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JUDICIAL PRONOUNCEMENTS ON SPEEDY TRIAL IN INDIA: AN ANALAYSIS

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I. INTRODUCTION

The Indian judiciary plays a significant role in protecting the rights of the people and it has tried to give certain rights like right to speedy trial, right to fair trial etc. a constitutional status by including all these rights within the purview of Article 21 of our Constitution. The judiciary in India has played a dynamic role in the dispensation of justice by providing fair and just trial to all its citizens. There are catena of pronouncements of the Supreme Court and High Courts on the subject of trial wherein the Courts have questioned the delays and discharged the accused.

The pre-emergency Supreme Court has not developed any extensive jurisprudence in the field of basic human rights. But the post–Emergency Supreme Court turned active and militant in this field. It has evolved a new regime of Fundamental Rights which are not expressly present in the Indian Constitution, e.g., right to speedy trial emerged as independent fundamental right.

In one of the finest hours of judicial activism when Article 21 of the Constitution was truly interpreted in ***Manka Gandi*** *v.* ***Union of India,***[1] the Supreme Court in ***Hussainara Khatoon***[2] proceeded further ahead to hold that no procedure which does not ensure a reasonable quick trial can be regarded as reasonable fair or just and it would fall out of Article 21. There can, therefore, be no doubt that speedy trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21.

The State as a guardian of the fundamental rights of its people is duty-bound to ensure speedy trial and avoid any excessive delay in trial of criminal cases that could result in grave miscarriage of justice. Speedy trial is in public interest as it serves societal interest also. It is in the interest of all concerned that the guilt or innocence of the accused is determined as early as

[1] AIR 1978 SC 597.
[2] AIR 1979 SC 1369.

possible.[3] Once an accused person is able to establish that this basic and fundamental right under Article 21 has been violated, it is up to the State to justify that this infringement of fundamental right has not taken place, that the restrictions or provisions of law are reasonable and that the procedure followed in the case is not arbitrary but is just, fair, without delay, expeditious and reasonable.

II. JUDICIAL PRONOUNCEMENTS ON SPEEDY TRIAL IN INDIA

Every individual in a democratic set up wants freedom. Without freedom no individual can lead a life as a free citizen of a country. Freedom and liberties are only for the living. Article 21 of the Constitution of India guarantees right to life and personal liberty to every person, citizen or non-citizen. A person can be deprived of his life and personal liberty if two conditions are complied with, first, there must be a law and secondly, there must be procedure prescribed by that law, provided that the procedure is just, fair and reasonable. The creativity of the Indian judicial system has been at its best whenever it was called to interpret Article 21, except perhaps during the short – interregnum of the emergency rule. Article 21 stands out as the beacon light for all freedom lovers promising the development of more rights when needed and ensuring a minimum degree of fairness in all legal proceedings.

The Indian judiciary plays a significant role in protecting the rights of the people and it has tried to give certain rights like right to speedy trial, right to fair trial etc. a constitutional status by including all these rights within the purview of Article 21 of our Constitution. The judiciary in India has played a dynamic role in the dispensation of justice by providing fair and just trial to all its citizens. There are catena of pronouncements of the Supreme Court and High Courts on the subject of trial wherein the Courts have questioned the delays and discharged the accused. The most glaring malady which has afflicted the judicial concern is the tardy process and inordinate delay that takes place in the disposal of cases. The piling arrears and accumulated workload of different Courts present a frightening scenario. As a matter of fact, the whole system is crumbling down under the weight of pending cases which go on increasing every day. Justice V.R. Krishna Iyer and Justice P.N. Bhagwati were aware of all these maladies. However, judicial delays in India are endemic. No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. Civil cases are delayed even longer.

[3] *Ibid.*

This is despite the legal position strongly favouring speedy trial. The Court's concern about problem of delay in trial finds reflection in the following judgments.

In ***State of West Bengal*** *v.* ***Anwar Ali Sarkar***,[4] a Bench of seven judges of the Supreme Court held that "the necessity of a speedy trial is too vague and uncertain to form the basis of 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 subjected to the special procedure prescribed by the Act"

In ***Machander*** *v.* ***State of Hyderabad***,[5] the Supreme Court refused to remand the case back to the trial court for fresh trial because of delay of five years between the commission of the offence and the final judgment of the Supreme Court. The Supreme Court has categorically observed: *"We are not prepared to keep persons on trial for their live and 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 the person accused of crimes are not indefinitely harassed …. While every reasonable latitude must be given to those concerned 'with the detection of crime and entrusted with administration of justice, but limits must be placed on the lengths to which they may go."*

In another case of ***Chajoo Ram*** *v.* ***Radhey Shayam***,[6] delay in trial was one of the factors on the basis of which the Supreme Court dropped the further proceedings.

In ***State of Uttar Pradesh*** *v.* ***Kapil Deo Shukla***,[7] 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.

The Supreme Court in ***Maneka Gandhi*** *v.* ***Union of India*** [8] has stated clearly held that Article 21 of the Constitution of India confers a fundamental right on every individual not to be deprived of his life or personal liberty except according to procedure established by law and

4 AIR 1952 SC 75.
5 AIR 1955 SC 792.
6 AIR 1971 SC 1367.
7 (1972) 3 SCC 504.
8 (1978) 1 SCC 248.

such procedure as required under Article 21 has to be "fair, just and reasonable" and not "arbitrary, fanciful or oppressive". The court has further stated that "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 and he would be entitled to enforce such fundamental right and secure his release." The apex Court has observed that in the broad sweep and content of Article 21 right to speedy trial is implicit.

The apex Court's decision in ***Hussainara Khatoon(iv)*** *v.* ***Home Secretary, State of Bihar*** [9] is a land mark in the development of speedy trial jurisprudence. In the instant case, a writ of habeas corpus was filed on behalf of men and women languishing in jails in the State of Bihar awaiting trial. Some of them had been in jail for a period much beyond what they would have spent had maximum sentence been imposed on them for the offence of which they were accused. Alarmed by the shocking revelations made in the writ petition and concerned about the denial of the basic human rights to those "victims of callousness of the legal and judicial system", Supreme Court went on to give a new direction to the Constitutional jurisprudence. In doing so, the Court heavily relied on its decision in an earlier case in which the Court gave a very progressive interpretation to Article 21 of the Constitution. Taking this interpretation to its logical end, P.N. Bhagwati J., in ***Hussainara khatoon's case*** said: *"...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 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 trial, is an integral and essential part of the fundamental right to life and liberty enshrined in Article 21."*

Bhagwati, J. also added that the State cannot be permitted to deny the constitutional right to speedy trial on the ground that the State has no adequate financial resources to incur the necessary expenditure needed for improving the administrative and judicial machinery with a view to ensuring speedy trial. As far as the question of consequences of violation of the right to speedy trial is concerned, it was raised but left unanswered by the Court. The decision in this case proved to be the plinth of right to speedy trial in India. The Court Categorically stated that "it is also the constitutional obligation of this Court as the guardian of the fundamental rights

[9] (1980) 1 SCC 81.

of the people, as sentinel on the qui vive, to enforce the fundamental right of the accused to speedy trial by issuing 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 law laid down in ***Hussainara Khatoon's case*** was followed in a number of subsequent decisions of the Supreme Court. In ***State of Bihar*** *v.* ***Uma Shankar Ketriwal,***[10] the High Court quashed the proceedings on the ground that the prosecution which commenced 16 years ago and still in progress, is an abuse of the process of the Court and should not be allowed to go further. Refusing to interfere with the decision of the High Court in the appeal, the Supreme Court said with regard to the delay that such protraction itself means considerable harassment to the accused and that there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage. The Court further observed that "We cannot lose sight of the fact that the trial has not made much headway even though no less than 20 years have gone by, such protection itself means considerably 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. It may be said that the respondents themselves were responsible in a large manner for the slow pace of the case in as much as quite a few orders made by the trial Magistrate were challenged in higher Courts, but then there has to be a limit to the period for which criminal litigation is allowed to go on at the trial stage."

The Court again considered the applicability of the right to speedy trial in *State of* ***Maharashtra*** *v.* ***Champalal Punjaji Shah***[11] and observed that while 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 delay was unintentional, caused by over-crowding of the court's docket or under-staffing of the prosecutors and whether the accused contributed a fair part to the time taken. This decision was severely criticized by Prof. Upendra Bakshi,[12] who said that even if the accused prefers interlocutory appeals it cannot be inferred that he contributed to delay, as by doing so he merely avails the opportunity-structure provided by the law of the land. Moreover, legal strategies are determined by the accused person's counsel and not by the accused himself as he cannot be expected to understand subtleties of law and its procedures. He further added that delay caused by

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10 (1981) 1 SCC 85.
11 (1981) 3 SCC 610.
12 Upendra Bakshi; "*Right to Speedy Trial:Geese ,Gender And Judicial Sauce*"; 2nd ed.1986; p. 243.

failure on the part of the courts to assign priority to the organization of day to day work cannot be said to be unintentional.

In ***Kadra Pahadiya*** *v.* ***State of Bihar***, [13] P.N. Bhagwati, J. observed "8 more years have passed, but they are still rotting in jail, not knowing what is happening to their case. They have perhaps reconciled to their fate, living in a small world of their own cribbed, cabined and confined within the four walls of the prison. The outside world just does not exist for them. The Constitution of India has no meaning and significance, and human rights no relevance for them. It is a crying shame upon our adjudicatory system which keeps man in jail for years on end without a trial."

The Court further observed that: *"..... any accused who is denied this right of speedy trial is entitled to approach this Court for the purpose of enforcing such right and this court in discharge of its constitutional obligation has the power to give necessary directions to the state governments and other appropriate authorities for securing this right to the accused."*

Mantoo Majumdar *v.* ***State of Bihar***[14] is another case on under trials. In this case Justice Krishna Iyer found that two petitioners had spent seven years in jail without trial. He found further that the Government of Bihar was unwilling to furnish the facts sought by the Court and was insensitive to the plight of the under trials rotting in jails for long years. He found that even Magistrates "have bidden farewell to their primary obligation, perhaps fatigued by over work and uninterested in freedom of other." He said that under Section 167 Criminal Procedure Code: "The Magistrate concerned have been mechanically authorizing repeated detentions, unconscious of the provisions which obligated them to monitor the proceedings which warrant such detention." He drew the attention to the failure of the police to investigate promptly and the prison staff to find out how long these under trials should languish in jail. In the fact of this failure of the limbs of law and justice, the judge wondered like any of us. 'If the salt hath lost its savour, wherewith shall it be salted"? He ordered the release of the two petitioners on their own bonds and without sureties.

Salim Khan *v.* ***State of Uttar Pradesh***[15] shows that in Uttar Pradesh too, under trials face similar trials and tribulations. The Court found in this case that the respondent was in

[13] (1983)2 SCC 104.
[14] AIR 1980 SC 847.
[15] (1983) 2 SCC 347.

jail since November, 1978 awaiting trial. The counsel for the respondent alleged that there were serious charges against the petitioner, but when directed by the court to produce a single case in which charge sheet was submitted against the petitioner, he was unable to do so. On the contrary the counsel informed the Court that in some cases the petitioners had been tried and acquitted. The Court, therefore, ordered his release on a personal bond of Rs. 500 deploring the government's cavalier attitude towards the petitioner's freedom.

In ***Raghubir Singh*** *v.* ***State of Bihar***,[16] a Bench of two judges of the Supreme Court held that the right to speedy trial is one of the dimensions of the fundamental right to life and liberty guaranteed by Article 21. The question whether the right to speedy trial has been infringed depends upon various factors. A host of question may arise for consideration: Was there delay? Was the delay inevitable having regard to the nature of the case? Was the delay unreasonable? Was the delay caused by the tactics of the defence? There may be other questions as well. But ultimately the question of infringement of the right to speedy justice is one of fairness in the administration of criminal justice even as 'acting fairly' is the essence of the principle of natural justice and "a fair and reasonable procedure" is what is contemplated by the expression "procedure established by law" in Article 21.

In ***Madhu Mehta*** *v.* ***Union of India***, [17] the Supreme Court held that "Article 21 is relevant in all stages. Speedy trial in criminal cases, though may not be a fundamental right, is implicit in the broad sweep and content of Article 21. Speedy trial is part of one's fundamental right to life and personal liberty"

In ***T.V. Vatheeswaran*** *v.* ***State Tamil Nadu***, [18] the Court again reiterated the significance of the right to speedy trial. In this case, the accused persons were acquitted by the trial court whereupon an appeal was filed before the High Court which allowed it after a period of six years and remanded the case for retrial. Reversing the decision of the High Court, the Supreme Court held that the pendency of criminal appeal for six years before the High Court is itself a regrettable feature of this case and a fresh trial nearly seven years after the alleged incident is bound to result in harassment and abuse of judicial process.

16 AIR 1987 SC 149.
17 (1989) 4 SCC 62 : AIR 1989 SC 2299: 1989 SCC (Cri) 705.
18 (1983) 2 SCC 68.

The Supreme Court in ***Sheela Barse*** *v.* ***Union of India*** [19] addressed the question left unanswered in *Hussainara Khatoon's case* and dealt specifically with the procedure to be followed in matters where accused was less than 16 years of age. The Court held that where a juvenile is accused of an offence punishable with imprisonment of 7 years or less, investigation was to be completed within 3 months of the filing of F.I.R. or else the case was to be closed. Further, all proceedings in respect of the matter had to be completed within further six months of filing of the charge-sheet. The apex Court observed: *"The right to speedy trial is a right implicit in Article 21 of the Constitution and the consequence of violation of this right could be that the prosecution itself would be liable to be quashed on the ground that it is in breach of the fundamental right."*

In ***Mihir Kumar*** *v.* ***State of West Bengal***,[20] where a criminal proceeding had been pending for 15 years from the date of the offence, the Supreme Court held that it amounted to violation of the constitutional right to speedy trial of a 'fair, just and reasonable' procedure, hence the accused was entitled to be set free.

The Supreme Court in ***Abdul Rahman Antulay*** *v.* ***R.S. Nayak***,[21] gave a landmark decision and finally adjudicated upon the questions left open in ***Hussainara khatoon's case,*** like the scope of the right, the circumstances in which it could be invoked, its consequences and limits etc. The salient features of the decision are as follows:

(a) Right to speedy trial flowing from Article 21 encompasses all the stages namely, the stage of investigation, inquiry, trial, appeal, revision and retrial.

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

(c) 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.

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19 (1986) 3 SCC 632.
20 1990 Cr. LJ 26 (Cal).
21 (1992) 1 SCC 225.

(d) 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 a given case.

(e) Accused's plea of denial of speedy trial cannot be defeated by saying that the accused didn't demand a speedy trial.

(f) The Court has to balance and weigh the several relevant factors- 'balancing test' and 'balancing processes – and determine in each case whether the right to speedy trial has been denied in a given case.

(g) 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.

(h) It is neither advisable nor practicable to fix any time limit for trial of offences because time required to complete trial of a case depends on the nature of the case.

(i) 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 case of grave and exceptional nature. Such proceedings in High Court must be disposed of on a priority basis.

After the decision of ***Abdul Rehman Antulay*** *v.* ***R.S. Naik***[22] there is no need to elaborate on this aspect of personal liberty, the Constitution Bench speaking through Jeevan Reddy, J., has traversed the entire ground. The judgment is illuminating and exhaustive. All the aspects of the matter which have any relevance to speedy trial were canvassed before the Court and the Bench did full justice to the submissions. The petitioners A.R. Antulay and Ranjan submitted before the Court that the right to speedy trial be made meaningful, enforceable and effective and there ought to be an outer limit beyond which continuance of

[22] *Ibid.*

proceedings would be violative of Article 21. In this connection, it was submitted that having regard to the prevailing circumstances, a delay of more than 7 years ought to be considered as unreasonable and unfair –this period of 7 years must be counted from the registration of the crime till the conduct of the trial; retrial ought not to be ordered beyond this period and the proceeding should be quashed.

The counter arguments which were advanced in the case of Ranjan on the State of Bihar coming on appeal against the Full Bench Judgment of the Patna High Court have been noted in paragraph 21, *wherein Jethmalani first stated that despite our Constitution-makers being aware of the VIth Amendment to the Constitution of the United States specifically providing for the right of speedy trial, did not incorporate the same in our Constitution, and so no proceeding should ever be quashed because of the delay in trial. Indian Courts have, therefore, to reconcile justice and fairness with many other interests which are compelling and paramount.*

The Supreme Court has emphasized the above propositions again and again. In ***Kartar Singh*** *v.* ***State of Punjab***,[23] the Supreme Court has observed: "*The concept of speedy trial is read into Article 21 as 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 the stages 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 be averred."*

In ***Union of India*** *v.* ***Ashok K. Mehta,***[24] 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 quash 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 guidelines laid down in ***Antulay's case*** [25] 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***

[23] (1994) 3 SCC 569: 1994 SCC (Cri) 899.
[24] AIR 1995 SC 1976.
[25] *Supra* n. 62.

Cause *a* ***Registered Society through its Director*** *v.* ***Union of India.***[26] 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 of time.

The Supreme Court has stated in ***Common Cause Case*** [27] that even persons accused of minor offences have to wait for 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. Accordingly, 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.

These directions are as follows:

(i) Where the offence under IPC or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding three years with or without fine and if the trial for such offences are pending for one year or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused on such conditions as may be found necessary.

(ii) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding five years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be found necessary.

(iii) Where the offence under Indian Penal Code or any other law for the time being in force for which the accused are charged before any Criminal Court are punishable with imprisonment not exceeding seven years with or without fine and if the trial for such offences are pending for two years or more and the accused concerned haven't been

[26] (1996) 4 SCC 33.
[27] *Ibid.*

released on bail but are in jail for a period of six month or more, the Court shall release such accused on bail or on personal bond to be executed by the accused and subject to such conditions as may be suitable in the light of Section 437, of Code of Criminal Procedure.

(iv) Where criminal proceedings are pending regarding traffic offences in any criminal Court for more than two years on account of non-serving of Summons to the accused or for any other reason whatsoever, the Court may discharge the accused and close the case.

(v) Where the cases pending in Criminal courts for more than two years under Indian Penal Code or any other law for the time being in force are compoundable with the permission of the Court and if in such a case trials have still not commenced, the Criminal Court shall, after hearing the public Prosecutor and other parties or their representatives before it, discharge or acquit the accused, as the case may be, and close the case.

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 the 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 Case*[28] 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 the part of the accused which resulted in prolonging the trial. The Court also explained the expressions, "pendency of trial" and "non commencement of trial"

In ***M.V Chauhan*** *v.* ***State of Gujrat***,[29] the facts of the case were that a government employee was prosecuted and convicted on certain charges of corruption. The incident was of 1983 and the prosecution started in 1985. In an appeal against the conviction in 1997, the Supreme Court found that the sanction given by the government for this prosecution was invalid. The Court barred initiation of fresh prosecution against the appellant. The apex Court observed: "*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 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*

[28] *Ibid.*
[29] AIR 1997 SC 3400.

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."

Another attempt was made to concretize the right to speedy trial in ***Raj Deo Sharma v. State of Bihar.*** [30] In this case, the Court issued certain directions for effective enforcement of the right to speedy trial as recognized in Antulay case and prescribed time limits for completion of prosecution evidence on completion of two years in cases of offences punishable with imprisonment for period not exceeding 7 years and on completion of 3 years in cases of offences punishable with imprisonment for period exceeding 7 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's case***[31]***:***

(a) Period of pendency of appeal or revision against interim orders, if any, preferred by the accused to protract the trial;

(b) Period of absence of presiding officer in the trial court;

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

The Supreme Court in ***Rang Bahadur Singh v. State of U.P.***[32] has held as follows: "The time tested rule is that acquittal of a guilty person should be preferred to conviction of an innocent person. Unless the prosecution establishes the guilty of the accused beyond reasonable doubt a conviction cannot be passed on the accused.

In ***Rajiv Gupta v. State of Himachal Pradesh***,[33] the apex Court held 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 is not commenced, then the criminal court is required to discharge and acquit the accused.

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30 AIR 1998 SC 3281.
31 *Ibid.*
32 AIR 2000 SC 1209.
33 (2000) 10 SCC 68.

In ***Anil Rai*** *v.* ***State of Bihar***,[34] the Supreme Court observed that the justice should 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.

In ***All India Judges' Association*** *v.* ***Union of India***,[35] the apex Court held that it is a constitutional obligation of this Court to ensure that the backlog of cases is decreased 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 the time has come for protecting one of the pillars of the Constitution, namely, the judicial system, by directing increase in the judges strength from the existing ratio of judge-population ratio.

In ***N.S Sahni*** *v.* ***Union of India***,[36] the Supreme Court held that the right of an accused to have a speedy trial is now recognized as a right under Article 21. The procedural fairness required by Article 21 including the right to speedy trial has, therefore, to be observed throughout and to be born in mind.

In ***Durga Datta Sharma*** *v.* ***State***,[37] the prosecution under the Prevention of Corruption Act has not commenced after a period of 25 years. No charges had been framed and chances of commencing and concluding the trial in 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.

In ***Moti Lal Saraf*** *v.* ***State of Jammu and Kashmir***,[38] the court has clearly stated that no general guidelines could be fixed. Each case must be examined on its facts and circumstances. During the criminal prosecution, no single witness was examined in last 26 years without there being any lapse on part of accused. Its continuation further would be total abuse of process of law, was liable to be quashed.

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34 (2001) 7 SCC 318 : 2001 SCC (Cri) 1009: AIR 2001 SC 3173.
35 (2002)4 SCC 247.
36 (2002) 2 SCC 210.
37 2004(1) Crimes 171.
38 2006 Cr. LJ 4765 (SC).

In ***Puran singh*** *v.* ***State of Uttaranchal***,[39] the apex Court acquitted Puran Singh in a murder case that had run for 29 years. The most important is that the court heard his appeal out of turn. But for this, the case would have lingered on much longer.

In ***Pankaj Kumar*** *v.* ***State of Maharastra and others***,[40] the Court came to the conclusion that the right to speedy trial of the accused has been infringed, the charges or the conviction, as the case may be, may be quashed unless the court feels that having regard to the nature of offence and other elegant circumstances, quashing of proceedings may not be in the interest of justice. In such a situation, it is open to the court to make an appropriate order as it may deem just and equitable including fixation of time for conclusion of trial. Tested on the touchstone of the broad principles enumerated we are of the opinion that in the instant case, appellant's ground that the first information report was recorded on 12th May, 1987 for the offences allegedly committed in the year 1981, and after unwarranted prolonged investigations involving financial irregularities, the charge sheet for which was submitted.

In another case of ***Vakil Prasad Singh*** *v.* ***State of Bihar***,[41] the appellant an Assistant Engineer in BSEB was alleged to have demanded illegal gratification for release of payment for civil work executed by a civil contractor. Investigation conducted by an officer having no jurisdiction to do so, were successfully challenged by the appellant. Further, the prosecution was found to have slept over the matter for almost 17 years, without any explanation. The stated delay was held to be a clear violation of constitutional guarantee of a speedy investigation and trial under Article 21. Any further continuance of criminal proceedings was said to be unwarranted. Despite the fact that allegations against him were quite serious, the apex Court referring to their earlier decisions quashed the proceedings pending against the appellant.

In the case of ***Bhawna Karir*** *v.* ***the State and Anr***,[42] where the right to speedy trial was alleged to have been infringed, the first question to be put and answered was that the person to liable for the delay. Proceedings taken by either party in good faith, to indicate their rights and interest, as perceived by them, cannot be treated as delaying tactics nor can the time taken in pursuing such proceedings be counted towards delay. It goes without saying that frivolous proceedings or proceedings taken merely for delaying the day of reckoning cannot be treated

39 Appeal (Crl.) 437 of 2006.
40 Decided on July 2008.
41 AIR 2009 SC 1822.
42 Decided on 20 March, 2012.

as proceedings taken in good faith. The mere fact that an application / petition is admitted and an order of stay granted by a superior court is by itself no proof that the proceeding is not a frivolous. Very often these stays obtained on ex parte representation. The prosecution should not be allowed to become a persecution. Hence, an accuser's pleas of denial of speedy trial cannot be defeated by saying that the accused has delayed the proceedings.

In a **recent case**,[43] the Supreme Court has said that it was apprehensive about fixing a time limit for completion of a criminal trial as it could be misused by intelligent criminals. A Division Bench consisting of Justices H.L. Dattu and C. K. Prasad during the hearing on a petition by advocate Ranjan Dwivedi, who has sought quashing of the trial proceedings against him in the L.N. Mishra murder case on the ground of inordinate delay of 37 years – long trial has blighted him personally, physically and socially. The apex Court has declared that right to speedy trial was a requirement under Article 21 guaranteeing right to life. But, the trial has dragged on for 37 years. In 1992, the Supreme Court had directed day-to-day trial in this case for speedy conclusion. Two decades later, we are no where near the end. The bench said there was no denying that delay had been frequent in the judicial system in India. "Delay will continue to happen given the system we have. Delay definitely effects the trial but can the Supreme Court fix a time limit for completion of a criminal trial. The Supreme Court had earlier in a judgment specifically struck down fixation of a time limit for completion of trial," it said.

The Court further stated that "it is a unique case. But if we quash the proceedings, we may be sending a wrong signal, which may be used by an intelligent accused at a later date. We do not want this to happen because of our order." The bench said since the trial has reached the fag end after dragging for nearly four decades, it could ask the trial court to complete it in the next three months by holding proceedings on a day-to-day basis refusing adjournment on any ground to the accused and prosecution.

III. CONCLUSION

To conclude all the judicial pronouncements related to Right to speedy trial one thing should be noted that people of India not getting speedy justice. Inordinate delay has become a common feature of Indian legal system.

[43] Dhananjay Mahapatra, Fixing Time Limit for Speedy Trial will prove Harmful:SC, *The Times of India,* 26 July, 2012. (Decided on 17 August, 2012).

A number of Judgments given by judiciary for elimination of delay and a number of Steps have been formulated by State but the object of speedy trial remains a myth and has not, so for, translated into reality.

There is need to enact a new comprehensive law on the speedy trial of cases. Criminal laws should be suitably amended to achieve the object of speedy trial of offences. There should be awareness campaign for speedy trial of offences.

It is revealed that although the Constitution of India does not directly talk of the right to speedy trial but the same has been given a status of fundamental right by way of interpretation of Article 21 of the Constitution of India. Besides the Constitution of India, the Code of Criminal Procedure also guarantees the right to speedy trial in its various provisions. The judiciary which is instrumental in giving this right the status of fundamental.

No person can hope to get justice in a fairly reasonable period. Proceedings in criminal cases go on for years, sometimes decades. This is despite the legal position strongly favouring speedy trial.