CHAPTER - 5
RIGHTS OF ACCUSED IN INDIA: A CRITICAL ANALYSIS

5 INTRODUCTION

Human rights are basic fundamental rights which are integral part for the development of human being in the absence of which person cannot live life with dignity. Constitution of India protects the fundamental rights or human rights of the people, provisions for the same have been made not only in the Articles of the Constitution but in fact Preamble also talks about the fundamental freedoms and protection of the dignity of the individual. The Indian Judiciary had even relaxed the rule of locus standi for the protection of human rights which pave the way for the development of the concept of Public Interest Litigation. Through public interest litigation various incidents of violation of human rights had been put before the Courts. Courts protected the rights of women, workers, children, prisoners and so on. Thus judiciary is playing a role of savior of the human rights of the people so that each individual can live with dignity. Protection of human rights is important issue of concern throughout the world various international instruments have been incorporated for the protection of human rights and on the basis of the provisions of the international instruments, national endeavors have been made such as enacting the Protection of Human Rights Act 1993. Provisions have been made under the Act for the establishment of the National Human Rights Commission as well as State Human Rights Commission in various States and it also provide for the constitution of Human Rights Courts at the district level so that the justice can be provided to the victims of human rights violation at every level.

Since the establishment of the National Human Rights Commission it has been playing a commendable task in protecting the human rights of the people and it also gave monetary relief to the victims and to their
families. Although some amendments are necessary to the be made in the Act and for the same some following suggestions have been made if such changes may be made than it can strengthen the position of the human rights commission and it would be possible to achieve the objectives of the Act easily.

i. With regard to personnel and financial matters the National Human Rights Commission must be made independent body, as it has to look towards the Government. It should be provided with its own staff for investigation of cases instead of keep it dependent on police department and such other officials, as may be necessary for the efficient working of the Commission.

ii. The National Human Rights Commission may be empowered to observe the decisions of the Supreme Court for protecting Human Rights and if there is any delay or failure in the implementation of such decisions, it can brought it before the Supreme Court of India for taking further adequate actions.

iii. Section 21(1) and Section 30 of the Protection of Human Rights Act, 1993 should be amended so to make it mandatory for the State Governments to constitute Human Rights Commissions at the state level as well to constitute Human Rights Courts at district level and further the jurisdiction of these courts as well as the procedural requirements should also be specified for the smooth and effective functioning.

iv. Section 36(1) should be amended and to empower National Commission to take up or investigate any matter pending before any state human rights commission or human rights courts to provide speedy justice.

v. The provision of 1 year limitation within which person can approach commission for redress of his grievances should be relaxed so as to enable such cases where complaint could not be filed before commission within period of 1 year due to
unavoidable reasons or circumstances.

vi. There should be a provision in the Act which specifically provide the time period within which the decisions of the commission should be implemented by the concerned Government.

vii. Provision can be made for the conduct of seminars in every district each month for educating people about their human rights and the protections granted by Constitution as well as under the Act of 1993.

viii. The provision can be made for conducting of periodical survey. The periodical survey should be conducted for checking the progress in the field of the implementation of the provisions as well as in achieving the objectives of the Act.

ix. The special cell can be established in every human rights court at district level where free legal aid should be provided to victims of human rights violation who due to their poverty and vulnerable conditions enable to approach court for the redressal of their grievances.

x. The provisions for the grants to NGOs can also be made in the Act. Where in Government can promote the NGOs by giving funds to them who are working in the field of protection of human rights and duty should be confer on such NGOs for conducting seminars for educating people about the human rights and their protections.

xi. In schools as well in colleges one compulsory subject can be introduce in which students may study about human rights.

xii. The local offices in each state can also be established for the National Human Rights Commission for the convenience of the general public for speedy disposal of cases and to provide justice in time as it might not be possible for every person to approach the national human rights commission at New Delhi for seeking redressal of their grievances.
Constitution of India provides safeguards for the protection of human rights, however, for the effective implementation of the human rights Government of India has enacted the ‘Protection of Human Rights Act, 1993’, which provides for the establishment of the National Human Rights Commission, State Human Rights Commission in various states and also the Human Rights Courts at the district level and Indian judiciary is also working to protect the human rights of the people of India as well as to provide speedy remedy to the victim of human rights violation. Despite such efforts by the Government sought objectives have not yet been achieved due to the following reasons:-

i. Though Constitution of India has enumerated various rights but there are large number of people who are not even aware of these rights guaranteed by the Constitution due to their vulnerable conditions and struggle of every day survival. These are the people who are mostly victims of human rights violation but they cannot think to approach court as they are more worried about their daily wages instead of protecting their basic human rights.

ii. Though Constitution enshrined duties of the State under Part IV i.e. Directive Principles of State Policy to enacts laws and to work for the welfare of the people of India in various spheres whereas these directive principles are not enforceable in the Courts and one cannot approach Court if the Government does not enforce these principles.

iii. The Human Rights Commission is expected to be completely independent in its functioning. But there is no provision for the independence of the Commission. In fact, there are provisions in the Act which draw attention to the dependence of the Commission on the Government these are discussed as follow:-

a) Commission is dependent upon the Government for its human resources for its functions as per Section 11 of the Act.

b) Finance is considered as the blood of an organization.
Section 32 of the Act makes the commission dependent on central government for its finances as the section stated that “the Central Government shall pay to the Commission by way of grants such sums of money as it may consider fit”.

c) Human Rights commission is only fact finding body and it has got no power to adjudicate upon the disputed facts and also to issue any order to any party or government so as to be complied with.\(^{440}\) The Commission’s findings are only advisory to the government. It is on the discretion of the government whether to accept or reject the findings and recommendations of the commission as there is no provision which makes the recommendations binding on the government.

d) Commission does not have power to constitute special investigation teams for purposes of investigation and prosecution of offences arising out of violations of human rights.

iv. Unlike Supreme Court and High Courts Commission cannot inquire into any matter which is pending before state human rights commission or before human rights courts despite the gravity of matter concern as provided under Section 36(1) of the Act.

v. Act has puts 1 year limitation period for seeking redressal of grievances before the human rights commissions. Human rights commissions cannot investigate an incident if the complaint was made more than one year after the incident as provided under Section 36 clause 2. Therefore, a large number of genuine grievances go unaddressed if victim fails to approach the commission on time due to whatsoever reasons.

\(^{440}\) State of Karnataka vs. Union of India and another (1977) 4 SCC 608.
vi. It is not mandatory on the State government to establish state human rights commission and human rights courts. Sections 21 provide “A State Government may constitute a body to be known as the………. (name of the State) Human Rights Commission to exercise the powers conferred upon, and to perform the functions assigned to, State Commission under this chapter”. Section 30 provide that “For the purpose of providing speedy trial of offences arising out of violation of human rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify for each district a Court of Session to be a Human Rights Court to try the said offences.”

The system of administering criminal justice is to be assessed on the basis of its ability to secure justice to the victim of a crime and protect the rights of the accused. Criminal justice system should strike a balance between the interests of the victim and the rights of the accused in the scales of justice. The criminal justice system in India through the Code of Criminal Procedure and the constitutional provisions indicate that there is no balance in the scales of justice in the area of victim compensation. The balance is tilted in favour of the accused and every step in the process is oriented to the protection of the accused.

5.1 VIOLATIONS OF THE RIGHTS OF ACCUSED: A STUDY

The concept of the protection of rights of the people accused of committing crime and rights of prisoners in the administration of criminal justice has been continually changing and developing over time. In ancient times, in the absence of formal criminal justice apparatus, the accused was deemed as a sinner. Crime was equated with "sin" transgression against God's will. Consequently, a criminal looked upon as a sinner could not claim any right for himself. Though the Medieval Era witnessed striking

441 Pfohl, 1985
reforms in the rules in terms of the accused's right to self-defense, a new meaning was accorded to the human rights perspective in the administration of criminal justice with establishment of the Universal Declaration of Human Rights in 1948. The defense of the rights of the accused and convicted prisoners came to be recognized as the legitimate objective of international and national communities. The significant features of the International Covenant were gradually adopted by the legal systems of common-law as well as non-common-law countries of the world.

The features contained in the Universal Declaration of Human Rights, 1948, were given added strength by the adoption of the International Covenant on Civil and Political Rights in 1966. Despite the induction of the procedural safeguards of human rights (as set forth by the two International Covenants, into codified laws of most countries of the world), the rights of the accused and the convicted imprisoned offenders in the administration of criminal justice are still being violated in some form or other world-wide. In this paper, the focus is on India. India has a longstanding parliamentary democracy with a free press, a civilian-controlled military, an independent judiciary, and active political and civic organizations. Significant human rights abuses, especially violations of rights of people accused of committing crimes (the undertrials who are detained in police custody) and rights of the convicted who are imprisoned (prisoners' rights) are quite prevalent in the administration of criminal justice in India, despite extensive constitutional and statutory safeguards. Considering the vastness of the area of criminal justice administration in India, the purpose of this paper is to critically evaluate the following two aspects - physical violence against the undertrials detained in police custody,

442 Barra, 1989.
“The constitutional guarantee of speedy trial is an important safeguard to prevent undue and oppressive incarceration prior to trial; to minimize concern accompanying public accusation and to limit the possibilities that long delays will impair the ability of an accused to defend himself”. The right to a speedy trial is first mentioned in that landmark document of English law, the Magna Carta. 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 a concept which deals with speedy disposal of cases to make the judiciary more effective and to impart justice as fast as possible. Article 21 declares that “no person shall be deprived of his life or personal liberty except according to the procedure laid by law.”

Justice Krishna Iyer while dealing with the bail petition in Babu Singh v. State of UP443, remarked, “Our justice system even in grave cases, suffers from slow motion syndrome which is lethal to 'fair trial' whatever the ultimate decision. Speedy justice is a component of social justice since the community, as a whole, is concerned in the criminal being condignly and finally punished within a reasonable time and the innocent being absolved from the inordinate ordeal of criminal proceedings.” In Sheela Barse v. Union of India444 court reaffirmed that speedy trial to be fundamental right. Right to speedy trial is a concept gaining recognition and importance day by day. There are 3 pillars of social restraint and order in India

(1) Legislature
(2) Executive
(3) Judiciary

Legislature is an authority which makes the law & Executive takes into consideration effective implementation of the legislations while

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443 1978 AIR 527.
444 1983 SCC (Cri.) 353.
judiciary implements it in practical life. The question is whether is anyone is really serious and concerned about these problems? With the rapid growth in technological, industrial field and population, workload has increased on the judiciary system which calls for effective and rapid disposal of ever increasing cases but the effectiveness of the court is hampered badly.

5.2 FACTORS FOR PENDENCY OF THE CASES

5.2.1 Delay in cases can be of two types:

1. Court system delay which accounts for the period of entering the cause till its taken up for trial.

2. Delay due to professional courtesy of lawyers towards each other and lawyer’s vis-à-vis the court. However, the chief reasons for delays can be enumerated as follows:

(a) The judge – population ratio – presently taking into consideration the population of the country and pendency of the cases the no. of judges available are very less.

(b) The functioning of the judiciary is independent in nature but it doesn’t mean it is not accountable to anyone. Considering this factor it can be concluded that it drives the judges toward leisure and comfort which ultimately results in delay of the cases. The Woolf report of 1996, had emphasized to make judiciary accountable by generating accurate judicial statistics.

(c) Provision for adjournment: The main reason for the delay in the cases is the adjournment granted by the court on flimsy grounds. Section 309 of Code of Criminal Procedure (CrPC) and Rule 1,Order XVII of Code of Civil Procedure (CPC) deals with the adjournments and power of the court to postpone the hearing.

(d) Vacation of the court: The reason with providing courts with a vacation period is a debate going on when in country like India pendency of cases is huge. In most of the countries like U.S. and France there is no such provision.
(e) *Hurried and ill-drafted legislations and statutes on diverse topics enacted, contribute to some extent to the inflow of cases.*

Take into consideration Bhopal Gas Leak Tragedy involving lives of more than 15000 people. 20 years had passed for that incident and still people suffered a lot to get the compensation. The condition of those girls who were brutally gang raped during the Godhra riots in front of their helpless family members. Consider the case of Jessica Lal, where Delhi police yet to grab Manu Sharma, key accused, still able to safeguard himself from the clutches of the judicial administration. The victims of Best Bakery case who awaited justice to be dispensed in their favour but the climax starts with the key witness in the case turned hostile and the entire fate of the Bakery case is in turmoil. Today the victims of the all the above-enumerated cases know full well that the price of truth is extremely high.

5.2.2 Legislative Efforts

It’s being high time to evaluate and take effective measures to curb the problem of pendency of cases. The legislative sensitivity towards providing and efficacious justice is mainly reflected in two legislations.

(1) *Arbitration and Conciliation Act, 1996*

(2) *Civil Procedure Code*

Section 89 of CPC deals with settlement of dispute outside the court: It provides that where it appears to the court that there exist elements, which may be acceptable to the parties, the court may formulate the terms of a possible settlement and refer the same for arbitration, conciliation, mediation or judicial settlement. Nowadays the concept of online ADR (Alternative Dispute Resolution) is gaining recognition but the problem with it is the lack of IT knowledge among the lower masses and need of knowledge of law and ADR, technical concerns, legal sanctity of proceedings, industry support etc. However, there are many loopholes in the measures taken by the government.
One of them I can pinpoint is that the time period which is considered long is not defined satisfactorily. The court has adopted an approach whereby it looks at each situation individually and balances all pertinent factors. The Supreme Court (SC) of India took positive steps in the direction of implementing article 14 (3) of international covenant on civil and political rights which determines that criminal charge too be tried without undue delay. Article 16 of principles of equality in administration of justice declares that everyone shall be guaranteed right to speedy trial. SC held in \textit{Raghubir Singh v. State of Bihar} \footnote{1997 AIR 149} that speedy trial is one of the dimensions of fundamental right to life and liberty under article 21. Cr.PC in sec 260 involves the concept of “summary trial” whereby in case of circumstances prescribed the court has to summarily dispose the case.

\textbf{5.2.3 Delay Leads To Mental Anguish}

In \textit{Hussainara Khatoon v. State of Bihar} \footnote{1979 AIR 1360} which formed the basis of the concept of the Speedy Trial, it was held that where undertrial prisoners have been in jail for duration longer than prescribed, if convicted, their detention in jail is totally unjustified and in violation to fundamental rights under Article 21. Inordinate delays violates article 21 of the constitution: for more than 11 yrs the trial is pending without any progress for no faults of the accused-petitioner. Expeditious rights is a basic right to everybody and cannot be trampled upon unless any of the parties can be accused of the delay. Delay in trial unnecessarily confers a right upon the accused to apply for bail. Under sec. 482 read with 483, Cr. P.C lays that every possible measure to be taken to dispose off the case within 6 months from today. No adjournments to be granted until unless circumstances are beyond the control of judiciary. It is the responsibility of the judiciary to keep a check on under trial prisoners and bring them to trial. Overcrowded courts, inadequate resources, fiscal deficiency cannot be the reasons for deprivation of a person. In cases relating corruption,
judiciary should deal with it swiftly and dispose the case as fast as possible. In the case *P. Ram Chandra Rao v. State of Karnataka*\(^{447}\), the court overruled decision of *Raj Deo Sharma and Common Cause*\(^{448}\) and held that no time bound direction for completing a trial can be issued by a High Court.

Article 21 of the Constitution, this right is implicit in article 14, 19(1) (a) and 21 of the constitution as well as the CPC. It is the constitutional obligation of the government to devise such procedures as would ensure and implement speedy trial. Supreme Court being majestic authority has to act as guardian of fundamental rights of citizens.

### 5.3 PURPOSE OF CRIMINAL JUSTICE

The paramount purpose of speedy trial is to safeguard the innocents from undue punishments but prolonged pendency has created an unmountable barrier in that. Huge no. of cases is pending for years together which creates mental and economic pressure on litigants.

### 5.4 RIGHT TO SPEEDY TRIAL AND EXPEDITIOUS CRIMINAL TRIAL

Fundamental rights are not teasing illusions but are meant to be enforced effectively. On a no. of matters cases were adjourned or delayed but now the court has a right to quash the case or the proceedings to meet ends of justice. In the case *Kharak Singh v. State of Punjab*\(^{449}\) it was declared that right to speedy trial is an essential part of fundamental right to life and liberty. In the case *Abdul Rahman Antulay v. R.S. Nayak*\(^{450}\), the bench declared certain aspects and guidelines regarding the speedy trial and quashing of cases should depend upon nature of the case. Hence it can be concluded that Right to speedy trial is right of the accused and it

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448 (1998) 7 SCC 507
449 AIR 1977 P H 335
450 1991 (3) Suppl. SCR 325
encompasses all the stages, namely investigation, inquiry, trial, appeal, revision and retrial.

The concerns from the view point of accused are:
(a) *Period or remand should be justified and should be as short as possible*
(b) *Worry, anxiety, expense and disturbance in conducting the trial should be minimal*
(c) *Undue delay may well result in impairment of the ability of the accused to defend himself.*

At the same time it cannot be denied that cases are delayed in the interest of the defendant. Its rightly said that “delay is known as a defence tactic”. To effectively implement this right of speedy trial the approach to be adopted by the judiciary should be a practical one instead of a pedantic one. On the contrary in White, J. in *U.S. v. Ewell*\(^{451}\) it was said that whether a delay of case is there or not and whether the litigants are deprived of their fundamental rights depends upon the circumstance of the cases. Same was outlined in Powell, J. in Barker’s case. It should be taken care that prosecution does not become a persecution.

Moreover, we cannot give effect to ‘demand rule’ as justice cant be denied or delayed on the grounds that the litigants did not ask for speedy trials. Hence, the court has to apply various balance tests and recognize whether the right has been infringed or not. It is not advisable to fix a period of trial because it will confine and restrict the judiciary and there will be a burden of swift disposal of cases which may deteriorate the quality of justice. The right to a speedy trial has been known, on occasion, to work to the disadvantage of the defendant -- as when sufficient time is not allowed for preparation of an adequate defense -- and the higher courts have found it necessary to keep a close eye on this. The other options for

\(^{451}\) 383 U.S. 116 (1966)
settlement of disputes is mediation, conciliation or settlement through Lok Adalat which helps in disposing off the cases fast.

5.5 REFORMATIVE MEASURES

5.5.1 Speedy Trial

The judicial capacity and capability is judged by the time taken for disposal of the cases. There are many scams and frauds which needs to be disposed off as quick as possible but this is not the case in India. For e.g. Harshad Mehta scam took about 6 years for the pronouncement of the decision when he already died while at the same time a scandal in Singapore Nick leeson of barring company which was decided in 2 years. This shows how the delay in justice providing system works in the favor of judicial system.

5.5.2 Proper Management of Court

Effective management of the courts and this is possible only when once in a couple of months or days problems faced by the litigants, lawyers and judges is discussed. Time scheduling should be done so that there is effective management of time leading to effective management of judicial system.

5.5.3 Recommendations of Malimath Committee

The main aim of this committee is to make recommendation for reformation on Criminal justice system, simplifying judicial procedures, practices and making the delivery of justice to the common man closer.

5.5.4 Proper Training

Judges should be provided with proper training and vocations on a regular basis to improvise there drafting, hearing and writing skills along with the skill of taking correct and fast judgment. Judicial accountability is one of them is important factor.

5.5.5 Proper Appointment of Judges

Moreover, the ratio of judges to population should be increased which will help in disposal of cases very fast. Cases must be assigned according to specialized area of judges. Assigning cases without taking into
consideration the specialization leads to delay. Moreover, special tribunal should be set up for some specialized fields of which cases come on a regular large scale basis e.g. Taxation, labour etc.

5.5.6 **Arbitration and Panchyat System should be Encouraged**

Arbitration should be done wherever possible and in particular small and petty cases arbitration should be made compulsory. It will save precious time of the courts. Nyaya Panchayats should be authorized to dispose off small and petty cases. However, Lok Adalats were established for the speedy disposal of cases at lower level.

Amendment is required so that procedural delays do not occur. Moreover, the state must look up that there are adequate no. of courts to cope up with the work load and timely appointment of judges. Reformation is necessary so as to make the implementation of the right in the right manner which is the need of the hour.

5.6 **JUSTICE DELAYED IS JUSTICE DENIED**

The right to speedy trial is not a fact or fiction but a “Constitutional reality” and it has to be given its due respect. The courts and the legislature have already accepted it as one of the medium of reducing the increasing workloads on the courts. The right to a speedy trial, and its resulting impact on both the defendant and society as a whole, makes this Sixth Amendment guarantee a crucial portion of the Bill of Rights -- and another important part of our legal heritage. Repeated delays and continuances in the criminal justice process prevent victims from ever reaching emotional, physical, and financial closure to the trauma suffered as a result of the crime(s) perpetrated against them. Such delays in prosecution can also limit the ability of victims to receive justice when their memories, or those of other witnesses, fade with the passage of time or when the victim’s health deteriorates.

Though there are no specific provisions for speedy trial, by judicial interpretation, the Supreme Court has held Article 21 of the Constitution confers the right on the accused. It is in the interest of all the concerned
that the case is disposed off quickly and justice is seem to occur. In *Abdul Rehman v. R.S Nayak* the SC observed that the ultimately it’s the court which decides whether right to speedy trial has been denied or not. Every time when proceedings cannot be quashed as it might not be in interest of the society. In the case *Madheshwardhari Singh v. State of Bihar* it was held that all criminal prosecutions are now inalienable fundamental rights to citizens. Moreover, in the case *Arun Kumar Ghosh v. State of Bengal* it was held that mental torture and anxiety suffered by an accused for a long length of time is to be treated ad punishment inflicted on him.

According to B.P. Singh, J the situation today is so grim that if a poor is able to reach to the stage of a high court, it should be considered as an achievement. Finally, to conclude with the words of Lord Hewet as it is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done.

The responsibilities that a court carries in a country with a written constitution are very onerous – much more onerous than the responsibilities of a court without a written constitution. Because here, they do not just interpret the laws but also the provisions of the constitution, and, are thus entrusted with giving meaning to the cold letter of the constitution. The courts thus act as the supreme interpreter, protector and guardian of the supremacy of the constitution by keeping all authorities – legislative, executive, administrative, judicial or quasi-judicial – within legal bounds. The judiciary has the responsibility to scrutinise all governmental actions and it goes without saying that in a constitution having provisions guaranteeing fundamental rights of the people, the judiciary has the power as well as the obligation to protect the people's rights from any undue and unjustified encroachment.

### 5.7 ANALYSIS AND CONCLUSION

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452 Ibid.
453 1986 Cri. LJ 1771
454 AIR 1972 SC 1366
Like in the case of all law enforcement in India, the right of the underprivileged always becomes harder to protect. The provisions of section 167b Cr.P.C extends to allowing the person bail if there isn’t sufficient cause to hold him in custody. The section, however also explicitly states that if the accused is unable to furnish bail then he continues to remain in custody. It was observed in *Laxmi Narain Gupta v. State*\(^{455}\) that ”Along with the present petition at least another 20 cases have been listed, where the accused are in judicial custody, merely because they are poor. In each of those cases, directions have been passed by the Courts concerned, for admitting them to bail. They are in judicial customary because they have not been able to arrange a surety while the orders for their judicial remands are being passed in a routine manner.” This drawback also persists when the accused is unaware of his rights.

While this section has been made clear by the statute, the same cannot be said for provisions relating to the inability of the police to get a person into custody due to medical or other reasons. The law is not clear if the 15 day limit must be suspended during the period of inability to hold in physical custody.

It becomes clear that the while the law provides for safeguards against abuse, it need to be amended to remove all obscurities and contradiction. The magistrates must also see to the background of the victims before passing orders. Section 167 must also be expanded so that remedies must be available for past illegal detentions or arrest even if in the present case custody is legal. Lastly, the executive must also play a role by ensuring that more and more people are aware of their right.

\(^{455}\) ILR 1986 Delhi 635