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An Overview of Speedy Trial in India

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ABSTRACT: There is a severe case concerning the legal and judicial system infirmity which is responsible for the denial of justice to the under-trial prisoners in India which are solely responsible for delay in the disposal of cases. In many states, under-trial prisoners spent more time in jail than the maximum term of imprisonment provided for the offence. Speedy trial is the main objective of criminal justice system and there should be no question that delays in trial constitute denial of justice by themselves. On the speedy trial justice in India and obstacles faced by a common person when he suffers from getting justice, this result shows failure of justice delivery system. The old laws must be change and it is need to implement new laws to provide the speedy justice and fill the vacant post of judges so the pending case can be eliminated.

KEYWORDS: Administration, Delay in court system, Justice, Rights, Speedy trial

I. INTRODUCTION

Fast track court is the main way to clear up the huge backlog cases pending in the Indian Court. The fast-track court's goal is to provide justice as quickly as possible. Proceedings, cross-question questioning, the questioning of witnesses and the trial go quick, and if there is a delay in the judgement it leads to the denied justice. It is a direct infringement of the fundamental right, even if it is clear violation of fundament right, even though Indian Constitution clearly not provides any fundamental rights in relation to speedy trail, but it reflect or implicit from the Article 21 says that no person is to be deprived of his life or liberty except in accordance with the procedure established by law.

History:

In Ancient India, Sanskrit language was more preferable, in that time the synonymous of law is “dharma”. As per Manu dharma is the second verse as what is just and traditional. In the legal term, the sources of law imply those which are recognized and binding by law. As per this dharma includes all the moral, religious and social principles which guide the behavior of man and society. Dharma brings wealth and supreme pleasure to the mankind. Adharma provides adverse effect on the prosperity of the mankind and supreme pleasure of the human being. In that time dharma was closely related to the duty of the king and the king had a fundamental obligation to protect the people to give them the security in life, property and to maintain social stability in order to enable the development of the state.

In the ancient period the organisation of the courts with different powers of jurisdiction was a feature of judiciary. The judicial courts consist of hierarchy of courts. Here the courts mentioned later were superior to the mentioned court. The power of the people's court was not extended to trial of offences committed with violence. There was a system of appellate jurisdiction which simple means that court mentioned later could review the decision of the court lower to them. The preference was also given to decisions of the lower courts also and also for the bench of magistrates. In that period, the hierarchy of courts was established and the jurisdiction of each court was provided by the historians of that time. The court of king was highest in the hierarchy and the judge decides the case on the basis of facts, laws and evidence.

In modern time:

In modern time, the concept is totally changed, in this time every State has different languages in different courts. The way to provide justice is also change, there are many courts constitutes where citizen get equal justice in a limited time, but in actual way delay occurs on the part of system itself for example when a case (civil or criminal) file in a court then there are many loopholes has to seen i.e. delay in filing, delay in replies, delay in proceedings, non presence of advocates or parties and so many reasons where a victim get justice in many years and sometimes he didn't get justice then he tries to commit suicide or any crime. We cannot blame on one side the mistake is also occurs on the other side.



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In modern time technology play a vital role, as seen in today's time on day to day basis technology is change. In our court system also technology can be used in a broad manner for example there is online process of filing of cases in mostly matters, the judgments pronounced by judges also can be upload online on courts websites and even the digital copy also signed by parties file online, from top to end the totally process goes online. This process is very challenging for old age persons because they don't aware about this technology. But, it is very easy for them also they know about it after using.

II. DISCUSSION

Concept of Justice:

Before discuss on speedy justice first clear the concept of justice in Indian Judicial system. Justice means, "To bind or tie together" justice can be justify from various Jurists:

As per Blackstone "Justice is a reservoir from where the concept of right, duty and equity evolves."

As per Salmond "Though every man wants to be righteous and just towards him, he himself being 'selfish' by nature may not be reciprocal in responding justly."

Concept of administration of criminal justice system:

The most important tool of criminal law is to protect society against criminals. For this purpose, criminal law constitutes certain framework, under the statute there were some penal provisions which clear the concept of administration of criminal justice. The procedure of criminal justice system is divided into three stages i.e. investigation, inquiry and trial. Under various provisions in IPC the concept is also clear i.e. cognizable offences, inquiry, investigation etc.

Criminal justice system is as old as the mankind is. There has never been a society without crimes and criminals thus no society can avoid the necessity of coping with crime on continuous basis, that method of crime is known as criminal justice system. Another basic precept of the criminal justice system is that accused is innocent until proven guilty beyond all reasonable doubt by the prosecution. Speedy justice in trials is also essential in order to gain the confidence of the public in criminal justice system. The right to speedy trial justice is not only the very essence of an effective criminal justice system but it is also consistent with the concept of fair trial.

Concept of fair trial:

Concept of fair trial means a right which does not ensure the right to speedy justice is a fair trial. In criminal justice system the concept of fair trial also discussed some grounds i.e. the investigation or enquiry officer shall attain promptness in investigations, the adjudicating authority should receive all relevant material which the individual wishes to produce against his opponent, the judiciary should give an opportunity to the accused to rebut these material and information.

Concept of speedy trial:

Speedy trial can be defined as a reasonable expeditiously trial which comply with all essentials of trial. The right to speedy justice includes all the stages of criminal justice system namely stage of investigation enquiry, trial, appeal, revision. As usually the term speedy trial means "disposal of a case within a prescribed time. In the real terms the speedy justice is one of the most neglected aspects of criminal justice system. The need for speedy justice has been realized in all the societies and all the phases of their growth and development, the delayed justice has been considered in all civilized systems in Indian society.

The denial of rights in speedy justice is delays express out as one of the main problems for this negative opinion about our judicial system. These problems can discuss through below (Figure 1)



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Figure 1: Problems of Speedy Justice

Social Justice:

The concept of social justice is a wide concept for the welfare of the state. The prime objective of social justice is removing all inequalities and affording equal opportunities to all citizens of India. Constitution of India also defines equality of status. In order to put an end all such social inequalities there are many provisions that have been made in the fundamental rights and directive principles of state policy. i.e. equality before law, prohibition of discrimination on the basis of colour, caste, religion, education, equal opportunity in public, abolition of untouchability, abolition of titles, prohibition of exploitation, protection of interests of minorities and so on.

Economic Justice:

Economic justice is the idea that the economy will be more successful. Economic Justice also creates more opportunities for all the members of the society to earn viable wages will contribute to economic growth. When more persons are able to provide for themselves and maintain stable discretionary income, they are more likely to spend their earning on goods which results demand in the economy.

Political Justice:

Political justice means justice provide to all citizens equally so that every citizen equally shares the use of political power in the state. Article 326 of Indian Constitution defines every Indian citizen who attains the age of eighteen years shall have a voting right to elect his representatives without any sort of discrimination.

Legal Justice:

Legal justice is also a most important pillar for the development of nation. Every citizen of aspects justice fairly, the justice shall not be given on unfair basis, fraudulently and so on. There are certain laws on justice i.e. fairness, moral rightness.

The fast track court scheme envisages the appointment, for a tenure of two years, of ad hoc Judges from among retired sessions or additional sessions Judges, members of the Bar, and judicial officers who would be promoted on an ad hoc basis. The selection of Judges will be made by the High Courts. The Centre has directed the State governments to fill the vacancies that might arise in the wake of ad hoc promotions through a special drive.

Theories of punishment:

Theories of punishment under criminal justice system describe as below in Figure 2

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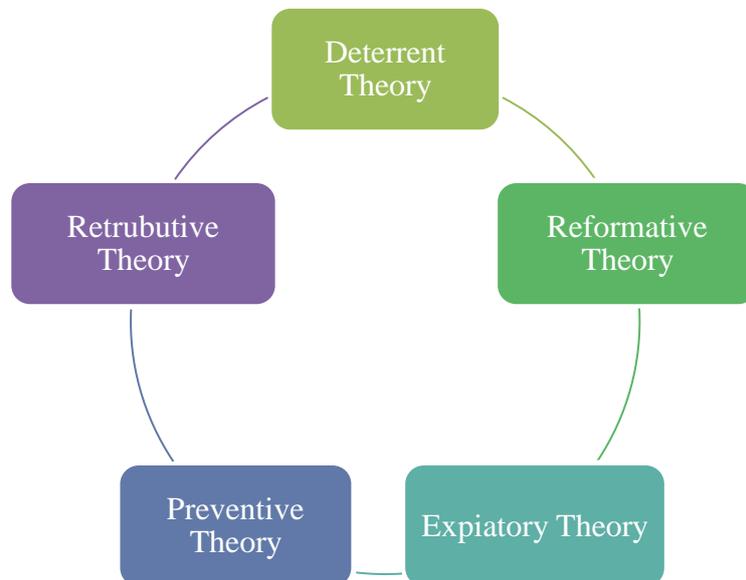


Figure 2: Theories of Punishment

a) *Deterrent Theory:*

The term “deter” means to abstain from doing an act. The main objective of this theory is to prevent the criminals from doing the crime or repeating the same crime in future.

b) *Retributive Theory:*

Retribution is the most important and ancient justification for punishment. This theory has clear views as a person deserves punishment as he has done a wrongful deed. Under this theory there are certain conditions where a person is considered as an offender:

- The penalty given will be equivalent to the grievance caused by the person
- To perform a crime of certain culpability
- Persons have been imposed for similar offenses
- The action performed was by him and he was only responsible for it

c) *Preventive Theory:*

This theory restraint that if an offender repeats offence is culpable for death, imprisonment. This theory only implicated to save the society from criminals.

d) *Expiatory Theory:*

This theory defines that if the offender expiates or realizes his mistake, he must be forgiven.

e) *Reformative Theory:*

This theory was born out of positive theory. The objective of punishment needs to be reformation by the offender. This theory also helps criminals to make a good citizen as much as possible.¹

Factors for pendency of cases:

a) *Delay in court system:*

As seen in today’s time while admitting a case in any court there are lots of pendency where delay occurs whether on the part of filing, objections, lack of documents filed during filing and so many other reason where this problem occurs and in criminal cases the delay in completing the trail process in many time trial process ends in many years and if the trial is delayed then judgment also come in many years this is the big reason of delay in court system.

b) *Delay due to non appearance of advocates:*

¹ Theories of punishment



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In India there are many courts where citizen don't get justice because of their advocate which they engage. All advocates not fall under this category but due to few advocates the whole organisation was blamed by society, sometimes due to this delay the victim want his fee back for non working in their case by advocates. Sometimes few advocates took the fee from their clients and pull the case to many years or they have to not present before courts. This result shown delay on behalf of advocates.

c) Delay due to absence of parties:

This also occurs in mostly time. Sometimes clients also want to get judgment in delay time to defame the other party, their intention is only that the other parties don't get justice in quick time. And some time one party appear and other party not appear before court, sometimes adjournment was sought on the behalf of non appearance of advocates and so many other reasons which causes delay for non-appearance before courts.

d) Disposition of cases:

The biggest problem in our country is victim don't get justice in a quick time due to long list of pendency of cases for disposition. Due to huge pendency, the cases take years for final disposal which would normally take few months.

e) Vacancy of Judges:

Another reason for pendency of cases is vacancy of Judges in many courts. As seen in today's time there are many seats vacant in courts for the vacancy of Judges but that position has not been filled by them. The "collogium system" also coming to fill the vacant post of Judges but sometimes this process seen in a wrong manner for misuse of powers of system due to political connections few judges get a priority to become senior most Judges and the Judge who came on that position does not get that position.

f) Infrastructure:

In Indian courts basically in district courts the infrastructure is very bad and disappointed. Though, the infrastructure of High Courts, Supreme Courts, commissions and tribunals is good in comparison with District courts. Few courts don't have proper space in buildings or other facilities due to which the case dispose in a long time, good library, staff, and so on these facilities are not available in district courts.

g) Independence of judiciary:

In judicial system some judges think that they are not accountable to any one due to which many a times this factor could comfort this is also a reason for delay in cases.

h) Vacation of courts:

Courts vacation also a major factor for pendency of cases in India. Mostly holidays count in Supreme Court as well as high courts.

i) Investigation agencies:

Investigation agencies like CBI, NIA, Police, and CID and so on also play a role in delay of cases. In mostly times, filing in chargesheet or filings of other documents cause a big reason of delay in pendency of cases.

In India due to pendency of cases, fast track courts constitutes which is basically constituted in heinous crime because in heinous crime victim get justice delay and culprit enjoy it because his intention is only to commit the same crime. There are many examples where we can say that justice gets delayed. The saying is true fast track is mostly for heinous crime but it shall be constituted for other crimes also like civil matters, family matters, arbitration matters so the victim get justice in a quick way. As seen in many times property cases which are pending from many years persons don't get justice and sometimes the wrong judgment give in the favor of other parties where that part enjoy the right and the victim only suffer.

Success and failure of fast track courts:

There are many failures of different states which observed huge variation in the kinds of cases handled by FTCs. Some state only decides rape and sexual offence cases to FTCs some allocates various other cases. Failure also occurs due to lack of judges and for this big reason the pendency of delay in cases occurs.

There are so many historical criminal cases where victim get justice delayed. For example the gang rape case of 2012 the mother of victim get justice in 2019 and so many others cases such as JessicaLal, Nithari case and so on where the victims get justice or they are sacrificing till date to get justice.

Inadequate staff and IT infrastructure cause delay in getting reports from the understaffed forensic science laboratories, frivolous adjournments and over-listing or lack of cause lists impacts on disposal of cases.

Data on pendency of cases in India:



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As per report of 2010 to 2017, in Karnataka, the number of sitting judges increased but pendency cases did not reduce, in other State also like Delhi, Kerala and other Northern regions where number of judges increased but this does not affect the pendency in cases.²

Solutions:

- State need to engage with the principal and senior district judges to resolve the issues of pendency of cases in various district courts
- Need to increase the infrastructure of courts
- Equal attention must be given to both the metropolitan and non-metropolitan areas while addressing the fast track courts
- Need for ratio of fair judge-population
- Arbitration and mediation can be done for early disposal of pending cases
- Lokadalats also constitute in huge manner so that poor people can file his matter in a reasonable fee
- The procedure for adjournments seeking on the part of advocates or clients is limited. That adjournments shall only provided only in emergency
- Need of advancement of technology and all public must be aware from it.

Judicial pronouncements:

- *Lalit Kumar versus Union of India*: the petitioner filed his application before Nanital High Court against the order passed by the Armed Forces Tribunal. The petition was filed by advocate who was ex-serviceman. His demand was to establish permanent bench of Armed Forces Tribunal in the State of Utrakhand. According to his arguments the person get a difficulty for the serving as well as ex-serviceman to have access to the armed force tribuna at Lucknow. The division bench of Utrakhand High Court underlying the principle of Armed Force Tribunal Act, is to provide access to justice within a reasonable cost to the service personnel. The High Court was further observed access to speedy justice is a fundamental right under Article 21 of the Indian Constitution. Armed Forced Tribunal had been constituted to fortify the trust and confidence among members of the three service in the system of dispensation of justice in their service related matters. The High Court of Utrakhand direct the Central Government to constitute a regional bench of the Armed Force Tribunal in the State of Utrakhand at an appropriate place.³
- *Anokhilalvs State of Madhya Pradesh* The bench of three Judges of Supreme Court set aside the Judgement of MP High Court and pronounce death penalty of a rape accused convicted after a trial of twelve days. The supreme court observed that speedy disposal of a case should not be at the cost of justice. In this case thirteen witness were examined in seven days. After this court appoint legal aid lawyer who have ten years of experience and he is the senior advocate. They should be given a minimum of seven days to prepare the case. They should be allowed to have meetings and discussions with the accused about the defence.⁴
- *Rajesh Pandoh vs. State*: the petitioner filed a petition of granting bail in the murder case before High Court of Jammu and kashmir because he had been in a police custody since 8 years and his proceedings are still going in the trialcourt. The court upheld the Judgment of Narayan Ghosh @ Nanu versus State of Orissa, VedPrakash @ Kalu (JC) v. State through the NCT of Delhi (2007) 1LR 2 Delhi 176 and State of Tamil Nadu Vs. S.A. Raja [criminal appeal no. 1470 of 2005] and held that bail cannot be granted since the applicant proceedings is still ongoing in the trial court, and further directed the trial court to complete the proceedings within six weeks and further held that right of speedy trial is a fundamental right available to accused.⁵

III. CONCLUSION

The basic principle of criminal adminstination is speedy trial. This concept is not new. It is a basic ingredient for protecting liberty. A common people only raise his voice to achieve the justice in a limited time and every citizen has certains rights where he can go before court if there is infringement. Every year there are many laws implemented by

² Report of 2010-2017 pendency of cases

³ Writ petition public interest litigation no. 203 of 2014

⁴ 2019 1245 SC

⁵ 2017 scc online J & K 859



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government but it is necessary to have some major amendments in it so that no one suffer for long time to get justice. There are many causes where a victim suffer for getting speedy justice which was discussed by author in the above paragraphs. It is necessary a victim get speedy justice in a correct form.

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