

"Quality of Justice suffer not only when an innocent person is punished or a guilty person is exonerated but when there is enormous delay in deciding the criminal cases."

-Committee on Reform of Criminal Justice System

Introduction

Justice is the foundation and object of any civilized society. The quest of justice has been an ideal which mankind has been aspiring for generation down the line. Justice is a constitutional mandate. The constitution of India has in its preamble defined and declared the common goal for its citizens as, to secure to all citizens of India, Justice-social, economic and political. Article 14 guarantees equality before law and equal protection of Laws. Article 39- A of the constitution mandates the state to secure that operation of legal system promotes justice on the basis of equal opportunity and ensure that the same is not denied to any citizen by reason of economic or other disabilities.

It is fundamental right of every citizen to get speedy justice. Which also is a basic requisite of good judicial administration. Rights to expeditious trial is extender the right to life guaranteed by the constitution. Right to expeditious trial is an important right recognised by the laws of many countries.

The phrases 'Speedy justice' and 'speedy trial have not been expressly stated in Article 21, constitution of India. But by way of its inovative interpretation the Hon'ble apex court in expanding the horizon of

Human Rights, enlarged the scope of Article 21, constitution of India holding that 'speedy trial' and 'speedy justice' are included in the said Article 21.

Besides the constitution, the code of criminal procedure and the code of civil procedure also guarantee the right to expeditious trial in its various provisions. But above all it is judiciary which is instrumental in giving this right the status of fundamental in giving this right the status of fundamental right so that the constitutional guarantee of providing expeditious justice to the people can be achieved in its realistic sense.

The foundation of this right in Supreme Court judgement in *Hussainara Khatton v. State of Bihar* (1980) where justice Bhagwati observed. "No procedure which does not ensure a reasonably quick trial can be regarded as reasonable, Fair or just and it would fall foul of article 21 of the constitution. There can therefore, be no doubt that speedy trial and by speedy trial we mean reasonably expeditious trial is an intergral and essential part of the fundamental right".

A procedure which does not provide trial and disposal within a reasonable period can not be said, to be just, fair and reasonable. If the accused is acquitted after such long delay one can imagine and unnecessary suffering he was subjected to. Delay results in witnesses being unable to

testing correctly to events which may have faded in their memory and sometimes in their being won over by the opponent.

Inordinate delays in the investigation and prosecution of criminal cases involving serious offences and in the trial of such cases in the courts is a bolt on judicial system. The objective of penal law and the societal interest in setting the criminal law in motion against the offenders with reasonable expedition is thereby defeated. The adverse effect of delay on the society at large is immeasurable. The fear of law and faith in the criminal justice system is eroded irretrievably.

The judiciary faces a large backlog of cases which in the end result in denial of real access to the courts on a account of delay that takes place in many cases in dispensation of justice. The problem of delay in disposal of cases pending in law courts is not a new incident. The courts are struggling with it since a long time. The Supreme Court made it clear in the case of All India Judges Association and others vs. Union of India, 2002 that this state of affairs must be addressed : "An Independent and efficient judicial system is one of the basis structures of our constitution. It is over constitutional obligation to ensure that the backlog of cases is decreased and efforts are made to increase the disposal of cases.

The alarm on rising pendency at a time when the situation is almost getting out of hand with a backlog touching 3.3 crore cases. While 2.84 cases are pending in the subordinate courts the backlog clogging the High

Court and Supreme Court in 43 Lakh and 57.787 cases, respectively. According to National Judicial Data Grid (NJDG), the five states which account for the highest pendency are Uttar Pradesh (61.58 lakh), Maharashtra (33.22 Lakh) West Bengal (17.59 Lakh) Bihar (16.58 Lakh) and Gujrat (16.45 Lakh) of all the pending cases 60% are more than two years old, while 40% are more than five year old. In the Supreme Court, more than 30% of pending cases are more than five year old. In the Allahabad High Court 15% of the appeal have been pending since 1980s. Which the M P High Court 70,000 have mounted since 1994.

There is no one factor which is solely responsible for these arrears of cases. As is Known that accumulation of thing drops of water results in to a pond. Similarly a combination of plethora of factor contribute to huge back-log of cases. There are number of factors responsible for the delay; so for carrying out reforms in the existing scenario, a number of elements must be considered.

In the Justice Malimath report the committee has observed that there is huge backlog of criminal cases in the country and unless concerned efforts are made on a war footing, the position will not improve.

The regime of criminal trial in India is regulated by the code of criminal procedure and Indian Penal Code. The procedure of Criminal trial as provided in Cr.P.C. lays down a number of provision aimed at a reducing

the delay in the investigation and trial of offences. As Section 56, Section 157, Section 167, Section 173(1), Section 204, Section 207, Section 208, Section 309, Section 437(6), Section 468, Section 469.

The code of civil procedure is the basic code of procedure governing civil actions in our country. There are many provision in C.P.C. dealing with speedy disposal of cases. Order VIII, Order XVII, Order XVIII Rule 3(11), Order XX Rule 1, Section 35-B, Section 89.

After going through the Pros and Cons of the delay just a alternative dispute resulation mechanism are the best possible to resolve dispute between the parties. If this is not done on a prority basis it would not only be defeted of our constitutional philosophy but also contribute to collapse of the entire judicial system. Other alternative methods for expeditious disposal of cases being used as Lok adalat, Gram Nyayalayas, Fast track court, Mobile Court and E-court etc. Method like negotiation mediation and concilation are being increasingly used to resolve the disputes instead of going for litigation.

Objective of the Study

The aim of study is to understand through what the concept of speedy trial analyze the introduction of concept in India amended of the CrPC, C.P.C. and judgements of the court, comapre study law. The main objectives of the study are:

- i- To evaluate and access the judicial delivery system in India.

- ii- To discuss and analyze the constitutional and legal right of speedy trial.
- iii- To access the judicial mechanism that was put to motion while exciting the philosophy of speedy trial in India.
- iv- To ascertain the impediments behind speedy trail and also to suggest ways and means to ensure speedy trial.
- v- To evaluate the judicial practice of Hon'ble High Court and Supreme Court with respect to their discretionary power for speedy trial.

Statement of the Problem

- i- In India nether the constitution nor any existing laws or statutes specifically centre the right to speedy trial on the accused. Democratic structure protecting the right of people enforcement of rights of citizen. Problem creates due to delay of Justice.
- ii- Increase in tendency justice delay and justice denied Delay people are losing faith in Judicial system various legislature, enactments and administrative measures touching the lives of citizens at all levels, have assumed proportion.

iii- Life and liberty provided custom of person may pass temp or otherwise under law of land speed trial has implied as a fundamental right given under Article 21.

Research Methodology and Area of the Study

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 judgements of Apex delivered time to time. The study encompassed doctrinal method of research by using primary and secondary sources. The basis of the study are judgements of the Apex Court. Law commission Report, Law books. Articles in law journals and news papers.

Considering the nature of the subject the researcher commenced his study by utilizing library material and pickup from relevant material on concept of speedy trial. Thereafter proceeded ahead the extensively to examine other material like the various legislation, commentaries by the jurists, the statutory interpretation by the Apex Court. An one the basis of work done in the light of recommendation of Law Commission and other recommendatory bodies the researcher gave suggestions after concluding remarks about the concept of speedy trial in India.

TENTATIVE CHAPTERISATION

The proposed research work for the Degree of Doctor of Laws (LL.D.) tentatively has been divided into eight chapters shown as under:

- CHAPTER -I** : Introduction
- CHAPTER-II** : Specific Causes of Delay in Justice in Civil and Criminal Matters
- CHAPTER-III** : Mechanism and Factors adopted by others Countries for Speedy Trial
- CHAPTER-IV** : Alternative Remedial Methods and Different Measures for Speedy Trial of Cases
- CHAPTER-V** : Recommendation made by Committees and Commission on Right to Speedy Trial
- CHAPTER-VI** : Factors Behind the Delays in Justice Delivery System
- CHAPTER-VII** : Judicial Response for Speedy Trial
- CHAPTER-VIII** : Suggestion and Conclusion

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