CHAPTER –I

INTRODUCTION

India is a democratic society governed by rule of law and it is enshrined in the Constitution of India, which the people of this country have given to themselves. Rule of law means that law is supreme and the rule of law is protected when there is a legal system, which is readily accessible and responds to the needs and problems of citizens in a fair and non-discriminatory manner. The development of any country is measured by the economic and judicial system of governmental set-up and living standard of the people, which also includes fair and speedy justice. The Constitution has guaranteed its citizens fundamental rights which are basic human rights. The quest for truth is the foundation of justice system which aspires to preserve and protect the rule of law.

The administration of criminal justice continuously evolves in response to the changing socio-economic circumstances. It is the prime duty of the judiciary to keep the balance, Criminal law that concerns with social protection and prescribes rules of behaviour to be observed by all and on other hand the liberty of the individual and security and order in the society or public

4. See Bharati Yadav v. State of U.P. (also known as Nitish kataria case, 2006 (135) DLT 620)
order. The function of judiciary is to protect the people's rights, adjudicate between two individuals, adjudicate whether a person is guilty of an offence or not and which is not readily apparent, is to ensure good governance of the nation.

The litigants knock the doors of the Court with an expectation to get justice. However, the dim ray of hope is lost when a delay is caused in the justice. Lord Denning said, "Law's delay have been intolerable. They have lasted so long as to turn justice sour." The criminal trials do not commence for a long period as three to four years after the accused was remitted to judicial custody. The delay is not of five to ten years but vary from ten to twenty to thirty years.

1.1 Nature of Delay in Criminal Trial

The interest of society lies in punishing the guilty and exoneration of the innocent but the determination (of guilty or innocent) must be arrived at in reasonable time. Justice Bhagwati indicated a time frame in these words:

"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 of 3 or 5 or 7 or even 10 years. Speedy trial is of essence to criminal justice system and there is no doubt that delay in trial itself constitutes a denial of justice."

The delay in trial is not a recent phenomenon, of late it has

assumed gignatic proportions, but the attitude of 21st century hesitates to responds positively to the .... of hallowed human rights, of the dignity of personhood versus blatant disregard by states of compassion for the undertrials.

Delay has defeated the primary goal of the criminal justice system. It has made the system weak and meek. Delay in courts refers to operation of courts rather than the judges; but the two are interlinked. The various reasons for the delay mainly are (i) the absence of witnesses, (ii) absence of counsel, (iii) adjournments, (iv) crowded lists, (v) failure to examine witnesses though present, (vi) absence of a system of day to day hearing and (vii) delay in the delivery of the judgments. It can be understood through an illustration of a passenger and mail train-- a journey by a passenger train takes 40 km per hour and took a five minute halt at each station whereas, a mail train runs at a higher speed and with few stops which highlights the difference in the time taken as also the resultant fatigue to the traveller.

Delay in providing justice has been interpreted as denial of justice. Justice Bhagwati opined in the following words:

"I am pained to observe that the judicial system in the country with considerable anguish that I say so, our judicial system is breaking almost on the verge of collapse. These are strong words I am using but it is under the weight of arrears."  

The mental agony, expense and strain which a person proceeded against in criminal law has to undergo and which coupled with delay, may result in impairing the capability or ability of the accused to defend himself have persuaded the constitutional courts of the country in holding the right to speedy trial a manifestation of fair, just and reasonable procedure enshrined in Article 21.21 The whole society is benefitted by recognising speedy trial as a fundamental right.22

Nani Palkivala on the speedy disposal of cases said,

"May I turn to the situation in India which has the second largest number of lawyers in the world? While it is true that the justice is blind in our country, it is also lame. It barely manages to hobble along. The law may or may not be an ass, but in India it is snail; it moves at a pace which would be regarded as unduly slow in community of snails. A lawsuit, once started in India, is the nearest thing to the eternal life ever seen on this


earth. Some have said that litigation in India is a form of fairly harmless entertainment. But, if so, it seems to be a very expensive way of keeping the citizens amused. If litigation were to be concluded in the next Olympics India would be quite certain of winning at least one gold medal.”

Fair and speedy trial are not per se provided in the Code of Criminal Procedure. In the case of Aslam Babalal Desai v. State of Maharashtra it is observed:

"Criminal law primarily concerns with social protection and prescribes rules of behaviour to be observed by all. Law punishes for deviance, transgression, violation or omission. Liberty of the individual and security and order in the society or public order are delicate and yet paramount considerations. To keep the weal balanced, must be the prime duty of the Judiciary."

The principles of equity, justice and good conscience demands that no one should be punished without a fair trial and the principles of criminal law states that everyone is presumed to be innocent unless his guilt is proved beyond reasonable doubt in a trial before an impartial and competent Court. The Courts have established that the primary object is to ensure a fair trial of accused persons.

1.2 Meaning of Fair Trial:

Fair trial is the paramount prerequisite of administration of justice. The fairness can not be measured in absolute manner, but is always relative. The fair trial implies to administer justice fairly and impartially as it should be administered; fair to the accused, fair to the State and fair to the vast mass of the people for whose protection penal laws are made and administered. The main objective of the State is to provide society peaceful environment to people and to protect them from the offenders by giving appropriate punishment. The object of establishing courts is to bring justice to the door step of the litigants to save time, expenditure and serve justice speedily.

The Code of Criminal Procedure,1973 has kept in view that an accused should get fair trial in accordance to the principles of natural justice and ensure fair deal to the poor sections of the society. The provision which deals about fair trial are covered in Criminal Procedure Code, 1973 and Indian Evidence Act, 1872. The fair trial is conducted by independent, impartial and competent judge and in open court.

There is a cardinal principle that an accused is presumed to be innocent unless his guilt is proved beyond reasonable doubt and the burden of proof lies on the prosecution. The place of inquiry or trial should be convenient to parties as contained

in Section(s) 177 to 189 of Criminal Procedure Code, 1973 however, it has exceptions.\textsuperscript{34} The accused person to be tried in his presence\textsuperscript{35} and also the evidence taken\textsuperscript{36}. However, it can be exempted in the following circumstances:

Where such attendance is not necessary in the interests of justice or.

The accused persistently disturbs the proceedings in court\textsuperscript{37}.

The accused has a right to have an expeditious trial. In every inquiry or trial, the proceedings shall be held as expeditiously as possible. In \textit{Zahira Habibullah Sheikh v. State of Gujarat} case, it has been observed:

"Each one has an inbuilt right to be dealt with fairly in a Criminal trial. Denial of a fair trial is as much injustice to the accused as is to the victim and to the society. Fair trial obviously would mean a trial before an impartial judge, a fair prosecutor and an atmosphere of judicial calm. Fair trial means a trial in which bias or prejudice for or against the accused, the witnesses or the cause which is being tried is eliminated".\textsuperscript{38}

\textbf{1.3 Meaning of Speedy trial:}

Speedy justice demands speedy and reasonably expeditious trial.\textsuperscript{39} It secures the right to live with basic human dignity and

\begin{itemize}
\item \textsuperscript{34} \textit{Kali Ram v. State of H.P.}, (1973) 2 SCC 808.
\item \textsuperscript{35} Section 205, Criminal Procedure Code, 1973.
\item \textsuperscript{36} Section 273, Criminal Procedure Code, 1973.
\item \textsuperscript{37} Section 317, Criminal Procedure Code, 1973.
\item \textsuperscript{38} (2006) 3 SCC 374 at 395.
\item \textsuperscript{39} Neha Gupta, “Role of Lawyers in Providing Speedy Justice”, 64, \textit{All India Arbitration Law Reporter} and 13 (2006 (4)).
\end{itemize}
right to individual liberty. There is a well-known saying "Justice delayed is justice denied". However, expeditious justice is very rare, as litigation has assumed alarming proportion with the explosion of population, expanding of business activities, sagging moral values, culture of demanding only rights and tardy disposal of cases by Courts, the arrears are mounting up day by day. This right of expeditious or speedy trial is the essence of justice and delay in the trial causes denial of justice to the accused.

The roots of speedy trial can be traced in England in twelfth century in the landmark document of English Law, Magna Carta. It was decided that justice must be provided to robbers, murderers and thieves “speedily enough”. It is designed on two reasons: firstly, to prevent defendants from languishing in jails for indefinite period before trial. Secondly, to minimize the time in which a defendant’s life is disrupted and burdened.

Every person who is arrested or detained shall be entitled to trial within reasonable time or to release during pending trial. Every person is entitled to full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

1.4 Speedy Trial under Indian Constitution:

The right to speedy trial is the pith and marrow of Indian

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42. See at http://law.jrank.org/pages/10299/Sixth-Amendment-Speedy-Trial.html as on November 2, 2010.
44. Article 10, Universal Declaration of Human Rights, 1948.
Constitution, although the right to have “expeditious trial” or “speedy trial” is not specifically mentioned as a Fundamental Right in Constitution of India, 1950. It provides only about procedure established by law. Article 21 is said to imply the right to speedy trial and it is the outcome of judicial activism coupled with judicial interpretation.

Article 21 of Constitution of India, 1950 provides that “No person shall be deprived of his life or personal liberty except according to procedure established by law”. Though it is not expressly conferred but has been impliedly declared that the Speedy Trial requires a ‘reasonable, fair and just procedure’ and it is the constitutional obligation of the state to ensure speedy trial to the accused. It is the most precious human right and forms the ‘arc’ for all other rights.

In *Maneka Gandhi v. Union of India* case, the Hon’ble Supreme Court observed that Speedy Trial is the essence of criminal justice and there can be no doubt that delay in trial by itself constitutes denial of justice. Later in *Hussainara Khatton (II) v. Home Secretary, Bihar case*, the Hon’ble Supreme Court ordered the release of such under trial prisoners against whom charge sheet has not been filed within the time limit provided in section 468 of Criminal Procedure Code, 1973. The Court

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50. AIR 1978 SC 597.
51. AIR 1970 SC 1369 at 1376-77.
52. *Hussainara Khatton (III) v. Home Secretary, Bihar*, (1979) 1 SCC 810 at 814.
clearly mentioned that the State cannot avoid its constitutional obligation to provide speedy trial to accused by pleading financial or administrative inability. It is also the constitutional obligation of this court as a guardian of fundamental rights of the people to enforce the fundamental rights of the accused to speedy trial by issuing necessary directions to the State”.

The Hon’ble Supreme Court reaffirmed the earlier decisions and held that any accused who is denied right of speedy trial is entitled to approach this court for the purpose of enforcing such right. In *Rajdeo Sharma II v. State of Bihar case*, the court ordered to close the prosecution cases if the trial had delayed beyond a certain period in specified cases involving serious offences. Hon’ble Supreme Court in *Sheela Barse v. Union of India case*, a Division Bench comprising Justice Bhagwati and Justice R.N. Mishra, reaffirmed that right to Speedy Trial is a fundamental right implicit in Article 21 of the Indian Constitution and observed that ‘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 is a breach of fundamental right.

In *Babu v. Raghunathj case*, Hon’ble Supreme Court observed that social justice would include ‘legal justice’ which means that system of administration of justice which must provide expeditious and effective instrument for realization of justice to all sections of people irrespective of their social, economic position or their financial resources.56
Later in *Motilal Saraf v. State of Jammu and Kashmir* case,57, Hon’ble Supreme Court dismissed a fresh complaint which is made after 26 years of an earlier complaint and explained the meaning and relevance of speedy trial right as:

“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 under our Constitution. The right to Speedy Trial begins with 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 impresible and avoidable delay from the time of the commission of the offence till it consummates into a finality, can be averted”.

1.5 **Speedy Trial under Criminal Procedure Code, 1973**:

Speedy justice is the sine qua non of criminal jurisprudence.58 The Legislature from the commencement of Criminal Procedure Code in 1973 has shown the intention to complete the trial expeditiously. The Code is made keeping in consideration that every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved but also to the society.59 Speedy justice is the joint responsibility of the lawyers and court, whereas non-

57. (2007) 1 SCC (Cri) 180.
cooperation will defeat the object. 60

The cardinal principle of criminal law provides a right to the accused to have an expeditious trial under several provisions like Section 207, 208, 204(3) of Criminal Procedure Code, 1973. However, it is not specifically conferring a right to have his ‘case decided’ expeditiously.

If in a summons-case triable by a magistrate, the investigation is not concluded within a period of six months from the date on which the accused was arrested, the Magistrate shall make an order stopping further investigation into the offence unless the officer making the investigation satisfies the Magistrate that for special reasons and in the interests of justice the continuation of the investigation beyond the period of six months is necessary. 61 In every inquiry or trial, the proceedings shall be held as expeditiously as possible and once the examination of witnesses has begin it shall be continued on day to day basis until all witnesses are examined, and the court finds the adjournment of the same beyond the following day to be necessary for the reasons to be recorded. 62 Once the Court has taken cognizance of the offence or there is commencement of trial it may postpone the commencement, or adjourn any inquiry or trial, if it is necessary, advisable and will record the reasons. 63

The court will not take cognizance of an offence after a prescribed period of limitation (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is

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

In order to secure fair procedure to a prisoner, who has to seek his liberation through the court process is lawyer’s services. The law does not permit any government to deprive its citizens of constitutional rights on a plea of poverty or administrative inability.

In the case of Yakub Abdul Razak Memon v. State of Maharashtra through CBI, Bombay the Criminal Procedure Code, 1973 is essentially a code of procedure and like all procedural law, is designed to further the ends of justice and not to frustrate them by the introduction of endless technicalities. At the same time it has to be borne in mind that it is procedure that spells much of the difference between rule of law and rule by whim and caprice. The object of the Code is to ensure for the accused a full and fair trial in accordance with the principles of natural justice. If there be substantial compliance with the requirements of law, a mere procedural irregularity would not vitiate the trial unless the same results in miscarriage of justice. In all procedural laws certain things are vital disregard of the provisions in respect of them would prove fatal to the trial and would invalidate the conviction. There are, however, other requirements which are not so vital and non-compliance with them would amount to an irregularity which would be curable unless it has resulted in to failure of justice.

The right of refusal to answer questions that may incriminate a person is a procedural safeguard which has gradually evolved in common law and bears a close relation to the `right to fair trial'.

1.6 **Role of Judiciary in Speedy Trial**

The Hon'ble Supreme Court is very firm in the delay caused in justice. In order to have expeditious trial, judiciary in its various decisions discussed this principle. In *Veerbhadra v. Ramaswami Niackar case*\(^{68}\), the Supreme Court refused to send back the proceedings as five years have already elapsed considering this delay as unjust and improper. Later in another case the Court refused re-trial after a period of ten years\(^{69}\). In *Machander v. State of Hyderabad case*\(^{70}\), it is incumbent on the Court to see that no guilty person escapes and it is also their duty to see that justice is not delayed and accused persons are not indefinitely harassed.

In *Nimoon Sangma v. Government of Meghalaya case*\(^{71}\) Hon'ble Supreme Court observed the importance of expeditious trial under sections 167, 209 and 309 of Criminal Procedure Code, 1973 for expeditious disposal of criminal cases including investigation and trials. However, this right can be refused also, where the accused is responsible for the delay\(^{72}\).

In *Kadra Phadiya v. State of Bihar case*\(^{73}\), the Supreme Court observed that it is a crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial.

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68. AIR 1958 SC 1032.
71. AIR 1979 SC 1518.
73. 1981 CriLJ 481.
The court also observed that no one shall be allowed to be confined in jail for more than a reasonable period of time, which we think cannot and should not exceed one year for a session trial we fail to understand why our justice system has been dehumanized that lawyers and judges do not feel a sense of revolt of caging people in jail for years without trial.

1.7 **Emerging Trends in Judicial Approach:**

During late 1980, the judicial opinions show divergent trends. In *Sheela Barse v. Union of India case*\(^{74}\), Hon’ble Supreme Court decided that in cases of juvenile accused, a time limit of nine months was fixed, where three months are for investigation and six months for trial for an offence not more than seven years. But, it is not made applicable to adult accused and to be given consideration at a later date. In *Abdul Rehman Antulay v. R.S. Nayak case*\(^{75}\), Learned Justice Jeevan Reddy showed serious concern towards the consequences of delay in trial of criminal cases and issued guidelines for making right to speedy trial an effective right but he has refused to draw or prescribe any outer time limit for conclusion of all criminal proceedings. In 1996, the Supreme Court in *Common Cause v. Union of India case*\(^{76}\), the division bench gave directions for fixing the maximum time limit for conclusion of trials and quashing the proceedings pending in criminal courts, this case provided a list where the time limit will not be applicable. In 1999, *Rajdeo Sharma (II) v. State of Bihar case*\(^{77}\),

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74. AIR 1986 SC 1773.  
75. AIR 1992 SC 1701.  
76. (1996) 6 SCC 775.  
77. (1999) 7 SCC 604. Here, the charges of corruption were levied against Supdt. Engineer, Electricity of Mangalore Municipal Corporation in 1994 and were not concluded till 1999.
the accused was acquitted by the trial court on the basis of time limit fixed earlier.

In 2002, in *P. Ramachandra Rao v. State of Karnataka* the Constitutional Bench held that Court cannot fix any time limit as a bar beyond which criminal proceedings or trial cannot continue, thereby entitling the accused to be acquitted on the ground of delay. Prescription of such limitation period would amount to judicial legislation which is not permissible. The directions are running counter to Constitutional Bench decision in A.R. Antulay case (supra discussed)

### 1.8 Hypothesis:

In India large number of pendency of cases in Courts is a major concern for both the parties as well as for the State, in spite of right of speedy trial declared as a fundamental right in catena of judgments under Article 21 of Constitution of India. Speedy and fair trial is the utmost and fundamental requirement for judicial accountability.

Researcher observed and perceived the adjudication process under the procedural laws under different dimensions. Researcher feels that one of the lacunae in adjudicating cases is slower disposal rate of cases. The frivolous, multiplicity of suits and vexatious litigations are also add to the arrears of cases, which further adds to this problem. Generally, the perception of public is that the provisions of revision and adjournments in Criminal Procedure Code, 1973 and in Civil Procedure Code, 1908 somewhere is the main reason for delay in

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dispensation of justice. In the light of applicability of law it is seen that the procedural methodology adopted by litigants/ lawyers to get adjudication from courts is applied not to get or impart justice but to create unfairness and delay. The rationale behind the study is justified on the basis of assumptions and completed with reasons, justification, conclusion and suggestions. On the above mentioned hypothesis and assumptions researcher made some objectives to complete the present work on “Fair and Speedy Trial: Need of the Time in Criminal Justice System”.

1.9 Aims And Objectives:

In light of the above hypothesis, the objective of the study is to examine the legal framework of speedy trial and the lacunas. The specific objectives are:-

1. To study whether the provisions to have fair and speedy trial under Criminal Procedure Code are followed or not?
2. To study the reasons given by the judge to reject it;
3. To study the legal provisions and policies made till date for speedy and fair trial;
4. To study the evolution and developments in speedy and fair trial;
5. To assess the present system for speedy justice;
6. To assess the judicial practice of Hon’ble High Courts and Supreme Court with respect to their discretionary powers for speedy trial;
7. To study various pronouncements made in India and abroad;
8. To find out the ways by which this right can be assessed by every person including poor.
1.10 Research Methodology:

The methodology of the study shall primarily be doctrinal, discussing the philosophy and analyzing the books, journals and other literature on the subject. Researcher has analyzed the Judgments of reported cases for speedy trial, as decided by Hon’ble High Courts and Supreme Court time to time. The study encompassed doctrinal method of research by using primary and secondary sources. The basis of the study are pronouncements of Hon’ble Supreme Court and High Courts Report of Law Commission, Law books, Articles in law journals and Newspapers.

Considering the nature of the subject, the researcher commenced his study by utilizing the rich treasures of books and treatises available in the library and pick up from them the material relevant for tracing the concept of speedy and fair trial thereafter proceeded ahead to extensively to examine other materials like the various legislations, commentaries by the jurists, the statutory interpretations by the Supreme Court and the High Courts of India. The researcher considers the ‘Doctrinal’ or the ‘Traditional’ method of research as the primary method for study. Researcher also intends to conduct research by applying the Anthropological Study, Critical Study, Comparative Study by collecting the data as secondary as well as Primary source of information.

An imperative is made by the researcher to analyze the judgments analytically, comparatively and anthropologically also by applying the tools of doctrinal research. On the basis of work done in the light of recommendations of law commission and other recommendatory bodies, the researcher gave suggestions
after concluding her remarks about the concept and law of fair and speedy trial.

1.11 Framework of the Study:

After making in-depth study on the subject, the research work is divided into six chapters

1. **Chapter 1.** In this chapter, researcher discussed about the subject including an explanation about the nature and scope in the light of constitution of India, meaning, objective, hypothesis and research methodology followed in the present work.

2. **Chapter 2.** This chapter covers the historical perspective followed in ancient, medieval period to provide fair and speedy trial. The different techniques followed to secure justice to the litigants. Further researcher also discussed, analysed and explained the topic with meticulous planning.

3. **Chapter 3.** This chapter covers the recommendations in eighteen reports of Law Commission. Also, various Committees are constituted to curb the issues of delay are covered so as to secure fair and speedy trial.

4. **Chapter 4.** In this chapter, researcher brings to light the Legal provisions relating to the fair and speedy trial by analyzing and examined them. Provisions and their interrelationship with each other are also discussed in detail.

5. **Chapter 5.** This chapter covers cases decided in the Hon'ble Supreme Court and High Courts on the topic of research. Also, the analysis is done which is supported with proper references.

6. **Chapter- 6.** In this chapter, after making in-depth and
extensive study on the subject, including the various aspects of the topic, researcher brings to light the conclusion and suggestions of the study.