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## **Criminal Justice System and Right to Speedy Trial: A Legal Analysis**

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### **Abstract**

*Criminal justice system is a concept to make and maintain the society safer for its people by enforcing disapprobation of criminal's activities through apprehending, convicting, punishing etc.; ensuring safety and security of people through maintenance of law and order; deterring criminals from pampering in criminal activities. Simultaneously, speedy trial is a remedial judicial system both for the accused and convicted ones. So, an analysis is attempted here to establish the status of speedy trial in the present criminal judicial system.*

***Key Words: Criminal Justice System, Speedy Trial, Constitution, Judiciary.***

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**Introduction:** The ultimate goal of criminal justice system is undoubtedly to make the society safer for its people. The faith and philosophy behind administration of Criminal Justice is attainment of Social Justice. Whatever means may be adopted for handling criminals, the object is to eradicate crimes from society and rehabilitation of offenders as law-abiding members of the community. Speedy trial is such a concept which is related to the broad spectrum of criminal justice and ultimately stands as a component of social justice.

**The Purpose of Criminal Justice:** The functioning of the criminal justice system is wide enough to achieve its goals and objectives. Its ultimate goal is undoubtedly to make the society safer for its people. More specific and generally accepted aims of criminal law include:-

1. The enforcement of criminal law should reflect the society's disapprobation for criminal's activity through apprehending, convicting and punishing offenders;
2. Detering criminals from indulging in criminal activities and at the same advising citizens as to how to avoid falling to be a victim to a crime;
3. Criminal law should be beneficially used to rehabilitate the corrigible offenders and incapacitating those who might otherwise prove to be a potential danger to the society;
4. Ensuring safety and security of people through maintenance of law and order;

5. Helping the victims to get adequate compensation from the offender wherever possible or ensuring their rehabilitation in any other way as the circumstance may warrant;
6. Efficient and fair application of law ensuring proper treatment of suspects, defendants, those who are held in custody and witnesses. Also ensuring that the innocents are acquitted without harassment and the guilty are duly punished; and
7. Ensuring that criminal justice system is accountable to the society.

The administration of criminal justice is composed of various components such as the police, prosecution, defence, courts and corrections. In India, unlike many countries, a person is innocent until proven guilty. This is called an adversarial system as opposed to an inquisitorial system. The adversary system presumes that the best way to get the truth is to have a 'contest' between the two sides, namely, the State or the prosecution and the defence. In contrast, in an inquisitorial system, the accused is presumed guilty and is supposed to prove his/her innocence.

**Right to Speedy Trial:** One of the most neglected aspects of criminal justice system is the delay caused in the disposal of the cases and detention of the poor accused pending trial. A few judgments of the Supreme Court delivered in the recent past are eye opener and may stir the conscience and disturb the equanimity of any socially motivated lawyer, judge or a jurist. As it has been seen, the basic premise of criminal justice system is that the punishment must follow judgement of guilt and should not precede it and the accused is presumed innocent during all the stages of criminal prosecution till his guilt is proved beyond reasonable doubt by the prosecution. In a legal system whose pillars are nourished with the creed of distributive justice and human dignity, it is an affront to our sense of justice and democratic way of life that we are depriving a considerable section of our citizens of their basic freedoms by long-term incarceration. It is a great paradox that injustice is being administered to them in the process of justice.

It is undesirable that the criminal prosecution should wait till everybody concerned has forgotten all about the crime. Procrastination of trials may sometimes result in injustice because of an unduly prolonged process much of the material evidence may perish as when witness die or situations are altered. Vanishing witness and fading memories render the onus on the prosecution even more burdensome and make a welter weight task a heavy weight one. The distributive justice demands that the criminal justice should be swift and sure, that the guilty should be punished while the events are still fresh in the public mind and that the innocent should be absolved as early as is consistent with a fair and impartial trial. A criminal trial which drags on for an unreasonably long time is not a fair trial. Sometimes, the offences with which the accused charged are so trivial that even if proved would not warrant punishment for more than few months, but the accused has to suffer detention because of the protracted nature of the trial. Continuation of such detentions are clearly illegal and are in violation of human rights enshrined in the constitution.

Long incarceration without trial is not only violative of our Constitution, but is also against our commitment to the Universal Declaration of Human Rights, 1948. Article 3 of the declaration reads:

*“everyone has the right to life, liberty and the security of person”.*

**Article 5 provides:**

*“no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment”.*

**Article 8 envisages:**

*“everyone has the right to an effective by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law”.*

**Article 9 says:**

*“no one shall be subjected to arbitrary arrest, detention or exile”.*

**Article 10 declares:**

*“Everyone is entitled in 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”.*

**Article 11(1) stipulates:**

*“everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he had all the guarantees necessary for his defence”.*

It is due to the social importance of the speedy trial, that due recognition is given to it by the international covenant on civil and political rights, 1996. On 16 December, 1966 at its 21<sup>st</sup> Session, the General Assembly of the U.N.O. approved resolution to this effect. India is also a party covenant.

Article 9(3) of the part III of the resolutions runs as:

Any one arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subjected to guarantees to should occasion arise for execution of the judgment.

Article 9(4) reads:

Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

Article 14(3) (b) and (c) express the direction of speedy trial in the following words:

In the determination of any criminal charge against him, every one shall be entitled to the following minimum guarantees, in fully equality.....

- (a) To have adequate time and facilities for the preparation of his defence and to communicate with the counsel of his own choosing.
- (b) To be tried without undue delays.

In the United State the right to speedy trial is one of the constitutionally guaranteed rights. The Sixth Amendment to the U.S. Constitution provides:

*“In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial”.*

Similarly, article 5(3) of the European Convention on Human Rights, 1960 guarantees:

Everyone arrested or detained .... Shall be entitled to trial within a reasonable time or to release pending trial.

The English law also recognizes the right of personal freedom, the right of an individual to have any case affecting him tried in accordance with the principles of natural justice. Thus, the right to speedy trial is a part of personal freedom in England.

Indian Constitution does not specifically guarantee to an accused person the right to speedy trial, yet the speedy disposal of cases is desired as an objective of rule of law in India. The ethics of distributive justice also necessitate it. The very spirit and soul of Article 21 in conjunction with Articles 14, 38, 39 and 39-A make it a necessary concomitant of distribute justice promised in the preamble. Right to speedy trial being an internationally recognized ‘human rights’ is thus a part of our national *grundnorm* by virtue of Article 51 of the Constitution.

Article 21 guarantees that the State shall not deprive any persons of his life or personal liberty except according to procedure established by law. The procedure contemplated by this Article must be ‘fair, just and reasonable’ one. The procedure established by law must not only have a semblance of these attributes, but in reality and practice it must have creative connotation according to changing values of society and human justice. The Code of Criminal Procedure, 1973 derives its potency from these cherished constitutional objectives. While framing the code, the following objectives were, therefore, kept in view: -

- (i) An accused person should get a fair trial in accordance with the accepted principles of nature justice.
- (ii) Every effort should be made to avoid delay in investigation and trial which is harmful not only to the individuals involved, but also to society; and
- (iii) The procedure to the utmost extent possible, ensure fair deal to the poorer sections of the community.

The Code of Criminal Procedure, 1973 decoratively synthesizes the very objectives and particularly Sections 167, 309 and 468 satisfy the aspirations of a speedy trial and speak of eliminating inordinate delays in investigations and trial proceedings.

The Code of Criminal Procedure was amended by the Parliament in 1978, empowering the State Governments to establish Special Courts of Judicial Magistrates for trying special categories of cases. By the Amendment Act, 1978, the High Courts were also empowered to confer on Special Courts, exclusive jurisdiction to try any particular class of cases. It was expected that these *modus operandi* will be conducive to cope with the problem of under trials, but so far no appreciable traces of success have appeared.

Bail is a generic term used to mean judicial release from custodial egis. The right to bail – the right to be released from jail in criminal case after furnishing sufficient security and bond has been recognized in every civilized society as a fundamental aspect of human right. This is based on the principle that the object of a criminal proceeding is to secure the presence of the accused charged of a crime at the time of the inquiry, trial and investigation before, the Court and to ensure the availability of the accused to serve the sentence, if convicted. It would be unjust and unfair to deprive a person of his freedom and liberty and keep him in confinement, if his presence in the Court is assured whenever required for the trial by the Court. The Code of Criminal Procedure, 1973 accordingly, (in Sections 436 to 450) has laid down in detail the norms as to grant of bail and bonds in criminal cases.

According to the provision laid down in the Code a person released on bail is required to execute a personal bond and also to furnish the bond of a surety for a certain sum of money fixed by the Court.

Even in case ofailable offences, where the accused in entitled to secure bail as a matter of right, bail is not granted by the Court unless the defendant is able to secure a surety. As a result, the poor persons who do not possess sufficient means to furnish bail and who are not able to arrange a surety, have to suffer incarceration silently even in summons cases, till the case is over. In certain cases, they have to be in detention for even longer periods than the maximum term of imprisonment provided under the concerned penal provision without their trial having commenced.

The entire system of monetary bail is anti-poor since it is not possible for a poor man to furnish bail because of poverty. In other words, the accused with means can afford to buy his freedom, but the poor accused who cannot pay the price languishes in jail for weeks, months and perhaps even for years as under-trial prisoner. He does not stay in jail because he is guilty, because he has been convicted, or because he may cross the prison walls before trial. He stays in jail because he is poor and not able to purchase the heavy cost of freedom from jail. Poverty prices them out of the freedom and is crime in itself.

It is found that more often than not, Courts impose heavy sureties and put stringent conditions without consideration of the relevant factors and principle purpose of bail. The indigent under-trial prisoners who cannot afford bail have necessarily to be in confinement

till the disposal of the cases (whether summons or warrant cases) and they are very often treated like convicted criminals despite our treasured principle of criminal jurisprudence that an accused is presumed to be innocent until proved guilty.

The sorry state of affairs came to the notice of the Supreme Court in *Moti Ram*. The accused, *Moti Ram* had obtained an order for being granted a bail, but the Magistrate concerned insisted him to produce a surety for a sum of Rs. 10,000 before granting the bail order, which the accused could not get as a result of his poverty.

Allowing the petition, the Court observed that, the pre-requisite of a surety of Rs. 10,000 fixed by the Magistrate for the grant of bail amounted to a denial of bail right of the accused and remarked that, “if masons and millionaire, were treated alike, egregious in equality is an inevitability”. The Court held that “bail covers both release on one’s own bond without surety and release on bond with surety”.

While explaining the unequal operation of the law in respect of bail, the Court said ‘the victims, when suretyship is insisted and heavy sums are demanded by way of bail or local bailers alone are *persona grata*, may well be the weaker segments of the society like the proletariat, the linguistic and other minorities and distant denizens from the far off corners of our country. It is evident from the cases coming up before the Supreme Court that sorry state of affairs shrouded in the mysticism of dilatory tactics in criminal trials is rampant in the legal system. The Supreme Court has decried the indolence prevalent in the administrative and judicial set up in several of its decisions. The principles of law laid down in these judgements, it is hoped would be cherished by all the lovers of personal liberty and distributive justice and serve as good precedents to be followed by the subordinate judiciary in the time to come in the matters of speedy trial and proceedings.

Justice Krishna Iyer, while dealing with the bail petition in *Babu Singh v. State of U.P.*<sup>1</sup> 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.

Similarly, in *Narasimhulu v. Public Prosecutor*<sup>2</sup>, Krishna Iyer, J. observed:

*“Realism is a component of humanism which is the heart of the legal system. We come across cases where parties have already suffered 3,4 and in one case over 10 years in prison. These persons may perhaps be acquitted – difficult to guess. If they are, the injustice of innocence long in rigorous incarceration inflicted by the protraction of curial processes is an irrevocable injury... and, at the best, law is*

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<sup>1</sup> (1978) 1 SCC 579; AIR 1978 SC 527

<sup>2</sup> AIR 1978 SC 429; 1978 Cr. L. J. 502

*vicariously guilty of dilatory deprivation of citizen's liberty a consummation vigilantly to be vetoed".*

Again in *Nimeon Sangma v. Home Secretary, Govt. of Meghalaya*<sup>3</sup>, Krishna Iyer, J., expressed his strong displeasure at the chaotic state of delays in investigations and trials in the following words:

*"Criminal justice breaks down at a point when expeditious is not attempted while the affected parties are languishing in jail. The Criminal Procedure Code in Ss. 167, 209 and 309 has emphasized the importance of expeditious disposal of cases including investigations and trials. It is unfortunate, indeed pathetic, that there should have been such considerable delay in investigations by the police in utter disregard of the fact that a citizen has been deprived of his freedom on the ground that he is accused of an offence. We do not approve of this course and breach of the rule of law and express our strong displeasure at the chaotic state of affairs verging on the wholesale breach of human rights guaranteed under the Constitution especially under Art.21 as interpreted by this Court".*

Bhagwati<sup>4</sup>, J. in *Hussainara* declared that the right to speedy trial is an essential part of fundamental right to life and liberty enshrined in Article 21 of the Constitution and stated:

If a person is deprived of his liberty under a procedure which is not 'reasonable, fair or just' such deprivation would be violated of his fundamental right under Article 21 and he would be entitled to enforce 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 guilt of such person. No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just', and it would fail 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 an essential part of the fundamental right to life and liberty enshrined in Article 21.

While dealing with the writ of *habeas corpus* of the accused persons who were detained in various prisons of Bihar as undertrial prisoners for more than seven years the Supreme Court in *Mantoo Majumdar v. State of Bihar*<sup>5</sup>, the Court expressed its deep concern over the appalling indifference and negligence on the part of the Magistrate. During all these long years not a single charge-sheet was laid before the concerned magistrate. On many occasions accused were produced before the Magistrates who passed routinely orders of detention without least caring for the application of judicial mind in these cases. This led the Supreme Court to remark:

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<sup>3</sup> AIR 1979 SC 1518

<sup>4</sup> (1980) 1 SCC 81; AIR 1979 SC 1360

<sup>5</sup> AIR 1980 SC 847

*“To put a man in prison and forget his personhood thereafter, to deprive a man of his personal liberty for an arbitrary period without monitoring by the law, to keep a man in continued custody unmindful of just, fair and reasonable procedure – these shake the faith in the rule of law and militate against the mandates of Part III of the Constitution”.*

In *Kadra Pehadiya v. State of Bihar*<sup>6</sup>, it was noted that once a person accused of an offence is lodged in the jail everyone forgets about him and no one bothers to care what is happening to him. He becomes a mere ticket number a forgotten specimen of humanity – cut off and alienated from the society, an unfortunate victim of a heartless legal and judicial system which consigns him to long unending years of oblivion in jail and it was finally concluded that the Constitution has no meaning and significance and human rights, no relevance for him. It is crying shame upon our adjudicatory system which keeps men in jail for years on end without a trial.

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<sup>6</sup> 1981 Cri L. J. 481 (SC)  
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