of an offence shall
be compelled to be a witness against himself.

Likewise, Article 21 of the Constitution guarantees protection
against life and personal liberty. Thus, Article read with Article 22
specifies the rights available to persons arrested for the commission of
crimes and the persons detained for the prevention of crimes and lays
down the manner in which the persons arrested or detained may be dealt
with.

Inevitable and one of the most important obligations of the state is
administration of justice through its one organ, i.e. judiciary. In Ancient
and Medieval time, justice was administered in consonance with Dharma,
Truth and Natural Law. At present time, the justice is administered
according to law alone, i.e. Constitution, Statutes and Rules etc. In strict
compliance of 'law' in name of administration of justice there happens
victory of lie and defeat of the truth and injustice is imparted to poor,
iliterate people of India, under English system of justice delivery viz.
justice delivery system of colonial ruler based on tenets of England for
exploitation of the colonial people. English system of justice is solely based on law.\textsuperscript{8}

(i) Protection of Life and Personal Liberty- General Observation

Article 21 – Constitution of India – “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The first and the foremost right, of not only human beings but any living being is the right to life. All other rights totally depend on this right because without life there can be no other right. Our Constitution framers have distinguishably placed personal liberty with right to life under Article 21. Freedoms have been enumerated in Article 19. The conspicuous distinction between Articles 19 and 20 is that Article 19 provides exhaustive list of 6 freedoms, while Article 21 does not provide but leaves to possible widest interpretation to this small Article than any other Articles of the whole Constitution.\textsuperscript{9}

The Article prohibits deprivation of life or personal liberty except according to procedure established by law. In a sense, it corresponds to the Fifth and Fourteenth Amendments to the U.S. Constitution, the relevant portions of which read:

“Nor be deprived of life, liberty or property without due process of law”

and;

“Nor shall any state deprive any person of life, liberty, or property, without due process of law”.\textsuperscript{10}

Protection of Article 21 is available to all persons whether citizens or foreigners or free or arrested or detained person.

Supreme Court through the process of interpretation gave possibly the widest scope of Article 21 for protection of life and liberty of all individuals free as well as arrested and detained.


\textsuperscript{9} Id., p. 129.

\textsuperscript{10} Jay M. Feinman, ‘Law 101 Every you Need to know About the American Legal System’, Oxford University Press, 2000, p. 47.
From the sequence of words used in Article 21 ‘life’ and ‘Personal liberty’, it is clear that ‘life’ is that the first right on which consequent right of personal liberty depends. Not only personal liberty, but all other rights, duties and functions, etc. depends upon existence of life because inanimate have no rights, duty and function etc. Liberty is necessary for the development and dignity of an individual, law is a scheme of social control over the liberty of the individual. Prof. Wills says that we are concerned with question of how much liberty is the best.\(^{11}\)

In 1755, Benjamin Franklin reminded his fellow citizens that freedom comes with a high price tag. “Those who would give up essential liberty to purchase a little temporary safety, deserve neither liberty nor safety”, he said.\(^{12}\)

The Protection of the Bill of Rights is most often tested at times of national emergency or war. During the early days of World War II, following the December 7, 1941, Japanese attack on Pearl Harbor, Japanese Americans became the target of widespread prejudice and suspicion, even though there was no evidence of espionage or disloyalty among them. Bending to public and military pressures, President Franklin D. Roosevelt authorized the forced relocation of more than 110,000 people of Japanese ancestry from their homes on the west coast to desolate camps surrounded by barbed wire and armed guards.

The internees were never charged with crimes or given a hearing. The majority were women and children. About two-thirds were native-born American citizens, deprived of their civil liberties. Some were kept imprisoned for three years or more, and many lost their homes, farm or businesses.\(^{13}\)


\(^{13}\) Id., pp. 124-126.
After four decades, in 1983, a Presidential Commission reported that the Japanese Americans had suffered a ‘grave injustice’. Finally, Congress passed the civil liberties Act of 1988.

Recently in 2001, following the September 11 terrorist attacks in New York City and Washington D.C., around twelve hundred foreigners, mainly Arab and Muslims were detained on mere suspicion and their names were kept secret from the public. Most of them were picked up for minor visa violations or because of neighbours suspicions. The government continued to keep in prison long after their immigration cases were resolved, but failed to charge any of them for terrorist activity.

These mass arrests and secret detention sparked a national debate: can we find security from terrorist attacks without giving up the Constitutional freedoms, we are fighting to preserve? The government justified the detention and civil rights advocates supported the same as precaution. But they argued that indefinite detention without framing charge it violates Constitutional rights. ‘Secret arrests’, said federal judge Gladys Kessler, “is a concept odious to a democratic society”.

The Bill of Rights makes no distinction between citizens and non-citizens. It refers throughout to ‘the people’ or to ‘persons’. The right to a speedy and public trial, to consult with a lawyer beyond the range of government microphones, and to protection against being held in secret for minor crimes are not for Americans alone.\textsuperscript{14}

Absolute freedom would result in chaos, anarchy and ruin; whereas the absolute control of the state over the liberty would result in tyranny. There must be striking balance between individual liberty and state control over it. Such view was held by Mukherjee J. in A.K. Gopalan vs. State of Madras.\textsuperscript{15}

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15. AIR 1950 SC 27.
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In Constituent Assembly there was a debate over whether American doctrine of 'due process' is to be adopted in our Constitution for enjoyment of personal liberty. B.N. Rau, Adviser to Constituent Assembly was against inclusion of due process clause in our Constitution on the ground that it may hinder legislation for social purposes. Rajaji and A.K. Ayyar were of the view that under due process clause the executive cannot detain a person without trial. Alexandronlicze observe that liberty has been greatly narrated in scope and meaning by qualifying the word liberty by personal.16

Despite inclusion of due process clause in American Constitution, it has also there been controversial. A.K. Ayyar opposed due process clause, as preventive detention was considered to be the best weapon for curbing communal riots that had shocked the country. Twenty-one members of Constituent Assembly moved an amendment for making personal liberty as justiciable right. K.M. Munshi was against 'due process' as it would imbalance individual liberty and social control. Many of the members of the CA expressed that they were not against social legislation but liberty is to be protected against arbitrary and prejudicial executive action. O.H. Bayley was of the view that in absence of due process clause a nation would be at the mercy of the legislature and the executive.17

He observed that Gopalan's decision was upheld because Supreme Court could not interpret 'law' in Article 21 as meaning of 'just' as distinct from 'lex'. 'Jus' includes natural law, whereas 'lex' stresses only on enacted law by the state. The court should have seen whether the procedure established by the statute was followed or not. Dr. B.R. Ambedkar in Constituent Assembly pointed out, "the due process clause in my judgment would give judiciary the power to question the law made by

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legislature with certain fundamental principles relating to rights of individuals. The law may be perfectly good and valid so far the authority of the legislature is concerned, but it may not be good law if it violates certain fundamental principles, that judiciary would have that additional power declaring the law invalid”.18

Alladi, Krishna Swamy Ayyer in Constituent Assembly said about the doctrine of due process, “the Supreme Court of U.S.A. did not take consistent view in all decisions, some of them are conflicting”. He suggested for adoption of phrase “Except according to procedure established by the law”.

In Kharak Singh vs. State of U.P.19, the Supreme Court held that personal liberty is more than mere animal existence and it is not limited to bodily restraints or confinement. It includes all varieties of rights, which go to make up personal liberty other than dealt in Article 19 (1). Particular species or attributes of personal liberty in Article 21 comprises the residue. But in the case of Govind vs. state of M.P.20 the Supreme Court retrograded its approach of Kharak Singh’s case. In Satuwant Singh vs. Assistant Passport Officer21, the Supreme Court accepted the plea of Satuwant Singh that to travel abroad was part of his personal liberty, which could be restricted by the authority of law, and government cannot deny passport in exercise of executive powers.

In Maneka Gandhi vs. Union of India22, the Supreme Court gave possibly widest meaning to personal liberty; it overruled Gopalan’s case and applied American doctrine due process. Justice P.N. Bhagwati spoke for majority that procedure contained in Article 21 must be just fair and reasonable. The principle of reasonableness, which is an essential element

20. AIR 1975 SC 1379.
22. AIR 1978 SC 597.
of equality, has been provided in Article 14. Impounding of passport without assigning reason is not only breach of statutory provisions but also in violation of *audi alteram partem*; (No one should be condemned unheard) a principle of natural justice. By adopting principle of natural law, Supreme Court moved towards justice in Maneka Gandhi's case against purely legal approach of Gopalan's case.

In *Sharda vs. Dharampal* 23 the Supreme Court relying on Govind Singh's case, the right to privacy has been read into Article 21 with the expansive interpretation of "personal liberty" but this right is not an absolute right and, if there were conflict between Fundamental Rights of the two parties, that right which advances the public morality would prevail.

In *Som Mittal vs. Govt. of Karnataka* 24, the Supreme Court held that Right to liberty under Article 21 of the Constitution is a valuable right, and hence should not be lightly interpreted.

In *Anuj Garg vs. Hotel Association of India* 25, personal freedom is a fundamental tenet which cannot be compromised in the name of expediency until and unless there is compelling state purpose.

Article 21 is to meet the following conditions:

(i) There must be valid law, and

(ii) The valid law must lay down just, fair and reasonable procedure.

Justice P.N. Bhagwati declared that the expression 'personal liberty' in Article 21 is of the widest amplitude and it covers variety of right who go to constitute personal liberty and some of them raised the status of distinct Fundamental Rights and given additional protection under Article 14 and 19.

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Some of the important rights have been recognized by the judiciary under Article 21 are enumerated as under:

➢ **Right to live with Human Dignity**

In Maneka Gandhi case Supreme Court held that the right to live is not confined merely to physical existence but includes right to live with dignity. In *Francis Coralie vs. Union Territory of Delhi*\(^2^6\), Supreme Court held that the right to live is not limited to protection of any faculty or limb through which the life is enjoyed or the soul communicates to outside world, but includes to live with human dignity. In *Bandhua Mukti Morcha vs. Union of India*\(^2^7\), this principle was further extended to include protection of the health and strength of workers, prevention of abuse of children opportunities and facilities for children to develop in a healthy manner and conditions of freedom and dignity, educational facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order to enable a person to live with human dignity. Recently in *Bombay Dying Mfg. Co. Ltd. vs. Bombay Environmental Action Group*\(^2^8\), held that as the factors governing the quality of life have been included in the expression "life", Article 21 require not only compliance with procedural requirements, but also the substantive rights of a citizen.

➢ **Right to life includes Reputation**

Reputation is an important part of one's life. It is one of the finer graces of human civilization, which make life worth living.\(^2^9\) The Supreme Court referring to an American decision\(^3^0\), in *Smt. Kiran Bedi*...
vs. Committee of Inquiry\(^{31}\), held that a good reputation was an element of personal security and was protected by the Constitution, equally with the right to the enjoyment of life and liberty. The court affirmed that the right to enjoyment of a private reputation was of ancient origin and was necessary to human society.

Recently, in *State of Bihar vs. Lal Krishna Advani\(^{32}\)*, the Supreme Court ruled that it was amply clear that one was entitled to have and preserve one's reputation and one had a right to protect it. The court further said that in case any authority, in discharge of its duties fastened upon it under the law, traversed into the realm of personal reputation adversely affecting him, it must provide a chance to him to have his say in the matter. The court observed that the principle of natural justice made it incumbent upon the authority to give an opportunity to the person, before any comment was made or opinion was expressed which was likely to prejudicially affect that person.\(^{33}\)

In another recent case,\(^{34}\), the Apex Court held that no judicial order can ever be passed by any court without providing a reasonable opportunity of being heard to the person likely to be affected by such order and particularly when such order results in drastic consequences of affecting one's own reputation. In the instant case the High Court had erred in directing enquiry and investigation against an institution without impleading the same.

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31. AIR 1989 SC 714. See also B.O.T. of Port of Bombay vs. Dlip Kumar, AIR 1983 SC 109, wherein the SC ruled that the right to reputation was a facet of a right to life of a citizen under Article 21. The court referred to the International Convention on Civil and Political Rights, 1966 which recognizes right to have opinions and the right of freedom of expression subject to the right of reputation of others.

32. AIR 2003 SC 3357: (2003) 8 SCC 361, 364. In this case two Members of a Commission of Inquiry appointed to inquire into the communal disturbances in Bhagalpur District on 24th October, 1989, made some remarks in their report, which impinged upon the reputation of the respondent as a public man, without affording him an opportunity of being heard.

33. See Section 8B of Commission of Inquiry Act, 1952, to the same effect.

Right to die (Euthanasia)

If Article 21 of the Constitution confers on a person the right to live a dignified life, does it also confer a right not to live if the person chooses to end his life? If so, then what is the fate of the provisions for attempt to commit suicide penal? This question came for consideration first time before the Bombay High Court in State of Maharashtra vs. Maruty Sripati Dubal, High Court held that desire to die is not natural but merely abnormal and uncommon. Everybody has no right to end his life as and when he desires, therefore Section 309 of IPC provides punishment for attempt to commit suicide as it is unconstitutional. Andhra Pradesh High Court took reverse view in case of Chena Jagdeeswar vs. State of A.P., held sec. 309, PC valid and not violative of Article 14 or 21. In P. Rathinam Nagbhushan Patnayak vs. Union of India, Apex Court approved decision of Bombay High Court, however Supreme Court rejected euthanasia/mercy killing. In case of Giankaur vs. State of Punjab, Supreme Court unanimously overruled its own decision in Patnayak’s case and held that right to life does not include right to die or to be killed.

Right of Education (Article 21-A)

A man given birth by parents but his existence is made meaningful by education as Chanakya says, without learning a man in fact remains an animal with tail and hoop.

There are only two enemies of man, first is poverty and second ignorance. Education brings refinement on the personality of a man. Therefore, it is said: Imparting education is the greatest donation. Ignorant person can be cheated at any time and at any place. The progress of culture

37. 1988 Cr.LJ 549.
and civilization of mankind largely contributed by education. The whole development of science and technology is based on education. Education is the pivot on which all development of society hinges.  

In the garb of importance of education the Constitution (86th Amendment) Act, 2002 added Article 21A\textsuperscript{41} that makes education up to age 6 to 14 years, Fundamental Right within the meaning of part III of the Constitution. 

Article 21A may be read with new substituted Article 45\textsuperscript{42} and new clause (k)\textsuperscript{43} inserted in Article 51A by the Constitution (86th Amendment) Act, 2002.

Recently in Modern School vs. Union of India\textsuperscript{44}, the Supreme Court held that the state have a duty to impart education and particularly primary education having regard to the fact that the same is a Fundamental Right within the meaning of Article 21 of the Constitution.

\section*{Article 21 and Prisoners Rights}

In Maneka Gandhi case\textsuperscript{45}, the Supreme Court gave a new dimension to Article 21. Though worded in negative terms, it has been held that Article 21 has both negative and affirmative contents. Positive rights have thus been held to be well conferred under Article 21. The court has interpreted Article 21 so as to have widest possible amplitude. Protection of Article 21 is well extended to under trials, prisoners and even to the convicts. It has been ruled that a prisoner, he a convict, under trial or a

\begin{enumerate}
\item[40.] Supra Note 8, p. 137.
\item[41.] "The state shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the state may, by law, determine".
\item[42.] Obligates the state "to endeavour to provide early childhood care and education for all children until they complete the age of six years".
\item[43.] Imposes a fundamental duty on parents/guardian "to provide opportunities for education to his child or as the case may be, ward between the age of six and fourteen years".
\item[45.] AIR 1978 SC 597.
\end{enumerate}
detenu does not cease to be a human being. Even when lodged in the jail, he continues to enjoy all his Fundamental Rights including the right to life. On being convicted of crime and deprived of their liberty in accordance with the procedure established by law prisoners still retain the residue of Constitutional rights.\footnote{46}{State of A.P. vs. Challa Ramkrishna, AIR 2000 SC 2083.} In this context, it may, therefore, be stated that the Supreme Court while interpreting Article 21, has laid down a new Constitutional and prison jurisprudence. The rights or protections recognized for the prisoners have been discussed as follows.

\begin{itemize}
\item \textbf{Right to Free Legal Aid}
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The concept of Legal Aid to the indigent has its roots in the well-settled principle of natural justice ‘audi alteram partem’ (hear the other side). Even in primitive society, the leader would hear the parties before passing his judgment. In today’s society where there is large number of Acts, Rules and Regulations with complex procedure, the assistance of a lawyer is necessary for ensuring justice. In a welfare state it is obligations of the state to ensure to the citizen justice according to law. It is crystal clear that due to poverty people are not in position to knock the doors of courts for getting justice from judiciary, so sometime even in genuine cases people are to suffer unnecessarily in prison. In \textit{M.H. Hoskot vs. state of Maharashtra}\footnote{47}{AIR 1978 SC 1548: (1978) 3 SCC 544.}, the Supreme Court has emphasized that the lawyer’s services constitute an ingredient of fair procedure to a prisoner who is seeking his liberation through the court procedure. In \textit{Hussainara Khatoon case}\footnote{48}{AIR 1979 SC at 1373.}, Bhagwati, J., has observed:

“Now, a procedure which does not make available legal services to an accused person who is too poor to afford a lawyer and who would, therefore, have to go through the trial without legal assistance, cannot possibly be regarded as ‘reasonable, fair and justice’.

\footnote{46}{State of A.P. vs. Challa Ramkrishna, AIR 2000 SC 2083.}
\footnote{47}{AIR 1978 SC 1548: (1978) 3 SCC 544.}
\footnote{48}{AIR 1979 SC at 1373.}
In the Constitution of India there is implicit in Article 142 read with Article 21 and 39A, the state is to pay the amount to lawyer fixed by the court.

Article 39A equal justice and free legal aid was inserted by the Constitution 44th Amendment Act, 1978, on the basis of report of the expert committee on legal aid in 1973. In the case of Sukhdas vs. UT of Arunachal Pradesh49, Supreme Court held that failure to provide free legal aid to an accused at the state cost, unless refused by the accused, would vitiate the trial. Free legal aid is implicit in requirement of just, fair and reasonable procedure under Article 21. The Magistrate is under an obligation to inform the accused of this right.

It may thus be noticed that Article 21 imposes a positive obligation on the Magistrate or the committing judge, to inquire as to whether the accused is not in a position to engage a lawyer on account of his poverty or indigence. If so, then the accused must be provided with a lawyer at the state cost.

➢ Right to a Fair Trial

Free and fair trial has been said to be the sine quo non of Article 21. It is said that justice should not be done but it should be seen to have been done. "If the criminal trial is not free and fair and not free from bias, the judicial fairness and criminal justice system would be at stake, shaking the confidence of the public in the system and would be the rule of law". So said, the Supreme Court in K. Arbazhagan vs. Superintendent of Police50, the trial of cases pending against the Chief Minister of Tamil Nadu, transferred from the court of Addl. Sessions Judge, Chennai to the state of

50. AIR 2004 SC. See also Police Commr., Delhi vs. Registrar, Delhi H.C., AIR 1997 SC 95; Maneka Gandhi vs. UOI, AIR 1979 SC 468; D.P. Agarulal vs. R.C. Agarwal, AIR 2003 SC 2686; Maneka Gandhi vs. Rani Jethmalani, AIR 1979 SC 468.
Karnataka with the direction to later to appoint special judge for the trial of the cases.

In *Zahira Habibullah H. Sheikh vs. State of Gujarat*\textsuperscript{51} (Best Bakery case) the Apex Court said that a trial which is primarily aimed at ascertaining truth, has to be fair to all concerned. Not only the accused be fairly dealt with, but also the victims or their family members and relatives. Denial of a *fair trial* is as much injustice to the accused as is the victim and the society.

A *fair trial* the court said would obviously mean a trial before an impartial judge, a fair prosecutor and atmosphere of judicial calm, that in which bias or prejudice for or against the accused, the witnesses or the cause which was being tried was eliminated. Where the witnesses got threatened or were forced to give false evidence or where material witnesses were not heard, fair trial would be said to have been denied. The state, the court ruled thus had a definite role to play in protecting the witnesses; to start with, atleast in sensitive cases involving those in power, having political patronage, could wield muscle and money power to avert trial getting fainted and derailed and truth becoming a casualty.

The principle of fair trial now informs and strengthens many areas of law. It is reflected in numerous rules and practices. It is a constant ongoing development process continually adapted to new changing circumstances, and exigencies of the situation - peculiar at times and related to the nature of crime, persons involved directly or operating behind, social impact and social needs and even so many powerful balancing factors which may come in the way of administration of criminal justice system.\textsuperscript{52}

\textsuperscript{51} AIR 2004 SC 3114.

Failure to observe fair hearing to the accused or the prosecution violates even minimum standards of due process of law. It is inherent in the due process of law that condemnation should be rendered only after the trial in which the hearing is a real one, not sham or a mere farce and pretence. Since the fair hearing requires an opportunity to preserve the process, it may be vitiated and violated by an overhasty stage managed, tailored and partisan trial. The fair trial for a criminal offence consists not only in technical observance of the frame, and forms of law, but also in recognition and just application of its principles in substance, to find out the truth and prevent miscarriage of justice.53

"Fair trial" includes fair and proper opportunity allowed by law to the accused to prove his innocence. Adducing evidence in support of the defence is a valuable right. Denial of that right means denial of fair trial54 and violate the right enshrined in Article 21 and Section 243 of Cr.P.C. 1973.

➢ Right to Bail

Excessive bail shall not be required, nor excessive fines, in effect, nor cruel unusual punishments inflicted. Bail, of course, is not actually punishment but rather a sum of money a defendant must deposit in order to stay out of jail until the case goes to trial and the jury reaches a verdict. It is a guarantee that the defendant will show up for trial on the date set. The clause banning "excessive bail" was intended to prevent the government from jailing people indefinitely without a trial. In the past, judges had sometimes fixed bail at impossibly high rates, far more than a defendant could hope to raise. As a result, a person accused of crime but not convicted might languish behind bars for months or years.55

53. Id, 396 (paras 38-39).
55. Russell Freedman in Defence of Liberty - The Story of America's Bill of Rights, the Eighth Amendment, p. 134.
The Supreme Court of India has analysed the root cause for long pre-trial incarceration to be the present day unsatisfactory and irrational rules for bail which insist merely on financial security from the accused and their sureties. A large number of under trials being poor and indigent are unable to provide any financial security. Consequently, they have to languish in prison awaiting their trial. The Apex Court has characterized the provision of bail in India as 'antiquated'. It is oppressive and weighted against the poor and indigent. The system of granting bails needs to be improved as in Babu Singh vs. State of U.P., the Supreme Court held that "refusal to grant bail" to an accused person without reasonable grounds would amount to deprivation of his "personal liberty" under Article 21...

The court has suggested to change provisions for bail so that these provisions need no longer be based merely on financial sureties but that other factors should also be taken into account so that the poor can get their release from the prison pending their trial.

The court has laid down that even under the law as it exists, if the trial court feels satisfied than an accused has his roots in the community and he is not likely to abscond, it can safely release him on his personal bond without sureties. The Supreme Court has laid down guidelines to enable the lower courts to determine whether the accused has his roots in the community which would deter him from fleeing from justice. Imposing unjust or harsh conditions, while granting bail, is violative of Article 21.

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57. AIR 1978 SC 527.
58. Ibid.
(ii) Right to Speedy Trial

A free generation of India fashioned a Constitution and a Republic whose founding faith is the Supremacy of law, social justice and secular democracy. The conscience of this document serves as the philosophy of our jurisprudence and the rule of law plays the part of social engineering, whereby a new order may be created.

Dedicated as our country is to build a modern society, benevolent humanism, mutation of social cultural values and development of economic structure assume supreme importance. While technological know how dictate the directions and pace of new order, actual change over can effectively be achieved only through legal process, so long as we are Constitutionally wedded to rule of law. The criminal justice system in India is founded on the bedrock of the Constitution.

Right to speedy trial is the essence of justice as “justice delayed is justice denied”. Speedy trial is not mentioned as a specific Fundamental Right in the Constitution; even criminal procedure does not guarantee specifically any right to speedy trial. Nor is there any specific provision which prescribing the maximum period for which a magistrate can keep an under trial in jail without trial.

The right to speedy trial has been said to have its roots at the foundation of criminal proceedings, and the US Supreme Court has traced its roots back to the twelfth century. The right to speedy trial is reflected in the major human right instruments (for example Article 14(3) of International Covenant on Civil and Political Rights (ICCPR), Article 6(1) of the European Convention on Human Rights (ECHR) and Article 7(5) of the American Convention on Human Rights (ACHR) and is reflected in the statutes of all of the international criminal courts and Tribunals.

In the United States speedy trial is one of the Constitutionally guaranteed right. The Sixth Amendment to the Constitution provides that- "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial".\(^6\)

The Supreme Court of India in its landmark judgment in Hussainara Khatoon vs. Home Secretary State of Bihar\(^7\) explicitly held speedy trial as part of Article 21 of the Constitution guaranteeing right to life and liberty. The Supreme Court took the matter up when the Indian Express newspaper carried a news story about the state of under-trial prisoners in Bihar, some of them were in jail for as many as five, seven or nine years and few of them for even more than ten years without their trials having begun. Justice P.N. Bhagwati observed:

"There is also one other infirmity of legal and judicial system which is responsible for this gross denial of justice to the under trial prisoners and that is the notorious delay in disposal of cases. It is a bad reflection on the legal and judicial system that the trial of an accused should not even commence for a long number of years. Even a delay of one year in the commencement of the trial is bad enough; how much worse could it be when the delay is as long as 3 or 5 or 7 or even 10 years. Speedy trial is of the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. We think that even under our Constitution, though speedy trial is not specifically enumerated as a Fundamental Right, it is implicit in the broad sweep and content of Article 21 as interpreted by this court in Maneka Gandhi vs. Union of India.\(^8\) We have held in that case that the Article 21 confers a Fundamental Right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law and it is not enough to constitute compliance with the requirement of the Article that some semblance of a procedure should be prescribed by law, but that the procedure should be "reasonable, fair and just".

If a person is deprived of his liberty under a procedure which is not 'reasonable fair and just', such deprivation would be violative of his Fundamental Right under Article 21 and he would be entitled to enforce

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8. AIR 1978 SC 597.
such Fundamental Right and secure his release. Now obviously 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 reasonable 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.

The court comes down harshly on the state for pleading financial and administrative constraints in providing speedy trial. The state cannot avoid its Constitutional obligation to provide speedy trial to the accused by pleading financial or administrative inability. The state is under a Constitutional mandate to ensure speedy trial and whatever is necessary for this purpose has to be done by the state. It is also the Constitutional obligation of this court, as the guardian of the Fundamental Rights of the people, as a sentinel on the *qui vive*, to enforce the Fundamental Right of the accused to speedy trial by issuing the 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 Apex Court also criticized monetary based approach of bail. One reason why our legal and judicial system continually denies justice to the poor by keeping them for long years in pre-trial detention is our highly unsatisfactory bail system. It suffers from a property-oriented approach which seems to proceed on the erroneous assumption that risk of monetary loss is the only deterrent against fleeing from justice.
The court further observed that the practice of release of accused only against bail with monetary sureties had done more harm than good. It noted that if the accused has roots in the community and is not likely to abscond, a personal bond should usually be adequate to issue a release order.

In *Maneka Gandhi vs. Union of India and Anothers*\(^{64}\), a Constitutional Bench of the Supreme Court went into the meaning of the expression "procedure established by law" in Article 21. The court held that the procedure established by law does not mean any procedure but a procedure that is reasonable, just and fair. The Court read Article 19 and 14 into Article 21 of the Constitution for this purpose.

The law must therefore now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of 'personal liberty' and there is consequently no infringement of the Fundamental Right conferred by Article 21, such law, insofar as it abridges or takes away any Fundamental Right under Article 19 would have to meet the challenge of that Article.

Now, if a law depriving a person of 'personal liberty' and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the Fundamental Rights conferred under Article 19 which may be applicable in a given situation, it must also be liable to be tested with reference to Article 14.

There can be no doubt that (Article 14) is a founding faith of the Constitution. It is indeed the pillar on which rests on the foundation of our democratic republic.

In fact equality and arbitrariness are sworn enemies: one belongs to the rule of law is a republic, while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary, it is implicit in it that it is

\(^{64}\) (1978) (1) SCC 248.
unequal according to both political logic and Constitutional law and is therefore violative of Article 14. Article 14 strikes at arbitrariness in state action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness, pervades Article 14 like a brooding omnipresence and the procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. It must be 'right, just and fair and not arbitrary, fanciful or oppressive, otherwise, it would be no procedure at all and the requirement of Article 21 would not be satisfied.

In Sheela Barse vs. Union of India$\textsuperscript{65}$, a social worker had taken up the case of helpless children below age of 16 years illegally detained in jails. She prayed for the release of such young children from jails, supply of information as to the existence of juvenile courts, homes and schools and other necessary directions for proper looking after of the children in custody.

The Supreme Court deciding the matter observed that where the court comes to a conclusion that the right to speedy trial of an accused has been infringed, the charge or conviction, as the case may be must be quashed. The court directed the state governments to take steps for completing an investigation within three months in cases lodged against children.

Further, it directed the establishment of an adequate number of courts to expedite the trial of children detained in various jails.

In Abdul Rehman Antulay and Others vs. R.S. Nayak and Anothers$\textsuperscript{66}$, a five judge Constitution Bench of the Supreme Court reiterated the position that a right to speedy trial is implicit in Article 21 of the Constitution. In

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this case the court also laid down detailed propositions of law on speedy trial.

The court observed that the provisions of the Criminal Procedure Code were consistent with the right to speedy trial and if followed in letter and spirit, there would not be any grievance but, unfortunately, these provisions are honoured more in breach than in compliance. The Court specifically mentioned Section 309 of Cr.P.C., which provides that the proceedings shall be held as expeditious as possible and in particular that when the examination of witnesses has begun it shall be held as expeditiously as possible and in particular that when the examination of witnesses has begun it shall continue from day to day until all the witnesses in attendance have been examined.

Another landmark judgment was *Supreme Court Legal Aid Committee Representing Undertrial Prisoners vs. Union of India*. In this judgment, the Supreme Court of India, while dealing with the Narcotic Drugs and Psychotropic Substances Act, 1985, laid down certain conditions for mandatory release of undertrial prisoners on bail where trial was not completed within a specified period of time. The Court’s directions with respect to pending cases included:

(i) Where the under trial is accused of an offence(s) under the Act prescribing a punishment of imprisonment of five years or less and fine, such as under trial shall be released on bail if he has been in jail for a period which is not less than half of the punishment provided for the offence with which he is charged and where he is charged with more than one offence, the offence providing the highest punishment. If the offence with which he is charged prescribes the maximum fine, the bail amount shall be 50% of the said amount with two sureties for like amount. If the maximum fine is not prescribed bail shall be to the satisfaction of special judge concerned with two sureties for like amount.

(ii) Where the under trial accused is charged with an offence(s) under the Act providing for punishment exceeding five years and fine,

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such an under trial shall be released on bail on the term set out in (i) above provided that his bail amount shall in no case be less than Rs. 50,000 with two sureties for like amount.

(iii) Where the under trial accused is charged with an offence(s) under the Act punishable with minimum imprisonment of then ten years and minimum fine of rupees of one lakh (100,000), such an under trial shall be released on bail if he furnishes bail in the sum of rupees one lakh with two sureties for the like amount.

(iv) Where an under trial accused is charged for the commission of an offence punishable under Section 31 and 31-A of the Act, such an under trial shall not been titled to be released on bail by virtue of this order.

The Court subjected the directives in clauses (i), (ii) and (iii) above to the same general conditions as ordinarily apply, which include deposition of the under-trial prisoner’s passport with the court, reporting to the police station prosecuting the case at prescribed periods and an obligation not to leave the jurisdiction of the trial court without the court’s express permission. Further, the court denied the benefit of the above directions to those accused that are likely to tamper with evidence or influence prosecution witnesses.

The issue of huge number of pending and delayed criminal cases came up before the Supreme Court in a petition filed by a non-governmental organization. The Supreme Court in the case reported as - *Common cause vs. Union of India & Others*68, observed: It is a matter of common experience that in many cases where the persons are accused of minor offence punishable for not more than three years or even less with or without fine, the proceedings are kept pending for years together. If they are poor and helpless, they languish in jail for long periods either because there is no one to bail them out or because there is no one to think of them. The very pendency of criminal proceeding for long periods by itself operates as an engine of oppression. Quite often, the private complaints institute these proceedings out of oblique motives. Even in case

68. 1996(4) SCC 33.
of offence punishable for seven years or less - with or without fine - the prosecution are kept pending for years and years together in criminal courts. In a majority of these cases, whether instituted by police or private complainants, the accused belong to the poorer Sections of the society, who are unable to afford competent legal advice. Instances have also come before courts where the accused, which are in jail, are not brought to the court on every date of hearing and for that reason also the cases undergo several adjournments. It appears essential to issue appropriate directions to protect and effectuate the right to life and liberty of the citizens guaranteed by Article 21 of the Constitution. It is also necessary to ensure that these criminal prosecutions do not operate as engines of oppression.

The court issued detailed guidelines for the release of under-trial prisoners and the ending of proceedings. The court ordered the release of under-trial prisoners on bail in cases involving offences under the IPC or any other law in force at the time if the offences are punishable with imprisonment not exceeding

i. Three years with or without fine and if trials for such offences have been pending for one year or more and the accused concerned have been in jail for a period of six months or more.

ii. Five years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have been in jail for a period of six months or more.

iii. Seven years, with or without fine, and if the trials for such offences have been pending for two years or more and the accused concerned have not been released on bail but have been in jail for a period of one year or more.

The court ordered the quashing of criminal proceedings and discharge or acquittal of accused persons in cases involving offences under IPC or any other law in force at the time in cases of:

i. Traffic offences, if the proceedings have been pending for more than two years on account of a non-serving summons to the accused or for any other reason.
ii. Offences compoundable with the permission of the court, if the proceedings have been pending for more than two years and trials have still not commenced.

iii. Non-cognizable and bailable offences that have been pending for more than two years and trials have still not commenced.

iv. Offences punishable with fine only and are not of recurring nature, and have been pending for more than one year and trials have still not commenced.

v. Offences punishable with imprisonment of up to one year, with or without fine, and have been pending for more than one year and trials have still not commenced.

The court said that the period that a criminal case has been pending must be calculated from the date that the accused are summoned to appear in court. Further, the court excluded offences

i. Of corruption, misappropriation of public funds, cheating, whether under the IPC, Prevention of Corruption Act, 1947, or any other statute;

ii. Concerning smuggling, foreign exchange violation and offences under the Narcotics Drugs and Psychotropic Substances Act, 1985;

iii. Under the Essential Commodities Act, 1955, Food Adulteration Act, and acts dealing with the environment or any other economic offences;

iv. Under the Arms Act, 1959, Explosive Substances Act, 1908, and Terrorist and Disruptive Activities Act, 1987;

v. Relating to the army, navy and air force;

vi. Against public tranquility;

vii. Relating to public servants;

viii. Relating to coins and government stamps;

ix. Relating to elections;

x. Relating to giving false evidence and offences against public justice;

xi. Of any other sort against the state;

xii. Relating to taxation; and

xiii. Of defamation as defined in Section 499 of the IPC.
In the second Common Cause Judgment\(^69\), the Supreme Court clarified that the time-limit mentioned regarding pending criminal cases in the first judgment shall not apply to cases wherein the delay of criminal proceedings is wholly or partly attributable to the dilatory tactics adopted by the accused or on account of any other action of the accused which results in prolonging the trial. It added further categories of offences from its directions above, regarding offences

i. Of matrimony under the IPC including Section 498A or under any other law;

ii. Under the Negotiable Instruments Act, including offences under its Section 138;

iii. Relating to criminal misappropriation of property of the complainant as well as offences relating to criminal breach of trust under the IPC or under any other law;

iv. Under Section 304A of the IPC or any offence pertaining to rash and negligent acts which are made punishable under any other law; and,

v. Affecting public health, safety, convenience, decency and morals as listed in chapter XIV of the IPC or such offences under any other law.

The Supreme Court in Shaheen Welfare Association vs. Union of India\(^70\) 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

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\(^69\) [1996 (6) SCC 775, 199]

\(^70\) [1996 (2) SCC 616]
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 IPC, 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.

In *Raj Deo Sharma versus State of Bihar,* the Supreme Court issued
certain directions for effective enforcement of the right to speedy trial as
recognized in Antulay’s Case, and prescribed time limits for completion
of prosecution evidence in criminal trials. During the hearing of this case,
certain facts were brought to the notice of the court. It was found that in
Bihar alone, several cases were pending for more than 25 years. A report
submitted by the Special Judge, CBI Court, Patna in December 1996
pointed out that in one case pending from 1982 the prosecution had cited
as many as 40 witnesses but had examined only three witnesses up to 1996,
the last in 1993. The report also pointed out that thereafter, the prosecution
had taken 36 adjournments to examine the remaining witnesses, but had
not produced even one of them. After discussing the existing case law, the
Supreme Court laid down, among other things, that if an offence is
punishable with imprisonment for a period.

i. Not exceeding seven years, whether the accused is in jail or not, the
court shall close the prosecution evidence on completion of a period of
two years from the date of recording the plea of the accused on the
charges framed, irrespective of whether the prosecution has examined
all the witnesses or not and the court can proceed to the next stage of
trial. Furthermore, if the accused has been in jail for a period of over
half of the maximum period of punishment prescribed for the offence,
bail shall be granted.

ii. Exceeding seven years, whether the accused is in jail or not, the court
shall close the prosecution evidence on completion of a period of

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71. [1998 Indlaw SC 1131],
72. [1992 (1) SCC 225]
three years from the date of recording the plea of the accused on the
charges framed, whether the prosecution has examined all the
witnesses or not.

In the second Raj Deo Sharma Case\textsuperscript{73}, the court clarified that if the
delay in trial has been caused on account of the conduct of the accused, no
court is obliged to close the prosecution evidence within the period
prescribed. Further, if the trial has been stayed by the orders of the court or
by operation of law, the time during which the stay was in force shall be
excluded from the period established for closing prosecution evidence.

While examining the outcome of judicial attitude, one discerns that
the Apex Court seemed to be vacillating on the debate of right to speedy
trial. Would it not be safe to submit that this vacillating attitude, be
contributory to piling of cases resulting in arrears and, ultimately,
(i) culminating in delay in disposal of cases (ii) collapsing of judicial
process under its own weight; and (iii) the death knell of the Indian legal
system? From the type of attitude, one may gather the impression that the
problem of speedy disposal of cases seems to remain at the same juncture
where it was originally, and the several reports\textsuperscript{74} and judicial
pronouncements have not been able to lessen the bottlenecks of the
problem.

(iii) Structure, Role and Management of the Judicial System

The Indian Judiciary consists of one Supreme Court with 26 judges,
21 High Courts with sanctioned strength of 725 justices (working strength

\textsuperscript{73} [1997 (7) SCC 604]

\textsuperscript{74} Civil Justice Committee (known as Justice Rankin Committee), 1924; Arrears Committee
headed by Justice S.R. Das), 1948; Judicial Reforms Commission, 1950, Law Commission
of India 14th Report (1958); Survey Report (1967); H.C. Arrears Commission (headed by
Justice J.C. Shah), 1972; Administrative Reforms Commission - Study Team (Headed by
M. C. Seetalvad); Law Commission of India, 79th Report (Delay and Arrears in High
Court and other Appellate Courts); Id, 80th Report; Estimates Committee, 31st Report,
Law Commission of India, 120th Report (Manpower planning in Judiciary; A new Forms
for Judicial Appointment) Id, 124th Report (th HC Arrears - A Fresh Look); The Arrears
Committee Report - (known as Justice V.S. Malinath Report) 1990
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597 as on 1.3.2007) and 14, 477 Subordinate Courts/judges. (Working strength only 11,767 as on 31.12.2006).

Justice K.G. Balakrishnan the Honourable Chief Justice of India on the occasion of Law Day inaugural address, said “I consider it my duty as head of the Judiciary to inform the people of the state of administration of Justice in our country reflecting on its performance in the past and efforts being made for better implementation of tasks assigned to it under the Constitution”.

Hon’ble Chief Justice of India has raised the question from above statistics is why such large number of vacancies are allowed to remain vacant particularly at the trial court level where the arrears are constantly on the increase. That takes us to the selection and appointment process where the Government has a greater role than the judiciary. A way has to be found by the government (which includes all states and Union Territory Governments) and the Judiciary to address this problem in order to maintain a zero-vacancy situation all the time.

There is unanimity of opinion that the judge strength in India has to considerably increase to cope with the needs and demands. In fact, the Supreme Court of India as early as in 2002 in All India Judge’s Association (III) case has directed the state and the Central Governments to increase strength five time over a period of five years. Governments have not yet acted on it keeping the number of judges by and large the same for too long, despite mounting and consequent delay. Judiciary has no power to increase the strength of Courts or appoint additional judges without government sanction and budgetary support.

76. Ibid.
77. All India Judges Association (III) vs. Union of India, 2002, 4SCC 247: 2002 SCC (L & S), 508.
Meanwhile in another judgement Salem Advocate Bar Association (II) vs. Union of India78 the court desired that a judicial impact assessment should accompany every fresh legislation so that the judiciary will be prepared to assist the enforcement of new laws properly and efficiently while dispensing justice under it.

The courts do not possess a magic wand, which they can waive to wipe out the huge pendency of cases, nor can they afford to ignore the instances of injustices and illegalities only because of the huge arrears of the cases already pending with them. There are volumes of Law Commission recommendations, expert committee reports and opinions of Jurists, highlighting the problem and suggesting ways and means.

The need of the hour is to act upon those suggestions swiftly and decisively. The real problem is that the institution of cases in the courts far exceeds their disposal. Though there is a considerable increase in the disposal of cases in various courts, the institution has increased more rapidly.79

The High Courts increased their annual disposal from 9,80,474 cases in the year 1999 to 14,50,602 cases in the year 2006, the cumulative increase being 48% in seven years, without there being commensurate increase in the strength of judges. However, the institution increased from 11,22,430 cases in the year 1999 to 15,89,979 year 2006 leading to increase in pendency from 27,57,806 as on 31.12.1999 to 36,54,853 cases as on 31.12.2006.

Subordinate Courts disposed of 1,58,42,438 cases in the year 2006 as against 1,23,94,760 cases in the year 1999, thereby, increasing the disposal by 28% in seven years without any substantial increase in the strength of judges. However, the institution increased from 1,27,31,275 cases in the

year 1999 to 1,56, 42,129 cases in the year 2006, resulting in the pendency getting increased from 2,04,98,400 cases as on 31.12.1999 to 2,48,72,198 cases as on 31.12.2006.80

The average disposal per judge comes to 2374 cases in the High Courts and 1346 cases in Subordinate Courts, if calculated on the basis of disposal in the year 2006 and working strength of judges as on 31.12.2006. Applying this average, we require 1539 High Court judges and 18,479 subordinate judges to clear the backlog in one year.

The requirement would come down to 770 more High Court judges and 9239 more subordinate judges if the arrears alone have to be cleared in the next two years. The existing strength being inadequate, even to dispose of the actual institution, the backlog cannot be wiped out without additional strength, particularly, when the institution is likely to increase and not come down in the coming years.81

Several statutes like the Penal Code, the Code of Criminal Procedure, the Negotiable Instruments Act etc., which contribute to more than 50% to 60% of the litigation in the trial courts are central enactments, referable to list I or list III and these laws are administered by the courts established by the state governments. The number of central laws which create rights and offences to be adjudicated in the Subordinate Courts are about 340. It is obvious that the Central Government must establish courts at the trial level and appellate level and make budgetary allocation to the states to establish these courts to cut down backlog of cases arising out of these central statutes. The Central Government must estimate and pay for the recurring and non-recurring expenditure of the state courts to the extent the courts spends time to adjudicate disputes arising out of central statutes.

80. Ibid
81. Supra note 24 J 17
Article 247 of the Constitution enables the Union Government to establish additional courts for better administration of laws made by Parliament or of any existing law with respect to a matter enumerated in the Union list. 82

So far backlog in Subordinate Courts is concerned, additional court must be created and additional Judicial Officers must be appointed till the backlog is cleared. Ad hoc judges under Article 224-A of the Constitution should be appointed to clear the backlog in the High Courts for a period of five years or till the backlog is cleared. All the cases which are pending in the High Courts for two years or more can be allocated these ad hoc judges. Since the annual institution in the High Courts as well as in sub-ordinate courts exceeds their respective annual disposal, additional judges in the High Courts as well as in Subordinate Courts should be appointed on permanent basis to deal with increase in institution over the disposal. 83

The Law Commission in its 120th Report submitted in 1987 examined the problem of understaffing of judiciary and recommended 50 judges per million of population instead of 10.5.

- Sanctioned strength of the High Court was 725 and working strength was 597 as on 1.3.2007 leaving 128 vacancies.
- Sanctioned strength of subordinate judge was 14,477 and working strength of 11,767, leaving 2710 vacancies as on 31.12.2006. 84

As per the information collected by the First National Judicial Pay Commission, every state except Delhi has been providing less than 1% of the budget for subordinate judiciary whereas the figure is 1.03% in case of Delhi.

During the 10th plan (2002-2007) Rs.700/- crores have been allocated for priority demands of Judiciary, which is 0.078% of the total plan outlay.

82. (2007) 4 SCC J 17
83. Id. J 18.
84. (2007) 4 SCC J 18
Such meagre allocations are grossly inadequate to meet the requirements of judiciary. The Government should place adequate funds at the disposal of the High Courts for augmenting the infrastructure.85

In the state of Gujarat Evening Courts have already started functioning since 14.11.2006. Presently there are 60 such courts and they have disposed of 57,422 cases between 14.11.2006 and 31.3.2007.

On the recommendation of the 11th Finance Commission, Fast Track Courts of Session Judge were set up for disposal of long pending sessions and other cases. These courts have been quite successful in reducing the arrears. Most of the criminal cases in Subordinate Courts are pending at the level of Magistrates. 1, 66, 77,657 criminal cases were pending before magisterial courts as on 31.12.2006. Keeping in view the performance of Fast Track Courts of Session Judges, the Government of India should formulate a similar scheme for setting up Fast Track Courts of Magistrates in each state, as recommended by the previous conference of Chief Ministers and Chief Justices held on 11.3.2006.

Our justice delivery system in spite of innumerable drawbacks and failings, still commands high esteem and the citizens have placed the judiciary on a high pedestal.

C. Emergence of Speedy Trial as a Fundamental Right in India

India has a written Constitution and Codified Central and State Laws. Its judiciary is of the highest integrity. The Supreme Court of India is a shining symbol of the great faith, the people have in the judiciary and to great pride the Supreme Court has earned high praise all over the world. Generations of learned judges have worked to uphold and to nurture this sacred national trust. The Indian legislature and judiciary

85. Id J - 19
make constant efforts to bring about improvements in Courts and dispense justice speedily.

The right to speedily trial is not expressly enumerated as one of the Fundamental Rights in the Constitution of India unlike the sixth Amendment\textsuperscript{86} the USA Constitution, which expressly recognises this right in the United States.

It is \textit{inter-alia} declared that in all criminal prosecutions accused shall enjoy the right to a speedy and public trial. This is in addition to the Fifth US Constitutional Amendment, which declares "no person shall be deprived of life, liberty or property without the process of law". This corresponds broadly to Article 21 also to the deleted clause I of Article 31 of the Indian Constitution. Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law."

Article 21 of the Constitution of India confers upon every individual a Fundamental Right not to be deprived of his life or liberty except in accordance with due procedure prescribed under law. The procedure prescribed under law has to necessarily be reasonable, fair and just. Under Article 21 of the Constitution, the right to speedy trial is a fundamental requirement. No procedure, which does not ensure a reasonably quick trial be regarded as "reasonable, fair and it will fall foul of Article 21 and hence is not valid under law. 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.

\textsuperscript{86} The relevant portion of the 6th Amendments reads: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury".
Speedy trial is hence the essence of criminal trial and there can be no
doubt that a delay in trial by itself constitutes denial of justice.87

There can, therefore, be no doubt that speedy and reasonably
expeditious trial is an integral and essential part of the Fundamental Right
to life and liberty enshrined in Article 21. Right to speedy trial
encompasses all the stages, namely the stage of investigation, inquiry, trial,
appeal, revision and retrial is applicable not only to proceedings before a
court but also to police investigation preceding it. 88

The Supreme Court while acknowledging speedy trial to be part of
the Fundamental Rights implicit in the broad sweep and content of Article
21 has posed some pertinent questions to itself. First, what would be the
consequence if a person accused of an offence is denied speedy trial and is
sought to be deprived of his liberty by imprisonment as a result of a long
delayed trial in violation of his Fundamental Right under Article 21?
Second, would be entitled to be released unconditionally, freed from the
charge levelled against him on the ground that trying him after an unduly
long period of time and convicting him after such trial would constitute
violation of his Fundamental Right under. Article 21 ? Third, what would
be outer limit which would declare a trial to have exceeded the unduly
long period? Fourth, what if the trial got delayed unduly due to the fault
of the accused or dilatory tactics adopted by him? Fifth, factors responsible
for delayed trial and last but not the least whether speedy trial ensures a
fair trial or acts as a hindrance to the same. These questions are well
answered by the Supreme Court in the Hussainara Khatoon's case and in
the subsequent cases like Sheela Barse vs. Union of India89. Madhesh -
Warhari Singh vs. State of Bihar90. A.R. Antulay and others vs. R.S. Nayak and

87. Hussainara Khatoon (iv) vs. Home Secretary state of Bihar, AIR, 1979, SC 1369 (1980) 1
89. 1986 (3) SCC, 632
90. AIR 1986 Pat. 324
another"91, Kartar Singh vs. State of Punjab,92 Common Cause vs. Union of India and others93, Raj Deo Sharma vs. State of Bihar94 and also in the case of P. Rama Chandra Rao vs. State of Karnataka.95

For the sake of convenience both the first and second points can be taken together for discussion. Basically two broad propositions emanate from the decision of Hussainare Khatoon's case. They are (1) right to speedy trial is implicit in the broad sweep and content of Article 21; and (2) that unless the procedure proscribed by law ensures a speedy trial it cannot be said to be reasonable, fair or just. Expeditious trial and freedom from detention are part of human rights and basic freedom and that a judicial system which allows incarceration of men and women for long period of time without trial must be held to be denying human rights to such under trials.

Likewise in the case of the State of Maharashtra vs. Champalal Punjaji Shah96 the Supreme Court observed:

"In 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 defendant himself was responsible for a part of the delay and whether he was prejudiced in the preparation of his defence by reason of the delay. The Court is also entitled to take into consideration whether the delay was unintentional, caused by over-crowding of the Court's docket or under-staffing of the prosecution".

This case is significant for the approach it adopts to the problem. According to this decision it is not possible to lay down any hard and fast rule in judging the complaint of denial of speedy trial and that all the circumstances of the case have to be taken in to account before making a

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91. 1999 (1) SCC 225
92. 1994 SCC 936
93. 1996 SCC (Cri) 589
94. 1998 (7) Supreme 556:1999 (II) OLR (SC) 512
95. 2002(3) Supreme 260.
96. 1981 (3) SCC 610
pronouncement. As pointed out in the A.R. antulay's case, the important consideration to be kept in mind by the Court:

1) Whether the accused is responsible for day;
2) Whether he is prejudiced by such delay in any manner. Of course, in some cases the delay may itself amount to prejudice;
3) Nature of offence with which the accused is charged. The court should also take into consideration the nature of offence like an economic offence, which jeopardises the economy of the country and those cases should be dealt within a different manner.

In T.V. Vatheeswaran vs. State of T.N.97 the Supreme Court reiterated the significance of the right to speedy trial and extended it even to post conviction stage. It was held that undue delay in carrying out the death sentence entitles the accused to ask for lesser sentence of life imprisonment. This opinion is based upon the immense psychological, emotional and mental torture a man condemned to death suffers. But this decision was overruled later by a Constitution bench.

However, in Sheela Barse vs. Union of India, a Division Bench of the Supreme Court comprising Bhagwati and R.N. Mishra J.J. reaffirmed that the "right to speedy trial is a Fundamental Right implicit in Article 21 of the Constitution " and observed "the consequence of violation of Fundamental Right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is a breach of the Fundamental Right. Thus, the Court answered the question, which Bhagwati J. had posed in the first Hussainare Khatoon case. This trend continued in the subsequent stages and the same is in conformity with the judicial trend of U.S.A. and other democracies. In Struck vs. United States98 it was held that dismissal of charges was the only possible remedy where a speedy trial has been denied.

97. 1983 (2) SCC 68
98. 37 LED 2d 56
However, it has been recognised in the Hussainare Khatoon's case and in other cases that the accused would be entitled to be released unconditionally if the accused charged with multiple offences have been in imprisonment for more than the total maximum period permissible for all the offences taken together. It was held that accused is entitled to bail if no challan is filed within the period of 90 days or 60 days as the case maybe in which punishment prescribed is above or less than 10 years, as per proviso (a) to sec. 167 (2) Cr.P.C. 1973. It was also held that the State is bound to provide free legal aid to enable the accused to exercise that right and the Magistrate must ensure that he is so provided.

Hence, the point No.1 and 2 are well answered. In a nutshell accused is to be released from custody on bail if investigation or trial could not be completed on time and if trial takes an unduly long time then he is to be discharged or convicted and even conviction can be quashed.

Now coming to the point No.3 as to what should be the outer limit, which would declare a trial to have exceeded the unduly long period it is pertinent to discuss the observations made by the Supreme Court in Raghubir Singh vs. State of Bihar. After examining the decisions of the United States Supreme Court in Strunk vs. United States and Willie Mae Barker vs. John Wingo and also the Privy council in Bell vs. Director of Public Prosecution, Jamaica, the Court posed the following relevant questions.

"Several questions arise for consideration. Was there delay? How long was the delay? Was the delay inevitable having regard to the nature of the case, the sparse availability of legal services and other relevant circumstances? Was the delay unreasonable? Was any part of the delay caused by the wilfulness or the negligence of the prosecuting agency? Was any part of the delay caused by the tactics of the defence? Was the delay due to causes beyond the control of the prosecuting and defending agencies? Did the accused have the ability and the opportunity to assert his right to a speedy trial? Was there a likelihood of the accused
being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his defence, was the very length of the delay sufficiently prejudicial to the accused?"

The Hon'ble Supreme Court also observed that deprivation of the right to speedy trial does not puruse prejudice the accused ability to defend himself, right to speedy trial is more vague concept than other procedural rights. It is, for example, impossible to determine with precision when the right has been denied. We cannot definitely say how long is too long in a system where justice is supposed to be swift but deliberate. As a consequence, there is no fixed point in the criminal process when the state can put the defendant to the choice of either exercising or waiving the right to speedy trial.

However, in Madheshwardhari Singh vs. State of Bihar99, the Full Bench of the Supreme Court had held:

"That a callous and inordinate prolonged delay often years or more, which is no way arises from the accused default (or is otherwise not occasioned due to any extraordinary and exceptional reasons). In the context of reversal of a clean acquittal on a capital charge, would be per se prejudicial to the accused and would plainly violate the Constitutional guarantee of a speedy trial under Article-21."

"that another time limit to concretes the right to speedy public trial is envisioned both by principle and precedent. It is further held that a callous and inordinately prolonged delay of seven years or more (which does not arise from the default of the accused or is otherwise not occasioned by any extraordinary or exceptional reason). In investigation and original trial for offences other than capital ones plainly violate the Constitutional guarantee of a speedy public trial under Article 21."

The other important findings of the Full Bench are that the right to speedy trial applies not only to major crimes but to minor offences as well as and that it takes in its fold not only the proceedings in Court but also the preceding police investigation.

99. AIR 1996 Pat. 324
Conversely, in the A.R. Antulay's case, while acknowledging that right to speedy trial flowing from Article 21 encompasses all the stages, namely the stage of investigation, inquiry, trial, appeal, revision and retrial the Supreme Court refused to prescribe any time limit. The Court had held that while determining whether undue delay has occurred (resulting in violation of right to speedy trial) one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the workload of the Court concerned, prevailing local conditions and so on what is called, the systematic delays. It is true that it is the obligation of the State to ensure a speedy trial and state includes judiciary as well; but a realistic and practical approach should be adopted in such matters instead of pedantic one.

More importantly, the Court had held:

"it is neither advisable nor practicable to fix any time limit for trial of offences. Any such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial of right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the Court to weigh all the circumstances of a given cause before pronouncing upon the complaint. The Supreme Court of U.S.A. too has repeatedly refused to fix any such outer time limit inspite of the sixth Amendment. Nor do we think that nor fixing any such outer limit in effectuates the guarantee of right to speedy trial".

In the Kartar Singh's case also it was held by the Supreme Court that whether a trial has been delayed was to be determined from the facts and circumstances of the case. However, this trend has been reversed in the subsequent decisions. In the case of Common Cause vs. Union of India a time limit of two years for traffic offences and offences with punishment not exceeding three years under I.P.C. or any other law was fixed and for offences punishable with imprisonment. Upto one year with or without fine a time limit of one year was fixed after which the Courts were directed to discharge or acquit the accused. This trend was further reinforced in the
Raj Deo Sharma's case in which direction was given to close the evidence after two years or three years of framing charges for offence punishable with imprisonment for less than 7 years and more than 7 years respectively. In both the cases, some modifications were done in the way of subsequent classifications. But all the four cases of Common Cause and Raj Deo Sharma were over ruled by the Supreme Court in the case of P.Rama Chandra Rao vs. State of Karnatak, by its Constitution Bench which also held that it was not necessary to have limitation bars terminating all criminal trials and proceedings and that the propositions and guidelines of the Constitution Bench in A.R. Antulay's case are held to be good and reaffirmed.

However, in all the above referred decisions and clarifications it was affirmed that if the trial got delayed unduly due to the fault of the Accused or the dilatory tactics adopted by him, he cannot be allowed to take the ground of denial of speedy trial to him. It was held in the aforesaid decisions that each and every delay did not necessarily prejudice the accused. Some delay may indeed work to his advantage. It is often pointed out that delay is a known defence tactic. Since the burden of proving the guilt of the accused lies upon the prosecution, non-availability of witnesses; disappearance of evidence by lapse of time really work against the interest of the prosecution. Of course, there may be causes where the prosecution, for whatever reason, also delays the proceedings. Therefore, in every case it is required to be seen as to who is responsible for the delay. If, it is the accused himself responsible then he would not be entitled to enjoy the benefit of acquittal under the pretext of vacation of his right to speedy trial. Hence, point No.4 needs no further elaboration. It is, however, relevant to reproduce a portion from the judgment of A.R. Antulay's case:

100. 2002(3)SC 260
"Delay is usually welcomed by the accused. He postpones the delay of reckoning thereby. It may impair the prosecution's ability to prove the case against him. In the meantime, he remains free to indulge in crimes. An accused cannot raise this plea if he has never taken steps to demand a speedy trial. A plea that proceedings against him be quashed because delay has taken place is not sustainable if the record shows that he acquiesced in the delay and never asked for an expeditious disposal".

Now coming to the last point, several factors are responsible for trial getting delayed. First there is only one trial judge each for about 10 lakhs population and as stated earlier about 2.5 million cases are pending in India for disposal. Congestion of the Court Calendar, unavailability of adequate number of judges is among the prime reason of delayed trial. Second, delay caused by the prosecution, accused to seek adjournments and taking recourse to various legal devices contributes to the cause of the delay. Third, as pointed out by the Supreme Court, delay is also caused by orders, whether induced by the accused or not, of the Court, necessitating appeal or revision or other appropriate actions or proceedings. Fourth nature of case and antiquated procedures still practised in India are also contributory factors, getting a key witness from outside the territorial jurisdiction of Courts, and those who are avoiding summons to appear also kill lots of time. Moreover, modern techniques are as videoconferencing tale conferencing etc., could have saved the valuable time of the court and expedite trial in India. Last but not the least, lack of infrastructure, manpower in the ministerial level, resources and clubbing up many administrative works with judicial functions retard the trial process.

However, the main point for discussion here is that if denial of speedy trial also deprives a fair trial and ultimately fails to deliver justice or else insistence, speedy trial promotes injustice as it denies a fair and proper trial. As pointed out in the first Hussainare Khatoon's case, the right to a speedy trial is not an expressly guaranteed Constitutional right in India but is implicit in the right to a fair trial, which has been held to be
part of the right to life and liberty guaranteed by Article 21 of the Constitution. It was also held in the State of Maharashtra. vs. Chamalal Punjaji Shah\textsuperscript{101} that while a speedy trial is an implied ingredient of a fair trial, the converse is not necessarily true. A delayed trial is not necessarily true. A delayed trial is not necessarily an unfair trial. The tactics or conduct of the accused himself may cause the delay. The delay may have caused no prejudice whatsoever to the accused\textsuperscript{a}. The question whether a conviction should be quashed on the ground of delayed trial is dependent on the fact as to if the accused has been denied an adequate opportunity to defend himself otherwise there would be no justification to quash the conviction on the ground of delayed trial only.

Fair trial can no means be equated with any trial on the ground of denial of speedy trial. It is both in the interest of the accused as well as in the interest of the society that a criminal case is concluded soon. If the accused is guilty, he ought to be declared so. Social interest lies in punishing the guilty and exoneration of the innocent but this determination of guilt or innocence must be arrived at with reasonable despatch reasonable in all the circumstances of the case. The nature of offence, the number of accused, the number of witnesses, the workload of the court, the means of communication available to the witnesses and several other circumstances have to be taken into consideration. Last the very purpose of trial should be defeated be it a fair trial conducted expeditiously or else a delayed but not necessarily an unfair one. On the conclusion, it can be said that fair trial cannot be necessarily speedy but in order to ensure speediness in the trial process fairness of the trial may be lost.

\textsuperscript{101} 1981(2) SCC 610
Judicial Response to Speedy Trial as Fundamental Rights

In India, the right to speedy trial is not enumerated as a Fundamental Right under the Constitution. Unlike the Sixth Amendment to the U.S. Constitution which recognizes this right in addition to the Fifth Amendment which inter-alia, declare that “no person shall be deprived of life, liberty, or property without the due process of law” which corresponds broadly to Article 21. Due to the narrow and restricted interpretation of Article 21 in A.K. Gopalan vs. State of Madras probably this right was not claimed or recognised as a Fundamental Right flowing from Article 21. But with the over ruling of A.K. Gopalan in R.C. Cooper vs. Union of India and by injecting dynamism of ‘fair, just and reasonable’ to Article 21 in Maneka Gandhi vs. Union of India, the said Article has come to acquire a new meaning and extended content and connotation. In the instant case the Supreme Court has emphatically stated that Article 21, which guarantees a Fundamental Right to every person not to be deprived of his life or personal liberty except in accordance with the procedure established by law does not mean some semblance of procedure established by law. However, the procedure should be reasonable, fair and just and if not so would amount to violation of Article 21 and detune will be entitled to be released. The Supreme Court by widening the scope of Article 21 has intended to protect the life and liberty of the individuals.

However, the Apex Court was shocked to note the state of administration of criminal justice in the first Hussainara Khatoon’s case, where a petition for a writ of habeas corpus was filed by number of under trials who were languishing in jails for years without trial for offences, which perhaps they might not have committed. The court while

102. Clause (1) of Article 31 deleted by Constitution (Forty fourth Amendment) Act, 1978.
103. AIR 1950 SC 27
104. AIR 1970 SC 564
105. AIR 1978 SC 507
emphasising that procedure prescribed by law under Article 21 must be 'reasonable, fair and just', observed that the procedure could not be so unless it ensure a speedy trial for determination of guilt of such person. The court speaking through Justice Bhagwati (as he then was) held\textsuperscript{106} that although unlike the American Constitution speedy trial is not specifically enumerated as a Fundamental Right, it is implicit in broad sweep and content of Article 21 as interpreted in Maneka Gandhi.\textsuperscript{107}

Thus, there is no doubt that 'speedy trial' by which we mean 'reasonably expeditious trial is an integral part of Fundamental Right to life and personal liberty guaranteed under Article 21 of the Constitution.\textsuperscript{108}

In the \textit{Hussainara Khatoon II case} the Supreme Court deserved that under trial prisoners against whom no charge sheet has been filed by the police within the period of limitation laid down in Section 468 of Cr. p.c. cannot be proceeded against at all. And directed their release forthwith because any further detention of such persons would have been unlawful and violative of Fundamental Right guaranteed under Article 21.

In \textit{Hussainara Khatoon (III) vs. State of Bihar}\textsuperscript{109} the scope of the Constitution was again explained so as to include speedy trial as an essential ingredient of 'reasonable, fair and just' procedure guaranteed by Article 21 of the Constitution.

In \textit{State of Bihar vs. Uma Shanka Kotrival}\textsuperscript{110} the Supreme Court observed that a trial which did not make much headway in 20 yeas means considerable 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. "There has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage".

Again in *Kadra Pahadiya vs. State of Bihar*,\(^{111}\) while reaffirming the principle of Hussainara Khatoon that 'speedy trial' is a Fundamental Right implicit in Article 21. The Supreme Court declared that an accused who is denied the right of speedy trial is entitled to approach this court for the purpose of enforcing such right. It had power to give necessary direction to the Government and other appropriate authorities for securing the right of the accused and gave necessary direction to the Government of Bihar and High Court including a direction to create additional courts for speedy disposal of pending cases since long. In the instant case, four boys languished in Bihar Jail as under trial prisoners for over ten years. The court directed the session judge to proceed with the case immediately.

The Supreme Court considered the applicability of right of speedy trial again in *State of Mahrashtra vs. Champalal Punjaji Shah*\(^{112}\) where Chinnappa Reddy J., speaking for himself and A.P. Sen and Bahrul Islam, judges. While affirming the principle of Hussainara Khatoon observed that if, delay caused by conduct of the accused himself or there is nothing to show that the accused had been prejudiced in conduct of his defence there will be no justification to quash the conviction on the ground of delayed trial depends upon the facts and circumstances of the case.\(^{113}\)

In *T.V. Vatheeswaran vs. state of Tamil Nadu*\(^{114}\), the court reiterated the significance of the right to speedy trial and extended it even, to post conviction stage, the court held that undue delay in carrying out the death sentence entitles the accused to ask for lesser sentence of life imprisonment. Though this case has been over-ruled by the Constitutional

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111. AIR 1981 SC 939.
112. AIR 1981 SC 1675
113. AIR 1983 SC 381.
114. AIR 1986 SC 1773
Bench but it is relevant to the limited extent as it reaffirmed the right of speedy trial as enunciated in Hussainara Khatoon case.

In Sheela Barse vs. Union of India\textsuperscript{115} a Division Bench comprising of Bhawati and R.N. Misra, JJ., re-affirmed that the right to speedy trial is a Fundamental Right implicit in Article 21 of the Constitution. And in case of violation of the said Fundamental Right the prosecution is liable to be quashed on the ground that it is in breach of Fundamental Right. The court directed that so far as an offence committed by a juvenile punishable with imprisonment of not more than 7 yeas is concerned. A period of three months from the date of filing of complain or lodging of FIR shall be deemed to be the maximum time permissible for investigation and a period of six months from the filing of the charge sheet as the reasonable period within which the trial should be completed. The court has specifically directed that if these time limits are not obeyed, the prosecution against child should be quashed.

In Raghubir Singh's case, the question before the court was whether delay in police investigation and trial was sufficient ground for holding that right to speedy trial under Article 21 is violated? The court observed that whether the right to speedy trial, which forms part of the Fundamental Right to life and liberty guaranteed by Article 21, has been violated will depend upon various factors such as was there delay? How long was the delay? Was the delay reasonable? Was any part of delay caused by the wilfulness or the negligence of the prosecution agency? Was any part of delay caused by the tactics of the defence? Was the delay due to cause beyond the control of the prosecuting and defending agencies? Did the accused have ability and the opportunity to assert his right to speedy trial? Was there likelihood of the accused being prejudiced in his defence? Irrespective of any likelihood of prejudice in the conduct of his

\textsuperscript{115} AIR 1979 SC 149
defence, was the very length of the delay sufficiently prejudiced to the accused?\textsuperscript{116}

In the instance case the court held that delay was caused because of the tactics of the accused as they did assert their rights, which was evident from the number of petitions filed before the magistrate and the special judge from time to time. The investigating agency could not be blamed for the slow progress made in investigation of the case and the delay in investigation and trial was the result of nature of the case and the general situation prevailing in the country. The court directed the trial court to proceed from day-to-day in the trial of the case.

In \textit{Srinivas pal's case}, while dealing with the problem of delay the Supreme Court has observed as follows:

"Quick Justice is \textit{sine quo non} of Article 21 of the Constitution. Keeping a person in suspended animation for 9\frac{1}{2} years without any cause at all and none was indicated before the learned Magistrate or before the High Court or before us, cannot be with the spirit of the procedure established by law. In that view of the matter, it is just fair and in accordance with equity to direct the trial or prosecution of the appellant to proceed no further. We do accordingly".\textsuperscript{117}

In \textit{Diwan Naubat Rai vs. State (Delhi Administration)}\textsuperscript{118} where charges were not framed even after the direction of the Apex Court for trial of the case on day-to-day basis, it refused to quash the proceedings in as much as it was found that the accused himself was mainly responsible for the delay of which he was complaining. The delay on the part of prosecution was found to be of thirty days only.

This case clearly shows that in those cases were an accused himself is mainly responsible for the delay; the court will refrain from quashing the proceedings for the denial of right of speedy trial. In \textit{Abdur Rehman
Antulay vs. R.S. Nayak\textsuperscript{119} the Supreme Court after analysis whole of trio case law, laid down the following propositions meant to serve as guidelines for speedy trial of the accused with the warning that "these propositions are not exhaustive. It is neither difficult to foresee all situations nor is possible to lay down any hard and fast rule".

These propositions are as follows:

1. Fair, just and reasonable procedure, which is implicit in Article 21 of the Constitution, creates a right in accused to be tried speedily. It is in the interest of society as well as the accused that guilt or innocence of the accused is determined as quickly as possible under the circumstances.

2. The right to speedy trial, which flows from Article 21 encompasses all stages, namely, the stage of investigation, inquiry, trial, appeal, revision and re-trial and there is no reason to take restricted view of this right.

3. The period of remand and pre-conviction detention should be as short as possible so that the accused is not subjected to unnecessary incarceration prior to his conviction and his worry, anxiety, expense and disturbance to vocation and peace resulting from an unduly prolonged investigation, inquiry or trial are minimal. The undue delay may result in impairment of the ability of the accused to defend himself whether on account of death, disappearance or non-availability of witnesses or otherwise.

4. It is usually the accused, who is interested in delaying the proceedings, as "delay is a known defence tactics". Since burden of proving the guilt of the accused lies upon the prosecution, delay ordinarily prejudices the prosecution. Non-availability of witnesses, disappearance of evidence by loss of timework against the interest of prosecution. In every case where the 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 indicate their rights or interests as perceived by them, cannot be treated as delaying tactics nor can the time taken pursuing such proceedings be counted towards delay.

5. For determining whether undue delay has occurred one must take note of all attendant circumstances including nature of offence, number of accused and witnesses, the work-load of the court concerned, prevailing local conditions and so on.

\textsuperscript{119} 1992 Cri. L.J. 2717.
6. Each and every delay does not necessarily prejudice the accused. Some delays may work in his advantage. The prosecution should not be allowed to become persecution when does the prosecution becomes persecution again defends upon the facts of a given case.

7. The plea of accused that he has been denied speedy trial cannot be defeated by the argument that the accused did at no time demand it.

8. The court has to balance and weigh the several factors, i.e. balancing test has to be applied for finding out whether the right to speedy trial has been denied in the given case.

9. Ordinarily court shall quash the charges or conviction if the right to speedy trial is infringed. But it is not the only course open. The nature of the offence and circumstances of the case may be such that quashing the proceedings may not be in the interest of justice. In such cases it is open to the court to make such other appropriate order including an order to conclude the trial within a fixed time or reducing the sentence where the trial has been concluded as may be deemed just and equitable in the circumstances of the case.

10. It is neither advisable nor practicable to fix time limit for trial of offences.

11. The objection based on denial of right to speedy trial and relief on the 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. The High Court must dispose of such proceeding on priority basis.

Again in Chote Lal Jain vs. State of Rajasthan\(^{120}\) the Rajasthan High Court has laid down the following propositions to serve as guidelines.

1. The right to speedy trial as a Fundamental Right being well settled the question whether the said right has been violated or likely to be violated on account of delay in the trial will depend on the facts and circumstances of each case and no other outer limit can be fixed in a general way for all the cases.

2. For calculating delay, the court would take into account the period consumed in the investigation of the case and the delay caused in actual proceedings in the court after filing of the charge sheet. The letter and spirit of the Code of Criminal Procedure, 1973 also mandates a speedy investigation and trial.

3. For deciding question of delay the court shall take into account the working of the judicial conditions in judicial courts including large

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\(^{120}\) 1992 Cri. L.J. 2620 (Raj.)
number of pendency and institution of the cases, inadequate, judge
strength and understaffing etc.

4. Whether in a pending case criminal proceedings should be quashed
or any other appropriate direction be given to the trial court to secure
ends of justice will depend on number of factors to be taken into
consideration. Such as, the gravity and seriousness of the offence,
whether delay caused by the tactic or conduct of the accused himself,
whether accused objected at any stage to the delay occasioned and
whether accused is prejudiced on account of the delay.

5. If the accused has been prejudiced in conduct of his trial and defence
the pending criminal proceedings should normally be quashed
because the accused in such a case is said to be denied an adequate
opportunity to defend himself and the trial is not fair and reasonable.

6. In grave and serious offences against the society in relation to nation’s
economy, defence or security the criminal proceeding should not be
normally quashed on the ground of delay simpliciter without
anything further.

In trivial offences, which have very little impact on the society,
quashing of criminal proceeding on the ground of delay simpliciter shall
be in the interest of justice as it will give room for serious and grave
offences and will lesson the burden of the court with heavy workload.

The Supreme Court refused to issue orders for enforcement of
guidelines laid down in A.R. Antulay\(^1\) and Chote Lal’s Case\(^2\) and instead
asked the Chief Justice of the High Courts to undertake the review of such
cases in their states and issue appropriate direction wherever required for
effective implementation of the guidelines. According to the Apex Court,
the pending of criminal proceeding for a long period itself operates as an
ingine of oppression.\(^3\)

A far-reaching judgement was delivered by the Delhi High Court in
'B.L. Wadehra vs. State (NCT of Delhi)\(^4\)' where the court held the strike by a

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1. AIR 1992 SC 1701.
2. 1992 Cri. L.J. 2620 (Raj.)
3. AIR 2000 Del. 266.
4. AIR 2000 SC 2544
lawyer as illegal and unethical because it had infringed the Fundamental Right of the litigants to speedy trial.

The Supreme Court Ramon Services Ltd vs. Subash Kapoor\(^{125}\) held that the litigants who suffered entirely on account of his advocate's non-appearance in court could sue the advocate for damages.

The Supreme Court has made another significant pronouncement in Anil Rai vs. State of Bihar,\(^{126}\) where it took a serious note of the lapse on the part of the High Court, which delivered the judgement after a long time of the concluding of the arguments. The court very aptly remarked that while justice delayed is justice denied, Justice withheld is even worse than that, in the instant case court observed that any inordinate, unexplained and negligent delay is pronouncing judgement of the High Court was an infringement of the right guaranteed under Article 21 of the Constitution.

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 interest, as perceived by them, cannot be taken as delaying tactic nor can the time taken in pursuing such proceedings be counted towards delay.

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.

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

\(^{125}\) 2001 (6) SC 515

\(^{126}\) AIR 2001, SC 3173
a given case. Accused's plea of denial of speedy trial cannot be defeated by saying that the accused did at no time demand a speedy trial. The court has to balance and weigh the several relevant factors-balancing tests - and determine in each case whether the right of speedy trial has been denied in a given case.

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.

It is neither advisable nor practicable to fix any time limit for trial of offences. Not fixing any such outer limit in effectuates the guarantee of right to speedy trial. 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 ease of grave and exceptional nature. Such proceedings in High Court must be disposed of on a priority basis. The Supreme Court has laid down great importance on speedy trials of criminal offences and has emphasized:

"It is implicit in the broad sweep and content of Article 21. A fair trial implies speedy trial. No procedure can be reasonable, fair or just unless that procedure ensures a speedy trial for determination of the guilt of such person".

The Supreme Court has observed:

"No procedure which doesn't 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 is an integral and essential part of the Fundamental Right to Life and Liberty enshrined in Article 21".

The Supreme Court has emphasized and re-emphasized this preposition again and again. In *Kartar Singh vs. State of Punjab*, the court has observed:

"The concept of speedy trial is read into Article 21 as an 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 stages, namely, the stage 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 averred".

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 vs. 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. 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 2/3rd of that 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" 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 part of the accused which resulted in prolonging the trial. The court also explained the expressions, "pendency of trial" and "non-commencement of trial"

130. "Common Cause" a registered society through its director vs. Union of India (1996) 6 SCC
The initiative taken by the court in "Common Cause" case was taken ahead by the court in *R.D. Upadhyay vs. State of Andhra Pradesh.* In this case 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 cases of murder. The 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.

Another attempt was made to concretize the right to speedy trial as in *Raj Deo Sharma vs. State of Bihar.* In this case the court directed the closure of prosecution evidence on completion of two years in cases of offences punishable with imprisonment for period not exceeding to seven years and on completion of three years in cases of offences punishable with imprisonment for period exceeding seven 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 (1): Period of pendency of appeal or revision against interim orders, if any, preferred by the accused to protract the trial; Period of absence of Presiding officer in the trial court.

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

In *Akhtari Bi vs. 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.

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In Santosh De vs. Archna Guha,\textsuperscript{134} 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 vs. Ashok K. Mehta,\textsuperscript{135} 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 quashing 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 Supreme Court has stated in Common Cause;\textsuperscript{136} that even persons accused of minor offences have to wait 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. According, 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.

A government employee was prosecuted and convicted on certain charges of corruption. The prosecution started in 1985 on the basis of the events which occurred in 1983. In an appeal, the Supreme Court found in 1997 in \textit{Manushukla},\textsuperscript{137} that the sanction given by the government for this prosecution was invalid. The Court barred initiation of fresh prosecution against the appellant. The court observed:

\begin{quote}
"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
\end{quote}

\textsuperscript{134} AIR 1994 SC 1229; 1984 Supp (3) SCC 735.
\textsuperscript{135} AIR 1995 SC 1976; (1999) 2 SCC 768.
\textsuperscript{136} Common Cause, A Registered Society vs. Union of India, AIR, 1996 SC 1619.
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 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.”

In 1982-83, an FIR was filled against a government employee alleging that he acquired disproportionate assets by misusing his official position. An investigation was undertaken but no prosecution was launched till the year 2000 as the permission for the same was not granted by the government till then. The Supreme Court quashed the proceedings saying that further prosecution would be travesty of justice. The Supreme Court has observed recently in Ramachandra:

“It is neither advisable, nor feasible, nor judicially permissible to draw or prescribe an outer limit for conclusion of all criminal proceeding.”

Speedy trial is an important limb of Indian Criminal Jurisprudence. The Supreme Court has given it utmost importance and has reduced it to the statutory right.

E. Speedy Trial and Judicial Dynamism

The Indian Judiciary plays a very vital role in the dispensing of justice by providing fair and just trial to all its citizens.

Even under the old Code (1898) the judiciary was aware of the necessity for a speedy trial. In Agha Nazar Ali Sultan Mohammad vs. Emperor,138 the Sind High Court observed: “The phrase that this case ‘has lingered on long time’ appears to show an inadequate appreciation of the gravity of delay which has occurred in the case.” And the court ordered:

“The trial of this case, the delay of which is now beyond all reason, must be continued by the magistrate from day to day ….”

138. AIR 1941 Sind 186, at p. 187.
The court was not speaking of delays running into decades, as now become common. It was speaking on 9th December, 1940, of a trial, concerning offences alleged to have taken place between 18th October and 19th November, 1939, a mere 13 months after the alleged commission of the offence.

In another case arising under the old code, setting aside the conviction for murder on the ground that certain evidence was improperly admitted and the accused was not examined under Section 342 of the Code, 1898 (now S. 313), the Supreme Court observed:

"We are not prepared to keep persons who are on trial for their lives under indefinite suspense because trial judges omit to do their duty, we have to draw a nice balance between conflicting rights and duties while it is incumbent on us to see that the guilty do not escape, it is even more necessary to see that persons accused of crimes are not indefinitely harassed. While every reasonable attitude must be given to those concerned with the detection of crime and entrusted with administration of justice, limits must be placed on the lengths to which they may go."

The court refused to remand the case for a fresh trial, because the 'indefinite suspense's lasted from December 1950, when the offence was committed, till September 1955, when the Supreme Court rendered its judgment. It would be interesting to note that the Sessions Court's sentence was confirmed by the High Court in September 1951 and out of a delay of 5 years, 4 years was caused in the Supreme Court alone.

The next major decision was in Veerabadram Chettiar vs. E.V. Ramaswami Naicker, in respect of an offence allegedly committed on 27.5.1953 was rejected by the magistrate without taking cognizance. Both the Sessions and the High Court confirmed the order. Reason given by these courts was that the act alleged did not constitute an offence, for an "object held sacred" as per Section 295 of the Indian Penal Code was not

involved. The Supreme Court reversed the concurrent findings of law, but
did not allow the matter to proceed, on the ground that it had become
"stale". In *Chajoo Ram vs. Radhey Shyam*, delay was only one among
other factors considered by the court in dropping further proceedings.

In *Stale of Uttar Pradesh vs. Kapil Deo Shukla*, reference was made
to both the above cases by the Supreme Court while upholding the High
Court's decision to acquit the accused. The case involved forgery of
documents. The first information report was filed in 1946. The case had
already come up in appeal once before, the Supreme Court, when the
earlier conviction was set aside and a fresh trial ordered, by the time,
second trial started, certain documents and statements made by some
witnesses in the earlier trial could not be traced. In this context, the Court
held that the new trial would amount to an abuse of the process, because
vital evidence was lacking.

A close examination of the ratio of all these cases would reveal that
they were decided on their own factors, and delays, if any, was only one
among other factors compelling acquittal/discontinuance of the
proceedings. The deeper jurisprudential question of why delay should
justify the termination of proceedings was never raised nor decided in any
of these cases.

There are various pronouncements of the Supreme Court of India on
the subject of speedy trial wherein the Apex Court has questioned the
delays, set aside the following prosecution, and discharged the accused.
There are other cases where the Apex Court has laid down elaborate
guidelines in the absence of any legislation in this area.

141. Id., p. 1035.
143. (1972) 3 SCC 504.
144. 1958 SCR 640.
145. Except in *Veerabadran*, where delay was the sole factor relied on to dismiss the case.
The key to judicial activism in India is the judgment in the case of Maneka Gandhi\(^{146}\) wherein the phrase "procedure established by law" in Article 21 was explained as not meaning, "any procedure" laid down in the statute but as meaning one that is necessarily a "fair, just and reasonable" procedure. The Apex Court in this trend setting and landmark judgment also observed that the term "law" under Article 21 of the Constitution envisages a law which is "right, just and fair and not arbitrary, fanciful or oppressive".

The most important and guiding ruling of the Apex Court on speedy trial is the case of A.R. Aniulay vs. Avdesh Kumar\(^{147}\) wherein, ten main guidelines on the subject were laid down. The concerns underlying the right to speedy trial from the point of view of the accused are: the period of remand and pre-conviction, detention should be as short as possible. In other words, the accused should not be subjected to unnecessary or unduly long incarceration prior to his conviction. The 'worry, anxiety, expenses and disturbance to his vocation and peace, resulting from an unduly prolonged investigation, inquiry or trial should be minimized.

Assurance of a fair trial is the first imperative of the dispensation of justice. It is prejudicial to a person to be detained and be deprived of his liberty without that in accordance with the law. It is prejudicial to a person to be denied fair trial. The process of justice should be such that it should not harass the parties and from that angle, the court may weigh the circumstances\(^{148}\).

\(^{146}\) AIR 1378 SC 597: (1978) I SCC 248: (1978) 2 SCR 621
\(^{147}\) (88) A SC 1531
The time imperative can never be absolute or obsessive.\textsuperscript{149} Even a delay of one year in the commencement of trial is bad enough; how much worse would it be when the delay is as long as 3 or 5 or even 10 years.\textsuperscript{150} While each days delay is important and must be considered, there is no magical formula, the slightest breach of which should lead to the release of the accused or convicted.

In \textit{State of West Bengal vs. Anwar Ali Sarkar}\textsuperscript{151} it was held that "the necessity of a speedy trial is too vague and uncertain to form the basis of a valid and reasonable classification. It is too indefinite as there can hardly be any definite objective test to determine it. It is no classification at all in the real sense of the term as it is not based on any characteristics which are peculiar to persons or to cases which are to be subject to the special procedure prescribed by the Act."

In \textit{Macherla Hanumimtha Rao vs. State of Andhra Pradesh}\textsuperscript{152} the Legislature has provided for a clear classification. Between the two kinds of proceedings at the commitment, stage based upon a relevant consideration namely, whether or not there has been a previous inquiry by a reasonable public servant whose duty it is to discover crime and to bring criminals to speedy justice.

In \textit{S. Veerbhadra vs. Raniaswamy Naickar}\textsuperscript{153}, the court refused to send back proceedings for retrial on the ground that already a period of five years has elapsed and it would not be just and proper in the circumstances of the case to continue the proceedings after such a lapse of time.

\begin{itemize}
\item \textsuperscript{150} Hussainara Khatoon's case (1980) 1 SCC 98: 1980 SCC (Cri) 40: AIR 1979 SC 1369
\item \textsuperscript{151} (1950) SCR 88: AIR 1950 SC 27: (1950) 2 MLJ 42
\item \textsuperscript{152} AIR 1952 SC 75: 1952 SCR 284: 1952 Cr LJ 510
\item \textsuperscript{153} 1957 Cr. LJ 1463: AIR 1957 SC 927: 1958 SCR 396 (1957)
\end{itemize}
In *Gopi Ckand vs. Delhi Administration*,\(^{154}\) there is no doubt that the procedure prescribed for the trial of summons cases is simpler, shorter and speedier. When the dangerously disturbed areas were facing the problem of unusual civil commotion and strife the legislature was justified in enacting the first part of Section 36 so that the cases against persons charged with the commission of the specified offences could speedily tried and disposed of. Therefore, the challenge to the vires of the first part of sub-section (1) of Section 36 cannot be sustained.

In *Chajju Ram vs. Radhey Sham*,\(^ {155}\) the court refused to direct a retrial after a period of 10 years having regard to the facts and circumstances of the case.

In *State of Uttar Pradesh vs. Kapil Deo Shukla*,\(^ {156}\) 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.

In *Maneka Gandhi vs. Ram Jethmalani*,\(^ {157}\) the phrase "procedure established by law" in Article 21 was interpreted widely as meaning not "any procedure" laid down in the statute but as one that is necessarily "fair, just and reasonable" procedure. The Court in this trend setting and landmark judgment also observed that the term "law" under Article 21 of the Constitution envisages not any law but a law which is "right, just and fair and not arbitrary, fanciful or oppressive".

In *Hussainara Khatoon vs. Home Secretary State of Bihar, Patna*,\(^ {158}\) Even under our Constitution, though speech trial is not specifically enumerated as Fundamental Right, it is implicit in the broad sweep & content of Article 21 as interpreted by this an essential ingredient of "reasonable fair and

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155. AIR 1959 SC 609: 1959 Supp (2) SCR 87: 1959 Cr.LJ 782
158 AIR 1978 SC 597: (1978) 1 SCC 248
just" procedure guaranteed by Article 21. Speedy trial is the essence of criminal justice and there can be no doubt that delays in trial by itself constitutes denial of justice. A procedure prescribed by law for depriving a person of his liberty cannot be termed as reasonable, just or fair unless it ensures speedy trial for the determination of guilt of such person by speedy trial meant expeditious trial.

In *Aladankandu Puthiyapurayil Abdulla vs. Food Inspector*, it was held that the trial courts should ensure that, in the spirit of Article 21, food adulteration case, which involve imprisonment, are tried expeditiously so that neither the prosecution nor the accused is prejudiced by unusual judicial procrastination. The High Court concerned will issue peremptory directions to trial Judges demanding expeditious disposal of such cases. In *State of Bihar vs. Uma Shankar Kotriwal*, F.I.R. lodged in April 1960, Charge sheet filed in 1962 charges framed September 1967. Thereafter, progress of the case was very slow. In 1979 the High Court quashed the proceedings on the ground that police report did not disclose any evidence against respondent and that prosecution started in 1963 and still in progress in 1979 is an abuse of the process of law and hence should not be allowed to go on further. The Supreme Court affirmed the High Court decision on the second ground.

In *Kadra Petwidiya vs. State of Bihar* it was held that speedy trial is a Fundamental Right implicit in the guarantee of life and personal liberty enshrined in Article 21. And any accused who is denied this right of speedy trial is entitled to approach Supreme Court for the purpose of enforcing such right and the Court in discharge of its Constitutional obligation has power to give necessary directions to the State Government and other appropriate authorities for securing this right to the accused.

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159. AIR 1979 SC 1360: (1980) 1 SCC 81: 1979 Cr LJ 1036
160. 1979 SCC (Cri) 948: (1979) 4 SCC 187
In *State of Maharastra vs. Champalal Punjaji Shah*, while a speedy trial is an implied ingredient of a fair trial guaranteed by Article 21, the converse is not necessarily true. A delayed trial is not necessarily an unfair trial. Whether a conviction should be quashed on the ground of delayed trial depends upon the facts and circumstances of the case. If the accused is found to have been prejudiced in the conduct of his defense and it could be said that the accused had thus been denied an adequate opportunity to defend himself, the conviction would certainly have to go. However, if nothing is shown and there are no circumstances entitling the Court to raise a presumption that the accused had been prejudiced there will be no justification to quash the conviction on the ground of delayed trial only.

In *Ranjan Dwivedi vs. Union of India*, it is well settled that the requirement of compliance with natural justice is implicit in Article 21 and that if any penal law does not lay down the requirement of hearing before affecting him then the court can intervene so that the procedure prescribed by law is reasonable and is not arbitrary.

In *T. V. Vaihsewaran vs. State of Tamil Nadu*, Court again reiterated the significance of the right to speedy trial and extended it even to post-conviction stage. It was held that undue delay in carrying out the death sentence entitles the accused to ask for lesser sentence of life imprisonment. This opinion is based upon the immense psychological, emotional and mental torture a man condemned to death suffers.

In Madheshwari Singh vs. State of Bihar, the right to speedy trial is inherent in and flows from Article 21. The court stated the four principles as flowing from Article 21. That, the basic human right to a speedy public trial in all criminal prosecutions has expressly written as the rights relating to life and liberty guaranteed under Article 21 of our Constitution. Further, that this right is identical in content with the express Constitutional guarantee inserted by the Sixth Amendment in the American Constitution. That once the Constitutional guarantee of a speedy trial and the right to a fair, just and reasonable procedure under Article 21 has violated, then the accused is entitled to an unconditional release and the charges leveled against him would fall to the ground. That a callous and inordinate prolonged delay of ten years or more, which in no way arises from the accused's default (or is otherwise not occasioned due to any extraordinary and exceptional reasons). In the context of reversal of a clean acquittal on a capital charge, would be per se prejudicial to the accused and would plainly violate the Constitutional guarantee of a speedy trial under Article 21.

In Sheela Barse vs. State of Maharashtra, A Division Bench comprising Bhagwati and R.N. Misra, JJ. re-affirmed that the 'right to speedy trial is a Fundamental Right implicit in Article 21 of the Constitution' and observed "the consequence of violation of Fundamental Right to speedy trial would be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the Fundamental Right."

In S. Guin vs. Grindlays Bank Ltd., a delay of 7 years after the judgment of acquittal led to the Supreme Court securing justice to the accused by terminating all the criminal proceedings.

165. AIR 1986 Pat 324
In *State vs. Maksudan Singh*,\(^{168}\) Cr. P.C. provides for an early investigation and for a speedy & fair trial. It is sufficient that the Constitutional guarantee of speedy trial emanating from Article 21 properly reflected in the provision of the code.

In *Raghubir Singh vs. State of Bihar*,\(^{169}\) the Court affirmed that the right to speedy trial is one of the dimensions of Fundamental Right to life and Gist of Judicial Pronouncement on Speedy Trial in India liberty under Article 21 and to act fairly is one of the essences of the principles of natural justice.

In *Anurag Bhatia vs. State of Bihar*,\(^{170}\) a callous and inordinate delay in hearing appeal, court's inability with no fault of accused and when there is no extraordinary of exceptional reasons for delay is a relevant considerations for quashing of prosecution case. Further delay in commencement of trial amounts to violation of Fundamental Right of the accused and the consequences should be borne by the prosecution. All charges are liable to be quashed. It was further held that once the party is able to prove that the Constitutional guarantee to Speedy Trial and the right to a fair, just and reasonable procedure under Article 21 have been violated, the accused is entitled to unconditional release and charges leveled against him. An Unwarranted delay of 20 years in investigation & trial is manifestly a procedure which cannot be said to be fair, reasonable or just.

In *Rakesh Saxena vs. State*,\(^{171}\) the proceedings were quashed on the ground that any further continuance of prosecution after a lapse of more than 6 years was uncalled for.

\(^{168}\) AIR 1986 Pat 38 (FB).
\(^{169}\) AIR 1987 SC 149: (1986) 4 SCC 481: 1986 SCC (Cri) 511
\(^{170}\) AIR 1987 Pat 274
In *Sahabiiddin Kureshi vs. State of Uttar Pradesh*,\(^{172}\) the delay in prosecution was of 18 years. The court observed after reading the charge sheet that the manner in which the charges had been framed of an incident that took place 18 years ago, prosecution of the accused will be nothing but an instance of gross abuse of the process of law.

In *Madhav Rao Jivaji Rao ScIndia vs. Sambhaji Rao Chandraji Rao*,\(^{173}\) 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 vs. Park Bottling Co. (P) Ltd.*,\(^{174}\) though the order of the High Court quashing charges against the accused (under Section 5 of the Imports and Exports (Control Act, 1947) was unsustainable in law. It would not be in the interest of justice to allow a prosecution to start and trial to be proceeded with after a lapse of twenty years even though one of the accused was himself responsible for most of the delay caused by his mala fide tactics. The order is merely based on the fact that it would not be in the interest of justice to allow a prosecution and trial to recommence after a lapse of 20 years.

In *Srinivas Pal vs. Union Territory of Arunachal Pradesh*,\(^{175}\) the Court quashed the proceedings against the appellant on the ground of delay in investigation and commencement of trial, in this case, investigation commenced in November, 1976 and the case was registered on completion of the investigation in September, 1977. The Court took cognizance in March 1986. These facts were held sufficient to quash the proceedings.

\(^{172}\) (1998) All Cr Cas 303


\(^{175}\) 1988 Suppl (1) SCR 477 AIR 1988 SC 1729
particularly when the offence charged was a minor one namely, Section 304A read with Section 338 of the Indian Penal Code.

In Madhu Mehta vs. Union of India, the right to speedy trial is implicit in the broad sweep and content of Article 21 of Constitution of India and is part of a citizen's Fundamental Right to life and liberty. At the same time it must be remembered that speedy trial in criminal cases by itself is not a Fundamental Right.

In case of State of Madhya Pradesh vs. Narayan Singh, the Supreme Court quashed the criminal proceeding which was pending for more than 15 years observing that allowing the prosecution to continue would mean that the accused would have to suffer for another decade in the trial/appeal.

In case of State of Punjab vs. Kailash Nath, even if the principle that there should be speedy trial in view of Article 21 is not disputed. The said principle cannot invoke in support of the interpretation of the third proviso to clause (b) of Rule 2.2 framed under Article 109 whose purpose is not to place an embargo on prosecution. It is always open to quash a prosecution on the ground of unexplained unconscionable delay in investigation and prosecution on the facts of a given case.

In case of the respondent in Criminal Appeal No. 422 of 1988 the F.I.R. was lodged after about six years of the accrual of the cause of action or taking place of the events and after about three years even from the date of his retirement from service in 1982. Now in 1988 it would be pursuing a state matter. Hence, the order of the High Court quashing the F.I.R. as against this respondent deserves to be maintained, though on a different ground. But the facts with regard to the respondent in Criminal Appeal Nos. 423-24 of 1988 are different.

In case of *State of Andhra Pradesh vs. P.V. Pavithran*, decision of the High Court quashing the F.I.R. on the ground of inordinate delay in completing the investigation was upheld. The court ruled 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.

In *Mihir Kumar vs. State of West Bengal*, it was held that where a criminal proceeding had been pending for 15 years from the date of the offence it amounted to violation of the Constitutional right to speedy trial of a fair, just and reasonable procedure and hence the accused was entitled to be set free.

In *Sanat Kumar Saha vs. State of Bihar*, if juveniles are involved in trial outer limits should be one year for its completion.

In *Mohanlal Shamji vs. Union of India* under Section 311, Cr. P.C. the court must ensure recalling or calling any witness during the trial only if it present failure of justice and for a just reason of the case at any stage should not be enlarged to delay the trial. Retrial under Section 386 by trial court or by appellate court in death sentence other criminal case should not one allowed. Once it is tried it cannot be subjudice.

In *Containment Board vs. Taramani Devi*, opportunity to hearing is integral part of fair trial.

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180. 1990 Cr LJ 26 (Cal).
181. 1991 (2) Cri 241 Pat (DB).
In A.R. Antulay vs. R.S. Nayak, Fair, just and reasonable procured implicit in Article 21 creates a right in the fact that a speedy trial is also in public interest or that it serves the social interest also, does not make it any the less the right of the accused. Social interest lies in punishing the guilty and exoneration of the innocent but this determination (of guilt or innocence) must be arrived at with reasonable dispatch - reasonable in all the circumstances of the case. It is in the interest of all concerned that the guilt or innocence of the accused is determined as quickly as possible in the circumstances. Every delay does not necessarily prejudice the accused. Some delays may indeed work to his advantage. However, inordinately long delay may be taken as presumptive proof of prejudice. In this context, the fact of incarceration of accused will also be a relevant fact. The prosecution should not be allowed to become a persecution. But when does the prosecution become persecution, again depends upon the facts of a given case. Ordinarily speaking, where the court comes to the conclusion that right to speedy trial of an accused has been infringed the charges or the conviction, as the case may be, shall be quashed. But this is not the only course open. The nature of the offence and other circumstances in a given case may be such that quashing of proceedings may not be in the interest of justice. In such a case, it is open to the court to make such other appropriate order - including an order to conclude the trial within a fixed time where the trial is not concluded or reducing the sentence where the trial has concluded - as may be deemed just and equitable in the circumstances of the case.

While determining whether undue delay has occurred (resulting in violation of right to Speedy Trial one must have regard to all the attendant circumstances, including nature of offence, number of accused and witnesses, the work load of the court concerned, prevailing local conditions and so on - what is called, the systemic delays. Though it is the

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obligation of the State to ensure a speedy trial and State includes judiciary as well, but a realistic and practical approach should be adopted in each matter instead of a pedantic one.

Ultimately, the court has to balance and weigh the several relevant factors - 'balancing test' or 'balancing process' - and determine in each case whether the right to speedy trial has been denied in a given case. It is neither advisable nor practicable to fix any time limit for trial of offences. Such rule is bound to be qualified one. Such rule cannot also be evolved merely to shift the burden of proving justification on to the shoulders of the prosecution. In every case of complaint of denial or right to speedy trial, it is primarily for the prosecution to justify and explain the delay. At the same time, it is the duty of the court to weigh all the circumstances of a given case before pronouncing upon the complaint.

In Rabindmnath Rout, a period ranging from 12 to 23 years had elapsed after the alleged acts of commission of the offence. The prosecution had not given any explanation for the long delay nor was any case made out that any part of the delay had been contributed by the accused. Hence, the Court dropped all charges and quashed the proceedings.

In Srinivasa Theatre vs. Government of Tamil Nadu speedy and natural justice should not violated in any form.

In Bhuwaneshwar Singh vs. Union of India, the basic object of trial is to dispose of court-martial cases expeditiously and to minimize the period of pre-trial detention. So that person charge should not be unnecessarily deprived of his freedom on the ground that he is accused of an offence tribal by the court martial. Keeping in view the limited nature of judicial review in matters arising after court martial proceeding it is not
only desirable but necessary that the authorities under the Army Act strictly follow the requirement of the act and the rules the authorities cannot be permitted to deal with the liberty of a person subject to the Army Act in a casual manner and can not be allowed by their commission or omission to frustrate the object of the speedy trial as to envisaged by the act of the persons to be tried by a court martial.

In *J.P. Unni Krishnan vs. State of Andhra Pradesh*, the right to speedy trial was held to be covered under Article 21.

In *Santosh De vs. Archana Guha*, the court ruled that an unexplained delay of 8 years in commencing the trial by itself infringes the right of the accused to Speedy trial. The delay being entirely and exclusively on account of the default of the prosecution, the proceedings were quashed.

In *Kartar Singh vs. State of Punjab*, it was held that speedy trial is one of the facts of the Fundamental Right to life and liberty enshrined in Article 21 and the law must ensure 'reasonable, just and fair' procedure, which has a creative connotation. The Constitutional guarantee of speedy trial is properly reflected in Section 309 of the Cr. P.C. The right to a speedy trial is not only an important safeguard to prevent undue oppressive incarceration, to minimize anxiety and concern accompanying the accusation and to limit the possibility of impairing the ability of an accused to defend himself but also there are societal interest providing a speedy trial. The right to speedy trial begins with the actual restraint imposed by arrest. And consequent incarceration and continues at all stages, namely the stage of investigation, inquiry, trial, appeal and revision so that any possible prejudice that may result from impermissible and

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avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted.

In *Ramanand Chaudary vs. State of Bihar*,\(^{191}\) the Supreme Court quashed the criminal proceeding, which was pending for more than 13 years observing that allowing the prosecution to continue would mean that the accused would have to suffer for another decade in the trial/appeal.

In *Biswanath Prasad Singh vs. State of Bihar*,\(^{192}\) the court observed that calling upon the accused persons to enter defence after a period of 16 years was bound to cause prejudice to them as the right to Speedy Trial has been infringed and hence quashed the criminal proceedings.

In *State of Maharashtra vs. Manubhai Vashi*,\(^{193}\) the right to free legal aid and speedy trial are guaranteed Fundamental Rights under Article 21.

In *Murlidhar Dayandeo Kesekar vs. Vishwanath Pandit Runic*,\(^{194}\) the right to life under Article 21 comprehends within its ambit right to education, health, speedy trial, and equal wages for equal work as Fundamental Rights, providing adequate means of livelihood for all the citizens and distribution of the material resources, to the community for common welfare. Enable the poor, *Dalits* and Tribes, to fulfill the basic needs to bring about a fundamental change in the structure of the Indian Society, which was divided by erecting impregnable walls of separation between the people on grounds of caste, sub-caste, creed, religion, race, language and sex. Equality of opportunity and status thereby would become the bedrocks for social integration.

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\(^{194}\) 1995 Supp (2) SCC 549.
In *State of Punjab vs. Ajaib Singh*,\(^{195}\) keeping an accused in custody for a day more than it is necessary is Constitutionally impermissible and violative of human dignity, freedom of life and liberty. The overcrowded court dockets, the phenomenal rise of public interest litigation, duty to ensure enforcement of Fundamental Rights undoubtedly keeps the Supreme Court under stress and strain. But that cannot be an excuse for keeping the sword of Damocles hanging on the accused for an indefinite period of time. It does not do any credit rather makes one sad. If the accused is not granted bail and serves out the sentence then the appeal is rendered academic for all practical purposes. And the right to establish innocence fades away in lack of enthusiasm and interest.

In *R.D. Upadhyay vs. State of Andhra Pradesh*\(^{196}\) it was held that speedy trial is guaranteed as a Fundamental Right under Article 21 of the Constitution of India. So far as 880 murder cases are concerned, we request the Delhi High Court to nominate/designate ten Additional District Judges to take up exclusively the trial of these cases. The High Court may consider directing the Additional District judges, as nominated, to dispose of these cases within a period of six months or so.

In *Anukul Chandra Pradhan vs. Union of India*,\(^{197}\) it is important to have utmost expedition in the trial and its early conclusion is necessary for the ends of justice and credibility of the judicial process. Unless prevented by any dilatory tactics of the accused, all trials of such kind involving public men should be concluded most expeditiously, preferably within three months of commencement of the trial. This is also the requirement of speedy trial read into Article 21.

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In Common Case vs. Union of India,\textsuperscript{198} cases relating to various types of offences pending in criminal courts for long periods in respect of under trials languishing in jail for long periods directed to be released on conditions laid down in the order. Guidelines and directions for disposal of other category of cases, whether instituted on police report or private complaint, were also issued. These directions shall be valid for all the States and Union Territories and would apply not only for pending cases but also to future cases.

In Ibrahim alias Munna Salim Shiekh vs. State of Maharashtra,\textsuperscript{199} the trial has to be conducted according to the "Procedure established by Law" which in turn means that the procedure has to not only be reasonable, fair and just but it also stipulates that it has to be a speedy and expeditious procedure.

In Phoolan Devi vs. State of Madhya Pradesh,\textsuperscript{200} the mere fact that the alleged terms offer immunity from death penalty and trial of all cases in Madhya Pradesh even for crimes committed in Uttar Pradesh indicates that the question of the punishment to be imposed on petitioner in each case depends on the final outcome at the trial. The imprisonment to be imposed on the petitioner in each case depends on the final outcome at the trial, and the imprisonment of eight years mentioned in one of these terms does not conclude the prosecutions. The Petitioner's contention that the violation of her right to speedy trial is proved by these facts alone to justify quashing of all the prosecutions is, therefore, Untenable.

In Kailash Chand Gupta vs. State\textsuperscript{201} it was held that speedy trial is a Fundamental Right implicit in the guarantee of life and personal liberty enshrined in the aforesaid Article 21 of the Constitution of India.

\textsuperscript{199} 1996 (1) Crimes 380 (Bom).
This right, i.e., the speedy trial is one of the dimensions and an integral and essential part of the Fundamental Right to life and liberty guaranteed under the aforesaid Article. Once the Constitutional guarantee of speedy trial and the right to a fair, just and reasonable procedure under Article 21 has been followed, then the accused is entitled to an unconditional release and the charge levelled against him would fail.

In *Police Commissioner, Delhi vs. Registrar Delhi High Court*, assurance of a fair trial is the first imperative of the dispensation of justice.

In *D.K Basu vs. State of West Bengal*, Supreme Court issued the guidelines in case of detention arrest by the police. The court did not leave to the Police Department to frame rules, which should be followed at the time of arrest. But framed the above guidelines itself meaning that failure to comply with these requirements shall render the concerned police personnel liable to be punishable for contempt of court. In case of *Mansukhlal Vithaldas vs. State of Gujarat* the prosecution wanted to retry the matter after a lapse of 14 years, due to the sanction order being bad in law, the Supreme Court observed that this was not fair, and just and hence quashed the criminal proceedings.

In *Raj Deo Sharma vs. State of Bihar*, the right to speedy trial flows from Article 21 and encompasses the stages right from the date of registration of the F.I.R. and onwards. Where the trial has been stayed by orders of the court or by operation of law, the period of such stay shall be excluded from the said period by closing the prosecution evidence.

In *C. Sahni vs. State*, proceedings under FERA, 1973 were quashed when the delay gap between the institution of complaint and recording of pre-trial evidence was of 13 years.

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206. 1999 (1) C. Cr. 472 (Del).
In *Rajiv Gupta vs. State of Himachal Pradesh*,\(^{207}\) it is clear 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 had not commenced, then the criminal court is required to discharge and acquit the accused.

In *Satya Brat Gain vs. State of Bihar*,\(^{208}\) Five years had elapsed since the accused was taken into custody and the slow-paced progress of the proceedings against him was without any reasons. The Court refused any incarceration for a further period without the adjudication being finalized and therefore orders him to be released on bail on executing a bond to the satisfaction of the trial Judge.

In *Arivazhan vs. State*,\(^{209}\) the requirement to file list of witnesses is made with the object of ensuring speedy trial of cases. Accused has no right to examine witnesses outside that list. If court thinks that the list is intended, to delay the proceedings that it can reject even the entire list.

In *Akhtari Bi vs. State of Madhya Pradesh*,\(^{210}\) it was held that to have speedy justice is a Fundamental Right. Prolonged delays in disposal of and thereafter appeals in criminal cases, for no fault of accused, confers the trials upon him right to apply for bail.

In *Bipin Shantilal Panchal vs. State of Gujarat*,\(^{211}\) accused was in jail for more than 7 years due to insensitivity of trial court to take swift action by adopting appropriate procedures instead of archaic ones. He was hence released on bail.

In *Anil Rai vs. State of Bihar*,\(^{212}\) justice 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.

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\(^{207}\) (2000) 10 SCC 68.


The intention of the legislature regarding pronouncement of judgments can be inferred from the provisions of the Code of Criminal Procedure. Sub Section (1) of Section 353 of the Code provides that the judgment in every trial in any criminal court of original jurisdiction shall be pronounced in open court immediately after the conclusion of the trial or on some subsequent time for which due notice shall be given to the parties or their pleaders. The words "some subsequent time" mentioned in Section 353 contemplate the passing of the judgment without undue delay, as delay in the pronouncement of judgment is opposed to the principle of law. Such subsequent time can at the most be stretched to a period of six weeks and not beyond that time in any case. The pronouncement of judgments in the civil case should not be permitted to go beyond two months.

It is true, that for the High Courts, no period for pronouncement of judgment is contemplated either under the Civil Procedure Code or under the Criminal Procedure Code, but as the pronouncement of the judgment is a part of the justice dispensation system, it has to be without delay.

In *P. Ramachandra Rao vs. State of Karnataka*, the Constitutional philosophy propounded as right to speedy trial has though grown in age by almost two and a half decades, the goal sought to be achieved is yet a far-off peak. It must be left to the judicious discretion of the court seized of an individual case to find out from the totality of circumstances of a given case. The quantum of time consumed up to a given point of time amounted to violation of Article 21, and if so, then to terminate the particular proceedings, and if not, then to proceed ahead. The test of whether the proceedings or trial has remained pending for such a length of time that the inordinate delay can legitimately be called oppressive and unwarranted. However, the guidelines laid down in *A.R. Antulay* case are not exhaustive but only illustrative. They are not intended to operate as

hard-and-fast rules or to be applied like a straitjacket formula. Their applicability would depend on the fact situation of each case.

In *Mahendra Lal Das vs. Union of India*, if the prosecution of the accused becomes a mere formality, it directly amounts to an abuse of the process of law, an unnecessary burden on court.

In *State vs. N.W. Nerukar*, the proceedings were quashed on the ground that there was unnecessary delay in the conclusion of the trial. The plea of the prosecution that the delay was due to the large number of documents that had to be exhibited was not accepted as a relevant ground to justify the delay. The Court observed that while the maximum punishment for the offence is charged with was only three years the accused had suffered custody for two years and faced the agony of trial for 12 years. Hence the accused was set free.

In case of *All India Judges Association vs. Union of India*, it is a Constitutional obligation of the Supreme Court to ensure that the backlog of the cases is decrease 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 time has come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increases, in the first instance, in the judge strength from the existing ratio of 10.5 or 13 per 10 lakh people to 50 judges per 10 lakh people.

In *Naminderjit Singh Sahni vs. Union of India*, the right of an accused to have speedy trial is now recognized as a right under Article 21. The procedural fairness required by Article 21, including the right to a
speedy trial has, therefore, to be observed throughout and to be borne in mind.

In *Usha Mahajan w/o Roshan Lal vs. State*,\(^{218}\) the petitioner in jail for the last four and half years. Case of accused in judicial custody for long time cannot be on same pedestal as those enlarged in bail-keeping accused in jail without trial not augur well for criminal justice delivery system. Direction to trial court to proceed with trial on day to day basis.

In *Ahmad Ilahi vs. State*,\(^{219}\) it was held that in view of the long 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 charge positively within one month. Failing which the proceedings against the petitioner shall stand quashed as no court can be taken for a ride.

In *Durga Datta Sharma @ Durgalal Sharma vs. State*,\(^{220}\) trial in this criminal case under Section 420/467/477A/120B, of IPC and under Section 5 of the prevention of Corruption Act had not commenced after a period of 25 years. No charges had framed and chances of commencing and concluding the trial in the 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, as right to speedy trial stood violated.

In *Atul B. Kohly vs. Narcotics Control Bureau (NCB)*\(^{221}\) it was held that right to speedy trial includes the right of speedy disposal of appeal also. For recording satisfaction that there are reasonable grounds for believing that an accused is not guilty of the offence court is not to find out as to

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218. (08/09/2003), 2003 (6) AD (Del) 486.
220. 2004 (1) Crimes 171 (Gav.)
whether he is proved to be innocent or not. Under criminal law, innocence of the accused recording satisfaction by court is the duty of the court.

_Surinder Singh vs. State of Punjab_ In this case the appellant was found guilty of the offence under Section 302 read with Section 34 of the Indian Penal Code and was sentenced to undergo imprisonment for life and pay a fine of Rs.2000. He preferred an appeal before the High Court of Punjab and Haryana at Chandigarh against his conviction and sentence. The said appeal was admitted for hearing. The appellant’s application for grant of regular bail was dismissed. One of co-accused was granted bail by High Court since he had suffered imprisonment for three years after his conviction and therefore was covered by the ratio of the judgement in Dharam Pal vs. State of Haryana (2000) 1 Chan LR 74.

It was observed that speedy trial is a Fundamental Right implicit in the broad sweep and content of Article 21. The aforesaid Article confers a Fundamental Right on every person not to be deprived of his life or liberty except in accordance with the procedure prescribed by law. 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. The procedure so prescribed must ensure a speedy trial for determination of the guilt of such person. Some amount of deprivation of personal liberty cannot be avoided, but if the period of deprivation pending trial becomes unduly long, fairness assured by Article 21 would receive a jolt.

Having noticed that the people in India were simply disgusted with the state of affairs, and losing faith in the judiciary because of the inordinate delay in disposal of cases. The Apex Court in _Pradeep Kumar Verma vs. State of Bihar_ required the authorities to do the needful in the

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223. AIR 2007 SC 3057
matter urgently to ensure speedy disposal of cases, if the people’s faith in the judiciary was to remain.

Though no general guideline can be fixed regarding speedy trial by the court and that each case has to be examined on its own facts and circumstances, but it is the bounded duty of the court and the prosecution to prevent unreasonable delay.224

In *Pankaj Kumar vs. State of Maharashtra & Others*225, The Apex Court held that the Right to Speedy Trial under Article 21 of the Constitution extends to all criminal prosecutions and applicable not only to actual proceedings in court but also in police investigation.

In this case, the appellant and his father charged with misappropriation of huge amounts in purchase of spare parts. The FIR was recorded on 12th May 1987 for the offence allegedly committed in the year 1981, and after unwarranted prolonged investigation; the charge sheet was submitted in court on 22nd February 1991. Nothing happened till April 19, 1999, when the appellant and his deceased mother filed criminal writ petition seeking quashing of proceedings before the trial court. The Apex Court considering the long delay in investigation and trial held that it would be unfair to the appellant to remit the matter back to the High Court for examining the said plea of the appellant. Apart from the fact that it would further protract the already delayed trial, no fruitful purpose would be served as learned counsel for the state very fairly stated before the court that he had no explanation to offer for the delay in investigations and the reason why trial did not commence for eight long years. The Apex Court also stated, nothing being established to show that the delay was in any way attributable to the appellant. Moreover, having regard to the nature of the accusations against the appellant, who was a young boy of about eighteen yeas of age in the year 1981? When the acts

225. 2008 Cr. Lj 3944
and omissions were allegedly committed by the concerns managed by his parents, who have since died, the court feel that the extreme mental stress of prolonged investigation by Anti Corruption Bureau and the sword of Damocles hanging perilously over his head for over fifteen years must have wrecked his entire career. Be that as it may, the prosecution has failed to show any exceptional circumstances, which could possibly be taken into consideration for condoning the prolongation of investigation and trial. The lackadaisical manner of investigation spread over a period of four years in a case of this type and inordinate delay of over eight years (excluding the period when the record of the trial court was in the High Court), is amply clear. The Apex Court on facts in hand and held that the appellant has been denied his valuable Constitutional right to speedy investigation and trial and therefore, criminal proceedings against the appellant quashed on the ground of delay in investigation and trial.

In Vakil Parasad vs. State of Bihar the court opined that the delay clearly violates the Constitutional guarantee of speedy investigation and trial under Article 21 of the Constitution. The court held that under gross delay further continuance of criminal proceedings, pending against the appellant in the court of special Judge, Muzaffarpur is unwarranted and despite the fact that allegation against the accused are quite serious, they deserve to be quashed.

The brief facts of the case are that on 8th April 1981 a search operation was conducted by the Crime Investigation Department, on a complaint lodged by a civil contractor against the appellant, an Assistant Engineer in the Bihar State Electricity Board (Civil) Muzafarpur, allegedly demanding a sum of Rs.1000/- as illegal gratification for release of payment for the civil work executed by him. In the trap, the chemically treated currency note has been recovered from the appellant's pocket. The charge sheet was filed on 28th February 1982. The Magistrate took
cognizance on 9th December 1982. Nothing substantial happened in 6 years i.e. till 6th July 1987 except for dismissal of an application dated 30th June, 1983 filed by the prosecution for reinvestigation of the case, when the case was transferred from Muzaffarpur to Patna.

On 7th December 1990, the appellant filed a petition under Section 482 Cr. P.C. before the Patna High Court against the order passed by the Special Judge, Muzaffarpur taking cognizance of the offences, on the ground that the investigations on the basis whereof the charge sheet was filed, had no jurisdiction to do so. The High Court accepting the plea of the appellant quashed the order dated 7th December 1990, with a direction to the prosecution to complete the investigation within a period of three months from receipt of the order. No further progress was made in the case till the year 1998, when the appellant filed yet another petition under Section 482 Cr. P.C. seeking quashing of the entire criminal proceedings pending against him on the ground that re-investigation in the matter had not been initiated. Even after the lapse of seven and half years of the order passed by the High Court on 7th December, 1990 and in the process the appellant had suffered undue harassment for over eighteen years. On 20th November 1998, the petition was admitted to final hearing for 11th May 2007. Almost after nine years, counsel for the Vigilance department sought time to seek instruction in regard to the stage of investigation. The Deputy Superintendent started investigations on 28th February 2007 and ultimately filed a fresh charge sheet on 1st May 2007.

The High Court has dismissed the petition, acknowledging that the accused has prejudiced due to long delay and concluded that this reason by itself was not sufficient to quash the entire criminal proceeding against the accused keeping in view the seriousness of the allegations. The learned Judge, however, directed the trial court to trial the matter on day-to-day basis and completes the same within four month. Being aggrieved by the said decision, the appellant has preferred the present appeal.
The counsel for the appellant submitted that about twenty-eight years, since the registration of the case against the appellant has elapsed. The Trial according to law is yet to commence and thus, the appellant has been deprived of his Constitutional right to speedy investigation and trial owing from Article 21 of the Constitution. And this is a fit case where the charge sheet against the appellant should be quashed. The learned counsel for the state contended that the delay in trial was also to same extent, attributable to the appellant because he belatedly questioned the jurisdiction of the investigating officer. The Hon'ble High Court analysing the fact and circumstances of the case stated that the delay clearly violates the Constitutional right of speedy investigation and trial under Article 21 of the Constitution. Further, the court held that continuance of criminal proceedings, pending against the appellant is unwarranted despite the fact that allegations against him are serious; the court dismissed the proceeding against the appellant.