

CHAPTER-1

INTRODUCTION AND OVERVIEW

1.1 The General Perception

The Indian Supreme Court has generally been acclaimed for its responsive and activist interpretation of the Indian Constitution since Independence¹. Over the years, the court has evolved into a fountainhead for newer and more progressive interpretations of fundamental rights. For instance, in spite of the fact that the Constitution-makers had initially envisaged a limited role for judicial review², in *Kesavananda Bharati vs. Kerala*³ the power of judicial review was held to extend to even preventing amendments to the Constitution that would destroy its basic structure - thereby protecting features such as fundamental rights⁴. Another instance

¹See for example the observation in para 1.7, *58th Report of the Law Commission of India on Structure and Jurisdiction of the Higher Judiciary*, January 1974, wherein the Commission notes: "...the Supreme Court has, by its verdicts rendered during the last 22 years, made the concept of the Rule of Law relevant, coherent and stable in this country. It has consistently protected the fundamental rights of the citizens against unconstitutional encroachment, examined the validity of legislative and executive actions fairly, impartially and fearlessly and introduced an element of certainty and uniformity in the interpretation of laws..." The Supreme Court has not been activist throughout however- scholars point out that the Supreme Court initially started off conservatively and was hesitant to expand the scope of its interference, but the trend was reversed after the Emergency Period. See *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, SP Sathe (2002).

²*Judicial Activism in India: Transgressing Borders and Enforcing Limits*, SP Sathe (2002), page 4.

³ AIR 1973 SC 1461

⁴*Judicial Activism in India: Transgressing Borders and Enforcing Limits*, SP Sathe (2002), page 3.

would be the decision in *RC Cooper vs. Union of India*⁵ where it was held that the fundamental rights envisaged under the different Articles of Part III of the Constitution are *not* distinct and mutually exclusive, thereby opening up the panorama for creative interpretation since the rights could now be read together. Seizing the opportunity made available by *RC Cooper*, Justice Bhagwati in *Maneka Gandhi vs. Union of India*⁶ ingeniously held that a law depriving a person of his life or liberty must not only satisfy Article 21, but also Articles 14 and 19 i.e., the procedure contemplated under Article 21 is not *any* procedure, but procedure that is not arbitrary, unfair or unreasonable⁷. A further illustration of judicial activism is seen in several decisions where an expansive meaning has been given to the phrase “life” contained in Article 21, thereby paving the way for inclusion of not only basic civil liberties, but also socio-economic rights such as the right to education, the right to shelter and the right to childhood under the rubric of Article 21⁸. In addition to expanding the ambit of fundamental rights, the court has shown its dynamism by also changing the law relating to *locus standi*, evolving the concept of public interest litigation. The wide powers under judicial review now extend even to the power to issue a *continuous mandamus* where the court actively ensures implementation of directions given by it over a period of time⁹.

⁵1970 (2) SCC 298

⁶1978(1) SCC 248

⁷Article 21 of the Constitution of India provides: “Protection of life and personal liberty: No person shall be deprived of his life or personal liberty *except according to procedure established by law*” (italics supplied). The mere fact that the procedure is one established by law would not suffice as per *Maneka Gandhi*. The procedure further needs to be reasonable, just and fair to satisfy Article 21.

⁸*Judicial Activism in India: Transgressing Borders and Enforcing Limits*, SP Sathe (2002), page 13.

⁹See for example, *Manohar Lal Sharma vs. Principal Secy*, 2014(2) SCC 532.

Insofar as the right to a speedy trial is concerned, one may well ask: has the Supreme Court done all it could have, to uphold and enforce this most basic of civil rights and in keeping with its image of being a defender of human rights? The genesis of the articulation of this right can be traced to Justice Bhagwati in *Hussainara Khatoon (I) vs. Home Secretary, Bihar*¹⁰ where, relying upon his own dictum in *Maneka Gandhi*, he held that a procedure depriving a person of his life or personal liberty cannot be regarded as being "reasonable, fair and just" unless that procedure ensures a speedy trial for the determination of the guilt of that person. It was noted that whilst speedy trial is the essence of criminal justice in the United States, whose Constitution expressly guarantees the right,¹¹ it was *implicit* in the broad sweep and content of Article 21, as interpreted by the court in *Maneka Gandhi*¹². Thereafter, the Supreme Court has considered the right to speedy trial and grappled with its facets in Constitution Bench judgments such as *Kartar Singh vs. State of Punjab*,¹³ *A.R. Antulay vs. R.S. Nayak*¹⁴ and *P. Ramachandra Rao vs. State of Karnataka*¹⁵. In addition, there are numerous cases decided by benches of two or three judges on the subject. The case-law at first glance, does not give a consistent and clear picture of the law relating to speedy trial: the virtues of the right are extolled with the grandest rhetoric-yet the long-suffering accused is often not let off

¹⁰1980 (1) SCC 81

¹¹The 6th Amendment states: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

¹²Para 5

¹³1994 (3) SCC 569

¹⁴1992(1) SCC 225

¹⁵2002(4) SCC 578

easily for violation of his right in spite of several years of incarceration as an under-trial¹⁶. At times the court sets time-limits for conclusion of trials and grants blanket bail to whole classes of accused persons¹⁷; but at other times the principle that “a crime never dies” is enforced¹⁸, making the accused undergo trial even after the lapse of several decades from the date of the alleged offence.

Various legal questions relating to the different aspects of the right appear unclear: Does the Indian Supreme Court really recognize the right to a speedy trial? Is quashing of criminal proceedings the only remedy for violation of the right? Which other remedies could be granted by the courts? When exactly can it be said, that the right has been infringed? Who can invoke the right- the accused, the victim or the State? Is it enough to grant bail to an accused whose right to speedy trial has been violated or is the right to bail only part of the right to speedy trial? What are the factors to be considered in deciding whether the right has been infringed? Is pre-trial delay i.e., delay at the stage of investigation, also to be taken into account? And so on.

Legal (doctrinal) questions relating to the right to a speedy trial arise in the midst of the distressing conditions of under-trial prisoners in India and the snail's pace of criminal litigation in the country- often highlighted in the media¹⁹. Triggered by the pathetic

¹⁶See for example the case of *Ranjan Dwivedi vs. CBI* 2012(8) SCC 495, where there was a delay of 37 years from the date of the alleged offence.

¹⁷See for example *Supreme Court Legal Aid Committee vs. Union of India* 1994(6) SCC 731.

¹⁸See for example *Mohd. Hussain vs. State (Delhi)* 2012(9) SCC 408.

¹⁹See for example: *British court slams Indian judiciary's slow pace*, Kounteya Sinha, April 7, 2014, The Times of India Online, <http://timesofindia.indiatimes.com/india/British-court-slams-Indian-judiciarys-slow-pace/articleshow/33364429.cms>.

conditions of under-trials, Governments are in the habit of announcing sudden, *ad hoc* measures for release of under-trial prisoners without any systematic rationale – much like medieval kings²⁰. The Modi government is supposed to have recently resolved to release all under-trials who had served detention for half the maximum punishable period for the offences alleged. But the law in section 436A of the Code of Criminal Procedure, 1973, that was newly inserted by Parliament,²¹ already provides for such release- so what was the fuss all about? Similarly, the previous Congress government with Mr. Veerappa Moily as Law Minister had made several claims about release of under-trial prisoners *en masse*²². Are such *ad hoc*, *en masse* releases of incarcerated accused persons the proper way of handling the problem of delay and arrears in criminal cases? Statistics thrown at us from time-to-time appear terrifying: 64.7% of the people in jails in the country are stated to be under-trials²³. Thus, it appears that the whole prison machinery is running only to keep under-trials incarcerated- and not so much for the housing and reformation of convicted criminals. Have recent legislative interventions like the introduction of section 436A CrPC, which provides for release of under-trials

²⁰ See for examples:

- The report in Times of India, September 01, 2014, wherein it is stated that the Modi Government had resolved to release prisoners who had served half of the maximum term punishable upon conviction: <http://timesofindia.indiatimes.com/india/Undertrials-who-have-served-half-of-their-maximum-terms-to-be-freed/articleshow/41380079.cms&>
- The report in Times of India, June 03, 2011, *Moily Gets Freedom for 5.6 lakhs Undertrials*: <http://timesofindia.indiatimes.com/india/Moily-gets-freedom-for-5-6-lakh-undertrials/articleshow/8704190.cms>.

²¹ In the year 2006.

²² The report in Times of India, June 03, 2011, "Moily Gets Freedom for 5.6 lakhs Undertrials": <http://timesofindia.indiatimes.com/india/Moily-gets-freedom-for-5-6-lakh-undertrials/articleshow/8704190.cms>.

²³ See Report in Times of India, April 28, 2013: <http://www.newindianexpress.com/columns/Undertrials-in-jails-The-idea-of-injustice/2013/04/28/article1564581.ece>.

on bail upon completion of half the maximum punishable period²⁴, provided relief? Are these remedies sufficient?

Invoking first principles, one may ask: Is not the cardinal rule of criminal jurisprudence in India the principle that an accused is presumed innocent until proven guilty by a court of law?²⁵ Why then, should large numbers of poor and impoverished accused remain incarcerated in jails for several years awaiting trial? Is this not a blatant violation of basic human rights? Denial of speedy justice to poor, illiterate and oppressed under-trials, who appear to constitute the large majority of India's incarcerated population, would appear to be one of India's most shameful human rights records since Independence.

There is another, equally important angle to the problem of delayed trials: the concern with the interests of the victims and the State as a whole. The general perception seems to be that the criminal justice system in India is dysfunctional and on the verge of collapse²⁶. Crime rates are rising,²⁷ but the perpetrators are not

²⁴This is subject to exceptions, to be explored later.

²⁵ The *Report of the Committee on Reforms of Criminal Justice System*, March 2003, para 1.7, notes that the cardinal principle of criminal law in India is that every man is presumed innocent until proven guilty. The principle is also enshrined in International Law: Article 14(2) of the *International Covenant on Civil and Political Rights* states that "everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." See *Woolmington vs. Director of Public Prosecutions* [1935 AC 462] for enunciation of the principle in English law.

²⁶See for example, para 1.3, *Report of the Committee on the Reforms of the Criminal Justice System*, March 2003, where it was observed that the two problems facing the criminal justice system were delays and low rates of conviction; violent and organized crimes have become the order of the day; law and order situation has deteriorated and the citizens have lost faith in the system. Also see paras 2.22.5 & 2.26.9, *Report of the National Commission to Review the Working of the Constitution*, 2002, wherein it was noted that the criminal justice system is on the verge of collapse; that the system has not been able to meet even the modest expectations of society, and that the trial system on both the civil and criminal sides has broken down. In the 1980s, Upendra Baxi in *The Crisis of the Indian Legal System* (1982) had argued that the entire Indian Legal System was indeed in a state of crisis.

brought to justice and meted out the punishments due to them within a reasonable time. The affluent and powerful in society are seen to manipulate the system to the point where the delay and inefficiency make it impossible to convict them²⁸. The goals of the criminal justice system namely, the enforcement of the penal law and the punishment of offenders in order to create a safe and just society, are seen to be frustrated. Thus, the delay in the criminal process is seen to affect not just the accused, but the victims of crime and society in general who equally, can claim the right to speedy trial²⁹.

In the light of these social conditions and general perceptions, and in the face of the respect earned by the Supreme Court for its progressive interpretation and enforcement of fundamental rights over the years, one is constrained to ask: how has the Supreme Court interpreted and enforced the right to a speedy trial? Is the Court's interpretation of this right *appropriate* in the light of current social realities, or is it deficient?

1.2 The Research Question

²⁷ See para 2.12.

²⁸ The proceedings relating to former Tamil Nadu Chief Minister Jayalalithaa Jayaram is a case in point. In spite of having been convicted after a trial that took 18 years, she was granted bail by the Apex Court and is yet to undergo her sentence. Her appeal is still pending.

²⁹ The penal law and its proper enforcement is seen as vital to the interests of society. The *Report of the Committee on Reforms of Criminal Justice System*, March 2003, para 1.17: "Whatever views one holds about the penal law, no one will question its importance to society. This is the law on which men place their ultimate reliance for protection against all the deepest injuries that human conduct can inflict on individuals and institutions. By the same token, penal law governs the strongest force that we permit official agencies to bring to bear on individuals. Its promise as an instrument of safety is matched only by its power to destroy. Nowhere in the entire legal field is more at stake for the community or for the individual."

How has the Supreme Court interpreted the right to a speedy trial and is its approach defensible?

1.3 Connected Questions

Several questions are intertwined with the main question, and are integral to forming an answer to the research question, including the following:

1. Has the right to a speedy trial been adequately defined by the Supreme Court in the face of statistical and social realities?
2. To whom does the right belong- the accused, the victim (or relatives of the victim) or the State?
3. When exactly can it be said that the right to a speedy trial has been infringed?
4. What factors would determine whether the right has been infringed?
5. What would be the remedies for infringement of the right and are they adequate?
6. Is the right to bail exhaustive of the right to a speedy trial i.e., is grant of bail an adequate remedy for infringement of the right?
7. Should the right be the same for all classes of under-trials?
8. What are the ramifications of this right on the scope of judicial review?
9. How have the other organs of the State i.e., the executive and the legislature, dealt with the right to speedy trial and are their approaches defensible?

1.4 Incidental Issues

In the process of answering the questions above, the researcher incidentally looks at how these questions might have been answered in other jurisdictions, especially the United States.

1.5 Research Methodology

In order to answer the research question and connected questions, the researcher has undertaken what is primarily a *doctrinal* study that involves, *inter alia*:

- a. **Analysis of Supreme Court decisions on the right to a speedy trial:** an attempt has been made to cover all important Supreme Court decisions rendered on the topic. Some cases which repeat or reiterate principles that have been laid down earlier are not discussed for the sake of brevity, but are indicated in footnotes.
- b. **A study of the Code of Criminal Procedure, 1973:** The Code and connected statutes are studied relating to each stage of the trial process: arrest, investigation, cognizance, charge, trial, appeal and execution. Relevant decisions rendered thereunder by the Apex Court are analyzed.
- c. **A study of provisions relating to the right to bail and analysis of the existing bail system:** The right to bail, seen as forming a part of the right to speed trial, is considered with Supreme Court decisions.

- d. **Comparison with the systems existing in other countries, especially the United States:** A comparative study is undertaken with regard to the approach of the United States to the right to speedy trial. Landmark decisions rendered by the US Courts of Appeal and Supreme Court are looked at. Academic literature discussing the right to speedy trial, as evolved in the United States, is used to tease out theoretical issues. At several stages, reference is made to practices and trends in other countries especially the United Kingdom.
- e. **Academic literature on the right to speedy trial in India and in other countries:** Extensive reference is made to academic literature in the form of books, articles and reviews by prominent scholars both in India and abroad relevant to the thesis.
- f. **Law Commission Reports:** All reports by the Law Commissions of India and other such bodies, that are relevant to the topic of speedy trial are examined.
- g. **Analysis of the empirical data obtained from secondary sources:** NCRB data is used to provide compilations of statistical data showing trends for the past 10 years. The NCRB website states that there are 762 server-based computer systems across the country in every State and District Crime Records Bureaux. The data is collected and sent to NCRB at the end of the year. *Prison Statistics* is available in digitized form from 1995 onwards whilst *Crime in India* is available from 1953 onwards and *Accidental*

Deaths and Suicides in India is available from 1967 onwards³⁰.

1.6 Parameters and limitations

It may be useful to reiterate the scope of the research and some limitations:

- (a) The subject *right to speedy trial*, situated as it is within constitutional law and criminal procedure, is bound to touch upon several other subjects incidentally. These aspects, although touched upon at certain points, are not central to this research and are therefore not dealt with extensively. For example, *Preventive Detention* although touched upon, is not central to this research. Therefore the question of speedy proceedings for *detenues* i.e., those incarcerated under the relevant preventive detention law, is not gone into.
- (b) The work is primarily *doctrinal* and relies upon Supreme Court cases studied in the light of empirical realities, as reflected by NCRB data.
- (c) NCRB data is used as a secondary source of statistical information. However, NCRB data may itself be subject to various limitations that are inherent in such data. For example, the data collected and maintained by the Supreme Court regarding criminal cases is stated to be at variance with NCRB

³⁰ <http://ncrb.gov.in/>

data. This is indeed acknowledged by the Supreme Court itself.³¹

- (d) The statistical tables shown in Chapter 2 are compilations made by the researcher from NCRB data for the last decade i.e., 2004 to 2013. The latest NCRB report relates to 2013. The statistics for the past 10 years are deemed sufficient to indicate the trends that are pertinent.
- (e) Even though the topic of the thesis is titled *Right to a Speedy Trial*, what is looked at is the right to speedy criminal proceedings, which includes trial proceedings, *pre-trial* proceedings such as investigation and cognizance, and *post-trial* proceedings such as appeals and execution of sentences. It is more convenient to use the phrase “right to speedy trial” since this phrase is commonly used by the courts and in the scholarly literature on the subject.

1.7 A summary of some of the findings

The study reveals that the Supreme Court has adopted a rather cautious and somewhat faltering approach to the interpretation and enforcement of the right to speedy trial. In several countries, time-limits are laid out within which criminal trials should be concluded. Failure to abide by the limits laid down usually means that the proceedings will be quashed. The presumption of innocence is strictly followed. In India however, thousands of accused persons are made to undergo incarceration for several

³¹ Chapter 2, *National Court Management Systems (NCMB): Policy and Action Plan*, released by the Chief Justice of India, 27/09/2012, prepared by the NCMS Committee in consultation with the Advisory Committee.
<http://supremecourtfindia.nic.in/ncms27092012.pdf>.

years and yet, the Supreme Court is hesitant to lay down time-limits for conclusion of trials and quash proceedings that exceed the limits. As a consequence, the presumption of innocence, which is a cardinal principle of criminal jurisprudence, is overturned. Instead, we have a system that incarcerates largely the poor and marginalized - for whom the presumption is turned upside down. Empirical data and existing social realities suggest that the Supreme Court could adopt a more activist stance and make the right to a speedy trial more effective. As a first step, time-limits for conclusion of trials for certain specified categories of under-trials could be laid down.

The study of Supreme Court decisions reveals a pattern whereby the court is often willing to hold that the right to speedy trial is infringed when the offence is petty or minor- but adverse to letting a single guilty man go free where major crimes are concerned-in spite of the lapse of several decades from the date of the crime. This approach does not seem very coherent on the whole. The remedies for infringement of the right – as enunciated by the Supreme Court- are also wanting.

The right to bail is an important part of the right to speedy trial. Whilst major legislative changes in the Code of Criminal Procedure, 1973, made in recent years have substantially strengthened the right to bail, it is seen that there are still several deficiencies in the system, warranting further legislative and judicial intervention. Even though it is commendable that default bail has been provided at different stages of the criminal process to protect the liberty of the individual, default bail has been qualified by various pre-conditions and the courts are authorized

to *nonetheless* continue the detention of the accused in spite of the lapse of the time-limits prescribed for detention. Thus, large numbers of under-trials may continue to be incarcerated. Further, whilst it is notable that Parliament introduced provisions for release on bond without sureties and the presumption of indigence in section 436A, similar insertions have not been made in the other provisions relating to bail. Consequently, the old property-oriented regime of bail continues, in spite of our Constitutional ethos of social justice, judicial exhortations to bring about radical changes to the existing bail system and in the face of the fact that India's jails mostly incarcerate people from the poorest strata of society. Some changes have been made in the system- but we do not seem to have gone far enough. We are yet to borrow innovative ways of dealing with the accused- which have been adopted in several other countries - which try to minimize incarceration and the reliance on the property-oriented regime of bail.

Insofar as the right to speedy trial *de hors* the right to bail is concerned, it is seen that the CrPC is quite weak in advocating time-limits for conclusion of trials. It is no wonder therefore, that the judiciary has had to read time-limits *into* the provisions in several cases. But unfortunately, the Supreme Court has made a U-turn in subsequent decisions such as *P. Ramachandra Raovs. State of Karnataka*³² and refused lay down any time-limits for trials- an approach which does not bode well for the effective management and disposal of criminal cases in the country.

³²(2002) 4 SCC 578

Further, the Supreme Court has failed to appreciate that there are several *classes* of criminal accused and that the right must be defined for each class separately. This may be the first step forward towards real enforcement of the right.

The lack of adequate funding and the consequent shortage of judges and courts is the main reason for delay in criminal trials. The study of the *institutional* aspect of the right to speedy trial reveals that the Supreme Court is yet to realize its full potential in exercising its power of judicial review to ensure that adequate funds are released to the judiciary by the Union and State executives. The right to speedy trial coupled with the principle of separation of powers confers legitimacy on the Supreme Court to indeed enter the domain of fiscal planning and expenditure. Whilst some inroads have been made into the arena of fiscal planning in recent times, the overall picture is that of a Supreme Court which is as yet unsure and timid in its demand for adequate funding. Consequently, the right to speedy trial is inadequately enforced simply due to the lack of adequate funding and consequently, insufficient numbers of judges and infrastructure.

Finally it is argued, that the time has come, when the evolution of judicial activism must take a new turn in order to ensure a criminal justice system that delivers. Several practices have now converged: the need of the courts for reliable statistics and data recording systems; modern case-management and court-management techniques; stress on evaluation and assessment of judicial performance; anxiety about financing the judiciary; the immense advancement in technology and greater scrutiny and accountability in the judicial sphere, all of which now require the

Supreme Court and other courts in the system to not just focus on the traditional task of deciding cases – but also to evolve themselves into *Managerial Courts*. This is the need of the hour, it is argued, and the next grand phase of judicial activism may well have to be in the realm of *judicial management*.

1.8 Chapter-wise break-up

Chapter II: The state of affairs: This chapter looks at the currently existing factual conditions relating to the trial of criminal cases in the country; the conditions of detention of under-trial prisoners and other empirical aspects. Statistical tables compiling trends over the past decade (2004 to 2013) are given.

Chapter III: Criminal Procedure and the right to speedy trial: This chapter looks at the right to speedy trial and the right to bail as found in the Code of Criminal Procedure, 1973, as well as the decisions rendered thereunder; the question is asked and answered as to whether Indian criminal procedure is at fault for the delayed conduct of criminal trials. The analysis of the relevant provisions is done stage-wise, relating to each stage of the criminal process: arrest, investigation, cognizance, charges, trial, appeal and execution.

Chapter IV: The Supreme Court and the right to speedy trial: This chapter analyses the approach of the Supreme Court through various decisions rendered by the Apex court. The Supreme Court's dalliance with time-limits is studied; the court's Janus-

faced approach to the question of speedy trial based on the gravity of the offence is considered. Other important questions such as to *whom* the right belongs and *when* it attaches, are also looked at. The approach in the United States to the question of speedy trial is used to compare and contrast it with the Indian approach.

Chapter V: Financing the judiciary: This chapter looks at ways in which the major reason for delays i.e., lack of funds, can be addressed by interpreting the *institutional aspect* of the right to speedy trial effectively; it is argued that proactively articulating the right to speedy trial along with the doctrine of inherent powers would be the way forward to address the issue of inadequate funding for the judiciary.

Chapter VI: Findings and recommendations: This chapter further summarizes, synthesizes and analyzes the findings obtained in the previous chapters; some issues are explored further; additional questions are asked; finally recommendations are listed out.

1.9 Terminology

Even though the phrase “right to speedy trial” is used through most of the work, what is actually meant is the right to speedy criminal proceedings, which include trial proceedings, *pre-trial* proceedings such as investigation and cognizance, and *post-trial* proceedings such as appeals and execution of sentences. It is more convenient to use the phrase “right to speedy trial” since this

phrase is commonly used by the courts and in the scholarly literature on the subject.

Similarly, the word "accused" is used liberally to refer to the person caught up in the criminal justice system, whether or not he has been formally charged with an offence.